

# The Grand Ethiopian Renaissance Dam and Ethiopia's Succession in Hydro-legal Prominence:

A Script in Legal History of Diplomatic Confront (1957-2013)

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## Abstract

This article argues that within the system of international law, while Ethiopia's equitable right of access to resources of the Nile is recognized as a matter of settled principle, the law's actual working is a coefficient of prior hydraulic measures adopted on the ground rather than mere articulation of legal norms, diplomatic civility or altercations. I also submit that the system of international law still remains vital in resolving transboundary water issues, and yet, the mechanics of law could not function optimally outside of power politics, diplomatic dexterity and sincere commitment to the fundamental values it upholds. In this light, and against a backdrop of Ethiopia's relegated position in the second half of the twentieth century, the paper concludes that today the country's relative renaissance in the Nile legal politics - which for the first time captured serious downstream interest in riparian negotiations - is attributed not to a change in the pertinence of the norms of international law nor to any altruistic revision of positions in the lower reaches of the river, but rather to its belated awakening in pursuing the Grand Ethiopian Renaissance Dam (GERD) as a national project of multifarious impact.

## Key terms

The Grand Ethiopian Renaissance Dam, Nile water resources development, Nile, legal diplomacy, Ethiopia, Egypt, Sudan.

DOI <http://dx.doi.org/10.4314/mlr.v9i2.5>

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## Introduction

In an article published in *Mizan* 8(2) focusing on the legal history and diplomatic minutiae of the first half of the twentieth century (1902-1956), it was argued that the Anglo-Ethiopian Treaty of 1902 on the Blue Nile and the stream of negotiations conducted in the immediate aftermath in relation to the Lake Tana

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Dam concessions engendered detrimental impacts on Ethiopia's riparian rights in the subsequent decades.<sup>1</sup> Paradoxically, the same period also witnessed a relative highpoint in Ethiopia's hydro-legal eminence which, although never pursued, presented the country a rare opportunity for propelling its own canoe with regard to utilization of the Nile within its jurisdiction. Carrying-over the legal and diplomatic account on Ethiopia's multifaceted glitches on the Nile, this article covers important episodes of the post-1950 period (1957-2013) – particularly featuring the fall and gradual rise of the country's hydro-legal posture in transboundary river discourses.

Unlike the pre-independence period in the Nile Basin where Ethiopia had to deal with the imposing maneuvers of Great Britain in defending its riverine interests, by the mid-1950's and the subsequent decades, the country was confronted with two more pressing threats. The first emanated from reinvigorated proprietary perception over the Nile which downriver states 'inherited' from their colonial past and the second originated from the unilateral moves they embarked upon in the immediate aftermath –carrying out grand Nile control works on the Aswan High and the Roseires dams.

Disturbed by the exclusionary negotiations processes and detrimental resource development patterns downstream, Ethiopia was forced to put in place a national strategy that strove to counter, or at least undermine, Egypt's hegemonic control that would inevitably ensue from construction of the Dam and consequent expansion of irrigational uses. A two-track approach was adopted: first, to diplomatically stake Ethiopia's claims of 'water quotas' with the Egyptian and Sudanese governments, and secondly, to work expeditiously on complete survey of the Blue Nile River within its jurisdiction so as to create opportunities for a pre-emptive use of the resource upstream –before Egypt and Sudan could claim prior use rights. In the second half of the twentieth century, neither approach was wholly implemented; Ethiopia's actions proved ineffective in safeguarding its equitable rights in the Nile waters.

Analytically reconstructing geographical, historical, diplomatic and developmental minutiae in a context relevant to legal discussions, the first section in this article highlights how decades of 'British water imperialism' in the basin eventually humbled Ethiopia's standing in basin-wide discourses and further entrenched nationalist beliefs along the downstream Nile. The second section investigates the evolution and chief causes of Ethiopia's waning influence in the hydro-legal dialogues of the post-1956 period –mainly concentrating on negotiations on the Aswan High Dam and re-division of the

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<sup>1</sup> See: Tadesse Kassa Woldetsadik (2014), 'The Anglo-Ethiopian Treaty on the Nile and the Tana Dam Concessions: A Script in Legal History of Ethiopia's Diplomatic Confront (1900-1956)', 8.2 *Mizan Law Review*, pp.271-298.

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Nile waters—pursued without any reference to it. With the collapse of British colonialism in the region at about the same period and the loss of its protective role of downstream interests, the second section also presents on how the new geo-political development prompted Egypt and Sudan to work on plans that offset the inevitable setback.

Section 3 discusses the clause under the 1959 Nile Waters Agreement which included the accommodation of 'future requests of share' by upstream Nile, and how, over time, the allocations regime constituted the 'absolute floor' below which neither country was willing to go. Section 4 narrates the unilateral water control schemes carried out in Egypt/Sudan in the post-High Dam period. The analyses in Section 4 centers on the effects of Egyptian long-standing strategy that the ultimate security of its claimed entitlements lay in the volume of waters preemptively withdrawn, and discusses how, from upstream perspective, such a growth trajectory trumped the bargaining vigor of Ethiopia for many decades to come. The fifth section discusses Ethiopia's countering actions during the 1951-1972 period, aiming on key institutional processes of the past century with regard to the gathering of basic hydraulic information on the Blue Nile and the plans for its harnessing. This theme is linked to the examination of how domestic factors—relating to fiscal and technical limitations, governmental procrastination and want of visionary insight—led Ethiopia pay the ultimate price in defending its interests and in raising its hydro-legal prominence.

Section 6 covers the 1972-1990 period—featuring further stagnation in Ethiopia's hydro-political eminence; it recites the studies and declarations which, inopportunately, were attended by very limited government actions during an era that saw the state's continuous preoccupation with the proliferation, structuring and redefinition of the powers of institutions accountable for the development of water resources in Ethiopia. The analysis in section 7 twirls on the changed facets of Ethiopia's water resources development and national security policies which, following the advent to power of a new regime, were fundamentally reformed; it scrutinizes futile enterprises of the Ethiopian state in 1991-1993 in its bid to restructure relationships with the Sudan and Egypt, and presents the earliest marks of regression in the extreme water uses policy of Sudan. As Ethiopia came to grasp that diplomatic and legal tools alone could not assure its equitable entitlements nor strengthen its prominence, the last section depicts the fundamental makeover in Ethiopia's river use policy in the post-1996 period—which increasingly reflects legitimate unilateralism as means of triggering genuine cooperation. The last section discusses four sweeping developments that furthered Ethiopia's sovereign interests and long term hydro-political standing in the basin's legal discourse.

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## 1. The Demise of British ‘River Imperialism’ in the Nile Basin: Ends and Upshots

In 1908, Lord Cromer, the long-time British viceroy in Cairo and one of the pioneers of Great Britain’s basin-wide policies in the Nile, declared that the Englishman had taken the entire Nile in hand; for the first and only time in the Nile’s history, one might talk of a ‘King of the Nile Waters –Lord Cromer’. This rhetoric was voiced at a time when ‘his and the government’s plans for taming the entire river were very ambitious in water systems –with projected dams and water infrastructure installations designed to serve the overall interests of one imperial authority’, i.e., Great Britain.<sup>2</sup> In the subsequent years, W. Garstin and Wilcocks (1904) wrote one of the first ‘comprehensive volumes’ of Nile development schemes, followed by Sir M. McDonald and later by J. Hurst (1919, 1921, 1946), each working in agency of the Egyptian Ministry of Public Works. Since then, British engagements in relation to Ethiopia had been framed *solely* on the basis of its imperial objectives and strategies in the basin.

The Anglo-Ethiopian treaty of May 1902 on the Nile was conceived in this context.<sup>3</sup> Attended by a stream of negotiations on Lake Tana conducted in the succeeding decades, the accord left behind profound marks on user-right perceptions along the downstream Nile and heralded the struggling position in which Ethiopia found itself in the twentieth century. Between 1882-1951, decades of British imperial river politics –espoused in the greater good of its political, economic and strategic interests in Egypt, the Suez Canal, Sudan and the Near East– did not only humble Ethiopia’s standing in basin-wide discourses, it also entrenched extreme nationalist beliefs in the states of Egypt and Sudan that brandished the river as exclusive resource domain. With changing facets in the pre and post-Egyptian revolution of 1919, British water imperialism endeavored to *solely* increase supplies downstream –by retaining the excess inflows of wet years to make good for short years by storing water in the lakes where the White and Blue Nile have their sources.<sup>4</sup>

Since the 1950’s, the independence movement surged in many African countries, including in Egypt who had already gained greater autonomy since 1922, in Sudan and the British East African Territories. The demise of colonialism, and with it, the closure of grand imperial designs such as those

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<sup>2</sup> Terje Tvedt (2015), ‘Water systems, Water Agreements and State Sovereignty: The Case of the Nile Waters Agreement of 1929’, eds. *Sovereignty and International Water Law*, Series III, vol.2, I.B. Tauris, New York/London, p.604

<sup>3</sup> For thorough discussions, see: Tadesse Kassa Woldetsadik (2014), *supra* note 1.

<sup>4</sup> Memorandum of International Aspects of the Waters of the Nile for Presentation to the Emperor of Ethiopia, E.B. Boothby, Foreign Office to D.L. Busk (Addis Ababa), 5 February 1954, JA 1421/3, London.

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proposed under the 'Century Storage Scheme' (1920) and 'Future Conservation of the Nile' (1946) projects for the control, use and management of the Nile waters was only inevitable. Yet, the injurious effects of British river imperialism and with that the works of monopolistic mind-set which its colonial administration in Cairo nurtured, lingered. In the post-independence period, while it is evident that no single state could garner basin-wide political leverage as the British had, Great Britain's imperial schemes which failed to present the Nile as a truly shared amenity of all riparian communities, were acceded to in the lower reaches of the river with sheer zeal and political resolve.

On the other hand, the collapse of colonialism in the region also occasioned that British protective roles, scheming on non-interference regimes of the Nile waters upstream, could no longer be availed. Whereas it is true that following its formal exit from the region, Great Britain had still endeavored not to be 'reduced to a policy of inaction while matters of importance were being settled' in the basin,<sup>5</sup> in practice there were clear indications that it was unable to 'regain through diplomacy the massive influence it had formerly exercised' in safeguarding downstream interests –by overlooking the sovereign stakes of Ethiopia and other upriver states.

For Egypt and Sudan, the new geo-political development was, in a way, a wakeup call –that they had to work on plans that offset this setback and rewrite previous British and (in part Egyptian) plans for the supply of Nile waters from hydraulic works situated elsewhere in the basin.

Alarmed by Great Britain's political manipulations on the Nile, Egypt had already revealed its inclination to embark on water control works within its own jurisdiction –trusting that this undermines British hydro-political leverages in the region. Hence, pushing forward the Aswan High Dam project –to which the Egyptian national administration had been committed since 1952– was perceived as the most inevitable course.<sup>6</sup> The dam's construction as over-year storage started in 1960 and was completed in 1966, effectively replacing earlier proposals such as the 1946 plans by Hurst, Black and Simaika for a system-wide Century Storage Scheme –with facilities spread in Ethiopia, Uganda and Sudan.

The new political reality in the basin presented Ethiopia with grave challenges, prompting the adoption of measures in defense of national riverine interests. Unlike the pre-independence epoch during which Ethiopia had to deal with the imposing maneuvers of Great Britain *only*, the country was confronted with more concerning threats since the 1950s and 1960s –one emanating from

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<sup>5</sup> Ralph S., British Embassy to Honorable Harold Macmillan, M.P., 16 May 1955, JE 1428/13/55, Cairo.

<sup>6</sup> For details, *see*: United Arab Republic and Sudan Agreement for the Full Utilization of the Nile Waters, 8 November 1959, Cairo.

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deeper proprietary perception over the Nile which downstream states ‘inherited’ from colonial past, and a second originating from unilateral moves which they embarked upon in the immediate aftermath– on the High Aswan and Roseires dams.

The High Dam project had occupied a central element in Egyptian nationalists’ thinking for some time; the project was retailed as a means for transforming Egypt’s serious economic predicament –affected by inadequate water-flow regimes, destructive floods and inefficient models applied in basin irrigation. The scheme sought to ensure Egypt’s two strategic pillars of all time –water and food security– through the protection of water quotas and continued expansion of irrigational uses of the resource.<sup>7</sup>

Disturbed by the new exclusionary processes, Ethiopia’s strategy strove to counter, or at least undermine Egypt’s hegemonic status that would unavoidably result from construction of the Dam. A two-track approach was adopted: first, to diplomatically stake claims of water quotas with the Egyptian and Sudanese governments –given both had resolved to embark on construction of the Dams withholding the entire river flow within their territory,<sup>8</sup> and second, to work on complete survey of the Blue Nile River within its jurisdiction so as to create opportunities for a pre-emptive use of the resource upstream– before Egypt and Sudan could claim to have acquired prior use rights.<sup>9</sup> In the following decades, neither approach was wholly implemented. Outflanked by realist approaches of the downstream states who over-stressed ‘self-interest’ in the development of shared resources, Ethiopia’s strategy was not effective in safeguarding its equitable rights in the Nile waters.

## **2. Ethiopia’s Waning Influence in Hydro-legal Discourses: the Post-1956 period**

By the mid-1950s, the diplomatic language and legal postures of the states of Egypt, Sudan and Ethiopia, hitherto articulated from positions of comparable strength, started to falter. In 1954 and through 1959, the relationship between Egypt and Sudan was itself extremely strained over Egypt’s initial reluctance to

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<sup>7</sup> Incidentally, it is worth noting that not a few authors had concluded previously that ‘optimum national water security’ is unattainable and in any case incompatible with policies of ‘food security’ or the ‘principles of international law’.

Adelphi Series (1992), ‘Conclusions: The agenda for the 1990s -Water and Instability in the Middle East’, vol.32:273, p.65.

<sup>8</sup> Tadesse Kassa Woldetsadik (2013), *International Watercourses Law in the Nile Basin: Three States at a Crossroads*, New York/Abingdon, Routledge, Taylor and Francis, pp.152-156.

<sup>9</sup> Ibid.

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involve Sudan as a bilateral cooperative partner, and subsequently, over issues of revision of the 1929 Treaty on the division of the Nile waters. Yet, from Ethiopia's perspective, Egypt's nationalist resolve to eventually proceed with construction of the dam preordained that the downriver states no longer needed to stick to the decades-long unyielding negotiations on the Lake Tana dam concessions. Against such background, the Eritrean question over which Egyptian support had been solicited, and the proven fear that Ethiopia might 'not (even) take a firm and satisfactory line with the Egyptians or anybody else',<sup>10</sup> prompted Egypt to stop its participation in the talks on Lake Tana projects.

On the other hand, Sudan's resolution to initiate the Roseires dam plan in 1956, while still engaged in the Lake Tana Dam negotiations with Ethiopia, signified a radical policy shift, reducing its reliance on an Ethiopian scheme. The same year, the Sudanese government announced it would give first priority to the Roseires dam, gradually replacing its need for hydraulic works on the Ethiopian Blue Nile.<sup>11</sup> Following a meeting with the Ethiopian Emperor and his Minister of Foreign Affairs in Addis Ababa in April 1956, Sudanese officials concluded their government had neither the money nor the need for works on the Ethiopian Blue Nile for many years to come –unless Ethiopia, mainly interested in Lake Tana and the Blue Nile from the point of view of power generation, went ahead with its own plans which would force the former to counter-advance alternatives and seek to influence the schemes in a direction that benefits the irrigational needs of Sudan.<sup>12</sup> The construction of the Roseires dam which started in 1960 and was completed in 1966 with a storage capacity of 3 BCM, fulfilled this objective. It was part of a chain of projects designed for the full utilization of the Nile waters which both Sudan and Egypt worked on within the framework of the negotiations for a revised Nile waters agreement. These projects involved the Aswan High Dam and re-division of the Nile waters without the courtesy of informing Ethiopia –a major upstream source of the river's flows.

The specific circumstances that led to Ethiopia's relegation in the Nile legal discourse, and in particular, the historic deliberations on the Aswan High Dam could not be understood properly without resorting to the rudiments that molded contemporaneous perceptions in Egypt, Sudan and in some degree, Great Britain. In addition to Ethiopia's imperial vacillation of the time on key

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<sup>10</sup> British Embassy to African Department (Foreign Office - London), 5 June 1950, 1421/54/50, Addis Ababa.

<sup>11</sup> Sudan Government to British Embassy (Addis Ababa), 23 April 1952, FO 371/96805, Khartoum.

<sup>12</sup> C.O.I Ramsden, British Embassy to J.H.A. Watson, Esq., African Department (Foreign Office), 14 April 1956, 1421/1, Addis Ababa.

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development initiatives, the country lacked the financial and technical means required for embarking on major water resource projects. Yet, the country's legal and political resolve to *reserve* its shares and take part in the High Dam negotiations had been fairly robust.

Ethiopia had recognized that its failure to attend in such processes would certainly entail heavy toll on its long-term stature. In reality, however, apart from the 'desperate' and 'politically inspired' letters of formal reservation of rights issued in 1956 and 1957, Ethiopia did little to force downstream states for talks in serious diplomatic settings or to conduct comprehensive surveys of the Nile waters within its jurisdiction.<sup>13</sup> Despite his extra-ordinarily long and stable reign, the Emperor, who relentlessly promoted the 'centralization of the Ethiopian state', reconstructed 'a new and answerable bureaucracy', saw to the 'modernization of the Ethiopian army' and resumed 'the educational revolution'<sup>14</sup> –failed to get it right when it comes to the Nile legal politics. With growing feelings of indignation, Ethiopia continued to bewail facts that, through time, kept it out of the picture of the convoluted Nile *politic* in the late 1950's.

The first main reason accounting for Ethiopia's troubled stature in the basin could be traced to the knotty British approaches adopted at the time. Of course, in the post-independence period, Great Britain had tried to shift-away its traditional spotlight from Sudanese and Egyptian interests. At least in theory, its colonial officials in London as well as at the Embassy in Cairo and the Governor General's Office in Khartoum concurred that the East African Governments' claims to a share in the Nile waters should not go by default, and that the bilateral negotiations (between Egypt and Sudan) had to be pursued 'without prejudice to their (certain but not quantified) claims.'<sup>15</sup> At one point, the East African colonies were even pressured to put forward rights for specific volumes which shall be utilized in the future and it was declared that Great Britain should 'be prepared at the right moment to bring in the Governments of Ethiopia and the Belgian Congo' to similarly stake their claims.

What is more, in relation to shares of the upriver states, Great Britain suggested that 'the division of the Nile waters between Egypt and Sudan should be made on a *proportionate* basis, not in terms of absolute quantities, i.e., each

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<sup>13</sup> Nile waters and economic aid to Ethiopia: reports conversation with the United States Ambassador, D.L. Busk, British Embassy to J.H.A. Watson, African Department (Foreign Office), 17 February 1956, 1423/28, Addis Ababa.

<sup>14</sup> Haggai Erlich (2000), 'Identity and Church: Ethiopian Egyptian Dialogue 1924-59', 32. *International Journal of Middle East Studies*, p.33

<sup>15</sup> W.H. Luce to Tom, Governor General's Office, 5 May 1955, FO 371/113733, Khartoum; Ralph Stevenson to Harold Macmillan, British Embassy, 16 May 1955, FO 371/113733, Cairo.

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country would be given a stated proportion of the natural flow at Aswan'.<sup>16</sup> A few months after Sudan's independence, British representatives held discussions with Ethiopia's Minister of Foreign Affairs, emphasizing how important it was that an agreement should be reached between Sudan and Egypt on the division of the Nile waters - with Great Britain (on behalf of Kenya, Uganda and Tanzania), and the Ethiopian governments registering their respective claims once this had been achieved'.<sup>17</sup> Clearly, in light of the changed political circumstances and its fading powers along the downstream Nile, Great Britain was trying to 'lean more heavily towards Ethiopia than ... (it had) done in the past, with a view to increasing the bargaining power of the up-river states in any negotiations with the down-river users'.<sup>18</sup>

While the British continued to recommend such a seemingly practical basis for durable settlement of the issues through multilateral division of the Nile waters,<sup>19</sup> this objective was never pursued seriously in the subsequent years, and if any, it was promoted only in a context that served British vested interests in the basin. Actually, Great Britain never took Ethiopia's interests earnestly. In the words of its own legate at the British Embassy in Addis Ababa, 'there is without doubt some justice in criticisms of us voiced in certain Ethiopian quarters that we have dealt *unfairly* with her in the past by imposing servitudes such as that in Article III of the 1902 Treaty, by insisting on certain conditions for Ethiopian negotiations with the J. White Corporation, and by offering money to help build the High Aswan Dam without reference to them'; indeed, 'at no time have we (i.e., the British) ever seriously taken into account the necessity of protecting Ethiopia's rights equally with those of down-river countries' although our wrong deeds are 'pardonable in that Ethiopia has never been in a position to express her need for a share in the Nile waters –backed up by any real plans for using that share'.<sup>20</sup> This penitent statement by the British government was partly correct; Ethiopia's 'real plans' that rushed Egypt and Sudan to forthwith plead for negotiations on equal footing came only six decades after the 1950s, i.e., following the commissioning of the Grand Ethiopian Renaissance Dam, as highlighted in Section 8.2 of this article.

Great Britain assumed that Ethiopia's involvement in the talks between Sudan and Egypt would needlessly strain the promises of a deal being struck. Its

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<sup>16</sup> W.H. Luce, Governor General Office to T.E. Bromley, African Department (Foreign Office-London), 5 May 1955, FO 371/113763, Khartoum.

<sup>17</sup> J.E. Killick, British Embassy to J.H.A. Watson, African Department (Foreign Office - London) 29 September 1956, FO 371/119063, Addis Ababa.

<sup>18</sup> J.E. Killick, British Embassy to Adam, 29 September 1956, FO 371/119063, Addis Ababa.

<sup>19</sup> Ralph Stevenson, British Embassy to Harold Macmillan, *supra* note 15.

<sup>20</sup> J.E. Kellick, British Embassy to J.H.A. Watson, *supra* note 17.

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authorities corresponded their country's main objective should rather be 'to reach an early and sufficiently comprehensive agreement to enable work start on developments –including the Aswan High Dam and others in Sudan (from which British entrepreneurs had hoped to benefit) and in East Africa–unhampered by lack of certainty as to the share of Nile waters to which each country is entitled'. Hence, talks of 'getting bogged by claims from the Belgian Congo and Ethiopia', they submitted, should be avoided –hoping to satisfy them 'by some such arrangement as inviting at some stage to send observers'.<sup>21</sup> In this light, a strategic visit proposed by Ethiopia in June of 1956 to send its representative and discuss Nile waters with the East African Territories was shrugged-off by Kenya's British colonial administration who believed that Kenya 'derives little benefit from such visit' and by Uganda who 'chose not to be involved in the melee of Middle East politics'.<sup>22</sup>

Overwhelmed by the complex British diplomatic machinations, Ethiopia had no choice but watch helplessly as negotiations on the High Dam as well as the re-division of the whole Nile waters were pursued, and in such context, its misfortune was clearly sealed. In contrast to the pre-1954 order where it commanded a fairly strong position and ran the talks on equal grip, this time Ethiopia had to yearn and tacitly implore for participation in the processes. Even Emperor Haileselassie's high profile visit to Egypt in June 1959 - shortly before the treaty was concluded –a visit which he accepted 'after three years of embarrassing courtship by Nasser'<sup>23</sup> could not turn the tides back. Egypt and Sudan 'calmly sat down to negotiate a comprehensive agreement for division of the whole water without any reference to [Ethiopia]'.<sup>24</sup>

On the other hand, Ethiopia's stressed position in the basin during this period could as well be narrated by reference to the hard-line attitude which Sudan and Egypt espoused in rebuking its stakes. Both states –geographically vulnerable as recipients of the river's flow from Ethiopia and Uganda– were barely impressed by British and Ethiopian diplomatic maneuvers for a *prior settlement* of water rights between all riparian communities in the basin. The 1956 publication of Sudan's *Government pamphlet on The Nile waters Question* referred to the division of the whole waters *solely* between Egypt and Sudan –without any mention of the rights of Ethiopia. In reality, in the post-1956 period, the values that informed Sudanese and Egyptian *legal politic* on the Nile remained hugely fixated with their past, and in official dealings both states replicated the old

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<sup>21</sup> Cairo to African Department, Foreign Office, FO Telegram No.2027.

<sup>22</sup> Ministry of Natural Resources to W.A. Mathieson, Colonial Office (London), 24 July 1956, JE1423/89, Uganda.

<sup>23</sup> Haggai Erlich (2000), *supra* note 14, p.39.

<sup>24</sup> J.E. Killick, British Embassy to J.H.A Watson, *supra* note 17.

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tricks adopted by their mentor, Great Britain, since the advent of the latter's colonial empire in the basin in the last legs of the nineteenth century.<sup>25</sup>

The quintessence of the Egyptian narrow nationalistic philosophy, which, later, the British Embassy in Cairo branded a 'chauvinistic rubbish' - was movingly compiled by Dr. Abdul Aziz Ahmed, a technical advisor at the Egyptian Ministry of Public Works, and published with official sanction in *The Egyptian Gazette* -only after *The Times* declined to print it in its editorials.<sup>26</sup> In broad unfamiliarity with the notion of state sovereignty over natural resources, the article submitted the problem associated with the Nile waters is 'not an international one -for Egypt and Sudan are the *only* states which utilize the ... waters for irrigation at the present and for many years to come'; secondly, the paper argued, the 'Nile flow regime -which is the decisive factor in the matter of water distribution, limits its use to the two countries *only*'.<sup>27</sup> Hence, it was held in a forewarning tone: the institution of any basin-wide organization not only 'jeopardizes Egypt's vital interest in the Nile waters (as ostensibly political move), it also touches the national ego on a sore spot'. From this followed that 'no others states could possibly partake' in the negotiations of the division of the Nile waters; whereas it may be argued Ethiopia, which supplies all the flood water, might participate in the discussions, the fact that the river flows through 'mountainous regions of almost uninhabitable wilderness and far from where it could be put to any use' serves no useful purpose 'for Ethiopia to be present at that discussion *merely* to witness how Egypt and Sudan would share the flood water.'<sup>28</sup>

Naturally, this perspective should not be perceived as a sporadic manifestation of an officer in charge of Egyptian *politic*. It is the outcome of centuries of interwoven naiveté that derived from the very early conjectures of Greco-Roman writers on the Nile, the major cartographic presentations of the Arabs and the Portuguese (14<sup>th</sup> c.), and the great explorations of John Speke, Samuel Baker, Richard Burton, Henry Stanley and David Livingstone (19<sup>th</sup> c.) on the sources of the Nile and its extraordinary impact on Egyptian civilization.

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<sup>25</sup> British position of the time held that Congo's interests were confined to the 'amount of compensation' that ensue from realization of Nile control works flooding parts of its territory, and Uganda's stakes limited to 'the development of hydro-electric power without affecting the flow of the Nile.' Ethiopia's only profit was assessed as the 'development of hydro-power for which there is no market in the near future', and its key water diplomacy directed to focus on 'the amount of money it can secure from Egypt and Sudan in return for permission to construct the Lake Tana Dam.'

<sup>26</sup> British Embassy to African Department, Foreign Office, 25 August 1956, JE 1428/108/56, Cairo.

<sup>27</sup> British Embassy to African Department, Foreign Office, 25 August 1956, JE 1428/108/56, *Enclosure*: 'Sharing Waters of the Nile'; Cairo.

<sup>28</sup> *Ibid*.

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The Nile River and its profound intertwine with Egypt had been addressed in various geographical, historical, developmental, social and cultural writings. These conjectures had prompted its lower-reach societies to crave for and construct a unique identity around the resource which tended to regard the watercourse as 'Egyptian River'.

Today, such thoughts prevail as critical constituents of the national consciousness in Egypt, affecting perspectives and actions at all levels of the cultural and political establishment. Hence, it would not be surprising to note that in the 1950s the construction of the High Dam 'within and controlled by Egypt, and not by Ethiopia' was pursued under a clear impression of proprietary ownership that 'Lake Nasser would become the *main source* of the Nile',<sup>29</sup> not Ethiopia.

Third, Ethiopia's beleaguered position could also be explained in relation to another closely related fact: the claims of 'natural' and 'vested' rights. The legal implication of the assertions notwithstanding, Egypt had consistently projected the natural and historical rights theories as providing indisputable grounds for exclusive use rights so much so that no new legal arrangement could work against such thinking. As early as in 1920, a Report of the Nile Projects Commission had already recommended that Egypt and Sudan be considered as each having a vested right to *all the natural flow* (of 40 and 18 BCM/annum of waters respectively),<sup>30</sup> in the same year, the growing economic import of the Sudanese territory prompted Great Britain to issue the Milner Mission Report which, among others, recognized that Egypt has an indefeasible right to an ample and assured supply of water for the land at present under cultivation and to a fair share of any increased supply which engineering skill may be able to provide.<sup>31</sup> This over-sentimentality of exclusive proprietorship was formally acknowledged by Great Britain on numerous occasions and expressly incorporated under the 1929/1959 Nile waters agreements, rejecting, in effect, any meaningful stake of upstream states in the resource, and hence in the negotiations.

Such was the fabric of the national predisposition in both Egypt and Sudan, stuffed with greater scales of bigotry. Therefore, it would not come as surprise that the 1959 Treaty on the division of the Nile waters was recast not on a proportionate basis of shares owed to each state in the basin –as would have been imagined following international law, but only in a context that created riparian uncertainty. Upstream states were not afforded the opportunity for

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<sup>29</sup> Haggai Erlich (2000), *supra* note 14, p.39.

<sup>30</sup> Report of the Nile Projects Commission (1920), Printed with the authority of the Egyptian Government, 25 August London.

<sup>31</sup> R. K. Batstone (1959), 'Utilization of the Nile Waters', 8 *Int'l & Comp LQ*, p.527.

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staking their shares through negotiations. In the subsequent decades, the perception of exclusive title remained entrenched; it was attended by new developmental trajectory which expanded user rights to the additional waters made available under the 1959 treaty –through the construction of the Roseires and the High dam facilities. Against such odds and besieged by its own inaction, Ethiopia was reduced to mourning its situation, with far-reaching implications on its stature in the basin.

### **3. A Positive Treaty Clause: Accommodating 'Future Requests of Share' by Upstream Nile**

Unlike the 1929 agreement between Great Britain and Egypt, the 1959 treaty for full utilization of the Nile waters introduced a paragraph that intended to deal with future requests of water share from upstream Nile. Given the national ego that informed the bilateral negotiations, it was surprising that a provision lukewarmly admitting the stakes of upstream states was included in the treaty regime. True, Sudan and Egypt were always convinced that Ethiopia did have neither a firm plan nor the means for pursuing significant development projects on the Blue Nile. Yet, the fact that both states (under the treaty) expressed intent to 'jointly consider' claims of other riparian states in the future and deduct their respective shares –'if any such consideration results in acceptance'– was in itself exceedingly progressive.

Most probably, this approach was adopted in reaction to the concerted diplomatic charges pursued at the time by Great Britain (representing the East African Territories) and Ethiopia –forewarning that their shares in the Nile waters should not be established by simple default. If anything else, the intense political setting and preconception under which the treaty was drafted and the subsequent practices of both Sudan and Egypt attests to the fact that neither was ready to acknowledge the 'equal sovereign right' of all riparian states in the Nile basin. This is particularly evident from the framing of the pertinent provision in the treaty which bestowed the power of deciding on whether or not to accommodate upstream requests of shares *wholly* on the good will of the two countries –as though the other states were vested with reduced sovereignty under international law.

In practice, profound details accounted in political history confirm that Sudan and Egypt harbored firm reservations and endeavored to forestall threats that potentially originate from prospective uses of the Nile waters upriver. Of course, with the passage of time, Waterbury wrote, the original spirit of the 1959 Agreement had been mostly lost ..., the shares in absolute terms had now

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become sacrosanct, absolute floors below which neither country will go.<sup>32</sup> A vigorous pattern denouncing upper riparian rights emerged –rebuffing Ethiopia’s right of pursuing *even* the measured ‘local irrigational rights of inhabitants dwelling on both sides of the Blue Nile’ which Great Britain had acknowledged in the past –when it was in charge of Egyptian and Sudanese hydraulic developments,<sup>33</sup> and the similar rights admitted by Sudan and Egypt within the framework of the draft Tana dam agreements exchanged in 1933, 1935, 1946 and 1951.<sup>34</sup>

Buoyed by longer periods of inaction and donors’ disinclination to devote capital in contested rivers, the post-1957 epoch in Ethiopia was attended by increased orientation of downstream policies along the contours of the now defunct conception –the absolute territorial integrity principle. Through time, not only did Ethiopia’s position in the basin deteriorate, the import of the ‘positive clause’ in the Nile waters agreement also paled in the thin air; this created a perfect setting for unabated development of water resource programs downriver –creating new facts that made Ethiopia’s legitimate quest for utilization of the resource harder to accomplish.

#### **4. The Downstream Nile: Subsequent Water Resource Developments**

Between 1954-1980, Sudan commissioned nine large and medium-scale irrigational projects, developing approximately one million ha of land,<sup>35</sup> including the projects executed at New Halfa (on the Atbara) and under the Rahad I project in the vicinity of the Gezira. In addition, the old Gezira Scheme, established in 1925, was doubled in the first decade of independence from 404,685 ha to 809,371 ha through the Managil extension completed in 1963,<sup>36</sup> heightening Sudan’s overall irrigation areas to 3.9 million ha. Today the Gezira schemes stretch over 882,000 ha and withdraw about 13 BCM of waters pledged

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<sup>32</sup> John Waterbury (2002), *The Nile Basin, National Determinants of Collective Action*, Yale University Press, New Haven, London, p.75.

<sup>33</sup> Draft Telegram to Cromer, 16 February 1907, FO 371/14591, Addis Ababa; Draft Agreement, Huge Dodds to Viscount Allenby, 26 December 1922, FO 371/8403, Addis Ababa.

<sup>34</sup> *See for e.g.*, Lake Tana Dam Project: Draft Agreement or Treaty, Sir Miles Lampson to Mr. Becket, 22 June 1935, J2606/318/1, Cairo.

<sup>35</sup> Government of the Democratic Republic of Sudan, Ministry of Irrigation (1979), *Nile Waters Study*, vol.III, Supporting Reports, p.3.

<sup>36</sup> Bret Wallach (1984), ‘Irrigation in Sudan Since Independence’, 74.2 *The Geographical Review*, pp.127-144.

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under the 1959 Nile Waters Agreement with Egypt.<sup>37</sup> Constructions on the Roseires and the Khashim El Girba dams –impounding the Blue Nile and Atbara Rivers respectively and designed to facilitate Sudan's full consumption of its water quota– were concluded in 1966. On the other hand, construction on the Jonglei Canal in the Sudd swampy region –now located in the South Sudan Republic– started in 1970 jointly by Sudan and Egypt 'with the object of increasing the Nile yield to meet their future water requirements needed for the expansion of irrigated agriculture'. The Canal, with a length of 360 km, will run from Bor or Baher El Jebel to the confluence of the Sobat and the White Nile, with expected yield of 5 BCM per year at Malakal which will be shared equally between both countries.<sup>38</sup> However, work on the Sudd project –an area accounting for the loss of about 42 BCM waters every year through evaporation, overspreading and evapotranspiration<sup>39</sup> had to be interrupted in 1983 following the civil war in the region. Attempts to revive it did not succeed. Sudan's last major venture on the Nile River was the Merowe multipurpose dam –built near the fourth cataract downstream of Khartoum in 2009– with installed producing capacity of 1250 MW of hydro-electric power.

In retrospect, such a dynamic development by a state that gained formal independence only in January 1956 and was plagued by ravaging civil wars is simply outstanding. From upstream perspective, the growth trajectory of Sudanese water resources trumped the bargaining vigor of Ethiopia for many years to come.

Egypt had already acquired alternative supplies from the Gebel Aulia Dam on the White Nile in Sudan as early as in 1932, and had been engaged in the successive heightening of the old Aswan dam over the decades. It embarked on the construction of the High Dam that heralded a concluding stage in its time-honored petition for dispensation of concessions on the Lake Tana. In 1951, Egypt formally shelved negotiations on the project.<sup>40</sup>

In the post-1960 period, Egypt read the new geo-political reality sufficiently in time and with clearer foresight; it realized that thoughts of 'grand imperial

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<sup>37</sup> Nile Basin Country Paper (1996), 'Comprehensive Water Resources Development of the Nile Basin: Action Plan', IVth Nile 2002 Conference, Kampala, Uganda, Proceedings, p. 2-3, C-26.

In 1996, Sudan reported it had virtually consumed its water-share of 20.55 BCM and projected to utilize 32 BCM by 2025 after the planned construction of dams on the Atbara and Merowe and the heightening of the Roseires were completed.

<sup>38</sup> A.M. Ibrahim (n.a.), 'The Environmental Impact of the Jonglei Canal in the Sudan', Projects Implementation Division AAAID, Sudan, p.1.

<sup>39</sup> Ibid.

<sup>40</sup> Sudan Government to British Embassy (Addis Ababa), 23 April 1952, FO 371/96805, Khartoum.

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schemes' analogous to the Owen Falls Dam, the Lake Tana Dam or the Equatorial Nile Projects that contemplated to institute water control works upstream with a view to advancing the economic welfare of Egypt or Sudan represented antiquated approaches in Nile waters management. In this light, it was only imperative for both Egypt and Sudan to work on plans that lessen their dependence for the supply of Nile waters on hydraulic works situated across the Great Lakes region and in Ethiopia.

In a long-term strategic perspective, Egypt also foresaw that the ultimate security of its claimed entitlements lay on the volume of waters it preemptively withdraws. In this spirit, streams of water control works were commissioned over the decades on a unilateral basis. Protected by the huge reserves of the High Dam, large-scale agricultural expansions were initiated since 1982 by reclaiming tracts of desert lands beyond the fertile Nile valley. Similar plans were also instituted in 1997 which aimed at the development of about 1.4 million ha of land until 2017 –including the two grand projects in the Sinai region and along the Toshka depression.<sup>41</sup>

Under the El Salam/Northern Sinai Agricultural Development Project, the Al-Salam Canal whose construction began in 1976 to bring water from the Damietta branch of the Nile –crossing under the Suez Canal south of Port Seid by means a siphon– was inaugurated in 1997; it diverted water from the Nile basin to reclaim desolate lands by irrigation in the western parts of the Sinai desert.<sup>42</sup> In 1994, as an eastward extension, excavation of the second phase of the Peace Canal commenced to irrigate 1700 sq. kms of the Sinai from El Arish, near the Israeli border, to accommodate 3 million Egyptian settlers through the Northern Sinai Agricultural Development Program.<sup>43</sup> On the other hand, the reclamation and development program in southern Egypt basically depended on the South Valley Development Project, commissioned in 1997 within the framework of the 25-years national plan; the scheme featured three important components along the Toshka (226,800 ha), East Oweinat (187,740 ha) and the New Valley Oases west of the Lake Nasser.<sup>44</sup>

Implementation of the plans on the Roseires, the High Dam and the subsequent agricultural expansions were attended by little countering reactions in upriver Nile, whether legal or institutional. The effect was that with the

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<sup>41</sup> Arab Republic of Egypt (2005), *National Water Resources Plan for Egypt 2017*, Cairo, Ministry of Water Resources and Irrigation, Planning Sector, pp.2-6.

<sup>42</sup> Ibid, pp.4-7, 8; Kristin Wiebe (2001), 'The Nile River: Potential for Conflict and Cooperation in the Face of Water Degradation', *41 Natural Resources Journal*, p.731.

<sup>43</sup> Robert O. Collins (1997), 'The Inscrutable Nile at the Beginning of the New Millennium', Working Paper, University of California, Santa Barbara, Dep't of History.

<sup>44</sup> Tadesse Kassa Woldetsadik (2013), *supra* note 8, p.44; Arab Republic of Egypt (2005), *supra* note 41, pp.3, 4-7, 8.

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intensified uses of the Nile, the new projects periled future utilization of the waters in upstream countries by creating *de facto* regimes of *prior use* in respect of all the water conserved in the High Dam. The massive reclamations, Caponera submitted, made it difficult for Egypt to reduce its water allocation in order to adjust to new upstream uses;<sup>45</sup> as a whole, the non-participatory process epitomized a highpoint in Ethiopia's fading influence over the Nile affairs – which continued unabated until the preceding decade.

## 5. Ethiopia's Countering Actions: Meager Surveys and Water Control Works (1951-1972)

In the 1950s and through the 1960s, as Egypt sketched a cogent river development roadmap and solicited finance from the West and East for its picturesque dam project and as Sudan stretched its hydraulic infrastructures on an inconceivable tempo, Ethiopia loitered as a spectator. Time and again, it failed to engage in the pursuit of a single course that could have enthused material impact under the circumstances: a comprehensive survey, design and development of the Blue Nile River basin. Obviously, Ethiopia's diplomatic proclamations alone –issued in the mid 1950s– had not prompted Egypt or Sudan to embrace it in the negotiations on the Nile legal regime or to acknowledge its rights of utilization *per se*.

Indeed, decades of its ardent participation in the Nile politics notwithstanding, Ethiopia failed to take matching actions on the ground. This may appear very ironic considering that the systemic synthesizing of hydraulic information on the Blue Nile River and firm plans for its harnessing crossed the threshold of its hydro-political landscape so early –with the ascent to power of Ras Teferi as Crown Prince and Regent. By 1902/3, C.E. Dupuis had already undertaken an expedition around Lake Tana based on the instructions of Sir William Garstin, then Advisor to the Egyptian Ministry of Public Works.<sup>46</sup> Between 1921-24, a team led by G. W. Graham from Sudan and R. P. Black from the Physical Department of the Egyptian Government spent considerable time around Lake Tana, and the result of their studies –*Report on the Mission to Lake Tana 1920-21*– was published by the Egyptian Government in 1925.<sup>47</sup> Hence, by the mid-1920s, basic hydrological knowledge on the Nile in Ethiopia had already metamorphosed; not only had the Blue Nile and Lake Tana represented central mainstays in the government's actions for development, the resources also

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<sup>45</sup> Dante A. Caponera (1993), 'Legal Aspects of Transboundary River Basins in the Middle East, the Al Asi (Orentes), the Jordan and the Nile', 33 *Natural Resources Journal*, p.656.

<sup>46</sup> D. E. Dupuis (1936), 'Lake Tana and the Nile', 35.138 *Journal of the Royal African Society*, pp.18-25.

<sup>47</sup> *Ibid*, pp.19-20.

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became vital tools of maneuver in foreign policy. The organizational and fiscal competence of state institutions charged with the use of the water sector also expanded slowly, but considerably.

In this light, the Ras started setting the stage very early by employing in '1924-25...a Swiss hydrologist to survey the Lake Tana'<sup>48</sup> for national developmental purposes. By 1925, report of studies produced by Graham and Black (two years earlier) was received.<sup>49</sup> In 1931, a fairly elaborate plan was conducted by J. G. White Engineering Co. in the context of the Lake Tana dam project,<sup>50</sup> and in 1952, the first reconnaissance report on the whole Blue Nile River was compiled as part of the 'Point Four General Agreement for Technical Cooperation' signed in Addis Ababa in June 1951.<sup>51</sup> During the latter period, US policy on Ethiopia was informed by multifaceted issues which included 'fears of communist inroads in the region', 'hostile Egyptian activities', 'the Somali problem' and 'US interests to counteract forces menacing its influence in Ethiopia'. From 1952-1956, several agreements were concluded and long-term military and economic assistance programs designed. In this context, Point Four was followed by 'Agreement for Mutual Defence Assistance' (1952, 1953), 'Technical Cooperation Program for Water Resources Development' (1953), and the 'Agreement Relating to Economic Assistance' (1957).

The 1952 reconnaissance mission's report identified several areas feasible for irrigation - through direct diversions - particularly focusing on the flat plains immediately surrounding Lake Tana; areas along the Little Abai, Rib and Gumara tributaries; the fertile plains of the Andassa River; the valley between Little Abay River and Lake Tana; the valley along the meandering low-banked tributary of the Didessa River along the Ethio-Sudanese border; and the Mughher and Guder river regions.<sup>52</sup> The study concluded that major storage reservoirs would be required before any large-scale developments –mostly undertaken by reclaiming desert lands – could be pursued.<sup>53</sup>

Still, the investigations were regarded 'inadequate' –not to mention that the Emperor also procrastinated against further studying of the Blue Nile basin against the learned advises of his ministers– except for the US Bureau of

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<sup>48</sup> Harold Marcus (1987), *Haileselassie I The Formative Years 1892-1936*, The Red Sea P., Lawrenceville, p.72.

<sup>49</sup> From Sudan Government Secretariat to British Embassy (Addis Ababa), JA.1422/4, 23 April 1952, Khartoum.

<sup>50</sup> Ibid.

<sup>51</sup> US Department of Interior, Oscar L. Chapman, Secretary, Michael W. Straus, Commissioner, Bureau of Reclamation, *Reconnaissance Report, Blue Nile River Basin, Ethiopia*, August 1952, Washington D.C.

<sup>52</sup> Ibid, pp.17-18.

<sup>53</sup> Ibid.

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Reclamation's (USBR) elaborate surveys conducted by *Sewell and Hough* in 1964.<sup>54</sup> In this light perhaps, British officials were correct in observing in 1956 that although 'it was over three years ago that Huntings first became interested in this question (Point IV) and began to make proposals to the Ethiopian Government' and that 'the Bureau of Reclamation and Point IV have also been working on it for a couple of years', the Ethiopian Government had 'always received the proposals amicably and usually implied that [it was] interested' where *in actual fact* 'nothing was ever done'.<sup>55</sup>

In 1956, the 'Third Operational Agreement for the Extension of the Program for the Study of the Water Resources of Ethiopia for the Multi-purpose Blue Nile River Basin Investigation' was signed –proposing to 'assist the Ministry of Works to initiate multi-purpose Blue Nile River basin investigations designed to facilitate the determination of the economic potential of the land, water and other resources of that area to the end that the data thus gained may be used in the future for planning specific projects.'<sup>56</sup> From this followed the USBR's final report published in 1964. The report recommended thirty-three irrigational, hydro-power and multipurpose projects in the Blue Nile basin –most of which were later identified in the reconnaissance stages; this included the construction of four dams –Karodobi, Mabil, Mendela and Border Projects, the latter now pursued as the GERD with greater modification.

The irrigational potential across the Blue Nile was re-assessed as extending over an area of 433,754 ha, with a total annual water requirement of 6.36 BCM and the total installed potential of generating hydro-power at 6,965,165 kilowatts.<sup>57</sup> Only two hydro-power plants, the Tis Abay I and the Fincha I hydro-power projects, with installed capacities of 11.4 and 100 MW were commissioned in 1964 and 1974 respectively.

The full implementation of the USBR's schemes could have heralded a wholly distinct legal, hydro-political and developmental configuration in the Nile River basin today, investing in the Ethiopian state a differential riparian status. Not least, it would have offered Ethiopia the opportunity to counterpoise downstream unilateralism in some measures. Ethiopia would have positioned to surprise Egypt and Sudan in own plans for Nile developments well before they could assume to have acquired extended 'prior use' rights –a pattern of physical

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<sup>54</sup> Limited studies were also conducted on the Gilgel Abbai basin by Lahmeyer Consulting Engineers in 1962. Dessalegn Rahmato (1999), Discussion Papers, Forum for Social Studies, Addis Ababa.

<sup>55</sup> British Embassy to African Department, (Foreign Office - London), 31 July 1956, JE1423/104, Addis Ababa.

<sup>56</sup> British Embassy to Foreign Office (African Department - London), 4 July 1956, JE 1423/95, *enclosures*, Addis Ababa.

<sup>57</sup> Tadesse Kassa Woldetsadik (2013), *supra* note 8, p.241.

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facts which, even when inequitable, becomes difficult to overturn at a later stage.

Pressed by exigencies of this period, Ethiopia concluded the legal security of its water rights as *partly* laying in the formal declaration of its shares in the Nile waters,<sup>58</sup> and *half-heartedly*, in the accelerated surveying and development of the Blue Nile basin. In 1956, Pierre Petridis, a Counselor at the Ethiopian Embassy in Cairo –and a Greek citizen with extended services at the Foreign Affairs office– was seconded to work on Ethiopian plans for the development of the Blue Nile. Petridis was aware of the urgency of the situation from Ethiopia's perspective; and he strongly advised the government to adopt a simplified plan – surveying the whole river basin (as opposed to the elaborate plans of Point IV).<sup>59</sup> His final policy brief for the Imperial Government, which was to be followed by 'a more specific letter to the Nile Valley States', advocated the 'clear and immediate reservation of Ethiopian rights' for irrigational and hydro-power projects.<sup>60</sup> More importantly, his proposal, presumably based on old technical investigations of the past, put forward six alternatives of developing the Tana dam for power and irrigation, including Sudan's likely involvement in joint development schemes.<sup>61</sup> All components of the proposed project, intended to be implemented either jointly or as alternatives, involved the utilization of Lake Tana as a natural reservoir with a regulator, barrage and hydro-electric power stations in different parts of the river basin.<sup>62</sup>

It is unsettling, though, to note that whereas limitations relating to fiscal and technical facilities had been imposing at the time, at least at the start, Emperor Hailesselassie's reaction to the Bureau's surveys had been cold. Although the Emperor's utter indifference was apparent, the degree of criticism he was subjected to was attributable to a wrong reading of the state of facts.

The Emperor, whose heart was then set on the development of Port Assab, the civil aviation industry and an eastwards expansion of modern farming, labelled the study report as 'unduly concentrating on big water control works in

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<sup>58</sup> In this line, the Ministry of Foreign Affairs issued a communiqué outlining the need for calling international tenders with a view to 'opening up new agricultural regions and sources of power' necessitated by 'the impressive growth of the Ethiopian economy ... increased population and enormous expansion of internal and external trade.'

Communiqué Released by the Ministry of Foreign Affairs of Ethiopia, Addis Ababa, Tuesday, February 7, 1956.

<sup>59</sup> P.R.A Mansfield, British Embassy to J. F. S. Philips, Foreign Office (London), 27 April 1956, FO 371/119061, Addis Ababa.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> 'Translation of a brief prepared by Mr. P. Petridis on the Blue Nile Basin for the Ministries of Foreign Affairs and Public Works', Annexed in Busk to Foreign Office (London), 5 May 1956, FO 371/119061, Addis Ababa.

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areas where no population settles, with limited indications of beneficial works for Ethiopia'.<sup>63</sup> The technical findings that Ethiopia's paybacks largely derive from hydropower schemes and that dams in Ethiopia hoarding waters for dry season irrigation downstream would alleviate alluvial concentration in Egypt and Sudan –were not earnestly welcome.<sup>64</sup>

Political stunt in commissioning the survey was also to account for Ethiopia's subsequent inaction on the USBR's recommendations. As Zewdie Gebreselassie, Minister of Works during the Imperial era recounted, the primary objective of the investigation was rather 'to use the information obtained from the study to negotiate with the lower riparian states, so that they can revise their estimates of how much water each riparian state should be allotted.' The actual development agenda, which was never pursued anyway, resurfaced only when this strategy failed, in the context of avenging 'downstream unilateralism'.<sup>65</sup> The truth remained that since the proposition on the Century Storage Scheme was put forward at the turn of the century to use Lake Tana as an over-year reservoir, Ethiopia's interest was never more than lukewarm.<sup>66</sup> This partly explains why none of the major projects identified by the USBR study were carried out in the following decades.

Separately from these exertions of the period, the early years of the twentieth century also saw less systemic reports composed by explorers that served as vital sources of hydrologic information. During the early periods, attempts by explorers and travelers to trail the Blue Nile's whole course using boats and other means had proffered unprecedented measures of geographical minutiae.<sup>67</sup>

In 1972, Ethiopia presented a quantified claim on the Nile waters, the first of its kind. The National Water Development Commission estimated that for three decades the country would require 18,789 BCM of Nile waters per annum for irrigations, domestic uses, and out-of-basin diversions.<sup>68</sup> The Commission also

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<sup>63</sup> National Water Development Commission (1972), *Note on the Blue Nile*, Addis Ababa, (unpublished), p.21.

<sup>64</sup> Ibid.

<sup>65</sup> Zewdie Gebreselassie (2000), 'The Nile River Question in a New Era of Cooperation among Riparian States', VIIth Nile 2002 Conference, Proceedings, Addis Ababa, Ethiopia, p.524.

<sup>66</sup> John Waterburry (1982), *Riverine and Lacustrine: Toward International Cooperation in the Nile*, Discussion Paper No.107, Princeton University, p.86.

<sup>67</sup> Notable explorers of the time that cleared the way for later development of the resource included Oscar Crosby (1901), Lewis (1903), H. Weld Blundell (1906), the W. N. Macmillan Expedition of B. H. Jensen (1902 and 1906), R.E. Cheesman (1926), and later, Herbert Rittingler (1962) and Arne Rubin (1965) on the main river course, and Samuel Baker (1861) on the Atbara-Tekeze-Anegereb Rivers and effluents draining to Tekeze River.

<sup>68</sup> National Water Development Commission (1972), *supra* note 63.

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advised the Ethiopian Government to frame a ‘clear policy guideline’ in respect of the use of its international rivers, and design a three-thronged stratagem: to preemptively use the river with or without foreign aid, work in concert with upper stream states to weaken the legitimacy of the 1959 agreement, and unequivocally state Ethiopia’s position in regard to the resource.<sup>69</sup> It would be noted, in the subsequent sections, that since the last decade of the twentieth century, Ethiopia’s key involvement within the framework of the Nile Basin Initiative had been informed by these strategic considerations.

## **6. Stagnation in Ethiopia’s Hydro-political Standing (1973-1990)**

Between 1972-1996, Ethiopia’s national enterprise in relation to the Nile River concentrated on establishing, restructuring and redefining the powers of state institutions responsible for the development of water resources. Rahmeto accounted that no less than eight public agencies were superfluously involved in the water sector –each specializing in irrigation, planning, feasibility, design, construction, or operation of water control works– creating duplication, confusion and resource wastage.<sup>70</sup>

In September 1974, a violent popular revolution deposed the Emperor and his antiquated imperial establishment –the institution that in the past had lacked the visionary acumen and proactiveness required in complex transboundary water control works and diplomacy. But, all the same, the Dergue’s ascent to power was attended by decades-long civil wars which devoured national resources and a Marxist ideology which drifted the country away from global financial institutions and technical assistance programs offered by the West. During the Cold War, Ethiopia’s faithful alignment with the Soviet bloc also entailed increased confrontation with Egypt and Sudan over a range of geo-political and strategic interests, with down-beating effects on the implementation of hydraulic projects within its jurisdiction.

Despite such unfavorable setting, the second half of the 1970’s and 1980’s saw modestly extensive ‘studies’ and ‘declarations’ and ‘very limited’ actions proposing irrigational and related developments in the Blue Nile River basin.

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<sup>69</sup> Ibid.

<sup>70</sup> These included the National Water Resources Commission (NWRC), Water Resource Development Agency (WRDA), Ethiopian Water Works Construction Agency (EWWCA), Ethiopian Valleys Development Studies Authority (EVDSA), Development Projects Studies Authority (DEPSA), Water Supply and Sewerage Authority (WSSA), Water Well Drilling Agency (WWDA), and Irrigation Development Department (IDD) within the Ministry of Agriculture. Dessalegn Rahmato (1999), *supra* note 54.

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These were limited to the Ribb, Gumara, Anger, Koga and the Gilgel Abai watersheds, and included the commissioning of Fincha I hydro-power plant. Since the 1970's, Ethiopia also pursued its largest project on the Alwero dam in the Gambella region, a tributary of the Baro River, with irrigation potential of over 10,000 hectares; however the project remained unutilized for several years even after its completion.<sup>71</sup> Most of the other investigations were undertaken at a reconnaissance, prefeasibility or feasibility levels. For instance, of the fifty irrigational and drainage projects identified by ten studies over a span of five decades (between the same period and the 1990's), many were pursued at a master-plan and reconnaissance levels; only a few passed the pre-feasibility and feasibility stages.<sup>72</sup>

At the 1977 UN Water Conference in Mar De Plata too, Ethiopia rolled a plan for the development of 91,000 ha in the Blue Nile basin and 28,000 in the Baro, extracting about 4 BCM of waters.<sup>73</sup> Similarly, at the 1981 UN Conference on the Least Developed Countries, Ethiopia presented a ten-year investment plan which listed fifty irrigation projects totaling 704,000 ha in the Blue Nile and Baro Akobo basins.<sup>74</sup> Yet, as the country suffered from destructive civil wars and economic misfortunes, and furthermore lacked sustainably organized water resources management programs, it became predestined to a condition where it became virtually unable to utilize its resources with a view to raising the welfare of its population.

On the diplomatic front, Ethiopia's participation in less-inclusive basin discourses of the time, which for the most part had been engineered by Egypt, deteriorated. In defending its riparian rights, the country appealed either from positions of indifference or submission, and as in the past, the mainstream policy only endeavored to formulate reactive prescriptive rights to unspecified shares in the Nile River flows. During the UN Water Conference at Mar Del Plata in 1977, for example, Ethiopia's delegation called for 'good neighborliness in the basin' but underscored the country's 'right to proceed unilaterally with water development projects', a position which was erroneously construed by many writers as a threat to camouflage under the absolute territorial sovereignty principle.<sup>75</sup>

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<sup>71</sup> Ibid.

<sup>72</sup> Federal Democratic Republic of Ethiopia Ministry of Water Resources (May 2006), *Ethiopian Nile Irrigation and Drainage Project, Consultancy Service for Identification of Irrigation and Drainage Projects in the Nile Basin in Ethiopia*, Final Report, p.ii.

<sup>73</sup> John Waterburry (1982), *supra* note 66, pp.90-92.

<sup>74</sup> Ibid.

<sup>75</sup> See, for example, Bonaya A. Godana (1985), *Africa's Shared Water Resources, Legal and Institutional Aspects of the Nile, Niger, and the Senegal River Systems*, p.46, 71; John

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During the same period, Ethiopia also protested against Egypt's expansion of out-of-basin projects. Egypt's right of executing plans that call for the diversion of Nile waters outside the natural course was disputed by Ethiopia, but more importantly, it was feared that such schemes would produce prior use facts on the ground –making future agreement on equitable uses of the Nile a far-flung prospect.

## **7. Restructuring Relationships with Downstream Nile: a Futile Enterprise? (1991-1993)**

In 1991, Ethiopia's political superstructure went through a transformation. With the overthrow of the Derg and the advent to power of a new regime, Ethiopia's water resources development and national security policies were tweaked afresh, in balanced but most critical tone, candidly reproaching the legal and developmental *status quo* in the basin. Financial, technical and legal hurdles notwithstanding, a speedy utilization of the Nile was settled high on the government's agenda, attended by diplomatic efforts to restructure relationships with Sudan and Egypt.

In 1991 and 1993, Ethiopia ventured in futility to radically reorganize relationships and improve its long-standing riparian antipathy with the states of Sudan and Egypt –by knotting two general agreements on the Nile. The Ethio-Sudanese Accord on Peace and Friendship was signed in Khartoum on 23 December 1991. Through the accord, both states endeavored to revive the deep and cooperative spirit that dominated their relationships in the pre-1950 period. With regard to Ethiopia, it should be noted, Sudanese policy had always contrasted with Egypt; Sudan had been conscious of the multifaceted impacts of upstream dams on its riparian interests.

Under the accord, Sudan conditionally embraced the principle of equitable utilization –along with another canon of international water law which highlights the obligation not to cause appreciable harm to one another. A series of meetings were held between the national delegates of the two riparian countries. Joint communiqués of the Ethio-Sudanese Technical Advisory Committee were issued between 1992 and 1994 wherein Sudan timidly came out of its comfort crate offered under the 1959 Nile Waters Agreement – explicitly acknowledging Ethiopia's rights in the shared resource. Both affirmed that 'existing arrangements in the Nile basin could not be peremptory to the rights of other states in the basin to equitably utilize the Nile waters'.<sup>76</sup> The

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Waterbury (2002), *The Nile Basin, National Determinants of Collective Action*, Yale University Press, p.46, 71.

<sup>76</sup> Minutes of Ethio-Sudanese Joint Meeting on Nile Waters Resources Cooperation, 5-18 May 1992, Addis Ababa, Ethiopia, (unpublished), p.3.

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Committee pledged to examine facts that impede equitable allocations and agreed to work on such setbacks that protract beneficial uses of the river in both jurisdictions.

Yet, Sudan refused to discuss the specific fate of the prior rights of use shielded under the 1959 treaty, a course which is incompatible with its recognition of Ethiopia's sovereignty in relation to the resource. Instead, Sudan chose to concentrate on the exchange of hydrological and meteorological data and watershed management –steadfastly warning that all water developments shall be carried 'without causing any appreciable harm to the interests of other co-basin states';<sup>77</sup> the two basin states also disagreed over the list of 'facts and circumstances' considered in evaluating the equitability of any use of Nile waters.<sup>78</sup> Ethiopia, on the other hand, maintained a clear position: any figure that represents the pattern of existing uses would not be afforded absolute protection and in fact would be looked upon merely as *one* of the several factors considered in the process of equitable determination.<sup>79</sup>

The ever-changing approaches which Sudan took-on during the conventions posed serious challenge in fulfilling Ethiopia's crave for anew water-sharing regime, which, it sought, was the chief object of the bilateral undertaking. Still, Sudan's cautious endorsement of the equitable uses doctrine as the operational guide and its agreement, at least in principle, that existing legal regimes shall not impede the equitable entitlement of both states was in itself a great leap forward. In fact, this relative acquiescence in riparian positions represented one of the earliest marks of regression in extreme water use policy which Sudan had espoused in the past. It heralded a serious 'reconfiguration' in the stances of the two states. While it is admitted that this new development failed the test during the last legs of the negotiations on the Cooperative Framework Agreement in 2010 –with Sudan storming out of the NBI's diplomatic pursuits at a crucial stage, it nonetheless created a very strong parallel in user right perceptions of the two countries in the aftermath of Ethiopia's decision to construct the GERD.

Unfortunately, the spirited collaboration between the two states, initiated in the early 1990's, had to be curbed –not on account of grounded differentials which both countries presented in shielding riparian rights *per se*, but because of the ill-timed incidence of other geo-political twists which ruined all aspects of their relationships for years to come. It occurred after an Islamic organization

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<sup>77</sup> Ministry of Natural Resources Development and Environmental Protection, Minutes of the Fourth Regular Meeting of the Ethio-Sudan Technical Advisory Committee on Nile Water Resources Cooperation, 5-17 October 1994, Addis Ababa, (unpublished), p.9.

<sup>78</sup> Ethiopia's Technical Advisory Committee Proposal, Application of the Principle of Equitable Utilization and the Duty not to Cause Appreciable Harm in the Context of the Nile, ANNEX 10, Addis Ababa, (unpublished), pp.3-5.

<sup>79</sup> Ibid.

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attempted to assassinate Egypt's President Hosni Mubarak in Addis Ababa on 26 June 1995 –as he was arriving for the OAU Summit; Egypt suspected the Islamist Government of Sudan under its spiritual mentor –Hassan al Turabi– was behind the terrorist plot. Ethiopia formally demanded Sudan to take immediate actions and ensure the extradition of three suspects who were believed to have sought refuge in its territory. Sudan's failure to comply with Ethiopia's demands and the instructions issued by the UN Security Council led to the slumping of its diplomatic relationships with Ethiopia to a historic low.<sup>80</sup>

Sudanese and Ethiopian Nile policy started to show robust realignment only after Ethiopia initiated the GERD national project on a unilateral basis. An array of hydrologic and geo-political considerations lured Omar Hassan al-Bashir's Sudan to drift away steadily from its traditional ally on the Nile –Egypt, and continued to play pivotal roles in reconciling Ethiopian and Egyptian positions in relation to the GERD. While, in the end, Sudan aspires to preserve its 'co-hegemonic status' along with Egypt in line with the spirit of the 1959 accord, it also realizes that in the long-term its best interest depends on future water control and conservation works pursued on the Blue Nile watersheds in Ethiopia.

Upriver schemes reduce evaporation, deliver waters through controlled gravity, mitigate the effects of seasonal and intra-year variations, provide flood protection, decrease sedimentation, improve navigability, abate the impacts of successive draught seasons, and increase water yields and the expansion of irrigation downstream. Needless also to account is also the upsetting implications of the declining reservoirs at the Sennar and Roseires dams –both in terms of finance and agricultural productivity. By 1985, the storage capacities of the dams had already decreased by 34% and 25% respectively.<sup>81</sup> Sudan needed to look upstream. As early as in 1904, detailed insights offered by the studies of C.E. Dupuis held that as reservoir on the Blue Nile 'feeding the canals irrigating the Gezira ... the suitability of Lake Tana is so great and obvious that it seems almost inevitable that sooner or later in the world's history some solution of the political difficulties must be found, and advantage taken of it.'<sup>82</sup> Subject to political exigencies, the overall strategy of the modern Sudanese state is influenced by such discernments –eying upstream and working with Ethiopia.

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<sup>80</sup> UN Security Council Press Release SC/6214, Security Council Demands Sudan Act to Extradite Suspects in Assassination Attempt of Egyptian President by 10 May or Face Limited Sanctions; adopted Resolution 1054 (1996) by 13-0-2 Vote, Demands Sudan Desist From Terrorist Support, Other Measures Possible for Non-Compliance in 60 Days.

<sup>81</sup> A.M. Eldaw (2004), 'The Gezira Scheme: Perspectives for Sustainable Development', University of Gezira, Reports and Working Papers 2/2004, Bonn, p.42.

<sup>82</sup> C.E. Dupuis (1904), 'Report on Lake Tana and the Rivers of the Eastern Sudan', Parliamentary Papers, p.23.

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With or without Egypt, therefore, Sudan continued to take greater interest in the GERD and the potential impacts of the Dam on its lifeline passing through the Gezira fields. Of course, only time will tell if the states would pursue cooperation beyond current levels.

During this particular period, Ethiopia's other diplomatic enterprise that in time proved to be less-rewarding relates to its attempt to restructure relations with Egypt. Even though geographical bond between Ethiopia and Egypt has interlocked their destiny, their relations have been overwhelmed by complex challenges. Egypt's foreign policy had been fundamentally informed by Khedive Ismael's pledge in the nineteenth century that his country holds no hostile intentions against Ethiopia for 'nature was already sending (Egypt) the best part of Ethiopia with each flood of the Nile (and hence) he had no desire for the residue'.<sup>83</sup> In reality, however, both countries were engrossed in two fairly major wars of aggression (1875 and 1876) and in the post-Medieval Modern Period their relationship featured recurring policies of hostility.<sup>84</sup> An embedded cultural tension and political ill-fate for each other's sovereign interests made up a discernible order of the day –the chief causes of which could be traced to the sole river both share and to Egypt's extremism in promoting the idea of 'Unity of the Nile Valley' under one hegemon.

In 1993, Ethiopia and Egypt commenced a rare initiative to transmute the entrenched perceptions of resentment that in the past had defined their political and diplomatic relations. The Ethio-Egyptian Framework for General Cooperation signed in Cairo in July 1993 was the first step in this direction.<sup>85</sup> The agreement discussed several issues of concern to both states; its key provision on the Nile, Article 4 stipulated the agreement of the two countries' to 'work out in detail', through discussions by experts from both sides, their respective interests 'on the basis of the rules and principles of international law'. It was evident from the outset that the future of the framework hinged on the degree and details of continued collaboration both states choose to carry out.

Article 5 of the Framework, an unnecessary inclusion from Ethiopia's perspective, required both parties 'to refrain from engaging in any activity

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<sup>83</sup> Czeslaw Jesman (1959), 'Egyptian Invasion of Ethiopia', *58.230 African Affairs*, p.76.

<sup>84</sup> Ethiopia's statement of Foreign Policy (*see below*) explicitly underlined that its problem in the use of the Nile is principally one caused by Egyptian extremism; it accused Egypt of promoting instability in the Horn of Africa and Ethiopia, blocking and negatively influencing the grant of foreign aid/loans for Nile related development schemes. But the Foreign Policy also acknowledged that the interests of the two countries are not necessarily irreconcilable.

<sup>85</sup> Framework for General Cooperation between the Arab Republic of Egypt and Ethiopia, 1 July 1993.

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related to the Nile waters that may cause appreciable harm to the interest of the other party.’ The accord made no reference to the old treaties concluded on the Nile –the chief subject of Ethiopia’s diplomatic scorn in the past six decades. In inadvertence, the agreement also failed to ‘co-accommodate’ one fundamental principle of international watercourses law alongside the no harm rule: the right to equitable utilization. Against such backdrop, the arrangement was subsequently read as imposing a limitation on Ethiopia’s sovereign rights of undertaking projects that significantly affect the Nile River’s flow regime.

Yet, from the overall organization of the framework itself and the practical anticipations of the parties under articles 4 and 7, ‘rules and principles of international law’ –providing both states with equivalent arms– constituted the basis on which future cooperative actions are predicated, the idea being a joint technical commission would be instituted to work on details of the framework. The framework and its legal ramifications on Ethiopia are better understood in this context. The framework agreement has not been transposed onto a treaty through parliamentary ratification.

Discussions were never pursued within the commission, nor had experts been convened to hammer down details of the framework. For different reasons, the future of the framework agreement was doomed *before* it kicked off. As the new government in Ethiopia came to grips with the sheer scale of Egyptian intransigence on the Nile, the enthusiasm faded; tossing contempt on the framework agreement, Egypt spared no moment implementing huge irrigational projects without the courtesy of consulting its new treaty partner-Ethiopia. The latter protested against Egypt’s continued efforts ‘to create facts on the ground which makes matters very difficult to deal with in the future’. Ethiopia also questioned Egypt’s good faith in adhering to the spirit of the agreement and ridiculed the role of a joint technical commission –asserting that ‘the facts created by Egyptians on the ground are not technical, but political and strategic’ that could not be addressed by such a team.<sup>86</sup>

Ethiopia grasped that diplomatic and legal tools alone could hardly assure its equitable entitlements in the river basin. A clear consensus emerged in the ranks; the key drive for Ethiopia’s absolutism laid in embracing unilateralism in resource development initiatives both as a means of poverty reduction and as a tool for triggering genuine cooperation. Within the system of international law, while Ethiopia’s equitable right over the Nile is recognized as a matter of settled principle, it had become evident that the law’s actual working is a coefficient of prior hydraulic measures adopted on the ground rather than mere articulation of legal norms, diplomatic civility or altercations. The system of international law still remains vital in resolving transboundary water issues, and yet, the

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<sup>86</sup> Mideast Mirror, *Ethiopia Challenges Egypt* (1998).

mechanics of law could not function optimally outside of power politic, diplomatic dexterity and sincere commitment to the fundamental values it upholds.

Hence, in the context of downstream Nile, Ethiopia's juridical fervor tended to advocate that no rule of international law as such exists to proscribe a late-coming riparian state's recourse to unilateral utilization of the Nile River. Ethiopia's former Prime Minister submitted 'if we had the resources, we could store the water, irrigate our lands and provide for our livelihoods; ... the issue is whether we can use *some* of the this water (stored at Aswan) for irrigation purposes'; he stoutly concluded no treaty would bar Ethiopia, warning 'if and when we get the resources, we will use it'<sup>87</sup> even if such action distresses previously established patterns of use in certain measures.

## 8. Fundamental Makeover in the Post-1996 Period: a Changing Diplomatic Equilibrium?

This vital episode in Ethiopia's diplomatic and legal history on the Nile saw four sweeping developments which furthered Ethiopia's sovereign interests and long-term hydro-political standing in the basin's discourse. These are –the reorganization of institutional, policy and legal frameworks governing the water sector with a clearer direction; the intensification of new water control schemes implemented on the Nile River system; the inception and part-realization of key objectives of the Nile Basin Initiative (including the Agreement on the Nile River Basin Cooperative Framework); and the start of construction on the Grand Ethiopian Renaissance Dam (GERD). Two of these developments deserve some discussion.

### 8.1 The reorganization of policy, program and legal frameworks

The Ethiopian Water Resources Management Policy was adopted in 1998/1999. The document admitted that in the water sector works implemented so far revealed a very low level of performance. The poor achievement, mainly attributed to the absence of well defined and coherent policy and lack of adequate investment, resulted in failure of the country's water resources to contribute to the overall socio-economic development of its population. To alleviate the problems, the Policy advocated that a sustainable and reliable development and use of the water resources of Ethiopia would be imperative, and, in particular, it stated detailed directions that should be followed in the irrigational and hydropower sectors.<sup>88</sup>

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<sup>87</sup> TV 2 Documentary, 'Reise til vannets fremtid', Sunday 28 October 2007, Norway, Oslo.

<sup>88</sup> FDRE Ministry of Water Resources (1999), *Ethiopian Water Resources Management Policy*, Addis Ababa, p.1.

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On the complex issues of transboundary waters, the Policy set out –as its primary goal– to study, promote and ascertain Ethiopia’s stakes in the allocation of shared watercourses, to establish integrated frameworks for joint and equitable cooperation on such resources, and to utilize transboundary waters on the basis of accepted international norms.<sup>89</sup> Two vital executive tools of the Policy, the Ethiopian Water Sector Strategy and a 15-year Water Sector Development Programme (WSDP) were put in place in 2001 and 2002 respectively.<sup>90</sup> The Strategy identified priorities for a 15-year time horizon –including the establishment of short, medium and long-term action goals of water resources development in Ethiopia. It advocated the construction of a series of small, medium and large-scale dams to generate hydropower and sustain irrigated-agriculture economy. On the other hand, the WSDP listed in substantial detail the small, medium and large-scale irrigation schemes scheduled for implementation throughout the country during the planned period –including the Omo Ratti, the Koga, Alwero/Abobo, Gode West/South, Megech, Nagi Beach and Azena/Ayo.<sup>91</sup> In total, 274,612 ha of farmland would be developed under new irrigation schemes –raising the countrywide total area of irrigated farmland to 471,862 ha by the end of WSDP period.<sup>92</sup>

In the hydro-power sector, the program included the construction of six medium-scale plants with an aggregate installed capacity of about 950 MW, and fifteen small-scale plants (<10 MW each), as well as the feasibility study of thirty-seven sites, the prefeasibility study of forty-eight medium-scale hydropower sites, and reconnaissance studies of thirty medium-scale hydropower sites.<sup>93</sup> Obviously, this figure did not account for the intervening schemes pursued on the basis of GTP-I and the implementation of the GERD project itself. The Nile basin in Ethiopia already hosts the Fincha-Amarti (100 MW), Fincha 4<sup>th</sup> Unit (33), Tis Abay I/II (11.5 and 75 MW), Tekeze I (300 MW) and the Tana Beles (460 MW) hydro-power facilities. The latter two were commissioned in 2010. In addition to existing power installations, several single and multi-purpose projects, including the Mendaia-Border-Mabil (5375 MW), Dedessa, Tekeze II, Fettam, Upper Guder, Aleltu East, ChemogaYada, Aleltu

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<sup>89</sup> FDRE Ministry of Water Resources (Oct.2002), *Water Sector Development Program*, Main Report, Executive Summary, vol.I, Addis Ababa, p.9.

<sup>90</sup> Three additional legislations, the Ethiopian Water Resources Management Proclamation No.197/2000, the Ethiopian Water Resources Management Regulation No.115/2005 and the River Basin Councils and Authorities Proclamation No.534/2007 were also issued - providing details of the powers, responsibilities and jurisdiction of state organs in the management, utilization and administration of water resources in Ethiopia.

<sup>91</sup> FDRE Ministry of Water Resources (2002), *Irrigation Development Programme Report*, Volume I, Executive Summary, Addis Ababa, p.9.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

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West and Neshe had also been proposed on the main stream and the Nile tributaries.

In raising Ethiopia's hydro-political eminence in accelerated phases, a convenient stage was also set in place through the commissioning of studies for Integrated Master Plan Projects of the twelve national river basins, including river systems that form part of the Nile in Ethiopia (i.e., the Blue Nile, Baro-Akobo and Tekeze sub-basins), and the identification of irrigational and drainage projects. Several pre-feasibility and feasibility studies were undertaken on the principal course, tributaries and sub-tributaries of all rivers.<sup>94</sup> More pertinently to the Nile in Ethiopia, the Ministry of Water Resources published in 1999 a comprehensive technical report –the 'Abay (Blue Nile) River Basin Integrated Development Master Plan Project'. Under the Master Plan, two irrigation development scenarios, extending over a 50-year period (1999/2000-2048/49), projected to develop a total area of 235,000-350,000 hectares,<sup>95</sup> withdrawing about 6% (3.1-3.3 BCM/yr) of the mean annual discharge of the Blue Nile River.<sup>96</sup> The study also identified that the potential large and medium-scale irrigation in the sub-basin extends over a total net area of 526,000 hectares.<sup>97</sup>

On the other hand, the same period also witnessed the adoption of Ethiopia's Foreign Affairs and National Security Policy and Strategy. From international relations' point of view, the document laid the overall direction that informs Ethiopia's initiatives in developing water resources and in nurturing its relationships with Egypt. It highlighted the country's predisposition to develop the resources particularly in the field of hydro-power and irrigation, 'without affecting Egypt's fundamental interests' and through 'the balancing of interests'.<sup>98</sup> The policy document presumed the impact of projects pursued under the WSDP, and later the GERD, on the quality and quantity of flows of the Nile

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<sup>94</sup> Ibid.

<sup>95</sup> FDRE Ministry of Water Resources (Apr.1999), *Abay River Integrated Development Master Plan Project*, Phase 3, vol. I, p.197.

<sup>96</sup> Ibid, p.200.

<sup>97</sup> Ibid, p.245; note that in contrast, a 2005 assessment by the FAO estimated the eventual irrigation potential in the Blue Nile sub-basin at 1,001,500 ha; the irrigation potential in Baro-Akobo and Tekeze-Atbara sub-basins of the Ethiopian Nile system was assessed at 905,500 and 312,700 ha respectively.

FAO Water Report 29 (2005), *FAO's information system on water and agriculture, Ethiopia* <<http://www.fao.org/nr/water/aquastat/countries/ethiopia/index.stm>>

<sup>98</sup> The Federal Democratic Republic of Ethiopia (2000), *Foreign Affairs and National Security Policy and Strategy*, Ministry of Information, Press & Audio-visual Department, Addis Ababa, p.124.

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downstream would be accommodated within the broader entitlements of each country under the principle of equitable utilization.<sup>99</sup>

It could be submitted that the utilization scenarios identified under the master plans and sector-specific programs are still *too low* to pose serious prejudice on downstream Nile. Yet, the concentrated programs have raised apprehension in Egypt and Sudan, and the new facts have set Ethiopia in the right developmental trajectory in the basin, commanding, as a result, a measure of influence in the contemporary trilateral discourses.

## **8.2 The Grand Ethiopian Renaissance Dam: no more playing chicken on the Nile?**

The launch of the Nile Basin Initiative (NBI), the first truly comprehensive cooperative enterprise on the river, was attended by a radical transformation of Ethiopia's water sector –focusing on institutional re-organization, the re-definition of mandates and policy frames, and the implementation of numerous projects. In fulfilling its strategic interests, Ethiopia adopted a two-tracked approach. The *first* track focused on influencing the direction of riparian discourse within the NBI so that the upstream states' engrained perception of injustice is brought to the open and rectified. The *second* track involved the development of new water control schemes that counter the hegemonic status and flout the legitimacy of non-interference regimes espoused in Egyptian and Sudanese water diplomacy.

### **8.2.1 Developments within the Nile Basin Initiative**

From Ethiopia's perspective, the accomplishments are fairly mixed. While the political ramification of the developments within the NBI leading to the conclusion of the Cooperative Framework Agreement could be read as an unprecedented diplomatic feat, the basin-wide legal framework was preordained to fail from the outset. In upper Nile and lower reaches of the river, the values, nationalist expectations and strategic designs that informed the decade-long negotiations process were incompatible, to say the least. The incentives for collaboration between the riparian states anticipated a wholly different set of economic and political payoffs.

True, during the first decade of the twenty-first century, the riparian position of downstream states ended to exhibit some measures of moderation. Sudan and Egypt participated in negotiations of the Transitional Institutional Mechanism of the Nile Basin Initiative (TIM-NBI) –launched in Tanzania on February 22, 1999 through a Council of Ministers' meeting of the Nile Basin States. The transitional process is mandated to set up the Nile River Basin Commission (NBC) and adopt the Agreement on Nile River Basin Cooperative Framework

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<sup>99</sup> Ibid.



(CFA) –based on a vision ‘to achieve sustainable socio-economic development through equitable utilization of, and benefit from, the common Nile Basin water resources’.

By June 2007, the Nile Council of Ministers (Nile-COM) concluded in Uganda negotiations on the substantive and procedural aspects of the CFA –on the basis of technical works undertaken by the Panel of Experts, the Transitional Committee and the Negotiations Committee in the course of 1997-2005. However, serious divergences lingered with respect to a few provisions of the proposed legal instrument. Negotiations were re-launched hosting various rounds of political and technical congregations of the Nile-Com as well as the Joint Nile-Technical Advisory and Negotiators Committee in Kinshasa (May-2009), Nairobi (July-2009), Alexandria (July-2009), Entebbe (September-2009), Dar es Salam (December-2009) and Sharm El Sheikh (April-2010). However, the parties could not resolve their differences. On April 13, 2010 seven countries participating in the Extra-Ordinary Meeting of the Nile-Com in Sharm El Sheikh voted on a landmark resolution to proceed, at a later date, with a formal signature of the proposed CFA document based on decisions adopted in Kinshasa in May 2009. The resolution was passed in spite of outstanding discrepancies in national positions of the partaking states. Egypt and Sudan rejected the proposed move and expressed strong reservation.<sup>100</sup>

The CFA instrument was opened in Entebbe, Uganda for signature from May 14, 2010 for a period of not more than one year.<sup>101</sup> Against Egypt's declared anticipation that ‘the upstream countries (would) reverse their decision to sign a unilateral framework agreement so that negotiations continue’,<sup>102</sup> the agreement has since been signed by six states: Uganda, Tanzania, Kenya, Ethiopia, Rwanda and Burundi. To date, three countries have ratified the instrument following domestic constitutional processes: Ethiopia (June-2013), Rwanda (August-2013) and Tanzania (March-2015). By virtue of Article 42, the CFA enters into force on the sixtieth day following the date of deposit of the sixth instrument of ratification or accession with the African Union.

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<sup>100</sup> Nile Basin Initiative, ‘Ministers of Water Affairs End Extraordinary Meeting over the Cooperative Framework Agreement’, Press Release, 14 April 2010. <[http://www.nilebasin.org/index.php?option=com\\_content&task=view&id=161&Itemid=102](http://www.nilebasin.org/index.php?option=com_content&task=view&id=161&Itemid=102)>, last accessed 15 December 2015; note that there had been discrepancy from first draft of the Framework which contemplated the signature to take place between 1 August 2009 - 1 August 2011.

<sup>101</sup> Nile Basin Initiative, ‘Agreement on the Nile River Basin Cooperative Framework opened for signature’, Press Release, 14 May 2010. <[http://www.nilebasin.org/index.php?option=com\\_content&task=view&id=165&Itemid=102](http://www.nilebasin.org/index.php?option=com_content&task=view&id=165&Itemid=102)>, last accessed 15 December 2015.

<sup>102</sup> Mohamed El-Sayed(2010) ‘Dangers on the Nile’, *Al-Ahram Weekly Online*, April Issue 995 <<http://weekly.ahram.org.eg/2010/995/eg3.htm>>, last accessed 16 December 2015.

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While this landmark ratifications process marked the beginning of formal transformation of the NBI into a permanent river basin commission, the treaty remained restrained by serious problems related to two concepts which detract its chances of ever becoming a truly comprehensive legal instrument: ‘water security’ and ‘the fate of pre-existing agreements’. Seven states in the upper reaches of the Nile, including Ethiopia, held a similar position on a version of the CFA which entailed the complete abrogation of all pre-existing treaty arrangements. Egypt and Sudan insisted on inserting a clause that requires each riparian state ‘not to adversely affect the *water security* and *current uses and rights* of any other Nile Basin State’,<sup>103</sup> and furthermore reiterated that any position adopted at the Extra-Ordinary Meeting of the Nile-Com ‘reflects the views only of the states.’<sup>104</sup> An alternative proposal for direct launching of the NBC ‘within the framework of which further negotiations on the remaining pieces of the CFA would be undertaken’ failed to garner an upstream favor.<sup>105</sup>

The result was that while efforts continued today to get Sudan and Egypt fully onboard, diplomatically, both states were sidelined as the ‘unruly horses’ who reigned on a realm of inequity. More concerning, however, is the fact that as institutional mechanism, it now appears that the CFA concluded its running course, potentially creating a ‘rights regime’ which would be applicable only as between the upriver states –with little chances of Egypt (or Sudan) accepting the treaty in its present form.

### **8.2.2 The Grand Ethiopian Renaissance Dam**

The blow to any hopes of the CFA as a comprehensive pact comprising Egypt also came about in June 2013, following tense diplomatic altercations between two main players in the basin: Ethiopia and Egypt. Prompted by rapid economic development in the first decade of the twenty-first century, Ethiopia undertook concrete measures –drawing a specific outline of national policies and laying down arrangements for the development of projects on the Blue Nile. Unlike in the past, Ethiopia’s relative stability and fiscal command evinced that the absence of cooperative arrangements in the basin or international financial provisioning could no longer deter its water resources development enterprises. The Grand Ethiopian Renaissance Dam project was conceived in such context. Mobilizing domestic resources, the Dam’s construction began in May 2011 –generally coinciding with the outbreak of the Arab Spring revolution that rocked Egypt and the rest of the Middle East.

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<sup>103</sup> This was not accepted at the Nile-COM’s Kinshasa Meeting of 22 May 2009 where seven countries instead agreed to ‘annex’ Article 14b for subsequent resolution by the NRBC.

<sup>104</sup> Nile Basin Initiative (2010), *supra* note 100.

<sup>105</sup> Tadesse Kassa Woldetsadik (2013), *supra* note 8, p.165.

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The Dam, the greatest engineering feat in Africa and one of the biggest hydropower infrastructures in the world, is situated at Guba in the Benishangul Gumuz region, close to the Ethio-Sudanese border. It comprises a dam about 1,780m long and 145 m high and will host a power plant with installed generating capacity of 6,000 MW. The Dam will create Ethiopia's largest artificial lake, impounding about 74 BMC of the Blue Nile flows -i.e., more than twice the volumetric size of Lake Tana and nearly half of the absolute volume of waters stored at the Lake Nasser Reservoir. It has a total surface area of 1,680 sq. km.

By design, the project has been sketched as a non-consumptive utilization of Nile waters for the generation of hydro-electric power, and even more so, in diplomatic communications, it is presented as a scheme that could potentially help in fulfilling the social and economic goods of the peoples of Ethiopia, Sudan and Egypt. On the other hand, Egypt viewed the dam and a better part of its technical specifications as unsound and politically inspired, and consistently held that the project may constitute a means for inflicting harm on the security of its 'shares' recognized under the 1959 Nile waters agreement.

Ethiopia's initiation of the GERD scheme fundamentally changed its image. The widely accepted negative narrative and the old intuitive prophesy by Waterbury that 'it is in the *longer haul* that the great Ethiopian unknown will become relevant'<sup>106</sup> –seemed now to have dashed its course. A centerpiece in all Nile-related negotiations today, Ethiopia turned out to be more than 'relevant', and in fact indispensable. The lingering differences in riparian perspectives notwithstanding, its determination 'not to any more play chicken on the Nile' prompted changes in the political and legal landscape of the basin, and consequently in the relative influence each state commands in contemporary riparian discourses. It was noted above that in the past despite its 'implorations' to participate, Ethiopia was wantonly excluded as a partner during negotiations on the 1959 Nile water treaty, leaving in the national ego an eternal hallmark of detest for downstream intransigence.

Faced with the unyielding enterprises of the NBI in terms of water-sharing and equitable benefits, Ethiopia's resort to unilateralism as the ultimate means of ensuring its rights under international law seemed only natural. Within the framework of the NBI, the pursuit of collective action values still continues – albeit without Egypt's full participation. But such process has little chance of enhancing the welfare of all riparian communities on equal footing or in altering the prior power relationships; in this context, Ethiopia's measure is but a logical outcome of decades of its yearn for a stake in a resource it co-owns. In typical upstream settings, Whittington noted, such a course of action seemed inevitable

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<sup>106</sup> John Waterbury (1982), *supra* note 66, p.94.

where political leaderships (as in Ethiopia wait for a perfect moment to) make intuitive judgments on the basis of the assessment of socio-economic payoffs, political, diplomatic and military strengths, the character and intentions of leadership in downstream states, as well as financial and technical ability of the upriver state (itself) to launch a unilateral development.<sup>107</sup>

Since May 2011, the pace of construction on the GERD proceeded unabated but the events that unfolded in the aftermath depicted an extremely strained relationship between Egypt and Ethiopia. All the same, this historical episode also exposed that during this period it was Egypt and Sudan –the unequal traditional hegemons in the basin– who ‘rushed to plead’ with Ethiopia to sit for negotiations on the Nile. Of course, even the staunchest optimist would not contend that decisions to engage in serious dialogues about basin-wide cooperation (as in the NBI or the trilateral talks) represent irreversible commitments to forego unilateral development.<sup>108</sup> Indeed, in bringing forward the GERD scheme onto the implementations board, Ethiopia was only fulfilling its prior declaration that the country’s participation in any regional or trilateral platform would not in any way detract its rights of unilateral action.

The pinnacle in Ethiopia’s transition to a relative hydro-political eminence will yet have to be witnessed through the conclusion of the GERD; yet, in its present state, the developmental minutiae has already presented a reverse historical trend in the diplomatic and legal discourse of the basin. Ethiopia’s voice had not only become sturdier; the traditional approach that accorded undisputed supremacy to Egypt’s position also seemed shackled –spurring downstream states to re-tune the language of diplomatic engagements in the immediate aftermath. Ethiopia’s influence in the bargaining processes was evident in its refusal to suspend construction on the GERD while the tripartite negotiations continue today, in the composition and effects of studies pursued by the International Panel of Experts, and in the powers, constitution and effects of specific studies pursued by the International Technical Experts Committee and the Tripartite National Technical Committee. Ironically, Ethiopia’s moves on the GERD also confirmed that genuine cooperation among appropriating riparian states with the intention to settle occurs *only* when certain conditions are in place –as restated in many writings on ‘game theory’ and ‘collective actions’.

Today, uncertainties with regard to impacts of the dam on Egyptian interests linger, and the true scale will not be fully known until such time when the impact assessment studies are undertaken by the International Technical Experts Committee. Whereas each state is entitled to interpret the project’s possible

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<sup>107</sup> Dale Whittington (2004), ‘Visions of Nile Basin Development’, *6 Water Policy*, p.12.

<sup>108</sup> *Ibid*, p.15.

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effects quite differently, it is evident, from the diplomatic dealings exchanged on the subject that Ethiopia did not seek to maximize its welfare at the expense of downstream states. Sudan was first in picking this line, adhering to Caponera's guidance that reservoirs upstream in Ethiopia 'would offer greater advantages in the long-term for the integrated management of the Nile'; Egypt, too, has started making concessions (at least diplomatically) as it would otherwise 'remain vulnerable to unilateral water withdrawals' upstream—outside of a negotiated allocations regime—which in turn forces it to 'begin negotiations without placing preconditions ... such as those contained in the philosophy of the 1959 Nile Agreement.'<sup>109</sup>

On May 28, 2013 Ethiopia celebrated the second anniversary of the launch of dam construction by its late Premier with a national fanfare; the occasion was attended by 'diversion' of the Blue Nile River's course along a different route, an engineering procedure required to provide way for physical construction of the GERD. Already overawed by domestic political problems and disconcerted by Ethiopia's unparalleled defiance against downstream hegemony, Egypt reacted strongly, reintroducing the debate on water security and prior use rights in the most extreme style.

Under pressure from the Egyptian society, President Mohamed Morsi convened a meeting with opposition leaders just a few days before his ouster; in a televised address, he declared 'his country is ready to confront any threat that would endanger the country's water security', and that 'Egypt's water security cannot be violated at all'; should Egypt 'lose one drop, our blood is the alternative', the President confirmed to his people, further promising that 'all options are open' to forestall the predicament'.<sup>110</sup> Apparently, the final scientific report of the International Panel of Experts on the GERD—already submitted on June 1, 2013 to the governments of Ethiopia, Sudan and Egypt after months of deliberation—played little role in swaying the hydro-political outlook in Egypt.

Outraged by the open declaration, Ethiopia summoned the Egyptian ambassador in Addis Ababa, expressed its displeasure and demanded official explanation. More significantly, Ethiopia's Foreign Ministry reaffirmed that the project would not be *stopped* for a second despite the stir caused in Egypt. The diplomatic confrontation subsided on June 18, 2013—after Egypt's new government represented by Foreign Minister Mohamed Kamel Amr visited Addis Ababa and both countries pledged to engage in further consultations to resolve outstanding issues. Yet, the blotch of this brief incident lingered as a

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<sup>109</sup> Dante A. Caponera (1993), *supranote* 45, p.660.

<sup>110</sup> 'Egypt's Live TV Coverage of Nile Crisis Meeting Draws Fire', Al-Ahram Weekly, Tuesday 4 June 2013, Available at: <<http://english.ahram.org.eg/NewsContent/1/0/73174/Egypt/0/Egypt-live-TV-coverage-of-Nile-crisis-meeting-dra.aspx>>.

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somber reminder of how Egypt, not accustomed to detractions on its hegemonic status in the Nile basin, reacts with serious apprehension to the rise of a new hydraulic power in the region: Ethiopia.

## Conclusions

It could be submitted that in relation to Ethiopia's equitable interests, the scale of moderation observed today with regard to downstream riparian positions is chiefly accounted to Ethiopia's resolve to unilaterally embark on the construction of the GERD. Whether the Nile continues to be a source of tension, rivalry and even conflict –or otherwise serves as a tool for maximizing the interdependent benefits of its communities– remains to be seen in future trilateral dialogues, and could not be analyzed in the abstract. However, given the entrenched and yet competitive stakes of each riparian state, there is little doubt that Egypt, Ethiopia and Sudan will eventually work on the outstanding issues and engage to tender certain compromises. If anything else, the more than two hundred water-related treaties now in force all over the world testify the fact that it is possible to settle, or at least confine, water disputes to manageable proportions.<sup>111</sup>

Yet, it also needs to be emphasized that genuine collaboration and equitable allocation are hard-won enterprises and function within the limits of domestic political workings and perceptions. Therefore, Ethiopia's 'long overdue' ambitions on the Blue Nile could not be expected to be fulfilled effortlessly. In such context, it suffices to reminisce of a perfectly fitting historical parallel – that it took six full-years of concentrated diplomacy and tempered negotiations – including a military confrontation in 1958 and a defiant unilateral heightening of the Sennar Dam,<sup>112</sup> before Sudan clutched a higher share of the Nile waters under the revised 1959 agreement (with Egypt).<sup>113</sup> Over the decades, the absolute interdependence which Egypt and Sudan had installed through the 1959 Nile treaty paved the way for greater cooperation in the sector –even when it operated against the background of tense geo-political relationships and conflicting socio-political orientations of both states.

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<sup>111</sup> A Dan Tarlock (2008), 'Water Security, Fear Mitigation and International Water Law', *31.3 Hamline Law Review*, p.712.

<sup>112</sup> Aron T. Wolf (1996), 'Middle East Water Conflicts and Directions for Conflict Resolution', Food, Agriculture and the Environment Discussion Paper, IFPRI, Washington D.C., p.4.

<sup>113</sup> In fact, the planning and some of the construction of the dam began before the two countries were able to reach an agreement over the division of the stored water in the High Dam. Only after a friendly government headed by Lt. General Ibrahim Abboud came to power were the two countries able to conclude a deal. Nurit Kliot (1994), *Water Resources and Conflicts in the Middle East*, Routledge, New York p.41.

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Ethiopia's fate would not be any different. The hydro-political relationship between Egypt, Sudan and Ethiopia may escalate or deescalate depending on several factors that affect the contents and direction of domestic water use policies. But there is no doubt that the new facts on the ground have forced the states into a new form of collaboration which functions within the confines of restructured conceptions of entitlement and the realities of power relations.

The developments in the cooperative initiatives and the negotiations on the GERD, now pursued between 'fairly equal partners', are not attributed to *changes* in the pertinence of international law *per se* nor to any *altruistic revision* in downstream positions. The moves are strategic choices and are better accounted by reference to Ethiopia's relative rise in its bargaining position—which itself is a coefficient of economic and political powers one wields.

It is evident that a mere hegemonic approach to political processes on shared waters is counter-productive, and affects the sincerity and sustainability of cooperation in a basin. While the long-term cooperative development of international water resources often presents the greatest challenge to policy-makers,<sup>114</sup> at this stage in the dialogues, Egypt, Ethiopia and Sudan have no other option than partnership. Or else, the ill-effects of unilateralism and competition will ensue in full force. Through concerted diplomacy and institutional mechanisms, the states must labour on assuring each other that the GERD, and even more so, the Nile would not become causes of tension, mistrust and even conflict. Indeed, Ethiopia's equitable actions in relation to the Nile should not be viewed as a conflicting strategic course of a zero-sum game in reference to its downstream neighbors in which one's gain represents absolute loss to the other party. ■

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<sup>114</sup> Adelphi Series (1992), *supra* note 7, p.7.

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