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NEWS & ANALYSIS

Trouble in Mesopotamia: Can America Deter a Water War Between Iraq, Syria, and Turkey?

by Itzchak E. Kornfeld

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I. Introduction

The tensions over the waters of the [Tigris-Euphrates] basin have reached internationally acknowledged levels, and a lack of cooperation among the riparians confronts the world with a new potential conflict area. This situation threatens the delicate political stability in the Middle East, and further polarization in [sic] region continues *The basin is one of the most unstable political areas in the region and water plays and [sic] important role.* This is a classic case of [sic] water quantity issue, and use of the available water in the basin.¹

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1. Tefik Emin Kor, ICE Case Studies, *Tigris-Euphrates River Dispute*, at *1-2 (Nov. 1997), at <http://www.american.edu/TED/ice/tigris.htm> (last visited Feb. 5, 2004) (emphasis added).

The United States is poised to relinquish a degree of governance to the Iraqis on June 30, 2004, some 16 months of being enmeshed in a difficult situation. Since the end of "Operation Iraqi Freedom" in May 2003, the United States has found itself in a war of attrition, losing at least one soldier every day, and has faced international disapproval for the prisoner abuse fiasco at the Abu Ghraib Prison in Baghdad. One historian framed the problem as follows: "The country is a political basket case, a condition guaranteed by its occupier's rush to war and hasty map redrawing. That things are bad in Iraq is a given; just how bad they'll yet become is the question."²

Additionally, the Coalition Provisional Authority (CPA), headed by Ambassador L. Paul Bremer III, has encountered numerous hurdles in supplying the Iraqi population with even basic services, such as potable water, adequate sewage, electricity, and security. Not only have soldiers and contractors become casualties of the ongoing fighting, but so have individuals, such as missionaries, especially those whose mission it is to improve Iraq's water problems.³

One thing is clear, however; Iraq today is strategically more important to the United States than it was at the beginning of 2003. Moreover, our allegiances have shifted. Turkey, one of our closest allies in the region, headed by the recently elected Islamist Justice and Development Party (Adalet ve Kalkinma Partisi or AK in Turkish)⁴ refused to allow our troops use of its territory for a northern front against Saddam Hussein's regime. Additionally, due to the AK government's foot-dragging, at least three large U.S. transport vessels full of essential military equipment were

2. P.M. Carpenter, *Tuned. Iraq's Problems, Bad as They Are Now, Will Only Get Worse*, HISTORY NEWS NETWORK (Feb. 2, 2004), available at <http://hnn.us/articles/3281.html> (last visited May 10, 2004).

3. According to recent news reports:

A fourth American missionary died overnight from wounds in a drive-by shooting in the northern Iraqi city of Mosul, the U.S. military said Tuesday. A fifth Baptist missionary was wounded in the attack. The missionaries were working on a water-purification project, church officials and friends said. Larry T. Elliott, 60, and Jean Dover Elliott, 58, of Cary, North Carolina, and Karen Denise Watson, 38, of Bakersfield, California, were killed in the attack Monday, according to the Southern Baptist Convention International Mission Board. David E. McDonnall, 29, of Rowlett, Texas, died Tuesday morning as he was being flown to a military support hospital in Baghdad, according to the U.S. military and Southern Baptist Convention board. McDonnall's wife, Carrie Taylor McDonnall, 26, remains in critical condition, according to the Baptist group.

CNN.com, *Four U.S. Missionaries Killed in Iraq* (Mar. 16, 2004), at <http://www.CNN.com> (last visited Apr. 22, 2004).

4. The AK was voted in as the majority parliamentary party on November 2, 2002, and is headed by Recep Tayyip Erdogan, Turkey's current prime minister.

kept sitting out at sea off of Turkey's western coast. American military commanders were therefore forced to scramble to find ports hundreds of miles to the south requiring numerous days of additional travel to these harbors. Furthermore, the United States and the other Members of its coalition must or at least should be indebted to the Iraqi Kurds who held the northern portion of the country and allowed American soldiers to concentrate on the area south of Mosul.

Nevertheless, U.S. policymakers now find themselves in a conundrum: how will they maneuver through the maze of existing regional issues affecting Iraq, and how will that country fit into the new regional framework? For example, Iraq, Syria, and Turkey have been embroiled in a decades-long conflict over their shared waters from the Tigris and Euphrates Rivers. This conflict is and will impact on the CPA⁵ and the Iraqi Governing Council's (IGC's)⁶ ability to ensure adequate water supplies for the Iraqi people.

In the Middle East water is life itself⁷:

For centuries the history of the desert lands of the Middle East centered on the [sic] wells and watercourses. Early [in the 20th] century battles were, [sic] fought for control of water resources to determine the outcome of [World War I].

Eighty[-]year[-]old adversaries are still fighting over scarce and fast diminishing water resources, though they are now provided with more destructive weapons, thanks to the riches provided by oil—the resource to which water is a key. He who controls water or its distribution can dominate the Middle East and all its riches.⁸

From Turkey, the southern bastion of [the North Atlantic Treaty Organization (NATO)], down to Oman, looking out over the [o]cean, the countries of the Middle East are worrying today about how they will satisfy the needs of their burgeoning industries, or find drinking water for the extra millions born each year, not to mention agri-

culture, the main cause of depleting water resources in the region.⁹

Given this precarious hydrologic situation, the water supply issue is of vital concern to the already battered Iraqi people—and by implication to the CPA, the IGC, and the post-June 30 sovereign Iraqi government—specifically during the summer months, when temperatures exceeding 115 degrees Fahrenheit are common. Iraq derives most of its water—both for drinking and agriculture—from the ancestral Tigris and Euphrates Rivers.

“The Tigris-Euphrates [R]iver [B]asin is the scene . . . of a bitter, low-intensity war in eastern Turkey.”¹⁰ It is one of the Middle East's major transboundary water hot spots.¹¹ It is also one of the most arid regions in the world.¹² For over 80 years, the three riparians that share these two rivers—Iraq, Syria, and Turkey—have been involved in a transboundary conflict over these rivers' waters.

Because Turkey is the upstream riparian, “[b]oth Syria and Iraq are dependent on it for the continual flow of the Euphrates.”¹³ Iraq and Syria, therefore, find themselves in an unenviable position.

The nightmare of the downstream riparian is that its neighbour will unilaterally exert sovereignty over the flow by increasing its own consumption . . . Syria and Iraq have actually endured a dramatic reduction of almost 50% in the average flow of the Euphrates since the 1970s [due to Turkey's actions upstream]. They are anticipating additional reductions in the flow of the Tigris.¹⁴

During the early 1980s, Turkey's use of the Euphrates River increased dramatically, thereby causing sporadic decreases in that river's downstream flow. The reduced discharge impacted the ability of the two downstream riparians, Iraq and Syria, in providing dependable allocations of water for their own uses.¹⁵

Unlike Iraq, which also relies on the Tigris River, Syria's main surface water source is the Euphrates.¹⁶ Thus, Syria is

5. “The [CPA] has been established to help the Iraqi people build a stable and democratic society with a future full of hope in a land that is free.” Iraqi Governing Council (IGC), available at <http://www.google.com> at cache <http://www.coalitioniraq.org> (last visited May 10, 2004).

6. According to the CPA's website:

The [IGC] was appointed by [CPA] Administrator [Bremmer] on July 13, 2003. The United Nations [U.N.] Security Council in [sic] described the [IGC] as “broadly representative” and praised its formation as “an important step towards the formation by the people of Iraq of an internationally recognized, representative government . . .” in Resolution 1500.

All Iraqi ministers were named by and serve at the pleasure of the [IGC]. While the [IGC] has a broad range of duties, its most important task is to organize a constitutional convention to write a new, permanent Iraqi constitution. The U.N. Security Council has charged the [IGC] with publishing a time table for transition to sovereignty no later than December 15, 2003.

CPA, at http://www.cpa-iraq.org/government/governing_council.html (last visited May 10, 2004).

7. Lester W. Grau & Ali Ahmad Jalali, *Underground Combat: Stereophonic Blasting, Tunnel Rats, and the Soviet-Afghan War* (Oct. 10, 2001), available at <http://fletcher.tufts.edu/faculty/shultz/pdf/Undergroundcombat.pdf> (last visited May 7, 2004).

8. Adel Darwish, *Troubled Waters in Rivers of Blood*, at *1 (Dec. 3, 1992), at <http://www.mideastnews.com/water004.html> (last visited May 7, 2004).

9. Adel Darwish, *Water Wars: The Next Major Conflict in the Middle East*, Text of Lecture at the Geneva Conference on Environment and Quality of Life I (June 1994), available at <http://www.mideastnews.com/WaterWars.htm> (last visited May 7, 2004).

10. *Id.* at “The Day the Tap Was Turned Off.”

11. The other two hot spots, also in the region, include the Nile River Basin, where nine States share the Nile River, and the Jordan River Basin, where five States share that river. SANDRA POSTEL, *LAST OASIS: FACING WATER SCARCITY* xxvi (1997). On the Jordan River conflict, see Itzchak E. Kornfeld, *A Water Solution for the Middle East Conflict*, 33 ELR 10207, 10208 (Mar. 2003).

12. POSTEL, *supra* note 11, at xxvi.

13. Clive Lipchin, *Water Scarcity, International Security, and Resource Disputes—The Case of the Tigris-Euphrates and Jordan Basin River System*, in *POPULATION-ENVIRONMENT DYNAMICS: TEN CASE STUDIES* (S.L. Arlinghaus et al. eds., 1997), available at <http://www-personal.umich.edu/~wdrake/lipchin.html> (last visited Apr. 22, 2004).

14. Global Policy Forum, Tony Allan, *Avoiding War Over Natural Resources* (Nov. 1, 1998), at <http://www.globalpolicy.org/security/docs/resourc2.htm> (last visited May 10, 2004).

It is a universally held belief that surface water that crosses boundaries is prone to dispute. In the arid Middle East and North Africa, where water symbolizes communal security, the tendency is for water to be perceived as a prime factor in determining the course of regional international relations.

Id.

15. Lipchin, *supra* note 13.

16. *Id.*

much more seriously impacted by any decrease in flow on the Euphrates River from Turkey. Given this sole lifeline, Syria, in order to quench its people's thirst under its *parens patriae*¹⁷ obligation, had and has no hesitation in cutting off water flow to its downstream neighbor, Iraq.

Iraq and Syria's worsening water plight across the past four decades has failed to forge either a bilateral accord between them or a tripartite agreement or a sustainable water management plan between Turkey and these two downstream neighbors. Therefore, "[t]he writing is on the wall for an impending crisis but the [P]arties seem to be the self[-]involved in their own [details] to notice."¹⁸ As the CPA, the IGC, and the Iraqi people undertake the task of rebuilding Iraq in the post-Hussein era, a crucial issue has been left unresolved: what will thirsty Iraq do for water?

America, the United Kingdom, and the world stand today in an exceptionally puissant position to influence both Syria, which is concerned that the United States will turn on its dictatorial Ba'athist regime, and Turkey, which desperately seeks entrance into the European Union. However, the CPA, the IGC, the post-June 30 Iraqi government, and the Bush Administration face a number of obstacles in embracing a solution to the area's political obstacles. For example, Turkey, the second largest U.S. export partner,¹⁹ has since its founding in 1923 insisted that the oil-rich Iraqi (more correctly Kurdish) area between Mosul and Kirkuk belongs to it. In support of this view it has sought to foment the seeds of irredentism. For example, as recently as August 2002, Turkey's Defense Minister, Sabahattin Cakmakoglu, stated "that Iraqi Kurdistan had been 'forcibly amputated' from Turkey, by the British, at the time of the Republic's founding, and that Ankara retains a protective interest in the fate of the region."²⁰

Nevertheless, in spite of these political challenges, the CPA—its two main sponsors, the United States and the United Kingdom—the IGC, the post-June 30 Iraqi government, and the world must endeavor to solve this critical water dilemma. As the de facto chief administrator of Iraq, any action by the United States in negotiating a trilateral water agreement with Turkey and Syria would decisively demonstrate to the Iraqi people and the Arab street that America

does in fact care about their long-term interest as well as that of the region.²¹ Such an unsolicited act would lend credence to U.S. efforts in two distinct ways. First, against those who charge that the sole U.S. reason for going to war with Hussein was for Iraq's oil; and second, against those who are in the forefront of the current Iraqi insurgency who have been killing at least one soldier a day since "major hostilities" were ended on May 1, 2003.²²

This Article addresses the Turkish, Syrian, and Iraqi transboundary water conflict over the Tigris and Euphrates Rivers. Part II reviews the modern history of the Tigris-Euphrates River Basin, including its hydrography and the damming of the two rivers. Part III analyzes the conflict in the basin, while Part IV reviews cooperative efforts by the three antagonists. Part V addresses how the deadlock can be solved, including the use of international law, and Part VI suggests a model for a unified plan for water allocation based on American established international law.

II. The Tigris-Euphrates River Basin

The end of World War I in 1918 saw the Ottoman (Turkish) Empire disintegrate. The empire was about to be carved up by the victors, when in 1920 the Allies and Turkey entered into the Treaty of Sevres,²³ which established Turkey's current borders. In June of that year, Mesopotamia and the oil-rich Kurdish area around Mosul was formed as a British mandate.²⁴ On August 10, 1920, pursuant to the Treaty of Sevres, France received a Mandate over Syria and Britain received the Palestine Mandate.

Eventually, the British Mandate caused the area encompassing the Tigris-Euphrates River Basin to emerge as three independent States—Iraq, Syria, and Turkey. During this post independence period Turkey has been said to use its "position [as one that] is both upstream and stronger than [Syria and Iraq,] the countries that share the [Tigris and Euphrates] river[s]"²⁵ with it, and to turn the water spigot on and off as it sees fit. Thus, it can and has limited the amount of water Iraq receives as a downstream riparian, leading to a transboundary water conflict.

17. The *parens patriae* doctrine—Latin for "parent of the country"—is a common-law doctrine providing the state or federal government with the power of representing the public interest. The U.S. Supreme Court, in *United States v. Chamberlin*, 219 U.S. 250 (1911), defined the doctrine as follows:

It is a familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words. The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least if they may tend to restrain or diminish any of his rights and interests. He may even take the benefit of any particular act, though not named. The rule thus settled respecting the British Crown is equally applicable to this government, and it has been applied frequently in the different states, and in practically all the federal courts. It may be considered as settled that so much of the royal prerogatives as belonged to the King in his capacity of *Parens Patriae*, or universal trustee, enters as much into our political state as it does into the principles of the British Constitution.

18. Lipchin, *supra* note 13.

19. Central Intelligence Agency, *The World Factbook 2002: Turkey*, at <http://www.cia.gov/cia/publications/factbook/geos/tu.html> (last visited Apr. 22, 2004).

20. Nicole Pope, *Cross-Border Concerns*, 683 MIDDLE EAST INT'L 22 (Sept. 13, 2002).

21. The United States has a great deal of ground to make up in convincing the Iraqi people and those back home that its leadership is moral and decent. The Abu Ghraib Prison torture debacle and the beheading of Nicolas Berg are but two recent examples. See, e.g., Adam Liptak et al., *Accused G.I.s Try to Shift Blame in Prison Abuse*, N.Y. TIMES, May 16, 2004, at A1; David Johnston, *Interrogations: Rumsfeld and Aide Backed Harsh Tactics, Article Says*, *id.* at A16. See also Sandy Bauers, *A Life Lived Fearlessly, but Lost Too Soon: Idealistic, Trusting, Brash, Nick Berg Went to Iraq to Help. It Cost His Life*, PHILA. INQUIRER, May 16, 2004, at A1.

22. BBC News World Edition, *Timeline: U.S. Losses in Iraq* (Apr. 15, 2003), at http://news.bbc.co.uk/2/hi/middle_east/3019552.stm (last visited May 5, 2004); see also CBC News, *Timeline: Iraq and the Fall of Saddam*, at http://www.cbc.ca/news/background/iraq/timeline_fallofsaddam.html (last visited Apr. 22, 2004) (May 1, 2003: the United States and the United Kingdom (U.K.) announce that major hostilities in Iraq have ended).

23. THE TREATY OF PEACE BETWEEN THE ALLIED AND ASSOCIATED POWERS AND TURKEY: SIGNED AT SEVRES AUGUST 10, 1920, available at <http://www.lib.byu.edu/~rdh/wwi/versa/sevres1.html> (last visited Mar. 28, 2004).

24. Zinda Magazine, Assyrian Iraqi Document Project, *Timeline of Brutality*, at http://www.zindamagazine.com/iraqi_documents/timelineofbrutality.html (last visited Apr. 22, 2004) (part of the Iraq Research and Documentation Project (IRDP), at <http://www.fas.harvard.edu/%7Eirdp/> (last visited Mar. 28, 2004)).

25. POSTEL, *supra* note 11, at xxvi.

A. Hydrography of the Basin

The headwaters of both the Tigris and Euphrates Rivers are in the highlands of eastern Turkey. The Euphrates begins its 2,700-kilometer (km) (1,700-mile)-long trek to the Persian Gulf near the northeastern Turkish city of Erzurum. The river drains an area of 444,000 square km (171,000 square miles). "Although less than 30[%] of the river's drainage basin is in Turkey, roughly 94[%] of the river's water originates in the Turkish highlands The Euphrates has an average annual flow of 28 billion cu[bic] m[eters] (990 billion cu[bic] f[ee]t); the flow is heaviest in the months of April and May."²⁶

The headwaters of the Tigris River, on the other hand, originate near the Turkish city of Elâzig, approximately 150 miles southwest from where the Euphrates originates.

The Tigris is 1,900 km (1,180 mi) long and drains an area of more than 110,000 sq km (43,000 sq mi). The river [is spawned] in the mountains of eastern Turkey and flows southeast into Iraq after briefly forming the extreme eastern portion of the border between Syria and Turkey. Once in Iraq, the Tigris zigzags slowly to the [S]outh-east, and its valley flattens and widens. In southern Iraq the Tigris joins with the Euphrates to form the Shatt al Arab, which is 170 km (110 mi) long and flows to the head of the Persian Gulf.²⁷

B. Damming the Rivers

The Tigris and Euphrates Rivers are no longer free-flowing. During the second half of the past century, Turkey constructed a number of super-dams, with their accompanying reservoirs, on the Euphrates River in the Kurd-dominated eastern Anatolian Plateau region. These dams are said to serve the country's irrigation and hydroelectricity requirements. The Attaturk Dam, located in the eastern Anatolian Plateau and on the Euphrates River, was completed in 1990, and is a centerpiece of Turkey's mega-scale projects.

These mega-dams are part of a massive dam initiative on the Euphrates River, which Turkey embarked upon during the 1960s: the Southeastern Anatolia Development Project (known in Turkish as the Turkish Hydro-Development Programs or by the Turkish acronym GAP). Although Turkey officially maintains that this enterprise envisages 22 dams and 19 hydroelectric plants on both the Tigris and Euphrates Rivers,²⁸ others disagree, calculating a much higher number. For example, Prof. Dan Hillel, in his 1994 book, *Rivers of Eden*, suggests that the true magnitude of the GAP is 80 dams, 66 hydroelectric power stations with a total generation capacity of 7,700 megawatts, and 68 irrigation projects covering at least 2 million hectares.²⁹ Turkey's ambitious plans have alarmed both Syria and Iraq. They contend that these dams will obstruct their own development aims

and leave them water poor.³⁰ For example, one expert has opined that

[t]he GAP could reduce the Euphrates's flow into Syria by 35[%] in normal years and substantially more in dry years, besides polluting the river with irrigation drainage. Last in line, Iraq also worries about Syria's plans to tap more of the Euphrates for irrigation and to meet the need of a domestic population, that at current growth rates, will double in 18 years. Damascus, Aleppo, and other Syrian cities have already experienced supply cut-backs in recent years. All three countries in the basin weathered water shortages in 1989 when drought cut the Euphrates's normal flow in half.

In January 1990, Turkey heightened the anxieties of its downstream neighbors by stopping for one month the flow of the Euphrates below the Attaturk Dam, the GAP's centerpiece and now the fifth largest rockfill dam in the world. Turkey had told Syria and Iraq the previous November of its plans to start filling the reservoir behind the dam, and offered to compensate them by increasing downstream flow from November until January. Nonetheless, Syria and Iraq protested Turkey's action. Turkey's President [Özul] Turgut tried to reassure them that Turkey would never use its power over the river to "coerce or threaten them." The assurance rang a bit hollow, however, given his government's veiled threat in late 1989 to cut the Euphrates's flow because of Syria's support of Kurdish insurgents.³¹

Turkey's position is also evidenced from the following statement by its former president, Suleyman Demirel, who pronounced that

[n]either Syria nor Iraq can lay claim to Turkey's rivers, any more than Ankara could claim their oil We have a right to do anything we like. The water resources are Turkey's; the oil resources are theirs. We don't say we share the oil resources, *and they cannot say they share our water resources.*³²

In fact, the predictions for reduced flow on the Euphrates River from Turkey to Syria have come true: "[F]low of the river . . . had fallen from about 30 cubic kilometers per year to just under 16 cubic kilometers per year by the 1990s."³³

Since the mid-1970s the gross reduction in flow of about 150 cubic kilometers has been the result of filling reservoir storage plus evaporation therefrom at the three major storage [Turkey's Keban, Karakoya[,] and Ataturk dams], and at other minor, structures. 150 cubic kilometers amounts to five years total of Euphrates flow or nine years of the 47[%] of flow which is the 500 cusec [cubic meters per second] average rate of flow promised by Turkey to Syria.³⁴

26. Encarta, *The Euphrates River*, at <http://encarta.msn.com/encnet/refpages/RefArticle.aspx?refid=761555291> (last visited Apr. 22, 2004).

27. Encarta, *The Tigris River*, at <http://encarta.msn.com/encnet/refpages/RefArticle.aspx?refid=761574188> (last visited Apr. 22, 2004).

28. Republic of Turkey, Ministry of Foreign Affairs, *Water Issues Between Turkey, Syria, and Iraq*, PERCEPTIONS, at <http://www.mfa.gov.tr/grupa/percept/i2/i2-6.htm> (last visited Apr. 22, 2004).

29. DANIEL HILLEL, *RIVERS OF EDEN: THE STRUGGLE FOR WATER AND THE QUEST FOR PEACE IN THE MIDDLE EAST* (1994).

30. See, e.g., Central Intelligence Agency, *supra* note 19, section entitled "Disputes-International."

31. POSTEL, *supra* note 11, at 81-82. A typical concrete face, rockfill dam consists of gravel and rockfill with a concrete face layer followed by a transition zone and three different fillings of rock. See, e.g., The Quebra Queixo Dam (Brazil), The Institution of Professional Engineers, *Dam Projects in Southern Brazil, Notes From Peter Mulvihill's Tour of Five Dam Sites in Parana and Santa Catarina*, Newsletter No. 38, at 8 (Dec. 2002), available at www.ipenz.org.nz/nzsold/NZSOLD%20Newsletter%20No%2038%20vers%201.pdf (last visited May 7, 2004).

32. Darwish, *supra* note 8 (emphasis added).

33. J.A. ALLAN, *THE MIDDLE EAST WATER QUESTION: HYDRO-POLITICS AND THE GLOBAL ECONOMY* 219 (2002).

34. *Id.*

Syria, like Turkey, has also built dams on the Euphrates cutting off Iraq's flow from that river. "In 1974 Syria began its greatest engineering feat, the damming of the Euphrates and the creation of Lake Assad"³⁵—named after its then-leader, Hafez al-Assad. The dammed water would be used to irrigate more than 640,000 hectares (259,109 acres) of land and generate electricity.³⁶ However, the enterprise has become a bitter disappointment for the Syrians. Syria's experience is not an isolated one. The headlong rush into these types of mega-projects will again trigger similar fiascos.

Iraq has also been a victim of Syrian and Turkish activities on the Euphrates River, including: (1) Syria's inefficient use of the Euphrates; and (2) the loss of two of that river's tributaries due to Turkish upstream use. However, Syria, and for that matter Turkey, cannot be held accountable for all of Iraq's water woes. The bureaucratic ineptitude of Hussein's regime bungled the management of both the Tigris and Euphrates waters. Additionally, the Iraqis ignored Russian help originally sought by that regime.³⁷

Iraq also built numerous dams on the two rivers. Moreover, in 1991 following the Gulf War, Hussein's Sunni Moslem regime built a series of dams along the rivers south of Baghdad in an effort to punish the majority Shi'ia Moslems—who live in the southern part of the country below Baghdad—for rebelling against the government, following the denouement of the Gulf War. The regime's crusade was initiated, in what became a successful effort, to destroy the indigenous Marsh Arabs, who for hundreds of years made their homes in the marshlands south of the southern Iraqi city of Basra.

Increasing use of the Euphrates River by Turkey and Syria presented a great challenge to Hussein's regime and will now pose a great challenge for the post-June 30 Iraq government.

III. The Conflict in the Tigris-Euphrates River Basin

"Water is an upstream resource and downstream users cannot tell us how to use *our resource*."

—Suleiman Demirel, President of Turkey.³⁸

The [GAP] project . . . creates a great deal of resentment from Syria and Iraq, the other riparians of the basin. The *tensions over the waters of the basin have reached internationally acknowledged levels*, and a lack of cooperation among the riparians confronts the world with a new potential conflict area. This situation threatens the delicate political stability in the Middle East . . . The basin is one of the *most unstable political areas in the region, and water plays an important role. This is a classic case of a water quantity issue*, and use of the available water in the basin.³⁹

Syria and Iraq bitterly oppose and are alarmed by Turkey's GAP and other development projects. They contend that these dams and their resulting reservoirs will reduce the downstream flow of the Euphrates River to each of them by 40% and 90%, respectively.⁴⁰

During the 1980s, Turkey and Syria, who were aligned with Iran throughout the Iran-Iraq War, curtailed the flow of water on both the Tigris and Euphrates Rivers, thereby limiting Iraq's share.

Once Turkey began construction of the GAP, Syria, concerned that it would be totally dependent on Turkish control of the river, responded by undertaking a campaign to destabilize Turkey, primarily in supporting the anti-Turkish Kurdish Workers Party (PKK—for the Turkish abbreviation of *Partiya Karkaren Kurdistan*). In response, Turkey retaliated by using the water issue as a bargaining chip against Syria's president, Hafaz al-Assad.

Turkey's strategy, however, backfired due to Syria's unbridled support of the PKK and that organization's many bombings of Turkey's main cities. Following numerous PKK bombings, Turkey proposed the following deal to Syria: Turkey would allow a water flow of 500 cubic meters per second from the Euphrates in exchange for an end to Syria's support of the PKK. Syria agreed. However, Turkey has as yet to commit the number to writing. Therefore, Syria fears that Turkey will capriciously restrict that flow amount.

Moreover,

Turkey argues that the flow is now reliable and assures its southern neighbours that the lower average flow [i.e., 16 cubic kilometers per year (ck/yr), down from 30 ck/yr] will be guaranteed even after serious consumptive use of ten or more cubic kilometers per year will be the norm when [its] irrigation projects are constructed and operating.

Because the [Euphrates River's] annual flow was unreliable the average use of the flow by Syria and Iraq was never above 15 cubic kilometers per year. Had Syria's 1970s irrigation projects been more successful the consumptive use downstream of Turkey would have been greater. Meanwhile Syria was continuing to develop the irrigation potential of the Euphrates in the 1990s . . .⁴¹

Finally, the Turkish government claims that it is not a country rich in water resources. It also advances the proposition that Iraq is actually richer than it on a per capita annual water availability and that Syria is not far behind.⁴²

Many in the region believe that with Syria under the gun by the United States, its Ba'athist regime may turn its venom on Turkey in a water war.⁴³ Nevertheless, the Bush Administration has an exceptional opportunity to fashion a settlement of this water conflict. The question is, will it choose to do so?

IV. Cooperation in the Tigris-Euphrates River Basin

In spite of their many disagreements over allocation, management, and development of the waters of the Tigris and Euphrates River Basin, Iraq, Syria, and Turkey have demonstrated a will to cooperate. For instance, in 1946 Turkey and Iraq entered into a bilateral agreement for control and man-

35. Lipchin, *supra* note 13, at *7.

36. *Id.*

37. Darwish, *supra* note 8.

38. *Quoted in*, Lipchin, *supra* note 13 (emphasis added).

39. Kor, *supra* note 1, at *1-2 (emphasis added).

40. *Id.*

41. ALLAN, *supra* note 33, at 255-56.

42. *Water Issues Between Turkey, Syria, and Iraq* (arguing Turkey's position on these issues), *supra* note 28, tbl. 1.

43. Personal Conversation with members of Israeli Military Intelligence (Aug. 28, 2003, and Feb. 25, 2004); and Intelligence officials of the U.K.'s MI-5 unit (Sept. 21, 2003, and Apr. 17, 2004).

agement of the Tigris and Euphrates Rivers.⁴⁴ Subsequently, in 1980, these two riparians agreed to establish a Joint Technical Committee on Regional Waters.⁴⁵ Then, in 1982, Syria was made a Party to that accord. Although the Parties met in each riparian's capitol, Ankara, Baghdad, and Damascus, they were at loggerheads for almost a decade.⁴⁶ In 1990, with Turkey's completion of the Ataturk Dam, the talks bogged down; as a result the committee was disbanded.⁴⁷

The situation has not improved in the intervening decade. As recently as January 16, 2004, the Turkish Ministry of Foreign Affairs, via its Chairman of the Department of Regional and Cross-Border Waters, Mithat Rende, rejected any assistance in mediating the dispute. In fact, Rende has stated that the ministry "did not welcome [a] third side's intervention in [the] cross-border waters matter," adding that "regarding this matter, we are against single type solutions and nationalist approaches."⁴⁸

V. Solving the Deadlock: International Law—A Framework for Resolution

It is clear that the Tigris-Euphrates River riparians are unable to forge their own plan for an allocation plan for the basin. For example, the three riparians have not proceeded beyond the *assertion* stage—the duty of a government to assert its water rights, yet "Turkey has gone a substantial way to attaining what it regards as its water rights by its construction programmes on the Euphrates without having them recognized by downstream Syria and Iraq."⁴⁹

Tony Allan, an expert on Middle East water issues asserts that some States in the region both selectively reject the well meaning principles of international water law developed by the end of the 20th century. The rapidly developing "hegemon" in the Tigris-Euphrates River Basin, Turkey, is the most trenchant in its rejection.⁵⁰

Therefore, the sole solution may be to impose an outside plan, i.e., one based on international water law. International water law, however, as a branch of international law, has no clear mandates or legal authority. Additionally, there exists

no international body that establishes or formulates water laws that are binding on all States. Albeit, a number of approaches do exist such as a State's customary practice, the actions of international tribunals, and writings of various legal institutions. Yet these standards are only binding on a State if it accepts a particular practice. Furthermore, one shortcoming of the use of international law in this region of the world is that it has "little appeal [to the basin's] politicians, professionals[,] and communities when they will disrupt existing practice and are not founded on the cultural and religious conventions of the region."⁵¹

Nevertheless one cannot give up and what follows is an attempt to reconcile the legal issues.

A. The Development of Equitable Principle of Water Use

Water has always been critical for human habitation. However, as populations have increased and the resource has come under greater pressure and is therefore more critical, there has been a concomitant evolution of both water law and international law governing water use between States. A myriad number of legal doctrines exist in the sphere of water allocation and utilization.

The four primary principles of water management are: (1) absolute territorial sovereignty; (2) absolute territorial integrity; (3) common jurisdiction; and (4) equitable utilization. The fourth principle, the doctrine of equitable utilization, is the most accepted and the one most encountered in international conventions.

B. The Doctrine of Equitable Utilization

Equitable utilization permits a river's waters to be used by any riparian to the extent that that use does not harm fellow riparian States. The principle has been interpreted to require all sides of a dispute to be flexible and base water requests on population and the needs and development of their societies and economies.

The doctrine was first codified in the Helsinki Rules.⁵² These rules have been updated to some extent and adopted by the United Nations General Assembly in the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses (1997 ILC Convention).⁵³ However,

44. Kor, *supra* note 1, at *7. "[W]ater has always been one of the major issues between Turkey and Iraq, even since the Lausanne Agreement of 1923, and despite the provisions of the friendship treaty between Iraq and Turkey in 1946." RFE/RL Analytical Reports, *Iraq Report* (Apr. 13, 2001), at <http://www.rferl.org/iraq-report/2001/04/12-130401.html> (last visited May 5, 2004).

45. Kor, *supra* note 1, at *7.

46. *Id.*

47. *Id.*

48. TurkishPress.Com, Anadolu Agency, *M.F.A.: We Don't Welcome Third Side's External Intervention in Cross-Border Waters Matter* (Jan. 16, 2004), at <http://www.turkishpress.com/turkishpress/news.asp?ID=16821> (last visited Apr. 22, 2004).

49. ALLAN, *supra* note 33, at 219. On the assertion of water rights, see *id.* at 216. See also Sami Kohen, *A Thirsty Syria May Make Turkey's Water Price of Peace*, CHRISTIAN SCI. MONITOR, Jan. 9, 1996, at 1 ("A possible peace between archenemies Syria and Israel may be the crown jewel for Mideast tranquility, but the prospect is making Syria's big neighbor to the north, Turkey, very jittery.")

50. ALLAN, *supra*, note 33, at 288. A hegemon is the dominant power in a basin. Under this theory, cooperation "can only be achieved if the dominant power accepted it, or had been coerced by an external power." (Citing M.R. Lowi, *The Politics Under Conditions of Scarcity and Conflict: The Jordan River and Riparian States* 386 (1990) (unpublished Ph.D. dissertation, Politics Department, Princeton University).

51. ALLAN, *supra* note 33, at 288.

52. INTERNATIONAL LAW ASS'N, HELSINKI RULES ON THE USES OF THE WATER OF INTERNATIONAL RIVERS 484-533 (1966) (codifying international laws on waters of international rivers), available at http://www.internationalwaterlaw.org/IntlDocs/Helsinki_Rules.htm (last visited Apr. 26, 2004) [hereinafter *Helsinki Rules*].

53. U.N. GAOR, U.N. Doc. A/51/869 (adopted & opened to signature May 21, 1997), available at <http://www.un.org/law/ilc/texts/nonnav.htm> (last visited Apr. 26, 2004) [hereinafter ILC 1997 Convention]; see also Press Release, United Nations General Assembly, General Assembly Adopts Convention on Law of Non-Navigational Uses of International Watercourses (May 21, 1997), at <http://www.un.org/News/Press/docs/1997/19970521.ga9248.html> (last visited May 5, 2003).

The General Assembly this morning adopted a Convention on the Law of the Non-Navigational Uses of International Watercourses aimed at guiding States in negotiating agreements on specific watercourses and invited States and regional economic integration organizations to become parties to it. The Assembly took that action through its adoption, by 103 votes in favour to 3 against (Turkey, China, Burundi) with 27 abstentions, of [the] resolution

Id.

the Helsinki Rules remain a good starting point for any discussion and they will be employed herein. The Helsinki Rules comprise the foundation for a majority of modern negotiations regarding non-navigational uses of international watercourses. Article IV of the rules provides that “[e]ach basin [S]tate is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of waters of an international drainage basin.”⁵⁴

Article V of the Helsinki Rules sets out 11 relevant factors that “are to be considered.” Some of the factors *to be considered* include but are not limited to:

- (a) the geography of the basin, including in particular the extent of the drainage area in the territory of each basin State;
- (b) the hydrology of the basin, including in particular the contribution of water by each basin State;
- (c) the climate affecting the basin;
- (d) the past utilization of the waters of the basin, including in particular existing utilization . . . ;
- (f) the population dependent on the waters of the basin in each basin State . . . ; and
- (h) the availability of other resources.

The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable share, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.⁵⁵

The doctrine of equitable utilization, the Helsinki Rules, and the 1997 ILC Convention have received little international judicial scrutiny. Nevertheless, the doctrine reflects

54. *Helsinki Rules*, *supra* note 52.

55. *Id.* Article 6, Factors Relevant to Equitable and Reasonable Utilization, of the 1997 ILC Convention incorporated Article V of the Helsinki Rules. However, Article 6, to some extent, modified Article 5 as follows:

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

- (a) Geographic, hydrographic, hydrological, climatic, ecological[,] and other factors of a natural character;
- (b) The social and economic needs of the watercourse States concerned;
- (c) The population dependent on the watercourse in each watercourse State;
- (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- (e) Existing and potential uses of the watercourse;
- (f) Conservation, protection, development[,] and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- (g) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

ILC 1997 Convention, *supra* note 53, art. 6.

the norm of international law. *See e.g.*, Ganges-Brahmaputra River Basin Treaty between India and Bangladesh.⁵⁶

The factors in Article V of the Helsinki Rules could provide a means, or at least a first step, for a water allocation formula between all of the riparians of the Tigris-Euphrates River Basin. Each State, however, would need to feel that its interests are being served and that the process will be equitable and just.

C. Water Management Principles and the Tigris-Euphrates River Basin Conflict

Turkey contends that

“[e]quitable utilization” seems to be the most accepted principle in international law in allocating waters of a trans-boundary river. In order to reach such an allocation, the countries should take certain factors into consideration, such as socio-economic, hydrological[,] and geopolitical conditions. These factors are not exhaustive and if other national and natural resources are available to meet the needs of countries in question, these resources have to be taken into account as well.

In this framework, Turkey has been advocating the necessity of common criteria in allocating the Euphrates-Tigris Basin waters, based on scientific and objective rules. In order to utilize water in an equitable manner Turkey has prepared a project which is called “Three Staged Plan” and has proposed it to Syria and Iraq.

However, the plan was rejected, specifically by Saddam Hussein’s Iraq on the basis that it will, to a great extent, hinder its water demand from the Euphrates.⁵⁷

Ba’athist Iraq, on the other hand, argued that it should have greater rights than those it currently has. Turkey, re-futes this assertion and articulates its rebuttal in the following manner:

Iraq maintains that it has “acquired rights” relating to its “ancestral irrigations” on the Euphrates and Tigris [R]ivers. According to Iraq, there exist two dimensions of acquired rights. One outlines the fact that, for thousands of years these rivers have given life to the inhabitants of Mesopotamia and thus constitute an acquired right for this people. Therefore no upstream riparian country is entitled to take away the rights of these inhabitants. The second dimension of acquired rights stems from the existing irrigations and water installations. Iraq has 1.9 million hectares of agricultural land in the Euphrates Basin, including the ancestral irrigation systems left from the Sumerians times. Iraq also maintains that it has several established irrigation installations to irrigate these lands.

During the initial impounding of the Atatürk Dam, Iraq accused Turkey of violating “International Law,” by

56. *See, e.g.*, Treaty Between the Government of the Republic of India and the Government of the People’s Republic of Bangladesh on Sharing of the Ganga/Ganges Waters at Farakka, Dec. 12, 1996, at <http://ocid.nacse.org/qml/research/tfdd/toTFDDdocs/172ENG.htm> (last visited May 16, 2004).

57. PERCEPTIONS, *supra* note at 28; *see also* Republic of Turkey, *supra* note 25, at <http://www.mfa.gov.tr/grupa/ad/adg/default.htm> (last visited Apr. 26, 2004).

Turkey also suggests that “[t]his plan . . . will be implemented by a group of engineers of the three countries. . . .” PERCEPTIONS, *supra* note 28.

not informing Iraq timely and by reducing the amount of flow below the committed level. Thus, the citizens of Iraq, have been subjected to a very difficult situation as a result of these actions [citation omitted]. In addition to that, Turkey will cause damage to the downstream riparian [S]tates, by building new dams and irrigation systems.⁵⁸

Iraqi officials have also asserted that the waters of the Tigris and Euphrates must be shared among the riparians through a mathematical formula.⁵⁹ On the other hand:

Turkey also suggests that under its 1987 Protocol it was to supply 500 cubic meters/second to Syria. However, it also claims that this amount was to continue flowing until the 'filling up' of Atatürk Dam is completed [citation omitted]. Iraqi authorities argue that the Protocol has lost its validity, due to the fact that the filling up of the Atatürk Dam has been completed. Therefore the final allocation must be made in an amount of water higher than 500 cubic meters/second [to both Syria and Iraq]. This amount should not be less than 700 cubic meters/second.⁶⁰

One doubts that any incoming Iraqi will alter Saddam's position. After all, he espoused the national view, and the Iraqi populace still needs the water they fought over pre-March 2003, when the "coalition" attacked the country. Thus, it is evident that although they have worked together in the past, Turkey and its downstream riparians neighbors, Iraq and Syria, disagree on what the allocation should be. In order to break this log jam, a solution must be crafted that will accommodate as many of the Parties' concerns as possible.

VI. A Solution to the Tigris-Euphrates River Basin Transboundary Dilemma

A. The League of Arab States' Solution

The League of Arab States, informally known as the Arab League, has taken an interest in the Tigris-Euphrates Rivers conflict. In September 1992, the Arab League's General Secretariat expressed its support of Syria's and Iraq's position. Although it took the same position of support of these two Member States as recently as February 2000, "it [has] called upon the Turkish Government to proceed to trilateral negotiations, in order to reach a final agreement on a fair and reasonable partition of water that ensures rights of the three countries under provisions of the international law."⁶¹

However, the Arab League has yet to advance a concrete proposal around which the Parties could rally. As pointed out above, Turkey has also sought to open trilateral negotiations. Notwithstanding the Parties' attitudes, these calls have yet to convince them to at least sit down to see if they can agree on the issues to be negotiated. This is where the United States and the CPA need to flex their muscle.

60. See *id.* at II (The Arguments of Syria and Iraq Concerning the Euphrates-Tigris Basin and Turkey's Views Thereof, Arguments of Iraq).

61. League of Arab States, *The Tigris & Euphrates*, at http://www.arableagueonline.org/arableague/english/print_page.jsp?art_id=1287 (last visited Apr. 26, 2004).

B. A Model for a Unified Plan

In 1909, the United States and Great Britain, on behalf of Canada, entered into the Boundary Waters Treaty.⁶² The treaty's purpose is to delineate and settle the Parties' rights, obligations, and interests in the Great Lakes and the rivers along their common border. In 13 short articles, Secretary of State Elihu Root and Ambassador James Bryce sought to limit the diversion of water, assure each country's rights of navigation, and curb pollution—a far-reaching concept for the early 1900s. The Boundary Water Treaty's initial term was for five years. Notice of termination of the treaty must be given within 12 months of the date a Party seeks to terminate. Ninety-three years have passed without incident and the treaty is still in force.

To fix and regulate their rights and obligations, the treaty's signatories created the International Joint Commission (IJC). This body consists of six commissioners, three representing each government. The IJC has three dominant responsibilities: (1) to arbitrate specific disputes arising between the two governments; (2) to conduct studies of certain issues or problems at the request of either government; and (3) to approve applications for the diversion or obstruction of streams and rivers that affect the level or flow of the boundary waters.

One of the stellar accomplishments in international law has been the IJC's ability to set aside partisan bickering in an effort to achieve protection over the entire water budget within its jurisdiction. Clearly, Canada and the United States were not in a state of conflict or hostility when they entered into the treaty. Nevertheless, with over 3,000 miles of common frontier and the many waterways that the treaty governs—and the numerous possibilities for conflict—it is a tribute to the IJC that its work has been singularly successful and essentially seamless.

The joint commission arrangement—with its various enforcement mechanisms—has stood the test of time. Therefore, it should come as no surprise that in hammering out a water settlement between Israel and Jordan, on the one hand, and a proposed settlement between the Israelis and the Palestinians on the other, the Clinton Administration adopted the joint commission concept from the U.S. arsenal of working treaties. However, there is a critical difference between the Boundary Waters Treaty and any accord that will govern an allocation scheme in the Tigris-Euphrates River Basin. While the Boundary Waters Treaty had and has two friendly Parties, an accord that will bind Iraq, Syria, and Turkey will be (1) among antagonists, and (2) a multi-Party agreement that will require a water allocation plan that meets the three Parties' needs.

Nevertheless, the Israel-Jordan and Israeli-Palestinian accords demonstrate how fractious Parties can arrive at meaningful allocation plans while employing the IJC model.

1. The Israel-Jordan Peace Treaty

On October 26, 1994, Israel and Jordan signed a peace treaty.⁶³ The agreement is comprehensive in that it ad-

62. Treaty Between the United States and Great Britain Relating to Boundary Waters Between the United States and Canada, Jan. 11, 1909, 36 Stat. 2448, T.S. No. 548.

63. Israel-Jordan Peace Treaty, Annex II, Water-Related Matters, at <http://www.usembassy-israel.org.il/publish/peace/annex2.htm> (last visited Apr. 26, 2004).

dresses the mutual concerns of both States, including the allocation of water. The water agreement was the last issue to be worked out and it required many all-night meetings between the respective negotiators, Noah Kinarti for Israel, and Dr. Munther Haddadin for Jordan.

That accord's "Water-Related Matters" section covers two distinct geographic areas: North and South. The Parties also agreed to a formula allocating water between them from the Yarmouk and Jordan Rivers and between summer and winter flow.

Albeit, the negotiators did not mean for the treaty to remain static. Anticipating future issues and the need for flexibility, they created a Joint Water Commission (JWC) "comprised of three [M]embers from each country."⁶⁴ It is the JWC's charge—as in the Boundary Waters Treaty—to implement the peace treaty and to resolve all future water-related concerns.

2. The Oslo II Israeli-Palestinian Water Agreement

For some three and one-half years, Palestinians and Israelis have been mired in an imbroglio, called the "Second Intifada."⁶⁵ Nevertheless, in September 1995, the two combatants signed an interim agreement, denominated as Oslo II,⁶⁶ which includes an Annex entitled "Water and Sewage."⁶⁷ The Annex was the first portion of the overall interim agreement to be concluded by the two sides.

As in the case of Jordan, "[b]oth sides recognize[d] [that their water resources are in jeopardy and acknowledged] the necessity [of] develop[ing] additional water resources [and] maintaining existing quantities of utilization from the resources in the sphere of water and sewage in their respective areas."⁶⁸

Like the Israel-Jordan treaty, Israel and the Palestinian National Authority agreed that "in order to implement their undertakings under this Article, the two sides will establish [a] permanent Joint Water Committee."⁶⁹ The JWC's function will be to "deal with all water and sewage related issues

including, inter alia: 'Coordinated management of water resources . . . ; Protection of water resources and water and sewage systems . . . ; [and] Resolution of water and sewage related disputes.'"⁷⁰

C. The JWC Framework and the Tigris-Euphrates Conflict

It is clear that in the foregoing bilateral treaties—the Israel-Jordan Peace Treaty and the Israeli-Palestinian Water Agreement—the Boundary Waters Treaty's JWC framework was employed as a "management" body for allocating water and governing future disputes and allocations. The stratagem has been working quietly for both Israel and Jordan.

Moreover, for the past 95 years, the Boundary Waters JWC framework has functioned with exemplary results. Although its use has been limited to two-Party accords—Canada and the United States, Israel and Jordan, and Israel and the Palestinian National Authority—there is absolutely no reason why it cannot be employed for multi-State water allocation and management, especially in the Tigris-Euphrates River Basin. Certainly, as the world's sole superpower and as the administrative power in Iraq, the United States has the standing, motive, and opportunity to make things happen in this basin.

Given the current climate of hostility of many Iraqis against the United States, which was recently tweaked by the tragic debacle at the Abu Ghraib prison, the Boundary Waters Treaty paradigm would be seen as a gesture of goodwill to Iraq's thirsty population. It therefore needs to be seriously considered by the incoming U.S. Ambassador, John Negroponte. Were the CPA, Ambassador Negroponte and U.S. Department of State officials to gather the three riparians around a table and propose or introduce the JWC paradigm with Turkey and Syria and impress upon them its sheer simplicity, feasibility, and practicalability, a framework could be developed around which trilateral negotiations would be initiated for resolving this wearisome and worrisome conflict.

Cooperation "could facilitate small endeavours such as the security of water for [the] water deficit [sic] communities [of these three riparians]."⁷¹ Moreover:

[S]uch cooperation could contribute the foundation building element in riparian relations This latter foundation building phase in inter-riparian relations is the essential preliminary to cooperation in water sharing and joint management.⁷²

VII. Conclusion

The conflict over the Tigris-Euphrates River Basin has continued for years without a hint that it will abate. Numerous issues exist, including practical and technological ones, i.e., exchanging the use of dams for more robust and sustainable methods of generating electricity and irrigating crops. It appears that Turkey and Syria may have agreed to negotiate allocation issues. Now Iraq, under the current administration of the CPA and the IGC, and the post-June 30 government, could take its place at the negotiating table with its upstream

64. *Id.* (emphasis added).

65. Intifada is the Arabic word for uprising. DON PERETZ, INTIFADA: THE PALESTINIAN UPRISING (1990). The second Intifada officially began on September 28, 2000, when Gen. Ariel Sharon, then the head of the minority Likud party and a member of the coalition government, walked through the old city of Jerusalem toward the Temple Mount, or Haram al-Sharif in Arabic, and was pelted by rocks thrown from the al-Aqsa Mosque down to the Western Wall by Palestinian men. This visit became the pretext for instigating large-scale demonstrations, the start of the al-Aqsa Intifada. *See e.g.*, Palestine Facts, *What Started the al-Aqsa Intifada in September 2000?*, at http://www.palestinefacts.org/pf_1991to_now_alaqsa_start.php (last visited Apr. 26, 2004); *see also* Peter C. Valenti, *Al-Aqsa Intifada, Three Years and Counting*, WORLD PRESS REV. (Dec. 2003), available at <http://www.worldpress.org/Mideast/1665.cfm> (last visited Apr. 26, 2004) ("Palestinians trace the violence to Sept. 28, 2000, when then-Likud party leader [Sharon] visited the Al-Aqsa mosque compound, regarded by Jews as the holy Temple Mount, with approximately 1,500 police and security forces. While hostilities simmered before this date, Palestinians feel that Sharon's action pushed the community to erupt.")

66. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, at <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH00qa0> and <http://www.pna.org/mininfo/key/oslo2.htm> (last visited Mar. 25, 2004).

67. *See id.* Annex III.

68. *Id.* arts. 40.2., 40.3.a.

69. *Id.* art. 40.11.

70. *Id.* arts. 40.12.1.a., c., f.

71. ALLAN, *supra* note 33, at 236.

72. *Id.*

riparians. However, the United States needs to push its charge into the negotiating room.

As every good chef knows, some recipes are tried and true. The Boundary Waters Treaty's JWC framework, for a multi-Party "management" body, has stood the test of time.

The moment is ripe for the United States to create the conditions for a trilateral meeting where the Parties to this dispute can implement the creation of a JWC and work toward a negotiated formula for the allocation of water and how future disputes will be addressed.