Changing the nature of transboundary water agreements:  
The Israeli-Palestinian case

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Transboundary water agreements are usually conceived as allocation agreements. In other words, water is treated as if it were a pie to be divided among the riparian states. This approach works for land, which is stable, but not for water, which not only moves along, across and under political boundaries but can be used over and over from the time it originates as precipitation until it eventually finds its way back to the sea or evaporates or seeps into a deep aquifer. This paper describes a proposed joint management structure for Israel and the future State of Palestine that allows for ongoing resolution of issues concerning fresh water, and does so in a way that effectively de-nationalizes and de-securitizes water uses. That is, water is shared by rules that are designed to protect the ecosystem for everyone's benefit, and then deliver water to different parties in ways that meet their needs and allow for their development without resorting to arguments of national security or beggar-thy-neighbour development. Though looking toward a Final Status Agreement, the draft proposal is designed in a way that allows it to be adopted and implemented in the near term, prior to that agreement.

This proposal treats the conflict over water in a new manner. It is not just a matter of two central institutions, one state and one proto-state, that deploy their policies over a national territory. Instead the proposal treats the differences over water between Israelis as a problem of conflict management over shared water. Joint management of water is never easy, but it is particularly difficult for Israelis and Palestinians because of the many years of conflict between them, their different rates and patterns of economic development during those years, and the almost diametrically opposite approaches to water management they have adopted — Israel largely top down; Palestine largely bottom up. Happily, joint management of shared water has also been shown to create its own positive dynamic that leads to further cooperation in a peace process.

Regardless of final location of borders, any agreement for joint management of water must be clear about exactly which bodies of water are shared. Given the diversity of paths that water can follow from source to sink, and the possible connections between surface watersheds and underground watersheds, designation of water as “shared” is at least partially a political choice. The western and northern basins of the Mountain Aquifer are shared water, but the eastern basin is deemed Palestinian. Most cross-border streams are shared water, but the Coastal Aquifer is not. Special rules are needed for sharing the Jordan River because the Israel-Jordan Peace Treaty ignored the West Bank.
The core of the revised approach to water shared by two sovereign peoples lies in a process of ongoing mediation of water use at the appropriate levels of management, with the only bottom lines being the parallel needs for equity and for sustainability, reinforced by attention to efficiency of water use and implementability by stakeholders in Israel and Palestine. Two senior bodies, each responsible to its government, guide the process: A Bilateral Water Commission (BWC) and a Water Mediation Board (WMB). Both bodies are composed of an equal number of Israeli and Palestinian representatives plus one member from outside the region, agreed to by both sides. If voting is necessary, the rules require at least two Israelis or two Palestinians be a party to any decision.

The BWC would replace today’s Joint Water Committee but with responsibility for all shared water (not just Palestinian water, as with today’s JWC) and will make key decisions on rates of extraction and of delivery of water and the removal and treatment of waste water. Its decisions are based on advice from a subsidiary body, the Office of Science Advisors, which is made up of staff appointed or seconded by the two governments. Should the BWC find itself unable to accept a decision of the Science Advisors, or should any group or community wish to oppose a decision, the Water Mediation Board (WMB), which would be trained in investigation and mediation techniques, can take action. As a further brake on unilateral decision making, the BWC cannot make a decision on its own; rather, it can accept or reject recommendations from the OSA or the WMB, but not alter them. If it rejects the recommendation, it must provide explicit reasons and for its rejection and send the issue back for further work and a new recommendation.

Though specifically applied to water shared by Israelis and Palestinians, the general goals, the specific emphasis on ongoing monitoring and mediation, and the type of institutional structure are relevant to any place in the world where transboundary water divides rather than unites two or more peoples. At present the draft proposal is under active though not public discussion in each Israel and Palestine. It was considered as a confidence building option by the US initiative at peace building, and seems to have survived the demise of that initiative.