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The Nile Basin Cooperative Framework Agreement: a peacefully unfolding African spring?

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Disputes between Egypt and Sudan on the one hand and the Nile upper riparians on the other hand have dominated the Nile Basin for the last half-century. Nevertheless, there have been attempts at cooperation, and they culminated in the establishment of the Nile Basin Initiative and negotiation of the Nile Basin Cooperative Framework Agreement (CFA). Ironically, the CFA resulted in solidification of the areas of differences and the emergence of the upper riparians as a power to be reckoned with. This article discusses the areas of difference over the CFA and analyzes its current status and the prospects for cooperation.

Keywords: Cooperative Framework Agreement; equitable and reasonable utilization; existing uses and rights; Nile Basin; Nile treaties; United Nations Watercourses Convention

Political geography of the Nile Basin

The Nile is the longest river in the world, flowing for more than 6,650 km from its origins in Burundi and Rwanda to the Mediterranean Sea. It has a basin area of more than three million km², extending over 11 countries that share the river, and covering one-tenth of the African continent (Collins 2002). About 300 million people live by or depend on the waters of the river, and the figure is expected to reach 500 million by 2030.

The Nile River system consists of two distinct basins, the White Nile and the Blue Nile. The White Nile has its origins in the springs rising from the hills of Burundi and Rwanda. These springs combine to form the Kagera River, which flows into Lake Victoria. The lake is the main source of the White Nile, and is shared by Tanzania, Uganda and Kenya. After exiting from the lake, the Victoria Nile flows through Lakes Kyoga and Albert, and thereafter enters the Republic of South Sudan, where it is named Bahr el Jebel. It is joined there from the west by Bahr el Ghazal which originates in South Sudan, and from the east by the Sobat River which originates in Ethiopia.

After it re-emerges from the three major swamps of South Sudan (the Sudd, the Machar/Sobat and the Bahr el Ghazal), where evaporation and seepage consume much of its flow, the river is named the White Nile. The White Nile crosses the Republic of South Sudan into Sudan and is joined in Khartoum by the Blue Nile, which originates in Ethiopia. These two rivers form the River Nile, which is joined thereafter by the Atbara River, the
last tributary to join the Nile. The river thereafter flows through northern Sudan before crossing into Egypt and emptying whatever is left of its waters into the Mediterranean Sea (Waterbury 2002).

The stakes of the Nile Basin states – their interests in, contribution to and uses of the Nile waters – vary considerably. The stakes of Egypt, Sudan, South Sudan and Ethiopia in the Nile are classified as very high; those of Uganda as high; those of Tanzania, Kenya, Burundi, and Rwanda as moderate; and those of Eritrea and the Democratic Republic of Congo as low (Salman 2011a). Ethiopia contributes about 86% of the total flow of the Nile waters, while the Equatorial Lakes provide the remaining 14%. Yet, Egypt and Sudan use almost the entire flow of the river. Naturally, this is where the disputes over the Nile Basin begin; and they are interwoven with what are termed “the Nile colonial treaties”, although not all of these treaties were concluded during the colonial era.

**Treaties and disputes over the Nile waters**

A number of treaties on the Nile River were concluded during the last two centuries, and most of them are causes of dispute. One treaty that is a source of a major dispute between Ethiopia on the one hand and Egypt and Sudan on the other is the “Treaty between Ethiopia and the United Kingdom, Relative to the Frontiers between the Anglo-Egyptian Sudan, Ethiopia, and Eritrea”, concluded in 1902 in Addis Ababa (Nile Treaty 1902). The treaty states in Article III that Emperor Menelik II 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”. The treaty has long been a source of bitter dispute between Ethiopia and Egypt over the Nile. Ethiopia vehemently rejects this treaty, claiming that it was not ratified by any of the government organs and that the Amharic and English versions of the treaty are different with respect to the said article (Degefu 2003, pp. 96–99). Egypt insists that the treaty is valid and binding on Ethiopia, and that according to its provisions Ethiopia cannot build any project prior to Egypt’s agreement as a successor to the treaty. Thus, this treaty is a major source of dispute between Ethiopia on the one hand and Egypt and Sudan on the other.

Another treaty that is a major source of dispute is the 1929 Nile Waters Agreement concluded by Britain on behalf of its East African colonies of Kenya, Uganda and Tanganyika, as well as Sudan, on the one hand, and Egypt on the other (Nile Treaty 1929). Paragraph 4 (ii) of the agreement states: “Except with the prior consent of the Egyptian Government, no irrigation works shall be undertaken nor electric generators installed along the Nile and its branches nor on the lakes from which they flow if these lakes are situated in Sudan or in countries under British administration which could jeopardize the interests of Egypt either by reducing the quantity of water flowing into Egypt or appreciably changing the date of its flow or causing its level to drop.”

Upon attaining independence in the early 1960s, Kenya, Uganda and Tanganyika (which was succeeded by Tanzania as a result of the unification of Tanganyika and Zanzibar in 1964) argued that they are not bound by this agreement because they were not parties to it (Garretson 1967). These countries also invoked the Nyerere Doctrine (named after Julius Nyerere, the first prime minister and later president of Tanganyika, and thereafter Tanzania), under which Mr Nyerere gave the treaties concluded during the colonial era two years to be renegotiated, after which they would lapse if no new agreement was reached (Mekonnen 1984).
Egypt, on the other hand, invoked the principle of state succession to support its claim that the 1929 agreement remains valid and binding. Egypt claims that, like the 1902 treaty with Ethiopia, the agreement gives Egypt veto power over any project on the Nile that would jeopardize the interests of Egypt (Tvedt 2004).

A third treaty, which is a source of bitter dispute between Egypt and Sudan on the one hand and the other Nile riparians on the other hand, is the 1959 Nile Waters Agreement (Nile Treaty 1959). The agreement was concluded in Cairo on 8 November 1959 and entered into force on 22 November 1959. The agreement established the total annual flow of the Nile (measured at Aswan) as 84 billion cubic meters (km$^3$), and allocated 55.5 km$^3$ to Egypt and 18.5 km$^3$ to Sudan. The remaining 10 km$^3$ represent the evaporation and seepage at the large reservoir created by (and extending below) the Aswan High Dam in southern Egypt and northern Sudan. Thus, Egypt and Sudan allocated the entire flow of the Nile, as measured at Aswan, to themselves. Indeed, the agreement itself is titled “Agreement between the United Arab Republic and the Republic of the Sudan for the Full Utilization of the Nile Waters”.

The agreement sanctioned the construction of the Aswan High Dam in Egypt and the Roseiris Dam on the Blue Nile in Sudan. The agreement established the Permanent Joint Technical Committee, with an equal number of members from each country, as the institutional mechanism for the joint management of the Nile. While Egypt and Sudan recognized the claims of the other riparian states to a share of the Nile waters if the other states so requested, they reserved to themselves the ultimate decision on whether these states would get a share, and if so, how much. They further entrusted the Permanent Joint Technical Committee with supervision of the use of any amount so granted to any such riparian. In support of their water allocation under the 1959 agreement, Egypt and Sudan claim historic and established rights to the waters of the Nile (Krishna 1988).

This agreement is totally rejected by the other riparian states, which argue that they are not parties to it and have never acquiesced to it. As riparians, they consider the claims of Egypt and Sudan to the entire flow of the Nile an infringement of their rights under international law to a reasonable and equitable share to the Nile waters, given that the entire flow of the Nile originates within their territories (Okidi 1994). Clearly, the basic dispute is about the allocation of the Nile waters, and is intertwined with the 1902 and 1929 treaties, whose validity is disputed by the upstream riparians, as well as the 1959 bilateral agreement (Swain 1997).

**Genesis of the attempts towards cooperation**

Despite these disputes, the Nile riparians started looking at ways of working together. This process started with the meetings in the mid-1960s to discuss the rising levels of Lake Victoria that led to the Hydromet project. There were speculations that the rising levels might have been caused by the Sudd swamps and/or by the Aswan High Dam that was about to be completed at that time. Accordingly, Egypt and Sudan were invited, and they happily joined the Hydromet project. The process continued and proceeded through the Undugu Group (the Swahili word for brotherhood) in the 1970s and 1980s; TECCONILE; and the Nile 2002 conferences in the 1990s (Brunnee and Toope 2002). However, these efforts did not go beyond attempts to improve communication between the Nile riparians.

Building on these efforts, the World Bank and the United Nations Development Programme (UNDP), together with some other donors, started in 1997 to facilitate the establishment of a more formal setting for cooperation among the Nile Basin riparians. This mechanism was called the Nile Basin Initiative (NBI). After a series of informal
meetings, the NBI was officially established by the Nile Basin states at the meeting of their respective ministers of water resources held in Dar-es-Salaam, Tanzania, 22 February 1999. The agreed minutes of the meeting, signed by the ministers in attendance, included the overall framework for the NBI and its institutional structure and functions. All the Nile riparian states became members of the NBI, except Eritrea, which opted for being an observer (NBI 2012). South Sudan applied for membership in the NBI following its formal secession from Sudan 9 July 2011, and its membership was approved 5 July 2012.

The NBI is established as an intergovernmental organization, and has been viewed as a transitional arrangement to foster cooperation and sustainable development of the Nile River for the benefit of the inhabitants of those countries. It was able to bring together for the first time the (at that time) 10 riparian states at the ministerial level. It is guided by a shared vision “to achieve sustainable socio-economic development through equitable utilization of, and benefit from, the common Nile Basin water resources” (NBI 2012). As will be discussed later, the emphasis on equitable utilization is quite noteworthy.

The NBI is managed by a transitional institutional structure, including the NBI Secretariat, located in Entebbe, Uganda, and two project offices, one in Addis Ababa, Ethiopia, for the Eastern Nile, and the other in Kigali, Rwanda, for the Southern Nile (also called the Nile Equatorial Lakes). In addition, the organs of the NBI include the Council of Ministers of Water Resources of the Nile Basin Countries (Nile-COM), which provides policy guidance and makes decisions on major matters relating to the NBI.

Consequent to the establishment of the NBI, the Nile Basin Initiative Act was enacted by the Republic of Uganda in October 2002 to give the force of law in Uganda to the signed agreed minutes of the meeting of the Nile-COM, held in Cairo, Egypt, 14 February 2002. According to the agreed minutes, the ministers decided to “invest the NBI, on a transitional basis, with legal personality to perform all of the functions entrusted to it” (Nile Basin Initiative Act 2002). A headquarters agreement was concluded between the government of the Republic of Uganda and the NBI in Kampala on 4 November 2002, following the enactment by Uganda of the Nile Basin Initiative Act.

The Nile Basin Trust Fund was thereafter established for financing joint projects in the Nile riparian states, with funding from a number of multilateral and bilateral donors. The World Bank, which has spearheaded the mediation efforts of the NBI, also administers the trust fund.

The Nile Basin Cooperative Framework Agreement

The main objective of the NBI has been to conclude a cooperative framework agreement that would incorporate the principles, structures and institutions of the NBI and that would be inclusive of all the Nile riparians. Work on the Nile Basin Cooperative Framework Agreement (CFA) started immediately after the NBI was formally established in 1999, and continued for more than 10 years. However, the process ran into some major difficulties as a result of the resurfacing and hardening of the respective positions of the riparians over the colonial treaties, as well as the Egyptian and Sudanese claims to what they see as their acquired uses and rights of the Nile waters.¹ Those differences, as discussed later, persisted and could not be resolved at the negotiations level, and were eventually taken to the ministerial meetings that took place in Kinshasa, Alexandria and Sharm El-Sheikh in 2009 and 2010. However, those meetings in turn failed to resolve those differences, and no agreement on the final draft CFA could be reached.

On 14 May 2010, four of the Nile riparians (Ethiopia, Tanzania, Uganda and Rwanda) signed the CFA in Entebbe, Uganda, and were joined five days later by Kenya (Nile
Cooperative Framework Agreement 2010). On 28 February 2011, Burundi joined those five states and signed the CFA. Although the Democratic Republic of Congo indicated its support of the CFA, it has not yet signed it. The CFA is also referred to as the “Entebbe Treaty” or “Entebbe Agreement” because it was signed at Entebbe, Uganda.

The CFA lays down some basic principles for the protection, use, conservation and development of the Nile Basin. The CFA establishes the principle that each Nile Basin state has the right to use, within its territory, the waters of the Nile River Basin, and lays down a number of factors for determining equitable and reasonable utilization. In addition to the factors enumerated in the United Nations Watercourses Convention,² the CFA includes the contribution of each basin state to the waters of the Nile River System, and the extent and proportion of the drainage area in the territory of each basin state.

The CFA also includes provisions requiring the Nile Basin states to take all appropriate measures to prevent the causing of significant harm to other basin states. The CFA indicates further that where significant harm nevertheless is caused to another Nile Basin state, the states whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of the CFA on equitable and reasonable utilization, in consultation with the affected state, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation. These provisions are exactly the same as those of the Watercourses Convention.

The articles of the CFA on equitable and reasonable utilization and the obligation against causing significant harm resulted in the same discussion and controversies that the respective provisions of the Watercourses Convention generated in the 1990s. As a general rule, the lower riparians favour the no-harm rule, since it protects their existing uses against impacts resulting from activities undertaken by upstream states. Conversely, upper riparians favour the equitable utilization principle because it provides more scope for states to utilize their share of the watercourse for activities that may impact downstream states (Salman 2010). However, it is widely believed that the Watercourses Convention has resolved this controversy by subordinating the obligation against causing significant harm to the principle of equitable and reasonable utilization (Bourne 1997, p. 158, Paisley 2002, McCaffrey 2007, p. 408, Salman 2007). This belief is supported and strengthened further by the decision of the International Court of Justice in the Danube case, where the court repeatedly emphasized the principle of equitable and reasonable utilization and made no reference to the obligation against causing significant harm (Gabcikovo-Nagymaros Project 1997, Salman 2010).

**Areas of differences over the Cooperative Framework Agreement**

In an attempt to address the controversies and differences over these two principles between Egypt and Sudan on the one hand and the remaining riparians on the other, the CFA introduced the concept of water security. Article 2 of the CFA defines water security as “the right of all Nile Basin States to reliable access to and use of the Nile River system for health, agriculture, livelihoods, production and the environment”. Article 14 requires the basin states to work together to ensure that all states achieve and sustain water security. However, these paragraphs did not satisfy Egypt and Sudan, which want to ensure, through an additional clause, that their existing uses and rights are fully protected under the CFA.

Egypt and Sudan demanded and insisted that Article 14 of the CFA include a specific provision, to be added at the end of the article, which would oblige the basin states “not to adversely affect the water security and current uses and rights of any other Nile Basin State”. The position of Egypt and Sudan revived the longstanding disputes related to the
treaties discussed above, namely Egypt’s veto power and Egyptian and Sudanese claims to their existing uses of and rights to the Nile waters under the 1959 Nile Agreement.

It should be added that Egypt and Sudan signed off on the objective of the NBI, which is “to achieve sustainable socio-economic development through equitable utilization of, and benefit from, the common Nile Basin water resources”. However, the two countries insisted throughout the CFA entire negotiation process on their existing uses and rights, and this is basically a claim to the no-harm rule. This position is tantamount to a demand for unequivocal recognition of those treaties and Egypt’s veto power, and the upper riparians do not see it as consistent with the vision of the NBI. No wonder that this position was totally opposed by the upper riparian states, which rejected the new clause demanded by Egypt and Sudan.

Thus, rather than assisting in the resolution of the controversies over the principle of equitable and reasonable utilization and the obligation against causing significant harm, the introduction of the third concept of water security simply widened the gap and exacerbated the differences over the two principles between the Nile’s lower and upper riparians, and over the CFA as a whole (Mekonnen 2010). Indeed, the concept turned out to be an unnecessary and unfortunate addition and a complicating factor. It is a more or less redundant reiteration of the principle of equitable and reasonable utilization and the obligation against causing significant harm. This is because the CFA defines water security as the right of all Nile states to a reliable access and use of the Nile waters (equitable and reasonable utilization), and at the same time the CFA requires these states to work together to ensure that all states achieve and sustain water security (obligation against causing harm). The Nile upper riparians went ahead with it because it reinforced their belief that the CFA subordinates the no-harm rule to the equitable and reasonable utilization principle. On the other hand, Egypt and Sudan thought they would inject the new clause to fully protect their existing uses and rights.

As a result, the new concept of water security simply reopened the major pre-NBI differences on colonial treaties and existing uses and rights, and derailed the CFA negotiations process. It is worth adding that this concept does not exist in any other multilateral or bilateral water treaty, and is not a legal theory per se but merely a political and socioeconomic concept.

Besides the issue of water security, Egypt and Sudan demand that the CFA include explicit provisions on the notification of other riparians of planned measures which may cause significant adverse effects to other riparians. The CFA requires the Nile Basin states to exchange information on planned measures through the Nile River Basin Commission to be established under the CFA, and includes no explicit provisions on notification. Ethiopia opposed notification of other riparians because of its concerns that such notification may be construed as recognition of the 1902 treaty. As discussed, Egypt claims that the treaty granted it veto power over projects on the Nile in Ethiopia. Ethiopia further alleges that it was not notified by Egypt and Sudan of any project affecting the Nile, and so it is not obliged to notify them. In support of their claim, Egypt and Sudan demand that provisions on notification of other riparians in line with those included in the World Bank Policy for Projects on International Waterways and the Watercourses Convention be included in the CFA.

It is worth noting in this regard that neither Egypt, nor Sudan, nor any of the Nile riparian states is a party to the Watercourses Convention. The convention was adopted by the United Nations General Assembly on 21 May 1997, by a vote exceeding 100 members. It has not yet entered into force because it needs 35 instruments of ratification to do so. As of October 2012, it has 28 parties, 7 short of the required number. Kenya and
Sudan voted for the convention, while Burundi voted against it. Egypt, Ethiopia, Rwanda and Tanzania abstained, while Eritrea, the Democratic Republic of Congo and Uganda did not participate in the vote. Thus, the invocation by Egypt and Sudan of the convention’s provisions is quite interesting.

Another major difference between the parties relates to the manner in which the CFA would be amended. While Sudan and Egypt demand that the CFA be amendable by consensus, or a majority that includes both Egypt and Sudan, the other riparians insist that it be amendable by a simple majority of the riparian states, whether that includes Egypt or Sudan or not, with no veto power for any riparian.

It should be added that the CFA distinguishes between “Nile River Basin” and “Nile River System.” It defines Nile River Basin as “the geographical area determined by the watershed limits of the Nile River System of waters; this term is used where there is a reference to environmental protection, conservation or development”. It defines Nile River System as “the Nile River and the surface waters and groundwaters which are related to the Nile River; this term is used where there is a reference to utilization of water”. No conclusive agreement has been reached on those definitions. Egypt has been claiming that the definition of Nile River System applies to both environmental protection and water allocation. This would mean, according to Egypt, that the waters of the Nile would include not only the 84 km$^3$ measured at Aswan and specified by Egypt and Sudan in the 1959 Nile Agreement, which the two countries currently fully utilize (blue water), but also the more than 1600 km$^3$ of rainwater that Egypt claims falls annually on the basin area (green water). In other words, Egypt would want to include not only the waters that flow in the river but also the rain that falls on the entire basin area. $^5$ This would be an increase of close to 1800% compared to the Nile current flow of 84 km$^3$ measured at Aswan. Under this scenario, Egypt’s current uses would be a small fraction of the “Nile River System”. If Egypt insists on this definition, it will certainly infuriate the other riparians, who consider it absurd. It would add another major complication to the CFA negotiations, and to the already difficult relations between the Nile’s upper and lower riparians.

Thus, a wide array of major issues divide the two groups of Nile riparians. This intricate situation was exacerbated further by the February 2011 signature of Burundi as the sixth riparian of the CFA, as mentioned earlier, rendering the entry into force of the CFA a possibility. This is because the CFA needs, according to its own provisions, six ratifications to enter into force and effect. The emergence of the Republic of South Sudan as an independent state on 9 July 2011 and its admission to the NBI on 5 July 2012 is another development that favours the upper riparians. South Sudan is expected, based on ethnicity, geography, history, culture and interests, to side with the Equatorial Lakes countries and Ethiopia, and to adopt their stance on Nile Basin and CFA issues (Salman 2011a).

However, entry into force of the CFA with only those six, or even seven, riparian states would result in some major legal problems and complications. The CFA establishes the Nile Basin Commission to promote and facilitate the implementation of the principles, rights and obligations set forth in the CFA, and to serve as an institutional framework for cooperation among the Nile Basin states. Article 30 of the CFA states that upon entry into force of the CFA the commission shall succeed to all rights, obligations and assets of the NBI. The immediate question that arises is: What will happen to the rights and obligations under the NBI of the states that are not parties (and do not plan to be parties) to the CFA? This situation, if it does materialize, will raise some difficult legal issues and exacerbate the existing disputes over the CFA. Clearly, the mediators and drafters of the CFA neither took into account nor anticipated the occurrence of this situation.
The challenges and opportunities of the Grand Ethiopian Renaissance Dam

In addition to the disputes over the CFA, another dispute erupted in March 2011 when Ethiopia announced its plans to build the Grand Ethiopian Renaissance Dam (known formerly as the Grand Millennium Dam). The dam would be built on the Blue Nile, about 40 km from the Sudanese border. It would have a power generating capacity of more than 5000 MW, create a reservoir that would hold 62 km$^3$ of water, and cost close to $5 billion (Salman 2011b). Ethiopia claims that the dam will benefit Egypt and Sudan (through flood and sediment control and regulation of the river flow) and generate electricity that could be sold cheaply to other Nile riparians. Immediately after the announcement was made, Egypt and Sudan vehemently opposed the dam, claiming adverse effects on their Nile water rights and interests. However, Sudan later softened its position and now seems to endorse the project.

A series of high-level meetings took place, and consequently the three countries agreed on 5 December 2011 to establish an international panel of experts to assess the impact of the dam on the Blue Nile and on Sudan and Egypt. The panel would consist of 10 members: 2 experts from each of the 3 countries, plus 4 other international experts. This was viewed as a positive step, indicating a major shift and an attempt to resolve the dispute over the Grand Ethiopian Renaissance Dam in a peaceful and constructive manner. Although the panel has been established and has already started its work, it remains to be seen how this approach and process will unfold, what recommendations will be made, and whether the parties will accept and adhere to such recommendations.

It should be pointed out that Ethiopia has embarked on an extensive dam construction programme on most of its rivers, particularly the Nile, in an attempt to harness some of its huge hydropower potential – estimated as 45,000 MW (30,000 in the Nile Basin) – and to become a regional hydropower producer and exporter.

The Nile mediation efforts and the basin’s new realities

The above discussion indicates that the results of the mediation efforts on the Nile spearheaded by the World Bank are still uncertain and far from successful. After close to 15 years of mediation, an agreement on the CFA still looks difficult to reach, and the issues are getting more complicated. The basic and original differences on the colonial treaties and on acquired uses and rights versus equitable and reasonable utilization still persist, defying resolution. They are compounded by the introduction of the unfortunate concept of water security and by differences on notification and on consensus versus majority on the amendment of the CFA. If Egypt insists on defining the Nile waters as also including the rain that falls on the entire basin area, this could signal the end of the whole mediation process.

No doubt the large number of the Nile riparian states (now numbering 11) and the limited flow of the Nile have been major factors in the difficulties faced in the mediation efforts. The limited flow of the Nile of 84 km$^3$ at Aswan, which is fully utilized by Egypt and Sudan, poses a major problem with regard to the demands of the other riparian states for a share of the Nile waters. It is noteworthy that 84 km$^3$ is only about 2% of the Amazon River, 6% of the Congo, 12% of the Yangtze, 17% of the Niger, and 26% of the Zambezi (Salman 2011a).

Thus, one major challenge that faces the Nile riparian states is how to augment the flow of the Nile River to meet the existing and growing uses of Egypt and Sudan and the emerging, though limited, uses of the other riparians. It is worth noting that Ethiopia’s main use is the generation of hydropower, with limited uses for irrigation and water supply. Ethiopia’s
use of the Nile waters for hydropower generation is expected to have little effect on Sudan and Egypt if the filling of the reservoirs is planned and executed over a reasonable period of time. The uses of Tanzania and Kenya are largely for water supply, such as the Shinyanga project in the former, with minor uses for irrigation. In addition to minor irrigation and water supply uses, Uganda is building a number of dams for generation of hydropower, but they are mostly run-of-the-river, with little or no effect on the other riparians. Thus, it seems that the aim of the upper riparians is to get recognition of their rights to a share of the Nile waters, more than to actually use such waters. Although the total uses are not major, they are already a cause of major concerns in Egypt and Sudan.

It should however be added in this connection that the Sudd swamps of South Sudan operate as a regulator of the flow of the White Nile. Thus, any uses of the Nile waters upstream of the Sudd would affect mostly the amounts of water spreading across the Sudd, rather than being fully at the expense of the amount of water flowing past the Sudd to Sudan and Egypt (Block and Rajagopalan 1999).

It does not seem that the mediation efforts have paid attention to those crucial issues. Instead, those efforts have focused on the CFA, and the CFA tries, inter alia, to reallocate waters that are fully utilized. In contrast, as a part of the World Bank mediation efforts in the Indus River dispute, major works were financed under the Indus Basin Trust Fund to provide additional waters to Pakistan to compensate for the waters of the Eastern Rivers that were allotted to India under the Indus Waters Treaty (Salman and Uprety 2002, 17–57). A similar approach should have been pursued under the mediation efforts for the Nile Basin. Sources for additional waters to meet the growing needs of Egypt and Sudan, and the emerging demands of the other riparians, should have been one of the focus areas of the mediation efforts. Indeed, the mediation efforts for the Indus Basin concentrated on engineering solutions to augment the flow of the Indus River System to meet the competing demands of both India and Pakistan. On the other hand, those on the Nile Basin have focused largely on a legal solution comprising a treaty that would reallocate the Nile’s already fully utilized waters. This, no doubt, is one main reason why the mediation efforts on the Indus River succeeded, while those on the Nile Basin have floundered. Other reasons for the success of the Indus mediation efforts included the commitment of India and Pakistan, at the highest political and technocratic levels, to finding a solution to the Indus dispute. This commitment does not seem to be wholeheartedly there in the case of the Nile.

Although some positive signs have developed recently, such as the visits in 2011 by the prime ministers of Egypt and Ethiopia to Addis Ababa and Cairo, respectively, and the establishment of the international panel on the Grand Renaissance Dam, a number of recent negative developments have also been cropping up, particularly with regard to the CFA. Those developments have exacerbated the existing disputes over the Nile and the CFA.

During the 18th annual meeting of the Nile Council of Ministers (Nile-COM), held in Addis Ababa in July 2010, Egypt and Sudan demanded that an extraordinary meeting of the Nile-COM be convened to discuss the CFA, but the upper riparians showed no interest. A similar demand was made a year later in Nairobi during the 19th annual meeting of the Nile-COM. It was agreed during the Nairobi meeting, as a compromise, that the extraordinary meeting would be held in Kigali on 28 October 2011 but would limit itself to discussing the legal and institutional ramifications of the entry into force of the CFA. However, Egypt and Sudan later requested postponement of the Kigali meeting, ostensibly because of the Egyptian elections. It was consequently agreed that the meeting would take place in Nairobi, Kenya, on 18 December 2011. Yet, again, Egypt and Sudan asked for a postponement, and the other riparians reluctantly agreed, rescheduling the meeting to take place 27 January 2012 in Nairobi, Kenya.
The Nile ministers from the upstream countries did arrive in Nairobi for that meeting, but the Egyptian and Sudanese ministers failed to show up. Consequently, the Nile-COM meeting did not take place. However, the ministers from the equatorial lakes countries convened their own Nile Equatorial Lakes Council of Ministers (NEL-COM) meeting, and agreed to upgrade the observer status of Ethiopia in the NEL-COM to full membership. As a result of this decision, the six countries that signed the CFA succeeded in establishing an institutional framework for working together and for making collective decisions. The outcome of the NEL-COM meeting was included in the Nairobi Statement, which they issued at the end of the meeting (Musoni 2012).

Annoyed by what they saw as dilatory tactics by Egypt and Sudan, the six ministers of the countries that signed the CFA stated that they would proceed with the process of ratification of the CFA and then the establishment of the Nile Basin Commission once the CFA enters into force. The ministers instructed the chair of the Nile-COM to continue discussions with the three Nile states that have not signed the CFA (Egypt, Sudan and the Democratic Republic of Congo), with the aim of getting them to join the CFA, and decided that such discussions should be concluded within 60 days. The Nairobi Statement indicated the frustrations of the ministers at Egypt and Sudan’s indecisiveness regarding the extraordinary meetings that resulted in a number of meeting cancellations on short notice. The Nile-COM chair was instructed to communicate these frustrations to Egypt and Sudan and to convey the outcome of the Nairobi meeting to the respective governments so that the ratification process of the CFA would commence (Salman 2012).

That meeting is no doubt a major watershed and a landmark in the history of the Nile Basin. The NEL ministers reversed the previous decision to delay the ratification process of the CFA to give Egypt some time after the January 2011 revolution. The discussions to be conducted by the Nile-COM chair with Egypt and Sudan would not be about the areas of disagreements on the CFA – not even about the legal and institutional ramifications of the entry into force of the CFA. They would be about bringing these states to join the CFA, and those discussions should be completed within 60 days. Although the ratification process by the upper riparians seemed to have been put off for the time being, behind-the-scene discussions are going on amongst the upper riparians on their next move, which could come soon.

Thus, the upper riparians are clearly emerging as a power to be reckoned with. They are asserting their demands for an equitable share of the Nile waters and are openly challenging the legal and political hegemony of Egypt and Sudan over the Nile Basin that has prevailed throughout the last century (Ibrahim 2011). They have even started to criticize Egypt and Sudan openly.

Conclusion

The Nile Basin is evidently passing through critical and uncertain times. The old order imposed by the lower riparians, particularly Egypt, which monopolized the Nile Basin for centuries, is being systematically challenged by new realities and demands from assertive upper riparians. The half-century-old alliance of Egypt and Sudan, established under the 1959 Nile Waters Agreement, has engendered a new alliance of the upper riparians, born and reared under the NBI and institutionalized by the CFA process.

It remains to be seen how the assertiveness of the upper riparians of their rights to an equitable and reasonable share of the Nile waters will eventually unfold, and whether the CFA will indeed enter into force and effect without Egypt and Sudan. It also remains to be seen what effects these developments would have on the task of the international panel
of experts on the Grand Ethiopian Renaissance Dam, which is the first attempt ever at an amicable settlement of a major dispute over the waters of the Nile Basin.

Regardless of the outcome, these developments have demonstrated amply that the era of the monopoly over the waters of the Nile Basin by Egypt and Sudan is clearly coming to an end. The political turmoil that has engulfed Egypt after the January 2011 revolution has no doubt provided an opportunity for the Nile upper riparians to press their claims over the Nile waters and to unite behind these claims. Burundi signed the CFA in February 2011, and Ethiopia announced its plans to construct the Renaissance Dam in March 2011; both events took place a few weeks after the eruption of the Egyptian revolution in January 2011.

The emergence of the upper riparians as a power to be reckoned with is, in this author’s view, an inevitable consequence of the level playing field resulting from the NBI itself. The new alliance of the upper riparians and their unfolding, albeit peaceful, African spring has engendered more balanced power relations vis-à-vis the downstream riparians, Sudan and Egypt. The CFA has ironically and inevitably resulted in solidification of the major differences between the upper and lower riparians. Yet, the newly emerging power equilibrium within the Nile Basin could as well generate an opportunity for the two parties to compromise, and to realize that there is no alternative to cooperation. Such cooperation is desperately needed to pull the 300 million people who live in or depend on the Nile Basin from their poverty and misery.

Notes
1. Sudan insists on its “rights” of 18.5 km³, stipulated in the 1959 Nile Agreement, because its uses of the Nile waters have only been about 12 km³ annually. On the other hand, Egypt insists on its “uses” because such uses exceed the 55.5 km³ under the 1959 agreement. Thus, Sudan’s and Egypt’s interests are not actually congruent on this matter.
2. The factors are enumerated in Article 6 of the convention and consist of (a) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character; (b) the social and economic needs of the watercourse states concerned; (c) the population dependent on the watercourse in each watercourse state; (d) the effects of the use or uses of the watercourses in one watercourse state on other watercourse states; (e) existing and potential uses of the watercourse; (f) conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect; and (g) the availability of alternatives, of comparable value, to a particular planned or existing use.
3. For discussion of why the notification requirement applies to both downstream and upstream riparians, see Salman (2010).
4. The World Bank has developed, through the years since 1956, elaborate policies for projects on international waterways financed by the Bank, including comprehensive provisions on notification. For a detailed analysis of these policies, see Salman (2009).
5. It is worth mentioning that the Watercourses Convention lists “the availability of alternatives, of comparable value, to a particular planned or existing use” as one of the factors for determining equitable and reasonable utilization, and not for allocation of the alternative amongst the different riparians.

References


