

Commentary

Cooperation over the Use of Nile Water Resources: The Only Option for Peaceful Coexistence

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1. Introduction

The Nile, the longest trans-boundary river constituting eleven riparian states, had been and remains to be one of the most controversial river basin with no peacefully settled agreement on the modalities of use and shares of water acceptable to all member states. The colonial era agreements of 1902, 1929, and 1959 are nullified and voided by all upper riparian states. This is because most of the agreements are entirely biased to the lower riparian states (specifically Egypt) in sharing the Nile water resources and none of these nations assume international legal obligation due to their exclusion from being parties to the agreements (Muluneh and Assefa, 2011). To the assertion of this fact, Mbote (2007) stated that Egypt and Sudan hold absolute rights to use 100 percent of the river's water under agreements reached in 1929 between Egypt and Britain and in 1959 between Egypt and Sudan. Moreover, none of those agreements comply with the internationally accepted legal principles such as the United Nations Water Course Convention (1997). The Convention stipulates the equitable and reasonable utilization, obligation not to cause significant harm, exchange of data and information and peaceful settlement of disputes.

Attempts to initiate a basin-wide settlement of the use of water resources along the Nile inclusive of all riparian countries have not borne any fruits to date. In principle the countries acknowledge the necessity of formulating a legal framework acceptable to all for managing the Nile (Mbote, 2007). But it could not be realized due to unreconciled demands between the upper and lower riparian countries on revising agreements on the water shares during the colonial era. The 1999's Nile Basin Initiative (NBI) is the first postcolonial era initiative. It brought all the basin states, including Egypt, to engage in multilateral relations over the Nile with the aim of achieving socio-economic development through equitable utilization and benefits from the water resources (Nile Basin Initiative, 2020 and Zeitounae and Mirumachi, 2008). The NBI played a key role in facilitating for the initiation of a new comprehensive legal framework for the management of the Nile namely, the Comprehensive Framework Agreement (CFA). The CFA, which aimed at establishing an institutional mechanism for cooperation

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among the Nile Basin States on the use, development, protection, conservation, and management of the river (CFA, 2010), has not become legally binding and operational although it is signed by six and ratified by four member states. The lower riparian countries, Egypt and Sudan, are not yet members to the CFA due to their strict emphasis on assuring water security, current uses, and rights protecting their exiting water share. Their stand is inconsistent with article 14 of the CFA provision that obliges all the Nile Basin states not to significantly affect the water security of the other.

2. Persisting Conflict of Interest over Utilization of Water Resources

Ethiopia is the major source of the Nile contributing 86% of the water flowing across the basin, but it is not able to use a river to which it contributes significant portion of the water. Efforts have been well underway for more than two decades now to achieve socio-economic development and to uplift its people from abject poverty. The nation is yet to give light to 65% of its population, and its need for energy to the emerging industrial economy is far from being fulfilled (Ministry of Foreign Affairs of the FDRE, 2020). This makes Nile a very strategic resource, and its proper utilization is more of a matter of grave necessity than choice. This is notwithstanding the fact that the two lower riparian states, Egypt and Sudan, are also equally in need of using the water resources.

Ethiopia, though the single most important contributor of the water in the Nile Basin, has not initiated a meaningful project of utmost importance to its economy until 2011 when it launched the construction of the Great Ethiopian Renaissance Dam (GERD). Since then, Egypt, Ethiopia, and Sudan were involved in a series of negotiations to reach an agreement on the filling and operation of the Dam that resulted in framing the Declaration of Principles (DoP) in 2015. The DoP serves as a framework agreement to govern the filling and operation of the GERD (DoP,2015). However, the application and interpretation of the DoP at this last phase of finalizing and filling the Dam, and downstream countries insistence on reaching comprehensive deal on future projects and water use along the river has again become a sticking point in the current negotiation process. In short, Ethiopia wants to negotiate on the technical aspects of filling and operation of the Dam while the other two actors demand to assert their exiting water share and preclude any future project along the basin. Sudan is further insisting on matters of safety and security of the Dam. Such competing demands have become sources of continued diplomatic squabbles among Ethiopia, Egypt, and Sudan attracting the attention of many international actors.

Ethiopia emphasizes the instrumentality of the GERD to the national efforts of addressing socio-economic and environmental challenges, to alleviate the country's chronic energy deficit and spurring development through industrialization. The survival and prosperity of its people is inextricably linked to its ability to use its water resources. Ethiopia is unable to provide electricity to 65% of its population with an ever increasing demand for electricity at 19% per annum. For Ethiopia, the construction of the GERD attributes to its legitimate and sovereign right to use the Nile waters which does not cause significant harm to downstream countries. Filling of 18.4 BCM water in two rounds causes no significant harm to them (Ministry of Foreign Affairs of the FDRE, 2020). On the other hand, Egypt has made its stand clear stating that Ethiopia's plan to execute first impoundment of the dam with 4.9 BCM of waters in July 2020 among others jeopardizes the water needs and food security of its people. Its people, according to Egypt, is entirely dependent on the Nile for their livelihood (Ministry of Foreign Affairs of the ARE,2020).

Sudan also presented its comments on the potential positive and negative impacts of the Dam, which more or less are related with technical safety and environmental concerns. The GERD, for Sudan, enables better regulation of water for power generation and irrigation system and reduces annual flood during rainy seasons.

However, it may also pose threat to lives and safety of millions of Sudanese citizens, endangers operational safety of its Dam and poses negative environmental impacts within its territory (Ministry of Foreign Affairs of RS, 2020).

The negotiation process to reconcile such conflicting demands has gone further steps but unable to bring a final negotiated settlement to date due to the intransigent position held by the three parties. The most feasible solution to the exiting dispute on the equitable and fair use of the Nile water, according to very renowned scholars in the field, is to reach a basin-wide settlement and to put a strong institutional mechanism of enforcement. "Collective action in the utilization of trans-boundary water resources can, in principle, provide optimal results" in the framework of sharing benefits by addressing heightened tensions related to "distributional nature of water conflicts" (Benvenisti, 2004, p.33). By this, scramble for a larger share of water might be reduced with each actor having a predefined right to use (Zeitounae&Mirumachi,2008). Contrary to such claims, efforts at reaching basin-wide settlement of the use of the Nile waters have been obstructed. This has been due to the highly polarized demands presented by the co- basin states and specially Egypt and Sudan strictly sticking to colonial era agreements.

3. Historical Rights or Historical Injustice?

Almost all the colonial agreements were either designed to entirely block upper riparian states from conducting any construction work that affects the natural flow of the river or to unilaterally recognize the highly disputed "historical and natural rights" claims of Egypt. It sounded to grant Egypt a veto power and hegemonic status in utilizing the water resources only for its own end and rejecting any attempt or even claims of equitable and reasonable utilization by the upper riparian states (Muluneh &Assefa, 2011). Besides, the 1902 and 1929 agreements that prohibited any construction project on the Nile Basin and recognized only Egypt's historical rights respectively, the 1959 bilateral agreement between Egypt and Sudan nailed the hegemonic status. It allocated 66% (55.5 Billion Cubic Meter) and 22% (18.5 BCM) of the water flowing through the Nile respectively to the nations, totally disregarding the water rights of all other upper riparian states including Ethiopia (Swain, 1997). The feasibility of strictly adhering to such exclusionary treaties might be questioned from the very intention of the agreements. Colonial agreements were basically aimed at extraction and exploitation of the occupied territories and were usually concluded among parties of unequal power positions asserting the lopsided relations between them.

If we go 60 years back, most African nations were only under the whim and struggles of detaching their people from the yoke of colonialism. They fought colonialism to avert its dismal effect of unjustness and inequality. Colonial era treaties not only sustain inequality but up hold them as foundational principles to sustain exploitation and extraction in favor of the oppressors. It is, therefore, long held that colonialism and the principles it upheld were existential threats to human dignity and equality. Hence, it might be advisable to consider that the agreements had already served the interest of the then colonialists and there is a dire need for their immediate revision if current needs have to be served and disputes are peacefully settled. In this regard, Periman, Veilleux and Wolf (2017) asserted that the Nile water treaties are best instances of colonial era treaties standing on the way of negotiated settlement of trans-boundary water resources use due to allocations to some members of the basin such as Egypt and Sudan. More cooperative framework turning around from the status quo could help to break the intransigence. "Once cooperative water regimes are established through treaties, they turn out to be impressively resilient over time" (Wolf et al, 2003 cited in Zeitounae & Mirumachi, 2008, p. 303). Hence, breaking the deadlock may require political will and commitment.

Diplomatic wrangling in effect has continued to maintain existing and historically practiced use of water share emphasizing more political than technical aspects of the negotiation. Such an approach does not emphasize the real implications (benefits and damages inflicted) for parties when one or another co-basin state is making (effecting) new use of the water resources and fails to clarify the actual mitigating measures to be executed by the user. Politicization of the negotiation process rather emphasizes existing power positions and the ability to put more diplomatic pressures from inside and outside. A politicized approach to trans-boundary water resources negotiation stresses the power asymmetries involved in a conflict situation emphasizing exercise of perceived or actual hegemonic position by an actor (Benvenisti, 2004). The Nile water issues has always been politicized through the manipulation of water share, alienating key stakeholders from negotiation processes such as Ethiopia, signing exclusionary agreements and even intervening in the internal affairs of other nations (Zeitounae&Mirumachi,2008 emphasis added).

In an asymmetric power approach where a state assumed a hegemonic status and opted for political approach to negotiation, the interest of less powerful states might be undermined in the face of the earlier opting to consistently promote its best interest (Warner &Zawahri,2012). Lasting solution can be rather achieved, specifically in the Nile water basin, if the negotiation process focuses on cooperation and recognition of each other's interest other than asserting economic, military, and political hegemony. This becomes true when some states such as Ethiopia have pressing socio-economic needs of a higher urgency that could be partly addressed by the use of the water resources. Such countries may assume, for obvious reasons, a revisionist stand in initiating new frontiers of agreements to write off exiting inequalities between parties and challenge the ability of the hegemonic state to sustain asymmetric cooperation and create its preferred mechanisms of trans-boundary water management (Periman, Veilleux, & Wolf, 2017).

The issue of efficient management and development of trans-boundary water resources has never been an easy task to deal with (Biswas,2008) as the path of diplomacy and negotiation process could be bumpy and uncertain. However, stakeholders' commitment to settle disputes in the most amicable manner through a long process of trust and confidence building could help addressing most of the matters and could averse the perceived risks for each party and reduces tensions and conflicts. In this regard, Biswas underlined the most likely scenario where co-basin states that currently negotiate new treaties prefer to resolve their difference on bilateral and multilateral forums of their own other than through a third party international intermediary of an organization or states (2008). Third party involvement comes with some level of influence by an outside party on the outcomes of the negotiation process. Third party engagement could be either through invitation, offer or enforcement. The former two cases could play constructive role to keep the negotiation process going by extending technical supports and suggesting reconciliatory proposals for reconsiderations by the parties. However, enforced third party holding its own interest might redirect the course of the discussion process by promoting the interest of one or another stakeholder followed by possible sanction or coercion to accept a particular course of action (Periman, Veilleux& Wolf,2017). The final outcome of the treaty, under such circumstances, could turn out to serve the needs of some of the actors while sidelining outstanding interests of the others.

The ongoing negotiation process over the GERD among the Nile co-basin states cannot be an exception to these rules. The modalities with which the negotiation has to go on should not fall under the whims and powers of some stakeholders, but rather be equally designed by all actors. Efforts at harnessing alliances and blocks of power to put more pressure from outside could come with ineffectual outcomes of its own on the negotiation process. Finding internal solutions in the most amicable manner and presenting feasible demands and interest could lead to a negotiated settlement with satisfactory outcome to all involved in the process.

Any negotiated settlement should recognize the lower riparian states need for water from Nile and their long time dependence. It should also equally recognize the development need and rights of the upper riparian

states for equitable and fair use of the resources and specially Ethiopia as the major contributor of the waters of the basin. The parties should commit themselves to the recognized principles of fair and equitable utilization of the Nile waters causing no significant harm to each other in the spirit of good faith and brotherhood. This should be exhibited through their continued efforts to involve in multilateral diplomatic engagements of their own initiatives considering each other as highly valued partners and all of them in need of utilizing the waters from the river. Working towards a basin-wide legal framework could also give a lasting solution to the long existed disputes by putting predictable institutional mechanism in place avoiding distrust and risks and building confidence among the co-basin states. This, however, requires detachment from the status quo and commitment to negotiate in good faith. A factual statement by Yoffe et al.(2003), cited in Periman, Veilleux and Wolf (2017, p.109), stated that “it is not shortage of water or lack of water that leads to conflict but how water is governed and managed” that leads to disputes indicating the need to put “stronger policies in place”.

As Benvenisti (2004) opines, countries are left with two options in the management of trans-boundary resources: conflict and cooperation. In the 21st Century, war is the most destructive and uncivilized alternative to settle differences among nations. We are living in an era of multilateral diplomacy and in a time when nations have more than ever realized the values of cooperation and peaceful settlement of disputes. Focusing on giving to take approach in the negotiation process and building trust and confidence in each other will lead to agreed settlement and further stronger cooperation among the nations involved.

4. Current Developments and the Way Forward

A major sticky point of the ongoing negotiation process of the GERD among Egypt, Sudan and Ethiopia has been whether the first filling of the Dam has to start before reaching a comprehensive agreement among them or not. This has been passed over with Ethiopia officially announcing the completion of the first stage filling of the Dam on 22nd July, a move fiercely objected by the two lower riparian countries. The official announcement clarified about the accumulation of sufficient water in the Dam due to over flow in the rainy season that is good enough to enable Ethiopia to test the first two turbines of the Dam. This first phase impoundment was considered an “important milestone” and a promising step to produce energy in the near future. Such a decisive measure however resulted in strong opposition and diplomatic pressure from the two downstream countries (“Ethiopia Says it has Reached”, 2020).

Ethiopia’s determined move might be a game changer in the negotiation process by enhancing its bargaining power and might also practically prove its previous stand. This is by showing that filling and operating the Dam does not have significant adverse effect on the water share and survival of Egypt and Sudan as actually been continuously reported to the international community. It could further more build public confidence about the success of the Dam and buy more support towards it. On the other hand Ethiopia may need to show more resilience in the face of pressure coming up from powerful international actors such as the USA which hinted the possibility of cutting some or all the non-humanitarian aid possibly targeting Development Finance Cooperation (Gramer, 2020). The U.S. State Department warning that “time is running out for reaching an agreement on disputed Nile Dam” may need to be seriously considered by Ethiopia (Herbling, 2020). It may implicate Ethiopia for the lack of success in the process and measures could follow to put more pressure on it. Creating a much better understanding of the situation to the international community through intensive diplomatic engagement might help to ease ensuing pressures. Such a move has to be accompanied with keeping the door open for negotiation until achieving a balanced and fair deal beneficial to all parties.

Global experiences testify that Ethiopia could be an exceptional upper riparian country with no meaningful development project in a river basin to which it contributes significantly high amount of water while the resources

are needed to address dire economic needs. It is also unusual for upper riparian countries like Ethiopia to seek and push for a basin wide inclusive legal framework to ensure a fair and equitable share and utilization of water resources. This should have been a case to be advocated by the lower riparian countries. The usual trend is for upper riparian countries to stick to the absolute territorial sovereignty principle asserting their full freedom to utilize water that originates from their territory irrespective of its adverse effect on other countries. On the other hand, lower riparian countries demand the continued flow of “fixed amount of water” from the source of water (Muluneh & Assefa, 2011, p. 411). Hence, Ethiopia’s gesture to share the water resources of the Nile and its readiness to fully recognize the importance of the river to the lower riparian countries should be considered a big opportunity to come up with a legal framework beneficiary and agreeable to all countries.

As a result, two major factors may determine the success of the ongoing negotiation process on the filling and operation of GERD among Ethiopia, Egypt and Sudan. The first one is that the three parties should recognize that the GERD is just a single dam which has nothing to do with dividing water share among them. The talks should focus on mitigating the perceived and identified risks of the dam and maximizing benefits to the three countries. Second, all the parties should take the other eight riparian countries and their water sharing and utilization interests in to account. As a result, the negotiation should recognize the right of the other nations to involve in any comprehensive legal framework. Therefore, avenues should be open for the formulation of basin wide agreement that gives equal voice to all riparian countries. This reinforces the first recommendation that the ongoing negotiation should not focus on securing water share from the Basin but only on setting guiding principles on the filling and operation of the Dam as clearly stipulated in the DoP. Focusing on such direction in the diplomatic process could help to sustainably address the conflicts on the Nile Basin and opens the door for cooperative use of the water resources in the future.

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Authors’ contributions

Ermyas Admasu fully involved in reviewing materials and analyzing current developments on the issue under discussion. Hence, it is a sole author commentary.

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References

- Agreement on declaration of principles.(2015). KhartoumSudan.
- Agreement on the Nile river basin cooperative framework. (2010). Entebe, Uganda.
- Biswas,A.K. (2008). Management of transboundary waters: An overview. In Olli Varis, Cecilia Tortajada and Asit K. Biswas (Eds.), *Management of trans boundary rivers and lakes*.Berlin: Springer.
- Benvenisti, E. (2004). *Sharingtrans boundary resource: International law and optimal resource use*. Edinburgh, UK: Cambridge University Press.
- Ethiopia says it has reached first-year target for filling divisive mega-dam. (2020, July 22). *France 24*.<https://www.france24.com/en/20200721-ethiopia-says-it-has-reached-first-year-target-for-filling-divisive-mega-dam>.
- Federal Democratic Republic of Ethiopia. (2020). A letter sent to the United Nations Security Council.
- Gramer, R.(2020, July 22). Trump mullswithholding aid to Ethiopia over controversial dam.*Foreign Policy*.Retrieved from<https://foreignpolicy.com/2020/07/22/trump-administration-africa-aid-ethiopia-egypt-gerd-nile-sudan-dispute-negotiations/>.
- Herbling, D. (2020, August 3). U.S. says time running out for agreement on disputed Nile dam. *Bloomberg*.Retrieved from<https://www.bloomberg.com/news/articles/2020-08-03/u-s-says-time-running-out-for-agreement-on-disputed-nile-dam>.
- Mbote, P.K. (2007). Water, conflict and cooperation: Lessons from the Nile River Basin. Woodrow Wilson International Center for Scholars. *Navigating Peace*, (4). Washington, USA.
- MulunehYitayew & Assefa Melese.(2011). Critical water resource issues in the Nile River Basin. In A.M.Melese, Wossenu Abteu and Shimelis G. Setegn (Eds.), *Nile River Basin: Echo hydrological challenges, climate change and hydro politics*. Springer.
- The Arab Republic of Egypt. (2020). A letter sent to the United Nations Security Council.
- The Nile basin initiative (2020, May 28). Who we are.<https://www.nilebasin.org/index.php/what-we-do/what-we-do>.
- Perlman,P., Veilleux,J.C. &Wolf, A. (2017). International water conflict and cooperation: Challenges and opportunities. *Water International*, 42(2), 105-120.
- Republic of Sudan. (2020). A letter sent to the United Nations Security Council.
- Swain, A.(1997). Ethiopia, the Sudan and Egypt: The Nile River Dispute.*Journal of Modern African Studies*,35(4), 675-694.
- Tesfalem Tekle. (2020, August 4). Nile dam talks resume as Ethiopians celebrate progress. *The East African*.Retrieved from<https://www.theeastafrican.co.ke/tea/rest-of-africa/nile-dam-talks-resume-as-ethiopians-celebrate-progress--1912630>.
- United Nations .(1997). *Convention on the law of the non-navigational uses of International Water course*.
- Warner,J. &Zawahri,N.(2012). Hegemony and asymmetry: Multiple Chessboard Games on Trans Boundary Rivers. *Int. Environ Agreements*, 12 , 215-229.
- Zeitounae,M. & Mirumachi,N. (2008). Trans-boundary water interaction I: Reconsidering conflict and cooperation. *Environ Agreements*, 8 , 297-316.