

THE PALESTINIAN WATER AUTHORITY: DEVELOPMENTS AND CHALLENGES INVOLVING THE LEGAL FRAMEWORK AND CAPACITY OF THE PWA

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1. BACKGROUND

Water is a central issue and highly politicised in the entire Middle East. The Middle East is one of the most water-stressed regions in the world and requires serious consideration. Demand exceeds supply and rights issues are intertwined and lend themselves to continued disputes. Between Palestine and Israel it takes even more special consideration both for historic and political reasons. Sharing of water between these two riparians has been difficult and has not been equitable. At the heart of their dispute is the Jordan drainage basin¹ and the underground aquifers of the West Bank both of which constitute the main resources of water available to Palestine and Israel.

The topic of this paper is the institutional and legal capacity of the Palestinian Water Authority ("PWA"). However, to understand the scope and limitations on its role, the dispute over water between Palestine and Israel must be underscored. Since 1967, Israel controls both of these water resources. In the West Bank, Israel controls, manages and sells water to the Palestinians. Israel allocates water to the Palestinians on its terms and without due regard to their needs. It only recognizes minimal drinking needs. Many West Bank and Gaza villages often experience shortage for domestic use. Use for industry and agriculture and economic needs are of little consequence to Israel. Israel ignores international law, rules and norms on riparian use. Israel, as an occupier has an obligation to use Palestinian water resources only to the extent necessary for the maintenance of the military occupation. It is not permitted to appropriate the water of the

¹ The headwaters of the River Jordan are located in northern Israel, the occupied Golan Heights and southern Lebanon (including Israel's self-proclaimed "security zone"). The waters feed Lake Tiberias, Syria and the Yarmouk River.

occupied territory for the use of its own civilians, much less for the illegal settlements.

On its part, Palestine has accepted international law and how its allocated freshwater resources. Palestine is entitled to an equitable and reasonable allocation of shared freshwater resources, including those in the groundwater aquifers and the Jordan River. Israel has ignored international law and opted for a unilateral decision.

The Declaration of Principles ("DOP") signed between Israel and the PLO in 1993 postponed water issues till final status. In essence, it maintained the status quo. The DOP left the Palestinians without control of their own water resources; it failed to deal with the water issues on equitable basis between riparian parties. Being an issue reserved for final status, water was equally not dealt with in the Interim Agreement signed in 1995. The Interim Agreement gave the Palestinians allocations of water and limited functional administration of water resources within Palestinian areas with full control reserved to Israel. Today, the situation is precarious as the Wall being erected by Israel limits the prospects for shared water resources and any equitable solutions even further.

2. LEGAL FRAMEWORK GOVERNING WATER AND WATER INSTITUTIONS²

Throughout history, various governments and occupying forces have administered the Palestinian territories. Both the West Bank and Gaza Strip have been under the jurisdiction of a number of rulers each of which imposed its laws atop others, all with the intention of furthering its interests and control over the water sector. A new ruler did usually not impose immediately a new legal system but enacted, overtime, a new set of norms as supplementary to the existing ones. Only when necessary the new ruler repealed the old laws and enacted new ones to replace the old, pre-existing, laws.

The West Bank and Gaza Strip do not form a singular geographical unit and were, at times, also separate legal units. Both areas were under the Ottoman Rule until the end of World War I, fell under British Military Rule (1918-1920), under a British Civil Administration (1920-1922) and subsequently became part of the

² Text adapted from information provided on PWA website

British Mandate proclaimed by the League of Nations in 1922. The two areas were separated in May 1948 after the termination of the British Mandate and the establishment of the State of Israel.

In the course of the 1948 War, the West Bank came initially under the Jordanian Military Rule and was subsequently formally incorporated in the Hashemite Kingdom of Jordan in 1950. Following the 1967 War the West Bank was governed by an Israeli Military Commander as a separate entity from Gaza Strip, which had its own Military Commander. The legal norms applied by the Israeli Military Commander were based upon laws, which were in force in the West Bank on 5 June 1967.

Following the 1948 War, Gaza Strip came under Egyptian Military Rule. The Egyptians did not view Gaza Strip as part of Egypt, refrained from incorporating Gaza Strip into Egypt and maintained it as a separate legal unit, subject to Egyptian Military Rule and Orders proclaimed by the Military Commander. Thus the laws of Egypt were not applied to Gaza Strip and the pre-existing legal norms, in so far as not amended by Orders of the Egyptian Military Commander, remained in force in Gaza Strip. Following the 1967 War when Gaza Strip came under Israeli Military Rule, a Military Commander was appointed for the Gaza Strip and the pre-existing legal norms were maintained, thus the two areas were governed therefore by distinct legal norms.

1.1 Basic Regulatory and Policy Framework

1.1.1 Historical Legislation

Shari'a Law (Muslim Religious Law) - This was the legal norm upon which the courts of the Ottoman Empire based their rulings in disputes between nationals of the Empire prior the enactment of the original Ottoman Legislation in the second half of the 19th Century. The Shari'a provides in principle that water is God's property and as such it is free for all. Ownership can take place upon effective possession. There are rights of use, mainly for purposes of drinking and irrigation. Payment for water use is questionable although in practice payment is demanded.

Ottoman Legislation in Palestine (Pre-1918) - Ottoman rule prevailed in the region from the 16th century until 1918. In the course

of an extensive legislative process, which took place during the reign of Sultan Abed El-Majid in the second half of the 19th century, two important laws containing rules relating to water were enacted:

1. The 1858 Ottoman Law on Land: The law provides that “In disputes as to the rights of watering crops and animals (haq-i-shurb) of irrigation and over water channels only ab antiquo usage is taken into account.
2. The 1870 Ottoman Civil Code (the “Mejelle”): Provides that “Water, grass and fire are property not owned by any one person but owned jointly by all members of mankind. Groundwater is also considered ownerless and, likewise, public wells not dug by any known person are (ownerless) property of all people.

British Mandatory Law in Palestine (1922-1948) - Article 46 of the 1922 King's Order in Council proclaimed that “The jurisdiction of the Civil Courts shall be exercised in accordance with the Ottoman Laws in force in Palestine on 1st November 1914, and such Ottoman Laws as have been or may be declared in force by Public Notice, and such Orders in Council, Ordinances and Regulations as are in force in Palestine at the date of the commencement of this Order, or may hereafter be applied or enacted”.

The British Mandatory Government enacted a number of original pieces of legislation in the sphere of water resources management, as follows:

1. Municipal Corporations (sewerage, drainage, and water) Ordinance No.6/1936: This ordinance provides that “Once the Municipality decides to supply water to the Municipal residents, the counted becomes responsible for the provisions of pure water, appropriate pressure, and obtains certain powers concerning pollution, pricing, etc.
2. Safeguarding of Public Water Supplies Ordinance No.20/1938: This ordinance enabled the Mandatory Authority to control the scarce water resources and to ensure adequate water supply for domestic use, it defined the public water supply as a supply of water to be controlled by the government and which is primarily used for domestic purposes.
3. Water Survey Ordinance No.2/1938: This ordinance authorised the Mandatory Government to drill experimental boreholes on private lands for the purpose of conducting a hydrographic survey of the land.

Jordanian Legislation in West Bank (1948-1967): - Ottoman laws on water as well as the Mandatory Ordinances remained in force in West Bank upon the assumption of the Jordanian rule in 1948 as well as following the proclamation of the joint Constitution in 1950.

The Jordanian Government enacted number of laws in the sphere of water resources management, as follows:

1. Land and Water Settlement Law No.40/1952: The law provides for a settlement and registration of land and water rights in the Jordanian Land Registry. The law provides for procedures on the registration process.
2. Water Control Law No.31/1953: This law prescribes rules relating to the construction of irrigation structures in Irrigation Areas. Water allocation tables were prepared to detail the quantities allocated to each land parcel and the quantity of irrigated land.
3. Municipalities Law No.29/1955: This law detailed the powers of the municipalities and stipulated that the council would be responsible for the provision of water to the residents, and for determination of the means used for this purpose including installations of pipelines, the organisation of water allocation, determination of tariffs and fees, and the prevention of pollution of springs, canals, pools, and cisterns.
4. Law on the Organisation of Matters of Drinking Water in the Jerusalem District No.9/1966: This law created a Municipal-Regional Water Authority with the responsibility as well as the powers for the supply of water in the district of Jerusalem, including to Ramallah, Bethlehem and their neighbouring townships and villages.

Egyptian Legislation in Gaza Strip (1948-1967): - Egyptian law was not applied to Gaza Strip. The legal norms applicable upon the termination of the Mandate remained in force also upon the assumption of the Egyptian Military rule.

Israeli Military Orders (1967-1995) - In addition to the natural constraints, Palestine has also suffered from the imposition of artificial restraints and the colonisation programme, which has more than 185 Israeli settlements constructed under its umbrella. Israel has imposed stringent restrictions on the Palestinians concerning the development of their water resources. After the 1967 war Israel declared all water resources in the region as State Property (Proclamation No.2/1967). This Proclamation was followed by many military orders prohibiting the Palestinians to develop their resources.

The impact of the historical legislation on Palestinian water resources, management and rights is complex, restrictions and has often reflected the interests of these external powers with little concern for the long-term strategic water needs of the indigenous population and never served as a platform for the development of Palestine. The most significant restrictions came during the Israeli occupation, whose impact remains operative to the present day.

1.1.2 Palestinian Legislation

When the Palestinian Authority took over, the water sector including administration and regulations were severely underdeveloped. However, this water sector was immediately recognized as the most important strategic sector. The PA found that the roles and responsibilities in the water sector were scattered, fragmented and unclear during the occupation period which lent itself to inefficient management and uncoordinated investments. In 1995, when the Palestinian Water Authority was established, it found that there was an urgent need to restructure the water sector in order to regulate, monitor and control the managerial, technical and financial performance at the national, regional and local levels.

After its establishment, the Palestinian Water Authority started drafting the necessary laws and regulations to guarantee the sustainable development of the water resources and the optimal utilisation between beneficial users and to regulate the planning, production, and use of the water resources in an effective and efficient manner. Present water administration and regulations in Palestine, which are stipulated in the Water Law are derived from Islamic water law principles together with concepts and interpretations which have been imposed on pre-existing regulations, local uses and customs.

Palestinian Legislation since the establishment of the Palestinian National Authority includes:

1. *Presidential Decree No.5/1995* - The Decree established the Palestinian Water Authority.
2. *Law No.2/1996* - This law established the Palestinian Water Authority and defined its objectives, functions and responsibilities. This Law gave the Palestinian Water Authority the mandate to manage the water resources, execute the water

policy, establish, supervise and monitor water projects, and to initiate coordination and cooperation between the stakeholders in the water sector.

3. *Presidential Decree No.66/1997* - The Decree established the internal regulations of the Palestinian Water Authority and the rules of procedures.
4. *Palestine Water Law No.3/2002* - The Law encompasses the whole water sector. It aims to develop and manage the water resources, to increase capacity, to improve quality, to preserve, and to protect against pollution and depletion. As leading principle the Law states that all water resources in Palestine are considered public property (art 3).

The Law provides further legal basis for the “Water Authority”, and it grants legal personality to the Authority. The budget of the Water Authority is part of the general budget of the Palestinian National Authority.

The Law stipulates that the Water Authority has the right to supervise and control/regulate regional utilities (art 28) and that the Water Authority shall carry out control tasks including keeping records regarding water usage and licenses, setting times when licensed “operators” of water or waste water facilities must give periodic reports, and to set the necessary rules and standards for inspecting meters and to control the leak of water (art 34.1). The Water Authority shall have also the right to inspect water resources and systems of supply, and any place where pollution is suspected (art 34.2). The Law indicates that specific regulations will be issued for specific purposes. (art 3.2; art 18; art 20; and art. 25).

The Law also sets the composition and tasks and responsibilities of the National Water Council, chaired by the Chairman of the Palestinian Authority and having as member Ministers of the most involved Ministries, the Heads of the Water and Environment Authorities, the Mayor of the Capital, and representatives of selected stakeholder groups (Union of Local Authorities, Palestinian Universities, Regional Utilities, and Water Unions and Societies).

The Council will primarily sanction policies and plans, ratify and approve the Water Authority’s reports, guidelines and internal regulations. It is envisaged that the first meeting of the National Water Council will take place in the foreseeable future.

The Law has a chapter on Regional Water Utilities, in which it is stated that Regional Water Utilities will be established on the desire of local authorities, and that the Water Authority will have the right to supervise regional utilities. Further regulations will set tasks and responsibilities.

1.1.3 The National Water Plan

The National Water Plan of 2000 is the strategic plan for the water sector. It sets the direction to the year 2020, and it proposes actions to be taken to achieve these goals. The document describes the role of service providers. It says that Regional water Utilities will be responsible for the following services: preliminary investigations and design; construction and/or rehabilitation; research; repairs; operations and maintenance. Moreover it states that services would cover the fields of municipal and industrial water supply; waste water collection treatment and re-use; storm-water collection, treatment and re-use; water and treated wastewater supplies for irrigation.

Regional Water Utility assets will remain government owned, with a community representation on their board. Employees will be seconded to a competitively selected private operator, who will be contracted for a set term to manage, operate and maintain all infrastructure and related services for a fee. All billing and collection procedures will also be placed in the care of the operator. The Utilities will be administratively and fiscally autonomous, although tariffs will be reviewed, and water abstraction and discharge will be licensed and monitored by PWA. The Regional Water Utilities will be required to seek full cost recovery in their operations and develop a customer charter.

1.2 The Palestinian Water Authority

A Presidential Decree established the Palestinian Water Authority in 1995 by Presidential Resolution No. 90. This follows Article 40 of the Interim Agreement of 1995. In 1996 Law No. 2 was promulgated and provided the legal framework for PWA as an institution and enumerates its powers and authorities. It supersedes Presidential Resolution No. 90. The enactment of the Water Law no. 3/2002 on 18 February 2002 resulted among other things in formalization of the scope of the authorities of PWA and more salient, it deemed water as publicly owned and managed by the PWA on behalf of the public for

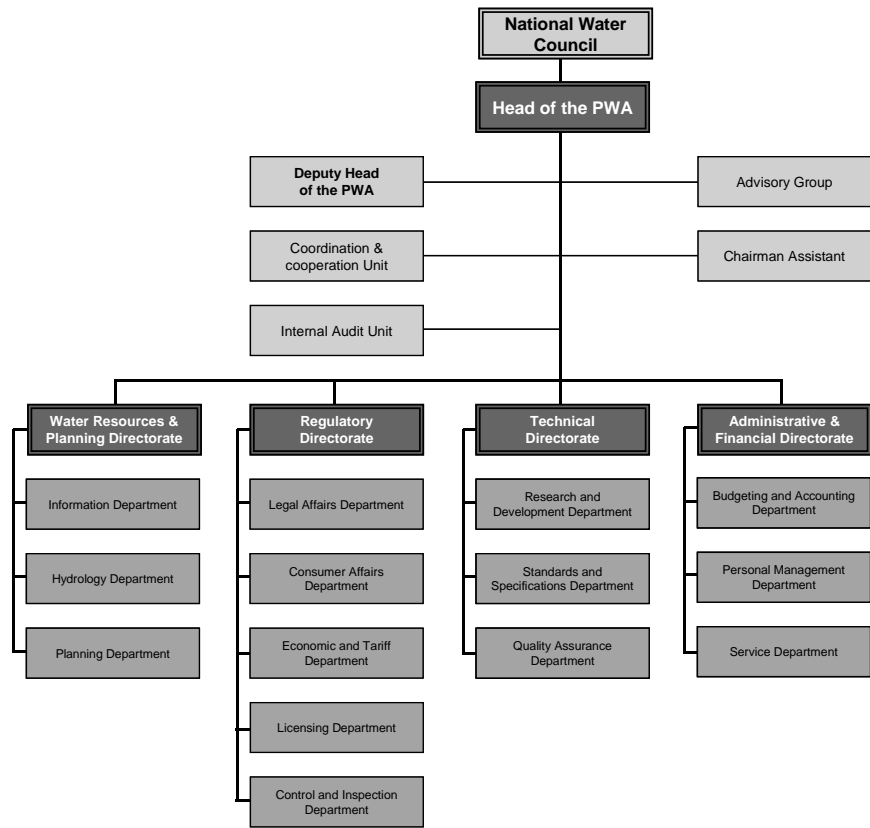
the public good. It legal eliminated the concept of private ownership of water (vested interests is a whole different matter. Article 7 of the Water Law the tasks and responsibilities of PWA are defined, as follows:

1. Have full responsibility for managing the water resources and wastewater in Palestine.
2. Set the general water policy and work to implement it in coordination and cooperation with the relevant parties, and present periodic reports concerning the water status to the Water Council.
3. Survey the different water resources, propose water allocation and determine priorities of usage.
4. Create reserve areas for protection from the danger of pollution, and exercise oversight and supervision over such areas, and approve transfer of water between the different geographic areas.
5. License the exploitation of water resources including the construction of public and private wells, regulating them, water exploration, drilling exploratory, testing and production wells, and any other matters or activities relating to water or wastewater, in cooperation and coordination with the relevant parties.
6. Study water and wastewater projects, and projects that integrate them, and setting design standards, and quality assurance, and technical specifications, and work to control its implementation.
7. Rehabilitate and develop water departments for the bulk water supply at the level of the different national governorates, considering them national water utilities, and set their tasks and responsibilities in accordance with regulations that are issued by the Cabinet of Ministers for this purpose.
8. Coordinate and cooperate with the relevant parties to set plans, and program for regulating the use of water, prevent wastage, conserve consumption, carrying out public awareness campaigns regarding this aspect.
9. Supervise well drilling and qualifying contractors in the field of constructing water facilities in accordance with procedures that are set by the law.
10. Set plans and programs for training the technical staff working in the water sector to develop the management of water resources and supervise its implementation and development.
11. Work towards achieving a fair distribution and optimal utilisation of water resources in order to ensure the sustainability of ground and surface water resources through cooperation and coordination

- with the relevant parties and finding solutions and suitable alternatives in case of emergencies.
12. Regulate and supervise research and studies relating to water and wastewater, and follow up with the concerned and specialised parties.
 13. Rehabilitate the centres for researches, studies, and training working in the water sector in accordance to the procedures to be set by the regulations.
 14. Participate in setting approved standards for the water quality for the different usages in cooperation with the relevant parties and insuring promulgation.
 15. Work to develop and coordinate programs for international, regional, and bilateral technical cooperation in the field of water resources; holding conferences, and seminars, and representing Palestine in regional and international meetings in this field.
 16. Prepare draft laws and regulations and issue directives concerning water resources and executing them, and give opinions with regard to the technical aspect in all disputes relating to water resources.
 17. Any other tasks that are to be assigned by virtue of applicable laws and regulations.

The organisation chart of PWA is presented in Figure 2.1.

Figure Error! No text of specified style in document..1 PWA Organisation Chart



The Regulatory Directorate - One of four directorates within the standing organisation of PWA. This Directorate includes: 1) the legal affairs department, responsible for all legal issues of the department, 2) the consumer affairs department, responsible for hearing and collection of complaints from the field, and for organizing public awareness campaigns, 3) the economic and tariff department, responsible for developing and implementing tariff system and, in Gaza, collecting of fees connected to licenses, and for doing economic and financial assessments, 4) the licensing department, responsible for issuing and renewal of licenses for water projects and 5) the control and inspection department, responsible for enforcement of issued licenses, inspection of the proper implementation of licenses and of potential illegal activities in the field.

The Technical Directorate - This directorate has: 1) the standards/specifications department, 2) the R&D department and 3) the QA department with two sections. One section is for the review of designs as part of the licensing process, and the other section is for the monitoring of the implementation of the works.

1.3 Other Key Stakeholders in the Water Sector

Palestinian Legislative Council (PLC) - The council has a mandate to recommend for the enactment of different regulations and by-laws.

The Ministry of Justice (MoJ) - This Ministry has a mandate with regard to justice and legal enforcement

The National Water Council (NWC) is responsible for overarching water policy and strategic matters. *Its tasks and responsibilities are defined in the water laws as follows:*

1. Sanction the general water policy.
2. Sanction the policy for development and utilisation of water resources and the different usage.
3. Ratify plans and programmes aimed at organizing the usage of water, the preventing wastage, and directing consumption.
4. Ratify the tariff policy.
5. Confirm the allocation of funds for investment in the water sector.
6. Approve the periodic reports concerning the activities of the Palestinian Water Authority and its work.
7. Approve the Water Authority's guidelines and confirming the internal regulations that govern its administrations and operations.
8. Confirm the appointment of the board of directors of the regional utilities.
9. Approve the annual budget of the Authority and presenting it to the Council of Ministers to confirm it.
10. Implement the financial regulations prevailing in the Palestinian National Authority.
11. Any other tasks which are delegated to it according to the provisions of this law.

The NWC consists of the following 13 members.

Below a brief description of the members of the National Water Council is given.

The Ministry of Agriculture - Responsible for the development of the agricultural sector, which is the major water user in Palestine

Ministry of Finance - Holds a mandate for the national economy, cost recovery and tariff issues.

Ministry of Health – Responsible for public health aspects, water quality standards and the alleviation of water related health risks. In the Gaza strip they do all the water quality testing.

Ministry of Local Government – Responsible for local (urban) planning, organisation of the operation of the systems via the Municipalities and participates in hearings regarding licensing.

Ministry of Planning and International Cooperation - Holds a mandate regarding the coordination of international cooperation and national planning issues. Its Directorate for Urban and Rural Planning (DURP) is responsible for overseeing the general policies, plans and programmes for the spatial planning at national and regional level.

Environmental Quality Authority - Responsible for environmental policies, strategies, and criteria to ensure ecological and environmental sound development of the surface water and groundwater resources.

Ministry of Industry (MoI) - Responsible for effluent standards, re-use of industrial wastewater and public enquiries about industrial water licenses

West Bank Water Department (WBWD) - In charge of the provision of bulk water to the various water service providers in the West Bank. In addition they are still involved in the rehabilitation, extension and construction of water facilities in the West bank. In the near future they will be transformed into the National Bulk Water Utility.

Coastal Municipal Water Utility (CMWU) - This is an association of 19 Municipalities in the Gaza area assuming the responsibility for the provision of water supply and sewerage services to these Municipalities. The tendering of a, World Bank sponsored, management contract for this utility is underway. It is anticipated that the CMWU will become one of the four ***Regional Water Utilities*** responsible for the provision of water supply and sewerage services in Palestine. The other Utilities will cover the Southern part of the West Bank, the Central part of the West Bank (basically the service area of the Jerusalem Water Undertaking) and the Northern part of the West Bank.

Other service providers - Until the Regional Water Utilities will be established, which may take a long time, water supply and sewerage services will be provided by the Municipalities and water user associations. In many cases various Municipalities have already established ***Common or Joint Service Councils***. These C(J)SC's are in charge of the operation and maintenance of the municipal facilities for water supply and sewerage. As a rule administrative and financial aspects remain with the Municipalities.

3. Modest Prospects

The Palestinian Water Authority has taken great strides since establishment in water resource management. It operates the existing system of water, however with limitations due to continued Israeli control over water resources. It manages an investment process, and planning for the future of the water sector. It continues water delivery, repairs pipes and licenses water abstraction to the best it can under the prevailing circumstances. It makes decisions about water pricing. It has improved governance. It has built a well organized institution and continues to improve services. It has well trained cadre of professionals and receives much donor assistance to rehabilitate the water systems of the West Bank and Gaza. It has passed a law and unified much of the fragmented legal framework and is working to harmonize the activities of the municipalities and village councils with respect to water abstraction from wells they own and water distribution. Considerable donor assistance has been geared for the water sector, however, the PWA has a long way to go and remains constrained financial. Investment requirements in the water physical infrastructure are huge.

The National Water Plan articulated important principles, salient among which is the water resource strategy. In this regard the PWA is still faced with dealing with the following:

- Secure Palestinian water rights
- Strengthen National Policies and Regulations
- Build institutional capacity and develop human resources
- Improve information services and assessment of water resources

- Regulate and coordinate integrated water and wastewater investments and operations
- Enforce water pollution control and production of water resources
- Build public awareness and participation
- Promote regional and international cooperation

Most of these areas, however, need to be worked on regardless of how the water rights are accorded to Palestinians and how shared water resources are ultimately decided between Palestine and Israel. These factors are becoming increasingly more difficult by the day as a result of the construction of the Wall separating Palestine and Israeli whose parameters, boundaries and path engulf much of the West Bank Mountain Aquifer.

On the other hand, the PWA, through the national policy plan has identified the following areas to deal with:

- Water resource availability
- Water uses and consumptions
- Water demand
- Domestic water demand
- Commercial and industrial water demand

In achieving its objectives, the PWA is greatly challenged and works against time. The peace agreements with Israeli have left much to be dealt with. Although Israel continues cooperation in water-related matters, the PWA cannot deliver in the absence of full sovereignty and control over its water resources, thus it must know what belongs to it. The PWA cannot manage and administer what it does not have. It will not be able to manage the increased demand so long as it has no role in managing and sharing the supply. It cannot address the needs of its people.

Of increasing importance and relevance is the potential that the Gaza withdrawal plan presents for cooperation in the water sector between Palestine and Israel. The withdrawal from the Gaza settlements and

the related water infrastructure can be a significant step in giving sovereign control to the Palestinians of water resources in Gaza. The PWA faces formidable challenges in Gaza where water is scarce and groundwater is saline. Alternative water sources like desalination have long been considered in the Gaza context and work on such a plant stopped because of the difficult situation on the ground. There is renewed hope that such projects would move forward and Gaza and begin to revive and rehabilitate its water sector and meet basic human needs.