



Negotiations for a Nile-Cooperative Framework Agreement

INTRODUCTION

Process and a way forward

The Nile basin is one of the few regions of the earth in which extensive archaeological remains of ancient civilisations, renowned polities, kingdoms and empires can still be found. The Nile itself is the world's longest river. It stretches 6825 km across 35 degrees of latitude from its source to its mouth, and its basin covers some 3.3 million sq km, or one tenth of the whole African continent.¹

The rivers known as the Abbay (the Blue Nile), the Baro-Akobo (the Sobat) and the Tekeze (the Atbara) all emanate from the same headwaters in Ethiopia as the Nile itself. The Nzoria, Kagera and Semliki rivers and the Victoria, Albert, George, Edward and Kyoga lakes all similarly emanate from the heart of Eastern and Central Africa. All these headwaters permanently replenish the Nile, which flows first into Sudan and then into Egypt. The communities and the countries that border on the upstream and downstream Nile basin are all permanently bound together by the generous Nile – upon which millions of human beings rely for their present livelihood and subsistence and their future prosperity.

The late Cheikh Anta Diop notes in his seminal work, *The African Origin of Civilization: Myth or Reality?*, that whether people have settled near the mouth, near the source or along the central passage of the Nile, they are all bound together by a common reliance on the life-giving waters of the Nile. He also emphasizes that all these people draw on the same source – the Nile River – for their life and civilisation. His life-long research and experience have led Professor Diop to conclude that the Nile basin is not only the original home of the earliest human beings but that it is also the site of some of the earliest civilisations known to the human race.² He also notes that the regions around the upper Nile are noted for their heat and humidity, both of which are ever present and both of which are necessary conditions for the replenishment of the downstream waters of the

Nile. This is, of course, no less true now than it was in ancient times.

GEOPOLITICAL SETUP

The geographical configurations of the Nile ensure that all Nilotic societies and countries (past and present) are inextricably bound together by a common reliance on the shared waters of this great river. In spite of the rise and fall of ancient and more recent empires, in spite of the fact that the political boundaries of countries have been repeatedly drawn and redrawn, and notwithstanding the fact that there are many regional, religious, cultural and ethnic differences of opinion among Nile-dependent societies, the Nile has continued to replenish and nurture all of the societies and settlements in both its upstream and downstream regions. The same flora and fauna in the aquatic and terrestrial environs of the Nile continue to flourish in the Nile basin and along the whole length of the river, as they have done since time immemorial. This unalterable fact should serve as a basis for creating mutually beneficial agreements and sustaining goodwill and cooperation among the riparian countries and societies.

The sad truth is that, for too long, all of these countries have given priority to the pursuit of their (often) divergent interests and their own agendas. The downstream nations, on one hand, have insisted on maintaining their 'historical' and 'natural' rights on the basis of colonial and unilateral agreements. The upstream countries, on the other hand, have asserted their sovereign right to utilise the water resources so long as the waters emanate from their territories and flow through their territorial jurisdiction. The all-encompassing negotiations that have resulted in the Cooperative Framework Agreement comprehensively reflect all of the upstream and downstream positions that still need to be harmonised.

It is the purpose of this paper to describe the geopolitical setup of the Nile Basin, the processes of the upstream-downstream negotiations, and outline what will be necessary before upstream-downstream

cooperation can be achieved. This paper also examines the policy options that will enable participating nations to find mutually acceptable solutions in the context of the north-eastern African geopolitical environment. The word *geopolitics* was originally coined by the Swedish political scientist, Rudolf Kjellen, in 1899. When it was first coined, the concept of geopolitics referred to the linkages between geographical expanse and means of political control.³ But this concept has been frequently misused and distorted by those who speak on behalf of regional, continental and global powers and their surrogates. Armed forces (whether local, mercenary or transcontinental), guerrilla movements, the colonial imperialists of yesteryear and the contemporary hegemonic powers of the contemporary political scene, have all used (and are still using) geopolitical considerations as arguments as they attempt to refashion local conditions to suit their long-term interests.

It is important to note that current controversies about the proprietorial use and management of the Nile all originate in colonial and neocolonial assertions about the alleged geopolitical interests of the parties concerned. All of these players strive to control the Nile waters from the downstream vantage point and to perpetuate the alienation of the upstream nations from their legitimate national rights and interests. This state of affairs continued to persist for a long time even after the structural colonialism imposed by European powers in the 19th century had formerly been abolished in the region. By now, however, the belief that upstream interests should continue to be subservient to downstream hegemony has been strongly rejected by all upstream nations. It is clear that, under such circumstances, the difficulties inherent in perpetuating any form of contemporary hegemonic control over shared waters are likely to meet strong resistance and outright rejection – not least in the Nile basin.

Colonial and post-colonial 'waterlordism' had finally been superseded in African history

When one examines all the conditions that prevail in the Nile Basin, one is immediately struck by the enormous amount of effort that has gone into undoing the legacies of colonial geopolitics and dismantling the obstacles and barriers that have been put in place by contemporary strategists and the numerous architects of regional hydro hegemony. What is now abundantly clear is that, so far as the Nile basin is concerned, we should be ready to learn

from history so that we do not repeat the same mistakes or – even worse – repeat them in some more damaging form. One of the most dangerous misconceptions about how to secure the benefits conferred by the Nile waters is that the welfare and security of *one* riparian nation in the basin can be best protected and safeguarded if that nation were to control and monopolise the waters that are shared and commonly owned by all the riparian nations. It goes without saying that the water security of one nation cannot be maintained at the expense of the water security of all the other nations in the basin.

This position was formalised in the common commitment of all the Nile basin states to the establishment of the Nile Basin Initiative as an interim institutional mechanism that could work toward creating a formal treaty that would ensure the equitable and reasonable utilisation of the shared waters of the Nile in perpetuity.⁴ Such commitments of all (or most) of the Nile basin states reflected the realisation that they, as countries, had finally come of age and that colonial and post-colonial 'waterlordism'⁵ had finally been superseded in African history.

THE PROCESS OF THE NEGOTIATIONS

For the past two hundred years, numerous interested parties, the majority of whom were representatives of colonial powers, negotiated among themselves about the rights and ownership of the Nile. Since all previous negotiations and the agreements that arose out of them, were biased in favour of downstream interests, such agreements have resulted in varying degrees of tension and hostility and in unsustainable assumptions about the use and management of the shared waters of the Nile. In spite of this, the present hope is that current negotiations about the establishment of a Cooperative Framework Agreement (CFA) will pave the way for future mutually beneficial agreements and sustainable cooperative projects.

Colonial negotiations and agreements

During the last decade of the 19th century and in the first two decades of the 20th century, the colonial powers negotiated among themselves over the Nile waters in the spirit of the Berlin Conference of 1884–85. But none of these negotiations took any cognizance of the inherent security, rights and interests of the basin countries themselves.

The 1891 Anglo-Italian Protocol

In terms of the 1891 Anglo-Italian Protocol, Great Britain and Italy demarcated their 'respective spheres of influence in North-Eastern Africa'. This agreement

allowed United Kingdom to maintain control over the headwaters of the Tekeze (Atbara) River.

The 1906 tripartite agreement between Great Britain, France and Italy

In a secret tripartite agreement between Great Britain, France and Italy in 1906, the latter two countries completely ceded all Nile basin interests to the British.

The agreement between King Leopold II of Belgium and Great Britain

The colonial ruler of Congo, King Leopold II of Belgium, formerly agreed with the British that he would not attempt to construct any structures (such as dams or other irrigation facilities) on the Semliki and Isango rivers.

These inter-colonial agreements and protocols gave Great Britain a controlling influence over the Nile waters. In spite of the fact that the Ethiopians resisted these claims and the Egyptians made it clear that they were inimical to British rule, a succession of United Kingdom governments continued to play a dominating role in the Nile basin during the first half of the 20th century.

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The Anglo-Egyptian Agreement of 1929

After the formal independence of Egypt had been recognised by the United Kingdom in 1922, the High Commissioner of Great Britain in Cairo, in an Exchange of Note with the Chairman of the Council of Ministers of Egypt,⁶ recognised the 'historical and natural rights' of Egypt over the Nile waters. None of the upstream riparian nations was even mentioned or considered in this assertion of presumptive 'rights'. Not even Ethiopia – at that time, long independent of foreign rule – was consulted or briefed in this comprehensive assumption of rights between Britain and Egypt. Since all the other countries that should rightly have been consulted about this far-reaching agreement were still under colonial rule, they were given no say whatsoever over the water resources that the Nile conferred on them because of their proximity to its waters.

The Egyptian-Sudanese Agreement of 1959 7

The negotiation process that culminated in the 1959 Agreement for the Full Utilization of the Nile Waters was stimulated in the 1940s when the Sudanese rejected the 1929 Anglo-Egyptian agreement that allowed the Sudan to use only what was 'left over' once Egypt's needs had been fully satisfied.⁸ Various Sudanese politicians persisted in demanding a modification of the 1929 Agreement, which was widely perceived by the Sudanese as being too restrictive of the Sudan's obvious claims to fair usage of the water of the Nile.⁹ The Egyptian-Sudanese negotiations for a reallocation of Nile water rights proceeded in tandem with preparations for the political independence of Sudan. Although Sudan gained independence from the United Kingdom in 1956, the Nile Agreement was only concluded three years later (in 1959). The terms of the agreement were that Egypt would be allocated a lion's share of the available 55.5 bcm of water, Sudan was to be allocated 18.5 bcm,¹⁰ while evaporation was estimated to account for 10 bcm. In terms of this particular agreement, no proportion of the waters of the Nile was legally recognised for the use and ownership of the other upstream countries in which *all* the waters of the Nile arise.

As one might have expected, Ethiopia rejected both the negotiation process and the subsequent bilateral agreement to which the negotiations gave rise because this agreement deprived it of its sovereign rights and interests. The Ethiopian government's criticism of the downstream governments' exclusionary basis of the treaty approach was reflected in the words of the Emperor Haile Selassie himself when he outlined his country's intentions and plans as follows:

We have already explained the plans that are under construction to utilise our rivers as an essential step in the development of agriculture and industry. It is of paramount importance to Ethiopia, a problem of first order, that the waters of the Nile be made to serve the life and needs of our beloved people now living and those who will follow us in centuries to come. However, generally, Ethiopia may be prepared to share this tremendous God-given wealth of hers with friendly nations neighboring upon her, for the life and welfare of their people. It is Ethiopia's sacred duty to develop the great watershed which she possesses in the interest of her own rapidly expanding population and economy. To fulfill this task, we have arranged for the problem to be studied in all its aspects by experts in the field. Ethiopia has time and again [made her position clear] with regard to the utilization of the Nile waters.¹¹

As an adjunct to the words of the Emperor, the Ethiopian Government submitted a circular *aide memoire* to the diplomatic community resident in Cairo, explaining Ethiopia's legitimate rights and interests in the following way:

... [J]ust as in the case of other natural resources on its territories, Ethiopia has the right and obligations to exploit the water resources of the empire [Ethiopia] ... for the benefit of the present and future generations of its citizens ... in anticipation of the growth in population and its expanding needs. The Imperial Ethiopian Government ... reasserts and reserves now and for the future, the right to take all such measures in respect of its water resources ... namely those waters providing so nearly the entirety of the volume of the Nile.¹²

Even the United Kingdom, at that time still the colonial ruler over Kenya, Tanzania and Uganda, complained about the Egyptian-Sudanese bilateral agreement and demanded its own participation in any negotiation process that would result in an agreement on behalf of its East African colonies of Kenya, Uganda and Tanganyika [Tanzania]. Britain accordingly dispatched diplomatic notes to Ethiopia, the Belgian Congo, Sudan and Egypt, in which it reserved the rights of the three East African countries. The United Kingdom at the same time proposed an international conference to set up a Nile Water Authority and to establish in a definitive way the rights and obligations of the riparian countries.¹³

None of these initiatives served the key purpose of bringing all the countries of the Nile together as equals

Once they achieved independence, Tanzania, Uganda and Kenya decisively rejected all Nile water agreements to which they had not been party and any other agreements or understandings that were prejudicial to their sovereign rights and national interests. They also explicitly declared that they would not sanction any Nile waters agreements that Britain had concluded when their countries were under colonial rule.¹⁴ The most notable expression of this determination was contained in the so-called Neyerere Doctrine, which rejected any obligations that might be construed from the 1929 Agreement and which described them as 'a living ghost'.¹⁵ It is hardly surprising to notice how indignant the Sudanese

government was about this unjust and irrational (1929) agreement. The Sudanese negotiators were deeply dissatisfied when they obtained what they regarded as an unjustly small share of the total allocation of water. They felt that the Agreement had allocated them 'an Egyptian grant' rather than their just share in what was meant to be an agreement between equal partners.

A PATCHWORK OF DOWNSTREAM COOPERATION INITIATIVES

Egypt then made successive efforts to cobble together a number of shaky and inconsequential initiatives to create a platform for future negotiations. Such initiatives included the establishment of: (1) Hydromet in 1967, (2) Undugu in 1983, and (3) Tecconile in 1992. The purposes of these initiatives were to increase water supply¹⁶ for Egypt, to create divisions and animosity among upstream countries, and to isolate key upstream countries such as Ethiopia in particular. As may be expected, none of these initiatives served the key purpose of bringing all the countries of the Nile together as equals to negotiate an equitable division of the Nile's resources. It therefore failed to set a course for any meaningful negotiations that could result in a basin-wide cooperative framework that would be acceptable to all affected countries.

NEGOTIATIONS FOR A COOPERATIVE FRAMEWORK AGREEMENT (1999–2010)

Since February 1999, the riparian countries of the Nile have been engaged in serious negotiations for a Cooperative Framework Agreement under the auspices of the Nile Basin Initiative. This negotiation process includes *all* the Nile basin countries, and this makes it qualitatively and politically different from all previous negotiations. It is indeed encouraging to note that all the riparian states agreed to accept the Nile Basin Initiative as an interim organisation that has the authority and means to facilitate a more permanent legal and institutional arrangement for the regulation of the Nile basin. It is hoped that these negotiations will finally abolish the colonial treaties, agreements and assumptions that legitimise the lingering downstream hegemony that persists in the Nile basin. The Cooperative Framework Agreement (CFA) negotiations were conducted under the leadership of the Council of Water Ministers of the Nile basin countries, and they involved protracted phases of negotiation.

These negotiations continued for more than ten years and concluded with differences of opinion about one particular sub-article. The negotiators were not able to reach agreement about some of the wording of Article 14(b). The words that were the cause of the disagreement read as follows: '... not to significantly affect the water security

of any other Nile Basin State'. Negotiators from Egypt and Sudan wanted these words to be revised so that they would read: '... not to adversely affect the water security and current uses and rights of any other Nile Basin State'.

The final form of the Cooperative Framework Agreement was finally adopted by seven votes to one in May 2009 by the Nile COM during an extraordinary meeting that was held in Kinshasa. They also agreed that the wording of sub-article 14(b) should be included in the CFA instrument and that any dispute about the precise wording of the sub-article should be resolved by the Nile Basin Commission (NBC) within six months of its establishment. But all subsequent efforts to get the representatives of Egypt and Sudan to agree with the wording that the other members wanted, were of no avail.

The CFA instrument has been open for one year from 14 May 2010 for signature by member countries. Ethiopia, Rwanda, Uganda, Tanzania and Kenya have already all affixed their respective signatures. The other countries are expected to sign before the closing date of 14 May 2011. The NBC will then be established upon ratification of the CFA instrument by means of a majority of six member states.

Cooperation is essential for
the well-being of all the
participating countries

A WAY FORWARD

Imperatives for a way forward

The result of this impasse is that the upstream and downstream countries might have to resort to their 'best alternatives to negotiated agreements'. The downstream countries might be forced to insist on upholding the status quo, which they perceive as ensuring their 'water security'. This position was in fact strongly expressed by Egypt and Sudan both during the 17th Nile COM Extraordinary Meeting in April 2010 and during the 18th Nile COM meeting that took place in June 2010. In response to the position adopted by the downstream countries, the upstream countries may yet decide to adopt unilateral measures for the utilisation of the water resources that they need to develop their respective territories. This unfortunate situation has arisen because certain negotiators (and those whom they represent) have retreated from the amicable and mutually beneficial agreements that led to the Cooperative Framework Agreement. But none of the Nile riparian

states can escape their responsibility to cooperate with the other states that are party to the Cooperative Framework Agreement. There are many compelling reasons why all the participating countries should work together to promote the provisions of the Cooperative Framework Agreement. Not least of these reasons is that all of the participating countries have been party to an internationally accepted convention on the equitable and reasonable use of strategically vital shared water resources. None of the Nile riparian nations (whether upstream or downstream) can afford to ignore the crucially important environmental, economic, legal and security reasons why cooperation between all of the riparian nations is essential for the survival and well-being of all the participating countries.¹⁷

Challenges on the road ahead

It is interesting to note that the downstream countries originally made the erroneous assumption that the outcome of the Cooperative Framework Agreement negotiations would culminate in a ready acceptance by the upstream countries that the downstream countries should continue to retain exclusive control over the Nile waters. It is equally interesting to note that the upstream countries were quite prepared to negotiate for ten years or more (if necessary) if it required that much time to challenge the status quo with regard to the Nile waters – a status quo that they were determined to change. In spite of the fact that the downstream countries rejected the instrument of the Cooperative Framework Agreement, it was adopted in May 2009 by an extraordinary meeting of the Nile COM that was held in Kinshasa between all seven upstream nations – with a proviso that the controversial water security clause (clause 14(b)) should be appended to the Cooperative Framework Agreement that some time in the future after the Nile River Basin Commission has agreed that this should happen. After intensive efforts had been made to include the downstream countries in negotiations about the Cooperative Framework Agreement, the 17th Nile COM meeting held in Sharm El Sheikh decided that the CFA instrument should remain open for signature by member countries between 14 May 2010 and 14 May 2011. In accordance with this decision, Ethiopia, Rwanda, Uganda and Tanzania signed the Cooperative Framework Agreement on the first possible day (14 May 2010), and Kenya signed the agreement a week later.

Outlook for the Cooperative Framework Agreement

Burundi and the Democratic Republic of Congo are expected to sign the Cooperative Framework

Agreement whenever it suits them. Egypt and Sudan may consider signing the CFA if they are unable to find some mechanism to save face in the eyes of the public in their respective countries. But if the downstream nations do not sign the CFA, this would result in unilateral upstream measures, among which would be the establishment of a Nile River Basin Commission that excludes both Egypt and Sudan.¹⁸ These two countries would then be torn between two equally undesirable situations:

- They would have to continue to entertain the illusion that they have a ‘monopoly’ over waters over which, in fact, they do not have unilateral control; or
- They would be forced to endure the ‘humiliation’ of being compelled to cooperate with upstream countries from which they receive all the Nile water that flows through their own territories

Current state of the Cooperative Framework Agreement

Egypt and Sudan will eventually realise that the upstream countries have no intention of withholding the waters of the Nile or of preventing the Nile’s waters from continuing to flow downstream. They will also come to the realisation that the upstream countries have no choice but to make use of the waters of the Nile to further their own national progress and development. They will also eventually realise that they really have no choice but to cooperate with the upstream countries from which they receive all their water resources.

The 1929 agreement and other colonial agreements ... can no longer be regarded as acceptable

Because of the suspicion that exists between Egypt and Sudan or because of the possibility of exacerbating public opinion in the two downstream countries, the upstream states will have to put specific measures in place in order to ensure that the downstream countries will not be disadvantaged when it comes to matters of water security. In other words, they will have to extend the same consideration to Egypt and Sudan that they do to all other riparian countries. The upstream countries will have to make quite sure that they establish a water use and a protection regime that minimises mismanagement and wastage for all countries. They will also have to make

equally sure that all participating countries are willing to adopt and implement the best possible systems of water use, management and protection.

It is also probable that Egypt and Sudan will finally come to appreciate that they can no longer continue to monopolise the water resources that originate in countries beyond their territorial jurisdiction. They will be compelled to join the upstream countries of the Nile in joint multi-purpose projects because such cooperation would represent the most rational, cooperative and progressive method of protecting the vital interests of all the countries concerned.¹⁹ They will therefore (sooner or later) sign and ratify the Cooperative Framework Agreement instrument and cooperate with the upstream countries in establishing the Nile River Basin Commission.

As long as the Cooperative Framework Agreement manages to provide water security for all the Nile riparian countries,²⁰ Egypt and Sudan will have no sound or justifiable reasons for abstaining from negotiating with the other participating countries about all aspects of the water use, management and protection of the Nile waters in accordance with the provisions of the Cooperative Framework Agreement under the auspices of a Nile River Basin Commission.

CONCLUDING REMARKS

The 1929 agreement and other colonial agreements – as well as the 1959 ‘full utilization’ agreement between Egypt and Sudan – can no longer be regarded as acceptable or justifiable for the upstream countries that border on the Nile. It would be to the benefit of all the Nile basin countries if they were to negotiate a new agreement that facilitates mutually beneficial economic, environmental, security and legal cooperation among their countries. Such an agreement would stimulate and enhance other forms of agreement and cooperation in cultural, scientific and technical areas. In any case, mutually acceptable cooperative engagement among the riparian nations of the Nile basin is an indispensable condition for stimulating sustainable development in all the countries concerned and for ultimately achieving that state of peace and security among the riparian nations that has for so long been a precondition for the progress and advancement of the whole region.

NOTES

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- 2 Cheikh Anta Diop, *African origin of civilization: myth or reality?*, United States, Lawrence Hill, 1974, 56.

- 3 Georoido Tuathail, Simon Dalby, Paul Routledge, et al (eds), *The geopolitics reader*, London: Routledge, 1998, 1–12.
- 4 See Agreed minutes of the Nile Basin Council of Ministers, Dar es Salaam, Tanzania, 22 February 1999.
- 5 See the explanation of the dangers of ‘waterlordism’ in Riccardo Petrella, *The water manifesto: argument for a world water contract*, London: Zed Books, 2001, 36–38.
- 6 Lord Lloyd to Mohamoud Pacha, Cairo, 7 May 1929.
- 7 See Agreement between the Republic of Sudan and the United Arab Republic on the Full Utilization of the Waters of the Nile, 8 November 1959.
- 8 Fadwa Taha, The history of the Nile waters in the Sudan, in Terje Tvedt (ed), *The River Nile in the post-colonial age: conflict and cooperation among the Nile basin countries*, London: I B Tauris, 2010, 179.
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- 11 *Ethiopia Observer*, II(2), 1958, 93.
- 12 M M Whiteman, *Digest of International Law*, Washington DC: Department of State Publication, 1964, 1011–13.
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- 16 See John Waterbury, *The Nile basin: national determinants of collective action*, New Haven, Yale University Press, 2002, 76–80.
- 17 Yacob Arsano, Four Approaches to Cooperation in the Nile Basin, in Mulugeta Feseha and Tesfaye Tafese (eds), Proceedings of the conference on management of water resources in Ethiopia, 14–15 May 2004, Institute of Development Studies, Addis Ababa University, 2005, 181–218.
- 18 Yacob Arsano, Towards conflict prevention in the Nile basin, in Ministry of Water Resources, Proceedings of the fifth Nile 2002 conference, 24–28 February 1997, 1998, 487–510.
- 19 See, for example, the significance of the Joint multi-purpose projects for Egypt, Sudan and Ethiopia, as shown in the Project appraisal document [...] for Eastern Nile first joint multipurpose program identification, Eastern Nile Technical Regional Office (ENTRO), 24 June 2009.
- 20 Article 14(a) of the Nile Cooperative Framework Agreement states that all the participants states need ‘to work together to ensure that all states achieve and sustain water security’ while maintaining due regard for the ‘equitable and reasonable utilization’ (see Article 4) and the ‘obligation not to cause significant harm’ (see Article 5).



ABOUT THIS PAPER

This paper aims to explain the geopolitical set-up of the Nile Basin, the processes of the upstream-downstream negotiations, and the imperatives for upstream-downstream cooperation. It argues that the Nile basin countries must have a new agreement that paves the way for fresh and vibrant cooperation in the economic, environmental, security and legal/institutional spheres. These further enhance deeper cooperation in the cultural, scientific and technical fields among the riparian countries. In the final analysis, the paper concludes that a mutually acceptable cooperative engagement among the riparian nations in the Nile basin is *conditio sine qua non* for enhancing sustainable development in each country, as well as for achieving much-desired peace and security among the riparian nations.

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