

## Decolonising the Nile River: Colonial Agreements as Impediments to Sustainable Basin-wide Cooperation

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### Abstract

*Attempts at resolving the two major problems in the history of the Nile waters issue, i.e. equitable Nile waters resource apportionment and the formation of a Basin-wide organisation to the benefit of all riparian states of the river, have largely failed. This paper argues that the disagreement over the utilisation of the Nile waters arises mainly from the 1929 and 1959 agreements that gave Egypt and the Sudan extensive rights over the river's water. These agreements have been at the heart of the struggle over the Nile waters between Egypt and the Sudan, on one side, and the other upper riparian states, on the other. Egypt and the Sudan saw the agreements as historical legacies to be maintained, like colonial boundaries which African states inherited from colonialism, without modification in perpetuity. On the other hand, other upstream countries see Nile agreements as colonial relics and demand their right to a fair and equitable share of the Nile waters. This paper argues for decolonising the Nile River and fostering the cooperation of all riparian states in the spirit of Pan-Africanism. Therefore, urgent and concrete steps should be taken to revise all agreements of the colonial period and the 1959 Nile Waters Agreement, and to renegotiate a new Nile Waters Agreement to accommodate the interests of all riparian states. This agreement should be based on internationally accepted principles and commitment to a win-win solution.*

**Keywords:** Agreement, colonial, cooperation, Nile, water

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## Introduction

The Nile River flows through the territories of eleven independent African states. The impact of the unfortunate legacy of colonialism on the use of its water resources has been deep and far-reaching. This paper critically examines the roots of the present struggle of independent African states to achieve basin-wide cooperation in the Nile Basin. It claims that the root of the problem is the British strategic world view of hegemonic control over the Nile River in the age of colonial rivalry and, no doubt, a general apprehension shared alike by Egypt. Colonialism sustains itself, safely so, by ensuring that the legal regime of the Nile waters resource utilisation to be distorted in favour of the colonisers' strategic worldview of the Nile River system. The colonial Nile Waters Agreements, which have polarised the Nile Basin states into upper and lower riparian states, were originally framed by the hegemonic claims by Great Britain to safeguard Egypt's interest during the colonial period, and in the post-independence era by Egypt itself.

Political independence has undoubtedly not changed the operating environment for the unfair use of the Nile waters resources. Based on colonial agreements, the two lower riparian states, particularly Egypt, still harbour the illusion that they have exclusive control over the Nile waters as if they controlled the territories of the upper riparian states from which they receive the water. This mind-set of monopoly control over the Nile waters is undoubtedly behind the continuation of the colonial legacy that impedes basin-wide cooperation over a shared water resource. This paper insists that the impact of colonialism on the use of the Nile waters did not disappear upon the political independence of the Nile Basin states. This is because the legal regimes of the basin have never quite broken free of the historic legacy of British colonialism, and because the main need of the lower riparian states is to maintain the *status quo*.

This paper argues that the Nile River should be disconnected from national sentiment and treated as a shared natural resource among the riparian states in the spirit of Pan-Africanism. It also insists that there is no viable alternative to revising all agreements of the colonial period, and the 1959 Nile Waters Agreement, in the interests of all riparian states, based on the principle of a fair and equitable share of the Nile waters.

### Colonisation of the Nile River

The opening of the Suez Canal, as an indispensable waterway between Great Britain and her important colony of India, in 1869, dramatically transformed the strategic importance of the Nile Basin. In particular, after Great Britain's unilateral occupation of Egypt in September 1882,<sup>2</sup> the mighty Nile River assumed a prominent place in Great Britain's geopolitical, diplomatic and strategic worldview of north-east Africa. The British were well aware that Egypt depended heavily on the Nile waters. They also understood that their position, their interest in Egypt and providing a stable source of cotton to the Lancashire mills could only be safeguarded if the British government protected the security of the waters of the upper Nile from rival colonial powers. This applied especially to France, which was the chief rival of Great Britain's occupation of Egypt, and had already established her position at Djibouti and wanted to expand her empire towards the Nile.<sup>3</sup>

As France in particular had been consistently unfriendly to Great Britain, the only acceptable outcome for British strategists was the establishment of Italian colonial rule over the sources of the Blue Nile; the Italians could be relied upon never to pose a threat to British interests in Egypt. Ethiopia, the source of 86 per cent of the Nile waters, lay at the heart of north-east African geopolitics. The British government violated the Adwa or Hewett Treaty of 1884, signed between Egypt and Ethiopia and mediated by Great Britain, by giving the green light to Italian colonial ambitions in Ethiopia. In 1885 the British government allowed Italy to occupy Massawa, thereby checking French entry into the Nile Basin from the east.<sup>4</sup> This indirect British manoeuvre via Italy was described by Ernest Work as follows: 'They [Italians] could not have taken it [Ethiopia] without the approval of the British and most certainly did not without their invitation.'<sup>5</sup> More explicitly, Bahru explains the basis of the Anglo-Italian friendship and conspiracy against Ethiopian independence: 'they [the British] wanted someone to watch over

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<sup>2</sup>Ernest Work, *Ethiopia: A Pawn in European Diplomacy* (New Concord, 1935), 11; Robert O. Collins, *King Leopold, England and the Upper Nile, 1899-1909* (New Haven and London: Yale University Press, 1969), 7-8; Haggai Erlich, *The Cross and the River: Ethiopia, Egypt, and the Nile* (London: Lynne Rienner, 2002), 66.

<sup>3</sup>G.N. Sanderson, *England, Europe and the Upper Nile, 1882-1899* (Edinburgh: Edinburgh University Press, 1965), 34; William L. Langer, *The Diplomacy of Imperialism, 1890-1902*, Second Edition (New York: Alfred A. Knopf, 1956), 106; Collins, *King Leopold*, 12.

<sup>4</sup>Bahru Zewde, *A History of Modern Ethiopia, 1855-1974* (London: James Currey, 1991), 56.

<sup>5</sup>Work, *Ethiopia*, 64.

the Blue Nile and its Ethiopian sources and tributaries. This was the Anglo-Italian collusion over Ethiopia'.<sup>6</sup>As the two authors clearly put it, the British government attempted to safeguard its interest in the waters of the Nile through colonial horse-trading. Therefore, in the eyes of the British government, Italian colonial penetration into the Ethiopian highlands in the period between 1885 and 1896 seems to have been considered a counterweight against France.<sup>7</sup>

As a counterweight to the Anglo-Italian collusion against Ethiopian sovereignty, Emperor Menilek II of Ethiopia pursued an active policy of consolidating his friendship with the French.<sup>8</sup> The French also crystallised their policy in Ethiopia with the idea of getting control of the headwaters of the Nile to force the British to evacuate from Egypt. It is important to note that since 1893 there had been a widespread rumour in Europe that a French engineer named M. Victor Prompte was planning to construct a dam at the confluence of the Sobat and the Nile Rivers that could ruin Egypt 'by drought or untimely flood.'<sup>9</sup> The French, by rejecting Italy's colonial claim over Ethiopia, appeared as the latter's main ally. The French government also offered Menilek a guarantee of the supply of arms and ammunition, which he was unable to import through Massawa after the area had been occupied by Italian troops.<sup>10</sup> Needless to say, this French support contributed to Ethiopia's victory over the Italians at the Battle of Adwain 1896.

Ethiopia's victory formed a watershed in the history of the hydropolitics of the Nile. The Adwa victory induced a radical review of Great Britain's grand strategy of safeguarding the waters of the Blue Nile through Italy. It proved that the Italians were not able to stop French entry into the Nile Valley. Even worse for the British, following Adwa, France improved its diplomatic ties with Ethiopia. On 24 November 1896, the French cabinet decided to send a mission to Addis Ababa led by Léonce Lagarde, governor of French Somaliland. The mission was able to sign two major conventions, one public and one secret, with Emperor Menilek in Addis Ababa. In the first, Ethiopia acquired a large territory from France; in the second convention Ethiopia pledged

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<sup>6</sup>Bahru, *A History of Modern Ethiopia*, 73.

<sup>7</sup>Work, *Ethiopia*, 58-59; Langer, *The Diplomacy of Imperialism*, 108-109.

<sup>8</sup>Bahru Zewde, 'Relations between Ethiopia and the Sudan on the Western Ethiopia Frontiers, 1898-1935' (PhD thesis, University of London, 1976), 27.

<sup>9</sup>Patricia Wright, *Conflict on the Nile: the Fashoda Incident of 1898* (London: Heinemann, 1972), 45.

<sup>10</sup>*Ibid.*

to support France in her Nile Valley struggle against Great Britain, whenever it was asked.<sup>11</sup> Apparently, following the Adwa victory, British policy-makers were much concerned over events in Franco-Ethiopian diplomatic relationships. At that same time, military tension heightened in the Nile Basin.

This became the basis for the transparent British scheme to defeat the Mahdists and snatch the Upper White Nile from the French. Indeed, more than any other factors, the Ethiopian victory at Adwa and the subsequent weakening of Italy's position as guardian of the Upper Nile hastened the British occupation of the Sudan.<sup>12</sup> Menilek seems to have been suspicious of Great Britain's intentions towards the sources of the Blue Nile. He sent a number of missions proposing better relationships with the Mahdists and even creating a military alliance against the colonial powers, particularly 'the red English.'<sup>13</sup> Unfortunately, however, such an alliance – which might have halted the southward advance of the British – did not materialise, because the Mahdists demanded that Menilek should stop any dealings with the European powers, including commercial ones.<sup>14</sup>

After the Adwa victory, Great Britain switched from a strategy of dependence on Italy and brought the Blue Nile issue to the negotiating table. In April 1897, the British special envoy, Rennell Rodd, chief lieutenant in Egypt of Lord Cromer (British ruler of Egypt 1883–1907), accompanied by Wingate, arrived in Addis Ababa to undermine growing Franco-Ethiopian relations and invalidate Emperor Menilek's suspicion about the British southward military operation in the Nile Valley under Kitchener. Menilek was told that the campaign was to regain territories which had been under Egyptian rule; it was not a plan of imperial conquest of Ethiopia.<sup>15</sup> The British continued to exert their diplomatic efforts to avoid any possible military confrontation with the Ethiopian army; thus in January 1898 Lord Salisbury informed Emperor

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<sup>11</sup>Harold G. Marcus, *The Life and Times of Menelik II: Ethiopia, 1844-1913*(Oxford: Clarendon Press, 1975), 179.

<sup>12</sup>Bahru described the episode as follows: '...it remains true that Adwa, as much as it assured the political independence of Ethiopia, hastened the British conquest of the Sudan.' Bahru, 'Relations',29.

<sup>13</sup>G.N. Sanderson, 'Contributions from African sources to the history of European competition in the Upper Valley of the Nile,' *Journal of African History*, 3, 1 (1962), 84-85.

<sup>14</sup>*Ibid.*

<sup>15</sup> FO 1/32, Salisbury to Rodd, Instructions, 27 February 1897.

Menilek that the dispatch of the British troops to the Sudan did not pose a threat to his empire.<sup>16</sup> Similarly, Queen Victoria sent Menilek a message of goodwill that was recorded on a phonograph.<sup>17</sup> Cromer also suggested a very generous territorial settlement that would cede to Ethiopia a large territory in the Sudan if the Emperor recognised the monopolistic right of Egypt over the Nile waters.<sup>18</sup>

Moreover, based on Rodd's proposal, the British Foreign Office appointed John Lane Harrington as its permanent agent in Ethiopia in November 1897.<sup>19</sup> Nevertheless, the British diplomatic intervention in Ethiopia regarding the Blue Nile issue was not successful until it was finally resolved as a by-product of Great Britain's military victory at Omdurman and diplomatic victory after Fashoda, over the Mahdists and the French respectively, in 1898.

The British government authorised Sir Horatio Kitchener to crush the Mahdist army of the Khalifa Abd Allah and to control the upper Nile. Kitchener, in command of the Anglo-Egyptian army, defeated the Mahdist army at the Battle of Omdurman in September 1898 and established full British control of the Sudan in the name of the Egyptian government.<sup>20</sup> The British occupation of the Sudan demonstrated that Great Britain viewed the entire Nile Basin as one economic and political unit. As Collins summarises: 'The Nile was essential to Salisbury's overall imperial strategy [in Africa]: the Cape-to-Cairo route was not.'<sup>21</sup> The Anglo-Egyptian army under the command of Kitchener did not stop at the confluence of the Blue and the White Nile; it proceeded towards the upper Nile.

After the fall of the Mahdist state, Great Britain confronted its main rival, France. The French expeditionary force, led by Colonel Jean-Baptiste Marchand, advanced to the upper Nile from the west and arrived at Fashoda, where a dam could be constructed to obstruct the entire waters

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<sup>16</sup>Sanderson, *England*, 260.

<sup>17</sup>*Ibid.*

<sup>18</sup> FO 1/35, Cromer to Salisbury, Telegram No 77, 5 March 1898.

<sup>19</sup> FO 1/32, Rodd to Salisbury, 18 June 1897; Harold Marcus, 'Ethio-British Negotiations Concerning the Western border with Sudan, 1896-1902', *Journal of African History*, 4, 1 (1963), 85.

<sup>20</sup> Gebretsadik Degefu, *The Nile: Historical, Legal and Developmental Perspectives* (Victoria: Trafford, 2003), 34; Terje Tvedt, *The River Nile in the Age of the British* (London: I.B. Tauris, 2004), 34.

<sup>21</sup> Collins, *King Leopold*, 27.

of the White Nile coming from the equatorial regions of central and eastern Africa.<sup>22</sup> At the same time, another French force supported by the Ethiopian army moved from Ethiopia to meet Marchand. This led to the Fashoda crisis of 1898. The incident brought the two colonial powers close to open conflict. However, the French thought that war with Great Britain was not a viable or desirable option, and instead chose to renounce their claim over the upper Nile to resolve the tension.<sup>23</sup> The aftermath of the Fashoda crisis clearly showed that Great Britain had become undisputed master of the upper Nile. Even though the ‘*Convention pour le Nile Blanc*’ was signed between Ethiopia and France on 20 March 1897,<sup>24</sup> Ethiopia did not keep its pledge of providing support to the French expeditionary force to the Nile. However, Ethiopia had mobilised her force in four directions as a response to the British southward military operation along the Nile Valley.<sup>25</sup> Nevertheless, Menilek’s policy towards the Nile Valley was apparently based on safeguarding Ethiopian interests without undermining the interests of any other European powers.

Great Britain had already taken the headwaters of the White Nile under its colonial rule in the early 1890s. The British rescued the source regions of the White Nile from German colonial encroachment through the Heligoland Treaty of 1890. The two colonial powers resolved their conflicting interests in East Africa and divided their spheres of influence. The British ceded the North Sea island of Heligoland to Germany; in return, Germany recognised Great Britain’s claims to Zanzibar, Kenya and Uganda.<sup>26</sup> The British strategists also viewed the importance of the sources of the Nile as an imperial contingency plan to silence Egyptian opposition to Great Britain’s dominant but insecure position in Egypt. Therefore, for such strategic reasons the British formally colonised Uganda in 1894.<sup>27</sup>

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<sup>22</sup>Gebretsadik, *The Nile*, 33.

<sup>23</sup> For detailed discussion on the Fashoda Incident of 1898 see Wright, *Conflict on the Nile*, 118-209.

<sup>24</sup>G.N. Sanderson, ‘Emir Suleyman Ibn Inger Abdullah: An episode in the Anglo-French conflict on the Upper Nile, 1896-1898’, *Sudan Notes and Records*, 35 (1954), 63.

<sup>25</sup> FO1/34, Harrington to G.J. Walther, 11 May 1898.

<sup>26</sup>Roland Oliver & Anthony Atmore, *Africa since 1800*, Fifth Edition (Cambridge University Press, 2005), 128.

<sup>27</sup>Terje Tvedt (ed.), *The River Nile in the Post-Colonial Age: Conflict and Cooperation among the Nile Basin Countries*(London: I.B.Tauris, 2010), 34.

Therefore, Great Britain realised its grand strategy of securing the unimpeded flow of Nile waters into Egypt by colonising almost the entire Nile River, from its source region in central and eastern Africa to its outlet at the Mediterranean Sea. The Great Lakes of central and eastern Africa, namely Lake Victoria, Lake Albert, Lake Edward and Lake George (named after members of the British royal family) symbolise the incorporation of the White Nile as part of the British Empire. Moreover, as will become clear later on, to ensure the continuous flow of the Nile waters beyond its colonial control, the British government worked hard on the diplomatic scene, which resulted in the signing of agreements with the Italian, German and Belgian colonial powers.

### **The British Nile Diplomacy and Major Nile Waters Agreements of the Colonial Period**

As well as protecting the River Nile from any possible rival power through direct colonial control, the British government practised active diplomacy with other powers that were in control of parts of the Upper Nile Basin, to secure the unimpeded flow of the tributaries of the main Nile into Egypt and the Sudan. Thus, the colonial period, from the last decade of the 19<sup>th</sup> century, witnessed the signing of a series of Nile Waters Agreements for optimal utilisation of the water for the benefit of Egypt and the Sudan only – without reference to the rights, interests and water security of the upper riparian states.

### **The Anglo-Italian Protocol of 15 April 1891**

As has been mentioned earlier, although the British encouraged Italy to colonise Ethiopia, they were also suspicious of Italian encroachment upon the source of the Nile. As the Italians were annexing the Ethiopian highlands, the Anglo-Italian Treaty of 24 March 1891 was signed between Lord Dufferin, the British Ambassador to Italy, and di Rudini, the Foreign Minister of Italy.<sup>28</sup> According to this protocol, Italy agreed to stay out of the Nile Valley. In return, Great Britain gave recognition to Italy's spheres of influence over the Ethiopian highlands.<sup>29</sup> This *rapprochement* eventually led to the signing of perhaps the first major treaty on the Nile waters between Great Britain and Italy, in Rome on 15 April 1891.<sup>30</sup> Article III of the protocol bound '... The Italian Government ... not to construct on the Atbara [Takazze], in view of irrigation,

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<sup>28</sup>Sir E. Hertslet, *The Map of Africa by Treaty*, Vol. 3 (London: Frank Cass, 1967), 948.

<sup>29</sup>*Ibid.*

<sup>30</sup>*Ibid.*



any work which might sensibly modify its flow into the Nile.<sup>31</sup> The treaty says nothing about the exact volumetric amount of water used upstream to sensibly modify the flow of the Atbara into the main Nile. This treaty was signed several years before the actual British occupation of the Sudan. This attempt at securing the uninterrupted flow of the Atbara River into the main Nile at a distance of thousands of kilometres from its actual colonial possession clearly illustrates Great Britain's hegemonic aspirations over the waters of the Nile.

### **The 1894 Treaty between the British and King Leopold II of Belgium**

Great Britain and King Leopold II of Belgium signed an agreement, which referred to the Nile Waters, in Brussels on 12 May 1894. By this agreement Great Britain recognised the so-called Congo Free State as a personal colony of Leopold II, King of Belgium. On his side, King Leopold accepted the British sphere of influence over the Nile waters by pledging uninterrupted water flow from the Congo into the main Nile. Article III of the Treaty says: 'The Government of the Independent State of Congo undertakes not to construct, or allow to be constructed, any work on or near the Semliki or Isango River, which would diminish the volume of water entering Lake Albert, except in agreement with the Sudanese Government.'<sup>32</sup> This agreement also did not specifically mention how much amount of water used in the Congo needs prior agreement with the Sudanese government not to be considered as diminishing the volume of water by the downstream users.

### **The Treaty between Great Britain and Ethiopia of 15 May 1902**

As the British never had any control over Ethiopia, they employed a different strategy to secure their interest in the Nile waters. The British, who had learned that the Ethiopian Nile was a major source of the water supply for Egypt and the Sudan,<sup>33</sup> attempted to control the source of the Blue Nile and Baro/Akobo River through a series of diplomatic initiatives taken by their agent, Harrington, aimed at gaining Emperor Menilek's consent through a written agreement. In April 1899, Harrington started a series of negotiations with Emperor Menilek regarding the western

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<sup>31</sup>*Ibid.*, 950.

<sup>32</sup>*Ibid.*, 585.

<sup>33</sup> See FO 1/52, Memorandum by Mr. Russel Aitken, 29 March 1905. In his memorandum of 1899 Aitken wrote to the Foreign Office stating the need for granting a concession from Emperor Menelek to build a dam at the outlet of Lake Tana.

border with the Sudan and the waters of the Nile and its tributaries.<sup>34</sup> Harrington's efforts to secure the agreement of Ethiopia concerning the Blue Nile, Lake Tana and Baro/Akobo eventually succeeded when the Ethio-Sudanese Boundary Agreement between Emperor Menilek II and Harrington, on behalf of King Edward VII of Great Britain, was signed in Addis Ababa on 15 May 1902. The Amharic and English versions of Article III of the Agreement read as follows:<sup>35</sup>

ጃንሆይ ዳግማዊ ምኒልክ ንጉሠ ነገሥት ዘኢትዮጵያ ከጥቁር ዓባይና ከበሕረ ፃና ከሶባት ወንዝ ወደ ነጭ ዓባይ የሚወርደውን ውሃ ከእንግሊዝ መንግሥት ጋር አስቀድመው ሳይስማሙ ወንዝ ተዳር እዳር የሚደፍን ሥራ እንዳይሠሩ ወይም ወንዝ የሚደፍን ሥራ ለማሠራት ለማንም ፈቃድ እንዳይሰጡበዚህ ውል አድርገዋል፤

[His Majesty Emperor Menelek II, King of Kings of Ethiopia, engages himself towards the Government of His Britannic Majesty not to construct or allow to be constructed any work across the Blue Nile, Lake Tsana or the Sobat, which would arrest the flow of their waters into the Nile except in agreement with His Britannic Majesty's Government and the Government of the Sudan.]

If this colonial agreement is assumed to be currently applicable, both the Amharic phrase 'ወንዝ ተዳር እዳር የሚደፍን ሥራ እንዳይሠሩ' and the English equivalent word, 'arrest', do not prevent Ethiopia from claiming its legitimate share of the Nile waters unless it completely diverts the course of the rivers or obstructs their flow into the Sudan. Needless to say, the latter course has never been Ethiopia's intention. However, it is important to point out that misinterpretation of the article is one of the major factors that has politicised the Nile issue and impedes basin-wide cooperation.<sup>36</sup>

### **The Tripartite (Great Britain-France-Italy) Treaty of 13 December 1906**

To a remarkable extent the Nile issue continued to influence diplomatic relations between Great Britain, Italy and France concerning Ethiopia. After Great Britain had obtained assurance from the Ethiopian government about the unobstructed and continuous flow of the Nile River to Egypt and the Sudan through political and legal manoeuvres, it tried to obtain Italian and French

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<sup>34</sup> Marcus, *Ethio-British*, 88.

<sup>35</sup> FO93/2/5, Treaty Between Great Britain and Ethiopia, Addis Ababa, 15 May 1902.

<sup>36</sup> Egypt has argued that the article prohibited Ethiopia from unilateral utilization of the waters of the Eastern Nile. See 'Ethiopia's Rights to Waters from the Blue Nile and Lake Tsana,' Confidential, *Nehase* 26, 1964 E.C. (Institute of Ethiopian Studies Manuscript, No. 2982), 21.

acknowledgement of its interest in the Nile and its source. This led to the signing of the Tripartite Agreement between Great Britain, Italy and France in London on 13 December 1906.<sup>37</sup> In Article IV (a) of this agreement, the three colonial powers agreed to act together and to safeguard ‘the interests of Great Britain and Egypt in the Nile Basin, more especially as regards the regulation of the waters of that river and its tributaries [due consideration being paid to local interests] without prejudice to Italian interests.’<sup>38</sup> Nevertheless, the treaty, which was concluded without the knowledge or involvement of the Ethiopian government and which denied Ethiopia its sovereign right over its water resources, was soon repudiated by Emperor Menilek. The Emperor notified the signatories: ‘But let it be understood that this arrangement in no way limits what we consider our sovereign rights.’<sup>39</sup>

### **The 1925 Exchange of Notes between Great Britain and Italy**

In the first two decades of the 20th century, Great Britain waged unsuccessful prolonged diplomatic negotiations with Ethiopia to erect a dam across the Blue Nile at its outlet at Lake Tana and to turn the lake into a water reservoir for the benefit of the downstream states, i.e. Egypt and the Sudan.<sup>40</sup> When the British authorities were not able to gain the Lake Tana Dam concession from Ethiopia, they approached the Italians, who considered the Lake Tana area as part of their sphere of influence according to the Tripartite Agreement of 1906.<sup>41</sup> Great Britain wished the Italians to put pressure on the Ethiopian government. Indeed, the two colonial powers had a disagreement on the interpretation of the Tripartite Agreement of 1906 regarding the Lake Tana region. These divergent colonial interests eventually led to the secret Anglo-Italian Exchange of Notes of December 1925. In this arrangement, Great Britain promised to support the Italians in order that they might obtain a concession from the Ethiopian government for a

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<sup>37</sup> Hertslet, *The map of Africa*, Vol. 2, 442.

<sup>38</sup> *Ibid.*

<sup>39</sup> Quoted in Wondimneh Tilahun, *Egypt's Imperial Aspirations over Lake Tana and the Blue Nile* (Addis Ababa: United Printers, 1979), 77.

<sup>40</sup> For detailed discussion see Teferi Mekonnen, ‘The Eastern Nile Waters Issue: A History of Confrontation, Mistrust and Attempts at Cooperation, 1950s to 2002’ (PhD thesis, Addis Ababa University, 2013), 37-66.

<sup>41</sup> FO 371/1572, Sir Edward Grey to Mr Dering, 12 November 1913.

railway from Eritrea to Somaliland, west of Addis Ababa.<sup>42</sup> In return the Italian government was constrained as follows:

Recognising the prior hydraulic rights of Egypt and the Sudan, [Italy] will engage not to construct on the headwaters of the Blue or White Niles or their tributaries or affluents any work which might sensibly modify their flow into the main river.<sup>43</sup>

Inevitably, the Exchange of the Notes led to a further diplomatic crisis between Ethiopia, on one side, and Great Britain and Italy on the other. The Ethiopian government fiercely opposed the British and Italian ploy against the independence and territorial integrity of the country. *Ras* Tafari, heir to the throne and the future Emperor Haile Selassie of Ethiopia, immediately dispatched letters of protest to the British and Italian Legations;<sup>44</sup> he also appealed to the Secretary-General of the League of Nations in June 1926 as follows: ‘Since this agreement, in our view, contradicts the basic principles of the League of Nations, we must present our strongest protest’.<sup>45</sup> On 5 September 1926, in his second letter to the Secretary-General of the League of Nations, *Ras* Tafari denounced the secret Anglo-Italian deal with the following words: ‘their agreement has no validity on our part and will be considered as null and void.’<sup>46</sup> It is important to note that the Anglo-Italian arrangement over the Lake Tana area became a prelude to the Italo-Ethiopian War of 1935. As Iadarola puts it, the Anglo-Italian Agreement of 1925 provided Mussolini with ‘carte blanche’ to go to war against Ethiopia.<sup>47</sup>

### **The 1929 Nile Waters Agreement**

The most far-reaching colonial agreement that allocated the Nile waters between Egypt and the Sudan was the 1929 Nile Waters Agreement. As Egypt was still under British colonial influence in 1929, this agreement obviously involved the British officials governing Egypt and the Sudan;

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<sup>42</sup>‘Notes exchanged between the United Kingdom and Italy regarding Lake Tana, together with Extracts from Correspondence Respecting the above Agreement, 1926.’ (Appendix C) in Charles Rey, *In the Country of the Blue Nile* (London: Duckworth, 1927), 279.

<sup>43</sup>*Ibid.*, 279-80.

<sup>44</sup>Haile Selassie, *Hiyateenna Ya-Ityopya Ermejja*, (My Life and Ethiopia’s Progress), Vol. I (Addis Ababa: Birhanina Salam Qadamawi Haile Selassie Printing Press, 1929 E.C.), 110.

<sup>45</sup>*Ibid.*, 111.

<sup>46</sup>*Ibid.*, 116.

<sup>47</sup>Antoinette Iadarola, ‘The Anglo-Italian Agreement of 1925: Mussolini’s “carte blanche” for war against Ethiopia,’ *Northeast African Studies*, 1, 1 (1979), 45.

it was signed on 7 May 1929.<sup>48</sup> It approved Egypt's so-called 'natural and historic rights' over the Nile River and its tributaries.<sup>49</sup> In other words, the agreement gave Egypt the right to impede any development projects on the Nile Basin outside its political boundary. Egypt acquired the privilege to inspect and investigate any kind of hydraulic project on the upper Nile that would regulate the flow of Nile waters into Egypt.<sup>50</sup> According to the agreement, any kind of hydraulic work in the basin needed prior agreement from the Egyptian government.<sup>51</sup> The agreement also allocated 48 billion cubic metres of water to Egypt and 4 billion cubic metres to the Sudan.<sup>52</sup> Unfortunately, however, the rights and interests of the remaining riparian states, which contribute the entire annual water discharge of the Nile River, were neither mentioned nor considered in this far-reaching agreement. Although all the upper riparian states were under colonial rule, Ethiopia, which contributes 86 per cent of the Nile waters, was independent (as it has always been) and should have been consulted. Sadly, the 1929 colonial Nile Waters Agreement laid the foundation for the 1959 Nile Waters Agreement on the full utilisation of the Nile waters, which was signed between Egypt and the Sudan without consulting the remaining Nile riparian states.

In a nutshell, the major colonial Nile Waters Agreements were signed to avert the danger and uncertainty that would arise if the powers in control of the upper Nile tried to block the flow of the river into Egypt. Moreover, the British imposed a basin-wide regime with the calculated intent of primarily benefitting Egypt by limiting the rights of the Sudan and rejecting the rights and interests of the remaining riparian states; this did not foster cooperation and regional integration that would have benefitted all the basin states. Therefore, it is not unreasonable for the upper riparian states to hold that the aforementioned colonial Nile Waters Agreements do not provide an historical base for binding present and future basin-wide cooperation on the use of the Nile waters.

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<sup>48</sup>Tesfaye Tafesse, *The Nile Question: Hydropolitics, Legal Wrangling, Modus Vivendi and Perspectives*(Munster-Hamburg: Lit Verlag, 2001), 74.

<sup>49</sup>*Ibid.*,175; Bonaya AdhiGodana, *Africa's Shared Water Resources*(London: Frances Painters, 1985), 170.

<sup>50</sup>Tesfaye, *The Nile Question*, 75.

<sup>51</sup>Tesfaye, *The Nile Question*, 175; Godana *Africa's Shared Water Resources*,170.

<sup>52</sup>*Ibid.*

### **Colonial Legacy in the 1959 Nile Waters Agreement**

Egypt and the Sudan, which achieved its political independence on 1 January 1956, carried out intricate prolonged negotiations on the division of the Nile waters until they eventually signed the 1959 Nile Waters Agreement, which laid the foundation for long years of legal wrangling and stalemate among the Nile Basin states. Although the 1959 agreement was lauded as the first ever treaty concluded between two independent Nile Basin states,<sup>53</sup> it did not much differ in substance from its predecessor, the 1929 agreement of the colonial era. The two parties to the 1959 agreement, who were of the same mind-set as their ex-colonial masters, wanted and indeed claimed a monopoly of the Nile waters by excluding the rights and interests of any other Nile riparian states from whose territory the water drains. In particular, Egypt's stubbornness in not accepting the principle of fair and equitable water resource distribution among the basin states or its successive rulers' interests in maintaining the agreement further complicated the hydropolitics of the Nile after 1959 and has become an impediment to basin-wide cooperation.

### **The 1959 Nile Waters Agreement**

Egypt and the Sudan, which seemed to consider Ethiopia's repeated statements about its reserved rights and interests in the Nile waters as distant and irrelevant historical echoes, signed a purely bilateral agreement known as the 'Agreement for the Full Utilization of the Nile Waters' in Cairo on 8 November 1959.<sup>54</sup> The two states did not invite the upper riparian states, including Ethiopia, which was then independent, as it has always been, and supplies 86 per cent of the Nile waters as well as the nutrient-rich silt that had formerly fed Egypt for millennia, to take part in the negotiations; their calculated intent was to assert Egypt's 'right' to apportion the Nile waters unilaterally. The two states, which are not contributors to the river but only users, agreed to their own 'full utilisation' and 'full control' of the Nile waters, as if they controlled the sources of the river or as if the Nile flowed only from the borders of Egypt and the Sudan. Their objective was to fully control and exclusively utilise the Nile waters, the entire average annual flow of which was estimated to be 84 billion cubic metres at the Aswan High Dam. The Nile waters resource

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<sup>53</sup>Taha Fadwa, 'The History of the Nile Waters in the Sudan' in Tvedt (ed.), *The River Nile in the Post-Colonial Age*, 187.

<sup>54</sup>Agreement between the United Arab Republic and the Republic of the Sudan for the Full Utilization of the Nile Waters, 8 November 1959.

was divided between the Sudan and Egypt at 18.5 and 55.5 billion cubic metres respectively. It was agreed that the remaining 10 billion cubic metres was annual water loss due to evaporation and other factors from the soon-to-be-constructed Lake Nasser.<sup>55</sup> The agreement made Egypt and the Sudan the first- and second-greatest users of the Nile waters. Needless to say, as the 1959 agreement was signed by only two of the Nile Basin states, it was not binding on the remaining basin states.

The 1959 agreement did not properly recognise imperatives grounded on the realities of the upstream states' existing and future water needs. It simply recognised that sometime in the future other countries of the basin might make claims on the Nile waters. Article V of the 1959 agreement reads as follows: 'In case any question connected with Nile waters needs negotiation with the governments of any riparian territories...the two Republics [Egypt and the Sudan] shall agree beforehand on a unified view'.<sup>56</sup> In effect, in connection with the hydro-politics of the Nile, this provision in the agreement meant that Egypt and the Sudan adopted a common policy and shared a common attitude *vis-à-vis* future claims over a share of the Nile waters from the remaining riparian states. Therefore, in effect, the signatories to the 1959 agreement formed the league of the two lower riparian states working against the water rights and interests of upstream states, which were neither informed nor invited for the water sharing negotiation. On the other hand, this bad precedent would inexorably oblige upper riparian states to set up their own league in order to safeguard their water interests. Consequently, the bilateral 1959 Nile Waters Agreement divided the Nile Basin into two competing leagues, i.e. downstream and upstream states. It is imperative not to ignore the deep repercussions these two separate and competing camps have had on the hydro-politics of the Nile by hindering basin-wide cooperation that could have benefitted all riparian states. Therefore, this article argues that the 1959 agreement should be revised, in the interest of all riparian states, by independent Nile Basin African states.

Furthermore, Egypt tended to ignore the sovereignty of the upper riparian states in utilising the Nile waters in their territories using the 1959 Nile Waters Agreement. As spelled out in the earlier article of the agreement, upstream states had to get prior permission from Egypt and the

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<sup>55</sup>*Ibid.*

<sup>56</sup>*Ibid.*

Sudan to utilise some of the Nile waters within the territories under their jurisdiction. Above all, the 1959 Nile Waters Agreement lies at the heart of Egyptian arguments to maintain the status quo of what they call the ‘legal’ regime and against the creation of a new legal regime in the Nile Basin.

### **Decolonising the Nile versus Maintaining Colonial Agreements as Historical Legacies**

All the Nile waters agreements were signed when all the upper riparian states, with the exception of Ethiopia, were under the yoke of colonialism. Ethiopia, the only independent African state, as Leo Silberman well-articulated: ‘when Egypt and the Sudan came to terms over the distribution of the Nile waters, Ethiopia acted as the spokesman for the excluded African riparian states’.<sup>57</sup> Indeed, the Ethiopian Ministry of Foreign Affairs released a *communiqué* on 6 February 1956<sup>58</sup> as well as an Aide-Memoir of September 23, 1957,<sup>59</sup> addressed to the Egyptian and Sudanese ambassadors in Addis Ababa, protesting against the hegemonic aspirations and the bilateral Nile waters division negotiations of Egypt and the Sudan. The Imperial Government of Ethiopia once again officially declared: ‘Agreements concluded between downstream friendly states to share water reaching their countries can in no way prejudice the interests of Ethiopia and other riparian states.’<sup>60</sup>

Moreover, in the early 1960s, as Collins noted: ‘No sooner was the ink dry on the Nile Waters Agreement’<sup>61</sup> than the newly independent upper riparian states namely: Tanzania, Uganda and Kenya resolutely rejected all inequitable Nile waters agreements which were signed over their heads by colonial powers as well as Egypt and Sudan when they had been under the yoke of colonialism. The upper riparian states’ rejection of the unfair and unbalanced colonial-period Nile waters agreements, which compromised their prerogative sovereign rights and national interests, was remarkably denounced by what came to be known as the ‘Neyerere Doctrine’.<sup>62</sup> In

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<sup>57</sup> Leo Silberman, ‘Ethiopia: Power of Moderation,’ *Middle East Journal*, 14, 2 (1960), 141.

<sup>58</sup> Communiqué released by the Ministry of Foreign Affairs of Ethiopia, 6 February 1956.

<sup>59</sup> Ministry of Foreign Affairs, ‘Aide-Memoire’, 23 September 1957.

<sup>60</sup> *Ibid.*

<sup>61</sup> Robert O. Collins, ‘The best-laid schemes o’ mice and men: in search of the Waters of the Nile, 1900-2000’, Paper for July 1998 Training Program, DebreZeit Workshop, Ministry of Foreign Affairs, Federal Democratic Republic of Ethiopia, 14. (This paper is available at the Library of the Ministry of Foreign Affairs).

<sup>62</sup> Yacob Arsano, ‘Negotiations for a Nile-Cooperative Framework Agreement’, *Institute for Security Studies*, ISS Paper 222 (January 2011), 4.



July 1962 Julius Nyerere, the first president of Tanzania, officially declared that the colonial-period Nile Waters Agreements were not binding on Tanzania.<sup>63</sup> Therefore, right after political independence the upstream states began to oppose the hegemonic aspirations of Egypt and Sudan. Nevertheless, the colonialists' unwillingness to consider the rights and interests of the upper riparian states was shared by particularly Egypt. It appeared that the 19th-century British hegemony over the Nile waters was replaced by Egypt in the post-independence era. Moreover, Egypt's fear that new Nile Waters Agreements would reduce its water quota was the reason for its reluctance to alter inherited colonial agreements.

Subsequently, Egypt employed various tactics or sabotage to sustain the inherited colonial legal regime and to undermine the capacity of the upper riparian states to utilise the Nile waters. For example, Cairo officials and statesmen reiterated threats that Egypt would go to war if upper riparian states built a dam on the Nile that reduced the river's flow into Egypt.<sup>64</sup> Moreover, Egypt also initiated successive deceitful basin-wide organisations to maintain the downstream states' monopoly over the use of the Nile waters. In May 1967, Egypt initiated the establishment of the Hydrometeorological (Hydromet) project as a broad-based operation for the collection of data in the upper White Nile drainage system.<sup>65</sup> Egypt, Sudan, Kenya, Tanzania and Uganda were the initial members of the Hydromet. In 1972 Burundi, Rwanda and Zaire joined the programme as full members, and Ethiopia joined as an observer.<sup>66</sup> Apparently, it was Egypt's subtle effort at maintaining its monopoly of the utilization of the Nile waters that the Hydromet project, founded in 1967, introduced an alternative model of cooperation with the upper riparian states but excluding Ethiopia, the greatest source of the Nile waters. The upper riparian states were either ignored or given uncertain promises of false benefits from their water resources. The Hydromet project was rightly described by the Ethiopian Ministry of Foreign Affairs as a discreet and prudent venture aimed at isolating Ethiopia from other upstream states. Therefore, fearing the

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<sup>63</sup>*Ibid.*; Okbazghi Yohannes, *Water Resources and Inter-Riparian Relations in the Nile Basin: The Search for an Integrative Discourse* (New York: State University of New York Press, 2008), 102.

<sup>64</sup> To mention one: in June 2013, President Mohamed Morsi warned Ethiopia as follows: 'We will defend each drop of Nile water with our blood if necessary'. See *ahram online*, <http://english.ahram.org.eg/News/73683.aspx> [accessed on 13 May 2015].

<sup>65</sup> *Sile Abbay Wanz Mastawesha, Birtu Mistir, Nehase* 26, 1964 E.C. (no name). Institute of Ethiopian Studies, MS. 2982, 19.

<sup>66</sup>*Ibid.*

risks of diplomatic isolation in the Nile Basin, the Ethiopian government ultimately decided to continue its involvement in the project with only observer status.

In 1983, Egypt initiated another organization that would serve to sustain its interest and influence over the states of the upper Nile Basin named the Undugu Group, as successor organisation of the Hydromet, was set up.<sup>67</sup> The architect behind the foundation of the Undugu (a Swahili word for ‘brotherhood’) Group – consisting of Egypt, Sudan, Uganda, the Democratic Republic of the Congo and the Central African Republic (though it is not a Nile Basin state)– was said to have been Boutros Boutros-Ghali.<sup>68</sup> Nevertheless, Ethiopia, Kenya and Tanzania chose not to become founding members.<sup>69</sup> Without the involvement of these riparian states, it would be very difficult, if not impossible, to think the prospect of establishing genuine Nile Basin cooperation.<sup>70</sup> Despite the fact that the Undugu Group organised a number of expert and ministerial-level meetings,<sup>71</sup> the group made no noticeable progress towards the realization of Nile Basin cooperation. Indeed, the strategy behind the formation of the Undugu Group was driven by the desire of Egypt to waste time by claiming that the upper riparian states of the Nile could benefit from closer cooperative relationships; however pushing aside the establishment of a genuine basin-wide organisation as well as a legal framework for fair and equitable utilization of the Nile waters.<sup>72</sup>

In 1992, Egypt initiated the foundation of the third Nile Basin organisation, known as the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile (TECCONILE) under the directorship of an Egyptian engineer, Mohamed Mahmoud Tawfik, with its Permanent Secretariat Office in Entebbe, Uganda.<sup>73</sup> The founding

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<sup>67</sup> Greg Shapland, *Rivers of Discord: International Water Disputes in the Middle East* (London: Hurst & Company, 1997), 76.

<sup>68</sup> United Nations Economic Commission for Africa, ‘Cooperation for the Nile Waters Development Role of the United Nations Economic Commission for Africa’, paper presented at the seventh of the Nile 2002 series of meetings, Cairo, Egypt, 15-22 March 1999, 6.

<sup>69</sup> Ethiopia began to participate in Undugu meetings only as an observer in December 1991. See Shapland, *Rivers of Discord*, 76.

<sup>70</sup> Collins, ‘In search of the Nile Waters, 1900-2000’, H. Erlich and I. Gershoni (eds.), *The Nile: Histories, Cultures, Myths* (London: Lynne Rienner, 2000), 233.

<sup>71</sup> United Nations Economic Commission for Africa, p 6.

<sup>72</sup> *Ibid.*

<sup>73</sup> ‘Second Ministerial Meeting of the Ministers of Water Affairs of the Nile Basin Countries’, Cairo, 18-20 January 1994. (Ministry of Water and Energy Archive); Technical Co-operation Committee for the Promotion of the

signatories of the TECCONILE consisted of the governments of Egypt, the Sudan, Uganda, Rwanda, Tanzania and Zaire (now the Democratic Republic of the Congo).<sup>74</sup> Kenya, Burundi, Ethiopia, and Eritrea, after its secession from Ethiopia in 1993, had only observer status.<sup>75</sup> Evidently, as Egypt was the most proactive player and an agenda-setter in the organization, the objectives of the TECCONILE were to advance and protect the strategic interests of Egypt. The TECCONILE denied in practice, if not in words, the legitimate rights of the upper riparian states for fair and equitable utilisation of the Nile waters. The Egyptians were reluctant as ever to commit themselves to genuine basin-wide cooperation; rather they tried to use the TECCONILE to maintain their monopolistic utilization of the Nile waters and to achieve greater influence over the upper riparian states by emphasizing technical issues. Yacob has rightly summarised the purposes of Egypt's 'shaky and inconsequential initiatives' to establish organisation after organisation as follows: 'The purposes of these initiatives were to increase water supply for Egypt, to create divisions and animosity among upstream countries, and to isolate key upstream countries such as Ethiopia in particular.'<sup>76</sup>

Above all, Egypt has been continuing to implement unilateral huge water development projects without adequately taking the interests of water-scarce upper riparian states into account or any consultation or prior agreement with the latter. Egypt has been diverting the waters of the Nile from their natural course to develop farmlands reclaimed from deserts in violation of the international law to keep the river within its natural basin. For instance, since the mid-1990s, in contrast to the upper riparian states' attempts at rectifying the unfair colonial Nile waters agreements through genuine basin-wide cooperation, Egypt unilaterally planned and implemented the Al-Salam (Peace) canal project to irrigate 250,000 hectares of land in the Sinai Desert by supplying Nile waters through pipelines under the Suez Canal<sup>77</sup> as well as the Toshka canal project to transport about 5 billion cubic meters of water per year through a canal spillway

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Development and Environmental Protection of the Nile Basin, 'The Nile River Basin Action Plan', May 1995, 1 (Ministry of Water and Energy Archive).

<sup>74</sup>Shapland, *Rivers of Discord*, 76.

<sup>75</sup>'Second Ministerial Meeting of the Ministers of Water Affairs of the Nile Basin Countries', Cairo, 18-20 January 1994. (Ministry of Water and Energy Archive).

<sup>76</sup>Yacob, 'Negotiations', 4.

<sup>77</sup>Fissaha Afawork, Ethiopian Embassy in Cairo, to the Directorate-General of African Affairs, Ministry of Foreign Affairs, *Tikimt* 17, 1990 E.C., in Folder No-11, File No-32/3-14/2. (Ministry of Foreign Affairs Archive).

from Lake Nasser to the south-western desert.<sup>78</sup> These Egypt's projects seem to be designed to make the colonial injustice irreversible; by creating facts on the ground and use them as a powerful card to render all future upstream states' attempts at negotiations on the Nile waters apportionment futile and meaningless through a *fait accompli*.

Therefore, Egypt's involvement in this kind of scramble would create a big obstacle to the practical progress towards decolonising the legal regime of the Nile River through inclusive legal institutions for fair and equitable exploitation of the water resource. On the other hand, Egypt's stubbornness to make the unjust *status quo* irreversible would be counterproductive as it might leave the upstream states with no apparent option but to join in the scramble in order to obtain their own legitimate fair share of the Nile waters within their territorial jurisdictions.

### **The Long Journey to Revise the Inherited Colonial Legal Regime of the Nile River**

The Nile Basin states have attempted to renegotiate the colonial water agreements to fulfil the aspirations of the upper riparian states since the 1990s. Perhaps one of the most positive attempts to decolonise the Nile River by the TECCONILE was Project-D3, entitled the 'Nile Basin Cooperative Framework'. As Project-D3 was supposed to promote basin-wide cooperation through equitable utilisation of the Nile waters; it was the only project of the TECCONILE that enjoyed unanimous endorsement by all upstream states.<sup>79</sup> As a result, in the autumn of 1996 the Nile basin countries formed a Panel of Experts (POE) containing three technical experts from each of the basin states. The POE formed the core of the dialogue process among the riparian states in an attempt to attain an adequate and acceptable legal and institutional framework for basin-wide cooperation. It started its protracted dialogue process in January 1997.<sup>80</sup>

However, the Nile riparian states agreed to create a new interim basin-wide organization to replace the TECCONILE, before it concluded Project-D3, known as the Nile Basin Initiative (NBI) on 22 February 1999 in Dar es Salaam. It was said that the organizational structure of the NBI intended to make acceptable permanent legal cooperative framework for integrated

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<sup>78</sup>*Ibid.*

<sup>79</sup>Panel of Experts, 'Nile River Basin Cooperative Framework Project (D-3), Final Reports, Draft Report 1.7, December 1999', 4.(Ministry of Water and Energy Archive).

<sup>80</sup>*Ibid.*

development of the Nile Basin more real than the TECCONILE, which had not been able to implement the 22 projects planned since 1995, due to lack of or insufficient funding promised by donors.<sup>81</sup> The NBI was able to embrace nine Nile riparian states: Egypt, Sudan, Ethiopia, Burundi, Rwanda, Tanzania, Congo, Kenya and Uganda, as full-fledged members, but Eritrea became an observer only.

Although it was very difficult, if not impossible, to think its golden visions could be reality in the Nile basin where grievances and mistrust were well-entrenched, at least on paper, the NBI had excellent objectives, visions, programs and organizational structures. Indeed, there were high hopes, even expectations, that the NBI might be able to decolonize the Nile River through resolving the irreconcilable positions of the lower and upper riparian states<sup>82</sup> with a new spirit of Pan-Africanism. The Cooperative Framework or Project-D3 continued to be the most important agenda among the five themes of the shared vision of the NBI. As it has been mentioned above, the panel of experts (POE), comprising three experts from each of the Nile Basin countries, continued to work out basic principles of the Cooperative Framework Agreement (CFA) that would govern the riparian countries on the use of the Nile waters and be a basis for the establishment of a Nile Basin Commission.<sup>83</sup>

Nevertheless, negotiations for a CFA between the Nile Basin states for several years could not come up with an agreed framework as the colonial legacy deeply divided the lower and upper riparian states. Obviously, the downstream states promoted tenacious and adamant position on maintaining the *status quo* or the colonial legacy. Although Egypt and Sudan had agreed to negotiate on the CFA, particularly Egypt's real interest was unsurprisingly to maintain its claim over its 'Law of Prior Appropriation' and its derivatives, such as 'historical right', 'acquired/established right' or 'user right' over the use of the Nile waters through the colonial period Nile waters agreements. It should be noted that Egypt promoted its 'historical right' over

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<sup>81</sup>Shiferaw Jarso, Minister of Water Resources Development, to the Office of the Prime Minister, *Mesikerem* 6, 1991 E.C., in Folder No-11, File No-33/3-14/2 (Ministry of Foreign Affairs Archive); Nile Basin Initiative Secretariat, 'Nile Basin Initiative: Strategic Action Program', Addis Ababa, Ethiopia, May 2001, 1. (Unpublished document available at the Institute of Ethiopian Studies' Library).

<sup>82</sup>*The Ethiopian Herald*, IV(209), 15 May 1999; Kinfe Abraham, 'The Nile Imperatives, Avenues for Cooperation', in Ministry of Water Resources, Federal Democratic Republic of Ethiopia, *The VIII<sup>th</sup> Nile 2002 Conference Proceedings*, Addis Ababa, Ethiopia, (26-29 June, 2000), 510; Tesfaye, *The Nile question*, 115.

<sup>83</sup>Panel of Experts, 'Nile River Basin Cooperative Framework Project (D-3), Final Reports, Draft Report 1.7, December 1999', 4-6.(Ministry of Water and Energy Archive).

the Nile waters not directly; but indirectly through the principle of ‘obligation not to cause significant harm’ over current use, to maintain the 1929 colonial agreement and its legacy, the unfair bilateral 1959 ‘legal regime’ of the Nile Basin.<sup>84</sup>

This is clearly reflected during the prolonged negotiations over the CFA, which would finally abolish the colonial Nile waters agreements, for more than 13 years. The negotiators of the upper and lower riparian states could not reach a consensus about the wording of Sub-article 14(b) of the draft CFA. The upper riparian states’ negotiators insisted that the sub-article read as follows: ‘... not to significantly affect the water security of any other Nile Basin State.’ Nevertheless, the negotiators of Egypt and Sudan refused to sign the agreement unless the words of the sub-article were revised to: ‘... not to adversely affect the water security and current uses and rights of any other Nile Basin State.’<sup>85</sup> Apparently, the Egyptian and Sudanese unwillingness to revise the colonial water agreements, in general, and their uncompromising demand for the insertion of the phrase ‘current uses and rights’ into Article 14 (b), in particular, is a testament to the embedded colonial mentality in the hydro-politics of the Nile River. The lower riparian states tried their best to preserve colonial agreements through Article 14 (b) that had granted them monopolistic rights over the Nile waters without taking into account the rights and interests of water-scarce present independent upstream states. The prolonged diplomatic efforts to replace the unfair colonial Nile water-sharing arrangements by a genuine legal and institutional cooperative framework have largely turned into a fiasco; and hence the Nile River could not be decolonised. Therefore, the long history of colonialism and the enduring colonial mentality continue to shape the hydro-politics of the Nile River and hinder the utilization of the water resource in the spirit of Pan-Africanism.

On the other hand, Ethiopia and other upper riparian states have openly challenged the *status quo*, which is a naked form of colonization and only favoring Egypt and the Sudan. Thus, Ethiopia, Uganda, Rwanda and Tanzania have already started the decolonizing processes of the Nile River by signing a new agreement called the Nile Cooperative Framework Agreement in Entebbe, Uganda, in May 2010. Subsequently, Kenya and Burundi also acceded to the

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<sup>84</sup>Teferi, p. 377.

<sup>85</sup>Yacob, ‘Negotiations’, 4-5.

convention and became signatories to the agreement, yet Egypt and the Sudan refused to sign it. The signing of the Cooperative Framework Agreement by almost all upstream states is a big step forward to overcome the legacy of colonialism through nullifying past colonial Nile Water Agreements.<sup>86</sup>

### **Conclusions**

The legal regime of the Nile River is conditioned by the Basin's colonial history and Great Britain's strategic concern to secure the unimpeded flow of the river into Egypt. Hegemonic control over the waters of the Nile was a colonial preoccupation, pursued either through direct colonial control over strategic places or through diplomatic negotiations designed to establish legal control over the Nile waters. Unfortunately, the colonial pattern of quest for hegemonic control over the waters of the Nile was subsequently replicated by the downstream states in spite of strong opposition to monopolistic aspiration over a shared water resource from independent downstream states. Therefore, the unsettled and irreconcilable interests regarding the colonial agreements have been at the heart of the struggle over the Nile waters and have impeded basin-wide cooperation in the post-independence era. Egypt and Sudan on one side saw the agreements as historical legacies to be maintained, like the colonial boundaries which African nations inherited from colonialism without modification in perpetuity. On the other side, upstream countries see past Nile agreements as a colonial relic and demand their rights to a fair and equitable share of the Nile waters. These irreconcilable interests are most often veiled by disagreeing hydropolitical positions on the 'fair and equitable share' arguments of upstream states and the 'natural right', 'historic right' and 'no significant harm' arguments of Egypt.

It is certainly true that Egypt depends absolutely on the Nile and therefore Egypt's intense concern for the Nile waters is understandable. It is even understandable that in the age of independent national states seeking their own interests, Egypt should have pursued her interests in the way she has. However, her methods are not of today, since upper riparian states are now independent and seeking to safeguard their interests. Many upper riparian states are not only independent but are now strong and stable enough to insist on their rights and interests. Indeed, the assertiveness of upper riparian states offered promises of non-hegemonistic approaches to the

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<sup>86</sup>*Ibid.*, 5.

Nile waters disputes. The way forward now has to be cooperation of all riparian states, however problematic this still seems.

Therefore, it is imperative for Egypt and the Sudan to avoid zero-sum calculations and listen to the increasing call for 'fair and equitable' Nile waters resource distribution. In this regard, urgent and concrete steps should be taken to decolonise the Nile River by, first, revising all agreements of the colonial period and the bilateral 1959 Agreement for 'full utilization' of Nile waters, between Egypt and the Sudan. The next step is to renegotiate a new Nile Waters Agreement to accommodate the interests of all riparian states based on internationally-accepted principles and a commitment to a win-win solution. Furthermore, institutional mechanisms and cooperation frameworks among the basin states should be built to address the problem of the Nile River in an integrated manner in the spirit of Pan-Africanism.

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