

EDITORIAL

A brief tribute to Archie Mafeje

Fred Hendricks

Faculty of Humanities

Rhodes University

Grahamstown, South Africa

Archie Mafeje, one of South Africa's legendary social scientists, has passed away. He was a respected scholar and deeply committed to the Pan-Africanist cause of political, economic and cultural emancipation. It is precisely this mixture of a normative concern for what is good for Africa together with his sharp analytical mind that made Archie Mafeje such a powerful intellect on the continent with an enduring influence on scholarship on and about Africa.

He had a doctorate in Anthropology from Cambridge University, but he was one of the fiercest critics of the role that this discipline had played as a handmaiden to colonialism. In response, Mafeje saw himself as liberated from the constraining boundaries of disciplines. His voice was unambiguously African and he brought his Western learning to bear on a profound understanding of the limits of decolonisation. He did this by deconstructing the essential concepts of Anthropology and revealing what lies hidden – its basis in alterity. But he did more than that. Since he was deeply concerned about African claims to study, understand and interpret their own reality, he exposed the manner in which the supposed makers of anthropological knowledge positioned themselves vis-à-vis the assumed objects. Invariably, given its history as well as its political and ideological importance in Africa, especially around the concept of 'tribe', the makers were suffused, according to Mafeje, with deep-seated white racism. In contrast, Mafeje committed himself to combating the distorted images produced and reproduced about Africa from the outside, by reference to the notion of authenticity in his ethnographic practices.

After a short stay at the University of Fort Hare, Mafeje, along with many others, was expelled for political activities. He eventually started a degree in biological sciences at the University of Cape Town in 1957. After graduating in 1959, he immediately began a BA with anthropology as major. He achieved his Masters degree, cum laude, in Political Anthropology.

Archie Mafeje's illustrious career took him all over Africa. He held senior positions at the University of Dar es Salaam, the American University in Cairo and Makerere College. It was while he was in The Hague as a visiting professor at the Institute of Social Studies that he met his wife, the Egyptian scholar and activist Dr Shahida El Baz.

It is difficult to isolate important events in the life of such a complex and multi-faceted individual as Archie Mafeje, but there are four that stand out as crucial in shaping his life and his work:

Firstly, his experience at the University of Cape Town when in 1968, he was appointed to the position of senior lecturer in social anthropology but a combination of

the apartheid government's intransigence on the appointment of black staff members to white universities on the one hand and deceit and complicity on the part of the University of Cape Town on the other prevented him from taking up his post. There can be little doubt that this racist decision profoundly shaped Mafeje's intellectual trajectory. He concerned himself directly with the details of the social and economic challenges facing the newly independent countries and in the process he developed an encyclopaedic knowledge of Africa.

Secondly, in 1969, his appointment to the position as Head of Department of Sociology at the University of Tanzania was a vital homecoming for Mafeje. Unfortunately, it was also the scene of a horrific motor car accident in which he was involved.

Thirdly, his return to Namibia shortly after it became independent where he experienced the worst kind of racist abuse from his colleagues.

Fourthly, the sad finale of his return to South Africa.

If there is one constant in Mafeje's life then it is his lifetime involvement in the work of the Council for the Development of Social Science Research in Africa (CODESRIA). During the long years of his exile from South Africa, CODESRIA became Mafeje's home where he contributed in no small measure to charting an Afrocentric approach to the study of African issues. But he also had an enormous impact outside of Africa where he had many experiences as visiting researcher, fellow or professor at Cambridge University, at the Institute of Social Studies in The Hague, at the University of Copenhagen, at the Nordic Africa Institute in Uppsala, at Umeå University in Sweden and at North Western University in Chigaco.

He was undoubtedly the doyen of the emerging community of African social science scholars. During the 1970s he wrote a path-finding article, 'The Ideology of Tribalism', and entered numerous debates challenging the concept of a dual economy, on the nature of the agrarian and land questions in Africa, and on the significance of the Soweto uprising in South Africa. His most productive years were during the 1980s and 1990s, publishing widely on a diverse range of topics, including a major extended – and much cited – essay on anthropology in the inaugural issue of the *African Sociological Review*.

Mafeje was a principled scholar who made a great contribution to the development of the social sciences in Africa. He was persecuted for his political ideas by the apartheid regime in South Africa, being arrested while doing political work among rural dwellers in Pondoland. He, more than most, grappled with the issues of historical explanation, of how to relate science and ideology to development, how to understand the constraints that confront the neo-colonial state in Africa, how to combine social history with ethnographic experience and generally how to marry scholarly pursuits with political commitment.

Mafeje represents the collective conscience of African social science and because of his widespread legitimacy and credibility across the continent it is not surprising that he is not liked by those outside who wish to write about Africa in ways that distort and

harm the interests of people here. His irreverence and his irrepressible spirit have inspired us and we have all benefitted enormously from his fertile mind. We will always have a very deep appreciation for his role in the social sciences in Africa as a whole.

Archie Mafeje described himself as being South African by birth, Dutch by citizenship, and Egyptian by domicile. His homecoming was intended to unite the spaces and places of his birthright, citizenship and domicile. Alas, it was not to be.

Korwa G. Adar

The Interface between National Interest and Regional Stability: The Nile River and the Riparian States

General Context

This special edition of the *African Sociological Review* focuses on the case studies of some of the countries within Nile River Basin. The scholars have delved into national interests of the countries in the Nile basin as well as the East African Community (EAC). This is the first study of its kind, to my knowledge, that has examined foreign policy interests of the Nile River riparian countries in one publication. The studies that have dealt with the Nile River basin take more of a comparative analysis as opposed to specific case studies and most importantly do not focus on foreign policy interests of the countries in the region.¹

The Nile is the longest river in the world covering a distance of 6,850 kilometres. Over 86 percent of the main Nile River stems from Ethiopia and the rest from the Equatorial areas in the Great Lakes region. It traverses ten countries namely, Burundi, the Democratic Republic of Congo (DRC), Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, and Uganda. The ten African countries have an estimated total population of more than 300 million or 38 percent of Africa's nearly 800 million people. The population of the ten African countries is expected to increase to more than 400 million by 2015 (World Bank 2002: 48050). The Nile River Basin alone is home to more than 130 million people, with a growth rate of between 2-3 percent per year.

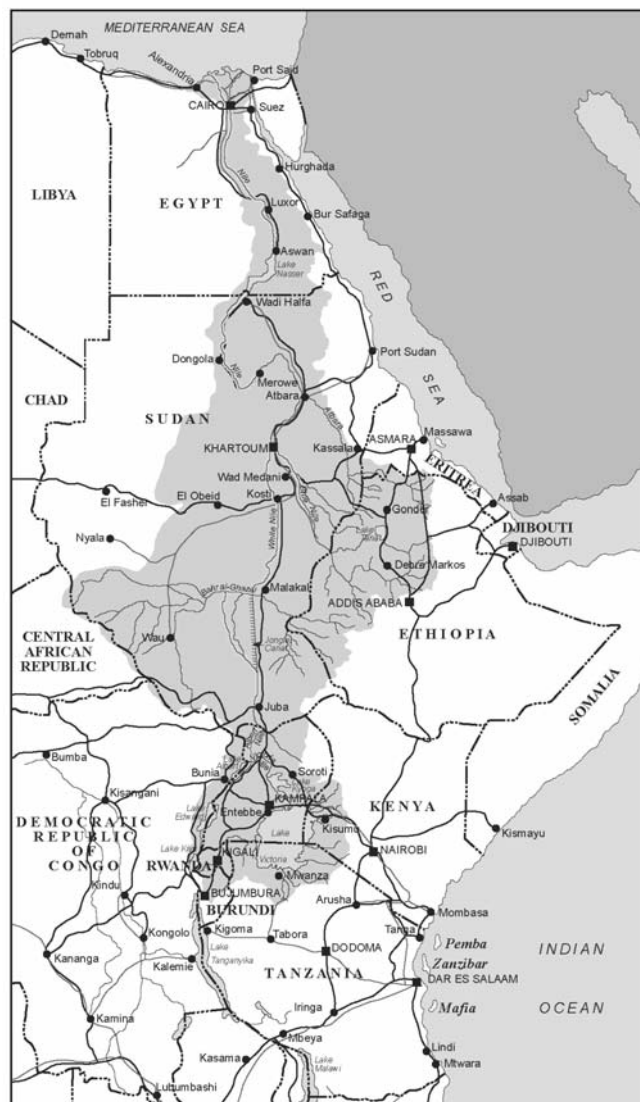
Egypt is the most vulnerable country within the Nile River basin region, with 97 percent of its waters stemming from the other countries in the region followed by Sudan (77 percent) and Eritrea (68 percent). The countries in the region with the highest percentage of their population within the Nile River basin are Egypt, Uganda, Sudan, Rwanda, and Burundi, with 85, 75, 74, 72 and Burundi 58 percent respectively (FAO 1998, Karyabwite 2000, SHI 1999, and World Bank 2003). Except for Egypt and Kenya, the rest of the Nile River riparian countries fall in the category of least developed countries. Dependence on the Nile River basin for their economic development and general survival cannot be underestimated. An acceptable legal regime to manage the Nile River and its drainage system for equitable intra- and inter-state economic-political and socio-cultural utilisation remains a major challenge.

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 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. Egypt signed a treaty with Britain in 1929, the then colonial power in the area which stipulated, inter alia, that no work would 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:

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 (YILC, vol 2, no. 1 1974, p.44).

NILE RIVER BASIN



On the regional front, Egypt signed an agreement with Sudan in 1959 that gave Cairo 87 percent of the Nile water with Sudan accorded only 13 percent. 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.¹ Egypt has also over the years backed rebel movements in Eritrea, Ethiopia, Sudan and Somalia thus complicating the geo-strategic scenarios and human-milieu relationships in the region. The East African Legislative Assembly, for example, has stated its position on the issue by suggesting that the 1929 Egyptian-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 socioeconomic and political needs of the riparian countries have led to numerous initiatives to resolve the long-standing dispute. The central objective by the riparian countries is to put in place a comprehensive international legal regime that would in many respect conform to the Helsinki rules entered into by UN member states in 1966 and provide for equitable utilisation of waters and international drainage system.

Table 1: Statistical Features of the Nile Basin Countries

Country	Popul. (millions) (% age 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)	Gross National Income (\$ Billions) 2001	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	Popul. Within Nile Basin (millions and % age) 1990
Burundi	7 (0%)	27,834	13,260	0.7	100	3.2	1.3	250	3 (58%)
DRC	52 (8%)	2,344,860	2,143	4.2	80	-4.6	-7.1	88	2 (4%)
Egypt	65 (97%)	1,001,450	326,751	99.6	1,530	2.9	1.0	163	48 (85%)
Eritrea	4 (68%)	121,890	24,921	0.7	160	9.7	6.9	38	1 (30%)
Ethiopia	66 (0%)	1,100,010	365,117	6.7	100	7.7	5.2	53	19 (35%)
Kenya	31 (33%)	580,370	46,229	10.7	350	1.1	-1.0	176	9 (32%)
Rwanda	9 (0%)	26,340	19,876	1.9	220	6.7	4.5	276	6 (72%)
Sudan	32 (77%)	2,505,810	1,978,506	10.7	340	6.9	4.9	11	21 (74%)
Tanzania	34 (10%)	945,090	84,200	9.4	270	5.7	3.4	40	5 (16%)
Uganda	23 (41%)	235,880	231,366	5.9	260	4.6	2.0	67	16 (75%)

- Sources: 1. World Bank, *World Development Indicators* (Washington, DC: World Bank, 2003).
 2. Food and Agriculture Organization, *Irrigation Potential in Africa: A Basin Approach* (Rome: FAO, 1998).
 3. Diana R. Karyabwite, *Water Sharing in the Nile River Valley*, (Geneva: UNEP/DEWA/GRID, 2000), p. 11.
 4. State Hydrological Institute, *World Water Resources and Their Use*, Russia and UNESCO, http://espejo.unesco.org/uy/part%604_africa/index.htm.

Problem Statement

There are numerous problems that could arise from the issues addressed here. First, each of the riparian states has a stake in the Nile Water, which by implication has direct impact on the country's national interests. It is the sovereign responsibility of every country to maintain its national interest and core values to survive in the anarchic international system. Second, the African countries, the riparian states in the region included, question the validity and relevance of some of the treaties entered into when they were still considered 'objects' of international law. Treaties as legislative instruments creating general rules and acceptable legal regimes are largely binding on the contracting parties. The countries of the region have, after their independence, declined to be bound by the Nile Water agreement between Egypt and Britain and Egypt and Sudan. Third, stability in the region is in the interest of the riparian countries. A long-term solution to the Nile question would serve the interests of all the parties.

Objectives

The central objective of the study is to assess policy issues pursued by the riparian countries that may engulf the region into conflict and suggest mechanisms for resolution.

Specific objectives of the study include the following:

- To examine the broad context of foreign policy interests of the countries in the region with a special focus on the Nile River.
- To assess the opportunities to develop better understanding among the riparian countries within the region.
- To examine the role of Regional Economic Communities (RECs), particularly the East African Community (EAC), on the Nile Water question.
- To find out what specific opportunities exist for conflict resolution in the region.
- To assess the extent to which the 1929 Egyptian-British treaty remains the main stumbling block to an acceptable legal regime.
- To investigate and provide specific recommendations that can assist in the long-term stability.

Multilateral Processes in the Nile River Basin

Since the 1960s, a number of attempts have 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 its international drainage system. These include, among others, the Hydromet, UNDUGU (Swahili for brotherhood), Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin (TECCONILE), and the Nile Basin Initiative (NBI).

Hydromet, Undugu, Tecconile, and NBI Processes

The Hydromet (or Hydrometeorological Survey of the Equatorial Lakes) brought together most of the riparian states except the DRC (Zaire), Ethiopia, and Kenya who participated as observers. Proposed by the World Meteorological Organisation and

funded by the United Nations Development Programme, the central objective of Hydromet was to examine the hydro-meteorological situation around equatorial lakes such as Lakes Victoria, Kyoga and Albert. The region was prone to heavy flooding, which caused untold human calamities. The 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 to provide a clear and specific legal regime for the utilisation of the Nile River basin led to the need for further exploration of possible modalities to deal with challenges. The Tecconile was therefore a product of this endeavour. Initially, it focused on issues such as the environment and water quality control. However, the main issue 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 in May 1995 (Abdalla, 2000). The Tecconile process was replaced by the NBI, which has since its establishment in Dar es Salaam, Tanzania, in 1999, is still putting in place acceptable rules for the utilisation of the Nile basin, its central objective. The contributors deal with these complex, interrelated and centrifugal and centripetal national and regional issue areas.

Acknowledgments

I am greatly indebted to the Africa Institute of South Africa (AISA) for providing funds that enabled me to conduct fieldwork in Kenya and to commission experts to write papers on specific case studies on this timely project. A number of people were extremely helpful either in enlightening me on Kenya's national interests on the Nile River issues or provided relevant reading materials. Due limitations of space only a few individuals will be mentioned here: Prof. Charles Odidi Okodi, University of Nairobi, Kenya, who is a renowned scholar on environmental law and has written extensively on the subject. John R. Nyaoro, Chief Executive Officer, Water Services Regulatory Board, Ministry of Water and Natural Resources, Kenya; and Elvin Nyukuri, African Centre for Technology Studies (ACTS), Kenya. The editor is also indebted to the valuable comments given by the participants during the presentation of papers on Kenya, Sudan, and the EAC case studies at a Seminar organised by the Africa Institute of South Africa.

Notes

1. See, for example, Yacob Arsano, Ethiopia and the Nile, Dilemma of National and Regional Hydropolitics, PhD Thesis, University of Zurich, 2004, R. O. Collins, *The Waters of the Nile, Hydropolitics and the Jonglei Canal, 1900-1988* (Oxford: Clarendon Press, 1990), M. D. el-Khalifa (ed.), *Blue Nile River; from Ethiopian Border to Khartoum* (Khartoum: Institute of Environmental Studies, University of Khartoum, 1985), Haggai, Erlich, *The Cross and the River: Ethiopia, Egypt and the Nile* (Boulder: Lynne Rienner, 2002), John Waterbury, *HydroPolitics of the Nile Valley* (New York: Syracuse, 1979), and Simon A. Mason, *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, 2004. For the African states' views on treaties entered into by the colonial powers on their behalf, see, Goerges M. Abi-Saab, 'The Newly Independent States and the Rules of International Law: An Outline', *Howard Law Journal* 8 (Spring 1962): 95-121, Nasila S. Rembe, 1980,

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Korwa Gombe Adar
Africa Institute of South Africa
Pretoria
South Africa

Patrick Loch Otieno Lumumba

The Interpretation of the 1929 Treaty and its Legal Relevance and Implications for the Stability of the Region

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. – Former UN Secretary General Kofi Annan, Message, World Water Day, 22 March 2002.

1. Introduction

The past few years has seen an increasing interest in the management of the Nile River and the disputes surrounding the use of the world's longest river. The same period has witnessed a number of initiatives aimed at addressing various components of the management of the Nile river 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 scarce water and other natural resources. Second, despite the extraordinary natural endowments and rich cultural history of the Nile Basin, its people face significant challenges. Today, the 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. Some of the countries are among the world's poorest with annual per capita incomes of less than \$250 (<http://www.worldbank.org/afr/nilebasin/overview.htm>).

The Nile River traverses a total distance of about 6700 km and over 35 degrees of latitude. It drains a basin area of about 3,350,000 sq km stretching over ten east-central and northeast African countries namely Burundi, Rwanda, the DR of Congo, Tanzania, Kenya, Uganda, Ethiopia, Eritrea, the Sudan, and Egypt. However, the development and exploitation of the hydropower and irrigation potentials of the Nile River has been the exclusive domain of Egypt and the Sudan. Chronic political instability and economic underdevelopment in the upper Nile has prevented the riparian countries from utilising the resource fully. Currently, the only existing arrangement for water sharing within the Nile basin is the 1959 treaty between Egypt and the Sudan, which provides for the 'full utilisation of the Nile waters' by the two countries (1959 Agreement Between Sudan and United Arab Republic for the Full Utilisation of the Nile Waters).

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 perpetuated further. Initiatives have therefore been established to address these emerging tensions. Of particular interest has been how to check 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 is imperative to undertake an academic study on the impact of the treaties on the Nile waters 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. This article examines the legal relevance and implications of the 1929 treaty on stability in the region hosting the Nile basin. The article proceeds as follows; first, it reviews the general terrain of international law with respect to the Nile River as a resource. Second, the article supplies a historical background to the 1929 treaty as a precursor to the legal examination of its status. Finally, the article provides an assessment of the implications of the treaty on the stability of the region.

1.1. Is The Nile River Part of Res Communis (The Common Heritage of Mankind)?

According to classical international law, *res communis* refers to territory consisting of the high seas and the 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 resource 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.¹

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

Egypt's and Sudan's joint exercise of sovereignty over River Nile is premised on the concept of accretion where 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 of title on the part of either country. As is the case with most trans-boundary 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 though the waters of River Nile were identifiable as originating mainly from territory of Ethiopia.²

The acquisition of title to the waters of River Nile by Egypt and Sudan has found further support in the principle of prescription, although hailed as more academic than practical. 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 which conclusively supports the doctrine of acquisitive prescription under international law.

In addition, effective control necessary to establish the Egyptian and Sudanese joint exercise of sovereignty over River Nile was historically accompanied by the tacit acquiescence on the part of neighbouring states. Consequently, if there were 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 River Nile by prescription or otherwise. Today, therefore, the River Nile cannot be construed under the principle of the *res communis*.

2. Historical Background

In the early 1900s, a biting shortage of cotton in the world market put tremendous pressure upon Egypt and Sudan, then under a British-Egyptian condominium, to turn to the perennial irrigation of this summer crop instead of the traditional flood-fed methods earlier used by the two countries.³ 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.

(www.transboundarywaters.orst.edu/projects/casestudies/nile_agreement.html).

With the end of the First World War, it became abundantly 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 was formed, with representatives from India, the United Kingdom, and the United States.⁴ The Commission estimated that of the river's average flow of 84 billion cubic meters (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 percent, 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 findings were not acted upon.⁵

The same year 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 inter alia for:

- (i) A storage facility on the Uganda-Sudan border;
- (ii) A dam at Sennar to irrigate the Gezira region south of Khartoum; and,
- (iii) A dam on the White Nile to hold summer floodwater for Egypt.

The plan worried 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.⁶ The core question of historic versus sovereign water rights was further complicated by the technical question of where the river ought best be controlled—upstream or downstream.⁷

In 1925, a new water commission was formed which made recommendations based on the 1920 estimates that would finally lead to the Nile Waters Agreement

between Egypt and the Great Britain of 7 May 1929. This Agreement was an ‘Exchange of Notes’ between Egypt and Britain. It had implications for Sudan, which was restricted with regard to the amount of water it could impound except during the flood period. The treaty did not only bind Sudan to Egypt’s approval before undertaking any irrigation project, but also gave Egypt rights over the use of Lake Victoria and other water bodies around the River Nile.⁸

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

- (i) Having a claim to the entire timely flow at a total amount of 48 BCM/year.
- (ii) Having rights to on-site inspectors at the Sennar dam, outside of Egyptian territory.
- (iii) Being guaranteed that no works would be developed along the river or on any part of its territory, which 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 negotiations until 1954. The negotiations which ensued, and carried out with Sudan’s struggle for independence as a backdrop, focused not only on what each country’s allocation would be, but whether the dam was even the most efficient method of harnessing the waters of the Nile.⁹

It is instructive to note that the 1929 Egyptian-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.¹⁰

It is quite surprising, ironical and paradoxical 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.¹¹ This Agreement was only bilateral and did not include any of the other riparian countries of the Nile despite the fact that it portioned out all of the Nile’s waters. Ethiopia, from which about 80 percent of the water comes, was not even consulted and no amount of 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 downstream countries.¹²

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. And for many decades after independence, particularly since 1980s, the riparian countries bordering the Nile River have engaged in numerous bilateral and multilateral diplomatic initiatives to resolve the dispute.¹³ A strong tension still exists between the Nile basin countries whenever a new Nile development project is proposed. In addition, Egypt, as 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.¹⁴

Perhaps, the thorniest issue that threatens future cooperation on the sharing of the resources of the River Nile including the recent Nile Basin Initiative (NBI) is the lack of a binding agreement between all of the Nile Basin countries, on the equitable and

just distribution of the Nile waters.¹⁵ 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 that took more than 20 years of preparation. But, as of 15 August 2002, none of the Nile Basin countries had ratified the Convention.

The Convention provides two important principles; it stresses that states should use water courses in an equitable and responsible manner, and secondly, it defines a procedure to follow when planned schemes may have adverse impact on other states. In actual fact, 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; while Eritrea, Uganda and DRC (Zaire) were absent.¹⁶

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.¹⁷

YEAR	MILESTONES (HISTORICAL HIGHLIGHTS)
1920	Nile Project Commission 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, having serious implications for Sudan.
1952	Aswan High Dam proposed by Egypt. Promise of additional water necessitates new agreement.
Sept-Dec 1954	First round of negotiations between Egypt and Sudan which end inconclusively.
1956	Sudan gains independence through a pro-Egypt led military coup. Egypt becomes more conciliatory with new Sudanese Government after the 1958 coup.
8 Nov. 1959	Agreement for the Full Utilization of the Nile waters (Nile Waters Treaty) signed between Egypt and Sudan.

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

2.1. Salient Features of the 1929 Treaty

- That Egypt and (Anglo-Egyptian) Sudan utilise 48 and 4 billion cubic meters (BCM) of the flow per year respectively, that is, 92.3 percent for Egypt and 7.7 percent (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 to July 15 (the dry season (summer) 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 her interests adversely. This was captured at Paragraph 27 which stipulates in part that ‘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 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’.

3. Interpretation of the 1929 Treaty

The interpretation of treaties like that any other legal instrument depends on the aim and goal of the treaty interpretation.¹⁸ On this issue there are three different schools of thought. On the one hand, there is a school which asserts 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. The other school 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 the meaning of this text. Finally, there is the school 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.

These three schools of thought reflect:

- The subjective approach (which looks at the intentions of the parties or founding father),
- The objective approach (which considers the textual or ordinary meaning of the words) and,
- The teleological approach (which adverts to the aims and objects of the treaty).
- One of the enduring problems facing courts, tribunals and lawyers, both in the municipal and international law spheres relates to the question of interpretation.¹⁹ In recognition of this problem, various rules and techniques have been put forward to aid practitioners and judicial bodies in resolving such problems. In seeking to analyse the 1929 treaty, it behoves us to pose the following questions:
 - What are the major defects and effects of the 1929 colonial treatise? What would happen if the majority of the riparian nations agreed to abrogate the colonial treatise? Who would benefit from such action?
 - The impact of Egypt’s independence on the 1929 Treaty:²⁰ Did the newly independent Egypt inherit the 1929 treaty rights and obligations?
 - The case of upstream vs. downstream riparian states. It is notable that relative riparian positions result in comparable power relationships, with upper riparian having greater hydro-political room for manoeuvre. This has not been the case in River Nile. Egypt, although a most downstream country, owing to its geopolitical strength, has been able to forestall upstream attempts to sway its position. One may pose for instance that, why hasn’t Ethiopia, which is the main source of River Nile’s waters at 84

- percent, been able to be the main user of the Nile waters? The answer lies in the relative geo- and hydro-political strength, or lack of it, of Ethiopia.²¹
- Do the treaties bind riparian countries, which are not party to them?
 - 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 vis-à-vis the Nile water? 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.²² With the current political and economic conditions of the Nile Basin states, what is the plausibility of this threat?
 - The internationalisation of the conflict: what does it portend for the region's stability? 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?²³
 - What legal factors impinge on attempts to reach a compromise amongst the Nile River riparian nations?
 - What is the legal effect of other riparian countries (for example, Ethiopia's) threats to pursue unilateral development and harvest of the Nile water resources within their territories?
 - Does the 1929 Treaty augur well for the region's 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 approach.²⁴ 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 which is obviously absurd or unreasonable.

Articles 31-33 of the Vienna Convention on the Law of Treaties deal with the interpretation of treaties.²⁵ Article 31 (1) embraces the well-known 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 paragraph thus embodies both the textual and teleological approaches to 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 the annexes:

- (i) Any agreement relating to the treaty, which was made between all the parties in connection with the conclusion of the treaty.

- (ii) 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 context:

- Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provision.
- Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.
- 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 Convention allows recourse to supplementary means including the *travaux préparatoires* of the treaty and the circumstances thereof.

An objective interpretation of the 1929 Agreement between Egypt and the Great Britain reveals a very one-sided contract, leaning heavily in favour of Egypt. As a recapitulation of the salient features of the treaty, Egypt was allocated 48 billion cubic meters (BCM) of the Nile flow per year; the flow of the Nile during January 20 to July 15 (the dry season) was also reserved for Egypt. As if that was not enough, Egypt reserved the right to monitor the Nile flow in the upstream countries and assumed the sole and exclusive right to undertake Nile river-related project without the consent of upper riparian states. Under paragraph 27 of the Treaty, Egypt also reserved the right to veto any construction projects on the river Nile or its branches or the lakes from which it flows that would prejudice her interest adversely by either reducing the quantity of water arriving in her territory or modifying the date of its arrival or lowering its level.

On the colonial front, the Great Britain must have been happy with the substance and spirit of this Agreement, because as was characteristic of most if not all colonial and imperial powers then, the British colonialists wanted to maintain and buttress their colonial grip and hegemony upon their ‘main and strategic’ colonial servant in the region, Egypt. Professor Allan notes that Britain was very influential in that it was so preoccupied with the economy of Egypt that it used its considerable power to ensure that there was no diminution of flows of water to Egypt through the development of works in its upper riparian colonies in the lakes Basin of East Africa – Uganda, Kenya and Tanganyika (now Tanzania).²⁶ This was because Egypt showed more economic potential. The learned author continued to note that Egypt was especially subject to European colonial engineering influence in the latter years of the nineteenth century and the first half of the twentieth century during a period when the ‘hydraulic mission’ was commonplace amongst colonising powers.²⁷

Another vitiating factor that invalidates and illegalises this Agreement is the fact that not all the relevant stakeholders (read riparian countries) were consulted during its negotiations 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.²⁸ The fact of non-consultation with riparian countries that were directly and substantially adversely affected by the treaty is an instance of bad faith (or *mala fides*).

Some people have argued that 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 hydro-politics have to be affirmatively interpreted in favour of increased regional stability. However, to the keen observer and analyser of the interface between national interest and regional stability as regards access to and ownership of the waters of the Nile River, the point has to be avidly argued that Egypt and its colonial power relegated riparian interests to the back seat in clear contravention of the spirit and tenets of both classical and emerging treaty law.

Malcolm Shaw advocates a more dynamic approach to treaty interpretation which entails a more flexible and programmatic or purpose-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.²⁹ 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 logical conclusion inevitably leads to advocating the negotiation and conclusion of a more embracing and autochthonous treaty regime essentially acceptable to all the riparian states.

In the premise, the 1929 Egypto-British Treaty rests on a very shaky juridical foundation bereft of the cardinal tenets of treaty law, Nile Basin hydro-politics and the demands of the global political order. Viewed from whichever angle, the Agreement cannot stand. Let us now ask the third question: did the newly independent Egyptian government inherit the treaty as part and parcel of its acquired rights and obligations? Contemporary discourse on the international law on the succession of states tends to have the overtones of the 'clean slate' approach to a succession of treaties. According to this principle, the new state (Egypt) inherited a 'clean slate' from its colonial master.

The UN Convention on the Law of Non-Navigational Uses of International Watercourses of 1997 favours the just and equitable distribution of the Nile waters.³⁰ The Convention further stresses that state should use water courses in an equitable and responsible manner and defines a procedure to be followed when planned schemes may have adverse impact on other states.³¹ Apart from 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 thereto.³²

4. The 1929 Treaty and Third Parties

It is perhaps important to pose further questions. First, does the 1929 Treaty bind non-parties to it? And can these countries derive rights and incur obligations under this 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.³³ Essentially, these provisions encapsulate the maxim '*pacta tertiis nec nocent nec prosunt*', a concept supported by

both general legal principle and common sense. It states that in so far as a treaty may bear the attributes of a contract, third states are clearly strangers to that contract and can neither be beneficiaries of any rights conferred thereunder nor be 'carriers' of any obligations imposed thereby.

Article 34 of the Vienna 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 of 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.³⁴

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 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*, namely:

- 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.
- 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, flowing from the principle of *pacta tertiis nec nocent nec prosunt*, these non-party riparian states are total strangers to that contract and can neither be beneficiaries of any rights conferred under the treaty nor be bearers of any obligations imposed thereunder. The treaty does not create either rights or obligations for Ethiopia, Uganda, Zaire, Tanzania, Sudan or Kenya without their consent.

According to available literature, at least those gleaned by the author, none of these riparian countries have formally assented to the treaty as to entitle them to any rights thereunder. Neither is there any empirical evidence that Egypt and Britain intended the treaty to confer a right upon third states.

However, an attempt was made in the 1959 Egypto-Sudanese Nile waters treaty to recognise the interests of riparian countries.³⁵ Egypt and Sudan agreed that the combined needs of other riparians would not exceed a paltry 1,000-2,000 MCM/yr and that any claims would be met with one unified Egypto-Sudanese position. It was further agreed that Permanent Joint Technical Committee to resolve disputes and jointly review claims by any other riparian would be established.

Did the riparian countries accept this provision? Ethiopia, which had all along not been a major player in Nile hydro-politics, served notice in 1957 that it would pursue unilateral development of the Nile water resources within its territory, estimated at 75-85 percent of the annual flow.

5. The Implications of the Treaty on Regional Stability: Making a Case for More Effective Riparian Dialogue

The fortunate corollary of water as an inducement to conflict is that water, by its very nature, tends to induce even hostile co-riparians to cooperate, and even as disputes rage over other issues.³⁶ To them, the weight of historic evidence tends to favour water as a catalyst for cooperation. But former UN Secretary General Boutros Boutros-Ghali, an Egyptian whose country sits at the mouth of River Nile, predicted 16 years ago that the next regional war would be over the Nile.³⁷ Also in pessimistic support is Professor Allan who avers that in the field of international water relations, the position is one of anarchy. There are no institutions which uphold a widely recognised and formally agreed code of practice.³⁸

A number of questions regarding Nile hydro-politics 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 Treaty be interpreted in order to further stability in the region? What are the implications of the Treaty on Egypt's foreign relation with other riparian states? What therefore is the interface between national interest and regional stability with regard to access to and ownership of the waters of River Nile?

Historically, after the Second World War, the control of the Nile Waters became a central issue in regional politics as the self-determination and national liberation movements grew in strength. The Nile Basin being a region in transition, substantial pressure on the Nile resources is likely to increase dramatically in the coming years as a result of high population growth rates in all the riparian states and the ever increasing development needs of the riparian countries.³⁹ Currently, tensions in the Nile River are constrained by a number of factors, including Egypt's political and military dominance, the civil war in the Sudan and negligible use of water by upstream countries. Concurrently, however, other factors are working to increase the potential for conflict over water in the basin: high population growth rate both in upstream and downstream countries, accompanied by subsequent demand for increases in agricultural irrigation; nascent development in Ethiopia; environmental degradation of established Ethiopian irrigated land; and the possibility of an end to the Sudanese war, which would spur development in Sudan. Although each of the foregoing factors holds the potential to increase tension and cause conflict in the basin, many also present potential areas of cooperation. Prevention of armed conflict in the Nile Basin could occur in a great number of realms, from the technical to the political or from the domestic to the regional.⁴⁰

The 1929 Treaty and its 1959 historic amendment have sent many ripples across the Nile basin and even further. The agreements have added renewed impetus to the turbulent waters of the Nile River and its hydro-politics. For instance, in early February, 2004, Tanzania launched a Tsh. 27.6 billion (\$27.6 million) project to draw water from lake Victoria to supply the Kahama area in Shinyanga region, in contravention of the two treaties controlling the use of water from the lake. The 1929 and 1959 treaties restrict riparian countries from initiating projects that would affect the volume of Nile waters without the permission of Egypt. Despite engaging in lengthy negotiations over the use of the waters from Lake Victoria, Tanzania has maintained that the two agreements were illegal.⁴¹

Professor Allan in his discussion of the factors affecting the saliency of river basin hydro-politics 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 issues. These were 'expediency agreements'. The 1929 Egypt-Sudan Nile Waters Agreement scarcely counts as it was arranged under particular and unrepeatable circumstances. The 1959 Nile Waters Agreement was put in place by an Egyptian Government in a very great hurry to achieve a major and unique prize – the total control of the Nile with huge economic benefits and the bonus of the hydro-power. The international relations regime of the time was unusual being both different from that of the preceding century and very different from the present.⁴²

In the totality of these arguments, the 1929 Treaty constitutes an obsolete colonial relic. It is patently out of touch with the present circumstances and the prevailing economic and political conditions of the inhabitants of the Nile basin region, including their basic needs. Therefore, there is an absolute and urgent need for a legal and institutional cooperation framework that will be the basis for sharing of the Nile resources among the ten countries that make up the Nile River basin. Central to this framework should be a more comprehensive, all-inclusive and autochthonous treaty regime governing access to and use of the river's resources. And the sooner this is done the better for all stakeholders.⁴³

Conclusion

International river basin and trans-boundary water management initiatives are increasing in importance and scope as the availability of water per capita is dropping significantly. Trans-boundary watercourse States now face more challenges in managing their national waters than ever before, resulting from increase of activities related to the use of shared waters. There are serious conflicts over water in most parts of the world at present 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 the needs. It is a crisis of management of these water resources and the legal regulation of the interests and sovereignties of trans-boundary watercourse States.

The international community having been prompted by the lack of coordination over shared water supplies and the interstate conflicts has in the recent past 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.

Notes and References

1. The 1982 United Nations Convention on the Law of the Sea recognises this principle by declaring the deep sea bed and ocean floor as part of the common heritage of mankind to be administered by the International Sea Bed Authority on behalf of the International Community.
2. At one point in history, it was considered that Lake Victoria was the main source of the river.
3. The creation of condominium is done by agreement between two states under which they exercise sovereignty jointly over a certain territory and its people. The existence of a

condominium rests upon a title in international law pursuant to which a number of states are 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 sovereignty. The basis for the Sudanese arrangement was the Agreement of 19 January 1899. And by the treaty of 12 February 1953 between Great Britain and Egypt the condominium was lifted to the extent that it was left to the Sudan to choose between full independence and further association with Egypt.

4. The keen observer is left to wonder what 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 of Britain at the time in relation to the project.
5. Supra Note 6.
6. The Lentric Law Library's lexicon defines riparian rights as 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.
7. Supra note 6.
8. Ibid.
9. Ibid.
10. Ibid.
11. 1959, Agreement for the Full Utilization of the Nile Waters (Nile Waters Treaty).
12. Being Egypt and the Sudan.
13. Supra note 6.
14. Ibid.
15. 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 CIDA. See, also Nabil El-Khodari, 'The Nile Basin Initiative (NBI): Business as usual?' Available at <http://nilebasin.com/documents/madrid.htm>.
16. Quoted in Keith Hayward (2002): 'Catchment Convention', *Water* 21, the Magazine of the International Water Association (IWA), June, 2002.
17. United Nations General Assembly 9, 1997: Press Release UNGA/9248.
18. Supra note 17.
19. For treaty interpretation generally, See, for instance, Lord McNair, *The Law of Treaties* (Oxford University Press, Oxford 1961); Antony Aust, *Modern Treaty Law and Practice* (Cambridge University Press, Cambridge, 2000); J. Fawcett, 'The Legal Character of International Agreements', 30 BYIL 381 (1953); M.S. McDougal et al., *The Interpretation of International Agreements and World Public Order*, Yale, 1967 and Dordrecht, 1993 and H Lauterpacht, 'Restrictive Interpretation and the Principle of Effective in the Interpretation of Treaties', 26 BYIL, 1949, p. 48.
20. Malcolm N. Shaw, *International Law* (Cambridge University Press, Cambridge, 1997), p. 655.
21. For the international law applicable to succession of states and the impact of colonialism see generally work of the International Law Commission, for instance, in the *Yearbook of the International Law Commission* 1974, vol. II, part I, p. 157 et seq and the International Law Association, *The Effect of Independence on Treaties*, London, 1965.

22. Professor Anthony Allan, in his interesting piece 'The Nile Basin: Evolving Approaches to the Nile Waters Management' Occasional Paper 20 SOAS Water Issues Group, June 1999), puts this point succinctly thus: 'The Nile riparians are not equal with respect to their economic and political competence. This lack of asymmetry 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'.
23. Elhance, *Hydropolitics*, 1999. President Sadat is quoted thus: 'We depend upon the Nile 100 percent 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. See also Benson Kathuri, 'Study Declares Nile Treaty Obsolete', *The East African Standard* (Kenya), 02.22.2005, Available at <http://www.afrika.no./Detailed/8484.htm>.
24. It has been noted that the globalisation or regionalisation of any conflict exacerbates existing tensions over the contentious issues rendering settlement even more difficult and illusory.
25. See, for instance, the UN Admissions Case (1947) where the international court 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 151.
26. 8 ILM 679 (1969). In force since 1980.
27. *Supra* (24). After the Second World War, the British government commissioned a complete hydrological study on the Nile Basin as a whole, 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 important 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 Jonglei Canal 1898-1988*, Oxford: Clarendon Press.
28. *Ibid.*
29. The principle of *pacta sunt servanda* is enacted at Article 31 (1) of the Convention.
30. *Supra* note 24.
31. *Supra* note 20.
32. Professor Allan (*Supra* 28) posits that the 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 it is argued should be taken into account when attempting to derive inter-state water entitlements. For a more in-depth analysis of the Convention, see McCaffrey S, 1998, 'Legal Issues in the United Nations Convention on International Watercourses: Prospects and Pitfalls', Paper delivered at World Bank

Seminar on International Watercourses, Washington, World Bank, Nov. 1997 and McCaffrey S. and Sinjela M., 1998, 'The United Nations Convention on International Watercourses', *American Journal of International Law*, Vol. 92, pp. 97 ff.

33. Supra note 30.
34. See, for example, the North Sea Continental Shelf Cases.
35. Professor Allan (Supra 23) notes that the other riparians were invited to participate in the discussions. None did; nor 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 her invest in projects that would preserve the river system including its headwaters. See Planet Ark: 'Kenya Minister urges review of the Nile water treaty', Feb. 20, 2002. Available at <http://www.planetark.org/dailynewsstorycfm/newsid/14624/story.htm>
36. Jesse H. Hamner and Aaron T. Wolf, '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, 1998. See also Okidi C.O., 1988, 'The States and the Management of International Drainage Basins in Africa', *Natural Resources Journal*, vol. 28, pp.645-669 (Fall).
37. Quoted from David O. Reagan, 'The Nile River: Building or Stumbling Block?' *Allafrica.com*, April 30, 2004.
38. Supra note 24.
39. ICE Case Studies (supra note 28), p. 2.
40. Supra note 24.
41. Faustine Rwambali, 'Tanzania ignores Nile Treaty, Starts Victoria Water Project', *The East African Standard* on the Web, Monday, February 9, 2004, p.1.
42. Supra note 24.
43. The 1929 Treaty need not be the basis for these negotiations. The efforts of the Nile Basin Initiative (NBI) are laudable in this regard. This initiative has been cherished as the greatest plan for a better future in the Nile basin, but it still lacks a formal legal framework.

Patrick Loch Otieno Lumumba
Faculty of Law
University of Nairobi
Nairobi
Kenya

Hamdy A. Hassan and Ahmad Al Rasheedy

The Nile River and Egyptian Foreign Policy Interests

Introduction

Historically, Egypt was considered an African rather than an Arab state. Pharaonic Egypt was nothing but an African state, and its relations with 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 African Horn 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 it.

- The first aspect of this relationship resulted 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 this very Sea.
- The second aspect was imposed by the water sources of the Nile, as Egypt relies entirely on the Nile River to supply her need for fresh waters. Ethiopia claims a monopoly of supply by consuming more than 80 percent of these sources. This is a fact that has set a permanent goal for the Egyptian leadership to ensure the present flow of waters of the Nile.
- The third aspect relates to the Nile River as an international river crossing the borders of ten states of the Nile basin. Such international nature of the river presents a grave challenge necessitating cooperation between all riparian states for the management of sources of the river to achieve the best utilization.
- The fourth aspect is reflected in the nature of protracted conflicts in the African Horn of Africa, and East Africa, particularly in Sudan, Somalia, northern Uganda, and the Great Lakes region.

Added to the preceding dimensions are the possibilities of future wars over water in the area after the end of the Cold War. As a number of studies indicate, a future war in the Middle East and Africa could well be based on conflict over water sources (Starr 1991). No doubt that this dimension has exerted new pressure on the Egyptian leadership as a national security issue, because not only does it threaten the entity of the state but also its social fabric as well.

This article aims to define the place of this dimension in Egyptian foreign policy vis-à-vis the states of the Nile Basin, with a special focus the Nile River water. The authors argue that Egyptian foreign policy behaviour as well as her desire to ensure a smooth and uninterrupted flow of the Nile River waters have historically been and will continue to be intertwined.

Egypt and the Nile Civilisation: Historical Context

The Nile River is the principal artery of life in Egypt. It is life itself. This basic fact does not apply to the same extent to the other riparian states. One well-known Egyptian writer articulated the external relations of Cairo around the Nile question by arguing that: 'the first civilization 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 civilization' (Himdan 1987: 782).

Indeed, the Nile River has shaped the life of Egyptian people over the centuries, their habits and culture, and through its periodic flood was like a renewed life cycle. Ancient Egyptian history indicates that ancient 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 will dry out, and the whole tree would die (Churchill 2000).

No doubt one of the major strategic threats to Egyptian national security is in essence the existence of vital water sources lying beyond the Egyptian borders. On the other hand, the north of the Nile valley is a rich agricultural area, which relies solely on the waters of the Nile. The Nile River basin is composed of ten states preoccupied with the problem of demographic explosion, forcing thus an agricultural expansion. Hence a problem of organisation, distribution and investment in water sources arises (Barbour 1957 and Metawie 2004). Its solution is only possible through the establishment of huge dams capable of controlling the flow of water in the river. The huge dams are like a double-edged sword – especially with respect to Egypt. They allow states of the basin to effectively share the distribution of the water according to what was agreed on, it also allows for states of the source to control, to a certain extent, the flow of that water.

In addition, the issue of Nile water grows in gravity in regional relations for the states of the basin for a number of reasons (Hassan 1993). 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 states of the basin, and the intra-state 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 underestimated. First, according to the statistics of the Egyptian Ministry of Irrigation and Water Resources, the Nile alone supplies 94 percent of total water resources of the country. As Table 1 shows, of Egypt's total area of 1,001,450 sq. km, more than 326,000 sq. km. or 33

percent of the territory fall within the Nile River basin (FAO 1997). The percentage of Egypt's population in the Nile River basin accounts for more than 85 percent compared to the other basin states' population percentages such as Uganda (75 percent), Sudan (74 percent), and Rwanda (72 percent).

Table 1: Population Indicators of the Nile Basin States

COUNTRY	Basin Population Density (hab/sq.km)	Basin Population 1990 (millions)	Country Population (1990) (millions)	Country Population (1998) (millions)	% country's Population within the Nile Basin
BURUNDI	250	3.204	5.503	6.457	58
DRCONGO	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, Diana Rizzolio, *Water Sharing in the Nile River Valley* (Geneva: UNEP/DEWA/GRID, January-June 2000), p. 33.

Second, Egypt is preoccupied with a shortage of water resources in addition to the increase in population and the adoption of economic development projects. The Nile waters can be considered the main resource for irrigation. It is also used for other purposes such as transportation, industry and tourism. It is estimated that an increase in population in three Nile River states namely, Egypt, Sudan and Ethiopia, will reach more than 200 million in the year 2015, which means an increase in the demand for Nile water (World Bank 2002: 48-50). 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 her water policies, with respect to her 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 milliard cubic metres annually. The flow of the Nile River waters can be utilised jointly with Sudan, after the application of four phases in 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 face the increasing demand on the water.

Egypt's vulnerability is also explained by the amount of rainfall the country receives in the Nile River basin, the main basket area for the country's agriculture since

Pharaoh's time. Table 2 indicates that Egypt receives the lowest amount of rainfall in the basin compared to the rest of the riparian states.

Table 2: Nile River Basin States' Average Rainfall

COUNTRY	Average Rainfall in the Basin Minimum (mm/year)	Average Rainfall in the Basin Maximum (mm/year)
BURUNDI	895	1,570
DRCONGO	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, Diana Rizzolio, *Water Sharing in the Nile River Valley* (Geneva: UNEP/DEWA/GRID, January-June 2000), p. 25.

The maximum average rainfall of only 120mm 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 3 shows that land irrigated by Egypt in the Nile River basin is almost twice the land irrigated by the other riparian states combined. Table 2 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 rain as compared to Egypt.

Table 3: Present Use and Potential of Irrigated Area of Nile Basin States

COUNTRY	Potentially Irrigable Land in the Nile Basin (1000 ha)	Irrigated land in the Nile Basin/ total in the Country (1000 ha)
BURUNDI	80	0/74
DRCONGO	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	1935/1'950
TANZANIA	30	10/155
UGANDA	202	9/9

Source: Mason, Simon A, *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, 2004, p. 106.

Thus, it becomes clear that Egyptian national interests are closely related to the Nile resources region, which represents a strategic depth for Egypt. This heavy dependence on fresh water from the Nile River means that any threat to the flow of the water translates into a fundamental threat to Egyptian 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 in the Nile River basin.

The Nile River Waters and Egyptian 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:

- Protecting the southern borders of Egypt.
- Protecting the southern area of the Red Sea.
- Insuring the flow of the Nile water.
- Insuring the vital interests of Egypt in the area.

In this context, we argue that the Nile River constitutes the central environmental factor, which influences the cognitive behaviour of the Egyptian foreign policy-makers (Sprout and Sprout 1965, and Sprout and Sprout 1969). Specifically, the Egyptian foreign policy-makers' minds are influenced by the geo-strategic and 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 and underestimated (Heikal 1978: 715). This could be ascribed into two factors: first, 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 (Erlich 2003).¹

As Tables 4 and 5 show, the Nile was and still is the valley's sole water source since ancient times. The Nile River supplies 55.5 milliard cubic metres annually. Ground water provides only 4.8 milliard cubic metres annually. On the other hand, the share of desalinated water is almost negligible (only 0.03 milliard cubic metres). The non-conventional sources of water like that from agricultural sewage and treated waters of the sanitary drainage only supply 4.6 milliard cubic metres (Hefny 1992 and Metawie 2004).

Table 4: The Total Sources at present

Sources	Water in 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, Martin, 'Water Resource Planning in Egypt', in Watkins, Eric, ed., *The Middle Eastern Environment. Selected Papers of the 1995 Conference of the British Society of Middle Eastern Studies*, Cambridge: St Malo Press, 1995, pp. 90-100.

Table 5: Present And Future Water Demand in billion cubic metres per year

Sector	Demand in 2000	2025
1. Agriculture	60.7	69.43
2. Domestic water	4.5	6.6
3. Industry	7.8	10.56
4. Navigation	0.3	0.3
Total	73.3	86.89

Source: Abdel Hay A. Farrag, 'The Hydraulic and Hydrochemical Impacts of the Nile System on the Groundwater in Upper Egypt', *Assuit University Bulletin, Environmental Resources*, Vol. 8 No. 1, March 2005.

Table 5 indicates that water demand in Egypt will continue to increase steadily in all categories, with agriculture being the main consumer. The Egyptian agricultural policy is guided by a number of underlying principles (MOA 2000):

- Gradually removing governmental controls on farm output prices; crop areas; and procurement quotas.
- Increasing farm gate prices to cope with international prices.
- Removal of farm input subsidies.
- Removal of governmental constraints on 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 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 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 were 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 own Muslims by diverting the course of the Nile away from Egypt so that its people could starve to death. Rulers of Abyssinia justified their actions as revenge against the Egyptians for their treatment of the Copts and their religious leaders (Erlich 2003).²

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 riparians. 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 to the Nile – to the Red Sea, thus depriving Egypt of the Nile River waters with all the adverse implications for the people of Egypt (Himdan 1987: 926).

The British inherited this colonial practice from the Portuguese and attempted to implement the same schemes (Himdan 1987: 926-930). For example, the British, in collaboration with the Kings of Buganda in Uganda and the Emperor of Ethiopia, pursued strategies that were not in the interests of Egypt. Even when Britain moved to gain international endorsement from some local rulers, particularly the Ethiopian ruler, with the objective of maintaining the status quo on the Nile River question, attempts at isolating Egypt still remained the strategic imperatives of London. As such, the water issue was one of the major means developed by Britain in her struggle with Egypt regarding the Sudan after 1882. Indeed Britain tried to achieve two objectives namely, to threaten Egypt politically while it was under her domination and to separate and to isolate the Sudan from Egypt. To achieve these dual objectives, the British colonial administration concentrated on the construction of dams and barrages and other water projects in the Sudan while preventing their construction in Egypt, thus guaranteeing the isolation of Egypt.

In general, and with exception of some minor attempts, particularly the threat by Moise Chombe in the Congo and the Ethiopian rulers after the overthrow of Haile Sellasie, the flow of the Nile River waters to Egypt has remained steady (Hassan 1993: 320). 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 can be adduced 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 (Swain 1997). With respect to the legal claims, a set of criteria to organise the complete utilisation of the water of the international rivers 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 (Sultan 1962: 535).

A riparian state should be obliged not to take any action or initiate any alternation that could cause a significant damage to any other state of the basin. Specifically, any attempt to manipulate water of the Nile that would 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 compared to Egypt. Egypt depends on the Nile River waters for its socioeconomic 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 River is distinguished from the other international rivers because it has numerous tributaries that traverse the upstream states and that feed the Nile River. An attempt by the upstream states would have serious implications on most of the states in the region (Himdan 1987: 925). What is also important to note is that Ethiopian highlands, with their massive natural flood waters feeding the Nile River,

are of such a nature that makes it inconceivable to control the sweeping waters (Brunnee and Toope 2002: 108).

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 (Himdan 1987: 691). In comparison to the Mediterranean countries of the north and the Middle East, Egyptian foreign 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 one geared towards the promotion of Egyptian strategic interests in the region (Sultan 1962: 535).

Egyptian Foreign Policy Approaches and the Nile River Water

The Egyptians through their long history of civilisation have grasped the importance of 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 in 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 trying 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 the governments prior to the 1952 revolution, to embracing cooperative diplomacy, particularly under the post-revolution governments. For example, Egypt initiated the UNDUGU (brotherhood), which brought together all the riparian states, with the objective of finding acceptable legal regime for the utilisation of the Nile River waters.

The Pre-1952 Scenario and Perspectives regarding Egyptian Water Politics

Prior to her independence in 1922, Egyptian water interests were principally determined by Britain, the colonial power since 1914. Egypt lost her sovereignty and legal personality that allowed her to speak as international legal person. As in other colonies governed by Britain (and other colonial powers), Egypt remained an object of international law with London becoming 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 the international law, particularly with respect to state succession (McCaffrey 2003: 76-77).

Britain was not the only colonial power in the Nile River basin. The other colonial powers at the time included Italy, France, Belgium and Germany. After the end of the First World War, with the beginning of a decline in European colonial power regarding on the acquisition of title to territories in Africa, 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 (McCaffrey 2003: 76-77). The treaties, for example, set binding rules that control the utilisation of international waters among the riparian states (Brunnee and Toope 2002: 145-148, Caponera 1993, Collins 1991, and Okidi 1990). A few examples may help explain the attempts by Britain to internationalise the utilisation of such international waters, the Nile River included.

First, Britain and Italy concluded the protocol of Rome in 1891, which dealt with the issue of drawing borders between Eritrea and Sudan. In the protocol, Italy pledged not to construct any projects on the Nile Atbara tributary that could affect the quantity of water flowing to Egypt. Second, the 1902 Addis Ababa agreement concluded between Britain and 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 express consent of the parties as well as Sudan.

Third, the London treaty concluded 1906 between Britain and Belgium (on behalf of Belgian Congo, now the Democratic Republic of Congo – 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 Ethiopia and to safeguard the interests of Great Britain and Egypt in the Nile basin, more specifically as regards the regulation of the waters of River Nile and its tributaries.

The agreement, among others, 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 as well as Egypt. These treaties laid the foundation for the post-independence 1929 and 1959 legal instruments between Egypt and Britain and Egypt and Sudan respectively. The Egyptian foreign policy makers have consistently invoked the 1929 and 1959 treaties ever since they were ratified by the parties.

The 1922-1952 Period and Egyptian Foreign Policy Behaviour

It has been argued that the geographic location of the Nile River represents a major asset, which has naturally and historically shaped Egyptian foreign policy since the dawn of independence (Brunnee and Toope 2002: 148). Egyptian geo-strategic objectives during the period from 1922 to 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 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, which is premised on the desire for the historical integration between Egypt and Sudan. Specifically, the policy is based on the age-old view that whoever controls the 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 (Caponera 1993: 657-659). The 1929 agreement provided for a clear sharing of the Nile River waters. For example, the treaty incorporated Egyptian historical needs by setting aside the bulk of the flow of the waters to Cairo, that is, by allocating to Egypt a share of 48 million cubic metres in return for four million cubic metres for Sudan.

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 million cubic metres annually.

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 and the major extra-continental factors. President Gamal Abdel Nasser, for example, during one of his speeches, reiterated the importance of Egyptian interests regarding the Nile River basin question by emphasising that the Nile River was an 'artery of life for our homeland' (Ghali 1982: 86).

However, Egyptian foreign policy was not solely shaped by the Nile basin question. Other salient issues that influenced Egyptian foreign policy included 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 (Himdan 1987: 936). 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. The Sudan, like Egypt, relies on irrigation for its agricultural production, especially in the middle and northern regions, which in some respects places Sudan on the same footing as Egypt (Himdan 1987: 936). The Sudan is the only fluvial state in the Nile basin that enjoys immense natural resources consisting of arable soil suitable for agricultural production, exceeding those of any other state in the Nile basin (Heikal 1978: 718). The increase in the desertification and the aggravation of waves of drought and their implications for hunger and scarcity of food in many countries of the Nile basin region become a crucial question for Egypt, Sudan and the other riparian states (Himdan 1987: 937).

It is because of dependence on the Nile waters that the Egyptian foreign policy-decision makers have had 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 (Sultan 1962). Second, Egypt realised that for a viable and 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 the two countries, particularly with respect to the utilisation of the Nile River waters (Khaled 1988: 106).

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 million cubic metres and 4 million 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, while the Sudan was to build the Rosiras dam on the Blue Nile. The high dam was to deliver 14.5 and 7.5 million 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 internal civil war and strained relations with neighbouring countries in the region, Cairo maintained closer relations with Khartoum.

Due 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 negatively affect Cairo's regional and continental interests (Himdan 1987: 940). On the geopolitical and geo-strategic front, the active role played by Egyptian diplomacy in mutual understanding between Ethiopia and Sudan, which culminated into 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 a balanced and flexible policy pursued by Egypt with respect to the intra-state civil wars and inter-state conflicts demonstrate 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 Ethiopian direct conflict with and involvement in Somalia regarding 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 states of the Nile Basin, and especially with Ethiopia and Sudan.

Justification for the principle of *uti possidetis*, endorsed by the Organisation of African Unity (OAU) in Cairo in 1964 and accepted by the member states except 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 the unique case in Africa where its striving for self-determination in 1993 was endorsed by the OAU.

The adoption of cooperative 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 (Labeeb 1985: 5-15 and Hassan 1993). Egypt's interests in Sudan are centred on the desire for stability in Khartoum. Specifically, the successive governments in Egypt have been concerned with potential hostile leaders 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 (Himdan 1987: 939-94).

Conclusion

The Nile River, the only major source of water for the country, plays a crucial role in the life of Egypt. As compared to 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 parameter that influences Egyptian foreign policy vis-à-vis the states in the basin region. The issue of the Nile River water and its significance for the survival of the peoples of Egypt has been clear in the minds of all political leaders in Cairo to the extent that no significant difference exists 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. We argue that 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 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.

Notes

1. 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 clouded Egyptian-Ethiopian relations since mediaeval times. In more recent times, the former Ethiopian military ruler Mengistu Haile Maryam is said to have threatened the late Egyptian President Anwar Sadat with cutting off Egypt's water supply.
2. 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 Yousuf Fadl Hassan, 'The historical Roots of the Afro-Arab Relations', *The Arab and Africa* (Beirut: Center for Arab Unity Studies, 1984): 31.

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Hamdy Hassan and Ahmed Al Rasheed
Department of Political Science
Cairo University
Egypt

Biong Kuol Deng

Cooperation between Egypt and Sudan over the Nile River Waters: The Challenges of Duality

Introduction

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

The Nile River is estimated to be 6,800 km long. It emanates from the Luvironza River in Burundi, East Africa, (although there is currently a new finding that it may indeed emanate from Rwanda and not Burundi), and connects to the Mediterranean Sea, at its delta in North East Egypt. Its water volume that flows northward is estimated to be c. 1,100,1000 sq. mi. (2,850,000 sq km) from which the Nile basin countries nurture their agricultural and hydroelectric projects. Indeed, Egypt and Sudan have been the main beneficiaries in this respect. While the former relies absolutely on the Nile waters, the latter supports 20 percent of its agricultural land with the Nile waters.²

Many scholars have postulated that future wars and conflicts will be over water resources because of their shrinking and scarcity. While the flow of the Nile River has been somewhat affected by the various ecological effects in the region, the raging desertification in the countries of the Nile Basin and the abject poverty that characterises the lives of the majority of the peoples there call for a pause and rethinking of the strategies that aim at an equitable and reasonable sharing of the Nile's resources.³

Elhance articulates and sends a warning about the scarcity of water, which, he argues, may ultimately lead to conflict. He writes:

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 one billion four hundred million – more than one-third of the Third World population – will live in region which will experience severe water scarcity. Another one billion will live in arid regions with absolute water scarcity. Three hundred and fifty 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.⁴

While in the past there had been no specific international law on the basin water resources, there had been a number of international legal principles or theories used by

States endowed with shared 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; and the theory of community of interests in the waters. The countries of the Nile Basin have invoked one of these theories to justify their non-adherence or adherence to the prevailing legal agreements on the use of the Nile waters, especially the theory of absolute territorial sovereignty and that of absolute territorial integrity.⁵

However, in the 1960s, the International Law Association drafted what became known as the ILA's 1966 Helsinki Rules. While these rules covered also 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 the water resources among riparian States. In this respect, certain elements were critical to determine the equitable and reasonable apportionment, and included 'the degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State'.⁶

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 United Nations General Assembly, which encouraged the International Law Commission (ILC) to come up with a draft convention on the non-navigational uses of international watercourses (IWC). 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 had 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.⁷

A number of draft provisions dominated the deliberations of the Working Group, especially those that pertained 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 relationship between the principle of equitable and reasonable utilisation and the no-harm rule; the peaceful settlement of watercourse disputes; and 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 United Nations 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.⁸

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 Nile Water Agreement and the 1959 Nile Water Agreement. While the British colonial government and the Egyptian government, which was, for all intents and purposes, a British colonial government, concluded the former agreement, Egypt and the Sudan concluded the latter. Controversy abounds and continues to surround the legality of the 1929 Agreement because of its colonial nature and the fact that the Nile Basin countries were not politically parties thereto. Egypt and the 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 rules; hence the challenge of its legality.⁹

The nature of the diplomatic ties between Egypt and the Sudan has been punctuated by strains because of the use of the Nile waters. In many instances, Egypt has

intermittently felt it necessary to issue threats to use military force against the Sudan, with a view to protecting its interests in the Nile water. Different regimes in the Sudan have attempted to challenge the domination of Egypt over the Nile waters – to no avail. Indeed, Egypt has been using the threat of military force to keep the countries of the Nile Basin in line with respect to the Nile Waters agreements (1929 and 1959).¹⁰

Egypt has also been receiving, with extreme reservation, statements from other countries of the Nile Basin with respect to the legality and relevance of the two agreements on the Nile waters: the 1929 Nile Water Agreement and the 1959 Nile Water Agreement that Egypt and the Sudan concluded. Egypt considers these two agreements on the use of the Nile waters to be somewhat sacrosanct, legal, valid, and thus binding on the other countries of the Nile Basin. Thus, any insinuation with respect to their non-binding status engenders Egypt's furry and threatening responses, a fact that has continued to raise tensions in the region.

In this respect, the other countries of the Nile Basin (Burundi, DRC, Eritrea, Ethiopia, Kenya, Rwanda, Tanzania) have individually and collectively been raising concerns with respect to the legality, equitability or fairness, and reasonableness of the 1929 Nile Water Agreement and the 1959 Nile Water Agreement. They view these two colonial legal instruments to be null and void since they did not participate in their negotiations and their governments did not sign them since they were under European colonial rules, except Ethiopia and Eritrea. Thus, they have constantly been calling for the renegotiation of these agreements, in the form of a new treaty, with a view to accommodating their equitable and reasonable shares in terms of the use of the Nile waters. Hence, the establishment of the Nile Basin Initiative.¹¹

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 and thus the need to come up with a new cooperative framework by all riparian states of the Nile Basin is inevitable and necessary. Hence, the two countries initiated some cooperative technical projects, with a view to creating an environment of trust among the Nile Basin countries.

This article seeks to interrogate some fundamental questions with respect to the duality of Egypt and the Sudan regarding the use of the Nile waters. Is this duality real vis-à-vis other countries of the Nile Basin? Is it feasible for these two riparian countries to cooperate to the exclusion of the other riparian countries, especially the Democratic Republic of Ethiopia and Uganda? Can colonial legal instruments on 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? Will the Nile Basin Initiative succeed in gluing the interests of its member States? Will the Nile Basin Initiative overcome the saga of 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 Nile Basin Initiative with respect to the 1997 UN Convention on the Non-Navigational Uses of International Watercourses?

Egypt and the Nile River

The River Nile was the cradle on which the Egyptian civilisation was built, a fact that Egyptologists countenance and attest thereto.¹² This civilisation could not have achieved its greatness without the flow of the Nile waters from its sources in East and Central Africa and its water discharge into the Mediterranean Sea at the Delta in North East Egypt. Ancient Egyptians could not have built the pyramids without the flow of the Nile waters. It is this strong link between the survival of Egypt, as a geographical and political entity and its greatness. The Greek historian Herodotus described Egypt in the fifth century BC as ‘the gift of the Nile’, an idea that has been appropriated by modern Egyptians. Also since the Nile is the longest river in the world, the Egyptians proudly give Egypt the status of being the ‘mother of the world’. Thus, Egypt has acquired, throughout its ancient and modern history, certain myths because of the Nile River.

While these beliefs can be traced to the era of the Pharaohs, the current Egyptians, who are a mixture of Arabs, Southern Europeans, Euro-Asians, Nubians and other Sudanic groups, have not only adopted these beliefs, but have also institutionalised them in terms of their internal and international geo-political strategies that relate to the Nile waters. In this connection, Egyptians equate their very survival to the uninterrupted flow of the Nile waters from upstream to downstream, where Egyptians usually wait anxiously for its arrival. These beliefs, according to the Egyptians’ perspective, are justified and warranted by the harsh climatic conditions that prevail in Egypt.¹³

Indeed, it is estimated that 98 percent of the land in Egypt is desert. Egypt’s annual rainfall is reported to be zero, except in Cairo whose annual rainfall may reach 25 mm and that of the Mediterranean coast that may reach 200 mm, a fact that eliminates and does not support rain-fed agricultural activities. Hence, the imperative of irrigated agricultural systems in Egypt. To date, Egypt is the most populous country as far as the Nile basin countries (ten of them) are concerned, notwithstanding the fact that, in 2025, Ethiopia’s projected population will exceed Egypt’s population by 20 percent, which will be more than 126 million Ethiopians. Its population is currently estimated to be more than 75 million.¹⁴

These facts and beliefs have informed Egypt’s geo-political policies towards the use of the Nile waters. Egyptians claim historical rights to the Nile waters and thus do not expect any interruption of its flow by countries through whose lands the River Nile flows. It is this Egyptian attitude towards the use of the Nile waters that has been a cause for concern as far as the other riparian countries are concerned. Egypt, since time immemorial, has cultivated control of the Nile by ensuring that the Nile water sources are protected and not tampered with, in terms of its water use.¹⁵

Egypt and the 1929 Nile Waters Agreement

While Egyptian rulers’ attempts to control the Nile waters could be traced to ancient periods, especially during the glorious era of Egyptian civilisation, the current efforts in this respect can be traced to the nineteenth century during Turkish rule, especially during the time of Mohammed Ali. Pursuant to this goal, Mohammed Ali Pasha, the Ottoman Governor or Khedive of Egypt, organised military expeditions into the Sudan

not only to acquire slaves, ivory, and gold, but also and assumingly to ensure the control of the sources of the Nile.¹⁶

The British inherited this role when they conquered Egypt. Hence, British administrations embarked on securing legal agreements with other European powers in the region with a view to averting any interruption of the flow of the Nile waters with respect to Egypt. Indeed, the United Kingdom signed a protocol with Italy in 1891 regarding the ascertainment of their spheres of influence in East Africa.¹⁷ In 1906, three European countries (Great Britain, France and Italy) entered into a tripartite agreement that attempted to determine their spheres of influence in East and Central Africa. The United Kingdom and Italy reaffirmed this agreement by signing an agreement in 1925, which, in effect, called on each party to exert its efforts with respect to Ethiopia.¹⁸

In this respect, the United Kingdom and Ethiopian Emperor Menelik II signed a treaty in which Ethiopia committed itself not to tamper with the Blue Nile waters. Article III thereof provided:

His Majesty the Emperor Menelik II, King of Kings of Ethiopia, engages himself towards the Government of His Britannic Majesty not to construct or allow to be constructed, any works across the Blue Nile, Lake Tana or the Sobat, which would arrest the flow of their waters into the Nile except in agreement with His Britannic Majesty's Government and the Government of the Sudan.¹⁹

While Kefyalew Mekonnen acknowledges the current irrelevance of the said treaty, he argues that the treaty's main challenge or shortcoming was the invocation of different interpretations of those involved. As a result of self-serving interpretations, Egypt and Sudan expect other countries of the Nile Basin to strictly adhere thereto and observe the provisions of the two agreements in question. Thus, Egypt and Sudan assume that other riparian countries ought to solicit their permission before they embark on projects which may impact on the flow of the Nile waters. Otherwise, failure to do just that may unfortunately engender military responses as far as Egypt and the Sudan are concerned.²⁰

Pursuant to the same goals, the United Kingdom and the 'independent state of the Congo' signed a treaty in 1906, which also called on the latter to respect and protect Sudan's water interests with respect to the Albert Nile. In this connection, article III of the treaty provided: '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 River, which would diminish the volume of water entering Lake Albert, except in agreement with the Sudanese Government'.²¹ It is important to note that by that time Sudan was under the Anglo-Egyptian Condominium Rule. The treaty in question was signed by Belgium on behalf of the 'independent state of the Congo', and thus this fact belied the notion that the so-called independent Congo was a *de jure* party thereto.

Regarding colonial entities under the United Kingdom in East Africa, the British government established commissions to study the Nile waters management and to make recommendations with respect to development plans that would benefit Egypt and the 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 those of the Gezira scheme and the Jebel Awliya dam. The Commission produced a report, which was dubbed as Garstin's

Report – Sir William Garstin, Under-Secretary 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 Egyptians' rights to the Nile waters.²²

In this respect, Sir William Garstin ameliorated Egyptians' 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 be 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.²³

By making this statement, Sir 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 of the Nile waters, especially with respect to the irrigation systems in the Sudan. Thus, the terms of reference of the commission, whose membership consisted of an Egyptian, a Briton, and a chairperson of the commission, included but were not limited to recommending development of irrigation systems in the Sudan, especially the Gezira Scheme that would not necessarily infringe on Egypt's Nile water rights. Previously, the proposed Gezira scheme and the Sennar dam and the Jebel Awliya dam had been a bone of contention among British officials in Egypt and the Sudan.²⁴

Indeed, the Egyptian prime minister at the time, Ahmed Ziwar Pasha, reiterated the Egyptian concerns with respect to the proposed irrigation schemes in the Sudan. He emphatically contended that such schemes would adversely affect the flow of the Nile waters to Egypt. In this connection, he noted:

The Egyptian Government has always stated that this development [of irrigation in the 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 principal vital to Egypt has been fully admitted by His Britannic Majesty's Government.²⁵

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 the Sudan and in response to the Egyptian Prime Minister's note, 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.²⁶

Pursuant to the Commission's recommendations, the British High Commission and the Government of Egypt exchanged notes, which mutated to become 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 the Sudan. Indeed, the 1925 Commission's Report was made part and parcel of the 1929 Nile Waters Agreement between the Governments of Great Britain and that of Egypt and thus was annexed to the text thereof.²⁷

In effect, the 1929 Nile Waters Agreement prioritised Egypt's 'natural and historic' rights as described by British officials and thus Sudan's rights to the Nile waters were automatically rendered secondary. In this connection, Bonaya Adhi Godana noted that the Egyptian attitude amounted to a subordination of Sudanese interests to Egypt's, rather to a mere judgment of competing interests in the Nile waters.²⁸

The 1929 Nile Waters Agreement produced three cardinal legal principles, which Egypt has since been invoking in case of disputes with other riparian states over the Nile waters: the principle of established rights; the notion of equitable shares; and rights of construction beyond territorial boundaries. The 1929 Agreement reaffirmed Egyptian natural and historical rights as enunciated by the notes of British officials. It also specified Egypt's share of the Nile waters, which was set to be 48 billion cubic metres of the Nile flow per year. It apportioned Sudan four billion cubic metres of the Nile flow per year. It unfairly empowered and authorised Egypt to undertake reconstruction projects beyond its geographical and political domain.²⁹

The 1929 Nile Waters Agreement was replete with irrational colonial legal principles that defied basic human cooperation precepts – what many might term as the precept of natural justice or equity – that should have guided and informed the framers of this agreement. The Agreement did not only trivialise the role of Sudanese, it totally and absolutely ignored many interested parties of the Nile Basin, whose lands the Nile waters crisscrossed, because their interests did not add up to the British geopolitical interests in Egypt, especially the Suez Canal. Thus, the disproportionate shares of the Nile waters with respect to Egypt and Sudan were a logical outcome of such skewed legal arrangements. While the 1929 Agreement assigned to Egypt unfettered rights, it assigned to Sudan the role of an unequal, symbolic, and passive partner – a decision that continues to haunt the region to date as far as the disputes over the Nile waters are concerned.

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. In this connection, Egypt planned to build a water reservoir or dam that would annually accommodate the flow of the Nile waters. These Egyptian efforts culminated in proposals that pertained to building the Aswan High Dam project and constructing of the Gebel Awliya Dam in Sudan, with a view to capturing the flow of the Nile waters from upstream riparian states.³⁰

Egypt needed a restatement of the legal principles established under the 1929 Nile Waters Agreement in a form of a new agreement with the Sudan. This approach was necessitated by the fact that the Sudan attained its independence from Britain in 1956. While the Government of Egypt was sure about the applicability of the principle of succession of treaties to the 1929 Nile Waters Agreement, it wanted to ascertain that the new independent political entity, the Sudan, would adhere to 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 they did not only sign, but was grossly unfair.³¹ Indeed, upon independence of the Sudan, the Egyptian Government and the British Government urged the new Government to issue a statement of intent with respect to the applicability of the 1929 Nile Waters Agreement on the Sudan.

In this connection, the government of the Sudan at the time queried the signatories of the 1929 Nile Waters Agreement and sought more information on agreements that might have been signed on its behalf. It officially sought clarification on the treaties that the two governments might have entered into on its behalf.³² Thereafter, the Sudan Government made it abundantly clear that it did not intend to be bound by the 1929 Nile Waters Agreement on the basis that the Sudan had achieved its independence and was therefore sovereign and capable of making sovereign decisions.³³

The change of government in the Sudan from a democratically elected government to a military government that came as a result of the 1958 coup, led by General Ibrahim Aboud, provided an enabling environment for the Egyptian Government to push for the signature of the 1959 Nile Waters Agreement by the new Government in the Sudan. Indeed, many political analysts at the time described the Government of Ibrahim Aboud as a brainchild of the Egyptian Government that had become concerned about the democratically elected Sudanese Government's concerns about agreements on the Nile waters that the British colonial administration had entered into on behalf of the Sudan.³⁴

In effect, while the Sudan did not challenge established rights under the agreement in question, it nonetheless called for the revisiting of the 1929 Nile Waters Agreement with a view to addressing the Sudan's concerns, especially its fairness and reasonableness as far as the Sudan's interests were concerned. Consequently, the two States signed notes in 1959 that became known as the 1959 Nile Waters Agreement. This agreement signalled the cooperation between Egypt and the Sudan in terms of the sharing of the Nile waters. It officially laid down a foundation for the duality of the two riparian states and excluded other riparian states that continued to be under British rule, excluding of course independent Ethiopia.³⁵

The main features of the 1959 Nile Waters Agreement included but were not limited to the following: the two parties agreed that the quantity of the Nile waters' flow was 84 billion cubic meters at Aswan High Dam, Egypt; that the parties agreed to dually share this water quantity of which the Sudan's share would be 18.5 billion cubic metres and that of Egypt would be 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 of the Nile waters and the balance thereof would be shared by the parties, according to the established shares of those concerned; the parties agreed to construct dams that would harness the Nile waters' flow and reduce the 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's and the 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 and Sudan the construction of the Rosaries Dam on the Blue Nile; and the parties established a permanent joint technical commission to nurture and cement the duality.³⁶

The 1959 Nile Waters Agreement between Egypt and Sudan laid down 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 Nile Waters Agreement excluded 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 agreement freely. However, the fact remains that Egypt, through conquest, considers the Nile as its natural domain and thus 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 was concerned.

Egypt has historically used Sudan as its passive and weak partner in the exploitation and use of the Nile Waters. Regarding other countries of the Nile Basin, Egypt assumes that colonial powers negotiated and signed the 1929 Nile Waters Agreement on their behalf and thus the international law principle of succession applies. This argument is certainly contradictory and flawed. Thus, the challenge is to contest the oblivion of the Egyptians to the injustice of colonisation and the fundamentals of the decolonisation process.

Egypt's Geopolitical Strategies over the Nile River

Egypt considers the Nile as its source of sustenance and life. With its growing population and the desert climatic conditions, the Nile becomes Egypt's national security strategic natural resource. Thus, Egypt's geopolitical strategies are fundamentally anchored in securing the Nile Basin and ensuring an uninterrupted flow of the Nile waters. In this connection, other countries of the Nile Basin argue that Egypt's quest is unrealistic, uncooperative, inequitable, and, above all, oblivious to their equal needs in terms of socioeconomic development of their countries and welfare of their peoples.³⁷

These geopolitical strategies include but not limited to the establishment of standing Egyptian military force that would timely response to any threat with respect to the flow of the Nile waters; the employment of omnipotent political influence over political developments in the Nile Basin countries, especially the Sudan, Ethiopia and Uganda; the establishment of political alliances with either of the super powers during the Cold War era and currently with the US and other powerful countries in the world, including the state of Israel; securing some influence over international lending institutions, especially the World Bank and the African Development Bank (ADB); exercising some control over the investment of the Arab League's members in the countries of the Nile Basin Egypt being the permanent seat of the Arab League, whose Secretary General has always been an Egyptian, except when the League expelled Egypt as a result of its Camp David Accord with Israel.

In its history, Egypt has always been concerned about the security of the Nile Basin. In this respect, it has ever since established a standing Nile forces that would address military operations with respect to the use of the Nile waters by other countries.³⁸ Egypt has indeed established a military plan known as 'Waraa-el-hidoud'. As Yosef Yacob noted:

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 (beyond the borders), 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.³⁹

Indeed, in a number of instances, Egypt issued military threats against Ethiopia, Sudan, and other countries of the Nile Basin regarding 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'.⁴⁰ In this connection, President Hosni Mubarak of Egypt told a local newspaper that: 'Those who play with fire in Khartoum ... will push us to confrontation and to defend our rights and our lives'.⁴¹

Yosef Yacob refers to the history of the Nile as that of 'unsuccessful diplomatic and political initiatives, hostility, tension, and non-cooperation'.⁴² He pointed out that:

The history 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 basin's rivers for the exclusive benefit of lower riparians. The history 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.⁴³

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. In this connection, Josef Yacob made reference to the report that the Nile expert, Dr Hamdi el-Taheri, had submitted to the Select Committee. He points out: '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 White 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'.⁴⁴

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'.⁴⁵ The two riparian countries argued that if Egypt had a water surplus, they should, in terms of priority, benefit from it since they had a greater need in terms of socioeconomic development in their respective countries.⁴⁶ In response to these concerns, different Egyptian officials uttered threatening statements against the Sudan and Ethiopia.

In this connection, Egyptian officials issued statements, which, in effect, reminded Sudanese and Ethiopians that Egypt would not tolerate unnecessary and uncalled-for complaints. Egypt Foreign Minister Amir Moussa told off Islamic leader Hassan al-Turabi and cautioned him not 'to play with fire' when Turabi remarked that Sudan was capable of reducing Egypt's water quota. 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 the 1959 Nile waters agreement with Sudan allocating water to Egypt was a 'red line that can never be crossed'. The Egyptian President added, while 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.'⁴⁷

These Egyptian threatening voices do not spare other countries of the Nile Basin either. Indeed, Egyptians do not refrain from restating the obligations of these countries under the two Nile legal agreements of 1929 and that of 1959. In this respect, Yosef Yacob reported:

Most recently, Ethiopia's announcement in 1999, to build a dam on the Blue Nile River, elicited a threat from Mubarak 'to bomb Ethiopia'. However, the Ethiopian government considered these threats as an 'irresponsible instance of jingoism that will not get us anywhere near the solution of the problem' and 'there is no earthly force that can stop Ethiopia from benefiting from the Nile'. Last month, Kenya's intended withdrawal from the 1929 Nile Waters Agreement was described by Egypt as 'an act of war' and Egypt's Minister for Water Resources and Natural Resources, Mahmoud Abu-Zeid, accused Kenya of breaching international law by opting out of the treaty and threatening that Kenya could not lay claim to sovereignty to protect itself from any action that Egypt may want to take'. According to the newspaper account, the Egyptian Minister '... hinted at sanctions, saying Kenya would suffer if [Egypt] and the other nine decided to punish it for quitting the treaty'.⁴⁸

It is abundantly evident that the duality of Egypt and the Sudan vis-à-vis 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 their historical and legal rights over the Nile waters. Indeed, Egypt has issued thus far more threats against the Sudan than against any other country of the Nile Basin. Thus, the duality is more of an Egyptian imposition that the Sudanese regimes bitterly swallow, lest they become easy prey to the Egyptian political manipulations and plots. In this respect, Egypt invokes Arabism and Islam as the foundation of this dualism or defence against other countries of the Nile Basin, which are largely 'perceived' to be non-Arab and non-Islamic.

Sudan and the Use of Nile Waters

The Sudan is geographically located in North-East Africa, neighbouring on nine countries: Egypt and Libya to the north; Eritrea to the north-east; Ethiopia to the east; Uganda and Kenya to the south; and the Democratic Republic of the Congo, Chad and Central African Republic to the West. It is the largest country in Africa in terms of size, which is about two and half million square kilometres. Its current population is currently estimated to be 34 millions.⁴⁹ Sudan has different natural regions: arid and semi arid regions in the northern and western parts of the country; semiarid and poor savannah regions in the central part of the country; and rich savannah and tropical regions in the southern part. Indeed, the vast land of the Sudan is either arid or semi-

arid like that of Egypt. Thus, the need for irrigation systems of agriculture is equally imperative.

The Sudan is the first African country that attained 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 that earned its independence from the British in 1957. Indeed, the independent Sudan joined the Arab League, which the Arab countries established in 1945, within two weeks of its independence. The Egyptian government bulldozed Sudan's membership in the Arab-League against the opposition of the other members of the League, whose argument was that the Sudan was not an Arab country and thus its membership would open a floodgate for non-Arab countries to join their Arab-focused organisation. Indeed, other African countries (Mauritania, Somalia, Djibouti, and Comoros Islands) followed suit.⁵⁰

In this respect, Egypt encouraged the Sudan to join the Arab League in an effort to ensure that Egypt would politically control the post-colonial Sudan. Indeed, prior to independence, Egyptians had hoped that there would be unity between Egypt and the Sudan to create a 'united state of the Nile Valley'. However, when those efforts failed or faltered, Egyptians made it abundantly clear that they would not countenance or support the disunity of the two parts (North and South) of the Sudan to their partner in the Anglo-Egyptian Condominium. 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 the Sudan with respect to the use of the Nile waters.⁵¹

The Nile River traverses the entire land of the Sudan. Indeed, the Blue Nile and the White Nile – that emanate from Ethiopia and Burundi respectively – meet in Khartoum to form the Nile River, which then flows northward to Egypt until it pours its waters into the Mediterranean Sea. Thus, like Egypt, the Sudan claims the 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 thus capable of maintaining rain-fed agriculture. It is in this context that the Sudan is sometimes sympathetic to, and agreeable with, the Egyptians' needs and claims with respect to the use of the Nile waters.⁵²

Sudanese Political Development and Egypt's Imprints

While the ancient history of Egypt credits the Sudanese for having built Egyptian civilisation, the modern history of the Sudan is replete with waves of invasions by Europeans, Turks, Arabs – especially the British in the eighteenth century and the nineteenth century. Among them, contemporary Egyptians have remained resilient and persistent in their control of political events in the Sudan.⁵³ Indeed, its obsessive concern about the security of the Nile Basin has rendered Egypt the role of godfather in the politics of the Sudan with respect to the Arabised and Islamic ruling elites in the Northern part of the country and a spoiling role in the aspirations of Southern Sudanese and other marginalised Sudanese in the Nuba Mountains, Southern Blue Nile, Eastern Sudan, and the Darfur region.

In this respect, Egypt's meddling in the Sudan's political affairs had started long way back in the 1920s prior to the Sudan's independence in 1956. As a partner in the

Anglo-Egyptian Condominium, Egyptians cultivated unity ideals and aspirations between Egypt and the Sudan in the military school's new recruits and Sudanese students in Egypt, a fact that resulted in the mutiny of army recruits in 1924, whose main demand was to call for immediate end of British colonialism of the Sudan and unity of the Nile Valley (Egypt and the Sudan). It is interesting to note that the ethnic backgrounds of the vast majority of the mutineers were invariably and paradoxically from the Southern ethnic groups (Dinka, Neur, and Shilluk).⁵⁴

Egypt openly and carefully coached new Northern political parties in the Sudan with respect to the unity of the Nile Valley. In the 1950s, Egypt's efforts in this respect could have succeeded had it not been because of the 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 peoples were in favour of the Sudan's independence, after all, they considered Egypt as a partner in the Anglo-Egyptian Condominium, and thus, by definition, a coloniser.⁵⁵

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 concerns. The Egyptian government was gravely concerned about this Sudanese request, 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 persistent calls for a federal system of government. All these challenges resulted in an induced military coup by General Ibrahim Aboud in 1958.⁵⁶

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 allowed Egypt to construct the Sudd el Aali at Aswan and other hydro-projects on the Nile, and the Sudan to construct the Roseires Dam on the Blue Nile and other projects on the Nile.⁵⁷ Indeed, this agreement resulted in the submerging of the Sudanese historical and cultural city of Wadi Halfa to give way to the Aswan Dam. The town's Sudanese inhabitants were nominally compensated, a fact that triggered protests and rioting, which the Sudanese military government quickly quelled. Pursuant to this agreement, Egypt established monitoring missions in the Sudanese cities along the Nile, with a view to monitoring the use of the Nile waters by the Sudanese farmers.⁵⁸

The construction of the Sudd el Aali at Aswan had devastating effects as far as the climatic conditions in the 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, so much so that the vast majority of the inhabitants of the areas concerned were permanently displaced. Indeed, the effects of those floods continue to be felt until today. These floods were caused by a twenty percent 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 zone, whose climatic conditions were utterly

different from those of Wadi Halfa, a fact that had devastating psychological effects on the displaced persons.⁵⁹

On 21 October 1964, the Sudanese popular uprising toppled and ended the reign of terror of the military government of General Ibrahim Aboud. 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 the Sudan. Indeed, the Umma Party, known for its hostility towards Egypt, controlled the civilian government. While the caretaker government of el Khalifa had put in motion a mechanism by which to resolve the so-called Southern problem, by holding 'the Round-table Conference' and produced acceptable recommendations, the Umma Party government failed to act on them. Hence, the intensification of the civil war in the South, the committing of war crimes and crime against humanity in the South, and the continued political instability.⁶⁰

In 1968, the national constituent assembly established a committee to draft a permanent constitution for the Sudan. In this respect, the Committee came up with a draft constitution, which was, for all intents and purposes, Islamic, a fact that triggered marginalised areas members to walk out of the assembly and declare that they would not want to be part of a constitution that alienated most of their communities and areas. The national assembly also passed a bill into law by which it dismissed members of the Sudanese Communist Party (SCP) on the basis of apostasy, despite being democratically elected. Hence, the precipitation of a political crisis, which ushered in the military takeover in 1969 and the dismissal of the national assembly.⁶¹

The military Junta called their government 'the May Revolution' government, signifying the month in which they staged their military takeover on the 25th of May 1969. Many members of the May Revolution government were ideologically and basically left of centre (communists, socialists, and Baathist or Arab-nationalists). The leader of the coup, General Jaafar Mohamed Nimeiri, in his statement after the coup, declared that Sudan was an Arab country and thus supported the struggle of the Palestinian people and Arab leaders' efforts in this respect, especially those of Jamal Abdel Nasser and Mamar Khadafi.

In 1970, Ansar's uprising, supporters of the Umma Party, erupted in Omdurman and in the Aba Island against Nimeiri's military government. The uprising was quite extensive, so much so that the government availed itself of the Egyptian air force to bomb the Aba Island in el Gezira. Indeed, one of the Egyptian military pilots was the current President of Egypt, Hosni Mubarak. Also in 1971, soon after he had foiled a coup attempt by the communist members of his government, Nimeiri declared his government's interest in 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 surrendered them to Nimeiri's government.⁶²

Pursuant to this policy, the government introduced a reform of its education system, by adopting syllabi based on the Egyptian system of education. The education reform was so extensive that it made the Arab world as the basis on which the Sudanese knowledge system was produced. Proficiency in Arabic became one of the pre-requisites for a tertiary education in the Sudan. Thus, in effect, the new educational system disadvantaged those Sudanese students whose educational background was

certainly not Arabic. Thus, it was abundantly clear that Egypt had supported the coup's leaders in their adventurous takeover of the government.

In 1972, the Nimeiri regime reached an agreement (Addis Ababa agreement) with the Southern Sudan Liberation Movement (SSLM or Anya Anya), by which the South attained self-government rule. The Addis Ababa Agreement became an organic law when the national assembly incorporated it into the Sudan's permanent constitution of 1973. Thus, the agreement brought a temporary peace in the South until president Nimeiri abrogated it when he divided the South into three states and imposed Islamic law on the country in 1983.⁶³

Egypt seized the coming about of peace in the Sudan to revive its long dream to conserve and preserve the water lost as a result of evaporation in the Sudd region of Upper Nile, Southern Sudan. In 1925, Egypt had decided to dig the Jonglei canal at the confluence of the White Nile and Sobat. However, the British government put the brakes on this project because of the Egyptians' complicity in the military school recruits' revolt in 1924. Thus, the Egyptian government, in consultation with the Sudanese government, decided to dig the Jonglei canal in 1974. Indeed, the permission of Egyptians to dig the Jonglei canal triggered serious high school student uprisings throughout Southern Sudan. Southern Sudanese high school students correctly felt that the construction of the canal would necessarily bring a large number of Egyptian farm-workers to the South, which, in turn, would commence a new wave of Egyptian invasion of South Sudan.⁶⁴

A French firm won the contract to dig the Jonglei canal in the late 1970s. This firm managed to dig eighty percent of the canal until its work came to a halt as a result of the military activities of the SPLA in the area in the 1980s. The gigantic machine that was used in the digging of the canal remains in situ, though. The Comprehensive Peace Agreement, signed on the 9th of January 2000, is silent about the Jonglei canal project. Egyptians have yet to raise the issue with the Government of National Unity (GNU) and the Government of Southern Sudan (GOSS). In all probability, the Egyptian Government will request the resumption of the Jonglei canal project, since it has already invested a lot of financial resources in the project.⁶⁵

In 1985, there was an uprising against the Nimeiri's government, which ultimately resulted in his overthrow by his vice-president, who headed the new interim government. It conducted democratic elections in 1986, which brought to power Al Sadding Al Mahdi, the chairperson of the UMMA party, as the prime minister. Al Mahdi failed to address the two main challenges to the Sudan's nation building project: separation of religion from state and bringing to an end the civil war. In 1988, however, Al Mahdi's government decided to embark on serious peace negotiations with the Sudan People's Liberation Movement/Army (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 as 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 (hereinafter NIF). This political party had not

only been in alliance with the governing party (UMMA Party) before it collapsed, but had also members in the parliament during the coup. Indeed, the coup leaders arrested and detained all the political leaders, including the leader of NIF, Dr Hassen El Turabi, who master-minded the coup.⁶⁶

The coup makers 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 undergone his military training in Egypt. Thus, 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.⁶⁷

In response to Egyptian government's threat against the NIF regime, its Islamic leader, Dr Hassen El Turabi, reciprocated by asking Egypt to peacefully withdraw from the Halai'ib strip or triangle along the Red Sea that it currently occupied. Failure to heed this advice, El Turabi threatened to stop the flow of the Nile waters to Egypt, a threat that reminded Egypt of its vulnerability to any hostile political developments in the Sudan. Egypt dismissed such threats as shallow and superfluous, since it knew that the Sudan government could not dare to challenge the security of Egypt, the consequence of which would be its forceful removal from power.⁶⁸

Notwithstanding, Egypt refrained from taking drastic measures against the leaders of the Sudan government and instead proceeded to cultivate confidence building measures: it exerted lukewarm efforts to support the imposition of sanctions on the Sudan government in the UN Security Council because of its complicity 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 IGAD peace process, which produced the Machakos's Declaration of Principles, especially the principle that gave the Southern Sudanese the right to self-determination. In this respect, Egypt and Libya concocted a parallel Sudan peace initiative in which they attempted to dilute the issue of self-determination for Southern Sudanese: that peace initiative was doomed at its infancy.⁶⁹

As the Sudan political history trajectory shows, Egypt's involvement in the Sudan 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 the Sudan. The Sudan does not only have the largest area that the Nile River traverses, but also its contemporary ruling elites profess Arabism and Islam as the sources of their political ideologies. Hence, the perpetuation of political marginalisation and economic underdevelopment of the Sudanese groups that do not claim Arab origin nor Islam as their spiritual domain. Egypt's Nile water interests in the Sudan are fundamentally and historically allied to, and ingrained in, the Arab-Islamic ruling elites, who have been in control of political affairs since independence. This political linkage has not only helped perpetuate these elites in power, but has also been responsible for the political

instability and economic underdevelopment of the Sudan in general since independence.

Cooperative Frameworks in the Nile Basin

Since the nineteenth century, Egypt has been asserting its historical rights to the Nile waters vis-à-vis other countries of the Nile Basin. Notwithstanding, it has to be historically pointed out that Egypt has also been encouraging cooperative frameworks in the area of hydraulic endeavour. Indeed, this is the area where Egypt welcomes cooperation among the countries of the Nile Basin and proffers its reservoir of technical expertise therein, 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 the floods in the 1960s in the East African countries, the World Meteorological Organization established a hydro meteorological (hydro-met) project, with a view to surveying the lake plateau region. In this connection, 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 a mandate to totally plan the waters of the Nile Basin. However, other countries of the Nile viewed the proposal with some scepticism, noting, of course, Egypt's advantageous technical and legal expertise that would make it a dominant power coupled with its constant quest for more water with utter disregard of others' water needs.⁷⁰

In the 1970s, the two downstream countries (Egypt and Sudan) again invited other countries of the Nile Basin to create a commission that would plan the development of the Nile waters. In this respect, 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 UNDUGU group, which consisted of Burundi, Central African Republic, Egypt, Rwanda, Sudan, Uganda, and Zaire. Yacob has noted that the UNDUGU Commission held numerous meetings but could not substantively produce groundbreaking resolutions with respect to the equitable distribution of the Nile waters.⁷¹

However, at its sixty-seventh meeting in Aswan, the water resources 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 (hereinafter TECCONILE). In its short span of time, TECCONILE managed to successfully complete a number of projects that it had set itself up to achieve. It took part in the preparation of an atlas map of the Nile Basin. It provided a requisite series of training for staff members of water resources agencies in the countries of the Nile Basin in areas of Geographical Information Systems (GIS), Hydrological Modelling, Monitoring, Forecasting, and Simulation. It also 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 (hereinafter NRBAP).⁷²

Notwithstanding the prevailing suspicion and mistrust between the two downstream countries and other eight countries of the Nile Basin, this period witnessed a semblance of cooperation among the countries concerned. While upstream countries of the Nile Basin put their point of view with respect to the equitable distribution of the Nile Waters, the two downstream countries began to appreciate the gains that could accrue to them from the cooperative and coordinated frameworks. Hence, 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.

The Nile Basin Initiative

Pursuant to the achievements of TECONILE and NRBAP, the ten countries of the Nile Basin founded the Nile Basin Initiative (hereinafter NBI), which they officially launched in 1999. The main objectives of the NBI, inter alia, were to realise a shared vision with a view to achieving sustainable socioeconomic development through the equitable utilisation of, and benefit from, the common Nile Basin water resources. In this connection, the NBI has developed a number of projects that purport to concretely translate into action its Shared Vision Programme (hereinafter SVP) by creating an enabling environment for cooperative management.⁷³

It outlined 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 the resources; to ensure cooperation and joint action between the riparian countries, seeking win-win gains; to target poverty eradication and promote economic integration; to ensure that the programme results in a move from planning to action.⁷⁴

The SVP comprises seven projects: 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 (Communications); applied training; and socioeconomic development and benefit-sharing. In this connection, the SVP claims to 'create and 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.⁷⁵

Pursuant to the SVP, a strategic action programme (hereinafter SAP) has been developed that consists of two sub-programmes: the SVP for 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; and SAPs to be carried out by smaller groups of Nile riparians, with a view to establishing physical investments at the sub-basin level. Geographically, the two SAPs have concretely put in place the Eastern Nile (hereinafter EN-SAP) and the Nile Equatorial Lakes Region (hereinafter NEL-SAP) that includes Burundi, DRC, Egypt, Kenya, Rwanda, Tanzania, Sudan, and Uganda.⁷⁶

In addition, an international consortium, known as the International Consortium for Cooperation on the Nile (ICCON), has been established to render support to the NBI's strategic action programme. It is organised under the auspices of the World Bank as a forum where the riparian states 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 of their cooperative efforts as far as the distribution and use of the Nile waters are concerned. In this connection, while the initial partnership involved the World Bank, UNDP, the Canadian International Development Agency (CIDA), this group of sympathisers has been joined the Food and Agriculture Organisation (FAO), the Global Environment Facility (GEF), and the governments of Denmark, Finland, Germany, Italy, the Netherlands, Norway, Sweden, the United Kingdom, and the United States.⁷⁷

While the NBI has been in place for quite some time, the experience so far points to the fact that socioeconomic development needs are finding some understanding and appreciation notwithstanding the fact that the old interpretations of the two legal agreements continue to linger. Some riparian countries have been reiterating their old positions vis-à-vis the use and exploitation of the Nile waters when it comes to the equitable distribution of the Nile waters. The issue of equitable distribution and no harm rule remain challenging in that countries of the Nile Basin have continued to call for fresh renegotiations of the current legal agreements on the Nile, while the two downstream countries have remained wedded to their historical rights as prior 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 ha for irrigation schemes. Indeed, the Ethiopian Minister of Water Resources noted that the two dams in question would be 'the first phase of forty-six 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'.⁷⁸ 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.⁷⁹

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'.⁸⁰ 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. In this respect, he added that the 1959 agreement between Egypt and Sudan was more an impediment as far as sustainable development in other NBI's was concerned.⁸¹

In effect, the NBI is a process that the riparian states intend to pursue with a hope that it will culminate in creating a legal framework or treaty that will address the root causes of the current mistrust or suspicion that currently characterises the relations among riparian states. Indeed, the process purports to foster cooperation and sustainable development to the benefit of all the parties concerned. It remains, though,

to be seen whether such objectives will, in the long run, override riparian states' national interests that they have been jealously protecting.

The success of the NBI will entirely depend on its ability to close the current gap, in terms of perceived differences over water rights, between upstream countries and downstream countries. 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 during the utilisation of the Nile waters.

The UN Convention on the Law of the Non-navigational Uses of International Watercourses and NBI

Before the adoption of the UN Convention on the Law of the Non-navigational Uses of International Watercourses, the void was filled by the 1966 Helsinki Rules, which the International Law Association (ILA) codified to assist in addressing disagreements over navigational and non-navigational uses of international watercourses. 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.⁸²

The UN Convention on the Law of the Non-navigational Uses of International Watercourses (hereinafter Convention) of 1997 was the first legal regime that garnered wide support from all the regions of the world. While 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 deciding the case between Hungary and Slovakia.⁸³

In this respect, two riparian states (Egypt and Ethiopia) effectively participated in the Working Group meetings, where both countries argued their variant positions with respect to existing bilateral and multilateral agreements on international watercourses.⁸⁴ 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.⁸⁵

The negotiations that ensued came up with a compromise, which while it appeared to support the position of Egypt and other countries, it 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'. 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'.⁸⁶

The Convention has established a number of general principles that may inform and help riparian countries in their effort 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 watercourse within their territories in an equitable and reasonable manner. Article 5 (1) thereof provides:

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.⁸⁷

Under Article 5 (2), the Convention saddles the participating States with the same responsibility with respect 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 a great premium on cooperation and coordination among watercourse States.⁸⁸

Article 6 of the Convention catalogues a number of factors and circumstances that will determine the needs to use and utilise an international watercourse in an equitable and reasonable manner. Thus, 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.⁸⁹

The Convention's other principle that is critical as far as the NBI process is concerned is the principle of obligation not to cause significant harm. Article 7 requires watercourse States to ensure that their use and 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, of course, entails consultation on remedial and compensatory measures.⁹⁰

Pursuant to the spirit of cooperation that the NBI process advocates, 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 watercourse, especially relating to hydrological, meteorological, hydro-geological, and ecological matters. Such an exercise helps to cement cooperative efforts among watercourse States.⁹¹

Notwithstanding the call for cooperative efforts to address challenges by the NBI, 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 Convention obliges watercourse States involved in dispute, in cases where there is the lack of a mechanism, to refer such disputes to arbitration or to the International Court of Justice. Article 33 provides a time-line of six months within which if the dispute in question has not been

resolved then a fact finding independent commission has to be established, with a view to resolving any dispute.⁹²

The Convention's general principles provide a workable and practical framework that can be used by the Member States of the NBI process in their efforts to mediate their perceived differences that have been stumbling blocks to creating a legal framework or regime that has the support of all the parties concerned. Indeed, under this theory, a watercourse state, within whose boundaries the waters flow, can use the waters in question in any manner without any regard for downstream states. While the theory of absolute territorial sovereignty has a resounding resonance with the majority of upstream states, this theory has to be tempered by the principle of an equitable and reasonable use of a watercourse under the Convention.⁹³

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 the Sudan. While 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.⁹⁴ Thus, Member States of the NBI 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.

Conclusion

While the duality between Egypt and Sudan continues to characterise the relations between downstream and upstream countries, it is evident that this duality has become somewhat outdated with the creation of NBI. The coming into existence of the NBI has indeed signalled this new trend, which suggests that cooperative and coordinated efforts of all those concerned will serve collective interests over the Nile waters, in terms of socioeconomic development, rather than the duality of the two downstream countries that excludes upstream countries.

Egypt's succession theory has not been necessarily endorsed by the UN Convention or by the Helsinki Rules; nor has the 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 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.

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 will certainly encourage those members that are yet to ratify the UN Convention to do so.

Notes

1. Jan Hultin, 'The Nile: Source of Life Source of Conflict', in Leif Ohlsson, ed., *Hydropolitics: Conflicts Over Water As A Development Constraint*, Dhaka: University Press Ltd, 1995, pp. 29-54.
2. See the *Columbia Encyclopedia*, Sixth Edition, pp. 2001-05.

3. Bonaya Adhi Godana, *Africa's Shared Water Resources: Legal and Institutional Aspects of the Nile, Niger and Senegal River Systems*, London: France Printer, 1985, pp. 1-7; World Bank, *Conflict And Cooperation on South Asia's International Rivers: Legal Perspective*, Washington DC: World Bank 2002, pp. xvii-xviii.
4. Arun P. Elhance, *Hydropolitics in the 3rd World: Conflict and Cooperation in International River Basins*, Washington, DC: United States 1999, p 309; see also note 1, pp. 1-28.
5. See note 3, p. 32. Ethiopia invoked this theory several times in its efforts to establish dams and harness waters of the Blue Nile to avert the impact of persistent and recurrent drought.
6. World Bank, *International Watercourses: Enhancing Cooperation and Managing Conflict*, Washington DC: World Bank 1998, p. 8.
7. Ibid.
8. Ibid, p9.
9. Tesfaye Tafesse, 'The Hydropolitical Perspective of the Nile Question', Occasional Paper, June 29, 2000.
10. http://www.transboundarywaters.orst.edu/projects/casestudies/nile_agreement.html;
<http://www.bctimes.com/bctimes/viewnews.php?category=4&newsID=272>.
11. <http://216.109.12.../From.htm&w=articles+nile+basin7d=CF705291C0&icp=1&.intl=u>
12. Cheikh Anta Diop, *The African Origin of Civilization: Myth or Reality*, 1955.
13. Yosef Yacob, 'From UNDUGU to the Nile Basin Initiative: An Enduring Exercise in Futility', Occasional Paper, August 11, 2005.
14. See note 9.
15. Ibid
16. See note 3, p. 102.
17. Ibid pp. 104-105.
18. Ibid.
19. Ibid.
20. Kefyalew Mekonnen, 'The defects of Past Treaties and Agreements on the Nile River Waters: Whose Faults Were They', Occasional paper, 12 August 2005, p. 2.; <http://www.ethiopians.com/abay/engin.html>.
21. See note 3, p. 104.
22. Ibid, pp. 108-110.
23. Ibid, p. 114.
24. See Gebre Tsadik Degefu, 'The Nile Waters: Moving Beyond Gridlock', in Gebre Tsadik Degefu, ed., *The Nile: Historical, Legal, and Development Perspectives*, Trafford Publishing 2003; <http://www.trafford.com/robots/03-0419.html>.
25. Ibid, p. 116.
26. Ibid, pp. 116-117.
27. Ibid.
28. Ibid.
29. See note 20, p. 5.
30. See note 28, pp. 117-119.
31. Ibid, p. 120
32. Ibid.
33. Ibid, p. 144-145.
34. Ibid.
35. Ibid.
36. See note 21, p. 5.
37. See note 13.
38. Ibid, p. 2.

39. Ibid.
40. *The Independent*, the London newspaper of July 5, 1995 had a caption: 'Egypt Tells Sudan not to resort to water weapon'.
41. Ibid.
42. For the discussion of this issue, see note no. 13, p. 1.
43. Ibid.
44. Ibid, p. 3.
45. Ibid.
46. Ibid.
47. Ibid.
48. Ibid.
49. Because of the civil war that started in 1955, the Sudan has never had a comprehensive census.
50. See Biong Kuol Deng, 'Sudan's Identity and The Notion of Broken Promises', *South Sudan Post*, 2nd Edition, February Issue (2006); see also M. W. Daly, *Imperial Sudan: The Anglo-Egyptian Condominium, 1934-1956*, Cambridge: Cambridge University Press, 1991.
51. Ibid.
52. See Wal Duany and Julia Duany, 'Genesis of Crisis in the Sudan', in Jay Spaulding & Stephen Beswick, eds., *White Nile Black Blood: War, Leadership, and Ethnicity from Khartoum to Kampala*, The Red Sea Press Inc., 2000, pp. 167-182.
53. See note 12; for further discussions, see also Endre Stiansen, 'Franz Binder: A European Arab in the Sudan 1852-1863', in Jay Spaulding & Stephen Beswick, eds., *White Nile Black Blood: War, Leadership, and Ethnicity from Khartoum to Kampala*, The Red Sea Press Inc., 2000, pp. 3-21.
54. See Ahmad Alawad Sikainga, 'Military Slavery and the Emergence of A Southern Sudanese Diaspora in the Northern Sudan, 1884-1954', in Jay Spaulding & Stephen Beswick, eds., *White Nile Black Blood: War, Leadership, and Ethnicity from Khartoum to Kampala*, The Red Sea Press Inc., 2000, pp. 22-37; the background of these military recruits can be traced to military slavery that Turkish-Egyptian invaders introduced into the Sudan when they invaded it to secure soldiers, gold, and ivory.
55. For further elucidation of this issue, see note no. 50.
56. The Sudan Prime Minister, Abdalla Khalil, handed over power to the military, having been frustrated by other political parties.
57. See, for clarification, Article 2 (1) and (2) of the 1959 Nile Waters Agreement between Egypt and the Sudan.
58. Egypt established official offices in Jebel Alwayia, Malak, and Juba. It is not a secret that the personnel, manning these offices, are drawn from military and security agencies in Egypt.
59. See for further explanation, Abel Alier, *Too Many Agreements Dishonored: Southern Sudan*, Reading: Ithaca Press, 1992, pp. 222-232; see also supra note 13, p. 4.
60. See Biong Kuol Deng, '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: African Institute of South Africa, 2004, pp. 102-127.
61. Ibid.
62. Ibid.
63. See note 58, pp. 222-232. The author became not only vice-president from 1972-1983, but he was also one of the main architects of the Addis Ababa agreement of 1972.
64. Ibid, pp. 233-254; see also John Garang de Mabior, 'Identifying, Selecting, and Implementing Rural Development Strategies of Socio-Economic Development in The Jonglei Projects Area, Southern Sudan, Sudan', Unpublished Ph.D. Dissertation, Iowa State University, Ames, Iowa, 1981, pp. 53-54.

65. Ibid; see also Ken Ramani and Waweru Mugo, 'Feature – Nile water deal threat to regional stability', *Sudan Tribune*, December 8, 2005; http://sudantribune.com/article_impr.php?id_article=6842.
66. On Al Jazeera's TV's programme in February 2006, Dr Hassen El Turab confessed about his role in the military coup of 1989 and the assassination attempt against President Hosnik Mubarak of Egypt.
67. Ibid.
68. See note 47.
69. See note 59, pp. 192-193.
70. See note 13, p. 4.
71. Ibid, pp. 4-5.
72. Ibid.
73. See Council of Ministers of Water Affairs of the Nile Basin States, 'Nile Basin Initiative Shared Vision Program: Socio-Economic Development and Benefit-Sharing', Project Document, March 2001, p. v.
74. Ibid, p. 4.
75. Ibid, p. v.
76. Ibid, p. 8.
77. Ibid, p. 3.
78. See note 13, p. 8.
79. Ibid.
80. Ibid.
81. Ibid.
82. See International Law Association, the Helsinki Rules on the Use of the Waters of International Rivers, 52 I.L.A. 477, 1967.
83. See Convention on the Law of the Non-Navigational Uses of International Watercourses, U.N.G.A. Res.51/220, U.N. Doc. A/51/869 (May 21, 1997); see also Gabcikovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 92 (Sept.25), 37 I.L.M. 162 (1998), <<http://www.icj-cij.org/idocket/his/ihsjudgment/ihsjudcontent.htm17>>
84. Ibid, p. 10.
85. Ibid.
86. Ibid; see also the UN Convention on the Law of the Non-Navigational Uses of International Watercourses.
87. Ibid.
88. Ibid.
89. Ibid.
90. Ibid.
91. Ibid.
92. Ibid.
93. See K Nobelsdorf, 'The Nile Waters Agreements: Imposition and Impacts of a Transboundary Legal System', Note Final Document, 2/28/2006, Dorsey & W Hitney Student Writing Prize in Comparative International Law Best Note Award Winner, pp. 16-18, <http://66.102.9.104/Search?q=cache:ICVgVX2-uCQJ:www.columbia.edu/cu/jtl>; see also the Nyerere Doctrine and Treaty Repudiation, which, in effect, calls for non-compliance with colonial era agreements unless international law requires such compliance.
94. Ibid, p. 19.

Korwa G. Adar

Kenya's Foreign Policy and Geopolitical Interests: The Case of the Nile River Basin

Introduction

As one of the riparian states, the use of the Nile water by neighbouring countries has direct implications for Kenya's national interest. The evolution of Kenya's official water policy, particularly on 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 a 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 in part (Kenya 2004a):

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 under the docket 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 to ensure a clear understanding of the implications of the Nile water policies pursued by the neighbouring states. The Nile River basin is shared by Burundi, the Democratic Republic of Congo (DRC), Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, and Uganda and encompasses a total population of 160 million people. Of the ten riparian states, only Egypt and Kenya are not among the least developed countries.

Operational Research Questions

- (i) Are Kenya's foreign policy interests vis-à-vis the Nile River question influenced by her internal demand for water?
- (ii) Is Kenya's foreign policy behaviour vis-à-vis the Nile River question influenced not only by her internal demand for water but also the demand for water by the riparian states? Stability in the region is in the interest of the riparian countries, including 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 that hold the potential of undermining the 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.

- (iii) To what extent do these regional geo-political interlocking questions influence Kenya's foreign policy interests on 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:¹

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:

- (i) 'The Nile Waters were to be shared between Egypt and Sudan, with Egypt and Sudan claiming rights to 48bn. m. and 4bn m. per year respectively.
- (ii) The dry season flow, between the 15th January and 15th of July, was entirely reserved for Egypt.
- (iii) Egypt claimed the right to monitor the flow of Nile Water into and out of upstream riparian countries.
- (iv) Egypt claimed the right to veto any upstream engineering works that would affect the flow of the Nile.
- (v) Egypt claimed the right to construct engineering works on the Nile without the consent of other riparian states' (Ng'wandu 2003).

This article examines Kenya's foreign policy interests on the Nile water question and the implications of the geopolitics of the region as well as the riparian states' policies for the country's national interest. The article is divided into four parts. Part One puts into 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' (Okidi 1994: 9).

Part Two focuses on the domestic context of Kenya's foreign policy interests in the Nile River basin. Part Three 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. Part Four puts into context the impact of the Nile River basin geopolitics on Kenya's foreign policy interests.

Theoretical Perspectives on State Claims to Rights to River Waters and International Drainage Basins

The legal regime on claims to river waters and international drainage basins has evolved over the centuries (Garretson et al., 1976; Godana 1985; Chauhan 1987). These claims centre around four main competing theoretical legal rights to river waters and international drainage basins, namely: absolute territorial sovereignty; absolute territorial integrity; community of coriparian states; and limited territorial sovereignty (Okidi 1980: 403-406). 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, 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' (International Law Association 1967). Analysis of these contending theoretical legal rights can provide a clearer basis for the assessment and contextualisation of Kenya's foreign policy interest regarding the Nile River waters and other related geopolitical questions.

Absolute territorial sovereignty theory, commonly associated with the *Harmon Doctrine*, presupposes that a state has unlimited sovereign rights to natural resources within its territorial jurisdiction.² In this context, a riparian state is free to use its natural resources as well as the river waters of an international drainage basin that flow through its territory without any limitations (Correia and Silva 1999 and Hyde 1956). 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 inter-state and regional conflicts. The US Attorney General Harmon during his ruling on the dispute involving US and Mexico over the Rio Grande River in 1895 stated that no rule, principles and precedents of international law, imposed any limitation on the US to allow 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 (Okidi 1980: 404). 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 co-operative rules to govern their claims recognising the importance of the principle of *pacta sunt servanda* (agreements are binding).

The *theory of absolute territorial integrity* or of *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 on the downstream state. Clearly, absolute territorial sovereignty and absolute territorial integrity have the potential for exacerbating interstate and regional conflicts.

The notion of *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 (Adar 1994:11). 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 passing through a territory gives the state in question water rights, while at the same time the lower riparian state claims the right to demand the free flow of river waters. This may lead to conflict, and in general practice the upper riparian states have adopted co-operative 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 systems constitute a common geographic and economic entity beneficial to the contiguous states that necessitate 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 basin and requires collaboration and creation of institutions to implement joint policies' (Ayugi n.d.: 21). 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.

Limited territorial sovereignty theory (also called *theory of sovereign equality and territorial integrity*), attempts to operationalise the use of river waters and international drainage systems as in the case of 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 in this theory is the recognition of the rights of the upstream and downstream countries in the reciprocal and equitable share of the waters. Enshrined in the limited territorial sovereignty theory are the doctrines of equitable utilisation and an obligation not to cause significant harm (*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) (Schroeder-Wildberg 2002: 14).

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 (UN Doc. A/51/229/PV.99 [1997] and Birnie and Boyle 2002). The doctrines of *equitable utilisation* and *no harm* are incorporated in the Nile Basin Initiative (NBI), the objective of which is to find an acceptable international legal regime for the utilisation of the Nile River waters (Bruneel and Toope 2002). 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 over and the use of river waters and international drainage systems. However, for the purposes of this study *limited territorial sovereignty*, which has officially been incorporated in 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 the UN Convention on the Law of the Non-navigational Watercourses (UN Doc. A/51/229/PV.99(1997)).³ The central proposition underlying 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.

The Domestic Context and Kenya's Foreign Policy Interests regarding the Nile Waters

Kenya has a territorial area of more than 580,000 sq. km., with over 85 percent of its 571,000 sq. km. of land area classified as arid and semi-arid, which makes Kenya, with its 1004m³ per capita per year in 2000, one of the chronically water-scarce countries in the Nile River basin. In 2000, for example, while Kenya's internal water flows amounted to 20 billion m³, water flow from the neighbouring Nile River basin countries reached 10 billion m³ in the same year (World Bank 2002: 152). A country falls in the category of being 'absolutely water scarce if it has less than 500m³ per capita, per year, as chronically water scarce with 500-1000m³ per capita per year and as water stressed if it has between 1000-1700m³ per capita per year' (Mason 2003: 105). In Kenya, the water area accounts for only 11,000 sq. km. It is estimated that more than 75 percent of Kenya's 32 million people occupy only 81,000 sq. km (Kenya 2005: 3).

There are five main drainage systems that provide water in Kenya and are determined largely by the Rift Valley. These include White Nile Basin (around Lake Victoria); the Rift Valley; Athi River; Tana River; and Ewaso Ngiro. Of these, the trans-boundary 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 by numerous rivers, accounts for 54 percent of Kenya's fresh water and remains the mainstay of the country's water resources. Yet the Lake Victoria drainage basin with all its water resource potential remains the least developed. Kenya accounts for over 45 percent 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 (Kenya 2005: 3-5).

It is this trans-boundary drainage system and the interdependence nature of the use of the Nile waters that draw Kenya into the Nile water geopolitical equation.

Table 1: Nile River Riparian States and Geographical Areas within the Basin

Country	Country Area (Sq. km)	Area within the Nile Basin (Sq. km)	% 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, Diana, R, *Water Sharing in the Nile River Valley* (Geneva: UNEP/DEWA/GRID, 2000), p. 10.

Table 1 shows that only eight percent of Kenya's 580,000 territory or over 46,000 sq.km. falls within the Nile Basin, that is, two percent of the total Nile Basin. This small percentage of the basin accounts for what has been dubbed as 'the granary of the Kenya water resources' (Kenya 2005: 3).

As Table 1 indicates, nearly 64 percent of the total Nile basin falls within Sudan's territory, followed by Ethiopia, Egypt, and Uganda with a total of 12 percent, 11 percent, and seven percent respectively. On the other hand only three percent and two percent of the total Nile basin falls within the territories of Tanzania and Kenya respectively. As Table 1 shows, less than one percent of the total Nile basin falls within the territories of Eritrea, DRC, Rwanda, and Burundi. However, these figures change greatly when the geographical area of each country in the Nile basin is examined. For example, nearly all of Uganda's territory, that is, 98 percent, falls within the Nile basin, followed by Sudan (79 percent), Rwanda (76 percent), Burundi (48 percent), Egypt (33 percent), Ethiopia (32 percent), Eritrea (21 percent), and Tanzania (9 percent).

The intra-Nile basin water resources dependence brings another dimension into the region. Table 2 shows that the dependence 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 percent respectively.

Table 2: Water Resources and Availability Per Person in the Nile Basin States

Country	Internal Renewable Water Resources (IRWR) Km ³ /year	Actual Renewable Water Resources (ARWR) (km ³ /year)	Dependency Ration %	IRWR inhabitants, in 1994 (m ³ /inhab.)	ARWR per inhabitants In 1994 (m ³ /inhab)
Burundi	3.6	3.6	0.0	579	563
DRC	935.0	1019.0	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, Diana, R, *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 2 indicates, the DRC topped the list in the Nile basin with over 23,000m³ actual renewable water resources per inhabitant in 1994, followed by Sudan, Uganda, Tanzania, Eritrea, and Ethiopia with 3,150m³, 3,099m³, 2,998m³, 2,492m³, and 1,998m³ per inhabitant in 1994 respectively. (Karyabwite 2000). 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.

Multilateral Diplomatic Initiatives and Kenya's Foreign Policy Interests regarding 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* self-interest and mutual distrust reminiscent of the colonial and post-independence era in the region. The interlocking challenges notwithstanding, 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 and Ethiopia's role in these Nile basin multilateral negotiations that were held during, the 1960s to 1990s, particularly the 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, participating mainly as observers (Swain 1997, Arsano 2004 and Allan 1999).

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 (Brunnee and Toope 2002: 132). The Hydromet initiative led to the conclusion of the 1977 treaty by Burundi, Tanzania and Uganda, which provided for the Establishment of the Organisation 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), initiated and dominated by Egypt, attempted, without success, to promote socio-cultural and economic co-operation among the riparian states on the use of the Nile River waters, the 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) and Daniel arap Moi (1978-2002) were of the view that Egypt's dominance negated the spirit of cooperation, which for Kenya's foreign policy-makers jeopardised the chances for the conclusion of a comprehensive Nile River basin agreement. Kenya also did not accept being bound by the 1929 and 1959 Nile River treaties. The 1929 Anglo-Egyptian and 1959 Egyptian-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 (Makonnen 1984).⁴ 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 (Kiplagat 1995). Specifically, the Nyerere Doctrine provides for three approaches to state succession.

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. 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' (Makonnen 1984: 55). Second, it provides for the legitimate sovereign right of a successor state to claim specific rights under international law. Third, even though the optional doctrine rejects certain treaties because of their nature, it does not disregard customary international law. Customary international law is regarded as positive particularly with respect to state boundaries (Rembe 1980, Okoye 1972 and Umzurike 1970). In other words, only treaties which contain obligations for the newly independent states to acquire the colonial boundaries and are territorial, real, dispositive, or localised, are respected (Knobelsdorf 2007).

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' (Huggins 2003: 6). Even though Kenya's foreign policy pronouncements on state succession have remained consistent, over the years the leaders exhibited ambivalence on the question of the Nile River riparian states' multilateral diplomatic negotiations (Kenya 2004b: 1386). Kenya's proactive involvement in the Nile River question began in 1999 with the establishment of the Nile Basin Initiative (NBI), a conglomeration of the riparian states (Huggins 2003: 2). 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.⁵

In a Ministerial Statement issued in the Kenya National Assembly, Parliamentary Debates, the then Minister for Water Resources and Development, Martha Karua, 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 utilisation* by all the countries' (my emphasis) (Kenya 2004b: 1385). This remains Kenya's official foreign policy position on the Nile River basin question.

Kenya's official foreign policy positions on the Nile Basin issues have, to a large extent, been influenced by the Nile Basin Initiative. Specifically, Kenya's 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' (International Law Association 1967: Article IV). 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 (International Law Association 1967: Article V). These factors 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 practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses; and
- 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 (UN Doc. A/RES/51/229 (1997)). While 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 (Kenya 2004b: 1384-1385):

- 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; and
- To improve the socioeconomic status of the member states through harnessing their resources and promoting economic integration.

The socioeconomic issues, particularly the survival of the people of Kenya around Lake Victoria and the exponential domestic demands for water and hydroelectric power, among other related socioeconomic reasons, 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 percent of the total available water in the country (Kenya 2002). A total of nearly 11 million people or 40 percent of Kenya's population, that is, 1,200 people per sq. km., the highest in the country and one of the highest in the world, occupy 8.4 percent of Kenyan part of Lake Victoria Basin (Huggins 2003: 7).

Lake Victoria Basin and the Nile River Basin form one drainage system. Kenya's jurisdiction over Lake Victoria is over six percent with the shoreline and surface water resources of the Lake Basin accounting for 50 percent and 17 percent respectively (Huggins 2003: 7). While ten rivers originating from Kenya, namely Kibos, Kuja, Mawa, Migori, Nyando, Nzoia, Riara, Sio, Sondu-Miriu, and Yala, feed Lake Victoria, four Ugandan rivers and six Tanzanian watercourses feed the lake (Huggins 2003: 7). In comparison to Tanzania and Uganda, Kenya contributes the largest volume of water,

that is, more than 40 percent, into Lake Victoria (Okidi 1994: 12). Even though the Lake Basin is endowed with rich natural resources as well as fish, forest products and fertile agricultural soils, more than 60 percent of Kenya's poor population live within the Lake Victoria basin (Huggins 2003: 7, Dawo 1995 and Institute of Economic Affairs 2002). The NBI, therefore, provides an opportunity for Kenya to establish sustainable socioeconomic development policies that can promote the livelihood of the people of the region.

One of the main interests of Kenya 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 (Ayugi nd: 31-33). In order to achieve its central mandate of building confidence and trust as well as promoting sustainable socioeconomic 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, namely the Shared Vision and Policy and Guidelines (SVPG) and the Subsidiary Action Programme (SAP).⁶

Since its inception, the SVPG has provided an opportunity for the riparian countries to manage, through technical experts, specific projects (Huggins 2003: 3-4 and Brunnee and Toope 2002: 138) on:

- 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).
- Applied Training.
- Socioeconomic Development and Benefit-Sharing.

These projects are considered by the riparian states as tangible rallying points for cooperative socioeconomic development in the Nile Basin. Envisaged in the Shared Vision project is 'sustainable socioeconomic development through the equitable utilisation of, and benefit from, the common Nile Basin water courses' by the riparian states (<http://www.nilebasin.org/nbiprocess.htm>).

The SAP projects, on the other hand, are divided into two main sub-Nile basin riparian groups. The first is the Eastern Nile Subsidiary Action Programme (ENSAP) comprising of Egypt, Ethiopia, Eritrea, and Sudan. The other programme is the Nile Equatorial Lakes Subsidiary Action Programme (NELSAP), comprising of Burundi, DRC, Egypt, Kenya, Rwanda, Sudan, Tanzania, and Uganda sub-Nile basin groups. The NELAP 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 of these examples.

Regional Geopolitical Questions and Kenya's Foreign Policy Interests regarding 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 geopolitics refers to the 'relationship between geography and politics and their consequences for states' national interests and relative power' (Kegley and Wittkopf 1999: 16). 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 rather how Kenya's location within the Nile Basin influences its national interest and foreign policy behaviour (Harkavy 1983, Kissinger 1994, Sprout 1963, and Tualhail 1996).

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 three percent between 1980 and 2000, demand for access to fresh water became a major challenge for the country. Scarcity of water resources, with only 31 percent 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 (World Bank 2002: 151). In 2004, the rural population in Burundi, Uganda, Ethiopia, Rwanda and Eritrea reached 90, 88, 84, 80, and 80 percent respectively. On the other hand, the rural population in Tanzania, Sudan, Kenya, and Egypt accounted for 63, 60, 59, and 58 percent of the total population respectively in 2004 (FAO 2006: 7-10).

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 \$23m worth of goods and services in 2001, compared to \$10m and \$2m for Tanzania and Uganda respectively. The share of imports by Kenya, Tanzania and Uganda within the East African Community (EAC) in 2001 totalled \$1m, \$7m, and \$49m respectively. Stability in the Nile basin is an important factor in the transboundary trade ((McInyre 2005: 5). 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 inter-state 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, while the Angola-Chad-Namibia-Sudan-Zimbabwe axis supported the government of Laurent Kabila, the Burundi-Rwanda-Uganda axis was 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 Rwandese government invaded the DRC in pursuit of the rebels such as the Banyamulenge, Mayi Mayi, Interahamwe, and the ex-Rwanda Armed Forces (Forces Armées Rwandaises, ex-FAR). Rwanda also supported Rally for Congolese

Democracy (RCD), 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 in order to contain the West Bank Nile Front (WBNF), Allied Democratic Forces (ADF), and the Lord's Resistance Army (LRA) rebel groups. As a quid pro quo, Uganda also provided military and logistical support to the Movement for the Liberation of Congo (MLC). Burundi was drawn in the conflict because of the Front pour la defense de la democratie (FDD), responsible for incursions into Burundi across the DRC-Burundi 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 (Adar 2000).

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 are yet to implement and recognise in toto the 2002 ruling by the International Ethiopia-Eritrea Border Commission (IEEBC) over the disputed border areas.⁷ 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.

Fifth, the level of dependence on the Nile Basin by the riparian states brings in another dimension of conflict into the region. The riparian countries account for 40 percent of Africa's over 800 million people, of whom 70 percent occupy the Nile Basin (El-Fadel, El-Sayegh, El-Fadl, and Khorbotly 2003: 107). As Table 3 indicates, five riparian countries in the region namely, Egypt, Uganda, Sudan, Rwanda, and Burundi, are heavily dependent on the Nile basin, with 85, 75, 74, 72, and 58 percent 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 percent respectively.

Table 3: Population Patterns in the Nile Basin

Country	Basin population density (hab/sq. km)	Basin population (million)	Country population (million) 1990	Country population (million) 1998	% of the country's 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., *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 those of the riparian states. The region through which the Nile River traverses is also one of the driest, water-scarce and water-stressed areas in Africa (Sandwidi and Stein 2003: 1). The average water use by the riparian states for agricultural, domestic, and industrial economic activities accounted for 71, 21, and 8 percent respectively. 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 percent respectively (FAO 2006). Kenya's per capita water availability is projected to decrease from 636 cubic metres in 1990 to 235 cubic metres by the year 2025 (Swain 2002). 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 two percent between 2000-2015, the highest in the world (World Bank 2002: 49-50). 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.

Table 4: Armed Forces and Military Expenditures of the Nile Basin Riparian States^x

Nile Basin Riparian States	Military Expenditures US\$ million			US\$ per capita			% of GDP			No of Armed Forces (000)	Estimated Reservists (000)	Paramilitary (000)
	2003	2004	2005	2003	2004	2005	2003	2004	2005			
Country	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	2732	3589	3834	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	Na	4	3	NA	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, *The Military Balance* (London: Routledge, 2007): 407 and 410.

Key: ^xDepending on the source used, figures tend to vary in almost all the categories.

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 favours Egypt, have ushered in a new geopolitical scenario into 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. The then Egyptian President Anwar Sadat once emphatically stated,

'the only matter that could take Egypt to war again is water' (Dawoud 2001). Boutros Boutros-Ghali, then Minister of Foreign Affairs of Egypt and later United Nations Secretary-General, for example, once observed: 'the next war in our region will be over the waters of the Nile' (Hillel 1994: 266 and Klare 2001: 59). Even though numbers alone are not the only measurable attributes that can adequately explain a country's military power, Table 4 shows that Egypt is clearly the preponderant military player in the Nile Basin. Table 4 indicates that the Egyptian military spending in 2005, for example, was more than twice the military expenditures of the nine riparian states combined. In comparison to the other riparian states, Egypt's military strength is also visible in all categories, that is, the armed forces, reservists, and paramilitary personnel. Of all the riparian states in the region, Kenya has the least number of military personnel, followed by Tanzania. The likely explanatory factor is the relative stability experienced by the two countries since their independence in the 1960s in a region replete with instability and civil wars.

Egypt's uncompromising stance over the years on the Nile Basin question, I would argue, has contributed to the unsuccessful multilateral diplomatic initiatives and the conclusion of 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' (Bullock and Darwish 1993: 79). 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' (Okidi 1994: 61).

Conclusion

The persistent Egyptian threat over the decades notwithstanding, 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 (Nicol 2003: 3). 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 Sudan People's Liberation Movement/Army (SPLM/A), has ushered in a window of hope and opportunities for the conclusion of a comprehensive international legal regime on the Nile River basin through multilateral diplomacy.

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 regarding the role the country needs to play vis-à-vis its national interests on the Nile 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 Ethiopia-Somalia proxy war of 1977-78 serving as a good example in the region at the time. Second, the transformation of the Organisation of African Unity (OAU) into the African Union (AU), with a mandate to promote continental multilateral diplomacy and to guard against war crimes as well as the right to intervene in the internal affairs of member states if situations so warrant (as enshrined in the Constitutive Act of the AU), is laying the foundation for bilateral and multilateral 'African solutions to African problems' based on legalistic and normative values. As I have explained, the cases of Burundi, the DRC, Rwanda, and Sudan serve as good examples. Yet, the unresolved conflict in Darfur, which has claimed over 300,000 lives and displaced more than two million people remain contentious. The decision by government of Sudan to allow the deployment of an expanded UN-backed African Mission in Sudan (AMIS) peace-keeping force in Darfur is a positive sign that could lead to the tangible resolution of conflict between the belligerent parties involving the Sudan Armed Forces (SAF) and the *Janjaweed* (men on horses) and the Sudan Liberation Movement/Sudan Liberation Army (SLM/A) and Justice and Equality Movement (JEM). The perpetual instability in Somalia following the overthrow of Siad Barre in 1991 still poses major challenges for the Nile basin riparian states.

Third, there is a shift towards what has been called a process of 'dialogue accumulation' by the riparian states that is 'the result of numerous meetings between representatives from different conflict parties over the years in various formal and informal settings' (Mason 2003: XVI). Countries such as Kenya and Ethiopia that originally adopted ambivalent attitudes in the negotiations have, since the establishment of the NBI, been fully involved in the process. Specifically, step-by-step or project-by-project approaches and the identification of an underlying acceptable legal framework have accommodated the interests of the riparian states.

Notes

1. United Nations, *Yearbook of the International Law Commission*, Vol 1, No. 1 (New York: United Nations Publication 1975: 44). See also Nasila S. Rembe, 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, 1980); Felix C. Okoye, *International Law and the New African States* (London: Sweet and Maxwell, 1972); and Oji Umzurike Umzurike, 'International Law and Colonialism in Africa: A Critique', *Eastern Africa Law Review* 3 (April) (1970): 41-62.
2. For details on the Harmon Doctrine, see McCaffrey, S. C., 'The Harmon Doctrine One Hundred Years Later: Buried, Not Praised', *Natural Resources Journal* 36 (2) (1996): 549-590.
3. 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 Zaire (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 absent, respectively. For the text of the Convention, see <http://untreaty.un.org/ilc/texts/instruments/english/conventions/831997.pdf>.

4. For the evolution and meaning of the Nyerere Doctrine, see Makonnen, Y, *The Nyerere Doctrine of State Succession and the New States of East Africa*, Dar es Salaam: Eastern Africa Publications, 1984. See, also Nyerere, J. K, 'Problems of State Succession in Africa: Statement of the Prime Minister of Tanganyika', *International and Comparative Law Quarterly*, Vol 11 (1962) and, Seaton, E. E and Maliti, S. T. M, '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, 1967).
5. The Nile Team or Friends of the NBI comprising of the United Nations Development Programme (UNDP), the World Bank, and 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, Yosef, *From Undugu to the Nile Basin Initiative: An Enduring Exercise in Futility*. File://E:/NileRiver/TheNileByYacobz.htm.
6. 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, <http://www.nilebasin.org/documents/TACPpolicy.html>.
7. For details on the ruling by the Commission, see generally, International Eritrea-Ethiopia Boundary Commission, *Decision Regarding the Delimitation of the Border Between the State of Eritrea and the Federal Democratic Republic of Ethiopia* (The Hague: Boundary Commission, 2002).

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P. Godfrey Okoth

The Nile River Question and the Riparian States: Contextualising Uganda's Foreign Policy Interests

Introduction

Uganda is one of the countries that border the Nile River. The other countries are Burundi, 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 eighty seven percent 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. Uganda, like the other riparian states after independence, declined to be bound by the Nile water agreement between Egypt and Britain. Yet stability in the region is in the interest of Uganda and the other riparian states. Uganda, therefore, supports the East African Community (EAC) position on the question of the Nile waters.

The cardinal objective of this article is to examine policy issues pursued by the various governments of Uganda since the country's political independence in 1962 with the view to providing conflict resolution mechanisms in the region for the sake of peace and stability.

Methodologically, this article takes into account two sets of variables. First, there are regional variables such as ethnicity, religion, political, economic and class struggles. Second are variables external to the region such as imperialism, neo-colonialism and globalisation. We, therefore, follow an 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. We situate the article within a particular theoretical framework.

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 (Herman, 1990: 300-301). In this sense, it is a means through which the state's national interest is pursued and acquired. Foreign policy in this sense must take into cognizance the objectives the state seeks to pursue and the means it must have at its disposal to realise the same. This position mirrors Modelski's functionalist perception of foreign policy as a process through which the state minimises adverse effects while maximising on the advantageous ones (Modelski, 1962: 3). Policy, in this sense, is not a charted course but a calculated response to external challenges. J. 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 methods and means used by it for the achievement and defence of these purposes and interests (Frankel, 1968: 20).

This can be via 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 presupposes the presence of an organised institutional framework. The same can also be pursued when needs be by the use of armed coercion. The use of armed force here brings in 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 (Utete, 1985: 43). 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 environment to satisfy demands made by the regime's domestic constituencies critical to the consolidation of its domestic power base.

Foreign Policy here constitutes the means through which national interest is pursued. The national interest is determined by the decision-makers and is presumably arrived at after an aggregation of divergent pressures through a consensus-building process (Morgenthau, 1967). 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 K. J. Holsti refers to as the routine foreign policy matters, or rather the middle-range objectives of the state that involve economic and commercial activities (Holsti, 1977: 51).

Most foreign policy issues revolve around these middle range objectives, yet 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 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 socioeconomic framework that can undergird 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 continent unity. Although the docket of foreign policy and security are 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 can in turn re-orient the state towards 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 policy behaviour that requires either external extraction of those resources or internal extraction (Choucri and North, 1975: 15-17). 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 the 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 poverty line is no doubt in need of a foreign policy that can address this problem. Other than the need to address economic concerns, there is also the question of internal security threats especially posed by the Lord's Resistance Army (LRA) that has been fighting the Museveni government since 1986. Other cases of internal security threats include opposition political pressure for multiparty politics and external threats in the form of international terrorism. A combination of a weak economic base and the traditional forms of insecurity threaten not only a state's sovereignty but also its territorial integrity. It is indeed these elements that bring about the connectivity 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 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 the 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 structures 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 level to engender associational life for resource mobilisation. The very essence of leadership is the enhancement and the insurance of the state's survival. This is what state security policy seeks to address itself to. Yet one must seek to respond to the question, '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 (Azar and Moon, 1986: 1-13). While the first question responds to physical security, the second finds its response in the re-conceptualisation 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 loyalty to 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 erosion of legitimacy and regime threats (Ayoob, 1986: 10). Notably the tendency has been that of equating regime insecurity to state insecurity.

Whereas states have tended to acknowledge the connection between foreign policy and security, the latter has tended to be perceived in the traditional militarist approach under which national security is predicated on the assumption that the principle threat emerges from other nations (Brown, 1982: 22). The urge here has been to build up weaponry (Ekppebu, 1980: 93). The problem with this orientation is that it assumes a purely militaristic orientation 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 the prevailing underdevelopment situation (McNamara, 1968: 145-149). Thus, to modernise a society's security presupposes enhancing development. Development provides people with the inclination to defend the state. Underdevelopment and institutional incapacity 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, government and personal security fears. 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 (Mwagiru, 2004: 6).

A nation is said to be secure to the extent to which it is not in danger of sacrificing its core values. To ensure its security, the state evolves 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 can incline states towards regional approaches. They include the quest by the state or regime to fend off threats either internal or external. Indeed, there are threats that assume a state-region-centric dimension and whose resolution or containment also presuppose a regional approach. On the other hand, a region-centric approach presupposes viewing crisis in neighbouring states as constituting a threat to the state's interest. It is in these contexts that past and present Nile water conflicts and cooperation within the riparian states can be studied.

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 century, the European colonialists had subdivided the Nile basin into zones of influence, and Britain had recognised that the primary consideration of its imperium on the Nile and at Suez rested on the security of Egyptian Nile waters (Collins, 1990: 67). Nonetheless, the colonial powers 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 (Collins, 1990:67).

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', (Glassman, 1990: 150), allocating for Egyptian use 48 bcm per year, only 4 bcm for the Sudan, and leaving 32 bcm per year unallocated. Not only were other upstream riparians not included in this agreement, but it was stipulated once again that, so 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 Nile flows to Egypt.

After World War Two, the control of Nile waters once again became a central issue in regional politics as the self-determination and national liberation movements grew in strength. In Egypt, the 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 (Ohlsson, 1995: 31-34). The Sudanese administration began preparing the case for an increase in its share of Nile waters following the Egyptian revolution in 1952 (Ohlsson, 1995: 35-40). The Sudanese administration revived plans to build the Jonglei canal through the Sudd swamps, thus reducing the immense amount of White Nile waters lost to evaporation, and developed new plans to increase the irrigated area and build the Roseries Dam on the Blue Nile. The new plans would have required an increase in allocated use of Nile waters above the amount stipulated in the 1929 agreement.

In the meantime, Egypt was developing the highly controversial plan to build the Aswan High Dam for over-year storage and regulation of floodwaters. The construction of the dam would create a reservoir extending 150 kilometres into the Sudan, submerging the old town of Halfa and displacing fifty thousand people (Pearce, 1994: 29).

The period 1954-1958 was characterised by political conflicts between Egypt and the Sudan over 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 (Nhail, 1995: 1-3). 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 socioeconomic concerns led to the withdrawal of this support (Pearce 1994: 28). 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.

Tensions increased between Egypt and the Sudan in 1956-1958, as the Sudan voiced further objections to the Aswan High Dam and continued demanding 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 (Nhail, 1995: 3).

In November 1958, three weeks before the Soviet Union formally offered financial assistance to Egypt for the Aswan High Dam (Pearce, 1995: 29), there was a military takeover in Sudan and the establishment of a regime more open to negotiation with the Egyptian government. Within a year, the two countries re-negotiated the 1929 agreement and developed the 1959 Agreement between the Republic of the Sudan and the United Arab Republic. The new agreement set Egypt's share of Nile waters at 55.5 bcm per year and allocated to the Sudan an allotment of 18.5 bcm per year. The remaining 10 bcm 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 (Nhail, 1995: 2). 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 to study and assess its water resources and irrigation and power potential. In 1970, Egyptian President Anwar Sadat had threatened war with Ethiopia over the proposed construction of a dam on Lake Tana on the Blue Nile (El-Khodary, 1995: 1), yet despite the obvious displeasure of Egypt, Ethiopia subsequently refused full participation in basin-wide cooperation efforts prompted by the 1959 Agreement (El-Khodary, 1995: 2). Egypt and the Sudan expressed concern in 1978 over a reported series of feasibility studies in Ethiopia, to which Ethiopia replied with a series of terse and non-conciliatory responses directed largely to Egypt and in part, to the Sudan (Postel, 1992: 1-23).

Construction of the Aswan High Dam started in 1960 and continued until 1971. During this time, relations were favourable between Egypt and the Sudan.

Accordingly, in return for helping [Sudanese President] Nimeiri to remain in power, Egypt obtained a number of concessions from the Sudan, notably permission to construct the Jonglei Canal in 1976 (Ohlsson, 1995: 178). The Jonglei Canal would circumvent the swamps of the Sudd in Southern Sudan, increasing the flow of the Nile by 5 bcm annually. Under the 1959 Agreement, this would be split equally between the two neighbours. Despite international controversy over the impact of the canal on the swamps and the people the canal would displace and disturb, work commenced on the canal 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. Egypt and the Sudan's relations remained friendly during the early 1980s, and in 1982, the two signed an agreement including plans for the future integration of policy and programmes (Postel, 1992: 1). After the ouster of Sudanese President Nimeiri, the new regime in Khartoum, faced with rapid population growth and increased food needs, began demanding re-negotiation of the 1959 Agreement. The Sudan began the construction of small dams and developed plans for further irrigation as well. Relations between the two further deteriorated in 1989 as the Islamic fundamentalist regime unilaterally abolished the cooperation agreements and began supporting anti-Egyptian forces in its territory (Postel, 1992: 3).

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, 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 (Postel, 1992: 4). 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' (Postel, 1992: 5). Boutros-Ghali is reported also to have talked of war over the Nile waters (Butts, 1997: 1).

Tensions between the 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 the aftermath of this included the issuance of threats and continued tension (Butts, 1997: 2).

Present and potential conflict over water in the basin stems from the increased food and agricultural needs generated by a rapidly growing population in 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 (Butts, 1997: 3).

Egypt is desperately trying to meet its food needs through dramatically expanding the number of acres under irrigation. On October 26 1997, the Al Salam Canal, or Peace Canal, was opened by Egyptian President Mubarak. This canal transports Nile waters under the Suez Canal into the Sanai desert, adding 6200 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 (Butts, 1997: 5). In 1998, work started on the Toshka, or New Valley Project, which is to extend a canal from Lake Nasser above the Aswan Dam westward into the desert. The Nile Water is to be supplemented by groundwater

extraction from a number of desert oases, allowing a total of a million new acres to be formed (Butts, 1997: 6). Although the first phase of the New Valley Plan, the canal, will cost about \$2 billion, the further projects in agriculture, industry and tourism bring the total estimated cost to \$88 billion (Butts, 1997: 7).

Both of these plans have been heavily criticised by water resource experts (Butts, 1997: 7). Egypt is at or above its allocation of Nile water under the 1959 Agreement, and some sources claim that it is taking up to 2bcm more than its share (Arlosoroff, 1996: 28). Magdy Sobhy, of the Al-Ahram Centre for Political and Strategic Studies, criticised the Toshka project as unrealistic because it was based on Nile flows during periods of higher-than-average floods. He cites other projects, such as wastewater reclamation and different agricultural techniques, which could increase Egypt's water supply for irrigation instead (Arlosoroff, 1996: 28).

However, pressures are high on Egypt to continue to expand its agricultural production. Even though it uses its full allocation, it still imports over half its food, including ten million tons of grain a year. Moreover, it has been suggested that Mubarak is pushing the New Valley project in part to deal with domestic political problems created by overcrowding and unemployment, which stands at about twenty percent (Lowi, 1996: 6). The New Valley project could attract as many as seven 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 has 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. In 1990, Egypt blocked an African Development Bank Loan to Ethiopia for new irrigation projects (Lowi, 1996: 7), but Egypt's political dominance in the region was further weakened with a 1991 agreement between Sudan and Ethiopia to cooperate over the use of Nile Water (Lowi, 1996: 8). 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 as much as 2-3 million cubic metres per year (Lowi, 1996: 8). It has been reported that Ethiopia is planning to implement a significant irrigation project, and that several hydropower projects are being developed (Kilfe, 2002:7).

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 utilizing the Nile waters while upstream countries have not been able to secure their equitable right' (Kilfe, 2002: 8). 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 riparian of water, but Ethiopia denied the charges (Kilfe, 2002: 9). Otherwise Ethiopia's aim is to achieve food security by not depending on rain-fed agriculture but 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 (Kilfe, 2002: 10). It is in this context that Uganda's foreign policy interests can be analysed.

Conceptualising Uganda's Foreign Policy Interests

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 East African Community (EAC) security issues that have to do with not only military security, but economic security too. 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 ten years now, the riparian countries have been negotiating a treaty on how to share the Nile river. The Nile basin holds three hundred 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) (Kaiza, 2004: 15).

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 could threaten the volume of water reaching Egypt. The agreement also gives Cairo the right to inspect the entire length of the Nile (Vasagar, 2004: 1). 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 stated that Tanzania was ready to renegotiate. The sentiments were the same in Uganda and Kenya. Unfortunately the other two countries did not take Nyerere's words as a legal statement (Kaiza, 2004: 15). Despite this, the East African countries, under the umbrella of the EAC, are now focusing on the way forward and are 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 the major rivers in the world only the riparians 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 (Global Water Intelligence, 2000). Currently the NBI is pursuing two tracks: the development track by the NBI and the Nile Basin Cooperative Framework (Kaiza, 2004:15). 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 – there are the Mekong, Limpopo, Danube and Rhine among others – 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 also to understand each other's interest.

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 to 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 plans that at times conflict with Arab interests (Hammad, 2000: 2).

With such cooperation and the negotiations that have been going on, there should be no fear or worry that the Nile waters could bring conflict. Such fears were intense over ten years ago. Then, experts in the region never talked about the Nile. Today, all the concerned countries are discussing it, not only talking about 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 (Kaiza, 2004: 15).

Threats, anger, acrimony and polarisation had, in the past, 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 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 (Mbaria, 2004: 6).

But lately the animosity has been between Egypt and the three 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 Kahama area of Shinyanga region (Mbaria, 2004: 6; Nkrumah, 2004: 1). 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' (Nkrumah, 2004: 1).

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 – 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 yet-to-be complete Sondu-Miriu Hydro Power Project was designed in such a way that the need for the construction of a big water reservoir along the Sondu river was avoided (Mbaria, 2004: 6).

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' (Quoted in Vasagar, 2004: 2). 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 hydro-politics 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 technically less dependent on the waters of the Nile for its agricultural development projects since it enjoys favourable climatic conditions that endow it with plenty of rainfall. Uganda has, therefore, of recent made a U-turn from its earlier position that the sharing of Nile waters was an awkward subject to discuss, and that it was too unsavoury for it to be debated publicly. The government of Uganda shared this view with most governments of the Great Lakes region (Nkrumah, 2004: 1). 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 two member states of 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 nasty, observing that failure to come to a consensus would undoubtedly express how hollow calls for regional integration ring (Nkrumah, 2004: 2).

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. But Uganda, like the other EAC member states, realises that without the NBI, tensions might spiral out of control (*New Vision*, 2004: 1).

Uganda, therefore, encourages continued dialogue and building of cooperation through understanding of the resources in the sub-region and coming up with guidelines. Indeed, during the NBI twelve Nile Basin Council of Ministers' meeting held in Nairobi in March 2004, Uganda and the 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 (Mbaria, 2004: 6). Generally, countries that had adopted hard-line positions were ready to compromise. This was in line with diplomatic niceties that dictate that Nile Basin countries, keeps 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 (Nkrumah, 2004: 3). Her Tanzanian counterpart, while visiting Cairo a week later, concurred, saying that there was no fundamental problem over sharing Nile waters with Egypt (Nkrumah 2004: 4).

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. They are 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 taken the whole Kagera basin, Mara basin, 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 (*New Vision*, 2005:18). These people are some of the poorest in the world today.

Conclusion

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 improving the balance of supply and demand and mitigating conflict in the future. It is in the best interest of Uganda and the other riparian states to promote policies with the potential to reduce 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 be put into practice by all the riparian states.

With current 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 can be ignored at the peril of national and regional strategists.

The status quo of the 1959 Agreement must be repealed and new agreement must be signed to accommodate the interests and development agendas of all Nile countries. In fact, the 1959 Agreement stipulates that Egypt and the Sudan must reduce their use of the Nile waters if the upstream countries begin to use the Nile for development. Thus, 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 the needs of the Ten Nile riparian states which want to use the Nile for their respective socioeconomic development. For a peaceful use of the Nile, the United Nations development agencies like the United Nations Development Programme must be

involved and if possible finance the development endeavours of respective riparian nations. The development of the Nile will then benefit all, resolve the contradictions between Egypt and 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.

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Adams Oloo

The Quest for Cooperation in the Nile Water Conflicts: The Case of Eritrea

Introduction

The Nile River Basin is the most unique of international river basins and presents the most challenges. This is because, besides its remoteness and the manifestation of disproportionate level of development within the basin, there is an almost total absence of any meaningful cooperation and comprehensive agreement among the ten watercourse states. This negative feature which is peculiar to the Nile has become an obstacle. So far, there is no effective cooperation, nor development of joint projects and investment in the basin. The end result is that the Nile has not made any significant contribution to the welfare of close to 300 million inhabitants living along its course who are among the most impoverished and where five of the world's ten Least Developed Countries are found.

This article examines the development of cooperation and the challenges encountered in the process amongst the riparian states of the River Nile with a 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.

One of the main concerns has been the need to develop conflict resolution mechanisms amongst 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 can lead to conflict, as well as in 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 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.

One of the initiatives to promote co-operation among the riparian states is the Nile Basin Initiatives (NBI). The NBI contends that it is only through 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 general lack of development.³ Based in Entebbe,

Uganda, the NBI comprises representatives of all basin states except Eritrea (which retains an observer status) and is helping to coordinate separate Vision and Subsidiary Action programmes with broad development agendas. The implementation of these projects now presents the key challenge.⁴

Background

The River Nile is one of the world's great rivers and traverses almost 6700 kilometres 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, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. The Nile Basin serves as home to an estimated 300 million people within the riparian countries, while 140 million people out of them live outside the boundaries of the Nile Basin and use other water resources that include groundwater sources. Conflict (both inter- and intra-state) characterises relations in the Nile Basin.

The waters of the Nile are generally utilised for irrigation, hydro-electric power production, water supply, fishing, tourism, flood control, water transportation and the protection of public health.⁵ In particular, the economy of the entire 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, Democratic Republic of Congo, Rwanda and Burundi, settled agriculture is the general economic activity. The lower-basin states of Sudan and Egypt are also primarily agricultural economies but, in contrast with the upper-basin states, their agriculture is largely irrigation-based. The economic use of the Nile for purposes of agriculture (particularly irrigation-based agriculture) is, therefore, its most important use. In Egypt, a desert agricultural country, the entire life of the nation is dependent on the river's waters.

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 Plateau contributes more than 80 percent 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 water Nile becomes the most important stream.

For some countries, such as DRC, the Nile water is only a small part of their total water resource. Other countries, as Burundi, Rwanda, Uganda, Sudan and Egypt are completely dependant on the Nile River for their water resource. The major determinant of the Nile Basin water balance remains the agricultural sector involving more than 70 percent of the population. The dependence on agriculture by this large sector of the population in spite of its limited share in the GDP may be the most important single factor regarding 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 utilisation of the Nile and Lake Victoria shows how Egypt has strenuously sought to ensure the security of the water flowing down the Nile. Second, the water is not evenly distributed either over the year or geographically. For instance, Ethiopia contributes approximately 85 percent 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 as a

country of perennial droughts and famine. Similarly, the East African states contribute steadier, but much smaller contributions to the Nile.⁷

Historically, the reasons giving rise for such unfair status quo can be attributed to British colonialism which had a deep interest in the control of the Nile for its cotton plantations which were to supply its industries in Europe. '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.

Egypt, the lowest riparian country, uncharacteristically controls the Nile. This was achieved mainly through the influence of England 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 of harnessing 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 subsequently destroyed by the SPLA.⁹ A project like the Jonglei Canal that would benefit Egypt is impossible without peace. Many Egyptians see the internal troubles in Sudan or between Ethiopia and Eritrea as the main obstacle to international cooperation in the Nile Basin. For this reason Egypt supports the moderate pragmatic sides in Sudan. It has to this end at different times offered its service as a third-party facilitator in the Sudanese civil war as well as in the Eritrean-Ethiopian war.

It is, thus, 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. The mistrust between the countries is seen as an obstacle that will take a long time to surmount.¹⁰

The conflict in the Nile Basin mainly emanates from the fact that Egypt is more than 95 percent dependent on water that stems from upstream countries; 85 percent of this water stems from the Ethiopian highlands. At present Ethiopia uses about three percent 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 could flow downstream.¹¹

Ethiopia (of which Eritrea was part prior to 1994) has never ever accepted unilateral agreements because of the prejudice to the country's interest. Ethiopia in 1959 asserted, 'Ethiopia 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, the position of Ethiopia is one and only one to have a win-win solution and legitimate right to use the Nile water for the socioeconomic development of the country and the region as a whole.¹² In addition to the historical reference to 'natural and territorial right', Ethiopia has to utilise its water to feed the people. No one is requested to offer this legitimate right at all.¹³

The Nile Basin Initiative

One of the foremost underlying factors of the treaties on the Nile waters is that Egypt, as a desert state and the lowest riparian of the Nile, would be a party to each of the

treaties, especially those dealing with consumptive use of the waters, while all the upper basin states would be involved in the different stages. There are about ten agreements dealing with consumptive use of the waters of the Nile. Prior to World War One, the treaties show Great Britain, representing Egypt, as the contracting state. The UK, 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 is a further agreement with Italy, signed by Britain, in 1925. Since then, 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 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, and followed by a protocol establishing a Joint Technical Commission in 1960.

It should be noted that since the 1902 treaty there has not been any agreement between the lower riparian states, the Sudan and 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 percent of the Nile waters reaching Egypt originate in Ethiopia.

In the 1929 agreement Egypt did not object to use of the Nile waters for construction of control works and subsequent irrigation in Sudan, but did insist on prior consultation and explicit agreement on what such construction would entail. 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.

As other riparian states became independent, they regarded the 1929 treaty as null and void while Egypt took the position that it remains valid and applicable. As pointed out earlier, Egypt considered the 1929 Agreement temporary pending determination of the political future of Sudan. It is against this background that the 1959 agreement between Egypt and Sudan over full utilisation and control of the Nile did not also involve the other riparian states.

In spite of the improvement in relations between formerly belligerent co-riparians, moving from relations characterised by political conflict to new forms of cooperation required significant institutional development. 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. Thus, in 1992, the Council of Ministers (COM) of Water Affairs of the Nile Basin States 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 (Democratic Republic of Congo, Egypt, Rwanda, Sudan, Tanzania, and Uganda) joined as members whilst 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 CIDA, and comprised 22 technical assistance projects totalling US\$100 million. One of the projects' objectives, which was to develop a cooperative framework for management of the Nile, is under implementation with UNDP funding (Project D3, the Cooperative

Framework). This was the first programme to include all the riparian countries, with the exception of Eritrea.

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 financing 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 the Consortium for financing.¹⁴

In 1993, another initiative was initiated and funded by CIDA. This culminated in the Nile 2002 Conference series which was designed to address the issue of dialogue and public participation. This initiative was planned for a span of ten years and provided for one conference to be held in each of the ten riparian countries. Nine of these conferences took place and were attended by approximately 350 people each. The participants included people from different sectors and backgrounds, i.e., government, NGOs, private sector and researchers.¹⁵

Whilst 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. But in the interim, 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). And in May 1999 it was officially named the Nile Basin Initiative (NBI). Subsequently, the Initiative's Secretariat was established in Entebbe, Uganda in June 1999. It was officially opened in September 1999 and received international organisational status under Ugandan Law in September 2000.

The Nile Basin Initiative was developed with assistance from UNDP and CIDA with the intention of helping reduce tensions and create a framework for equitable sharing and 'cooperative development' of 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 Nile Basin Initiative is broadly a 'transitional arrangement until a permanent legal and institutional framework is in place',¹⁶ and comprises a Council of Ministers of Water Affairs of the Nile Basin (Nile-COM), a Technical Advisory Committee (Nile-TAC) and a Secretariat (Nile-SEC); the latter is located in Entebbe.

The NBI's 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 forward the cooperation agenda, the Nile-COM, at its Extraordinary Meeting in February 1999, adopted a Shared Vision: to achieve sustainable socioeconomic 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.

To help to achieve the ultimate goal of co-operative development on the Nile, the riparian governments are developing a Strategic Action Programme composed of two complementary sub-programmes:

- A basin-wide ‘Shared Vision’ Programme (SVP) which will articulate a common purpose among the riparians and implement activities to coordinate and enable implementation of the shared vision, and
- ‘Subsidiary Action Programmes’ (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.

The success to date 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.¹⁷ This has led to institutional division into an ‘Eastern Nile’ 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 in reducing decision-making complexity the process of cooperation can be facilitated.¹⁸

The involvement of third parties, such as the World Bank, the United States, 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 insensible policies and programmes. Furthermore, autocratic government control over civil society prevents the emergence of vibrant non-governmental organisations (NGO) with respect to economic projects and political programs. Thus, both domestic and international NGOs are not prevalent, while the influence of third parties strengthens.

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 day-to-day understanding of the consequences of such projects. Consequently, project designs fail to incorporate community intricacies, which inhibit 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, due to the involvement of third parties, the absence of an NGO presence, and the aspects of Nile Basin politics, the NBI will fail to achieve the intricate goals of conflict resolution and regional cooperation.¹⁹

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) that attempts to facilitate dialogue about the NBI and to establish learning processes for institutions involved in Nile Basin-related activities, be they environmental, socioeconomic, or cultural. In 2003 a formal Nile Basin Discourse Desk was established in Entebbe.²⁰ The other major challenges facing the NBI are: political instability; mistrust and other shortcomings to mutual co-operation 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; inappropriate legal and institutional framework for water management; and various disparities within the region.²¹

The Challenges

The major impediment on the road towards 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 rightful states. There seems to be an entrenched desire not to accept the legitimate rights of other riparian states to share in its bountiful resources. Both history and nature have colluded to lend credence to this deep seated desire, sustained by a myth that 'Egypt is the gift of the Nile' to assert monopolistic claim over the entire course of the river.²²

As Okidi observes, the average volume of water each riparian contributes to the Nile basin might be taken into account in deciding how much water a country might properly divert for 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.²³

In contrast, upper riparian countries, which 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 of the Nile

between themselves. In the agreement Sudan as a junior partner, was allotted 18.5 billion cubic metres of water while Egypt retained 55.5 billion cubic metres: the lion's share.

Egypt and Sudan have made a provision in the Agreement 'to study together' and 'adopt a unified view' on other riparian claims to share in 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 (for example, 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 percent 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. 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.

The Eritrean Case

The current state of affairs with 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 administrator of the regions. Allan (1999) observes that the utilisation of the water of the Nile Basin was influenced by the United Kingdom, 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 and offered unlimited freedom to dominate and be a monopoly power in the region. The British are thus responsible for the ever-arising conflict that recurs since they were the main architects of these treaties.²⁴

One of the peculiar features in the management and allocation of the Nile River is the absence of a single agreement or treaty that represents all of the ten riparian states.²⁵ The practical application and acceptability of the existing partially established treaties are thus not backed up by any comprehensive agreement of all riparian countries. The governing power and conflict solving capacity is, therefore, uncertain and inefficient.²⁶ Moreover, the position of Eritrea is the weakest one in the fact that it has retained an observer status which has hindered its effective participation and negotiation with the other riparian states.

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. It 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. Eighty percent of the population is involved in farming or herding. Most of the rain comes in during July to October, highly torrential and erratic, providing the main source of water to the country.

The agriculture of Eritrea does not produce enough food to feed its own people. Its farms in the highlands suffer from frequent and unpredictable droughts. The Eritrean government has embarked on an ambitious and unconventional programme to develop sea water agriculture, silviculture, and mariculture on its deserts bordering the sea. This programme is thought to be potentially more productive than conventional fresh water agriculture and is bound to lessen the ever-increasing tension around the distributions of resources on the Nile, as Eritrea is not dependent on the Nile since the river only passes through a small part of its territory. While the Blue Nile will remain an important, but 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 percent of water sources rely on groundwater: just more than half of all water sources are hand-dug wells, and another one-quarter are boreholes, or machine-dug wells. While both sources rely on groundwater, boreholes are constructed using machines and are often given covering and a protective apron around the ground opening to guard against contamination, unlike hand-dug wells that are not necessarily protected.²⁸

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.

The main water use conflict exists between the countries of the Eastern Nile Basin, Egypt, Sudan and Ethiopia. While forming part of the Eastern Nile Basin, Eritrea is thus here only treated in summary, similarly to some other Nile countries as it is not a major contributor to or dependent of the Eastern Nile Basin.

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 Eritrea's foreign policy.

As in Ethiopia, rainfall in Eritrea is largely limited to a four month period. Eritrea's contribution to the Nile Basin area is 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 nor benefits substantially from the Nile basin. Hence, it has always taken the position of observer status in the Nile basin development initiatives, especially the NBI.

A major objective of Eritrea has been to increase food security, in order to reduce dependence on foreign aid.²⁹ This has led to a drive in increasing water security. To this end, a National Water Policy was drafted in 1997. Its main objectives are to do an inventory existing water supplies, establish a resource centre for such data, and to improve planning, assessment and management of these water resources. Involvement of the entire community is seen as vital for project success.³⁰

Harnessing rainfall appears to represent the greatest opportunity for increasing water availability in Eritrea. By constructing small dams to store peak runoff, water can be retained to increase supplies for irrigation and domestic use. Terracing agricultural plots also appears to aid in reducing soil erosion as well as retain rainwater

and thereby increase infiltration.³¹ It is within this context that Eritrea has become involved in the cooperation initiative, but not as a result of its contribution or usage of the Nile waters. Eritrea holds the position that consensual cooperation can only be achieved when all riparian states are involved in any development initiatives on the Nile basin.

Conclusion

The NBI initiative has so far mainly involved water technocrats in the process. Although this initiative is undertaken up to the ministerial level, it does not yet have institutionalised 'political will' from the riparian states. The NBI, thus, 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. Since the issue of 'equitable utilisation' is central to the process, it means that there are political compromises that have to be reached that would eventually affect the average individual state or long propagated expectations (for instance, less water for Egypt affecting mostly farmers or not gaining full control by the upper riparian countries). This is currently not taking place, since the NBI process has not progressed to involve the top political powers of participating countries.

Secondly, public participation in the NBI seemed to have come as an after-thought, 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.

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Adams Oloo
Department of Political Science and Public Administration
University of Nairobi
adams_oloo@yahoo.com