1.3 Negotiation Strategies in Transboundary Water Disputes

Joseph W. Eaton and David J. Eaton 1
University of Pittsburgh
Forbes Quadrangle
Pittsburgh, Pennsylvania 15260
USA

The Universality of Negotiation Patterns

Individuals, groups and nations often try to negotiate their differences with competing stakeholders. The process is circumscribed by applicable laws, the readiness of law-enforcement agencies to enforce them and the respective goals and priorities of each of the negotiating parties. This model has to be modified in international disputes over the management of water resources. Each sovereign nation is a law unto itself. Even when an applicable treaty exists, each country can choose to ignore it or interpret its terms as it pleases, in ways that other stakeholders might regard as a violation. This paper reviews the use of universal alternate negotiation strategies to modify this anarchistic framework that has characterized transboundary water management in the Middle East for almost half a century, plus pertinent illustrations from North America and the Indian sub-continent. Decision maker and those who may negotiate on their behalf have a choice of six universal negotiations strategies:

1. Negative non-zero sum games, or "Lose-Lose" solutions
2. Unilateral creation of new facts
3. Zero-sum games or "Win-Lose" negotiations
4. Positive non-zero sum games or "Win-Win" negotiations
5. Conflict and threats of violence
6. No action, causing opportunity costs from neglect and/or delay

"World Government" advocates share as their goal the adoption of an international body of laws. Their dream of a better world includes the adjudication of disputes between states about environmental pollution or water rights by international courts which arbitrate or enforce

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1 Joseph W. Eaton is Professor Emeritus in the School of Public and International Affairs, the University of Pittsburgh, Pittsburgh, PA 15260. David Eaton is Bess Harris Jones Centennial Professor of Natural Resources Policy Studies, Lyndon B. Johnson School of Public Affairs, University of Texas, Austin, Texas. This research was support by a grant from the U.S. Institute of Peace in Washington, D.C., as well as administrative support from the University of Pittsburgh and from the University Research Institute and Policy Research Institute of the University of Texas at Austin.
international conventions and standards. But such a peace committed world does not yet exist. No member of the United Nations has as yet been willing to accept significant reduction in their sovereign powers, as did the 50 sovereign states which compose the United States.

A dispute over water rights between California and Arizona can be finally adjudicated by the United States Supreme Court. Mexico and the United States are not bound by such a World Federalist order. They have to negotiate over their differences politically without referral to a supra-national authority.

Distinguished international experts have adopted guidelines on how to manage transboundary water resources, the Helsinki Declaration (International Law Association, 1992) and the Seoul Rules (Utton, 1981). But they include some mutually exclusive general principles. For example, consider Turkey's unilateral decision to impound behind newly constructed dams within its sovereign territory a portion of the flow of the Euphrates River to irrigate its Southeast Anatolia region. This so-called "GAP Project," will ultimately include a coordinated network of 22 dams and 17 hydroelectric power stations.

As a result, the volume of Euphrates River water available to the lower riparian nations, to Syria and Iraq, will be reduced permanently (Gruen, 1992). Turkey's strong defense force makes it unlikely that either Iraq or Syria can use military force to reverse this reduction of their previously available share of the river. Nor does any international body have jurisdiction. Disputes such as these can be dealt with only on the basis of the above mentioned negotiation strategies.

Option 1: Lose-Lose Solutions or Negative Non-Zero Sum Games

Groundwater management in the Rio Grande/Rio Bravo Basin along the Border of Texas and Mexico poses particularly difficult policy challenges because of the technical uncertainties and laissez faire water right standards within both nations (Eaton et al. 1992). The quality and quantity of groundwater in the border area's high-growth centers are already diminishing because each land owner is free to pump as much water as he or she wants from a well on their property, although they share common aquifer. In the absence of joint planning and control of this limited natural resource, the population growth on both sides of the border will increasingly exacerbate water shortages on both sides of the border. Estimated withdrawals from the aquifers are twice the recharge rate, which consequently will deplete the recoverable storage over time.

Each country's legal inability to limit withdrawal of sub-surface waters by property owners is leaving them without domestic power to adopt a joint policy. Compounding the problem is that the two countries have different domestic laws governing groundwater use. Any agreement that is fair bilaterally would require one or both nations to strike down state laws and local precedent for allocating withdrawal rights, which would become politically controversial. The Texas Water Development Board predicts a sharp decline in the amount of water withdrawn from the El Paso aquifers—from 253 million cubic meters per year in 2020 to about 74 million cubic meters in 2030. While the United States and Mexico are able to cooperate in the multilateral negotiations to phase out the use of ozone-depleting chemicals, they are unable to address the need to assure their next generation a sustainable supply and quality of water in the