UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

A/40/381
E/1985/105
17 June 1985

Original: ENGLISH

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

ECONOMIC AND SOCIAL COUNCIL
Second regular session of 1985
Item 6 of the provisional agenda**
PERMANENT SOVEREIGNTY OVER NATIONAL RESOURCES IN THE OCCUPIED PALESTINIAN AND OTHER ARAB TERRITORIES

Report of the Secretary-General prepared in pursuance of General Assembly decision 39/442

1. By its decision 39/442 of 18 December 1984, the General Assembly requested the Secretary-General to submit to it at its fortieth session, through the Economic and Social Council, a comparative study on Israeli practices in the occupied Palestinian and other Arab territories and its obligations under international law, requested in General Assembly resolution 38/144 of 19 December 1983. By resolution 38/144, the General Assembly had requested the Secretary-General to elaborate on his report on the implications, under international law, of the United Nations resolutions on permanent sovereignty over natural resources in the occupied Palestinian and other Arab territories and on the obligations of Israel concerning its conduct in those territories (A/38/265-E/1983/85). The Secretary-General was requested, in particular, to elaborate on his report with a view to covering 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.

2. The study prepared in implementation of the foregoing requests of the General Assembly is annexed to the present report.

* A/40/50/Rev.1.
** E/1985/100.

ANNEX

Study elaborating on the report of the Secretary-General on the implications, under international law, of the United Nations resolutions on permanent sovereignty over natural resources in the occupied Palestinian and other Arab territories and on the obligations of Israel concerning its conduct in these territories

I. INTRODUCTION

1. The General Assembly, in its resolution 38/144 of 19 December 1983, commended 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 those territories (A/38/265-E/1983/85) (hereinafter referred to as the study by the legal expert). In the same resolution, the Assembly requested the Secretary-General to elaborate on that report in order to cover 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. The Secretary-General was requested to submit the report to the General Assembly at its thirty-ninth session, through the Economic and Social Council. In pursuance of that request, the Secretary-General submitted his report (A/39/326-E/1984/111) (hereinafter referred to as the water resources report), to which was annexed a report prepared by a team of experts. The main focus of the water resources report was the exploitation of water resources by Israel in the occupied Palestinian and other Arab territories and a consideration of the regulations and policies adopted by Israel pursuant thereto.

2. On 18 December 1984, the General Assembly adopted decision 39/442, in which it requested the Secretary-General to submit to the Assembly at its fortieth session, through the Economic and Social Council, a comparative study on the Israeli practices (regarding exploitation of natural resources) in the occupied Palestinian and other Arab territories and its obligations under international law.

3. The present study, which has been prepared pursuant to the requests contained in paragraph 10 of General Assembly resolution 38/144 and decision 39/442 is, as requested by the Assembly, an elaboration on the study by the legal expert referred to in paragraph 1 above and a comparative study of Israeli practices and obligations. The present study does not restate in detail the international legal rules and norms examined in the study by the legal expert. The legal expert in his study (A/38/265-E/1983/85, annex, para. 52) reached the following conclusions:

> "The right of peoples and nations to permanent sovereignty over their natural resources has been accepted as a principle of international law although its exact content and the relation to other principles of international law have yet to be fully developed and defined. The principle of permanent sovereignty has been specifically applied by the General Assembly to the occupied Palestinian and other Arab territories, and Security Council resolutions have also dealt with protection of property rights in those territories. Moreover, both the General Assembly and the Security Council have recognized the applicability of the law of belligerent occupation to the occupied territories. The law of belligerent occupation gives some protection to the principle of permanent sovereignty while the principle of permanent sovereignty enhances and reinforces the law of belligerent occupation. The law of belligerent occupation should be interpreted and applied to protect to the greatest extent possible the principle of permanent sovereignty."

4. With respect to the implications of the United Nations resolutions on permanent sovereignty over natural resources as they apply to the occupied Palestinian and other Arab territories and the obligations of Israel therein, the legal expert in his study (A/38/265-E/1983/85, annex, para. 51) stated the following:

> "... the following are some of the implications of United Nations resolutions on permanent sovereignty over natural resources in the occupied Palestinian and other Arab territories and on the obligations of Israel concerning its conduct in those territories which might be considered:
>
> (a) The primary right of peoples and nations to permanent sovereignty over their natural resources is a right freely to use, control and dispose of such resources. The full exercise of this right can only take place with the restoration of control over the occupied territories to the States and peoples concerned. Such restoration is the first implication of the resolutions on permanent sovereignty over natural resources;
>
> (b) A second implication derived directly on the primary right would be that in any interim pending full implementation of the foregoing, control over the land, water and other natural resources should be restored to the local population. This would include allowing municipalities and other local Palestinian and Arab authorities to control the natural resources for which they have had responsibility prior to the occupation;
>
> (c) A third implication would be that the occupying Power is under an obligation not to interfere with the exercise of permanent sovereignty by the local population;
>
> (d) A fourth implication of the United Nations resolutions on permanent sovereignty over natural resources would be the strengthening of the protection of the natural resources of the occupied territories afforded by the law of belligerent occupation. In any event such resources could not be used by the occupying Power beyond the limits imposed by the Hague Regulations and the Fourth Geneva Convention. Land and other resources may not be taken for settlements or permanently acquired for any purposes. Privately owned land and other resources may, if at all, only be requisitioned for the needs of the army of occupation and they must be paid for. Public land cannot be used beyond usufruct and the proceeds must then be used only in connection with the occupation. While there is a practice of working existing mines, if any, the text of article 55 of the Hague Regulations requires the occupying Power to 'safeguard the capital' of properties subject to usufruct. The principle of permanent sovereignty would imply that no depletion of natural resources should be permitted and would emphasize the provision in article 55 on safeguarding the capital. A further requirement of the Hague Regulations is that property of municipalities should be treated as private property. The land held for the benefit of municipalities and similar local groups, even if registered in the name of the State or central authorities, should be protected as private. The principle of permanent sovereignty of peoples over their natural resources suggests the strengthening of this provision as well as the other limitations placed by the law of belligerent occupation on an occupant's use of natural resources;
>
> (e) A fifth implication of permanent sovereignty would be to reinforce a right under international law to reparation for any loss or damage to natural resources suffered as a result of violations of the rules of belligerent occupation."

5. As it was not possible to send a fact-finding mission to the occupied Palestinian and other Arab territories to collect information on natural resources exploited by Israel in those territories or on Israeli-imposed regulations and policies relating thereto, reliance for the preparation of the present study

was necessarily placed on information contained in United Nations reports and other readily available sources.

6. The present study is divided into two main sections. The first section deals with land resources and the second with water resources. Each section first endeavours to ascertain the natural resources exploited and the policies adopted in pursuance thereof, and then briefly reviews, in the light of the international legal rules and norms examined by the legal expert in the annex to document A/38/265-E/1983/85, the international legal obligations of Israel relating to the exploitation of those resources in the occupied Palestinian and other Arab territories. Each section then proceeds with a comparison of the practices and obligations of Israel.

II. NATURAL RESOURCES IN OCCUPIED PALESTINIAN AND OTHER ARAB TERRITORIES EXPLOITED BY ISRAEL

A. Land resources

7. The exploitation of land resources viewed in the context of the law of belligerent occupation considered in the study by the legal expert encompasses seizure, confiscation and expropriation of land, whether public or private, from the Arab population of the occupied territories. It also includes the establishment of settlements in the occupied territories for the nationals of the Occupying Power. Hence in this study the establishment of Israeli settlements in the occupied Palestinian and other Arab territories, whether or not such establishment had the prior approval of the Government of Israel, is treated as exploitation by Israel of the land resources of these occupied territories.

8. In a comprehensive report on permanent sovereignty over national resources in the occupied Palestinian and other Arab territories (A/38/282-E/1984/84, annex, para. 36), which was prepared by a consultant in 1983, the former Deputy Mayor of Jerusalem, Mr. Meron Benvenisti, is cited as listing the following legislative policies which illustrate Israeli practices in regard to land in the occupied Palestinian and other Arab territories:

"(a) `Absentee' property. Land and other property owned by citizens of the West Bank who left the area in 1967. The land is administered by the Custodian of Abandoned Property who has leased large areas to Israeli agricultural settlements in the Jordan Valley;

(b) `Registered state domain'. Areas registered in the name of the Treasury of the Government of Jordan or in the name of the King of Jordan. The status of the Military Government in these areas is that of a temporary administrator for the duration of the military occupation. However, the Military Government treats these lands as Israeli State domain and leases it to Israeli settlers, including for `build-your-own-home' schemes, that is for long-term leases (49 years, renewable);

(c) Lands requisitioned for military purposes. Privately owned land which is seized by the Military Government under an order proclaiming that the area is needed for `vital and immediate military requirements'. The land remains under private ownership while the Military Government offers a rental payment for the `use' of the land. Many settlements are reported to have been built on these lands;

(d) Lands closed for military purposes. Areas closed by the Military Government for use as training grounds, firing ranges, etc. In some cases, the military allow cultivation when the area is not used by it. `Closed' lands tend to become `requisitioned' lands, for example the Kiryat Arba land acquisition;

(e) `Jewish lands'. Lands owned by Jews prior to 1948 and administered by the Jordanian custodian of enemy property;

(f) Lands purchased by Jewish bodies. While until 1979 only public Jewish companies received permission from the Military Government to purchase land in the West Bank and most of these lands were acquired by an affiliate of the Jewish National Fund, since 1979 private Israeli citizens have also been allowed to purchase land in the West Bank;

(g) Land expropriated for public purposes. The Military Government uses the Jordanian Expropriation Law of 1953, inter alia, for acquiring land for roads, including arterial roads and access roads to Israeli settlements, since, in 1972, the Israeli High Court of Justice recognized Israeli settlers as part of the population of the West Bank."

9. The land taken over by Israel from the Arab residents of the West Bank is reported to include viable agricultural lands as well as those suitable for the establishment of Israeli settlements. The taking-over of some of these lands has been referred to in the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (A/8089, para. 124). Additional expropriations of Arab lands in the occupied territories have been periodically reported to the United Nations by Jordan and Egypt a/

10. With regard to the Golan Heights, a consultants' report on the national resources in the occupied Arab territories and the impact of the occupation on the development process of the Arab States, the occupied territories and on the people living there (A/36/648) contained in its annex, paragraph 14 the following information:

"precise information on land use in the Golan Heights is not available, as this area is under direct Israeli military control. At the time of the occupation, virtually all the Syrian population of the occupied area, as well as some 16,000 Palestinian refugees then living in the Golan Heights, were forced to leave. Since that

time Israel has established at least 30 settlements in the area, although it is not possible to calculate the total land area involved."

11. In an analysis of the development of the policy of Israel to establish settlements for its nationals in the occupied Palestinian and other Arab territories contained in a report prepared at the request of the United Nations Conference on Trade and Development (UNCTAD) (TD/B/870), it is stated that:

> "soon after the 1967 war, the Israeli Government delegated authority to the Jewish National Fund and the Israeli Lands Administration to purchase land in the territories. By 1973, the Israeli Lands Administration claimed to have purchased over 30,000 dunums in the West Bank, and the Jewish National Fund, 10,000 dunums. In addition, it is alleged that several hundred thousand dunums were purchased by the two bodies through agents. Added to this, the Israeli authorities controlled by that date (1973) over 730,000 dunums of cultivated land claimed to be `public land' in the West Bank and 300,000 dunums of land along the Judean hills."b/

12. It was also stated in paragraph 35 of the UNCTAD report referred to above (TD/B/870) that by the end of 1978, the new settlements established by Israel in the West Bank and the Arab section of Jerusalem were reported as shown in the following table:

Israeli settlements in Arab Jerusalem and the West Bank

Location	Total area Dunums)	Number of settlements	Number of settlers	Housing units	
				Established	Planned
Ramallah and al-Bireh	35,600	12	1,514	198	50
Hebron, Bethlehem and Jericho	116,150	12	6,895	543	8,000
Nablus, Jenin and Tulkarm	20,850	14	1,050	246	2,237
Jordan Valley	80,700	19	4,688	145	330
Total West Bank	253,310	57	14,147	1,132	10,617
Arab Jerusalem	94,564	11	76,000	26,320	55,450
Total	347,874	68	90,147	28,050	66,067

Source: Derived from a report prepared in February 1979 by the Economics Department of the Royal Scientific Society of Jordan reported in Journal of Palestine Studies, vol. VIII, No. 4 (Summer 1979).

13. The report prepared for UNCTAD (TD/B/870) provides more detailed information regarding the policies referred to in paragraph 7 above concerning the manner in which Israel acquires land in the occupied territories. The following excerpts illustrate the procedures followed:

> "69. The methods used to acquire land in the occupied territories vary, but in the West Bank, for example, resort is usually had to a provision in Jordanian Law which has been handed down from the Ottoman period, that is, that certain village land, or Miri land, can only be claimed if it is cultivated. This Miri land covered about 70 per cent of the West Bank, and whenever it lay fallow, or was grazed, the Government had the right to dispose of it as it wished. By use of this law, much land has now been taken over.
>
> "70. At the same time as utilizing the existing Jordanian law, Israel also took actions to provide its own means of appropriation. One of the first was the promulgation of military order 58 on Absentee Property. This order defines an absentee as anyone who has left the West Bank `on, before, or after' 7 June 1967. The control of such land is vested in a `Custodian' who, in law, is charged with the safeguarding of the rights of the true owner until his return. This power has, however, been used in a number of ways to Israel's benefit, in that it is often difficult to prove ownership of land in cases where the owner has inherited rights over generations but nothing has been committed to writing. In normal circumstances recourse can often be had to witnesses, but in the present circumstances of scattered populations this is often not possible, and more importantly, proof of ownership is usually actively obstructed by the Custodian. Order 58, in fact, gives the Custodian wide powers which have been used with the discretion of absolute ownership, and where ownership by a returning absentee has been proved of land already disposed of, subsequent compensation has been extremely small. The large exodus from the land during the 1967 war, much of it intended to be only temporary, coupled with subsequent population movements, has given the Custodian effective control over a large quantity of land, and that control is undoubtedly being exercised within a wider set of policies designed for the benefit of Israel.c/ Added to this, a good proportion fled from the land to other countries during the wars, and of those who wish to return, most are prevented from doing so by current Israeli policies.

"71. Not only is the Custodian responsible for land owned by absentees, he must also approve transfer of such land by permit when a sale is arranged, and this is often refused. For example, an absentee, notwithstanding proof of ownership, is unable to sell his land.

"72. As well as powers of control mentioned above, actual appropriation of land has also been facilitated by military orders which amend existing legislation. In the West Bank, Jordanian Law forbids appropriation without fair compensation, and the owner affected has the right to appeal to the `Court of First Instance'. By a succession of military orders, the rights of owners were restricted in ways which facilitated expropriation. The need to publish an intention of expropriation was removed (order 321). The appeal to Civil Courts was replaced by appeal to an Objection Committee (order 172). The settlement of land disputes by a special court, after which title was registered in the Land Registry, was abolished (order 291). At the time of the occupation only about one third of the area of the West Bank had been registered, and in those cases where proof of title became subsequently necessary, evidence such as witnesses' testimony, receipts etc., were difficult to present in post-war conditions. Further, the proof of ownership rests upon the owner in cases where expropriation is decided upon, and if he fails to support his claim of ownership to his land, then it is regarded as State land, which Israel claims to have inherited as legitimate successor to the previous Governments of Jordan and Egypt. The land can then be appropriated without payment.d/ At the same time, a system of curfews forbidding entry on land between dusk and sometimes as late as 9 a.m., or restrictions on population movement, make the tilling of much of the land which remains difficult or impossible.

"...

"75. It must be stressed that the expropriation is carried out through the military authorities, to whom power has been transferred in the manner previously outlined, so that those wishing to acquire land, e.g. for settlement purposes, are able to proceed without going through normal non-military channels. Since the normal safeguards have been removed by transfer of the appeal procedure from the Civil Court of First Instance to the Objection Committee, composed of military personnel, this means that all avenues of recourse open to an aggrieved land owner lie exclusively within the control of the military forces of occupation; and as the military Area Commander has power of eviction and imprisonment of anyone who refuses to vacate land within a time specified in an order of expropriation, many acts of land seizure have been undertaken quietly by the military authorities when in normal circumstances such seizure would have been resisted. The decisions of the Objection Committee are not published, and no body of precedents is being built up. Moreover, there is no appeal against its decisions. Thus, the manner in which it operates makes it a quick and effective instrument of Israeli policy rather than an instrument of justice. For instance, a common means of acquiring land by the Israeli authorities is to declare that in their opinion a certain piece of land is public land, and to inform the local Mukhtar (village elder) of their intention to expropriate it. This puts the onus of proof of ownership on the Arab owner, who has to prove it before the Objection Committee. Unless the land (if on the West Bank) has been subject to dispute immediately prior to the occupation, it will not have been registered under Jordanian law, and even though in other legal systems proof by receipts for tax payments or by sworn testimony of witnesses is acceptable, such evidence is reported to be usually inadequate for the Objection Committee, and much expropriation has been undertaken in spite of appeals to the Committee based on such evidence."

14. In a study by the former Deputy Mayor of Jerusalem, Mr. Meron Benvenisti, it is stated that:

"The Israelis are in the process of gaining direct control over 40 per cent of the West Bank land mass and 31 per cent of the Gaza Strip area. The Palestinian will probably be able to retain at least limited control over 3.2 million dunums in the West Bank and 250,000 dunums in Gaza (58 per cent and 69 per cent, respectively.) To understand the meaning of those figures, we should bear in mind that thirty-seven years ago, in 1947, the Jews possessed less than 10 per cent of the total land of Mandatory Palestine. In 1983, they possessed 85 per cent of the area, and the Palestinians (including Israeli Arabs) controlled less than 15 per cent." a/

[a] "....Meron Benvenisti, The West Bank Data Project: A Survey of Israel's Policies (American Enterprise Institute, 1984), p. 19

15. In a letter, dated 5 February 1985, from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People to the Secretary-General (A/40/119-S/16943), it was stated that:

"According to reports in the Jerusalem Post and Ha'aretz of 20 December 1984, a plan for the establishment of a national road grid for the entire area of the West Bank was promulgated recently by the occupying authorities.

"...

"It is estimated that the construction of these new roads will entail the seizure of 78,000 dunums of private Palestinian land by the military authorities and that large areas of cultivated land, as well as refugee camps, will be bulldozed."

16. It is a well-established element of the law of belligerent occupation that the sovereignty of the occupied State in the territories under enemy control merely goes into abeyance and it is not permanently displaced by the fact of occupation. A corollary of this universally accepted rule is the principle that the sovereignty of the occupied State and its peoples over their occupied territories and the natural resources thereof is of a permanent character. The occupying Power does not acquire sovereignty or sovereign rights by the mere fact of occupation. Its authority is transitional in character and is purely of a military and administrative nature.

The legal expert in his study summarizes the essence of the law, as far as land resources are concerned, in the following paragraphs:

"26. The rights and obligations of the occupant with respect to property are spelt out in articles 46 and 52 of the Hague Regulations. In addition, article 47 forbids pillage, article 50 forbids general penalties, while articles 48, 49 and 51 regulate the collection of taxes, levies and contributions. Distinctions are made with respect to private and public property and with respect to movable and immovable property. Private property must be respected and cannot be confiscated (art. 46). Requisitions in kind and services can only be demanded from municipalities or inhabitants for the needs of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in military operations against their own country. They must either be paid for in cash or a receipt given and payment made as soon as possible (art. 52). The second paragraph of article 53 also permits the seizure of private property generally described as ammunition or munitions of war (munitions de guerre), as well as transport and communication facilities, but these must be restored and compensation fixed when peace is made. While the scope of the term munitions de guerre has been subject to much discussion it is narrowly interpreted even in the face of total war situations. The property of municipalities and that of institutions dedicated to religion, charity, education, and the arts and sciences, is treated as private property and all seizure or destruction is forbidden (art. 56).

"27. The general rule with respect to private property is that it cannot be confiscated. Requisitions may be made only for the needs of the army of occupation. In this connection it may be noted that the Supreme Court of Israel has held that the requisitioning of private land in the occupied territories for the establishment of settlements not required for security reasons was contrary to article 52 of the Hague Regulations.

"28. Public property is covered by the first paragraph of article 53 and by article 55 of the Hague Regulations. Under article 53 an army of occupation can only take possession of cash funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, store and supplies and, generally, all movable property belonging to the State which may be used for military operations. As already noted, property of municipalities and of cultural and humanitarian institutions even if State owned is excluded. Immovable property is dealt with under article 55 which reads as follows:

`The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct.'"

17. The relevant rules and norms laid down by international law clearly establish a duty incumbent upon the Occupying Power to protect, at the very least, the right of the occupied State and its peoples over their natural resources. The study by the legal expert recognizes a link between the non-observance of these rules and norms and State responsibility (A/38/265-E/1983/85, annex, para. 40). It states that:

"Another point of contact between the principle of permanent sovereignty and the law of belligerent occupation concerns State responsibility for internationally illegal acts. Wanton plunder or destruction of natural resources by an occupying State is a crime under the law of belligerent occupation and would give rise to international criminal responsibility. ellegal use or taking of property or depletion of resources contrary to the Hague Regulations and the Fourth Geneva Convention, even if not amounting to the crime of spoliation, gives rise to State responsibility and its consequences."

The legal expert concluded therefore in his study that "a breach of the obligation of an occupying State with respect to natural resources in the occupied territories consequently involves a duty to make reparations".

18. To the extent that the information provided above regarding expropriation of land from the Arab residents of the occupied territories and the settlement of Israeli nationals therein is accurate, it would engage the international legal obligations of Israel as the occupying Power in those territories. The principles and norms of international law referred to in the study by the legal expert would seem to require that Israel as the Occupying Power should not hinder the exercise of the right of the local population of the occupied Palestinian and other Arab territories to freely use, control and dispose of their land resources (see A/38/265-E/1983/85, annex, para. 51). Israel is also prohibited from taking any lands in these occupied territories for use in establishing settlements for its own nationals. Any regulations and directives issued by Israel to give effect to its land acquisition policies in the occupied territories which disregard the recognized rules and norms of the law of belligerent occupation and the law of permanent sovereignty over natural resources would not be in conformity with Israel's international legal obligations.

B. Water resources

19. The geographic characteristics of much of the Middle East region make water a valuable resource. Land is basically arid and water resources very limited. Some have predicted that a continuous scramble for scarce water resources could be a permanent source of conflict occasionally erupting into armed conflict e/

20. Since 1967, water supply and management of water resources in the occupied territories has been under the direct control of the Israeli Water Commission through its Department of Water Allocation and Certification (S/14268, para. 200). On the question of Israeli policies concerning the control of water resources in the occupied territories, the Security Council Commission established under resolution 446 (1979) provided in its report (S/14268) the following information to the Security Council:

"201. The policies and objectives attributed to the Israeli authorities with regard to the handling of water resources in the occupied territories, particularly in the West Bank, have already been referred to by the Commission in its previous reports. In the course of the examination of the information made available to

it, the Commission came across evidence that most of the Israeli practices in that regard fell under the following categories: measures based on claims of national security requirements; restrictive measures aimed at controlling the search for, and the development and use of, water by the Arab population; and practices resulting in quantitative reduction of, and subsequent qualitative damage to, the water made available to them.

"202. A number of instances were pointed out to the Commission in substantiation of those practices. Thus, the Commission was told that in the early days of the occupation, Israeli authorities under the claim of security blew up 140 Arab pumps installed on the West Bank of the River Jordan. As a result of that action, the Arab farmers were prevented from pumping water from the river for agricultural irrigation whereas the Israeli settlers in the area were allowed to continue to do so. Also, in the summer of 1979, Israeli military authorities destroyed the irrigation canals alongside many of the citrus and banana plantations in the district of Al-Jiftlik on grounds of establishing a new security belt, thus causing the dessication and destruction of extensive areas of crops.

"203. As to any endeavors by Arab farmers to undertake water development projects, it was said that they were systemically discouraged by the occupying authorities. In contrast, new hydrological surveys have been undertaken by the Israeli settlement authorities in co-operation with the Mekorot Company to meet the water needs of the Israeli agricultural settlements. On the basis of those surveys, Mekorot has since 1968 drilled altogether 30 new artesian wells in the West Bank for the exclusive use of the Israeli settlements. Moreover a number of wells belonging to those whom Israel calls Arab absentee owners are now being used exclusively for the settlements. Furthermore, since the early seventies, all users have been required to install meters on their wells to enable the Israeli authorities to check on the water used. Only meager quantities of extraction from Arab wells are permitted, and penalties are imposed for pumping in excess of the authorized limits.

"204. The drilling of any new artesian wells or deepening of existing ones is forbidden without special permits. Since 1967 no such permit has been granted to any Arab inhabitant in connexion with irrigation wells; and under heavy public pressure, only seven permits have been granted for the purpose of boring wells for domestic purposes. a/

"[a] Paul Quiring, "Israeli Settlements and Palestinian rights", Middle East International No. 88 (London), October 1978. Hisham Awartani (Chairman, Department of Economics, Al Najah National University, Nablus, West Bank), Water Resources and Water Policies on the West Bank, Bulletin No. 2, October 1979. The Awartani study identifies the location of five of those wells as follows: two in Nablus and one each in Qalgilia, Tulkarm and Jenin. There are also seven wells owned by the Israeli Military Administration in the vicinity of Israeli settlements which provide drinking water to those settlements and to some Arab villages. However, the ultimate purpose of these wells located at Qabatiya, Beit Ayba, Arraba, Al Fari'a, Bethlehem, Al Ziwiya and Shabtin, is to cater for the interests of the adjacent Israeli settlement

"205. It is worthy of note that under no circumstances are Arab inhabitant permitted to drill wells close to the borders of Israel. The rejection of such a request by the inhabitants of Nablus in that regard is a case in point. In contrast, as already stated, many Israeli wells have reportedly been drilled in close proximity to existing Arab wells and springs, with a most detrimental effect on the quality and quantity of water made available Arab inhabitants. [b] In some cases, village wells and springs have dried up altogether. Specific references were made in that regard to the villages of Al-Auja, Ramallah, Al-Bireh, Bardala, Tel-el-Beida and Kardala, whose water supply had been drastically diminished owing to the new wells dug for Israel settlements within a few hundred metres of the existing Arab springs or well.

"206. That policy was said to be followed in disregard of the vital intere of the Arab population. Thus in the instance of the village of Tel-el-Beid Mekorot advised the neighbouring Israeli settlement of Mehola in 1968 that planned new well for the settlement would adversely affect the five neighbouring Arab wells and springs; nevertheless the proposed Israeli well was dug, and, as a result of it, the output of water from the central spring of Tel-el-Beida fell from 80 cubic metres per hour before 1970 to barely 5 cubic metres per hour in 1976. [c]

"207. It happened that in such cases the occupying authorities offered to Arab inhabitants concerned, as an alternative arrangement, to have their way provided by the Israeli settlement. That offer was made, for instance, to inhabitants of Bardala at the time their well's pump had to be reset deeper The Mekorot Company then offered to connect the village's water supply to the of the neighbouring Israeli settlement in exchange for closing the village well. The villagers refused the offer, for fear of becoming dependent on the whims of the settlers and they reset their pump. But, thereafter, a second Israeli well was drilled in the immediate vicinity, raising the fears of the villagers that after their well dried up they would be compelled anyway to water from the Israeli settlement on a per-person basis. In that connexion the Commission was reminded that in the Bardala/Tel-el-Beida area mentioned above, 11 springs and all but one of the eight Arab artesian wells had dried up.

1/ Meron Benvenisti, The West Bank Data Project: A Survey of Israel's Policies (American Enterprise Institute, 1984), p. 19.

"[b] Through technological advances, Israeli wells can be drilled to depths of 300 to 500 metres, whereas the existing Arab wells are limited to depth of no more than 100 metres. There is little doubt, according to Jordanian assessments, about the effect on the Arab wells and springs of the proximity and depth of Israeli wells. In fact, Jordanian law prohibits the drilling, under areas of the same artesian pressure, of any new wells within kilometres of an existing well. Also, for areas under the same water table systems, two wells must not be drilled within 500 metres of each other.

"[c] Awartani, op. cit.; Quiring, op. cit.; Ann Lesch, "The impact of Israeli's settlements", Palestine Human

Rights Bulletin, No. 22, September 1979.

(f) Depletion of the water resources in the Golan Heights and the Gaza Strip

"208. Although evidence of the Israeli water policies is documented mostly in connexion with the West Bank, similar practices have been experienced by the Arab inhabitants in the Golan Heights and in the Gaza Strip. Before 1967, according to information provided by the Syrian authorities, more than 140,000 Arab inhabitants in the Golan Heights were using 12.5 MCM per year. Presently, barely some 8,000 of the original Arab inhabitants still remain in the Golan Heights, while the number of Israeli settlers is estimated at 6,400. Additional plans have been announced to increase the number of settlers up to 10,000 by the end of 1981 and 50,000 by 1985, of whom 20,000 are expected to be settled in agricultural and industrial villages. [d] In order to meet the water requirements of the settlers by then, the Israeli plan calls for increasing the water supply in the Golan Heights to a level of consumption amounting to 46 MCM which may deprive the Arab population of its own supply.

"209. With regard to the Gaza Strip, the Commission received information similar to that already reported above concerning, in particular, the restrictions imposed on the amount of water that could be used for irrigation by the Arab inhabitants who furthermore had to pay high prices for each cubic metre of water, while by contrast water was free for Israeli settlers. Furthermore, it was repeatedly pointed out to the Commission that the Arab inhabitants in Gaza, like those in the West Bank and the Golan Heights, were deprived of any possibilities of developing their own water resources."

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"[d] Davis, Maks and Richardson, "Israel's Water Policies", in Journal of Palestine Studies, No. 34, Beirut, Winter 1980.

21. These policies have led to the curtailing of water uses by West Bank Arabs. It was reported that in the first 10 years of Israeli occupation (1967-1977), apart from two new wells, drilling of new wells by Arab farmers was prohibited by Israel while the Water Authority (Mekorot) permitted the drilling of 30 new wells by the Israeli settlers (A/39/326-E/1984/111, annex, para. 37 and TD/B/870, para. 65).

22. The water resources report states that in the Gaza Strip, water use is about 110 MCM in contrast with water supply of about 50 MCM, reflecting considerable over-exploitation, attributable to new Israeli settlements, with grave consequences for existing wells (A/39/326-E/1984/111, annex, para. 39).

23. The rules and norms of international law relating to land resources in territories under occupation which were considered in paragraphs 17 and 18 above, equally apply to water resources. The minimum obligation of the occupying Power is to protect the natural resources of the occupied territories and to refrain from illegally using or taking property or depleting resources.

24. To the extent that the information on exploitation of water resources provided above is accurate, it would engage the international legal obligations of Israel as the occupying Power, which obligations were referred to in the study of the legal expert. Here again, as in the exploitation of land resources through expropriation, there is a general obligation not to impede the exercise by the local population of the occupied Palestinian and other Arab territories of their right to freely use, control and dispose of their natural resources, including water resources (A/38/265-E/1983/85, annex, para. 51 (a)). There is also an obligation incumbent upon Israel as the occupying Power to refrain from using such resources for the benefit of its own economy.

Notes

a/ See, for example, the following documents: A/34/505-S/13456, A/34/666-S/13613, A/38/82-S/15574, A/38/112-S/15635, A/39/278-S/16589 and A/39/321-S/16442.

b/ 1,000 dunums = 1 km2 (TD/B/870, para. 26).

c/ See R. Juris, "The Arab in Israel", Monthly Review Press (New York, 1976).

d/ See Shehadeh and Kuttab, The West Bank and the Rule of Law (Geneva, International Commission of Jurists and Law in the Service of Man, 1980).

e/ See John Cooley, "The hydraulic imperative" in Middle East International, No. 205, 22 July 1983.

References

The following documents were used in the preparation of the present study:

"Permanent sovereignty over national resources in the occupied Arab territories" (A/10290).

"Permanent sovereignty over national resources in the occupied Arab territories" (A/32/204).

"Permanent sovereignty over national resources in the occupied Arab territories" (A/36/648).

"Implications, under international law, of the United Nations resolutions on permanent sovereignty over national 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).

"Permanent sovereignty over national resources in the occupied Palestinian and other Arab territories" (A/38/282-E/1983/84).

"Permanent sovereignty over national resources in the occupied Palestinian and other Arab territories" (A/39/326-E/1984/111).

"Report of the Security Council Commission established under resolution 446 (1979)" (S/14268).

"Review of the economic conditions of the Palestinian People in the occupied Arab territories" (TD/B/870).