

# Shared Basin Management (Conflict versus Cooperation): The Nile Basin, a Case Study

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In the face of population growth, rampant urbanisation, industrialisation and environmental degradation, shared basin management has proved to be synonymous to conflict management. Of the world's 263 shared basins, sixty-three are in Africa. Most of them are shared by two to four countries, although some are shared by many more. The Nile is a vital resource for the ten states embraced by its basin (Burundi, the Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Kenya, Uganda, Rwanda, Sudan and Tanzania), and it is especially important for the survival and development of Egypt, Eritrea, Ethiopia and Sudan. Also, five of these ten states are among the poorest countries in the world. Its basin affects some 300 million people, of which 160 million are directly dependent on its waters.

After many attempts, the Nile River Basin Cooperative Framework Agreement, concluded at the 15th ordinary meeting of the Nile Council of Ministers Responsible for Water Affairs (Nile-COM) held on 24th-25th June 2007 in Entebbe (Uganda), marks an important stage in strengthening Nile cooperation.

Certain clauses are of course still a problem and will be later submitted to the opinion of the Heads of State, but once it has been ratified, this Agreement will be the first instrument to bring together all the Nile basin countries and it will serve as an example for settling other conflicts in the Mediterranean area.

## The Nile: Facts

Originating from an "uncertain" source, the Nile, called the Kagera at this stage, crosses Lake Victoria (the Victoria Nile), passes the Ripon and Owen Falls and

enters Lake Kyoga, flows over the Murchison Falls to enter Lake Albert (the Albert Nile), crosses the southern Sudan plain where it takes the name of Bahr al-Jabal, passes through a swamp area, the Sudds, is joined by the River Sobat on its right shore and the Bahr al-Ghazal on its left shore, and from here it takes on the name of Bahr al-Abyad (the White Nile). At Khartoum, it is met from the right by the River Bahr al-Azraq (the Blue Nile, or Abbaï in Amharic), which has its source in Lake Tana in northwest Ethiopia, and becomes simply the Nile. Its final tributary, the Atbara, flows into it 322 km north of Khartoum. The Nile then crosses the desert regions of Nubia and Upper Egypt with a succession of waterfalls between Khartoum and Aswan, numbered in reverse order from 6 to 1. Between Aswan and Cairo, the river flows through a narrow, fertile valley, finally widening out into a vast marshy delta north of Cairo on the Mediterranean.

Its southernmost source, however, remains a controversy. A team of Britons and New Zealanders announced on 31st March 2006 that the source of the Nile is the River Rukarara, a tributary of the River Kagera, and is located in the Nyungwe Forest in southern Rwanda, and not in Uganda. Others believe its source to be the spring of the River Ruvyironza (Burundi), from which the Kagera flows. The Nile is the longest river in the world and measures 6,695 or 6,718 km, depending on its origin. Its basin affects some 300 million people (with 160 million directly depending on its waters). The Nile delivers some 300 million m<sup>3</sup> of water per day when it reaches Egypt. Ethiopia contributes over five-sevenths of its flow, and the rest comes from the White Nile.

## The Nile in Politicised Convention

The Nile fell within the area of influence of Great Britain during colonisation, and the British took great care to maintain their presence in the area.

This constant concern resulted in a series of agreements being signed between 1890 and 1949, with Germany (1st July 1890), Italy (15th April 1891, 13th December 1906), Belgium (12th May 1894, 9th May 1906), France (13th December 1906), Ethiopia (15th May 1902) and Egypt (7th May 1929, 31st May 1949).

#### *The Anglo-German Agreement of 1890*

This Agreement recognised German sovereignty over the Sultanate of Zanzibar in exchange for Germany's acknowledgement of the Nile as a British area of influence.

#### *The Anglo-Italian Protocol of 1891*

When Italy stated its claims on Ethiopia, Britain feared it would proceed to drain the Nile waters. It therefore delegated its ambassador in Rome, and this Protocol was reached, confirming Italian influence over Ethiopia from the 35° East Meridian, but with the region located in the West, i.e. the Nile Basin, remaining under British influence. It also stated that "the Italian government engages not to construct on the Atbara River, in view of irrigation, any work which might sensibly modify its flow into the Nile" (§ III).

#### *The Anglo-Belgian Agreements of 1894 and 1906*

Under the 1894 Agreement, King Leopold II, the ruler of the Congo Free State (today the Democratic Republic of the Congo) acknowledged the Nile as a zone of British influence, granting Great Britain a 25-kilometre corridor between Lakes Tanganyika, Albert and Edward and thus guaranteeing continued control of the river. In exchange, Britain agreed to lease the two Sudanese provinces of Bahr al-Jabal and Equatoria to the King with the condition that the former should be governed by the Congo Free State while the Congo remained under the supremacy of either the King, his successors or a Belgian colony, and the latter for the duration of the monarch's lifetime. However, under major pressure from the French, Belgium surrendered its dominion over these two provinces on 14th August 1894.

This Franco-Belgian Agreement was quickly followed by the Border Treaty between Great Britain and the Congo State in 1906, which stipulated that "Government of the independent state of the Congo engages not to construct, or allow to be constructed, any work over or near the Semliki or Isango River which

would diminish the volume of water entering Lake Albert except in agreement with the Sudanese Government" (Art. III).

#### *The 1906 Tripartite Agreement between Britain, France and Italy*

From then on, British control was established over the accesses upstream and downstream of the Nile. As a result of this stabilisation the 1906 Agreement was concluded between the three Nile powers, to maintain "the political and territorial status quo in Ethiopia." It stipulated that "should events occur to disturb the status quo set forth under Article I, France, Great Britain and Italy shall make every effort to maintain the integrity of Ethiopia (...) they shall agree to safeguard the interests of Great Britain and Egypt in the Nile Basin, and more especially, with regard to the control of the waters of this river and its tributaries..." (Art. IV, a).

#### *The Anglo-Ethiopian Treaty of 1902*

In this Treaty signed in Addis Ababa with Great Britain for the delimitation of the border between Ethiopia and Sudan, 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 work across the Blue Nile, Lake Tsana [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" (Art. III).

#### *The Anglo-Egyptian Agreements of 1929 and 1949*

The 1929 Agreement established the acceptance of the Commission's recommendations made in 1925 regarding the Nile. This was confirmed by an exchange of notes between Mohamed Mahmoud Pacha and Lord Lloyd, recorded as an agreement between the British government (in the name of Sudan and the countries under British administration) and the Egyptian government. The note from the President of the Council of Ministers emphasised that no irrigation or electrical power production works could be built without prior consent from the Egyptian government (§ 4 (ii)). In return, if "... the Egyptian government should decide to undertake works on the river and its branches, or take measures with a view to increasing the water supply to Egypt's advantage, the measures to be taken to safeguard local interests must previously be agreed on with the local au-

thorities. The construction, maintenance and administration of the aforementioned works will be under the direct control of the Egyptian government” (§ 4 (iv)). In response to the Egyptian note, the British High Commissioner affirmed that Her Majesty’s government acknowledged the “natural and historical rights of Egypt in the Nile waters”, and considered safeguarding them to be “a fundamental principle of British policy” (§ IV). The Agreement concluded in 1949 for the construction of a dam on the Owen Falls (Uganda) was drawn up “in line with the commitment made by the His Britannic Majesty’s Government on the exchange of notes regarding the use of the Nile waters, on 7th May 1929.”

### **The Nile in the Exemplary Agreement of 8th November 1959**

This Agreement, established between the United Arab Republic (now Egypt) and Sudan, distributed the Nile waters by means of subtle calculations, simultaneously taking into account the rights acquired by each country (48 billion/m<sup>3</sup> and 4 billion/m<sup>3</sup>/per year respectively measured at Aswan by Egypt and Sudan) and the average losses caused by long-term stocking of the future Aswan High Dam. It rectified the unbalance in the proportion of the Nile waters previously allocated, Sudan’s part now being 18.5 billion m<sup>3</sup> as opposed to Egypt’s 55.5 billion. The two governments agreed to the High Dam being constructed by Egypt and to Sudan building any other works it should consider necessary for the use of its part. In the eyes of the non-signing riparian countries, this Agreement was merely a *res inter alios acta aliis nec nocet nec prodest*; as a result, neither of the signing countries could oblige a third country to acknowledge any fact without their consent.

Egypt and Sudan, sensitive to the future needs of the Upper Nile riparian states, acknowledged the rights of the other riparians in their Agreement. Thus, Sudan stipulated that whenever a claim was made by the non-signing countries, the volume of water that the governments had agreed to allocate to the new demanding countries would be deducted in equal parts from Egypt and Sudan’s allocations, as measured at Aswan (V, §2).

### **The Nile and its Legal “Regime” at the Time of the “Administrative Powers”**

Prior to independence, the Nile treaties were subject to different interpretations, varying according to the

interests of the riparian states other than Egypt and Sudan. The succession of these countries after their independence raises the question of the value of the treaties of the former “administrating power.”

### *The Anglo-Ethiopian Agreement of 1902 and the Question of the Succession of State*

Previous to this Agreement, Ethiopia was bound by the aforementioned 1891 Protocol. However, Ethiopia had always invoked the principle of starting afresh and had brought up the question of “its natural rights” over the part of the Nile waters originating in its territory. The Ethiopian government went as far as claiming the title of “original possessor” of the Nile and, consequently, its priority right of use of the waters for the development of its economy and its population. The Addis Ababa government also refused to participate in the work of the permanent joint technical Committee created within the framework of the 1959 Agreement, unlike the other riparian countries. Furthermore, it refused to contemplate any proposals for the collective management of the Nile waters.

### *Succession of the Belgian Congo and Rwanda-Urundi on the Anglo-Belgian Agreements of 1906 and 1934*

The 1906 Agreement required the Sudanese government’s consent for the lesser use that any modification of the regime for the waters would entail. An analogous formula also appears in the Agreement of 22nd November 1934 between Belgium and Great Britain, concerning the use of the waters on the border between Tanganyika (now Tanzania) and Rwanda-Urundi.

Unlike the case with Tanzania, Zaire (now the Democratic Republic of the Congo), Rwanda and Burundi did not question the validity of the Agreements. It is true that these three countries are “relatively” less sensitive to the question of sharing the Nile waters than the other riparians.

### *Independence of the East African Countries and its Effect on the Anglo-Egyptian Agreement of 1929*

On gaining independence, Tanzania declared the 1929 Agreement incompatible with its sovereignty in a note sent on 4th July 1962 to the governments of Great Britain, Egypt and Sudan. Uganda’s attitude was also to condemn it. Kenya did the same, but it accorded the Agreement a two-year period of grace, dur-

ing which it should be repealed or replaced; this period concluded on 12th December 1965.

### *The "Uncertain" Validity of the Nile "Regimes"*

In this respect, some of these Agreements were imposed on the successor countries by virtue of Article XI of the 1978 Vienna Convention on the succession of States in terms of treaties, as they were border treaties. However, some of their stipulations solely concerning the use of the Nile waters to this regard were a cause of problems.

As for the others, there were arguments for and against their continuity, none of which was particularly convincing. Finally, the International Court of Justice (ICJ) implicitly dealt with the matter in its judgement on the Gabčíkovo-Nagymaros Dams project (Hungary/Slovakia) of 25th September 1997. It based the principle of transmissibility on the very nature of the international water course, i.e. its nature as a shared resource. It also set out other principles essential for water resource management (equitable and reasonable use and participation, obligation not to cause significant damage, etc.) by virtue of which the successor countries always had the opportunity to modify the treaties concluded by the former administering powers.

In view of this ambivalence, the Vienna Convention and Article III of the Convention on the Law of Non-navigational Uses of International Watercourses (1997) ran too great a risk of giving rise to conflicts instead of solving the problem of knowing which treaties the successor state is bound by or not.

With the Nile's legal regime "remaining disputed," hydraulic constructions were proposed.

### **The Nile and the Difficulties of its Constructions**

The flow of the Nile is controlled by four main dams: one on the White Nile in Uganda, one in Egypt (the High Aswan Dam), and two in Sudan. There are also at present several major Nile construction schemes either under study or in progress.

#### *The Works in Sudan*

Of the approximately 27 billion m<sup>3</sup> of water entering the Sudds region, only 14 billion leave the region, the rest being "lost" to evaporation and infiltration. In

1978, Egypt and Sudan began to dig the Jonglei canal, an ambitious scheme for channelling the Nile along a 360 km long canal starting at Bor.

Work advanced rapidly until 15th May 1983, when an uprising broke out in the garrisons of Bor and other towns. The "Sudan Liberation Army" was formed, criticising the central government for the lack of any real cooperation with southern Sudan regarding the large financial development projects. The works were reported sine die pending a definitive settlement of the question of the South.

### *The "Vindictive Dam" on Lake Tana in Ethiopia and Other Projects*

This scheme for the Blue Nile consisted of building a dam at the outlet of Lake Tana to constitute a water reserve (for irrigation and hydroelectric power). The scheme went a long way back, with the first feasibility studies having been made by the Egyptians in 1913 and later abandoned in 1936 on Italy's invasion of Ethiopia. The project remains a source of tension between Egypt and Ethiopia. Also, whenever the situation between the Nile states escalated, it was normally due to a plan, project or event concerning the Nile waters (the dam on the Tekeze/Teccaze, the Finchaa reservoir, the Peace Canal, the scheme for a new valley, etc.).

### **The Nile, Conflict Prevention and Cooperation Prospects**

For several years, efforts favoured by Egypt have been made to encourage cooperation through common schemes for the Nile waters, such as the following:

- the Hydrometeorological Survey of the Catchment of Lakes Victoria, Kyoga and Albert in 1967 (HYDROMET, 1967-1992);
- the Organisation Agreement for the construction and development of the basin of the River Kagera in 1977;
- the Lagos Action Plan for Financial Development of Africa in 1980 (a catalyst for the creation of the Undugu group (meaning "the brotherhood") in 1983, 1983-1999);
- the Khartoum Declaration between Ethiopia and Sudan in 1991;
- the Technical Cooperation Committee for the protection of the Nile basin environment in 1992 (TECCONILE, 1992-1999);

- the general cooperation framework between Egypt and Ethiopia in 1993;
- the environment management project for Lake Victoria in 1996.

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However, these endeavours ended in failure, mainly because they did not succeed in gaining the confidence of the riparian states, several of which considered that their aim was to institutionalise an unfair *status quo* regarding use of the Nile waters.

### *The Nile Basin Initiative (NBI)*

At their meeting held in February 1999 in Dar es-Salaam (Tanzania), the nine Nile-COM countries created the Nile Basin Initiative (with Eritrea participating as an observer), founded with the aid of the World Bank and the United Nations Development Programme (UNDP).

Organised by the NBI, the Nile-COM meets annually and provides the necessary political impulse for issues regarding the Nile waters. The technical advisory committee (Nile-TAC), created in March 1998, meets whenever the need arises: composed of eighteen members (an official representative and a deputy member for each country), it issues technical opinions, draws up the proposals to be made to Nile-COM, and aids them in their work. These two bodies are backed by a permanent secretariat (Nile-SEC) based in Entebbe. The Presidency of Nile-COM and Nile-TAC is ensured by an annual rotation system.

The NBI, a participatory process of dialogue between the riparian states, has led to a "shared vision": it has succeeded in bringing about durable socio-economic development through the equitable use and sharing of the common benefits of the Nile basin water resources. The Strategic Action Programme provides the means for transforming this "shared vision" into specific activities, through an approach based on two simultaneous complementary processes:

- Preparing all the cooperative actions through a regional programme for promoting confidence

and cooperation, and for skills development in the basin as a whole (Shared Vision Programme);

- Putting into practice the opportunities for investment and development of cooperation at the sub-basin level in order to obtain specific results (Subsidiary Action Programme).

The projects of the Shared Vision Programme have created a propitious environment for investment. There are currently eight of them, involving practical training, confidence promotion and commitment of stakeholders, the regional energy market, coordination of the Shared Vision Programme, socio-economic development and profit-sharing, trans-border environmental action, optimum use of water in the agricultural sector, and water resource management.

### *Restored Confidence*

One of the Nile basin action plan projects, whose objective was to develop a cooperative framework for Nile management (Project D3), was approved at the 3rd Nile-COM meeting (Arusha, 9th/11th February 1995). This cooperation framework programme was launched in 1997 with the support of the UNDP, the World Bank and other bilateral development partners, and its aim is to study the legal and institutional aspect of the cooperation.

A Panel of Experts (PoE, composed of three legal and hydraulic experts per country) and a Transition Committee drew up a Nile Basin Cooperation Framework Agreement to enable determination of the equitable and legitimate right of use of the Nile waters by each country. The Nile-COM recommended the creation of a negotiation committee to complete the Agreement project, and it was concluded in June 2007. On the one hand, the cooperation framework agreement helped to dissipate Ethiopia's mistrust, and on the other hand the NBI Programmes fortified the stance of Egypt.

### *Interdependence is Established*

The NBI promotes interest in inter-state cooperation and is attempting to clear the way for the idea of optimum interdependence. The Nile-COM established a fiduciary Fund in March 2003 and asked the World Bank to manage it so that it could be put into practice. Its realisation is based on the principle of a decentralised approach within the different countries in accordance with a determined procedure, and not within a strictly national framework. The NBI has thus developed two baskets of the Subsidiary Action Pro-

gramme: the Eastern Nile Subsidiary Action Programme (ENSAP) and the Nile Equatorial Lakes Subsidiary Action Programme (NELSAP).

The first of these two programmes is supported by Egypt, Ethiopia and Sudan. Its steering committee is made up of three Water Resources Ministers and the Programme Team (a group of three national technical teams). Its objective is to carry out joint actions in situ to reduce poverty, promote economic growth and restore the environment. Its Regional Technical Office began its activity in June 2002 in Addis Ababa: it runs and coordinates the creation of the projects, develops capacities, reinforces the institutions and serves as a secretariat. It is equipped with a Social Development Office that supports all the projects by reinforcing the social development capacity, drawing up guidelines and establishing and analysing studies (preparatory and pilot studies), etc.

Based in Kigali (Rwanda), the second of the programmes involves six states in addition to Egypt and Sudan (Burundi, Democratic Republic of the Congo, Kenya, Rwanda, Tanzania and Uganda). Its objectives are similar to those of the first programme. It was devised to generate long-term effects that would be favourable for the economic integration of the Great Lakes region. Twelve development projects have been identified and classified into two main groups:

- Natural resource management (improving agricultural productivity through rainwater collection, small-scale irrigation and livestock management; the Lakes Albert and Edward fisheries projects; development of a cooperative framework for the water resources of the Mara Basin and the Malakisi-Malaba-Sio Basins, and integrated management of the Kagera Basin; eradication of the water hyacinth in the Kagera River).
- Development of hydropower and the energy market (hydropower development on the Rusumo Falls; prioritisation and feasibility studies for hydroelectric power; interconnection of the electrical networks between: Kenya and Uganda; Burundi, the Democratic Republic of the Congo and Rwanda; Burundi and Rwanda; Rwanda and Uganda).

These Projects will be drawn up and put into practice by the countries concerned, under the supervision of the Steering Committees or any other monitoring mechanism agreed on by the States themselves. A Coordination Unit was set up in Entebbe in December 2001 to facilitate the creation and realisation of the projects.

To optimise this interdependence, the NBI tends toward integrating the idea of dissociation cost. This represents loss of profit due to discontinuity of the expected "transactions". If this cost is disproportionate and particularly low to the profit of one State, and the other is not in a position to respond, the first state has the power to inflict substantial damage on the second and obtain greater concessions from them. Thus, only a substantial, globally equal dissociation cost for the parties enables this optimum interdependence to be attained.

### **Conclusion: Ten Riparians, One River and One Common Destiny**

There are numerous accomplishments to add to the NBI's credit: the setting up of a large national and regional network of teachers, journalists, members of parliament, etc., together with other forums; the involvement of the governments, local authorities and civil society organisations; the progress made within the framework of energy exchange, water resource planning, confidence promotion between the stakeholders, etc.; carrying out the projects on a regional, national and local level; signing the Memorandum of Understanding in July 2006 with the community of East Africa for the integrated management of Lake Victoria, etc.

**The Nile basin countries share the same interests and their desire is to move forward in the future with the same spirit, that of a "Nile community"**

The NBI is a step in the right direction. However, it represents only a transitory agreement, until the countries concerned endorse a permanent framework, both legal and institutional, for the development of the Nile waters (the Nile Basin Commission). This desire for change requires the involvement of the international community (the International Consortium for Nile Cooperation, the World Bank, specialist UN institutions – UNDP, FAO, WHO, UNEP – regional and development banks, etc.) as a facilitator and financial backer, and the commitment of the Nile States.

The Nile basin countries share the same interests and their desire is to move forward in the future with the same spirit, that of a "Nile community."

## MEDITERRANEAN AND INTERNATIONAL WATER ORGANISATION AND NETWORKS

ACSAD, Arab Centre for the Study of Arid Zones and Dry Lands

[www.acsad.org/aboutACSAD.htm](http://www.acsad.org/aboutACSAD.htm)

Arab Water Council

[www.arabwatercouncil.org/](http://www.arabwatercouncil.org/)

EMWIS, Euro-Mediterranean Information System on Know-How in the Water Sector

[www.emwis.net](http://www.emwis.net)

Euro-Mediterranean Irrigators Community

[www.e-mic.org/](http://www.e-mic.org/)

GWPMed, Global Water Partnership Mediterranean

[www.gwpmed.org](http://www.gwpmed.org)

Horizon 2020 Initiative

[http://ec.europa.eu/environment/enlarg/med/horizon\\_2020\\_en.htm](http://ec.europa.eu/environment/enlarg/med/horizon_2020_en.htm)

IME, Institut Méditerranéen de l'eau

[www.ime-eau.org](http://www.ime-eau.org)

MEDA Water Program

[www.medawater-rmsu.org/](http://www.medawater-rmsu.org/)

MEdIES, Mediterranean Education Initiative for Environment and Sustainability

[www.medies.net](http://www.medies.net)

Mediterranean Component of the EU Water Initiative

[www.euwi.net/index.php?main=1&sub=1&id=127](http://www.euwi.net/index.php?main=1&sub=1&id=127)

MedWet, Mediterranean Initiative of the Ramsar Convention on Wetlands

[www.medwet.org/medwetnew/en/index.asp](http://www.medwet.org/medwetnew/en/index.asp)

MENBO, Mediterranean Network of Basin Organisations

[www.remoc.org](http://www.remoc.org)

NBI, Nile Basin Initiative

[www.nilebasin.org/](http://www.nilebasin.org/)

Plan Bleu

[www.planbleu.org/themes/eau.html](http://www.planbleu.org/themes/eau.html)

The World Bank, Water Unit, North Africa and Middle East

<http://web.worldbank.org>

UNEP-MAP, United Nations Environment Programme – Mediterranean Action Plan

[www.unepmap.org/](http://www.unepmap.org/)

UNESCO; Water sustainable development and conservation of fresh water resources in the world

[www.unesco.org/water/](http://www.unesco.org/water/)

UN Water

[www.unwater.org](http://www.unwater.org)

WaDImena, Regional Water Demand Initiative for the Middle East and North Africa.

[www.idrc.ca/wadimena/](http://www.idrc.ca/wadimena/)

Water Monitoring Alliance – Mediterranean Region

[www.watermonitoringalliance.net/index.php?id=1856](http://www.watermonitoringalliance.net/index.php?id=1856)

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