

## The Nile Basin States: the need for genuine cooperation.

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Around the world there are over 260 trans boundary rivers that flow through two or more countries. To resolve the difficulties and disputes that inevitably arise, states have set up different forms of cooperation, on a theoretical or practical level, providing different agreements or mechanisms. The list is almost infinitely variable but almost all, however, have something in common: the aim of increasing actual cooperation among riparian countries. Indeed, there is general understanding that there is a necessity to help eradicate poverty and sustain development for the mutual benefit within river basins.

The River Nile, at over 6,820 kilometers, is one of the longest rivers in the world, comprising two major tributaries, the White Nile and the Blue Nile, known as the Abbay in Ethiopia. The Blue Nile starts at Lake Tana in Ethiopia, and flows into Sudan to join with the White Nile at Khartoum, and then on to the Mediterranean through Egypt. The entire Nile Basin comprises ten riparian countries, Egypt, Sudan, Ethiopia, South Sudan, Uganda, Rwanda, Kenya, Tanzania, Burundi and DRC, with Eritrea by its own choice remaining on the periphery. The Nile Basin occupies an area of about 3.3 million square kilometers and receives an average annual rainfall of about 2,000 billion cubic meters. It stretches over very different geographical, climatological and topographical regions. Out of the 300 million people living in the Nile Basin, about 160 million depend directly on the Nile River for their livelihoods. On average, 85% of the water is utilized for agricultural purposes and over 70% of the Nile population depends directly or indirectly on farming for livelihood. One major characteristic of the Nile Basin is that livestock grazing is the dominant land use (involving about 60% of the total land area) while mixed agricultural-livestock systems cover about one third of the Basin.

Inevitably, as the populations grow and as countries develop, competition for use of the water and between the different users in the Nile Basin is increasing. In the past, water utilization in the Nile Basin has been unilateral, and no comprehensive inter-riparian legal or institutional modalities to facilitate cooperative development and joint planning activities between upstream and downstream riparian areas, were created. Considerations of possible or mutually beneficial options for, the unilateral and conflicting approaches to water utilization have barely been considered, despite the fact that the demand for water in domestic and industrial sectors is expected to increase substantially in the coming decades. Even so, agriculture will remain the largest water user, accounting for at least 75% of human water use. The issue of utilization will continue to grow with concerns about climate change; expansion of crop production and the use of water for energy generation are becoming more and more important. This will be reinforced by the question of adequate upstream-downstream water management including the cross-border challenges of excessive soil erosion and land degradation in upstream Ethiopia, flood and silt accumulation in midstream Sudan and excessive water loss through evaporation in downstream Egypt.

In fact, all the riparian countries, particularly the upper riparian states have very low energy per capita output, and even this is highly dependent upon biomass. Until a few years ago in Ethiopia only a fraction of the population, mainly in urban areas, had access to electricity. Low coverage and

poor quality of power caused serious economic losses. Equally serious have been the environmental consequences of the country's present energy composition, and due to intensive exploitation of the biomass, the country's natural forest coverage has fallen to no more than 3%; and siltation from land degradation has added to the challenge. The search for solutions has also been complicated by the significant loss of water in both agricultural and non-agricultural systems in the Nile Basin. There has been uncontrolled evaporation particularly in extensive land-use plantation systems, water depletion through excessive run-off in upstream countries, and water pollution from excessive use of agro-chemicals in downstream countries. Water management interventions at local and regional levels, in farms or for wider landscape developments, have often been poorly implemented, leading to high social and environmental costs. Policies in the region have failed to give priority to improved use and management of water; they have rather concentrated on extracting the largest possible share of water for irrigation or hydropower usage. The absence of adequate and fair treaties or international arrangements to deal with shared water resources leads to the possibility of increasing water disputes which in turn will further undermine any future sustainable use of water resources. In most cases, the planning of Nile water resources has usually been done nationally with no or little regard to the balance of overall water resources in the Nile Basin, despite the obvious fact that any consequences of environmental degradation or resource scarcity will not be restricted to national borders but will inevitably affect all riparian countries. And climate change, with its variations in temperature, rainfall and other extreme occurrences, will certainly put extra pressure on sustainable water resource management.

Among the reasons for the failure of water resource management in the Nile Basin is the fact that until the 1990s Egypt and Sudan were the only countries in the Basin that significantly exploited the Nile water and regularly addressed issues of apportionment. In 1959, the two countries signed an agreement entitled "The Full Utilization of the Nile", apportioned the entire "utilizable flow" of the Nile, estimated to be 74 BCM, between the two countries. This figure was based on the premise that 10 BCM of the flow would be lost in evaporation and seepage from the soon to be constructed Aswan Dam and Lake Nasser. The basic allocation provided in the treaty was 55.5 BCM for Egypt and 18.5 BCM for Sudan. No allowance was made for upstream riparian states that were not consulted, though it was recognized that one day this might arise and the agreement stipulated that, in this event, Egypt and Sudan would negotiate jointly with any other claimants. It might be noted that none of the upstream riparian states ever formally recognized the "rights" of Egypt and Sudan in this agreement.

It was in recognition of this that in 1999, following a long process of discussion and with assistance from the World Bank and the United Nations Development Program (UNDP), the Nile Basin Initiative (NBI) was launched. From the outset the intention was to develop a cooperative framework that would ultimately lead to the establishment of a Nile River Basin Commission incorporating all the states, the NBI has led to more general cooperation. Intensive dialogue and consultation led the Nile Basin countries to agree on a 'Shared Vision' that seeks "to achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources". This vision recognizes that only cooperation can unlock the development potential of the river, increase access to food, energy, water supply, and enhance trade and international relations: in other words provide win-win benefits to all. Of course, in order to unlock the full development potential, understand the possible opportunities and establish an agreed framework of investment, it is essential to have a proper understanding of the river's hydrology and the implications of water resource development.

The Nile Basin Initiative (NBI) was an important step forward in creating a forum to maintain cooperation and peaceful negotiation among the riparian countries. Nevertheless, there is a clear gap in terms of formulating legal regulatory frameworks that will improve the management and productivity of livestock and water use at basin level. In addition, despite the fact that the NBI is

designed explicitly to include involvement of local communities and local governments, the lower levels of administration seem to be less involved in the process, partly because the NBI is essentially a top-down process that is poorly designed for stakeholder involvement. The cooperation between administration levels is underdeveloped. It might be added that the historical disputes have made decision-making between the riparian countries difficult despite the existence of the NBI and its firm basis for cooperation.

There is a need for a regional policy that would ensure equitable and sustainable use of the Nile water including the provision of sufficient watering points for socio-economic development and ecosystems across the Nile basin. The principles proposed in the draft of December 1999, but not yet adopted and ratified by the member states, give prominence to “equitable” utilization of the water among all ten states. However, the importance of prevention of “significant harm” to existing water utilization is also stressed. The intention is, as far as possible, to develop win-win projects (e.g. infrastructure development, trade, tourism, industrial promotion, environmental protection and watershed management) that benefit all states.

In affirmation of the importance of the Nile Basin to the economic and social well-being of their peoples, almost all the riparian countries set up committees to help prepare for a constitutive document of cooperative agreement, to be based on the principles of equitable and reasonable and sustainable development, and on the international conventions and experiences of trans-boundary river utilization for sustainable development and mutual benefits. They accepted a legal, comprehensive framework agreement to govern their relations with regard to the Nile River Basin to promote integrated management, sustainable development and harmonious utilization of the water resources of the basin, as well as conservation and protection for the benefits of present and future generations. The riparian countries` Ministerial Council meeting in Sharm al Sheik, in April 2010, decided to adopt the Nile Basin Cooperative Framework Agreement (CFA), and a month later it was opened for signature. The agreement lays down the rights of upper riparian states to use the waters of the Nile. Five state signed immediately and another later. (Six are enough to implement the agreement). The DRC has yet to sign; and the new state of South Sudan has announced its strong commitment to the CFA and is expected to sign soon. Egypt and Sudan have continued to negotiate over the Comprehensive Framework Agreement, although neither has rejected the principles of the agreement.

The upper riparian states have in fact introduced the CFA as an international legal instrument because of its legal, principled and cooperative values. It is best explained as a first step towards rendering any earlier claims to the Nile as null and void while not in any way affecting the water security of any other Nile Basin state. It is also designed to encourage the promotion and strengthening of cooperation over the Nile River, emphasizing specifically the prevention of harm to any Nile Basin state. Senior Egyptian and Sudanese officials and scholars have often stressed that both countries, specially, Egypt would only use peaceful, diplomatic means to try to prevent any impact on the flow of the Nile. Some, Egyptians however, have indicated their lack of faith in diplomacy or international pressure, and suggested an early show of force might be needed to back up government representations. In fact, for the upper riparian states, the acceptable solution of negotiations would be acceptance by lower riparian states of the CFA. Nothing else will satisfy the upper riparian states. Under the current situation, the upper riparian states have continued to find it hardly difficult to finance large projects; these premises also underlie their identification of poverty and backwardness as their number one enemies. Thus, the policies and strategies of the upper riparian countries are geared towards winning the “war” against these. Another important element is the governments’ consideration of the importance of hydropower as crucial source of energy, on one hand, to maintain the domestic economic growth, on the other, to promote regional economic cooperation and integration and beyond that. The need to change this has therefore been a major issue for the upper riparian states.

Therefore, one of the best approaches has been the introduction of a policy of genuine negotiation and bargaining with Egypt and Sudan by the upper riparian states which have portrayed themselves as states that were willing to sign an agreement that was “fair,” “benefitted all,” “harmd no one” and “left none out.” However, there is enough reason to believe that the introduction of the Nile Basin CFA will by itself, change the dynamics of Nile hydro-politics. Because, Egypt continues hardly to exercise considerable diplomatic influence over potential donors and lenders such as the World Bank and Western governments. Its unfair position provides no devices to counter the effects of the CFA could have. The reason is that, Egypt still has no the potential to change “facts on the ground” without genuine cooperation among riparian countries, although, it still tries to persuade some basin countries not cooperate with the upper riparian states. Indeed, some analysts still argue that Egypt might continue to try to use resource-capture strategies, securitization, and incentives or mobilize financial constraints to oppose the CFA. Certainly, there is legal based facts and indication that the upper riparian states have become more successful in ratification, implementation and garnering funds for major regional projects.

The then, the Nile Basin Cooperative Framework Agreement has to be implemented and it may have significant legal or political effect in the short term, or, it can certainly provide greater long-term legal utility for the upper riparian states as the first step in a coordinated campaign against Egypt's hegemonic strategy. In fact, if the CFA is to have any real future significance, the upper riparian states need to make sure it is implemented in specific ways: They must be able to use the agreement to create a proper counter-hegemonic narrative; develop the ability to maintain and sustain the vital importance of water security for all; and recognize that the cooperative management and development of water in the Basin must facilitate achievement of water security and other benefits. They must agree to work together in a spirit of cooperation to ensure that all states achieve and sustain water security; they must convince the lower riparian states to make every effort to take all appropriate measures to mitigate any conditions to the system which might harm other Nile Basin states; they must ensure that successful upper riparian developments will utilize the water resources of the Nile river system in an equitable and reasonable manner; they must recognize the need to reset the narrative to present a non-securitized and morally-acceptable counter-narrative – that is, the Nile Basin Cooperative Framework Agreement does not aim to effect lower riparian interests negatively. It is, of course, intended to result in projects that will positively benefit all the states of the Nile Basin without exception.

Indeed, although the upper riparian states have rejected the unequal colonial treaties, they have repeatedly reiterated, and demonstrated, that the CFA is for the benefit of all the states of the Basin. This is part of a momentum for the production of a counter-hegemonic policy created by the Nile Basin Cooperative Framework Agreement. There is, in fact, ample scientific evidence to show that the lower riparian states would benefit from a basin-wide cooperative framework. The upper riparian states should exploit this evidence to de-securitize the issue and convince lower riparian decision makers and the public, that working with the upper riparian states can only lead to a win-win situation. The upper riparian states should therefore be able to create and implement projects that can obviously promote integrated management, sustainable development, promoting regional economic integration and harmonious utilization of the basin, as well as the conservation and protection of benefits for both present and future generations.

While there is, as yet, no reason to believe that the upper riparian states can use the Nile Basin Cooperative Framework Agreement to change the minds of state actors or international funding institutions in the short-run, it is certainly possible (as Ethiopia is currently demonstrating) for upper riparian states to raise enough funds by mobilizing their peoples or by joint action to embark upon projects which they are unable to conduct individually. There are indications of this approach being adopted in the agreements for cooperation between Kenya, Ethiopia and South Sudan,

between Ethiopia and Djibouti, and between Ethiopia and Sudan in infrastructural development, in telecommunications, power supplies, roads and railways. In effect, the upper riparian states have started to put forward credible projects demonstrating their ability to take action on regional cooperation and economic integration, none of which will actually affect the flow of water in the Nile River. In Ethiopia, the Great Ethiopian Renaissance Dam Project is the latest effort to impress the Egyptian and Ethiopian populations; and the credibility of GERD project is unquestionable. It envisages the building of a dam that promises to be the largest in Africa, and cost more than 4.8 billion dollars and this without support from any foreign state or non-state actors. In other words, the government of Ethiopia is making counter-hegemonic moves and its efforts certainly seen to be both credible and coordinated enough to truly change the narrative.

The Nile Basin Cooperative Framework Agreement is intended to be the legal document regulating the relations between the Nile riparian states. Although, in the absence of signatures from Egypt and Sudan, the upper riparian states have gone ahead, signed the CFA, and their narrative also needs to incorporate a credible effort to develop the waters of the Nile, with the involvement of lower riparian countries' active role and input. Indeed, the CFA is clear that the upper riparian states substantially outnumber the lower riparian states and are in a position to create growing diplomatic pressure. They are, after all, pushing for a framework that would help them in their struggle against poverty without seriously threatening the well-being of the lower riparian states. However, Egypt and Sudan are still in negotiation and reluctant to give up their unfair claims over the waters of the Nile. But, either the fact on the ground or theoretical, legal and practical experiences in the World never allow them to continue to maintain injustices claims. It was obvious a decade ago, when the process of drafting the CFA was initiated, that Egypt would be very reluctant to sign any agreement giving up its unfair position, while Sudan is in a modest way to agree the frame work. Honestly speaking, it is time for both Sudan and Egypt to negotiate and would genuinely bargain jointly with the upper riparian countries, then, the Nile Basin Cooperative Framework Agreement will succeed as a political and legal instrument and its implementation as a legal document will be an important step forward in promoting the regional economic cooperation and integration and ensure sustainable development and harmonious utilization of the Nile Basin, as well as conservation and protection for both present and future generations. Whereas, in its absence, the attainment of CFA'S goals, such as equitable and reasonable utilization, appropriate measures to prevent the causing of significant harm to other basin states and protection and conservation of the basin and the ecosystem will be harder and more protracted. Therefore, it is an opportunity for all, especially, for the Government of Ethiopia to emphasize and strengthen its public diplomacy and aggressively push for all the riparian countries to ratify and implement the Nile Basin Initiative Cooperative Framework Agreement as soon as possible for regional/continental partnership development.