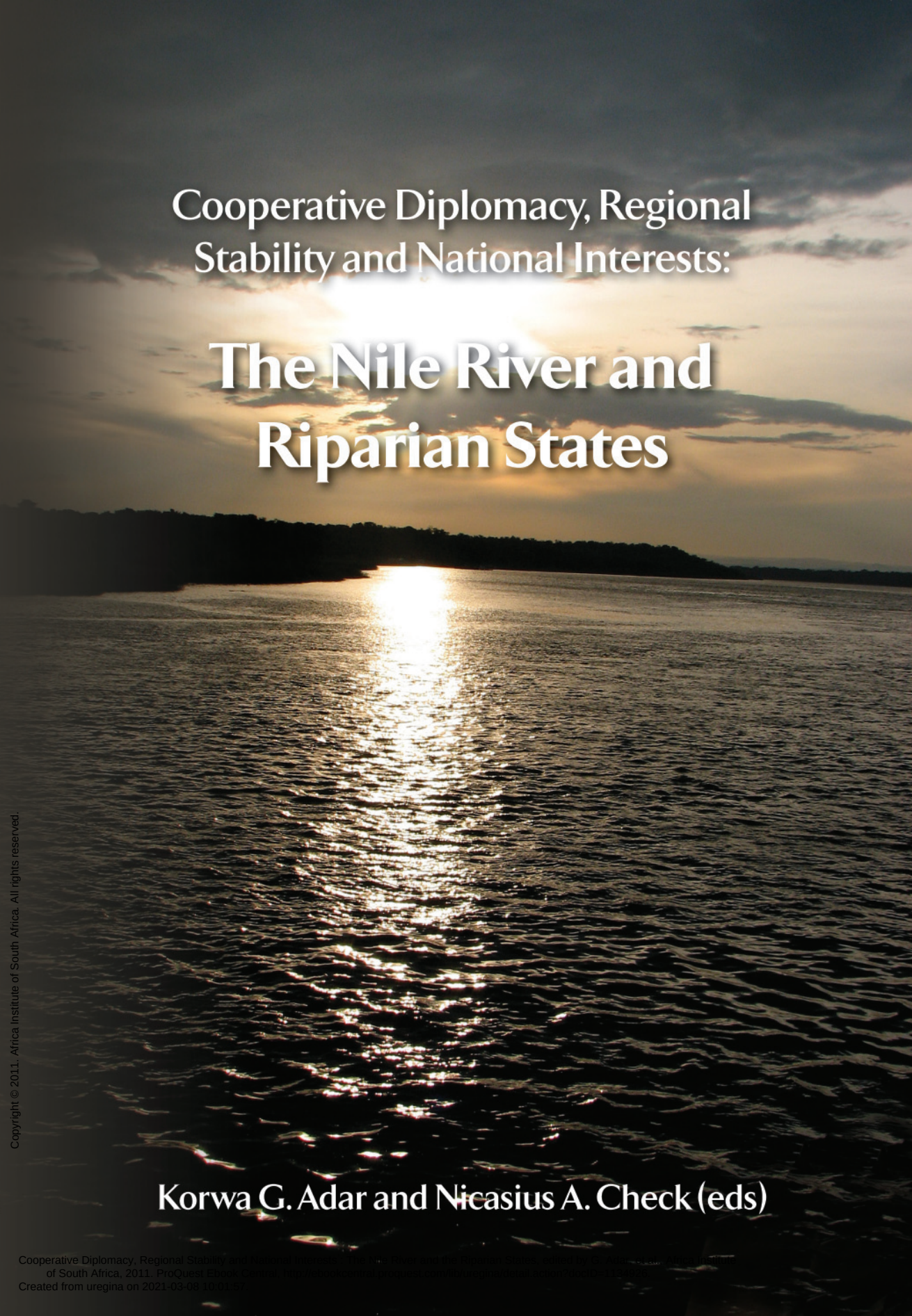


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Cooperative Diplomacy, Regional Stability and National Interests

The Nile River and the Riparian States



Edited by

Korwa G. Adar and Nicasius A. Check

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The Nile River and Riparian States

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Abbreviations, Acronyms and Concepts

ACDI	*L'Agence canadienne de développement international*
ADF	Allied Democratic Forces
AFDL	*Alliance des Forces Démocratiques de Libération*
AMIS	African Mission in Sudan
AU	African Union
BCM	Billion cubic metres
BTWMP	Bugesera Transboundary Water Management Project
CEPGL	*Communauté Economique des Pays des Grands Lacs*
CFA	Nile Cooperative Framework Agreement
CIDA	Canadian International Development Agency
CNDP	National Congress for the Defence of the Congo People
CODESRIA	Council for the Development of Social Science Research in Africa
COM	Council of Ministers
COMESA	Common Market for Eastern and Southern Africa
COP	Conference of Parties
CPA	Comprehensive Peace Agreement
DESS	*Diplôme d'Etudes Supérieures Spécialisées*
DRC	Democratic Republic of Congo
EAC	East African Community
EALA	East African Legislative Assembly
ECCAS	Economic Community of Central African States
EIIPD	Ethiopian International Institute for Peace and Development
ENSAP	Eastern Nile Subsidiary Action Programme
ENTRO	Eastern Nile Technical Regional Office
EU	European Union
FAR	*Forces Armées Rwandaises*
FCBN	*Le Forum Burundais de la Société Civile du Bassin du Nil*
FDD	*Front pour la défense de la démocratie*
FDLR	*Front Démocratique pour la Libération de Rwanda*
FUNA	Former Ugandan National Army
GDP	Gross domestic product

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HYDROMET	Hydrometeorological Survey of the Catchments of Lakes Victoria, Kyoga and Mobutu Seseseko
IBN	*L'Initiative du Bassin du Nil*
ICC	International Criminal Court
ICCON	International Consortium for Cooperation on the Nile
ICJ	International Court of Justice
IEEBC	International Ethiopian-Eritrean Border Commission
IGAD	Intergovernmental Authority on Development
ILA	International Law Association
ILC	International Law Commission
JEM	Justice and Equality Movement
JNC	Joint Negotiation Committee
KBO	Kagera Basin Organization
LDC	Least Developed Countries
LPA	Lagos Plan of Action
LRA	Lord's Resistance Army
LVB	Lake Victoria Basin
MDGs	Millennium Development Goals
MLC	Movement for the Liberation of Congo
MOA	Ministry of Agriculture
NALU	National Army for the Liberation of Uganda
NAM	Non-Aligned Movement
NAP	Nile Action Plan
NBC	Nile Basin Commission
NBCF	Nile Basin Cooperative Framework
NBDF	Nile Basin Discourse Forum
NBI	Nile Basin Initiative
NCP	National Congress Party
NELSAP	Nile Equatorial Lakes Subsidiary Action Programme
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organisation
NIDP	National Irrigation Development Plan
NIF	National Islamic Front
Nile-COM	Nile Council of Ministers of Water Affairs of the Nile Basin States
Nile-SEC	Nile Basin Initiative Secretariat
Nile-TAC	Nile Basin Initiative Technical Advisory Committee
NPC	Nile Projects Commission
NRB	Nile River Basin
NRBAP	Nile River Basin Action Plan
NRBC	Nile River Basin Commission
NRBCFA	Nile River Basin Cooperative Framework Agreement
NRC	Nile River Commission
NRS	Nile River System/Nile River States
NTEAP	Nile Transboundary Environment Action Project

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OAU	Organization of African Unity
OBK	*Organisation du Bassin de la Kagera*
OMDKRB	Organization for the Management and Development of the Kagera River Basin
OMM	*Organisation Météorologique Mondiale*
PALU	United Lumumba's Party/*Parti Lumumbiste Unifié*
PBDAC	Principal Bank for Development and Agricultural Credit
PJTC	Permanent Joint Technical Commission
RCD	Rally for Congolese Democracy
RCD-ML	Rally for Congolese Democracy-Liberation Movement
RCD-N	Rally for Congolese Democracy-National
PNUD	*Programme des Nations Unies pour Le Developpement*
POE	Panel of Experts
RPF	Rwandan Patriotic Front
SAC	Sectoral Advisory Committee
SADC	Southern African Development Community
SAF	Sudan Armed Forces
SAP	NBI Subsidiary Action Program
SLM/A	Sudan Liberation Movement/Army
SPLM/A	Sudan People's Liberation Movement/Army
SVP	NBI Shared Vision Program
SVPG	Shared Vision and Policy Guidelines
TECCONILE	Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin
UAR	United Arab Republic
UNDP	United Nations Development Programme
Undugu	Swahili for 'brotherhood'
UNESCO	United Nations Education Scientific and Cultural Organisation
UNITA	National Union for the Total Independence of Angola
UNMIS	United Nations Mission in Sudan
UNRF II	Uganda National Rescue Front II
UNWC	United Nations Watercourses Convention
WB	World Bank
WNBF	West Nile Bank Front
WMO	World Meteorological Organization

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THE NILE RIVER BASIN



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INTRODUCTION

The Nile River Basin: An introductory context

Korwa Gombe Adar and Nicasius Achu Check

Introduction

This book is the culmination of two events. Firstly, five articles focusing on the case studies of Egypt, Eritrea, Kenya, Sudan and Uganda, as well as an article interpreting the 1929 treaty and its implication for the Nile River waters, were published in 2007 in the special edition of the *African Sociological Review*.[1] Secondly, together with the scholars whose articles were published in the *African Sociological Review*, experts on the other riparian states, namely, Burundi, the Democratic Republic of Congo (DRC), Ethiopia, Rwanda and Tanzania, as well as the East African Community (EAC), met at a conference in Nairobi, Kenya, in 2010 to address the interlocking national and regional centrifugal and centripetal issue areas which concern the Nile River Basin states.[2] At the time of writing this introduction in February 2011, the southern Sudanese electorates have registered their sovereign rights by voting overwhelmingly for secession. It would not be an exaggeration to predict that once it acquires its international legal personality and sovereignty, as is likely to happen, Southern Sudan will become a partner state of the Nile Basin Initiative (NBI).

For many decades after independence, particularly since the 1980s, the Nile River riparian states have engaged in numerous bilateral and multilateral diplomatic initiatives to resolve the long-standing dispute over the Nile River. On a number of occasions, Egypt has made it clear that it is prepared to go to war to protect its national interests vis-à-vis the Nile water. For more than half a century, Egypt has maintained its monopoly over the Nile River. In 1929, Egypt signed a treaty with Britain (see Appendix 1 for the treaties), the then colonial power in the area, which stipulated, *inter alia*, that no work should be carried out on the Nile that would lessen or reduce the flow of water to Egypt. Paragraph 27 of the treaty stipulates in part:

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> Save with the previous agreement of the Egyptian Government, no irrigation or power works or measures are to be constructed or taken on the River Nile or its branches or on the lakes from which it flows, so far as all these are in the Sudan or in countries under British administration, which would, in such manner as to entail any prejudice to the interests of Egypt, either reduce the quantity of water arriving in Egypt, or modify the date of its arrival, or lower its level.[3]

On the regional front, Egypt signed an agreement with Sudan in 1959 that gave Cairo 87 per cent of the Nile water, with Sudan accorded only 13 per cent. This agreement was reached by the two riparian countries without the express consent of the other countries in the region, all of which (except for Ethiopia) were still under colonial rule.[4] Egypt has also over the years backed rebel movements in Eritrea, Ethiopia, Sudan and Somalia, thus complicating the geo-strategic scenarios and man-milieu relationships in the region. The East African Legislative Assembly (EALA), for example, has stated its position on the issue by suggesting that the 1929 Egypto-British treaty should be revoked to accommodate the interests of the other riparian states. These developments, as well as the evolving intra- and inter-state socio-economic and political needs of the riparian countries, have led to numerous initiatives to resolve the long-standing dispute. The central objective of the riparian countries is to put in place a comprehensive international legal regime that would in many respects conform to the Helsinki Rules entered into by UN member states in 1966 and provide for the equitable utilisation of water and international drainage systems.

The riparian states' interests in and concerns over the utilisation of the catchment areas of the lakes in the Great Lakes region and other areas and the Nile River waters gained momentum in the post-independence era. The states' international sovereign legal capacity enabled them to engage directly in diplomatic initiatives to promote their interests – the issue of the utilisation of water resources being one of the main issues. A number of attempts in the area of cooperative diplomacy have since then been put in place by the riparian states with the objective of establishing an acceptable regime for the utilisation of the Nile River waters and the river's international drainage system. These include, for example, HYDROMET (or Hydrometeorological Survey of the Catchments of Lakes Victoria, Kyoga and Albert, 1967–1992), which brought together most of the riparian states except the DRC (then Zaire), Ethiopia and Kenya, which participated as observers. HYDROMET's main objective was to collect and analyse the hydrometeorological data of the area. The HYDROMET Survey Project Technical Committee (HSPTC), which served the interests of the riparian states, was funded mainly by the United Nations Development Programme (UNDP), the World Meteorological Organization (WMO) and the United Nations Environmental Programme (UNEP). The HSPTC was the institution responsible for operationalising the objectives of HYDROMET.

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The other bodies included UNDUGU (Swahili for 'brotherhood', 1983–1993), the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin (TECCONILE, 1992–1999) and the Nile Basin Initiative (NBI, 1999 to present). The region is prone to heavy flooding, which continues to cause untold human calamities. UNDUGU was established in 1983 to deal with development-related issues, such as infrastructure, environmental cooperation, culture and trade in the Nile River Basin areas and the contiguous states.

The failure of the HYDROMET and UNDUGU projects to provide a clear, specific legal regime for the utilisation of the Nile River Basin led to the need for further exploration of possible modalities to deal with the challenges. The TECCONILE, signed by Egypt, Sudan, Rwanda, Tanzania, Uganda and Zaire (DRC), with Burundi, Eritrea, Ethiopia and Kenya as observers, was, therefore, a product of this endeavour. Initially, it focused on issues such as infrastructure development, environmental management and water-quality control. However, the main issue of dealing with equitable utilisation of the Nile River waters became part of the agenda for discussion by the ministers of water affairs in the riparian states, culminating in the establishment of a document focusing on the Nile River Basin Action Plan (NRBAP) in May 1995.[5]

The TECCONILE process was replaced by the NBI, which, since its establishment in Dar es Salaam, Tanzania, in 1999, has been involved in cooperative diplomatic initiatives to establish a workable legal regime in the Nile River Basin. With its shared vision centred on the achievement of 'sustainable socio-economic development through the equitable utilisation of, and benefit from, the common Nile Basin water resources', the authors argue that the NBI has opened the gates for cooperative diplomacy.[6] The NBI institutional structures responsible for carrying out its objectives include the Council of Ministers (Nile-COM), which comprises the ministers from the riparian states responsible for water affairs. The Nile-COM is the highest governing body, whose chairmanship rotates annually among the partner states. The other institutional structures include the Nile Technical Advisory Committee (Nile-TAC), represented by one expert from each riparian state, and the Nile-Secretariat (Nile-SEC). The Nile-SEC is responsible for the general management of projects that fall within its administrative jurisdiction, such as Shared Vision Programmes (SVPs) and Subsidiary Action Programmes (SAPs). The programmes which have been established to cater for sub-basin-level projects include the Eastern Nile Subsidiary Action Programme (ENSAP) and the Nile Equatorial Lakes Subsidiary Action Programme (NELSAP). In 1999, for example, the NELSAP was established to deal with cooperative projects on investments. What is important to emphasise is that the NELSAP projects and the others carried out within the NBI framework are meant to promote Nile River Basin cooperation.[7] Specifically, the NBI encourages a paradigm shift away from unilateralism and bilateralism, common during the colonial

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period, to multilateralism and cooperative diplomacy. These and other issues are examined extensively in the book.

The Agreement on the River Nile Basin Cooperative Framework Agreement (CFA), concluded in 2010, and thus far signed by Ethiopia, Kenya, Rwanda, Tanzania and Uganda, is a milestone for the NBI. The principle of equitable and reasonable utilisation of the waters of the River Nile and other related contentious issues at stake enshrined in the agreement, if accepted by the riparian states, have the potential of laying the foundation for a durable legal regime in the NBI region.

Physiographic and Statistical Appraisal of the Nile River Basin

The Nile is the longest river in the world, covering a distance of 6 850 kilometres. Over 86 per cent of the main Nile River's volume originates in the Ethiopian Highlands, and the rest in the equatorial areas in the Great Lakes region. It traverses 10 countries – Burundi, the DRC, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. There are six main regions of the Nile – the Lake Plateau, the Sudd, the White Nile, the Ethiopian Plateau, the Main Nile and the Nile Delta. The two main tributaries of the Nile are the Blue Nile and White Nile. The Blue Nile, the largest tributary, originates from Ethiopia's highlands around Lake Tana and contributes approximately 86 per cent of water flow to the River Nile, with the Atbara and Sobat, also from Ethiopia's highlands, bringing 21 per cent of the water flow. The longest tributary, the White Nile, flows from Lake Victoria and other lakes in the area, such as Albert, Kyoga and Edward, and contributes nearly 14 per cent of the Nile River flow. The two tributaries have their confluence in Khartoum, Sudan, and meet the Atbara River, another tributary of the Nile River.[8]

The 10 African countries have an estimated total population of more than 300 million, or 38 per cent of Africa's nearly 800 million people. The population of the 10 African countries is expected to increase to about 340 million by 2030.[9] The Nile River Basin alone is home to more than 130 million people, with a population growth rate of 2–3 per cent per year. The basin alone covers an area of about 3,3 million square kilometres. The Aswan High Dam in Egypt was first built in 1902 and raised in 1912 and 1933. Its full capacity was completed in 1970, making it the largest dam in the Nile River Basin (for dams in the basin, see Appendix 2).

Table 1 shows the extent to which some of the Nile River Basin countries are potentially vulnerable to the Nile River Basin issues due to the percentage of inhabitants in the region.

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Table 1 Statistical features of the Nile Basin countries

Country	Popul. (millions) (% of country dependence on water from the region) 2001	Surface area (1 000 sq. km) 2001	Area of the country within Nile Basin (sq. km)	Popul. density (people per sq. km) 2001	Gross national income ($ billions) 2001	Gross national income per capita ($) 2001	PPP gross national income ($ billions) 2001	PPP gross national income (per capita)($) 2001	Gross domestic product (% growth) 2001	Gross domestic product (per capita) (% growth) 2001	Nile Basin popul. density (hab./sq. km) 1990	Proportion of popul. within Nile Basin (millions and %) 1990
Burundi	7 (0)	27 834	13 260	270	0,7	100	5	680	3,2	1,3	250	3 (58)
DRC	52 (8)	2 344 860	2 143	23	4,2	80	33	630	–4,6	–7,1	88	2 (4)
Egypt	65 (97)	1 001 450	326 751	65	99,6	1 530	232	3 560	2,9	1,0	163	48 (85)
Eritrea	4 (68)	121 890	24 921	42	0,7	160	4	1 030	9,7	6,9	38	1 (30)
Ethiopia	66 (0)	1 100 010	365 117	66	6,7	100	53	800	7,7	5,2	53	19 (35)
Kenya	31 (33)	580 370	46 229	54	10,7	350	30	970	1,1	–1,0	176	9 (32)
Rwanda	9 (0)	26 340	19 876	352	1,9	220	11	1 240	6,7	4,5	276	6 (72)
Sudan	32 (77)	2 505 810	1 978 506	13	10,7	340	56	1 750	6,9	4,9	11	21 (74)
Tanzania	34 (10)	945 090	84 200	39	9,4	270	18	520	5,7	3,4	40	5 (16)
Uganda	23 (41%)	235 880	231 366	116	5,9	260	33	1 460	4,6	2,0	67	16 (75)

Sources: *World Bank, 2003. World development indicators. Washington, DC: World Bank; Food and Agriculture Organization, 1998. Irrigation potential in Africa: A basin approach. Rome: FAO; Karyabwite, D.R., 2000. Water sharing in the Nile River Valley. Geneva: UNEP/DEWA/GRID, p.11; State Hydrological Institute. World water resources and their use, Russia and UNESCO. Available at http://espejo.unesco.org/uy/part%604_africa/index.htm [Accessed 20 January 2011]*

Even though the figures vary from source to source and from year to year, Table 1 still provides useful statistical data. For example, Table 1 indicates that Rwanda, Burundi, Kenya, Egypt, the DRC, Uganda, Ethiopia, Tanzania, Eritrea and Sudan have the highest population density in Africa, which stood at 276, 250, 176, 163, 88, 67, 53, 40, 38, and 11 inhabitants per square kilometre in 1990, respectively.

On the issue of the countries' portion of population within the Nile River Basin, the figures vary somewhat, with Egypt, Uganda, Sudan, Rwanda, Burundi, Ethiopia, Kenya, Eritrea, Tanzania and the DRC registering 85, 75, 74, 72, 58, 35, 32, 30, 16 and 4 per cent, respectively, in the same period.

What is also interesting to note is the level of dependence on the Nile River waters by the riparian states. In terms of the level of dependence on the River Nile, Table 1 shows that 97 per cent of the population of Egypt relies on the waters of the Nile, followed by Sudan (77 per cent), Eritrea (68 per cent), Uganda (41 per cent), Kenya (33 per cent), Tanzania (10 per cent) and the DRC (8 per cent).[10] Except for Egypt and Kenya, the rest of the Nile River riparian countries fall into the category of least developed countries. Their dependence on the Nile River Basin for their economic development and general survival should not be underestimated. An acceptable legal regime to manage the Nile River and its drainage system for equitable intra- and interstate econo-political and socio-cultural utilisation remains a major challenge.

Politico-Legal and Conceptual Frameworks

The debate that has surrounded the utilisation of international watercourses, river waters and international drainage basins is as old as mankind. Establishing a legal regime to govern these water areas and resources has been a challenge to the international community. Over the centuries, particularly in the post-Westphalian state system, competing legal theories have been invoked at variance by sovereign states. The claims to the rights to international river waters and drainage systems mainly between the upstream and downstream states have revolved around, among others, the theories of absolute territorial sovereignty, absolute territorial integrity, community of co-riparian states and limited territorial sovereignty.

Some scholars have argued (perhaps rightfully to a large extent) that 'countries that receive their fundamental legal order from another country have to come to grips with what was often a substantial mismatch between the pre-existing and imported order'.[11] This geographical anomaly has been at the centre of conflict in the Nile River Basin. It was not until 1966, at the end of the deliberations in Helsinki by the International Law Association, that the experts adopted what became known as the Helsinki Rules, which for the first time provided comprehensive definitions of international drainage basins and other related issues. In one of its provisions, an international drainage basin is defined as meaning 'a geographical area extending over two or more states determined by the watershed limits of the system of waters, including

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surface and underground waters, flowing into a common terminus'.[12] These legal theories are examined extensively in most of the chapters of this volume. A brief appraisal of these legal theories would suffice. However, before examining the legal theories it is necessary to provide a brief definition of the concept of regime (see Chapter 10). Regimes are 'sets of implicit or explicit principles, norms, rules and decision-making procedures around which actor expectations converge in a given area in international relations'.[13] Regimes facilitate cooperation among parties and can be less coherent or weakened if principles, norms, rules and decision-making procedures of a given regime are not recognised or are increasingly challenged. In the Nile River Basin, for example, a number of the riparian states have challenged the validity and legitimacy of the 1929 Anglo-Egyptian and the 1959 Egypto-Sudanese treaties/agreements. The CFA attempts to revoke the existing agreements/treaties and instead establishes a more inclusive regime.

Absolute territorial sovereignty theory is centred on the assumption that a sovereign state has unlimited sovereign rights to natural resources within its territorial jurisdiction. Specifically, no existing state or groups of states have the right to limit the rights of a state to exercise complete sovereign rights over resources within its territory. This theory is akin to the Harmon Doctrine, invoked in 1895 by the US Attorney General Harmon. The theory of absolute territorial integrity is based on the general proposition that the natural flow of waters should not be interfered with by the upstream states in a way that would affect the flow of the waters downstream.

The theory of territorial integrity is centred on the idea that sovereign states traditionally have the right to defend what is within their territory, and to that extent alone the theory empowers the upstream states to exercise sovereign rights over waters within their territory. The community of co-riparian states, on the other hand, extends the use of river waters and international drainage basins to the contiguous riparian states, thereby allowing the idea of collective use of the waters and international drainage basins. The theory is embodied in the doctrine of equitable utilisation, in other words, the area is treated as a common economic entity for the benefit of the upstream and downstream states. This is what the NBI is attempting to achieve in its 2010 CFA agreement. The principle of equitable and reasonable utilisation is incorporated in Part 1, Article 3(4) of the NBI, the central objective of which is to reach a consensus on a durable regional legal regime.

Contents and Sections of the Book

This volume is divided into two parts. Part 1 deals with treaties and agreements of the Nile River waters and its resources, with a special focus on the case studies of some of the riparian states. Chapter 1 deals with the treaties and agreements; the remaining four chapters in Part I assess the implications of the treaties for some of the riparian states. Part 2 puts into proper perspective the national and regional foreign-policy interests of six

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riparian states. Specifically, the six case studies provide a clear view of the extent to which the six riparian states have been involved in the issues at stake within the Nile River Basin. Suffice it to say, the subdivisions of the chapters in the book into Parts 1 and 2 are largely arbitrary given that the issues at stake cut across politico-legal questions. There is room perhaps for a better way of dividing the volume to capture the issues which have been addressed by the contributors.

Part 1: Treaties and agreements of the Nile River Basin: Legal questions and case studies

In Chapter 1, Patrick L.O. Lumumba interprets the 1929 Anglo-Egyptian treaty, its legal significance, relevance and implications for the stability of the Nile River Basin region. The author provides a historical legal trajectory of the 1929 treaty and the 1959 amendment and their implications for the interests of the post-independence riparian states. Lumumba argues that the legal significance and relevance of the 1929 treaty have diminished for four main reasons. Firstly, the author argues that the treaty blatantly ignores the rights and interests of the riparian states (save for Egypt and Sudan) who were/are directly and substantially affected by its provisions. To a large extent, the treaty reflects the interests of Britain, as the colonising power in the area at the time, to maintain and buttress its colonial grip and hegemony upon what the author calls its 'strategic colonial servant', Egypt.

Secondly, Lumumba argues that the treaty was negotiated when all the riparian states, except Ethiopia, were colonies and objects of international law. Following the *tabula rasa* ('clean slate') approach, the author observes, it is understandable that the 1929 treaty was not part of treaty obligations inherited by all the newly independent states. Thirdly, the author observes that contemporary discourse on the sharing of international waters favours a just and equitable distribution of water resources. The 1929 treaty, the author argues, falls short of this standard. Lastly, he argues that the treaty ignores the current Nilo-political, hydrological and diplomatic realities of the Nile River Basin region. The treaty rests on what he calls shaky juridical foundations. Lumumba suggests that for more effective riparian cohesion and stability, a case is made for the repeal of the 1929 treaty and a renegotiation of a more comprehensive and all-inclusive treaty regime to equitable access to the waters of the Nile River and its resources, beyond the mere allocation of volume utilisation of the Nile River waters through the 2010 CFA.

The DRC is traversed by not only the 4 700-kilometre-long Congo River, but also by numerous tributaries. As the author, André Mbata B. Mangu (Chapter 2) observes, only 0,9 per cent of the DRC's territory falls within the Nile River Basin (see Table 1). The author observes that the Eastern DRC bordering Burundi, Rwanda and Uganda is one of the sources of the Nile River, placing the country within the Nile River Basin econo-polical and socio-cultural national and regional contexts. Mangu argues that for most of

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its independence history, the DRC exhibited little interest in the Nile River Basin issues. It was not until the 1990s that the DRC became directly involved in the Nile River issues through its participation in the TECCONILE debates. Its membership in the TECCONILE marked the beginning of the country's multilateral interests in the region. The author traces the DRC's interests within the contexts of the existing Nile River Basin treaties and agreements.

Mangu argues that the DRC was/is not bound by the 1929 Anglo-Egyptian and the 1959 Egypto-Sudanese Nile River waters agreements because they were concluded when the country was still a colony of Belgium. The author states that the DRC's view is influenced by the NBI riparian states' position on the issue. Although it is one of the original founders of the NBI and an active participant, the DRC is nevertheless one of the riparian states that has not signed the CFA – others include Burundi, Egypt, Eritrea and Sudan. As a consequence of what has been described as carrot and stick diplomacy (see also Chapters 7 and 11 by Hamdy Hassan and Godfrey Okoth, respectively), the DRC and Burundi, Mangu posits, have thus far been persuaded by Egypt not to sign the CFA. He argues that the DRC made the decision following the meeting between Presidents Joseph Kabila (DRC) and Hosni Mubarak (Egypt) in Cairo in 2010.

The bilateral initiatives and agreements involving Egypt and Sudan on the one hand and multilateral negotiations by all the riparian states on the other are examined by Biong Kuol Deng in Chapter 3. Deng offers a detailed analysis of legal concepts relating to international watercourses (see also Chapters 1, 2, 9 and 10). These concepts are analysed in relation to Sudan and the Nile River question. Deng argues that the 1929 treaty contained what he calls 'irrational legal principles' inconsistent with cooperative diplomacy, peaceful co-existence and normative values. The 1959 agreement between Egypt and Sudan, the author argues, culminated in what he calls Egypto-Sudanese duality on the Nile River Basin issues. This initiative, in many respects, has remained the cornerstone of the relations between the two countries vis-à-vis the NBI riparian states. This duality explains why Egypt and Sudan have remained unwilling to sign the CFA, insisting on the removal of Article 14(b) which deals with water security.[14] Deng argues that the two countries are not willing to limit their 'historical rights' to the Nile River waters.

In Chapter 4, Tesfaye Tafesse puts into proper context the historical trajectory of the Nile River agreements and their implications for Ethiopia's national and regional interests. Even though Ethiopia has never been colonised (save for the 1936–1941 occupation by Italy), the 1929 Anglo-Egyptian and 1959 Egypto-Sudanese agreements were concluded without Ethiopia's involvement in the negotiations. These historical developments notwithstanding, Ethiopia has advocated for what the author calls a policy of 'rightful share' of the Nile River waters and its resources by the riparian states. The author examines these treaties and other Nile River Basin agreements in relation to Ethiopia's interests. It is in light of these historical developments that Ethiopia continues to play an active role within the NBI framework, and has made it clear that

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it is not bound by the two agreements. The conclusion of the CFA, Tafesse observes, is an important aspect for Ethiopia, particularly with respect to the issue of equitable and reasonable utilisation of the Nile River waters.

Nicasius Achu Check (Chapter 5) examines the impact of the 1929 Anglo-Egyptian treaty on Rwanda and how the treaty has shaped Rwanda's perception and facilitation of the CFA. The author argues that the main centre of contention in the region has been that Egypt and Sudan have contested the proposal by the other riparian states for a rightful and equitable share of the Nile waters. Rwanda has contested the validity and legitimacy of the 1929 and 1959 treaties concluded prior to its independence. Rwanda and the other riparian states, except Ethiopia and Sudan, have advocated the revocation of the two treaties to pave the way for a more equitable system of water management in the Nile River Basin region. Check observes that the CFA attempts to address these concerns. Rwanda's participation in the NBI multilateralism is influenced by a number of national and regional interests.

Firstly, Check observes that at the national level, Rwanda is concerned with its increasing population density – nationally and particularly within the Nile River Basin (see Table 1 and Chapters 7 and 9). Rwanda has the highest population density within the Nile River Basin (276 inhabitants/km^2), followed by Burundi (250 inhabitants/km^2), Kenya (176 inhabitants/km^2) and Egypt (163 inhabitants/km^2).[15] The issue of population density is also compounded by drought, particularly in the southern region. These and other national challenges, the author argues, influenced Rwanda and Burundi to establish the Bugesera Transboundary Water Management Project. Secondly, Check argues that in the multilateral regional context, Rwanda remains an active member of the NBI and supports the principle of equitable and reasonable utilisation of the Nile River waters enshrined in the CFA.

Part 2: National and regional interests in the Nile River Basin: Country case studies

In Chapter 6, Jean Salathiel Muntunutwiwe traces the history of cooperation amongst the Nile riparian states and posits that the NBI is an unprecedented initiative which needs to be supported as it aims to eradicate poverty, promote peace and cooperation and strives to protect the environment and sustainable development in the Nile River Basin. The author argues that before the establishment of the NBI, there has been other initiatives such as HYDROMET, UDUNGU and TECCONILE. These initiatives laid the foundation for the NBI whose mission has been adopted by the Nile riparian states.

Jean Salathiel Muntunutwiwe (Chapter 6) argues that Burundi's policies towards the Nile River question depart from both realist and idealist standpoints. Realism supports and upholds the national interests of a sovereign state, and in this regard, Burundi's national interests towards the Nile Basin supersede those of other riparian states. Within the idealist perspectives, states would have to construct their strategies taking into

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account the norms and principles of the established laws. Muntunutwiwe argues that Burundi's position with regard to the signing of the CFA has been guided by these principles. In this regard, he argues that the CFA should be based on two complementary principles, namely, the construction of a stable and prosperous economy in the subregion and the establishment of a solid water-security regime. Burundi's interest within the Nile River Basin equally lies in the realisation of projects such as the Transboundary Environmental Action plan of the Nile, which strives to mitigate the impact of climate change on the upper riparian states and facilitate the sustainable management of the natural resources of the basin.

The construction of a dam on the Rusumo Falls, Muntunutwiwe argues, also falls within Burundi's strategic paradigm of energy exchange. The construction of the dam would provide the country with much needed hydroelectric power, which is a *sine qua non* for the economic development of the country after several years of conflict. The author also contends that an effective transboundary cooperative framework would enable Burundi to sustainably utilise the Nile Basin water for irrigation works along its borders with Rwanda. In conclusion, Muntunutwiwe posits that for an effective cooperative structure, such as the CFA, to succeed, Egypt should renounce its historic rights to the water of the Nile and adopt an 'evolutive' approach in its interaction with other riparian states. This can be done through the creation of common institutions, such as the NBI and, more importantly, the Nile Basin Commission.

In Chapter 7, Hassan and Al Rasheedy proceed from the premise that the Nile River is the principal artery of life in Egypt, a basic fact which does not apply to the other riparian states at the same level. The authors argue that one of the major strategic threats to Egyptian national security is in essence the existence of vital water resources lying beyond the Egyptian borders. The issue of the Nile waters grows in gravity, they argue, in regional relations for the states of the Nile River Basin for a number of reasons. Firstly, the authors observe that no real organisation exists among the countries of the basin to allow for a dialogue to determine the distribution and exploitation of the Nile River waters. Secondly, they argue that there is real competition among the riparian states of the Nile River Basin over the production of specific crops for export, especially cotton, which needs enormous amounts of water. Thirdly, Hassan postulates that the ongoing enmities and conflicts between states of the Nile River Basin and the intra- and interstate wars, which have created opportunities for instability and frequent manipulation by external powers, continue to undermine their own interests and the interests of the region. The author argues that Egypt's desire to ensure a smooth and uninterrupted flow of the Nile River waters underpins the country's foreign-policy behaviour in the region.

In Chapter 8, Adams Oloo traces Eritrea's policy towards the Nile River Basin issues following the country's independence in 1993. The author observes that Eritrea has remained ambivalent over the Nile River issues, participating

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as an observer over the years. Oloo offers a number of possible reasons which may have, at one time or another, influenced Eritrea's decision to remain as an observer in the River Nile Basin multilateral negotiations. Firstly, the author observes that only a small portion of the Nile River – the eastern Nile River Basin – passes through Eritrea. Secondly, Eritrea's belligerence towards Ethiopia and Sudan makes the countries less interested in the NBI issues other than for national survival. Specifically, Eritrea looks at the Nile River Basin issues from what the author calls an 'Ethiopia versus Egypt lens', that is, Eritrea supports Egypt's position because of the strained relations between Egypt and Ethiopia.

In Chapter 9, Korwa Gombe Adar offers a systematic analysis of Kenya's foreign-policy interests towards the Nile River Basin question. The author traces the evolution of Kenya's water policy and the extent to which the country has involved itself in the Nile River Basin issue areas. From the 1960s to the 1990s, the author argues, Kenya exhibited minimal interest in Nile River Basin multilateral negotiations, participating merely as an observer. Kenya, for example, participated as an observer, at least in the initial stages, during the HYDROMET (1967–1992), Undugu (1983–1993) and TECCONILE (1992–1999) negotiations. However, with the increase in Kenya's population and the internal water demand, the country began to play proactive roles in the region. As one of the founding members of the NBI, Kenya has contributed actively to the negotiations aimed at reaching a consensus on the utilisation of the Nile River waters and other issues at stake. The author observes that Kenya has maintained that it strongly supports the adoption of the principle of equitable and reasonable utilisation of the waters of the Nile River. This policy position, the author argues, has been clearly articulated internally in Kenya's National Legislative Assembly and externally in the EALA, as well as within the NBI negotiations. Kenya's foreign-policy behaviour towards the riparian countries is, therefore, underpinned by the context of the principle of equitable and reasonable utilisation of the Nile River waters and its resources.

Tanzania's regional and national foreign-policy interests in the Nile River issue areas are discussed by Richard M. Bosire (Chapter 10). Employing relevant theoretical and legal frameworks, Bosire provides a detailed analysis of the historical trajectory of Tanzania's foreign-policy interests in the region. Specifically, the author analyses Tanzania's position within the legal contexts of the Harmon Doctrine, absolute territorial integrity, absolute territorial sovereignty, limited territorial sovereignty, equitable utilisation and community of co-riparians. The theoretical framework of the chapter is also strengthened by an analysis of regime theories, such as interest-based, liberal-institutionalist and institutional-bargaining approaches. The author argues that on the question of utilisation of the River Nile waters and its resources, Tanzania subscribes to the concept of limited territorial sovereignty and, in particular, the principle of equitable and reasonable utilisation, which recognises the rights of upstream and downstream riparian states and is enshrined in international instruments. Tanzania rejects the validity and

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legitimacy of the 1929 Anglo-Egyptian and 1959 Egypto-Sudanese treaties (see Appendix 1), arguing that they were concluded at the time when the country was still a colony, that is, an object of international law. This policy position is driven by what has become known as the Nyerere Doctrine of state succession. The author concludes that Tanzania's decision to sign the CFA must be understood in the broad context of its national and regional interests.

In Chapter 11, Godfrey P. Okoth addresses Uganda's foreign-policy interests in the Nile Basin region from a theoretical perspective. Uganda is one of the riparian states which has made it clear that it is not bound by the 1929 Anglo-Egyptian and 1959 Egypto-Sudanese agreements, which gave Egypt rights to monopolise the Nile River waters. Uganda's foreign-policy stance on the Nile River waters, Okoth observes, is influenced by a number of factors. First is the growing population in Uganda, most of whom (i.e. 75 per cent) live within the Nile River Basin. Thirdly, the 1929 and 1959 treaties/agreements ignored Uganda's long-term national interests. In other words, the treaties were based on the assumption that Uganda, let alone the other upstream riparian states, was static and did not need any form of water resources for development. Secondly, the two treaties/agreements did not take into account Uganda's contribution to the flow of the Nile River waters. To assume that the 1929 and 1959 treaties were to remain the sole legal regimes governing the operationalisation of the foreign-policy interests of all the riparian states is to remain in the dark days of the colonial era. Uganda's decision to be one of the original signatories to the CFA, the author argues, not only places the country as one of the advocates of the principle of equitable and reasonable utilisation of the Nile River waters and its resources, but also signals the country's foreign-policy perspectives on the Nile River Basin in general. Specifically, the decision reaffirms the country's view that the CFA has opened the door for the cooperative diplomacy needed to contextualise and iron out the recurring contentious issues at stake and put in place a durable legal regime in the region.

The chapters in this book conclude with a positive note that, notwithstanding the lack of consensus governing the Nile River waters and the resources thereof, the CFA, concluded in 2010 under the auspices of the NBI, points towards a workable legal regime in the region. This is not to argue that the CFA will eliminate all the pending national and regional contentious questions. Specifically, at the national and regional levels, the upstream and downstream riparian states have historical attachments which may not be resolved in a single treaty/agreement. The authors believe that the CFA is a good start for the NBI in the area of cooperative diplomacy, which if embraced by the riparian states, has the potential of laying the foundation for lasting peace in the region.

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Notes and References

1 Korwa G. Adar was the guest editor of the volume. The editors and the Africa Institute of South Africa are indebted to the *African Sociological Review* for granting permission for the publication of the articles. However, it needs to be noted that the chapters have been extensively revised prior to their publication in this book.

2 To our knowledge, this is the first book of its kind which has covered all the 10 riparian states in a single volume. This volume (or volume I of the series) deals with, among other issues, the socio-economic, legal and political questions associated with the riparian states and the EAC. Volume II will cover the 10 case studies (or 11 if Southern Sudan becomes a partner state) and the role of the NGOs in the region, as well as the Africa Maghreb Union, AMU, AU, COMESA, EAC, ECCAS and SADC. The NBI partner states belong to one or more of the regional organisations.

3 *Yearbook of International Law Commission*, 2(1), 1974: 44.

4 For the African states' views on treaties entered into by the colonial powers on their behalf, see, for example, Abi-Saab, G.M., 1962. The newly independent states and the rules of international law: An outline. *Howard Law Journal* 8, spring: 95–121; Rembe, N.S., 1980. *Africa and the international law of the sea: A study of the contribution of African states to the Third United Nations Law of the Sea*. Alphen aan den Rijn: Sijthoff and Moordhoff; Felix, C., 1972. *International law and the new African states*. London: Sweet and Maxwell; Bokor-Szego, H., 1970, *New states and international law.* Budapest: Akademiai Kiado; Falk, R., 1970. *The new states and international legal order.* Princeton: Princeton University Press; Mutiti, M., 1976. *State succession in respect to newly independent African states*. Kampala: East African Literature Bureau; Valentine, D.G., 1962. Problems of state succession in Africa. *International and Comparative Law Quarterly*, 2, October: 1210–1215; and Umozurike, O.U., 1970. International law and colonialism in Africa: A critique. *Eastern Africa Law Review* 3, April: 41–62.

5 Abdalla, S., 2000. *The Nile Basin: Century of cooperation*. Paper presented at the 8th Nile 2002 Conference. June 23–30. Addis Ababa, Ethiopia.

6 See http://www.nilebasin.org/documents/TACpolicy.html [Accessed 5 January 2011].

7 For details on NELSAP projects, see, for example, Nile Basin Initiative, 2005. *Nile Equatorial Lakes Subsidiary Action Programme (NELSAP), strategy for scaling up NELSAP investments projects*. Entebbe: NBI Secretariat.

8 See, for example, Arsano, Y., 2004. Ethiopia and the Nile, dilemma of national and regional hydropolitics, PhD thesis, University of Zurich; Collins, R.O., 1990. *The waters of the Nile, hydropolitics and the Jonglei Canal, 1900–1988*. Oxford: Clarendon Press; el-Khalifa, M.D. (ed.), 1985. *Blue Nile River, from Ethiopian border to Khartoum.* Khartoum: Institute of Environmental Studies, University of Khartoum; Haggai, E., 2002. *The cross and the river: Ethiopia, Egypt and the Nile*. Boulder: Lynne Rienner; Waterbury, J., 1979. *HydroPolitics of the Nile* Valley. New York: Syracuse; Mason, S.A., 2004. *From conflict to cooperation in the Nile Basin: Interaction between water availability, water management in Egypt and Sudan, and international relations in the eastern Nile Basin*, PhD Thesis, Swiss Federal Institute of Technology, Eth, Zurich.

9 Voice of the Nile @ http://www.voiceofnile.org/?page_id=164 accessed on 12/04/11

10 See, for example, Food and Agriculture Organization, 1998. *Irrigation potential in Africa: A basin approach.* Rome: FAO; Karyabwite, D.R., 2000. *Water sharing in the Nile River Valley*. Geneva: UNEP/DEWA/GRID, p.11; State Hydrological Institute. *World water resources and their use*, Russia and UNESCO. Available at http://espejo.unesco.org/uy/part%604_africa/index.htm [Accessed 20 January 2011]; World Bank, 2003. *World development indicators.* Washington, DC: World Bank.

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11 Berkowitz, D., Pistor, K. and Richard, J., 2003. The transplant effect. *American Journal of Comparative Law*, 171: 163.

12 International Law Association, 1967. *The Helsinki Rules on the Use of International Rivers, Helsinki 1966*. Fifth-Second Conference. London: International Law Association.

13 Krasner, S.D., 1983. Structural causes and regime consequences: Regimes as intervening variables. In Krasner, S.D. (ed.), *International regimes*. Ithaca: Cornell University Press, p.2. For details on regime theory, see chapters in this volume. See also, Haggard, S. and Simmons, B.A., 1987. Theories of international regimes. *International Organization* 41, summer: 491–517.

14 Article 14(b) on water security is annexed to be resolved by the River Nile Basin Commission (RNBC) within six months of its establishment. At the time of going to press, the RNBC had not been established.

15 These are the 1990 figures.

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PART 1

Treaties and Agreements of the Nile River Basin:

Legal Questions and Case Studies



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CHAPTER 1
The interpretation of the 1929 treaty and its legal relevance to and implications for the stability of the region

Patrick Loch Otieno Lumumba

> 'Fierce national competition over [shared] water resources has prompted fears that water issues contain the seeds of violent conflict. By the year 2025, two-thirds of the world's population is likely to live in countries with moderate or severe water shortages as demand for water approaches the limit of the available supply.'
>
> (UN Secretary General Kofi Annan, Message on World Water Day, 22 March 2002)

1.1 Introduction

The past few years have witnessed increasing interest in the management of the Nile River and the disputes surrounding its non-navigational uses.[1] The same period has witnessed a number of initiatives designed to address components of the management of its resources. The increasing concern is attributable to two main factors. First, an estimated 160 million people depend on the Nile waters for survival. This population is expected to double within the next 25 years, placing additional strain on water and other scarce natural resources. Second, despite the extraordinary natural endowments and rich cultural history of the Nile Basin, its people face significant challenges. Today, the Nile Basin is characterised by poverty, instability, rapid population growth, environmental degradation, failing rains, recurring droughts and famine, as well as declining land resources and productivity and frequent natural disasters. Indeed, some of the Nile Basin countries are among the world's poorest, with an annual per capita income of less than $250.[2]

The Nile traverses a total distance of about 6 700 km and more than 35 degrees of latitude. It drains a basin area of about 3 350 000 km^2, stretching over ten east-central and north-east African countries, namely Burundi, Rwanda, the Democratic Republic of Congo (DRC), Tanzania, Kenya, Uganda, Ethiopia, Eritrea, Sudan and Egypt. However, the development and exploitation of the hydropower and irrigation potential of the Nile have been the exclusive domain of Egypt and Sudan. Chronic political instability and

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economic underdevelopment in the Upper Nile regions have prevented the riparian countries from utilising the resource fully. Currently, the only existing arrangement for water sharing within the Nile Basin is the 1959 Agreement between Egypt and Sudan, which provides for the 'full utilisation of the Nile waters' by the two countries.[3]

In the face of mounting demographic pressures and adverse changes in their hydrological conditions, riparian states can no longer afford to ignore the potential of the Nile waters that remain untapped in their respective 'sub-basins'. In a nutshell, the unjust and inequitable use of the Nile waters cannot be allowed to continue. Initiatives have, therefore, been established to address the emerging tensions. Of particular interest has been how to control the conflicts and promote political stability and economic development throughout the region through an arrangement that accommodates the legitimate interests of all the basin countries.

Against this background, it would be imperative to undertake a study on the legal regime of the Nile waters and its impact on peace, stability and development in the region. It is generally viewed that where multiple countries share water supplies, the risk of conflict is especially high.[4] This chapter will examine the legal relevance and implications of the 1929 treaty on stability in the Nile Basin region. First, this chapter reviews the general terrain of international law with respect to the Nile River as a resource. Second, it supplies a historical background to the 1929 treaty as a precursor to the legal examination of its status. Finally, the chapter provides an assessment of the implications of the treaty for the stability of the region.

1.1.1 Is the Nile River part of *res communis* (common heritage of humankind)?

According to classical international law, *res communis* refers to territory consisting of the high seas and outer space and/or which is not capable of being placed under state sovereignty. Such territory is governed by the concept of the common heritage of humankind. The main governing principle with regard to the common heritage of humankind is that no state shall claim or exercise sovereignty or sovereign rights over any part of *res communis* or its resources, nor shall any state or natural or political person appropriate it. No such claim or exercise of sovereignty or sovereign right nor such appropriation shall be recognised in international law.[5]

Egypt and Sudan have throughout the years sought to lay territorial sovereignty and jurisdiction over the Nile waters. This is evident from the formal and informal agreements, negotiations and protocols that the two countries have entered into regarding access to and use of the waters of the Nile.

Egypt and Sudan's joint exercise of sovereignty over the Nile is premised on the concept of accretion, whereby the new territory (the river itself) was added to the physical boundaries of the two countries mainly through natural causes. In this case, history has it that there was no formal act of assertion

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of title on the part of either country. As is the case with most transboundary natural water resources, there was a gradual and almost imperceptible movement of alluvial deposits and abrupt transfer of soil embedded within the territories of both states, although the waters of the Nile were identifiable as originating mainly from the territory of Ethiopia.[6]

The acquisition of title to the waters of the River Nile by Egypt and Sudan has found further support in the principle of prescription. Such acquisition is characterised by and consequential to the peaceful exercise of de facto sovereignty for a very long period of time over the acquired territory. This could be as a result of immemorial exercise of such sovereignty or as a result of lengthy adverse possession only. There is no judicial decision that conclusively supports the doctrine of acquisitive prescription under international law. In addition, the effective control necessary to establish the Egyptian and Sudanese joint exercise of sovereignty over the Nile was historically accompanied by tacit acquiescence on the part of neighbouring states. Consequently, if there had been any protests or other acts or statements that demonstrated a lack of acquiescence, these could have prevented Egypt and Sudan from jointly laying claim to the waters of the Nile by prescription or otherwise. Today, therefore, the River Nile cannot be construed under the principle of *res communis.*

1.2 Historical Background[7]

'Those who do not know history are predestined to repeat it.'
(Anonymous)

Table 1.1 Historical highlights of Nile agreements

Year	Historical milestones or highlights
1920	Nile Projects Commission is formed; offers allocation scheme for Nile riparians. Findings not acted upon. Century Storage Scheme put forward, emphasising upstream, relatively small-scale projects. Plan is criticised by Egypt.
1925	New Water Commission is named.
7 May 1929	Commission study leads to Nile Waters Agreement between Egypt and Britain, which has serious implications for Sudan.
1952	Aswan High Dam proposed by Egypt. Promise of additional water necessitates new agreement.
September–December 1954	First round of negotiations between Egypt and Sudan, which end inconclusively.
1956	Sudan gains independence through a pro-Egypt military coup. Egypt becomes more conciliatory with new Sudanese government after the coup.
8 November 1959	Agreement for the Full Utilization of the Nile Waters (the Nile Waters Treaty) signed between Egypt and Sudan.

Source: Case summary on the Nile Waters Agreement, www.transboundarywaters.orst.edu/projects/casestudies/nile_agreement.html

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In the early 1900s, a biting world shortage of cotton put tremendous pressure upon Egypt and Sudan, then under a British-Egyptian condominium,[8] to turn to the perennial irrigation of this summer crop instead of the traditional flood-fed methods earlier used by the two countries. The need for summer water and flood control provided an unprecedented impetus for an intensive period of water development along the Nile, with proponents of Egyptian and Sudanese interests occasionally clashing within the British Foreign Office over whether the emphasis for development ought to be further upstream or downstream.[9]

With the end of World War I, it became clear that any regional development plans for the River Nile and its basin would have to be preceded by some formal agreement on water allocation. In 1920, the Nile Projects Commission (NPC) was formed, with representatives from India, the United Kingdom and the United States.[10] The commission estimated that of the river's average flow of 84 billion cubic metres (BCM)/year, Egypt needed 58 BMC/year. It was considered that Sudan would be able to meet its irrigation needs from the Blue Nile alone. Since the Nile flow fluctuated greatly, with a standard deviation of about 25 per cent, an appendix was added which suggested that any gain or shortfall from the average output or flow be divided evenly between Egypt and Sudan. However, as fate would have it, the commission's findings were not acted upon.[11]

The year 1920 also saw the publication of the most extensive scheme for comprehensive water development along the Nile, now known as the Century Storage Scheme, put forth by the British. It provided for, *inter alia*:

- a storage facility on the Uganda-Sudan border
- a dam at Sennar to irrigate the Gezira region south of Khartoum
- a dam on the White Nile to hold summer floodwater for Egypt.

The plan concerned Egypt because all the major control structures were planned to be beyond Egyptian territory and authority. Some Egyptians visualised the plan as a British means of controlling Egypt in the event of Egyptian independence. As the Nile riparians progressively gained independence from their colonial masters, riparian disputes became international and, consequently, more contentious, particularly between Egypt and Sudan.[12] The core issue of historical versus sovereign water rights was further complicated by the technical question of where the river ought best to be controlled – upstream or downstream.[13]

In 1925, a new Water Commission was formed. The commission made recommendations based on the 1920 estimates that would finally lead to the Nile Waters Agreement of 7 May 1929 between Egypt and Great Britain. This agreement was an 'exchange of notes' between Egypt and Britain. It had implications for Sudan, which was restricted in the amount of water it could impound except during the flood period. The treaty not only bound Sudan to Egypt's approval before undertaking any irrigation project, but also gave

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Egypt rights over the use of Lake Victoria and other water bodies around the River Nile.[14]

Egypt, as the downstream state, had its interests guaranteed in three ways:

- It had a claim to the entire timely flow at a total amount of 48 BCM/year.
- It had the right to on-site inspectors at the Sennar Dam, outside Egyptian territory.

It was guaranteed that no works would be developed along the river or on any part of its territory that would threaten Egyptian interests.

In accordance with this Agreement, one dam was built and one reservoir raised, with Egyptian acquiescence.

The Aswan High Dam, with a projected storage capacity of 156 BCM/year was proposed in 1952 by the new Egyptian government, but debate over whether it was to be built as a unilateral Egyptian project or as a cooperative project with Sudan kept Sudan out of the negotiations until 1954 (see also Chapter 3). The negotiations which ensued, and which were carried out against the backdrop of Sudan's struggle for independence, focused not only on what each country's allocation would be, but also on whether the dam was indeed the most efficient method of harnessing the waters of the Nile.[15]

It is instructive to note that the 1929 Egypto-British treaty was last revised in 1959, but it still retained clauses barring the Nile Basin countries from using the waters for large-scale irrigation and other projects without permission from Egypt.[16] It is ironic that the 1959 'treaty' between Sudan and Egypt has been heralded as the most complete and comprehensive agreement on the use of the Nile waters.[17] This agreement was merely bilateral and did not include any of the other riparian countries of the Nile, despite the fact that it established the apportionment of all of the Nile's water. About 80 per cent of the Nile's water comes from Ethiopia. However, that country was not even consulted and no water was even allocated for future usage by any upstream country except Sudan. It is even less comforting for the other riparian countries (other than Sudan) that all of the Nile's average water flow was divided between the two most downstream countries.[18]

Despite its relative 'comprehensiveness', the 1959 Egyptian-Sudanese agreement did not put an end to the long-standing, raging conflict over the rights of ownership and access to the Nile waters. For many decades after independence, and particularly since the 1980s, the riparian countries bordering the Nile have engaged in numerous bilateral and multilateral diplomatic initiatives to resolve the dispute.[19] There is still a high degree of tension among the Nile Basin countries whenever a new Nile development project is proposed. In addition, Egypt, the country most in danger of losing access to the Nile waters through development projects in other riparian countries, remains willing and probably able to intervene militarily in order to preserve the status quo.[20]

Perhaps the single issue that threatens future cooperation on the sharing of the resources of the River Nile, including the recent Nile Basin Initiative (NBI),[21]

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is the lack of a binding agreement between all of the Nile Basin countries[22] on the equitable and just distribution of the Nile waters. The international community has stepped into this lacuna by promulgating the Convention on the Law of the Non-Navigational Uses of International Watercourses of 1997, which took more than 20 years of preparation. However, as of 15 August 2002, none of the Nile Basin countries had ratified the convention.

The 1997 convention provides two important principles. Firstly, it stresses that states should use watercourses in an *equitable* and *responsible* manner, and secondly, it defines a procedure to follow when planned schemes may have an adverse impact on other states.[23] When the convention was presented to the United Nations General Assembly, Sudan was the only Nile Basin country in favour; Burundi opposed; Egypt, Ethiopia, Rwanda and Tanzania abstained; and Eritrea, Uganda and the DRC were absent![24] However, Egypt has insisted that only the two treaties – the 1929 and 1959 agreements – must be respected in any Nile water negotiations with other riparian countries.[25]

1.2.1 Salient features of the 1929 treaty

The salient features of the 1929 treaty are as follows:

- That Egypt and (Anglo-Egyptian) Sudan utilise 48 BCM and 4 BCM of the flow per year, respectively, that is, 92,3 per cent for Egypt and 7,7 per cent for Sudan of the total utilisable flow. Precedence was given to the so-called 'historic or acquired rights'.
- That the flow of the Nile between January 20 and July 15 (the dry season) be reserved for Egypt.
- That Egypt reserves the right to monitor the Nile flow in the upstream countries.
- That Egypt assumes the right to undertake Nile River-related projects without the consent of upper riparian states.
- That Egypt assumes the right to veto any construction projects that would affect its interests adversely. This was captured in Paragraph 27, which stipulates in part that '[s]ave with the previous agreement of the Egyptian Government, no irrigation or power works or measures are to be constructed or taken on the River Nile or its branches on the lakes from which it flows, so far as all these are in the Sudan or in countries under British administration, *which would, in such manner as to entail any prejudice as to the interests of Egypt, either reduce the quantity of water arriving in Egypt or modify the date of its arrival or lower its level.'* (Emphasis supplied.)

1.3 Interpretation of the 1929 Treaty

The interpretation of a treaty, like that of any other legal instrument, depends on its intention.[26] However, there is no unanimity on this issue, hence the existence of three different schools of thought. There is a school which asserts

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that the primary, and indeed the only, aim and goal of treaty interpretation is to ascertain the intention(s) of the parties to the treaty. Another school of thought starts from the premise that there must exist a presumption that the intentions of the parties are reflected in the text of the treaty which they have drawn up and that the primary goal of treaty interpretation is, therefore, to ascertain that intention. Finally, there is the approach which maintains that the decision maker must first ascertain the object and purpose of the treaty and then interpret it in such a way as to give effect to that object and purpose.

Respectively, these three schools of thought reflect:

- the subjective approach (which looks at the intentions of the parties or founding fathers);
- the objective approach (which considers the textual or ordinary meaning of the words); and
- the teleological approach (which looks to the aims and objects of the treaty).

According to Malcolm Shaw, one of the enduring problems facing courts, tribunals and lawyers, both in the municipal and international law spheres, relates to the question of interpretation.[27] In recognition of this problem, various rules and techniques have been put forward to aid practitioners and judicial bodies in resolving such problems. Therefore, in analysing the 1929 treaty, the following questions are germane:

- What are the major defects and effects of the 1929 colonial treaty?
- What would happen if the majority of the riparian nations agreed to abrogate the colonial treaty? Who would benefit from such action?
- What impact does Egypt's independence have on the treaty?[28] Did the newly independent Egypt inherit the rights and obligations under the 1929 treaty?
- What is the case of the upstream riparian states in relation to those downstream?[29]
- Does the treaty bind the riparian countries that are not party to it?
- What is the legal effect of the fact that the rights and interests of non-party (but affected) countries were not taken into consideration?
- Is Egypt's purported monopoly over the Nile waters legally permissible?
- What is the legality and legitimacy of Egypt's threat of war to protect its national interests in terms of the Nile water?[30] With the current political and economic conditions of the Nile Basin states, what is the plausibility of this threat?[31]
- What does the internalisation of the conflict portend for the region's stability?[32]
- Which legal factors may have an influence on attempts to reach a compromise among the Nile River riparian nations?

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- What is the legal effect of other riparian countries' (e.g. Ethiopia's) threats to pursue unilateral development and harvesting of the Nile water resources within their territories?
- Does the 1929 treaty guarantee regional stability?

It is notable that there has been no official judicial pronouncement on the 1929 treaty. In general, the jurisprudence of the International Court of Justice (ICJ) tends to lend support and credence to the textual interpretation approach.[33] This approach places the principal emphasis on the actual words of the treaty. While the subjective approach treats as the first question 'what did the parties really mean?', the textual approach takes as the first question 'what did the parties say?' The textual approach admits the qualification that extrinsic sources may be used if the text is ambiguous or if the meaning of the words leads to a conclusion that is obviously absurd or unreasonable.

Articles 31–33 of the Vienna Convention on the Law of Treaties deal with the interpretation of treaties.[34] Article 31(1) embraces the legal doctrine of *pacta sunt servanda* and provides that a treaty shall be interpreted in good faith and in accordance with the ordinary meaning to be given to the terms of the treaty and in the light of its objects and purposes. The provision thus embodies both the textual and teleological approaches to treaty interpretation, and, by failing to separate these two, would appear to conclude that whenever a problem of interpretation arises, the objects of the treaty must be taken into account. Paragraph 2 of the article further provides that the context for the purposes of interpretation of a treaty shall comprise, in addition to the text, the preamble and annexes:

1. Any agreement relating to the treaty, which was made between all the parties in connection with the conclusion of the treaty.
2. Any instrument which was made by one or more parties in connection with the treaty.

Paragraph 3 states that in the interpretation of a treaty, there shall be taken into account together with the context:

1. Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provision.
2. Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.
3. Any relevant rules of international law applicable in the relations between the parties.

Paragraph 4 concludes that a special meaning shall be given to a term used in the treaty if it is established that the parties intended so. Where the interpretation of a treaty, as per Article 31, leaves the meaning ambiguous or obscure, or leads to a result which is manifestly absurd or unreasonable, Article 32 of the Vienna Convention allows recourse to supplementary

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means, including the *travaux preparatoires* of the treaty, and its circumstances. Although Great Britain must have been happy with the substance and spirit of the 1929 agreement, it reveals a skewed contract, leaning heavily in favour of Egypt[35] because, as was characteristic of most, if not all, colonial and imperial powers then, the British colonialists wanted to maintain and strengthen their colonial grip and hegemony on their 'main and strategic' colonial servant in the region, Egypt.[36] At the time, Britain had a great influence on, and was preoccupied with, the economy of Egypt, and used its considerable power to ensure that there was no diminution of water flow to Egypt as the result of the development of works in the upper riparian colonies in the Lakes Basins of East Africa – Uganda, Kenya and Tanganyika (now Tanzania).[37] This was because Egypt showed more economic potential than other countries in the region. Egypt was especially subject to the European colonial engineering influence in the latter years of the nineteenth century and the first half of the twentieth, a period when the 'hydraulic mission' was commonplace among the colonising powers.[38]

To a very large extent, the 1929 treaty embraced the Harmon Doctrine, or the theory of absolute territorial sovereignty. According to this theory, a state as the 'master of its own territory' may, with regard to watercourses within its territory, adopt all measures deemed suitable to its national interest, irrespective of their effects beyond its borders.[39] An international watercourse situated on the territory of a state constitutes part of the public domain of that state and since a state has dominion over its territory, another state acquires rights thereon only with the agreement of the first state. This theory was authoritatively formulated for the first time by Judson Harmon, the then Attorney General of the United States, in a declaration made in 1895.[40] Defending the US position, Harmon stated that:

> A careful examination of the law of nations on the subject has failed to disclose any settled and recognized right created by the law of nations by which it could be held that the diversion of the waters of an international boundary stream for the purpose of irrigating lands on one side of the boundary and which would have effect to deprive lands on the other side of the boundary of water for irrigation purposes would be a violation of any established principle of international law. [41]

Thus, the theory holds that the independence of a state particularly manifests itself in the free and exclusive use of all successive waterways occurring on its territory. Those portions of international watercourses that are within national territory are subject to the exclusive control of the territorial sovereign and no general principle of law prevents the state from diverting or polluting its own waters. Consequently, a state may not only possess and use such territory, but may also increase it by accession, notably by changing the course of waterways, even though this may have prejudicial effects on other states.[42]

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This theory has been criticised as intolerable and radically unsound. It introduces a strong uncertainty tantamount to anarchy as regards the utilisation of international waters.[43] It ignores the generally accepted principle of *sic utero tuo ut alienum non laedas* (i.e. one may not injure his/her neighbour unreasonably). International law imposes limitations upon the sovereignty of a state over a watercourse partially situated in its territory in the interests of co-riparians. The rejection of the Harmon Doctrine by state practice has been even more overwhelming. Downstream states have pressed arguments requiring their consent to actions performed by upstream states that may produce adverse downstream effects. Consequently, co-riparians have sought to share the benefits of international watercourses.

The inadmissibility of the Harmon Doctrine in contemporary international law is also reflected in arbitral jurisprudence. In the *Lake Lanoux* case between France and Spain, the arbitral tribunal rejected the doctrine in its award of 16 November 1957, declaring that:

> … the upstream state has, according to rules of good faith, the obligation to take into account the different interests at stake, to strive to give them all satisfactions compatible with the pursuit of its own interests, and to demonstrate that on this subject it has real solicitude to reconcile the interests of the other riparians with its own.[44]

The theory of absolute territorial sovereignty is almost universally abandoned today, since it is anachronistic and ignores modern exigencies, notably those of interdependence and cooperation between states. A treaty should not take into account only the territorial sovereignty of one state and ignore entirely the equal territorial sovereignty of a neighbouring or riparian state. The 1929 treaty did exactly this, in favour of Egypt.

Another vitiating factor that invalidates the 1929 agreement is the fact that not all the relevant stakeholders (i.e. riparian countries) were consulted during its negotiation and ultimate conclusion. The Vienna Convention on the Law of Treaties enacts a cardinal rule of treaty law to the effect that treaties must be concluded in good faith.[45] The fact of non-consultation with riparian countries that were directly and substantially affected by the treaty is an instance of bad faith (or *mala fides*).

The treaty must be interpreted in order to further stability in the region. A case must, therefore, be made for more effective riparian cohesion. The Nile's hydropolitics have to be affirmatively interpreted in favour of increased regional stability. Viewed against this background, to the keen observer and analyst of the interface between national interest and regional stability on access to and 'ownership' of the waters of the Nile River, it must be stated that Egypt and its colonial power (Britain) relegated riparian interests to the back seat in clear contravention of the tenets and spirit of both classical and emergent treaty law.

Malcolm Shaw advocates for a more dynamic approach to treaty interpretation, which entails a more flexible and programmatic or purpose-

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oriented mode of interpretation with substantial emphasis on construing treaties as living instruments that have to be interpreted in the light of present-day conditions.[46] Taking this approach, it is arguable that the 1929 treaty is a living instrument which has to be construed and interpreted in light of the prevailing Nilo-political and diplomatic conditions. Following this line of reasoning to its conclusion logically leads to advocating for a renegotiation and conclusion of a more embracing and comprehensive treaty regime essentially acceptable to all the riparian states.

Therefore, owing to its history, the 1929 Egypto-British Treaty rests on a very shaky juridical foundation bereft of the cardinal tenets of treaty law, Nile Basin hydropolitics and the demands of the global political order. From whatever angle it is viewed, the agreement cannot stand. Furthermore, contemporary discourse on the international law applicable to succession of states[47] tends to assume the 'clean slate' (*tabula rasa*) approach to the succession of treaties.[48] According to this principle, the new state (Egypt) inherited a 'clean slate' from its colonial master, Britain.

The United Nations Convention on the Law of Non-Navigational Uses of International Watercourses of 1997 favours the just and equitable distribution of the Nile waters. The convention further stresses that states should use watercourses in an equitable and responsible manner, and defines a procedure to be followed when planned schemes may have adverse impacts on other states.[49] In addition to the riparian countries ratifying and domesticating the convention, there is an urgent, absolute need for a progressive, all-inclusive and comprehensive treaty regime on the River Nile that takes into account the rights, interests and obligations of all the riparian countries with their express consent.[50]

1.3.1 The 1929 treaty and third parties

It is important to pose some further questions. First, does the 1929 treaty bind non-parties to it? And can these countries derive rights and incur obligations under the treaty? In other words, what are the practical implications of the treaty for non-party states? Articles 34–38 of the Vienna Convention on the Law of Treaties of 1969 deal with the relationship between treaties and third parties. Essentially, these provisions encapsulate the maxim '*pacta tertiis nec nocent nec prosunt*', a doctrine supported by both general legal principle and common sense. The convention states that in so far as a treaty may bear the attributes of a contract, third-party states are clearly strangers to that contract and can neither be beneficiaries of any rights conferred by it nor 'carriers' of any obligations imposed thereby.

Article 34 of the convention lays down the accepted statement of principle that a treaty does not create either rights or obligations for a third state without its consent. As a matter of treaty law, this principle admits no exceptions in the case of obligations, although this is without prejudice to the principle that certain obligations stipulated in a treaty may bind third states independently as rules of customary international law.[51]

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Article 35 allows a third state to bind itself to a treaty through a collateral agreement whereby it accepts an obligation or obligations under the treaty. Article 36, on the other hand, deals with the converse case of rights arising for a third state under the treaty, in which case two conditions must be satisfied prima facie:

1. The parties to the treaty must have intended the provision to accord or confer that right upon the third state or to a group of states to which it belongs or to all states; and
2. The third state must have assented thereto, assent being presumed so long as the contrary is not indicated unless the treaty has provided otherwise.

Article 38 preserves the principle that rules contained in a treaty may become binding upon third states as rules of customary international law recognised as such.

The 1929 treaty was concluded between Egypt and its colonial master, Great Britain, to the total exclusion of the other riparian states. Therefore, applying the principle of *pacta tertiis nec nocent nec prosunt* (discussed above), these non-party riparian states are total strangers to that contract and can neither be beneficiaries of any rights conferred under the treaty nor bearers of any obligations imposed by it. The treaty does not create either rights or obligations for Ethiopia, Uganda, the DRC, Tanzania, Sudan or Kenya without their consent.

There is no empirical evidence that any of these riparian countries have formally assented to the treaty in order to entitle themselves to any rights thereby. Neither is there any evidence that Egypt and Britain intended the treaty to confer a right or rights upon third states. However, an attempt was made in the 1959 Egypto-Sudanese Nile Waters Treaty to recognise the interests of riparian countries.[52] Egypt and Sudan agreed that the combined needs of other riparians would not exceed a paltry 1–2 BCM/year and that any claims would be met with a joint and unified Egypto-Sudanese position. It was further agreed that a Permanent Joint Technical Committee to resolve disputes and jointly review claims by any other riparian countries would be established. Did the riparian countries accept this provision? Ethiopia, for instance, which had all along not been a major player in the Nile's hydropolitics, served notice in 1957 that it would pursue unilateral development of the Nile water resources within its territory, estimated at 75–85 per cent of the annual flow. This was a clear demonstration of non-recognition.

1.3.2 The implications of the treaty for regional stability: Making a case for more effective riparian dialogue

By its very nature, water tends to induce even hostile co-riparians to cooperate, even as disputes rage over other issues.[53] The weight of historic evidence tends to favour water as a catalyst for cooperation. However, former UN Secretary General Boutros Boutros-Ghali, an Egyptian, whose country sits at the mouth

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of the Nile, predicted 16 years ago that the next regional war would be over the Nile.[54] And in pessimistic support of this notion is Professor Allan, who avers that in the field of international water relations, the position is one of anarchy. There are no institutions in place to uphold widely recognised and formally agreed codes of practice.[55]

A number of questions regarding Nile hydropolitics have vexed the minds of many a scholar. How can a strong case be made for more effective riparian dialogue? Does the 1929 treaty (as amended in 1959) further or hinder the stability of the Nile region? How can the 1929 treaty be interpreted in order to further stability in the region? What are the implications of the treaty for Egypt's foreign relations with other riparian states? What is the interface between national interest and regional stability with regard to access to and 'ownership' of the waters of the Nile?

Historically, after World War II, the control of the Nile waters became a central issue in regional politics as self-determination and national liberation movements grew in strength. Since then, there has been substantial pressure on the Nile resources attributable to, *inter alia*, high population growth rates in all the riparian states and the ever-increasing development needs of the riparian countries.[56] Currently, tension is fuelled by a number of factors, including Egypt's political and military dominance, the civil war in Sudan and negligible use of water by upstream countries. Although each of these factors holds the potential to increase tension and cause conflict in the basin, they also present potential areas of cooperation.

The 1929 treaty and its historic 1959 amendment have sent many ripples across the Nile Basin and beyond. The agreements have added renewed impetus to the turbulent waters of the Nile River and its hydropolitics. For instance, in February 2004, Tanzania launched a $27,6 million project to draw water from Lake Victoria to supply the Kahama area in the Shinyanga region, in contravention of the two treaties, which substantially control the use of water from the lake. The two treaties restrict riparian countries from initiating projects on the lake that would affect the volume of Nile waters without the permission of Egypt. Despite engaging in lengthy negotiations over the use of the waters of Lake Victoria, Tanzania has maintained that the two agreements were/are illegal.[57]

In his discussion of the factors affecting river basin hydropolitics, Professor Allan notes that the only agreements reached to date in the long history of the Nile were signed when one entity was very keen to address some imperative.[58] These were 'expediency agreements'. The 1929 Egypt-Sudan Nile Waters Agreement scarcely counts, as it was arranged under particular and unrepeatable circumstances. The 1959 'amendment' was put in place by the Egyptian government in a very great hurry to achieve a major and unique prize – the total control of the Nile, with huge its economic benefits, and the bonus of hydropower. The international relations regime of the time was unusual, in that it was both different to that of the preceding century and very different from the present.[59]

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In a nutshell, the 1929 treaty constitutes an obsolete colonial relic. It is patently out of touch with the present circumstances and the prevailing econo-political conditions of the countries of the Nile Basin region, including their inhabitants.

1.4 Latter-day Efforts: Agreement on the Nile River Basin Cooperative Framework, 2010

For many decades after independence, the African countries bordering the Nile River engaged in numerous bilateral and multilateral diplomatic initiatives to resolve the long-standing dispute over the Nile. The discourse on the management of the Nile and the disputes surrounding its non-navigational uses prompt a study on the legal regime of the Nile and its impact on peace, stability and development in the region.

The most recent milestone is the Cooperative Framework Agreement on the River Nile Basin (CFA), signed on 14 May 2010 by Ethiopia, Rwanda, Tanzania and Uganda. Kenya signed the agreement on 19 May 2010. while the DRC and Burundi are expected to sign the agreement in due course.[60]According to Article 3.5, the framework shall be open for signature by all the states in whose territory part of the Nile River Basin is situated from 1 August 2010 to 1 August 2011 in Entebbe, Uganda. Pursuant to Article 37, the framework shall enter into force after the deposit of the sixth instrument of ratification or accession with the African Union.

Egypt and Sudan still oppose the CFA. The position of these two countries is greatly dependent on Article 14(b), which calls for the states not to 'significantly affect the water security of any other Nile Basin States'. No consensus was reached, as Egypt proposed that Article 14(b) should instead call upon the states not to 'adversely affect water security and the current use and rights of any other Nile Basin States'.[61] The dispute arises because, according to the CFA, each basin state is entitled to an equitable and reasonable share in the beneficial uses of the water resources of the River Nile system, whereas Egypt and Sudan would like to maintain the status quo.[62]

Although Egypt and Sudan opine that the use of the waters by the upstream riparian countries may jeopardise their rights to the use of the waters, Article 14 ensures that all riparian states must respect the water security requirements of all the other riparian states in all planned projects surrounding the use of the waters of the River Nile. To ensure the 'equitable and reasonable' apportionment of the Nile Basin resources, the CFA established the Nile Basin Commission (NBC).[63] The NBC will operate as an intergovernmental legal entity and will succeed the NBI, which, until May 2010, worked to balance the interests of the states in matters concerning equitable distribution of the common Nile Basin water resources.[64] The NBI is a transitional mechanism until the CFA is signed by all riparian states, which will lead to the formation of the permanent NBC by 2012, when the NBI will cease to exist.[65]

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Egypt and the Sudan must wake up to the reality. As stated by Sebhat Nega of the Ethiopian International Institute for Peace and Development (EIIPD), the 1929 and 1959 agreements are 'not historical rights but historical wrongs' and they should be rewritten as 'historical right' by signing the CFA.[66] Under the old agreement, everyone lost except Egypt, whereas the 14 May 2010 agreement makes everyone a winner.

1.5 Conclusion and Policy Recommendations

International river basin and transboundary water-management initiatives are increasing in importance and scope as the availability of water per capita is dropping significantly. Transboundary watercourse states now face more challenges in managing their national waters than ever before as a result of increased activities involving the use of shared waters. There are emerging conflicts over water in most parts of the world and the dispute relating to the use of the Nile Basin provides a good example. At the risk of oversimplification, the crisis is not about having too little water to satisfy needs. It is a crisis in the management of these water resources and the legal regulation of the interests and sovereignties of transboundary watercourse states.

Prompted by the lack of coordination over shared water supplies and interstate conflicts, the international community has recently stepped up its efforts in promoting greater co-riparian cooperation. A number of declarations, as well as organisational and legal developments, have been realised to further this objective. The current debate on the review of the Nile treaties must be located within this context. There is an urgent and absolute need for a legal and institutional cooperation framework that will be the basis for sharing the Nile River and its resources among the 10 countries that make up the Nile River Basin. Central to this framework should be a more comprehensive and all-inclusive treaty regime governing *equitable* access to and use of the river's resources.[67]

Notes and References

1 The most general categories of non-navigational uses include agricultural, commercial, industrial, social and domestic. See International Law Commission, 26th Session, 6 May–26 July 1974, *Report of the Sub-Committee on non-navigational uses of international water courses*, p.4, UN Doc. A/CN. 4/283, 16 July 1974.

2 See World Bank, *The Nile Basin*. Available at http://www.worldbank.org/afr/nilebasin/overview.htm [Accessed 11 March 2011].

3 The full title of the Agreement is the "1959 Agreement between Sudan and United Arab Republic for the Full Utilisation of the Nile Waters".

4 Indeed, it has been averred that whereas many wars in the 20th century were over oil, wars in this century will be over water. As Meredith A. Giordano ('International river basin management: Global principles and basin practice', Unpublished PhD dissertation, Oregon State University, 2002, p. 2) writes: 'As we move into the twenty-first century, water and

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water-supply systems are increasingly likely to be both instruments of political conflict and the objectives of military action as human populations grow, standards of living improve, and global climatic changes make water supply and demands more problematic and uncertain.'

5 The 1982 United Nations Convention on the Law of the Sea recognises this principle by declaring the deep seabed and ocean floor as part of the common heritage of humankind to be administered by the International Sea Bed Authority on behalf of the international community.

6 At one point in history, it was thought that Lake Victoria was the main source of the River Nile.

7 Refer to Table 1.1, which summarises the historical agreements relating to the Nile.

8 The creation of a condominium is by agreement between two states, under which they exercise joint sovereignty over a certain territory and its people. The existence of a condominium rests upon a title in international law pursuant to which more than one state is vested with sovereignty. The legal title to the condominium binds the relevant states in such a way that their sovereignty over the territory appears as joint territory. The basis for the Sudanese arrangement was the agreement of 19 January 1899. By the treaty of 12 February 1953 between Great Britain and Egypt, the condominium was listed to the extent that it was left to Sudan to choose between full independence or further association with Egypt.

9 Case Summary on the Nile Waters Agreement. Available at http://www.transboundarywaters.orst.edu/projects/casestudies/nile_agreement.html, [accessed 11 April 2005].

10 The keen observer is left to wonder what the Indian and American interests were in the project. What immediately comes to mind is the fact that these two countries could have been the closest and most convenient allies to the British at the time in relation to the project.

11 Case summary on the Nile Waters Agreement.

12 As far as riparian rights are concerned, the landowner who is the upper riparian must allow the water to flow down in its natural channel, undiminished in quantity and unimpaired in quality, to the lower riparian. The landowner may, however, make reasonable use of the water while it traverses his land. The 'Lectric Law Library's lexicon defines riparian rights as the legal rights of owners of land bordering on a river or other body of water. It further defines riparian proprietors as those who own the land bounding upon a watercourse. Such a riparian proprietor owns that portion of the bed of the river (not navigable), which is actually his land, to the thread or central line of the stream.

13 Case Summary on the Nile Waters Agreement.

14 Ibid.

15 Ibid.

16 Ibid.

17 Ibid.

18 Egypt and Sudan.

19 Case summary on the Nile Waters Agreement.

20 Ibid.

21 This is a process that started in 1992, when the Council of Ministers (Nile-COM), the highest authority in the Nile Basin, formed the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin (TECCONILE). Within this framework, the Nile River Basin Action Plan (NRBAP) was prepared with support from the Canadian International Development Agency (CIDA).

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22 El-Khodari, N. The Nile Basin Initiative (NBI): Business as usual? Available at http://nilebasin.com/documents/madrid.html. The paper was scheduled for presentation at the International Conference of Basin Organizations, in Madrid, Spain 4–6 November 2002 but was not presented. [Accessed 11 March 2006].

23 Dr Patricia Wouters, Director of the International Water Law Research Institute at the University of Dundee, Scotland, quoted in Hayward, K. 2002. Catchment convention. *Water*, 21, the magazine of the International Water Association (IWA), June.

24 United Nations General Assembly, press release GA/9248, 1997.

25 Case Summary on the Nile Waters Agreement.

26 For treaty interpretation generally, see, for instance, Lord McNair, 1961. *The law of treaties*, Oxford: Oxford University Press; Aust, A. 2000. *Modern treaty law and practice*, Cambridge: Cambridge University Press; Fawcett, J. 1953. The legal character of international agreements, *BYIL*, 381, p.30; McDougal, M.S. et al. *The Interpretation of Agreements and World Public Order*; (1967) M.S. McDoughal & H. Lasswell, Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties. *BYIL*, 26, p.48.

27 Shaw, M.N., 1997. *International law*. Cambridge: Cambridge University Press, p.655.

28 For the international law applicable to succession of states and the impact of colonialism, see, generally, the work of the International Law Commission, for instance, in the *Yearbook of the international law commission*, vol. II, part I, 1974, p.157 *et seq.* and the International Law Association, 1965. *The effect of independence on treaties*. London: International Law Association.

29 It is notable that relative riparian positions result in comparable power relationships, with upper riparian states having greater hydro-political manoeuvrability. This has not been the case in the Nile region. Although it is the most downstream country, Egypt, owing to its geopolitical strength, has been able to forestall upstream attempts to sway its position. One may question, for instance, why Ethiopia, which is the main source of the Nile's waters (at 84 per cent), has been unable to be the main user of these waters. The answer lies in the degree of Ethiopia's geo- and hydro-political strength. Professor A. Allan (1999. The Nile Basin: Evolving approaches to the Nile waters management. Occasional Paper 20 SOAS Water Issues Group, June) puts this point succinctly thus: 'The Nile riparians are not equal with respect to their economic and political competence. This lack of a symmetry has always caused awkwardness in inter-state relations and there has been much evidence that downstream states have enjoyed decades of water security brought about by the incapacity of the upstream states to control and dam their tributaries.'

30 For instance, after signing the historic Camp David Peace Accords with Israel in 1979, the late President Anwar Sadat is reported to have said that the only reason his country might go to war against any of its neighbours would be a dispute over water. President Sadat is quoted thus: 'We depend upon the Nile 100 per cent in our life, so if anyone, at any moment, thinks of depriving us of our life, we shall not hesitate to go to war.' And speaking in 1978, Sadat said Egypt, a desert country, relied on the Nile for its agricultural economy besides producing cheap electricity that drives Egyptian industries.

31 *Hydropolitics in the Third World: Conflict and Cooperation in International River Basins,* Elhance, Arun, P. 1999, United States Institute of Peace. See also Kathuri, B. 2005. Study declares Nile treaty obsolete. *East African Standard*, 22 February 2005. Available at http://www.afrika.no./Detailed/8484.html [Accessed 11 March, 2011].

32 For instance, given the fact that Egypt is the second financial-aid recipient (after Israel) from the US, does this create a power imbalance in the region? The globalisation or regionalisation of any conflict exacerbates existing tensions over the contentious issues rendering settlement even more difficult and illusory.

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33 See, for instance, the *UN Admissions Case* (1947), in which the ICJ held that the provisions of Article 4(1) of the UN Charter were exhaustive and that no member of the Security Council or the General Assembly could attach conditions to the admission of a new member beyond those contained in Article 4(1). See also *The Expenses Case* (1962), ICJ Reports 151.

34 The Treaty was signed in Vienna, on 23 May 1969, and has been in force since 27 January 1980.

35 See Section 1.3, above.

36 As Godana aptly puts it, 'Egypt, on account of its position astride the Suez Canal and hence, of its function as guardian of the passage to India, was a much-coveted prize of British imperialism …' (Godana, B.A. 1985. *Africa's shared water resources: Legal and institutional aspects*. Boulder: Lynne Rienner, pp.103–104.)

37 Allan, 1999. After World War II, the British government commissioned a complete hydrological study of the entire Nile Basin, which culminated in the 1958 Report on the Nile Valley Plan. The report suggested ways to increase the amount of water that reached Egypt. The most significant of these suggestions was the construction of the Jonglei Canal, which would divert the Nile flow in southern Sudan (in the Sudd) to avoid the enormous evaporation losses which occurred there. For a more elaborate discussion on this issue, See ICE Case Studies, Case NBO 1. Available at http:/www.american.edu/projects/mandala/TED/ice/NILE.HTM See also Collins, R.O. 1990. *The waters of the Nile: Hydropolitics and the Jonglei Canal 1898–1988*. Oxford: Clarendon Press. Accessed on 9 March 2011.

38 Ibid.

39 Godana, 1985, p.32.

40 The declaration concerned the waters of the Rio Grande, which forms the boundary between the US and Mexico.

41 Collins, 1990, p.33.

42 Ibid., p.34.

43 Ibid., p.36.

44 *'Sentence du Tribunal Franco-Espagnol en date du 16 Novembre 1957 dans l'affaire de l'utilisation des eaux de Lac Lanoux.'* Large extracts of the award are found in 53 *American Journal Of International Law*, 1959, p 159. Two other decisions of international tribunals, though not related to interstate water disputes, have some bearing on the matter. They hold states responsible for acts committed on their territory and causing damage to the territories of other states. In the *Corfu Channel* case (ICJ Report p. 3, at p 22), the International Court of Justice referred to 'every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states'. Similarly, in the *Trail Smelter* case (United Nations, Reports of International Arbitral Awards, vol III, p. 1938 at p. 1965) between the United States and Canada, the arbitral tribunal concluded that 'under principles of international law … no state has the right to use or permit the use of its territory in such a manner as to cause injury … in or to the territory of another …'.

45 The principle of *pacta sunt servanda* is enacted at Article 31(1) of the Vienna Convention.

46 Allan, 1999.

47 In this context, succession refers to the replacement, through the process of independence, of the sovereignty of a colonial power by the sovereignty of the newly independent state in terms of whether and to what extent the rights and obligations of the old sovereign are inherited by the new sovereign.

48 There is no general rule of law which obliges the new state to take upon itself the juridical consequences of the acts of its predecessor state.

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49 Allan (1999) posits that the International Law Commission (ILC) Convention has attempted to de-emphasise the two contentious principles of 'sovereignty' over water within the boundaries of a state and that of 'no harm', which is closely related to that of 'prior use'. Upstream states tend to assert sovereignty; downstream states tend to assert that they should suffer no harm as a result of upstream developments put in place after the downstream has asserted prior use. Therefore, the 1997 convention reflects the monumental struggle which the participants in the three decades of ILC meetings had to endure in order to bring forward the concept of equitable utilisation. This concept embraces a wide range of other contexts which should be taken into account when attempting to derive interstate water entitlements. For a more in-depth analysis of the convention, see McCaffrey, S. 1997. World Bank Seminar on International Watercourses, *Legal issues in the United Nations Convention on International Watercourses: Prospects and pitfalls*. Washington. November; McCaffrey, S. & Sinjela, M. The United Nations Convention on International Watercourses, *American Journal of International Law*, 92, pp.97 ff.

50 This recommendation is further supported by the fact that the other riparian countries are not party to the 1929 treaty.

51 See, for instance, ICJ Reports, 1969. *The North Sea Continental Shelf Cases*, p.3.

52 Allan (1999) notes that the other riparians were invited to participate in the discussions. None did; neither did they agree to recognise the terms of the ensuing agreement at any time since. However, Kenya and Ethiopia have been consistently and trenchantly critical of the 1959 agreement. In fact, the then Kenyan Energy Minister, Hon. Raila Odinga, termed the 1929 treaty outdated and in need of review and renegotiation since it was signed on behalf of governments which were not in existence at that time. He went ahead to request Egypt and the Sudan to offer capital and compensation to Kenya, as an upstream country, to enable it to invest in projects that would preserve the river system, including its headwaters. See Kenya minister urges review of the Nile water treaty. *Planet Ark*, 20 February 2002. Available at http://www.planetark.org/dailynewsstorycfm/newsid/14624/story.htm [Accessed 14 March 2005].

53 Hamner, J.H. & Wolf, A.T., 1998. Patterns in international water resource treaties: The transboundary freshwater dispute database. Available at http://www.transboundarywaters.orst.edu/publications/patterns and published in the *Colorado Journal of International Environmental Law and Policy 1997 Yearbook*. See also Okidi, C.O. The states and the management of international drainage basins in Africa. *Natural Resources Journal*, 28, pp.645–669 (Fall)(1988). [Accessed on 11 March 2011].

54 Quoted in Reagan, D.O., 2004. The Nile River: Building or stumbling block? Allafrica.com, 30 April.

55 Allan, 1999.

56 ICE Case Studies, p.2.

57 Rwambali, F. 2004. Tanzania ignores Nile treaty, starts Victoria Water Project. *East African Standard*, 9 February, p.1.

58 Allan, 1999.

59 Ibid.

60 Also referred to as the Cooperative Framework Agreement (CFA).

61 The clause was unresolved by the time of signing the agreement, but was 'annexed to be resolved by the River Nile Basin Commission within six months of its establishment'.

62 Article 4.

63 Article 30.

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64 Nile Basin Initiative website, 2010 http://www.nilebasin.org [Accessed 9 November 2010].

65 Institute for Security Studies and The Ethiopian International Institute for Peace and Development, 2010. The historical dispute over the sharing of the Nile: Breaking the deadlock and charting a way forward, June, p.4. Available at http://www.iss.co.za/uploads/3JuneReportNile.pdf [Accessed 10 November 2010]

66 Ibid., p.3.

67 The 1929 treaty need not be the basis for these negotiations. The efforts of the NBI are laudable in this regard. This initiative has been cherished as the greatest plan for a better future of the Nile Basin, but it still lacks a formal legal framework.

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CHAPTER 2
The Democratic Republic of Congo and the Nile Cooperative Framework Agreement

André Mbata B. Mangu

2.1 Introduction

With a total area of 2 344 885 km^2 and a population of around 65 million, the Democratic Republic of Congo (DRC) is Africa's third-largest country and one of its most densely populated nations. It gained its independence from Belgium on 30 June 1960. The DRC is bordered by nine other African countries: the Central African Republic and Sudan to the north and north-east; Uganda, Burundi, Rwanda, and Tanzania to the East; Zambia to the South; Angola to the south-west; and the Republic of Congo to the north-west.

The DRC is blessed with two main rivers. The first is the Congo, which is the world's second largest river in terms of discharge, coming after the Amazon. It is 4 700 kilometres long, making it the 10th longest river in the world and the second in Africa after the Nile. The Congo River has many tributaries and runs from the Katanga Province (south-east) to the Atlantic Ocean in the Bas-Congo Province (south-west) via the Province of Maniema (east), the Province Orientale (north-east), the Equateur Province (north-west), and to the west, the Bandundu Province and Kinshasa, the capital. Of the DRC's 10 provinces, the Congo flows through all except for Kasai-Occidental and Kasai-Oriental (centre).

The second main river in the DRC is the Nile, which has one of its sources in the eastern DRC at the borders with Burundi, Rwanda and Uganda. The DRC lies on the south-western fringes of the Nile River Basin. This qualifies the DRC as a riparian state member of the Nile River Basin (NRB), together with nine other African states, namely Burundi, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. Once independent, Southern Sudan is expected to become the tenth member state of the NRB. However, the Nile portion constitutes less than two per cent of the DRC's land era and the Nile water is only a small part of its total water resources.[1] Accordingly, unlike countries such as Burundi, Rwanda, Uganda, Sudan and Egypt, which completely depend on the Nile River for their water resources, the DRC has abundant water resources and mainly depends on the Congo.

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As stressed in the Nile Cooperative Framework Agreement (CFA), the Nile River is important to the economic and social well being of the people of the states of the NRB. Its natural resources and environment are assets of immense value to all the riparian countries. During colonisation, the Belgian colonial masters of the DRC saw little interest in the Nile. They left it to the British, who colonised Egypt, Sudan and much of East Africa, including Uganda, Kenya and Tanzania. Two major treaties were concluded on the Nile during the colonial era. The first was the 1929 treaty between Egypt and Britain in the name of the latter's Nile upstream colony. This treaty reserved most of the Nile River for Egypt. It was replaced with the 1959 Egypt-Sudan treaty, which increased the share of the Nile waters of Sudan, but did not consider the interests of other Nile upstream riparian states. Belgium as the colonial power was not a party to any of these treaties.

During the first three decades of its independence, the DRC showed little interest in the NRB. The interest in the NRB only started growing in the 1990s. In 1992, the Council of Ministers (COM) of Water Affairs of the Nile River Basin states launched an initiative to promote cooperation and development in the NRB. In 1993, the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile River Basin (TECCONILE) was formed. The DRC was one of the six riparian states that joined as members (the others being Egypt, Rwanda, Sudan, Tanzania and Uganda); the other four riparian states (Burundi, Ethiopia, Kenya and Eritrea) participated as observers. The DRC participated actively in the Nile River Basin Initiative (NBI) when it was launched in May 1999.[2]

The NBI is a partnership initiated and led by the Nile River riparian states through Nile-COM. It seeks to develop the river in a cooperative manner, share substantial socio-economic benefits and promote regional peace and security.[3] Nile-TAC is its advisory and technical arm; Nile-SEC is the administrative arm, tasked with supporting the activities of Nile-COM and Nile-TAC. One of the primary goals of the NRB states within the NBI was to sign a treaty by 2009 that would create a permanent Nile River Commission, an international organisation with legal authority to control the development and allocation of the river and enforce the NBI's decisions.

Against this background, this chapter reflects on the DRC's position on the CFA and the 1929 Egypt-Britain and 1959 Egypt-Sudan agreements that preceded it. However, to better understand this position, one needs to examine the place of international conventions under domestic Congolese law and the law of succession to treaties concluded by the DRC's former colonial power, Belgium.

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2.2 International Conventions under the DRC's Constitutional Law and Succession of Independent DRC to Treaties Entered into by Belgium, the Former Colonial Power

Treaties, or international conventions, are the primary sources of international law. According to Article 38(1) of the Statute of the International Court of Justice (ICJ),[4] the sources of international law include international conventions; international custom; the general principles of law recognised by civilised nations; and judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law.

States and international organisations are subjects of (public) international law. As such, only states and international organisations are entitled to conclude treaties. Treaties between states on the one hand and those between states and international organisations and between international organisations among themselves on the other are governed by different instruments, which were adopted in Vienna. The first and second categories of treaties are governed by the 1969 Vienna Convention[5] and the 1986 Vienna Convention[6] respectively. Although they were concluded before the 1969 Vienna Convention, the 1929 Egypt-Britain and the 1959 Egypt-Sudan agreements on the Nile River feature in the first category of treaties, since they were conventions among states. However, a reading of Article 38(1) (a) of the ICJ makes it clear that only independent states may conclude treaties or international conventions. Accordingly, colonised states did not possess the capacity to enter treaties. Treaties were concluded on their behalf by the colonial states and they were free to recognise or denounce them on independence.

The 1969 Vienna Convention established two rules or principles regarding the effects of treaties. The first principle relates to the effects of treaties vis-à-vis state parties. This principle is known as *pacta sunt servanda*, implying that treaties are binding upon state parties and must be performed by them in good faith.[7]

With regard to non-state parties, or third states, the principle is *pacta tertiis nec nocent nec prosunt*, meaning that as a matter of principle, states cannot benefit or be bound by treaties to which they are not parties, or that a treaty does not create either obligations or rights for a third state (Article 34). In some cases, however, treaties may provide obligations (Article 35) or rights (Article 36) for third states.

Under the current constitution of the DRC, which was approved by popular referendum on 18 and 19 December 2005 and promulgated on 18 February 2006, the president has the authority to negotiate and ratify treaties or international conventions (Article 213). Peace treaties, commercial treaties, treaties or international agreements related to international organisations and conflict settlements, those that involve public funding, modify legal provisions and relate to the status of persons or exchange of territories, may only be ratified or approved in terms of the law enacted by parliament (Article 214).

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As far as the relationship between international law and domestic law is concerned, unlike common-law countries, the DRC is a monist state in the sense that treaties and international agreements that have been regularly concluded and ratified are automatically incorporated in the domestic law. Such treaties and international agreements prevail over ordinary legislation enacted by parliament despite the fact that they are subject to the constitution, which is the supreme law of the land (Article 215).

Regarding the Congolese law of succession to treaties, the DRC adopted the position that treaties or international conventions entered into on its behalf by Belgium as its colonial power could not be considered automatically binding on the country when it became independent. These international instruments had no effect or force until they were expressly endorsed by the competent and legitimate authorities of the newly independent state. Besides, this is consistent with the 1978 Vienna Convention on Succession of States in respect of Treaties.[8] Article 16 of this convention provides that newly independent states are subject to the 'clean slate' rule, according to which they do not inherit the treaty obligations of the colonial power. Accordingly, the independent DRC succeeded to some treaties concluded by Belgium during colonisation and which became binding on the republic, whereas others were terminated and could not have any effect.

2.3 The DRC's Position on the 1929 Egypt-Britain and the 1959 Egypt-Sudan Agreements on the Nile River

The 1929 Egypt-Britain agreement was concluded during the colonial era between Egypt and Britain on behalf of its African colonies along the Nile River. These included other British colonies such as Kenya, Sudan, Uganda and Tanzania. This agreement gave Egypt the monopoly of the use of the Nile waters and the right to veto any work done by any upstream state that could have a negative impact on its rights over the Nile.

Of the 84 billion cubic metres of water reaching Aswan every year, the 1929 agreement reserved around 48 billion for Egypt and only 4 billion for Sudan. The remaining 32 billion were expected to flow into the Mediterranean Sea. A portion of these 32 billion cubic metres could either be used by other riparian states or evaporate. Under the 1929 Egypt-Britain agreement, upstream countries had to get permission from Egypt before using Nile River water for any development project, such as irrigation. Sudan, as one of the Nile upstream countries and the first to achieve independence, contested the 1929 Egypt-Britain agreement. Following lengthy negotiations between Egypt and Sudan after the construction of the Aswan Dam, which helped increase the volume of water, the 1929 Egypt-Britain agreement was revised and replaced with the 1959 Egypt-Sudan agreement.

Under the 1959 agreement, Egypt managed to increase its share of the Nile waters from 48 to 55,5 billion cubic metres (i.e. 7,5 billion more than under

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the 1929 agreement). Sudan's share also increased from 4 to 18,5 billion cubic metres (14,5 billion more than under the 1929 agreement) and around 10 billion cubic metres were expected to evaporate. However, Sudan remained a junior partner, as Egypt was apportioned the lion's share. Nevertheless, Egypt and Sudan agreed 'to study together' and 'adopt a unified view' on other riparian states' lack of share in the Nile waters.[9]

Both the 1929 Egypt-Britain agreement and the 1959 Egypt-Sudan agreement were concluded when the DRC was still under Belgian colonisation and Belgium itself as the colonial state was a third party to these two agreements. As a third state, Belgium could not be bound by or benefit from them. Accordingly, the DRC totally ignored these agreements and had everything to win in any new international agreement that would give the country a share of the Nile water, as any other NRB country.

2.4 DRC's Conflict and Involvement in the NBI

The DRC has participated in the NBI since its launch in 1999. The DRC conflict provided a background to its involvement.

2.4.1 Background to the DRC's involvement in the NBI: Conflict and foreign aggression

In 1996, an armed conflict broke out in Zaire (as the country was then called), which was still under the authoritarian leadership of President Mobutu Sese Seko, who had ruled the country since the *coup d'état* he perpetrated on 24 November 1965.

On 27 May 1997, after seven months of a virtually unchallenged 'long march' through Zaire, Kinshasa fell to Laurent-Désiré Kabila's *Alliance des Forces Démocratiques de Libération* (AFDL). Kabila proclaimed himself president and moved on to unilaterally rename Zaire the DRC by decree. In August 1998, some of his comrades rebelled against Kabila, accusing him of authoritarianism, corruption, mismanagement, nepotism and tribalism. They created a rebel movement named as the *Rassemblement Congolais pour la Démocratie* (the Rally for Congolese Democracy (RCD)), which was backed by some of Kabila's former allies, notably Rwanda and Uganda. The *Mouvement pour la Libération du Congo* (Movement for the Liberation of Congo (MLC)) also joined the rebellion against Kabila and was backed by Uganda. The RCD later split into RCD-Goma, the main rebel grouping, *RCD-National* (RCD-N) and *RCD-Mouvement de Libération/Liberation Movement* (RCD-ML).[10]

The conflict in the DRC also involved Congolese militia, such as the Mai Mai, and foreign rebel groups, like the FDD (Forces for the Defence of Democracy of Burundi), the Interhamwe (Rwandan militia), the ex-FAR (Forces Armées Rwandaises, the former Rwandan army of the late Rwandan President Juvenal Habyarimana), the Ugandan Allied Democratic Forces (ADF), Lord's Resistance Army (LRA), the Uganda National Rescue Front II (UNRF II), the

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National Army for the Liberation of Uganda (NALU), the Former Ugandan National Army (FUNA), the West Nile Bank Front (WNBF) and Angolan rebels of the National Union for the Total Independence of Angola (UNITA).[11]

At the climax of the conflict, at least seven other African countries had regular troops in the DRC, namely, Angola, Namibia, Zimbabwe and Chad lent support to President Kabila; Rwanda and Uganda backed the rebels.[12] At one stage, the Congolese rebels and Uganda blamed Sudan for backing President Laurent-Désiré Kabila. Sudan denied these allegations.[13] Based on the number of foreign countries involved, analysts such as Naidoo came to label the DRC conflict the 'African equivalent of World War I' or the 'African War'.[14] Howard Wolpe, a former presidential special envoy to Africa's Great Lakes Region in the Clinton administration, who recently returned to the State Department as special advisor to the secretary for the same region, considered the DRC war as 'the most widespread interstate war in modern African history'.[15]

The Congolese belligerents and their respective allies differed on the nature of the conflict. The RCD, MLC and their supporters argued that the conflict was a rebellion of the Congolese people against the authoritarian rule of President Laurent-Désiré Kabila. On the other hand, the rhetoric of the Kinshasa government and its allies tended to deny the internal dimension of the Congolese crisis and argued that the DRC was rather a victim of aggression from Rwanda, Uganda and Burundi.[16]

As pointed out earlier, the DRC conflict was a conflict under domestic and international law. It was a rebellion, but also an instance of foreign aggression by Rwanda, Uganda and Burundi – despite the latter's denial of having troops in the Congo. This aggression did not commence under Kabila.[17] Zaire was already under attack from Rwanda, Uganda and Kabila's allies (Angola, Namibia and Zimbabwe) when, with the blessing of the international community, they supported Laurent-Désiré Kabila and his AFDL. Rwanda and Uganda were heavily involved and their intervention in the DRC could be depicted as a form of invasion.[18]

An active DRC involvement in the NBI, and later in the CFA, was to be seen as a strategy of the DRC government to deter any further backing of Rwanda, Uganda and even Burundi to any prospective rebellion in the DRC or any further aggression against the country, and to promote peace, security and development through cooperation within the NBI and the NRB Commission to be established later by the CFA.

2.4.2 DRC's involvement in the NBI

On 22 February 1999, the NBI was agreed upon by ministers in charge of Water Affairs from the nine NBI countries, Burundi, DRC, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. Eritrea participated as an observer. The NBI institutional structure consists of the Council of Ministers (Nile-COM), the Technical Advisory Committee (Nile-TAC), and the Secretariat

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(Nile-SEC), which was established in Entebbe, Uganda, in June 1999, and was officially opened in September 1999. The NBI was granted international organisation status under Ugandan law in September 2000.

The DRC's involvement in the NBI resulted in the appointment of Henriette Ndombe as the executive director of Nile-COM, NBI's highest decision-making body, during its 16th meeting in June 2008 in Kinshasa. She held this position until her replacement by Dr Wael Mohamed Khairy of Egypt, who was appointed at the 18th ordinary meeting of Nile-COM, held on 26 and 27 June 2010 in Addis Ababa, Ethiopia. Dr Khairy became the fifth executive director of the NBI since its inception in 1999 and started working in September 2010.

José Endundo Bononge, the DRC's Minister of the Environment, Nature Conservation and Tourism, who has the overall responsibility for water resources, chaired the Nile-COM when it met in Kinshasa on 21–22 May 2010 and agreed, despite protest by Egyptian and Sudanese ministers, that the CFA should open on 14 May 2010 and would remain open for signing by all NBI states for one year until 13 May 2011.

During this period, negotiations had already been launched to replace the NBI with a multilateral treaty that would be open to all riparian states and which would replace all the previous legal arrangements, especially the 1959 Egypt-Sudan Treaty, and establish the Nile River Commission (NRC) as a new international organisation consisting of all riparian states. Negotiations for the adoption of the Nile River CFA took almost a decade among the NBI states. Mr Endundo played an important role during the final phase of these negotiations in his capacity as the chair of the Nile-COM. However, when the Nile-COM met at the Nile-SEC headquarters in Entebbe, Uganda, and the CFA was opened for signing, the DRC was only represented by its ambassador to Uganda and did not sign the CFA. So far, the CFA has been signed by five riparian states, Ethiopia, Kenya, Rwanda, Uganda and Tanzania. Egypt and Sudan opposed the CFA and subjected their signing to the revision of Article 14(b) of the CFA dealing with water security, which would preserve their past or 'historic rights' on the Nile based on the 1929 Egypt-Sudan treaty as revised by the 1959 Egypt-Sudan treaty, yet rejected by other riparian states as a colonial legacy.

2.5 The DRC and the CFA

The NBI prospered and facilitated the conclusion of the CFA, which paved the way to the establishment of the NRB Commission. The CFA is a framework agreed upon by NBI states to strengthen their cooperation in order to promote integrated management, sustainable development and harmonious utilisation of the water resources of the NRB, as well as their conservation and protection for the benefit of present and future generations, and in their mutual interests.

The CFA's aim is to establish the NRB Commission, which should assist in the management and sustainable development of the NRB for the benefit of

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all. However, the CFA needs to be examined briefly before assessing the role played so far by the DRC in its conclusion and operation.

2.5.1 The CFA

The main provisions of the CFA are examined throughout the book. Nevertheless, it is worth revisiting the general principles of the CFA, the rights and duties of state parties, and the NRB Commission to be established by this agreement. [19]

2.5.2 General principles of the CFA

Article 3, Part I of the CFA, contains the general principles governing the protection, conservation and development of the Nile River System (NRS). These principles include the following:

1. Cooperation between the states of the NRB based on respect for international law principles such as sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilisation and adequate protection and conservation of the NRB and to achieve social and economic development.
2. Sustainable development of the NRB.
3. Subsidiarity, whereby development and protection of the NRB water resources are planned and implemented at the lowest appropriate level.
4. Equitable and reasonable utilisation of the waters of the NRS.
5. Prevention of the causing of significant harm to other states of the NRB.
6. The right of NRB states to use water within their territories in a manner that is consistent with the other basic principles referred to herein.
7. Protection and conservation of the NRB and its ecosystems through individual and joint appropriate measures.
8. Exchange of information concerning planned measures through the NRB Commission.
9. Community of interest of the Nile River states in the NRS.
10. Regular and reciprocal exchange of data and information among states of the NRB.
11. Environmental impact assessment and audits.
12. Peaceful resolution of disputes.
13. Water management in an integrated and holistic manner, linking social and economic development with protection and conservation of natural ecosystems.
14. Water utilisation in its most economic use, taking into account the satisfaction of basic human needs and the safeguarding of ecosystems.
15. Water security for all the NRB states.

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2.5.3 Rights and duties of the states under the CFA

States parties have the right to equitable and reasonable utilisation of water of the NRB and the NRS, with a view to attaining optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the basin states concerned (Article 4), and a number of relevant factors and circumstances. States are also required to observe the rules and procedures established by the NRB Commission.

Article 5 provides that they should refrain from causing significant harm to other states of the NRB in the management, utilisation and use of the water of the NRS and should take all appropriate measures, in consultation with the affected state, to eliminate or mitigate any significant harm and, where appropriate, discuss the question of compensation. States should take all appropriate measures, individually and, where appropriate, jointly, to protect, conserve and, where necessary, rehabilitate the NRB and its ecosystems (Article 6). They should cooperate (Article 7) over the use, development and protection of the NRB and its water resources, through the exchange on a regular basis of readily available and relevant data and information on existing measures and on the condition of water resources of the basin, where possible in a form that facilitates its utilisation by the states to which it is communicated through the commission (Article 8). Article 13 deals with the protection of the NRB and related installations in times of armed conflict through respect for the rules of international law, especially those applicable in international and non-international armed conflicts, in particular the rules of international humanitarian law.

One of the most important provisions of the CFA is Article 14, which deals with water security. Water security is defined as the right of all Nile River Basin states to reliable access to and use of the NRS for health, agriculture, livelihoods, production and environment. The NRB states recognise the vital importance of water security to each of them. They also recognise that the cooperative management and development of waters of the NRS will facilitate the achievement of water security and other benefits. Article 14(b) is the most contested. The delay in the signing and, therefore, the entry into force of the CFA is mainly due to Egypt's and Sudan's request to change this provision in order to protect their 'historical rights'.

The CFA provides that Article 14, like Articles 1–5, 8–9, 23–24 and 33–34, may be amended only by consensus.

2.5.4 The NRB Commission

The CFA established a Commission (Article 15) whose purposes and objectives (Article 16) are to

- promote and facilitate the implementation of the principles, rights and obligations provided for in the framework;

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- serve as an institutional framework for cooperation among NRB states in the use, development, protection, conservation and management of the NRB and its waters; and
- facilitate closer cooperation among the states and peoples of the NRB in the social, economic and cultural fields.

The NRB Commission consists of five organs, namely the Conference of Heads of State and Government, the Council of Ministers, the Technical Advisory Committee (TAC), the Sectoral Advisory Committees (SACs) and the Secretariat (Article 17).

The Conference of Heads of State and Government is composed of Heads of State and Government of Nile River Basin States (Article 20). It is the supreme policy-making organ of the commission (Article 21).

Article 22 provides that the Council of Ministers is composed of the ministers for water affairs of each NRB state and other ministers, according to the agenda of the commission. It convenes once a year in regular session and in special session at the request of any state of the NRB (Article 23). Unless the council decides otherwise, the venue of regular sessions shall rotate among the NRB states in alphabetical order, in English.

The venue of a special session shall be the same as that of the preceding regular session. Regular sessions shall be chaired by the NRB state in which they are held. Special sessions shall be chaired by the state that chaired the next preceding regular session. Decisions are made by consensus and are binding on the states of the NRB. The council is the governing body of the commission (Article 24). It may refer matters to the Conference of Heads of State and Government for decision. The council approves the rules and procedures governing the operations of the TAC, SAC's and the Secretariat, as well as its work programme and financial and staff regulations. The council appoints the executive secretary and other senior staff of the commission. The council makes determinations concerning the staffing and organisational structure of the secretariat, and the equitable and reasonable use of water in each riparian country. The headquarters of the commission shall be situated in Entebbe, Uganda (Article 18).

The commission is established as an intergovernmental organisation and shall enjoy international legal personality (Article 19). The commission and its officials shall, in the territory of each NRB state, enjoy such privileges and immunities as are necessary for the performance of their functions under the CFA. These privileges and immunities will be provided for in a protocol to the CFA. The council decides upon a sliding scale of contributions of NRB states for the financing of the budget of the commission, and approves the budget of the commission. The TAC consists of two members nominated by each state, who are senior officials (Article 25).

Delegates may bring other experts to meetings of the TAC as necessary to deal with special questions. The TAC shall propose, for the approval of

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the council, its own rules and procedures. The TAC shall prepare for the consideration of the council cooperative programmes for the integrated and sustainable management and development of the NRB (Article 26). On the basis of reports from the secretariat, the TAC shall make recommendations to the council concerning annual work programmes and the budget of the commission. The TAC shall advise the council on technical matters relating to the use, development, protection, conservation and management of the NRB and the NRS, including protection from drought and floods. The TAC shall make proposals to the council concerning the appointment of the executive secretary and senior technical staff of the Secretariat, and supervises the Secretariat. It shall make recommendations to the council concerning rules and procedures governing the operations of the Secretariat and its work programme, and, when directed to do so by the council, the TAC shall make recommendations to the council concerning the modification of the framework or the elaboration of protocols. SACs (Article 27) may be established by the council to deal with specific sectoral matters within the competence of the commission. Unless the council decides otherwise, a SAC shall be composed of one member from each NRB state who is an expert in the field of activity of the SAC in question. SACs shall be governed by the rules and procedures applicable to the TAC, *mutatis mutandis*.

The Secretariat (Article 28) is headed by an executive secretary, appointed for a three-year term by the council, and accountable to the council through the TAC. The executive secretary and the officials of the Secretariat enjoy in NRB states the privileges and immunities necessary for the performance of their functions. The office of the Secretariat is situated at the headquarters of the commission. The executive secretary (Article 30) represents the commission in matters specified in the rules and procedures governing its operations, and in particular in its relations with international and bilateral assistance institutions and with any Nile sub-basin institutions or arrangements. The Secretariat serves as the secretariat for meetings of all organs of the commission.

The executive secretary is responsible for the administration and finances of the commission. The executive secretary prepares and submits reports to the TAC concerning the annual work programmes of the commission, taking into account any information provided by National Nile Focal Point Institutions. The executive secretary prepares a proposed budget of the commission and submits it to the TAC. The executive secretary is responsible for carrying out studies and the performance of other activities proposed by the TAC and authorised by the council. The executive secretary may engage consultants with the approval of the TAC to assist in the performance of these functions. The Secretariat assists the TAC with the preparation of a plan for the coordinated, integrated and sustainable management and development of the NRB. The Secretariat will perform any other functions assigned to it by the TAC. When the CFA comes into force, the NRB Commission shall succeed to all rights, obligations and assets of the NBI (Article 30).

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The CFA was to be open for signature, ratification or accession by all NRB states from 1 August 2009 to 1 August 2011 in Entebbe, Uganda (Articles 40 and 41). It should enter into force on the 60th day following the date of the deposit of the sixth instrument of ratification or accession with the African Union (Article 42). However, this did not occur. Owing to long and difficult negotiations among the NBI states, it was only during the Nile-COM meeting in Kinshasa that the states agreed to open it from 14 May 2010 to 13 May 2011.

2.5.5 The DRC and its role in the negotiation, signing and commencement of the CFA

As a member of the NBI, the DRC was involved in the negotiations on the CFA from the outset, although the country has yet not signed this agreement. To date, the CFA has been signed by five NBI countries, Ethiopia, Kenya, Rwanda, Tanzania and Uganda. Egypt and Sudan, the two downstream countries that almost exclusively benefited from the Nile River on the basis of the 1929 Egypt-Britain agreement, as revised by the Egypt-Sudan agreement of 1959, have refused to sign until Article 14(b) has been revised so as to take into account their historic rights, as they argue that the CFA will decrease the amount of Nile water they currently consume.

Egypt and Sudan argued that Clause B in Article 14 on water security should be amended 'not to significantly affect any current uses and rights of any other Nile River Basin State', instead of reading 'not to significantly affect the water security of any other Nile River Basin State'. Egypt and Sudan maintained their stance during the meeting of the Nile-COM on 27 June 2010, when they called for an extraordinary meeting to discuss the legal implications of the agreement.

For a long time, Sudan and mainly Egypt, which is most affected given its total dependence on the Nile's water for the survival of its people and the development of its economy, succeeded in convincing the DRC and Burundi not to sign the CFA and, therefore, prevent its coming into operation.

During a visit to Cairo on 6–7 December 2010, the deputy president of Burundi, Gervais Rovkiri, discussed with President Hosni Mubarak the issue of sharing water resources and stated at a joint conference with Egyptian Prime Minister Ahmed Nazif that Burundi supported Egypt's quest to defend its rightful share of Nile water resources.[20]

Officially, the DRC is waiting for other NBI countries before signing the CFA and expects that a consensus will emerge among all member states, including Egypt and Sudan, before signing within one year. In fact, President Kabila's official visit to Cairo, on invitation by the Egyptian government where he met with Egypt's President Mubarak, played a role in the DRC not signing or delaying the signing of the CFA. President Kabila reaffirmed after the meeting that his country would not hurt the Egyptian interests in the Nile's water. No statement was made to inform the opinion in detail on what

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they agreed on concerning the reinforcement of their bilateral cooperation and the developments about the negotiations in the NRB concerning the CFA.

Arguably, the DRC did not signed, or refused to sign, in exchange for Egypt's contribution to development, security and stability in the DRC. It is said that Egypt promised to support President Kabila's reconstruction programme and efforts to bring peace to the conflict-ravaged eastern DRC.

As part of the deal, Egypt would contribute to building infrastructure and provide weapons to the Congolese army in their fight against the insurgents or 'negative forces' threatening peace and security in eastern DRC (foreign rebel groupings such as the LRA (Uganda), Interhamwe and ex-FAR (Rwanda) and elements of former national rebel movements, like the National Congress for the Defence of the Congo People (CNDP) and Mai Mai). All these are allegations that were made after President Kabila's meeting with President Mubarak, which resulted in the DRC's delaying its signing of the CFA. However, the DRC was officially looking for consensus among all the riparian states before signing in due course. Egypt was also accused of using corrupt tactics and bribery to convince the DRC and Burundi to refrain from signing the CFA. The Nile River Basin Discourse, which is a civil society initiative to promote the NBI in all its member states, is not vibrant in Kinshasa. Civil society and even parliament are uninformed of the developments in the NBI and are unable to call the government to account.

Besides, Egypt could rely on a number of facts to convince the DRC president to delay signing or refrain from signing the CFA. First, unlike most other riparian states, the NRB represents only a small percentage of the territory of the DRC, which is dominated by the Congo River Basin. It, therefore, has little to gain from the CFA and may not rush to sign like other riparian countries. Second, under President Nasser, Egypt assisted the Congolese leaders in their struggle for the independence of their country. Patrice-Emery Lumumba, the first DRC Prime Minister, enjoyed great support from Egypt during the Cold War. Nasser and Lumumba were labelled 'communists' or 'socialists' and considered close to the Soviet and Chinese governments. Egypt strongly condemned Lumumba's assassination in January 1961. Lumumba's family found refuge in Egypt, where they spent many years, and they still regard Egypt as their second home.

Laurent-Désiré Kabila, Joseph Kabila's father, was one of Lumumba's followers and enjoyed Egypt's support. Later he embarked on a rebellion against the regime of President Mobutu, who was blamed for Lumumba's fall and death in the 1960s. Antoine Gizenga, deputy prime minister in the Lumumba government and one of the closest allies of the prime minister, was also backed by the Egyptian government when he fled Kinshasa to Kisangani in the Province Orientale, where he proclaimed a new republic and established another government after they lost power in Kinshasa and Lumumba was assassinated. During the 2006 presidential elections, Gizenga's *Parti Lumumbiste Unifié (PALU)* (United Lumumba Party) strongly backed Joseph Kabila to secure his election. According to a deal concluded by the

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two leaders, President Kabila appointed Gizenga as prime minister and the government is still led by a member of his party, the PALU. Under these circumstances, a request to President Joseph Kabila to get his country to refrain from signing the CFA could easily get the support of the DRC government led by Gizenga's party. Third, as stressed earlier, the DRC recently emerged from an armed conflict that the DRC government considered aggression by neighbouring countries, notably Rwanda and Uganda with the support of their African and Western allies. The conflict may already be over, as the DRC has improved its relations with its two eastern neighbours. However, the wounds are still far from being fully healed. When former 'aggressors', Rwanda and Uganda, were eager to sign and had indeed already signed the CFA, Egyptian leaders knew they could use 'divide and rule' tactics to convince the DRC to refrain from signing or at least delay the signing in order to preserve Egypt's 'historical rights' on the Nile River. However, President Kabila's visit to Cairo and what he got, or was promised there in exchange for not signing, played a critical role in the current position of the DRC with regard to the CFA. One should not forget the role played earlier by José Endundo Bononge, the DRC Minister for Environment, Nature Conservation and Tourism within the Nile-COM, which he once chaired, and during the negotiations. Arguably, the minister would have signed and committed the DRC had not he been instructed otherwise by the president, especially after meeting President Mubarak. Officials in Minister Endundo's department and at the DRC NBI Focal Point still consider the CFA a 'good thing' for the DRC and hold that the minister was ready to sign until he was stopped by the president. According to them, the DRC should side with other riparian states to get the CFA signed and enforced. Many were embarrassed by the position taken by the president and thought it was not in the best interests of the DRC to side with Egypt in the defence of its 'historical rights' on the Nile. However, the CFA remains open for signing, as it did not require all the NBI states to sign on the same day and the DRC has promised to sign during this period.

2.6 Conclusion and Policy Recommendations

During the colonial era, two treaties were signed in respect of the use of the Nile water, namely the 1929 Egypt-Britain and the 1959 Egypt-Sudan agreements. Belgium was a third party to these two treaties and could not, therefore, be considered bound by or to benefit from them. The same applied to the DRC when the country gained its independence from Belgium in 1960. However, the DRC became a member of the NBI when it was launched in 1999. Since then, the country has played an important role in its development, which would culminate in the signing of the CFA, which establishes the NRB Commission in replacement of the NBI. The armed conflict that broke out in 1996 provided an opportunity for the further involvement of the DRC in the NBI. The DRC was instrumental in the conclusion of the CFA; however, despite playing an important role during the negotiations, the DRC did not

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sign the CFA, but promised to do so before 14 May 2011. President Joseph Kabila's visit to Cairo and his meeting with Egypt's President Mubarak was the main factor that delayed the DRC's signing of the CFA after having promised to do so earlier.

The CFA is likely to promote development, peace and security among riparian states through the NRB Commission and should, therefore, be welcome by all NBI states, including Egypt and Sudan, which opposed it in defence of their 'historical rights' to the Nile. They should continue to negotiate with other riparian states to achieve a CFA that would be accepted by consensus and stand a better chance of enforcement in the interests of the people of the NRB. They should also realise that the 'divide and rule' tactics will not always prove successful. On the other hand, war is not an option, as no victory would be guaranteed over all the downstream riparian states should they decide to use the Nile water.

Moreover, Burundi and the DRC could have used their position as a bargaining tactic vis-à-vis the upstream states; however, they could not indefinitely delay the signing of the CFA. As far as the DRC is concerned, the most viable policy option for the DRC government is to ensure that it continues to play a proactive role in the NBI, which will also serve the interests of its people. It will do so by signing the CFA. The political landscape has been changing over the past months in North Africa. South Sudan successfully seceded from Sudan and the newly independent African state is poised to become a member of the NBI. A regime change has also taken place in Egypt. President Mubarak, who was opposed to and managed to convince the President of Burundi and his DRC counterpart not to sign the CFA, is no longer in power. This was a positive development, as just weeks after President Mubarak resigned, Burundi signed the CFA on Monday 28 February 2011. The DRC is also expected to sign it in May 2011.

Notes and References

1 Oloo, A., 2007. The quest for cooperation in the Nile water conflicts: The case of Eritrea. *African Sociological Review*, 11(1), p.96. Available at http://www.codesria.org/IMG/pdf/07_Oloo.pdf [Accessed 10 December 2010].

2 Oloo, 2007, p.98.

3 See http://www.nilebasin.org [Accessed 10 December 2010].

4 Mitshaulana, P.M., Dugard, J. & Botha, N., 1976. *Documents on international law*. Cape Town: Juta, pp.32–41.

5 The Vienna Convention on the Law of Treaties was adopted in Vienna on 22 May 1969, opened for signature on 23 May 1969 and entered into force on 27 January 1980.

6 The Vienna Convention on the Law of Treaties Between States and Between States and International Organisations was signed on 21 March 1986 and is not yet in force.

7 The 1969 Vienna Convention on the Law of Treaties (Article 26).

8 The Vienna Convention on Succession of States in respect of Treaties was signed on 22 August 1978 and entered into force on 6 November 1996.

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9 Oloo, 2007, p.102.

10 For an account on the DRC conflict, see Mangu, A.M.B., 2003. Conflict in the Democratic Republic of Congo: An international legal perspective. *SAYIL*, 28, p.84.

11 Ibid., pp.84–85.

12 Ibid.

13 Ibid., p.85.

14 See Naidoo, S., 1999. Rebels without a pause: Diplomacy in the DRC conflict. *SAJIA* 6, p.155; Mangu, 2003, p.82.

15 See Wolpe, H., 2000. The Great Lakes crisis: An American view. *SAJIA* 7, p.27; Mangu, 2003, p.82.

16 See Mangu, 2003, p.94; Mangu, A.M.B., 2000. 12th Annual Conference of the African Society of International and Comparative Law. *Maintenance and restoration of peace in the Great Lakes region: A reflection on the crisis in the Democratic Republic of Congo* (unpublished paper). 7–8 August. Accra, Ghana.

17 Mangu, 2003, pp.94, 98.

18 See Mangu 2003, p.98; Breytenbach, W. et al., 1998. Conflicts in the Congo: From Kivu to Kabila. *African Security Review* 8, p.40.

19 This section draws its analysis from the CFA. See http://www.nilebasin.org [Accessed 10 December 2010].

20 See http://www.almasryalyoum.conference/news [Accessed 7 December 2010].

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CHAPTER 3
Cooperation between Egypt and Sudan over the Nile River waters: The challenges of duality

Biong Kuol Deng

3.1 Introduction

The Nile, the longest river in the world, has shaped the mythological and political histories of the peoples of Egypt, Sudan and the entire African continent, especially the Nile Basin countries. Indeed, the Nile is the main source of life for Egyptians, Sudanese and the peoples of the Nile Basin to the extent that it is hard to believe the survival of these nations without it. It is, therefore, imperative to analyse objectively and critically the issues that pertain to the use of the Nile waters in the context of naturally condemned parties to cooperation and understanding with respect to their socio-economic development needs.[1]

The Nile is estimated to be 6 800 km long, and emanates from the Luvironza River in Burundi, East Africa, though there is currently a new finding that it may indeed have its source in Rwanda. It flows into the Mediterranean Sea at its delta in north-eastern Egypt. The volume of water that flows northward is estimated to be 2,85 billion cubic metres, which the Nile Basin countries utilise for their agricultural and hydroelectric projects. Egypt and Sudan have been the main beneficiaries of the Nile water. Whereas Egypt totally relies on the Nile waters, Sudan supports 20 per cent of its agricultural land with the Nile waters.

Although the diplomatic ties between Egypt and Sudan have been characterised by cooperative relations on the use of the Nile waters, these cooperative efforts have sometimes been strained. In many instances, Egypt has intermittently felt it necessary to issue threats to use military force against Sudan with a view to protecting its historical interests in the Nile waters. In Sudan various regimes have attempted to challenge Egypt's historical dominance over the Nile waters to no avail. Indeed, Egypt has used the threat of military force to keep the countries of the Nile Basin in line with respect to the Nile Waters agreements of 1929 and 1959.[2]

Egypt has also received, and treated with great reservation, statements from other countries of the Nile Basin questioning the legality and relevance of the 1929 and 1959 Nile water agreements between Egypt and Sudan. Egypt considers these two agreements on the use of the Nile waters to be somewhat

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sacrosanct and perfectly legal, and thus binding on the other countries of the Nile Basin. Therefore, any suggestions that these agreements are not binding engenders Egypt's fury and elicits threatening responses, which has continued to raise tensions in the region.[3]

3.2 Research Questions on the Equitable Sharing of the Nile Waters

Egypt's unwavering position vis-à-vis the legal validity of the two Nile agreements presents a number of challenges with respect to socio-economic development in the region. This chapter seeks to address some fundamental questions about the duality of Egypt and Sudan over the use of the Nile waters. These questions are as follows:

- Does this duality really affect other countries of the Nile Basin?
- Is it feasible for these two countries to cooperate to the exclusion of the other riparian countries, especially Ethiopia and Uganda?
- Can colonial legal instruments regarding the Nile waters survive the era of independence of the other riparian countries?
- Is equitable and reasonable sharing of the Nile waters among the Nile Basin countries possible and popular as a cardinal concept that defines cooperative and understanding relations among these countries?
- Will the Nile Basin Initiative (NBI) succeed in cementing the interests of its member states?
- Will the NBI overcome the conflict of interests among its member states and forge a treaty that will institutionalise the concept of equitable and reasonable sharing of the Nile waters and the peaceful resolution of disputes among its member states?
- What is the position of the NBI with respect to the 1997 UN Convention on the Non-Navigational Uses of International Watercourses?

3.3 International Legal Theories and Conflict-resolution Mechanisms on Uses of Water Resources

Many scholars have postulated that future wars and conflicts will be over water resources because of the increasing scarcity of these resources. The raging desertification in the countries of the Nile Basin and the abject poverty that characterises the lives of the most people of the Nile Basin now call for reflection and a rethinking of strategies that should aim at an equitable and reasonable sharing of the Nile water resources.[4]

Elhance warns about the scarcity of water, which, he argues, may ultimately lead to conflicts:[5]

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> If prevailing circumstances continue, within the next twenty years much of the Third World will be faced with stringent water shortages. The number of people affected will be staggering. Nearly [1,4 billion] – more than one-third of the Third World population – will live in regions which will experience severe water scarcity. Another billion will live in arid regions with absolute water scarcity. [350] million, living mostly in sub-Saharan Africa, may avoid water scarcity with massive construction of hydro-facilities (storage dams and canals) and institutions of complex organizational and management operations.

Basin water resources remained over the years without definitive legal regimes governing their uses until the 1960s, when the International Law Association (ILA) adopted the 1966 Helsinki Rules. Nonetheless, states with shared water resources have continued to invoke to this day a number of international legal principles or theories in order to accentuate their use of water resources:

- The theory of absolute territorial sovereignty
- The theory of absolute territorial integrity
- The theory of limited territorial sovereignty
- The theory of limited territorial integrity
- The theory of community of interests in the waters

The countries of the Nile Basin have been invoking these theories to justify either their non-adherence or adherence to the prevailing legal agreements on the use of the Nile waters, especially the theories of absolute territorial sovereignty and absolute territorial integrity.[6]

The theory of absolute territorial sovereignty supports a state's unlimited sovereign rights over its natural resources. In this respect, a state's control over its resources without any interference from other countries is considered to be absolute. Most of the Nile Basin upstream states have been invoking this theory to justify their ownership or use of the Nile waters within their territories. This theory, in effect, disadvantages the downstream states, whose rights to the use of the Nile waters cannot be diminished by the sovereign claims of the upstream countries.[7]

The theory of absolute territorial integrity, on the other hand, purports that upstream countries cannot arbitrarily use river waters without regard for the use rights of downstream countries. Upstream countries have a responsibility to ensure their river water use will not have adverse effects on the flow of the river waters. Egypt and Sudan have at different times invoked this theory against the upstream states' claims over the use of the Nile waters.[8]

The theory of limited territorial sovereignty acknowledges the equal use rights of upstream countries and those of downstream countries. This theory, in effect, embodies most of the elements of the 1966 Helsinki Rules and thus encourages the sharing of water resources among countries through whose territories the water flows. The NBI is basically anchored in this theory.

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The theory of limited territorial integrity calls on downstream countries to moderate their claims and to allow reasonable use of river waters by upstream countries. This theory also encourages cooperative efforts with respect to the use of river waters by all riparian states. In effect, it embodies current efforts to establish a legal regime that will govern the use of the Nile waters by the Nile Basin states.

The theory of community of interests in the waters advocates the use of waters in a communitarian way. This theory embodies most of the elements of the 1966 Helsinki Rules and the UN Convention on the Law of the Non-Navigational Uses of International Watercourses.

In the 1960s, the ILA drafted what became known as the 1966 Helsinki Rules.[9] Although these rules covered navigational matters, they mainly focused on the non-navigational uses of international drainage basins. The main guiding principle of the Helsinki Rules was the equitable and reasonable apportionment of water resources among riparian states. In this respect, certain elements were critical to determine the equitable and reasonable apportionment, which included 'the degree to which the needs of a basin state may be satisfied, without causing substantial injury to a co-basin state'.[10]

In the 1970s, the scarcity of fresh water and its potential to create conflicts among riparian states became evident. This triggered some concern in the UN General Assembly, which encouraged the International Law Commission (ILC) to come up with a draft convention on the non-navigational uses of international watercourses. Pursuant to this request, the ILC submitted its first draft to the Sixth (Legal) Committee of the General Assembly for its review and consideration. On the basis of the comments it received from the Sixth Committee, the ILC amended its first draft text, especially in the areas of equitable utilisation and the no-harm rule, and submitted it to the constituted working group.[11]

A number of draft provisions dominated the deliberations of the working group, especially those that pertain to

- the status of the proposed convention and prevailing agreements
- the validity of the future agreements that may not be consistent with the convention
- the relation between the principle of equitable and reasonable utilisation and the no-harm rule
- the peaceful settlement of watercourse disputes
- the participation of states in agreements that other states have concluded on the same watercourse.

Notwithstanding difficult negotiations, the draft convention was agreed upon by voting. Thus, on 21 May 1997, the UN General Assembly adopted the UN Convention on the Law of the Non-navigational Uses of International Watercourses, the only main authority in the field to date.[12]

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The UN Convention on the Law of the Non-navigational Uses of International Watercourses has restated most of the 1966 Helsinki Rules, which the ILA codified to assist in addressing disagreements over navigational and non-navigational uses of international watercourses. Indeed, the Helsinki Rules mainly focused on the non-navigational uses of international watercourses. Some of the articles of the Helsinki Rules addressed areas that currently challenge the NBI: Article IV enunciated the rule of equitable and reasonable apportionment, while Article V provided some elements that should inform the apportionment process. These factors consisted of geographical, hydrological, climatic, historical, social, economic and technical elements.

The 1997 UN Convention on the Law of the Non-navigational Uses of International Watercourses[13] (hereinafter 'the Convention') was the first legal regime that widely garnered support from all the regions of the world. Although the provisions of the Convention are not necessarily binding on member states, they at least constitute customary international law akin to that of the Universal Declaration of Human Rights. Indeed, in the Gabcikovo-Nagymarose case, the International Court of Justice used some general principles of the Convention in its decision on the case between Hungary and Slovakia.[14]

Two Nile riparian states (Egypt and Ethiopia) effectively participated in the working-group meetings, in which both countries argued their variant positions with respect to existing bilateral and multilateral agreements on international watercourses. Ethiopia and other participating countries called for some of the provisions of the Convention to be treated as international treaty law instead of customary international law. Had this proposal been adopted, it would have meant that existing agreements would have been succeeded by the Convention or simply declared null and void. On the other hand, Egypt and other countries proposed that the Convention should not in any way affect existing agreements.[15]

The negotiations that ensued produced a comprise, which, while it appeared to support the position of Egypt and other countries, also provided some leeway for the countries that might want to make the provisions of the existing agreement consistent with the principles of the Convention.

In this connection, Article 3(1) of the Convention provides that 'nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention'. (I do not have the hard copy of the Convention and thus the printed version may not give accurate page numbers.)

However, it appears that Article 3(2) attempts to qualify Article 3(1); it avers that 'notwithstanding the provisions of paragraph 1, Parties to existing agreements … may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention'.

These two provisions reflect the challenges that the negotiators encountered in an attempt to reach a consensus on dividing issues. Thus, countries with

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powerful lobbying capabilities appeared to have secured considerable concessions.

Nonetheless, the Convention has some important and critical general principles that will inform and help riparian states in their efforts to come up with a regional treaty that will be acceptable to all. In this respect, the Convention has adequately highlighted the principle of equitable and reasonable utilisation and participation by which member states are required to use their international watercourses in their territories in an equitable and reasonable manner. Article 5(1) of the Convention provides that:

> Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

Under Article 5(2), the Convention saddles the participating states with the same responsibility with respect to not only to the utilisation of an international watercourse in an equitable and reasonable manner, but also the duty to cooperate in its protection and development. In this respect, the Convention places great premium on cooperation and coordination among watercourse states.

Article 6 of the Convention catalogues a number of factors and circumstances that will determine the need to utilise an international watercourse in an equitable and reasonable manner. These factors and circumstances operate as guides in terms of cooperation and coordination among watercourse states. Hence, the principle of cooperation underscores the use and utilisation of an international watercourse.

The other Convention's principle that is critical as far as the NBI process is concerned is that of obligation not to cause significant harm. Article 7 requires watercourse states to ensure that their utilisation of an international watercourse will not cause harm to other watercourse states. In case of such harm, the affected watercourse states may take measures in the spirit underlined by Articles 5 and 6. This entails consultation on remedial and compensatory measures.

The Convention also puts more emphasis on the need for watercourse states to exchange data and information. Article 8 obliges watercourse states to constantly and regularly exchange readily available data and information on the condition of the watercourse, especially with respect to hydrological, meteorological, hydro-geological, and ecological matters. Such an exercise helps cement cooperative efforts among watercourse states

Member states of the Nile Basin have yet to put in place concrete mechanisms with respect to the resolution of conflicts that may arise. Indeed, some riparian states reportedly invoked several times the use of force as the best method to address threats to their national interests in the Nile waters. In this respect, the

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Convention obliges watercourse states involved in disputes, in case of a lack of a mechanism, to refer such disputes to arbitration or to the International Court of Justice. Article 33 provides a timeline of six months, after which, if the dispute in question has not been resolved, a fact-finding independent commission has to be established with a view to resolving disputes.

Indeed, the general principles of the Convention provide a workable and practical framework that can be used by the member states of the Nile Basin in their efforts to mediate their perceptual differences, which have been a stumbling block to creating a legal framework or regime that has the support of all the parties concerned.

The downstream countries (i.e. Egypt and Sudan) have been invoking the theory of historical rights and prior use as a means by which to support the validity and relevance of the two legal agreements on the Nile waters. According to this theory, upstream countries are prohibited from using the Nile waters in a way that will negatively affect the historical and prior use rights within Egypt and Sudan. Although the Convention's principle of an equitable and reasonable use of a watercourse may accommodate this theory, it does not support any historical right to waters that are currently not in use. Thus, member states of the Nile Basin need to reconcile their respective positions with respect to the use of the Nile waters by accommodating compromises that the Helsinki Rules and the Convention offer in pursuit of a legal regime that will be acceptable to all.

Nonetheless, the modus operandi in terms of the use of the Nile waters by the Nile Basin countries continues to be practically informed by the 1929 and 1959 Nile water agreements. The British colonial government and the Egyptian government, which was, for all intent and purposes, a British colonial government, concluded the former agreement; Egypt and Sudan concluded the latter. Controversy continues to surround the legality of the 1929 agreement because of its colonial nature and the fact that the Nile Basin countries were not parties to the agreement. Egypt and Sudan concluded the 1959 Nile water agreement to the exclusion of the other countries of the Nile Basin, since those countries were still under European colonial administration, hence the challenge to its legality.[16]

3.4 Egypt and the 1929 Nile Waters Agreement

This agreement came into effect as a result of exchanges of notes between British colonial officials and Egyptian officials on the use of the Nile waters. Indeed, these notes developed into the 1929 Nile waters agreement. In addition, the British government established a number of commissions to study the Nile waters management and to make recommendations with respect to development plans that would benefit Egypt and Sudan. These eventually became part and parcel of the agreement.

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The main objectives of the 1929 agreement were the following:

- The negotiation of an equitable allocation of the flow of the Nile River between Egypt and Sudan
- The need to develop a rational plan for integrated watershed development, especially in the area of storage facilities on the Nile

While Egyptian rulers' attempts to control the Nile waters can be traced to ancient periods, particularly the era of early Egyptian civilization, the current efforts in this respect can be traced to the nineteenth century during the Turkish rule of Egypt, especially during the mantle of Mohammed Ali Pasha, the Ottoman governor, or Khedive, of Egypt. Pursuant to this goal, Mohammed Ali Pasha organised military expeditions into Sudan not only to acquire slaves, ivory and gold, but also to ensure the control of the sources of the Nile.[17]

It is important to note that, by that time, Sudan was under the Anglo-Egyptian Condominium Rule, and thus the government was that of the Anglo-Egyptian Condominium. Besides, the treaty in question was signed by Belgium on behalf of the 'independent of the Congo', which consequently belied the notion that the so-called independent of the Congo was a *de jure* party to the treaty.

Regarding colonial entities under the United Kingdom in East Africa, the British government established commissions to study the management of the Nile waters and to make recommendations for development plans that would benefit Egypt and Sudan. One of these commissions was the 1919 British Foreign Office Commission, which explored a number of possibilities with respect to establishing irrigation schemes in Sudan, especially the Gezira scheme and the Jebel Awliya Dam. The commission produced a report, which was dubbed Garstin's Report, after Sir William Garstin, Undersecretary of State for Public Works in Egypt, who led these pioneering efforts and proposals. While British engineers assigned to the Egyptian ministry of irrigation welcomed the recommendation that the Sudanese irrigation services should be part of the Egyptian irrigation ministry, they opposed the establishment of the Gezira scheme and the Jebel Awliya Dam and that of Sennar on the basis that these projects would encroach on Egyptian rights to the Nile waters.[18]

In this respect, Garstin alleviated Egypt's concerns when he explained in his report that:

> Should it be decided to form an irrigation service in the Sudan, it is absolutely necessary that it should be entirely controlled by the Ministry of Public Works in Egypt, and that it should in fact form a branch of that department. This is imperative. The work of such a service will be of a purely technical nature and, moreover, will involve the construction of works, which must, more or less, interfere with the supply of the Nile. The control of the flow of this river must remain always and absolutely in the hands of one authority.[19]

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By making this statement, Garstin assured Egyptians that the British authorities wholeheartedly blessed their absolute control of the Nile.

In 1925, a commission was established with a view to coming up with a utilisation plan for the Nile waters, especially with respect to the irrigation systems in Sudan. The terms of reference of the commission, whose membership included an Egyptian, a Briton and a chairperson of the commission, included, but were not limited to, recommending the development of irrigation systems in Sudan, especially the Gezira scheme, which would not necessarily infringe on Egypt's rights over the Nile waters. Previously, the proposed Gezira scheme and the Sennar and Jebel Awliya Dams had been a bone of contention among British officials in Egypt and Sudan.[20]

Indeed, the Egyptian prime minister at the time, Ahmed Ziwar Pasha, reiterated Egypt's concerns about the proposed irrigation schemes in Sudan, emphatically contending that such schemes would adversely affect the flow of the Nile waters to Egypt:

> The Egyptian Government has always stated that this development [of irrigation in Sudan] should in no case be of such a nature as to be harmful to the irrigation of Egypt or to harm future projects, so necessary to meet the needs of the rapidly increasing agricultural population of this country. I do not think I am wrong in asserting that this principle vital to Egypt has been fully admitted by His Britannic Majesty's Government.[21]

In an effort to reassure the Egyptian government that Egypt's rights over the Nile waters would not be affected by the proposed irrigation schemes and dams in Sudan, in response to the Egyptian prime minister, the British High Commissioner in Cairo reiterated the position of the British government:

> I need not remind your Excellency that for forty years, the British Government watched over the development of the agricultural well-being of Egypt, and I would assure your Excellency at once that the British Government, however, solicitous for the prosperity of the Sudan, have no intention of trespassing upon the natural and historic rights of Egypt in the water of the Nile, which they recognize today no less than in the past.[22]

Pursuant to the commission's recommendations, the British High Commission and the Egyptian government exchanged notes, which became the 1929 Nile waters agreement, whose main objective was to put in place legal arrangements that would control the use of the Nile waters between Egypt and Sudan. The 1925 commission's report formed the main part of the 1929 Nile waters agreement between the governments of Great Britain and Egypt, and was annexed to the agreement.[23]

In effect, the 1929 Nile waters agreement prioritised Egypt's 'natural and historic' rights, as described by British officials, and consequently Sudan's rights to the Nile waters were automatically rendered secondary. In this connection, Godana notes that the Egyptian attitude amounted to a

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subordination of Sudan's interests to Egypt's interests, rather than a mere acknowledgement of competing interests in the Nile waters.[24]

The 1929 Nile waters agreement produced three cardinal legal principles, which Egypt has invoked in instances of disputes with other riparian states over the Nile waters:

- The principle of established rights
- The notion of equitable shares
- Rights of construction beyond territorial boundaries

The 1929 agreement reaffirmed Egypt's natural and historical rights, as enunciated by the notes of British officials. It also specified that Egypt's share was to be 48 billion cubic metres of the Nile flow per year. It apportioned Sudan 4 billion cubic metres of the Nile flow per year. It also unfairly empowered and authorised Egypt to undertake reconstruction projects beyond its geographical and political domain.[25]

The 1929 Nile waters agreement contained irrational, colonial legal principles that defied basic human cooperation precepts – what many may term as the precept of natural justice or equity, which should have guided and informed the framers of this agreement. The agreement not only trivialised the role of the Sudanese, but it completely ignored many naturally condemned interested parties of the Nile Basin whose lands the Nile waters traversed, because their interests did not align with British geopolitical interests in Egypt, especially the Suez Canal. Thus, the disproportional sharing of the Nile waters by Egypt and Sudan was the logical consequence of these skewed legal arrangements. Whereas the 1929 agreement assigned unfettered rights to Egypt, it gave Sudan the position of an unequal, symbolic, passive partner. Today, as a result of this decision, the region continues to be haunted by concerns over the use of the Nile waters.

3.5 Egypt and the 1959 Nile Waters Agreement

Pursuant to the 1929 Nile waters agreement, Egypt embarked on developing irrigation schemes and dam projects not only in Egypt, but also in the Sudan and other riparian states that were under British rule. Egypt planned to build a water reservoir or dam that would annually accommodate the flow of the Nile waters. These efforts culminated in producing proposals for building the Aswan High Dam, Egypt, and the Jebel Awliya Dam in Sudan with a view to capturing the flow of the Nile waters from upstream riparian states.[26]

Egypt needed a restatement of the legal principles established under the 1929 agreement in the form of a new agreement with Sudan. This was necessitated by the fact that the Sudan attained its independence from Britain in 1956. Although the government of Egypt was sure about the applicability of the principle of succession of treaties to the 1929 agreement, it wanted to ascertain that Sudan, now a new independent political entity, would adhere to

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this principle. Besides, Sudanese leaders began to make it clear to their peers in Egypt that they would not be bound by an agreement that not only did they not sign, but that they also deemed grossly unfair and unconscionable.[27] Indeed, when Sudan gained independence, the Egyptian and the British governments urged the new Sudanese government to issue a statement of intent with respect to the applicability of the 1929 agreement.

The government of Sudan then queried the signatories to the 1929 agreement and sought more information on agreements that might have been signed on its behalf. It also officially sought clarification on the treaties that the two governments might have entered into on its behalf. Thereafter, the Sudanese government made it abundantly clear that it did not intend to be bound by the 1929 agreement on the basis that Sudan had achieved independence and was, therefore, sovereign and capable of making sovereign decisions.[28]

A change of regime in Sudan from a democratically elected government to a military one came as a result of the 1958 coup led by General Ibrahim Abboud. This provided an environment that enabled the Egyptian government to push for the signing of the 1959 Nile waters agreement by the new government in Sudan. Indeed, many political analysts at the time described the government of Abboud as a brainchild of the Egyptian government, which had become concerned about the democratically elected Sudanese government's reluctance to be bound by agreements on the Nile that the British colonial administration had entered into on its behalf.[29]

Although Sudan did not challenge the rights established under the agreement in question, it nonetheless called for a revisiting of the 1929 agreement with a view to addressing its concerns, especially the agreement's fairness and reasonableness as far as Sudan's interests were concerned. Consequently, in 1959, the two states signed notes that became known as the 1959 Nile waters agreement. The agreement signalled a cooperative understanding between Egypt and Sudan in terms of sharing the Nile waters. It officially laid a foundation for the duality of the two riparian states and excluded other riparian states that continued to be under British rule, except for Ethiopia.[30]

The main features of the 1959 Nile agreement included, but were not limited to, the following:[31]

- The two parties agreed that the quantity of the Nile waters was 84 billion cubic metres at the Aswan High Dam.
- The parties agreed to dually share this water quantity, of which Sudan's share would be 18,5 billion cubic metres and Egypt's 55,5 billion cubic metres.
- The parties estimated that the evaporated water of the Nile would be 10 billion cubic metres, which would be subtracted from the overall quantity and the balance shared by the parties, according to the established shares of those concerned.

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- The parties agreed to construct dams that would harness the Nile's flow and reduce the water loss as a result of evaporation.
- If a third party put forward a claim over the Nile waters, the amount in question would be deducted from Egypt and Sudan's allocations and shares in equal parts of the Nile volume at Aswan.
- Under the agreement, Egypt secured the construction of the Aswan High Dam; Sudan secured the construction of the Roseires Dam on the Blue Nile.
- The parties established a permanent joint technical commission to nurture and cement the duality.

The 1959 agreement between Egypt and Sudan laid the foundation on which the two parties built their dual approach with respect to the use of the Nile waters. Like its predecessor, the 1959 agreement also excluded the other members of the Nile Basin whose lands the Nile traverses. Egypt and Sudan argued, at the time, that the other members of the Nile Basin were still under colonial rule and thus it would have been difficult to secure their free will. However, the fact remains that Egypt, through conquest, considers the Nile as its natural domain, and any attempt by other Nile Basin countries to equitably share the Nile waters amounts to a violation of its territorial borders, the consequence of which would be dire as far as the violator is concerned.

Egypt has historically used Sudan as its passive, weak partner in the exploitation and use of the Nile waters. As for the other countries of the Nile Basin, Egypt takes the stance that the colonial powers negotiated and signed the 1929 agreement on their behalf and, therefore, the international legal principle of succession applies. This argument is without doubt contradictory and flawed. Therefore, the challenge would appear to be Egypt's oblivion to the injustice of colonisation and the fundamental principles involved in the decolonisation process.

3.6 Egypt's Geopolitical Strategies and the Nile

Egypt considers the Nile to be its source of sustenance and life. With Egypt's growing population and desert climatic conditions, the Nile has become its strategic natural resource. Therefore, Egypt's geopolitical strategies are fundamentally anchored in securing the Nile Basin and ensuring an uninterrupted flow of the Nile waters. Consequently, other countries of the Nile Basin argue that Egypt's strategy is unrealistic, uncooperative, inequitable and, above all, oblivious to their equal needs in terms of the socio-economic development of their countries and welfare of their people.[32]

Egypt's geopolitical strategies have included, but are not limited to, the following:[33]

- The establishment of a standing military force that would respond swiftly to any threat to the flow of the Nile waters

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- The employment of omnipotent political influence over political developments in other Nile Basin countries, especially Sudan, Ethiopia and Uganda
- The establishment of political alliances during the Cold War era with both superpowers, and currently with the US, and other powerful countries globally, including Israel
- Securing some influence over international lending institutions, especially the World Bank and the African Development Bank
- Exercising some control over the investment of Arab League member states in the countries of the Nile Basin (Egypt has the permanent seat of the Arab League, and its secretary general has always been Egyptian, except for when the Arab League expelled Egypt as a result of its Camp David accord with Israel)
- Egypt has a standing Select Committee on the Nile, whose mandate includes, but is not limited to, the perceived threats that the countries of the Nile Basin may pose

Egypt has always been concerned about the security of the Nile Basin. Throughout history, it has established standing Nile military forces to address the use of the Nile waters by other countries. Egypt has an established military plan known as *Waraa-el-hidoud* ('beyond the borders'). As Yacob notes:

> As deterrence, the Egyptian High Command has established contingency plans for armed intervention, in each country in the Nile Basin, in case of a direct threat to the flow of the Nile. Egyptian military plans, known as *Waraa-el-hidoud*, were traditionally associated with Nile water. Some of the plans date back to the early nineteenth century, to the days when Mohammed Ali was rebuilding the Egyptian army. All have been updated several times since then, several by the British around the turn of the century. Today, a full-time staff at the Nasser Military Academy in East Cairo reviews and adapts the plans to changing circumstances.[34]

In a number of instances, Egypt has issued military threats against Ethiopia, Sudan and other countries of the Nile Basin over their proposed dams. Adel Adel Darwish reported that President Hosni Mubarak had unequivocally warned Sudanese officials 'against interfering with the flow of the River Nile'. Egypt's President Hosni Mubarak told a local newspaper: 'those who play with fire in Khartoum … will push us to confrontation and to defend our rights and our lives.'[35]

Yosef Yacob refers to the history of the Nile as that of 'unsuccessful diplomatic and political initiatives, hostility, tension, and non-cooperation'. He points out that:

> [H]istory confirms lower riparians' perception of 'superior rights' to the basin's waters by virtue of relative need, prior appropriation, and a perceived requirement on upper riparians to maintain the absolute integrity of the

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> basin's rivers for the exclusive benefit of lower riparians ... [H]istory chronicles the lower riparians' failure to accept propositions to engage in negotiations with the upper riparians, and the lower riparians strategy of equivocation, avoidance, and hostility to deflect the issue of equitable utilization of the basin's resources in preference for preservation of the status quo.[36]

Indeed, the Egyptian parliament has a Select Committee on the Nile whose mandate includes, but is not limited to, the perceived threats that the countries of the Nile Basin may pose. Yacob refers to a report that Nile expert Dr Hamdi el-Taheri submitted to the Select Committee:

> The Committee was told the immediate external danger to Egypt was that either Uganda or Ethiopia, or both, would implement plans to build new dams on the While or Blue Nile River. The Committee was further advised of Egypt's vulnerability in Sudan should the southern part of the country split off; that would have a direct effect on the future of the Jonglei Canal project, already halted because of civil war. Dr el Taheri's report was subsequently presented to a special session of the Egyptian parliament, amidst shouts of 'when are we going to invade Sudan?' and 'why doesn't the air force bomb the Ethiopian dams?' from Egyptian Deputies.[37]

In the 1990s, Ethiopia and Sudan claimed that Egypt had embarked on plans 'to divert Nile waters to Israel, as part of the Northern Sinai Agricultural Development Project'. The two riparian countries argued that if Egypt had a water surplus, then Ethiopia and Sudan should, in terms of priority, benefit from it, since these countries had a greater need in terms of socio-economic development. In response to these concerns, Egyptian officials uttered threatening statements against Sudan and Ethiopia.[38] The Egyptian officials reminded the Sudanese and Ethiopians that Egypt would not tolerate unnecessary and uncalled-for complaints. Egypt Foreign Minister Amir Moussa told Islamic leader Hassan al-Turabi not 'to play with fire' when Turabi remarked that Sudan was capable of reducing Egypt's water quota. Egypt's Information Minister Safwat el-Sherif followed suit by indicating that Egypt 'rejects the hollow threats [on water] from the Sudanese regime. Any [Sudanese] wrongdoing or infringement will be met with full force and firmness'. Water Resources Minister Abdel-Hadi Radi warned that the 1959 Nile waters agreement with Sudan that allocated water to Egypt was a 'red line that can never be crossed'. The Egyptian president added that, although he had remained silent in the face of many 'Sudanese provocations' in the past, 'it is finished, I will not stay quiet. I do not want to hurt the Sudanese if they are helpless, but I say, and the world hears me, that if they continue with this stance and take other measures, then I have many measures of my own'.[39]

It is abundantly evident that the duality of Egypt and Sudan in relation to the other countries of the Nile Basin is weak and vulnerable. As noted above, Egyptian officials did not hesitate to remind Sudanese officials about what would befall them if they dared to interfere with Egypt's historical and legal rights over the Nile waters. Indeed, Egypt has issued thus far more threats

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against Sudan than against any other country of the Nile Basin. Hence, the duality is more of an Egyptian imposition that the Sudanese regimes bitterly swallow, lest they become easy prey to Egyptian political manipulations and plots. In this respect, Egypt invokes Arabism and Islam as the foundation of this dualism, a form of defence against other countries of the Nile Basin, which are largely 'perceived' to be non-Arab and non-Islamic.

3.7 Sudan and the Use of the Nile Waters

Sudan lies in north-east Africa and has nine neighbouring countries: Egypt and Libya to the north; Eritrea to the north-east; Ethiopia to the east; Uganda and Kenya to the south; and the DRC, Chad and the Central African Republic to the west. With an area of about 2,5 million km^2, it is the largest country in Africa in terms of size. Its population is currently estimated to be 44 million.[40] Sudan has several different natural regions and climatic zones: arid and semi-arid regions in the northern and western parts of the country; semi-arid and poor savanna regions in the central part of the country; and rich savanna and tropical regions in the south. Indeed, most of the land is either arid or semi-arid, like that of Egypt, hence the need for agricultural irrigation systems is equally imperative.

Sudan was the first African country to gain its independence from the Anglo-Egyptian Condominium rule in 1956. However, because of its ruling elites' unambiguous bias towards the Arab and Islamic world, Ghana became historically known as the first African country to earn its independence from the British, in 1957. Indeed, the independent Sudan joined the Arab League, which the Arab countries had established in 1945, within two weeks of its independence. The Egyptian government bulldozed through Sudan's membership to the Arab League in opposition to the other members of the League, whose argument was that Sudan was not an Arab country and thus its membership would open a floodgate for non-Arab countries to join the Arab organisation. And indeed, other African countries – Mauritania, Somalia, Djibouti, and the Comoros Islands – followed suit.[41]

In reality, Egypt encouraged Sudan to join the Arab League in an effort to ensure that Egypt could politically control post-colonial Sudan. Indeed, prior to independence, Egypt had hoped that there would be unity between Egypt and Sudan to create a 'united state of the Nile Valley'. However, when those efforts failed or faltered, Egyptians made it abundantly clear to their partner in the Anglo-Egyptian Condominium that they would not countenance or support the disunity of the two parts – northern and southern Sudan. In this connection, Egyptian officials were mainly concerned about the control of the Nile waters and the security of the Nile Basin in general. Hence, the birth of the Nile Valley's duality between Egypt and Sudan with respect to the use of the Nile waters became a reality.[42]

The Nile traverses Sudan's entire territory. The Blue Nile and the White Nile, which emanate from Ethiopia and Burundi respectively, join in Khartoum to

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form the Nile River, which then flows northwards to Egypt until it discharges into the Mediterranean Sea. Therefore, like Egypt, the Sudan claims absolute territorial integrity rights to the Nile River. Besides, it also argues that most of its land is either arid or semi-arid, as opposed to the lands of the upstream countries, which have a high rate of rainfall and are, therefore, capable of having rain-fed agriculture. It is in this context that Sudan is sometimes sympathetic to, and agreeable with, the Egyptians' needs and claims with respect to the use of the Nile waters.[43]

3.7.1 Sudan: Political developments and Egypt's imprints

While the ancient history of Egypt credits the Sudanese with having built the Egyptian civilisation, the modern history of Sudan is characterised by waves of invasions by Turks, Arabs and Europeans, especially the British in the eighteenth and nineteenth centuries. Contemporary Egyptians have remained resilient and persistent in their control of political events in Sudan. Indeed, its obsessive concern about the security of the Nile Basin has made Egypt assume a godfather-like role in the politics of Sudan towards the Arabicised and Islamic ruling elites in the northern part of Sudan, and an obstructive role in terms of the aspirations of the southern Sudanese and other marginalised Sudanese in the Nuba Mountains, Southern Blue Nile, Eastern Sudan and Darfur regions.

In this respect, Egypt's meddling in Sudan's political affairs started a long time ago in the 1920s, before Sudan's independence. As a partner in the Anglo-Egyptian Condominium, Egypt cultivated unity ideals and aspirations with Sudan among new recruits of the military college and Sudanese students in Egypt, a fact that resulted in the mutiny of army recruits in 1924, whose main demand was to call for the immediate end to British colonialism in Sudan and the unity of the Nile Valley (Egypt and Sudan). It is interesting to note that the backgrounds of the vast majority of the mutineers were invariably, and paradoxically, from the southern ethnic groups (e.g. Dinka, Neur and Shilluk).[44]

Egypt openly and carefully coached new northern political parties in Sudan with a view to fostering the unity of the Nile Valley. In the 1950s, Egypt's efforts in this respect might have succeeded had it not been for British counter-strategies and the hostility of the Umma Party to the unity between Sudan and Egypt. Indeed, Sudan's northern unionist parties (The Nationalist Union Party and other Arab nationalist parties) changed their positions when they realised that the majority of the Sudanese people were in favour of Sudan's independence – after all, they considered Egypt as a partner in the Anglo-Egyptian Condominium, and thus, by definition, a coloniser.[45]

Upon independence, Sudanese political parties started to question the legality of the 1929 Nile waters agreement which the Anglo-Egyptian Condominium administration had signed on their behalf. They called for the renegotiation of the said agreement with a view to addressing Sudanese

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concerns. The Egyptian government was gravely concerned about this Sudanese request, especially that of the Sudan government, and thus commenced covert political activities to ensure the destabilisation of the democratically elected government of the prime minister, Abdalla Khalil. These efforts coincided with the raging civil war in the south and the southern Sudanese's persistent calls for a federal system of government in Sudan. All these challenges induced the military coup led by General Ibrahim Abboud in 1958.[46]

The complicity of the Egyptian government in the Sudanese change of government became evident when the new Sudanese military government not only recognised the legality of the 1929 Nile waters agreement, but also signed the 1959 Nile waters agreement with the Egyptian government. This agreement sanctioned Egypt to construct the Sudd el Aali at Aswan, the Roseires Dam on the Blue Nile and other projects on the Nile.[47] The agreement resulted in the submerging of the Sudanese historical and cultural city of Wadi Halfa to give way to the Aswan Dam. The Sudanese inhabitants of Wadi Halfa were nominally compensated, a fact that triggered protests and rioting, which the Sudanese military government quickly quelled and suppressed. Pursuant to this agreement, Egypt established monitoring missions in the Sudanese cities along the Nile with a view to monitoring the use of the water by Sudanese farmers.[48]

The construction of the Sudd el Aali at Aswan had devastating effects as far as the climatic conditions in Sudan were concerned, especially in northern Sudan. During the same period, many areas in the south, especially in the Upper Nile province, suffered from unprecedented floods, to the extent that the vast majority of the inhabitants of the areas concerned were permanently displaced. Indeed, the effects of those floods continue to be felt today. The floods were caused by a 20 per cent increase in the rainfall in East Africa, which, in turn, increased the amount of water in the Sudd area. On the other hand, the inhabitants of Wadi Halfa were relocated to Khashm el Girba in the Blue Nile region, where the climatic conditions were utterly different from those of Wadi Halfa, a fact that had devastating psychological effects on the displaced persons.[49]

On 21 October 1964, the Sudanese popular uprising toppled and ended the reign of terror of Abboud's military government, and a civilian caretaker government, headed by Sir el Khatim el Khalifa, took over. Thereafter, a democratically elected government assumed the control of political affairs in Sudan. Indeed, the Umma Party, known for its hostility towards Egypt, controlled the new civilian government. Although the caretaker government of el Khalifa had put in motion a mechanism by which to resolve the so-called southern problem by holding a round-table conference which produced acceptable recommendations, the Umma Party government failed to act on them. The consequences were the intensification of the civil war, war crimes and crimes against humanity in the south, and continued political instability.[50]

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In 1968, the national constituent assembly established a committee to draft a permanent constitution for Sudan. The committee came up with a draft constitution, which, for all intents and purposes, was Islamic, a fact that triggered marginalised-area members to walk out of the assembly, declaring that they would not want to be part of a constitution that alienated most of their communities. The national assembly also passed a bill into law by which it dismissed members of the Sudanese Communist Party, whom their constituents had democratically elected, on the basis of apostasy. Hence, the precipitation of a political crisis, which ushered in the military takeover in 1969, when the new military government dismissed the national assembly.[51]

The military junta named their government the May Revolution government after the date of their military takeover (25 May 1969). Many members of the May Revolution government were ideologically left of centre (communists, socialists, Baathists and Arab nationalists). The leader of the coup, General Jaafar Mohamed Nimeiri, in his statement, declared that Sudan was an Arab country and thus supported the struggle of the Palestinian people and Arab leaders' efforts, especially those of Jamal Abdel Nasser and Muammar Gaddafi.

In 1970, in the Ansar's uprising, supporters of the Umma Party revolted in Omdurman and Aba Island against Nimeiri's military government. The uprising was so extensive that the government availed itself of the Egyptian air force to bomb Aba Island in el Gezira. Interestingly, one of the Egyptian military pilots was later to become the president of Egypt, Hosni Mubarak. In 1971, soon after he had foiled a coup attempt by the communist members of his government, Nimeiri declared his government's interest in forming a unity of three Arab states: Sudan, Egypt and Libya. Indeed, Libya was critical in the crushing of the attempted coup by intercepting the plane that was carrying the coup's leaders and surrendering them to Nimeiri's government.

Pursuant to this policy, the government introduced a reform of its education system, adopting syllabi based on the Egyptian system of education. The education reform was so extensive that it looked to the Arab world as the basis on which the Sudanese knowledge system was produced. Proficiency in Arabic became one of the prerequisites for tertiary education in Sudan. Thus, the new education system disadvantaged those Sudanese students whose education background was not Arabic. Hence, it was abundantly clear that Egypt had supported the coup's leaders in their advantageous takeover of the government.

In 1972, the Nimeiri regime reached an agreement (known as the Addis Ababa Agreement) with the Southern Sudan Liberation Movement, or Anya Anya, by which the south attained self-government. The Addis Ababa Agreement became an organic law when the national assembly incorporated it into Sudan's permanent constitution in 1973. The agreement brought a temporary lull in the hostilities until President Nimeiri abrogated it when he divided the south into three states and imposed Islamic law on the country in 1983.

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Egypt snatched the opportunity afforded by peace in Sudan to revive its long dream of preserving water lost through evaporation in the Sudd region of Upper Nile, southern Sudan. In 1925, Egypt had decided to construct the Jonglei Canal at the confluence of the White Nile and the Sobat. However, the British government put the brakes on this project because of the Egyptians' complicity in the military school recruits' revolt in 1924. Therefore, the Egyptian government, in consultation with the Sudanese government, decided to construct the Jonglei Canal in 1974. Egypt's decision to dig the Jonglei Canal triggered major high-school student uprisings throughout southern Sudan. Southern Sudanese high-school students correctly felt that the construction of the canal would necessarily bring a big number of Egyptian farm workers to the south, which, in turn, would commence a new wave of Egyptian invasions of southern Sudan.[52]

A French firm won the contract to construct the Jonglei canal in the late 1970s, and managed to dig 80 per cent of the canal, until its work came to a halt as a result of the military activities of the Sudan People's Liberation Movement/Army (SPLM/SPLA) in the area in the 1980s. However, the gigantic machine that was used to dig the canal remains on site. The Comprehensive Peace Agreement, signed on 9 January 2000, is reticent about the Jonglei Canal project. Egyptians have yet to raise the issue with the Government of National Unity and the Government of Southern Sudan. In all probability, the Egyptian government will request the resumption of the Jonglei Canal project, since it has already invested a great deal of financial resources in it.[53]

In 1985, there was an uprising against Nimeiri's government, which ultimately resulted in his overthrow by his vice president, who headed the new interim government. The latter conducted democratic elections in 1986, which brought to power Al Saddig Al Mahdi, the chairperson of the Umma party, as prime minister. Al Mahdi failed to address the two main challenges to Sudan's nation-building project: the separation of religion from state and ending the civil war. In 1988, Al Mahdi's government, albeit hesitantly, decided to embark on serious peace negotiations with the SPLM/SPLA with a view to resolving the conflict in the country.

In 1989, in an effort to foil these peace efforts, some Islamist elements in the military staged a coup against the civilian government and called their military council the salvation military council, implying that they had taken power to salvage the country from an impending collapse. The leader of the coup was General Omar Hassen Al Bashir. Although the initial perception was that the nationalist elements in the army had staged the coup, it soon became apparent that the coup had been organised and financed by the National Islamic Front (NIF). This political party had not only been in alliance with the governing party (Umma Party) before it collapsed, but also had members in the parliament during the coup. Indeed, the coup leaders arrested and detained all the political leaders, including the leader of the NIF, Dr Hassen El Turabi, who masterminded the coup.[54]

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Those who engineered the coup deceived not only the Sudanese people, but also Egyptian security elements in Khartoum, who reported to their government that the leader of the coup was not only a friend, but had had his military training in Egypt. Therefore, Egypt had initially supported the coup until it became apparent that the coup leaders were Muslim fundamentalists and thus supporters of Egyptian Muslim fundamentalist groups. Indeed, some elements of the Egyptian Muslim fundamentalist groups attempted to assassinate President Hosni Mubarak during the 1994 OAU summit in Addis Ababa, Ethiopia. Sudanese security elements facilitated and supported the assassins. In this connection, an unspecified number of these security elements had to be eliminated by the government of Sudan with a view to burying any evidence of its complicity, according to Dr Hassen El Turabi's statement.

In response to the Egyptian government's threat against the NIF regime, its Islamic leader, El Turabi, reciprocated by asking Egypt to peacefully withdraw from the Halai'ib strip or triangle along the Red Sea that it currently occupies. Failure to heed this advice would result in El Turabi threatening to stop the flow of the Nile waters to Egypt, a threat that reminded Egypt of its vulnerability to any hostile political developments in Sudan. Egypt dismissed such threats as hollow, since it knew that the Sudanese government would not dare to challenge the security of Egypt, the consequence of which would be its forceful removal from power.[55]

Notwithstanding, Egypt refrained from taking drastic measures against the leaders of the Sudanese government and instead proceeded to cultivate confidence-building measures, as follows:

- It exerted lukewarm efforts to support the imposition of sanctions on the Sudanese government in the UN Security Council because of its complacency in the attempt to assassinate President Hosni Mubarak.
- It advised the US to be more sensitive with respect to the complexity of the Sudanese situation.
- It initially expressed its opposition to the Intergovernmental Authority on Development (IGAD) peace process, which produced the Machakos Declaration of Principles, especially the principle that gives the southern Sudanese the right to self-determination. In this respect, Egypt and Libya concocted a parallel Sudan peace initiative, in which they ensured to mute the issue of self-determination for southern Sudan: that peace initiative was doomed from the start.[56]

As Sudan's political history trajectory shows, Egypt's involvement in Sudan's political affairs is entrenched and far-reaching. The security of the Nile Basin appears to be the driving force behind Egypt's covert political activities in Sudan. Sudan is not only the largest territory that the Nile traverses, but its contemporary ruling elites profess Arabism and Islam as the sources of their political ideologies that inform their political strategies. Hence, the perpetuation of political marginalisation and economic underdevelopment of the Sudanese groups that do not claim Arabism or Islam as their spiritual

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domain. Egypt's Nile water interests in Sudan are fundamentally and historically allied to, and ingrained in, the Arab-Islamic governing elites, who have been in control of political affairs since independence. This political linkage has not only been keeping these elites in power, but has also been responsible for the political instability and economic underdevelopment of Sudan in general since independence.

3.8 Cooperative Frameworks in the Nile Basin

It has become abundantly apparent to Egypt and, to a lesser extent, Sudan that the status quo with respect to the use of the Nile waters is not tenable and sustainable; hence a new cooperative framework agreed to by all riparian states of the Nile Basin is inevitable and necessary. Therefore, Egypt and Sudan initiated some cooperative technical projects with a view to creating an environment of trust among the Nile Basin countries.

Since the nineteenth century, Egypt has asserted its historical rights to the Nile waters over other countries of the Nile Basin. Notwithstanding, it has to be pointed out that Egypt has also encouraged cooperative frameworks in the area of hydraulic endeavours. Indeed, this is the area where Egypt welcomes cooperation among the countries of the Nile Basin and proffers its reservoir of technical expertise with a view to ensuring efficient use and storage of the Nile waters. The 1929 Nile waters agreement provided a legal framework that Egypt has been using to render technical expertise to other countries of the Nile Basin, especially in the area of hydro-projects.

As a result of floods in the East African countries in the 1960s, the World Meteorological Organization established a hydro-meteorological (hydro-met) project, with a view to surveying the lake plateau region. The East African countries invited the two main downstream countries (Egypt and Sudan) to participate in the project. Pursuant to this initiative, Egypt and Sudan, in turn, came up with a proposal to establish a Nile Basin Planning Commission that would have had an unrestricted mandate to plan the waters of the Nile Basin. However, other countries of the Nile viewed the proposal with some scepticism, noting Egypt's advantageous technical and legal expertise, which would make it a dominant power, coupled with its constant quest for more water with utter disregard for other countries' water needs.[57]

In the 1970s, Egypt and Sudan again invited other countries of the Nile Basin to create a commission that would plan the development of the Nile waters. The invitees remained circumspect about the objectives of these two downstream countries. In order to avert what they perceived to be a trap, they instead proposed the creation of the Undugu group, which consisted of Burundi, the Central African Republic, Egypt, Rwanda, Sudan, Uganda and Zaire. (*Undugu* is Swahili for 'brotherhood'.) Yacob points out that the Undugu Commission held numerous meetings, but could not substantively produce groundbreaking resolutions with respect to the equitable distribution of the Nile waters.[58]

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However, at its 67th meeting, in Aswan, the water-resource ministers decided to dissolve the Undugu Commission and, in its place, established the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile (TECCONILE). In a short time, TECCONILE managed to successfully complete a number of projects that it had set itself to achieve.

- It took part in the preparation of an atlas map of the Nile Basin.
- It provided a series of training for staff members of water-resource agencies in the countries of the Nile Basin in areas of geographical information systems (GIS), hydrological modelling, monitoring, forecasting and simulation.
- It organised a number of conferences and workshops with a view to fostering cooperation and exchange of ideas among the participants. In this respect, it developed and produced the Nile River Basin Action Plan (NRBAP).[59]

Notwithstanding the prevailing suspicion and mistrust between the two downstream countries and the other countries of the Nile Basin, this period witnessed a semblance of cooperation between the countries concerned. While upstream countries of the Nile Basin put their point through with respect to the equitable distribution of the Nile waters, Egypt and Sudan began to appreciate the advantages that could accrue to them from the cooperative and coordinated frameworks. Hence, they saw the need to encourage further cooperative frameworks that would assist in charting a collective way forward as far as the Nile Basin was concerned: a positive development, indeed.

3.8.1 The Nile Basin Initiative

Pursuant to the achievements of TECCONILE and the NRBAP, the ten countries of the Nile Basin founded the Nile Basin Initiative (NBI), which they officially launched in 1999. The main objective of the NBI was to realise a shared vision with a view to achieving sustainable socio-economic development through the equitable utilisation of, and benefit from, the common Nile Basin water resources. With a view to this objective, the NBI has developed a number of projects that purport to concretely translate into action its Shared Vision Programme (SVP) by creating an enabling environment for cooperative management.[60]

The NBI outlines the following as its primary objectives:

- To develop the water resources of the Nile Basin in a sustainable and equitable way to ensure prosperity, security and peace for all its people.
- To ensure efficient water management and the optimal use of resources.
- To ensure cooperation and joint action between the riparian countries, seeking win-win gains.

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- To target poverty eradication and promote economic integration; to ensure that the programme results in a move from planning to action.[61]

The SVP has seven projects:

- Nile transboundary environmental action
- Nile Basin regional power trade
- Efficient water use for agricultural production
- Water-resource planning and management
- Confidence building and stakeholder involvement (communications)
- Applied training
- Socio-economic development and benefit sharing

The SVP purports to 'create an enabling environment for cooperative development and management'. Indeed, the process is intended to encourage regional cooperation and dialogue with a view to establishing common strategies and analytical frameworks.[62]

Pursuant to the SVP, a strategic action programme (SAP) has been developed that consists of two sub-programmes:

- Technical assistance and capacity-building-type projects to be widely implemented in the basin countries with a view to creating an enabling environment for cooperative development.
- SAPs to be carried out by smaller groups of Nile riparians, with a view to establishing physical investments at the sub-basin level. Geographically, two SAPs have been firmly established in the eastern Nile (EN-SAP) and the Nile Equatorial Lakes Region (NEL-SAP), which includes Burundi, DRC, Egypt, Kenya, Rwanda, Tanzania, Sudan and Uganda[63]

In addition, the International Consortium for Cooperation on the Nile (ICCON) has been established to render support for the NBI's strategic action programme. It is organised under the auspices of the World Bank as a forum for the riparian states to exchange views with the international community and mobilise resources for their specific development projects. This forum is meant to accentuate international cooperation with the Nile Basin countries and support their cooperative efforts as far as the distribution and use of the Nile waters are concerned. The initial partnership comprised the World Bank, the UNDP and the Canadian International Development Agency (CIDA); this group of sympathisers has subsequently been joined by the Food and Agriculture Organization, the Global Environment Facility and the governments of Denmark, Finland, Germany, Italy, the Netherlands, Norway, Sweden, the UK and the US.[64]

The experiences of the NBI so far point to the fact that the basin countries' socio-economic development needs are being understood and appreciated. However, the interpretations of the 1929 and 1959 legal agreements continue to linger. Some riparian countries have reiterated their old positions vis-à-vis the

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use and exploitation of the Nile waters in terms of their equitable distribution. The issue of equitable distribution and no harm remain challenging, in that the countries of the Nile Basin have continued to call for fresh negotiations of the current legal agreements on the Nile, while the two downstream countries have remained wedded to their historical rights as the main users of the Nile waters.

Prior to the ICCON conference in Geneva, Ethiopia declared that it had embarked on building two dams in the Blue Nile sub-basin that would allow it to develop approximately 200 000 hectares for irrigation schemes. Indeed, the Ethiopian minister of water resources noted that the two dams in question would be 'the first phase of 46 projects, which Ethiopia proposed to execute along with ten joint projects which Egypt and Sudan proposed such as a watershed management, flood control, basin studies and dam projects'.[65] In this connection, the Egyptian ambassador to Ethiopia reiterated the spirit of the NBI by reaffirming Egypt's commitment to

> … the utilization of the Nile waters for the benefit of all riparian countries … that Egypt was committed to multilateral arrangements of joint development projects of the Nile waters that would benefit both upstream and downstream countries without harming downstream countries, provided projects did not lead to a reduction of the waters reaching Egypt.[66]

Egypt's historical rights to the Nile waters underlined the reservations made by its ambassador to Ethiopia. Indeed, the Egyptian government issued a statement to the effect that 'the 1959 Nile Water Agreement was in effect without any limits on its duration'.[67] In response to this statement, the Ethiopian minister of water resources referred to the NBI's agreement and reiterated that Ethiopia had reserved its right to execute development projects. He added that the 1959 agreement between Egypt and Sudan was more an impediment as far as sustainable development through the NBI was concerned.[68]

In effect, the NBI is a process that the riparian states intend to pursue in the hopes that it will culminate in creating a legal framework or treaty that will address the root causes of the current mistrust and suspicion that characterise the relations among riparian states. Indeed, the process purports to foster cooperation and sustainable development for the benefit of all the parties concerned. It remains to be seen, however, whether such objectives will, in the long run, override the individual riparian states' national interests, which they have been jealously protecting.

The success of the NBI will entirely depend on its ability to close the current gap between upstream and downstream countries in terms of their perceptual differences over rights. This can only be done if the parties concerned accentuate the principles of cooperation and coordination. These principles will certainly help the parties to negotiate a treaty that will balance the equitable distribution of the Nile waters and the concept of no harm in their utilisation.

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3.9 Conclusion and Policy Recommendations

While the duality between Egypt and Sudan continues to characterise the relations between downstream countries and upstream countries, it is evident that this duality has become somewhat outdated with the creation of the NBI. The coming into existence of the NBI has signalled a trend which suggests that cooperative and coordinated efforts by all those concerned will serve the collective interests in the Nile waters in terms of socio-economic development better than the duality of the two downstream countries, which excludes upstream countries. However, the reluctance of Egypt and Sudan to sign the proposed treaty rekindles and reinforces the politics of duality.

Egypt's succession theory has not necessarily been endorsed by the UN Convention or by the Helsinki Rules; nor has Nyerere's succession doctrine been wholly adopted by the general principles of both legal regimes. It is thus critical that member states of the NBI accelerate the process of developing a new regional treaty that will be supported by all. In this respect, the cooperative and coordinating nature of the NBI process is indeed encouraging as long as those concerned stay the course.

One of the key recommendations is that the NBI should seriously consider the membership of the UN Convention with a view to persuading its members to incorporate the general principles in their anticipated legal framework or treaty. Such a membership would certainly encourage those members that have yet to ratify the UN Convention to do so. The NBI should continue its efforts to persuade the reluctant members to sign its proposed treaty.

Notes and references

1 Hultin, J., 1995. The Nile: Source of life, source of conflict. In Ohlsson, L. (ed.), 1995. *Hydropolitics: Conflicts over water as a development constraint*. Dhaka University Press.

2 Nobelsdorf, K, 2006. The Nile waters agreements: Imposition and impacts of a transboundary legal system. Dorsey & Whitney Student Writing Prize in Comparative International Law, best note award winner, 44 Colum J. TRANSNAT'L L.622/632-33 (2006).

3 Degefu, G.T., 2003. The Nile waters: Moving beyond gridlock. In Degefu, G.T. (ed.), 2003. *The Nile: Historical, legal, and development perspectives.* Trafford Publishing.

4 Godana, B.A., 1985. *Africa's shared water resources: Legal and institutional aspects of the Nile, Niger and Senegal river systems.* London: France Printer.

5 Elhance, A.P., 1999. *Hydropolitics in the Third World: Conflict and cooperation in international river basins.* Washington, DC: United States of Peace, p.309.

6 Godana, 1985, op. cit., p.32.

7 Godana, 1985, op. cit.; Hyde, J.N., Permanent sovereignty over natural wealth and resources. *American Journal of International Law* 50, pp.854–867.

8 Mekonnen, K., 2005. The defects of past treaties and agreements on the Nile River waters: Whose faults were they? Occasional paper, 12 August 2005, Wikipedia. Available at http://www.ethiopians.com/abay/engin.html [Accessed 11 March 2011].

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Cooperative Diplomacy, Regional Stability and Capacity Issues: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

9 International Law Association, 1967. The Helsinki Rules on the Use of the Waters of International Rivers, 52 ILA, p.477.

10 World Bank, 1998. *International watercourses: Enhancing cooperation and managing conflicts*. Washington DC: World Bank, p.8.

11 World Bank, 1998, op. cit.

12 Ibid.

13 United Nations, 1997. Convention on the Law of Non-Navigational Uses of International Watercourses, UN Doc. A/RES/51/229. New York: United Nations.

14 World Bank, 2002. *Conflict and cooperation on South Asia's international rivers: Legal perspective.* Washington DC: World Bank, p.xvii.

15 Yacob, Y., 2004. From UNDUGU to the Nile Basin Initiative: An enduring exercise in futility, Addis Tribune, Jan. 30, 2004, available at http:// www.tigrai.org/News/Articles 2004/. The Nile by Yacob2.htmI, [Accessed 11 March 2011].

16 Tafesse, T., 2000. The hydro-politics perspective of the Nile question. Occasional Paper, 29 June, 2000, London, UK : Transaction Publishers. Available at http://www.transboundarywaters.orst.edu/projects/casestudies/nile_agreement.htmI, [Accessed 11 March 2011]; http://www.bctimes.com/btimes/viewnews.php?category=4&newsID=272 [Accessed 11 March 2011]; http://216.109.12…/From.htm&w=articles+nile+basin7d=CF705291C0&icp=1&.intl=u [Accessed 11 March 2011].

17 Godana, 1985, op. cit.

18 Ibid., pp.108–110.

19 Ibid., p.114.

20 Degefu, 2003, op. cit.

21 Ibid., p.116.

22 Ibid., pp.116–117.

23 Ibid.

24 Godana, 1985, op. cit.

25 Mekonnen, 2005, op. cit.

26 Degefu, 2003, op. cit.

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid.

31 Godana, 1985, op. cit., p.5.

32 Yacob, 2005, op. cit.

33 Ibid.

34 Ibid., p.2.

35 Ibid.

36 Ibid., p.3.

37 Ibid., pp.4–6.

38 Ibid.

39 Ibid., p.3.

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Created from uregina on 2021-03-08 10:01:57.

40 The Sudan civil war started in 1955 before independence in 1956, and there has never been a comprehensive census since then.

41 Deng, B.K., 2006. Sudan's identity and the notion of broken promises. *South Sudan Post*, 2nd edition, February; Daly, M.W., 1991. *Imperial Sudan: The Anglo-Egyptian Condominium, 1934–1956*. Cambridge: Cambridge University Press.

42 Deng, 2006, op. cit.

43 Duany, W. & Duany, J., 2000. Genesis of crisis in the Sudan. In Spaulding, J. & Beswick, S. (eds), *White Nile black blood: War, leadership, and ethnicity from Khartoum to Kampala*. Asmara: The Red Sea Press, pp.167–182.

44 Swain, A., 1997. Ethiopia, the Sudan, and Egypt: The Nile River dispute. *The Journal of Modern African Studies*, 35(4), pp.675–694.

45 Sikainga, A.A., 2000. Military slavery and the emergence of a southern Sudanese diaspora in the northern Sudan, 1884–1954. In Spaulding, J. & Beswick, S., 2000, op. cit., pp.22–37; Stiansen, E., 2000. Franz Binder: A European Arab in the Sudan 1852–1863. In Spaulding, J. & Beswick, S., 2000, op. cit.

46 Sudanese Prime Minister Abdalla Khalil handed over power to the military in 1958, having been frustrated by other political parties.

47 See, for clarification, Article 2(1) and (2) of the 1959 Nile Waters Agreement between Egypt and the Sudan.

48 Egypt established official offices in Jebel Awliya, Malakal and Juba. It is no secret that the personnel supervising these offices are drawn from military and security agencies in Egypt.

49 Deng, B.K., 2004. The legal implications of the Sudan peace process: Interpretation of the texts of the agreement. In Adar et al. (eds), *Sudan peace process: Challenges and future prospects*. Pretoria: Africa Institute of South Africa.

50 Deng, 2004, op. cit.

51 Alier, A., 1992. *Too many agreements dishonored: Southern Sudan*. Reading: Ithaca Press, pp.222–232.

52 De Mabior, J.G., 1981. Identifying, selecting, and implementation of rural development strategies of socio-economic development in the Jonglei project area, southern Sudan. Unpublished PhD dissertation, Iowa State University.

53 Ramani, K. & Mugo, W., 2005. Nile water deal threat to regional stability. *Sudan Tribune*, 8 December 2005.

54 On El Gizira TV in February 2006, Hassen El Turabi confessed about his party's role in the military coup of 1989 and the attempted assassination of President Hosni Mubarak of Egypt.

55 Degefu, 2003, op. cit.

56 Ibid.

57 Yacob, 2005, op. cit.

58 Ibid.

59 Tafesse, 2000, op. cit.

60 Ibid.

61 Ibid.

62 Council of Ministers of Water Affairs of the Nile Basin States, 2001. Nile Basin Initiative Shared Vision Program: Socio-economic development and benefit sharing, project document, March, p.v.

63 Council of Ministers of Water Affairs of the Nile Basin States, 2001, op. cit., p.4.

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Cooperative Diplomacy, the Nile Basin and the Riparian States: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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64 Council of Ministers of Water Affairs of the Nile Basin States 2001, op. cit., p.v.

65 Yacob, 2005, op.cit.

66 Ibid, p.8.

67 Ibid.

68 Ibid.

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CHAPTER 4
Ethiopia's position on the Nile water agreements

Tesfaye Tafesse

4.1 Introduction

By virtue of the three major tributaries of the Nile River systems, namely the Blue Nile, Atbara and Sobat, Ethiopia contributes 86 per cent of the total volume of water to the Nile, with the White Nile contributing the remaining 14 per cent. Ethiopia's contribution to the Nile flow, however, rises to 95 per cent during the summer season heavy rains from July to September. For historical and geographical reasons, not all the Nile Basin's riparian states have been in a position to utilise the waters of the Nile equally. Egypt has always been the most extensive user of the Nile waters, followed by Sudan. Ironically, Ethiopia, which contributes about 86 per cent of the waters of the Nile, utilises less than 1 per cent. In reality, Ethiopia's hydraulic works in the Nile Basin are very limited in scope when weighed against their potential, both in terms of irrigation and hydropower generation.

Given the locations of Ethiopia and Egypt at the producing and receiving ends, respectively, of the course of the Nile, and owing to Egypt's total dependence upon the river, fear, suspicion and anxiety among Egyptians of what may occur upstream in Ethiopia have been more the norm than the exception since the dawn of history. It is this predominantly acrimonious interstate relationship between the two countries that has shaped and continues to shape the hydropolitics of the Nile Basin. The wider claim that Ethiopia could control the flow of the Nile and starve the people of Egypt to death was an all too common issue in the medieval and post-medieval periods. As shown in the next sections, with the intent to avert their real and/or imagined fears, the colonial powers and Egypt left no stone unturned to strike a deal with independent Ethiopia and the then colonised Nile riparian states (through their colonial masters) in order to secure the full control of the Nile.

This chapter first aims to appraise the previous Nile water agreements. In so doing, it discusses the essence of the agreements, the situations and contexts in which they were signed and their relevance and/or irrelevance to the Nile upstream states, most particularly to Ethiopia. Following that, the various Ethiopian governments' positions on the previous agreements are discussed. In addition, the study reviews the ongoing Cooperative Framework Agreement

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(CFA) in the basin. The chapter concludes its discussion by assessing the current state of affairs, indicating future directions and suggesting scenarios.

4.2 Appraisal of Nile Water Agreements

To begin with, there is no multilateral and comprehensive agreement regarding the use of the waters of the Nile for the common benefit of all the nations of the basin. At best, what can be said of the Nile is that there have been bilateral agreements that have remained as partial rather than comprehensive treaties. As stated by Hultin, '... in a situation like this [absence of agreement], all national development plans made by one government concerning the use of the Nile will be perceived by another government as a threat to its national interests and thus a source of international conflict'.[1] The relevant parts of the previous Nile water agreements are appraised in the following sections.

4.2.1 Rome, 15 April 1891

This treaty was made alongside the demarcation of the respective influence of Britain and Italy in East Africa from Ras Kassar in the north (the northern tip of present-day Eritrea) to the Blue Nile Basin in the south. Britain urged Italy and/or Ethiopia to strike a deal or make a treaty with regard to the utilisation of the Atbara River. Italy acceded to British demands and agreed to sign an article (Article III, No. 136) referring to the river. It read as follows: '... the Italian government undertakes not to construct on the Atbara any works which might sensibly modify its flow into the Nile'.[2] At the time of this pact, the Italians had already established themselves in Eritrea, but not in Ethiopia. The vague phrase 'sensibly modify' limits neither the utilisation of the river nor the fair share of the Nile waters. Had the treaty even excluded the usage of the Nile water by Ethiopia, which was not the case then as it is now, it should have ceased to have any relevance after the demise of the British and Italian colonial rules in the region. This treaty, however, exemplified the British motive of safeguarding Egyptian interests from as early as this period.

4.2.2 Addis Ababa, 15 May 1902

At this time, Great Britain sent its special envoy, Lt Colonel John Lane Harrington, to Addis Ababa to negotiate outstanding frontier issues between Ethiopia and the neighbouring British colonies. Article III of the resultant agreement between the two countries, with Britain acting for Egypt and Anglo-Egyptian Sudan, dealt with the future utilisation of the waters of the Nile. The treaty reads as follows:

> His Majesty the Emperor of Ethiopia, Menelik II, King of Kings of Ethiopia, engages himself toward the Government of His Britannic Majesty not to construct or allow to be constructed any works across the Blue Nile, Lake Tsana or the Sobat, which would arrest the flow of their waters into the

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> Nile, except in agreement with His Britannic Majesty's Government and the Government of the Sudan.[3]

The above agreement was instigated as part of a grandiose British stratagem to fully control the Nile waters. To do this, the Anglo-Egyptian forces first conquered Sudan in 1898 and then resorted to striking a deal with independent Ethiopia by way of a treaty. The pact, which is said to have had an Amharic version that was different from the original English text, has never been ratified by either Ethiopia or the British Parliament.[4] Had it even been considered as binding, the phrase that read as 'not to arrest the flow of the Nile water' would by no means signify either the non-usage of the Nile water or a reduction in its volume downstream. Instead, as has been enunciated by Kefyalew, '... by forbidding the Nile water from being arrested by Ethiopia, the treaty inadvertently advocated the principle of sustainable development'.[5] In addition, it sounds illogical to ask 'His Britannic Majesty's Government' in London for permission to 'arrest' or 'not to arrest' the flow of the Nile. Another author also spotted some holes that marred the 1902 treaty. Chiefly, by inserting the phrase 'except in agreement with ...', the article provided the seeds of its own demise by once again betraying a hidden motive on the part of the British, whereby they had anticipated the possibility of actually revamping the provision, perhaps to punish Egypt at some later point.[6] Secondly, as the same author stated, the provision is also poorly drawn up as a result of its reference to a non-existent bona fide independent state, namely 'the Government of the Sudan'.

4.2.3 London, 13 April 1906

After the British secured an apparent commitment from Ethiopia in 1902 'not to tamper with the Blue Nile', they went one step further by soliciting identical assurances from the colonial rivals of the region, namely, Italy and France. This endeavour brought about the trilateral agreement and declaration between Britain, France and Italy, which called for, among other things, '... the safeguarding of the interests of the UK and Egypt in the Nile Basin, [most particularly] as regards the regulation of the waters of that river [the Nile] and its tributaries in the event France or Italy obtained control of the source of the Blue Nile'.[7] This agreement was hence designed in such a way as to apply a significant amount of pressure on the Italians and the French to limit their interference with the British hegemony in the Nile Valley. One should also bear in mind that the agreement was signed after Italy's attempt to establish control over Ethiopia was crippled by Ethiopian patriots at the Battle of Adwa in 1896 and after the three actors in the scramble for Africa, i.e. Britain, France and Italy, nursed fear and resentment for not being outpaced by one or the other party in Ethiopia.[8] In the end, the British had partially attained, albeit temporarily, their dream of placing the Nile Basin under their sphere of influence. Undoubtedly, as a deal among European colonial powers, the treaty would have had little or no significance for the now sovereign Nile riparian states.

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4.2.4 9 May 1906

After apparently ensuring the security of the water of the Blue Nile and Atbara Basins through the previous treaties, the British then turned their attention towards the White Nile sources in 1906. Their efforts bore fruit when they persuaded the 'Government of the Independent State of the Congo' to sign an agreement with them regarding the utilisation of the tributaries of the White Nile that flow through the Congo. Accordingly, the agreement that was signed on 9 May 1906 reads as follows: '... the Government of the Independent State of the Congo undertakes not to construct, or allow to be constructed, any work on or near the Semliki or Isango rivers that would diminish the volume of water entering Lake Albert, except in agreement with the Sudanese government'.[9] This pact was not substantially different from the one that was concluded with Ethiopia in May 1902. It signified the same routine of protecting British imperial interests in the Nile Basin at the expense of the equatorial riparian states. The fact that all the equatorial riparian, states save the 'Independent State of the Congo', Burundi and Rwanda, had at that time been under direct and/or indirect British colonial rule did not necessitate further agreements. Therefore, in effect, after the signing of the 1906 agreement, Britain had apparently secured its long experienced wish to control the whole of the Nile Basin.

4.2.5 7 May 1929

This was a time when an agreement was concluded between Great Britain (on behalf of Sudan) and Egypt, whereby the British government, on behalf of its colonies, pledged not to undertake works which would reduce the volume of the Nile waters reaching Egypt. The agreement had simultaneously granted Egypt the right to inspect and investigate any control work along the whole length of the Nile. The 1929 agreement fixed quantitative shares to the two downstream states, by which 48 billion cubic metres of water per year were allocated to Egypt as its 'acquired right' and only 4 billion to Sudan.[10] Looking at such an unfair distribution, one author remarked that 'Egyptian (British) hegemony over the Sudan culminated [in] this agreement'.[11] In addition to the lion's share of the water they were entitled to by the 1929 agreement (i.e. a ratio of 12:1 in favour of Egypt), the Egyptians were also given the right to monitor the Nile flow in Sudan, use the entire 'timely flow' and undertake any hydraulic work on the Nile when deemed necessary, without the consent of Sudan or any other riparian state in the basin.[12] The agreement went further by giving Egypt the right to veto any project on the Nile that could adversely affect its interests. This agreement could not have any binding effect on the upper Nile riparian states for two reasons. Firstly, it was a bilateral agreement and did not include any of the upper riparian states of the Nile and, secondly, it was struck by a colonial power, which makes it null and void, as stipulated in the Nyerere Doctrine, which was formulated in 1961.

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4.2.6 The 1959 agreement

After Sudan gained its independence in 1956, its first prime minister, Ismail al-Azhari, called for the revision or abrogation of the 1929 Anglo-Egyptian agreement and demanded its replacement by a more rational and fair distribution of the waters of the Nile. The Sudanese stated that 'the agreement was no longer valid because it had been reached by Britain and Egypt without consulting with them [Sudan] and had discriminated against them'.[13] Incidentally, the Sudanese demand for the revision of the 1929 agreement was put forward at a time when President Nasser of Egypt was contemplating making a deal with the Sudanese that would enable his country to construct the envisaged Aswan High Dam. The Egyptians were well aware of the fact that the completion of the dam would create an artificial lake that would inundate the northern sections of Sudan. There were also several ecological concerns with regard to the dam's impact on the change of life it might bring about on the banks of the Nile in both states. Besides, the Egyptians might have calculated that invoking a cooperative agreement with Sudan could possibly draw the international financial institutions on their side. Waterbury, however, argues to the contrary by pointing out that '... the 1959 agreement was not the result of Egypt's need for Sudanese acquiescence in the construction of the High Dam, but rather of the Sudan's need for [the] Egyptians' acquiescence in the construction of the Roseires Dam on the Blue Nile'.[14]

For about three years, there was an impasse between Egypt and Sudan on which country should get what amount of the water of the Nile.[15] It even culminated at one point in Egyptian claims and muscle flexing over the contested Halayb Triangle in their common border area. Interestingly, the deadlock came to an end when the incumbent prime minister of Sudan was toppled by a military *coup d'état* on 17 November 1958 and was replaced by General Ibrahim Abboud (see also Chapter 3). Unlike his predecessor, the new leader showed a flexible stance towards the Egyptians and pledged the settlement of all outstanding issues with Egypt, more particularly on matters related to the sharing of the Nile water. After conducting numerous discussions at ministerial levels, a deal on the 'full utilization of the Nile waters' was struck between the two parties on 8 November 1959. This agreement apportioned the total annual discharge of the Main Nile, as measured at Aswan, i.e. 74 billion cubic metres, between Egypt and Sudan.[16] The division was made after deducting the anticipated net surface evaporation and seepage at the reservoir, which is estimated to be 10 billion cubic metres per year. Of this amount, Egypt was allotted 55,5 billion cubic metres, and Sudan was allowed to use the remaining 18,5 billion cubic metres. The ratio of Sudan's share to Egypt's, which had been 1:12 in the 1929 agreement, was elevated to 1:3 in 1959. The two countries also formed a Permanent Joint Technical Committee, which would be in charge of overseeing the 1959 agreement, coordinating a unified Egyptian-Sudanese position for negotiation with other riparian states, planning the development of the Nile Basin, collecting data and information and supervising projects.[17]

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The 1959 agreement created a watershed in the hydropolitcal history of the Nile Valley in the sense that it invigorated a monopoly on the waters of the Nile by Egypt and Sudan. By implication, the agreement has literally set up a zero-sum game in the Nile Basin by ignoring the natural and legal rights of the remaining seven riparian states to the bounty of the Nile water resources. Even worse, Ethiopia, the then only independent co-riparian state and a major contributor to the Nile water, was neither consulted nor invited to any of the negotiation processes that led to the 1959 agreement. The agreement merely stated that if other upstream riparian states claimed a share of the Nile waters, both countries (i.e. Egypt and Sudan) would study together these claims and adopt a unified view on them. If such studies result in the allocation of a specified volume of Nile water to one or the other of the upper riparian states, then the amount would be deducted in equal shares from the shares of Egypt and Sudan. Although the provision recognised the multilateral interdependencies and rights in the basin, actualities showed otherwise, namely the peripheral commitment of the two downstream states to the rights of the upper riparian countries. Taking note of this unfortunate situation, Collins stated that '... both Egypt and Sudan unashamedly staked out substantial increases in their "historic and established rights to the waters of the Nile"'.[18] Erlich also commented on Ethiopia's exclusion by enunciating that '... one can never really appreciate the Egyptian approach without perceiving it as new, modified version of the old Islamic legacy of "leave the Abyssinians alone", in the sense of ignoring and sidelining Ethiopia'.[19] In short, the invocation of the 1959 agreement contravened the customary law of the basin, which normally considers the Nile or any other transboundary river basin as a common resource whose destiny must be decided by consensus.

Ever since the signing of the 1959 agreement, Egypt has time and again shown its inflexible stance towards the alteration of the treaty. It considers the 1959 and preceding agreements as unchangeable and sacrosanct. In effect, as far as the Egyptians are concerned, any new talks on the utilisation of the Nile water beyond the 1959 status quo must at all costs be circumvented. Put another way, the bottom line to any such talks and the resultant scenarios, should first and foremost take the 1959 status quo for granted and examine the possibility of acquiring additional water in the Nile Basin. If the avenues towards redistributing the previously specified average Nile discharge – i.e. 74 billion cubic metres – are closed, the question that arises is what else can the upper Nile riparian states discuss with the downstream states?

Ironically, for one reason or another, the international community seems to be growing comfortable with the 1959 status quo.[20] For example, the World Bank upheld a double standard by not only inadvertently recognising the 1959 bilateral deal between two of the nine riparian states as a 'genuine Nile agreement', but also by attaching the agreement as a condition to financing future hydraulic works in the Sudan. On 19 May 1959, the then president of the World Bank, Eugene Black, imposed the condition on the Sudanese that if they intended to get financial assistance from the West both for the construction

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of the Roseires Dam on the Blue Nile and to resettle the displaced Nubians (Sudanese), they needed to sign the intended Nile agreement with Egypt.[21] Waterbury's argument about international organisations' acquiescence to the 1959 status quo, which stated, among others, that '... none of the nations [the Nile upper riparian states] affected by it [the 1959 agreement] have *consistently called [it] into question*' (emphasis mine) is at best groundless because Ethiopia has time and again, and *consistently*, aired its objections to the 1959 agreement – and all the previous ones.[22]

As the aforementioned treaties and agreements have explicated, there is a lack of comprehensive agreement regarding the use of the waters of the Nile. Most of the existing treaties or agreements were signed by colonial powers during their rule in the region. In the process, these powers ignored not only Ethiopia, from where over 80% of the Nile water originates, but also the other equatorial co-basin states that have a legitimate right to a share of the pie. The colonial powers had imposed their will on all the upstream states for the sake of Egypt and, to a lesser degree, Sudan. For strategic and economic reasons, the treaties were designed to promote British interests in its colonies Egypt and Sudan, the former being given a unilateral right to the use of the Nile waters as if the river rises, flows and ends within its territory.

The next section deliberates on Ethiopia's hydropolitical positions towards the various Nile water agreements.

4.3 Ethiopia's Position with Regard to the Nile Water Agreements

The various Ethiopian governments have recognised no obligations to limit their use of the Blue Nile for the sake of Egypt and/or Sudan. No Ethiopian government has recognised the various treaties, including the 1959 agreement, as binding. Ethiopia has always been the silent partner in all the Anglo-Egyptian and later Egyptian-Sudanese negotiations. As mentioned earlier, non-recognition of these colonial treaties is not restricted to Ethiopia, but is a position that is equally, if not more so, shared by the other upstream riparian states. For instance, Tanzania had long dismissed the colonially initiated treaties as null and void and non-binding, going back to the Nyerere Doctrine, which was initiated in 1961. The other equatorial riparian states followed suit after gaining their independence in the early 1960s.

By underpinning the notion of a 'rightful share', Ethiopia has time and again reiterated its positions on the utilisation of the waters of the Nile for irrigation and hydropower generation. The first such official attempt was made as far back as February 1956, a month after Sudan's independence, when Ethiopia informed Cairo that it 'reserved its rights to utilize the water resources of the Nile for the benefit of its people'.[23] The same Ethiopian claim to its natural rights to the Nile was aired some months later in the midst of the Suez crisis. These views were again echoed in a memoir of 23 September

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1957 to the diplomatic missions in Cairo. The memoir's content has been paraphrased by Daniel Kendie, as follows:

> Ethiopia has the right and obligation to exploit its water resources for the benefit of present and future generations of its citizens [and] must, therefore, reassert and reserve now and for the future, the right to take all such measures in respect of its water resources.[24]

In short, as has been testified by Collins, time and again, Ethiopia has declared in official notes to Cairo and international organisations that the country reserves its right to utilise the water resources of the Nile for the benefit of its people, whatever the volume of water sought to be used by the other riparian states.[25]

At the March 1977 Water Conference at Mar del Plata, Argentina, the Ethiopian delegation emphasised the urgency of basin-wide agreements without which the upstream states may be compelled to unilateral development of water resources. In fact, it was at this conference that the Ethiopian presenter disclosed his country's plan to develop 91 000 hectares of the Blue Nile and 28 000 hectares of the Sobat Basins for irrigation purposes.[26] Similarly, Ethiopia's displeasure with the status quo was echoed at the 1980 Organization of African Unity (OAU) meeting in Lagos, Nigeria, where the Ethiopian representative denounced Egypt for its plans of diverting the Nile water to the Sinai Peninsula.

At the seventh ordinary session of the Council of Ministers of Water Affairs (Nile-COM), which took place in Addis Ababa on 12 May 1999, the host country reiterated its position by calling for the '... equitable utilization of the resources of the Nile for effective and sustainable development of all concerned towards a shared vision amongst the nine basin countries'.[27] It was also decided at this meeting that there should be a joint discourse with a common pursuit of the sustainable development and management of the Nile waters.[28] Given the fact that Ethiopia has made its position on the Nile water known for over half a century by proposing, among other things, the revision of the 1959 agreement and the implementation of a 'fair and equitable distribution' of the Nile waters invalidates Waterbury's classification of Ethiopia as the 'great unknown'. Besides, since the 1980s, Ethiopia has come up with comprehensive and detailed hydraulic plans for the purposes of both irrigation and hydropower generation.[29]

The Egyptian out-of-basin projects, formally known as New Valley Development or New Delta Projects, embrace the newly designed Toshka Canal in the south-western part of Egypt and the El-Salam (Peace) Canal in the north-west.[30] Ethiopia has objected to this overall water diversion scheme from day one. This was relayed to the Egyptian Ministry of Foreign Affairs in a verbal note on 20 March 1997, and a copy was sent to the UN secretary general, the general secretary of the Organization of African Unity (OAU), the president of the World Bank and the general secretaries of both the European Union and the Intergovernmental Authority on Development.[31] The note

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underscored, among other things, Egypt's unilateral move as an illegitimate action that is tantamount to denying the other Nile co-basin states their fair and equitable share of the Nile water resources. Egypt's ambitious move can, nonetheless, be interpreted with certainty as a pre-emptive plan designed to create facts on the ground prior to the settlement of outstanding water reallocation issues with other Nile riparian states.

The next section discusses the ups and downs of the ongoing attempts to come up with a legal and institutional framework via the CFA.

4.4 The Cooperative Framework Agreement

Of the six pillars of the Shared Vision Programme (SVP) of the Nile Basin Initiative (NBI), the Nile River Basin Cooperative Framework (Pillar B, also commonly called the D3 Project) has been in process since 1997. The major objective of the D3 Project, which was later renamed the CFA, is spelt out as '... enabling the Nile River Basin countries to determine equitable entitlements for each riparian country for the consumptive and non-consumptive use of the Nile waters [and] for optimum sustainable socio-economic benefits of the inhabitants of the basin'.[32] The CFA is a legal and institutional framework designed to transform the transitional mechanism, i.e. the NBI, into a permanent Nile Basin Commission (NBC). The latter is expected to coordinate, guide and facilitate the mechanisms of use, management and protection of the Nile waters.

That said, the task of preparing a draft CFA – in line with the terms of reference that were elaborated by Nile-COM – was given to independent consultants. The latter were given directives to consider as many relevant provisions of international water laws on transboundary river basins as possible before drafting the cooperative framework for the Nile.[33] These included, among others, assessing the status of international water laws and existing legal and institutional frameworks; identifying relevant and applicable principles for the Nile Basin; appraising water supply quantity and quality in the basin; prioritising existing uses and needs; exploring the potential of the basin's resources for development; and understanding the compatibility of sectoral water-development programmes, projects and plans of the different riparian states of the basin. In addition, the CFA has outlined the relevant factors that need to be considered in order to come up with a cooperative framework, which, among other things, seeks to attain equitable and legitimate water use of the Nile Basin.[34] Accordingly, factors, such as the amount of water that is currently used, the benefits that are derived from water use, the trend line of water use, population size and growth trends, as well as other economic, social and physical parameters, have been included in the CFA.

In the end, in 1999, the consultants came up with a draft CFA and submitted it to the panel of experts (PoE) of the Nile Basin states for discussion and revision.[35] The PoE discussed every provision of the draft document

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and produced a revised version that was marred by reservations made by one riparian state or another. As exemplified in the revised document, the sticking points revolved around two classic issues, namely the equitable and reasonable utilisation of the waters of the Nile and the causing of no significant harm to downstream users. For obvious reasons, the former issue is underpinned by upstream states, such as Ethiopia, and the latter by Egypt and Sudan. Put another way, as victims of the status quo in Nile water utilisation, the Ethiopian members of the PoE expressed reservations about certain provisions, such as 'prior notification for planned projects in the Nile Basin' and 'upstream water utilization should not cause significant harm to downstream users'. The Egyptian and Sudanese members of the PoE objected to provisions that are directly or indirectly related to water allocation and issues relating to existing projects.[36] The downstream states have, for instance, expressed their misgivings on the articles that refer to 'environmental audits of existing projects' and 'taking appropriate measures to prevent the causing of significant harm to other basin states'. In the case of the latter, the Egyptians and Sudanese PoEs wanted to replace the statement that read as 'prevent the causing of ...' with 'refrain from and prevent'.[37] Therefore, what is acceptable to upstream states has bedevilled downstream states, and vice versa, perpetuating the stalemate. This indicates the ascendancy of conflicts of interest and locked-in positions that have long prevailed in relations among Nile Basin states.

Nevertheless, the draft of the revised cooperative framework containing the above-stated footnote of reservations was submitted to the respective Nile Basin governments for further discussion and comments in late 1999. All indications suggest that things became worse when additional rounds of reservations and deletions of clauses, which the individual states deemed detrimental to their respective 'national interests', were made to the draft CFA. This can best be testified by the fact that the revised cooperative framework document that was submitted to Nile-COM in August 2000 failed to be accepted and ratified by the same body. Instead, it was acknowledged at the meeting that '... substantive issues in the cooperative framework remain unresolved'.[38] In order to find a way out of the deadlock through a further re-examination of the matter at stake, and to possibly include some of the suggestions made by the parties, Nile-COM formed a Joint Negotiation Committee (JNC) in August 2000 that was made up of two water experts from each of the Nile riparian states.

The JNC met regularly and came up with a draft CFA of its own in 2007. As stated earlier, the CFA is considered as a precursor to the establishment of the NBC. This process has, however, encountered a series of setbacks. The Nile riparian states have failed to agree on some of the clauses and articles in the legal and institutional framework. The sticking point hinges on Article 14(b), which refers to water security.[39] The seven upstream states want to keep the clause in Article 14(b) as it is – 'not to cause significant harm to the water security of any other Nile basin state', whereas the two downstream states – Egypt

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and Sudan – want the clause to be altered to 'not to adversely affect the water security of current users and the rights of any other Nile basin country'.[40] In other words, through this demand, 'Egypt and Sudan want a clear recognition of their "historic share of the Nile water" in the CFA based on the 1929 and 1959 agreements'.[41] In April 2010, after agreeing with all the articles and clauses except for the aforementioned article, two more contentious issues have been added by the two downstream states, which may compound the problems related to the signing and ratification of the CFA. Firstly, Sudan and Egypt want the upstream states to make commitments to early notification before the construction of any project – so-called 'prior notification' – and, secondly, the downstream states oppose the two-thirds or majority vote principle by advocating decision making on any project on a consensual basis.[42]

As stated by Cascão, 'after years of negotiations and two years since the negotiations were concluded, no political decision has been taken and the CFA has neither been signed nor ratified'.[43] The Nile heads of state and Nile-COM have failed to resolve the impasse. The various meetings of the JNC members to resolve the issue have also failed. The meetings that took place in Kinshasa, DRC, in May 2009; Alexandria, Egypt, in July 2009; Kampala, Uganda, in October 2009; Dar es Salaam, Tanzania, in December 2009; and Sharm-el-Sheikh, Egypt, in April 2010, failed to bear any fruit. For instance, at the Extraordinary Nile-COM Meeting in Kinshasa the seven upstream states proposed to proceed with the signing of the CFA by either holding or annexing the contentious Article 14(b), which, according to their view, must be resolved by the NBC within six months of its establishment.[44] Sudan and Egypt, however, have objected to the proposal and suggested an alternative by which the NBC will be established by presidential decree to be followed by further negotiations on the CFA.[45] These proposals and counter-proposals have created political and legal deadlocks in the Nile Basin.

As a follow-up to the previous meetings and with the intention of finalising the procedures for the signing of the CFA, and to possibly replace the transitional NBI with a permanent NBC, Nile-COM and the JNC held their latest meeting at Sharm-el-Sheikh on 14–15 April 2010. Sadly, the meeting encountered the same fate as the previous meetings. As stated by Uganda's environment minister, Maria Mutagamba, 'the seven countries [upstream states] have agreed to sign the CFA, but two [downstream states] decided to continue disagreeing with us'.[46] The same issue was reiterated at Sharm-el-Sheikh: Egypt and Sudan insisted on proceeding with the establishment of the NBC before concluding negotiations on the CFA.[47] It has also been stated that the upstream states, Kenya, Uganda, Tanzania, Ethiopia, Rwanda, Burundi and the DRC, viewed the proposal made by Egypt and Sudan as 'an attempt to sidestep the real issue'.[48] At the end of the meeting, the seven upstream states agreed to move on to the next stage, i.e. signing the CFA, starting on 14 May 2010. According to a Ugandan Ministry of Environment press release, the CFA will remain open for signing for not more than a year, after which the countries will engage in the ratification process.[49]

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This deadlock can be attributed to the stance of the Egyptian government, as reflected in the statements made by the Egyptian Minister of Water Resources and Irrigation, Mohamed Nasr El Din Allam:[50]

> We still want historical uses of the Nile water to be recognized by other Nile Basin countries because this is the only source of water we have … we want historical rights to be recognized in the agreement before it is signed.

The minister has reiterated that Egypt will not sign a deal until the following three conditions are met: that it should maintain its share of 55,5 billion cubic metres of water from the river that was apportioned to it by the 1959 agreement; that it would like to see a commitment to prior notification by upstream states before they construct hydraulic projects; and that it wants basin decisions to be made not by majority vote, but by consensus.[51] Nasrawi quotes Hany Raslan, head of the African Research Unit at the Al-Ahram Political and Strategic Studies Centre, who said:[52]

> Up until now, there has not been any breakthrough regarding the three contentious issues holding back the signing of the Agreement [the CFA]. Egypt sees no urgency in making concessions to the upstream countries. Instead, Cairo can rely on what it considers its leverage to press donor bodies like the World Bank not to provide aid to projects – particularly dams – that could reduce Egypt's share of Nile water.

4.5 Conclusion and Policy Recommendations

The hitherto existing Nile treaties and agreements on the use of the Nile waters have been partial and incomprehensive. Most of the existing treaties or agreements were signed by colonial powers during their rule in the Nile Basin region. In the process, these powers ignored not only Ethiopia, from where more than 80% of the Nile water emanates, but also the other equatorial co-basin states which have a legitimate right to a share of the pie. Through these agreements, the colonial powers imposed their will on all the upstream states for the benefit of Egypt and, to a lesser degree, Sudan. For strategic and economic reasons, the treaties were designed to promote British interests in their colonies of Egypt and Sudan, with the former being given an exclusive right to the use of the Nile waters, as if the river springs in the northern part of Sudan, flows through Egyptian territory and ends its journey at Alexandria. Given the fact that none of the upstream countries were parties to the colonially induced treaties and bilateral agreement, they do not legitimise them.

In spite of Ethiopia's crucial importance with respect to the Nile, it has systematically been excluded from any treaty, nor has it been allowed to utilise the portions of the Nile water that flow inside its own territory. It goes without saying that Ethiopia's natural right to the Nile, which is supported by the Helsinki and International Law Commission rules on water sharing, would entitle it to a fair and equitable share of the waters of the Nile. The

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failure to reach a basin-wide agreement has resulted in Ethiopia's potentially irrigable land on the Nile, which is estimated at about 3.35 million hectares, remaining unexploited to this day. The country presently utilises less than 1 per cent of its irrigation potential and about 3 per cent of its hydropower potential.

Unless Egypt and Sudan, which have adamantly overplayed the issue, make a U-turn, the impasse cannot be resolved. It is incumbent upon the downstream states to change their policy fundamentally, even going as far as compromising some of their 'national interests' to solve this problem for the sake of bringing a lasting regional peace to the basin. Put another way, a breakthrough requires a strong departure from already held principles by downstream states. International funding organisations, such as the World Bank and the UNDP, can also play a significant role in bringing the Nile riparian states together to settle outstanding issues, the most important of which is the CFA, which is still pending signing. The funding agencies can go ahead with their arbitration and go-between roles of bringing the downstream states in the direction of cooperative solutions through the signing and ratification of the CFA. Now, more than ever, such organisations can underline the principle of cooperation among the riparian states as a decisive criterion for granting loans to fund hydraulic projects of any sort. The fact that most of the Nile riparian states are too poor to fund hydraulic projects without external assistance could in this context be considered as a blessing in disguise in the sense that the states will be forced to fulfil the condition of the prospective donors, i.e. the signing and ratification of the CFA and the establishment of the NBC. Hence, by employing a 'carrot and stick' strategy, the donors – or any other third party for that matter – may act as honest brokers whose objective should be to create rapprochement amongst the protagonists. Similarly, given the strategic significance of the Nile Basin region and its potential role in global security, the West, and most particularly the US, has a major stake in helping to resolve the impasse by persuading the downstream states to sign and ratify the CFA.

In sum, it can be said with certainty that the deadlock can be broken if the downstream states stop 'canonizing the status quo' and become more pragmatic.[53] Indeed, the CFA can bring major benefits to Egypt and Sudan by protecting their interests through the reduction of sediments, availability of more water in the basin and assurance of water security. Conversely, failure to sign the CFA by the downstream states brings about the risk of unilateralism and/or partial multilateralism. In the opinion of this author, the pledges made by Egypt in 2010 to invest in upstream states, such as Ethiopia and Kenya, can in no way sidetrack the long-standing issue of water entitlement and the pending CFA.[54]

Given the current situation in the Nile Basin, the following three scenarios can be envisaged:

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- **Scenario 1**: Constructive engagement. This is the best-case scenario, whereby the two downstream states continue negotiating and renegotiating with upstream states to resolve the impasse. In the opinion of Pham, as quoted by McConnell, one way out for the downstream states will be to prepare themselves to 'revisit the old agreements, employ new technologies to make better use of the water and cooperate on a regional basis'.[55] A one-year period was provided to settle these issues and join the upstream states before the signing period closes in May 2011.
- **Scenario 2**: Legal and diplomatic engagement. In spite of the debatable validity of 'historic rights' claimed by downstream states in international law, Egypt can take its cases to different international legal forums. One has to await the decisions that will be made by such international organisations on the fate of the colonially induced 1929 treaty, which gave the lion's share of the water to Egypt, and the 1959 bilateral agreement, which divided the water resources of the Nile between Egypt and Sudan.
- **Scenario 3**: Destructive engagement. This, the worst-case scenario, refers to subversive activities and war that will be waged by downstream countries against upstream states. There are some analysts, including the current executive director of the NBI, Henriette Ndombe, who saw the breakdown of talks between upstream and downstream states as the 'beginning of a conflict' and another author who qualified it as a 'looming water war'. In the opinion of this author, the war option, which is outdated and old-fashioned, will see no winner, but only losers.[56]

It seems logical to conclude this chapter by quoting an author who has succinctly depicted the stark reality that shared-river basins, such as the Nile, are facing: 'Where nature conspired to provide common resources, there can be no ultimate independence only mutual dependence.'[57]

Notes and References

1 Hultin, J., 1995. The Nile: Source of life, source of conflict. In Ohlsson, L. (ed.), *Hydropolitics: Conflicts over water as a development constraint*. London: Zed Books, p.38.

2 Hertslet, E., 1907. *A complete collection of the treaties and conventions and reciprocal regulations at present subsisting between Great Britain and Foreign Powers*. London: Harrison and Sons, p.668.

3 Ibid., p. 1.

4 According to the Ethiopian Ministry of Foreign Affairs report (September 1997), the Amharic version of the 1902 agreement between Britain and Ethiopia forbade the latter from *constructing a dam that could stop the flow of the Nile river downstream* (emphasis added).

5 Mekonnen, K., 16 November 1999. The defects and effects of past treaties and agreements on the Nile water: Whose faults were they? Available at http://www.ethiopians.com/ abay/ engin.html [Accessed 30 April 2001].

6 Ayele, N., 1986. *The Blue Nile and Hydropolitics among Egypt, Ethiopia, Sudan*. Proceedings of the Ninth International Conference of Ethiopian Studies, Nile Basin Initiative. August 2000. Moscow. Press release no. 00/8/11. Available at http://www.nilebasin.org [Accessed 5 October 2000].

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by Africa Institute of South Africa
Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

7 Caponera, D.A., 1993. Legal aspects of trans-boundary river basins in the Middle East: The Al Asi (Orontes), the Jordan and the Nile. *Natural Resources Journal*, 33, p.658.

8 Godana, B.A., 1985. *Africa's shared water resources: Legal and institutional aspects of the Nile, Niger and Senegal Rivers*. London: Frances Publishers.

9 Hertslet, 1907. op. cit., p.344.

10 As stated by Waterbury J., 1996 (*Is the status quo in the Nile Basin viable?* Princeton University), because both the old Aswan Dam and the Sennar Dam afforded only seasonal storage, then much of the river's discharges could not be effectively put to use. In effect, what could be used at the time of the 1929 agreement was estimated to be 52 billion m^3 per year.

11 Kliot, N., 1994. *Water resources and conflict in the Middle East.* London: Routledge.

12 The 1929 agreement reserved the entire 'timely flow' to Egypt, in effect obliging Sudan to irrigate its Gezira cotton plantation only during the winter months when the Blue Nile, Atbara and Sobat rivers would have bankful and/or over-bankful discharges.

13 Collins, R.O., 2000. In search of Nile waters, 1900–2000. In Erlich, H. & Gershoni, I. (eds), *The Nile: Histories, cultures, myths*. London: Lynne Rienner Publishers, p.231.

14 Waterbury, J., 1994. Transboundary water and the challenge of international cooperation in the Middle East. In Rogers et al. (eds), *Water in the Arab world: Perspectives and prognosis*. Harvard: Harvard University Press, p.52.

15 As enumerated by Collins, R.O., 1990 (*The Waters of the Nile*. Oxford: Clarendon Press), Sudan first demanded 35 billion m^3 of water (out of an agreed total of 84 billion m^3) as their share. The Egyptians countered by proposing to allocate 9 billion m^3 for Sudan. The Sudanese lowered their earlier proposal and demanded to have no less than 25 billion m^3. This brought about a deadlock until the new pro-Egyptian leader came to power in 1958 and acquiesced to Egypt's proposal. (For details on this and related issues, refer to Collins, 1990.)

16 One should bear in mind that the technical capabilities of Egypt were elevated at the time of the 1959 agreement so much so that the annual discharge of the Nile could be fully be utilised and allocated. It literally meant that the gross gain over the 1929 reached 32 billion m^3.

17 Whittington, D. & Haynes, K., 1985. Nile water for whom? Emerging conflicts in water allocation for agricultural expansion in Egypt and Sudan. In Beaumont, P. & McLachlan, K. (eds), *Agricultural development in the Middle East*. Chichester: John Wiley & Sons.

18 Collins, 2000. op. cit., p.231.

19 Erlich & Gershoni, 2000, op. cit.

20 Waterbury, 1996. op. cit.

21 Collins, R.O., 1998. The Jonglei Canal: Illusion or reality? *Water International*, 13, pp.144–153.

22 Waterbury, 1996. op. cit., p. 24.

23 Statement of the Imperial Ethiopian Government, 1956. *Ethiopian Herald*, 6 February.

24 Kendie, D., 1999. Egypt and the hydro-politics of the Blue Nile River. *Addis Tribune*, 6 and 13 August.

25 Collins, 1990. op. cit.

26 Howell, P.P. et al., 1988. *The Jonglei Canal: Impact and opportunity*. Cambridge: Cambridge University Press.

27 BBC, 1999. Nile cooperation meeting, 12 May. Available at http://news.thdo.bbc.uk/english/world/africa/newsid%5F341000/341800.stm [Accessed 5 April 2001].

28 Walta Information Centre, 1999. Defining moments in Ethiopia's resistance to Eritrea's violent aggression. Available at http://www.telecom.net.et/~walta/conflict/articles/ article713.html [Accessed 12 September 2000].

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Cooperative Diplomacy, the Nile River and the Riparian States: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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29 Waterbury, J., 1979. *Hydropolitics of the Nile Valley*. New York: Syracuse University Press.

30 Both the out-of-basin projects were launched after they got their go-ahead from President Mubarak on 19 January 1997. In order to realise the Toshka Project plan, also called the South Valley Scheme, a consortium led by Kraerner Construction Firm of Norway is building one of the world's biggest pumping stations and a canal that would be fed by 25 million m^3 of water per day from Lake Nasser – eventually carrying 5,5 billion m^3 of water a year. The water will then be put in an 80-km-long canal called Zayed, linking the Nile to the new valleys of the Kharga, Dakhla and Farafra oasis located in the south-western desert. The El-Salam (Peace) Canal is planned to leave the Nile 20 km south of the Damietta distributory on the Nile Delta, pass beneath the Suez Canal by means of underground channels and then move eastwards for about 240 km to the north Sinai town of El-Arish, which is located only 40 km from the border town of the Gaza Strip at Rafah. The project, which consists of four tunnels, each measuring 750 metres long, is intended to transfer Nile water at a rate of 160 million m^3 per second.

31 Ministry of Foreign Affairs, Ethiopia, September 1997. The Nile question: Policy briefing, paper no. 1 (Amharic version).

32 Nile-COM, 1999. Policy guidelines for the Nile River Basin Strategic Action Programme.

33 United Nations Development Programme (UNDP), 1997. Project of the Nile Basin countries, project document, May.

34 Ibid.

35 The panel of experts was composed of water specialists from each of the Nile riparian countries (three apiece), excluding Eritrea.

36 Panel of experts, 1999. Draft of the Cooperative Framework: Revision 2. Entebbe, Uganda, 10 December.

37 Ibid.

38 Nile-COM, 1999. op cit; Nile-COM, 2010. Nile Council of Ministers agrees to meet in Uganda next month, 23 April.

39 Water security refers to the capacity of a population to ensure that they continue to have access to potable water (wikipedia.org) [Accessed 20 April 2010]

40 Pham, P., 2010. Crisis, conflict, and opportunity in the Nile basin, March. Available at http://www.currentanalyst.com [Accessed 29 March 2010].

41 Nasrawi, S., 2010. Disagreement looms on Nile Basin meeting, April. Available at http://www.almasryalyoum.com [Accessed 15 April 2010].

42 Ibid.

43 Cascão, A., 2009. Changing power relations in the Nile River Basin: Unilateralism vs. cooperation? *Water Alternatives*, 2(2), p.658.

44 Ibid.

45 Ibid.

46 *The New Vision*, 2010. Egypt, Sudan opposed to Nile sharing deal, 14 April.

47 Menya, W., 2010. No deal on use of Nile waters, April. Available at http://www.nation.co.ke [Accessed 15 April 2010].

48 Ibid.

49 Ibid.

50 Pham, 2010. op. cit.

51 Nasrawi, 2010. op. cit.

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52 Ibid.

53 Borrowing Pham's expression, 'Crisis, conflict, and opportunity in the Nile Basin'.

54 According to information obtained from Nasrawi, 2010 (Disagreement looms on Nile Basin meeting, p.7), 'Egypt's public and private sectors have both recently unveiled plans to invest billions of dollars in projects in upstream countries, including an electricity grid in Ethiopia and a railway in Kenya. Egypt proposed a $5 billion electricity project in the Eastern Nile and a $150 million investment in building a 2 000-km railway that connects Kenya and Uganda.'

55 McConnell, T., 2010. Tensions rise over access to the Nile River. *Global Post*, 13 June; McConnell, T., 2010. War clouds gather as nations demand a piece of the Nile. *Times Online*, 4 June. Available at www.timesonline.co.uk/tol/news/world/africa/article7143786.ece [Accessed 21 August 2010]

56 Nile deadlock risks spilling over into violence, 2010. *Sydney Morning Herald*, 28 June.

57 Smith, J., 1996. Nine nations, one Nile. Available at http://www-personal.umich.edu/ [Accessed 25 February 2001].

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Cooperative Diplomacy, the Nile Basin and the Riparian States: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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CHAPTER 5
Rwanda and the Nile Cooperative Framework Agreement: Assessing the 1929 Nile treaty

Nicasius Achu Check

5.1 Introduction

At the end of the last Ice Age, which was accompanied by massive global climate change, vast expanses of land stretching from North Africa to the Middle East became immense desserts and wastelands. The melting ice formed large rivers flowing between valleys, and the most prominent of these was the Nile. Hunter-gatherers congregated along the Nile, where domesticating animals and plants was first practised. This unprecedented practice was at the foundation of the various civilisations that flourished along the Nile River over the millennia, notably the Cush, Axum and Egyptian civilisations. At the time of colonialism, the Nile water and several other water resources were internationally shared, giving rise to severe tensions over how to divide those waters among the various interested countries. In many arid regions, such as North Africa and the Middle East, time-tested theories abound on effective transborder water-management techniques. Can such time-tested techniques be applicable to the Nile River, which traverses distinctive religious, cultural and social communities?

The Europeans' drive for geographical discovery of the African continent and efforts at empire building and colonial expansion led missionaries and explorers, such as David Livingstone, to help satisfy the obsession with discovering the source of the Nile. As long ago as 1895, Britain had concluded that control of the Nile Basin countries was vital to the interest of the British Empire.[2] A mastery of the continent's geographical setting and the anthropology of the interior were considered important factors for establishing trade and colonial empire-building initiatives. This necessitated the approval by the British Crown of David Livingstone's quest to discover the source of the Nile and gain knowledge of the people groups of the interior of the continent. It is important to point out that Livingstone's account of his travails on the continent, published in the *New York Herald*, detailing the warmth he received from some of the ethnic groups around the Great Lakes has been credited with arousing sympathy for the Africans and for the increasing number of Westerners who lobbied for the abolition of the slave

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trade in the 1870s. The abolitionist movement culminated in the creation of several African Missionary Societies specifically for enlarging the scope of the European civilising mission on the continent.

At the heart of the Nile River was Egypt, strategically located at the threshold of Africa and the Middle East. When Livingstone died in 1874, Egypt was a British colony and home to the very strategic Suez Canal. Thus, the survival of Britain's vast commercial endeavours in the east depended on a vibrant and agriculturally viable Egypt. The control of the Nile Basin countries was, therefore, vital to the interests, and to an extent, the continuous survival, of the British Empire. The control of the riparian countries was central in assuring the continuous, uninterrupted flow of the Nile waters. At the beginning of the twentieth century, Britain did not control the Nile riparian countries such as Ethiopia, Tanganyika, Rwanda, Burundi and the Congo Free State, which contribute 93 per cent of the Nile waters.[3] To correct this geographical anomaly, Britain resorted to diplomacy and in 1929 concluded the Nile Water Agreement with Egypt. The agreement basically gave Egypt total control over the Nile waters, from its source to its mouth. It forbade any projects that would threaten the volume of water reaching Egypt. In all its totality, the 1929 agreement gave Egypt the right to inspect the entire length of the Nile.[4] To redress Egypt's monopolistic access to the Nile waters, the Nile Basin Initiative (NBI) initiated the Cooperative Framework Agreement (CFA), which recognises the rights and obligations of all the riparian states to the Nile waters. However, Egypt and Sudan have refused to ratify the CFA, pushing for the reinforcement of the old treaty, which favours these two countries.

This chapter appraises the role of Rwanda in redressing the imbalanced access to the Nile waters, as propagated in the 1929 agreement, through the country's efforts in making sure that the CFA is adopted by all the Nile Basin countries.

From the Ruvyironza River in Burundi, to the Kagera in Rwanda via Lake Victoria in Uganda to the Mediterranean Sea, covering a distance of over 4 145 miles, the Nile is the longest river in the world. The river basin's total area of 3 352 710 km^2 makes it the third largest in the world, after the Congo and Amazon basins.[5] The Nile is fed by two tributaries, the White Nile and the Blue Nile. Arsano argues that the source of the White Nile is the Luvironza River, which discharges into Lake Victoria at the Ugandan-Tanzanian border.[6] Further south, the Nzoria River drains Mount Elgon and empties into Lake Victoria. The Kagera River runs between the borders of Rwanda and Uganda and discharges into the White Nile.[7] Any of the above watersheds could claim the title of the source of the Nile, but ultimately, Lake Victoria, one of the largest freshwater lakes in the world, by dint of its voluminous contribution to the waters of the Nile, is the major source of the White Nile and, consequently, the Nile, seeing that the White Nile contributes about 93 per cent of the total waters of the Nile. On the other hand, the Blue Nile originates from the Abbay River in Ethiopia's north-western plateau. Other contributors to the Blue Nile are Lake Tana, and the rivers Dabus, Didessa, Fincha, Guder, Muger, Jamma,

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Wolaka, Bashilo, Birr, Beles, Dinder and Rahad.[8] These rivers congregate on the Abbay River and run through the Ethiopian plateau, joining the White Nile in Sudan.

Since the inception of the Organization of African Unity (OAU), several institutional frameworks have been enacted for the rational utilisation of water and unrestricted access to water by riparian communities. Central to these schools of thought are the 1968 OAU Convention on the Conservation of Nature and Natural resources and the 2003 African Union's (AU) Environmental Initiative of the New Partnership for Africa's Development (NEPAD). The Environment Initiative comprises eight priority sectors, including combating land degradation; drought and desertification; wetlands; invasive species; marine and coastal resources; cross-border conservation of natural resources; climate change and cross-cutting issues.[9] Through NEPAD, the AU has recognised the importance of the UN framework conventions for climate change, which oblige countries to meet current climate change commitments and future negotiations. Equally important was the 2004 Sirte AU decision on the challenges of implementing integrated and sustainable development on agriculture and water in Africa. Of importance to the present chapter is the fact that the Nile Basin countries have no legal or institutional arrangements to guide riparian countries on access to and utilisation of the Nile water in the post-colonial socio-economic and political dispensation. This has accounted for the mistrust and tension between upstream and downstream countries.[10] These tensions between the upstream and downstream countries have persisted despite the fact that the Nile water has played a significant role in transforming the nature of the national economy, politics and interstate relations among the Nile riparian countries.[11] It is, therefore, important that any sustainable cooperation between upstream and downstream countries should be based on a mutually acceptable mechanism whereby all the countries will enjoy the benefit accruable from their shared natural endowment.[12]

5.2 Conceptualising Transborder Water Management

This chapter is based on the assumption that sustainable transborder water management is a condition *sine qua non* to ensure water security and the economic and social development of the riparian states. The impact of water policies on social mobility, therefore, becomes an important element in determining the effectiveness of the political authority charged with the management of the resources of the area. With regard to the Nile waters, the implication for peace and security in the riparian states becomes a critical issue, as the recent threat by Egypt to wage war on upstream countries should they tamper with the flow portrays.

Although a rich body of customary law regarding internationally shared water has emerged, there are still contending issues as to what the content of an internationally binding shared water agreement should be. As with the Nile, upstream and downstream states would advance contradictory and,

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at times, different claims to water utilisation. The post-industrialisation era saw intensive use and extensive diversion of water from its origin, leading to international claims and counter-claims, which quickly settled into a predictable pattern, depending on the riparian status of the state making the claim.[13] The 1997 United Nations Convention on Watercourses agreed that only riparian states have a legal right to use the water of a river, lake or other surface source. As a result of this general UN concept, the Harmon Doctrine, or the principle of 'absolute territorial sovereignty', became an obvious concept, which most riparian states advocate in defence of access to water resources found along shared watercourses. The concept is premised on the notion that a riparian state has the right to do whatever it chooses with the water of a shared course, regardless of its effect on the other riparian states.[14] It is obvious that downstream riparian states may be harmed by the physical impacts of water quantity and quality changes caused by the use of it by upstream riparians. The quantity of water flow may be decreased by the upstream riparians through the construction of dams and canals, and through storage and diversion of the waters of the shared rivers.[15] The concept has not found any international acceptability and has been advocated in most part by rogue states in an attempt to provoke conflict or threaten the security of another riparian.

The concept of 'absolute territorial integrity' has frequently been put forward by downstream riparians to argue that upstream riparians should not do anything that would affect the quantity or quality of the water that flows down the watercourse. This concept establishes the right of a riparian state to demand continuation of the natural flow of an international river into its territory from the upper riparians, but imposes a duty on that state not to restrict such natural flow of waters to the other lower riparians.[16] This principle stands in contradiction to the principle of absolute territorial sovereignty, as it is intended to favour downstream riparians, often by protecting existing uses or prior appropriation.[17] With regard to the Nile Basin, Egypt advocated for this principle and has for the most part encountered resistance from upstream riparians, which have insisted on a new water-utilisation formula. The principle has been criticised and, like absolute territorial sovereignty, is not recognised as part of contemporary international water law.

This chapter is based on the principle of equitable and reasonable utilisation, as propounded by the UN Convention on Watercourses of 1997, and which has equally found expression in several Rwandan water policy documents. The basis of the principle is that the entire river basin is an economic unit, and the rights over the waters of the entire river are vested in the collective body of the riparian states or divided among them either by agreement or on the basis of proportionality.[18] The concept is also known as the community of co-riparians in some circles. One of the main characteristics of the concept is that it abrogates the rights over the shared river to a collective body. This suits the Nile Basin scenario, whereby the NBI would subsequently give way to the Nile River Basin Commission (NRBC). The concept ensures that the

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supranational body is entrusted with the necessary power to arbitrate and lobby for water use by each riparian state. This body also has to ensure that each state receives a fair share of the available water or its benefits, a right that is sometimes expressed as an obligation not to cause unreasonable injury to other states.[19] The principle of equitable utilisation has been codified several times and most essentially in the Helsinki rules of 1966. Although the title of the rules refers to international rivers only, Article 1 states that the rules are applicable to the use of waters of an international drainage basin. A basin is defined as 'a geographical area extending over two or more states determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus'.[20] In broader terms, the Helsinki rules established the principle of equitable utilisation of the waters of an international drainage basin among the riparian states as the basic principle of international water law. As such, the Helsinki rules have specified a number of factors for determining equitable utilisation, which also include

- the geography of the basin, including in particular the extent of the drainage area in the territory of each basin state
- the hydrology of the basin, including in particular the contribution of water by each basin state
- the climate affecting the basin
- the past utilisation of the waters of the basin, including in particular existing utilisation
- the economic and social needs of each basin state
- the population dependent on the waters of the basin in each basin state
- the comparative costs of alternative means of satisfying the economic and social needs of each basin state
- the availability of other resources
- the avoidance of unnecessary waste in the utilisation of waters of the basin
- the practicability of compensation to one or more of the co-basin states as a means of adjusting conflicts among uses
- the degree to which the needs of a basin state may be satisfied without causing substantial injury to a co-basin state.[21]

With regard to navigation, the Helsinki rules incorporate the customary international law principle that grants each riparian state the right of free navigation on the entire course of the river or the lake on a reciprocal basis. It is on the basis of this principle that the Rwandan government has engaged the NBI and, more specifically, Egypt and Sudan, to reform the legal instruments guiding the utilisation of the Nile waters. This instrument should take on board internationally accepted legal frameworks, such as the Helsinki rules

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which were premised on the principle of equitable utilisation. The protocols of the CFA, which Rwanda espoused, encompass the ideals and spirit of the Helsinki rules, and Rwanda has called on all Nile riparian states to adopt the CFA in order to prevent conflict in the region.

5.3 History and Hydropolitics of the Nile Basin: Assessing the 1929 Nile Water Agreement

The Nile derives its name from the Greek word *nelios*, meaning 'river valley'.[22] As far back as 3000 BC, the Egyptians constructed earth banks to form flood basins to redirect floodwater into the basin where crops would be planted after the soil had been saturated and the water drained. Egyptologists have argued that this form of irrigation technique sustained the ancient Egyptian civilisation for more than 5 000 years, principally because most of the waters of the Nile come from freshwater lakes around the equator. This form of irrigation preserves the soil nutrients, and salination, which is a major concern for modern irrigation farming, was absent.[23] Because of its continuous utilisation of the resources of the Nile, Egypt has abrogated to itself the natural historical rights over the waters of the Nile River. The principles of its acquired rights have been the focal point of discussion and negotiation with upstream countries. With respect to the fact that the Nile River is Egypt's economic pulse, Egypt has argued that the natural rights principle was acquired through international legal instruments which Egypt entered into with international actors. These include:

- The 1891 Anglo-Italian Protocol. Article 3 of the protocol states that 'the Italian government engages not to construct on the Atbara River, in view of irrigation, any work which might sensibly modify its flow into the Nile'.
- The 15 May 1902 treaty between Great Britain and Ethiopia. Article 3 of the treaty states: 'His Majesty the Emperor Menilik II, King of Kings of Ethiopia, engages himself towards the Government of His Britannic Majesty not to construct or allow to be constructed any work across the Blue Nile, Lake Tana, or the Sobat, which would arrest the flow of their waters except in agreement with His Britannic Majesty's Government and the Government of Sudan.'
- Article 3 of the 9 May 1906 agreement between Britain and the Government of the Independent State of Congo states that the Government of the Independent State of Congo undertakes not to construct, or allow to be constructed, any work over or near the Semliki or Isango River which would diminish the volume of water entering Lake Albert except in agreement with the Sudanese government.
- Article 4(a) of the 13 December 1906 Tripartite Treaty between Britain-France-Italy states that the parties 'would act together to safeguard the interest of Great Britain and Egypt in the Nile Basin, more especially

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as regards the regulation of the waters of that river and its tributaries without prejudice to Italian interest'.

- The 1925 exchange of notes between Britain and Italy concerning Lake Tana. The notes indicated that 'Italy recognises the prior hydraulic rights of Egypt and Sudan and undertakes not to construct on the head waters of the Blue Nile and the White Nile and their tributaries and effluents any work which might sensibly modify their flow into the main river'.
- The 7 May 1929 Agreement between Egypt and Anglo-Egyptian Sudan. The parties agreed that Egypt and Sudan would utilise 48 and 4 billion cubic metres of the Nile flow per year respectively. Secondly, the parties agreed that the flow of the Nile between 20 January and 15 July would be reserved for Egypt. Egypt reserved the right to monitor the Nile flow in upstream countries. Egypt assumed the right to undertake Nile River-related projects without the consent of upstream countries and Egypt assumed the right to veto any construction projects that would affect its interests adversely.
- The 1959 Nile agreement between Sudan and Egypt settled the controversy on the quantity of the average annual flow of the Nile at 84 billion cubic metres, measured at the Aswan High Dam in Egypt. The annual average flow of the Nile was to be shared among Sudan and Egypt at 18,5 and 55,5 billion cubic metres, respectively. The agreement also granted Egypt the right to build the Aswan High Dam, which could store the Nile water for a year. It also obligated the parties to jointly entertain queries emanating from Nile riparian states with regard to the utilisation of the Nile waters.[24]

These colonial treaties granted Egypt unrestricted control of the Nile River, which, in essence, has given Egypt the natural rights to the Nile River waters. At the dawn of independence, the natural rights of Egypt over the Nile water were contested because of the ambiguity in several of the international treaties entered into between Egypt and the colonial powers. Dellapenna has argued that international law lacks centralised institutional structures for law making and law enforcing, and relies generally on the decentralised processes of agreement and custom.[25] Egypt's claims over the Nile waters also go against the agreed principles of shared water embodied in the 1997 UN Convention on the Law of Non-Navigational Use of International Watercourses, as stipulated in Article 5.[26] On the other hand, Egypt has reminded the Nile riparian states of the prescriptions of Article 7 of the same UN Convention, which indicates that 'Watercourse states shall, in utilizing an international watercourse in their territories take all appropriate measures to prevent the causing of significant harm to other watercourse states'.[27] This, therefore, assumes that any unilateral undertaking to alter the course or volume of the Nile water by any of the Nile riparian states is against the principles and undertaking of the UN Convention. The Nile riparian states have largely respected these colonial agreements that allowed Egypt to unilaterally assume control of the

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Nile water despite the absence of a neutral enforcement mechanism.[28] Post-independent Nile riparian states have generally resorted to consultation and engaging multilateral institutions in settling disputes that may arise from their attempt to utilise water from their portion of the Nile River. This consultative approach adopted by the Nile riparian states, which was outlined in Article 8 of the UN Convention on the Law of Non-Navigational Use of International Watercourses, can indeed be regarded as the genesis of the NBI, encompassing all the 10 Nile riparian states. Article 8 states that 'watercourse states shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilisation and adequate protection of an international watercourse'.[29]

5.4 The Nile Basin Initiative

The NBI was formed in 1999 following decades of dialogue and consultation, as agreed in the 1959 Nile waters agreement. Formed in 1993 by Nile Basin water ministers, the Technical Cooperation Committee (Nile-TEC) for the Promotion of the Development and Environmental Protection of the Nile Basin (TECCONILE) provides an informal mechanism for dialogue among the Nile Basin countries. The initial TECCONILE member countries included Egypt, Rwanda, Sudan, Tanzania, Uganda, the DRC, Burundi, Ethiopia, Kenya and Eritrea.[30] Armed with an international advisory panel, TECCONILE prepared a Nile River Basin (NRB) action plan, which was adopted at its third meeting, although with some reservation by Ethiopia.[31] As a follow-up of its reservation with regard to the Nile Action Plan (NAP), Ethiopia suggested the formation of a permanent Nile Basin Cooperative Framework (NBCF) to act as an anchor for dispute resolution and litigation concerning the optimal use of the Nile waters.

This permanent consultative framework, largely supported by the World Bank, the United Nations Development Programme (UNDP) and the Canadian International Development Agency (CIDA), helped establish a mechanism through which the countries of the Nile Basin could work for their mutual benefit and the sustainable use of the river and its resources.[32] The continuous interface between the Nile Basin countries culminated in the formation of a permanent consultative initiative in May 1999 in Dar es Salaam, named the Nile Basin Initiative (NBI). As Tadesse argues, for the first time in history, all Nile Basin countries expressed a serious concern about the need for a joint discourse on the Nile.[33] The principal objective of the NBI is to 'achieve sustainable socio-economic development through the equitable utilisation of, and benefit from, the common Nile water basin resources'.[34] The creation of the NBI is also a recognition that sustained cooperation on the Nile requires a permanent institution with a developmental agenda[35] to facilitate the dialogue between the Nile riparian states and to act as an adjudicator on major disputes relating to the use of the Nile waters. There are three main programmes that are central to the NBI in achieving its objectives: the Shared Vision Programme

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(SVP), the Eastern Nile Subsidiary Action Programme (ENSAP) and the Nile Equatorial Lake Subsidiary Action Programme (NELSAP).

The SVP of the NBI is a basin-wide initiative aimed at fostering trust and cooperation, and building an enabling environment for investment. The vision comprised eight grant-based activities, which include Nile transboundary environment action projects, socio-economic development and benefits sharing, confidence building and stakeholder involvement, water resources planning and management, applied training projects, regional power trade, efficient water use for agricultural production and the shared vision coordination project.[36] These basin-wide projects are aimed at facilitating dialogue beyond water usage and were primarily aimed at defusing the tense and at times aggressive arguments between the downstream and upstream states. The confidence building and stakeholder involvement project was created principally to raise awareness of the NBI and its activities and to increase positive coverage of NBI issues in the national and regional media houses through the activities of the Nile Media Network.[37] In addition, the Nile Transboundary Environment Action Project (NTEAP) has made considerable progress in institutional capacity development, creating awareness and skills development among communities and initiating a water quality monitoring framework.[38] These projects have immensely strengthened the capacity of the people in the basin to benefit from the water resources of the area.

5.5 Rwanda's Water Need

One of the major determinants of the water needs of the people of Rwanda is their settlement pattern. As of 2007, about 17 per cent of the total population of about 9,4 million live in urban areas; therefore, about 83 per cent of the total population are in the rural areas of the country. Of this 83 per cent, 53 per cent are women. The population density is about 321 people per square kilometre and in arable areas it is in excess of 500 people per square kilometre.[38] This high population density and the urban/rural dynamic play an important role in the water needs of the population. Interestingly enough, the country is situated in the Central Africa subregion which has an abundant amount of rainfall throughout the year. Hence, most of the subsistence water needs of the rural population is provided by rainwater. Subsistence agriculture and artisanal industries do not necessarily need large quantities of water. Thus, rainwater and streams that flow between the valleys provide sufficient water for survival for the majority of the population of Rwanda.

However, the country can be hydrologically divided into two major basins. First, there is the Nile Basin in the east, which accounts for about 90 per cent of Rwanda's national water needs. Then there is the Congo Basin, which covers about 33 per cent of the total land surface of Rwanda, but provides only about 10 per cent of the population's total water needs.[39] The Nile Basin is, therefore, of the utmost importance to Rwanda, as it provides the bulk of the water needed by the country. Strategically, Rwanda would have to harness

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the water resources of the Nile Basin in order to meet the water requirements of its population. In as much as Rwanda would not wish to interfere with the Nile's water flow, it would also not want to compromise the water needs of its people. These issues explain why the Rwandan government supported the CFA, especially the principle on equitable and reasonable utilisation of the waters of the Nile.

It has been noted that the pressure on water resources in Rwanda is predicated on the basic needs of its people, as well as the socio-economic development of the country. In the domestic arena, studies indicate that the water demand in Kigali city is 55 080 cubic metres per day, whereas nominal production is 30 525 cubic metres per day.[40] This illustrates a deficit in the water requirements for the city. The study further indicates that water demand over the next decade will double in Kigali and surrounding rural areas and more than double in the semi-urban settlements. This is a major concern for the Rwandan government, as production capacity or available water could only cater for a third of this demand. There is therefore a need to harness all the water resources of the Rwandan Nile Basin to meet the domestic water demand of the people of Kigali and its surroundings.

Table 5.1 Rwanda – water resources (2009)

Name of catchment	Surface area (km^2)	Average rainfall (mm)
Rusizi	650	1 300
Lake Kivu	2 900	1 200
Sebeya	300	1 400
Nyabarongo Upstream	2 700	1 500
Nyabarongo Downstream	4 450	1 200
Mukungwa	1 500	1 300
Akanyaru Upstream	2 600	1 200
Akagera Upstream	5 000	900
Akagera Downstream	4 550	800
Muvumba	1 450	1 000
Mulindi	200	1 100

Source: http://www.rema.gov.rw/soe/chap7.php [Accessed 11/03/11]

As for Rwanda's industrial water needs, a study by the national management of the water resources project indicates that industrial water requirements will be between 300 000 and 900 000 cubic metres of water per year by 2020 in urban areas. It is also projected that coffee washing stations will require 130 000 cubic metres of water per year.[41] Although the study does not specify

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the amount available for industrial needs, it is assumed that the demand far exceeds supply and the government would have to look at innovative ways to address this shortfall. The water needs in the agricultural sector are paramount and have been government's major preoccupation. Although Rwanda's agriculture is rain-fed, it still needs an additional 150 million cubic metres per year. The lion's share of this need is for rice cultivation.[42] It has also been noted that the government of Rwanda is putting in place strategies to promote irrigation, especially in the dry lands of the eastern province (the Nile Basin area), in a bid to increase food security. Rwanda's firm engagement to see to it that the CFA comes to fruition is underpinned by such considerations. If steps are not taken to address the water needs of the people of Rwanda, they may resort to unsustainable means to address their water requirements. This could be a disaster for the Nile Basin and for other Nile riparian states.

5.6 Nile Basin Cooperative Framework Agreement

Egypt and Sudan have long claimed historical rights to the waters of the Nile on the basis of their long use and reliance on the Nile watercourse. The 1929 and 1959 agreements allocated to Egypt and Sudan more than 90 per cent of the Nile waters. The argument from the upstream riparian states centres on the fact that these agreements were colonial dictates and thus have no binding effect on the newly independent states. Many other riparian states have equally posited that several international water laws, especially the Helsinki Rules, have tended to shun absolute claims of right, and these states have opted for more flexible principles, such as equitable and reasonable use, which allows the possibility that nations' rights to shared waters may be adjusted in response to changing circumstances.[43] The way forward for cooperation in the Nile Basin was, therefore, for a negotiated agreement between the riparian countries. Soon after its formation in the late 1990s, the NBI engaged all the Nile Basin role players in crafting an acceptable water utilisation agreement. After more than 10 years, the Nile River Basin Cooperative Framework Agreement (NRBCFA), commonly referred to as the Cooperative Framework Agreement (CFA), was presented to all the 10 Nile riparian countries for adoption. On its presentation on 14 May 2010 at the NBI secretariat in Kampala, Uganda, only Uganda, Rwanda, Tanzania, Ethiopia – and more recently, Kenya – signed the agreement. Sudan and Egypt refused to sign on the grounds that it would detract from their economic interests in the river.[44] Why have Egypt and Sudan refused to sign? A close look at the articles of the agreement may shed more light on this question.

A quick glance at the CFA suggests that the framework is in line with other major international water agreements, such as the Helsinki and the Berlin Rules, on the protection and use of transboundary watercourses and international lakes. Paramount to this understanding is the equitable and reasonable utilisation concept, as outlined in the CFA. Article 3.6 provides that 'each Nile Basin state has the right to use, within its territory, the waters

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of the Nile River System in a manner that is consistent with the other basic principles referred herein'.[45] This is an article which several upstream countries, including Rwanda, have expressed a desire to see included in the final agreement, despite objections from Egypt and Sudan. Water as social and economic capital also finds expression in Part 1 Article 2.14. It states that water utilisation should give priority to its most economic use, taking into account the satisfaction of basic human needs and the safeguarding of ecosystems.[46] It, therefore, gives Rwanda permission, as a Nile riparian state, to harness the water resources of the Kagera River Basin for the benefit of its population, be it social, economic or subsistence need.

Part 2 of the agreement deals with the rights and obligations of the Nile riparian states vis-à-vis the Nile water utilisation coefficient. It posits that the Nile Basin states shall in their respective territories utilise the water resources of the Nile River Basin (NRB) in an equitable and reasonable manner. It further posits that such utilisation should be anchored in the contribution made by each basin state to the waters of the Nile River System.[47] In essence, it suggests that the utilisation coefficient should be based on each country's contribution to the Nile waters. It thereby suggests that Ethiopia, which contributes about 85 per cent of the Nile waters, should engage in activities that can account for almost a similar contributory percentage. Egypt and Sudan have contested such provisions and have indicated that their rights to the Nile waters are reserved and that they reserve the right to veto any upstream project that could have a significant impact on the flow of the Nile waters downstream. This argument falls in line with Part 2 Article 5.1, which posits that the NRB countries have an obligation not to cause significant harm to other basin states in utilising the Nile River System water resources in their territories. On the other hand, it argues that where such a thing has occurred, such as significant harm and in an environment where no prior agreement exists, the state concerned shall take all appropriate measures, in consultation with the affected state, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.[48]

The provision does not in any way provide protection for smaller upstream countries, which in their endeavours to provide adequate water resources to their inhabitants, could cause negative impact or some degree of significant harm to downstream countries. Generally, these upstream countries, because of their population and economic size, have a weaker bargaining power in international circles. For the spirit of equity which the CFA espouses, it should empower the NBI to undertake such negotiations on behalf of the recalcitrant state. This would have provided a middle ground through which consensual agreements could be debated and adopted.

The CFA shied away from such important issues by delegating them to the soon-to-be-created NRBC. Part 3 Article 15 of the CFA established the NRBC, whose objective is to promote and facilitate the implementation of the principles, rights and obligations provided for in the CFA. It equally serves as an institutional framework for cooperation among Nile Basin states in the

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use, development, protection, conservation and management of the NRB and its waters.[49]

The question of water security, prevention and mitigation of harmful conditions, environmental impact assessment and audits, and many other issues, would be dealt with by the new commission. The challenge is that the exact date for the establishment of the commission is still to be determined, considering that the CFA is still to be endorsed by six Nile riparian countries for it to be legally operational. Until the CFA is signed by the majority of Nile Basin countries and the NRBC officially established, most of the regulations and recommendations contained in the CFA will remain wishful thinking.

One would be tempted to argue that the most critical part of the CFA is Part 3, which creates the NRBC. It has spelt out the framework and modalities for facilitating cooperation and preventing disputes. However, the fundamental question would be whether the creation of such a structure would guarantee harmony along the Nile River. To a large extent, the answer is no – principally because there are many such supranational institutions on the continent and none have been able to sustainably prevent, or even successfully manage, conflict situations in their areas of operation and jurisdiction. However, it has been argued that the CFA's success will greatly depend on whether the parties to the CFA implement the provisions for its creation and operation, as well as the degree to which they place their trust in it.[50] The CFA represents a clear departure from earlier colonial agreements (those of 1929 and 1959), which had little regard for equity and reasonable utilisation. The concepts outlined in the CFA are well recognised under international water law, including those of cooperation, equitable and reasonable utilisation, no significant harm and the exchange of data and information.

5.7 Rwanda and the Nile Basin Cooperative Framework Agreement

The negative impact of climate change on Africa's wetlands and a drastic change in the rainfall patterns in the tropical zones have made transboundary water resources a source of discord among riparian states. In most of these countries, the authorities have pursued unilateral and conflicting approaches to the utilisation of shared water resources, normally driven by their respective national interests. This has resulted in squabbles between upstream and downstream countries. Within the Nile geopolitical dispensation, the downstream countries held a monopoly on the use of the Nile waters through a series of treaties and agreements. The 1929 and the 1959 treaties gave the exclusive right to Egypt and Sudan of the Nile waters.

In Rwanda, the post-independent government began to question the logic behind these agreements and in 1977 concluded an agreement with Burundi and Tanzania over the establishment of the Organisation for the Management and Development of the Kagera River Basin. The Kagera is the largest river

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feeding Lake Victoria and it could thus be claimed that it is the prior source of the Nile.[51] The river forms the north-eastern part of Rwanda's border with Uganda, and runs through the mountainous and densely populated Kagera River Basin. Within the realm of the 1929 and 1959 treaties, Rwanda would be in breach of such treaties if it engages in developmental activities that would negatively alter the flow of the Kagera River. Rwanda has been a vocal critic of the historical and natural rights doctrine which the downstream countries have been advocating. The upstream countries, including Rwanda, do not only repudiate the downstream claim, but also hold to the riparian doctrine.[52]

These contending claims and mistrust between the upstream and downstream countries have aggravated the security situation in the region. It is in the realm of this understanding that the NBI soon after its formation initiated a series of consultations in order to craft an all-encompassing framework that would be acceptable and amenable to all the Nile riparian states. It is in this spirit that the CFA was tabled on 24 May 2010 in Kampala for signature and adoption by all the Nile riparian states. Rwanda has been at the forefront of the negotiation process of the CFA. The reasons for such involvement are many and varied. First, the recent tumultuous history of the Rwandan state suggests that Rwanda would frown on any unjust or impartial international agreement which may have a negative impact on the developmental trajectories of the country. The CFA provides an opportunity for Rwanda to redress the imbalances of the 1929 and 1959 Nile water treaties and to relaunch developmental projects in the Kagera River Basin that would benefit the rural poor and enable the country to be self-sufficient in basic food needs.

With Burundi becoming the fourth member of the Organisation for the Management and Development of the Kagera River Basin, there was consequently an urgent need to gradually scale up basin-wide projects to benefit the inhabitants and the people of the region.[53] Rwanda, therefore, has an obligation to the citizens of the country to negotiate and come up with an internationally binding agreement that would not restrict its use of the Kagera River waters, or other water resources thereof. The CFA, therefore, provided a perfect framework that would allow Rwanda to judiciously manage the water resources of the Kagera Basin without breaching any international treaty or agreement. Strategically, Rwanda has developed several policy frameworks to evaluate the availability of water resources and demand in the country, to develop strategies and alternative options in water-resource usage and to build capacity in the area of water-resource use. Such a policy framework, however, cannot be carried out to its conclusion if the country is still bound by international agreements not to alter the flow of the Nile waters. The CFA would allow the Rwandan government to improve the treatment and distribution of drinking water, and to embark on sustainable agricultural, energy and fisheries policies, and the provision of water for livestock and soil conservation.[54]

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The propensity for conflict to degenerate in the Nile Basin is very high, and Rwanda, considering its recent past, has pressed for a consensus on the CFA framework. There is a concern that conflicts emerging here may spread political, social and economic instability into surrounding areas.[55] Rwanda is still battling against the rebel *Front Démocratique pour la Libération de Rwanda* (FDLR) in the eastern DRC, and any conflictual situation in the Nile Basin with another riparian country would definitely help the cause of the FDLR, a situation which Rwanda would not want to contemplate. Rwanda and many other countries in the region understand that by coming together to jointly manage their shared water resources, countries build trust and diminish the possibility of conflict. The CFA is, therefore, an attempt to continue to seek cooperative solutions in the face of potential conflict and regional instability.[56]

Rwanda's participation in the CFA negotiation process and its willingness to see it to final adoption were also influenced by its desire to engage independently in other water-management projects, such as the Bugesera Transboundary Water Management Project. This project was initiated in partnership with the government of Burundi. The project is located in the southern region of Rwanda and northern parts of Burundi, encompassing Bugesera, Gisagara, Ngoma and Huye in Rwanda, and Ngozi, Kirundo and Muyinga provinces in Burundi.[57] The area is characterised by high levels of poverty due to recurrent drought and famine. The objective of the two governments is, therefore, to reduce poverty and mitigate the negative effect of environmental degradation around the Cyohoha and Rweru Lakes and the Akanyaru Marshland. In order to achieve this, the governments have divided the project into two phases. The first phase will focus on the preparation of integrated management plans for the two lakes based on a comprehensive diagnosis of the water bodies. The second phase will focus on building the capacity of stakeholders for better resource management through training and water-resource monitoring.[58] The capacity-building aspect of the project is of paramount importance to the Rwandan government considering that more than 60 per cent of water-resource management specialists left the country or were killed during the genocide.[59]

Cooperation with other Nile riparian countries is a *sine qua non* for the unity project which the Africa Union espoused. Rwanda holds the view that if cooperation is achieved, the first step for a greater unity project on the continent will have been taken. The Lagos Plan of Action of the 1980s was of the opinion that subregional blocs, such as the NBI, should be the building blocks for a united Africa. As such, cooperation with other riparian states has bolstered the unity efforts of the AU. It has also ignited a lot of energy from the Intergovernmental Authority and Development (IGAD) and Common Market for Eastern and Southern Africa (COMESA) members to harness the necessary support for the unity project in the region. Rwanda also viewed this cooperation as a way of deterring other Nile riparian countries from supporting rebel movements or rogue regimes in the region. It should be noted that the Habyrimana regime bought arms worth over $5 million from

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Egypt, one of the riparian states, soon after the invasion of Rwanda by the Rwandan Patriotic Front (RPF).[60] The understanding in Rwanda is that these arms helped perpetrate the killing of innocent civilians by the Habyrimana regime. Cooperation would, therefore, deter other riparian states from supporting or selling arms to rebel movements or rogue regimes in the region.

Rwanda's civil society, under the umbrella of the Nile Basin Discourse Forum (NBDF), has put enormous pressure on the government to liberate the water sector and encourage the rural poor to engage in activities that would alleviate their plight. The government is, therefore, obliged to respond to the concerns of the rural poor, considering that very few alternatives exist. It is in light of this that the government of Rwanda spearheaded the draft CFA in the hope that its adoption and effective implementation would allow the rural poor to engage in farming activities that would augment their meagre income.

5.8 Conclusion and Policy Recommendations

One of the critical debates on the African continent at the moment is the lack of the voice of ordinary citizens in major decisions concerning their livelihoods and basic subsistence. The CFA was equally guilty of such claims and, in many quarters, it cannot be said that it speaks for the entire population of the Nile conventional basin. The population of the region cannot boast of the ownership of the document and, therefore, would not want to defend it at all costs. However, one notable criticism that can be levelled at the CFA is the fact that although it rejects the 1929 and 1959 agreements, which gave about 85 per cent of the Nile water per year to Egypt, it did not decide on new allocations.[61] Without a clear water-resource allocation in the agreement, there are concerns that some countries may take more than or less than is due to them. This, therefore, leaves room for manoeuvre and negotiation. It is not clear if the NBDF, which is present in most Nile Riparian states, participated in the drafting of the CFA. This author's understanding is that it did not, and, as such, the CFA is just another elitist framework which many grass-roots organisations would find difficult to sell to their members.

The question of water security has not been properly dealt with in the agreement. Water security is defined in the CFA as the right of all Nile Basin states to have reliable access to and use of the Nile River System for health, agriculture, livelihoods, production and the environment.[62] It, therefore, provides that it is a legal right held by all the riparian states to have an amount of water that is adequate to fulfil the needs of all the sectors mentioned above. If adopted, this clause would become law, and taking into account the fact that some countries need the Nile waters more than others, the CFA should have been more pragmatic in balancing water need and availability consistent with each of the Nile riparian states. Because of the intricacies involved with water security, members of the NBI and drafters of the CFA decided to move ahead with the CFA minus Article 14(b), which deals specifically with water

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security in the Nile Basin. They agreed that the issue of water security be annexed and resolved by the Nile Basin Commission within six months of its establishment.[63] In the meantime, the issue of water security hangs in the balance and would be the next bone of contention once the parties reconvene for their annual meetings.

Consensus has been the norm in international treaty negotiation processes. The CFA was never the outcome of a consensus. Egypt and Sudan have tried to influence the outcome to no avail and have reportedly refused to sign the agreement. The bone of contention for Egypt and Sudan is Article 14(b), which deals with water security. The ambiguous nature of the article with regard to water security, as alluded to earlier, has led to the two lower riparian states' refusal to sign the agreement and their rather strong language in objecting to its implementation by the upper riparians smacks of continuous tension in the region. The fact that the two are willing to continue negotiating over the disputed provisions in the CFA suggest that there is room for consensus and agreement in the long run. In line with the foregoing analysis, Rwanda needs to rely on the NBI's cooperative diplomacy as the best policy option for the country. In a nutshell, the central short- and long-term policy recommendation for the foreign-policy establishment is that it should advocate for the full adoption and operationalisation of the principle of equitable and reasonable utilisation of the Nile River waters enshrined in the CFA.

Notes and References

1 Dellapenna, J., 2006. The Nile as a legal and political structure. In Coopey, R. & Tvedt, T. (eds), *A history of water: The political economy of Water*, Vol. 2. London: I.B. Tauris, p.295.

2 Abraham, K., 2004. *Nile dilemmas: Hydropolitics and potential conflict flashpoints*. Addis Ababa: Ethiopian Institute for Peace and Development and The Horn of Africa Democracy and Development International Lobby, p.14.

3 Ibid.

4 Vasagar, J., 2004. Storms lie ahead over future of Nile, 13 February. Available at http://www.ntz.info/gen/n01799.html [Accessed 26 February 2009].

5 Arsano, Y., 2006. Nile Basin co-operation: Prospects for the twenty-first century. In Coopey & Tvedt, 2006. op. cit., p.325.

6 Ibid.

7 Ibid.

8 Ibid.

9 See http://www.acops.org/Nepad.htm [Accessed 24 July 2008].

10 Arsano, 2006. op. cit., p.324.

11 El Zain, M., 2006. Reshaping the 'political': The Nile waters of the Sudan. In Coopey & Tvedt, 2006. op. cit., p.117.

12 Arsano, 2006. op. cit., p.324.

13 Dellapenna, J. 2008. *The Berlin rules on water resources: A new paradigm for international water law*. Paper delivered at the 2008 World Water Congress, p.1.

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Cooperative Diplomacy, the Nile Waters, and the Riparian States: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

14 Ibid.

15 Salman, S.M., 2010. Downstream riparians can also harm upstream riparians: The concept of foreclosure of future uses. *Water International*, 35(4), p.351.

16 Salman, S.M., 2007. The Helsinki rules, the UN Watercourses Convention and the Berlin rules: Perspectives on international water law. *Water Resources Development*, 23(4), p.627.

17 Ibid.

18 Ibid.

19 Dellapenna, 2008. op. cit., p.2.

20 Salman, 2007. op. cit., p.629.

21 See Article V(11) of The 1966 Helsinki Rules and Complementary and Supplementary Rules (1972–1996).

22 See NBI, About the Nile. Available at http://ensap.nilebasin.org/index.php?Itemid=84&id=58&option=com_content&task=view [Accessed 27 February 2009].

23 See Hydropolitics in the Nile Basin. Available at http://en.wikipedia.org/wiki/Hydropolitics_in_the_Nile_Basin [Accessed 27 February 2009].

24 All data on the Nile colonial agreements were compiled from Hydropolitics in the Nile Basin. Available at http://en.wikipedia.org/wiki/Hydropolitics_in_the_Nile_Basin [Accessed 27 February 2009].

25 Dellapenna, J., 2006. op. cit., p.296.

26 United Nations Convention on the Law of Non-Navigational Use of International Watercourses. Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf [Accessed 9 March 2009].

27 Ibid.

28 Dellapenna, J., 2006. op. cit., p.296.

29 United Nations Convention on the Law of Non-Navigational Use of International Watercourses. Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf [Accessed 9 March 2009].

30 Tadesse, D., 2008. The Nile: Is it a curse or blessing? Institute for Security Studies Paper 174, November, p.18. Eritrea, after its independence from Ethiopia in 1993, has maintained observer status in the NBI.

31 Ibid.

32 Ibid.

33 Ibid.

34 See Nile Basin Initiative. Available at http://www.nilebasin.org/index.php?option=com_frontpage&Itemid=1 [Accessed 9 March 2009].

35 Tadesse, 2008. op. cit., p.18.

36 See NBI, Shared Vision Project Summary. Available at http://www.nilebasin.org/index.php?option=com_content&task=view&id=28&Itemid=116 [Accessed 9 March 2009].

37 See NBI, Key achievements by project. Available at http://www.nilebasin.org/index.php?option=com_content&task=view&id=13&Itemid=42 [Accessed 30 March 2009].

38 Ibid.

39 Government of Rwanda, 2007. Rwanda State of Environment and Outlook Report. Kigali, p.1.

40 Ibid., p.91.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by Africa Institute of South Africa, Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

41 Ibid.

42 Ibid., p.92.

43 See Accord or discord on the Nile? Part 1. Available at http://www.internationalwaterlaw.org/blog [Accessed 25 October 2010].

44 The Nile treaty, water security and the future of peace in Africa. Available at http://www.oneworldmanypeaces.com/one_world_many_peaces/2010/10/the-nile-treaty-water-security-and-the-future-of-peace-in-africa-nile-basin-initiative-nbi.html#tp [Accessed 29 October 10].

45 NBI, 2010, Article 3.6 of the Agreement on the Nile Basin Cooperative Framework, p.6.

46 Ibid., p.7.

47 Ibid., p.8.

48 Ibid.

49 Ibid.

50 See International Water Law Project Blog. Available at http://www.internationalwaterlaw.org/blog/ [Accessed 25 October 2010].

51 Burkitt, D., 1964. *Surgical pathology in the source of the Nile*. Department of Surgery, University of Makerere, p.1.

52 Arsano, Y., 2006. Nile Basin co-operation: Prospects for the twenty-first century. In Coopey & Tvedt, 2006. op. cit., p.324.

53 FAO, Transboundary agro-ecosystem management programme for the Kagera River Basin. Available at http://www.fao.org/ag/agl/fieldpro/kagera/news.htm [Accessed 28 October 2010].

54 NBI, Rwanda. Available at http://www.nilebasin.org/index.php?option=com_content&task=view&id=39&Itemid=37 [Accessed 28 October 2010].

55 Kameri-Mbote, P., 2007. Water, conflict and cooperation: Lessons from the Nile River Basin. In *Navigating peace*, Woodrow Wilson International Center for Scholars, No. 4, p.3.

56 Ibid.

57 NBI, Bugesera Transboundary Water Management Project: The governments of Rwanda and Burundi work together. Available at http://nelsap.nilebasin.org/index.php?option=com_content&view=article&id=120:bugesera-transboundary-water-management-project-the-governments-of-rwanda-and-burundi-work-together&catid=1:latest-news&Itemid=128 [Accessed 28 October 2010].

58 Ibid.

59 NBI, Rwanda, op. cit.

60 Melvern, L., 2000. *A people betrayed: The role of the West in Rwanda's genocide*. London: Zed Books, p.31.

61 Africa Confidential, 2010. The battle of the Nile, Vol. 51, No.17, 17 August. Available at http://www.africa-confidential.com/article-preview/id/3643/No-Title [Accessed 29 October 2010].

62 CFA Article 2(f).

63 NBI, Agreement on the Nile River Basin Cooperative Framework, Article 14(b).

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Cooperative Diplomacy, the Nile River and the Riparian States: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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PART 2

National and Regional Interests in the Nile River Basin:

Country Case Studies



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CHAPTER 6
Interets Nationaux Du Burundi A Travers Son Adhesion A L'Initiative Du Bassin Du Nil

Par Jean-Salathiel Muntunutwiwe

6.1 Introduction

Dans un colloque intitulé « *Water War in the Nile Basin* » (Guerre de l'eau dans le Bassin du Nil), organisé le 16 mars au Laboratoire national de Los Alamos, USA, David Shinn[1] affirmait avec raison que : « *l'Initiative du Bassin du Nil (IBN), un mécanisme novateur visant le développement et le règlement des différends établi en 1999 avec l'appui de la Banque mondiale, aide les dix pays bordant le Nil à éviter les conflits qui pourraient voir le jour au sujet de leurs droits en tant que riverains du fleuve* »(Shinn 2000). En effet, la création de l'Initiative du Bassin du Nil entre dans la logique du partage négocié des ressources que regorge le Bassin.

S'adressant aux participants au colloque, David Shinn justifiait l'opportunité et l'utilité de cette initiative. Son utilité pour la sous-région était la possibilité de construire la croissance économique car en réalité, « *le développement coopératif de la totalité du bassin peut, pour les riverains, être nettement plus avantageux que si ce développement intervenait par le truchement de projets unilatéraux* » (Shinn 2000).

Comme nous le savons, le fleuve Nil, avec ses 6.570 km, est le fleuve le plus long du monde. En plus, son bassin couvre exactement 3,37 millions de kilomètres carrés, soit un peu plus que la superficie de l'Inde. Les 10 pays riverains du Nil sont le Burundi, la République Démocratique du Congo, l'Égypte, l'Érythrée, l'Éthiopie, le Kenya, le Rwanda, le Soudan, l'Ouganda et la Tanzanie.

Cette expérience de formation d'une coopération ne date pas d'aujourd'hui. Elle s'est construite dans le temps. Cette coopération se révèle être une des stratégies étatiques pour exploiter les ressources issues de ces eaux. En effet, les États ont procédé, au début, par une logique violente en croyant qu'elle allait être efficace. En réalité, le Soudan s'opposait à l'Egypte depuis la nuit des temps ; l'Egypte procédait de son côté soit par entente et surtout par pressions contre l'Ethiopie quand elle le jugeait utile : la guerre de l'eau eut lieu. Au sud du Bassin, les États ne se préoccupaient pas trop de l'entretien du Bassin parce qu'ils s'occupaient souvent à faire la guerre et à élaborer des

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stratégies de conservation du pouvoir face à une opposition violente tentant de le conquérir. Par conséquent, la question de la gestion des eaux du Nil et de l'environnement ne les concernait pas outre mesure.

Aujourd'hui cependant, la question de l'environnement et de l'eau se pose avec beaucoup plus d'intérêt, d'autant plus que certains États comme l'Egypte, qualifiés de dons du Nil, se développent rapidement alors qu'ils vivent dans des régions naturelles relativement désertiques. A titre d'exemple, l'accroissement des besoins engendrés par la mise en valeur agricole du XIXe siècle renforce le besoin égyptien de contrôle. Puissance dominante du bassin du fleuve Nil, l'Égypte a signé des accords avec ses voisins du Sud pour leur garantir l'essentiel du flux d'eau car, faut-il le noter, 95 % de l'eau égyptienne provient de l'extérieur de ses frontières. Avec une démographie galopante et une surface agricole utile très réduite, l'Égypte est devenue très agressive dès que le Soudan ou l'Éthiopie, que drainent les affluents du Nil, ont laissé paraître une volonté d'exploitation de leurs ressources en eau. En 1979, le président Anouar El Sadate a affirmé que l'eau est le seul facteur qui pourrait déclencher l'entrée en guerre de l'Égypte, tandis que Boutros Boutros-Ghali alors ministre des Affaires étrangères égyptien, a résumé clairement la position de son pays en 1987, en soulignant que la prochaine guerre dans la région [serait] sur les eaux du Nil (Lassere & Descroix 2003:510). Ces prédispositions belliqueuses et ces guerres anciennes entre l'Égypte et l'Éthiopie ont structuré en fait la logique de paix au travers des accords et des traités de coopération entre ces États riverains. C'est une nécessité de raison!

Le Burundi, en tant que le plus petit et le moins riche État du Bassin a plus à gagner de cette coopération. Pour sortir de la crise politique et de ses conséquences néfastes, il doit entrer en interaction avec ces États riverains. D'où la démonstration de cette riche et nécessaire coopération. Nous adoptons un plan en trois temps. Le premier temps développe une approche méthodologique aboutissant à une grille de compréhension de cette interaction stratégique en cours dans le Bassin. Cette grille considère que le Burundi doit tirer profit des configurations sous-régionales nouvelles. Les intérêts publics immédiats doivent trouver des réponses logiques respectueuses des souverainetés étatiques. Dans un deuxième temps, en effet, le Burundi ne doit pas ignorer que toute volonté unilatérale conduit toujours aux confrontations avec d'autres volontés productrices de tensions se terminant par des violences. C'est pourquoi le retour sur ces *égoïsmes* étatiques producteurs d'antagonismes et de confrontations violents est plus que nécessaire. L'histoire des guerres de l'eau justifiant alors son dépassement doit être faite. Enfin dans un troisième temps, nous montrerons quelques exemples d'intérêts tirés de cette coopération sous-régionale à travers le Bassin du Nil.

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6.2 Le socle théorique du paradigme d'intérêts nationaux au regard de l'Initiative du Bassin du Nil

6.2.1 Le socle *réaliste* comme paradigme de l'intérêt national burundais

Cette représentation des relations internationales estime que,

> *les* États, *animés par une volonté de puissance, sont en rivalité permanente, ils ne s'en félicitent pas et ils n'y voient pas une part du plan divin. Le refus des* États *de se soumettre à une loi commune ou à un arbitrage leur apparaît incontestable, intelligible mais non sublime parce qu'ils ne tiennent ni la guerre ni le droit de tirer l'épée pour sublime* (Aron 1984:579).

Il apparaît alors que les États rivalisent dans la mobilisation de gains politiques, économiques et symboliques. En d'autres termes, cela signifie qu'ils pensent souvent *égoïstement* aux intérêts nationaux. En effet, dans cette logique réaliste, ces derniers doivent être valorisés et protégés par les acteurs politiques de chaque État. Comme nous le fait remarquer Raymond Aron, « *les hommes d'*État *doivent être soucieux de l'intérêt de la collectivité dont ils ont la charge, mais ils ne doivent pas ignorer l'intérêt des autres collectivités* » (1984 :581). Partant de là, ces hommes de pouvoir – ces dirigeants – doivent savoir aussi que leurs intérêts nationaux soient limités, soient en concurrence avec ceux des autres. C'est pourquoi R. Aron nous conseille : « *le réalisme, la reconnaissance des égoïsmes nationaux, est plus propice à la prise de conscience, par chacun, des intérêts et des idées des autres que l'idéalisme ou le culte de principe abstraits* » (1984 :581).

L'approche réaliste de l'intérêt national postule succinctement que l'adhésion du Burundi dans l'Initiative du Bassin du Nil poursuit des objectifs clairs et légitimes. En effet, le Burundi doit d'abord remplir ces objectifs nationaux, c'est-à-dire tirer le maximum de bénéfices politico-économiques et sécuritaires de cette organisation sous-régionale. Les dirigeants politiques burundais en général et le Ministère de l'Environnement en particulier doivent élaborer des politiques nationales réalisant les intérêts publics burundais. Comme nous le dit H.J. Morgenthau,

> *le réalisme ne doit pas être cynique et que le remède à apporter à un idéalisme prétentieux, qui prétend en savoir sur l'avenir et sur les hommes plus qu'il n'est donné aux mortels de connaître, n'est pas l'égoïsme. C'est un souci à la fois de soi et d'autrui où le moi, qu'il soit individuel ou collectif, conserve un respect décent pour les opinions de l'humanité, dérivé d'une conscience modeste des limites de son propre savoir et de son propre pouvoir* (cité par Aron, 1984 :582).

Dans son ensemble, les autorités étatiques burundaises (et régionales) considèrent qu'en dépit du fait que les intérêts nationaux sont concurrents, ils doivent les régler stratégiquement en respectant la part des uns et des autres. A titre d'exemple, les projets de construction de grands travaux à haute intensité en main d'œuvre ne peuvent se réaliser qu'ensemble. Non seulement il serait impossible, du point de vue financier, de construire des

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infrastructures électriques et routières, mais aussi techniquement, le Burundi doit profiter de la compétence et de la gouvernance sous régionales. Ainsi, soutenu par tous les membres de l'IBN, il pourra remplir cette fonction. Il est alors compréhensible et surtout rationnel que la communautarisation des moyens et d'expertise profite à tout le monde au moment où son manque est préjudiciable à un des États membres comme le Burundi.

6.2.2 Le socle *idéaliste* comme paradigme de l'intérêt national burundais

L'approche idéaliste de l'intérêt national estime que les États doivent construire leurs stratégies en respectant principalement les normes, les idées et des principes en vigueur. En d'autres termes, les idéalistes des relations interétatiques fondent les rapports entre les États sur des idées, des principes et des lois contraignant les États car ces derniers sont des monstres égoïstes. C'est pour cela qu'il faut des lois qui les contraignent à respecter les intérêts des autres. Comme le souligne R. Aron, « *La conduite diplomatico-stratégique tend à se justifier par des idées, elle prétend obéir à des principes, se soumettre à des principes. On appelle cyniques ceux qui ne voient dans leurs idées, les normes et les principes que des déguisements de la volonté de puissance, sans difficulté réelle* » (1984 :569).

L'apport de ce courant de pensée internationaliste est que l'Initiative du Bassin du Nil poursuit l'idée de la construction de deux idées principales et complémentaires, à savoir la construction d'un monde économique stable et prospère d'une part et de l'autre, la construction d'un monde politique sécuritaire. Par exemple, cette dernière dimension résulte des temps de conflits violents ayant caractérisé certains États membres de la communauté. En outre, le respect des règles est un instrument de construction de cette sécurité interétatique. L'application du principe de partage des eaux du Nil est un outil de conservation de la paix contrairement au **traité égypto-soudanais de 1959** qui a remplacé le **Traité de 1929**. Celui-ci résulte d'un compromis historique entre les colonisateurs britanniques et les autorités égyptiennes. Celles-ci semblaient convaincues que les Britanniques se servaient de leur présence au Soudan, en amont du Nil, pour exercer une forte pression sur l'Égypte et ainsi mieux contrôler le canal de Suez. Lors de négociations entamées en 1926 entre Le Caire et Londres, les autorités égyptiennes s'efforcèrent à tout prix de faire reconnaître le principe de ***droits historiques*** sur l'essentiel des eaux du Nil. Pressés par le temps dans leurs projets de développement cotonnier dans la Gezira, et désireux d'éviter une crise avec le gouvernement égyptien, les Britanniques acceptèrent la revendication égyptienne et signèrent l'Accord sur les Eaux du Nil en 1929. Le traité prévoyait le partage des eaux du fleuve entre l'Égypte et le Soudan ; l'Égypte obtenait 48 km³ et le Soudan, 4 km³. Comme les besoins en eau augmentaient en fonction de population galopante, l'Égypte se trouvait alors dans l'impossibilité de produire des vivres agricoles suffisants. Par conséquent, la question de l'eau se reposait avec gravité. Les égyptiens se montraient également très intéressés par le projet de canal de

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Jonglei, un projet formulé dès 1938 par des ingénieurs britanniques, et qui consistait à percer un canal permettant aux eaux du Nil blanc de franchir plus rapidement les marais du Sud, diminuant ainsi la très forte évaporation. En mai 1945, Le Caire informa les autorités coloniales de Khartoum que l'Égypte désirait entamer des négociations pour la construction du canal. En 1947, le gouvernement égyptien adoptait dans son Plan directeur pour l'eau, le concept de *réservoir centennal* (century storage) qui prévoyait l'édification de nombreux réservoirs, dont deux majeurs sur le lac Tana et le lac Victoria : le projet britannique n'inquiétait plus Le Caire qui y voyait au contraire le moyen de réguler durablement les eaux du Nil. Mais l'Égypte revendiqua l'Érythrée en novembre 1947, revendication qui concurrençait directement les prétentions éthiopiennes à annexer l'ex-colonie italienne. Le gouvernement éthiopien, non seulement rejeta le projet de barrage sur le lac Tana, mais établit un lien direct entre la revendication égyptienne sur l'Érythrée et la possibilité d'un détournement des eaux du Nil bleu. Ce traité de 1958 fut signé à l'issue d'une crise entre Égypte et Soudan en 1958 car Khartoum revendiquait une part plus importante que celle que lui accordait l'Accord de 1929. Néanmoins, aucun intérêt des États en amont ne fut pris en considération. C'est pour cela que la prise en compte des intérêts de chaque pays s'imposait. D'où l'approche trans-nationaliste qui répond en partie à cette exigence.

6.2.3 Le socle *trans-nationaliste* comme paradigme de l'intérêt national burundais

Dans son « Hydropolitics of the Nile valley », John Waterbury écrit que « *les fleuves ont la mauvaise habitude de se promener à travers les frontières… et les États-Nations ont la mauvaise habitude de considérer la portion qui coule dans leurs frontières comme une ressource naturelle à leur disposition souveraine* » (2004 :25). D'où la logique de l'appropriation privative est dominante sur cette portion du territoire nationale. Les États croient y poursuivre des activités indépendamment des réactions d'autres pays riverains.

L'approche trans-nationaliste de l'intérêt national voudrait voir les pays de l'Initiative du Bassin du Nil construire leurs stratégies dans la porosité des frontières à l'instar du cours du fleuve. Dans ce cas, toutes les alternatives de coopération doivent contourner les alternatives toujours dichotomiques résultant du paradigme juridique statocentré. Ainsi, parler de la trans-nationalisation de cette Initiative, revient à reconnaître l'existence des rapports internationaux entre les individus ou groupes relevant d'États différents et n'empruntant pas de canaux inter- étatiques et devant se manifester par les échanges commerciaux, les migrations des personnes, les dialogues des cultures et croyances, les organisations qui passent par-dessus les frontières, transfert des technologies, échanges intellectuels, etc. Autant dire avec Bertrand Badie et Marie-Claude Smouts que dans le cadre trans-nationaliste, l'État « *agit sur des acteurs dont les références nationales sont multiples et peu*

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maîtrisables tandis que les acteurs déploient des stratégies où la référence nationale se dilue dans la prise en compte des intérêts les plus divers » (1992 :78).

Ainsi, l'apport de cette approche dans le cadre de l'Initiative du Bassin du Nil intéresse à plus d'un titre. D'emblée, la création des rapports interindividuels non-verrouillés par la jalousie de la souveraineté, chère aux États, engendre une société complexe avec des mécanismes originaux réglant les nouveaux partenaires qui cherchent non seulement à se connaître, mais à s'influencer à travers l'innovation. C'est dans ce cas que les transferts de compétence à travers les stages de formation des formateurs, de cursus académiques et les stratégies de renforcement de capacités institutionnelles sont réalisables et réalisés. Ensuite, cette approche inhibe le danger des gestes unilatéraux : l'État, aussi bien que l'individu, est soumis aux exigences de l'environnement sociétal ; ce qui diminue la multiplication des foyers de tension. Enfin, le trans-nationalisme, en tant que multiplication des centres d'intérêt, entraîne aussi la diversification des centres d'action et, partant l'émergence d'une approche mixte de l'intérêt.

En récapitulant, l'approche trans-nationaliste de l'IBN se veut une approche mixte. Visiblement, en plus des relations diplomatiques classiques, les eaux du Nil unissent à travers l'IBN dix pays riverains de ce fleuve. Pour l'heure, l'idéal est de faire de ce cours d'eau qui, pendant des millénaires, a été la source des moyens de subsistance pour une plus grande partie de la population riveraine, un véritable outil de communalisation transfrontalière. Les eaux du Nil doivent, en fin de compte, constituer pour tous les pays de véritables facteurs de production d'un espace économiquement et politiquement stable, clouant au pilori les velléités souverainistes au profit du renforcement des capacités humaines à affronter ensemble les défis d'un monde trop plein (bâtir un havre géo-démographique), de la mondialisation (construire un espace économique holistique) et de la spirale des conflits déstructurés (initier un espace de paix durable)[2].

Ainsi, le Burundi pourra en bénéficier énormément, car une fois les frontières ouvertes à la libre circulation des personnes, des biens et des services, le pays sera de même libre à recevoir des flux d'informations tout azimut. Bien plus, des problèmes qui actuellement se posent avec acuité tels que la démographie galopante, l'enclavement, le manque de matières premières finies, les technologies encore obsolètes, la rareté des centres de recherche, le manque de ressources humaines hautement qualifiées, etc. pourront être contenus à travers le partenariat transfrontalier. Autant dire que l'adhésion du Burundi à l'IBN pourra rationnellement augmenter 'les profits pour le fleuve, par le fleuve et au-delà du fleuve', c'est-à-dire une gestion commune des écosystèmes du fleuve bénéfique pour tous les utilisateurs du fleuve, ce qui permettra l'amélioration de la qualité et de la quantité disponible de l'eau et, partant diminuera les coûts liés aux situations de non-coopération (c'est-à-dire des situations de tensions qui conduisent au transfert des ressources destinées au développement à l'effort sécuritaire et militaire) et *in fine,* renforcera les structures politique et institutionnel du pays (renforcement du processus de

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démocratisation, des capacités institutionnelles, de la société civile à travers le Forum Burundais de la société civile du Bassin du Nil créé en 2003 et agréé en 2006). Cependant, le processus de construction de cette Initiative a connu des hauts et des bas consécutifs aux confrontations égoïstes des États du Bassin du Nil.

6.3 Historicisation de la coopération interétatique sur le fleuve Nil

L'IBN est une tentative sans précédent qui amène ensemble tous les pays du Bassin du Nil pour créer une nouvelle voie afin d'éradiquer la pauvreté et asseoir la prospérité, la paix, la coopération, la protection de l'environnement et le développement durable dans le bassin. Elle a été initiée au plus haut niveau politique et est complètement indépendante des autres processus. Si tout tourne autour d'une vision commune du Nil développée, négociée et approuvée par le Conseil des Ministres en charge de l'eau dans le bassin du Nil, sa devise somme toute laconique est plus emblématique: *« Réaliser un développement socioéconomique durable par l'entremise d'une exploitation équitable des ressources hydriques communes du bassin du Nil et une répartition équitable des profits* [(3)]*.* » Cette devise résume au bout du compte la philosophie ayant entouré la création de l'IBN. Elle ne pouvait pas être spontanée car s'incorporant au bout du comte dans un long processus.

6.3.1 Avant l'Initiative du Bassin du Nil

Comme nous l'avons déjà mentionné, les relations interétatiques anciennes se caractérisaient par des violences politiques meurtrières. L'Egypte, le Soudan et l'Ethiopie vivaient des tensions transfrontalières graves depuis la période antique. A la base de cette violence était le contrôle de l'eau du Nil. Cependant, cette stratégie s'est révélée en définitive non productrice. C'est pourquoi, la logique coopérative s'est imposée à tous les acteurs en présence.

6.3.1.1 Egypte : vers la confiscation du cadre hydrique du Nil

Le contrôle de l'eau du Nil est longtemps resté l'enjeu majeur et la préoccupation centrale de politiques en Egypte[4]. La crainte égyptienne d'un détournement des eaux du Haut Nil a alimenté des manifestations latentes de velléités expansionnistes. Ainsi, l'accroissement des besoins engendrés par la mise en valeur agricole a renforcé le besoin de contrôle du bassin vis-à-vis d'une part de l'Ethiopie[5] et de l'autre du Soudan. S'agissant de ce dernier cas, dès 1821, l'Egypte revendiqua le Soudan comme sa partie naturelle, ce qui la rapprochait visiblement de l'Ethiopie qui *contrôlait* (même si cela restait inconnu jusque-là) 85% des eaux du Nil longtemps convoitées.

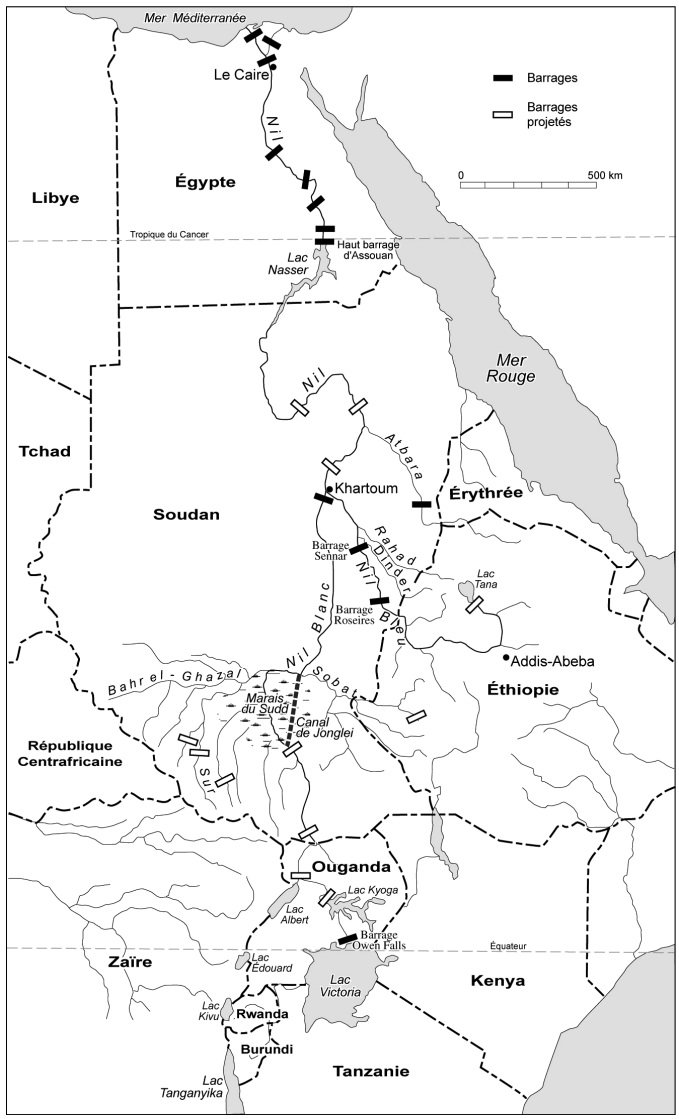
Cependant, la guerre de 1875 couronnée par une cuisante défaite des troupes égyptiennes ouvrit une brèche aux Britanniques qui conquièrent le Soudan et, partant signèrent des traités d'abord avec l'Ethiopie en 1902 pour

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empêcher cette dernière de construire des ouvrages susceptibles d'endiguer l'écoulement normal des eaux du Nil Bleu ; et ensuite avec l'Egypte en 1929, un traité de partage des eaux du fleuve entre l'Egypte et le Soudan avec respectivement 48km^3 et 4km^3. Les enjeux du Nil se jouent autour du contrôle des quantités d'eau nécessaires pour l'agriculture d'abord et pour d'autres projets connexes ensuite. Certains États vivent et existent grâce aux eaux du Nil. C'est le cas essentiellement de l'Egypte comme nous le montrent les travaux qui se font sur le bassin septentrional du Nil.

Figure 6.1 Le bassin du Nil



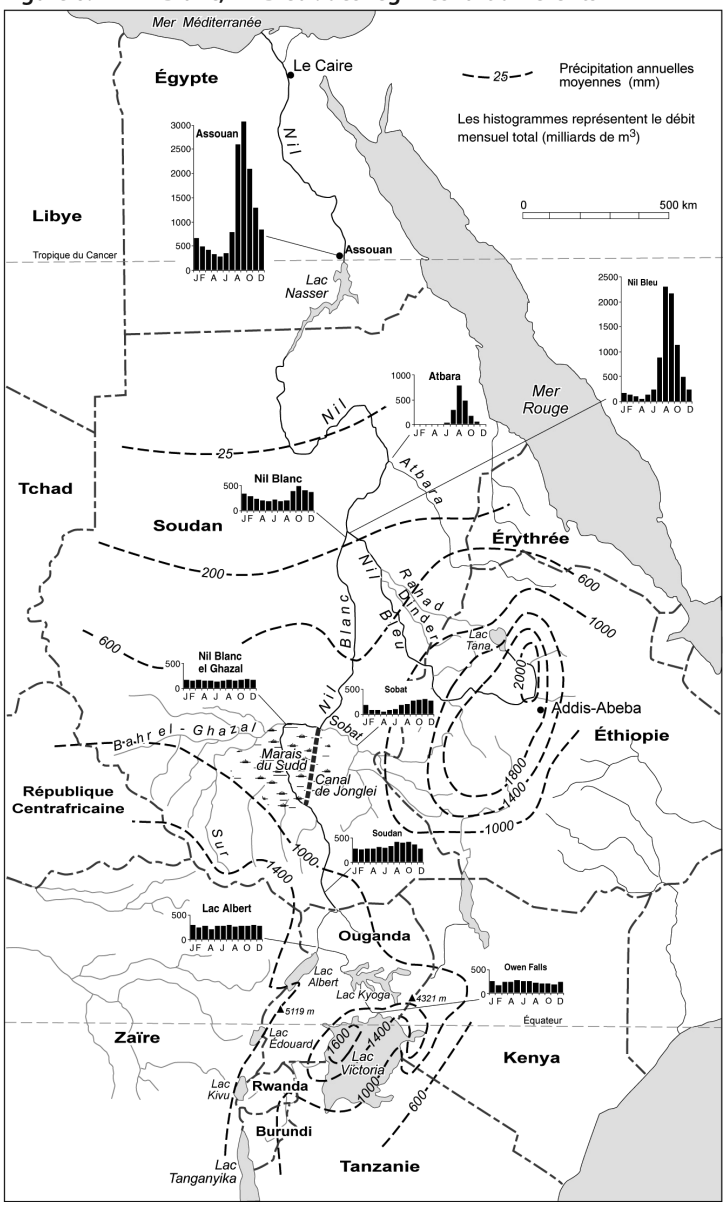
Source : Lasserre et Descroix (2003 : 510).

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Néanmoins, le Soudan continua à revendiquer une part plus importante que celle accordée par les accords de 1929. Cela entraîna une crise sur l'utilisation totale des eaux du Nil et, amena l'Egypte à la signature d'un second traité en 1959 sur le partage intégral du cours utile du Nil[6]. Cette stratégie étatique s'explique par le fait que les régimes climatiques intraétatiques sont très variés comme nous le montre le tableau réalisé par Frédéric Lasserre et Luc Descroix.

Figure 6.2 Nil Blanc, Nil Bleu : des régimes fort différents



Source : Lasserre et Descroix (2003 :510)

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Cependant, ce traité relégua aux oubliettes les revendications des autres pays en amont, ravivant ainsi d'anciennes rancœurs (Ethiopie) mais aussi amorçant des conflits par rapport à l'apparition de nouveaux pôles de consommateurs (la région des Grands Lacs).

6.3.1.2 IBN : une coopération évolutive

A partir des années soixante, des tentatives de coopération entre les pays riverains en vue d'inhiber l'approche unilatérale poursuivie par chaque État furent surface.

- La première tentative de coopération fut l'*Hydronet*[7] créée en 1967 avec l'appui du PNUD et l'OMM. Cette organisation avait pour but de coopérer dans la collecte des données météorologiques et de réguler ainsi le niveau des eaux du lac Victoria ainsi que le flot du Nil. Elle fonctionnera jusqu'en 1992 en dépit de l'adhésion éthiopienne.
- La deuxième tentative fut l'*Undugu* (fraternité en swahili) créé sous l'initiative de l'Egypte en 1983 et dont le but était d'encourager les liens économiques, sociaux, culturels et techniques entre ses membres afin de mettre sur pied une organisation économique régionale. Le *Undugu* évolua vers un cadre politique de gestion des réfugiés et de la sécurité transfrontalière quand fut mis sur pied un forum de discussion et un carrefour d'échanges d'expériences au plus haut sommet, en l'occurrence au niveau des Ministres des affaires étrangères pour le bassin du Nil en entier, à l'exception de l'Ethiopie.
- La troisième tentative fut le *Technical Committee for the Promotion of the Nile Basin (TECCONILE)*[8] créé en décembre 1992 sous l'instigation des ministres d'Egypte, du Soudan, du Rwanda, de la Tanzanie, de l'Ouganda et du Congo. Bien plus, d'autres pays riverains du Nil (Ethiopie, Kenya, Erythrée et Burundi) acquièrent l'accord du statut d'observateur augurant ainsi la première sérieuse évolution dans le processus de négociations sur la gestion commune de l'eau. Cet organe fut un cadre de dialogue et de concertation dont la pertinence fut exprimée par tous les pays riverains du Nil d'une part, et appuyée par la communauté internationale d'autre part.
- Conscients qu'une coopération durable autour du Nil requiert un programme de développement bien élaboré, avec une institution permanente et un accord sur des principes légaux, les pays riverains du Nil ont, avec l'appui du PNUD, institué en 1997 un forum qui devait servir de cadre légal et institutionnel de dialogue. La Banque Mondiale a accepté de coordonner les donateurs pour réunir les fonds nécessaires à la mise en œuvre des activités du plan d'action. Corollairement, un cadre légal de travail a été créé et des structures administratives mises en place avec un Secrétariat Exécutif basé à Entebbe en Uganda. Ce mécanisme de coopération fut officiellement lancé en février 1999 à Dar Es Salam et en Mai 1999, sous le nom de l'*Initiative du Bassin du Nil*.

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6.3.2 …Après la création de l'Initiative du Bassin du Nil

6.3.2.1 Des institutions communes …..

Les demandes sans cesse croissantes en ressources hydriques, surtout pour les pays en amont du Nil, ont conduit à définir une équation pacifique amenant non seulement le gouvernement du Caire à accepter le principe qu'il n'a pas de droit particulier sur les eaux du fleuve, mais aussi aux autres gouvernements riverains à initier une politique hydraulique commune du bassin versant.

L'Initiative du Bassin du Nil lancée en février 1999 est une structure temporaire, jusqu'à ce que les pays membres s'accordent sur la mise en place d'un cadre institutionnel permanent susceptible de promouvoir un développement économique durable pour une utilisation équitable des eaux du Nil avec une juste répartition de cette ressource commune.

Actuellement, le cadre institutionnel de l'IBN facilite la coordination entre les partenaires, le suivi de l'application des objectifs visés et l'évaluation de la mise en œuvre à travers :

- *Le conseil des Ministres du Nil*, organe suprême de l'IBN. Il est l'instance de prise de décision politique composée des ministres de l'eau et des ressources hydriques de chaque pays membre. Sa présidence est annuellement rotative ;
- *Le Comité consultatif technique*, un parterre de conseillers techniques (deux conseillers par pays) qui précise les projets prioritaires, établit la procédure des projets recommandés et coordonne les projets de l'IBN et du secrétariat de l'IBN. La Banque Mondiale, le PNUD et l'ACDI y sont admis en qualité d'observateur ;
- *Le Secrétariat du Bassin du Nil*, bras administratif de l'IBN, il est responsable de faciliter les logistiques de soutien pour les projets du Conseil des Ministres et du Comité Consultatif Technique, en plus de la prise en charge financière du programme et de la communication avec les peuples nilotiques ;
- *Le Consortium international pour la coopération dans le Bassin du Nil* qui organise le partenariat entre les pays riverains du Nil et la communauté internationale en coordonnant le financement bilatéral, multilatéral et privé pour soutenir la coopération de la gestion des ressources hydrauliques et le développement des projets de l'Initiative. Il cherche aussi à créer un forum regroupant les pays riverains avec les bailleurs de fonds.

Cependant, en dépit de ce cadre institutionnel commun, la grande question se trouve dans la problématisation des enjeux qui, variant d'un pays à l'autre suivant les intérêts à gagner, exige, par-dessus tout, des objectifs et des programmes communs.

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6.3.2.2 …. pour une vision commune

Les objectifs de l'IBN tournent autour de quatre axes importants:

- développer les ressources en eau du Bassin du Nil dans une optique de durabilité et de partage équitable pour s'assurer de la prospérité, de la sécurité et de la paix pour tous les peuples ;
- s'assurer de la gestion efficiente de l'eau et des utilisations optimales de cette ressource ;
- s'assurer de la coopération entre les États et des actions conjointes entre les pays riverains dans une optique de gagnant- gagnant (win-win gains) ;
- cibler l'éradication de la pauvreté et promouvoir l'intégration économique.

Ces programmes ont été élaborés autour d'un accord cadre dit Programme d'action stratégique fondée sur deux idées majeures : *la vision commune* et *le programme d'action subsidiaire.*

La première se veut un programme de préparation des consciences en vue du renforcement de la confiance des parties prenantes, d'autant plus qu'il s'est avéré que la plupart des initiatives de regroupement régional[9] ont foiré suite au manque d'objectifs communs. Autrement dit, la *vision commune* prépare le terreau des investissements pour les 7 projets thématiques[10] dont bénéficient tous les pays membres.

Cependant, ce programme de vision commune ne peut marcher qu'en co-manageant avec un *programme d'action subsidiaire* dont le but est de développer les sous-bassins[11] nationaux, quitte à réaliser une implication sans faille de tous les États du bassin et d'équilibrer les impacts positifs et négatifs des projets communs. Le programme d'action subsidiaire est conçu pour exécuter des projets de développement impliquant au moins deux pays. Au-delà, il s'agit de traduire en action la vision commune, la réalisation des opportunités de développement transfrontalières dans le cadre accepté du Bassin.

Ainsi, ce programme se déploie sur les projets généraux de gestion des ressources hydrauliques (fourniture d'eau, irrigation et drainage, pêche, gestion des marais et des lacs, contrôle de la pollution, etc.) et les projets de développement conjoint (infrastructure, développement des télécoms, transports régionaux, investissement privé, contrôle de la malaria et autres maladies endémiques, gestion et prévision des catastrophes, gestion environnementale, etc.).

Bien plus, à côté des deux programmes-phares de l'IBN, d'autres projets multilatéraux et indépendants de l'IBN, ont été négociés, entre autres *le projet cadre de coopération dans le bassin du Nil* (amorcer la gestion équitable et légitime du bassin mariée au développement socio-économique durable), *le projet de gestion environnementale du Lac Victoria* poursuivant une utilisation rationnelle du lac par le Kenya, la Tanzanie et l'Ouganda ainsi que *le projet des ressources hydrauliques du bassin du Nil* en vue d'une gestion opérationnelle de l'eau à l'aide d'un système d'information pour les pays riverains et du développement des capacités de gestion.

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Enfin, à travers ce vaste programme de l'IBN, force nous est de remarquer que les fleuves ne sont pas une ressource commune, mais plutôt une propriété commune qui ne peut jamais être exploitée simultanément, car pouvant générer des conflits du moment que, contrairement aux autres produits, on ne peut trouver de substitut à l'eau. La meilleure stratégie pour les États est de faire une économie de l'eau, c'est-à-dire statuer sur un meilleur moyen d'achever le partage des avantages, mais pas de l'eau. D'où la nécessité d'un cadre légal établissant au sein de l'IBN des règles de coopération en la matière.

6.3.4 Aspects légaux de l'Initiative du Bassin du Nil

Les mécanismes réglementant les actions conjuguées des États membres de l'IBN sont consignés dans un *Accord cadre sur la coopération dans le bassin du Nil*. Véritable traité constitutif de l'IBN, son préambule réaffirme la gestion intégrée du fleuve Nil comme point d'ancrage du bien-être économique et social des peuples du bassin à travers le renforcement de la coopération dans la gestion du fleuve, de ses ressources naturelles, de ses ressources en eau ainsi que de son environnement en tant que patrimoine commun du bassin du Nil. Tous les États sont en passe d'un consensus suffisant sauf à l'article 14(b). Ce dernier est libéré dans une phrase dont les contours soulèvent plutôt le retour de la gestion du bassin dans les girons des logiques stato-centrées et partant, annonce un non-dit dans la géostratégie des États où prévaut l'équilibre de la terreur : « (…) *Les* É*tats du Bassin du Fleuve Nil conviennent, dans un esprit de coopération, (…), (b) de ne pas affecter considérablement la sécurité de l'eau de tout autre* É*tat du Bassin du Fleuve Nil* »[12]. Cela a fait dire à l'Egypte et au Soudan qu'un amendement de cet alinéa s'imposait dans le sens de « *ne pas affecter défavorablement la sécurité de l'eau ainsi que les usages et droits actuels de tout autre* É*tat du bassin* ». Or, les « droits historiques » qui sont sous-entendus ici violent la logique coopérative soutenue par l'ensemble des États. Ces droits renforcent la logique réaliste car les Egyptiens qui ont signé beaucoup d'accords favorables se trouvent être les plus avantagés par ce statu quo ante. Pour l'instant, cet article sera soumis au sommet des chefs d'État et de Gouvernement des pays de l'IBN pour examen, amendement et approbation. Mais tout compte fait, cet accord cadre présente la morphologie d'un traité international. Le préambule retrace la base philosophique globale de la création de l'IBN (qui sera prochainement remplacée par la *Commission du Bassin du fleuve Nil* (1er au 5e considérant), l'article 3 en donne les principes généraux de coopération ; les articles 4 à 14 statuent sur les droits et obligations des États membres, véritable épine dans les pieds des États aux velléités souverainistes sans cesse ravivées. C'est ainsi que pour atténuer de probables confrontations d'intérêts et de confusion des rôles par rapport au poids sur l'échiquier international, l'accord prévoit des structures institutionnelles communes (les articles 15 à 29) et des institutions subsidiaires propres aux sous bassins (articles 31 et 32). Comme les divergences de vue et d'intérêt sont susceptibles de produire des conflits, l'accord dans les dispositions diverses prévoit le règlement pacifique

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des différends (article 33), les conventions complémentaires (article 34) et les clauses finales (articles 34 a, b, c, d, e ; 35, 36, 37, 38 et 39). L'on pourrait dire pour conclure que ce cadre légal, vise à la longue le développement d'un processus pourvu d'objectifs clairs qui déboucherait sur la détermination du droit équitable et légitime d'utiliser l'eau par chaque pays riverain. Ce qui protège alors les intérêts de chaque État membre, y compris le Burundi.

6.4 Le Burundi dans l'Initiative du Bassin du Nil

6.4.1 Enjeux économiques de l'Initiative du Bassin du Nil

La création de l'IBN, comme cela est consigné dans sa devise, répond à la nécessite de réaliser un développement socioéconomique et un partage équitable des revenus générés par l'exploitation commune des ressources hydriques. Cela revient à situer l'adhésion à l'IBN dans le sillage de *l'homo oeconomicus*, c'est-à-dire que les États sont mus rationnellement par la recherche des intérêts à tirer de leurs engagements internationaux. Le Burundi n'échappe pas à ces logiques néo-utilitaristes.

En effet, si l'on se réfère à bien des études en hydropolitique[13], l'avivement de la compétition pour le contrôle de ressources rares dépend principalement du rapport des quantités totales disponibles avec le nombre de consommateurs et leurs besoins individuels en ressources naturelles. Dès lors, le Burundi, un des foyers de population humaine dans la zone de l'IBN laisse entrevoir une dotation en ressources hydriques assez importantes, mais cela est dilué par le degré de développement socio-économique dont les statistiques attestent d'une relation positive entre le développement socioéconomique et le niveau de prélèvement hydrique[14]. Ce qui prédispose naturellement les États à privilégier le paradigme du *Win-Win gains* pour finalement pouvoir récupérer à droite ce qui se serait perdu à gauche.

Le gros du travail pour le Burundi réside dans la consolidation des acquis consignés dans la vision commune et le plan d'action subsidiaire. Mais à la limite cela suppose un état global de cohérence mutuelle entre les politiques et les programmes ; une façon de dire que les enjeux doivent être appréhendés en terme de politiques publiques initiées sur base de réseau entre État et les divers interlocuteurs (collectivités locales, les groupes d'intérêts, grandes entreprises, les partenaires internationaux, etc.). Ainsi, sur le plan économique, tous les enjeux pour le Burundi sont de tirer des avantages consistants des projets potentiellement finançables et financés inscrits dans le programme de vision commune à savoir :

1°. Le projet d'Action environnementale transfrontalière du Nil

Dans cette rubrique, le Burundi étant en amont du Nil (il en est d'ailleurs sa source la plus méridionale quand bien même des polémiques persistent encore avec le Rwanda), l'intérêt pour tout le bassin est que le Burundi ne soit

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la cause de l'insécurité environnementale et hydrique soit par la pollution tant des eaux de surface que souterraines, soit en participant activement au réchauffement climatique. Ainsi, l'IBN en tant qu'institution préventive injecte des fonds dans le volet de la conservation des terres, des forêts et des eaux au niveau communautaire. Le Burundi vient de vivre une guerre dévastatrice depuis 1993. Celle-ci se caractérise par une série de destruction avancée de l'environnement par une exploitation sauvage des mines (comme le colombo tantalite, le coltan, la cassitérite, etc.), des forêts naturelles de la Kibira et de la Ruvubu et d'une exploitation des marais afin de fabriquer des briques de construction de maisons dans les divers centres urbains du pays. C'est pourquoi, la mobilisation des fonds disponibles a eu sans doute un double impact. Par exemple, les associations locales participent dans les activités de fermeture des mines ouvertes grâce au financement dudit projet. D'une part, les travaux de remise en valeur des terres, de reforestation et de conservation des réserves hydriques relèveront le niveau de vie des communautés impliquées et du pays, en relançant le circuit économique des ménages par l'augmentation du pouvoir d'achat. D'autre part, au-delà des effets de protection des écosystèmes du bassin, de la réduction des gaz à effet de serre et de l'augmentation des réserves hydriques en qualité et en quantité, de l'augmentation de la fertilité des sols qui demeurent la rançon du succès, il en résultera des pesanteurs dans le changement des comportements des citoyens[15] en contribuant à créer un esprit de bonne gouvernance environnementale.

La perspective de la gestion efficiente de l'environnement exige en effet des acteurs compétents et informés. En effet, la gestion demande une maîtrise des technologies administratives et technologiques nouvelles. Le Burundi profite alors de la formation d'acteurs du développement. D'un côté, il est en train de former des étudiants en matière environnementale. Dans ce cadre, il y a un doctorant en géologie dont la bourse est financée par le projet *Formation appliquée à la gestion intégrée de l'eau-PTA*. Ensuite, les formations en maîtrise et en DESS organisée au Rwanda sont réalisées. Dans le même sens, des stages de formation des acteurs étatiques et de la société civile sont organisés en faveur du Burundi en particulier. De l'autre, la logique de la participation populaire dans la gestion et la protection des terres, des forêts et de l'eau se développent. En effet, il n'y a pas de protection possible sans que les acteurs impliqués n'intériorisent les objectifs poursuivis par le gouvernement burundais. C'est dans cette perspective que le Forum Burundais de la Société Civile du Bassin du Nil[16] fut créé en 2003 et agréé par l'Ordonnance ministérielle n° 530/913 du 20 septembre 2006. Le financement de ce Forum permet une vulgarisation locale de l'intérêt de la protection des biens nationaux par une socialisation collinaire. Ce processus de socialisation procède par des mécanismes d'organisation des ateliers et des sessions de formation, de la participation aux réunions et organisation conjointe des journées reconnues par l'IBN. Par conséquent, l'IBN deviendrait **un instrument de réduction de la pauvreté et de la misère *cognitive***. Ainsi, l'éducation environnementale doit être telle que

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la responsabilité de chaque membre de la communauté soit engagée dans la défense des ouvrages de protection de l'environnement.

2°. Les échanges énergétiques

Le Burundi accuse un déficit énergétique malgré l'abondance des eaux dans ses bassins versants. L'intérêt du pays d'adhérer à l'IBN est de pouvoir d'une part compenser les ressources financières limitées par les exigences d'une économie extravertie à travers des projets communs de construction des centrales hydrauliques (le projet le plus visé est celui de la construction du barrage de Rusumo Falls) pouvant compléter le déficit énergétique ; et d'autre part par la marchandisation transfrontalière de l'énergie à des prix défiants les règles du marché. Dans ce cas, le Burundi pourra engranger de nouvelles dynamiques économiques et sociales telles l'électrification des campagnes dont un des effets d'entraînement est le développement du secteur informel structuré, l'exploitation des ressources minières encore en jachère (comme le Nickel de Musongati, l'or de Kamaramagambo, de Mabayi, etc., et l'installation des nouvelles technologies de l'information et de la communication dont le Burundi reste encore l'enfant embryonnaire de la région, ... Bref, les effets des liens entre énergie et développement sont assez clairs : une meilleure production agricole se reflétera en la croissance des industries agro-alimentaires. Une plus grande production hydroélectrique peut se refléter en une meilleure productivité des industries intensives en énergie ; tout ceci pouvant conduire à de plus accrus investissements en industrie ou en infrastructure, et des relations commerciales plus étroites. Ces liens peuvent être nationaux, et donc avoir des effets locaux dans chaque pays riverain, ou internationaux dés lors qu'ils encouragent le commerce et les échanges entre ces pays.

3°. L'utilisation rationnelle de l'eau pour la production agricole

Si l'eau reste au centre des polémiques et tensions interétatiques, c'est qu'il est aussi le passage obligé pour le développement de l'agriculture, base de la sécurité alimentaire. Le Burundi, pays agricole à 90 pourcent n'en est pas épargné. Bien plus, s'il est arrosé 9 mois sur 12, il n'en demeure pas moins le plus affecté par les aléas climatiques, ce qui en filigrane, le prédispose à des famines et disettes quasi chroniques, et au-delà à une dépendance alimentaire. Adhérer à l'IBN, c'est adhérer à une approche rationnelle de l'utilisation de l'eau pour la production agricole. Ainsi, le Burundi pourra bénéficier d'un cadre cohérent de gouvernance de l'eau, c'est-à-dire d'une part à travers l'identification des problèmes liés à l'eau (inondation due à l'abondance, sécheresse consécutive au tarissement), le renforcement des capacités pour endiguer de tels aléas (des techniques modernes d'irrigation, la conservation des eaux de ruissellement pour être utilisé au moment de sécheresse, terrasses radicales pour empêcher l'érosion différentielle, des hommes capables de

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mobiliser des compétences, etc.) et d'autre part, à travers la mobilisation des fonds, la définition des stratégies et la prise de conscience des dangers qui handicapent les politiques publiques[17]. *Grosso modo*, la coopération dans le cadre de l'IBN permettra au Burundi de s'ouvrir aux techniques de drainage qui se sont avérées pertinentes ailleurs et tel l'effet d'onde de choc, être testées au travers des politiques publiques initiées sous les auspices de l'IBN.

4°. La planification et la gestion des ressources en eau

Une bonne planification de la gestion des ressources en eau est celle qui chercherait à s'inscrire dans un jeu à *somme double*, si l'on s'en tient à la théorie des jeux dans les relations de négociation en situation de conflit. Dans ce cas, les eaux du Burundi qui se veulent les affluents les plus éloignés, une fois la planification et la gestion mal assurées produisent des effets pervers en aval à telle enseigne que le coût des outputs reste largement supérieur à celui des inputs. Finalement, les pertes sont cumulées de part et d'autre. Subséquemment, l'intérêt du Burundi est de voir ses capacités renforcées et optimisées durablement pour ne pas constituer le maillon faible de la chaîne. Cela passe dès lors par une formation appliquée dont le champ de prédilection se veut d'emblée les institutions en charge de l'eau, les consommateurs ensuite et, enfin les Centres de recherche universitaires en vue de concevoir et de délivrer des programmes autour des ressources hydriques. La résultante est qu'*in fine*, cela engrange un développement socio-économique sans précédent et un partage équitable des bénéfices induits. Ainsi, dans de telles circonstances, l'adhésion du Burundi à l'IBN amorce une nouvelle dynamique dans le processus d'intégration et de coopération sous-régionale et régionale. Cela est à mesurer à l'aune des différentes organisations régionales dont il est membre, mais dont la méfiance mutuelle produit un sentiment d'enfermement, et du coup annihile les motivations profondes ayant été à la base de leur formation. Bien entendu, si cela remet aux calendes grecques la transformation des défis en opportunités, il n'en demeure pas moins l'épicentre de la prise de conscience. « *Rien ne pousse sans pourrir* », *dit-on.* L'adhésion à l'IBN pour le Burundi pourra ressusciter des organisations sous régionales comme la CEPGL, l'OBK, EGL, etc. ou tout simplement revitaliser celles qui sont moribondes (retour de la PTA Bank à Bujumbura) ou encore donner une aura aux nouvelles alliances (EAC, NEPAD). En somme, cette coopération intégrée soutient le développement socio-économique de nos populations et redorer le blason de la confiance déjà terni par les tergiversations souverainistes des parties prenantes aux différentes organisations, surtout que celles-là sont toujours restées la chassée gardée des politiques sans politiques publiques cohérentes.

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6.4.2 L'intérêt sécuritaire de l'Initiative du Bassin du Nil

Le gros de tous les enjeux réside dans les conflits susceptibles de faire irruption autour de la gestion commune des eaux et des ressources hydriques. Le but ultime de la création de l'IBN est d'endiguer en amont les velléités conflictuelles interétatiques. Cela revient à dire que l'IBN est une donnée politique et doit viser des solutions politiques. Pour un pays comme le Burundi, adhérer à cette organisation préfigure une façon de se redimensionner en plus de la seule sous-région des Grands lacs. A cet égard, c'est aussi accepter de co-manager, co-gérer toutes les questions de politique internationale de la région de l'IBN. Dans ce cas précis, il apparaît qu'à bien des égards cette région est constamment soumise à une spirale de violences déstructurantes[18], exigeant alors des remèdes à la nature de l'incurie. L'article 33 de l'Accord-cadre sur la coopération dans le Bassin du Fleuve Nil statue sur le règlement pacifique des différends. Ce qui présage en interligne les premiers balbutiements vers la construction d'un espace élargi de paix qui pourrait permettre de résoudre et prévenir les conflits armées internes et régionaux, endiguer les activités subversives et fournir de cadre juridique d'éradiquer l'insécurité persistante dans la région de l'IBN[19]. Mais tout cela ne sera une réalité que si et seulement si toute attaque ou toute menace contre un quelconque État serait perçue comme une attaque contre eux tous[20]. En outre, le traitement commun de tous les crimes remet en cause la valorisation des usages criminels des produits environnementaux, c'est-à-dire « *ne pas traiter de la figure du chef de guerre, du militaire ou du milicien ? La généralisation de la violence, comme 'voie normale' d'accès au pouvoir, et surtout comme mode d'accumulation de richesse et prestige, a fait de l'homme en armes un acteur social de plus en plus valorisé et attracteur* » (Banegas et Warner 2001 :16 ; Braekman 2003 ; Marchal 1993). Autant dire que le Burundi attend beaucoup plus d'une part une gestion conjointe de la sécurité aux frontières communes. Il est clair que les rebelles s'imposent et récupèrent l'autorité des notables. Or, nous devons savoir qu'une célébrité de rebelles risque de produire et de s'étendre comme une traînée de poudre. Comme en République démocratique du Congo,

> *elle produit un bouleversement des représentations morales de l'accumulation légitime et une remise en cause des hiérarchies sociales. Au Kivu, par exemple, les anciens notables ont cédé la place à de « nouveaux riches », qui tirent profit de l'économie de pillage, tel le négociant-civil ou militaire de 'coltan'(colombo tantalite), aisément reconnaissable à son véhicule 4X4, à sa ceinture à bouche dorée et à ses mocassins à bouts carrés* (Banegas et Warner 2001 :16).

En outre, un travail coordonné des activités de lutte contre la prolifération des armes légères doit être entrepris, consolidé et continué. Cela est d'autant plus important qu'il exige des mécanismes adaptés allant de la resocialisation par désocialisation[21] à la redéfinition de la gouvernance du secteur de la sécurité. Au bout du compte, il s'agit du renforcement des capacités institutionnelles en matière de sécurité (création d'une armée professionnelle, élitiste et respectueuse des droits de l'homme et du droit humanitaire) et des capacités

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des communautés à travers l'action de la société civile (renforcement des principes et des valeurs démocratiques, respect des droits de l'homme, lutte contre les idéologies, les politiques et les pratiques discriminatoires, etc.) en déployant des mécanismes multidimensionnels à travers la recherche et la formation dans différents domaines (démocratie, bonne gouvernance, sécurité préventive, éducation citoyenne, l'enracinement du pouvoir judiciaire, etc. mais aussi par la mise en place d'observatoires, de groupes de médias, d'experts et des groupes d'intérêt (comme les syndicats) pour alerter chaque fois que de besoin.

Tout compte fait, les conflits susceptibles d'éclater dans la région du bassin du Nil sont géostratégiques. S'ils peuvent être représentés sous la forme d'un jeu à deux ou à plusieurs acteurs suivant la nature de la cause défendue et/ou à défendre, stratégiquement, il peut s'agir d'un conflit d'usage qui découle soit de l'érection d'un barrage ou encore d'un détournement du fleuve pour des fins d'irrigation ou d'autres usages ; soit d'un conflit de pollution dont les externalités négatives ne sont point supportées par l'État pollueur eu égard à la trans-nationalité du fleuve, ou encore un conflit de manque relatif lorsqu'en amont un État essaie de détourner trop d'eau pour son seul usage ; et enfin, de conflit de manque d'eau absolu (ici les aléas climatiques sont ex-cathedra) dont l'ampleur est liée au degré de développement et à l'utilisation variée de l'eau. Autrement dit, les différentes politiques stratégiques et réalistes entre les *grandes* puissances régionales doivent structurer la configuration de l'équilibre ou la stabilité/instabilité des systèmes politiques. Autant dire que l'IBN pour le cas du Burundi doit permettre de remplacer le *chacun pour soi* par le *tous pour un* et pour tous les États riverains, *la notion de puissance par la notion de partage*; une façon de dire que l'institutionnalisation géostratégique de la sécurité autour de la gestion commune des ressources hydriques augmente pour les États les avantages de coopération et les chances de resocialisation des acteurs impliqués (acteurs étatiques et non étatiques, mais concernés par la gestion de l'eau) dans la gestion constructiviste de la vision commune de l'eau en tant que ressource rare et finie.

6.5 Conclusion and Policy Recommendations

L'initiative du Bassin du Nil doit être profitable à tous les États la composant. Le Burundi nourrit des ambitions de développement économique, politique et sécuritaire. Les domaines d'action dominants exigeant la construction d'un modèle d'analyse objective des stratégies et tactiques nécessaires pour l'obtention des intérêts nationaux immédiats. L'analyse de cette problématique d'intérêts a mobilisé le modèle interactionniste car le Burundi est un des acteurs *rationnels* de l'espace IBN. C'est pour cela que les autorités dirigeantes doivent négocier non seulement les biens économiques, mais aussi sécuritaires et techniques. L'importance de ces problèmes demande une logique coopérative. A ce titre par exemple, c'est l'agriculture qui consomme le plus d'eau et représente 88 pour cent de la consommation d'eau en Afrique. En outre, les

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nombreux troupeaux de bétail qui vivent dans le Bassin du Nil dépendent également de son eau. Étant donné que l'eau du Nil doit être partagée entre plusieurs populations, les pays riverains ont institué d'importantes mesures pour minimiser les conflits qui peuvent naître. Et l'IBN en est une. Ainsi, si chaque membre de l'IBN a consenti à partager avec les autres riverains du Nil des informations concernant les projets qu'il envisage et, dans la mesure du possible, d'entreprendre des études conjointes afin de ne pas nuire à la pérennité des ressources en eau, il n'en demeure pas moins que chaque État membre doit jouer un rôle approprié, entre autre celui « *de proposer des solutions reposant sur la collaboration en ce qui .concerne l'utilisation de l'eau du Nil dans le cadre du dialogue diplomatique ordinaire qu'ils ont avec les pays riverains* » (Shinn 2000). Cependant, ce dialogue doit être centré sur les vrais bénéficiaires, en l'occurrence les populations riveraines.

Le Burundi doit, comme nous l'avons développé, profiter des politiques publiques de l'environnement comme le reboisement, la conservation des forêts, l'entretien des marais, de réaménagement du territoire afin de rajeunir son écosystème. Au même moment, les acteurs burundais publics et privés doivent mobiliser les financements en matière de la formation des acteurs burundais intervenant dans différents domaines de la vie nationale d'un côté et de l'autre de la gouvernance démocratique. Il s'agit entre autres de l'implication des populations dans le processus de prise de décision et de l'inculcation de nouvelles mœurs de faire et d'agir politiques respectueuses de l'environnement. C'est dans ce cadre précis qu'évolue le Forum burundais de la société civile du Bassin du Nil. Enfin, l'Initiative du Bassin du Nil en préconisant prioritairement le dialogue entre partenaires peut renforcer les logiques exclusives de la violence ayant élu domicile au Burundi. Ainsi, pour des aires géographiques surpeuplées dont la survie demande parfois des réflexes *néo-malthusiens* , c'est-à-dire des massacres pour *mieux respirer*[22], l'apport d'une telle organisation serait de permettre de créer un havre démographique en palliant à l'exiguïté des terres, aux impacts négatifs des risques et persistances de la sécheresse dans certaines régions (déplacement des populations, pertes de superficies agricoles, problèmes d'accès à l'eau, malnutrition et famine) et/ou des inondations dans d'autres (dommages matériels importants, coûts de reconstruction élevés, multiplication des sans abris, etc.) par la création d'un espace démographique unique et surtout par la fabrication d'un *citoyen transfrontalier*. Cela permettrait la mobilité des populations par delà les frontières nationales et de réguler les déséquilibres des densités d'une part. D'autre part, comme la croissance démographique entraîne l'occupation excessive du sol et l'amenuisement de ressources naturelles avec parfois des effets induits tels le gaspillage, la pollution et les complications climatiques, etc., l'IBN pourra fournir une aide technique susceptible de mettre au point des modèles climatiques régionaux, d'établir des prévisions météorologiques à long et à court termes et de préparer des modèles écologiques respectueux de la sécurité humaine et environnementale.

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Partant de ces éléments et pour être efficaces, l'État burundais devrait :
*mettre sur pied des stratégies d'utilisation de l'eau faisant objet de partage ;
*signer l'Accord-cadre afin que tous ces intérêts soient acquis ;
*élaborer un plan stratégique synthétisant les intérêts à défendre ;
*intégrer la société civile burundaise agissant dans le domaine de l'environnement afin qu'elle améliore le plan stratégique ;
*et enfin, renforcer l'équipe de négociateurs burundais par des techniciens provenant des secteurs intéressés afin de bien défendre les intérêts nationaux burundais.

Notes

1 Aujourd'hui professeur auxiliaire à la Faculté Elliott des Affaires internationales de l'Université George Washington.

2 Actuellement, tous les dix pays de l'IBN sont affectés par un conflit interne et/ou international ou encore par la gestion des effets induits (les réfugiés notamment).

3 Nile Basin Initiative, *Annual Report 2005*, p.1.

4 Pour plus d'information, le lecteur pourra consulter Frédéric LASSERRE, *Les enjeux actuels du partage du Nil. Entre craintes égyptiennes et rancoeur éthiopienne*, Actes du 14e Festival de Géographie de Saint-Dié, Eau et Géographie, Saint-Dié, 2003, 16 p.

5 Pour le cas d'Ethiopie, l'Egypte est animée d'une volonté sans précèdent de contrôler le débit du fleuve et chaque fois, sa diminution entraînait au départ des persécutions d'allure religieuse (massacres des coptes par les musulmans) pour évoluer vers l'entreprise coloniale sous Mohamed Ali (ou Mehemet Ali) dans le dessein de maximiser les dividendes de l'exploitation des eaux du Nil.

6 Le traité de 1959 partageait l'intégralité du cours utile du Nil entre l'Egypte et le Soudan, attribuant 24,3 pourcent (18,5 milliards de m^3) du débit à celui-ci et 75,7 pourcent (55,5 milliards de m^3) à l'autre.

7 Il s'agit de la coopération entre d'abord l'Egypte, le Kenya, le Soudan et la Tanzanie. l'Ouganda et le Rwanda l'intégreront en 1977 en créa un système de gestion du bassin du fleuve Kagera auquel appartient aussi le Burundi.

8 Le projet nous est connu sous la dénomination française de *Comité Technique de Coopération pour la promotion du développement socioéconomique et la protection de l'environnement dans le Bassin du Nil*.

9 Pour les seules organisations régionales auxquelles appartenait le Burundi, l'on pourrait citer la CEPGL (Communauté économique des pays des Grands Lacs) et l'OBK (Organisation du Bassin de la Kagera) qui n'ont pas fait longue vie suite à l'absence d'une vision commune et surtout de l'implication des populations concernées au premier chef.

10 Il s'agit des projets d'Action environnementale transfrontalière du Nil, de Commerce régional énergétique, Formation appliquée, Planification et gestion des ressources hydriques, Utilisation efficiente de l'eau pour l'agriculture, Renforcement de la confiance et implication des parties prenantes, Développement socio-économique et partage équitable des bénéfices et de la coordination des actions et des attentes.

11 Actuellement, deux programmes d'action subsidiaire ont été érigés, l'un pour *la région du Nil de l'Est* pour l'Egypte, l'Erythrée, l'Ethiopie et le Soudan ; l'autre pour *les Lacs Equatoriaux du Nil* concernant les pays en amont du Nil à savoir le Burundi, le Kenya, l'Ouganda, la RDC, le Rwanda et la Tanzanie ainsi que l'Egypte et le Soudan, deux pays en aval.

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12 Cet article semble rejoindre les dilemmes ayant entouré l'adoption aux Nations Unies de la *Convention sur le droit relatif aux utilisations des cours d'eau internationaux a des fins autres que la navigation*, un texte qui gravite autour de trois principes de base : l'« *utilisation et la participation équitable et raisonnables* » ; l' « *obligation de ne pas causer de dommages significatifs* » et l' «*obligation de coopérer* » pour régler d'éventuels litiges. Cette disposition ne montre pas le seuil qui devra être atteint pour dire que tel État a été affecté défavorablement. Ce qui en filigrane montre une contradiction implicite entre le droit dit et le droit à appliquer. Et le plus souvent, les États'en remettent au droit coutumier. (Pour plus d'information sur cette ambivalence du droit, voir Frédéric LASSERRE et Annabelle BOUTET, « Le droit international réglera-t-il les litiges du partage de l'eau ? Le bassin du Nil et d'autres cas », *Etudes internationales*, septembre, 2002, pp.512-513.)

13 L'hydropolitique est une nouvelle discipline émergente en relations internationales tendant à montrer un possible lien entre les ressources hydriques transfrontalières et les rapports coopératifs ou conflictuels interétatiques. Arun ELHANCE dans une des rares tentatives de délimitation de la discipline écrit : « *Hydropolitics is the systematic study of interstate conflict and cooperation over transboundary water ressources* » (Voir ELHANCE, A., "conflict and cooperation over water in the Aral sea basin", *Studies in conflict and terrorism*, avril-juin 1997, p.218.)

14 A ce sujet, le travail de Frédéric JULIEN reste enrichissant à bien des égards, (Frédéric JULIEN, *Ressources hydriques et conflits interétatiques. Apports et limites d'une approche quantitative*, IQHERI, Université Laval, 2006, pp.12-18.)

15 Le Bassin du Nil s'étend sur les 13 provinces sur 17 que comptent la République du Burundi. Ces entités territoriales sont : Bururi où se trouve la source la plus méridionale, Rutana, Ruyigi et Cankuzo à l'Est, Gitega, Karusi et Mwaro au centre, Bujumbura Rural, Kayanza et Muramvya à l'Ouest, Ngozi, Kirundo et Muyinga au Nord. Le Bassin hydrographique du Nil au Burundi couvre une superficie de 13.800 km^2 soit 49,58 pour cent de la superficie nationale (27.834km^2) et abrite 5 millions d'habitants, environ 72 pour cent de la population totale du pays. Il s'agit de la partie la plus surpeuplée du Burundi.

16 Le Forum Burundais de la Société Civile du Bassin du Nil (FCBN) a été créé en octobre 2003 par des représentants de 60 organisations de la société civile burundaise opérant essentiellement dans le domaine de la protection de l'environnement et la lutte contre la pauvreté dans la zone burundais du Bassin du Nil

17 Si dans ce petit pays l'eau pèche par l'excès, les politiques publiques excellent par ignorance dans la rationalisation des actions en matière d'agriculture. Non seulement ce domaine reste la parent pauvre en terme d'enveloppe budgétaire (4% cette année), mais beaucoup plus les recherches en vue d'améliorer les techniques arables restent la chasse gardée des cafards sur les rayons des bibliothèques.

18 Il suffit de faire référence aux génocides rwandais, burundais et récemment dans le Darfour soudanais, aux massacres de l'Est du Congo, aux différentes rébellions et autres forces négatives qui pullulent un peu partout (RDC, Burundi, Rwanda, Ouganda, Soudan, Ethiopie), aux crises électorales récurrentes (Burundi, Kenya), à la montée en force du fondamentalisme islamique (Soudan, Egypte, Tanzanie).

19 Par exemple les personnes accusées d'infraction ne peuvent plus élire domicile dans un des pays de l'IBN. Une personne qui avait fui le Rwanda en s'installant au Burundi s'est renvoyée chez elle manu militari.

20 Si déjà l'Egypte dispose d'une "*armée de l'eau*", la tendance pour tous les États membres sera de faire autant pour se préparer psychologiquement à une éventuelle invasion.

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21 Dans certains État s où toute réflexion se ramène aux réflexes identitaires, refondre les valeurs ancrées dans les carcans identitaires et, ce perçu en tant que mémoire collective, reviendrait à initier d'autres valeurs socio-normatives à même de structurer un nouveau décor social ; ce qui suppose un nouveau départ à neuf dans l'entreprise de socialisation.

22 Nous faisons référence à la Région des Grands Lacs où les études jusqu'ici faites montrent un lien de cause à effet entre les tueries et massacres assez récurrents et l'amenuisement des espaces fonciers. C'est le cas de André GUICHAOUA (ed.), *Les crises politiques au Rwanda et au Burundi*, Paris, Karthala, 1995.

Références bibliographiques

Aron, R. (1984), Paix et Guerre entre les nations, Paris, Calmann-Lévy.

Badie, B. et Smouts, M.-C. (1992), *Le retournement du monde. Sociologie de la scène internationale*, Paris, Presses de la FNSP/ Dalloz.

Banegas, R. et Warner, J.P., (2001) « Nouvelles figures de la réussite et du pouvoir », *Politique africaine*, n°82

Braeckman C. (2003), *Les nouveaux prédateurs. Politique des puissances en Afrique centrale*, Paris, Fayard.

El Dahshan, M. (2004), *La coopération internationale dans le bassin du Nil. Entre théorie et réalité*, Paris, IEP.

Elhance, Arun P. (1997), "conflict and cooperation over water in the Aral sea basin", *Studies in conflict and terrorism*, Volume 20, 1997, 207 – 218, États-Unis.

FCBN, *Guide de formation sur lien existant entre la gestion de l'environnement et la réduction de la pauvreté*, mars 2008

Guichaoua André (ss la dir de) (1995), *Les crises politiques au Rwanda et au Burundi*, Paris, Karthala,

Julien Frédéric (2006), *Ressources hydriques et conflits interétatiques. Apports et limites d'une approche quantitative*, IQHERI, Université Laval,

Lasserre Frédéric et Boutet Annabelle (2002), « Le droit international réglera-t-il les litiges du partage de l'eau ? Le bassin du Nil et d'autres cas », *Etudes internationales*,

Lasserre, Frédéric et Descroix (2003), Luc. *Eaux et territoires: tensions, coopérations et géopolitique de l'eau*. Presses de l'Université du Québec, Québec.

Lasserre, Frédéric. « Les enjeux actuels du partage du Nil : entre craintes égyptiennes et rancoeur éthiopienne ». Actes du 14e Festival de Géographie de Saint-Dié, Eau et Géographie, Saint-Dié, 2003, 16 p.

Marchal, R. (1993), Les mooryaan de Mogadiscio. Formes de la violence dans un espace urbain en guerre «, Cahiers d'études africaines, vol. 33, n° 2, p. 295-320

Nile Basin Initiative, *Annual Report 2005*.

Shinn David (2000), «Water War in the Nile Basin»(Guerre de l'eau dans le Bassin du Nil), Colloque, Laboratoire national de Los Alamos, Nouveau-Mexiqu Conflict and cooperation over water in the Aral Sea basin

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CHAPTER 7
The Nile River and Egyptian foreign-policy interests

Hamdy A. Hassan and Ahmad Al Rasheedy

7.1 Introduction

The Nile River is Egypt's principal artery of life. It is life itself for Egypt. This basic fact does not apply to the same extent to the other riparian states. Therefore, one of the major strategic threats to Egyptian national security is the threat to vital water sources lying beyond the Egyptian borders. The issue of Nile water is becoming increasingly serious in terms of regional relations for the states of the Nile Basin for a number of reasons. First, no real organisation exists among the states of the basin to allow for a dialogue to determine the distribution and exploitation of the Nile water. Second, there is real competition among the states of the Nile Basin over the production of specific crops for export – especially cotton which needs enormous amounts of water. Third, the ongoing enmities and conflicts between the states of the basin, and the intrastate civil wars, which have created opportunities for instability and frequent manipulation by external powers, continue to undermine their own interests and the interests of the area.

Historically, Egypt was considered an African, as opposed to an Arab, state. Pharaonic Egypt was nothing but an African state, and its relations with countries south of the Nile Valley and central Africa have continued ever since. It is possible to view the geopolitical regional relations between Egypt and the states of the Horn of Africa and the Nile Basin in such a way that they could be considered conducive to cooperation in peacetime, but a point of pressure that might threaten the Egyptian entity in case of war or the threat of war.[1]

The first aspect of this relationship emerged when the Red Sea became an important international waterway and centre of interest of the international powers, hence the necessity for Egyptian, Arab and African cooperation by virtue of the long African and Western shorelines on the Red Sea.

The second aspect was imposed by the water sources of the Nile, as Egypt relies entirely on the Nile River to supply its need for fresh water. Ethiopia claims monopoly of supply by contributing more than 80 per cent of the Nile's water sources. This is a fact that has set a permanent goal for the Egyptian leadership to ensure the present flow of the Nile waters.

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The third aspect relates to the Nile River as an international river that crosses the borders of the 10 states of the Nile Basin. This multinational nature of the river presents a grave challenge, necessitating cooperation between all riparian states for the management of the sources of the river in order to achieve their best utilisation.

The fourth aspect is reflected in the nature of the protracted conflicts in the Horn of Africa and East Africa, particularly in Sudan, Somalia, northern Uganda and the Great Lakes region.

Added to these dimensions are the possibilities of future wars over water in the region in the post-Cold War era. As a number of studies indicate, a future war in the Middle East and Africa could well be based on conflict over water sources.[2] There is no doubt that this dimension has exerted new pressure on the Egyptian leadership as a national security issue because it threatens not only the entity of the state, but also its social fabric.

This chapter aims to define the position occupied by this dimension in Egyptian foreign policy vis-à-vis the states of the Nile Basin, with a special focus on the Nile River water. The authors argue that Egyptian foreign-policy behaviour as well as Egypt's desire to ensure a smooth and uninterrupted flow of the Nile River waters have historically been – and will continue to be – intertwined.

7.2 Egypt and the Nile Civilisations: Historical Context

One well-known Egyptian writer articulated Cairo's external relations regarding the Nile question by arguing that 'the first civilisation was the fruit of fortunate geographical marriage between Egypt and the Nile, hence if history was a father of Egyptians and Egypt was a Mother of the World the Nile is simply the great, great grandfather of human civilisation'.[3]

Indeed, the Nile River has shaped the life of Egyptian people, their habits and culture over the centuries, and through its periodic flood was like a renewed life cycle. Ancient Egyptian history indicates that the Egyptians became used to the measurement of the level of the river and they considered it as an indication of the economic and civilised conditions of the country. While the river participated creatively in forming Egyptian civilisation, Egyptians also played an important role in preserving the water of the river. The former prime minister of Great Britain, Winston Churchill, discussed the challenge determined by the geography of the river when he compared the Nile River with a huge palm tree extending its roots into central Africa in Lakes Kyoga, Albert and Victoria, and its tall trunk to Egypt and Sudan, where its green upper part ends up in north Egypt. If you cut the roots, the green upper part would dry out, and the whole tree would die.[4]

Undoubtedly, one of the major strategic threats to Egyptian national security is the existence of vital water sources lying beyond the Egyptian borders. Any cut in Nile water supply will negatively affect Egypt's leading regional role. The north of the Nile valley is a rich agricultural area which relies

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solely on the waters of the Nile. The Nile River Basin is composed of 10 states preoccupied with the problem of demographic explosion, thus necessitating agricultural expansion. Hence a problem of organisation, distribution and investment in water sources arises.[5] The solution is only possible through the establishment of huge dams capable of controlling the flow of water in the river. These dams are like a double-edged sword – especially with respect to Egypt. They allow the states of the basin to effectively share the distribution of the water, according to what was agreed on, by allowing the states to control to a certain extent the flow of the water.

The issue of Nile water grows in gravity in terms of regional relations for the states of the basin for a number of reasons.[6] First, no real organisation exists among the states of the basin to allow for a dialogue to determine the distribution and exploitation of the Nile water. Second, there exists real competition among states of the Nile Basin over the production of specific crops for export, especially cotton which needs enormous amounts of water. Third, the ongoing enmities and conflicts between the states of the basin, and the intrastate civil wars, which have created opportunities for instability and frequent manipulation by external powers, continue to undermine their own interests and the interests of the area.

Bearing all this in mind, the importance of the Nile water to Egypt – particularly if a number of interrelated issues are addressed – cannot be overestimated. First, according to the statistics of the Egyptian Ministry of Irrigation and Water Resources, the Nile alone supplies 94 per cent of the total water resources of the country. As Table 7.1 shows, of Egypt's total area of 1 001 450 km^2, more than 326 000 km^2, or 33 per cent, of the territory falls within the Nile River Basin.[7] The proportion of Egypt's population in the Nile River Basin is more than 85 per cent, compared with the other basin states' population percentages, such as Uganda (75 per cent), Sudan (74 per cent) and Rwanda (72 per cent).

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Table 7.1 Population indicators of the Nile Basin states

Country	Basin population density (per km²)	Basin population (1990) (millions)	Country population (1990) (millions)	Country population (1998) (millions)	Population within the Nile Basin (%)
Burundi	250	3 204	5 503	6 457	58
DRC	88	1 838	43 901	49 139	4
Egypt	163	47 599	56 312	65 978	85
Eritrea	36	0 918	3 082	3 577	30
Ethiopia	53	19 454	55 053	59 649	35
Kenya	178	9 129	28 261	29 008	32
Rwanda	278	5 731	7 952	6 604	72
Sudan	11	20 893	28 098	28 292	74
Tanzania	40	4 878	29 685	32 102	16
Uganda	67	15 999	21 297	20 554	75
Total		129 643	279 144	310 360	46

Source: Karyabwite, D.R., 2000. Water sharing in the Nile River Valley. Geneva: UNEP/DEWA/ GRID, January–June, p.33

Second, Egypt is preoccupied with a shortage of water resources in addition to its increase in population and the adoption of economic development projects. The Nile waters can be considered the main resource for irrigation. The river is also used for other purposes, such as transportation, industry and tourism. It is estimated that the combined population in three Nile River states, namely Egypt, Sudan and Ethiopia, will reach more than 200 million by 2015, which means an increase in the demand for Nile water.[8] If the current water policies persist, each of these three states would seek to increase its share at the expense of the other states.

Third, the international dimension appears crucial in designing Egyptian water policies. Considering that Egypt's water resources mainly come from beyond its borders, the increase in these sources should be achieved within the framework of coordination with the other governments of the river states. There is no doubt that this places Egypt in a serious and vulnerable situation while designing its water policies, with respect to its inability to control the projects designed to preserve water along the banks of the White Nile. It is essential for Egypt's survival that there is an uninterrupted flow of the Nile water into Lake Nasser, amounting to 18 billion cubic metres annually. The

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flow of the Nile River waters can be utilised jointly with Sudan, after the application of four phases in the Upper Nile, particularly in Jongli I, Jongli II, Machar Marches swamps and Gazelle Nile. Egypt depends largely on the implementation of these projects in order to meet the increasing demand for water.

Egypt's vulnerability is also explained by the amount of rainfall the country receives. Table 7.2 indicates that Egypt receives the lowest amount of rainfall in the basin of all the riparian states.

Table 7.2 Average rainfall of the Nile Basin states

Country	Average minimum rainfall in the basin (mm/year)	Average maximum rainfall in the basin (mm/year)
Burundi	895	1 570
DRC	875	1 915
Egypt	0	120
Eritrea	540	665
Ethiopia	205	2 010
Kenya	505	1 790
Rwanda	840	1 935
Sudan	0	1 610
Tanzania	625	1 630
Uganda	395	2 060

Source: Karyabwite, D.R., 2000. Water sharing in the Nile River Valley. Geneva: UNEP/DEWA/ GRID, January–June, p.25

The maximum average rainfall of only 120 mm per year is the least in the region, a situation which, over the centuries, has forced Egypt to irrigate more land for its agricultural production. Table 7.3 shows that the area of land irrigated by Egypt in the Nile River Basin is almost that irrigated by the other riparian states combined. Table 7.3 also shows that most of the Nile River Basin countries, namely Burundi, DRC, Rwanda, Kenya, Uganda, Eritrea and Ethiopia, have so far not adequately utilised the river for irrigation. However, these countries receive more rainfall than Egypt.

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Table 7.3 Present irrigation use and potential irrigable area of the Nile River Basin states

Country	Potentially irrigable land in the Nile Basin (1 000 ha)	Irrigated land in the Nile Basin – total in the country (1 000 ha)
Burundi	80	0/74
DRC	10	0/11
Egypt	4 420	3 078/3 300
Eritrea	150	15/22
Ethiopia	2 220	23/190
Kenya	180	6/67
Rwanda	150	2/4
Sudan	2 750	1 935/1 950
Tanzania	30	10/155
Uganda	202	9/9

Source: Mason, S.A., 2004. From conflict to cooperation in the Nile Basin: Interaction between water availability, water management in Egypt and Sudan, and international relations in the eastern Nile Basin, PhD thesis, Eth Zurich, Swiss Federal Institute of Technology, p.106

Thus, it becomes clear that Egyptian national interests are closely related to the Nile resources region, which represents a strategic challenge for Egypt. Egypt's heavy dependence on fresh water from the Nile means that any threat to the flow of the water translates into a fundamental threat to its security. Therefore, the idea of securing the Nile resources is of paramount importance to the Egyptian foreign policy-making establishment, and a source of Cairo's geo-strategic interests and consistency in foreign policy behaviour vis-à-vis the riparian countries of the Nile River Basin.

7.3 The Nile River Waters and Egypt's Southern Strategic Imperatives

Egypt's successive administrations have concentrated on a number of geo-strategic foreign-policy areas in order to ensure the free flow of the Nile River waters. These policy areas have revolved around four interrelated underpinning national interests:

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- Protecting the southern borders of Egypt
- Protecting the southern area of the Red Sea
- Ensuring the flow of the Nile water
- Ensuring the vital interests of Egypt in the area

In this context, the authors argue that the Nile River constitutes the central environmental factor that influences the cognitive behaviour of the Egyptian foreign policy makers.[9] Specifically, the Egyptian foreign policy makers' minds are influenced by the geo-strategic, economic and political environmental factors within the Nile River Basin and the behaviour of the riparian states. The limits that the geographical factors impose on Egypt positively and negatively cannot, therefore, be ignored or underestimated.[10] This could be ascribed to the fact that the river unites the ten African states, including Egypt, with implications for the geo-strategic economic, political, socio-cultural and legal relationships between Cairo and the countries of the basin.[11]

As Tables 7.4 and 7.5 show, the Nile has been the valley's virtually sole water source since ancient times. The Nile River supplies 55,5 billion cubic metres annually; ground water provides only 4,8 billion cubic metres annually; and the supply of desalinated water is almost negligible (0,03 billion cubic metres); non-conventional sources of water, such as from agricultural sewage and treated waters of sanitary drainage supply 4,6 billion cubic metres.[12]

Table 7.4 Sources of water in the Nile Valley

Source	Water volume (km^3)
Nile water	55,50
Ground water	04,80
Desalination of sea water	00,03
Non-conventional water	04,70
Total	65,03

Source: Hvidt, M., 1995. Water resource planning in Egypt. In Watkins, E. (ed.), The Middle Eastern environment. Selected papers of the 1995 Conference of the British Society of Middle Eastern Studies. Cambridge: St Malo Press, pp.90–100

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Table 7.5 Present and future water demand in Egypt (billion cubic metres per year)

Sector	Demand in 2000	Demand in 2025
Agriculture	60,7	69,43
Domestic water	4,5	6,6
Industry	7,8	10,56
Navigation	0,3	0,3
Total	73,3	86,89

Source: Farrag, A.H.A., 2005. The hydraulic and hydrochemical impacts of the Nile System on the groundwater in Upper Egypt. Assuit University Bulletin, Environmental Resources, 8(1), March, p.95.

Table 7.5 indicates that water demand in Egypt will continue to increase steadily in all categories, with agriculture being the main consumer. Egyptian agricultural policy is guided by a number of underlying principles:[13]

- Gradually removing governmental controls on farm output prices, crop areas and procurement quotas
- Increasing farm gate prices to cope with international prices
- Removing farm input subsidies
- Removing governmental constraints on the private sector in importing, exporting and distribution of farm inputs to comply with the Principle Bank for Development and Agricultural Credit (PBDAC)
- Removing governmental constraints on the private sector in importing and exporting agricultural crops
- Gradually diverting the role of the PBDAC to financing agricultural development projects
- Limitation on state ownership of land and sale of new land to the private sector
- Confining the role of the Ministry of Agriculture (MOA) to agricultural research, extension and economic policies
- Adjusting the land tenancy system
- Adjusting the interest rate to reflect the commercial rate

Observers of the development of the political relations between states of the Nile Basin have noticed that there have been numerous attempts from time to time on the part of some of these states to use the Nile water as a political weapon against Egypt. For instance, in ancient times, the Abyssinians often threatened to annihilate many of their fellow Muslims by diverting the course

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of the Nile away from Egypt so that its people could starve to death. The rulers of Abyssinia justified their actions as revenge against the Egyptians for their treatment of the Copts and their religious leaders.[14]

However, the water policy game and its utilisation as a counter-weapon appeared only with the advent of modern colonialism and with technological progress, which increased the importance of the water factor in the economic life of the riparian states. The Portuguese planned to dominate the sources of the Nile in order to strangle Egypt after they succeeded earlier in deflecting international trade routes to the Cape of Good Hope instead of the Red Sea routes. To achieve this aim, the Portuguese tried to convince the King of Abyssinia to dig a watercourse extending from the sources of the Blue Nile – which is the principal tributary of the Nile – to the Red Sea, thus depriving Egypt of the Nile River waters, with all the resultant adverse implications for the people of Egypt.[15]

The British inherited this colonial practice from the Portuguese and attempted to implement the same schemes.[16] For example, in collaboration with the Kings of Buganda in Uganda and the Emperor of Ethiopia, the British pursued strategies that were not in the interests of Egypt. Even when Britain moved to gain international endorsement from some local rulers, particularly Ethiopian rulers, with the objective of maintaining the status quo on the Nile River question, attempts at isolating Egypt still remained the strategic imperatives in London. As such, the water issue was one of the major means developed by Britain in its struggle with Egypt regarding Sudan after 1882. Indeed, Britain tried to achieve two objectives – to threaten Egypt politically while it was under its domination and to separate and isolate Sudan from Egypt. To achieve these dual objectives, the British colonial administration concentrated on the construction of dams, barrages and other water projects in Sudan while preventing their construction in Egypt, thus guaranteeing Egypt's isolation.

In general, and with the exception of some minor attempts, particularly the threat by Moise Chombe in the Congo and the Ethiopian rulers after the overthrow of Haile Selassie, the flow of the Nile River waters to Egypt has remained steady. However, what are the consequences of the attempts to use the Nile water as a political weapon against Egypt? Even if we assume that there were serious attempts to use the Nile as a tool of political conflict with Egypt, the gravity of these attempts should not be underestimated vis-à-vis the riparian Nile Basin states.

A number of points are pertinent in this regard. First, international law is clear on the issue of legal claims and obligations on upstream member states in an international river and drainage system.[17] With respect to the legal claims, a set of criteria for allocating the complete utilisation of the Nile water by the member states of the basin in a fair and just way is essential. The criteria set out by the riparian states should take cognisance of the economy, the life of its people and the size and distance traversed by the river within the borders of the riparian states.[18]

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A riparian state should be obliged not to take any action or initiate any alteration that could cause significant damage to any other state of the basin. Specifically, any attempt to manipulate the water of the Nile in such a way as to affect Egypt's interests could be considered contrary to the spirit of the 1929 Egyptian-British and 1959 Egyptian-Sudanese treaties.

Second, most of the riparian states are not nearly as dependent on the Nile River waters as Egypt. Egypt depends on the Nile River waters for its socio-economic survival. To ignore this reality in the region is to misunderstand and underestimate the complexities and realities with which Egypt finds itself confronted in the basin. The Nile is different from other international rivers because it has numerous tributaries that traverse the upstream states and feed the Nile. An attempt by the upstream states to manipulate the water would have serious implications for most of the states in the region.[19] What is also important to note is that the Ethiopian highlands, with their massive natural flood waters feeding the Nile, are of such a nature that makes it inconceivable to control the sweeping waters.[20]

Another important factor to emphasise is that, notwithstanding a few incidents, Egyptian-Ethiopian historical relations have remained cordial. It has been maintained by some scholars that Cairo's foreign policy-making establishment has exaggerated the gravity of relations between Egypt and Sudan, as well as the other riparian states, on the use of the Nile River waters.[21] In comparison to the Mediterranean countries of the north and the Middle East, Egyptian foreign-relations behaviour towards Sudan and the south in general has been a point of weakness. Perhaps this exaggeration also explains the fact that with exception of Mohammad Ali's attempt (and some of his successors) to control Sudan and the upper Nile, Egyptian foreign policy in these areas was not expansionist, but a defensive strategy geared towards the promotion of Egyptian strategic interests in the region.[22]

7.4 Egyptian Foreign-Policy Approaches and the Nile River Water

The Egyptians through their long history of civilisation have grasped the importance of the Nile waters as an inseparable resource for their lives and have in that respect alone maintained interests in the economic and political developments in the upstream riparian states of the basin. For centuries, Egypt has ensured through all means at its disposal that enough water flows to its territory. Egypt has guarded against any hostile power attempting to control the sources of the Nile River waters. Cooperative diplomacy has, therefore, been one of the options and avenues used by the Egyptian leaders to prevent hostile decisions against its national interests. The policies pursued by Egyptian leaders have ranged from the strategy of obtaining complete control and influence, as was evidenced during the time of Mohammad Ali and some of his successors, as well as by the governments prior to the 1952 revolution, to embracing cooperative diplomacy, particularly under the post-revolution

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governments. For example, Egypt initiated the Undugu (brotherhood) project, which brought together all the riparian states with the objective of finding an acceptable legal regime for the utilisation of the Nile River waters.

7.4.1 The pre-1922 scenario and perspectives regarding Egyptian water politics

Prior to the country's independence in 1922, Egyptian water interests were principally determined by Britain, the colonial power since 1914. During this time Egypt lost its sovereignty and legal personality that allowed it to speak as an international legal entity. As in the case of other British colonies – and other colonial powers – Egypt remained an object of international law, with London the centre of external relations on behalf of the country. Egyptian water politics during the colonial period was the domain of the British colonial power. The international conventions concluded between Britain and other contracting parties became binding on Egypt in the post-independence period. This is the general practice according to the rules of international law, particularly with respect to state succession.[23]

Britain was not the only colonial power in the Nile River Basin. Other colonial powers at the time included Italy, France, Belgium and Germany. After the end of World War I, which marked the decline in the European colonial powers' acquisition of title to territories in Africa, the British decided to guarantee Egyptian rights over the Nile water by concluding international agreements akin to those concerning European international riparian navigation used for industrial and agricultural purposes.[24] The treaties, for example, set binding rules that control the utilisation of international waters among the riparian states.[25] A few examples may help explain the attempts made by Britain to internationalise the utilisation of such international waters, including the Nile.

First, Britain and Italy concluded the protocol of Rome in 1891, which dealt with the issue of delineating the borders between Eritrea and Sudan. In the protocol, Italy pledged not to construct any projects on the Nile's Atbara tributary that might affect the quantity of water flowing to Egypt. Second, the 1902 Addis Ababa agreement, concluded between Britain and Emperor Menelik II of Ethiopia, committed the two countries not to construct or allow any construction on the Blue Nile, Lake Tana and the Sobat River which would affect the flow of their waters, except with the express consent of the parties and Sudan.

Third, the London treaty concluded in 1906 between Britain and Belgium (on behalf of the Belgian Congo, now the DRC), which provided for, among other things, a commitment by an independent Congo not to establish or allow the establishment of any constructions on or near the river Semliki, a tributary of the Nile River, that would diminish the volume of waters entering Lake Albert. Fourth, the tripartite agreement concluded in 1906 between Britain, France and Italy also bound the contracting parties to maintain the unity of

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Ethiopia and to safeguard the interests of Great Britain and Egypt in the Nile Basin, more specifically in terms of the regulation of the waters of the River Nile and its tributaries.

The agreements were entered into between the contracting parties to prevent the upstream states from diverting the flow the Nile River waters against the interests of the colonial powers and the colonies, including Egypt. These treaties laid the foundation for the post-independence 1929 and 1959 legal instruments between Egypt and Britain and Egypt and Sudan, respectively. Egyptian foreign-policy makers have consistently invoked the 1929 and 1959 treaties ever since they were ratified by the parties.

7.4.2 Egyptian foreign-policy behaviour in the 1922–1952 period

It has been argued that the geographic location of the Nile River represents a major asset that has naturally and historically shaped Egyptian foreign policy since the dawn of independence.[26] Egyptian geo-strategic objectives during the period 1922–1952 focused on three issues. First, there was an interest in establishing cordial bilateral relations between Sudan and Egypt. The Egyptian-Sudanese bilateral relations guaranteed the uninterrupted flow of Nile waters and in the process protected Egypt's historical and acquired rights. Indeed, the idea of binding Sudan to Egypt is deeply rooted in Egyptian political history, and is premised on the desire for integration between Egypt and Sudan. Specifically, the policy is based on the age-old view that whoever controls Sudan threatens Egyptian geo-strategic water-policy interests. Egyptian-Sudanese linkages date back to 1899, when Britain established a condominium over the control of Southern Sudan. The question of Sudan became one of the central issues in British-Egyptian relations during that period before the revolution of 1952.

Second, the Egyptian-British Nile River treaty of 1929 took cognisance of Egyptian historical interests with regard to the Nile waters. The 1929 agreement provided for a clearly defined allocation of the Nile River waters. The treaty incorporated Egyptian historical needs by allocating the bulk of the flow of the waters to Cairo – a share of 48 billion cubic metres – and 4 billion cubic metres for Sudan.[27]

The agreement concluded in London in 1934 between Britain (on behalf of Tanganyika) and Belgium (on behalf of Rwanda and Burundi) regarding the River Kagera, which flows into Lake Victoria, recognised the equitable utilisation of the river in such a way that would not jeopardise the interests of other fluvial states. Third, Britain and Egypt also entered into a bilateral agreement in 1932 on the use of the Jabal el Awleya Reservoir. The storage capacity of this project was estimated to be 3,5 billion cubic metres annually.

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7.4.3 The post-1952 revolution and Egyptian foreign-policy interests in the Nile Basin

Post-revolutionary governments have remained intent on maintaining the economic, political and security interests of Egypt with regard to the Nile River Basin question. However, it is important to observe that they were no longer limited to the narrow Nile River Basin prism, but focused on Africa as a whole and the major extra-continental factors. President Nasser, for example, during one of his speeches, reiterated the importance of Egyptian interests in the Nile River Basin by emphasising that the Nile River was an 'artery of life for our homeland'.[28]

However, Egyptian foreign policy was not solely shaped by the Nile Basin question. Other salient issues that have influenced Egyptian foreign policy include solidarity with the Palestinian people; assistance to African liberation movements; overcoming the Israeli infiltration attempts in Africa; and fighting racial discrimination in southern Africa. It is in this context that Egypt has, over the years, attempted to develop cordial relations with other Nile Basin riparian states, particularly Kenya, Sudan and Uganda.[29] As we have explained, the post-1952 Egyptian leaders pursued foreign-policy issues on the Nile question based on historical and geopolitical considerations, especially those that promoted the goal of integration between Sudan and Egypt, as well as regional security. Sudan, like Egypt, relies on irrigation for its agricultural production, especially in the central and northern regions, which in some respects places Sudan on the same footing as Egypt.[30]

Sudan is the only fluvial state in the Nile Basin that enjoys immense natural resources, including quantities of arable soil suitable for agricultural production exceeding those of any other state in the Nile Basin.[31] The increase in desertification and the aggravation caused by waves of drought and their implication for food security in many countries of the Nile Basin region have become crucial issues for Egypt, Sudan and the other riparian states.[32]

It is because of its dependence on the Nile waters that Egyptian foreign-policy decision makers have had a special interest in Sudan since 1952. This special interest has revolved around three interrelated issues. First, due to the desire for a long-term and durable stability in the Nile region, Egypt concluded an agreement with Britain in 1953 which called for the independence of Sudan in 1956.[33] Second, Egypt realised that for viable, long-term stability to prevail between the two countries, the maintenance of the condominium in South Sudan was the best option. This would guarantee access to the Nile waters that would benefit the two countries. In order to solidify the bilateral relations between Cairo and Khartoum, the two riparian states entered into an agreement to construct a high dam in Egypt. However, Sudan was of the view that the 1929 treaty favoured Egypt and pushed for a separate treaty that would be favourable to both countries, particularly with respect to the utilisation of the Nile River waters.[34]

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The 1959 treaty largely reconfirmed the legal historical claims of Egypt on the use of the waters of the Nile. The treaty incorporated the 1929 provisions in which 48 billion cubic metres and 4 billion cubic metres were allocated annually to Egypt and Sudan respectively. The treaty also laid the basis for a more comprehensive legal framework that solidified Egyptian-Sudanese relations with respect to the question of the Nile River waters. A number of specific issues incorporated in the 1959 treaty need to be identified. First, Egypt was to construct a high dam south of Aswan, and Sudan was to build the Roseires Dam on the Blue Nile. The high dam was to deliver 14,5 and 7,5 billion cubic metres of water to Sudan and Egypt respectively. Second, the treaty provided for closer cooperation between the two countries on the Nile Basin question. Third, it provided for 15 million Egyptian pounds for compensation to Sudan in return for water losses arising out of the construction of Lake Nasser. Fourth, irrespective of Sudan's civil war and strained relations with neighbouring countries in the region, Cairo maintained closer relations with Khartoum.

Owing to domestic needs and the pursuit of a pragmatic foreign policy, Egypt avoided, officially at least, support for Sudan in the struggle against southern insurgents for fear that such support would be detrimental to Cairo's regional and continental interests.[35] On the geopolitical and geo-strategic front, the active role played by Egyptian diplomacy in terms of securing mutual understanding between Ethiopia and Sudan, which culminated in the normalisation of the two countries' relations, is a clear indication of Egypt's neutral position in the region. Similarly, it can be argued that the balanced and flexible policy pursued by Egypt with respect to the intrastate civil wars and interstate conflicts demonstrates Cairo's pragmatism in the region.

In addition to the civil war in Sudan, internal Ethiopian conflict with the national movement for the Eritrean people, the Ethiopian-Eritrean war of 1998–2000 and direct Ethiopian conflict with and involvement in Somalia over the Ogaden area since the 1960s have necessitated careful consideration by the Egyptian foreign-policy establishment. Specifically, Egyptian foreign-policy makers adopted positions that did not support one party against the other, irrespective of the legal claims. The decision by Egyptian foreign-policy makers to maintain regional peace and security is influenced by the desire to avoid any conflict with the states of the Nile Basin, and especially with Ethiopia and Sudan.

Justification for the principle of *uti possidetis*, endorsed by the Organization of African Unity (OAU) in Cairo in 1964 and accepted by the member states, except for Morocco and Somalia, became the central *modus operandi* in post-colonial Africa.

Attempts to deviate from this continental practice in cases such as Biafra (Nigeria) and Katanga (Zaire – later the DRC) were met with uncompromising rejection by the OAU member states. Eritrea is a unique case in Africa where its striving for self-determination in 1993 was endorsed by the OAU.

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The adoption of cooperation diplomacy towards other states of the Nile Basin does not mean that Egypt is not prepared to use other means at its disposal to protect its interests in the region. On a number of occasions, Egypt has demonstrated its preparedness to go to war if the situation so warranted. For example, in the 1970s when Ethiopia tried to establish projects in the Blue Nile without consultation with other fluvial states, Egypt warned Addis Ababa against such destabilising actions. Egypt made it clear to Ethiopia that Cairo was prepared to go to war to protect its national interests.[36] Egypt's interests in Sudan are centred on the desire for stability in Khartoum. Specifically, the successive governments in Egypt have been concerned with hostile leaders potentially taking over the leadership in Sudan. Similarly, any internal or external threats to stability in Sudan are treated with great concern by Egyptian foreign-policy makers.[37]

There follow some observations on the mutual exploitation of the Nile waters in light of the rules of international law.

In general, the principles governing the mutual exploitation of international rivers are not purely legal, but include other complex economic, political and social aspects. However, given the steady rise in water demand against its diminishing supply, the international community has yet to find ways to prevent conflicts between states sharing international river basins. One of these ways is a set of legal rules and general guiding principles which can be used to resolve disputes concerning the mutual exploitation of the resources of international rivers. These rules and principles are now an integral part of the International Law of Rivers. On 21 May 1997, the General Assembly of the United Nations adopted the Convention on the Law of the Non-Navigational Uses of International Watercourses. Among the most prominent of these rules are the following:

- First, an abandonment of the old theory which gives the riparian state an absolute right over the part of the river which is located in its territory (known as the Harmon Doctrine).[38]
- Second, consistent with the above, and after several attempts since 1956, the International Law Association (ILA) decided to emphasise three important principles of the mutual exploitation of the resources of international rivers, namely:
  - The international river basin and its different tributaries represent an integrated unit and one drainage basin.
  - Each riparian state must have a reasonable share in the resources of the river, and in line with its actual needs and acquired historical rights.
  - Riparian states must respect all the legal rights of other states in the basin.

In addition, it has been agreed upon, according to principles of international law, that it is necessary to take into account the following rules regarding the mutual exploitation of the resources of international rivers:

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- The historical, acquired rights of riparian states must be protected.
- All riparian states are committed to consult with each other in implementing any projects that would affect the rights of other riparian states, and to prevent any harmful exploitation or abuse of the rights of each party.

In 1966, the ILA approved the Helsinki Rules, which state that an equitable apportionment of shared water resources would be determined in the light of the following considerations:

- The geography of the basin, including, in particular, the extent of the drainage area in the territory of each basin state
- The past, and especially current, utilisation of the basin waters
- The economic and social needs of each basin state
- The population dependent on the basin waters in each basin state
- The comparative costs of alternative means to meet the economic and social needs of each basin state
- The availability of other resources

As for the River Nile, the authors emphasise the following points:

- Although there is no existing general agreement governing the mutual exploitation of the resources of the river, several agreements since 1891 have recognised Egypt's legal rights, and the obligations of other states not to harm these rights.
- The 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses stipulates clearly the principle of respecting existing agreements between riparian states.
- Article 5 of this convention states that the watercourse states shall in their respective territories utilise an international watercourse in an equitable and reasonable manner. Article 6 adds that the utilisation of an international watercourse in an equitable and reasonable manner within the meaning of Article 5 requires taking into account all relevant factors and circumstances, including the abovementioned Helsinki Rules.
- Consultation and cooperation between riparian states are essential to prevent any substantial damage to the other riparian countries in the basin.
- The legal regime for the utilisation and management of the Nile consists of bilateral treaties concluded among the riparian states and within the international customary law principles, which are reflected in these bilateral treaties.
- Finally, Egypt's legal rights over the Nile waters are also preserved under the international law rules according to the state succession theory. These obligations are transmitted to the successor states and may be either

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amended or abrogated only by consent in accordance with the Vienna Convention on the Law of Treaties.

7.5 Egypt's Dilemma: Bilateralism or Multilateralism?

The water problem, as a national security issue for Egypt, is guided by the following constants:

- No compromise on its historical rights over the Nile water estimated at 55,5 billion cubic metres annually.
- Any joint projects that would affect Egypt's quota of the water flow are not allowed without Egypt's consent.
- Adopting the principle of consensus in any future agreement encompassing the Nile Basin countries.

The Egyptian leadership adopts the principle of formal diplomacy in dealing with the Nile Basin countries, and maintains the principle of cooperation as opposed to conflict, especially as Egypt needs the water more than the other countries because of its relatively fast-growing population compared to its fixed quota of water for eight decades. As a result, a set of both bilateral and collective cooperation mechanisms has been adopted, including the provision of both material and technical aid.

On the bilateral level, Egypt's role has been present in the following projects:[39]

- Establishing the Sennar Reservoir on the Blue Nile in 1925 for the benefit of the Sudan
- Financing the costs of establishing the Alwlia Mountain Dam in Sudan in order to generate electricity for Khartoum in 1932
- Signing the Egyptian-British agreement in 1953 on behalf of Uganda to construct a dam on the Owen Falls, Lake Victoria, with the aim of forming a water reservoir for Uganda. Egypt paid its construction costs and annual expenses, and assured the permanent presence of Egyptian engineers to help Ugandan officials to operate the dam. In 1991, a project to enlarge the dam's electric station was completed.
- Digging several wells in Kenya, including a $2 million grant offered to Kenya in March 2004 for drilling 40 wells
- Establishing the Center for Water Research in Tanzania in 2003
- Purifying Lake Victoria and Lake Kyosha from grasses and aquatic plants in both Uganda and Tanzania with a grant of $14 million
- Egypt, Sudan and Ethiopia agreed on establishing the Eastern Nile Technical Regional Office (ENTRO) in March 2001[40] in Addis Ababa. The office aims to develop joint water projects grouped in the Eastern Nile Subsidiary Action Programme (ENSAP). The programme includes

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several projects concerning flood control and hydroelectricity generation, including

- Establishing a joint mechanism for flood preparedness and early warning through information sharing and data analysis to alleviate flood intensity
- Energy trade investment projects between the three countries of ENTRO, as well as other countries, and the establishment of electrical linkage networks
- A river basin management project that aims to reduce the amount of silt deposited in Lake Nasser for the benefit of the region
- A joint irrigation and investment project in common agricultural projects
- Establishing a mathematical model of the eastern Nile to plan projects and support decision makers with solutions and alternatives to avoid negative impacts in any of the Nile Basin countries.

- The Sobat River Project aims to provide large quantities of water normally lost in the swamps and create agricultural and energy developments in the region

At the collective level, Egypt proposed a number of projects with a view to gaining the utmost benefit from the Nile water, such as HYDROMET (1967), Undugu (1983), TECCONILE (1992) and the Nile Basin Initiative (1999),[41] which is a mechanism to which all basin countries are party, and is based on achieving collective benefits according to win-win rule principles, while avoiding any possible damage. However, it is a temporary mechanism that is not based on a permanent or comprehensive agreement that includes all the Nile Basin countries. Therefore, the need has arisen to establish a legal and institutional framework that serves as a binding charter respected by all the countries of the basin.

In fact, a draft legal and institutional framework has been prepared, comprising 39 articles divided into three main sections – general principles, rights and obligations, as well as the institutional framework, the mechanisms of conflict settlement, the procedures for signing and ratifying the treaty and other issues. Most of the articles were agreed on, except for two, which are of great importance in relation to Egypt's historical rights over the water of the Nile. These are Article 14(b) on water security and Article 8 on prior notification. The Egyptian position on these articles was summarised in the meeting of water-resource ministers of the Nile River Basin, held in Kinshasa on 22 May 2009, as follows:[42]

- The legal framework of the agreement should include a clear, explicit statement in Article 14(b) on water security, including the reference to Egypt's historical quota of the Nile water.

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- To include Article 8, prior notification of the projects that are to be established in the Upper Nile countries following the World Bank procedures, with the inclusion of these procedures explicitly in the agreement and not in special appendices.
- To modify Article 34(a and b) so that all resolutions to amend any of the terms of the agreement or its appendices should be taken by consensus rather than by majority, and once the majority principle is acknowledged, it should include the downstream countries (Egypt and Sudan).

Because of the continuing disagreement between Egypt and Sudan on one side and the upstream countries on the other, the following points were agreed on during the ministerial meeting held in Alexandria on 26 and 27 July 2009:

- To continue negotiations and consultation for another six months in order to resolve controversial issues and reach a unified agreement.
- Any new pact signed unilaterally by Nile Basin countries during ongoing negotiations without the approval of downstream countries will be considered invalid.
- The conclusion of the final agreement for the Nile countries is subject to the approval of all the states concerned.

Since the Nile Council of Ministers meeting at Sharm El Sheikh, Egypt, in April 2010, the riparian states have been divided into two clear factions: the upstream versus the downstream states.[43] The seven upstream states decided to open the Cooperative Framework Agreement (CFA) for signing in Entebbe, Uganda, from 14 May 2010. The CFA is to remain open for signing for one year until 13 May 2011 (Article 41).

7.6 Conclusion and Policy Recommendations

The Nile River, the only substantial source of water for Egypt, plays a crucial role in the life of the country. Unlike the other riparian states, Egypt is the only country that is heavily dependent on the Nile River waters, making Cairo vulnerable to any actions that would jeopardise the flow of the Nile. The Nile River will always be the defining influence of Egyptian foreign policy towards the states in the basin region. The issue of the Nile River water and its significance for the survival of the people of Egypt has been clear in the minds of all political leaders in Cairo to the extent that there has been no significant difference among the successive administrations over the decades. There were various attempts during the colonial period to utilise the Nile water as a political weapon against Egypt. However, these attempts never succeeded in undermining the lives of Egyptians. The present authors argue that the Egyptian claim to rights and to the utilisation of the Nile River waters is in conformity with the general practice employed in any internationally recognised drainage system. The best option in the Nile River Basin is for

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the states in the region to engage in cooperative diplomacy to establish a comprehensive legal regime amenable to the utilisation of the waters. Specifically, stability in the region in the new millennium is contingent upon the conclusion of a durable Nile River Basin legal regime acceptable to all the riparian states.

The authors believe it is important that those involved in making decisions regarding Egyptian policy take into consideration the following matters to manage water issues with other riparian countries in the Nile Basin:

- It is clear that the issue of the Nile water is a societal issue which affects Egyptian society as a whole and all its institutions, not just the Ministry of Irrigation and Water Resources, or the Ministry of Foreign Affairs alone.
- Choosing the most qualified Egyptian diplomats to serve in the capitals of the Nile Basin countries could strengthen relations of cooperation with these countries.
- The Egyptian religious institutions, in particular Al-Azhar and the Coptic Church, should play a greater role, particularly with regard to Ethiopia. Educational institutions, such as the Ministries of Education and Higher Education, could participate in the efforts to build close relations between Egypt and the Nile Basin countries through the provision of grants and missions for the citizens of these countries.
- After extended negotiations within the Nile Basin Initiative, it became clear that there is a need to build a legal framework that takes into account the interests of all riparian states. This legal framework should be drafted on the principle of fair and equitable allocation of water.
- Egypt should pursue a policy of dialogue, persuasion and understanding with Ethiopia and the rest of the Nile Basin countries in order to reach a consensus so that the benefits of the Nile resources may be shared collectively.
- Egypt should follow public and parliamentary diplomacy to build bridges of trust with counterpart institutions in the Nile Basin. There is a need to shift the approach from formal to informal diplomacy. As formal negotiations have now reached an impasse, it may be a good time for Egypt to consider this approach, which has never been adopted in its dealings with the Nile Basin states.

Notes and References

1 Phillips, J., 1997. Punt and Aksum: Egypt and the Horn of Africa. *The Journal of African History*, 38, pp.423–457.

2 Starr, J.W., 1991. Water wars. *Foreign Policy*, 82, spring, pp.17–36. See also Still, D.R., & Naval War College Newport Rhode Island Joint Military Operations Dept. 2006. *Water scarcity as a cause of conflict in the Nile, Euphrates, and Jordan River Basins*. Ft. Belvoir: Defense Technical Information Center.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by I. Adam et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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3 Himdan, J., 1987. *The character of Egypt*. Cairo: Alam Al Kotob, p.787.

4 Churchill, W.S., 2000. *The river war.* New York: Carroll & Graf Publishers.

5 Barbour, K.M., 1957. A new approach to the Nile waters problem. *International Affairs*, 33(3), July: 319–330; Metawie, A.F., 2004, History of co-operation in the Nile Basin. *Water Resources Development*, 20(1), March: 47–63.

6 Hassan, H.A., 1993. Possibilities of enhancing Arab national water security. In Mustafa, K. (ed.), *To prevent another Arab-Arab war: Lessons from the Gulf War.* Cairo: CPRS, Cairo University.

7 Food and Agriculture Organization, 1997. *Irrigation potential in Africa: A basin approach*. Rome: FAO.

8 World Bank, 2002. *World development indicators.* Washington, DC: World Bank, pp.48–50.

9 Sprout, H. & Sprout, M., 1969. Environmental factors in the study of international politics. In J.N. Rosenau (ed.), *International politics and foreign policy* 2nd ed. New York: Free Press. pp.41–56; Sprout, H. & Sprout, M., 1965. *The ecological perspective on human affairs with special reference to international politics.* Princeton: Princeton University Press.

10 Heikal, M.H., 1978. Egyptian foreign policy. *Foreign Affairs* 56(4), July, p. 715.

11 There are many myths surrounding the historical relationship between Egypt and Ethiopia in particular. The suspicion that Ethiopia might obstruct the flow of the Nile water to Egypt has clouded Egyptian–Ethiopian relations since medieval times. In more recent times, the former Ethiopian military ruler Mengistu Haile Mariam is said to have threatened the late Egyptian President Anwar Sadat with cutting off Egypt's water supply. See Erlich, H., 2002. *The cross and the river: Ethiopia, Egypt and the Nile*. London: Lynne Rienner Publishers, p.45.

12 Hefny, A-Z.M., 1992. Water resources assessment and management in Egypt during conditions of stress. *World Meteorological Organization*, 41, pp.35–46.

13 Ministry of Agriculture, 2000. *Agricultural development in Egypt: Challenges and achievements.* Cairo: MOA.

14 A letter from Emperor Tekla Haymanot I in 1706 to the authorities in Cairo confirmed the hostile relationship between Ethiopia and Egypt. The emperor threatened that 'the Nile might be made the instrument of our vengeance, God having placed in our hands its fountain, its passage, and its increase, and put it in our power to make it do good or harm'. For more details, see Hassan, Y.F., 1984. *The historical roots of the Afro-Arab relations, the Arab and Africa*. Beirut: Center for Arab Unity Studies, p.31.

15 Himdan, 1987. op. cit, p.926.

16 Ibid., pp.926–930.

17 Swain, A., 1997. Ethiopia, the Sudan and Egypt, the Nile River dispute. *Journal of Modern African Studies*, 35(4), pp.676–677.

18 Sultan, H., 1962. *International Public Law.* Cairo: Dar al Nahdha, p.535.

19 Himdan, 1987. op. cit, p.925.

20 Brunée, J. & Toope, S.J., 2002. The changing Nile Basin regime: Does law matter? *Harvard International Law Journal*, 43(1), winter, pp.105–159.

21 Himdan, 1987. op. cit., p.691.

22 Sultan, 1962. op. cit, p.535.

23 McCaffrey, S.C. 2003. Water disputes defined: Characteristics and trends for resolving them. In International Bureau of the Permanent Court of Arbitration, *Resolution of International Water Disputes*. The Hague: Kluwer Law International, pp.76–77.

24 Ibid.

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Cooperative Diplomacy, Regime Stability and Water Implications: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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25 Brunée & Toope, 2002. op. cit, pp.145–148.

26 Ibid., p.148.

27 Fahmi, A.M., 1986. The legal regime of the River Nile. In *Österreichische Zeitschrift für öffentliches Recht und Völkerrecht*, 37, pp.51–70.

28 Boutros-Ghali, B., 1982. Egypt's foreign policy in the post-Sadat era. *Al Siyasa al Dawliya*, 69, July, p.86.

29 Himdan, 1987, op. cit., p.936.

30 Ibid.

31 Heikal, 1978, op. cit., p.718.

32 Himdan, 1987, op. cit., p.937.

33 Sultan, 1962, op. cit.

34 Khaled, M., 1988. The external factors in the Sudanese conflict. *Al Siyasa al Dawliya*, 91, January, p.106.

35 Himdan, 1987. op. cit, p.940.

36 Labeeb, F. (ed.), 1985. *The Nile River.* Cairo: Dar al-Mustakbal al-Arabi, pp.5–15.

37 Himdan, 1987. op. cit. pp.939–994.

38 McCaffrey, S.C., 1996. The Harmon Doctrine one hundred years later: Buried, not praised. *Natural Resources Journal*, 36(4), pp.725–768.

39 State Information Service (SIS), Egypt Mubarak and Africa. Cairo : SIS, 2007,pp.49–50.

40 See http://www.nilebasin.org [Accessed 15 October 2010].

41 Arafat, I.A., 2004. The River Nile: Challenges of development and regional cooperation. *Al-Siyassa Al Dawliya*, July. Available at: http://www.siyassa.org.eg/esiyassa/ahram/2004/7/1/REPO5.HTM [12 October, 2010].

42 For more details, see Shehab, M., 2009. Egypt and the Nile Basin. *Al Akhbar*, 1 August.

43 See An interview with the Minister of Irrigation. Egypt's water security should be observed under any circumstances, 2009. *Al-Ahram*, 7 August, p.10.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by H. Adam et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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CHAPTER 8
The Nile 'Lone Ranger' in the Nile River waters initiative: The case of Eritrea

Adams Oloo

8.1 Introduction

The Nile River is unique and faces the most enormous challenges of all international river basins. This is because – besides its remoteness and the disproportionate levels of development within the basin – there is an almost total absence of any meaningful cooperation or comprehensive agreement among the 10 watercourse states. This lack of cooperation and agreement, which is peculiar to the Nile, has become an obstacle. There has been no effective cooperation or development of joint projects and investments in the basin. The end result is that the Nile has not made any significant contribution to the welfare of the approximately 300 million inhabitants of the countries that share its course, who are among the most impoverished in the world, and out of the world's 10 least developed countries, five of them are on the course of the Nile.

One of the main concerns has been the need to develop conflict-resolution mechanisms among the member states. Conca et al. argue that progress has been achieved in trying to identify policies for reducing the risks of disputes over water sources that may lead to conflict, and reaching a better understanding of mechanisms for promoting cooperation and collaboration over shared water resources.[1] They observe that considerable progress has been made both in understanding the nature of the connections between water resources and conflict and in evaluating regional cases where such connections may be particularly strong. Despite such progress, they contend:

> There is a long way to go before nations or regions produce a common policy agenda or set of initiatives that truly incorporate environmental and resources issues into approaches to reduce the risk of regional and national conflicts. Nevertheless, construction has begun on a new framework that will permit scholars and policymakers to apply new tools, set new priorities, organize responses to a range of environmental threats to peace and security.[2]

Thus, advances in conflict resolution and environmental cooperation function as an emerging platform for national and regional collaboration.

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One of the initiatives to promote cooperation among the riparian states is the Nile Basin Initiative (NBI). The NBI contends that it is only through the comprehensive planning, management and utilisation of natural resources, principally water, in a non-conflictual regional environment, that African countries can address the perennial problems of widespread famine and a general lack of development.[3] Based in Entebbe, Uganda, the NBI comprises representatives of all the basin states except Eritrea, which retains an observer status and is helping to coordinate a separate vision and subsidiary action programmes with broad development agendas. The implementation of these projects now presents the key challenge.[4]

This chapter examines the development of cooperation and the challenges encountered in the process among the riparian states of the River Nile, with the focus on Eritrea. Despite recent initiatives supported by all the riparian states, the challenge remains to put this institutional development and cooperative thinking into practice through the development of projects of mutual benefit that are both sustainable and able to deliver benefits to the poorest of the riparian states. Eritrea continues to retain an observer status in the cooperation process and, therefore, has played no major role in the negotiation process.

8.2 Historical Background

The River Nile is one of the world's great rivers and traverses almost 6 700 km from its farthest sources at the headwaters of the Kagera River in Burundi and Rwanda to its delta in Egypt. Ten countries share the Nile River: Burundi, the Democratic Republic of Congo (DRC), Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. The Nile Basin is home to an estimated 300 million people within the riparian countries; 140 million of these live outside the boundaries of the Nile Basin and use other water resources, including groundwater resources. Both interstate and intrastate conflict characterise relations in the Nile Basin.

The waters of the Nile are generally utilised for irrigation, hydroelectric power production, water supply, fishing, tourism, flood control, water transportation and the protection of public health.[5] In particular, the economy of the Nile Basin almost entirely consists of agricultural activities of the co-riparians of the Nile.

In the upper-basin states of Ethiopia, Eritrea, Kenya, Uganda, Tanzania, DRC, Rwanda and Burundi, settled agriculture is the general economic activity. The lower-basin states of Sudan and Egypt are also primarily agricultural economies. However, in contrast with the upper-basin states, their agriculture is largely irrigation-based. Utilising the Nile for the purposes of agriculture (particularly irrigation-based agriculture) is, therefore, its most important economic use. Egypt's desert agricultural production, the entire life of the nation, is dependent on the river's waters.

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The water of the Nile comes from two sources, the Equatorial Plateau and the Ethiopian Highlands, both of which receive large quantities of rain. The Ethiopian Highlands contribute more than 80 per cent of the Nile's total water supply, while the remainder comes from the lake plateau of East Africa. During the season when the river's water level is low, the White Nile becomes the most important stream.

For some countries, such as the DRC, the Nile water is only a small part of their total water resources. Other countries, such as Burundi, Rwanda, Uganda, Sudan and Egypt, are completely dependent on the Nile River for their water resources. The major determinant of the Nile Basin water balance remains the agricultural sector, involving more than 70 per cent of the population. The dependency on agriculture by this large sector of the population, in spite of its limited share in the GDP, may be the most significant causative factor of the poverty prevalent in the Nile Basin.[6]

The water of the Nile Basin is a scarce resource in more than one sense. First, the Nile is a source of livelihood for the desert states of Egypt and Sudan. A review of the treaties on the consumptive utilisation of the Nile and Lake Victoria show how Egypt has strenuously sought to ensure the security of the water flowing down the Nile. Second, the water is not evenly distributed – either through the year or geographically. For instance, Ethiopia contributes approximately 85 per cent of the volume of the water which flows annually past Khartoum. Yet most of the Ethiopian heavy rain is confined to a few months of the year and falls only over a part of the country, leaving Ethiopia a country of perennial droughts and famine. Similarly, the East African states contribute steadier, much smaller volumes of water to the Nile.[7]

Historically, the reasons that have given rise to such an unfair status quo could be attributed to British colonialism, which had a great interest in the control of the Nile for its cotton plantations which supplied its industries in Europe. According to El-Khodari: 'The colonial treaties and the condominium over Sudan were designed mainly to protect Egypt's interests in the basin, since for many strategic and economic reasons, Egypt had become the most important Nile Basin riparian state for the British colonizers.'[8] After independence, Egypt pursued more or less similar goals in securing the flow of the river to meet its own interests.

Uncharacteristically for a downstream riparian country, Egypt controls the Nile. This was achieved mainly through the influence of the British during the colonial period. The unity of the Nile Basin countries is of great importance to Egypt, as conflicts along the Nile have impaired its efforts to harness the Nile waters. For example, the Jonglei Canal project, developed between Sudan and Egypt, was halted in 1983 due to troubles in the south of Sudan. The machine digging the canal was then destroyed by the Sudan People's Liberation Army.[9] A project like the Jonglei Canal that would benefit Egypt is impossible without regional peace. Many Egyptians see the internal troubles in Sudan or conflict between Ethiopia and Eritrea as the main obstacle to international cooperation in the Nile Basin. For this reason, Egypt supports the moderate, pragmatic

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sides in Sudan. It has to this end at different times offered its services as a third-party facilitator in the Sudanese civil war and in the Eritrean-Ethiopian war.[10]

It is, therefore, the political troubles in the upstream countries, in Sudan, between Ethiopia and Eritrea, and around the Great Lakes, that are seen as the main *obstacles* to cooperation in the Nile Basin. And the mistrust between the countries is seen as an obstacle that will take a long time to surmount.[11]

The conflict in the Nile Basin mainly emanates from the fact that Egypt is more than 95 per cent dependent on water that stems from upstream countries; 85 per cent of this water originates in the Ethiopian Highlands. At present, Ethiopia uses about 3 per cent of its run-off, but it plans to use more in the future and is concerned that Egypt will hinder water development projects upstream. Depending on how upstream development is done, Egypt is concerned that less water might flow downstream.[12]

Ethiopia (of which Eritrea was part prior to 1993) has never accepted unilateral Nile water agreements because of their perilous prejudice. In 1959, Ethiopia asserted that it '... has reserved the right to utilize the water resources of the Nile for the benefit of its people, whatever might be the measure of such waters sought by riparian states'. Irrespective of the type of regime in Addis Ababa, Ethiopia's position has been consistent – to have a win-win solution and the legitimate right to use the Nile water for the socio-economic development of the country and the region as a whole.[13] In addition to the historical reference of a 'natural and territorial right', Ethiopia has to utilise its water to feed its people. No one is requested to offer this legitimate right at all.[14]

Technically, this was also Eritrea's position until it became formally independent in 1993 after a 30-year-long liberation struggle against Ethiopia. Eritrea is yet to carve out its perspectives on the Nile issues, mainly because it does not see the Nile as pertinent to its survival and it is still currently attempting to shoulder tasks which are clearly beyond its capabilities to allow it the time and resources to concentrate on its utilising the Nile Basin. Eritrea is at loggerheads with Yemen, Djibouti, Sudan and now, Ethiopia., as there is currently a border dispute between Ethiopia and Eritrea. In this recent dispute, there is also evidence that Egypt is involved. For example, according to recent global intelligence sources, it is alleged that Egypt is already supporting Eritrea with arms and expertise. By promoting the Eritrean insurrection, Egypt made sure that Ethiopia would divert both its efforts and resources into quelling the Eritrean uprising – resources that could have been utilised in tapping the waters of the Blue Nile for development purposes.[15]

The Blue Nile and its main tributaries, the Dinder and the Rahad, rise in the Ethiopian mountains and around Lake Tana. The confluence of the White Nile and the Blue Nile is at Khartoum. Further downstream is the Atbara tributary, the last important tributary of the Nile system, again originating in the Ethiopian plateau north-east of Lake Tana and forming the border between Ethiopia and Eritrea before entering Sudan. There are no important

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tributaries further downstream in Egypt. The irrigation potential in the Nile Basin in Eritrea has been estimated at between 60 000 and almost 300 000 hectares – although these figures are based on very limited studies. Most of this irrigable area would be in the Tekeze-Setit Basin, which Eritrea shares with Ethiopia. The Mereb-Gash Basin has mainly spate flows and its water reaches the Atbara River in Sudan only during extremely high floods whose average irrigation potential has been estimated at 150 000 hectares.[16] In this regard, one waits to see what position Eritrea will take in terms of starting to exploit the potential of the Nile.

8.3 The Nile Basin Initiative: The Search for Cooperation

In order to enhance cooperation among the riparian states, the NBI was established in 1993 to deal with the complex Nile River question in relation to the riparian states. This was necessary in spite of the improvement in relations between formerly belligerent co-riparians, which progressed from relations characterised by political conflict to new forms of cooperation. This required institutional development. However, the fact that the countries were now in a position to develop institutional cooperation was not sufficient. They still required external assistance in order to facilitate this process. Therefore, in 1992, the Council of Ministers of Water Affairs of the Nile Basin States (NILE-COM) launched an initiative to promote cooperation and development in the basin. In 1993, the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin (TECCONILE) was formed. Six of the riparian countries (DRC, Egypt, Rwanda, Sudan, Tanzania and Uganda) joined as members, while the other four riparian states (Burundi, Ethiopia, Kenya and Eritrea) participated as observers. In 1995, within the framework of TECCONILE, the Nile River Basin Action Plan (NRBAP) was prepared with support from the Canadian International Development Agency (CIDA), and comprised 22 technical assistance projects totalling $100 million. One of these projects' objectives, which was to develop a cooperative framework for management of the Nile, is being implemented with UNDP funding (Project D3, the Cooperative Framework). This was the first programme to include all the riparian countries, with the exception of Eritrea, which chose to have observer status.

Further requests by the Nile-COM led to the World Bank in 1997 agreeing to a request from the Council of Ministers (including all riparian governments except Eritrea) to lead and coordinate donor support for their joint activities. This included organising a donor meeting – the International Consortium for Cooperation on the Nile (ICCON) – to raise finance for cooperative projects. The World Bank, UNDP and CIDA are currently facilitating dialogue and cooperation among the riparian states in order to create a climate of confidence within which a cooperative framework can be established and sustained. Under this initiative, a number of joint projects are currently being identified and developed for presentation to ICCON for financing.[17]

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Although there is no current formal legal agreement between all the countries of the Nile Basin on how the resources can be jointly developed for maximum mutual benefit, the D3 Project is expected to resolve the problem. In the interim however, the Nile-COM was established as a transitional mechanism made up of the Council of Ministers (the Nile-COM), a Technical Advisory Committee (Nile-TAC) and a Secretariat (Nile-SEC); in May 1999, it was officially named the Nile Basin Initiative (NBI). Subsequently, the initiative's secretariat was established in Entebbe in June 1999. It was officially opened in September 1999 and received international organisational status under Ugandan law in September 2000.

A further initiative in 1993 funded by the CIDA culminated in the Nile 2002 Conference series, designed to address the issues of dialogue and public participation. This initiative was planned for a span of 10 years and provided for one conference to be held in each of the 10 riparian countries. Nine of these conferences took place and were attended by approximately 350 people each. The participants were from different sectors and backgrounds – government, non-governmental organisations (NGOs), the private sector and researchers.[18]

The NBI was developed with assistance from the UNDP and the CIDA with the intention of helping reduce tensions and create a framework for equitable sharing and 'cooperative development' of the Nile water resources. The NBI also serves as the funding conduit for financial institutions interested in the region. It now forms the most important basin-level approach to cooperative development of the Nile waters ever undertaken, and its significance extends well beyond the basin itself.

The NBI is broadly a 'transitional arrangement until a permanent legal and institutional framework is in place'.[19] Its ambitious programme includes projects in fisheries, watershed management, desertification control, flood management, pollution reduction, water-use efficiency and waterborne disease control. Such projects have great potential to improve cooperation among the basin states, as well as improve the lives of the region's residents.

In order to move the cooperation agenda forward, the Nile-COM, at its extraordinary meeting in February 1999, adopted a 'shared vision': to achieve sustainable socio-economic development through the equitable utilisation of, and benefit from, the common Nile Basin water resources.

The policy guidelines which accompanied the vision provided a basin-wide framework for moving forward with cooperative action, and established the primary objectives of the NBI as being to

- develop the water resources of the Nile Basin in a sustainable and equitable way to ensure prosperity, security, and peace for all its peoples
- ensure efficient water management and the optimal use of the resources
- ensure cooperation and joint action between the riparian countries, seeking win-win gains
- target poverty eradication and promote economic integration.

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To help to achieve the ultimate goal of cooperative development on the Nile, the riparian governments are developing a Strategic Action Program composed of two complementary sub-programmes:

- A basin-wide Shared Vision Program (SVP) which will articulate a common purpose among the riparians and implement activities to coordinate and enable implementation of the shared vision.
- Subsidiary Action Programs (SAPs) which will plan and implement physical infrastructure projects and other actions on the ground at the lowest appropriate level, taking into account benefits and externalities of planned activities on other countries.

To date, the success of the NBI lies in one of its institutional innovations, namely the application of the principle of subsidiarity, or management of the basin at the lowest appropriate level.[20] This has led to institutional division into an eastern Nile region, comprising Ethiopia, Sudan and Egypt (and Eritrea too, were it to formalise its participation) and the Nile equatorial lakes countries, comprising Kenya, Uganda, Tanzania, the DRC, Rwanda and Burundi as well as Egypt and Sudan. The inclusion of the latter two represents recognition of the importance of the White Nile to both countries. The basic rationale is that by reducing decision-making complexity, the process of cooperation can be facilitated.[21]

The involvement of third parties, such as the World Bank, the US and Canada, in environmental conflicts further complicates the issues of political, social and economic interests, and hinders regional cooperation. Third parties become active players in environmentally induced conflicts through the creation of non-sensible policies and programmes. Furthermore, autocratic government control over civil society prevents the emergence of vibrant NGOs with respect to economic projects and political programmes. Thus, both domestic and international NGOs are not prevalent, while the influence of third parties strengthens.

The implications of the absence of NGOs include a shortage of active community participation in project creation, a lack of micro-level information regarding project development and a deficiency in the day-to-day understandings of the consequences of such projects. Consequently, project designs fail to incorporate community intricacies, which inhibits community subsistence and project success. As a result, large projects like the NBI generate problematic ramifications because of the lack of adequate information, local expertise and community participation. Local and national NGOs are more aware of the intricacies of the region and its political, social and economic qualities. The role of third parties, such as the World Bank, continues to create a schism between the project planners and those individuals directly implicated by its construction or implementation. Therefore, as a result of the involvement of third parties, the lack of an NGO presence and the aspects of Nile Basin politics, the NBI will fail to achieve its intricate goals of conflict resolution and regional cooperation.[22]

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One of the major challenges to ensuring the sustainability of the NBI is the creation of a process of institutional support at all levels, including civil society at regional, national and local levels. The importance of this challenge has been emphasised within the Nile Basin Discourse Project (undertaken since 2001), which attempts to facilitate dialogue about the NBI and to establish learning processes for institutions involved in Nile Basin-related activities – be they environmental, socio-economic or cultural. In 2003, a formal Nile Basin Discourse Desk was established in Entebbe.[23] The other major challenges facing the NBI are political instability; mistrust and other obstacles to mutual cooperation among the riparian countries; lack of transparency in dealing with issues of common interest; lack of technical, financial and economic capacity; lack of long-term visions and long-term planning; an inappropriate legal and institutional framework for water management; and various disparities within the region.[24]

8.3.1 Nile Basin Initiative: The challenges

The major impediment on the road to effective cooperation on the Nile has been the position of some lower riparian states which are bent on appropriating the entire flow of the river to the detriment of other states that have a right to their share. There seems to be an entrenched desire not to accept the legitimate rights of other riparian states to share in the river's bountiful resources. Both history and nature have collided to lend credence to this deep-seated desire, sustained by a myth that 'Egypt is the gift of the Nile', to assert a monopolistic claim over the entire course of the river.[25]

As Okidi observes, the average volume of water each riparian contributes to the Nile Basin may be taken into account in deciding how much water a country may properly divert for its national use. In the case of East Africa, Lake Victoria's contribution is easily determined from discharge records at the Owen Falls Dam, but for the purpose of policy the exact proportion of the annual outflow of each country separately needs to be established. This line of analysis should use percentage of volume rather than absolute quantity because when an upper riparian diverts water flowing through its territory from an international basin the fear of deprivation or injury expressed by a lower riparian becomes clear when expressed in proportions.[26]

By contrast, upper riparian countries that were embroiled in endless conflicts and general instability have been unable to give full attention to the development of their water resources. In the absence of formidable challenge, Egypt in particular carried out a series of major water projects that had the consequences of not only appropriating large portions of the Nile waters, but also bringing the flow within its sovereign jurisdiction. It deployed all human, material and scientific resources to put in place the legal and institutional structures that could enable it to acquire full monopoly over the river.

In this connection, one of the major steps taken by Egypt, after co-opting Sudan, was the conclusion of the 1959 agreement to appropriate all the waters

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of the Nile between themselves. In the agreement, Sudan, as the junior partner, was allotted 18,5 billion cubic metres of water while Egypt retained the lion's share of 55,5 billion cubic metres.

Egypt and Sudan made a provision in this agreement to 'study together' and 'adopt a unified view' on other riparian claims to a share of the Nile waters 'if such studies result in the possibility of allocating an amount of the Nile waters to one or the other of these territories, then the value of this amount as at Aswan shall be deducted in equal shares from the share of each of the two Republics'.

The conflict in sharing international water in this case is between upper riparians and lower riparians. As already indicated, the problem lies in the diametrically opposed dimensions of water rights which these two groups of riparians tend to take.

As a general rule, upper riparians in successive rivers have asserted claims to individual property rights in the part of the river flowing in their territory (e.g. the Harmon Doctrine), while lower riparians have made the opposite claim, insisting on the principle of non-interference with the natural flow of the river in their territory.

More than 95 per cent of Egypt's water stems from the Nile, which means that it depends on rainfall outside of its territory. Egypt has, therefore, always closely observed Ethiopia's water development plans (Eritrea was formerly part of Ethiopia). Ethiopia's irrigation plans are of great concern, since they could reduce the water flow in the Nile. Currently, Ethiopia's economic capacity does not yet allow full implementation of its irrigation plans. Ethiopia's present food production is dependent on rain-fed agriculture, which is unreliable because of the irregularity of the seasonal rains.

8.4 Eritrea's National and Geopolitical Interests and the Nile

Eritrea is a small country on the north-eastern fringes of the Nile Basin. It shares the drainage basin of the Setit/Tekeze (Atbara) River with Ethiopia and Sudan. A sixth of its population lives within the Nile Basin, which is dominated by an extension of the Ethiopian Highlands in the west, descending to the coastal plains. The highlands can receive up to 69 cm of rainfall, but the coastal plains tend to be hot and arid.[27] Most of the population and agricultural activities tend to be concentrated in the Central Highlands and 80 per cent of the population is involved in farming or herding. Most of the rain comes during the months of July to October, and provide Eritrea's main source of water.

The current state of affairs on the use and distribution of Nile water in general, and the Blue Nile in particular, is based on several historical agreements. Some of them were formulated and signed by the colonial administration of the regions. The utilisation of the water of the Nile Basin was influenced by Britain, which directly or indirectly controlled the political economy of the basin. The surprising character of these treaties is that almost all of them were intentionally crafted to benefit Egypt which was offered

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unlimited freedom to dominate and be a monopoly power in the region. The British were thus responsible for the recurring conflict, since they were the main architects of these treaties.[28]

The major peculiar feature in the management and allocation of the Nile River is, therefore, the absence of a single agreement or treaty that represents all of the 10 riparian states.[29] Arising from this, the practical application and acceptability of the existing partially established treaties are thus not backed up by any comprehensive agreement of all riparian countries. Hence, the governing power and conflict-solving capacity is uncertain and inefficient, as the treaties are not binding on all the riparian states.[30] Moreover, the position of Eritrea is the weakest given the fact that it has retained only an observer status, which has hindered its effective participation in negotiations with the other riparian states.

There are some 10 agreements dealing with consumptive use of the waters of the Nile. Prior to World War I, the treaties show Great Britain, representing Egypt, as the contracting state. Britain, then the administering colonial power over Sudan, signed an agreement with Italy (1891), Ethiopia (1902), the Independent State of Congo (1906), and with Italy and France (1906). There was a further agreement with Italy, signed by Britain, in 1925. Consequently, after this period, Britain and Egypt signed all agreements on the Nile waters, beginning with the 1929 agreement dealing with Egyptian rights generally vis-à-vis those of Sudan, and ending with the agreements for construction and maintenance of the Owen Falls Dam, achieved by the Exchange of Notes between 1949 and 1953. After Sudan became independent in 1956, the fourth and final set of agreements was signed in 1959 between Egypt and Sudan on the utilisation of the Nile waters, followed by a protocol establishing a Joint Technical Commission in 1960.

The overall impact is that since the 1902 treaty there has been no agreement signed by all the lower riparian states, Sudan, Egypt and Ethiopia. Egypt and the UK or Sudan have signed other agreements since 1929, but in no instance was Ethiopia a party, even though more than 80 per cent of the Nile waters reaching Egypt originate in Ethiopia.

In the 1929 agreement, Egypt did not object to the use of the Nile waters for construction of control works and subsequent irrigation in Sudan. However, it did insist on prior consultation and explicit agreement on what such construction would entail. The implication was that the two countries would have to agree before Sudan could extract the water of the Nile to an extent that would change the quantity of the water flowing to Egypt.

It is against this background that, as other riparian states became independent, they regarded the 1929 treaty as null and void, whereas Egypt took the opposite stance, claiming it remains valid and applicable. As already observed, Egypt considered the 1929 agreement temporary, pending determination of the political future of Sudan. Subsequently, the 1959 agreement between Egypt and Sudan over the full utilisation and control of the Nile was signed in the spirit of 1929 and did not involve the other riparian states.

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However, when Eritrea became independent it did not take any position on the Nile and opted for an observer status as a result of not being yet in a position to exploit its potential on the Nile, as it was busy consolidating its independence; and, in any case, only a very small portion of the Nile passes through Eritrea. Eritrea's agriculture does not produce enough food to feed its own people. Its farms in the highlands suffer from frequent and unpredictable droughts. Consequently the Eritrean government has embarked on an ambitious and unconventional programme to develop seawater agriculture, silviculture and mariculture on its deserts bordering the sea. This programme is thought to be potentially more productive than conventional freshwater agriculture and is bound to lessen the ever-increasing tension over the distribution of resources on the Nile. This is possible because Eritrea is not dependent on the Nile, since the Nile passes through a small part of its territory. While the Blue Nile will remain an important potential economic resource for Ethiopia until further shifts in riparian and international relations take place, for Eritrea, the volumes of Nile water available now and in the future are negligible. Nearly 80 per cent of Eritrea's water sources rely on groundwater: just over half of all water sources are hand-dug wells, and another quarter are boreholes, or machine-dug wells. Although both types of well draw groundwater, boreholes are constructed using machines and are often covered and given a protective apron around the ground opening to guard against contamination, unlike hand-dug wells, which are not necessarily protected.[31]

However, Eritrea has a firm belief in accepting negotiation in good faith and confidence, on the basis of equitable utilisation so as to avoid the danger of engaging in competitive and conflicting use of the water.[32]

The major water conflicts exist mainly between the countries of the eastern Nile Basin, i.e. Egypt, Sudan and Ethiopia. Although, it forms part of the eastern Nile Basin, Eritrea has chosen observer status in the NBI, as it is neither a major contributor to nor dependent on the eastern Nile Basin. Another reason that can explain its position is that Eritrea has had a chequered history of conflict with its neighbours, with the major conflicts involving Ethiopia, Sudan and Yemen over its borders, and, therefore, security has been a key determinant of its foreign policy, meaning it has paid little attention to other regional issues.

As in Ethiopia, rainfall in Eritrea is largely limited to a four-month period. Eritrea's contribution to the Nile Basin area is consequently relatively small. Hence, after seceding from Ethiopia, Eritrea's position on the Nile has not been of major concern to its foreign-policy formulators, as it neither makes a substantial contribution to, nor benefits substantially from, the Nile Basin. It is against this background that it has always taken the position of observer status in the Nile Basin development initiatives, especially the NBI.

Overall, Eritrea's major objective has been to increase food security in order to reduce dependence on foreign aid.[33] This has led to a drive aimed at increasing its water security. To this end, a national water policy was drafted in 1997, the main objectives of which are to do an inventory of existing

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water supplies, to establish a resource centre for such data and to improve the planning, assessment and management of these water resources. The involvement of the entire community is seen as vital for the project's success.[34]

Currently, harnessing rainfall would appear to represent the greatest opportunity for increasing water availability in Eritrea. By constructing small dams to store peak run-off, water can be retained to increase supplies for irrigation and domestic use. Terracing agricultural plots also appears to help reduce soil erosion, as well as retain rainwater and thereby increase infiltration.[35] It is within this context that Eritrea has become involved in the cooperation initiative, but not as a result of its contribution to or usage of the Nile waters. Eritrea holds the position that consensual cooperation can only be achieved if all riparian states are involved in any development initiatives on the Nile Basin. This is in line with the measures being undertaken by the riparian states towards collaborative, peaceful management of the Nile Basin resources.

8.5 Conclusion and Policy Recommendations

The NBI initiative has so far mainly involved water technocrats in the process. Although this initiative is undertaken up to ministerial level, it does not yet have institutionalised 'political will' from the riparian states. Therefore, the NBI so far is simply a 'water authority'. The problem with this is the fact that not only the political centre, but also the publics of the participating states are yet to be involved in the process. The issue of equitable utilisation is central to the process, which necessitates reaching political compromises that would eventually have an effect on individual states and/or long-propagated expectations (e.g. less water for Egypt, affecting mostly farmers, and/or not gaining full control by the upper riparian countries). Such political compromise is currently not taking place because the NBI process has not progressed to involve the top political powers of participating countries.

Secondly, public participation in the NBI seem to have come as an afterthought, mainly to satisfy the need of funding agencies when the first ICCON meeting was planned. Even then, such participation remains simply a 'window-dressing' exercise. As for Eritrea, it still retains the position of observer status and, therefore, has had little impact on the NBI process.

The position of Eritrea on the Nile has to a large extent been influenced by Egyptian and Ethiopian rivalry. Being the Arab world's most populous, politically influential and militarily strongest state, Egypt has entertained its long-established ambition of projecting its power into the Red Sea. Ethiopia was exposed to this geopolitical projection, which included overt support for the Eritrean Liberation Front, established in Cairo, and military support for Eritrea during the 1998–2000 Ethiopian-Eritrean war. Therefore, in terms of the Nile question, Eritrea has taken the position that the 'enemy of my enemy is my friend'. To this end, Eritrea has not placed a premium on a multilateral solution to the Nile crisis, as encompassed in the NBI, but instead looks at the

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Nile question through an Ethiopia versus Egypt lens. It has thus supported the position of Egypt on the Nile question, as it receives more support from Egypt both economically and politically than from the other riparian states.

Against this background, it is imperative that the Eritrean foreign-policy establishment rethink its policy position on the Nile River Basin question. Specifically, the policy pursued by Eritrea is not beneficial for the country in the long run. The author suggests that Eritrea get involved directly in the NBI instruments by supporting the emerging consensus in the region, based on the principle of equitable and reasonable utilisation enshrined in international instruments.

Notes and References

1 Conca, K., Ehrlich, A.E. & Gleick, P., 2000. Conflicts over resources, draft background paper for Working Group 5: Resources and environmental degradation as sources of conflict. *50th Pugwash Conference on Science and World Affairs: Eliminating the Causes of War*. 3–8 August 2000. Queens' College, Cambridge.

2 Conca et al., 2000. op. cit.

3 Okidi, O., 1994. History of the Nile and Lake Victoria Basins through treaties. In Howell, P.P. & Allan, J.A. (eds), *The Nile: Sharing a scarce resource*. Cambridge: Cambridge University Press.

4 See the NBI website, www.nilebasin.org, 18 November 2010.

5 NBI, 2001. *Strategic Action Program: Overview*. Entebbe: Nile Basin Secretariat in Cooperation with the World Bank.

6 Nabil, El-Khodari, N., 2003. *The Nile River: Challenges to sustainable development*. Paper presented to the River Symposium, 2003

7 Okidi, 1994. op. cit.

8 Nabil El Khodari, 2003 pp. 69 Collins, R., 1999. *Smoothing the waters: The Nile conflict*. University of California: IGCC Policy Briefs.

10 Collins, 1999. op. cit.

11 Mason, S., 2003. From conflict to cooperation in the Nile Basin: Interaction between water availability, water management in Egypt and Sudan, and international relations in the eastern Nile Basin. PhD thesis, Swiss Federal Institute of Technology, Zurich.

12 Tafesse, T., 2000, *The hydropolitical perspective of the Nile question*, Paper presented at the 8th Nile 2002 Conference, Addis Ababa, 26–28 June, 2000

13 Hillawi, T., 1998. The Nile River Basin: Its use and development. *Ethiopscope* (quarterly magazine of Foreign Minister of Ethiopia), 4(1), pp.13–23.

14 Hillawi, 1998. op. cit.

15 Ibid.

16 FAO (Food and Agriculture Organization of the United Nations), 1997. Irrigation potential in Africa: A basin approach. *FAO Land and Water Bulletin* No. 4. Rome: FAO.

17 NBI, 2001. op. cit.

18 Ibid.

19 Ibid.

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Cooperative Diplomacy, Regional Security and Sustainable Development: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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20 Nicol A., 2002. *The Nile: Moving beyond cooperation*. UNESCO. Available at http://unesdoc.unesco.org/images/0013/001333/133301e.pdf 21 November 2010

21 Nicol, 2002. op. cit.

22 Foulds, K.E., 2002. *The Nile Basin Initiative: Challenges to implementation*. Paper presented at the Managing Shared Waters Conferences. 23–28 June 2002. Ontario.

23 Nicol, 2002. op. cit.

24 El-Khodari, 2003. op. cit.

25 Daniel, K., 1999. Egypt and the hydro-politics of the Blue Nile River. *Northeast African Studies*. Henderson: Henderson State University, 6(1–2), pp.141–169.

26 Okidi, 1994. op. cit.

27 Geraghty, P. & Temnewo, G., 2000. Water resource development and management in Eritrea. In *Proceedings of the International Water Resources Association Xth World Congress*. 12–16 March 2000. Melbourne. Available at http://www.iwra.siu.edu/pdf/Geraghty.pd. Accessed 18 November 2010

28 Daniel, 1999. op. cit.

29 Sisay, G., 2005. The hydro-politics of the Nile: Past, present and future., March 4, 2005; see also Hillawi, 1998. op. cit.

30 Elhance P.A., 1999. *Hydro-politics in the 3rd World: Conflict and cooperation in the international river basins*. Washington DC: United States Institute of Peace Press; Hu, D., 2002. Do the upstream countries have the right to change the present irrigation uses of the waters of the Nile? Research paper, spring 2002.

31 Geraghty & Temnewo, 2000. op. cit.

32 Ibid.

33 Ibid.

34 Butt, A., Powers, L. & Zaffiro, J., 2003. *A comparative case study of the politics and policy development of sustainable water resource: Southern and eastern Africa*. University of Wisconsin.

35 Ibid.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by H. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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CHAPTER 9
Kenya's foreign-policy and geopolitical interests: The case of the Nile River Basin

Korwa G. Adar

9.1 Introduction

With only 647 cubic metres of water per capita, Kenya faces a major challenge in terms of water resources.[1] As one of the riparian states, the use of the Nile water by the neighbouring countries has direct implications for Kenya's national interest. The evolution of Kenya's official water policy, particularly in terms of the Nile River question, has been slow and ambiguous. The Sessional Paper No. 10 of 1965 on African Socialism and its Application to Kenya, for example, only directed the government to prioritise its policies on poverty, illiteracy and diseases, with special focus on water and sanitation services. Even Kenya's constitution, as well as the recently concluded 2004 draft constitution, do not provide for water rights. Article 67 of the draft constitution stipulates that:[2]

> Every person has the right: (a) to an environment that is safe for life and health; (b) to have the environment protected, for the benefit of present and future generations, through legislative and other measures that (i) prevent pollution and ecological degradation; and (ii) promote conservation; and secure ecologically sustainable development and use of natural resources while promoting economic and social development …

It was not until 1974 that the government established the Ministry of Water Development. The issues relating to water policy were originally the responsibility of the Ministry of Agriculture. However, a number of policies and development programmes have been put in place, particularly since the 1990s, in an attempt to synchronise and harmonise the country's national needs, as well as provide a clear understanding of the implications of the Nile water policies pursued by the neighbouring states. The renaming of the Ministry of Water Resources Management to the Ministry of Water and Irrigation through Presidential Circular No. 1/2004 augmented the role of the ministry and, more particularly, was premised on the need for the expansion of the irrigation subsector, rivers included, to address the country's water scarcity. In this regard, the Ministry of Water and Irrigation was mandated

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to, among other things, coordinate the 'Nile River Basin Initiative activities' and negotiate the 'cooperative framework for the peaceful management of trans-boundary water resources'.[3] The Nile River Basin is shared by Burundi, the Democratic Republic of Congo (DRC), Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda, and has a total population of 160 million people. Of the 10 riparian states, only Egypt and Kenya are not among the least developed countries. At the time of writing this chapter in January 2011, Southern Sudan had successfully and peacefully completed its referendum process, with the Southern Sudanese voting overwhelmingly for secession. If Southern Sudan secedes, as is almost certain, it will become the 11th member of the Nile Basin Initiative (NBI) and, by extension, be entangled in the Nile River multilateral debate.

9.2 Operational Research Questions

- Is Kenya's foreign-policy interest vis-à-vis the Nile River question influenced by its internal demand for water?
- Is Kenya's foreign-policy behaviour vis-à-vis the Nile River question influenced by both its internal demand for water as well as the demand for water by the other riparian states? Stability in the region is in the interests of all the riparian countries, as well as Kenya. As a sovereign independent state, Kenya, like the other riparian states, has the right to question the validity and relevance of treaties entered into by the colonial countries, which have the potential of undermining its national interest and creating instability in the region. The 1929 Nile River agreement entered into between Britain (the colonial power at the time) and Egypt on behalf of Kenya, Uganda and Tanzania, for example, remains a contentious issue for the riparian states.
- To what extent do these regional, interlocking geopolitical questions influence Kenya's foreign-policy interests in the use of Nile water?

The 1929 Nile River treaty provides that Kenya, Uganda, Tanzania and Sudan cannot use the waters of Lake Victoria and the Nile without the acquiescence of Egypt. Paragraph 27 of the treaty, for example, stipulates in part that:[4]

> Save with the previous agreement of the Egyptian Government, no irrigation or power works or measures are to be constructed or taken on the River Nile or its branches or on the lakes from which it flows, so far as all these are in the Sudan or in countries under British administration, which would, in such manner as to entail any prejudice to the interests of Egypt, either reduce the quantity of water arriving in Egypt, or modify the date of its arrival, or lower its level.

The other key elements incorporated in the 1929 treaty, which have direct implications for Kenya's national interest, include the following:

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- The Nile waters were to be shared between Egypt and Sudan, with Egypt and Sudan claiming rights to 48 billion cubic metres and 4 billion cubic metres per year, respectively.
- The dry season flow, between 15 January and 15 July, was entirely reserved for Egypt.
- Egypt claimed the right to monitor the flow of the Nile water into and out of upstream riparian countries.
- Egypt claimed the right to veto any upstream engineering works that would affect the flow of the Nile.
- Egypt claimed the right to construct engineering works on the Nile without the consent of other riparian states.[5]

This chapter examines Kenya's foreign-policy interests relating to the Nile water question and the implications of the geopolitics of the region, as well as the impact of the riparian states' policies on Kenya's national interests. The chapter proceeds from the premise that Kenya's foreign-policy interest in the Nile River Basin is driven by the regionally and globally recognised principle of equitable and reasonable utilisation of water resources enshrined in international instruments.[6] More specifically, regional cooperation on the issue of equitable and reasonable utilisation of the Nile River waters underpins Kenya's core foreign-policy perspective. The chapter is divided into four sections. The first section (Section 10.3) puts into proper perspective the theoretical claims to rights over waters and international drainage systems by sovereign states, with a special focus on the Nile River Basin and the concomitant implications for Kenya's national interest. A drainage basin is defined as:

> The entire area, known as a watershed, that contributes water both surface and underground, to the principal river, stream or lake or other common terminus. While the Nile and its tributaries flow directly into the Mediterranean Sea, Lake Victoria drains directly into the Nile, thus contributing water to that one terminus. Therefore the Lake Victoria Basin and the Nile Basin contribute one drainage system.[7]

Section 10.4 focuses on the domestic context of Kenya's foreign-policy interests in the Nile River Basin; Section 10.5 examines Kenya's involvement in the multilateral initiatives in the Nile River Basin by the riparian states and the impact of these on the country's foreign-policy interests; and Section 9.6 puts into proper context the impact of the Nile River Basin's geopolitics on Kenya's foreign-policy interests.

9.3 Theoretical Perspectives on State Claims to Rights to River Waters and International Drainage Basins

The legal regime concerning claims to river waters and international drainage basins has evolved over the centuries.[8] These claims centre on four main

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competing theoretical legal rights to river waters and international drainage basins, namely absolute territorial sovereignty; absolute territorial integrity; community of co-riparian states; and limited territorial sovereignty.[9] At the end of its meeting in Helsinki in 1966, the International Law Association established what became known as the Helsinki Rules, which provided specific definitions of, among other things, the concepts of an international drainage basin and a basin state. Article 2 of the Helsinki Rules, for example, states that 'an international drainage basin is a geographical area extending over two or more states determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus'.[10] Analysis of these contending theoretical legal rights will provide a clear basis for the assessment and contextualisation of Kenya's foreign-policy interests in the Nile River waters and other related geopolitical questions.

The theory of absolute territorial sovereignty, commonly associated with the Harmon Doctrine, presupposes that a state has unlimited sovereign rights to natural resources within its territorial jurisdiction.[11] In this context, a riparian state is free to use its natural resources, as well as river waters of an international drainage basin that flow through its territory, without any limitations.[12] Under these circumstances, it is the lower riparian state that is affected if absolute territorial sovereignty is invoked by the upstream state, with potential implications for interstate and regional conflicts. The US Attorney General Harmon, during his ruling on the dispute involving the US and Mexico over the Rio Grande River in 1895, stated that no rule, principles or precedents of international law imposed any limitation on the US to let sections of its river waters flow to Mexico. However, the theory of absolute territorial sovereignty has rarely been invoked in practice with respect to river waters and international drainage basins.[13] The Harmon Doctrine has been rejected by states generally because it violates the accepted principle of *sic utere tuo ut alienum non laedas* (use your own so as not to cause an injury to another). In situations where international drainage traverses a number of states, the riparian states in question have, in general practice, employed sets of consensual and cooperative rules to govern their claims recognising the importance of the principle of *pucta sunt servanda* (agreements are binding).

The theory of absolute territorial integrity, or the riparian rights, as it is also known, on the other hand, stipulates that an upstream country may not be involved in any activities that might affect the natural flow of the river waters which may have adverse implications for the downstream state. Absolute territorial sovereignty and absolute territorial integrity have the potential of exacerbating interstate and regional conflicts.

Territorial integrity takes a different approach with respect to the use of river waters and international drainage systems. Territorial integrity is commonly invoked by sovereign states to defend territory in their possession. It is the power which a sovereign state uses to exercise authority over its territory.[14] In the context of river waters and international drainage systems, it gives the upper riparian state sovereign and natural water rights. For example, a river

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passing through a territory gives the state in question water rights, while at the same time the lower riparian claims the right to demand free flow of river waters. This may lead to conflict and, in general practice, the upper riparian states have adopted cooperative and collective decision-making processes to curb conflicts.

The community of co-riparian states (or community of interests) theory allows for collective rights to river waters and international drainage basins by the contiguous riparian states. The theory is embodied in the idea that the river waters and the international drainage system constitute a common geographic and economic entity beneficial to the contiguous states. This theory necessitates the application of the doctrine of equitable utilisation. Community of interest theory is 'premised on the belief that integrated management is the most efficient approach to water course basins and requires collaboration and creation of institutions to implement joint policies'.[15] Specifically, the basin is treated as a single economic and geographic entity enjoyed by the states through established contractual obligations or agreements. The Nile Basin Initiative (NBI) process currently being negotiated by the riparian states is a practical example that attempts to operationalise the community of co-riparian thesis.

The limited territorial sovereignty theory (also called the theory of sovereign equality and territorial integrity) attempts to operationalise the use of river waters and international drainage systems, as in the case of the community of co-riparian states theory. In other words, a state through which a river flows has the right to the use of its river waters provided that it does not hinder its use by the other riparian states. The underlying principle of this theory is the recognition of the rights of the upstream and downstream countries to a reciprocal and equitable share of the waters. Enshrined in the limited territorial sovereignty theory are the doctrines of equitable utilisation and obligation not to cause significant harm (or *sic utere tuo ut alienum non laedas*, which simply means that a riparian state, upstream or otherwise, must take cognisance of the rights of the other riparian states).[16]

These doctrines are codified in the 1966 Helsinki Rules and the 1997 United Nations Convention on Non-navigational Uses of International Watercourses, also known as the UN Watercourses Convention.[17] The doctrines of equitable utilisation and no harm are incorporated in the NBI, the objective of which is to find an acceptable international legal regime for the utilisation of the Nile River waters.[18] The question of equitable access to the river waters by the contiguous states if accepted *in toto* is central to the survival of the evolving international legal regime.

These theories provide useful tools in understanding claims and use of river waters and international drainage systems. However, for the purposes of this study, limited territorial sovereignty, which has officially been incorporated into Kenya's foreign-policy pronouncements since the country became actively involved in the NBI, will be used to assess the country's interests. Kenya and Sudan are the only countries in the Nile River Basin that voted in favour of

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the UN Watercourses Convention.[19] The central proposition underlying the limited territorial sovereignty and community of co-riparian states is that the use of resources within a state, river waters included, should not cause harm beyond its juridical boundaries.

9.4 Domestic Context and Kenya's Foreign-policy Interests in the Nile Water

Kenya has a territorial area of more than 580 000 km^2, with over 85 per cent of its land area classified as arid and semi-arid, which makes Kenya, with its 1 004 cubic metres of water per capita per year in 2000, one of the most chronically water-scarce countries in the Nile River Basin. In 2000, for example, while Kenya's internal water flows amounted to 20 billion cubic metres, water flow from the neighbouring Nile River Basin countries reached 10 billion cubic metres in the same year.[20] A country falls into the category of being absolutely water-scarce if it has less than 500 cubic metres per capita, per year; as chronically water-scarce with 500–1 000 cubic metres per capita per year; and as water-stressed if it has between 1 000 and 1 700 cubic metres per capita per year. In Kenya, the water area accounts for only 11 000 km^2. It is estimated that more than 75 per cent of Kenya's 32 million people occupy only 81 000 km^2.[21]

There are five main drainage systems that provide Kenya's water, which are determined largely by the Rift Valley. These include the White Nile Basin (around Lake Victoria); the Rift Valley; the Athi River; the Tana River; and Ewaso Ngiro. Of these, the transboundary drainage system, which covers the whole area west of the Rift Valley and drains into the upper White Nile Basin, Lake Victoria and Lake Kyoga through numerous rivers, accounts for 54 per cent of Kenya's fresh water and remains the mainstay of the country's water resources. However, the Lake Victoria drainage basin, with all its water resource potential, remains the least developed. Kenya accounts for over 45 per cent of surface water flows into Lake Victoria and the upper White Nile River, more than half of which is shared by the neighbouring riparian states.[22]

It is this transboundary drainage system and the interdependent nature of the use of the Nile waters that draw Kenya into the Nile water geopolitical equation.

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Table 9.1 Nile River riparian states and geographical areas within the basin

Country	Country area (km²)	Area within the Nile Basin (km²)	% of the total Nile Basin area	% of the country in the Nile Basin
Burundi	27 835	13 260	0,4	47,6
DRC	2 345 410	22 143	0,7	0,9
Egypt	1 001 450	326 751	10,5	32,6
Eritrea	121 320	24 921	0,8	20,5
Ethiopia	1 127 127	365 117	11,7	32,4
Kenya	582 650	46 229	1,5	7,9
Rwanda	26 340	19 876	0,7	75,5
Sudan	2 505 810	1 978 506	63,6	79,0
Tanzania	945 090	84 200	2,7	8,9
Uganda	236 040	231 366	7,4	98,0
Total	8 919 072	3 112 369	100	

Source: Karyabwite, D.R., 2000. Water sharing in the Nile River Valley. Geneva: UNEP/DEWA/ GRID, 2000, p.10

Table 9.1 shows that only 8 per cent of Kenya's territory, or some 46 000 km², falls within the Nile Basin, that is 2 per cent of the total Nile Basin area. This small percentage of the basin accounts for what has been dubbed 'the granary of the Kenyan water resources'.[23]

As Table 9.1 indicates, nearly 64 per cent of the total Nile Basin falls within Sudan's territory, followed by Ethiopia, Egypt and Uganda, with a total of 12, 11 and 7 per cent, respectively. On the other hand, only 3 per cent and 2 per cent of the total Nile Basin falls within the territories of Tanzania and Kenya, respectively. As Table 9.1 shows, less than 1 per cent of the total Nile Basin falls within the territories of Eritrea, DRC, Rwanda and Burundi. However, these figures change greatly when the geographic area of each country in the Nile Basin is examined. For example, nearly all of Uganda's territory, i.e. 98 per cent, falls within the Nile Basin, followed by Sudan (79 per cent), Rwanda (76 per cent), Burundi (48 per cent), Egypt (33 per cent), Ethiopia (32 per cent), Eritrea (21 per cent) and Tanzania (9 per cent).

The intra-Nile Basin water resources dependence brings another dimension to the region. Table 9.2 shows that the dependency ratio on water resources in the Nile River Basin by Egypt, Sudan, Eritrea, Uganda and Kenya in 1995 reached 97, 77, 68, 41 and 33 per cent, respectively.

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Table 9.2 Water resources and availability per person in the Nile Basin states

Country	Internal renewable water resources (IRWR) km³/ year	Actual renew-able water resources (ARWR) (km³/year)	Dependency ratio (%)	IRWR per inhabitant in 1994 (m³/ inhabitant)	ARWR per inhabitant in 1994 (m³/ inhabitant)
Burundi	3,6	3,6	0,0	579	563
DRC	935,0	1 019,0	8,2	21 973	23 211
Egypt	1,7	58,3	96,9	29	926
Eritrea	2,8	8,8	68,2	815	2 492
Ethiopia	110,0	110,0	0,0	2 059	1 998
Kenya	20,2	30,2	33,1	739	1 069
Rwanda	6,3	6,3	0,0	833	792
Sudan	35,0	88,5	77,3	1 279	3 150
Tanzania	80,0	89,0	10,1	2 773	2 998
Uganda	39,2	66,0	40,9	1 891	3 099

Source: Karyabwite, D.R., 2000. Water sharing in the Nile River Valley. Geneva: UNEP/DEWA/ GRID, 2000, p.11

Kenya ranked seventh in its actual renewable water resources, which reached 1 069 cubic metres per inhabitant in the Nile Basin in 1994. As Table 10.2 indicates, the DRC topped the list in the Nile Basin, with over 23 000 cubic metres actual renewable water resources per inhabitant in 1994, followed by Sudan, Uganda, Tanzania, Eritrea and Ethiopia with 3 150, 3 099, 2 998, 2 492 and 1 998 cubic metres per inhabitant in 1994, respectively.[24] The doctrines of equitable utilisation and obligation not to cause significant harm, if incorporated in the NBI regime and made operational, have the potential of laying the foundation for long-term and sustainable stability in the region, a desirable condition for Kenya's foreign-policy interests.

9.5 Multilateral Diplomatic Initiatives and Kenya's Foreign-policy Interests in the Nile Water Question

The central objective of the post-Cold War diplomatic initiatives by the riparian states has been to lay the groundwork for a comprehensive and consensual international legal regime on the use of the Nile River waters and the international drainage basin. It is an attempt to move away from realpolitik

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self-interest and mutual distrust reminiscent of the colonial and post-independence era in the Nile Basin region. Notwithstanding the interlocking challenges, the riparian states have, over the years, attempted to establish politico-legal and economic institutional frameworks governing the use of the Nile waters and the international drainage system. Kenya's and Ethiopia's roles in these Nile Basin multilateral negotiations that were held from the 1960s to the 1990s, particularly HYDROMET (1967–1992), Undugu (1983–1993) and the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin (TECCONILE) (1992–1999), were minimal, as the countries participated mainly as observers.[25]

The underlying objective of the HYDROMET project was to provide a clear baseline for measurements of the availability and needs of water in the White Nile, as well as around Lakes Victoria, Kyoga and Albert.[26] The HYDROMET initiative led to the conclusion of the 1977 treaty by Burundi-Tanzania and Uganda, which provided for the Establishment of the Organization for the Management and Development of the Kagera River Basin, also known as the Rusumo Treaty. The Rusumo Treaty provided for the management of the Kagera River Basin, whereas the Undugu (Swahili for 'brotherhood') project, initiated and dominated by Egypt, attempted, without success, to promote socio-cultural and economic cooperation among the riparian states on the use of the Nile River waters. TECCONILE, on the other hand, led to the establishment of the Nile River Basin Action Plan (NRBAP) in 1995 and the Nile Basin Initiative (NBI) in 1999. The NBI process remains the central multilateral initiative put in place by the riparian states to negotiate an international legal regime for the use of the Nile River waters and the drainage system.

The administrations of Presidents Jomo Kenyatta (1963–1978), Daniel arap Moi (1978–2002) and Mwai Kibaki (started 2000) have viewed Egypt's dominance on the Nile River Basin question as the main source which has negated the spirit of cooperation and has, in the view of Kenya's foreign-policy makers, jeopardised the conclusion of a tangible, durable, comprehensive Nile River Basin agreement. Kenya did not accept to be bound by the 1929 and 1959 Nile River treaties. The 1929 Anglo-Egyptian and 1959 Egypto-Sudanese Nile River treaties were rejected by Kenya's parliament mainly because they were concluded when the country was still a colony and that the country had no international legal personality with rights and duties under international law.

Since attaining its sovereign status, Kenya has invoked what has become commonly known as the Nyerere Doctrine of state succession, particularly with respect to the Nile River treaties.[27] The Nyerere Doctrine – or the optional doctrine, as it is also called – is generally premised on the 'clean slate' theory (or *tabula rasa*), which presupposes that a newly independent state cannot be bound by treaties entered into by the predecessor state without the express consent of the successor state.[28] Specifically, the Nyerere Doctrine provides for three approaches to state succession.

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First, once a state acquires its international legal personality as an independent sovereign state, treaties entered into on its behalf during the pre-independence years automatically cease to have any binding effect on it. It is for the newly independent state to renew treaty commitments of mutual interests without necessarily separating or dividing 'rights and obligations contained in the same text of an instrument'.[29] Second, it provides for the legitimate sovereign rights of a successor state to claim specific rights under international law. Third, even though the optional doctrine rejects certain treaties because of the nature of the treaties, it does not disregard customary international law. Customary international law is regarded as positive, particularly with respect to state boundaries.[30] In other words, only treaties that have obligations for the newly independent state to acquire the colonial boundaries, and are territorial, real, dispositive or localised, are respected.[31]

In adopting the Nyerere Doctrine, Kenya has emphasised that it considers treaties which were not modified by mutual consent within a two-year period and 'which cannot be regarded as surviving according to the rules of customary international law to have terminated'.[32] Even though Kenya's foreign-policy pronouncement on state succession has remained consistent, over the years the leaders exhibited ambivalence on the question of the Nile River riparian states' multilateral diplomatic negotiations.[33] Kenya's proactive involvement in the Nile River question began in 1999 with the establishment of the NBI, a conglomeration of the riparian states.[34] The NBI was launched in February 1999, in Dar es Salaam, Tanzania, by the Council of Ministers of Water Affairs of the Nile Basin states (Nile-COM), and the process was officially named the NBI in May 1999. The Nile-COM is the central decision-making body of the NBI.[35]

In a ministerial statement issued in the Kenya National Assembly parliamentary debates, the then Minister for Water Resources and Development stated Kenya's official position on the Nile Basin question. The minister explained to members of parliament that 'all the ten riparian countries, Kenya included, are entitled to utilise the waters of the Nile Basin and that what [the Nile Basin Initiative] is seeking is a formula for the *reasonable and equitable utilization* by all the countries' (emphasis added).[36] This remains Kenya's official foreign-policy position on the Nile River Basin question.

Kenya's official foreign-policy position on the Nile Basin issues has, to a large extent, been influenced by the NBI. Specifically, Kenya's foreign-policy position generally falls within the 1966 Helsinki Rules and the 1997 United Nations Watercourses Convention, which are centred on the limited territorial sovereignty theory. Article IV of the Helsinki Rules stipulates that 'each Basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin'.[37] Article V, on the other hand, provides for the relevant factors, which are to be considered reasonable and equitable within the meaning of Article IV. These factors include:[38]

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- The geography of the basin, including, in particular, the extent of the drainage area in the territory of each basin state
- The hydrology of the basin, including, in particular, the contribution of water by each basin state
- The climate affecting the basin
- The past utilisation of the waters of the basin, including, in particular, existing utilisation
- The economic and social needs of each basin state
- The population dependent on the waters of the basin in each basin state
- The comparative costs of alternative means of satisfying the economic and social needs of each basin state
- The availability of other resources
- The practicability of compensation to one or more of the co-basin states as a means of adjusting conflicts among uses
- The degree to which the needs of a basin state may be satisfied, without causing substantial injury to a co-basin state

The principle of equitable and reasonable utilisation is also provided for in Article 5 of the 1997 United Nations Watercourses Convention. Article 6, on the other hand, sets out factors relevant for its operationalisation.[39] Although the Helsinki Rules have been acceded to by member states, Kenya included, the United Nations Watercourses Convention is not yet in force.

Kenya's Minister for Water Resources and Development also outlined the objectives of the NBI, which she identified as follows:[40]

- To develop the water resources of the Nile Basin in a sustainable and equitable manner
- To ensure prosperity, security and peace for all people in the basin
- To ensure efficient water management and optimal use of the resources and promote cooperation and joint action between the riparian countries
- To improve the socio-economic status of the member states by harnessing their resources and promoting economic integration

The Nile Basin Cooperative Framework (NBCF), signed in May 2010 by Ethiopia, Kenya, Rwanda, Tanzania and Uganda, reinforces cooperative diplomatic efforts by Kenya and the other riparian states, particularly with respect to finding tangible and durable solutions to the interlocking, complex issues inherent in the question of utilisation of the water resources. To this end, Article 4 of the NBCF provides details of ways and means of dealing with the issue of equitable and reasonable utilisation of the waters of the Nile River Basin.[41] In this regard, the NBCF calls into question the relevance of the existing instruments concluded without the acquiescence of the riparian states.

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The socio-economic issues, particularly the survival of the people of Kenya around Lake Victoria and the exponential domestic demands for water and hydroelectric power, and other related socio-economic factors, have contributed immensely to Kenya's proactive involvement in the Nile River Basin initiatives. By 2010, for example, it is estimated that the demand for water in Kenya will account for 15 per cent of the total available water in the country.[42] A total of nearly 11 million people, or 40 per cent of Kenya's population, that is, 1 200 per square kilometre, the highest in the country and one of the highest in the world, occupy 8,4 per cent of the Kenyan portion of the Lake Victoria Basin.[43]

The Lake Victoria Basin and the Nile River Basin form one drainage system. Kenya's jurisdiction over Lake Victoria is over 6 per cent, with the shoreline and surface water resources of the lake basin accounting for 50 per cent and 17 per cent, respectively.[44] There are 10 rivers that originate in Kenya – the Kibos, Kuja, Mawa, Migori, Nyando, Nzoia, Riara, Sio, Sondu-Miriu and Yala – that feed Lake Victoria. Four Ugandan rivers and six Tanzanian watercourses feed the lake.[45] In comparison to Tanzania and Uganda, Kenya contributes the largest volume of water to Lake Victoria, i.e. more than 40 per cent of its volume.[46] Even though the lake basin is endowed with rich natural resources, as well as fish, forestry products and fertile agricultural soils, more than 60 per cent of Kenya's poor population live within the Lake Victoria Basin.[47] Therefore, the NBI provides an opportunity for Kenya to establish sustainable socio-economic development policies that can promote the livelihood of the people of the region.

One of Kenya's main interests in the NBI process is the establishment of a cooperative framework that will enable the riparian countries, Kenya included, to realise tangible benefits in the spirit of reasonable and equitable utilisation of the Nile Basin. The Nile-COM, with the help of its technical wing, the Nile Technical Advisory Committee (Nile-TAC) and the Nile Secretariat (Nile-SEC) at its headquarters in Entebbe, Uganda, is laying the foundation for this spirit of trust and confidence among the riparian states.[48] In order to achieve its central mandate of building confidence and trust, as well as promoting sustainable socio-economic development through the equitable utilisation of, and benefit from, the common Nile Basin water resources, the NBI established two main programmes between 1999 and 2001 – the Shared Vision and Policy and Guidelines (SVPG) and the Subsidiary Action Program (SAP).[49]

Since its inception, the SVPG has provided an opportunity for the riparian countries to manage, through technical experts, specific projects on:[50]

- Nile transboundary environmental action
- Nile Basin regional power trade
- Efficient water use for agricultural production
- Water resources planning and management
- Confidence building and stakeholder involvement (communication)

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- Applied training
- Socio-economic development and benefit sharing

These projects are considered by the riparian states as tangible rallying points for cooperative socio-economic development in the Nile Basin. Envisaged in the shared vision project is 'sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water courses' by the riparian states.[51]

The SAP projects, on the other hand, are divided into two main sub-Nile Basin riparian groups, namely, the Eastern Nile Subsidiary Action Programme (ENSAP) comprising Egypt, Ethiopia, Eritrea and Sudan. The other programme is the Nile Equatorial Lakes Subsidiary Action Programme (NELSAP), comprising Burundi, DRC, Egypt, Kenya, Rwanda, Sudan, Tanzania and Uganda sub-Nile Basin groups. The NELSAP deals with a spectrum of programmes, which include among others, efficient water use in agriculture, natural-resource management and resource management and development. These are important programmes in which Kenya is involved in various capacities. The Mara River Basin, shared by Kenya and Tanzania, and the Sio-Malaba-Malakisi water project, involving Kenya and Uganda, are some examples.

9.6 Regional Geopolitical Questions and Kenya's Foreign-policy Interests in the Nile Basin

This section addresses the geopolitical situation in the Nile Basin and its impact on Kenya's national interests and foreign-policy posture. The concept of geopolitics refers to the 'relationship between geography and politics and their consequences for states' national interests and relative power'.[52] A country's geographic location, physical terrain, and national frontiers are central in determining its relative influence and survival vis-à-vis the contiguous states in the region. The analysis in this section is not concerned with the competing theses on geopolitics per se, but instead looks at how Kenya's location within the Nile Basin influences its national interests and foreign-policy behaviour.[53]

A number of interlocking, centrifugal, centripetal and interrelated geopolitical factors influence Kenya's foreign-policy posture. First, due to the high population growth rate, which reached 3 per cent between 1980 and 2000, demand for access to fresh water became a major challenge for Kenya. Scarcity of water resources, with only 31 per cent of the rural population in the Nile Basin region having access to improved water, will continue to remain a concern for the country's leadership.[54] In 2004, the rural population in Burundi, Uganda, Ethiopia, Rwanda and Eritrea reached 90, 88, 84, 80, and 80 per cent, respectively. On the other hand, the rural population in Tanzania, Sudan, Kenya and Egypt accounted for 63, 60, 59 and 58 per cent of the total population, respectively, in 2004.[55]

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Second, Kenya is one of the dominant trading partners in the Nile Basin region, which makes the issue of stability a major concern for the country's foreign-policy-making establishment. In the East African region, for example, Kenya is the largest trading partner, exporting $23 million in 2001, compared with $10 million and $2 million for Tanzania and Uganda, respectively. The share of imports by Kenya, Tanzania and Uganda within the East African Community (EAC) in 2001 totalled $1 million, $7 million and $49 million, respectively. Stability in the Nile Basin is an important factor in terms of transboundary trade.[56] The admission of Burundi and Rwanda as full members of the EAC in 2006 will broaden the scope of economic opportunities for Kenya.

Third, the Nile Basin remains one of the most volatile and conflict-prone regions in Africa in the post-Cold War era, experiencing internal civil wars (Burundi, the DRC, Ethiopia, Rwanda, Sudan and Uganda) and interstate conflicts (Eritrea-Ethiopia, Ethiopia-Somalia, DRC-Rwanda-Sudan-Uganda) – conditions which have had adverse effects on trade in the region. The civil war in the DRC in the 1990s entangled a number of Nile Basin riparian state and non-state actors, as well as others beyond the region, creating interlocking and complex geopolitical scenarios. For example, whereas the Angola-Chad-Namibia-Sudan-Zimbabwe axis supported the government of Laurent Kabila, Burundi, Rwanda and Uganda were directly involved in the conflict, accusing the DRC of providing material and logistical support for rebel groups responsible for launching attacks on their territories.

The Rwandan government invaded the DRC in pursuit of the rebel groups, such as the Banyamulenge, Mayi Mayi, Interahamwe, and the ex-Rwandan Armed Forces (*Forces Armees Rwandaises,* ex-FAR). Rwanda also supported Rally for Congolese Democracy, a rebel group, which was fighting the government of Laurent Kabila. Uganda, on the other hand, was directly involved in the conflict in the DRC to contain the West Bank Nile Front (WBNF), Allied Democratic Forces and the Lord's Resistance Army (LRA) rebel groups. As a quid pro quo, Uganda also provided military and logistical support for the Movement for the Liberation of Congo. Burundi was drawn into the conflict because of the *Front pour la Défense de la Démocratie*, responsible for incursions into Burundi across the DRC-Burundian border in the 1990s. Sudan's entanglement in the DRC conflict was on the side of the government of the DRC because of Uganda's historical support for the Sudan People's Liberation Movement/Army (SPLM/A). Similarly, Sudan has historically supported the LRA and the WBNF.[57]

Fourth, the continued stalemate between Ethiopia and Eritrea following their 1998–2000 war over the Bardenme border question and the unresolved Darfur crisis are some of the main obstacles to the NBI process. Ethiopia and Eritrea have yet to implement and recognise *in toto* the 2002 ruling by the International Ethiopia-Eritrea Border Commission (IEEBC) over the disputed border areas.[58] The broader mandate given by the United Nations Security Council to the United Nations Mission in Sudan (UNMIS) has ushered in new hope for the resolution of the Darfur crisis.

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Fifth, the level of dependence on the Nile Basin by the riparian states introduces another dimension of conflict to the region. The riparian countries account for 40 per cent of Africa's 800 million-plus people, of whom 70 per cent occupy the Nile Basin.[59] As Table 9.3 indicates, five riparian countries in the region – Egypt, Uganda, Sudan, Rwanda and Burundi – are heavily dependent on the Nile Basin, with 85, 75, 74, 72 and 58 per cent of their countries' populations occupying the basin, respectively. The population of Ethiopia, Kenya, Eritrea, Tanzania and the DRC occupying the Nile River Basin reached 35, 32, 30, 16 and 4 per cent, respectively.

Table 9.3 Population patterns in the Nile Basin

Country	Basin population density (inhabitants/ sq. km)	Basin population (millions)	Country population (millions) (1990)	Country population (millions) (1998)	% of country population within the Nile Basin
Burundi	250	3	6	6	58
DRC	88	2	44	49	4
Egypt	163	48	56	66	85
Eritrea	36	1	3	4	30
Ethiopia	53	19	55	60	35
Kenya	179	9	28	29	32
Rwanda	276	6	8	7	72
Sudan	11	21	28	28	74
Tanzania	40	5	30	32	16
Uganda	67	16	21	21	75
Total		130	279	301	46

Source: Karyabwite, D.R., 2000. Water sharing in the Nile River Valley. Project GNV11: Using GIS/ remote sensing for the sustainable use of natural resources. Nairobi: UNEP, 2000, p.33

Sixth, in a region where there is heavy dependence on agriculture, the risk of regional conflicts and civil wars remains a major concern for Kenya's foreign-policy makers, as well as for the riparian states. The region traversed by the Nile is also one of the driest, most water-scarce and water-stressed areas in Africa.[60] The average water use by the riparian states on agriculture, domestic and industrial economic activities accounted for 71, 21 and 8 per cent, respectively, while the water use for agricultural production in Sudan, Eritrea, Tanzania, Ethiopia, Burundi, Egypt, and Kenya in 2004 reached 97, 95, 93, 93, 82, 78 and 64 per cent, respectively.[61] Kenya's per capita water availability is projected to decrease from 636 cubic metres in 1990 to 235 cubic metres by the year 2025. On the other hand, Kenya's population is estimated to increase from 30 million in 2000 to nearly 40 million by 2015. The population growth rate for the Nile River Basin riparian states is projected to increase steadily to 2 per

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cent between 2000 and 2015, the highest in the world.[62] These interlocking and interrelated state and human variables have led to strained relations and conflict among the riparian states over the decades and remain the central litmus test for multilateralism in the Nile Basin.

The multilateral diplomatic initiatives since the 1990s by the riparian states to transform the decades-old imbalances in the use of the Nile River waters and the international drainage system, which favour Egypt, have ushered in a new geopolitical scenario in the region. A number of the riparian states, particularly Ethiopia, Kenya, Sudan, Tanzania and Uganda, have publicly stated that the 1929 treaty no longer binds them. The Egyptian leadership has repudiated these decisions over the years. Former Egyptian President Anwar Sadat once emphatically stated that 'the only matter that could take Egypt to war again is water';[63] and Boutros Boutros-Ghali, former Egyptian Minister of Foreign Affairs and later United Nations Secretary General, once observed: '[T]he next war in our region will be over the waters of the Nile.'[64] Even though numbers alone are not the only measurable attributes that can adequately explain a country's military power, Table 9.4 does show that Egypt is clearly the preponderant military player in the Nile Basin region.

Table 9.4 Armed forces and military expenditure of the Nile Basin riparian states*

Nile Basin riparian states	Military expenditure ($ million)			$ per capita			Percentage of GDP			Size of armed forces (000)	Estimated number of reservists (000)	Number of paramilitaries (000)
	2003	2004	2005	2003	2004	2005	2003	2004	2005	2007	2007	2007
Burundi	42	45	50	6	6	6	7,0	6,6	6 1	35	0	31
DRC	119	196	150	2	3	2	2,1	3,0	2 1	51	0	0
Egypt	2 732	3 589	3 834	37	47	49	4,0	4,5	4 5	469	479	330
Eritrea	147	72	65	33	16	14	18,2	7,7	6 3	202	120	0
Ethiopia	279	348	300	4	5	4	4,3	4,3	3 1	153	0	0
Kenya	247	266	353	8	8	10	1,6	1,7	1 8	24	0	5
Sudan	400	426	426	10	11	11	2,3	2,0	1 6	105	0	18
Tanzania	132	122	n/a	4	3	n/a	1,3	1,1	Na	27	80	1
Rwanda	69	45	56	9	5	7	3,9	2,5	2 5	33	0	2
Uganda	158	168	196	6	6	7	2,4	2,4	2 3	45	0	2

Source: International Institute for Strategic Studies, 2007. The Military Balance. London: Routledge, pp.407 and 410

*Note: * Depending on the source used, figures tend to vary in almost all the categories.*

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Table 9.4 indicates that Egypt's military expenditure in 2005, for example, was more than twice the military expenditure of the nine riparian states combined. In comparison with the other riparian states, Egypt's military strength is also visible in all categories – the armed forces, reservists and paramilitary personnel. Of all the riparian states in the region, Kenya has the smallest number of military personnel, followed by Tanzania. The likely explanation is the relative stability experienced by the two countries since their independence in the 1960s in a region fraught with instability and civil wars.

The present author would argue that Egypt's uncompromising stance over the years on the Nile Basin question has contributed to the lack of success of the multilateral diplomatic initiatives and the failure to conclude a comprehensive and tangible international legal regime based on the reasonable and equitable utilisation doctrine. Egypt maintains a High Command known as *Waraa-el-hidoud* ('beyond the borders') specifically established to intervene in each Nile River riparian state 'in case of a direct threat to the flow of the Nile'.[65] For example, in 1977, when Ethiopia planned to divert some water from the Blue Nile for irrigation for food production because of frequent droughts and famine, Egypt's response was the threat of war. The then Egyptian President Anwar Sadat declared that 'if Ethiopia undertakes any action that will affect our full rights to the Nile waters, there is no alternative to the use of force. We will retaliate when something happens but we have to be ready with plans and alternatives to firmly stop any action'.[66]

9.7 Conclusion and Policy Recommendations

Notwithstanding the persistent Egyptian threat over the decades, there is a shift towards cooperative multilateral diplomacy, particularly since the 1990s, with the Nile River Basin riparian states' foreign-policy makers employing diplomacy as the best option for the utilisation of the Nile River waters. Specifically, there is a paradigm shift by the riparian states from unilateralism to multilateralism in pursuit of a workable international legal regime for the utilisation of the Nile River Basin.[67] The relative stability which prevails in the region following the peace initiatives in Burundi and the DRC, as well as the 2005 Comprehensive Peace Agreement (CPA) between the government of Sudan and the SPLM/A, has offered a window of hope and opportunities for the conclusion of a comprehensive international legal regime on the Nile River Basin through multilateral diplomacy. Kenya, therefore, should focus its efforts on multilateral diplomacy as one of the most viable policy options on the Nile River Basin question.

The outcome of an acceptable legal regime is contingent upon the willingness of the Nile Basin countries to set aside their national interests for the general good of the region. Kenya's proactive involvement in the NBI negotiations is a clear indication of the perception of foreign-policy makers of the role the country needs to play regarding its national interests in the Nile

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River question. These developments and other internal and external factors are slowly influencing and transforming the geopolitical scenario in the Nile Basin region.

First, the end of the Cold War has ushered in a new epoch in global affairs, burying the so-called satellite states thesis inherent in the east-west bipolar system, with the Ethio-Somali proxy war of 1977/78 serving as a good example in the region at the time. Second, with the transformation of the Organization of African Unity (OAU) into the African Union (AU), with its mandate to promote continental multilateral diplomacy and to guard against war crimes – along with the right to intervene in the internal affairs of member states if situations so warrant (as enshrined in the constitutive act of the AU) – the foundation is being laid for bilateral and multilateral African solutions to African problems based on legalistic and normative values. As has been explained, the cases of Burundi, the DRC, Rwanda and Sudan serve as good examples. However, the unresolved conflict in Darfur, which has claimed over 300 000 lives and displaced more than 2 million people remains contentious. The decision by the government of Sudan to allow the deployment of the expanded UN-backed African Mission peacekeeping force in Darfur is a positive sign that will lead to a tangible resolution of the conflict between the belligerent parties involving the Sudan Armed Forces and the *Janjaweed* ('men on horses'), and the Sudan Liberation Movement/Sudan Liberation Army and the Justice and Equality Movement. The perpetual instability in Somalia following the overthrow of Siad Barre in 1991 still poses major challenges for the Nile Basin riparian states.

Third, countries such as Kenya and Ethiopia, which originally adopted ambivalent attitudes in the negotiations, have since the establishment of the NBI been fully involved in the process. Specifically, a step-by-step or project-by-project approach to identifying an underlying acceptable legal framework should remain one of the cornerstones of Kenya's foreign-policy options vis-à-vis the riparian states. Fourth, the principle of equitable and reasonable utilisation of the Nile River waters, adopted by the EAC member states, should also continue to drive Kenya's foreign-policy options in the region.

Notes and References

1 Ministry of Water and Irrigation, 2008. Ministerial Strategic Plan, 2009–2012. Nairobi: Kenyan Ministry of Water and Irrigation.

2 Ministry of Environment and Natural Resources, 2005. *Situation analysis on the national water policy: Nile Basin Initiative*. Water Resources Planning and Management Project. Nairobi: Kenyan Ministry of Environment and Natural Resources.

3 Ministry of Water and Irrigation, 2008. op. cit., p.9.

4 United Nations, 1975. *Yearbook of the International Law Commission*, Vol. No. 1. New York: United Nations Publication, p.44. See also Rembe, N.S., 1980. *Africa and the international law of the sea: A study of the contribution of African states to the Third United Nations Law of the Sea*.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by C. Adar et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

Alphen aan den Rijn: Sijthoff and Moordhoff; Okoye, F.C., 1972. *International law and the new African states.* London: Sweet and Maxwell; Umozurike, U.O, 1970. International law and colonialism in Africa: A critique. *Eastern Africa Law Review* 3 (April), pp.41–62.

5 Ngwandu, P.Y., 2003. *The 1929 Nile Waters Agreement: Can it be a basis for an equitable cooperative framework for all Nile Basin co-riparians?* Paper presented at the East African Legislative Assembly Seminar. 19–22 June. Kisumu, Kenya: Imperial Hotel.

6 See Adar, K.G., 2007. Kenya's foreign policy and geopolitical interests: The case of the Nile River Basin. Special issue on the riparian states of the Nile River, their national interests and regional stability. Guest editor, K.G. Adar. *African Sociological Review*, 11(1), pp.63–80. See also Nile Basin Initiative, Agreement on the River Nile Basin Cooperative Framework. Available at www.nilebasin.org [Accessed 10 January 2011].

7 Okidi, C.O., 1994. *Environmental stress and conflicts in Africa: Case studies of drainage basin*. Nairobi: ACTS Press, p.9.

8 Chauhan, B.R., 1987. *Settlement of international water law disputes in international drainage basins*. Berlin: Erich Schmidt-Verlag. See also Garretson, A.H, et al. (eds), 1967. *The law of international drainage basins*. New York: Dobbs Ferry; Godana, B., 1985. *Africa's shared water resources: Legal and institutional aspects of the Nile, Niger and Senegal River Systems*. Boulder: Lynne Rienner Publishers.

9 Okodi, C.O., 1980. Legal and policy regime of Lake Victoria and Nile Basins. *Indian Journal of International Law*, 20(3) (July). pp.395–447.

10 International Law Association, 1967. *The Helsinki Rules on the use of international rivers*. Helsinki 1966, Fifth-Second Conference. London: International Law Association.

11 For details on the Harmon Doctrine, see McCaffrey, S.C., 1966. The Harmon Doctrine one hundred years later: Buried, not praised. *Natural Resources Journal*, 36(2), pp.549–590.

12 Correia, F.N. & Silva, J.E., 1999. International framework for the management of transboundary water resources. *Water International*, 24(2), pp.86–94; Hyde, J.N., 1956. Permanent sovereignty over natural wealth and resources. *American Journal of International Law*, 50, pp.854–867.

13 Okodi, C.O., 1980. op. cit., p.404.

14 Adar, K.G., 1994. *Kenyan foreign policy behavior towards Somalia, 1963–1983*. Lanham: University Press of America, p.11.

15 Ayugi, R.J., n.d. Background paper on issues of environment change in the Nile Basin affecting Kenyan stakeholders, especially the poor. Draft paper, Department of Public Law, Faculty of Law, University of Nairobi, Kenya, p.21.

16 Schroeder-Wildberg, E., 2002. *The 1997 International Watercources Convention – Background and negotiations*. Berlin: Technical University of Berlin, p.14.

17 United Nations, 1997. Convention on the Law of Non-Navigational Uses of International Watercourses. UN Doc. A/RES/51/229, 1997. New York: United Nations; Brunee, J. & Toope, S.J., 2002. The changing Nile Basin regime: Does law matter? *Harvard International Law Journal*, 105, pp.105–159.

18 United Nations, 1997. Convention on the Law of Non-Navigational Uses of International Watercourses. UN Doc. A/51/PV.99, 1997. New York: United Nations.

19 Ibid. Voting pattern in the UN by the riparian states: In favour: Kenya and Sudan; against: Burundi; abstained: Egypt, Ethiopia, Rwanda and Tanzania; absent: Eritrea, Uganda and DRC. Burundi, China and Turkey were the only UN member states that voted against the resolution. In total, 103, 27 and 32 voted in favour, abstained and were absent, respectively. For the text of the convention, see http://untreaty.un.org/ilc/texts/instruments/english/conventions/8 3 1997.pdf

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Cooperative Diplomacy, Regional Stability and National Interests: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

20 World Bank, 2002. *World development indicators.* Washington, DC: World Bank, p.152.

21 Ministry of Environment and Natural Resources, 2005. op. cit. p.3.

22 Ibid., pp.3–5.

23 Ibid, p.3.

24 Karyabwite, D.R., 2000. *Water sharing in the Nile Basin River Valley*. Project GNV11: Using GIS remote sensing for the sustainable use of natural resources. Nairobi: United Nations Environmental Programme.

25 Allan, J.A., 1999. The Nile Basin: Evolving approaches to Nile waters management. Occasional Paper No. 20. London: University of London. See also Arsano, Y., 2004. Ethiopia and the Nile – Dilemma of national and regional hydropolitics, PhD thesis, University of Zurich; Swain, A., 1997. Ethiopia, the Sudan and Egypt: The Nile River dispute. *Journal of Modern African Studies*, pp.675–694.

26 Brunee, J. & Toope, S.J., 2002. op. cit., p.132.

27 For the evolution and meaning of the Nyerere Doctrine, see Makonnen, Y., 1984. *The Nyerere Doctrine of state succession and the new states of East Africa*. Dar es Salaam: Eastern Africa Publications. See also Nyerere, J.K, 1962. Problems of state succession in Africa: Statement of the prime minister of Tanganyika. *International and Comparative Law Quarterly*, 11; Seaton, E.E. & Maliti, S.T.M., 1967. Treaties and succession of states and governments in Tanzania. In *African Conference on International Law and African Problems.* Lagos: Carnegie Endowment for International Peace and the Nigerian Institute of International Affairs.

28 Kiplagat, K., 1995. Legal status of integration treaties and the enforcement of treaty obligations: A look at the COMESA Process. *Denver Journal of International Law and Policy* 23(259).

29 Makonnen, Y, 1984. op. cit., p.55.

30 See, for example, Rembe, N.S., 1980. op. cit.; Okoye, F.C., 1972. *International law and the new African states.* London: Sweet and Maxwell; Umozurike, 1970. op. cit, pp.41–62.

31 Knobelsdorf, V., 2007. *The Nile waters agreements: Imposition and impacts of a trans-boundary legal system*. Available at www.jurisafrica.net/docs/international/valerie_knobeldorf-nile-note.pdf [Accessed 20 December 2010].

32 Huggins, C., 2003. Establishment of a national discourse forum for the Nile Basin discourse process in Kenya. Background paper delivered at the *Issues of access to Nile waters and constraints to water development in Kenya seminar*. 10 July 2003. Organised by the African Centre for Technology Studies (ACTS). Nairobi: St Anne Guest House, p.6.

33 Kenya National Assembly, 2004. National Assembly, parliamentary debates, 9th Parliament, 3rd Session, vol. 1, May. Nairobi: Kenya National Assembly, p.1386.

34 Huggins, C., 2003. op. cit., p.2.

35 The Nile Team, or Friends of the NBI, comprising the United Nations Development Programme (UNDP), the World Bank, and the Canadian International Development Agency (CIDA), have provided the needed financial support to the NBI process. On the developments on cooperative diplomacy in the Nile River Basin see, for example, Yacob, Y., *From Undugu to the Nile Basin Initiative: An enduring exercise in futility*. Available at File://E:/NileRiver/The NileByYacobz.htm [Accessed 20 December 2010].

36 Kenya National Assembly, 2004. op. cit., p.1385.

37 International Law Association, 1967. op cit.

38 Ibid.

39 United Nations, 1997. op. cit.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by C. Adar et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

40 Kenya National Assembly, 2004. op. cit., pp. 1384–1385.

41 See Nile Basin Initiative, *Agreement on the River Nile Basin Cooperative Framework*. Available at www.nilebasin.org [Accessed 10 January 2011].

42 Ministry of Environment and Natural Resources, 2002. *Country strategy on the integrated water resources management*. Nairobi: Government Printer.

43 Huggins, C., 2003. op. cit., p.7.

44 Ibid.

45 Ibid.

46 Okidi, C.O., 1994. op. cit., p.12.

47 Huggins, C., 2003, op. cit., p.7. See also Dawo, I.O., 1995. *A lake on its deathbed: A case study on water pollution of Lake Victoria and the role of Osienala in its restoration process.* Nairobi: ACTS Press and Institute of Economic Affairs; Institute of Economic Affairs/Friedrich Erbert Stiftung Publication, 2002. *The little fact book: The socio-economic and political profiles of Kenya's districts.* Nairobi: Institute of Economic Affairs/Friedrich Erbert Stiftung Publication.

48 Ayugi, op. cit., pp.31–33.

49 On these developments, see Nile Basin Initiative, *Policy guidelines for Nile River Basin Strategic Action Programme*, Council of Ministers of Water Affairs of the Nile Basin States. Available at http://www.nilebasin.org/documents/TACPolicy.html [Accessed 20 July 2006].

50 Huggins, 2003. op. cit., pp.3–4 and Brunee & Toope, 2002. op. cit., p.138.

51 See http://www.nilebasin.org/documents/TACPolicy.html [Accessed 20 July 2006].

52 Kegly, C.W. & Wittkopf, E.R. 1999. *World politics: Trend and transformation* (7th ed). New York: St Martins, p.16.

53 See, for example, Harkavy, R., 1983. *Great power competition for overseas bases: The geopolitics of access diplomacy*. New York: Pergamon; Kissinger, H., 1994. *Diplomacy*. New York: Simon & Schuster; Sprout, H.H., 1963. Geopolitics hypothesis in technological perspective. *World Politics* 15(2) (January), pp.187–212; Tualhail, G.O., 1996. *Critical geopolitics.* Minneapolis: University of Minnesota Press.

54 World Bank, 2002. op. cit., p.151.

55 Food and Agriculture Organization, 2006. *Statistical Yearbook*. Rome: FAO, pp.7–10.

56 McIntyre, M.A., 2005. Trade integration in the East African Community: An assessment for Kenya. IMF Working Paper. Doc. WP/05/143, July. Washington, DC: IMF, p.5.

57 Adar, K.G., 2000. Conflict resolution in a turbulent region: The case of the Intergovernmental Authority on Development in Sudan. *African Journal on Conflict Resolution*, 1(2), pp.39–66.

58 For details on the ruling by the commission, see generally, International Eritrea-Ethiopia Boundary Commission, 2002. *Decision regarding the delimitation of the border between the state of Eritrea and the Federal Democratic Republic of Ethiopia*. The Hague: Boundary Commission.

59 El-Fadel, M. et. al, 2003. The Nile River Basin: A case study in surface water conflict resolution. *Journal of Natural Resources and Life Science Education*, 32, pp.107–117.

60 Sandwidi, J. & Stein, A.J., 2003. *Problems and prospects in utilising international water resources: The case of the Nile*. Bonn: Centre for Development Research, University of Bonn, p.1.

61 Food and Agriculture Organization, 2006. op. cit.

62 World Bank, 2002. op. cit., pp.49–50.

63 Darwoud, K., 2001. *Taming the Nile serpents*. (Correspondent for *Al-Ahram*). UNESCO Courier, October. Available at http://www.unesco.org/courier/2001_10/uk/doss01.htm [Accessed 20 July 2006].

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64 Hillel, D., 1999. *Rivers of Eden – The struggle for water and the quest for peace in the Middle East*. New York: Oxford University Press, p.266; Klare, M.T., 2001. The new geography of conflict. *Foreign Affairs*, 80(3), p.59.

65 Bulloch, J., & Darwish, A., 1993. *Water wars: Coming conflict in the Middle East*. London: Victor Gollancz, p.79.

66 Okidi, 1994. op. cit., p.61.

67 Nicol, A., 2003. *The Nile: Moving beyond cooperation*. Water Policy Programme, ODI. Geneva: UNESCO, p.3.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by H. Adar et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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CHAPTER 10
Tanzania: Multilateralism and national interests in the Nile River Basin question

Richard M. Bosire

10.1 Introduction

Tanzania is one of the countries that form part of the Nile River Basin. Tanzania contributes less than 3 per cent of the total volume of the Nile water, while more than 10 per cent of Tanzania's population depend on the resources of the Nile for their livelihood. This has put pressure on the government to pursue a Nile policy that is considerate towards the plight of its people. This chapter attempts to investigate the underlying interests of Tanzania in the equitable utilisation of the Nile water. The chapter addresses the problem of the 1929 treaty and its skewed water-utilisation ratio. The chapter contends that Tanzania should subscribe to the concept of limited territorial sovereignty, as it recognises the rights of other upstream and downstream countries in the reciprocal and equitable share of the Nile waters.

Tanzania's approach to the sharing of the Nile waters takes cognisance of these principles, especially the principle of equitable access, which questions the validity of the 1929 agreement, as it violates the rights of other riparian states while favouring Egypt. This treaty was a colonial arrangement, specifically geared towards securing water rights for Egypt, limiting access to Sudan and refusing access to upper riparian states. The main focus of the 1929 agreement was to allay Egypt's fears as to Britain's behaviour towards the Nile waters and to prevent unilateral action by Britain, which, if unchecked, would severely injure Egyptian interests.[1]

Upon independence from British rule, Tanzania declared that the 1929 and the 1959 agreements were not binding, as they were acceded to by Britain, a different sovereign state. This declaration was contained in what came to be known as the Nyerere Doctrine: Tanzania, together with the other two East African states, argued that they had the right to use the waters of the Nile within their respective territories as they wished without seeking permission from Egypt or Sudan, as stipulated in the 1929 agreement. Egypt and Sudan objected to these claims, thus putting Tanzania on a collision course with the two states.[2] However, Nasser of Egypt, Haille Selassie of Ethiopia and Julius Nyerere of Tanzania, being strong supporters of African unity and the

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Organization of African Unity (OAU), perhaps intervened and diffused the looming conflict among the riparian states. This suggests that the Nile has geopolitical and security significance for the riparians and may be a source of overt or covert conflict between upper and lower riparian states.

The sharing of the Nile waters is compounded by the growing demand for water resulting from population growth, among other challenges. Such common challenges virtually make cooperation the only option in the utilisation of the Nile waters. Some of these challenges include poverty eradication and the creation of opportunities for broader socio-economic development; the avoidance of potential water-related internal and extra-basin disputes and conflicts; satisfying the growing demand for and protection of water rights by all riparian states; the increasing demand for and low level of access to electricity; and addressing food security, floods, desertification and other water-related matters. Therefore, cooperative development of the Nile is the best option for Tanzania and other riparians in order to unlock economic growth, promote regional integration and bring peace and stability to the region.[3] The governance of transboundary water resources is based on various international normative and legal principles, on the basis of which Tanzania anchors its pursuit of a cooperative framework or regime for sharing the Nile Basin water resources.

10.2 Governance of Watercourses: Existing Principles

Realist scholars argue that the international system is characterised by systemic anarchy, a characterisation that points to the lack of an overarching authority that would restrain actors from resorting to self-help in their pursuit of national interests. Perhaps this is the case with the governance of transboundary water resources. No effective international judicial authority or legal mechanism exists that legislates and implements the principles agreed upon among states in a bid to manage water-related disputes.[4] Over time, a number of legal principles concerning the sovereignty of countries have evolved: the Harmon Doctrine, or the principle of absolute territorial sovereignty; the principle of absolute territorial integrity; limited territorial sovereignty; equitable utilisation; and community of co-riparians. These are discussed in the following sections.

10.2.1 The Harmon Doctrine

According to the Harmon Doctrine, a state has the right to use the waters which lie within its territory without any limitation whatsoever, regardless of the effect of this utilisation on the other riparian states. However, the basic principles of international law, contrary to the Harmon Doctrine, 'prohibit riparian states from causing harm to other states, and call for cooperation and peaceful resolution of disputes'.[5] Restraints on states are imposed by the requirement that upper riparians must recognise and respect the interests of the lower riparians.

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10.2.2 Absolute territorial integrity

This principle is often applied by lower riparians that claim to have a right to demand the continued natural flow of transboundary waters, but where that state, on its part, does not accept to permit continuation of the natural flow of the river passing through its territory. This principle was used by Egypt at the Nile Commission in 1925. Despite threats of war against Ethiopia over the sharing of the Nile waters, Egypt later changed its position and embraced collaborative approaches, as similar claims or behaviour by upper riparians could seriously harm its national interests. Therefore, the application of this principle leads to claims of rights without corresponding responsibilities and does not foster intra-basin cooperation. Largely, the lower riparians are aware that they cannot enforce their claims by any means whatsoever, such as by military invasion and the occupation of strategic territory of the upper riparian states.[6] This principle is untenable, and lower riparian interests can only be secured with the cooperation of the upper riparians.

10.2.3 Absolute territorial sovereignty

This principle holds that a state is free to use and/or dispose of the natural resources within its territory according to its needs and interests without any restraints from external sources. This principle is anchored in the Westphalian type of sovereignty, which views the state as the highest institution in the international system, and has absolute authority or complete freedom of action over its territory and resources. Thus, the state claims the right to dispose of the waters of a transboundary basin flowing through its territory. A state claiming this right would be in conflict with lower riparians within the basin. This principle has rarely been invoked in transboundary water basins.

10.2.4 Limited territorial sovereignty

This principle is similar to the principle of community of riparians.[7] It grants co-riparians the right to reasonable use of the basin waters that flow through the state's territory. It recognises the rights of the other states and is thus incommensurable with the absolute sovereignty principle. This principle posits that 'even though the co-riparians may neither have joint management nor share in the costs and benefits, they are under obligation to permit equitable and reasonable access to each co-riparian'.[8] This principle permits international cooperation and regime building in sharing transboundary water resources, such as those of the Nile Basin.

10.2.5 Equitable utilisation

The principle of equitable utilisation allows the use of transboundary waters to the extent that this does not harm other riparian countries. This principle is widely applied in the international legal community. The Helsinki Rules

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on the Uses of the Waters of International Rivers provide guidelines for 'reasonable' and 'equitable' sharing of transboundary water resources. The key guiding principle is found in Article IV, which 'guarantees' each state entitlement, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of a transnational drainage basin. The Helsinki Rules, however, do not exactly define the criterion for reasonable and equitable sharing of transnational water resources.[9] Likewise, the 1997 United Nations Convention on International Watercourses calls upon states to utilise international watercourses in an 'equitable and reasonable manner'.

10.2.6 Community of co-riparians

The principle of a community of co-riparian states in the utilisation of the waters of transboundary basins is based on the ethos that the entire Nile River Basin is an economic unit, and the rights over the waters of the entire river are vested in the collective body of the riparian states, or divided among them either by agreement or on the basis of proportionality. As such, this principle is a further extension of the equitable utilisation principle, but goes beyond it by vesting the rights over the river in a collective or collaborative body. This principle has not gained wide acceptance because riparian states believe that it forces them into reaching an agreement.[10]

10.3 The Nile Water and its Geopolitical Significance to Tanzania

> Whether one invokes the term 'resource war' or not, the relationships between violence and the supplies of vital materials are a persistent part of the pattern of international rivalries. The extension of the national interest to outside national borders to ensure the supply of essential materials turns defence into intervention, national security into imperial ambition.[11]

The above view is in tandem with realist theorising concerning the importance of transboundary water resources to the national interests of riparian states. According to realist scholarship in international politics, states protect their interests in the international system using all instruments of statecraft, including diplomacy and war. According to this perspective, national interests, both domestic and international, are key in determining states' foreign policies. National-security considerations are always top of the list of foreign-policy priorities. Security in this era and age is not exclusively defined in terms of military threats to territorial integrity, but also in terms of access to and utilisation of transboundary water resources, as is the case of the Nile Basin waters. Thus, states within the basin have advocated for and engaged in negotiations towards a cooperative framework to address issues of protection and equitable sharing of the Nile waters.

The principle of equitable utilisation of the Nile water resources requires that basin states allow one another a reasonable and equitable sharing of the

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basin waters. This principle enunciates quality as well quantity in utilisation, such as in irrigation agriculture.[12]

Although states have presumed absolute authority over territorial resources, a state should use resources located in its territory in such a manner as to ensure that such utilisation is not injurious to other riparians. This is in line with the application of the principle of *sic utere tuo ut alienum non laedas*, which is an accepted principle of international law that facilitates good relations among neighbouring states and prevents the abuse of rights of other basin members.[13]

The Nile Basin and its waters, therefore, have a geostrategic significance to Tanzania and other riparian states. Currently, there is a resurgence of scholarship on the security implications of sharing basin resources among states with competing and often incompatible or contradictory interests. This scenario has elevated environmental issues, which over the years have been 'low or soft politics' issues, to the domain of 'high politics'.[14] This has created a sense of urgency among states and other actors to address issues of sharing regional and international commons as a way of addressing impending security threats. In a sense there is the securitisation of freshwater basins, changing the traditional thinking that water sharing is a conservation and not a security concern. This invites a state-centred thinking about environmental security.[15] Some analysts argue that military security considerations have become critical components of safeguarding access to transboundary water resources and mitigating states' national interests.[16]

Water has been historically associated with conflict and war, and predictions of future wars revolving around the sharing of water resources are widespread. In 1995, Ismail Serageldin, the vice president of the World Bank, said: 'The wars of the next century will be about water.'[17] Analysts of transboundary resources and their geopolitical significance argue that there is a close relationship between water scarcity and acute conflict, both domestically and internationally. Westing argues that competition for limited freshwater resources leads to severe political tensions and even wars,[18] while Butts[19] maintains that 'history is replete with examples of violent conflict over water.'[20] and Homer-Dixon[21] argues that water is the renewable resource that is most likely to stimulate interstate resource wars.

Water scarcity and competition for its limited supplies 'can lead nations to see access to water as a matter of national security'.[22] Gleick further argues that the connections between the environment and international conflict and cooperation have become important issues in current discussions among scholars and practitioners alike, drawing attention at many levels, from the military to the political, from the local to the global.[23] He outlines some of the characteristics that make water a likely source of international strategic rivalry: the degree of scarcity; the extent to which the water supply is shared by more than one region or state; the relative power of the basin states; and the ease of access to alternative fresh water sources.[24] However, he cautions that not all transboundary water sharing causes conflict. Other situations may

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lead to negotiations, discussions and eventually international agreements, to minimise the probability and consequences of such conflicts.[25]

In this regard, therefore, the control of the Nile is increasingly contentious among riparian states as water demands in the basin soar – the demands of irrigation agriculture, urban populations, industry and other sectors. The potential for conflict could still be present within the Nile Basin; governments within the region do not consider threats by Egypt as mere rhetoric. In 1979, President Anwar Sadat threatened that 'the only matter that could take Egypt to war again is water'. Later, in 1988, Egypt's foreign minister, Boutros Boutros-Ghali, said that 'the next war in our region will be over the waters of the Nile, not politics'. While these statements partly reflect political rhetoric, they also give an indication of the importance of the Nile to Egypt and underscore the significance of a cooperative and collective approach to the sharing of the Nile waters.[26]

To confront the security situation arising from sharing freshwater resources, a state can respond in two ways. It can respond so as to 'eliminate or reduce an environmental threat, acting unilaterally and cooperatively', or 'reduce its vulnerability, acting unilaterally or cooperatively'.[27] Interdependence and vulnerability would influence state decisions, encouraging cooperation rather than conflict.

Claims to absolute state sovereignty and territorial integrity constitute a serious conundrum when it comes to the management of international watercourses, such as the Nile. As Vajpey, among others, argues, environmental resources, including water, do not recognise political borders. Sovereign countries guard and protect their water resources with all available means, making transboundary waters a battleground. In this regard, the main obstacle to a quick solution is the sovereignty of states.[28] Riparian states must be concerned about water sharing, state interests and their declared position in terms of protecting these interests. Tanzania abandoned its previous position regarding the sharing of the Nile Basin resources based on absolute state sovereignty and adopted a cooperative framework, which is likely to lead to a win-win situation for all riparians. A similar position is required of Egypt and Sudan. Pooling this sovereignty through a cooperative framework becomes necessary for peace and security in the Nile Basin.

As Wolf argues, what is lacking to avert resource-sharing conflicts among riparian states are effective international institutions and water laws that would constrain states from taking unilateral action on shared freshwater resources.[29] Thus, building effective institutions founded on law or treaties would serve as a conflict-mitigating mechanism. States, as rational actors in the international system, are willing to cooperate if international cooperation would result in greater net gain than the net benefits of non-cooperation, and when the distribution of benefits seems to be fair.[30] Thus, it is important that states perceive the economic gains from cooperation and the distribution of benefits as equitable. Evidently, this is at the core of the Nile Basin cooperative framework negotiations.

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From a rational choice perspective, there are four categories of benefits: environmental benefits to the river in terms of improved water quality and conserved biodiversity; economic benefits from the basin, especially in terms of increased food and energy production; reduction of costs through reduced geopolitical tensions and flood management; and benefits that extend beyond the river itself, i.e. facilitating cooperation and economic integration.[31] All these will serve the interests of the riparian states, including Tanzania, which is supporting efforts towards the creation of a Nile Basin regime.

Within the Nile Basin, the contestation has always been between the upper and lower riparians, mainly on the basis of water volume and its unfettered access. The upper riparians perceive current arrangements in the sharing as unequal and in favour of the lower riparians, especially Egypt and Sudan. Therefore, there has been a gradual shift of focus among states in negotiations[32] towards water security. Water security refers to the 'availability of an acceptable quantity and quality of water for health, livelihoods, ecosystems and production, coupled with an acceptable level of water-related risks to people, environments and economies'.[33] This may lead to a win-win situation among the riparians, as opposed to distributional approaches that are often zero-sum. However, the lower riparians are often opposed to this approach, as it entails a threat to their current levels of water use.

10.4 Theoretical Framework for Nile Basin Cooperation

This chapter attempts to apply regime theory in explaining the nuances facing the realisation of equitable sharing of the Nile waters. Regimes are viewed as principles, norms, rules and decision-making procedures that govern state behaviour in specific issue areas of international relations.[34] Krasner provides a classic definition of a regime:

> Implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.[35]

Regime theorists view regimes as effective and robust instruments for fostering cooperation among states. A regime is effective to the extent that its members abide by its norms and rules. This is often referred to as regime strength.[36] A regime is effective to the extent that it achieves certain objectives or fulfils certain purposes. Most fundamentally, an effective regime is one that enhances the ability of states to cooperate. For instance, the 1929 and 1959 Nile Water agreements do not command basin-wide compliance and cooperation and hence are being renegotiated to foster cooperation, as opposed to the self-help option that is likely to breed conflict among riparians. On the other hand, regime robustness or resilience refers to the 'staying power' of international

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institutions in the face of exogenous challenges and the extent to which prior institutional choices contain collective decisions and behaviour in later periods, or, in other words, the extent to which 'institutional history matters'.[37] Key to an analysis of cooperative arrangements or regimes are the national interests of riparian states, the building of collaborative institutions and the role of bargaining in the realisation of desired goals – mainly cooperation and peace in the case of the Nile Basin.

10.4.1 Interest-based regimes

Key to realist and liberal theorising in international regimes is their shared commitment to rationalism, especially the claim that states are self-centred goal seekers whose behaviour can be explained in terms of maximisation of individual utility. Their foreign policies and international institutions are crafted as outcomes of calculations of advantage made by states.[38] For rationalists, actors' preferences are fairly stable over time, unlike the outcomes of international arrangements. Neoliberals, on their part, have argued that international regimes may distribute states' expected utilities over options, thus turning previously too risky cooperative strategies into rational means for reaching states' unchanged goals of welfare and security.[39] In this regard, the Nile Basin Initiative (NBI) has the potential of reaching an understanding between all the riparian states despite the obstinate positions taken by states on the basis of their state security and the welfare of citizenry. Redistribution of water to care for the interests of the upper riparians is a reality that can no longer be ignored. Tanzania's claim to water rights is legitimate and should be considered by all riparians.

Neoliberals and realists alike emphasise 'the importance of various forms of uncertainty for any adequate account of international politics in general and international regimes in particular'.[40] The most important source of uncertainty is international anarchy. Strategically rational actors also seek mutually beneficial outcomes from international regimes, in a bid to circumvent the anarchic, Hobbesian system of impending war of all against all.

Realists insist that the utility functions of states are particularly interdependent such that the gains from mutual cooperation that a state's partner achieves may diminish considerably its willingness to cooperate in the first place. They emphasise the importance of power for the formation, (normative) content and impact of international regimes.[41] Perceptions of gains and losses would either promote or hinder cooperation. Even rational actors regularly experience difficulties in cooperating, with the result that suboptimal (sometimes drastically suboptimal) outcomes are a common occurrence in building international regimes.[42]

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10.4.2 Liberal institutionalist approach

Liberal institutionalists assume that the nature of international actors and their environment and the attributes of international institutions play a significant role in international politics. Keohane, for instance, agrees that the distribution of power and wealth in the international system exerts a strong influence on state behaviour.[43] He argues that regimes operate under specific situational preconditions: 'The states that are active in the issue-area concerned must share common interests which they can realise only through cooperation.'[44] Such interests are necessary, but not sufficient, conditions for cooperation.

Cooperation does not imply that states have harmonious rather than conflicting interests. As Axelrod and Keohane (1986) argue, cooperation is not synonymous with harmony.[45] Harmony requires a complete identity of interests, whereas cooperation exists where there are conflicting as well as complementary interests. Thus, according to them, cooperation occurs when actors adjust their behaviour to the actual or anticipated preferences of others.[46] Cooperation, furthermore, is a mutual adjustment that occurs as a consequence of policy coordination.[47] If actors fail to arbitrate and realise cooperation among them, discord obtains. In this regard, it is not the interests that are adjusted when states cooperate, but policies.

Contractualists, who are institutionalists, argue that international regimes are instruments created by states in pursuit of joint gains. Regimes facilitate international cooperation, which would otherwise be difficult to achieve. They do this by altering actors' incentives for action and, therefore, changing the calculations of advantage that governments make.[48] Through regimes, cooperation becomes possible even for egoistic utility maximisers. International regimes, likewise, enhance the continuity of political relationships over time by providing actors with negotiation opportunities that can not be ignored without consequences or costs. They 'increase the (perceived) "iterativeness" of the situation, thus allowing for a "shadow of future" to discourage defection'.[49]

International regimes have reputational effects on actors. According to Keohane, international regimes 'help to assess others' reputations by providing standards of behaviour against which performance can be measured, by linking these standards to specific issues, and by providing forums, often through international organisations, in which these evaluations can be done'.[50] This way, regimes shape the reputations of their members as well as their behaviour. Reputational considerations raise the costs associated with non-compliance with regime norms and standards, thus making cooperation more likely. They reduce cheating and the fear of being double-crossed by other members.[51]

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10.4.3 Institutional bargaining

According to Young, the phrase 'institutional bargaining' refers to 'efforts on the part of autonomous actors to reach agreement among themselves on the terms of constitutional contracts or interlocking sets of rights and rules that are expected to govern their subsequent interactions'.[52] This is an interest-based model of regime formation which assumes that self-interested actors are confronted with both the possibility of achieving joint gains from effectively coordinating their conduct and the difficulty of setting a specific set of norms and rules for the purpose. This model centres on the bargaining process that is meant to lead to a 'contractual contract', specifying the content of a regime for the issue-area in question.[53] Regimes that result from this process are negotiated regimes, as opposed to spontaneous or imposed regimes. Thus, this model retains 'an emphasis on negotiations among self-interested parties as a means of dealing with collective-action problems'.[54]

According to Young, parties to institutional bargaining regularly act under a 'veil of uncertainty' regarding their own future positions and interests. The veil creates incentives for the party to opt for institutional arrangements that produce acceptable results for states in quite different positions as far as resources and interests are concerned. This makes agreement among differently situated states easier to reach.[55] For negotiated regimes to succeed, there must be 'clear-cut and effective' compliance mechanisms and effective leadership, especially leaders who are entrepreneurial and endowed with negotiation skills and ingenuity rather than power, who present issues in such a way as to facilitate agreement and generate new institutional alternatives when negotiations are endangered with collapse.[56] 'A leader in this context is an actor who, desiring to see a regime emerge and realising that imposition is not feasible, undertakes to craft attractive institutional arrangements and to persuade others to come on board as supporters of such arrangements'.[57] According to Young, the focus of negotiations is on typically *integrative (or productive) bargaining* in contrast to *distributive (or positional) bargaining*, which would save negotiations from failing.[58] Perhaps this should currently be the focal point of the Nile Basin Cooperative Framework. Instead of zones of conflict, shared water resources can provide a basis for cooperation and benefit sharing, as long as the threats to regional peace and stability are recognised and collaborative structures created. Cooperation should be based on objective analysis of the problems and opportunities, their potential solutions and the shared benefits arising from the alternative solution.[59] This is a rational comprehensive approach to collaboration, and the continued involvement of an impartial epistemic community that would gradually influence value change among states in the Nile Basin would be in order.

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10.5 Tanzania's Foreign Policy: Defining National-interest Priorities

The foreign policy of any nation is a response to conditions in the domestic and international milieu. Domestic aspirations and interests influence foreign policies of states, and Tanzania is no exception. As Gordon argues, 'Tanzania has been successful in utilising foreign relations to promote national goals'.[60] Since independence in December 1961, and especially in the 1960s and 1970s, Tanzania's foreign policy was fundamentally influenced by various factors: domestic development policy, and its support for African unity, non-racialism in Africa and the total liberation of Africa. In the realm of domestic politics, the adoption of the *Ujamaa* policy of self-reliance and its position on independence and autonomy from foreign influences has greatly influenced Tanzania's position internationally. This redefined its approach to local and international issues, both regionally and globally. There are also idiosyncratic influences on Tanzania's foreign relations, especially the personality traits of the first president, Mwalimu Julius Nyerere, described as a leader of 'exceptional insights, diplomacy and moral stature'.[61]

Over the years, Tanzania has been a keen participant in regional politics, especially via regional organisations, such as the East African Community (EAC) (old and new), the OAU, which Nyerere chaired from 1984 to 1985, the Southern African Development Community (SADC), the Frontline States during the fight against colonialism and apartheid, the Non-Aligned Movement (NAM) and the Nile Basin cooperation (this is not the Nile Basin Cooperative Framework, but the various attempts made by riparian states to work toward cooperation in the sharing of the Nile Basin water resources), among others. Likewise, more recently, Tanzania has participated in the promotion of regional peace through multilateral and bilateral means. The state helped to secure a peace agreement that ended the conflict in Burundi, and supports the Lusaka agreement concerning the conflict in the Democratic Republic of Congo (DRC), and has played host to peace negotiations and international mediation and conflict-resolution efforts in Africa. For instance, the International Criminal Court (ICC) trials over Rwanda are being held in Arusha.

The focal point of Tanzania's relations with its neighbours is its national economic interests, which can be met through participation in regional economic cooperation. For instance, Tanzania signed the East African Customs Union Treaty with Kenya and Uganda in 2004 to foster economic and political cooperation and national economic development.

Tanzania's national interests can be understood from the lenses of President Nyerere's model of African development. Nyerere argued that development should be for Africans and by Africans and ingrained in socialism and self-reliance – *Ujamaa na Kujitegemea*. The Arusha Declaration announced by Nyerere in Dar es Salaam on 5 February 1967 is the official formulation of this unique approach to the problems of African development. Although

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the *Ujamaa* policy was a domestic response to the country's development, it affected Tanzania's relations with states within the Nile Basin, reinforcing Tanzania's resolve to stand by its opposition to the colonial water agreements and exploitative relations with the West.

Tanzania's relations with extra-regional states are based on mutual respect, a position taken by the founders of the republic. Thus, Tanzania had to reassess its relations with Britain and other Western states to match with its domestic policy of 'self-reliance, commitment to an egalitarian society, and socialism'.[62] This change of model of domestic politics and development strategy had an impact on Tanzania's international relations. The main causes of tensions and strains in its relations with the UK in the 1960s, for instance, were liberation ideology and British policy towards Rhodesia, whereby Britain froze loans to Tanzania, and subsequently Tanzania cut its links. Therefore, the policy of self-reliance had an impact on domestic and foreign relations, including foreign trade, domestic institutions, security and national defence, and domestic politics, especially mass participation in politics and economic development.[63]

According to Catherine Hoskyns,[64] what distinguishes Tanzania's experience from that of other African states is the continued attempt to evolve locally derived strategies for development and see foreign relations from the perspective of what helps or hinders the furtherance of this policy. However, others argue that this is an over-exaggeration of domestic-foreign policy congruence.[65] Despite this disagreement, current Tanzanian foreign policy exhibits such strong tendencies. The internal milieu that affected Tanzania's foreign relations includes its relative homogeneity and political stability, as there were no separatist groups, no pronounced ethnic or racial differences and the leadership decided to minimise divisive effects; a lack of extensive foreign involvement in its economy; and the fact that Tanzania was not geographically in a position of strategic interest to outside powers, with no important communication facilities and no military bases established during the Colonial period. It was Kenya that was regarded as key in the region.[66]

The effects of these factors on Tanzania's foreign affairs are threefold. First, the foreign policy of the state was likely to be accepted domestically without much contestation because of societal cohesion; second, outside powers had little motivation for intervening, irrespective of the foreign or domestic policy adopted; and, third, the very homogeneity and non-involvement of great powers resulted in the government viewing the international environment with equanimity and depending on goodwill in international affairs.[67] This way, Tanzania was able to pursue a foreign-policy orientation characterised by consistence and coherence. Although changes in domestic and international politics pose new challenges and affect the dynamics of foreign relations, the policy approach discussed above generally pervades Tanzania's foreign relations to date.

Tanzania's non-aligned position taken early in its independence helped the country pursue more or less independent domestic and foreign policies. For instance, Tanzania refused to join the Commonwealth because South Africa

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was still a member; it refused to sign an inheritance agreement covering treaties signed by Britain on its behalf during the colonial era, and it decided to decide for itself which of the treaties would be accepted and which ones would be renegotiated.

President Nyerere's Memorandum on Principles and Development of 1966 set out the framework for policy:[68]

> … it was now the prime aim of Tanzania's policy in all its aspects to create a position of greater independence especially in the economic field; second, that offers of foreign aid would in future be much more carefully scrutinized to make sure that they would really contribute to the kind of society Tanzania was attempting to build; third, that the West must be prepared to accept Tanzania's need for closer links with socialist countries which would give her new markets and relevant expertise; and fourth, that although in general Tanzania would try to avoid controversy, in situations of obvious injustice, such as Vietnam or Rhodesia, no compromise of essentials would be made.

Tanzania's experience in the early years of statehood would more accurately account for its present position in regional and international politics. Tanzania has over the years continued with efforts to develop locally derived strategies for development, endeavouring to ensure that foreign relations contribute to the furtherance of domestic development policy. Questions of poverty and development have been at the centre of debates on international relations – today Tanzania is no exception. Liberal theorists would argue that the open exchange of goods and services along with international rules and institutions 'lead to the promotion of both international peace and economic prosperity'.[69]

Although Tanzania has occasionally had sour relations with neighbouring states in the past, its regional policy is still focused on its economic interests, especially poverty reduction and development. One may note the Tanzania-Malawi dispute of 1967/68 over Malawi's support for apartheid and claims of Tanzania's support for Malawian insurgents to overthrow President Kamuzu Banda; Tanzania's helping Ugandan fighters to overthrow dictator Idi Amin in 1979; and its closing the border with Kenya in 1977. However, Tanzania's participation in the revival of the EAC and current cordial relations with its neighbours is testimony to the vitality of these interests and their relevance in international relations.

10.6 Centrality of Fresh Water and Tanzania's Development

Tanzania experienced a harsh economic climate in the 1980s, most prominently the severe famine of 1980–1982, which was compounded by the country's dwindling foreign-exchange earnings. The food-production crisis was worst in 1974 and 1975 and again from 1980.[70] Millions of people in Shinyanga, Mwanza and Mara regions had severe food shortages during 1981, which was blamed on bad weather. The drought is said to have affected nearly half of the 1,3 million people in the Shinyanga region.[71] This is the region around Lake

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Victoria, which could benefit from irrigation programmes utilising the Nile Basin waters. This vulnerability has drawn Tanzania into the NBI, through which a fair share of the waters would accrue for Tanzania's irrigation agriculture.

10.6.1 Tanzania's water policy

Tanzania's water policy recognises the essence of protecting and preserving the country's water resources for posterity. Human activities, social and economic, are threatening the sustainability of water resources in the country. According to the water policy document, over the last 15 years demands for water have intensified owing to the population growth and the concurrent growth of economic activities requiring water. These include hydropower generation, irrigated agriculture, industries, tourism, mining, livestock farming, domestic usage, fisheries, wildlife and forestry activities.[72] Water scarcity is mainly caused by unreliable rainfall, a multiplicity of competing users and the degradation of sources and catchments. As a consequence, water scarcity threatens food security, energy production and environmental integrity, and may cause conflicts among communities and sectors. Tanzania's water policy also recognises the challenges of managing the multiple transboundary watercourses and strengthening legal and institutional frameworks for water sharing and management.

Tanzania's Vision 2025 aims at achieving a high-quality livelihood for its people, attaining good governance through the rule of law and developing a strong, competitive economy. This underscores the centrality of equitable access to transboundary water resources and securing this through international legal arrangements with riparian states in the various basins. The state recognises water as one of the most important agents to enable Tanzania achieve its development vision objectives (both social and economic), such as eradicating poverty, attaining water and food security and sustaining biodiversity and sensitive ecosystems. Regarding transboundary water resources, the government declared: 'In order to make effective utilisation of trans-boundary water resources efforts have to be directed at assessing the needs of Tanzania, development of national plans and promotion of regional cooperation and integration with riparian states.'[73]

Growing demand for fresh water is especially strategically significant to Tanzania's socio-economic development. Tanzania has an abundance of fresh water in the form of lakes, covering approximately 60 000 square kilometres. Lake Tanganyika, which is shared by Tanzania, the DRC, Burundi and Zambia, runs along the western border and it is Africa's deepest and longest freshwater lake, and the world's second deepest lake. Lake Victoria, shared by Tanzania, Kenya and Uganda, is the world's second largest freshwater lake and drains into the Nile River. Lake Malawi, in the south of the country, shared by Tanzania, Malawi and Mozambique, is situated in the Zambezi River Basin.[74] As discussed above, Tanzania's strategic sectors are heavily dependent on

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fresh water, transboundary basins being the major sources, which should be harnessed for national development.

10.6.2 Water and agriculture

Tanzania is predominantly an agricultural economy, with the sector contributing about 48 per cent of the GDP in 2002. The main objective of its National Agricultural Policy is to ensure food security at national and household level. Tanzanian agriculture is mostly rain-fed, thus remaining susceptible to drought as well as the inadequate and erratic nature of rainfall. Consequently, emphasis on irrigated agriculture protects against drought and ensures food security, and is at the core of the country's agricultural transformation. It is a means for poverty alleviation, as more and more people are able to cultivate irrigated high-value crops, such as vegetables, flowers and fruits. Irrigation potential in the country is estimated at 1 million hectares, of which only about 150 000 hectares are under irrigation.[75] The key objectives of the agricultural policy include the following:

- Assuring basic food security for the nation, and improving national standards of nutrition by increasing the output, quality and availability of food commodities
- Improving standards of living in the rural areas through increased income generation from agricultural and livestock production, processing and marketing
- Increasing foreign-exchange earnings for the nation by encouraging the production and increased exportation of cash crops, livestock products and other agricultural surpluses, including food crops, by-products and residues
- Producing and supplying raw materials, including industrial crops, livestock, by-products and residues for local industries, while also expanding the role of the sector as a market for industrial outputs through the application of improved production, marketing and processing technologies[76]

The development of irrigation systems is seen as an important component of the overall agricultural development strategy, which could contribute to the improvement of food security by increasing the production of rice, which depends mainly on irrigation, and maize through supplementary irrigation on predominantly rain-fed fields; increasing farmers' productivity and income; and the production of high-value crops, such as vegetables and flowers for the domestic and international markets. Consequently, the government has created a National Irrigation Development Plan (NIDP), which has the mandate of implementing the national irrigation programme.[77] Therefore, the state is interested in the realisation of equitable sharing of the Nile Basin waters to implement irrigation programmes in the drier parts of the Lake Victoria region.

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10.6.3 Water and other key sectors

Mining is a rapidly growing sector that is critical to Tanzania's economic growth. The sector is undergoing liberalisation and has attracted a great number of foreign investors. Tanzania's declared vision for the sector in the next 25 years is to have 'a strong, vibrant, well-organised private sector'. Small-scale mining is dominated by local investors, whereas large-scale mining is dominated by foreign capital. The contribution of the mining sector to the GDP increased from 2,3 per cent in 2000 to 3,4 per cent in 2008 and dropped to 3,3 per cent in 2009. The sector requires huge amounts of fresh water for its operations, and the Lake Victoria region already utilises the Nile Basin waters, with various multinational companies engaged in the sector. The Tanzanian government, in collaboration with the Chinese government, has developed projects in Lake Victoria to support domestic and industrial needs.

The industrial sector contributed about 23 per cent of Tanzania's GDP in 2008. The increase in the contribution and growth of the sector is attributed to the rehabilitation of privatised industries and the establishment of new industries. Industrial performance depends, among other factors, on reliable water supply. On the basis of estimated economic growth rates for the period 1995–2025, water will be needed for the anticipated growth of the industrial sector.[78] In the energy sector, more than 60 per cent of energy produced in the country is from hydropower plants and more potential is available for development, for instance, in the River Mara and River Kagera. However, the development of hydropower on these rivers requires agreements among riparian countries. Hydropower is not a consumptive water user, but a renewable source of energy.[79] Tanzania's participation in the NBI is to protect its national water-security interest, which variously affects national economic interests.

10.7 Tanzania's Response to the 1929 Agreement

In the light of Tanzania's national interests, transboundary water is a vital ingredient for the country's security and development. The 1929 treaty works against these interests. Therefore, Tanzania considers the treaty as irrelevant and void because it was not party to the agreement. The pact was neither a real nor a dispositive agreement, and thus has no legal effect on a newly independent state. The Tanzanian government takes the position that an inherited agreement that purports to bind the country perpetually to secure the consent of the Egyptian government before it undertakes irrigation, power works and other measures was incompatible with Tanganyika's status as an independent sovereign state.[80] Furthermore, evaluating the 1929 treaty as to its validity against salient principles of international law on international watercourses would find the treaty to be in violation of the following salient principles: consent and equality of sovereignty; equitable access and reasonable utilisation; fundamental changes in circumstances; and causing no

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significant harm to other co-riparians.[81] Therefore, Tanzania has the right to assert its sovereignty, which the 1929 treaty violated. The Nyerere Doctrine was the entry point into the political process that would eventually lead to a negotiated cooperative arrangement to access the Nile waters to facilitate the realisation of its national interests.

10.7.1 The Nyerere Doctrine of state succession

Tanzania's foreign relations are anchored mainly on domestic policies and interests. The country's leaders believes in self-reliance and international interactions based on mutual respect. The Nyerere Doctrine underscores this position. Starting from a clean slate in terms of cooperation in the Nile Basin was critical, and Tanzania's position, though viewed as the extreme, was an important policy position that has shaped its relations with co-riparians. Tanganyika had just emerged from colonialism and was a case of state succession. State succession arises when there is a definitive replacement of one state by another in respect of sovereignty over a given territory in conformity with international law.[82] It consists of any change of sovereignty over a given territory whose effect is recognised in international law.[83] State succession in fact does not entail an automatic juridical substitution of the factual successor state in the complex sum of rights and obligations of the predecessor state.[84] In this regard, the Nyerere Doctrine is embodied in this claim, as Tanganyika did not inherit British treaty obligations and responsibilities within the 1929 agreement.

The Nyerere Doctrine has been influential in the Nile Basin region, as the other seven riparians, apart from Egypt and Sudan, have adopted its principles to advocate for equitable access and reasonable utilisation of the Nile waters to serve their national interests. According to this doctrine, Tanzania refused to be bound by the colonial era agreements unless compelled by international law.[85] The doctrine, also referred to as the opting-in formula, was formulated on 30 November 1961. This doctrine endorsed the classical 'clean-slate' theory and rejects any categorisation of international obligations which a successor state might have to accept or reject only because of the nature and type of the obligation without, however, disregarding customary international law.[86]

On 4 July 1964, the Tanzanian government made its stance clear to the governments of Britain, Egypt and Sudan regarding the 1929 agreement through a note which read:

> The government of Tanganyika has come to the conclusion that the provisions of the 1929 Agreement purporting to apply to 'the countries under British Administration' are not binding to Tanganyika. At the same time, however, and recognizing the importance of the waters of the Nile that have their source in Lake Victoria to the Government and peoples of all the riparian states, the Government of Tanganyika is willing to enter into discussions with other interested Governments at the appropriate time, with a view to formulating and agreeing on measures for the regulation and division of the

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> waters in a manner that is just and equitable to all riparian states and of the greatest benefits to all their peoples.[87]

The rationale for this stance was clear on the part of Tanzania: the agreements were not binding on an independent state because Tanzania had never taken part in the negotiations leading to the agreement(s) that created obligations under those treaties.[88] Tanzania made this declaration to protect its national interests, especially geopolitical and socio-economic ones, which have a bearing on the Nile waters.

10.8 Multilateralism: In Pursuit of National Interests

Tanzania has been variously engaged in multilateral approaches to addressing the water-sharing dilemma in the Nile Basin brought about by the 1929 agreement. This has been in a bid to adequately respond to the challenges discussed in this chapter, some of which touch on national interests. It is important to emphasise that Tanzania abandoned its initial stance concerning the treaty and adopted a more pragmatic and rational approach towards the utilisation of the Nile waters that would lead to a realisation of its interests. A collaborative or cooperative approach was the better option. Consequently, Tanzania has participated in various multilateral initiatives to address the unequal distribution of water, as well as to counter the often latent security threats from the lower riparians. These initiatives include HYROMET, Undugu, TECCONILE, the Kagera Basin Organisation and the NBI.

10.8.1 Hydrometeorological project (HYDROMET)

HYDROMET was established in 1967 by Kenya, Uganda, Tanzania, Sudan and Egypt as a response to the rising water levels in Lake Victoria due to increased precipitation in the region. The water rose by 2,5 metres. Initially, this was the concern of Tanzania, Uganda and Kenya, who invited Egypt and Sudan, in the spirit of African unity, to participate; Ethiopia had observer status. The main purpose of this project was to study, analyse and disseminate meteorological and water-quality data on the equatorial lakes (Lakes Victoria, Kyoga and Albert) to members. Monitoring was performed on water quality and quantity, and the data used to enhance discussions on water sharing. The project helped identify potential sites for developing hydroelectric stations in the Kagera Basin, Tanzania. The World Meteorological Organization (WMO) and the UNDP executed the project. Egypt and Sudan wanted to expand the scope of HYDROMET by proposing the establishment of a Nile Basin Planning Commission. Owing to suspicions and fear of the intentions of the two lower riparian states, Kenya, Tanzania and Uganda did not render support. The project closed in 1992 and was succeeded by TECCONILE. Consequently,Tanzania initiated irrigation projects along the Kagera Basin as a result of participating in HYDROMET.

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10.8.2 Undugu

Undugu, a Kiswahili word meaning 'brotherhood', was formed in 1983 by the participating states, Egypt, Sudan, Burundi, Rwanda, Tanzania, the DRC (then Zaire), and the Central African Republic. The main purpose of this initiative was to create a Nile Commission, which would plan the development of water resources for the entire basin. The commission would also serve as a framework for the apportionment of water resources among the riparian states. Participating states did not commit themselves to the aspiration because they felt it was premature and were not sure if it would serve their best interests. Because it had been suggested by Egypt and Sudan, there was suspicion that it was intended to serve the interests of the lower riparians. Although Undugu did lead to some degree of cooperation, it was undermined later by suspicion about Egypt's hegemonic interests, which were thought to overshadow genuine cooperation. It ended in 1993, giving way to TECCONILE.

10.8.3 TECCONILE

The Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin was formed in 1992 at a Nile Basin Water Ministers conference held in Kampala, Uganda. An agreement was signed by ministers from Tanzania, Egypt, Rwanda, Sudan, Uganda and Zaire (DRC), with the other riparians participating as observers. The long-term objectives of this institution was to back participating states in the development, conservation and use of the Nile Basin waters in an integrated and sustainable manner through basin-wide cooperation. Likewise, it was expected to assist participating states in determining each riparian's equitable entitlements. It was also supposed to help the states with capacity building with regard to the above objectives and help develop water master plans and integrate the Nile Basin Action Plan into national water development policies.[89]

TECCONILE, funded by the Canadian International Development Agency, established the Nile River Action Plan, signed in Arusha, Tanzania, by the Council of Ministers of Water Affairs in February 1995. Regional cooperation was one of the prominent components of the action plan, besides capacity building and environmental protection and sustainability. It pioneered in developing the Cooperative Framework Project, which aimed at formulating a framework agreement for the equitable utilisation and protection of the Nile water resources.[90] Hence, Tanzania continued to pursue its interests using a multilateral approach and cooperative efforts to arrive at a basin-wide water regime.

10.8.4 The Kagera Basin Organization

The Kagera Basin straddles Burundi (22 per cent), Rwanda (33 per cent), Tanzania (35 per cent) and Uganda (10 per cent), covering an area of 59 800 square kilometres.[91] The Kagera Basin Organization (KBO) was established in

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August 1977, with an agreement signed by heads of state of Tanzania, Rwanda and Burundi; Uganda acceded to the agreement in May 1981. The main purpose of creating this organisation was to meet the demand for a negotiated regime or regional organisation through which an integrated approach to the development of the region's natural resources could be realised. Ultimately, this was intended to stimulate socio-economic growth in the region, based on each participating states' needs. The key sectors targeted in this arrangement include energy, transport and communications, agriculture and human-resource development, which are central to Tanzania's national development agenda. The information generated and plans that were designed are an important component of the KBO's cooperative efforts. Notwithstanding its positive objectives and action-oriented strategies, the KBO was overtaken by TECCONILE and eventually the NBI.[92]

10.8.5 Nile Basin Initiative

The NBI is an international framework regime or cooperative mechanism for protecting and sharing the resources of the Nile Basin among the riparian states. It was initiated in February 1999 with the main purpose of seeking to develop the Nile Basin in a cooperative manner for benefit sharing within and across national borders.[93] The initiative is led by a Council of Ministers responsible for water (Nile-COM) in the Nile Basin. Nile-COM is assisted by a technical advisory committee (Nile-TAC), comprising two senior professionals from each country, and a secretariat, the bureaucratic arm of the NBI, which coordinates its operations.

The NBI has various objectives: to develop the Nile water resources in a sustainable and equitable manner; to ensure prosperity, security and peace for its entire people; to ensure cooperation and joint action among the riparian states seeking win-win gains; poverty eradication and the promotion of economic integration; and to ensure efficient water management and optimal use of the resources.[94] In the NBI Shared Vision Program (SVP), participating states have different planned projects. For instance, Tanzania hosts the Nile Basin Power Trade Project and Uganda has the Socio-economic and Benefit Sharing Project. The ultimate goal of the NBI is to negotiate an agreement for equitable and reasonable sharing of the Nile water among all riparians. The draft framework was concluded by the Nile Commission in June 2007 in Entebbe, Uganda. To this end, the NBI has succeeded, as the Permanent Cooperative Framework has been concluded by the Nile-COM. This success is partly due to the involvement of international development partners. However, Article 14 on water security was contested and, as a result, Egypt and Sudan entered reservations to acceding to the agreement. Consequently, the Nile-Com meeting held in Kinshasa, DRC, in July 2008 to iron out outstanding issues regarding the establishment of a permanent Nile River regime, including water security, left out this issue. The 17th Nile-Com meeting, held in July 2009 in Alexandria, Egypt, allowed six months to

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enable member states to move forward to conclude an inclusive treaty. The securitisation of water clause (on the basis of the reasonable and equitable usage principle) is a problem for the parties to the 1929 regime, and this still remains a challenge to achieving a permanent solution to the Nile Basin transboundary water problems.

The NBI instituted the Cooperative Framework Agreement (CFA), which is a regime awaiting signing by some states to realise cooperation within the basin. As a framework regime, the CFA has the following principles: cooperation among states of the Nile River Basin based on respect for international law principles such as sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilisation and adequate protection and conservation of the Nile River Basin and to achieve social and economic development; sustainable development of the Nile River Basin; subsidiarity, whereby development and protection of the Nile River Basin water resources are planned and implemented at the lowest appropriate level; equitable and reasonable utilisation of the waters of the Nile River System; prevention of causing significant harm to other states of the Nile River Basin; the right of Nile Basin states to use the water within their territories in a manner that is consistent with the other basic principles referred to herein; protection and conservation of the Nile River Basin and its ecosystems through individual and joint appropriate measures; exchange of information concerning planned measures through the Nile River Basin Commission; community of interest of the Nile River states in the Nile River System; regular and reciprocal exchange of data and information among states of the Nile River Basin; environmental impact assessment and audits; peaceful resolution of disputes; water management in an integrated and holistic manner, linking social and economic development with the protection and conservation of natural ecosystems; water utilisation at its most economic levels, taking into account the satisfaction of basic human needs and the safeguarding of ecosystems; and water security for all the Nile River Basin states (Article 3). A glance at these principles reveals that Tanzania's efforts were not squandered, as they substantially address its national interests and the shortfall of the 1929 agreement. Tanzania is among the states that have signed the CFA. Upon signing, Tanzania's representative, Mark Mwandosya, described the agreement as 'not exclusive of any member state. It is indeed inclusive'. He added that the socio-economic well being of the people of the basin can be achieved through cooperation, hence the importance of the CFA. The CFA further created obligations for each riparian state to ensure equitable utilisation of the basin's resources. Institutions were created to implement the CFA, including the commission provided for in the CFA.

10.9 Conclusion and Policy Recommendations

Tanzania's pursuit of national interests through multilateralism has been beneficial and could even provide greater security and assurance when

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the CFA has been signed by all riparians. Cooperation is the best option for addressing transboundary water-sharing issues. Tanzania's domestic needs and development challenges have impacted on its foreign relations, regionally and internationally, since independence. It is for this reason that Tanzania softened its initial position of absolute sovereignty on access to the Nile water. The CFA is one of the pillars of sustainable sharing of the Nile water to address Tanzania's water-related development challenges along the Lake Victoria shores and beyond. However, the road towards the creation of a Nile Basin regime has been tough, partly due to the nature of the basin resources. The inequitable contribution of each riparian state to the volume of the Nile water and the fact that utilisation of the water by the upper riparian states would inevitably affect the lower riparians, poses a challenge to cooperation. Such conditions exacerbate the vulnerability of the lower riparians, especially Egypt and Sudan. Theoretically, from an interest-based perspective, Egypt and Sudan should *ipso facto* be keen to ensure that the framework for water sharing is eventually realised. However, the two riparians are 'comfortable' maintaining the 1929 and 1959 status. The most likely scenario is the development of a crisis that would force the riparians to get back on track and have the CFA fully acceded. A free-rider problem exists at the moment, as there are no consequences for states who decide not to cooperate. As Waterbery argues, a crisis would mobilise collective action because non-cooperation poses no tragedy to the common problem requiring emergency resuscitation.

This chapter also concludes that there is a need to explore the postulation provided by the institutional bargaining model of regime creation. Entrepreneurial leadership is required as well as an arbitrator, most preferably a neutral international or regional organisation, such as the AU or the UN, to spearhead negotiations to conclude the CFA. The focus of the negotiations should not be water sharing alone, but most importantly cooperation to achieve the desired goals. Likewise, Egypt and Sudan could be encouraged to explore other sources of water, such as developing water-desalination programmes on the Mediterranean and Red Seas. As Oran Young has argued, cooperation, through regimes, becomes possible even for egoistic utility maximisers. The creation of a basin-wide regime would enhance the continuity of political relationships among riparians over time by providing them with negotiation opportunities through the resultant institutions, which can not be ignored without consequences or costs. Egypt should worry about reputational considerations and the action the rest of the riparians might take to protect their individual or collective interests, which should encourage collaboration to conclude the CFA. Tanzania and other riparians should strive to create strong institutions that would enforce compliance with the CFA principles to make the cooperation meaningful.

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Created from uregina on 2021-03-08 10:01:57.

Notes and References

1 Ng'wandu, P.Y., 2008. *The challenges and prospects for a new Nile water agreement*. Nairobi: African Center for Technology Studies, pp.3–4.

2 Ibid., p.6.

3 Ibid.

4 Wolf, A. & Hammer, J.H. (2000). "Trends in transboundary water disputes and dispute resolution" in *Environment and Security* (eds. Lowi, M.R. & Shaw, B.R.). London: MacMillan, p.136

5 Salman, M.A., 2007. The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: Perspectives on international water law. *Water Resources Development*, 23(4), p.627.

6 Okidi, O.C., 1980. Legal policy regime of Lake Victoria and Nile Basins. *Indian Journal of International Law*, 20, p.403.

7 Ibid., p.405.

8 Ibid.

9 Salman, 2007. op. cit.

10 Okidi, 1980. op. cit.; Salman, 2007. op. cit., p.628; Ng'wandu, 2008. op. cit.

11 Dalby, S., 2003. Environmental insecurities: Geopolitics, resources and conflict. *Economic and Political Weekly*, 38(48), p.5073.

12 Okidi, 1980. op. cit., p.37.

13 Ibid., p.36.

14 Graeger, N., 1996. Environmental security? *Journal of Peace Research*, 33(1), p.109; Dalby, 2003. op. cit.

15 Graeger, 1996. op. cit., p.111.

16 Graeger, 1996. op. cit., p.110.

17 Wolf, T.A., 1999. Water and human security. Available at http://www.humansecuritygateway.com/documents/UCOWR_waterandhumansecurity.pdf, p.29 [Accessed 9 December 2010].

18 Ibid.

19 Butts K.H., 1997. The strategic importance of water. *Parameters*, Spring, pp. 65–83. http://www.carlisle.army.mil/usawc/Parameters/Articles/97spring/butts.htm. [Accessed on 20 October 2010].

20 Wolf, 1999. op. cit., p.29.

21 Homer-Dixon, F.T., 1994. Environmental scarcities and violent conflict: Evidence from cases. *International Security*, 19(1), pp.5–40.

22 Gleick, H.P., 1993. Water and conflict: Fresh water resources and international security. *International Security*, 18(1), p.79.

23 Ibid., pp.80–81.

24 Ibid., p.81.

25 Ibid., p.80.

26 Ibid., p.86.

27 Vukovic, M., 2008. International Water Disputes and Cooperative Responses to Water Stress, p.244. http://www.socioloskipregled.org.rs/Tekstovi/2(2008)/6%20Vukovic.pdf. [Accessed 10 November 2010]. (This article can be accessed at this address but the language and characters used in journal title are incompatible with my computer softeware.)

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Cooperative Diplomacy, Regional Security and Development in the Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

28 Vajpeyi, Dhirenda K. (ed.), 1998. *Water resources management: A comparative perspective*. Westport, Praeger, p.8.

29 Wolf, 1999. op. cit.

30 Grey, D., Sadoff, C. & Connors, G., 2009. Effective cooperation on transboundary waters: A practical perspective. Available at http://www.siwi.org/documents/Resources/Reports/Report25_Transboundary_Waters_with_WWW.pdf, p.15. [Accessed 1 December 2010].

31 Ibid., p.16.

32 Granit, J. & Claassen, M., 2009. A path towards realising tangible benefits in transboundary river basins. Available at http://www.siwi.org/documents/Resources/Reports/Report25_Transboundary_Waters_with_WWW.pdf, p.22. [Accessed 1 December 2010].

33 Grey, Sadoff & Connors, 2009. op. cit.

34 Hasenclever, A., Mayer, P. & Rittberger, V., 1999. *Theories of international regimes.* Cambridge: Cambridge University Press, p. 1

35 Krasner, D.S. (ed.), 1983. *International regimes.* Ithaca: Cornell University Press, p.2.

36 Hasenclever, Mayer & Rittberger, 1999. op. cit., p.2.

37 Powell, R., 1991. Absolute and relative gains in international relations theory. *The American Political Science Review*, 85(4), pp.1303–1320.

38 Hasenclever, Mayer & Rittberger, 1999. op. cit., p.23.

39 Ibid., p.24.

40 Ibid.

41 Ibid., p.26.

42 Young, R.O., 1989. *International cooperation: Building regimes for natural resources and the environment*. New York: Cornell University Press, p.556.

43 Hasenclever, Mayer & Rittberger, 1999. op. cit., p.28.

44 Ibid., p. 30.

45 Axelrod, R. & Keohane, R.O., 1986. Achieving cooperation under anarchy: Strategies and institutions. *World Politics*, 38(1), pp.226–254.

46 Hasenclever, Mayer & Rittberger, 1999. op. cit., p.30.

47 Keohane, R., 1984. *After hegemony: Cooperation and discord in world political economy*. Princeton, NJ: Princeton University Press, p.52.

48 Ibid., p.26.

49 Hasenclever, Mayer & Rittberger, 1999. op. cit., p. 32.

50 Keohane, 1984. op. cit., p.94.

51 Hasenclever, Mayer & Rittberger, 1999. op. cit., p.35.

52 Young, R.O., 1999. *The effectiveness of international environmental regimes: Causal connections and behavioural mechanisms.* Cambridge, MA: MIT Press, p.282.

53 Ibid., p.282.

54 Young, 1989. op. cit., p.359.

55 Hasenclever, Mayer & Rittberger, 1999. op. cit., p.69.

56 Young, 1989. op. cit., p.370.

57 Ibid., p.355.

58 Ibid., p.361.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by F. Adar et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

59 Uitto, I.J. & Duda, A.M., 2002. Management of transboundary water resources: Lessons from international cooperation for conflict prevention. *The Geographical Journal*, 168(4), p.365.

60 Gordon, F.D., 1987. Anglophonic variants: Kenya versus Tanzania. *Annals of the American Academy of Political and Social Science*, 489, p.88.

61 Klaas, W., 1982. Tanzania's foreign policy: The first decade. *Africa Today*, 29(1), p.52.

62 Cranford, P., 1975. Foreign-policy issues and the emergence of socialism in Tanzania 1961–8. *International Journal*, 30(3), *Africa*, p.448.

63 Biersteker, J.T., 1980. Self-Reliance in theory and practice in Tanzanian trade relations. *International Organization*, 34(2), pp.229–264.

64 Hoskyns, C., 1986. Africa's foreign relations: The case of Tanzania. *International Affairs*, 44(3), pp.446–462.

65 Cranford, 1975. op. cit., p.469.

66 Hoskyns, 1986. op. cit., p.450.

67 Ibid.

68 Ibid., p.454.

69 Nkiwane, C.T., 2001. Africa and international relations: Regional lessons for a global discourse. *International Political Science Review*, 22(3), pp.279–290.

70 Shao, J., 1985. Politics and the food production crisis in Tanzania. *A Journal of Opinion*, 14, p.10.

71 Ibid., p.11.

72 The United Republic of Tanzania, 2002. Tanzania's Water Policy 2002. Available at http://www.ewura.go.tz/pdf/NationalWaterPolicy.pdf, p.4 [Accessed 2 December 2010].

73 Ibid., p.13.

74 Ibid., p.9.

75 Ibid., pp.10–11.

76 The United Republic of Tanzania, 1997. Agriculture and Livestock Policy 1997. Available at http://www.tanzania.go.tz/pdf/agricultureandlivestockpolicy.pdf [Accessed on 1 December 2010].

77 Ibid.

78 The United Republic of Tanzania, 2002. Tanzania's Water Policy 2002. op. cit.

79 Ibid.

80 Ng'wandu, 2008. op. cit., p.43.

81 Ibid., p.47.

82 Owiro A.O., 2004. The Nile Treaty, State Succession and International Treaty Commitments: A case study of the Nile Water Treaties. *Occasional Papers*, Nairobi, Konrad Adenauer Foundation. http://www.kas.de/wf/doc/kas_6306-544-1-30.pdf. [Accessed 15 November 2010].

83 Ibid.

84 Ibid.

85 Degefu, G.T., 2003. *The Nile: Historical, legal and developmental perspectives*. Victoria, Trafford Publishing.

86 Mekonnen, D.Z., 2010. The Nile Basin Cooperative Framework Agreement negotiations and the adoption of a 'water security' paradigm: Flight into obscurity or a logical cul-de-sac? *The European Journal of International Law*, 21(2) pp.421–440.

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Cooperative Diplomacy, Regional Security and Development in the Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

87 Okidi, 1980. op. cit., p.421.

88 Carroll, C., 1999. Past and Future Legal Framework of the Nile River Basin, *Georgetown International Environmental Law Review*, 12 (1), pp. 269–304

89 Ng'wandu, 2008. op. cit., p.8.

90 Ibid., p.9.

91 Ibid.

92 Ngowi, H.P., 2010. Unlocking economic growth and development potential: The Nile Basin approach in Tanzania. In Terje, T. (ed.), *The River Nile in the post-colonial age: Conflict and cooperation among the Nile Basin countries*. London: I.B. Tauris.

93 Ng'wandu, 2008. op. cit.

94 Ibid.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by F. Adar et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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CHAPTER 11
National and regional foreign policy underpinnings: Uganda and the Nile River Basin controversy

Godfrey P. Okoth

11.1 Introduction

Uganda is one of the 10 countries that border the 6 700 kilometre-long Nile River, the longest river in the world. The others are Burundi, the Democratic Republic of Congo (DRC), Egypt, Eritrea, Ethiopia, Kenya, Sudan, Tanzania and Rwanda. Since the 1980s, Uganda has been involved in numerous bilateral and multilateral diplomatic initiatives to resolve the long-standing dispute over the usage of the Nile River. Egypt, one of the countries heavily dependent on the waters of the Nile, has on several occasions threatened to wage war in order to protect its national interests regarding the Nile waters. This is against the background that it has maintained its monopoly over the Nile River for more than half a century following its signing of a treaty with Britain, the colonial power, in 1929. Regionally, Egypt signed an agreement with Sudan in 1959, whereby Cairo was granted 87 per cent of the waters of the Nile River. This was done without the consent of the other riparian countries.

These and related problems mean that Uganda has a stake in the Nile waters, which by implication, directly impacts on its national interests. Uganda maintains that it is its sovereign responsibility to safeguard its national interests and core values to survive in the anarchic international system. Uganda, therefore, questions the validity and relevance of the 1929 and 1959 treaties in the eyes of today's international law. Like the other riparian states after independence, Uganda declined to be bound by the Nile water agreement between Egypt and Britain. However, stability in the region is in the interests of Uganda and the other riparian states. Uganda, therefore, supports the position of the East African Community (EAC) on the question of the Nile Waters.

The cardinal objective of this chapter is to examine policy issues pursued by the various governments of Uganda since the country's political independence in 1962 with a view to providing conflict-resolution mechanisms in the region for the sake of peace and stability.

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Methodologically, this chapter takes into account two sets of variables. First, there are regional variables, such as ethnicity, religion and political, economic and class struggles. Second, there are variables external to the region, such as imperialism, neocolonialism and globalisation. This author, therefore, follows a historical approach that recognises constant interaction between political, economic and social factors as they emanate from society in general and as they affect regional integration in Africa. The chapter is situated within a particular theoretical framework.

11.2 Foreign and National Security Policy and Regional Stability in the Riparian States: A Theoretical Framework

The behaviour of a state in its regional backyard is determined by its foreign policy. This is perceived as a goal- or problem-oriented programme, designed by decision makers and directed towards entities outside their political jurisdiction. It is a programme whose objective is directed towards addressing a certain problem or the pursuit of certain goals towards external entities.[1] In this sense, it is a means by which the state's national interest is pursued and acquired. Foreign policy in this sense must take into cognisance the objectives the state seeks to pursue and the means it must have at its disposal to realise these objectives. This position mirrors Modelski's functionalist perception of foreign policy as a process through which the state minimises adverse effects while maximising the advantageous ones.[2] Policy, in this sense, is not a charted course, but a calculated response to external challenges. Frankel takes a sociological perspective by defining foreign policy as a combination of aims and interests pursued and defended by a given state and its ruling class and its relations with other states, and the methods and means used by it for the achievement and defence of these purposes and interests.[3]

These may be peaceful means, which presupposes the availability of a critical component of a competent diplomatic core and leadership with an understanding of the domestic needs of a state and how these can be met through the process of external interaction. The realisation of these objectives presupposes the presence of an organised institutional framework. The same objectives can also be pursued when needed by the use of armed coercion. The use of armed force leads one to the connection between security and foreign policy. But more important is the role of coalitions that make up a government and how these inform the type of foreign-policy interests to be pursued by the state. As Utete observes, the objectives and interests a state pursues and safeguards in its dealings with other states must be premised on its internal social structure and power configuration.[4] In specific terms, a class that controls and wields power necessarily shapes foreign policy. To this extent, foreign policy can be defined as a means through which a state extracts resources from its external environments to satisfy demands made by the regime's domestic constituencies critical to the consolidation of its domestic power base.

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Foreign policy – by this definition – constitutes the means by which national interest is pursued. The national interest is determined by the decision makers and is presumably arrived at after a collision of divergent pressures through a consensus-building process.[5] The national interest encompasses the core values, such as the sustenance of state sovereignty and the guarantee of its territorial integrity at one level and the insurance of its economic interests at another. There is also what Holsti refers to as the routine foreign-policy matters, or rather, the middle-range objectives of the state that involve economic and commercial activities.[6]

Most foreign-policy issues revolve around these middle-range objectives. Nevertheless, as values, the middle-range objectives are critical to sustaining internal social cohesion. They constitute one of the core bases for helping the state consolidate its legitimacy in the public realm. For developing countries, like the Nile riparian states, these values revolve around the need to respond to the crisis of underdevelopment and poverty. To the extent that a state cannot provide services such as education, health, security and the enabling socio-economic framework that underpins job creation, its legitimacy realm may be increasingly eroded, and in the process, a threat engendered to national cohesion. A third component of national interest is what Holsti refers to as the long-range objectives of the state. These tend to be philosophical aspirations, and include the pursuit of international peace and continental unity. Although the docket of foreign policy and security is state-dominated, it is possible for social forces to influence and shape the orientation of a state's foreign policy. Such influences form part of lateral pressures engendered by commercial interests, welfare needs and external threats. These may, in turn, reorientate the state to the necessity to build both military force and the technological capacity to respond to internal challenges.

As Choucri and North observe, population increase engenders demand. Technological advancement equally engenders an increased appetite for resources. Such demand can only be satisfied through a certain external extraction.[7] In other words, a state that has been undergoing a nation-state crisis would be driven by lateral pressures to pursue an activist foreign policy. Nation-state crises here are manifested by the inability of state institutions to penetrate society, the crisis of identity, the crisis of resource distribution and allocation, the crisis of participation and the crisis of conflict resolution and management. A state like Uganda, with the vast majority of its citizens living below the poverty line, is no doubt in need of a foreign policy that can address this problem. In addition to the need to address economic concerns, there is also the question of internal security threats, especially those posed by the Lord's Resistance Army, which has been fighting the government of President Museveni since 1986. Other cases of internal security threats include opposition political pressure for greater democracy and external threats in the form of international terrorism. A combination of a weak economic base and the traditional form of insecurity threatens not only a state's sovereignty, but also its territorial integrity. It is, indeed, these elements that give rise to the

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connection between foreign-policy pursuits for domestic ends and national security. Either way, a state like Uganda, for instance, cannot address its internal economic, security and political concerns without addressing the regional components of these aspects. Any internal economic expansion presupposes a regional market. This has to be sustained by a strong security position both internally and at a regional level.

Whatever the type of policy adopted by the state, its pursuit is influenced by several factors. These include the societal character of the state. Here, elements such as the availability of resources, the level of technological advancement, population size and density, and ethnic and racial cohesion are critical. Also important are environmental elements, such as geographical location, terrain, climate and natural resources. Equally important is the world system and the space for manoeuvre it gives to a given state and the nature and type of the political structures in existence. The argument here is that certain types of structure provide various state and non-state actors spaces within which they can influence each other and, indeed, take certain actions. More importantly, they help facilitate mobilisation and maximisation of resources more effectively than others. Notably, the leadership element, and how it interprets the environment either as a constraint or as an opportunity, is critical.

The central question is that of how an actor opts to perceive constraints as either obstacles or opportunities. Where the former is the case, and state leaders opt to work towards responding innovatively to them, the said state is likely to mobilise its resources effectively. Notably, the leadership element must be present at all levels to think through relevant innovative institutions at regional, state and local levels to engender associational life for resource mobilisation. The very essence of leadership is the enhancement and insurance of the state's survival: this is, what state-security policy seeks to address. However, one must seek to respond to the questions: security against what? And whose security? The general perspective is to perceive security in state-centric terms and to emphasise external threats. This is what Azar and Moon refer to as the physical protection of the state from external threats.[8] Whereas the first question concerns physical security, the second finds its response in the reconceptualisation of security to include concerns in the domestic realm, especially the need to maintain societal cohesion while also ensuring the survival of the regime. The first presupposes security of the core values, such as sovereignty and territorial integrity. These are shared by all and are expected to survive regime change.

The second has to do with other existential values that the state must provide to win legitimacy and the loyalty of its citizens. Most Third World states face a crisis of legitimacy and domestic vulnerability resultant from the state's inability to engender good governance. This, in turn, causes regime insecurity. To survive, regimes turn to violence in a bid to maintain control. The absence of critical institutions for conflict resolution and management, interest articulation and elite consensus on social and political issues generates the erosion of legitimacy and regime insecurity to state insecurity. Notably, the tendency has been that of equating threats.[9]

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Whereas states have tended to acknowledge the connection between foreign policy and security, the latter has tended to be perceived in terms of the traditional militarist approach, under which national security is predicated on the assumption that the principal threat emerges from other nations.[10] The argument in this case has been to build up weaponry.[11] The problem with this orientation is that it assumes a purely militaristic focus despite the fact that economics is an imperative, given the threats posed by poverty to national security. Underlying the threat is the demand side of the acquisition of small arms as a means towards reversing deprivation. Economic security, on the other hand, is not possible outside the availability of energy and technology. Overall, much of the insecurity has tended to be driven by prevailing underdevelopment.[12] Therefore, to modernise a society's security presupposes enhancing development, and development provides people with the inclination to defend the state. Underdevelopment and institutional incapacity, however ensure that the average African state can neither mobilise internal human resources nor the existing institutions to cope with adversaries, including natural disasters. Insecurity in this sense can be broadly said to include regime, state, governance and personal security matters. To the extent that the state is incapable of addressing them at the domestic level, its own collapse would also threaten the security of its neighbouring states. The converse is also the case. The search for security can also stem from the attempts geared towards seeking to protect values previously acquired.[13]

A nation is said to be secure in terms of the extent to which it is not in danger of sacrificing its core values. To ensure its security, the state develops a national-security policy. Such a policy presupposes dangers external and internal to the state. It is also possible for the pursuit of security to be driven by the state's desire and ambition to retain or create wealth and development for its citizens. Security can be acquired by the state on its own if it is endowed with enough resources, or through alliance with others. This presupposes the establishment of regional frameworks that seek to address security concerns. Several reasons may incline states towards regional approaches. These include the quest by the state or regime to fend off threats that may be either internal or external. Indeed, there are threats that assume a state-region-centric dimension and whose resolution or containment also presupposes a regional approach. On the other hand, a region-centric approach entails viewing crises in neighbouring states as constituting threats to the state's own interest. It is in these contexts that one can examine past and present Nile-water conflicts and cooperation within the riparian states.

11.3 Nile-Water Conflicts and Cooperation Within the Riparian States

Following the British conquest of Egypt in 1882, Britain became the primary colonial power in the Nile River Basin, but was later joined by the Italians in Ethiopia and the Belgians in the Congo Free State. By the turn of the nineteenth

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century, the European colonialists had subdivided the Nile Basin into zones of influence, and Britain had recognised that the primary consideration of its dominion over the Nile and at Suez rested on the security of the Egyptian Nile waters.[14] Nonetheless, the colonial power recognised the hydrological unity of the basin in protocols and boundary agreements which prohibited any construction on tributaries that would interrupt the flow of the Nile to Egypt and Sudan without prior consultation and agreement.[15]

In 1929, the Nile waters agreement was concluded through an exchange of notes between the British High Commission in Cairo and the Egyptian government. The agreement heavily favoured Egypt's 'historic rights', allocating for Egyptian use 48 billion cubic metres per year, with only 4 billion cubic metres for Sudan, leaving 32 billion cubic metres per year unallocated.[16] Not only were other upstream riparians not included in this agreement, but it was stipulated once again that, as long as they were under British jurisdiction, upstream states could not undertake without permission any development on the tributaries or on the equatorial lakes that would alter the Nile flows to Egypt.

After World War II, control of the Nile waters once again became a central issue in regional politics as the self-determination and national liberation movements grew in strength. Egypt's rapid increase in population had led to an increase in water demand for irrigated agriculture and improvement of technological control of the Nile, and a limited increase in industrial water use.[17] Following the Egyptian revolution in 1952, the Sudanese administration began preparing the case for an increase in its share of Nile waters [18] The Sudanese administration revived plans to build the Jonglei Canal through the Sudd Swamps, thus reducing the immense amount of White Nile waters lost through evaporation, and developed new plans to increase the irrigated area and build the Roseires Dam on the Blue Nile. The new plans would have required an increase in allocated use of Nile water above the amount stipulated in the 1929 agreement. In the meantime, Egypt was developing its highly controversial plan to build the Aswan High Dam. The construction of the dam would create a reservoir extending 150 kilometres into Sudan, submerging the old town of Halfa and displacing 50 000 people.[19]

The period 1954–1958 was characterised by political conflicts between Egypt and Sudan over the sharing of the Nile waters. Sudan achieved independence in 1956 and its first prime minister immediately reiterated that the 1929 agreement had to be revised, just when Gamal Abdel Nasser of Egypt was contemplating the creation of a massive new dam at Aswan.[20] Further complicating the situation was the international attention given to the Aswan High Dam plan. The Western countries and the World Bank had originally offered technical and financial support for the dam, but environmental and socio-economic concerns led to the withdrawal of this support.[21] Egypt then turned to the Soviet Union for support and nationalised the Suez Canal in retaliation against the West, leading to the Suez Canal Crisis.

Tension increased between Egypt and Sudan in 1956–1958, as Sudan voiced further objections to the Aswan High Dam and continued demanding

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a renegotiation of the 1929 agreement. Egypt subsequently withdrew its support for the Sudanese project to build a reservoir at Roseires on the Blue Nile, and Sudan unilaterally declared its non-adherence to the 1929 agreement. In a show of force, Egypt moved units of its army to the border with Sudan.[22]

In November 1958, three weeks before the Soviet Union formally offered financial assistance to Egypt for the Aswan High Dam, there was a military takeover in Sudan and the establishment of a regime more open to negotiation with the Egyptian government.[23] Within a year, the two countries renegotiated the 1929 agreement and developed the 1959 agreement between the Republic of Sudan and the United Arab Republic. The new agreement set Egypt's share of the Nile waters at 55,5 billion cubic metres per year and allocated to Sudan 18,5 billion cubic metres per year. The remaining 10 billion cubic metres flow per year was allocated to evaporation and seepage loss, and it was agreed that any additions to annual flow through conservation or discovery be split equally between the two countries.[24] Plans to move ahead on the Aswan High Dam and the construction of the Roseires Reservoir were also approved. The new water agreement most notably did not include other riparian states, and allocated the entire flow to Egypt, Sudan and natural loss. Ethiopia, in particular, emphasised its rights to the waters originating from its territory, and began to work with the United States Bureau of Reclamation (USBR) to study and assess its water resources. However, despite the obvious displeasure of Egypt, Ethiopia subsequently refused full participation in basin-wide cooperation efforts prompted by the 1959 agreement.[25] In 1978 Egypt and Sudan expressed concern over a reported series of feasibility studies in Ethiopia, which had prompted a series of terse and non-conciliatory responses directed largely at Egypt and in part at Sudan.[26]

Construction of the Aswan High Dam started in 1960 and continued until 1971. During this time, relations were favourable between Egypt and Sudan. Accordingly, in return for helping Sudanese President Nimeiri to remain in power, Egypt obtained a number of concessions from Sudan, notably in 1976 permission to construct the Jonglei Canal.[27] The Jonglei Canal would circumvent the swamps of the Sudd in southern Sudan, increasing the flow of the Nile by 5 billion cubic metres annually. Under the 1959 agreement, this would be split equally between the two neighbours. Despite the international outcry over the impact of the canal on the swamps and the people the canal would displace and disturb, work on it commenced in 1978. Construction of the canal halted in 1984 after a series of violent attacks by the Sudanese People's Liberation Army, and the civil war in southern Sudan made any further work impossible. Relations between Egypt and Sudan remained friendly during the early 1980s and, in 1982, the two signed an agreement that included plans for the future integration of policy and programmes.[28] After President Nimeiri was ousted, the new regime in Khartoum, faced with rapid population growth and increasing food needs, began the construction of small dams and also developed plans for further irrigation. Relations between Egypt and Sudan further deteriorated in 1989, as the Sudanese Islamic fundamentalist regime

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unilaterally abolished the cooperation agreements and began supporting anti-Egyptian forces in its territory.[29]

Despite increased emphasis on water cooperation in the early 1990s, water rights remained an issue of great concern in the region as population growth stretched the Nile to its limits in Egypt and Sudan. In October 1991, the Egyptian defence minister, Lieutenant General Mohammed Hussein Tantawi, remarked in al Ahram that his country would not hesitate to use force to defend its control of the Nile River, and predicted that future Middle East wars could result from water scarcity issues.[30] He said, 'I do not actually expect an impending control of the Nile River by a foreign country, but we consider it a possibility and are planning our military strategy accordingly'.[31] Boutros-Ghali is also reported to have talked of war over the Nile waters.[32]

Tensions between Sudan and Egypt remained high for political reasons as well. In June 1995, Egyptian President Hosni Mubarak narrowly escaped an assassination attempt in Addis Ababa, in which Sudanese Islamic militants were the suspects. Egypt took control of a disputed area on the Sudanese border, and in its aftermath threats were issued and tension continued.[33]

Present and potential conflict over water in the basin stems from the increased food and agricultural needs generated by the rapidly growing populations of the riparian states. All three of the major players – Egypt, Sudan and Ethiopia – publicly stated as recently as February 1997 that their share of the water was insufficient and demanded the right to use the water as they saw fit.[34]

Egypt is desperately trying to meet its food needs by dramatically expanding the number of acres under irrigation. On 26 October 1997, the Al Salam Canal, or Peace Canal, was opened by Egypt's President Mubarak. This canal transports Nile waters under the Suez Canal into the Sanai Desert, adding 6 200 acres of arable land and allowing 5,5 million Nile Valley residents to resettle there. The $1,62 billion project was partly financed by Kuwait.[35] In 1998, work started on the Toshka, or New Valley, Project which is to extend a canal from Lake Nasser above the Aswan Dam westwards into the desert. The Nile water is to be supplemented by ground water extraction from a number of desert oases, allowing a total of a million new acres to be farmed.[36] As the first phase of the New Valley Project, the canal will cost about $2 billion; further projects in agriculture, industry and tourism will bring the total estimated cost to $88 billion.[37]

Both of these plans have been heavily criticised by water-resource experts.[38] Egypt is at or above its allocation of the 1959 agreement, and some sources claim that it is taking up to 2 billion cubic metres more than its share.[39] Magdy Sobby of the Al-Ahram Centre for Political and Strategic Studies criticised the Toshka Project as unrealistic because it was based on the Nile flows during periods of higher than average floods. He cites alternative projects, such as waste water reclamation and different agricultural techniques, which could increase Egypt's water supply for irrigation.[40]

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However, pressures are high in Egypt to expand its agricultural production. Even though it uses its full allocation, it still imports over half its food, including 10 million tonnes of grain a year. Moreover, it has been suggested that Mubarak was pushing the New Valley project in part to deal with domestic political problems created by overcrowding and unemployment, which stands at about 20 per cent.[41] The New Valley Project could attract as many as 7 million people to jobs in the desert while increasing the country's food production.

Ethiopia is the new unknown in the conflict equation, as the end of the Ethiopian civil war opened the doors to new development. Rapid population growth and the need to establish food security after the famines of the 1980s have prompted Ethiopia to press ahead with plans to divert Nile waters for irrigation projects, and Egypt's political dominance in the region was further weakened by a 1991 agreement between Sudan and Ethiopia to cooperate over the use of the Nile. Ethiopian farmers are already building small earthen dams on the tributaries of the Blue Nile, which, although permitted by the 1959 agreement, are restricting the flow to Sudan and Egypt by 2–3 million cubic metres per year.[42] It has been reported that Ethiopia is planning to implement a significant irrigation project, and that several hydropower projects are being developed.[43]

Ethiopia's willingness to demand a greater share of the Nile waters was echoed in a February 1997 policy paper presented during a four-day annual conference on the use of Nile River waters. It stated:

> The stark inequity currently prevailing in the Nile Basin cannot remain in the future since only the downstream riparian states (Egypt and Sudan) are exclusively utilising the Nile waters while upstream countries have not been able to secure their equitable right.

Furthermore, it is not only Egypt that has been issuing threats to Ethiopia. Sudan accused Ethiopia in 1996 of sponsoring attacks by Sudanese opposition forces in order to dam the Blue Nile in Ethiopia and deprive the downstream riparians of water. However, Ethiopia denied the charges. Otherwise, Ethiopia's aim is to achieve food security by not depending on rain-fed agriculture, but instead by utilising available water for irrigation. In this regard, Ethiopia encourages Nile River riparians to commit themselves to real, fair, equitable and just outcomes in what cannot be a zero-sum game.[44] It is in this context that Uganda's foreign interests can be analysed.

11.4 Conceptualising Uganda's Foreign-policy Interest

It is important to recognise that Uganda's unstable political environment has, over the years, affected its foreign policy. Between 1962 and 1971, when President Apollo Milton Obote presided over the affairs of Uganda, he promoted cooperation and harmony in the country's international relations near and far. However, when Idi Amin captured state power via a military

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coup and initiated a reign of terror which lasted until 1979, Uganda's foreign policy was negatively affected.[45] The military dictatorship pursued a belligerent, erratic, cantankerous and unpredictable foreign policy based on brinkmanship, and, therefore, antagonised Uganda's neighbours and most of the riparian states.[46] This led to an unjustified war with Tanzania (following Amin's invasion of the Kagera Salient region of Tanzania), threats of war with Kenya, the intimidation of the tiny state of Rwanda and threats to divert the Nile waters following disagreements with Egypt and Sudan. Amin later changed tactics and shifted Uganda's foreign policy in favour of the Arab world and against Israel.[47]

Following Amin's overthrow by a combined force of Ugandan émigrés and the Tanzanian army, Obote resumed the presidency between 1980 and 1985, and revived his pan-Africanist style of relating with other states. Nevertheless, once more, Obote was overthrown by his own army. However, the short reign of Tito Okello did not make much impact on foreign policy. The Okello junta was overthrown by Yoweri Museveni via a guerrilla struggle in 1986. Ever since, Museveni has wielded state power with a mixed record on the foreign-policy front within the riparian states. This can be summed up as brinkmanship, charisma, pragmatism and abrasiveness based on strategic and geopolitical considerations.[48]

Uganda's foreign-policy interests regarding the utilisation of the Nile waters fall within matters of security which arise from the post-Cold War definition of security. These foreign-policy interests fall within the overall EAC security issues that have to do with not only military, but also economic, security. The most disturbing aspect of the latter is the need to equitably share the Nile waters, whose source can be traced to Lake Victoria. This is a security issue that Uganda and the other member states of the EAC must address jointly with the other stakeholders. Indeed, for over 10 years now, the riparian countries have been negotiating a treaty on how to share the Nile River. The Nile Basin is home to 300 million people whose countries are also members of the EAC, the Intergovernmental Authority on Development (IGAD), and the Common Market for Eastern and Southern Africa (COMESA).[49]

The Nile water agreement of 1929, granting Egypt the lion's share of the Nile waters, has been criticised by Uganda, Kenya and Tanzania as a colonial relic. The treaty, which Britain signed on behalf of its East African colonies, forbids any projects that may threaten the volume of water reaching Egypt. The agreement also gives Cairo the right to inspect the entire length of the Nile.[50] The 1929 treaty was contested and the 1959 treaty reviewed the quotas of water to be used. It was assumed that the upper riparian countries did not need the waters of the Nile and the British colonial regime failed to predict that, with population expansion, these countries would need more water in future.

When the East African countries became independent, these treaties were nullified. Julius Nyerere's Tanzania, for one, declared that all old treaties entered into by the British on behalf of Tanzania were null and void, but he

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stated that Tanzania was ready to negotiate. The sentiments were the same in Uganda and Kenya. Unfortunately, the other two countries did not take Nyerere's words as a legal statement.[51] Despite this, the East African countries, under the umbrella of the EAC, are now focusing on the way forward and tackling population pressure and environmental degradation as major security issues that are part of their foreign-policy interests.

The matters concerning the Nile Basin have been in a legal limbo. Unfortunately, of all the major rivers in the world only the riparian states of the Nile are not adequately cooperating on the use of its waters. This is what gave rise to the Nile Basin Initiative (NBI) in 1995.[52] Currently, the NBI is pursuing two tracks: the development track by the NBI and the Nile Basin Cooperative Framework.[53] The EAC countries involved in the NBI are designing institutional arrangements acceptable to all the concerned countries for a permanent solution through these two approaches.

Because the Nile is not the only river shared internationally – among others, there are the Mekong, Limpopo, Danube and Rhine – the NBI can learn something from them. The riparian countries are squabbling precisely because they want to share the Nile fairly. These countries need to develop a vision and to understand each other's interests.

When one travels on the Rhine, one hardly notices that it is an open channel with no borders. Countries can easily make use of such a shared resource to move towards economic integration. The Rhine is playing an important and catalytic role in bringing European countries together. The Nile can do the same in bringing together the African countries using its waters, especially in terms of development. The EAC member states stand to gain immensely from the Nile, but only if they cooperate and unlock the potential in their part of the river. This is where their foreign policy interests should, indeed, be channelled. This is what Egypt is trying to do: it has adopted dialogue and understanding as the best ways of coping with changes in the political and regional configuration in East Africa and the Great Lakes region. Among the most significant developments in the region is the general trend in Uganda, Ethiopia and Eritrea away from the legacy of Arab/Islamic culture and towards European/American planning, which at times conflicts with Arab interests.[54]

With such cooperation and the negotiations that have been going on, there should be no fear or worry of conflict over the Nile waters. Such fears were intense over 15 years ago. Then, experts in the region never talked about the Nile. Today, all the concerned countries are discussing it, not only in terms of technical issues, but also joint projects. Moreover, today the EAC countries also enjoy considerable support from the donors. Besides, there is a lot of positive talk in the upper Nile countries about the colonial treaties.[55]

In the past, threats, anger, acrimony and polarisation marked negotiations for the repeal of the 1929 treaty. Initially, the hostility was between Egypt, which continues to enjoy the lion's share of the Nile waters, and Ethiopia. The two countries almost went to war after Ethiopia threatened to obstruct the Blue Nile from flowing into Egypt in the early 1980s following Egypt's proposal to

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export the river's water to Israel's Sinai Desert. This was in the context of the historic Camp David peace agreement between Israel and Egypt.[56]

Lately, however, the animosity has been between Egypt and the original East African countries, which now want more water for their own needs. Indeed, while Uganda and Kenya have merely been talking about repealing the treaty, Tanzania publicly ignored it in March 2004 and went ahead to implement the $27,6 million Shinyanga Water Project. The project involves pumping water from Lake Victoria to irrigate farmlands in the Kihama area of the Shinyanga region.[57] According to Tanzania's Minister of Water Resources, 'the water we get from Lake Victoria is such a small amount of water anyway and it does not affect water coming to Egypt'.[58]

As Tanzania was implementing the project, Egypt was warning Kenya that an attempt to withdraw water from the lake for irrigation would be tantamount to a declaration of war. Though many of Kenya's biggest rivers – the Sondu, Yala, Kuja, Nzoia and Nyando – empty into Lake Victoria, Kenya seems to have adhered to the 1929 treaty, as it has not engaged in any major irrigation or hydroelectricity project. Indeed, the as yet incomplete Sondu-Miriu Hydropower Project was designed in such a way that the need for the construction of a big water reservoir along the Sondu River was avoided.[59]

Uganda's interests were succinctly captured by the journalist Charles Onyango Obbo, when he wrote: 'Egypt can't enjoy the benefits of having access to the sea, while blocking a landlocked country like Uganda from profiting from the fact that it sits at the source of the Nile.'[60] Indeed, Uganda is keenly interested in developing its hydroelectric potential and is currently studying several projects in collaboration with Egyptian water engineers. This despite the fact that under the agreement between Egypt and Sudan, and likewise under the 1929 treaty, Egypt assumed the right to vet any construction projects that would adversely affect its interests. This reflects current Egyptian diplomacy with Uganda. Of late, President Hosni Mubarak has been dispatching his foreign-affairs officials to President Yoweri Museveni for urgent consultations on water security. These consultations provide the government of Uganda with the opportunity to articulate its foreign-policy interests regarding the use of the Nile waters. Uganda recognises the fact that the hydropolitics of the Nile have long dogged the riparian countries, and that disputes over water utilisation are becoming more problematic and, therefore, it cannot afford to be a disinterested party. This despite the fact that Uganda is less dependent on the Nile, given the favourable climatic conditions that endow it with plenty of rainfall. Uganda has, therefore, recently made a U-turn from its earlier position that the sharing of the Nile waters was an awkward subject to discuss, and one that was too unsavoury to be debated publicly. The government of Uganda shared this view with most governments of the Great Lakes region.[61] Lately, Uganda has started speaking openly about the challenges it faces as it tries to equitably share out the river's resources, and to abrogate outdated colonial treaties that have for decades governed the use of the Nile waters. Uganda supports the stand taken by the other members of

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the EAC to reach an agreement to establish a new legal framework governing the sharing of the Nile waters. The government of Uganda recognises that the political fallout could turn out to be unpleasant, observing that failure to come to a consensus would undoubtedly express how hollow ring the calls for regional integration.[62]

The talks held in March 2004 in the Ugandan capital, Kampala, took place under the NBI. They highlighted how important it is for the Nile Basin countries to act together in order to ensure the rejuvenation and development of the vast region. Given its severe economic and political problems, the region is still trying to come to grips with the finer workings of the NBI. Nonetheless, Uganda, like the other EAC member states, realises that without the NBI, tension might spiral out of control.[63]

Uganda, therefore, encourages continued dialogue and building cooperation via an understanding of the resources in the subregion and by coming up with guidelines. Indeed, during the NBI meeting of the 12 Nile Basin Council of Ministers, held in Nairobi in March 2004, Uganda and other riparian states compromised on the usage of the Nile waters. Egypt, for one, made an about-turn on its earlier stand by stating that it had no problem with the other riparian countries using the Nile waters.[64] Generally, countries that had adopted hard-line positions were ready to compromise. This was in line with diplomatic niceties that dictate that the Nile Basin countries keep up a semblance of friendliness and political closeness. Thus, when Uganda's Minister of State for Water, Mary Mutagambwa, visited Egypt in April 2004, she stressed that Uganda had reached a 'full understanding' with Egypt,[65] although 'disagreeing is normal'.[66] Indeed, a fresh agreement governing the use and management of the Nile was signed in May 2010. This was done after rejecting the colonial agreement of 1929 and 1959. Ethiopia, Rwanda, Tanzania and Uganda signed what they called a 'landmark agreement'. Kenya, Burundi and the DRC, and other riparian states, for reasons that remain unclear, did not sign, but promised to do so later after the agreement was declared open for signing for one year from 14 May 2010 at the Nile Basin Initiative secretariat in Entebbe. The new agreement is supposed to determine how much water each country should get. This paves the way for the envisaged Nile Basin Commission. Uganda's policy is to cooperate with the rest of the riparian states in order to resolve the pending issues. The new agreement is to provide a legal framework for the creation of the Nile Basin Commission, which is expected to replace the NBI, which expires in 2012.[67]

Of course, Egypt and Sudan are not happy with the new agreement. Upon the signing of the new agreement, Egypt even threatened to block Nile dams.[68] After the pact was signed, Ethiopia inaugurated its Beles Dam, which would produce 460 megawatts. However, Egyptian media voiced concern that the project could reduce the flow of water to Egypt which gets almost all its water needs from the Nile, but faces possible shortages as early as 2017. This, despite reports that indicate that Egypt needs to cut water waste and use new technology in agriculture and other fields to support its case for the

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lion's share of the Nile's resources over the other riparian states.[69] Thus, the row over the Nile distracts from the real problem of poor water management in Egypt and the other upstream states clamouring for a bigger share. So there is no excuse that Egypt does not have enough water. Egypt, therefore, needs a radical overhaul of its water-management plan in order to cope with its water scarcity. After all, Egypt has many lawyers and experts trained in managing water issues.

Egypt is aware that when it 'allows' other riparian states to use the Nile for irrigation or building big dams, the level of water it receives will fall tremendously, thereby affecting its very survival. Indeed, Egypt has already entered the cycle of water poverty. With a population of over 78 million, by 2017, Egypt will need about 64 billion cubic metres of water out of the Nile's 84 billion cubic metres annually. By 2010, Egypt will need about 86,2 billion cubic metres of water. If it sticks to the 1959 agreement, it will have only 71,4 billion cubic metres.[70]

Now that the upstream states have signed an agreement without the consent of Egypt and Sudan, will they go to court or declare war like they have threatened in the past? In the past, the Egyptian politicians said the Nile water is a matter of national security to Egypt. In 1980, Egypt's late President Sadat threatened to use military power if any Nile countries tried to overturn the 1929 and 1959 agreements.

Since signing the new agreement, such threats have resurfaced. However, these are scarecrows that have been in existence to keep some upstream states from using the Nile water. How is it that other countries have used the water and nothing has happened? Ethiopia has developed four big dams on the Blue Nile to generate electricity. The Ethiopians intend to export the electricity to Uganda and Kenya, which are experiencing shortages. Tanzania built a project worth 27 billion Tanzanian shillings to draw water from Lake Victoria to supply Kahama irrigation projects in the Shinyanga region. Uganda has not been using the Nile waters for big projects due to lack of funds and consistent reliance on donors like the World Bank, which always preaches to Uganda to first consult Egypt whenever Kampala seeks funds to effect any development on the Nile. However, things are changing. Uganda's national budget is now relying less on donors, and Uganda now has oil, which, if used for the benefit of the masses, will mean that Uganda should be financially independent to a reasonable extent, thereby allowing the construction of dams.[71]

For Egypt and Sudan on the one hand, and the upstream states on the other, a win-win situation must prevail. Diplomacy, therefore, becomes the weapon for all of them to succeed together. This means that all of the riparian states should go slow in the negotiations. The countries that have signed the new agreement must ensure that Egypt and Sudan also sign the convention before doing any activity. In this scenario, Egypt should yield to the demands of the upstream states so that equal and unconditional use of the water is realised. After all, the 1997 Convention on the Law of the Non-Navigational Uses of International Waters calls for equitable utilisation and participation of

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watercourse states. The convention also provides for the states to cooperate on the basis of equity, territorial integrity, mutual benefit and good faith in order to attain optimal utilisation. The riparian states should also use the African Union (AU) to solve the issue, because the AU provides for the equitable utilisation of the upstream resources. So there is no way that Egypt can insist that the new Nile treaty is non-binding.[72] Neither can Egypt declare war on the other riparian states.[73]

The new agreement gives Egypt and Sudan one year to join the rest of the other riparian states on the framework. After one year, the signing of the treaty will close, and if Egypt and Sudan do not sign, they will not be part of the Nile Basin Commission. The treaty will transform the NBI to the Nile Basin Commission. Under this, the riparian states will have to submit their intended projects along the Nile to the commission for endorsement.[74]

On the positive side, the Egyptian government has ruled out war over the new treaty. Instead, the Egyptians plan to seek international arbitration. They also plan to intensify diplomatic efforts with the Nile Basin countries. Egypt's immediate approach is to turn itself into a donor to the upstream countries as it asks for further negotiations over the use of Nile River water. Egypt is sponsoring a Nile Basin investment conference and it has promised to support projects in Kenya. It is offering training to Ethiopia in different fields, including electrical energy, maintenance and renewable and non-renewable energy. It is also offering to cooperate with other Nile Basin countries on electricity projects and has exempted goods imported from Nile Basin countries from duties.[75] Moreover, now that Dr Wael Khairy from Egypt has taken over as the new head of the NBI, effective from September 2010, thereby replacing Harriette Ndombe of the DRC, Egypt will be in an even better position to pursue its aquarian diplomacy with the other riparian states.[76]

Therefore, although Egypt is attacking the new deal on the Nile, it is willing to spend heavily on the Nile Basin countries. This can be interpreted as a move to bribe the countries out of the agreement. For example, although the DRC promised to sign the agreement later, the DRC president, Joseph Kabila, made a U-turn and refused to sign any agreement that did not involve Egypt. He made the remark after meeting with Egyptian President Hosni Mubarak in Cairo.[77]

On Uganda's part, it has declared that it will go ahead to use the River Nile Basin waters for massive development projects, regardless of whether Egypt and Sudan sign the Nile River Cooperative Framework or not. According to a senior official in the Ugandan Ministry of Water and Environment, '[Uganda] shall start building big dams for electricity and irrigation projects to boost agricultural production'.[78] Uganda's new position is that it has waited for Egypt and Sudan for more than 10 years of negotiations and, therefore, it can no longer wait, as this would amount to postponing development, although it has not closed the doors on negotiations with the other riparian states – Egypt and Sudan included. This declaration, Kampala argues, is in line with Uganda's national interests, which it promotes beyond its borders.

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Uganda's foreign-policy interest is that cooperation over the Nile waters should form the basis for other joint ventures among the concerned countries. In fact, this is already happening through the basin-wide shared programme. There are also two subsidiary programmes being implemented at sub-basin level – the Nile Equatorial Lakes Subsidiary Action Programme and the Eastern Nile Subsidiary Programme. These programmes are implementing joint investment projects. The Nile equatorial projects have already encompassed the whole Kagera Basin, the Mara Basin and the River Malaba-Sio-Malakisi, between Uganda and Kenya. Even before full implementation of some of these projects, the NBI countries are talking about scaling up investment projects so that the expectations of the people are quickly met.[79] These people are some of the poorest in the world today.

11.4 Conclusion and Policy Recommendations

Uganda's foreign-policy interests are to ensure that the Nile waters are equitably shared by the riparian states for their development. The government of Uganda advocates the view that water-demand management is the key to providing the balance of supply and demand and mitigating conflict in the future. It is in the best interests of Uganda and the other riparian states to promote policies with the potential to reduce a water scramble and water-resource scarcity. The best approach for reducing demand may be through an integrated demand-management system instituted by a government or regional commission. In this regard, the NBI is best suited to undertake this exercise. The policy that Uganda supports looks at demand across all uses (agricultural, industrial and urban), and uses incentives, such as pricing, investment credits, and penalties, to promote efficient water use.

In addition to demand management, several other steps could be taken by the riparian states to reduce the potential for conflict. One is to encourage the development of an international body of laws concerning Nile water resources that would be capable of gaining acceptance and put into practice by all the riparian states.

With the current growing population trends in the riparian states, Nile water utilisation will increase tremendously. One can thus expect heightened competition for Nile waters, hence regional instability and conflict. In such an environment, certain concepts should be of importance to strategists. Geopolitical thinking will increase in importance in the post-Cold War environment, where regional issues such as water security seem destined to remain the chief concern of the riparian states' security interests. In today's milieu, as far as the regional security of the riparian states is concerned, geographical variables punctuated by Nile water demand may be ignored at the peril of national and regional strategists.

The status quo of the 1959 agreement must be repealed and the new agreement must be signed, as indeed has been done by the majority of the riparian states, to accommodate the interests and development agenda of all

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Nile countries. The 1959 agreement stipulates that Egypt and Sudan must reduce their use of Nile waters if the upstream countries begin to use the Nile for development. Consequently, although Egypt is suffering from water-stress phobia, it has no choice but to share the Nile with the other riparian states. Egypt must also respect the interests and needs of the other Nile riparian states, which want to use the Nile for their respective socio-economic development. To achieve a peaceful use of the Nile, UN development agencies, like the United Nations Development Programme, and the AU must be involved and if possible enhance the development endeavours of the respective riparian nations. The development of the Nile will then benefit all, resolve the contradictions between Egypt and the other Nile countries, and should Egypt make the mistake of resorting to the use of force and war, it is the one which stands to suffer and lose most. However, Egypt cannot afford to make such an obvious blunder. This is why Dr Khairy, an Egyptian currently heading the NBI, recognises that combating water shortage, poverty, environmental degradation and climate change should continue to be the key objectives of the Nile Basin countries.[80]

Notes and References

1 Herman, C., 1990. Changing course: When governments choose to redirect foreign policy. *International Quarterly*, pp.300–301.

2 Modelski, G., 1962. *A theory of foreign policy*. London: Pall Mall, p.3.

3 Frankel, J., 1968. *The making of foreign policy.* Oxford: Oxford University Press.

4 Utete, C.B., 1985. Foreign policy and the developing state. In Ojo, J.C.B. et al., *African international relations*. London, New York, Lagos: Longman.

5 Morgenthau, H., 1967. *Politics among nations: The struggle for power and peace*, 5th edition. Scientific Book Agency.

6 Holsti, J., 1977. *International politics: A framework for analysis*, 3rd edition. Englewood Cliffs: Prentice-Hall.

7 Choucri, N. & North, R.C., 1975. *Nations in conflict, national growth and international violence*. San Francisco: Freeman, pp.15–17.

8 Azar, E.E. & Chungi-Moon, 1990. Rethinking Third World national security. In Azar, E.E. & Chungi-Moon (eds), *National security in the Third World*. Aldershot: Edward Elgar Publishing, pp.1–13.

9 Ayoob, M., 1986. *Regional security in the Third World*. London: Croom Helm, p.10.

10 Brown, L.R., 1982. An untraditional view of national security. In Reichart, J.F. & Stuarm, I. (eds), *American defence policy*. Baltimore: Johns Hopkins University Press, p.22.

11 Ekppebu, L.B., 1980. An African perspective on US/USSR/China arms politics. *Alternative* Vol. iv, p.93.

12 McNamara, R.S., 1968. *The essence of security*: *Reflections in office*. New York: Harper and Row, pp.145–149.

13 Mwagiru, M., 2004. *African regional security in the age of globalisation*. Nairobi: Heinrich Boll Foundation, p.6.

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Cooperative Diplomacy, Regional Security and Sustainable Development in the Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

14 Collins, R.O., 1990. *The waters of the Nile*. Oxford: Clarendon Press, p.67.

15 Ibid.

16 Glassman, J., 1990. Nile waters. *Journal of African History*, 33(1), p.150.

17 Ohlosson, L., 1995. *Hydropolitics: Conflict over water as a developmental constraint*. New Jersey: Zed Books, pp.31–34.

18 Ibid., pp. 35–40.

19 Pearce, F., 1994. High and dry in Aswan. *New Scientist*, 7 May, p.29.

20 Nhail, B., 1995. Sudan – environment: Eviction threat over new dam. Inter Press Service, 28 February, pp.1–3.

21 Pearce, 1994. op. cit., p.28.

22 Nhail, 1995. op. cit., p.3.

23 Pearce, 1994. op. cit., p.29.

24 Nhail, 1995. op. cit., p.2.

25 El-Khodary, N., 1995. Sudan – environment: Eviction threat over new dam: Response, 3 March, as quoted by http://sun.nlib.ee/other/onforterra /1995/03/meg00036.html pp.1–2 [Accessed 15 January 2011].

26 Postel, S., 1992. *Last oasis: Facing water scarcity*. New York: W.W. Norton, pp.1–23.

27 Ohlosson, L., 1995. op. cit., p.178.

28 Postel, S., 1992. op. cit., p.1.

29 Ibid., p.3.

30 Ibid,. p.4.

31 Ibid., p.5.

32 Butts, W., 1997. *History of the Nile*. London: Longman, p.1.

33 Ibid., p.2.

34 Ibid., p.3.

35 Ibid., p.5.

36 Ibid., p.6.

37 Ibid., p.7.

38 Ibid., p.1.

39 Arlosoroff, S., 1996. Managing scarce water. In Allan, J.A. (ed.), *Water, peace and the Middle East*. New York: I.B. Tauris, p.28.

40 Ibid., p.28.

41 Lowi, M.R., 1996. Water disputes in the Middle East. *Environmental Change and Security Project Report*. Washington: The Woodrow Wilson Center, spring, p.6.

42 Ibid., pp.7–8.

43 Knife, A., 1997. *The Nile issue: Psycho-political hurdles to an agreement and the way forward towards rapprochement*. Paper presented at the 5th Nile 2002 Conference. Addis Ababa, p.7.

44 Ibid, pp.8–10.

45 Okoth, P.G., 2010. *Kenya and the contemporary world order*. Kakamega: Masinde Muliro University of Science and Technology Press, pp.171–192.

46 Okoth, P.G., 2000. Uganda's foreign policy during the Amin Era, 1971–1979. *African Review of Foreign Policy*, 1(3), July, pp.1–25.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by F.C. Adar et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
Created from uregina on 2021-03-08 10:01:57.

47 Okoth, P.G, 1994. The foreign policy of Uganda toward Kenya and Tanzania. In Oyugi, W.O. (ed.), *Politics and administration in East Africa*. Nairobi: East African Educational Publishers, pp.359–394.

48 Okoth, P.G., 2007. Uganda's foreign policy in the post-Cold War era: The Museveni presidency in Uganda. In Adar, K.G. & Schraeder, P.J. (eds), *Globalisation and emerging trends in African foreign policy Vol. 2: A comparative perspective of Eastern Africa*. Lanham, Boulder, New York, Toronto, Plymouth: University Press of America, pp.125–135.

49 Kaiza, D., 2004. New battle for the Nile moves to Nairobi. *The East African*, 15–21 March, p.15. See, also Kaiza, D., 2004. Interview with Meraji Msuya, executive director of the Nile Basin Initiative, Entebbe, Uganda. *The East African*, 1– 7 March.

50 Vasaga, J., 2004. Storm lies ahead over future of Nile. *The Guardian*, 13 February, p.1.

51 Kaiza, 2004. op. cit., p.15.

52 Global Water Intelligence, 2000.

53 Kaiza, 2004. op. cit., p.15.

54 Hammad, A.A., 2000. Water, water everywhere. *Al-Ahram Weekly*, 10–16 February, p.2.

55 Kaiza, 2004. op. cit., p.15.

56 Mbaria, J., 2004. Nile riparian states compromise on waters. *The East African*, 22–29 March, p.6.

57 Ibid. See also Nkrumah, G., 2004. Nile Basin countries redouble efforts to work out a way of sharing and managing the region's water resource. *Al-Ahram Weekly*, 11 June.

58 Ibid., p.1.

59 Mbaria, 2004. op. cit., p.6.

60 Vasaga, 2004. op. cit., p.2.

61 Nkrumah, 2004. op. cit., p.1.

62 Ibid., p.2.

63 *New Vision*, 2004. Kampala, 18 March, p.1.

64 Mbaria, 2004. op. cit., p.6.

65 Nkrumah, 2004. op. cit., p.3.

66 Tenywa, G., 2010. Uganda to continue Nile talks. *New Vision*, 17 May, p.1.

67 Ibid., p.2.

68 Egypt threatens to block Nile dams, 2010. *The Daily Monitor*, 19 May, 2010, p.4.

69 Biswas, A., 2010. Egypt wasting Nile water. *New Vision*, 5 May, p.11.

70 Ibid., p.12.

71 Ibid.

72 Lirri, E., 2010. Egypt insist new treaty is non-binding. *Daily Monitor*, 17 May, p.4. See also Lirri, E., 2010. Egyptian named new head of Nile Basin, *Daily Monitor*, 6 September.

73 Womakuyu, F., 2010. Will Egypt go to war over the new Nile treaty? *Saturday Vision*, 12 June 12, p.6.

74 Ibid.

75 Mulekwa, E., 2010. Egypt using diplomacy. *New Vision*, 22 May, p.17.

76 Lirri, 2010. op. cit., p.3.

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Cooperative Diplomacy, the Nile River and the Riparian States: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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77 Womakuyu, 2010. op. cit., p.6.

78 Ibid.

79 *New Vision*, 5 September 2005, p.18.

80 Lirri, 2010. op. cit., p.3.

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PART 3

Conclusion

Setting the Agenda for the Nile River Waters Agreement



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CHAPTER 12
Conclusion: Setting the Agenda for the Nile River Waters Agreement

Korwa G. Adar and Nicasius A. Check

12.1 Introduction

The debate about water sharing within the Nile Basin has been centred on Egypt's need for a sustained and reliable supply of water, without recourse to the water needs of the upper riparian states. The 1929 and 1959 agreements clearly attest to this. The legal regime of these agreements and their international legal persona in the upper riparian region has been carefully addressed in Chapter 1 by Lumumba. The international legal persona of these agreements is perhaps intriguing, as they were concluded when most of the upper riparian states where still under colonial rule. The question, therefore, arises – should the upper riparian states respect both the 1929 and 1959 agreements? The various chapters in the book have attempted to address this pertinent issue. Save for Egypt, all the other nine riparian states are of the view that a new Nile agreement is long overdue and that the recently concluded Cooperative Framework Agreement (CFA) should be able to address the needs of all the riparian states with regard to water sharing and conflict resolution. The fact that only five out of 10 riparian states (Ethiopia, Kenya, Rwanda, Tanzania and Uganda) have signed the CFA, one year since it has been open for signature, suggests that a further debate on the contents of the agreements should be undertaken.

On the whole, one notices that there has been little progress in finalising comprehensive agreements involving other riparian states around the world. In most cases where a river or water system is shared by two or more countries, there has been some progress made bilaterally.[1] Egypt and Sudan have employed this tactic successfully in opposing international assistance to Ethiopia for the construction of dams on the Blue Nile and the Atbara. In Chapter 7, Hassan and Al Rasheedy make reference also to the carrot diplomacy which Egypt has employed in dissuading some upper riparian states from signing the CFA. This has actually worked by ensuring that there is no comprehensive binding basin-wide agreement regulating the water resources of the Nile. The main beneficiary of this chaotic situation is Egypt, which would continue to support the present status quo through its leverage

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in international financial institutions and its relations with the United States. As a result, a basin-wide comprehensive agreement that is not supportive of Egypt's historic claim to the Nile water would not be supported by the international community.

Another factor that has worked against developing a basin-wide agreement in the Nile is the presence in the region of major differences of culture, language and religion among the riparian states. The cultural and religious differences between Egypt and Ethiopia have dented any suggestion that the two riparian states could agree on a basin-wide water-sharing agreement. Without a common border, Egypt cannot threaten Ethiopia militarily, and it equally did not prevent Ethiopia from allegedly attempting to assassinate the Egyptian president on a visit to Addis Ababa in 2005 during the AU summit. Ethiopia, on the other hand, is too poor to initiate development projects on the Blue Nile on its own without international financial assistance. Equally intriguing is the fact that Ethiopia has been too embroiled in a proxy war in Somalia and with the ever-threatening Eritrea to wage a successful campaign against Egypt over the waters of the Nile.

In the absence of a basin-wide agreement, bilateral water-sharing negotiations should be encouraged among the water-stressed or water-scarce riparian states. In this regard, Egypt and Ethiopia should look at ways in which they can come to some kind of understanding on a water-sharing regime. The reason for singling out the two countries stems from the fact that Ethiopia is the major contributor of the Nile water, while Egypt is the major beneficiary. A firm bilateral agreement between the two would avoid unnecessary squabbling over the ratio of the Nile water each riparian state is entitled to. Still within the realm of bilateralism in the Nile Basin, as early as 1991, Ethiopia and Sudan reached an agreement on the Blue Nile and Atbara. The aim was to promote the principle of equitable utilisation and the establishment of a joint technical committee to exchange data and explore cooperation in other areas of mutual interest.[2] In 1993, Egypt also reached an agreement with Ethiopia covering a wide range of issues, including the exchange of data, in which the parties agreed not to carry out any activity that would harm the other, and to consult and cooperate on mutually beneficial projects on the basis of the principle of international law.[3]

Although the Ethio-Egyptian agreement does not establish an ongoing consultative framework, it provides an opportunity for Egypt to control, and stamp its authority on, what Ethiopia can and cannot do along the Blue Nile. The veto right accorded to Egypt by the 1993 agreement immediately had an enormous spin-off for Ethiopia. It should be recalled that immediately after the agreement had been signed, Egypt did not object to a loan application by Ethiopia for a small-scale irrigation project on the Blue Nile.[4] Because of the success of these bilateral agreements, bilateralism should be encouraged as one of the models for facilitating basin-wide agreements on key issues regarding water sharing. Egypt, Ethiopia and Sudan should take the lead in making sure that consensus on important issues, such as water security,

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technological transfer and environmental conservations, is the cardinal issue guarding any negotiation process.

On the whole, there are perhaps 263 rivers globally that cross international boundaries. Many of these rivers, including the Nile, are being significantly degraded through poor and unsustainable river-basin and ecosystem management frameworks. These river basins, which traverse 145 countries, it has been noted, cover about half of the earth's land surface, are home to about 40 per cent of the world's population and contain about 60 per cent of global river flows.[5] One of the major challenges of these river basins is the negative impact of climate change, which inadvertently has reduced people's access to fresh water and brought about resultant diminishing returns on the livelihood of the people. Several international efforts to address these challenges have been contemplated, including the Kyoto Protocol, the ongoing negotiations within the Conference of Parties (COP) framework and the UN Convention on the Law of the Non-Navigational Uses of International Watercourses. This UN convention clarifies the rules of international law governing all non-navigational uses of cross-boundary watercourses. It also attempts to balance the interests of upper and lower riparian states and provide a basis for negotiating regional and bilateral agreements.[6] The chapters in this book reflect the attempts by the Nile riparian states to apply the principle of 'equitable and reasonable utilisation' of the Nile water, as contained in the UN convention and the CFA legal framework.

However, it should be noted that international water law, in most cases, could be described as frugal, as it lacks centralised institutions for both law making and law enforcement, relying instead on decentralised processes of self-help, agreement and custom.[7] Despite this drawback, the UN watercourse convention has set forth basic rules of international law regarding internationally shared watercourses. Article 5, contained in part II of the convention, entrenches the principle that is widely regarded as the cornerstone of the accord: the principle of equitable and reasonable utilisation and participation.[8] This requires that a state sharing an international watercourse with other states utilises the watercourse, in its territory, in a manner that is equitable and reasonable vis-à-vis the other riparian states. In order to ensure that their utilisation of an international watercourse is equitable and reasonable, states are to take into account all relevant factors and circumstances.[9] (Dr Deng has elaborated on these factors and circumstances in Chapter 3.) Article 5 also sets forth the principle of equitable participation, which, in all its vicissitudes, implores states to participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. The Helsinki Accord also places significant interest in Article 7, which emphasises the need not to cause significant harm to downstream countries. The article requires that states shall take all appropriate measures to prevent significant harm to other states sharing an international watercourse. In order to take on board this internationally accepted legal instrument, members of the Nile Basin Initiative (NBI) crafted the CFA, which in all its operational framework

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conforms with the Helsinki Accord. However, not all members of the NBI have signed the CFA.

A closer examination of conflict in the region reveals that the Nile question is not just about water sharing, but more to do with one country trying to establish a foothold in an erstwhile strange socio-political and cultural environment. First, it should be noted that the Nile forms part of the post-referendum issues being negotiated by parties to the Comprehensive Peace Agreement in Sudan, viz. the National Congress Party (NCP) and the Sudan People's Liberation Movement (SPLM).[10] Because of the belligerence of some of the parties to the CPA, a consensus on the CFA would be difficult to arrive at. These difficulties are clearly evident, as only four out of 10 countries have signed the CFA, more than a year after it was officially opened for signature in Entebbe, Uganda. The reluctance by some NBI members to sign the CFA could be attributed to the tumultuous route the Nile treaty regime has undergone thus far.

The general concern within the Nile Basin region is that the new Nile treaty could work if there is enough water to satisfy all reasonable needs of the riparian states' populations. This was evident in the early days – the 1929 and 1959 treaties temporarily solved most water-related problems of the two signatory countries. National and regional conflicting interests resurfaced between Egypt and the other riparian states soon after independence in the 1960s as most of the upstream countries began to question the 1929 and 1959 treaties. The negative impact of climate change on the Nile Basin ecosystem and Egypt's increasing population made its share of the Nile water barely adequate.[11] As a result, Sudan and Ethiopia have been at the forefront of negotiating a new water-sharing regime in the Nile. Although these negotiations have resulted in the CFA, Egypt has somehow managed to arm-twist some of the riparian states from adhering to the CFA. However, some of the upstream countries, such as Burundi, Rwanda, Kenya, Tanzania and Uganda, have undertaken to develop their economies by exploiting the Nile waters and have claimed that the 1929 and 1959 treaties were colonial treaties and, therefore, not binding on the newly independent countries. Despite these tacit understandings, it has not prevented Egypt from establishing control over water projects in these states. Of particular importance is the fact that Egypt manages the Owen Falls Dam at the outlet of Lake Victoria in Uganda.[12] Secondly, Egypt, together with the Central African Republic and Sudan, has established an organisation called Undugu (brotherhood), which is principally aimed at creating a milieu through which information on economic development, especially issues around water, can be exchanged. These are clear indications of Egypt's resolve to control any water development initiative in upstream riparian countries.

The perpetual conflict between Ethiopia and Eritrea has distracted attention from meaningful developmental projects which could have had a useful impact on the Nile water supply. The situation could have been different if stability prevailed in the region, paving the way for the partner states to embark on developmental water-consuming projects. Besides multilateral

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initiatives concluded among the partner states which deal with water-sharing-regime questions within the Nile Basin, it would be necessary for Egypt and Ethiopia to engage in bilateral processes. This, in the authors' view, would help in moderating the prevailing tensions between the two countries over the Nile water-sharing equation. The fact that the ex-President of Egypt, Hosni Mubarak, escaped an alleged assassination attempt in Addis Ababa during the 2005 AU summit suggests that the negotiation process should be hastened and amicable, with bilateral, lasting solutions clearly defined. Although there is no definite link between the assassination attempt and the Nile water-sharing issue, there are nevertheless concerns that such tensions between Ethiopia and Egypt could degenerate into armed conflict.

12.2 The Cooperative Framework Agreement

One of the main goals of the NBI is to develop the water resources of the Nile Basin in a sustainable and equitable way in order to ensure prosperity, security and peace for all its peoples. To operationalise this concept, a detailed framework had to be set up to manage the process of sustainability and equity in the sharing of the water resources of the Nile. It is through this understanding that all the 10 countries of the NBI have been engaged in negotiating the draft CFA. Since 2007, the CFA has been discussed by the countries and consensus has been reached on all except Article 14, which deals with water security.[13] With regard to the water-security question, one of the principal objectives of the framework was to ensure that the current use of the Nile waters does not significantly affect the water security of any Nile Basin state.[14] Egypt and Sudan are the only countries that have expressed reservations on the water-security question, and have indicated that they would like the clause to read as follows: 'Not to adversely affect the water security and current uses and rights of any other Nile Basin state.'[15] The other riparian states are of the opinion that inserting such a clause would be to condone the 1929 and 1959 agreements. Although the draft CFA was presented for signature in 2010, Article 14(b) was annexed, pending its resolution by the Nile Basin Commission once it is established. Egypt and Sudan have rejected the CFA because of the fact that Article 14(b) has been annexed to the agreement, arguing that a resolution should be reached before the draft agreement is presented for signature. The CFA will become operational once a sixth member state ratifies the agreement.

Egypt and Sudan insist that decisions regarding the draft CFA should be reached by consensus, arguing that any action taken without consensus could not be carried out under the NBI framework. On their part, the upper riparian states have responded by presenting the draft CFA for signature. In many respects, this continued impasse, the authors argue, could jeopardise the donor-funded projects of the NBI. The fact that the riparian states resolved to meet at the end of January 2011 to explore ways and means of unblocking the stalemate on negotiations on the CFA is a step forward in the process of establishing a water-sharing framework within the Nile Basin. At the time of

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writing this chapter in early January 2011, the NBI member states are yet to meet to resolve the contentious questions entrenched in the CFA raised by some of the NBI member states.

14.2.1 Towards a new water-sharing treaty?

The process of a negotiated water-sharing regime within the Nile Basin was completed in 2007, when the first draft of the CFA was finalised. Although Egypt objected to some of the protocols, especially those dealing with water security, the treaty was nonetheless presented to member countries for signature in August 2009 in Entebbe, Uganda. It has been argued that the failure by the NBI to attract the requisite number of members to adhere to the agreement can be attributed to Egypt's carrot diplomacy with some Nile riparian states (see Hassan and Al Rasheedy, Chapter 7). The question many pundits have raised is what are the ingredients needed for all, especially Egypt, to accede to the CFA? Hassan and Al Rasheedy (Chapter 7) have succinctly addressed the Egyptian position, but it is also important for Egypt to note that other riparian countries, Ethiopia in particular, need sufficient water and water-related development endeavours to offset the many years of war and drought. It is also important for Egypt to persuade other riparian states about its commitment to Africa vis-à-vis its geographical and cultural association with the Middle East.[16]

Egypt should equally take cognisance of the fact that some of the riparian states, such as Ethiopia and Sudan, genuinely need a sizeable quantity of the Nile water to satisfy industrial, commercial, subsistence and agricultural needs. If such a consideration were not taken into account, most of these countries would not meet their Millennium Development Goal targets by 2015. Recognition by Egypt of some of these issues would, therefore, open the route for a genuine negotiation for an inclusive agreement, which would equally take on board the fact that the Nile issues are socio-economic, political and cultural in nature for Egypt, Ethiopia and Sudan. Such an agreement should take into account that the Nile forms part of the basis for the physical survival of Egypt and its geopolitical interests.[17]

It is also of utmost importance for the other riparian states to recognise the historicity in Egypt's claim to the Nile water without precluding the need for an equitable and reasonable agreement on the sharing of the water. This should be done within the realm of realism, rather than the passion and emotion that have characterised the Nile water-sharing negotiations in the post-1990 era. Any new negotiation on the Nile question should also take on board the fact that delaying the process is actually counterproductive to all the riparian countries, as water-related development projects would have to wait until such negotiations are concluded. Within the realm of such an understanding, there is a need for a middle-ground perspective on the matter and a revised CFA should take this into consideration. To guarantee regular and consistent flow of the Nile water, Egypt should use it leverage within

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international financial institutions to finance environmental-conservation initiatives in upper riparian states and to facilitate irrigation concerns and soil-conservation initiatives in other riparian states. Paramount to these concerns would be a concerted effort in making sure that technological transfer to riparian states from developed countries is a reality so that the riparian states can adequately mitigate the effects of climate change.

Before the drafting of the CFA, several interim arrangements regarding the Nile water had been contemplated. It is of the utmost importance to also understand that, since ancient times, water has been a central political factor in this part of the world. It has been argued that the shared need for the optimum management of water, both because it is scarce and because it is an imperative human need, can become a source of regional unity rather than regional discord if the contending states are prepared to exploit this possibility actively and effectively, rather than to allow themselves to drift into mutually destructive competition.[18] Cooperation in water sharing is needed more than ever before because of the increasing water shortages and the negative effect of climate change. However, the Nile River Basin states have begun to move in this direction with the conclusion of the CFA. The finalisation of the CFA began with the establishment of the Technical Cooperation Committee for the Promotion of the Development and Protection of the Nile Basin (TECCONILE), which replaced earlier initiatives, such as HYDROMET and several Nile conference series. The idea was to forge an all-inclusive Nile Basin cooperative initiative under one legal regime. By the beginning of 2000, the NBI was formed with a permanent secretariat in Entebbe. Since its formation, the NBI has initiated several basin-wide workshops to strengthen cooperation among riparian states and to look at ways of putting in place credible institutions to facilitate the Nile water-sharing schema and conflict resolution among the contracting NBI member states.

As a result, the NBI created within its secretariat a permanent consultative body to draft a comprehensive basin-wide agreement. In May 2010, the Nile Cooperative Framework Agreement was presented to all riparian states for signature. The protocols of the agreement have been widely discussed in the various chapters of this book, with the principle of equitable and reasonable utilisation, water security and the formation of the Nile River Basin Commission as its features. Egypt and Sudan have objected to the agreement, indicating that the CFA negates Egypt's rights to the lion's share of the water. Egypt's Minister of Irrigation, Mohammed Naser, has argued that the new agreement is not binding on Egypt and that it violates the country's water rights.[19] The Egyptian delegation also maintained that the new agreement does not conform to international law. It is still unclear how the Egyptian delegation would prove this point, but the fact that five out of 10 riparian states have signed the agreement attests to the will of the riparian states to abrogate the old water-sharing formula and embrace the new dispensation. The fact that the European Union (EU) representative in Egypt has cautioned against a unilateral Nile sharing deal is a precursor to the understanding that

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the EU would not endorse the CFA if Egypt is not a signatory.[20] This would be a big blow to the other riparian states, as they rely heavily on the EU in financing basin-wide conservation, dam and irrigation projects.

It should be noted that the CFA is a replica of the UN convention and that the Nile basin states cannot simply adopt the convention as a mechanism for instituting basin-wide management. Secondly, the Helsinki agreement is not yet in force among the signatory states, and the convention is only a framework for negotiations.[21] What the UN convention set out to do was codify the relevant general customary international rules, and, as is the case with customary rules, it cannot resolve disputes over shared water resources. Conflict management within such a structure can only be dealt with by specific agreement between the riparians and the creation of the necessary institutional structure which would address common matters in the riparian states.[22] The Nile Basin states were not in harmony during the adoption of the UN convention, from which the CFA borrows its legal framework. Kenya and Sudan voted in favour of the convention; Congo, Egypt, Eritrea, Ethiopia, Rwanda, Tanzania and Uganda either abstained or did not participate in the voting. Burundi is the only Nile Basin riparian state which voted against the convention.[23]

There was already disagreement on the shared water framework within the UN corridors and it would have been a miracle if these countries had cooperated on the CFA, considering that the CFA was based on the UN convention. It is, therefore, important that the riparian states should look at ways of establishing a basin-wide framework for cooperation, taking into account the peculiarity of the region and the countries that make up the Nile Basin. Although the UN convention endorses the primacy of equitable and reasonable utilisation in the management of internationally shared water resources, converting this noble principle into practical allocations within the basin is bound to be a daunting and challenging task. The task for the riparian states would be to recognise the fact that the existence of Egypt as a state depends on the regular flow of the Nile water. Coupled with this primary understanding, the issue of the recognition of the historic rights of Egypt over the water could then be addressed.

To argue that the chapters in this book unanimously advocate for an equitable and reasonable utilisation principle as the ultimate water-sharing concept would be an overstatement. Hassan and Al Rasheedy (Chapter 7) are of the opinion that the historic rights of Egypt over the Nile waters should be recognised, whereas Deng (Chapter 3) and Tafesse (Chapter 4) argue strongly for the application of the principle of equitable utilisation. Deng and Tafesse point to the need to resist the historic right principle on which Egypt's claim to the Nile water has been anchored. They argue that in order to avoid tension or armed conflict among Nile Basin countries, the ratio of contribution to consumption should be revisited. They also argue that the 1929 and 1959 agreements cannot be binding on the upper riparian states, which were still objects of international law because of their status as colonial territories during

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the period. Kenya and Tanzania have reserved their rights in the recognition of Egypt's historic rights over the Nile waters, invoking the Nyerere Doctrine as the determining factor on the 1929 and 1959 treaties (see Adar and Bosire in Chapters 9 and 10). Mangu and Oloo (Chapters 2 and 8) are of the opinion that the DRC and Eritrea are less concerned with the wrangling within the Nile Basin, paving the way for carrot diplomacy, as propagated by Egypt. Burundi has been one of the countries in the region that is favourable to the carrot diplomacy, considering that it has very little territorial area drained by the Nile Basin. On the other hand, Rwanda and Uganda have advocated for the application of the equitable and reasonable utilisation principle and have indicated that they would engage in developmental projects within the Nile Basin if a basin-wide agreement were not reached in the next couple of years following the conclusion of the CFA.

In conclusion, the following need to be taken into consideration:

- Because of the apparent failure of the CFA to attract unanimity among the riparian states, reinforcement of bilateral talks between Egypt, Sudan and Ethiopia with regard to cooperation on the initiation and financing of important developmental projects along the Nile is necessary.
- Nile riparian states should put emphasis on technology transfer and the development of the human-capital needs of the riparian states. These efforts would enable the states to adequately address the challenges posed by the negative effect of climate change in the Nile Basin.
- Efforts should equally be made to address the need of the rural population along the Nile River and to strategise ways in which its livelihood could be assured through alternative subsistence approaches. This could be done through the provision of healthcare centres, the construction of roads and the provision of telecommunication facilities.
- Basin-wide interdisciplinary research should be conducted to address the water needs of the riparian population. There is also a need to encourage informal trade between the riparian states and to facilitate the free movement of people and goods in the region.
- Ultimately, the authors hope that this book will stimulate researchers, policy makers and practitioners to reflect on the complexities they face in bringing countries together under the aegis of a supranational organisation in managing their natural resources. The onus is on the leaders of the riparian states to seek broad-based perspectives so that policies take better account of people's strategies in water management to the benefit of rural livelihoods and the environment in the Nile Basin as a whole.[24]
- The conclusion of a new agreement on the Nile River Basin should take into account all the riparian states, with the principle of equitable and reasonable utilisation taking centre stage. The principle of equitable

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utilisation should be the subject of negotiation between the riparian states, and take into consideration the needs and specificities of each state involved.

- The principle of water security should equally be debated among the riparian states, with particular interest in what constitutes water security to the partner states and the region.
- The formation of a proposed Nile Basin Commission should be finalised to enable the contentious issues inherent in the utilisation of the waters of the Nile to be addressed.

Notes and References

1 Dellapenna, J., 2006. The Nile as a legal and political structure. In Coopey, R. & Tvedt, T. (eds), *A history of water: The political economy of water*. London: I.B. Tauris, p.302.

2 Ibid., p.304.

3 Ibid.

4 Ibid.

5 WWF & World Development Movement, Why the UK government must support the UN Watercourses Convention. Available at http://assets.wwf.org.uk/CB47FBD2-FB7B-4926-B4FE-248C39BEAE1E/FinalDownload/DownloadId-03328D3989DD3D2DEC4520 30CCE72671/CB47FBD2-FB7B-4926-B4FE-248C39BEAE1E/downloads/briefing_paper_ watercourses_convention.pdf [Accessed 30 December 2010].

6 Ibid.

7 Dellapenna, 2006. op. cit., p 296.

8 See Article 5, Part II of the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses.

9 McCaffrey, S., 1997. Convention on the Law of the Non-Navigational Uses of International Watercourses. Available at http://untreaty.un.org/cod/avl/ha/clnuiw/clnuiw.html accessed 28/12/2010 [Accessed 30 December 2010].

10 International Peace Institute, 2010. A political storm over the Nile, issue brief. New York: IPI, p.1.

11 Dellapenna, 2006. op. cit., p.299.

12 Ibid.

13 See Article 14 of the Draft Agreement on the Nile Basin Cooperative Framework, Entebbe, Uganda, 14 May 2010.

14 International Peace Institute, 2010. op. cit., p.4.

15 Ibid.

16 Abraham, K., 2004. *Nile dilemmas: Hydropolitics and potential conflict flashpoints*. Addis Ababa: The Ethiopian International Institute for Peace and Development, p.236.

17 Ibid., p.239.

18 Dellapenna, 2006. op. cit., p.300.

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Cooperative Diplomacy, Regional Stability and National Interests : The Nile River and the Riparian States, edited by F. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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19 MirayaFm, 14 May 2010. Four Nile Basin countries sign Nile water agreement regardless of Egypt and Sudan boycott. Available at http://www.mirayafm.org/index.php?option=com_content&view=article&id=2883:4-nile-basin-countries-sign-nile-water-agreement-regardless-of-egypt-and-sudan-boycott-&catid=85:85&Itemid=278 [Accessed 5 January 2011].

20 Ibid.

21 Dellapenna, 2006. op. cit., p.301.

22 Ibid.

23 Ibid.

24 Homewood, K., 2005. Rural resources, local livelihoods and poverty concepts. In Homewood, K. (ed.), *Rural resources and local livelihoods in Africa*. New York: Palgrave Macmillan, p.204.

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Cooperative Diplomacy, Regional Stability and Water Institutions: The Nile River and the Riparian States, edited by G. Adar, et al., Africa Institute of South Africa, 2011. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uregina/detail.action?docID=1134926.
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Appendix 1
Nile River Basin Bilateral and Multilateral Treaties/Agreements

Date	Countries	Treaties/agreements (Only specific clauses/articles of some of these treaties/agreements dealt with the River Nile)
1891	Great Britain and Italy	Italy not to construct irrigation work on Atbara River that could affect flow of the river into the Nile
1894	Great Britain and Belgian Congo	Articles on River Nile
1901	Great Britain and Italy	Agreement over the utilisation of River Gash
1902	Great Britain-Italy and Italy-Ethiopia	Related to the frontiers between Anglo-Egyptian Sudan, Ethiopia and Eritrea signed on 15 May 1902 in Addis Ababa, Ethiopia. Emperor Menelik II agreed neither to construct nor to allow the construction of any work on the Blue Nile, Lake Tana and Sobat River that could affect the flow of waters into the Nile River.
1906	Great Britain-Italy-Ethiopia	Articles on River Nile
1906	Great Britain-Congo	Signed on 8 May in London. The Congo agreed neither to construct nor to allow construction of work on or near the Simliki and Isango Rivers which could affect waters flowing into Lake Albert
1925	Great Britain-Italy	Italy to recognise the hydraulic rights of Egypt and Sudan in the Blue Nile and White Nile rivers. Italy not to construct on the headwaters of the Blue Nile and White Nile and their tributaries any work that could affect the flow of the waters into River Nile.
1929	Great Britain-Egypt (Great Britain on behalf of Kenya, Sudan, Tanganyika and Uganda)	No construction of any kind to be undertaken on the Nile River, its tributaries, and lakes without Egypt's consent
1934	Great Britain (on behalf of Tanganyika) and Belgium (on behalf of Burundi and Rwanda)	The agreement relates to River Kagera flowing into Lake Victoria. The parties agree to return to River Kagera, before it reaches the borders between Burundi, Rwanda and Tanganyika, amounts of water diverted for power-generation projects.

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1949–1953	Egypt-Great Britain	Exchange of memoranda between Egypt and Great Britain on behalf of Uganda
1954	Great Britain-Egypt (Britain on behalf of Uganda)	Exchange of notes from July 1952–January 1953 on Egypt's participation in the construction of Owens Falls Dam for power generation in Uganda. Raised the water level in Lake Victoria; allowed Egypt more water for irrigation; allowed hydropower generation for electricity for Kenya and Uganda.
1959	Egypt-Sudan	8 November 1959. Maximum utilisation of Nile River waters. Utilisation of surplus waters from Aswan High Dam. Annual flow of 84 bcm divided as follows: Egypt: 55,5 bcm; Sudan 18.5 bcm
1991	Sudan-Ethiopia	Committed the contracting parties to the principle of equitable utilisation of the waters of the Blue Nile and Atbara rivers
1991	Egypt-Uganda	Exchange of memoranda between Egypt and Uganda
1993	Egypt-Ethiopia	Framework for general cooperation agreement committed the parties not to do anything with the Nile River which could cause 'appreciable harm' to the other
1998	Egypt-Uganda	Agreement between Egypt and Uganda for controlling water hyacinth
2010	Signed by Ethiopia, Kenya, Rwanda, Tanzania and Uganda (NBI member states Burundi, the DRC, Egypt, Eritrea and Sudan are yet to sign)	Agreement on the River Nile Basin Nile Cooperative Framework (CFA) committing the contracting parties to the principle of equitable and reasonable utilisation of the waters of the River Nile Basin; water security

Sources: Compiled from various sources, including Nicol, A., 2003. The Nile: Moving beyond cooperation. Water Policy Programme, ODI. Rome: UNESCO, p.19

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Appendix 2
Dams in the Nile River Basin

Riparian state	Name of dam	River/lake built on	Year built	Other countries using the dam
Burundi	N/A			
DRC	Inga Dam 1 Inga Dam 2 Inga 3 And Grand Inga	River Congo River Congo	1972 1982 Under construction	Used by DRC
Egypt	Aswan High Dam Aswan Low Dam	Lake Nasser River Nile	1970 1902	All used by Egypt
Eritrea	Toker Dam Gerset Dam		1997 2009	
Ethiopia	Gilgel Gibe III Tana Beles Dam Omo River Dam	River Omo Lake Tana River Omo	Under construction 2010	Kenya
Kenya	N/A			
Rwanda	Nyarabongo Dam	Nyarabongo River		
Sudan	Sennar Dam Jabal Awlia Dam Roseires Dam Khashm Al Gerba Dam Merowe Dam	Blue Nile White Nile Blue Nile Atbara River	1926 1937 1950 1964 Under construction	Egypt
Tanzania	N/A			
Uganda	Owen Falls Dam Kiira Dam	Victoria Nile Victoria Nile	1954 1954	

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The Nile River is the longest river in the world covering nearly 7,000 kilometres. It traverses ten countries in Africa, Burundi, the Democratic Republic of Congo (DRC), Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, and Uganda, with South Sudan as the eleventh riparian state once it acquires its sovereignty.

Of the more than 300 million inhabitants in the ten riparian states, the Nile River Basin is home to nearly 160 million people. The interlocking controversies surrounding the utilisation of the waters of the Nile River and the resources therein have centred on the 1929 Anglo-Egyptian and the 1959 Egypto-Sudanese treaties, which have largely ignored the interests of the upstream states.

Through the initiative of the Nile Basin Initiative (NBI) established in 1999, the riparian states concluded, in 2010, the Agreement on the River Nile Basin Cooperative Framework (CFA) based on the principle of equitable and reasonable utilisation, the objective of which is to establish durable legal regime in the Nile River Basin.

This book addresses the complexities inherent in the colonial and post-colonial treaties and agreements and their implications on the interests of the riparian states and the region in general. It is the first book of its kind that covers the ten riparian states in a single volume and deals comprehensively with politico-legal questions in the Nile River Basin as well as conventions on the international water courses and their relevance to the region.

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