

AN APPRAISAL OF TRANSBOUNDARY WATER DISPUTE RESOLUTION IN THE NILE BASIN

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Abstract

There are more than 200 transborder river basins in the world that are shared by two or more countries. All of them possess their own peculiar problems and conflict resolution mechanisms. The variations thereof could be attributed to the differences in the physical, economic and political geographies of the basins as well as the extent of water availability in relation to demand. A classic source of conflict has always been surfacing between downstream and upstream states with the former underpinning the 'no-harm rule' and the latter 'absolute sovereignty'. Being cognizant of the divergences in the interests of up- and down stream states, various international bodies, chief of which being the UN, have tried to come up with 'international laws on the non-navigational uses of international waters'. Their efforts have, however, failed to bring about binding laws even to this date.

*One of the many transborder rivers that is marred with the above-stated problems is the Nile (refer to Figure 1). So far, the basin has lacked integrated and basin-wide management. Due to historical, geographical, geo-strategic, and developmental factors, an asymmetry in the utilization of the water resources of the Nile is evident. The paradox lies in the fact that the basin states that are contributing the most are using the least (mainly Ethiopia but also to some extent the Equatorial riparian states) and those that get the lion's share of the water are those that contribute the least (mainly Egypt but also to a lesser extent the Sudan)[refer to Figure 2]. In order to maintain the status quo, both the downstream states, most particularly Egypt, have all along carried out a 'water protectionist policy'. As a result, non-cooperation has remained the Nile **modus operandi** for too long.*

Prior to the emergence of the NBI in 1999, there were some two attempts to forge cooperation via The Hydro-meteorological Survey of the Equatorial Lakes (Hydromet) and the Technical Cooperation Commission for the Promotion and Development of the Nile (TECCONILE). The fact that these two organizations were dominated by downstream countries, most particularly by Egypt, hampered their successes. The NBI has been established in 1999 in Dar es Salaam, Tanzania, as a transitional institution pending the advent of a permanent Nile Basin Organization (NBC). The latter requires, among others, the signing up of a legal and institutional framework, which is not yet concluded. Owing to the disagreements between upstream and downstream countries over the 'water security' issue, the framework is still in limbo. This outstanding issue is now transferred to the Nile heads of states to come up with a solution. Everybody is curious to see what an earthly formula the Nile heads of states will employ to overcome the deadlock unless and otherwise Egypt and the Sudan that have adamantly overplayed the issue make a u-turn.

Egypt has demonstrated for the first time in history a shift from its assumed confrontational and gate-keeping role by acknowledging the rights of the other riparian states that have an equal say and a right to equitable share of the Nile water resources. The establishment of the NBI and the subsequent founding of the Eastern Nile Subsidiary Action Program (ENSAP) and the Nile Equatorial Lakes Subsidiary Action Program (NELSAP) are testimonies to this effect. By so doing, the downstream states are giving some confidence and a glimmer of hope to the heretofore-disadvantaged upper riparian states, most particularly

Ethiopia. If this attempt is further strengthened, there is a good possibility of untying, if not breaking, the stalemate. In the opinion of the author, three factors are responsible for the change of heart and minds by the Egyptians: (a) the pressure from the Third Parties, such as the World Bank and UNDP, to cooperate, (N.B. the World Bank played a central role in the establishment of the NBI), (b) the threats from upstream riparian states, particularly Ethiopia, to harness the Nile waters unilaterally (c) the appointment of a wise, well-experienced and pragmatic Minister of Water in Egypt, Mr. Abu Zeid, who has made lots of efforts in changing the attitudes of hard-core elements in Egypt.

The NBI and ENTRO have created platforms for discussions and dialogues. In effect, the tense relations between upstream and downstream countries have eased in the past one decade. This doesn't however mean that they have a rosy relationship. In spite of the presence of a basin-wide forum, i.e. NBI, and some strides made in one or the other basin-wide projects, the Egyptians seem to stick to their water security policy and the adoration of the status quo. Unless there is a change of heart and mind on these sticking issues, it becomes very difficult to build confidence and trust between Ethiopia and Egypt. Be that as it may, the fact that there is a Nile-based Organization in Entebbe, Uganda is by itself a virtue and a plus on the balance sheet. The establishment of the NBI has also kindled some hope for the poor folks inhabiting the basin with expectations to improve their well-being through irrigation agriculture, watershed management and access to power. The other added advantage of the NBI is its creation of employment opportunities for many basin-based professionals. The NBI and its affiliates have also funded a number of studies on socio-economics, hydrology, institutions and water technology. As a result, quiet a sizeable number of valuable research outputs have been produced and published.

The rationale behind the establishment of the Eastern Nile Technical Regional Office (ENTRO) is to come up with concrete transboundary or in-country projects in the Eastern Nile, i.e. in Egypt, Ethiopia and the Sudan. ENTRO is preparing a number of projects related to watershed management, power production and pool, irrigation and what they call 'Joint Multipurpose Projects'. The latest information the author has about the projects is that some are at the pre-feasibility stage, others at feasibility and some more at the design stage. The power pool deal between Ethiopia and the Sudan seems to be on the right track while for unknown reason the much awaited Baro-Akobo Multipurpose Project is derailed. Dam sites within Ethiopia have also been identified, e.g. at Koga, to irrigate 7000 hectares of land and to improve watershed management on 22,000 hectares catchment area. Sadly, this dam that was scheduled to be completed by November 2006 and to supply irrigation water by the end of January 2007 is not yet completed. According to some sources, currently only 90% of the dam works and 15% of the irrigation and drainage infrastructure are complete. Best estimates indicate that the dam construction will not be completed before March 2009 and the irrigation and drainage infrastructure before 2011.

The major problem bedeviling the NBI and ENTRO is the immense time it is taking to translate plans and projects on the ground. So far, one could see little or nothing on the ground. This is adding frustration not only to the impoverished people living in the hitherto disadvantaged countries like Ethiopia but also to elites and skeptics alike. Everybody knows that hydraulic projects require quite a significant time to get grounded. However, it is inconceivable and unbearable to see little or nothing coming out of the NBI in the past ten years and from ENTRO in the past seven years. The picture will become complete if one adds the failure to come up with a permanent institution through the ratification of the Legal and Institutional Framework that started way back in 1997. Such a lacuna begs a number of questions: Is the NBI and its offshoots, ENTRO, NELSAP, time-buying exercises? Why are the Egyptians still adamant when it comes to rescinding their water security policies? Why are they still considering the colonially-induced Treaty of 1929 and the bilateral treaty they made with the Sudan in 1959 as sacrosanct?

The catch-word 'win-win' is easier said than done. It clings good to the ear but complicated to translate it into reality. How can upstream states think of 'win-win' under a situation where (a) the Egyptians are interested to get their water quota from the Nile based on the 1959 Agreement in an uninterrupted manner (55.5 billion m³/year), (b) the Egyptian 'water security' policy remains intact through the maintenance of the status quo ante, (c) the out-of-basin transfers at Toshka and El-Salaam canals are either operational or on-going. It is incumbent upon the Egyptians to revise or annul these age-old positions if we aspire to create 'win-win situations' in the basin. In addition, no specific methodology has been developed to quantify benefits and costs in the utilization of Nile water resources. Neither is it easy to develop a benefit

sharing model. The NBI has now hired international consultants who are expected to come up with a benefit sharing methodology or model by considering the objective realities and the historical context prevailing in the basin.

The author of this paper feels that the position in the Nile Basin for some time to come should not be 'win-win' but rather 'lose-win'. The unilateral users of the Nile, mainly Egypt but also to some extent The Sudan, should rescind their monopoly by compromising some of their national interests in order to bring the hitherto disadvantaged upstream states on board. This requires, inter alia, willingness to relinquish some of their water shares for the benefit of the upstream states, looking for alternative water sources other than the Nile (e.g. exploring groundwater aquifer potentials) and partial dependence on 'virtual water'. It is the conviction of the author to suggest that the solutions in the Nile could be found if the downstream states prepare themselves for a 'lose-win' solution in the short-term which could bring about a 'win-win' solution in the long-term.

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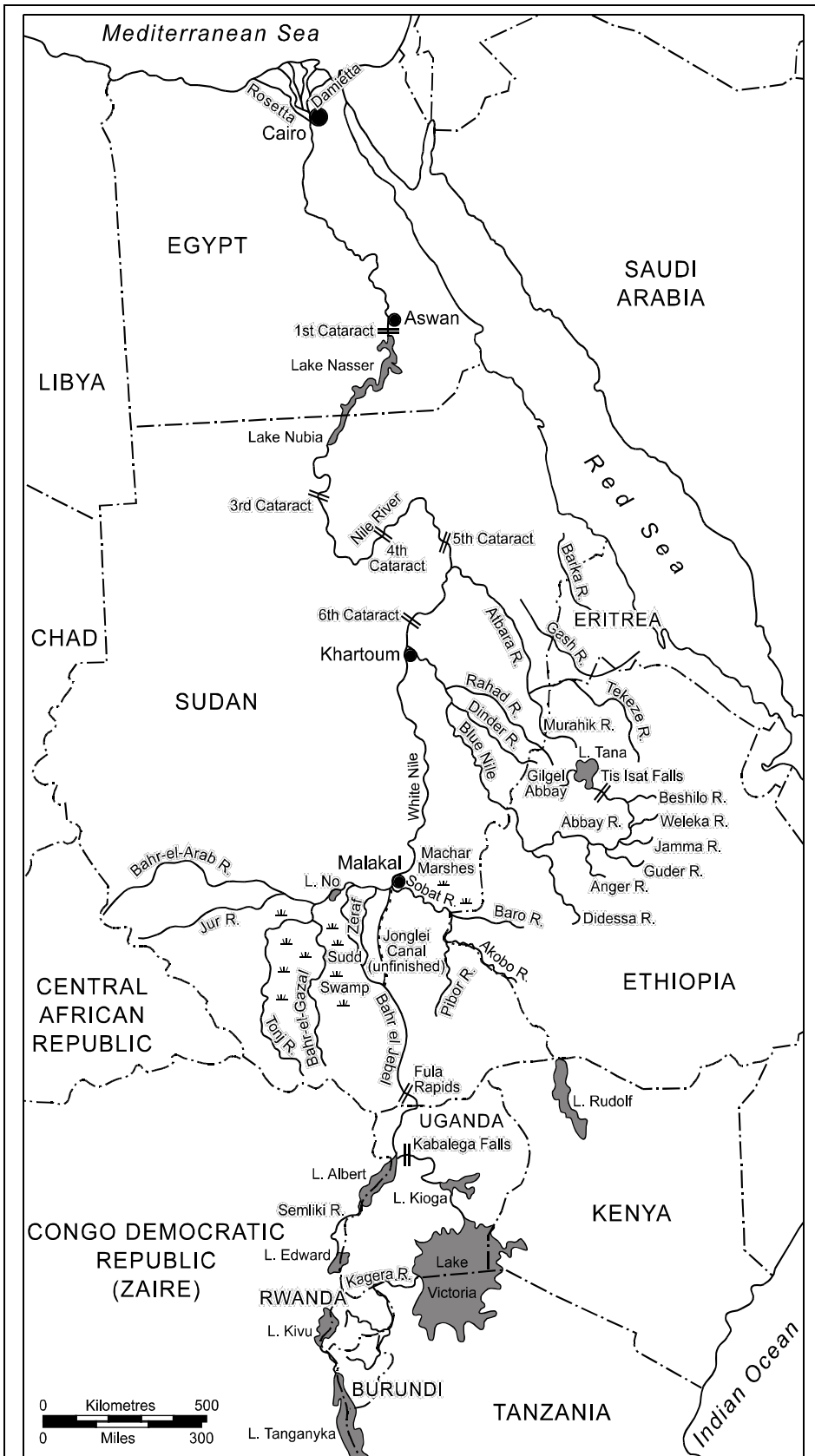


Figure 1. The Nile Drainage Basin

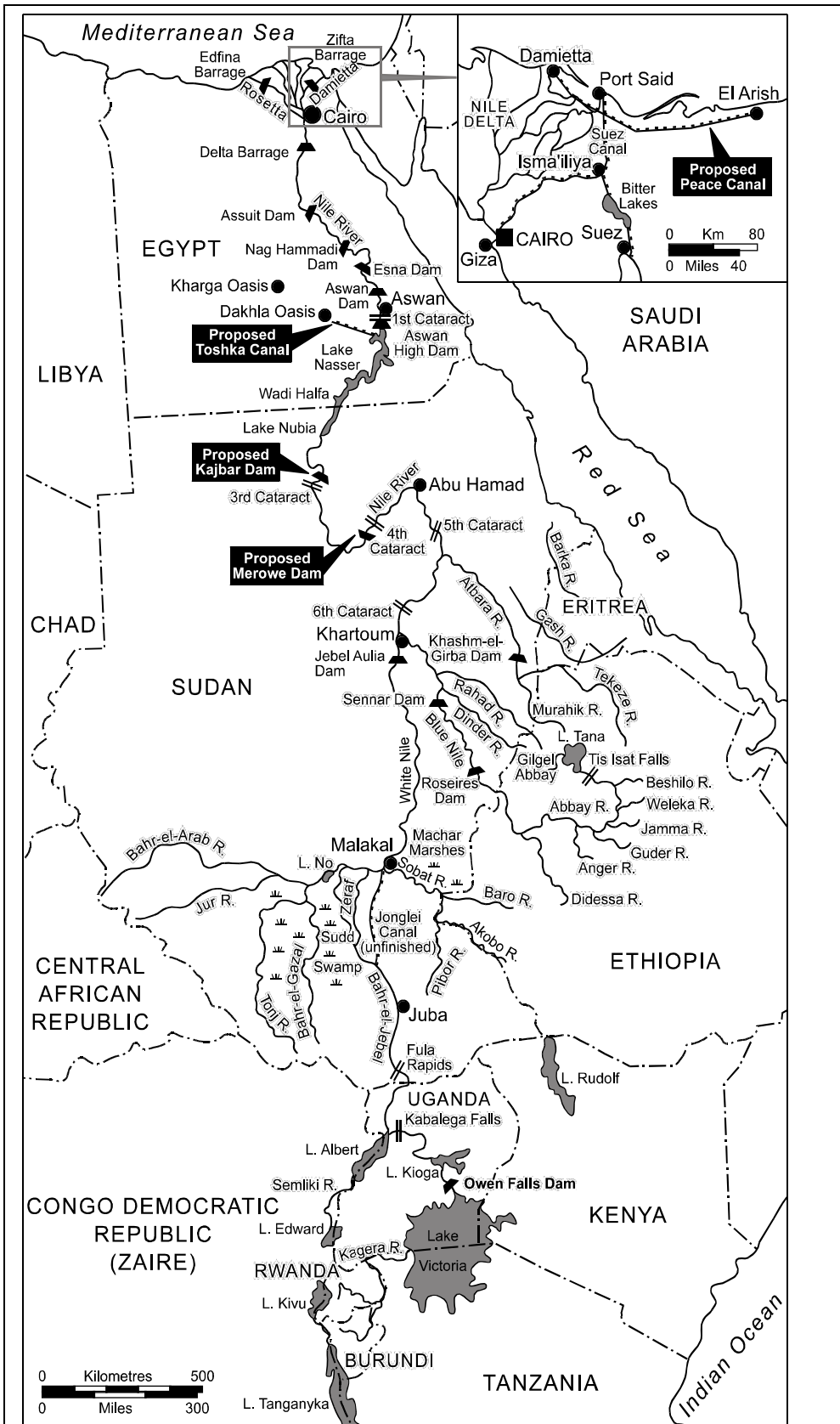


Figure 2. Existing and Planned Hydraulic Works on the Nile