

Is Palestinian Israeli Cooperation on Shared Groundwater Resources Needed? Possible? A Palestinian Perspective

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Living with Global
Change: Challenges in
Environmental Sciences

***We Know the Value of Water
When the Well Runs Dry
(Benjamin Franklin)***

Contents

- Not to forget that.....
- Background
- Is cooperation Needed?
- The Problem on the Ground: Is Cooperation Possible?
- Is there a Way Out? Do We want to get out?

Not to Forget that..

- The Israeli military occupation of the West Bank and Gaza Strip is the central issue that dominates all others;
- Israel has committed itself to the “Road Map” which calls for *establishment of a viable, sovereign, democratic and independent Palestinian State*;
- Whether admitted or not by the politicians on both sides, Israelis and Palestinians share an invaluable, irreplaceable and a highly vulnerable resource: **Groundwater**;
- The unilateral development of the water resources is not in the interest of both parties neither it fulfills the objectives of sustainable development of these resources;
- With or without a final peace settlement a strategy for cooperation on the development and protection of the shared waters must be jointly formulated and enacted;

We: Professionals on both sides have “responsibility” to utilize our knowledge from science, law and other disciplines to influence change and to work towards peace, cooperation and sustainable development;

Background



- The Water Problem and the political Setting
- The Mountain Aquifer

Is Cooperation Needed?

- Genuine Coordination and Cooperation between Israel and Palestine on the utilization, protection and development shared water resources is absent
- The current situation of no cooperation has widened the gap between the parties and deepened the mistrust in all matters and at all levels.
- Without Cooperation each entity's pursuit for more water supplies or less demand will take place unilaterally, with the probability of duplicate efforts and foregone opportunities
- Any further delays in taking serious steps towards genuine co-operation will lead to a more deteriorated water situation and to inflation in the water crises, thus causing harm to the present and future generations and to the groundwater resources themselves.

Is Cooperation Needed?

- However, in light of the historical and current political background, there are valid reasons to suggest that in the short-term at least, Israel is unlikely to be ready for a binding agreement relating to transboundary groundwater on the basis of international law.
- There is a need for an innovative approach that draws lessons from international law and relevant State practice in order to systematically address them following a progressive manner.
- The progressive approach has the potential to aid the decision-making process by clarifying the various steps that states should take before committing the Parties to implementing international law
- The option of a binding treaty is only realistic when the parties collectively agree to commit themselves entirely to the rigors of a formal treaty regime

The Problem on the Ground

Asymmetry: at what levels?

- Economy
 - half of the Palestinian population live under the poverty line
 - An overwhelming superiority of Israeli economic resources.
- Access to data and information:
 - Knowledge on transboundary groundwater
- Water Utilization
 - Inequality; below basic human needs
- Level of technological development
 - Non-conventional resources

The Parties' Position On the Water Conflict

➤ The Palestinian Position

- Sovereignty
- International law

➤ Israeli Position

- Prior Use (historical rights)
- Non-negotiable existing uses
- non-conventional resources

Resistance to International Law

- To date international law has had limited role in resolving the water conflict between Israel and Palestine
- The existing inequitable utilization of the international watercourses –including transboundary groundwater - has been considered “*de facto*” as establishing water rights
- the “no harm” rule appears to be the overarching principle embraced by at least the Israeli negotiators

Relevance of Signed Agreements: A Mutual Benefit?

- signed agreements do not provide an adequate framework for the regulating the relationship of parties as far as the Mountain Aquifer is concerned.
- The Agreement emphasizes the Israeli recognition of Palestinian water rights in the West Bank, but gives no definition of these rights
- The obligation to cooperate contained under the relevant regional treaties appears to serve mainly the objectives of the Israelis - namely protecting their existing uses

Continue..Signed Agreements.

- there is no agreement on the overarching legal principles that will govern the rights and obligations of both parties. If one compares the agreements with what has actually been achieved, there is a strong indication of the complexity of the situation and the inequality of the power structures that appears to favour the Israelis.
- The existing joint mechanisms and institutions - namely the Joint Water Committee- completely failed to fulfil their obligations. On a technical level, the essential projects for development were delayed, rejected or put on hold due to unjustified reasons.

Lack of a Strategic Vision on Cooperation

- genuine cooperation on the utilization, development and protection of the transboundary groundwater resources is still lacking
- the magnitude of the problems outpace any effort for comprehensive management.
- Existing cooperation efforts don't operate within a comprehensive cooperative framework, rather they are scattered, fragmented and often lacking the long term vision.

Palestine's Water Institutions and Good Governance

- The newly established Palestinian Water Authority (PWA), is empowered to regulate and manage all water resources of Palestine including transboundary water resources.
- The mandates of PWA are not fully achieved, and will not be, unless the sovereign rights of the Palestinians over the transboundary groundwaters are respected and recognized.
- The PWA is facing many obstacles in its efforts to rehabilitate, build and operate new systems and structures.
- There is a need for investment in the water sector.
- Building the water institutions together with the required infrastructure will require huge investments to accomplish.
- This need calls for a genuine commitment from the international community and Israel to help the establishment of strong institutions of comparable capacities to those in Israel in order to pave the way for co-operation

Lack of Donor Coordination

- There is a lack of strategic thinking and a lack of good programs to support.
- This is not to be blamed on the donors only rather more on the recipient parties.
- The lack of a comprehensive vision on the cornerstones of successful cooperation
- there is a tendency by donors to favour ad-hoc projects as they are easy to implement and monitor.
- The impact of the last 10 years donor funding for multilateral and bilateral projects is poor and at least not coherent.
- For many years donors were acting out of mere “solidarity”, but now the time has come for a more professional approach.

Is there a way Out???

...

Do we really want to get
out?

Underlying Principles for Cooperation

- **Cooperation is Crucially Important for All**
- **Prerequisites for successful cooperation must be fulfilled**
- **Economic Projects are not the replacement for Equitable Utilization of the shared water resources**
- **Regional Options must be Mutually Beneficial**
- **Minimize Reliance on foreign sources of water**

Prerequisites for Successful Cooperation

- Acknowledge that there is a common crisis
- A mutual acknowledgement to the need for a common base in the interest of the resource optimisation and management
- Acknowledge the need for establishing appropriate mechanisms on the utilisation of the shared resources in an optimal manner for the present as well as for future generations is required.

Continue..Prerequisites..

- The creation of the adequate dialogue and constructive communication
- Agree on a long term mutually beneficial vision (sustainability of resources and benefits)
- Define the various stages/steps and degrees of for cooperation
- Build awareness on the local and political levels
- Consider Asymmetry in the various stages of implementation
- Demonstrate Successful Stories

The Progressive Approach

7/11/2005

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Identify the Problem

- Identify the scope/problems
 - Which groundwater aquifers are to be considered?
 - How to reduce the asymmetry between the parties? Data, knowledge, development
 - Degree and Intensity of Cooperation (pilot projects)
 - Committees needed for the implementation

Agree on Interests not positions

- Jointly assess the water situation
- Identify Basic Human Needs
- Social and Economic Needs
- Alternative Resources of comparable value
- Conservation and Efficiency Measures
 - Protection of aquifers from depletion and pollution
 - Apply the same standards
 - Joint monitoring and assessment

The Legal Assessment Model

Law • Hydrology • Economics

Phase I Defining Scope

Scope

Identify and describe the transboundary water resource including the legal, geographical and hydrological parameters

Phase II Data Collection

Data Collection Tools

Process for gathering the best available data in a systematic way based on country situation
Involves use of following tools:

Legal Audit Scheme - Method for reviewing applicable law at the international and national levels

Relevant Factors Matrix - Provides format, process, anticipated problems and suggested solutions for collection of requisite data and information

Glossary of Terms - Defines terms used in LAM from an interdisciplinary perspective

Phase III Evaluation

Method of Evaluation

Determine most appropriate evaluation method taking into account quality and quantity of data and national capability

Apply most appropriate method to determine whether current or planned uses of a transboundary water resource are equitable and reasonable

Create Options for Mutual Benefits

- If under the equitable and reasonable scenario the water is insufficient
 - Prepare plans for alternative and new water resources
 - Options for desalination, wastewater treatment and import of water (feasibility analysis)

Third Party Intervention

- In this case of power inequity The need for a “Third Party’s” TP or a “Mediator’s” intervention arises;
- The TP team could help the process of identifying the aspects of the problem, the actors, and act as advocate not just for reaching a compromise but also for ensuring that the presented facts and information are accurate and reliable.
- The “TP” is recommended to be composed of one member nominated by each Party concerned and, in addition, a member not having the nationality of any of the Parties concerned chosen by the nominated members who shall serve as the chairman.
- It is recommended that team’s expertise is diverse and includes a lawyer, a hydrogeologist and an economist.

Institutionalization of the Cooperation

- Establish the appropriate institutions at the various stages of cooperation
- At the early stages only technical committees are required ensuring adequate communication with the government. The consent from the government on their operation is vital
- At later stages a different hierarchy institutions are needed with more formal representation

Who Implements the steps

- The approach is expected to set the stage for thoughtful elaboration at the technical level, whereby scientists, economists and lawyers from both sides can establish an operational network of technical coordination and develop rules of procedures essential for protecting and harnessing the transboundary groundwater resources.
- The process of implementation can be placed in the hands of the middle management and technical people within respective institutions.

Continue..Who implements..

- Conflict Resolution Experts are needed to educate potential leadership
- Advisory/Technical assistance is needed

What Support do we Need?

- genuine commitment (technical, political and financial) to help the establishment of strong institutions of comparable capacities to those in Israel.
- from
 - international community in general including a more active role for Europe
 - USA in particular
 - Israel

Practical Steps

- Build and emphasize the Professional capacity
- Seek and identify “Genuine Partnerships”
 - Transparency
 - Equity
 - professionalism
- Secure financial support for a holistic programs
- Strengthen Public Participation
- Demonstrate Success stories/models

Will eventually stimulate and encourage

- Political Will
- Intervention of a Third Party

Treaty Formulation

...A very optimistic scenario

Treaty Formulation

- Glossary of Terms
- Identify Hydrogeological Unit
 - determines the degree and extent of the cooperation
- Identify Substantive Rules
 - Equitable & reasonable Utilization VS. No Harm
- Identify Procedural Rules
 - Exchange of Information
 - Consultation
 - Prior Notification
 - ..
- Joint Institutional Mechanisms
- Dispute Settlement Mechanisms