

The Role of Creative Language in Addressing Political Realities: Middle-Eastern Water Agreements

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Motivation for research

- ❑ Neighboring states find it difficult to achieve mutually acceptable arrangements over shared water
- ❑ For helping states negotiate water resolutions international bodies have formulated general legal principles and norms

International bodies and forums that promote water principles

International body	Conventions
International Law Association	1966 Helsinki Rules 1986 Seoul Rules 2004 Berlin Rules
International Law Commission	- 1997 UN Convention - <i>Draft Articles on the Law of Transboundary Aquifers</i>
European Economic Commission	United Nations doc. E/ECE/(42)/L. 1987
Hayton and Utton	The Bellagio Draft Treaty (1987)

Motivation for research

□ The most acknowledged norms are:

Legal principle	Rationale	How appears in IL
Basin wide Development and management	<ul style="list-style-type: none"> - internalize externalities - equity - sustainability 	integrated basin principle (ILA, 1951)
Clearly defined Water rights	<ul style="list-style-type: none"> - reduce uncertainty - reduce conflicts 	<ul style="list-style-type: none"> -right of watercourse states to utilize the watercourse (Article, 5, Watercourse Convention) - right to have access to water (Berlin Rules)
Joint management	<ul style="list-style-type: none"> -optimal management - data exchange 	<ul style="list-style-type: none"> -Establishment of a joint management arrangements (Berlin Rules, Article, 64). -Creation of integrated water management institutions (Dublin Statement, 1992)

Motivation for research

- ❑ The "ideal" types of legal principles are often not adopted (Conca et al,2006; Kliot, 2001; Beach et al, 2000)

Legal principle	Contradicting facts
Basin wide	ILC's adopted the term "international watercourse"
Water rights	"needs-based" is often adopted
Joint management	20% of all multi-partite basins have multilateral organizations in place (DOMBROWSKY, 2005)

- ❑ Even if the language of IL does appear in treaties, it actually has a different meaning

Research questions

- Why do states fail or decline to adopt several of the general principles of customary law?
- What is the creative language that is adopted instead?
- What are the implications of this creative language?

Research hypothesis

Suggested legal principle

Effect on power asymmetry

Effect on the wider dispute

MANTAIN

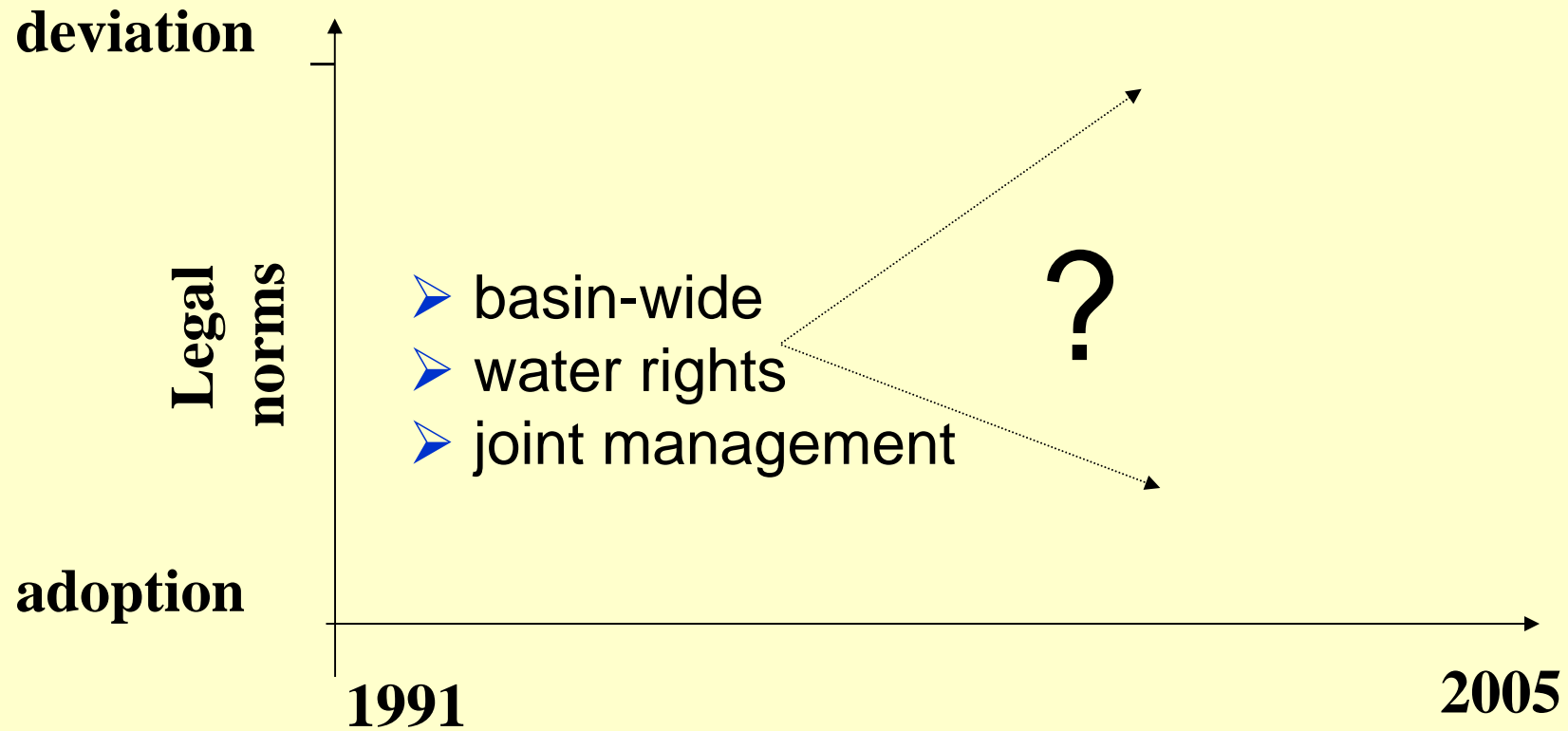
CHANGE

Legal principle is promoted

Creative terminology is promoted

Research Method

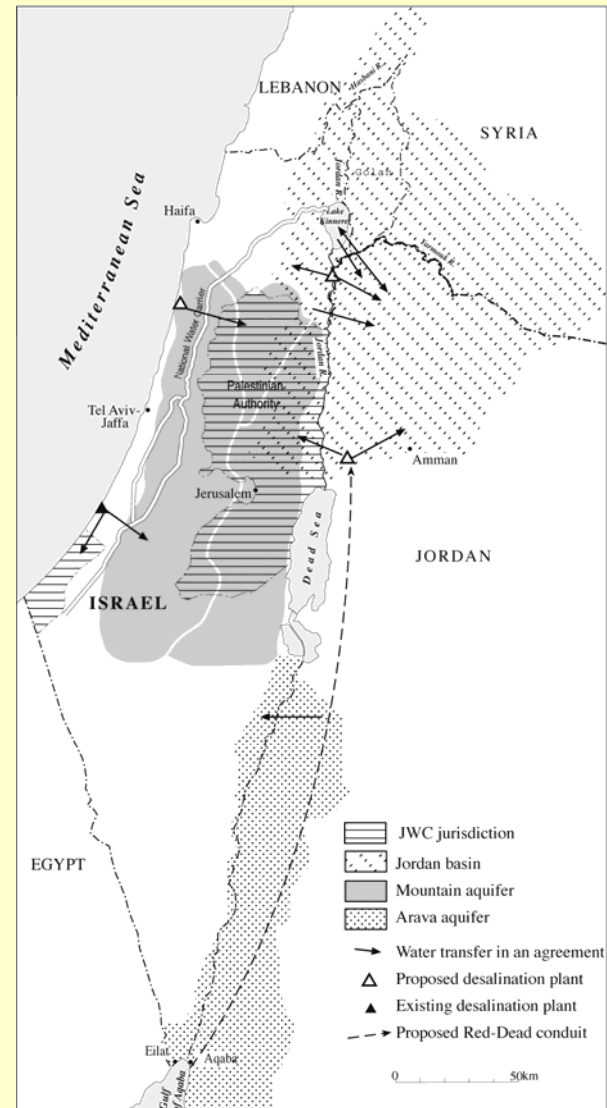
Oslo II / Israel and Jordan / Red Dead



Geopolitical background

❑ Most of Israel's water resources are transboundary and under pressure

- The Jordan basin
- The mountain aquifer
- Coastal aquifer (in the past)



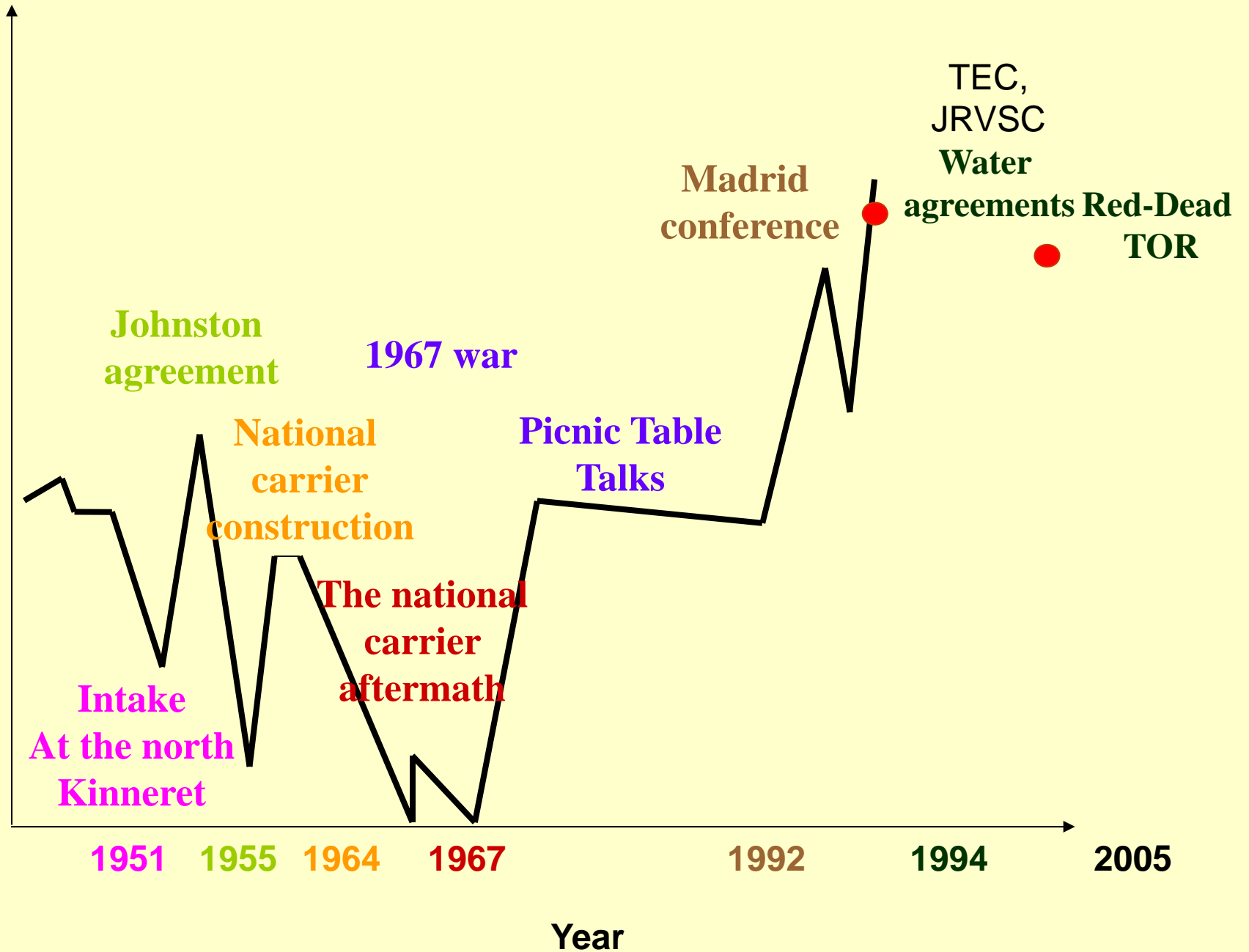
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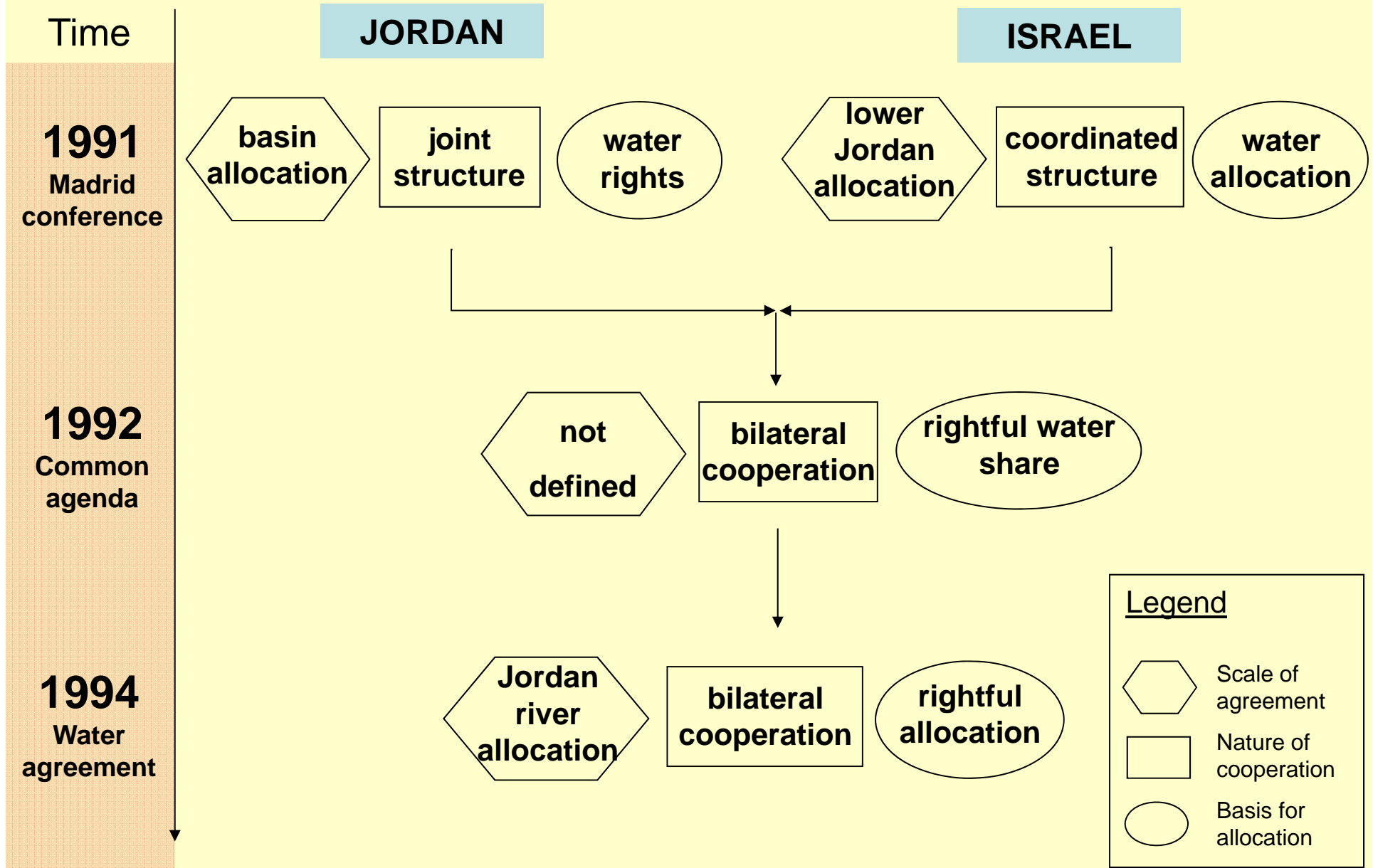
- ❑ Computation on the development of the resource
 - The Jordan basin
 - The Mountain Aquifer

- ❑ Several regional water agreements
 - Oslo I, II
 - Israeli-Jordan water agreement
 - RED-dead TOR

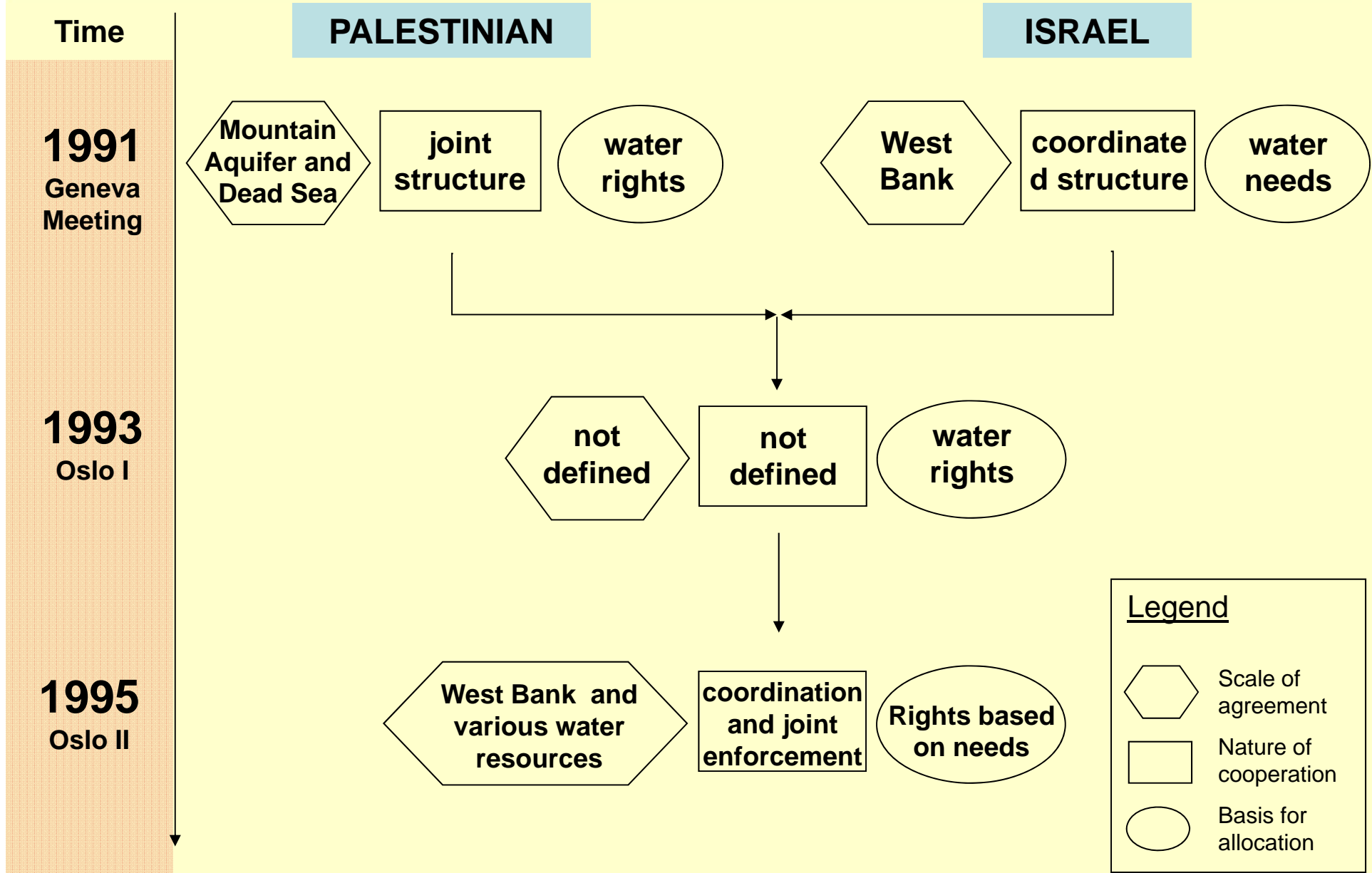
Hydro Political Relations



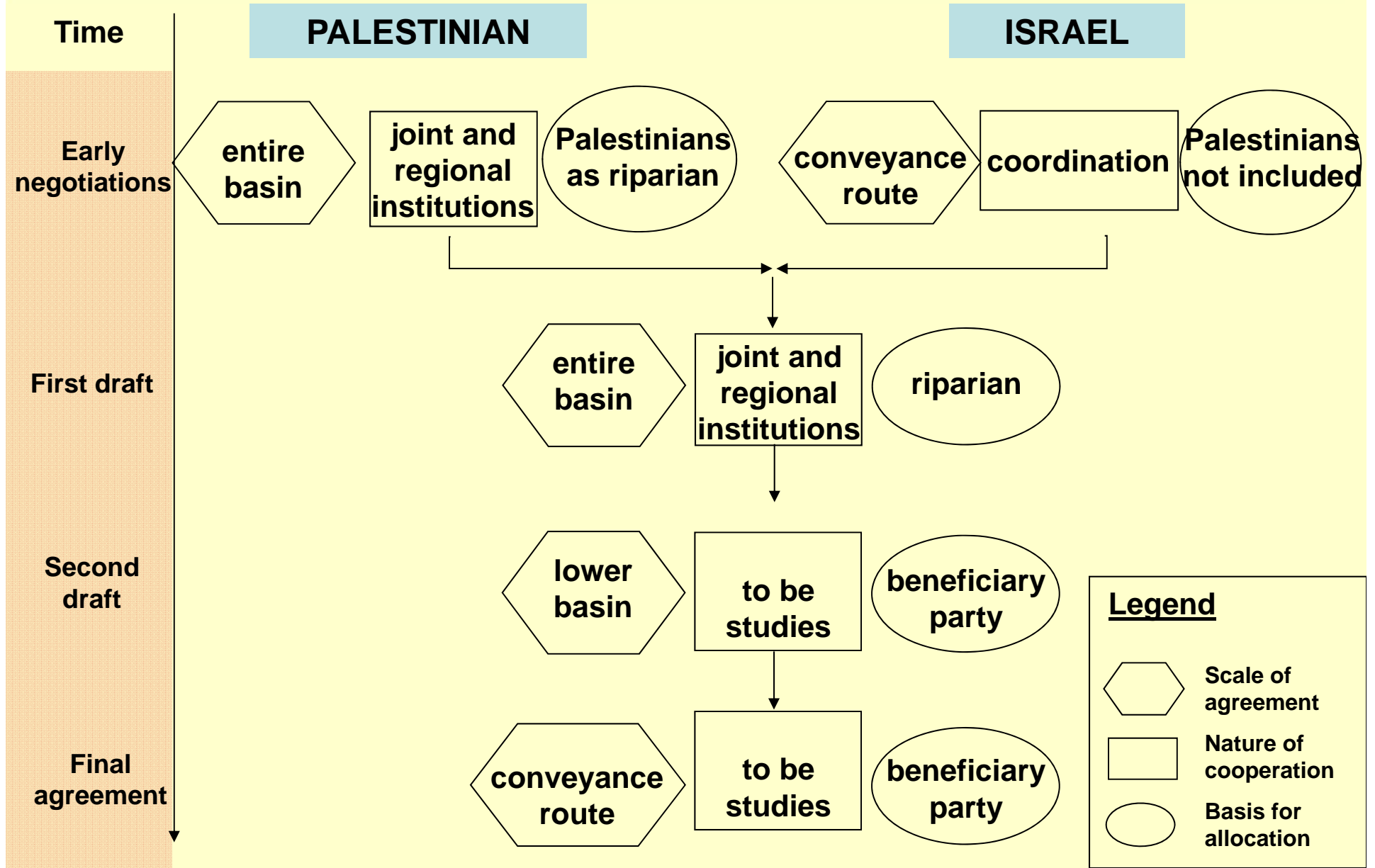
Language story line in the Israeli-Jordanian negotiations



Language story line in Israeli-Palestinian negotiations



Language story line in the Red-Dead negotiations



Conclusions

- ❑ The assumption is that a higher degree of integration will result in optimal and equitable management
- ❑ Against this assumption stands the low commonality of the use of joint basin-wide management based upon water rights
- ❑ The discrepancy can be explained by the affect of IL language on power asymmetries and the wider dispute
- ❑ The negotiation over legal terminology and language adopted were found to be a manifestation of the power struggle and asymmetries
- ❑ The deadlock was resolved when the language adopted captured elements of IL while addressing the needs of the hegemonic riparian

- ❑ Since negotiations are often conducted under asymmetrical balance a more realistic language is required
- ❑ A language is needed that better reflects the political and power asymmetries but still acknowledges the importance of the existing rules of customary law