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## ***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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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'.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

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).<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup>

### **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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup>

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'.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup>

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.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup>

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.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup>

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.<sup>35</sup>

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.<sup>36</sup>



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.<sup>37</sup>

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.<sup>38</sup> 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.<sup>39</sup>

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'.<sup>40</sup> 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'.<sup>41</sup>

Yosef Yacob refers to the history of the Nile as that of 'unsuccessful diplomatic and political initiatives, hostility, tension, and non-cooperation'.<sup>42</sup> 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.<sup>43</sup>

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'.<sup>44</sup>

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'.<sup>45</sup> 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.<sup>46</sup> 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.'<sup>47</sup>

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'.<sup>48</sup>

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.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup>

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.<sup>52</sup>

### **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.<sup>53</sup> 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).<sup>54</sup>

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.<sup>55</sup>

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.<sup>56</sup>

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.<sup>57</sup> 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.<sup>58</sup>

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.<sup>59</sup>

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.<sup>60</sup>

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.<sup>61</sup>

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.<sup>62</sup>

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.<sup>63</sup>

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.<sup>64</sup>

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.<sup>65</sup>

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.<sup>66</sup>

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.<sup>67</sup>

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.<sup>68</sup>

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.<sup>69</sup>

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.<sup>70</sup>

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.<sup>71</sup>

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).<sup>72</sup>

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.<sup>73</sup>

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.<sup>74</sup>

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.<sup>75</sup>

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.<sup>76</sup>

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.<sup>77</sup>

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'.<sup>78</sup> 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.<sup>79</sup>

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'.<sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup>

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-Nagymaros* case, the International Court of Justice used some general principles of the Convention in deciding the case between Hungary and Slovakia.<sup>83</sup>

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.<sup>84</sup> 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.<sup>85</sup>

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'.<sup>86</sup>

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.<sup>87</sup>

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.<sup>88</sup>

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.<sup>89</sup>

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.<sup>90</sup>

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.<sup>91</sup>

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.<sup>92</sup>

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.<sup>93</sup>

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.<sup>94</sup> 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

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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.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](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.