Lessons from Negotiations for Allocations

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Water Allocations in Transboundary Basins
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OSU International Freshwater Treaties Database

Fig. 2  Treaty coverage (at least one treaty present) and riparian participation at the basin-country level for bilateral basins (*shades of green*) and multilateral basins (*shades of blue*)

OSU Transboundary Database: ~600/700 treaties coded

Treaties with Allocation Mechanism

- Allocation Mechanism (any) 28%
- No Allocation Mechanism 47%
- Not coded for Allocation Mechanism 25%

Type of Allocation Mechanism

- Water Quantity * 72%
- Pollution * 15%
- Hydropower * 13%
Lessons from Negotiations:
1. Focus on the Issue

Three Aspects of Allocations:
“All” that needs to be decided on at the border
1. Quantity
2. Quality
3. Timing
Lessons from Negotiations:

2. Water is Variable

1. Downstream quantity is fixed
   - eg. Colorado

2. Upstream quantity is fixed
   - eg. Jordan

3. Variable allocations, based on precipitation
   - eg. Ganges
Lessons from Negotiations:
3. Whatever Works, Works -- Political Viability

**Table 2**: Water allocations from the Johnston Negotiations, in MCM/year.

<table>
<thead>
<tr>
<th>Plan</th>
<th>Israel</th>
<th>Jordan</th>
<th>Lebanon</th>
<th>Syria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main</td>
<td>393</td>
<td>774</td>
<td></td>
<td>45</td>
</tr>
<tr>
<td>Cotton (Israel)</td>
<td>1290</td>
<td>575</td>
<td>450</td>
<td>30</td>
</tr>
<tr>
<td>Arab</td>
<td>182</td>
<td>698</td>
<td>35</td>
<td>132</td>
</tr>
<tr>
<td>Unified</td>
<td>400*</td>
<td>720</td>
<td>35</td>
<td>132</td>
</tr>
</tbody>
</table>
In the room: where engineering and law collide eg. Allocations on the Incomati (1992)

South Africa and Swaziland agree to share water in terms of assurances using a unique formula, giving each state a certain amount (South Africa 157.8 CHM, Swaziland 15.1 CHM) at high assurance--2% risk in any one year of only partial availability--and another amount (South Africa 381 CHM, Swaziland 260.2 CHM) at low assurance -- total unavailability for up to 20% of the time on average in respect of 30% and a 2% risk in any one year of only partial availability in respect of the remaining 70%. Losses to evaporation are counted. In variable years, the ratio of the flows remains the same. A country may convert its allocations from low assurance to high assurance flow, or vice versa, at a conversion rate of 0.794, subject to approval.
Lessons from Negotiations:

4. Incorporate local & indigenous values early and often

The Pacific Northwest recognizes the value of the Columbia River Treaty in facilitating shared water resource management in the Basin to maximize benefits to both the United States and Canada.

U.S. Entity Regional Recommendation – December 2013

The primary objective of the Treaty should be to maximize benefits to both countries through the coordination of planning and operations.

Columbia River Treaty Review B.C. Decision – October 2013
Four Worlds in Water:

- Emotional
- Mental
- Spiritual
- Physical
New Directions: Spiritual Aspect of Water

All things in the natural world have *mauri* (life force) and *wairua* (a spiritual dimension). Respect for the spiritual integrity of the environment and the *atua* (God) that created it will ensure that the *taonga* (treasure) can be protected and passed on to succeeding generations.

*NEW ZEALAND NATIONAL POLICY STATEMENT for Freshwater Management 2014*
Lessons from In the Room

- Customary law comes from practice, not the other way around
  - Can’t use customary law to determine allocations, but rather can determine boundary conditions for dialogue
  - "(T)he principles (of customary law) themselves derive from the process and the outcomes of the process rather than prescribe either the process or its outcome" Dellapenna 1997
- Legal principles offer umbrella for negotiations; negotiations determine solutions
- If the parties agree, it’s reasonable and equitable
- Resilient agreements allow for evolving values & conflict mitigation
- Problem is not lack of guidelines or principles (or, really, lack of water), but lack of process. This is where international community can make its best contribution
Thank you!