Through the Eyes of the Indigenous Population

Innovative and Comprehensive Approaches to Mediation and ADR in the Middle East

By Ahmed Abukhater

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Abstract:

This paper seeks to shed light on the indigenous population's approaches to mediation and ADR. How they managed to maintain integrative negotiation and peaceful relations with each other as well the environment is of particular interest. While emphasizing the role of mediation, this paper also argues for the importance of reviving these indigenous techniques of negotiation, mediation, and water dispute resolution. Going beyond the question of state sovereignty and land and natural resources entitlement, this paper poses an entirely different set of practical issues by seeking to address the following questions: How did the indigenous people of the Middle East manage to adequately share scarce water resources while coping with conflict? What values do the Arabs and Israelis share and how can they be integrated into more efficacious practical conflict resolution policies? Which principles of the indigenous practice could be incorporated in water conflict negotiation to deter conflict and facilitate cooperation? What dynamics of negotiation could be learned from the indigenous practice? And finally, the paper evaluates whether or not incorporating modern and indigenous approaches together can be applied to the current Arab-Israeli water dispute to advance agreements towards a more comprehensive and stable stage.

Introduction:

Water and war are two words that have been increasingly and interchangeably used in many contexts. Water constitutes a fundamental ingredient in the making of the Middle East geopolitics. By relying on religious and ideologically driven approaches, it is often the case that politicians, as well as policy makers, hasten to expropriate the uniquely bloody and seemingly interminable Arab-Israeli struggle for undivided, unshared mastery over the region's most precious natural resource. Increasing demands on water resources generate a state of resentment and lays the groundwork for international disputes among different nations.

None of the many conflict resolution strategies that have been proposed and put forth to deter *hydro-hostility*, fighting related to the water resources, and promote *hydro-cooperation* have been successful. There is ample evidence that the current practice of water allocation demonstrated unequivocal failure. Conversely, history provides vivid proof and tantalizing clues that people, regardless of their cultural differences, have been living in peace in this particular region for thousands of years. It is only in our recent history that the Middle East has been witnessing a situation of unrelenting water stress characterized by longstanding animosity, political and economic power structure imbalance, and a dramatically fluctuating political climate.[1]

The indigenous population had their own techniques and processes that they used in mediating and resolving severe conflicts over trans-boundary water resources. In this paper, the term "indigenous population" refers to the original inhabitants of the Middle Eastern region. Whether related to religious or cultural practices, these techniques were effective in alleviating tension and reaching more desirable conditions for all disputing parties. However, as conflict intensifies and the need for new and innovative conflict resolution tactics takes on unprecedented immediacy, this indigenous source of knowledge remains untapped. Having said this, there are both parallels and lessons to be learned from the indigenous approaches to conflict resolution.

Tracing the Problem – On the Brink of Regional Peace:

Power structure imbalance, or *hydro–hegemony,* has a key role in fueling and exacerbating the conflict in this region, which makes this conflict exceptionally complicated and uniquely formidable. Regardless of how precise and fair any allocation plan might in reality be, the existence of power imbalance tends to promote a distorted perception of the process as being unfair. This not only hinders the pursuit of alternatives and the ability to reach plausible resolutions, but also the success of the implementation process of any agreement once officiated. Due in part to the fact that cooperation offers little benefit to the most powerful state and, in some cases, means relinquishing its most favorable position, it is often the case

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[1] Shmueli, D.F. (1999). "Approaches to Water Dispute Resolution: Applications to Arab-Israeli Negotiations", *International Negotiation,* 4(2), pp. 295-325.

that the dominant state, usually the least needy state, tends to avoid cooperation.[2] Conversely, because of its very limited and weak BATNA,[3] the neediest and least powerful riparian states will tend to seek a cooperative arrangement, despite the larger political conflict.

Israel appears to be the most powerful state in the region, given its strength, advantageous riparian hydro-strategic position, and exploitation potential[4]. The interplay between water acquisition and *hydro-hegemony* is evident in man's regional distribution of fresh water. Realizing how the role of *hydro-hegemony* as a dominant underlying factor in determining who gets access to water helps illustrate and understand how the most powerful state receives the highest amount of water in the region.

The results are clear; a group of people, although living in the same region, receives more water than others whose access to water is limited.[5] As shown in figure 1, one Israeli consumer[6] uses more water than five Palestinians put together. Not only is the *per capita* Palestinian water use significantly lower than that of Israel, these figures demonstrate a declining trend over time. These dramatic differences are due to the lack of Palestinian access to water, along with the intermittent supply that the Palestinian communities witness. For all the Palestinians, a people yearning for a subsistence level demand of water, the situation not only remains the same, but seems to deteriorate exponentially and irrevocably as time goes on with no feasible resolution in sight.

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[2] Lowi, M. R. (1995). *Water and Power: the Politics of a Scarce Resource in the Jordan River Valley.* Cambridge University Press.

[3] BATNA, the best alternative to a negotiated agreement, refers to the course of action that a party involved in negotiation will take if the parties do not come to agreement (Wheeler, 2000).

[4] Zeitoun, Mark. (2005). *Hydro-Hegemony Theory – a Framework for Analysis of Water-related Conflicts.* King's College – London.

[5] Palestinian Academic Society for the Study of International Affairs (PASSIA). (2002). *The Blue Gold of the Middles East* [Electronic Version]. Retrieved 10/15/06 from: http://www.passia.org/publications/bulletins/water-eng/index.htm

[6] This is the total *per capita* consumption of water that includes domestic, agricultural, and industrial uses.

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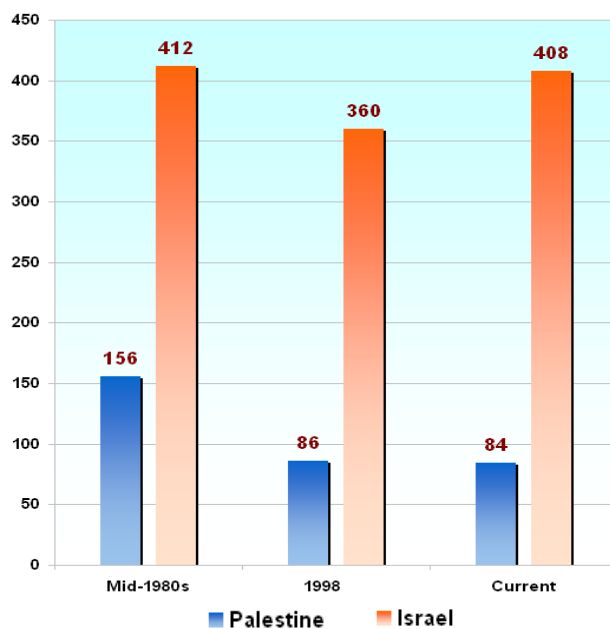Available at www.peacestudiesjournal.org.uk

Figure (1): *per capita* water use (m3/person/year)
Source: (PASSIA, 2002), (Palestinian Water Hydrology Group, 2004),
Graphic design and representation: author

Whether the source of the Palestinian deprivation is due to the Israeli occupation, as perceived by the Palestinians, or other technological constraints and infrastructure mishaps, according to the Israeli side of the argument, the issue must be addressed and acted upon immediately to prevent a more disastrous situation from occurring.

In addition to hostility, frustration, and personal difficulties, current water consumption and allocation has a number of substantial environmental ramifications, including the high contamination of the Coastal Aquifer in the Gaza Strip and the declining trend of the Dead Sea water levels. More than 80% of the Gaza Strip's potential drinking water is not compatible with the standards of the World Health Organization (WHO) for potable water due to the high levels of contamination of the Coastal Aquifer.[7] Rather than attempting to manipulate outcomes, the key issue lies in finding adequate processes that offer solutions and remedies for the root cause of the problem, which is related to the disproportional regional water consumption trends.

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[7] Palestinian National Information Center. (1999). *Dangers Threatening Water Resources in Palestine* [Electronic Version]. States Information Service, PNA. Retrieved 10/15/06 from: http://www.pnic.gov.ps/english.html.

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Despite the many conscientious attempts to negotiate and cement an enduring settlement, this conflict has been particularly violent since 1967. Negotiations have been intermittently taking place between the Palestinians and Israelis and there have been a medley of conventional resolution attempts to settle the conflict. Both Palestinians and Israelis ground their arguments in these negotiations on principles of international law, which is related to the question of sovereignty and ownership entitlement.[8] The Hague Regulations of 1907, the Fourth Geneva Convention of 1949, the Helsinki Rules of 1966, and 1997 United Nations Convention on the Non-Navigational Uses of International Watercourses are the major international law applicable to the Palestinian-Israeli water dispute.[8] However, the international law is an area of great controversy.

The major problem is that all of these previous negotiations between the Palestinians and Israelis regarding water allocation represented a position-based approach. This is coupled with the fact that the zone of possible agreement, or ZOPA, between the two parties did not even exist in the previous stages of diplomatic efforts, which has been focused on *dividing* the resources of the region, namely land and water, rather than *sharing* them. Almost all of the previous negotiations suffered from the lack of implementation. The problem lies in the disconnect between reaching an agreement and its implementation. It was not until the 1990s that conflict progressed from agreements to partial implementation. However, this classical negotiation process that was once thought to be revolutionary is now yielding another surprise. The dispute reverted back to a stage of "talk-fight" and the negotiation between the Palestinians and Israelis have come to a screeching halt.

A medley of water allocation plans have been proposed by different nations, all of which lack a regional approach. Confining their target population to their own people, these unilateral approaches often tend to provide national solutions to a regional problem. The problem, therefore, is not related to a shortage of

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[8] Rouyer, A. R. (2000). *Turning Water into Politics: The Water Issue in the Palestinian-Israeli Conflict.* Department of Political Science, University of Idaho.

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resolutions, but rather to a lack of a wholesome approach that ties all of these resolutions into a unified regional approach applicable to all nations in the region.[9]

Why Mediation Process?

Mediation, known also as assisted communications for agreement, is a conflict resolution process where an impartial third party, the mediator, amicably facilitates communication among disputing parties to promote reconciliation, settlement, or agreement.[10] The Palestinians and Israelis failed to reach an agreeable solution regarding sharing international water resources, which calls for a careful and persistent involvement of a neutral third party to ensure, manage, and facilitate the process of negotiation.

In the context of the Arab-Israeli water dispute, mediation not only has a place, but it also has many benefits to the overall stability of the region. By opening channels of communication and focusing on real needs and interests, mediation can help disputants discuss issues of interest in a comfortable and neutral environment in an attempt to explore practical and innovative solutions, promote mutual understanding, cement durable agreements, and reduce hostility. Reducing hostility is especially important in the case of the Arab-Israeli conflict, as the conflict extends to other cultural, political, and land acquisition issues, while long term cooperation over these other issues is needed. The need to maintain ongoing relationships is a compelling reason for the parties to consider mediation as a viable option to resolve their dispute. Given the high degree of power structure imbalance involved, intervention of a third party is necessary to balance and neutralize this imbalance in power structure and induce a state of ongoing future cooperation.

Why Indigenous Processes and Approaches?

In such a semi-arid region, water is a precious natural resource that has always been a point of contention, severe conflict and vicious disagreement. Today, both the Palestinians and Israelis need to not only divulge and clarify their intentions, positions, and interests, but also define criteria for negotiation and the establishment of a robust mechanism in support of their war against conflict. Developing and presiding

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[9] Abukhater, A. B. (2006a). "Water for Peace"[Electronic Version]. *Media Monitors Network*. Retrieved 10/02/06 from: http://world.mediamonitors.net/content/view/full/33708

[10] Kovach, K. (1990). *Handbook of Alternative Dispute Resolution.* Greenspan.

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over agreed upon criteria, principles, and general rules for negotiation is imperative. It is the responsibility of both nations to define strategies and secure measures for lasting channels of cooperation and negotiation in matters pertinent to trans-boundary water resources allocation. In order to do this, the parties need a process, or several processes, that allows them to come together to communicate, gain a better understanding of each other, and ultimately explore mutually beneficial solutions.

One of the major detriments to formulating a plausible negotiation process is the fact that the practice of modern negotiation and conflict resolution is relatively new to the Middle East and viewed as a western panacea.[11] This calls for approaches that incorporate both modern and indigenous processes of conflict resolution and reconciliation in order to boost the acceptability of these techniques and processes, and as a result, advance negotiation towards more plausible agreements.

By taking a closer look that examines the experience of the indigenous population of this particular region, the negotiation process can be shaped and facilitated by a number of values that tend to be shared by all parties. These principles and values can potentially constitute the basis for negotiation and work as the foundational framework for a stable and robust process (refer to figure 2).

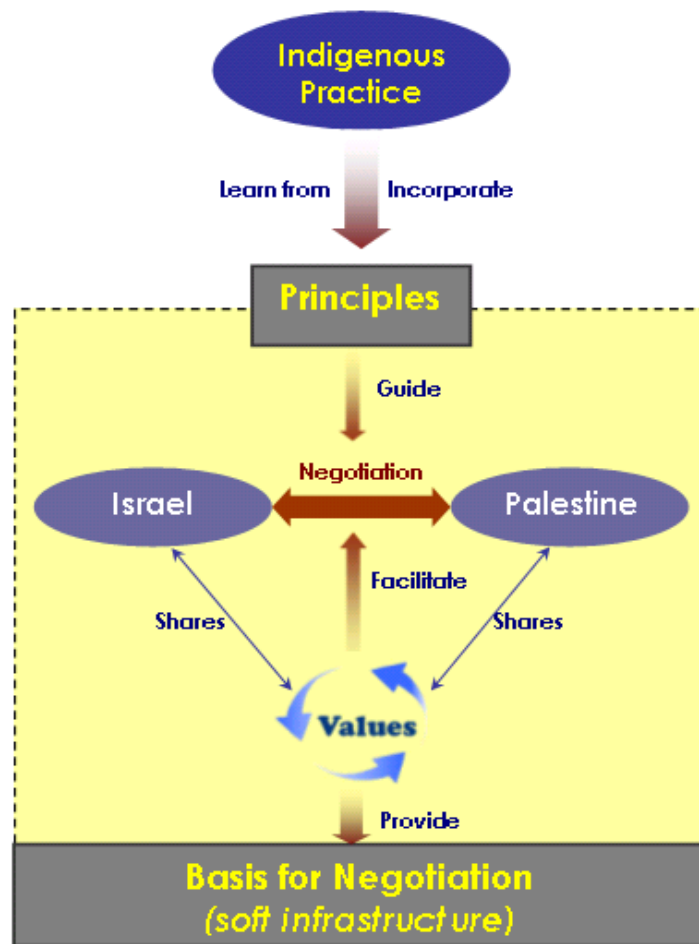[11] Irani, G. E. (2000). "Islamic Mediation Techniques for Middle East Conflicts" [Electronic Version]. *Mediate*. Retrieved 10/02/06 from: http://www.mediate.com/articles/mideast.cfm.

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Figure (2): the role of indigenous practice in facilitating negotiation process
Source: author

Innovative Indigenous Processes of ADR and Mediation:

There are a plethora of ADR and mediation possesses that can be used in developing a successful conflict resolution process. These include the incremental negotiation process, the tradition of forgiveness (*Sulha* or *Musalaha*), "saving face" concept, independency of mediators, and utilization of representative judges from both disputing sides in a collaborative conflict resolution process.

- **Incremental Negotiation Process**

Incrementalism is a fundamental principle inherited in the cultural and religious heritage of the indigenous society. In essence, creating and adopting new legislation cannot all be done at once or in a vacuum. On its way to reach perfection and completion, the Islamic regulations, for instance, were not revealed *en mass,*

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but rather revealed piece-meal over the course of 23 years.[12] Reflecting this incremental strategy, both initial and final agreements were used by the indigenous people to ameliorate conflict of significant magnitude. No big settlements can be accomplished in one round – time is an important asset.[13] Before reaching their final stage of completion, agreements follow a systematic process of incremental evolution. Carving out smaller topics helps parties to better focus on them and gain common ground before moving up toward a more complex and controversial topics. In that sense, reaching an initial agreement over matters of lesser magnitudes (issues of "low" politics) sets the stage to reaching agreements over larger and more controversial and complicated issues (issues of "high" politics). It is believed that solving issues of "low" politics, including water, helps in facilitating negotiation over issues of "high" politics.[14] Once an initial agreement has been reached and approved, it is used as a basis for further agreements that are more detailed and sophisticated. The final output of an established agreement can be used as a starting point in further future negotiation. This steady incremental process slowly but surely moves toward a more stable and permanent resolution.

In time, water disputes evolve creating new circumstances that ought to initiate different realities and, therefore, suggest different strategies for intervention. Both the principle and practice of initial agreements and an incremental follow up process of negotiation reflect this dynamic nature of water dispute evolution. In the initial stages of water disputes, the parties, having different interpretations of the issues at hand, may not consent to negotiate or agree on what issues to be addressed, let alone reach a final agreement[15] While the initial agreements are used to address more dire and immediate needs, comprehensive agreements are concerned with matters of less urgency in order to craft long term resolutions. It is easier to gradually build on clear and established agreements in order to reach more comprehensive ones, rather than starting from scratch, trying to attain a complete and well-rounded resolution for a certain conflict.

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[12] Sheikh, A. (2006). "The essence of Islam." *Spirituality and Health International*, 7(2), pp. 88-92.

[13] Wolf, A. T. (2000). "Indigenous Approaches to Water Conflict Negotiations and Implications for International Waters." *International Negotiation. A Journal of Theory and Practice* 5(2), pp. 17.

[14] Priscoli, J., and Wolf, A. (2009). *Managing and Transforming Water Conflicts*. Cambridge University Press.

[15] Shmueli, D.F. (1999). "Approaches to Water Dispute Resolution: Applications to Arab-Israeli Negotiations." *International Negotiation,* 4(2), pp. 295-325.

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The current water negotiation practice seems to be lacking such a systematic process of incremental negotiation. Since water disputes evolve over time in terms of the number of parties involved and the number and nature of issues addressed, negotiation over water should take place through a developmental or incremental process that reflects this evolving nature of water disputes.

- **Tradition of Forgiveness (*Sulha or Musalaha*)**

In principle, *"Sulha,"* alternatively referred to as *"Musalaha"* or reconciliation, means reaching settlement through the act of forgiveness.[16] The concept and practice is based on cultural principles of forgiving others. Taking water without having the right to access it is considered an erroneous and immoral act that requires cleansing. *"Sulha,"* more often performed in the Bedouin culture, is usually conducted in a ritual ceremony to symbolize the importance and solidify the legitimacy of this practice.[17] This legitimacy carries over into the output of negotiation and the final agreed upon contract. Enforcement of this agreement is usually an easy task, since all parties understand what is entailed in this agreement – strong moral and ethical commitment, imposed and enforced by the society, to maintain the continuity of implementation.

Characterized by a great deal of respect, the ceremony consists of mediated negotiation in an exclusively private setting, where all parties involved in, and affected by, a certain dispute, gather to discuss and reconcile the matter in a subdued environment. A neutral third party involved in the mediation process that brings all parties to the table is a necessity for this process to yield a desirable and agreeable resolution and to be properly implemented afterwards. This third party mediator is characterized by impartiality to both disputing parties and socially recognized as an influential and respected figure, which can facilitate smooth and effective process and carry leverage to induce proper implementation. Once an agreement has been reached, a public declaration of forgiveness is announced and a celebration takes place, where a meal is often served.[18] After performing this ceremony, the issue is forgiven and all parties, individuals and

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[16] Irani, G. E. (2000). "Islamic Mediation Techniques for Middle East Conflicts" [Electronic Version]. *Mediate*. Retrieved 10/02/06 from: http://www.mediate.com/articles/mideast.cfm

[17] Wolf, A. T. (2000). "Indigenous Approaches to Water Conflict Negotiations and Implications for International Waters." *International Negotiation. A Journal of Theory and Practice* 5(2), pp. 17.

[18] *Ibid.*

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communities, must abide by the contract. After this point, dispute no longer exists and can never be discussed again – as if it did not occur.[19]

This traditional custom has both significant psychological and practical impacts on the minds and lives of the indigenous population and, in turn, the wellbeing of the whole community. Psychologically, *"Sulha"* is not only a reflection of forgiving others for bad conduct, but it is also a declaration of satiety and approval of certain transactions, whether related to water acquisition, or any other matters of daily life. In that sense, whether an allocated water method is "fair" or not, the end result in most cases is to ensure that the transaction is satisfactory to all parties involved.

"Sulha," therefore, has profound effects on setting the stage to "start over," without feelings of resentment, negative attitudes, preconceptions, or the need for revenge. "Starting over" means that no party is to make any reference to past disputes to strengthen their position in current or future disputes.[20] This boosts a sense of stability and satiety on the individual as well as the societal level, which makes disputes decimate, and mitigates chances for potential future conflicts. Practically speaking, allocating water followed by forgiveness induces a sense of responsibility towards others and the society one lives in. Understanding others' needs for water, compared to one's own water needs, fosters easier transactions and facilitates better negotiation grounds. Additionally, while bringing all affected parties and stakeholders to the negotiation table helps in the consensus-building process, celebrating the resolution solidifies the sense of agreement and encourages disputing parties and their societies to participate in its implementation.

International negotiation and trans-boundary water agreements need to incorporate ceremonial elements and public announcement and outreach programs. The issue of water negotiation is usually perceived as unworthy material to broadcast and, therefore, is conducted without much publicity, where agreements are reached and signed. This current practice tends to alienate the public from the decision-making arena. Informing the public, who are most affected by these decisions, helps in providing better tools for implementation, as the public feels that they have become an integral part of the process. Thus, announcing

[19] *Ibid.*
[20] *Ibid.*

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and celebrating water-related negotiation and agreements is important in informing and educating the public about the process.

- ▪ **"Saving Face" Concept**

The indigenous Middle Eastern culture is characterized by its non-confrontational nature. Based on the virtues of honor, respect and civility, a concept called "saving face" emerges as a way to avoid and resolve conflicts by avoiding pressuring, embarrassing or discomforting the parties involved.[21] To allow the other party a way to exit certain uncomfortable situations with minimal embarrassment to an individual or a group, "saving face" involves using a number of techniques such as patience, avoidance, compromise, holding one's reactions, and sometimes allocating more time to get things back on the right track.

The morality of a person or a group and the negotiation practice and the type of resolutions they present are interlinked in the indigenous population's perception. The morality of a party, as viewed by the indigenous people, can be judged by the way they engage, resolve, and react to disputes in a negotiated agreement. Central to the concept of "saving face" is the sensitivity to others' welfare, dignity, and interests, which has a soothing impact on the overall development and progress of the negotiation process. In that sense, suggesting solutions that only favor the specific needs of one party, while neglecting the other side's interests is considered bad negotiation strategy and etiquette by the indigenous population, and therefore a bad reflection on the proposing party. When proposing resolutions to a disputed matter, one must show good intention demonstrated by incorporating all parties' interests involved in the dispute in a fair and equitable fashion – unilateral resolution proposals are not acceptable.

The current international water negotiation practice shows that some dominant riparian states tend to propose solutions that only cater to their very own needs excluding others from the scope of the resolution proposal. There is a pressing need to incorporate an "all-party resolution" that addresses and satisfies interests of all parties and considers the wellbeing of the region as a whole.

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[21] Al-Sabt, M. (1995). "Arabian Business and Cultural Guide:" [Electronic Version]. *TradersCity*. Retrieved 10/02/06 from: http://www.traderscity.com/abcg/

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▪ **Independency of Mediators**

Mediators may enter disputes at the request of the disputing parties, who both consent to engage this person or entity as a third party facilitator. Both parties have the final decision as to whether or not mediation is necessary and whom they choose to involve in mediating their dispute.[22] Generally, mediation is perceived by the indigenous people to be an honorable and prestigious duty that can only be executed by a well-known, charismatic leader in the community. This mediator is usually a well-respected neutral, powerful, influential, and trusted figurehead to be able to take on such a weighty job. The mediator is a person of integrity, character and sound judgment. Neutrality of the mediator means that they must have no relations of any sort with any of the disputants. It also must be known that this mediator has no overlapping interests with any of the parties, in the process, or its outcome. Further, the mediator should have enough influence and clout to facilitate a smooth negotiation and mediation process and ensure implementation of agreements. There is a common understanding of the mediator's responsibilities, however. Although they lay, out and obtain consent over, the general ground rules, they cannot make decisions for, or in favor of, any of the parties. Their job is confined to assisting and facilitating communication to forge agreement.

One of the key elements in the indigenous mediation process is the mutual specification of a meeting location. This place, which is proposed and sanctioned by all disputants, must be an agreed upon neutral and intimidation-free environment. In many cases, this neutral place is the house of the leader of the community who is intervening as the third party mediator.

This key component is largely missing from the current international practice of mediation. The characteristics of the mediator are clearly and precisely outlined in theory, but in practice this outline is often not fully adhered to.[23] This calls for a change in the currently utilized process. To set reforms in motion, the process must embody certain qualities. For the mediation process to be effective and successful, it should maintain neutrality, collaboration, and the option of confidentiality whenever required by the

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[22] SPIDR. (1997). *Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement-Seeking Processes.*

[23] For instance, the USA and Egypt, acting as third party mediators, have pressured the parties excessively in previous negotiations.

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parties, ensure informed mechanisms from the beginning to the end of the process, and provide commitment to implementation.

- **Collaborative Conflict Resolution Process**

The indigenous community understood and embraced the importance of deliberation and put the process of integrative negotiation in practice. Reflecting this approach, their processes of collaboration include identifying all affected and interested stakeholders, informing and involving several sectors of the community, and including representatives from all sides. Bringing appropriately represented parties together entices dialog where all parties are encouraged to freely and clearly express their interests and major concerns. This sets the stage for reaching specific agreements through collaborative negotiation and consensus building. Resolution processes of issues that represent common public concerns are open to the public to attend in order to obtain feedback and address the society's needs. It is worthwhile to note, however, that this is an ongoing process. The indigenous community's use of collaborative processes does not represent an end in itself, but rather a means to an end where new circumstances emerge and continuously change with evolving environments.

In the current practice of many international agreements appears a flaw that seems to have led to only fragile and unsustainable agreements at best. It is related to the classic process of distributive bargaining, where one party's gain, while viewed as winning, is considered as a loss to other parties.[24] International water disputes need to empower and involve all parties in the making of solutions as they are being formulated by utilizing collaborative agreement-seeking processes to reduce post settlement disputes. Collaborative agreement-seeking processes provide interested parties a stake in the decision and the overall negotiation process. It is a far more superior approach to the classic distributive bargaining/zero sum approach, which has lead to the current political impasse. Unlike the traditional, adversarial methods for resolving conflicts through litigation, multi-party decision making often yields desirable and implementable outcomes. By involving all parties at stake in the negotiation and decision making process, parties feel responsible to ensure implementation of the agreement.

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[24] Shmueli, D.F. (1999). "Approaches to Water Dispute Resolution: Applications to Arab-Israeli Negotiations." *International Negotiation,* 4(2), pp. 295-325.

Collaboration means more than simply the gathering of people and ideas, but it is rather the symbolic ceremonial commemoration of values and the celebration of differences in an interwoven deliberative process that incorporates all. Given the evolving nature of water related disputes, collaboration must take into account both bottom-up and top-down approaches to generate concrete ideas that appropriately respond to the complex ever-changing reality of contemporary society. By encouraging proactive participation from all entities in a democratic and collaborative fashion in decision making, involved parties take ownership of any decisions made, and therefore support implementation, which is a fundamental element for the success of multilateral cooperation and regional hydro-political stability.

Interest-based negotiation is a key to collaboration and consensus-building processes. By employing consensus building measures through the application of collaborative agreement-seeking processes, voices of all parties can be heard and various interests can be explored and evaluated. Utilizing this process of collaboration, parties can identify major issues, collaboratively analyze them, generate options, and select options that meet the interests of all parties. The adverse impacts of the notion of entitlement that tends to dominate position-based negotiation can be mitigated by focusing on identifiable interests and quantifiable needs. Shifting the focus of the negotiation process from the question of rights and entitlement to the question of interests in the use of trans-boundary water resources means emphasizing the need to utilize processes of *sharing*, rather than *dividing* these water resources.

Process Approach:
While it compares two contradictory approaches to conflict resolution, this paper suggests and emphasizes only one of them. As illustrated in figure 3, equity and power, "*hydro-hegemony*," are the soft infrastructure that charts the course of the negotiation processes and outcomes. These two forces counteract each other. The first approach represents the traditional conflict resolution methods that focus on power structure imbalance, ideologies, and position-based negotiation. These factors act as deterrents to achieving

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hydro-stability, resulting in a state of altercation, *hydro-hostility*, and in turn, potential clash ranging from minor political disagreements to outright violence.[25]
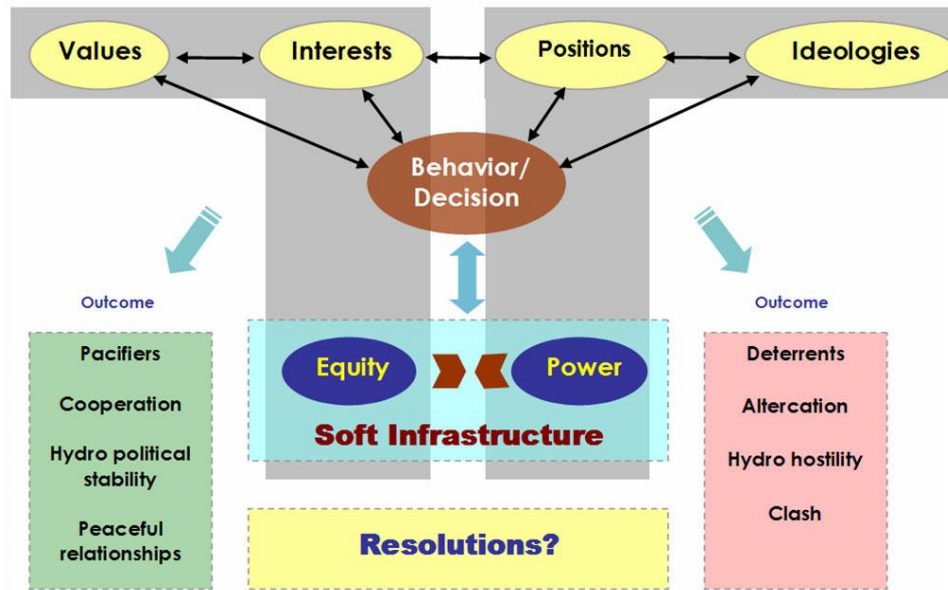

Figure (3): conceptual diagram of interacting factors in shaping the conflict
Source: author

Potentially viable resolutions lie in the second approach, which focuses on pacifiers, including shared values, equity attainability and interest-based negotiation. The expected outcome is a deterrent of *hydro-hostility* and a promotion of cooperation and hydro-political stability, and in turn long-lasting peaceful relationships. Hence, focusing on common values, coupled with interest-based negotiation strategies, tends to favorably influence the behavior, as well as the decision to either cooperate or altercate, of all riparian states involved in trans-boundary water-related disputes.

Under this paradigm, equity has an essential role to play in influencing and shaping the process and the outcome. Equity-based allocation processes are the cornerstone of the indigenous people's teachings and

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[25] Wolf, A. T. (2000). "Indigenous Approaches to Water Conflict Negotiations and Implications for International Waters." *International Negotiation. A Journal of Theory and Practice* 5(2), pp. 17.

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practice.[26] Palestinians, akin to the Israelis, have come to realize the extreme adverse impact of the power imbalance that personifies loud voices of intimidation, silencing all attempts to conduct a meaningful negotiation process. There is conclusive evidence that the interplay of equity, interests, and values has profound potential water policy implications that tend to influence the distribution of shared trans-boundary water resources and the extent to which agreements are attained and maintained.[27]

Recommendations:

Proposition (1): Linking Resolution Process to Human Values:

Ideologies and preconceptions about the "other" party usually result in stereotyping the conflict, grave misunderstanding, and ethnocentric, segregation-oriented conflict resolution proposals. Understanding and meeting the "other" is central to any conflict resolution scheme. Through educational campaigns and public awareness programs, along with cross-ethnic dialogue, both nations can understand each others' different needs and viewpoints.[28] Destructive ideologies, views, and unilateral misinterpretations of the history of the region must be changed to reduce hostility. Reiterating the history of the region and putting it in an alternative peace-oriented perspective is a very essential element to attain in peace education (Abu-Nimer, 2001). Through peace education, the history of the region could be demystified, incorporated, and reinterpreted as a venue for needed peace-seeking efforts (Abu-Nimer, 2001). Linking the shared values and interests of both parties, instead of reliving and focusing on the brutal side of the region's history, is a key component in the public awareness programs, as well as proposals for conflict resolution and future negotiation.

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[26] Faruqui, N. I. (2001). *Water Management in Islam.* United Nations University.

[27] Abukhater, A. B. (2006b). "De-mystifying the Conflict: Equity to Deter Hydro-hostility in the Middle East" [Electronic Version]. *AMIN*. Retrieved 10/02/06 from: http://www.amin.org/articles.php?t=ENews&id=1757

[28] Abu-Nimer. (2001). "Conflict Resolution, Culture, and Religion: Toward a Training Model of Interreligious Peacebuilding." *Peace Research*, 38(6), pp. 685–704.

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Regardless of cultural and ethnic backgrounds, humans essentially adhere to the same basic values and principles and have similar physiological needs. Although Arabs and Israelis might have different ideologies that form their motives and positions, they both have the same basic human, cultural, strategic and environmental values (refer to figure 4). These basic values can provide aspirational principles that facilitate smooth channels of communication.
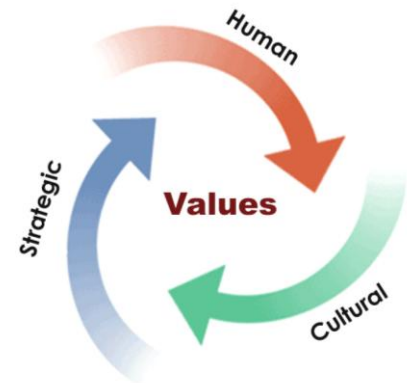

Figure (4): shared human, cultural, and strategic gains and values
Source: author

First, human values of both cultures embody ethical and moral principles of mitigating harm to others and protecting the overall welfare of the society. Second, although Arabs and Israelis represent diverse cultural backgrounds, there are still many shared cultural elements that seem to resemble each other and tie both cultures. For example, the kinship system is fundamental to the make of the Islamic Arab society and values. Family is the basic unit in the Islamic Arab society. People of the Middle East have strong and inseparable ties to their families.[29] For each family there is a leader, "*Zaim,*" who represents and defends the interest and welfare of the family. Family leaders, "*Zuama',*" tend to manage conflict within the family and maintain relationships with other families.[27] This is the foundation of the concept of patronage mediation, "*Wasta.*" In this system, the intervention of an impartial, yet respected, mediator is sought to bridge the gap among disputants. In Judaism, family values are just as important as in the Islamic Arab society. This common kinship system carries a significant amount of clout in approaching and resolving conflicts on personal, societal and potentially institutional levels.[27]

The significance of the land, and its natural resources, extends beyond its apparent economic values in both cultures. Arabs perceive their land as part of their personal and national identity and pride.[30] In Judaism, land "*Eretz,*" the people, "*Ha'am,*" and the book, "*Torah,*" are three inseparable entities.[27] Further,

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[29] Irani, G. E. (2000). "Islamic Mediation Techniques for Middle East Conflicts" [Electronic Version]. Mediate. Retrieved 10/02/06 from: http://www.mediate.com/articles/mideast.cfm

[30] Lowi, M. R. (1995). *Water and Power: the Politics of a Scarce Resource in the Jordan River Valley.* Cambridge University Press.

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humanistic religious values, which osculate around conceptions of exemplary personal behavior based on principles of justice, equity, and righteousness, permeate throughout the Arab and Israeli religious and cultural teachings and practices. Third, strategic and environmental values are very similar in Judaism, Christianity, and Islam. Arabs and Israelis both share the same strategic goals of peace seeking, cooperation, and stability throughout the vast Middle Eastern region. They also have the same environmental concerns, including preserving the integrity of the environment and fostering principles of stewardship and sustainability.

Instead of highlighting differences, the negotiation process should focus on these shared commonalities. Focusing on the shared values of both the Palestinians and Israelis constitutes a major common ground foundation for negotiating other matters. Tying the negotiation process to the overall common values is extremely important in bridging the gap of ideological differences between them and transforming animosity into cooperation. Therefore, for any water-related policy, solution, or conflict resolution program to succeed, it should be reflective of the defining values of both peoples. This necessitates designing a process that realizes the same multidimensional identification of both Arabs and Israelis, reflecting their aspirations, rather than ethnic backgrounds or positions.

Proposition (2): Comprehensive Approach to Conflict Resolution - *Interwoven Blend of Modern and Indigenous Approaches:*

There are a number of ways to approach this conflict. Ranging from least to most coercive, this conflict may be avoided, talked out, negotiated, arbitrated, adjudicated, resolved by legislation, by political action, or by violent means.[31] Neither avoidance nor violent means can lead to a viable resolution for this particular conflict. A major concern to one-sided approaches is how it will be received by the other parties that may or may not share the same history and background. Thus, an "either or" conflict resolution approach that may not be appropriately attuned to the other party provides a recipe for negotiation failure. Literature suggests that there is no particular approach that could single-handedly transform the conflict. Continuing to rely on processes that stem only from modern practices will only deepen the gap between the

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[31] Moore, C. (1996). *The Mediation Process: Practical Strategies for Resolving Conflict.* 2nd ed., San Francisco: Jossey-Bass Publishers.

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parties and make it even harder to accept negotiation on this basis. Having said this, the process of mediation and ADR, while reflecting the defining values of both Arabs and Israelis, must personify an interwoven blend of both modern and indigenous approaches to conflict reconciliation. Combining both modern and indigenous approaches means that an incremental and consensual negotiation process must be structured in a way that isolates the issue of water sharing from the overall political conflict.

Negotiation over the immediate water demands of both nations is the first stage of an incremental negotiation process that caters to needs rather than rights. As agreements regarding the most immediate issues facing the region are reached over time, other issues of less priority can then be addressed. Otherwise, the overall political conflict will deleteriously impact the negotiation process and cause political deadlock. For the conflict resolution process to be effective in producing viable, desired, just and sustainable solutions, it must rely on a comprehensive conflict resolution
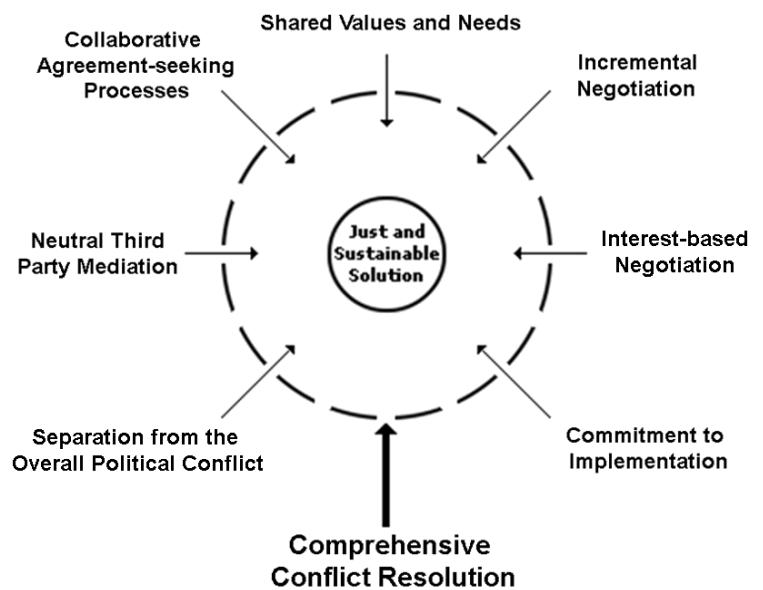

Figure (5): comprehensive conflict resolution process components
Source: author

approach that encompasses shared values and needs, separation of the negotiation process from the overall political conflict, collaborative agreement-seeking processes, neutral third party mediation, incremental negotiation process, interest-based negotiation process, and commitment to implementation (refer to figure 5).

Proposition (3): Neutral Third Party Mediation Process:

Third party mediation is an integral part of the negotiation process. If determined appropriate by both disputants, advocating a collaborative agreement-seeking approach is central to mediation. This is particularly crucial as fostering this approach is a fundamental component of indigenous practices. On the whole, the process of mediation can take a number of forms including cultural dialog mediation,

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facilitative mediation, and directive mediation[32]. Within such processes, both general and contingent tactics can be conjoined. General tactics include analyzing the conflict, clarifying parties' interests, and identifying suitable mediation strategies. These also entail developing a framework to facilitate negotiation by helping the parties generate options, draft and evaluate resolutions, and develop implementation plans.[33] Along with the use of general tactics, contingent tactics can be used to address special issues arising during negotiation, namely value differences, power structure imbalances, communication problems, conflicting analyses, misrepresentation, and misinformation.[34] The proposed mediation process, which embodies both modern and indigenous approaches, is composed of three main processes, illustrated in figure 6. These are the pre-negotiation stage, the negotiation stage, and the post-negotiation stage.

Figure (6): mediation process stages
Source: author, based on the work of (Arthur, 1999)

During the pre-negotiation process, cultural dialog must take place to build trust, increase understanding of the other party, and lay the groundwork for meaningful negotiation. During these dialog sessions, the parties could share narratives and discuss values important to both of them. This stage also provides them the chance to mutually establish process ground rules that might reflect and incorporate indigenous practices, as they see fit. During this stage, consent of all parties to participate is a prerequisite for the process to be legitimate and effective. Moreover, building public trust of the negotiation process during the

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[32] While directive mediation might not be suitable for this conflict, cultural dialog and facilitative mediation can be employed as part of a consensus-based mediation process.

[33] Moore, C. (1996). *The Mediation Process: Practical Strategies for Resolving Conflict.* 2nd ed., San Francisco: Jossey-Bass Publishers.

[34] SPIDR. (1997). *Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement-Seeking Processes.*

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pre-negotiation stage is important for its success. The challenge of introducing such consensual negotiation processes in the Middle East, where centralized governments are the norm, stems primarily from the difficulty in obtaining public trust of the process and support for the outcome. In the pre-negotiation process, building public trust is a cornerstone in initiating open and productive dialog. Acquiring and disseminating information and encouraging informal dialog are essential in fostering cross-ethnic cooperation and trust-building. This has profound impacts on alleviating the root cause of the conflict by providing opportunities to eliminate reasons of frustration, misunderstanding, and clash.

In addition, consent of the parties must be obtained regarding the involvement and identity of a third party in a collaborative fashion. Once identified, a number of tasks are assigned to this third party at this stage. First, all involved, impacted, and interested stakeholders must be identified and included in the process to avoid adverse impacts of excluding any important players, known as *ex parte*. In addition to being neutral and impartial, the mediating third party should have a cross section of interested parties without over-representing one group or interest to avoid influencing the negotiation process or pressuring any parties into any agreement.[35]

If mutually determined as a suitable process by the parties, an incremental negotiation process can be used, reflecting the indigenous practice. This includes prioritization of the number of parties involved and the number and types of issues to be addressed in the different phases of negotiation.[36] Responding to the high urgency of the water dispute in this region, the Israelis and the Palestinians must be identified as the major disputing parties in the earliest stages of negotiation. Involving others at this point, although helpful considering the region as a whole, is not an urgent request. In fact, prematurely involving other parties, with their own needs, in the Palestinian-Israeli negotiation track will add more complexity to an already complicated issue and tends to distract attention away from the primary water scarcity issue that seems to adversely impact the Palestinians the most. Eventually, negotiation should not be limited to only the Israelis and Palestinians, but rather it should involve other co-riparians, namely Syria, Lebanon and

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[35] *Ibid.*

[36] Shmueli, D.F. (1999). "Approaches to Water Dispute Resolution: Applications to Arab-Israeli Negotiations." *International Negotiation,* 4(2), pp. 295-325.

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Jordan[37]. After addressing water issues of high priority, the focus can be shifted to include these other co-riparians as part of a multinational approach to achieve a long term basin-wide agreement. Although Israel and Jordan were successful in reaching and maintaining treaties over water resources, little was done to manage direct negotiation between the Palestinians, Israelis, and Jordanians over the sharing of the Jordan River. Involving the Jordanians and other regional players should be a priority in the search for a long term resolution. Furthermore, the severity and hostility of the water crisis in this particular region suggest the need to rely on other measures of water allocation to cater to a compelling and immediate demand. To that end, an incremental negotiation strategy also suggests prioritization of water related issues according to urgency through an ongoing flexible situational assessment to guide negotiation. This could mean addressing and resolving the current and most pressing domestic water needs of the Palestinians before any future negotiation over irrigation or industrial uses can take place.

Second, the mediating third party must build credibility with all disputants in order to boost confidence in the mediator as well as the mediation process itself. This can be attained by creating a relatively close, comfortable relationship with all parties and educating them about the mediation process. It is the mediator's responsibility to acquire informed consent from all parties regarding process ground rules prior to engaging in any negotiation, and to impartially enforce them once these ground rules have been officiated and mutually agreed upon. The mediating third party may initiate contact with the parties to precisely identify major issues, interests, needs, and concerns, which must be consensually outlined and made clear to everyone. Finally, commitment of all parties to mediation must be secured prior to entering into any negotiation process.

Process neutrality extends beyond the mediation process and the identity and role of the mediating third party to include the location where all disputants are willing to meet, negotiate, and seek resolutions. Incorporating the indigenous people's view and practice of neutrality in the process means that this place, which must be collaboratively approved by all parties, should be neutral to ensure a comfortable and intimidation-free atmosphere. Neither Egypt nor Jordan, therefore, can be considered a neutral place for

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[37] Israel and Jordan were able to reach a resolution over dividing and sharing crucial water resources as part of the Israel-Jordan Peace Treaty of 1994 addressed water-related matters and other political issues important to both parties.

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negotiation, since they both have been involved in the conflict with Israel. Continuing to hold meetings for negotiation in either country could be very detrimental to the success of the process. Finding another neutral place is one of the major issues that needs to be addressed and reconciled with all parties prior to negotiation.

During the mediation process, both the mediator and the parties work together to utilize appropriate mediation strategies to achieve resolution. Seven tasks are essential to the role of the mediator at this stage to assist the parties in choosing the most suitable mediation techniques and multilaterally generate legitimate alternatives for resolution. First, the mediator may work closely with the parties to clarify their interests and re-emphasize their respective goals.[38] Second, mediator can help the parties explore and generate possible, creative, acceptable, and workable options. The mediating third party has certain obligations to facilitate the invention and assessment of options and alternatives. Four basic steps for inventing options are identifying the problem, analyzing the sources and causes of the problem, identifying possible strategies and approaches, and finally, crafting specific steps and criteria to evaluate and choose a preferred option for all.[39] Third, by relying on an interest-based negotiation process, the mediator can help all parties in searching for mutual gain and identifying common interests and shared needs and values to help provide maximum mutual benefits and produce agreement amicably. All parties must be made cognizant of the ramifications of choosing to walk away from the negotiation process. Although it might seem that the BATNA for Israel is very advantageous, walking away from the negotiation table means one thing – instability, a price that is too expensive for Israel or any other state in the Middle East to afford. Israel shares the same strategic goal sought by all Arab nations, including the Palestinians. Water in this regard is viewed by both Israelis and Palestinians as an essential element of cooperation and development in the Middle East. This common interest must be magnified, incorporated, and embraced in the negotiation process as the best alternative for all. Thus, conveying to the disputing parties that the BATNA is equally deplorable for both the Arabs and Israelis is a crucial component of the process.

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[38] SPIDR. (1997). *Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement-Seeking Processes.*

[39] Fisher, R., William, U., and Patton, B. (1991). *Getting to yes negotiating agreement without giving in.*

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Fourth, by encouraging the parties to mutually formulate and utilize objective and fair standards and flexible procedures, the mediator can help the parties in crafting the criteria that will guide their choice of strategies. For example, utilizing criteria for equitable water sharing, which constitutes the essence of the indigenous process, can be discussed and evaluated as a viable factor. Criteria for equitable water sharing, if mutually determined appropriate by all parties, could be developed and agreed upon. Fifth, the mediator can assist the parties in prioritizing and weighing their options to craft a mutual decision. Reflecting the indigenous people's practice, prioritizing the issues at hand and separately and incrementally focusing on their resolution are central to mediation. Sixth, the mediator should work with the parties to coordinate their strategies and entice coherent and consistent approaches to their conflict. Finally, once an agreement is reached and formalized, the mediating third party may assist the parties in developing mechanisms for implementation and strategies for facilitating and putting them to use thereafter.

The post-negotiation stage includes assessing, facilitating, and overseeing implementation and enticing all parties to maintain continuous relations with each other. Developing a monitoring plan and performance measures to ensure successful implementation of the agreed upon plans, revisiting the issue, and continuing cooperation must all be part of an ongoing assessment process. Ensuring the implementation of the agreement requires the involvement of a powerful party to influence and pressure the disputing parties to maintain implementation. Utilizing the indigenous process of patronage mediation, *"Wasta,"* these can be external or internal forces that can exert pressure on the parties to implement agreements. Therefore, the involvement of the USA, being a key influential player with a vast wealth of resources, and Egypt, given its strong relationships with the parties and its leading role in the region, is important to ensure implementation and break the current political stalemate that the peace process witnesses.

Concluding Remarks:

There are signs of both water stress and inequitable sharing of ground and surface water resources in the Middle East. The threat of water shortage and droughts overburdens the regional geopolitical and hydro-political landscape and can easily escalate the conflict. Lack of water-sharing equity poses a tremendous challenge to the peace process.

The potential for comprehensive and collaborative agreement-seeking negotiation and mediation processes is so often unrealized and the promise of achieving peace is commonly unfulfilled. To that end, many attempts to attain acceptable and workable resolutions were crafted but to no avail. For the conflict to transform from its current intractable state to a contained, cooperative one, the way the parties view and approach the conflict must be changed. If the parties continue to define and approach the water problem and conduct negotiation in the same fashion that lead them to their present deadlock, little is expected to change as far as outcome is concerned. Worse yet, severe conflicts and outright violence threatening regional stability could ensue as a result of their reluctance to employ new methods of reconciliation. Without relying on new strategies for both water allocation and negotiation, sentiments of resentment and hostility will turn the hope of change from within to a fantasy at best.

In this land of extremes, any proposed resolution plan must be proportional to such an intricate problem. Otherwise, it will be dwarfed by the magnitude and level of urgency of the crisis. These resolution plans must cater and appeal to both parties by integrating modern and indigenous processes of conflict resolution and mediation to foster their implementation. In addition to employing modern ADR approaches, incorporating indigenous processes of reconciliation, such as an incremental negotiation process, tradition of forgiveness, known as "*Sulha*" or "*Musalaha*," the concept of "saving face," independency of mediators, collaborative conflict resolution process, and patronage mediation, known as "*Wasta*," is a useful strategy to advance negotiation towards more plausible agreements.

This paper has cautioned against continuing to relinquish the option of incorporating the indigenous conflict resolution techniques in the Arab-Israeli negotiation, policy formation, and the peace-seeking process. Acknowledging the shortcomings of the current exclusively modern approach to dispute resolution, this paper provided a sequence of procedural steps for a third party intervention and mediation to reflect and tie the process to all parties' shared interests, goals, and values.

Drawing attention to the current daunting, tumultuous reality that the conflict has reached, the paper further argues that bridging the cultural and communication gaps means more than simply bringing the parties to the negotiation table. As such, it emphasizes the need to respect the views and values of others and combine modern and indigenous resolution approaches to facilitate a more inviting, mature, and effective

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negotiation environment. Encompassing regulatory and conflict resolution remedies of both approaches that appeal to both sides can lead to more workable and acceptable common grounds and consensus-based processes and solutions. Engaging different adversaries in acknowledging and respecting the views and values of others is paramount. By so doing, the parties can shift the focus of the conflict from competing narrow self-interest positions to identifiable common goals that promote interest-based allocation schemes.