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Who gets what water is a large part of the general Israeli-Palestinian conflict. International law and right-to-water based approaches have not contributed to a clear consensus on what should be done by Israelis and Palestinians. Dr. Elver writes, "Customary international water law principles appear to be too conservative and primitive . . . especially in a region where water is scarce and countries are not able and willing to cooperate on common problems." Dr. Elver argues the international water law principles relevant to the Israeli-Palestinian conflict are: a consideration of historical use of water, possession of the territory where groundwater recharge occurs, respect for basic human needs for water, reasonable and equitable use of water, and progress through negotiations in good faith.

An additional relevant principle is the unequal division of costs and benefits among unequal partners.[1] Partly because of unequal division of costs and benefits among unequal partners—Pakistan got infrastructure funding and most of the contested flows from India—the 1960 Indus Water Treaty between India and Pakistan succeeded.[2]

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1. Isha Ray, Gershon Baski, Zakaria al Qaq, and W. Michael Hanemann. University of California Institute on Global Conflict and Cooperation Policy Paper 42: *Environmental Diplomacy in the Jordan Basin*, 2 (2001). Posted to the eScholarship Repository, available at <http://repositories.cdlib.org/igcc/PP/pp42>.

2. Heather Beach et al. 2000. *Transboundary Freshwater Dispute Resolution: Theory, Practice, and Annotated References.* United Nations University Press. The

Ray and her coauthors argue that the positions in the water allocation conflict of Israel and the Palestinian Territories respectively, are similar to the positions of India and Pakistan in their water dispute. Unequal sharing of costs and benefits worked for India and Pakistan and therefore may work for Israel and the Palestinian Territories.

Dr. Elver points out four main difficulties in applying international water law principles to the Israeli-Palestinian conflict. One, the stakes are high in committing to any water management plan, since resolution of the conflict may depend on addressing water scarcity. Two, Israeli per capita water use far exceeds Palestinian per capita water use. Immigrants to Israel and returning Palestinians must somehow be reconciled with scarce water supplies. Three, Israel politically downplays the importance of water issues. Despite the costs, increased desalinization may be the best way to reduce the demand for the most contested groundwater. Four, it is costly to desalinate seawater and socially disruptive to move water away from irrigation to other uses.

As Dr. Elver notes, the water problems in Israel and the Palestinian Territories depend on geography, demographics, and economics, not solely politics. Simply addressing politics and disputes over territory and sovereignty in Israel and the Palestinian Territories therefore will not clear up the problem of consistently providing affordable water to Israelis and Palestinians.

A less polarized Israel and Palestinian Territories might resemble the Hashemite Kingdom of Jordan today. There are important differences, but Jordan, Israel, and the Palestinian Territories are geographically close, suffer from water scarcities and water quality problems, are subject to highly variable rainfall, lack extensive natural resources, and have large population centers at some distance from water sources. Even after the Israeli-Palestinian conflict is resolved, consistent provision of affordable water in Israel and the Palestinian Territories will be as difficult as it is now in Jordan.

In Jordan, people pay high prices for water because of water scarcity and water delivery costs. For example, much of the water for Amman is pumped up a great distance from the Jordan Valley. Scarcity of water and large transport costs similarly will keep water

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section on the Indus is available at <http://www.transboundarywaters.orst.edu/projects/casestudies/indus.html>.

expensive in Israel and the Palestinian Territories regardless of how the Israeli-Palestinian conflict is resolved.

Throughout the area, many creative projects are underway to make more water available to people. Even with projects that increase water supply or water use efficiency, good water management will be key. A joint water management plan between Israelis and Palestinians will probably include some complex exchanges of water and other goods, such as food, and services, such as water quality monitoring. Two models for Israeli-Palestinian water deals are water sharing within Jordan and the 1994 water treaty between Israel and Jordan. That treaty:

> [H]as Jordan storing winter runoff in the only major surface reservoir in the region—the Sea of Galilee—even though that lake happens to be in Israel; it [the treaty] has Israel leasing from Jordan in 50-year increments wells and agricultural land on which it has come to rely; and it creates a Joint Water Committee to manage the shared resources. But it did not adequately describe what would happen to the prescribed allocations in a drought.
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> [T]he worst drought on record caused Israel to threaten to renege on its delivery schedule, which in turn caused protests in the streets of Amman, personal outrage on the part of the King of Jordan, and, according to some, threatened the very stability of peace between the two nations before a resolution was found. Such are the dangers of treaties which do not allow for the vagaries of nature.[3]

Within Jordan, the water trades between the valley and highlands regions also led to tension during drought. During the recent drought, some of the water traditionally used for irrigation in the Jordan Valley was pumped to Amman to meet urban water demands. This pumping caused hardships for farmers and increased tensions between irrigators and other water users. Drought is an additional difficulty in applying international water law principles to the Israeli-Palestinian conflict beyond Dr. Elver's four. It is important that any water agreement between the Israelis and the Palestinians must include specific provisions for prolonged drought or other water supply disruptions.

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3. Arnon Medzini and Aaron T. Wolf, *Towards a Middle East at Peace: Hidden Issues in Arab–Israeli Hydropolitics*, WATER RESOURCES DEVELOPMENT 20, 203 (2004).

A non-drought supply disruption that Israelis and Palestinians might have to cope with might be like the situation Jordan faced in 1998. That summer, the water system in Amman could not provide affordable drinking water to the urban poor since algae had contaminated a main reservoir. For two weeks, the main water supply was off and the price of water delivered by private tanker trucks rose to more than fifteen US Dollars per cubic meter. Emergency water reallocations between Israelis and Palestinians would be one way to keep water prices as low as possible during crises.

To increase water supplies, Israelis and Palestinians have the same technological options Jordan has, but with better access to seawater. Dr. Elver discusses these options in her paper. One option she did not mention is that the Palestinian Territories may be able to increase trade with Israel of food for water as Jordan imports food to free up water from irrigation.[4] Producing food mainly for trade purposes strongly reduces a region's food security and cultural resilience and should not be considered lightly.

How governments treat water policies, as an isolated subset of all government policies is another difficulty in applying international water law principles to the Israeli-Palestinian conflict. According to Ray, "environmental impact assessment and cost benefit analysis are excellent training devices because they force researchers across national and disciplinary boundaries to confront one another's priorities, values, and constraints within a unified framework."[5] Even with analysis, however, decisions treating water policies as an isolated subset of all policies could make good water management much more difficult.

In Jordan there are several crucial water-related issues government water policy traditionally has not dealt with. Jordan's very high tariffs on imported produce, especially bananas, hinder efficient water and food management. These high tariffs are what make farming bananas in Jordan profitable, even though a banana crop requires lots of high-quality water per hectare. Politically important Israeli agricultural subsidies, like the Jordanian agricultural subsidies, constrain water management options.

In Jordan, actively assisting crop selection, farming techniques, and marketing has not been a national water management issue. In

4. Ray, *supra* note 1, at 8.
5. *Id.* at 16.

Jordan and the Palestinian Territories, lack of technical training will become more important as more treated wastewater is used for irrigation.

In Jordan, decisions about which irrigation to curtail during droughts are highly politicized. Since the government controls the canals in the Jordan Valley, the government easily withheld some water from Jordan Valley farmers and pumped the water up to Amman during the last drought. An alternative, increasing pumping from the municipal wells in the highlands and reducing pumping from the nearby private wells (perhaps by buying and fallowing farmland), has been politically impossible. Well-using irrigators in the Jordan Valley and in the highlands often see groundwater pumping regulation as a violation of their property rights. These irrigators tend to be politically powerful and thus make changes to national water management difficult. Similarly, as water demands in Israel have grown, restricting Palestinian water use has been politically easier for Israelis than restricting Israeli irrigation. As Dr. Elver writes, "Israeli water shortages are shifted to the Palestinian society, which lacks the financial means for new investment and the necessary institutions to impose good management to ensure that the best use is made of limited water resources."[6]

In Israel and the Palestinian Territories, the resources committed to violent conflict and its suppression almost certainly exceed what building enough desalinization plants to diffuse the Israeli-Palestinian conflict would cost.[7] It is true that pumping, treating, and distributing the contested groundwater is less expensive for the Israelis than desalinating an equal flow of water would be. However, "Sovereignty over the West Bank's water resources is an essential part of the Palestinian's security conception."[8] If the Palestinians had more water there might be less violence towards Israel. Including some part of Israel's military and security budget in the cost of using current levels of the contested groundwater is therefore justified and might reveal desalinization and granting more

6. Hilal Elver, *Palestinian/Israeli Water Conflict and Implementation of International Water Law Principles*, 28 HASTINGS INT'L & COMP. L. REV. 287, 293.

7. Fred Gordon, *Managing Groundwater: Israel, Gaza, and the West Bank* in MARY BRENTWOOD AND STEPHEN F. ROBAR, EDS. MANAGING COMMON POOL GROUNDWATER RESOURCES: AN INTERNATIONAL PERSPECTIVE, 211 (Praeger Publishers, Westport, 2004).

8. *Id.* at 210.

water to the Palestinians to be the least expensive water supply option for Israel.

Not only does the occupation of the Palestinian Territories increase the true cost of water to Israelis, but Israeli use of water antagonizes Palestinians—"drilling for the exclusive use of settlers has in some cases caused neighboring wells to go dry."[9] Even outside of the settlements, Israeli per capita water use, high relative to Palestinian water use, does not signal willingness to make concessions to Palestinian water security.

Political uncertainties overall limit joint Israeli-Palestinian management of water resources. Also, analysis of water-related treaties shows "just how many of these treaties are based on an incomplete understanding of the hydrology in question, and just how often these misunderstandings lead to tense political standoffs."[10]

Any end to the Israeli-Palestinian conflict will involve water agreements, perhaps via international law and right-to-water based approaches. There are several reasons reaching an agreement on water will be difficult. Political tensions are high, demographics are changing, the government of Israel does not treat water as a central issue, costs of water supply and reallocation action are high, droughts cause problems, and water policies are seen as isolated from other government policies. Reducing the Israeli-Palestinian conflict will require Israeli concessions to Palestinian needs for more water.

9. *Id.* at 205.
10. Medzini, *supra* note 3, at 203.