



General Assembly
Economic and Social Council

Distr.
GENERAL

A/39/326
E/1984/111
29 June 1984
ENGLISH
ORIGINAL: ARABIC/ENGLISH

GENERAL ASSEMBLY
Thirty-ninth session
Item 12 of the preliminary list*
REPORT OF THE ECONOMIC AND
SOCIAL COUNCIL

ECONOMIC AND SOCIAL COUNCIL
Second regular session of 1984
Item 8 of the provisional
agenda**
PERMANENT SOVEREIGNTY OVER
NATIONAL RESOURCES IN THE
OCCUPIED PALESTINIAN AND
OTHER ARAB TERRITORIES

Permanent sovereignty over national resources in the
occupied Palestinian and other Arab territories

Report of the Secretary-General

1. At its thirty-eighth session, the General Assembly adopted resolution 38/144 of 19 December 1983, the operative part of which reads as follows:

"The General Assembly,

"...

"1. Takes note of the report of the Secretary-General on permanent sovereignty over national resources in the occupied Palestinian and other Arab territories (A/38/282-E/1983/84);

"2. Commends the report of the Secretary-General on the implications, under international law, of the United Nations resolutions on permanent sovereignty over natural resources, on the occupied Palestinian and other Arab territories and on the obligations of Israel concerning its conduct in these territories (A/38/265-E/1983/85);

* A/39/50.

** E/1984/100.

"3. Condemns Israel for its exploitation of the national resources of the occupied Palestinian and other Arab territories;

"4. Reaffirms that Convention IV of The Hague of 1907 and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 are applicable to the occupied Palestinian and other Arab territories;

"5. Emphasizes the right of the Palestinian and other Arab peoples whose territories are under Israeli occupation to full and effective permanent sovereignty and control over their natural and all other resources, wealth and economic activities;

"6. Also reaffirms that all measures undertaken by Israel to exploit the human, natural and all other resources, wealth and economic activities in the occupied Palestinian and other Arab territories are illegal, and calls upon Israel to desist immediately from such measures;

"7. Further reaffirms the right of the Palestinian and other Arab peoples subjected to Israeli aggression and occupation to the restitution of, and full compensation for the exploitation, depletion and loss of and damage to, their natural, human and all other resources, wealth and economic activities, and calls upon Israel to meet their just claims;

"8. Calls upon all States to support the Palestinian and other Arab peoples in the exercise of their above-mentioned rights;

"9. Calls upon all States, international organizations, specialized agencies, business corporations and all other institutions not to recognize, or co-operate with or assist in any manner in, any measures undertaken by Israel to exploit the national resources of the occupied Palestinian and other Arab territories or to effect any changes in the demographic composition, the character and form of use of their natural resources or the institutional structure of those territories;

"10. Requests the Secretary-General to elaborate on his report (A/38/265-E/1983/85) in order to cover also, in detail, the resources exploited by the Israeli settlements and the Israeli-imposed regulations and policies hampering the economic development of the occupied Palestinian and other Arab territories, including a comparison between the practices of Israel and its obligations under international law;

"11. Also requests the Secretary-General to submit the detailed report to the General Assembly at its thirty-ninth session, through the Economic and Social Council."

2. In implementation of that resolution, a team of experts was engaged to prepare the report requested by the General Assembly. In view of the guidelines laid down in the resolution, it was considered essential that a member of the team should travel to Israel and the occupied territories in order to secure the most accurate,

detailed and up-to-date information on "the resources exploited by the Israeli settlements and the Israeli-imposed regulations and policies hampering the economic development of the occupied Palestinian and other Arab territories". To this end, on 27 February 1984, the Under-Secretary-General, Department of Technical Co-operation for Development, addressed a letter to the Permanent Representative of Israel, which read as follows:

"I refer to General Assembly resolution 38/144 of 19 December 1983, on permanent sovereignty over national resources in the occupied Palestinian and other Arab territories, whereby the Secretary-General was requested to elaborate on his previous report, and to submit it to the thirty-ninth session through the Economic and Social Council.

"In order to assist in the preparation of the report, the Secretary-General would be most grateful to receive such information on this matter as the Government of Israel might have available.

"In addition, to facilitate the preparation of a report, a fact-finding mission will visit the region in March 1984 in the person of Mr. Dante Caponera, formerly Chief, Legislation Branch, Food and Agriculture Organization, and a noted authority on water legislation. Mr. Caponera's task will be to collect on-the-spot information on the issues involved, in particular on applicable occupation policies, laws and regulations concerning water and land administration, including administrative practices.

"I would be grateful if the Government of Israel would receive the mission and make available to it such information as the Government might have and co-operate in the provision of other information as might be needed by the mission."

3. On 4 May 1984, the Permanent Representative of Israel sent the following reply:

"I have the honour to refer to your letter of 27 February 1984 concerning General Assembly resolution 38/144 on 'permanent sovereignty over national resources' in the territories administered by Israel, and wish to indicate the following:

"In my notes verbales of 3 August 1981 and 3 September 1982 addressed to the Secretary-General of the United Nations (see A/36/648, annex, appendix VII, and A/37/600, para. 4), I outlined Israel's position with regard to the resolutions pertaining to the same subject. As already indicated on those occasions, my Government could not associate itself with the actions called for by those resolutions, since they were characterized by blatant political hostility towards Israel, and by a distorted and inherently biased attitude to my country, thus ignoring the many productive activities and achievements concerning national resources in the administered territories.

"General Assembly resolution 38/144, referred to in your letter, constitutes the terms of reference for the actions to be undertaken by the Secretariat on the above subject. It should be recalled that this resolution,

like those adopted in the past under the same agenda item, has taken a biased and hostile approach towards Israel and its activities in the administered territories. Such approach, having preceded the visit to the territories by United Nations experts, was not only totally unfounded; it must unavoidably call into question their mission when the conclusions are evidently predetermined.

"Israel is an open and free country. It permits journalists, tourists and others to visit not only Israel but the administered territories as well. In fact, when a positive approach is adopted and applied by United Nations agencies, Israel enables them to gather the necessary information they are interested in.

"However, for the reasons set out in this letter, you will no doubt readily understand why my Government cannot accept any activity based on General Assembly resolution 38/144."

4. In view of the position taken by the Government of Israel, the expert was not able to visit Israel and the occupied territories. However, he visited the Syrian Arab Republic and Jordan. He held discussions with the competent authorities of those countries as well as officials of the Palestine Liberation Organization in Damascus and Amman concerning matters relevant to the resolution. Another member of the team visited the headquarters of various United Nations agencies to obtain additional information on this subject. By a letter dated 8 June 1984 addressed to the Secretary-General, the Permanent Representative of Israel transmitted for circulation to the General Assembly and the Economic and Social Council "a report entitled 'Judea-Samaria and the Gaza District - A sixteen-year survey', constituting a shortened version of the report prepared by the Government of Israel pertaining to the economic and social developments in those areas between the years 1967 and 1983". The letter with annexed report was circulated in document A/39/295-E/1984/124. It was available to the team of experts in the latter stages of their work.

5. The report of the experts is reproduced in the annex to the present report.

Annex

REPORT OF THE TEAM OF EXPERTS

I. INTRODUCTION

1. The question of permanent sovereignty over national resources in the occupied Palestinian and other Arab territories has been a subject of concern to the General Assembly since its twenty-seventh session, when it adopted resolution 3005 (XXVII) of 15 December 1972. The question was dealt with in two reports submitted by the Secretary-General to the Assembly at its thirty-second and thirty-sixth sessions (A/32/204 and A/36/648). Further, in response to Assembly resolutions 36/173 of 17 December 1981 and 37/135 of 17 December 1982, two reports, which focused on legal matters, were submitted to the General Assembly at its thirty-eighth session: in one report (A/38/282-E/1983/84), specific Israeli occupation policies - laws, regulations, military orders, administrative practices - and their impact on the national resources of the Palestinian and other Arab territories were analysed, while the other report (A/38/265-E/1983/85) contained a discussion of principles of international law, particularly the law of belligerent occupation, and legal principles of permanent sovereignty over natural resources and their applicability to the occupied territories and the obligations of Israel thereunder.

2. In order to prepare the report requested by the General Assembly in its resolution 38/144, the team considered it essential that it should undertake an on-site inquiry in the occupied territories so as to gather all available information relevant to the question of permanent sovereignty over national resources in those territories and to discuss the various aspects of this question with the parties directly concerned, including officials of the Government of Israel. Unfortunately, efforts to gain access to Israel and the occupied territories were unsuccessful.

3. From 29 February to 14 March 1984, a member of the team visited the Syrian Arab Republic and Jordan, where he held discussions with the competent authorities of those countries, as well as with officials of the Palestine Liberation Organization (PLO) in Damascus and Amman. In the Syrian Arab Republic, he also held discussions with the provincial authorities of Quneitra, and in Jordan he was able to obtain material submitted to an international symposium on "Israel and the Arab waters" that was held at Yarmouk University at the time of his visit. On 15 May 1984, the Permanent Representative of Jordan to the United Nations conveyed to the Secretariat a list of Israeli military orders relating to the use of water resources in the West Bank. His letter and its enclosure are reproduced in the appendix to the present report.

4. Information was obtained by another member of the team in the course of visits he undertook in April/May 1984 to the headquarters of the International Labour Organisation, the United Nations Industrial Development Organization, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the United Nations Conference on Trade and Development and the Centre for Human Rights. The team also reviewed the information contained in reports of various United Nations

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organs and specialized agencies, material issued by Governments and the PLO, publications of specialized research organizations and other publications dealing with the situation in the occupied territories.

5. The information thus obtained enabled the team to examine in some detail the Israeli policies relating to the exploitation of the water resources of the occupied territories. However, regarding other aspects, such as land, economy, and social, cultural and political institutions in the occupied territories, the team was unable to obtain information that would add substantially to what has already been reported to the General Assembly. Such additional data as the team was able to obtain on those subjects paralleled closely the information collected by another group of experts which relied on the same sources. Their report (A/39/233-E/1984/79, annex), which deals in detail with the impact of the Israeli settlements on land, economy, social and religious life and local government in the occupied Palestinian territories, was submitted to the Economic and Social Council at its first regular session of 1984 and is to be submitted to the General Assembly at its thirty-ninth session, in pursuance of Assembly resolution 38/166 of 19 December 1983, entitled "Living conditions of the Palestinian people in the occupied Palestinian territories". In these circumstances, the report which follows is limited to the subject of Israeli policies and practices relating to the exploitation of the water resources of the occupied territories. The team was not able to prepare the comparative study referred to in paragraph 10 of General Assembly resolution 38/144. Such a study would require a full compilation of the most accurate and up-to-date information concerning the practices of Israel relating to the questions at issue, which would need to be secured by means of a thorough investigation on the spot. As indicated earlier, this essential condition could not be met.

II. WATER POLICIES IN THE OCCUPIED TERRITORIES

6. Water is a vital natural resource for the inhabitants of the occupied areas, as well as for Israel. 1/ The economic value of land in this region is directly dependent on the availability of water supplies. This has acquired particular importance in Israel and, more recently, in the West Bank, since the commercial competitiveness of agricultural production in these areas is determined mainly by modern methods of irrigation which make extensive use of water, while dependence on natural rainfall permits only limited agricultural production.

7. Almost all water resources in the area, both surface and underground, are shared by two or more States. The Jordan basin is shared by the Syrian Arab Republic (two of the main headwaters, the Baniyas and the Hasbani rivers, are located in the occupied Golan Heights), Lebanon (in which the Dan, another headwater tributary, is located), Jordan (which contributes the Yarmuk, an important tributary) and Israel. International underground water aquifers are also present in the region. The western part of the West Bank is the site of most of the headwaters of the aquifers that flow from the West Bank towards Israel, where they feed springs and wells.

8. All countries recognize that the region is closely interconnected as far as water resources are concerned. 2/ In fact, any interference by one country in the surface or groundwater flow has repercussions on the activities of other countries sharing the same basin. The effects of any activities in connection with water resources are particularly felt in downstream territories which depend on upstream water supplies. In these shared surface or groundwater basins, Jordan, the occupied West Bank and Israel are at the same time upstream and downstream, depending on the location of the basins.

9. The available water resources in Israel have been almost fully utilized as a result of population growth and related increases in water consumption. Possible water development projects have been studied and a centralized management system of water resources has been established in Israel, on the basis of a 1959 water law. Israeli water and land policies and practices, both within Israel and in the occupied territories, suggest that the control of water resources constitutes a major concern.

10. Since the water potential of the area between the Mediterranean Sea and the Jordan River has been almost fully utilized and the need for water for domestic, agricultural and industrial uses is steadily growing, any substantial improvement in the situation has to be sought by making new sources available and by developing techniques for reclaiming otherwise unusable sources, such as cloud-seeding, desalinization, recharging of aquifers, sewage reclamation and modification of irrigation practices from sprinkler to drip irrigation. Another remedy would be the diversion of water from agriculture to domestic consumption. However, according to the Israeli Water Commissioner, to "divert water from production to domestic consumption in an amount that is equivalent to one third of the water consumed by agriculture today will entail economic and social regression, as well as injury to the policy of population dispersion". 3/

11. Israeli water policies have been implemented in the occupied territories by utilizing available legislation, whether customary, Ottoman, Mandate, Jordanian, Egyptian, Israeli or military. By means of military orders and regulations, the Israeli Government, since June 1967, has been exercising complete legislative, administrative and judicial authority over the occupied territories and their inhabitants. Often, legal enactments applied to the occupied territories and their enforcement have been at variance with the legal framework that existed prior to 1967. The existing institutions have also been modified or replaced in order to facilitate the application of the water policies.

12. The analysis below is based on a review of the laws and institutions as they existed in the Palestinian and other Arab occupied territories prior to 1967. It is known, however, that up to 1984, the Israeli authorities have issued about 1,200 military orders; some of these have purported to modify the legal status quo in matters of water resource management. For a thorough appraisal of the extent to which the above-mentioned military orders have changed the legal status quo as regards water resource management and administration, it would be essential to undertake a comprehensive analysis, not only of the military orders that were accessible for review but also of others. This has not been possible because the full text of the relevant military orders, including those issued up to 1984, were not available.

13. Analysed below are several sectors in which the Israeli regulations and practices have brought about modifications in the legal and institutional framework relating to water resources that existed prior to 1967 in the Palestinian and other Arab occupied territories.

III. PRINCIPLES OF WATER OWNERSHIP

14. The legal status of water ownership under the legislation of Israel extended to the occupied territories is substantially different from its comparable status under the domestic law - whether customary or written - that used to apply in the occupied territories. Whereas, under the latter legislation and subject to certain qualifications, landowners could claim private ownership of or equivalent vested rights in the waters on or under their land, this is not permissible under the Israeli water legislation, according to which all waters, both surface and underground, are public property. To the extent that the Israeli principles of absolute State property have been extended to the water resources in the occupied territories without exception, an appreciable change has been introduced in the legal status quo that existed prior to the occupation in respect of the ownership of water in the occupied territories. This has taken place in the Golan Heights by means of the full introduction of Israeli legislation in that territory, and in the West Bank by means of Military Order No. 291 of 1968 which suspended the operation of Jordanian Law No. 40 of 1952 on the settlement of disputes of law and water rights. In view of the fact that title to water is, under Israeli legislation, severed from title to land, the extension of such legislation to the occupied territories also has brought about an appreciable change in the legal character and economic and social value of land ownership, for water is, in arid regions, a highly prized resource.

IV. SYSTEM OF WATER ALLOCATION AND CONTROL

15. Israeli legislation on the allocation and control of water resources is at considerable variance with the legislation, whether written or customary, that used to prevail in the Palestinian and other Arab occupied territories. The differences are in both the kind and degree of restrictions that can be enforced with respect to the abstraction and use of water. Israeli legislation has introduced a very extensive system of central governmental control, whereby both surface and underground water can be abstracted and used only under a governmental permit and strictly for the indicated purposes in the area concerned and within the limits of the allocation envisaged. Metering of groundwater abstracted from wells and of surface water is also extensively practised and strictly enforced.

16. However, a special régime has been established in favour of "planned settlements", whereby these supplements are entitled to a water allocation for irrigation purposes as collective users, as opposed to the individual allocations made with respect to all other users. While the internal distribution of water is left to the discretion of the settlement corporation, it is worth noting that if a settlement does not use its annual quota, it may receive its entire water allocation in the following year. 4/ Generally, in the case of individual Arab

users, this procedure of collective water allocation is not followed. The legal system for water allocation that used to be in force in the Golan Heights and in the West Bank is characterized by far more flexibility and a greater protection of the interests of the water user vis-à-vis the governmental regulatory authority. For instance, under Jordanian water legislation and administrative practice, whenever the water from a well could no longer satisfy the uses for which a water-use permit had been granted, or a well went dry, a new drilling permit was automatically issued for another well to replace the old one. This is no longer permissible under Israeli legislation, as evidenced by the many refusals to allow Arabs to drill new wells.

17. As far as the Gaza Strip is concerned, the two legal systems are even further apart, for in Gaza no government-administered water permit system was in force, and the right to take water was governed by customary law. This recognized the proprietary water-use rights of the landowner and the rights of all those who needed it for the basic necessities of life (right of thirst, chafa, and right to irrigate, chirb). In addition, private arrangements could be freely entered into for the purchase and exercise of water-use rights.

18. The restrictive Israeli legislation relating to water resource allocation has been enforced in the occupied territories by means of Military Order No. 92 of 1967, concerning "Powers for water concerns", and Military Order No. 158 of 1967, amending the Jordanian Law on Water Supervision of 1953 as regards the West Bank; thus, the proprietary rights as regards water that had been validly acquired under the pre-occupation legal régime have since been exposed to curtailment to the full extent permitted by Israeli law on the subject.

19. Restrictive policies on the allocation of water have been cited by Arab sources as preventing Arabs from drilling new irrigation wells, particularly in the Jordan Valley, while 25 wells in the same area were dug, at depths ranging between 200 and 750 metres, to supply settlements. 5/ The same sources indicate that Israel exploits 40 to 50 per cent of the West Bank waters annually by means of the westward inclination of the West Bank's water basin, in addition to the quantities consumed by Israeli settlements established in the West Bank by means of pumping wells owned by Israeli settlements or by the Israeli Mekorot National Water Company. 6/ Discriminatory practices against Arab residents in favour of Israeli settlements in the allocation of water are also reported. 7/

20. On the other hand, no new rights to use water may be acquired in the fashion known to and customarily followed by the Arab populations. For instance, Military Order No. 291 of 1968 suspended the procedures provided for in Jordanian Law No. 40 of 1952 which regulated the adjudication and settlement of disputes over land and water rights and under which the right to use water could be recognized, granted or adjudicated. Likewise, through Military Orders Nos. 450 and 451 of 1971, all of the powers of the Jordanian Director of Lands and Surveys - which included the right to grant licences for the use of waters - have been transferred to an Israeli "person responsible". In the Gaza Strip and the Golan Heights the customary rights formerly enjoyed by the local inhabitants for the unrestricted digging of wells and abstraction of ground water have been equally subject to restrictions to the full extent permitted by Israeli legislation.

21. The Israeli military authorities seem to have applied, in general, provisions of Jordanian water legislation tending to limit the drawing or use of water by the Arab populations. However, if local legislation does not provide for restrictions, such as in Gaza and in the Golan Heights, the relevant Israeli provisions on water-use restrictions or other practices have been applied, either on the basis of military orders or other legal enactments, or by means of administrative decisions. 8/ The legal assertion of Arab-held rights also has been affected by the change imposed by the occupation authorities in the administrative machinery used to register, and thus safeguard, acquired water rights.

22. Under the legislation existing prior to 1967, local records of water rights as regards the Golan Heights, were kept by the mohafez (i.e., the prefect) of Quneitra (Syrian Arab Republic), by Jordan's Director of Lands and, since 1966, by the Jordanian Natural Resources Authority (NRA) in the case of the West Bank, and by the relevant village or city councils or customary water administrations in the Gaza Strip. With Israeli Military Orders Nos. 92 of 1967, 158 of 1967, 291 of 1968, 389 of 1970, 450 and 451 of 1971 and 457 of 1972, these recording functions have been taken over by the Israeli authorities. Whereas the Israeli legislation on the allocation and control of water resources is more restrictive than comparable legislation and practices in effect before 1967 in the occupied territories, in one particular respect the reverse holds true, that is, with regard to the transfer of water from one basin to another and from one area to another within the same basin.

23. Jordanian water legislation in force in the West Bank prior to Israeli occupation specifically prohibited the transfer of water from one drainage basin or aquifer to another. 9/ Even within the same basin, water could not be transferred from one area to another without an authorization from the Jordanian Council of Ministers. 10/ Since the water resource management practices of Israel ignore administrative, political and hydrological boundaries, the Israeli authorities are in a position to transfer water from one basin or aquifer to another, both within the West Bank and from the West Bank to other areas. Thus, the waters of the Jordan basin are diverted into the Israeli national water carrier and distributed to other basins up to the Negev desert region. 11/ The diversion of a substantial amount of the waters of the Jordan River has increased the salinity of what remains of the river flowing into Jordan and the West Bank, sharply reducing the possibilities of using these waters for domestic and irrigation uses. The waters abstracted from the ground-water aquifer of the West Bank are likewise conveyed into the same national water carrier. These waters are sometimes transferred from the National Water Carrier back to other basins located in the Golan Heights and the West Bank. 12/ This method of "water sharing", 13/ permitted under Israeli legislation, suspends the basin-of-origin protection clauses found in the legislation in force in the West Bank prior to occupation. It can affect established rights as regards water and relevant use patterns in the West Bank. To the extent that "water sharing" results in net water losses to the occupied territories, it raises the issue of the transfer of waters from an occupied territory into the occupying power's own territory. 14/

V. ADMINISTRATION OF WATER RESOURCES

24. The Israeli system of water resource administration appears to be quite different from the system of water resource administration that used to be in effect in the occupied territories. The basic difference is one of approach, the Government of Israel having vested strictly centralized water management responsibilities in a Water Commissioner and responsibility for the supply of water in a National Water Authority. Whereas a degree of centralization of governmental responsibilities for water resource management was not alien to the occupied territories prior to occupation, some functions in the management of irrigation water used to rest with the local governments, and certainly the bulk of responsibility for the provision of domestic and municipal water supplies used to rest with the Municipal Council of the city of Gaza, the municipalities of the West Bank and the mohafez of the city of Quneitra in the Golan Heights. As a consequence of various military orders and practices, the extension to the territories of the Israeli system of water resource management in general, and for the provision of public water supplies for domestic and municipal uses in particular, 15/ has reduced considerably the powers and responsibilities of the local governments in the occupied territories, 16/ including, in particular, the authority to levy and collect water rates and charges. The present integration of the basic water services in the occupied territories with those of Israel is about to lead to the complete dependence of the former services on those of Israel and will eventually make the separation of the two very costly and difficult.

25. While in the occupied territories the new water administration system has resulted in centralization and absence of local participation, the Israeli system of water resource administration, however, contains features providing for the decentralization of responsibilities to the regional, local and users' levels; indeed, public participation in policy formulation, planning, management and conservation is a basic tenet of Israeli water legislation. 17/ For this purpose, various bodies have been created in Israel in which public participation is provided for, such as, among others, the Water Board (and its regional, agricultural and water supply committees), the Board for Drainage Affairs, the Planning Committee, the Fund for Adjustment of Water Charges, the Regional Water Authorities and the Tribunal for Water Affairs.

26. Since it appears that the benefit of public participation, at least in the decentralized water management bodies, is not extended to local Arab populations - even in those cases in which their legitimate water rights are or might be affected - or where the water resources under consideration are located in the occupied territories, Arab water consumers or users have no say in the formulation of policies or in the decisions taken or advice given by the responsible bodies. In the extension of Israeli water administration to the occupied territories, an element of discrimination to the detriment of Arab inhabitants is therefore difficult to deny.

VI. DECLARATION OF SPECIAL ZONES OR AREAS

27. On the basis of Israeli legislation, a large number of "special zones or areas" may be declared, such as "protection strips", 18/ "rationing areas", 19/

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"drainage districts", 20/ and "flood and soil erosion protected areas"; in addition, "security military areas" may also be imposed in the occupied territories. Most of these areas are so declared after consultation with relevant boards in which public participation is ensured. Prior to the Israeli occupation, the powers of the Government to declare protected or restricted zones or areas were exercised only exceptionally. The extensive network of legal powers conferred by Israeli legislation on the water administration service for establishing special zones or areas makes it possible for the administration to intervene to a great extent in water allocation and use patterns. As a result, the Israeli water authorities may restrict or prohibit individual activities connected with the utilization, distribution and conservation of water within the occupied territories.

28. As an example, in accordance with Military Order No. 1015, 21/ the Commander of the Israeli forces in the West Bank, "in order to preserve the water resources and the agricultural production" has prohibited the planting of fruit trees without a permit from the military government. Trees already planted must be registered within 90 days and a permit must be obtained for each of them. Government inspectors have the power to make searches and to uproot unlicensed trees at the expense of the owners. A subsequent order 22/ contains similar restrictive provisions regarding vegetables. In other instances, it has been reported that the existing rules of a customary and legal nature relating to the irrigation water entitlements of individual or collective holders of water rights and to the establishment of the protected areas around wells (harim), canals and rivers and other water works in Gaza have been ignored and replaced by Israeli criteria and principles through military orders or decisions of the Israeli water authorities.

29. The implementation of these extensive legal powers in the occupied territories has brought about a substantive modification of legitimate uses of water under the legislation of Gaza, the Golan Heights and the West Bank. The lack of participation of the Arab users in the bodies responsible for advising on such measures is a feature alien to both Israeli and previously applicable Arab legislation.

VII. PROTECTION OF WATER RIGHTS

30. Israeli water legislation contains detailed provision for appeals against decisions on the recognition of existing rights, the proclamation of "rationing areas", increases in water rates, the issuance or modification of water permits and licences, the promulgation of water-use norms and many other administrative determinations of the water management authorities. In addition, the payment of compensation is provided for in such cases as the loss or reduction in water availability or output as a result of, inter alia, the issuance of water-use norms or of water rationing orders. Israeli literature emphasizes the special care taken by lawmakers to protect the rights of the individual and to ensure fair compensation in the case of justified claims as regards water questions. 23/ However, the appeals for review of these decisions are heard by the Israeli authorities alone, without any Arab participation in the review and decision-making process. The water authorities seek the views of various "Boards" in which there is, contrary to internal Israeli practice, no Arab participation. 24/

31. The procedures for appealing administrative decisions of the Israeli water-controlling authorities could not be fully ascertained by the team. It seems that the first recourse is to the military objection or appeals committees. These committees, created by Military Order No. 172 of 1967, have been made responsible for hearing appeals on matters within their jurisdiction, including water questions. They are each composed of three military officers, at least one of whom has legal qualifications. Apparently, they can only make recommendations to the Area Commander who is not bound to accept them. Pursuant to Military Order No. 1062 of 1982, these committees have now been made responsible for adjudicating land cases which, until 1982, were dealt with by Arab courts. It is not clear if the Arab populations may seek recourse against the decisions of the military objection or appeals committees in the Israeli Water Tribunal or in other courts, or what the prevailing procedures are with regard to appeals against decisions in water matters.

VIII. FINANCIAL POLICIES FOR WATER RESOURCE MANAGEMENT

32. Under the rule of the Israeli legislation, criteria for the assessment and collection of water rates and charges and governmental policies on the reimbursement by the beneficiaries of the costs of water development projects and on the provision of subsidies and incentives to water users to promote water development activities differ from comparable policies and practices under the original domestic legislation of the occupied territories. Since Israeli policies and practices are enforced in the occupied territories and local Arab interests are not adequately represented in the public bodies responsible for relevant policy-making, financial hardship and discrimination may result for the affected Arab water users and consumers. 25/

IX. IMPACT OF WATER OCCUPATION POLICIES

33. Given the controversial context of Israeli water policies in the occupied territories, it is not surprising that there are differing assessments of the impact of such policies on water distribution and on economic, agricultural, social and human development. In general, while official Israeli sources 26/ stress the beneficial impact - the introduction of modern water management techniques, waterworks and protection against salinization - Arab sources emphasize the discriminatory nature of Israeli water policies geared towards denying Palestinians opportunities for modern irrigation agriculture by favouring Israeli settlements that make extensive use of water and by protecting the underground flow of West Bank waters to Israeli-tapped aquifers.

34. On the basis of previous reports of the Secretary-General (A/38/282-E/1983/84, paras. 44-49 and the recent report entitled "Living conditions of the Palestinian People" (A/39/233-E/1984/79, paras. 51-54)), Arab sources 27/ and Israeli sources, 28/ the following factual picture of water supply and water consumption emerges: While Israel consumes about 1,700 million cubic metres per year (MCM), the Arab population in the West Bank consumes about 100 MCM (86 MCM for irrigation and 14 MCM for domestic use) from a supply available, in principle, of 800-850 MCM (600 MCM underground, 50 MCM surface and 200 MCM from the Jordan). Israeli

settlements in the West Bank (excluding East Jerusalem) consume about 26 MCM, mostly for water-intensive irrigation in agricultural projects in the Jordan Valley.

35. A considerable portion of Israeli water supplies comes firstly from Jordan water diverted to Israel, estimated to be over 400 MCM on average 29/ and, secondly, from precipitation falling in the West Bank and flowing in a westerly direction into Israel (estimated at over 200 MCM). An independent Israeli expert 30/ reports that there are about 460 MCM of "shared water resources" (i.e., water originating in or flowing through the West Bank which could be tapped by West Bank wells), of which West Bank Palestinians use about 25 per cent (100 MCM) and Israel the remaining 75 per cent. In a separate study, Israel's Water Commissioner, Meir Ben Meir, is quoted as having acknowledged that "one third of the water reaching Israel ... originates in the West Bank". 31/

36. Israeli policy-makers perceive a severe water shortage, since the region's water supply threatens to fall short of demand and since over-pumping tends to threaten existing water sources; therefore, they take the position that:

"Exploitation of water resources must end in Judea and Samaria and decrease in the Gaza Strip. According to present forecasts of demographic and economic development, there will be a water deficit by the end of the century of 200-400 MCM per year in these two areas." 32/

37. Given the West Bank's huge surplus of water supply (800-850 MCM) over West Bank Arab use (about 100 MCM) and even West Bank Arab and settler use (about 125 MCM), the cited policy declaration is based on an integrated view of both Israel and the occupied territories. From the perception of an impending water shortage, the measures taken to restrict water use by West Bank Palestinians are logical: as the Israeli Government reports, 33/ the consumption of water as of 1977 was determined through metering and water use was held at that level, to which 10 per cent was added to offset errors. Drilling of new wells was prohibited for Arab farmers (apart from two wells) and the Israeli water authority Mekorot was permitted to drill at least 30 new wells. As a necessary result of these measures, the full supply of water for the very water-intensive agricultural settlements and the unimpeded flow of underground water to the Israeli-tapped aquifers is fully protected. An Israeli commentator 34/ noted that these policies deny the Palestinians the possibility of developing competitive water-intensive farming techniques to put irrigable land to full use and exposes them to the vagaries of natural rainfall.

38. The Israeli Government, while not denying these facts, asserts that through a system of water sharing by means of pumping in the years from 1978 to 1980 (no information is given for other years), a net balance of about 2 MCM was received by the West Bank. Also, the modernization and expansion of waterworks for domestic use and the sometimes dramatic increase of water consumption by seven municipalities is mentioned. However, the official Israeli report does not provide a breakdown of these figures into water use by Israeli settlers and by Palestinian inhabitants. 35/

39. In the Gaza Strip, water use is about 110 MCM in contrast with a water supply of about 50 MCM, reflecting considerable over-exploitation with grave consequences for existing wells. An Israeli expert (see A/38/282-E/1983/84, para. 48) has estimated that the use by Israeli settlements of about 30 to 60 MCM contributes to this over-exploitation. The official Israeli statement reports restrictive policies to reduce water abstraction and efforts made to improve the water supply situation, resulting in a saving of over 20 MCM. 36/ However, the official Israeli statement does not mention or offer information on the distribution of available water between the Arab inhabitants and Israeli settlements.

X. CONCLUSIONS

40. Israeli policies and practices differ fundamentally from those in effect in the occupied territories before 1967. As a consequence, and to the extent that these policies and practices have been enforced in the occupied territories, the legal and institutional framework obtaining at the time of occupation has undergone a basic revision. The changes of major consequence that seem to have been effected relate to the following:

(a) The water rights held by the water users;

(b) The pattern of administrative water management responsibilities and water allocation, particularly with respect to the provision of water supply and sewerage services to towns and villages;

(c) The fact that the system of water management operates not by voluntary co-operation and with the participation of the Arab inhabitants concerned but by decision of the Israeli authorities.

41. The situation in Israel differs from the situation in the occupied territories. In Israel proper, the prevailing modern and centralized system is balanced by mandatory participation. In addition, given the apparent Israeli objective of preventing increases in the use of water in the West Bank in order to protect the flow of water from the West Bank to the Israeli aquifers and given the Israeli policy to support fully the water needs of settlements, it is difficult to see how the water management system that has been established can operate without discrimination.

42. To the extent that the basic public water services in the occupied territories have been interwoven with, and made dependent on, Israeli public water services, the former eventually may find it difficult to manage independently such essential services as water distribution for domestic, municipal, agricultural and industrial uses. It may thus become in practice difficult and very costly to separate the water administrations of the occupied territories from those of Israel.

Notes

1/ Meron Benvenisti, The West Bank Data Project (Washington, D.C., American Enterprise Institute for Public Policy Research, 1984), p. 14.

Notes (continued)

2/ State of Israel, Ministry of Defense, Judea-Samaria and the Gaza District: A Sixteen-year Survey (1967-1983), November 1983 (hereinafter referred to as Judea-Samaria and the Gaza District), p. 14. In this document it is stated that "As far as water is concerned, Judea-Samaria is inseparable from the territory of Israel within its pre-1967 lines. The area between the Jordan River and the Mediterranean Sea shares several aquifers extending on either side of the central watershed".

3/ Declaration of the Israeli Water Commissioner, as reported in Ha'aretz, 5 June 1978.

4/ Virshubsky, "Water law in Israel", in "Water laws in selected European countries", FAO Legislative Study No. 10 (Rome, 1975), p. 108. The method of water allocation, instead of treating every settler as a separate consumer as is normally done in the case of Arab users, has also been a cause of complaint from the moshavim (individual farm settlements) which have claimed to have been discriminated against in favour of the kibutsim (collective settlements) in the allocation of water.

5/ Shawkat Mahmoud, "Agriculture and waters in the West Bank under Israeli occupation" (Amman, Ministry of Occupied Territory Affairs, November 1983), p. 1.

6/ Ibid., p. 2.

7/ See Turkaya Ataor, "The Israeli use of Palestinian waters", Palestinian Rights and Denial (Wilmette, Illinois, Medina Press, 1982), p. 153.

8/ In the Gaza Strip, for example, very few drilling permits have been issued to the Arab populations. An argument stated by Israeli authorities regarding the limited allocation of drilling permits is that the only available water lies in the deep water aquifer and, therefore, the cost involved in pumping from the aquifer is said to be too exorbitant for an individual local farmer. However, local farmers' co-operatives have similarly been prohibited from pumping, although the cost of deep drilling was to be financed by the Gulf States and Jordan. (See David Kahan, "Agriculture and water in the West Bank and Gaza", West Bank Data Base Project, Jerusalem, 1983, p. 111.)

9/ Law No. 51 of 1959, art. 6c.

10/ Law No. 12 of 1968, art. 17.

11/ The national water carrier is one of the technical foundations on which the Israeli system of water management is based. Completed in 1964, this integrated system takes the water from wherever it is available (Jordan River basin, underground aquifers), uses Lake Tiberias (Kinneret) as a surface fresh-water regulation reservoir and the major fresh-water aquifers as underground reservoirs, and transports and distributes these waters through pipelines whenever needed, up to the Negev desert.

Notes (continued)

12/ Judea-Samaria and the Gaza District, p. 15; Thomas Stauffer, "The spoils of war" (paper presented at the Yarmouk International Symposium on Israeli and Arab Waters, Amman, 25-26 February 1984), p. 43; and John Cooley, "The war over water", Foreign Policy, No. 54 (1984), pp. 3-27.

13/ Judea-Samaria and the Gaza District, p. 15.

14/ Ibid., p. 14. This statement reports that, from 1978 to 1980, water sharing resulted in a net balance in favour of the territories amounting to about 2.2 million cubic metres. There is no further information on the water balance in previous or subsequent years and it has not been possible either to corroborate or question this claim through other sources.

15/ Reportedly, "The Israeli authorities have connected the major centres of the West Bank and Gaza to the water networks of Israel" (ibid., p. 13).

16/ According to Israeli sources, in 1978 the Government of Israel amended the existing Jordanian legislation on local governments "for the purpose of giving a necessary status" to the villages. In practice, as far as water management is concerned, many municipalities and village councils have lost control over the right to allocate and distribute water supplies, these functions having been taken over almost everywhere by the Israeli water authority Mekorot. The municipal and village council's responsibilities have been confined, and not in all cases, to the operation and maintenance of the systems. (Ibid., p. 59.)

17/ Ora Tamir, Legal Adviser to the Water Commissioner, Israel, "Legal and administrative aspects of the water laws in Israel", in "Proceedings of the Conference on Global Water Law Systems", Doc. M. (Valencia, 1975), p. 33.

18/ Water Law of 1959, sects. 14-15.

19/ Drainage and Flood Control Law, sects. 10-22.

20/ Ibid., sects. 17-35 and 53.

21/ Military Order No. 1015 of 8 August 1982, regarding monitoring the planting of fruit trees.

22/ Military Order No. 1039 of 5 January 1983.

23/ Saoul Aloni, Legal Adviser to the Water Commissioner, Israel, "Modern water legislation and development", in "Water for peace", Doc. P/55 (1967).

24/ Al Hamishmar, and Jerusalem Post, 13 September 1983 (Palestinian Press Services, 8 September 1983).

25/ There have been reports in the Press that Arab populations have complained against the assessment of too-high water rates (Al Fajr, 19 June 1983),

Notes (continued)

or the cutting of the water supply by Mekorot for non-payment of water rates, as in the case of some Druze villages in the Golan Heights (Palestinian Press Services, 24 May 1983).

26/ Judea-Samaria and the Gaza District, pp. 14-18.

27/ Mahmoud, op. cit., p. 20.

28/ Meron Benvenisti, The West Bank and Gaza, Data Base Project (Washington, D.C., American Enterprise Institute for Public Policy Research, 1982), p. 23.

29/ Stauffer, op. cit., p. 90.

30/ Benvenisti, op. cit., 1984, p. 14.

31/ Middle East Institute, The West Bank: An Assessment, January 1984, p. 84.

32/ J. Schwartz, "Water resources in Judea, Samaria and the Gaza Strip", in Daniel Elazar ed., Judea, Samaria and Gaza: Views on the Present and Future (Washington, D.C., American Enterprise Institute for Public Policy Research, 1982), p. 99.

33/ Judea-Samaria and the Gaza District, p. 14.

34/ Benvenisti, op. cit., 1984, p. 14.

35/ Judea-Samaria and the Gaza District, p. 14 ff.

36/ Ibid., p. 18.

Appendix

LETTER DATED 15 MAY 1984 FROM THE PERMANENT REPRESENTATIVE OF
JORDAN ADDRESSED TO THE UNDER-SECRETARY-GENERAL, DEPARTMENT
OF TECHNICAL CO-OPERATION FOR DEVELOPMENT

[Original: English]

In reference to your letter dated 27 February 1984 and pursuing discussions which took place between representatives of the Department of Technical Co-operation for Development and Jordanian representatives in New York and in Amman, please find enclosed herewith a list of the military orders which Israel, the occupying power, issued in the period between 1967-1982 to control the usage of water resources by the Arab population in the West Bank.

Analysed objectively, these orders yield two facts:

- (a) They are in contravention of the principles of international law relevant to military occupation;
- (b) They aim to strangle Arab farmers' activities in the West Bank and the other occupied Arab territories.

The latter objective contributes to Israel's plans to destroy attachment and link between the Arab population and their lands in the occupied territories. Such a situation would be favourable to Israel's policies of forcible transfers of population and confiscation of land in these territories.

I am sure that you will make use of this letter and its enclosure in preparing the report requested in General Assembly resolution 38/144 of 19 December 1983.

(Signed) Abdullah SALAH

Enclosure

[Original: Arabic]

Military orders issued by Israel with regard to water resources in the occupied Arab territories

Pursuant to the policy adopted by them, the military orders issued by the occupation authorities are in the form of amendments to Jordanian laws that were in force in the West Bank before 1967. The objective is to consolidate their control over water sources in order to serve their settlement projects. Among these orders are the following:

- (a) Military Order No. 291 of 1969, concerning land and water surveys. The order suspended work on land and water surveys;
- (b) Military Order No. 457 of 1972, concerning the regulation of natural resources. This order is an amendment to Law No. 37 of 1966 (paras. (a) and (b) of art. 19). The amendment gave the Military Commander-in-Chief of the West Bank the power to appraise land and water and to assess any damages arising out of any act on the part of the occupation authorities. This is to say that the occupation authorities or their representatives would assess damages arising out of actions in the context of water use carried out by those same authorities;
- (c) Military Order No. 1039 of 1982. The order stipulates that anyone who cultivates crops must submit particulars thereof (such as the area of the planted land in dunums, the varieties involved, the number of plants and the date of their planting) and of the existence of any water well for irrigating such plants and of the quantity of water extracted during 1982. The Commission on Human Rights declared, in a report published in the newspaper Al-Quds on 18 December 1983, that this was an onerous order and entailed great expense. Arab farmers and those who wish to cultivate a plantation or a vegetable plot would encounter difficulties in tilling their land and, with the passage of time, the uncultivated land would become State land and easy for the occupation authorities to confiscate for purposes of settlement and expansion;
- (d) A military order concerning water was issued in 1982. It stipulated that anyone who consumed, on an annual basis, between 11 and 25 per cent more water than permitted would be fined 30 agorot per cubic metre and, for amounts in excess of 100 per cent, between 6 and 10 shekels per cubic metre. The occupation authorities have installed meters on the farmers' wells in order to fix the amount of water to which Palestinian farmers are required to adhere in the irrigation of their land.

The military orders regulating the use of water by the farmers of the occupied territories are accompanied by other orders issued by the occupation authorities with a view to consolidating their control of agricultural land. Among these orders is Military Order No. 1015 of 1982, concerning the supervision of fruit-tree cultivation. This order gave the Israeli Military Governor the power to grant or withhold permits to Palestinian inhabitants wishing to grow a tree, even in the gardens of their own houses. This makes it necessary for them to obtain a permit

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from the Israeli Military Governor, to pay a levy for it and to allow a periodic inspection to be carried out in order to ensure that no trees are grown in their gardens in an "illegal" manner, that is to say in contravention of the clearance given by the Military Governor.

Any person who contravenes the instructions under this order is liable to imprisonment for a period of up to one year, together with the uprooting of the trees planted in violation of the terms approved by the Israeli Military Governor in granting the permit.
