

*The Political Economy of Transboundary
Water Resource Management in Africa*

Most African countries have territory that is located in at least one transboundary water basin (see, for example, Lautze and Giordano 2005, p. 1053), and about 62 percent of the continent's land mass is covered by transboundary water basins (Wolf and others 1999, p. 392). Because of the pervasiveness of transboundary water basins in the continent, "African water management is also, by definition, transboundary water management" (Lautze and Giordano 2005, p. 1054). Hence most water law on the continent has, historically, been transboundary water law.

One can begin the study of water management in Africa by taking a look at existing legal regimes that regulate the allocation of water across the continent. Ordinarily, that would lead one to those institutional arrangements that deal with transboundary water basins—that is, transboundary water law. African transboundary water law consists of agreements and treaties that were concluded in both colonial and postcolonial periods, many international water law conventions and treaties, and various customs and traditions that have, throughout history, regulated water use. To date, researchers have identified "more than 150 agreements, treaties, protocols, and amendments spanning over 140 years and involving more than 20 African basins" (Lautze and Giordano 2005, p. 1054).

During the colonial period, European countries that undertook the development and implementation of transboundary water agreements often did so not to ensure the fair allocation of water to benefit the African populations but to maximize European objectives in the colonies. As a consequence, the settling of boundaries between territories claimed by one European colonizer or another often dominated some of these agreements. For example, the

1891 Anglo-Italian protocol (officially referred to as the Protocol between the Governments of Great Britain and Italy, for the Demarcation of Their Respective Spheres of Influence in East Africa, from Ras Kasar to the Blue Nile) was designed by the two colonial powers not only to deal with water issues but also to settle the boundary between Italian Eritrea and British Sudan. The 1902 Anglo-Ethiopian treaty (Treaties between the United Kingdom and Ethiopia and between the United Kingdom, Italy, and Ethiopia relative to the Frontiers between the Soudan, Ethiopia, and Eritrea) also deals with boundary determination: the treaty aimed to settle the boundary between Sudan, which was at the time a British colony, and Ethiopia.

Jonathan Lautze and Mark Giordano (2005, pp. 1075–87) provide a relatively comprehensive list of African transboundary water agreements and treaties. Our interest in this monograph is not to delve into all the water agreements or into all the continent's water basins. Instead, we take a look at the agreements surrounding the Nile River basin that have regulated the allocation of its waters. Specifically, we provide an overview of the Nile Waters agreements—the 1929 Anglo-Egyptian treaty and the 1959 bilateral agreement between Egypt and Sudan, which the two countries claim to be the main legal framework for the Nile River basin.¹ Today's Nile River riparians, except for Egypt and the Republic of Sudan, consider these agreements anachronistic holdovers from the colonial era and want them abrogated and replaced by a new international watercourse legal regime that enhances equity in the allocation of the Nile River's waters. Egypt and Sudan, however, insist that the existing Nile Waters agreements be maintained or that, in the event a new legal regime is established, Egypt's historical rights—those granted by the original agreements—should be honored.²

Although the Nile Waters agreements specifically mention Egypt's "acquired rights," that virtually all upstream riparian states have renounced these agreements and do not consider them binding brings into question the

1. Officially, Exchange of Notes between His Majesty's Government in the United Kingdom and the Egyptian Government in Regard to the Use of the Waters of the Nile River for Irrigation Purposes (with Seven Diagrams), May 7, 1929, L.N.T.S. 2103; and United Arab Republic and Sudan Agreement (with Annexes) for the Full Utilization of the Nile Waters, Cairo, November 8, 1959, 6519 U.N.T.S. 63. The short forms are used throughout this volume.

2. Although treaties grant rights, those rights are granted as between those states that are parties to the treaties and/or are bound by them. Since the upstream riparian states have made it clear that, as nonparties to these agreements, they are not bound by them, the validity of these rights is in question. Hence, they do not recognize the "historical rights" claimed by both Egypt and the Republic of Sudan.

validity of Egypt's claims.³ All property rights are relative, and treaties or other agreements may grant rights only as between those states that are actually bound by the treaties granting such rights and cannot do so relative to parties that are not bound by the treaties.

The Nile River basin's existing legal arrangements do not provide the wherewithal for the effective management of the basin's multifarious problems, which include the allocation of water, climate change, ecosystem degradation, and resource sustainability. We provide guidelines for the construction of an effective and viable legal mechanism that is capable of achieving fairness and sustainability in the allocation and utilization of the waters of the Nile River, as well as meeting the needs of the basin's economies, which are searching for ways to improve the living standards of their citizens. Such an agreement, we believe, would be acceptable to all riparian states.

Here we examine the failure of the countries of the Nile River basin to provide a legal regime that is acceptable to all and provides the necessary mechanisms for the equitable, fair, reasonable, and sustainable utilization of the waters of the Nile River.⁴ In chapter 2, we provide an overview of the physical characteristics of the Nile River, its tributaries, and sources. We also provide information on the river's riparian states and briefly examine various activities, such as agriculture, that affect water use in the basin. Finally, we examine the impact of climate change on the basin, generally, and water use, in particular.

In chapter 3, we explore various historical events that have contributed to the nature of conflict, specifically that related to the use of water, in the Nile River basin. For example, we take a look at how the U.S. Civil War created opportunities for the development of cotton production in the Nile River basin, significantly changed the political economy in the region, and set the stage for the conflict that currently afflicts the basin.

In chapter 4, we examine the Nile Waters agreements, which are considered a key to understanding the basin's present conflict. Although the downstream riparian states argue that these bilateral treaties represent the basin's legal regime, the upstream states reject that claim, argue that they are not bound by them, and seek to produce a new inclusive legal framework.

Chapter 5 is devoted to an examination of theories of treaty succession and their possible impact on governance in the Nile River basin. Of special

3. See chap. 1, para. 2, of the 1959 bilateral agreement between Egypt and Sudan.

4. A major problem here is that it is not possible to maintain current allocations—that is, those provided by the Nile Waters agreements—and still increase access to the waters of the Nile River for the upstream riparian states. Equity and fairness necessarily imply trade-offs, which must involve a certain level of sacrifice by both Egypt and the Republic of Sudan.

interest is the Nyerere doctrine and how it was used by Britain's former colonies to justify their rejection of treaties that were entered into on their behalf by Britain.

In chapter 6, we examine international water law and its implications for governance in the Nile River basin. Specifically, we examine the UN Convention on the Law of Nonnavigational Uses of International Watercourses and determine the types of insights that it can provide for the Nile River basin countries as they struggle to develop an inclusive legal framework for the basin.⁵

In 1999 the Nile Basin Initiative was signed by the Nile River basin riparian states (except Eritrea) as a mechanism to enhance the equitable, fair, and sustainable utilization of the waters of the Nile River. In chapter 7, we examine the initiative and its relevance to the effective resolution of water-related issues in the Nile River basin.

Chapter 8 is devoted to an examination of the Cooperative Framework Agreement (CFA). In taking a look at this new agreement, we try to resolve the question of whether it can serve as the inclusive legal instrument that would finally bring an end to the struggle between the upstream and downstream states over how to allocate the waters of the Nile River.

In chapter 9, we review the tumultuous relationship between Egypt and Ethiopia, which over the years has had a significant impact on water-related conflicts in the basin. Chapter 10 is devoted to an examination of the Grand Ethiopian Renaissance Dam, a project that is currently under way and is expected to have a significant impact on the demand for and supply of water in the Nile River basin.

Finally, in chapter 11, we suggest a way forward for the Nile River riparian states. Specifically, we conclude from our study that all relevant stakeholders—the upstream and downstream riparians—should engage in negotiations to produce a new inclusive treaty that would provide them with an effective legal mechanism for regulating the use of the waters of the Nile River.

Our goal is not merely to be critical of the current legal regime—the Nile Waters agreements—or to advocate the development and implementation of legal frameworks that would jeopardize the livelihoods of the people of Egypt and the Republic of Sudan or any other riparian state. Instead, we seek to show that inclusive negotiations would produce a legal regime capable of providing an environment leading to equitable, fair, and reasonable management of the Nile River waters and the peaceful coexistence of the populations of the states that share this common resource.

5. UN Convention on the Law of the Nonnavigational Uses of International Watercourses, New York, May 21, 1997, G.A. Res. 51/229, U.N. Doc. A/RES/51/229.