

**UNIVERSITY OF NAIROBI**

**“LEGAL AND POLITICAL IMPLICATIONS OF SHARED  
WATER RESOURCES; A CASE STUDY OF LAKE  
VICTORIA BASIN.”**

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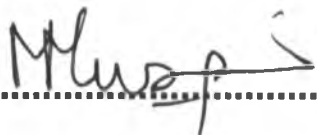
## DECLARATION

This research project is my original work and has not been presented for a degree in any other university.

SIGNATURE .....  ..... DATE..... FEBRUARY 10<sup>th</sup> 2005.

**ORINA STELLA KERUBO**

This project paper has been submitted for examination with my approval as a university supervisor.

SIGNATURE .....  ..... DATE 10 February 2005

**DR. MAKUMI MWAGIRU**

## **DEDICATION**

This effort is dedicated to my son Jerry Bogonko Orina and daughter Daniella Mwangi Orina and my mum Mrs Pacifica Mokaya.

## **IN MEMORY**

In memory of JAMES MOKAYA NYAKUNDI, my late father, who together with my mum inculcated in me the value of knowledge.

”

## **ACKNOWLEDGEMENTS**

My heartfelt gratitude go to all those who contributed to the realization of this work in various ways. To the government of Kenya through the Ministry of foreign affairs, I am grateful for the financial support that enabled me pursue this higher education. I also thank the University of Nairobi for offering me the opportunity to pursue a Masters degree.

I am profoundly indebted to my supervisor, the Director of the Institute of Diplomacy and International Studies (IDIS), Dr. Makumi Mwagiru for supervision. His meticulous, invaluable guidance and uncompromising stance on academic standards got me focused and inspired me to accomplish my task.

My special thanks go to my family for their support and assurance. My sincere and everlasting gratitude go to all those who took close interest in my work, assisted with literature and contacts, and to type it. May God bless all of you.

”

## **LIST OF ABBREVIATIONS**

IBEA	British East Africa Company
COMESA	Common Market for East and Central Africa
ENSAP	Eastern Nile Subsidiary Action Program
EPLF	Eritrean Peoples Liberation Front
HYDROMET	Hydrometrological Survey of the Catchment of Lakes Victoria, Kyoga and Mobutu Sese Seko (1967-1992)
IEC'S	International Environmental Conflicts
ILA	International Law Association
ILC	International Law Commission
KBO	Kagera Basin Organization
LVFO	Lake Victoria Fisheries Organization
LRA	Lords Resistance Army
NBI	Nile Basin Initiative
NELSAP	Nile Equatorial Lakes Subsidiary Action Program
OBK	Organization for Development of Kagera Basin
SVP	Shared Vision Program
SAP	Strategic Action Plan
TECCONILE	Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin
SPLA/M	Sudanese Peoples Liberation Army/Movement
UN	United Nations

USA	United States of America
UNDP	United Nations Development Programme
WMO	World Meteorological Organization

## **ABSTRACT**

This work seeks to find out the genesis of the Nile Conflict and its implications for the riparian states of the river. The objectives of the study focus on finding ways and means to enhance equitable utilization of the Nile as a shared water resource in addition to suggesting ways of protecting Lake Victoria and the Nile. An analysis of the causes of conflicts among the riparian states of the Nile is made and past and present legal regimes on the Nile critically examined in so far as they affect the East African States and other riparian states to the river.

The study established that the Nile conflict is a natural resource based conflict. Further, it was established that Egypt, a key actor in the conflict, has shaped the prevailing legal regime on the Nile with a view to controlling the resource for its survival.

From the study, it also emerges that other riparian states favour a change in the *status quo* in order to also benefit from the shared water resource of Lake Victoria and the Nile. The interests of each of the riparians, issues and various actors in this regard are analysed at length.

The study proposes that Egypt's interpretation of the prevailing legal regimes (i.e Colonial treaties) on the Nile is the cause of the conflict. As a way forward, the research concludes that a multidisciplinary approach be applied to resolve the Nile Conflict.

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## CHAPTER ONE

### Introduction.

This chapter gives the background to natural resource based conflicts covering the introduction, statement of the problem, objectives, justification, literature review, theoretical framework, hypotheses and chapter outline.

Natural resource based conflicts are a special type of international environmental conflicts. Trolldalen<sup>1</sup> defines international environmental conflicts as,

“conflicts that arise from the utilization of natural resources in one country which has negative environmental consequences for another country or groups of countries. Natural resource based conflicts specifically relate to access, control and unsustainable use of natural resources.”

The problem that this research will look into is natural resource based conflicts over shared water resources and specifically the case of Lake Victoria basin. The research interest will focus on the genesis of the causes of the conflict over the use of the waters of Lake Victoria – Nile waters conflict. The need for carrying out research in this area arises from the necessity that if the way for the proper management of the conflict is not identified in time, there is a likelihood of the conflict escalating into violence, which is already apparent from the threats of military action emanating from some of the users of the water. To achieve this, existing literature on the subject will

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<sup>1</sup> Trolldalen J. M. *International Environmental Conflict Resolution: The Role of the United Nations*, Washington, D.C., 1992, UNEP, p.3.

be studied to shed light on any data, analysis, opinion and recommendations by earlier authors and researchers. Guidance will be sought from existing theories that will help in the understanding of the causes and factors that lead to natural resource based conflicts and the perpetuation of such conflicts.

According to Mwangi<sup>2</sup> natural resource based conflicts are a type of environmental conflicts that revolve around access over, and control of natural resources, particularly when the use of the natural resource becomes unsustainable leading to competition over it. The common resources prone to conflict over their use are forests, water, minerals and grazing land.

Hagenstein<sup>3</sup> explains that forests are the world's major sources of hardwoods for furniture and other wood products. They also provide society with many other vital needs. They protect watersheds, provide habitat for wildlife and fish, are a source of people's enjoyment, affect the climate and help maintain the productivity of the land base. Hagenstein's observation confirms a direct linkage of forests and its resources to human survival and sustenance of the world's ecosystems.

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Hagenstein<sup>4</sup> posits that ownership of forest land affects how it will be used and managed. The extent to which one owns forest land is directly proportional to the case and usage of the forest, hence the difference between private ownership and public ownership, small ownership and large ownership.

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<sup>2</sup> Mwangi M. *Peace and Conflict Management in Kenya, Nakuru, Catholic Justice and Peace Commission*, 2003 p. 63

<sup>3</sup> Hagenstein P. as cited in Sampson R. N. and Hair D. *Natural Resources for the 21<sup>st</sup> century*, Washington, D. C, Island Press, 1990. P. 78.

<sup>4</sup> *Ibid* p. 83

Hagenstein<sup>5</sup> emphasizes that public forest lands are usually managed for societal benefits which are broad and changing, and since no one view dominates, conflicts arise. The usage to which land and vegetation cover are put impacts on their productivity.

Water is considered to be the most important of nature's resources. No other natural resource has so many uses as water. It is indispensable not only to human life but also for agricultural and industrial development. When it comes to the need to conserve, water must be treated differently from other natural resources, such as minerals, which can be converted in their natural form and saved until required, so that if a little is used in the present generation some/more will be available in the next.

The United Nations (UN)<sup>6</sup> notes that, most countries have deeply worrisome problems concerning the quantity and quality of their fresh water resources, and many countries are suffering from the effects of pollution of their coastal waters. This shows that the extent to which water is available both in quantity and quality to a country is a critical and potential factor for conflict. This is more so in cases of shared water resources. The UN<sup>7</sup> also notes that constraints on the supply of fresh water are increasing, aggravated by droughts, depletion of aquifers, and deforestation, while demand for water is rising rapidly for irrigation, energy generation, industrial production, and urban consumption.

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<sup>5</sup> Ibid p. 87

<sup>6</sup> The United Nations. *Global Outlook 2000, An Economic, Social and Environmental Perspective*. New York, The United Nations Publications p. 88

<sup>7</sup> Ibid p. 89

Conflicts over grazing land are prevalent in arid and semi-arid regions. The pastoral way of life of the users of land in such areas often causes conflicts as they come into contact with each other in their competition for pasture. The cause of conflict in such situations is the tendency for certain communities to take control of particular pasture land and boreholes, particularly when there is a prolonged drought, to the exclusion of others as noted by Sabala.<sup>8</sup>

Mineral related conflicts occur because of the lucrative value of mineral resources. Their exploitation therefore causes stiff competition that in some cases escalates to violence. As noted by Sabala<sup>9</sup>, the desire to exploit minerals is a source of conflicts. The desire and interest for mineral exploitation attracts competition from different actors ranging from individuals, organizations and states. Most of the mineral resource based conflicts are protracted and violent due to the role minerals play in the funding of the interests and the activities of the actors involved. The control of mineral exploitation particularly in areas without proper state control leads to conflict of interests which transcends national jurisdictions.

Recent trends have shown that global conflicts are increasingly taking on an environmental character either due to changes in the environment or non-availability of natural resources. In this connection Trollalden<sup>10</sup> explains that, because the world's resources are not evenly distributed according to Political boundaries, international

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<sup>8</sup> Forest Action Network. *Natural Resource Based Conflicts in the Greater Horn of Africa, Experiences and Strategies for Intervention*. Nairobi, Motif Creative Arts, 2001 p. 51.

<sup>9</sup> Ibid p. 49

<sup>10</sup> Op. cit

environmental conflicts have many characteristics, which extend beyond national boundaries.

### **Statement of the Problem**

Water, especially fresh water from rain, rivers, wells, and fresh water lakes is the source and mainstay of human and animal life. In the tropics water is taken for granted because it is in plenty. This is not so in deserts like Sahara, Kalahari and the like. Competition for the resource, especially in regions of short supply, often gives rise to confrontation among users.

The scramble and struggle for water for animal and domestic use is perennial. Battles and wars for water litter the history of mankind. Migratory patterns and trends in human settlements are dictated by water sources and courses. The Lake Victoria and Nile basin is a case in point.

The Nile is the lifeblood of the desert countries of Egypt and the Sudan, to the extent that when Egypt tamed the Nile at Aswan, it largely operated under the legal assumption that "Egypt is the Nile and the Nile is Egypt."<sup>11</sup> The assumption determined the nature and character of colonial and post-colonial treaties which created aggregate treaty rights to Nile water for Egypt and Sudan. The consequence is that, as a matter of treaty rights, up to today Egypt lays claim to most of the Nile flow, to the chagrin of other riparian states. These exclusive rights of Egypt over the waters of the river Nile is a source of possible conflict between it and other riparian States. Unless the treaties are re-negotiated, chances of armed conflict are high.

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<sup>11</sup> Walubengo D. and Obare L. (Eds), *Whose Natural Resources? Local Natural Resources Management in Tanzania*; Nairobi, Forest Action Network, 1997 p 2

Over the years, Egypt's foreign policy has, to a significant degree, been shaped by the hydro-politics of the Nile. This policy has been predicated on the premise that Egypt should control the Nile. This position is generally unacceptable to the other riparian states; hence the need to diagnose, analyze and explain the underlying and proximate causes of the Nile conflict, which has prompted this study.

It is evident that the existing legal regime on the utilization of the Nile river runs contrary to the prevailing politics. This study contends that unless this is resolved, the heightened tension already apparent may escalate into violence. This study will further undertake to identify the dynamics of these latent conflicts and suggest ways of resolving them. Within the general legal framework, the analysis of the resilient and nagging problems of conflict which hinge on the legal and policy regime are *ipso facto* of profound academic interest.

This explains the curiosity and interest in this problem of global magnitude but which has sparked off interesting debate in East Africa in general, and Kenya in particular, in the last few years. The conflict over the Nile is about sharing the water resource. The solution to the conflict requires a synthesis of the causes of the problem and its effects. The sharing of the Lake Victoria Nile waters is hampered by the existing legal framework which is rooted in colonial history. With emphasis on Lake Victoria and its feeder rivers, this study looks at the legality and politics behind the utilization of the lake Victoria and Nile waters as a nagging problem in international relations. Diplomacy as an avenue has not been explored as a means of resolving the conflict.

The study seeks to evaluate the extent to which the legality and politics on the utilization of the Nile waters affects the EAC states with regard to utilizing Lake Victoria. This will include an examination of the colonial treaties concluded between Britain (acting on behalf of Uganda), Egypt, and Sudan. Kenya and Tanzania in their status then, as colonies of Britain are only mentioned as third parties in the treaties in question. The effect of this is that the rights of the upper riparian states were ignored. As third parties, only minimal rights could accrue to the EAC states for any damage caused to them arising from the regulation, control and utilization of the river. The post-independence implications of the treaties will also be considered in this study.

## **Objectives**

The general objective of the study is to map out ways and means of enhancing equitable utilization of the common property resource beyond tight legalities and political rhetorics and to suggest the most reasonable way of protecting the Lake Victoria / Nile Basin and its waters.

The specific Objectives of the study will be: -

- I To analyze the causes of conflicts amongst the riparian states.
- II To examine the present Nile legal regime as it affects the EAC states with specific reference to how Egypt has shaped the prevailing Nile regime.
- III To assess the Nile conflict as a natural resource based conflict.



## **Justification of the study**

The Nile conflict is multi-dimensional and therefore requires multiple approaches to its resolution. It will require a multiplicity of disciplines and theories from international conflict management, international law, diplomacy, international relations, and foreign policy analysis among others. International law approaches would not resolve the underlying causes of the Nile conflict because they are settlement based and do not lead to conflict resolution.

This study will critically examine the natural resource based conflicts in the Nile and suggest alternative approaches to resolving the conflict. The study will contribute to available literature on natural resource based conflict resolution that will be useful to academics, researchers, policy makers who will in future be involved in natural resource conflict management. It will be one among other studies on the legal framework on the utilization of the Nile waters offering a new dimension to complement existing works.

## **Methodology**

This research relied on both primary and secondary sources of data. Oral interviews by use of an unstructured questionnaires were carried out amongst senior diplomatic representatives of the riparian states. Other primary sources included treaties and statutes. This information was counter checked and supplemented with extensive readings from existing documented sources available, such as, books, journals, electronic and print media, and unpublished academic papers.

## Literature Review

A lot of literature has been written on natural resource based conflicts. Different authors have given different approaches to the understanding of natural resource based conflicts. Broadly, the authors agree that access, control and use of the natural resources are critical factors that generate conflict. In trying to analyze the natural resource based conflicts, the authors have given different approaches to the levels of analysis. Whereas some have emphasized community level approach, others place their analysis at the state level.

A review of the literature reveals different emphasis placed on various perspectives ranging from historical arrangements (legal), political and morality. Whereas some literature has given some consideration to universal aspects of natural resource based conflicts, some are specific and contextual. The concept of scarcity of resources is inherently traced within the literature on natural resource based conflicts as stated by Bell.

"The only real "time bombs" associated with people and natural resources of the future are polity and demography. The former concerns how people in meaningful public entities such as countries, states, provinces, or nations organize themselves to solve natural resource problems. The latter concerns both the number of people and then distribution relative to natural resource systems. More people within any natural resource setting implies a greater frequency of interaction with the resources, greater likelihood of scarcity or conflict and greater

challenge for political and economic institutions.”

In line with Bell’s observation, Deng and Zartman<sup>12</sup> argue that conflict in Africa arises from problems basic to all populations, which range from distribution of resources, access to power and competing definitions of what is right, fair and just.

Trolldalen<sup>13</sup> distinguishes three types of resource based conflicts; The *A-type* conflicts are caused by unsustainable use of, control over, and access to natural resources. An example is the conflict between states over access to resources such as oil and fish. The *B-type* conflicts are caused when negative environmental effects of resource use in one country affects a second or more countries. These conflicts involve pollution of a shared resource such as the seas or international rivers or reduction and degradation of a resource for some countries through its use in other countries for example, when a dam or irrigation project reduces downstream discharge of an international river. The *C-type* conflicts are caused when negative environmental effects of one resource use affect another resource system. Examples of such conflicts include those arising from the acid rain problem and potential conflicts associated with accelerated sea-level rise induced by climatic change. Trolldalen’s classification of natural resource based conflicts gives the impression that the conflicts in all situations are separate and distinct as opposed to reality where the three classifications can have linkages and impact on each.

Mwagiru<sup>14</sup> approaches natural resource based conflicts from the conflict cycle standpoint. He views conflicts as dynamic, organic with the capacity to assume a life of their own. He extends the conflict cycle concept as the model

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<sup>12</sup> Deng F. and Zartman W. *Conflict Resolution in Africa*, Brookings Institute, 1991 p. 299.

<sup>13</sup> Op. cit, pp57-60

<sup>14</sup> Mwagiru M. *Peace Conflict Management in Kenya*, Nakuru Catholic Justice and Commission, p. 43

that can be used to design the best approach in the prevention and management of natural resource based conflicts. Although the concept identifies four stages of the conflict process, the tension stage, the crisis stage and the violence stage, it is difficult for one to make a distinction of the stages as overlapping is a characteristic of a cycle. In an actual conflict situation, the distinction between the stages is not easy to make.

According to Birnie and Boyle,<sup>15</sup> Principle 21 of the 1972 Stockholm Declaration on the Human Environment supports the sovereign rights of states to exploit their own resources 'pursuant to their own environmental policies'. Secondly, it affirms their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or to areas beyond the limits of their national jurisdiction.

Warren and Hammer<sup>16</sup> have adopted a historical approach to conflicts associated with water use and the development of international drainage basins with the claim that such conflicts do not occur due to technological inadequacies, but rather due to disagreements over allocation, and other competing uses like, irrigation, fishing and navigation. This line of argument impeded prevailing legal regimes and doctrines that impose outdated or opposing laws and regulations.

Rodgers<sup>17</sup> points out that international law on transnational rivers is weak, leaving the amicable settlement of problems of shared water resources to the goodwill of the upstream riparians. This position obtains in the case of the Nile where the challenge of reaching an agreement on joined (shared) water resources

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<sup>15</sup> Birnie P. W. and Boyle A. E. *International Law and Environment*, Oxford: Clarendon Press, 1993, p.90.

<sup>16</sup> Warren and Hammer J, *Water Supply and Pollution Control 4<sup>th</sup> Edition*, New York, Harper and Row Publishers, 1985, p5

<sup>17</sup> Rodgers P. *Comprehensive Water Resources Management*, A Concept Paper, World Bank, 1992, p.9

in an international drainage basin increases with the number of states involved. It is observed that leaving the issue to the goodwill of upper riparians will certainly not resolve the conflict. This approach does not invite optimism as it underpins the concept of absolute territorial sovereignty which entails that an upstream state can freely utilize or deplete an international river's flow within its boundaries without considering, the effect of its actions on downstream states and absolute territorial integrity which operates when the downstream states have an absolute right to have continued uninterrupted flow of a river from the territory of the upstream states, no matter what the priority. Upstream states are not to interfere with quality and quantity of water flowing downstream. Both doctrines allocate rights without corresponding obligations.

The desire of upstream states for unlimited territorial sovereignty and that of downstream states for unlimited territorial integrity must be reconciled or else strict application of either of these two doctrines would breed permanent conflict.<sup>18</sup> In 1978 Egypt said it would not allow Ethiopia to harness the Blue Nile for irrigation in the Ethiopian plateau as that would diminish the volume of water reaching the Aswan Dam. In return Ethiopia issued a terse warning that it had the right to exploit its natural resources and to defend that right, even if it meant going to war.<sup>19</sup>

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<sup>18</sup> Westing A. H. *Global Resources and International Conflict, Environmental Factors in Strategic Policy and Action*, Oxford, Oxford University Press 1998, p 103

<sup>19</sup> C. O. Okidi as cited in Obudho R. A. and Ojwang J. B. (Eds), *Issues in Resource Management and Development in Kenya, Nairobi*, East African Educational Publishers 2000 p 39

The two doctrines therefore have no relevance in modern times and this study shall not rely on them. Shared water resources are increasingly being governed by a doctrine that transcends the exclusively nationalistic approach favoured by the two doctrines that disregard reciprocity of sovereign rights among states. The international community as a whole has moved away from reinforcing the interests of states to balancing of interests, because the sovereign rights of states are inter-dependent, especially those of states that share natural resources.

Okidi<sup>20</sup> rightly questions what and who stopped Kenya from flood control, hydropower generation and irrigation using Kenyan rivers. There is no rule of international law which grants foreign states any rights on the national rivers or other treaties granting some rights to a foreign state with regard to national rivers, every state is free to use its national rivers to the exclusion of other states.

Shaw<sup>21</sup> takes a middle ground position guided by the international legal principle of equity which grants rights and imposes duties on both upstream and downstream states. States are at liberty to use water flowing through their territories without injuring other states. Dolzer<sup>22</sup> reinforces Shaw's argument on the principle of sovereignty over natural resources and the responsibility for not degrading the environment of another state in the process of utilizing shared natural resources.

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<sup>20</sup> Okidi, C .O. "Overview of past treaties related to Lake Victoria and River Nile and Implications for water use in the EAC", paper presented at seminar by the East African Legislative Assembly on June 21, in Kisumu, 2003 p 9.

<sup>21</sup> Shaw M., *International Law*, 4<sup>th</sup> Edition, New York, Cambridge University Press, 1997, pp616-619

<sup>22</sup> Dolzer R. "Formulating, Funding and Implementing the Concept of Worldwide Environmental Protection", in Rudolf D. and Joseph T, (eds) *Protecting our Environment, German Perspectives on a Global Change*, Bornheim Germany, Konrad Adenauer Stiftung, 2000, pp267-325.

The doctrine of community interest treats a shared river basin as a common economic unit. It disregards territorial boundaries. Collective plans or activities are undertaken with the cooperation of all states that form the community/ organization. The closest African experience is the Kagera basin organization. The doctrine assumes that states and communities will always be ready and willing to cooperate on the use of shared water resources, which is good but may not always be the case.

Okidi <sup>23</sup> argues that colonial treaties are not binding on the upper riparian states, for example Kenya, Uganda and Tanzania in particular .He states that those treaties, especially the 1929 one should have been rendered null and void by the virtue of the lapse of the imperial reign by United Kingdom over the East African Community states. He further backs this position with customary international law. The Nile conflict can be traced to the colonial history of Egypt, Sudan and East Africa. The above countries were under British influence before their independence as colonies except for Tanzania which was a protectorate. The British rule in these countries made it possible for Britain to influence the use of the Lake Victoria – Nile waters in favour of Sudan and Egypt through conclusion of the 1929 and 1959 Agreements on the Nile waters.

The above political history gave rise to the subsequent conflict situation over the Nile as the colonial treaties allocated absolute rights over the use of the Nile waters to Egypt and Sudan, and ignored the interests of the upper riparians.

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<sup>23</sup> Op. cit.

This arrangement is what underlies the current contentions over the use of the Nile waters.

According to Godana<sup>24</sup>, the states concerned accepted the continuation in force of the rights and obligations created by that instrument, albeit pending the conclusion of a new comprehensive agreement to replace it. Both Okidi and Godana agree that an alternative regime on Lake Victoria and Nile Waters is needed, though they dissent on the status of the current regime. Whereas Godana is emphatic that the legal status of the colonial treaties is binding on the basis that the treaties were unilaterally disowned by the EAC states, Okidi stresses more on the equitable principles of law on the conflict. Okidi's position is more practical because of the historical and political changes that have occurred since the contentious treaties were concluded. However, both approaches do not recognize a multidisciplinary approach.

On bilateral and multilateral diplomacy, most countries including Kenya ordinarily negotiate treaties and agreements to foster friendly relations with other countries. The riparian states of the Nile have in the recent years sought to promote joint co-operation on the Nile and its catchment in order to improve ways of utilizing the river's resources on the basis of reasonable and equitable utilization and to protect the basin from environmental degradation.

The first step towards diplomacy on the Nile was when Sudan demanded for the review of the 1929 Treaty immediately after its independence in 1956,

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<sup>24</sup> Godana B. A. *Africa's Shared Water Resources*, (London, Frances Pinter Publishers, 1985) pp 152-3.



leading to the conclusion of the 1959 treaty. Subsequent to that, other countries have at different stages raised questions about the validity of both colonial treaties of 1929 and 1959. In pursuance of this, a number of diplomatic communications and meetings have been held among the riparian states of the Nile with a view of resolving the conflict.

The EAC states signed a protocol for the sustainable utilization of the Lake Victoria Basin in November 2003 which is now in the process of ratification. Besides the above protocol, other diplomatic efforts have been made which have culminated in the formation of the Nile Basin Initiative (NBI) that incorporates the 10 riparian states of the Nile. Development partners and multilateral funding agencies have also been involved in the NBI.

Despite the above arrangement, the riparian states of the Nile have continued to have bi-lateral diplomatic relations. Matters of the Nile however, have continued to be addressed through the NBI. A number of meetings involving all the riparian states have been held with a view to resolving the Nile conflict. The last of such meetings was held in March 2004 during which Egypt expressed its willingness to partner with the other riparian states in resolving the Nile conflict. A follow up meeting is scheduled for the end of May 2004 for further discussions. As it is, the major bottleneck to the diplomatic option of resolving the conflict is the time it is likely to take to secure Egypt's practical commitment to unite with the stand of the rest of the riparian states on the issue of the colonial treaties.

## Theoretical Framework

Theory, according to Columbis and Wolfe<sup>25</sup>, helps one to organize knowledge, guide the formulation of priorities in research and to select methods to carry out research in a fruitful manner. Hoffman<sup>26</sup> defined theory in international relations as a systematic study of observable phenomena that tries to discover the principal variables, to explain the behaviour and to reveal the characteristic types of relations among national units.

This study will utilize the interdependence theory of International Relations and the Pluralist theory of international law. Mwangiru<sup>27</sup> explains that the idea of interdependence of states and actors in the international system has profound effects on the understanding of how the international system works, and the diverse forces that influence it. Interdependence is a political and not just economic phenomenon. The reality of interdependence is accepted by all major schools of thought in international relations. Thus according to Mansfield<sup>28</sup>, many International Relations scholars argue that interdependence inherently promotes peace.

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Mwangiru<sup>29</sup> further notes that the interdependent nature of the international system becomes more evident as a conflict develops. The pluralist theory of international law as advanced by proponents like Mc Dougal sees the

<sup>25</sup> Columbis, T. A. and Wolfe, J. H. *International Relations* (New Jersey: Prentice-Hall Inc., 1987).

<sup>26</sup> Theodore et.al *An Introduction to International Relations 3<sup>rd</sup> edition Neynolds*, London, Longman p27

<sup>27</sup> Mwangiru M. *Conflict, Theory, Processes and Institutions of Management*, Nairobi, Watermark Publications, 2000 p.26.

<sup>28</sup> Mansfield, E. D. as cited in Goldstein J. S. *International Relations, 4<sup>th</sup> Edition*, Washington D. C., Priscilla McGeehan 2001 p. 363

<sup>29</sup> Op. cit

overriding goals of international law as the promotion of human dignity in decision making. The theory is multidisciplinary and recognizes a world social process of interaction among various actors aimed at maximizing certain values like wealth, health, safety and well being among others. Specifically the principle of reasonable and equitable utilization of shared water resources embraces the tenets of the two theories. This principle recognizes the sovereignty of states that share natural resources and also imparts an obligation on the part of the states not to injure the interests and rights of other states while utilizing a shared resource. The principle refutes the concepts of absolute territorial sovereignty and absolute territorial integrity.

### **Hypotheses**

- a) The Nile conflict can only be resolved using a multidisciplinary approach.
- b) Egypt's interpretation of the legal regime is the cause of conflicts over the Nile.

### **Chapter Outline**

The entire study consists of seven chapters.

Chapter One is an introduction and constitutes a revised version of the project proposal, touching on the Statement of the Problem, Objectives, Justification, Literature Review, Theoretical Framework and Hypotheses.

Chapter Two looks at International Legal Regimes on the Nile waters, outlining Agreements that were signed regarding the utilization of the Nile Waters and the developments since independence.

Chapter Three centres on Actors, Issues and Interests in the Nile waters by looking at all the riparian states.

In Chapter Four, the study looks at the Nile as a Shared Natural Resource, in the context of the International Legal Water Regimes.

Chapter Five is a brief outline situating the Nile within the conflict cycle.

Chapter Six is a Critical Analysis of Conflict Management in the conflict over the Nile while the study concludes in Chapter Seven.

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## **CHAPTER TWO**

### **INTERNATIONAL LEGAL REGIMES ON THE NILE**

#### **INTRODUCTION**

Chapter one dealt with natural resource based conflicts. It encompassed the Statement of the Problem, Objectives, Justification, Literature Review, Theoretical Framework, Hypotheses and Chapter Outline. This Chapter will deal with International Legal Regimes on the Nile from the colonial period to post independence.

The Nile basin is approximately 1/10 of the continent of Africa, measuring 6511kms from its White Nile source in Lake Victoria and 4588kms from the Blue Nile source in lake Tsana. Its catchment comprises ten countries with a population of more than 250 million people.<sup>1</sup> These are Burundi, Rwanda, The Democratic Republic of Congo, Tanzania, Kenya, Uganda, Sudan, Ethiopia, Eritrea and Egypt.

#### **AGREEMENTS BETWEEN BRITAIN AND OTHER COLONIAL**

##### **POWERS RELATING TO THE NILE**

The agreements on the Nile fall in two broad categories. One, touching on the delineation of spheres of influence by colonial powers and the other on the control of the Nile waters.

The Nile conflict can be traced to the colonial history of Egypt, Sudan and East Africa. These countries were under British influence before their

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<sup>1</sup> The estimated population of the Nile basin is between 250 and 300 million with about 160 million living within the boundaries of the basin-[www.worldbank.org/afr/nilebasin.overview.htm](http://www.worldbank.org/afr/nilebasin.overview.htm)

independence as colonies except for Tanzania, which was a protectorate. The British rule in these countries made it possible for Britain to influence the use of the Lake Victoria – Nile waters in favour of Egypt and Sudan through the conclusion of the 1929 and 1959 Agreements on the Nile waters, which excluded the upper riparian states on the basis that they were situated in more climatically favored areas that did not need the Nile waters for irrigation and could depend on rain for their agriculture.

Britain, the colonial power that controlled most of the Nile valley embarked on securing the waters of the Nile for Egypt's use, with slight changes after 1929 to cater for the needs of the Sudan whose northern regions were as arid as most of Egypt. This was done through entering treaties with other European colonial powers. After Egypt gained nominal independence in the 1920s, it entered into treaties with Britain to secure the waters of the Nile for its sole use. The treaties indicate the general growth of the regulation of the Nile and its direction in favor of Egypt and to some extent to Sudan.<sup>2</sup>

The agreement between Italy and the United Kingdom of 15th April 1891 delineated the spheres of influence between Britain and Italy in Eastern Africa and provided for the Italian government not to construct any works that would divert or modify the flow of the Atbara into the Nile.<sup>3</sup> The Atbara

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<sup>2</sup> Refer to Agreements regarding the Nile from 1891 to 1959.

<sup>3</sup> Article III of the Anglo-Italian Protocol of 1891.

neither flowed in the territory claimed by Italy nor did Italy have a colony near the river in order to claim the river. Britain entered this contract on the basis that the Atbara flowed through Sudan and Egypt which were part of the British colonial empire. It is not clear why Italy signed the Agreement but for Britain it was most probably to establish a colonial boundary.

In 1902 an Agreement defining the boundaries of the Sudan and other British possessions bordering on Ethiopia was entered. It required Ethiopia not to construct any works on the Blue Nile, lake Tsana and the Sobat, which would arrest their flow into the Nile except with the agreement of the United Kingdom and the government of Sudan.<sup>4</sup> This treaty has been subjected to conflicting interpretations by Ethiopia and Sudan. Sudan has argued that Ethiopia cannot use the Nile Water without the permission of Sudan. Whereas Ethiopia disregards the treaty as having been entered on its behalf before independence. Moreover the term "not to arrest the flow of the Nile river ..." did not mean "not to use" the waters of the river. This controversy was to threaten future efforts on co-operation over the Nile waters in that Ethiopia was initially to participate as an observer at the launch of the Nile Basin Initiative discussed in detail towards the end of this chapter.

The treaty of May 9<sup>th</sup> 1906 between United Kingdom and the independent

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<sup>4</sup> *Article III of the treaty between United Kingdom (acting for Egypt and Sudan) and Ethiopia (15<sup>th</sup> may 1902)*

State of Congo in Article III redefined the spheres of influence of the parties and bound the independent state of the Congo not to construct any works on the Semliki or Isango River which would diminish the volume of water entering Lake Albert except on agreement with the Sudanese government. This agreement expired with the end of colonial rule in the region. Belgium, on behalf of the Congo, forfeited the right of the Congo to use the water of its two rivers, the Semliki and Isango that drained into lake Albert. The agreement is significant as an indicator of how far back the interests of Egypt and Sudan over the Nile water have been protected. Like all other agreements, it did not oblige downstream users of the Nile to cooperate with upstream countries from the use of the Nile.

The tripartite agreement of 13<sup>th</sup> April 1906 between United Kingdom, France and Italy was concluded after Italy lost Ethiopia, which was then called Abyssinia<sup>5</sup>. It provided for the parties to act in concert to preserve the interests of Great Britain and Egypt in the waters of the Nile and its tributaries. The purpot of the Agreement was that it denied Ethiopia's sovereignty over its water resource, the Blue Nile. Ethiopia's immediate rejection of the agreement was overlooked by the parties thereto. According to Aseto and Ong'ang'a<sup>6</sup> Ethiopia protested to the League of Nations regarding an arrangement in an exchange of notes between United Kingdom and Italy in 1925 to control Lake Tsana. When the League of Nations demanded an

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<sup>5</sup> Article 4 (a) of the Tripartite Agreement between United Kingdom, France and Italy of 13/4/1906

<sup>6</sup> Aseto O. and Ong'ang'a O. *Lake Victoria (Kenya) and Its Environs: Resources, Opportunities and Challenges*, Kendu Bay, Africa Herald Publishing House, 2003, pp164-165.



explanation from the government of the two countries, they denied having challenged Ethiopia's sovereignty over Lake Tsana.

Negotiations from as far back as 1920 led to the appointment by Egypt of the Nile Project Commission,<sup>7</sup> which compiled a report entitled NILE CONTROL in 1926, on the ultimate water requirements of Egypt and the immediate requirements of the Sudan. An agreement was reached in an exchange of notes dated 7<sup>th</sup> May 1929 to divide the waters of the Nile between Egypt and the Sudan and especially to allocate water to the latter for irrigation in the Gezira. In the Agreement Britain undertook not to construct any irrigation or power works on the Nile or its tributaries or associated lakes in the Sudan or in the territories under the administration of Britain without the consent of Egypt, if such constructions would have the effect of reducing or delaying the water destined for Egypt. Whittington rightly assesses<sup>8</sup> that the agreement heavily favoured Egypt, as it limited the rights of the Sudan and rejected those of the remaining riparian states of the Nile.

Other terms were that during the dry season (January 15<sup>th</sup>-July 15<sup>th</sup>) the Nile flow was to be reserved solely for Egypt. Further, Egypt reserved the right to monitor the Nile flow in the upstream riparian countries and to undertake Nile river related projects without the consent of upper riparian states and lastly the right to veto any construction projects that would adversely affect its interests. This right to veto was easily enforceable during

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<sup>7</sup> Howell P and JA Allen: *The Nile Sharing a Scarce Resource*, Cambridge University Press 1994

<sup>8</sup> Whittington, DA et al 'Toward a Nile Accord', *Ethioscope* 1994, vol 1 September 1994

the colonial period because Britain was the colonial power over most of the riparian states. However, it is difficult to conceive how such a power could be enforced by Egypt against independent states. This agreement became the basis of the 1959 Agreements for the Full Utilization of the Nile waters.

The supplementary agreement of 1932 between the United Kingdom and Egypt provided for the building of the Jebel Awliya Dam near Khartoum (Sudan) on the Blue Nile for the benefit of Egypt. So far, none of the agreements scrutinized were sensitive to the water needs of the upstream countries of the Nile.

The Owen Falls Agreements of 1949 and 1953 between the United Kingdom and Egypt and provided for the participation of Egypt in the construction of the Owen Falls dam and the use of Lake Victoria as a storage reservoir of water for Egypt. The agreements also provided for the financial contribution of Egypt, the stationing of an Egyptian engineer at Jinja and the compensation Egypt would pay to the East African states due to damage incurred as a result of the rising level of the lake.

The agreement of cooperation of February 1950 between the United Kingdom and Egypt related to cooperation in the carrying out of hydrological and meteorological surveys between Egypt and the British authorities in Uganda and indicated the degree of cooperation which Uganda was to accord Egypt, because the data would help Egypt to determine the amount of water it could expect from these upper reaches of the Nile. The agreement also

entitled Egypt to take possession of the data and information to guide its policy towards the catchment of Lakes Victoria, Albert and Edwards.

The supplementary agreement of 1952 between Sudan and Egypt concerned the raising of the level of Sennar Dam and the Jebel Awliya Reservoir and drawing of 200 milliards of cubic metres of water by Sudan during the restricted period and also the construction of a dam at the fourth cataract. During this period, Egypt also sought to create other schemes that were not covered in the agreement that would ensure that the Nile waters were conserved for its own use. An instance is the incomplete Jonglei Canal project in the Sudan which was to create a by passage channel for the White Nile water, by reducing the wastage in the swamps of the Sudd region. According to Okidi<sup>9</sup> draining the Sudd swamp would occasion changes in the weather, and particularly in the rainfall patterns, in the region around Southern Sudan and well into the territories of the neighbouring states. However, Egypt was not concerned with this. The project sought to increase the yield of water from the White Nile to be used when the floodwaters from the Nile were not available. Other components were a dam at Owen falls to regulate the flow of Lake Victoria, a barrage at Masindi port to regulate the flow from Lake Kyoga and a dam at Mutir in the west Nile province of Uganda to provide a storage reservoir and regulate the flow from Lake Albert.

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<sup>9</sup> Okidi C O *Legal and Policy Regime of Lake Victoria and the Nile Basin*, Indian Journal of International Law, vol 20, 1980.

The 1959 Agreement for the Full Utilization of the Nile waters between

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and Sudan forms the crux of the matter. It stated that the 1929 agreement had only regulated partial use of the natural river and did not cover the future conditions for a fully controlled river supply. The full utilization of the Nile waters for the benefit of the two countries required the implementation of projects for the full control of the river to ensure increased water supply.

The position of the other basin states with regard to the 1959 agreement is that the principle of *pacta tertiis nec nocent nec prosunt* could be invoked. The principle upholds the view that a treaty may not create obligations or rights for a state, which is not party without its consent. The proviso to this principle is that where a treaty creates a right for a third party to a pact, the third party may take advantage of those rights. However, since no right is provided under the agreement to benefit the other basin states the qualification does not apply. These legal propositions on the positions of the third parties in relation to treaties have now been accepted and codified in Articles 34, 35 and 36 of the Vienna Convention on the Law of Treaties of 1969<sup>10</sup>.

Where treaties are entered in respect of third parties which do not stand to gain, they violate the principles generally acceptable in international law, such as the declaration on the principles of international law concerning

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<sup>10</sup> Vienna Convention on the Law of Treaties, May 23, 1969

friendly relations and cooperation among states adopted in 1970, which recognizes the independence or sovereignty of states. The others are the right to self-determination enshrined in articles 1(2) and 55 of the United Nations Charter<sup>11</sup> and the principle of consent freely and independently given by equally sovereign states. The principles of equitable access<sup>12</sup> and reasonable utilization of shared water resources as embodied in the United Nations convention on the law of non-navigational uses of water (1997)<sup>13</sup> and the principle of *Clausula Rebus Sic Stantibus*<sup>14</sup> cannot be over emphasized. Of importance, are also the clean slate principle of non-succession of treaties (or the Nyerere doctrine of state succession of treaties) as regards newly independent states and *jus cogens*<sup>15</sup> as defined by article 53 of the Vienna Convention, which specifies that a treaty conflicting with *jus cogens* at the time of its conclusion is void. Similarly article 64 of the Convention provides

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<sup>11</sup> *The United Nations Charter*, 1945 pp2-3

<sup>12</sup> The principle of equitable and reasonable use (without causing significant harm) is now the overriding principle of the customary international law governing uses of international watercourse. The principle was developed from the *Helsinki rules (1966) through the convention on the law of the non-navigational uses of international watercourses*; see also Article 5 of the *United Nations Charter*.

<sup>13</sup> United Nations Convention on the Law of Non-navigational uses of Water (1997)

<sup>14</sup> Aziz T Saliba *Rebus sic stantibus: A comparative survey*; E-law, Murdock university Electric journal of law, vol 8 no 3 September 2001

<sup>15</sup> The basis of the *jus cogens* concept that there develops over time international customary rules that are of general acceptance and override any other norms purporting to govern international relations in the respective field, Malcom N.Shaw, *International law*, 4th edition 1997, Cambridge university press, p 96, Article 53 of the *Vienna convention*; treaties conflicting with the peremptory norm of general international law.

that a treaty becomes void and terminates if it is in contradiction with a peremptory norm of international law, which has newly emerged.

## **POST INDEPENDENCE**

Most of the basin states since independence have been active in the field of international co-operation in the area of the management of international waters. The principal agreements in this period have focused on the assessment of the resources and integrated basin development. These treaties relate to the establishment of the Hydroment project and the Kagera Basin Organization Agreement. Unlike the treaties signed by the colonial power, these treaties are not controversial.

The agreement for the establishment of the Organization for the Development and management of the Kagera River Basin was signed by the heads of the states of Burundi, Rwanda and Tanzania at Rusumo on 24<sup>th</sup> August 1977. The agreement entered into force on February 1978, with Uganda acceding to the treaty on May 19<sup>th</sup> 1981. The treaty is open to membership of the four basin states only and is aimed at promoting the development of the basin. The objectives of the agreement cover all aspects of development including water and hydropower development, mining, industry, agriculture, health, tourism, trade, wildlife conservation and development, fisheries and environment protection.

The treaty permits the state parties to carry out any activities within its scope, subject to the right of the organization to claim competence for projects with an inter- state character. A project is deemed under article 2 to have that character if it involves the territory of more than one state and the services and benefits to be derived may be transmitted through or received entirely or partially in the territory of a member state or states other than that of the state where the project, work or programme is to be undertaken. Further, if in the judgment of the organization, it is likely to produce substantial effects, whether these effects are beneficial or prejudicial in the territory of a state or states different from that of the state where the project, work or programme is to be undertaken.<sup>16</sup>

However the agreement does not have clear and pointed provisions on the allocation of the rights of the various states to the waters of the river Kagera. Nevertheless, the agreement is strategic in the sense that it disregards Egypt's attempt to control river Nile and its tributaries on the basis of colonial agreements. This factor is strengthened by the participation of Uganda and Tanzania, subjects of the former British empire, on whose behalf Egypt insists that the 1929 agreement remains binding.

Beyond this, the agreements failed to make provision for the rights and obligations of the basin states *vis a vis* each other, or setting out detailed modalities for development activities in the basin. Instead, virtually the entire

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<sup>16</sup> Ibid

agreement is devoted to providing the basin with an organizational framework and adequate procedures for its development and management.<sup>17</sup>

The Agreement for the Establishment of the Hydrometeorological Survey of Lakes Victoria, Kyoga and Albert was signed in may 1967 by Kenya, Uganda, Tanzania, Sudan and Egypt, the United Nations Development Programme (UNDP) and the World Meteorological Organization (WMO). The agreement was in the form of a project and it entered into force on 17<sup>th</sup> August 1967. The objective of the agreement was to enable and enhance the collection of meteorological and hydrological data on the Great Lakes and their catchment areas. The data obtained would be essential in understanding the water balance of the river and the associated Great Lakes.

The project was later expanded to include Rwanda, Burundi and Zaire as parties to the agreement while Ethiopia initially participated as an observer. The project headquarters are established at Entebbe. The project contributed a lot of data regarding the hydrology and meteorology of the Great Lakes. It however expired in December 1992 and was succeeded by a new project, the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin (TECCONILE) on 8<sup>th</sup> December, 1992.

The Agreement was based on a project that was agreed on at a meeting at Dar es salaam, Tanzania in September-October 1992, of the

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<sup>17</sup> Ibid p194



technical committee of the hydromet. The agreement was signed by Egypt, Rwanda, Sudan, Tanzania, Uganda and Zaire. The transitional structure constituted an organization with a council of ministers with decision-making powers, a technical committee and an international secretariat, whose headquarters was in Entebbe, Uganda.

The organization had both short and long-term objectives. In the short term, the organization was to assist the participating countries in developing national water plans and to develop infrastructure, capacity and techniques required for managing the Nile basin water resources. In the long term, TECCONILE had the objective of assisting the member states in the development, conservation and use of the Nile basin water resources in an integrated and sustainable manner through basin wide co-operation for the benefit of all. The agreement also provided for assisting states to determine the equitable entitlement of each riparian state to the Nile waters.

TECCONILE is, so far, one of the most comprehensive international agreements in the Nile basin. With its intended revolutionary character, it is the first post independence agreement in which riparian states accept an undertaking to create an organization for assisting participating countries in the determination of the equitable entitlement of each riparian state to the use of the Nile waters. In 1999, however, due to the lack of participation by some of the riparian states, especially Ethiopia, TECCONILE was replaced by yet another arrangement called the Nile Basin Initiative (NBI).

The NBI that replaced the TECCONILE was formed as a transitional arrangement bringing all the Nile basin states together to foster cooperation and sustainable development on the Nile river for the benefit of all for a period of between 3-5 years or until the final framework for cooperation is put in place and shall enter into force when signed by at least six of the Nile basin riparian states.

The structure of the NBI consists of the council of ministers, technical advisory committee and the secretariat. The purpose of the initiative is to advance the Nile basin Strategic Action Programme (SAP) in realization of the shared vision of the Nile: to achieve sustainable, socio-economic development through the equitable utilization of, and benefit from, the common Nile water resources.<sup>18</sup> The agreement is the first post independence agreement in which Egypt accepts and has signed an agreement to create an organization to assist participating countries in the determination of the equitable entitlement of each riparian country to use the waters of the Nile. It underscores the direct acceptance of Egypt of the concept of equitable utilization of water resources which is a movement away from its previous stand. It remains to be seen whether the project would be a useful forum in the resolution of the Nile Conflict.

The current problem with the Nile waters is the stalemate that exists between opposing views on the draft agreement on the NBI co-operative

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<sup>18</sup> Ibid p 2

framework project (D-3). It applies to the use, development protection, conservation and management of the Nile river basin and its resources and establishes an institutional mechanism for cooperation among the Nile basin states. Principle 15 of the draft asserts that existing agreements on the waters of the Nile (including the 1929 Nile waters agreement), which are inconsistent with the framework, shall be null and void to the extent of their inconsistency as and when the agreement came into force.<sup>19</sup>

Egypt has entered the reservation to the above clause proposing an alternative that should read: "the co-operative framework shall be without prejudice to existing agreements", which simply means that the framework should accommodate the terms of the 1929 agreement and others. In view of this, the realization of a shared vision among the co-riparian states is likely to be delayed.

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<sup>19</sup> *The Nile river basin cooperative framework project, August 2001*

## CHAPTER 3

### ACTORS, ISSUES AND INTERESTS IN THE NILE

In the previous chapter the international legal regimes on the utilization of the Lake Victoria Nile Basin were analyzed, critically considering the Agreements between Britain, other colonial powers and the countries that benefit from the basin. The developments within the basin since independence and the proposed objectives for the future of the Nile were equally considered.

In this chapter, the actors, issues and interests of the Lake Victoria – Nile riparian states will be discussed country by country. The chapter centres on the issues and conflicts that arise from the sharing of the resources within the basin.

Throughout history, rivers have always influenced the imagination of man. In Europe, rivers were used to demarcate national boundaries because it was then thought that such clearly demarcated river courses could not result in disagreement. Similarly, in the event of conflict, a river forming a physical boundary was thought to be so clear cut that it could not cause any dispute. Rivers were held as a basis of unity for the riparian states that shared a river. The tributaries of a river were thought to create a bond of unity for countries within the basin, such as the Rhinelands in Europe and the Urals.

As stated in Chapter Two, the Nile Basin covers ten countries. This shared water resource is of strategic importance to each of the ten riparian states, although to differing extents.

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## EGYPT

Egypt is a desert country. Its strategic location at the intersection of Asia, Africa and Europe underpins its influence in the Middle East region and its importance to intrusive powers such as the former colonial power Britain, the United States of America (USA) and the former Soviet Union. The littoral position of Egypt within the Mediterranean region at the intersection of the Arab world, Africa and Europe remains a prominent aspect of Egypt's sense of identity.<sup>1</sup> The Suez Canal, which opened in 1869, serves as a vital artery for international commerce. Foreign powers have coveted this strategic prize from the Hyksos (1730 B.C) through Alexander the Great (332 B.C) to armies from Arabia (641 A.D), the Ottoman Empire (1517) and the European powers of France (1798) and Britain (1882).<sup>2</sup> Egypt's leaders stress its centrality in the Arab World in order to enhance their influence diplomatically and politically in that region, especially its support for the Palestinian cause and the desire to tap the oil resources in the Middle East. Moreover, the strategic importance of Egypt induces foreign governments to cultivate close ties.<sup>3</sup> Governments successfully sought military and economic aid from the Eastern and Western blocs in the height of the Cold War; they attracted U.S. assistance as a reward for ending the 1973 confrontation with Israel.<sup>4</sup> Egypt is an important ally for the U.S in its

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<sup>1</sup> Almond G. A. and Powell G. B. Jr. (Eds.), *Comparative Politics Today, A World View*, New York, Harpercollins College Publishers, 1996, p.609.

<sup>2</sup> Ibid p.610

<sup>3</sup> Ibid

<sup>4</sup> Ibid

relations with the Middle East and particularly Israel hence the existence of cordial relations between the two states.

For Egypt, the Nile is the lifeblood of its people. Egypt depends on the Nile for all aspects of life. The Nile provides the main source of fresh water for human consumption, serves as a route for communication, and supports fisheries, agriculture, industry and hydroelectric power. But the Nile Valley is less than ten miles wide from Aswan to Cairo, a stretch of 500 miles. North of Cairo, the Nile divides into several branches that form the densely populated Delta. The 60.8 million Egyptians are crowded into 4,000 villages and a dozen cities along the river and the Delta.<sup>5</sup> Barely two inches of rain fall annually, concentrated along the Mediterranean Coast.<sup>6</sup> Only 4 percent of the land is inhabited; the remainder is desert, dotted by a few oases.<sup>7</sup> It is the significance of the Nile to Egypt that led Herodotus to describe Egypt as, "The gift of the Nile," more than two thousand years ago.<sup>8</sup> Egypt is 96 percent desert with no any other source of water apart from river Nile.

Historically, Egypt has wanted to dominate and rule the Sudan because of the Nile. When the British acquired Egypt as a colony, they too conquered Sudan in 1890 and formed what they called the Anglo-Egyptian condominium. This was a pact between the Pharaohs of Egypt and the British government to control the waters of the Nile. The exploration efforts of H. M. Stanley leading to

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<sup>5</sup> Daniel C.D. (Ed)., *The Middle East*, 8<sup>th</sup> Ed., Washington D.C.: Congressional Quarterly, 1994, p.194.

<sup>6</sup> Op.cit p.610

<sup>7</sup> Ibid

<sup>8</sup> Pounds. *Political Geography*, International Student Edition, New York, McGraw-Hill Book Co. Inc. 1963, p279.

the discovery of Uganda as the supposed source of the river Nile was based on this strategic Valley of the river. Perhaps, the most telling importance of this river to Egypt lies in the 1929 Agreement that gave it exclusive control of the river, as has been noted in Chapter Two.

Egypt attained independence under a 1922 treaty that gave it four conditions; first, the British army was to continue to guard imperial lines of communication through Egypt between the Mediterranean Sea and the Red Sea, especially on the way of the Suez Canal. Secondly, Britain was to continue to be responsible for defending Egypt against outside attack. Thirdly, Britain was to continue supervising the protection of foreign interests inside Egypt. Lastly, Egypt's continued acceptance of British control of the Anglo-Egyptian condominium (joint-government) of the Sudan.<sup>9</sup> Britain warned foreign powers against interference with Egypt.<sup>10</sup> Attempts by Egypt to bring about political union with the Sudan were motivated by the urgent need to have some control over what happens to the waters of the Nile before they flow into Egypt.<sup>11</sup> In this regard, the 1929 Nile waters Agreement can be perceived clearly as an agreement to secure Egypt's water needs while reassuring its political independence of 1922.

Until recently, Egypt was prepared to go to war with any country whose intentions it deemed would affect the steady flow of the Nile water. This can be

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<sup>9</sup> Op.cit p112

<sup>10</sup> Thompson V.B. *Africa and Unity: The Evolution of Pan Africanism*, 3<sup>rd</sup> Ed., London. Longman, 1973, p.67

<sup>11</sup> Op.cit p.292

deduced from pronouncements made by senior government officials. A classical example is one made by a leading Egyptian diplomat stating that the next war in the region would be over the waters of the Nile, not politics.<sup>12</sup> In 1898, when Egypt was under British rule, rivalry over colonies between France and Britain almost led to a battle between the two European powers when France threatened to divert the waters of the Nile at Fashoda.<sup>13</sup>

Recent developments in which the upper Nile riparian states claim a right to utilize the waters of the river have generated a lot of debate on whether to honour or renegotiate the colonial treaties on the Nile. Although Egypt initially was adamant on controlling the flow of the water of the Nile, states like Tanzania have rejected the treaty and proceeded to tap the water of Lake Victoria.

The Nile Basin Initiative (NBI) has been reactivated. Egypt has been forced to come to the negotiating table due to pressure from the upper riparians and Tanzania's belligerence, to resolve the age long problem. The Nile water is a national security issue for most of the basin states and not only Egypt. Although Egypt is engaged in the NBI negotiation process, it has remained adamant about abandoning or reviewing the colonial treaties.

With modern technology, the Nile can be utilized for irrigation and navigation hence providing an important link between East and North Africa. Trade in the region would then improve tremendously. The fish resources of

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<sup>12</sup> Butrous Butrous Ghali in Lloyd Timberlake. *Africa in Crisis: The Causes, the Cures of Environmental Bankruptcy*, New Edition, Nairobi, East African Educational Publishers, 1994, p.162.

<sup>13</sup> Okoth P. G. and Ogot B.A. (Eds). *Conflict in Contemporary Africa*, Nairobi, Jomo Kenyatta Foundation, 2000, p.96.



Lake Victoria would be tapped for North Africa, Middle East and Europe. The water course would also be an economic lifeblood to the 89 million East African communities in terms of trade and the expansive COMESA trading bloc. The linkage may possibly extend to the SADC region creating a viable market for Eastern, Central and Southern Africa.

Egypt has faced severe environmental problems for an extended period. Waste from factories pours into the Nile, which also serves as a primary source of water for drinking, bathing and agriculture. Smoke from factories, tannery fires, chemical fertilizers etc contribute to contaminate the river system. However, systematic monitoring of the quality of the Nile Water has been instituted by the government.

Each country within the Lake Victoria – Nile Basin would like to maximize the use of the water resources to their own advantage. These resources include water for irrigation, industry and domestic use, transport, marine life and minerals. It is the desire to control and exploit these resources by each country that constitutes the genesis of the conflict.

## **SUDAN**

Sudan is the largest country in Africa. The country has been bedevilled by conflicts from as early as the 1950s based on race, religion and resources. The country has also been involved in inter-state conflicts with Uganda, another riparian state of the Nile over the past four decades. This conflict though not resolved, has to a negligible extent been managed through bilateral diplomacy.

The river Nile which has, for centuries, been a life – line of both Egypt and Sudan flows from Uganda, northwards into the Mediterranean Sea.<sup>14</sup> For a long time in the era of exploration and later imperialism, the “mystery” of the origin of the Nile determined Britain’s relations with the people of what later became Uganda and Sudan. This was due to the importance of the Nile to both Egypt and Sudan.

The government of the Anglo-Egyptian Condominium took control of Sudan from 1889 until its independence in 1956. In Sudan, British policy was to differentiate the “natives” along nationality, cultural and religious lines. The policy was designed to isolate Africans as much as possible from the Northern (Arab and Islamic) influences. The tendency towards a separate policy was based on a consuming fear of Islam as a threat to government control.<sup>15</sup> Sudan had much to do with Uganda’s geopolitical importance as far as the struggle for the control of the Nile Valley was concerned.

Like Egypt, Sudan utilizes the Nile for irrigation. Both the White and Blue Nile converge at Khartoum creating a very large waterway that drains into Egypt. The Gezira scheme is the largest irrigation scheme in the world with 1.2 million hectares under irrigation. Apart from cotton, cereal crops such as wheat, millet and sorghum are grown in the scheme. Other crops grown include onions, legumes and fruits. Irrigation in the Gezira is by natural gravity.<sup>16</sup> If financial resources are available there is plenty of room for expansion of the scheme.

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<sup>14</sup> Okoth P. G. et al, (eds). *Uganda: A Century of Existence*, Kampala, Fountain Publishers, 1995, pp.5-7.

<sup>15</sup> Holt P.M., *A Modern History of Sudan*, London, Wiendenfeld and Nocolson, 1969, p.125.

<sup>16</sup> Op.cit. p292

Besides, recent studies reveal that there are oil deposits at the convergence of the two tributaries of the Nile raising the potential for further economic exploitation.

Sudan contributes to the Nile waters through rivers Atbara, Sabot, Tonj, Gel, Pibor and Lau, all of which flow into the white Nile. The Nile can be an important transport and communication line for Sudan's Agricultural and oil produce to the outside world.

Much of the Northern Sudan heavily relies on the Nile for irrigation. In 1991/92, 27 full units had been installed in the Blue Nile schemes, 31 for the White Nile schemes while emergency units were allocated for irrigation schemes on the river Nile where the irrigated areas have increased accordingly.<sup>17</sup>

The Kenana factory in Sudan produces sufficient sugar from sugar cane grown by irrigation using the river Nile. The sugar is not only sufficient for domestic consumption but also for export to the COMESA region. Given the strategic importance of the Nile to the Sudan, it is in the interest of the latter that the flow of the Nile remains uninterrupted.

The continuing insurgency in Uganda between the Lords Resistance Army (LRA) and the Ugandan Government is remotely linked to covert support by Khartoum, which blames Uganda for supporting the Sudanese Peoples' Liberation Army/Movement (SPLA/M). The underlying suspicion has been that an independent Southern Sudan which is more arable than the North will utilize the

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<sup>17</sup> External Information Secretariat General., *Sudan 1998*, Khartoum, Khartoum House, 1998, p.128

Nile waters to the detriment of the arid North. Other factors like race, religion and governance have also contributed to the insurgencies. Following the historic signing of the Sudanese Peace Accord in January, 2005 in Nairobi, the scenario has since changed. Dr John Garang' of the SPLA/M on his first visit to Uganda as Sudanese first Vice President claimed that time is out for those LRA elements who have been using Southern Sudan as a training ground to launch attacks on Kampala.

Linked to this insurgency in the Sudan, is the long running Lords Resistance Army (LRA) conflict against the regime in Kampala. Khartoum has been accused of supporting the LRA against Uganda because of the belief that President Museveni has been supporting SPLA/M for the control of the region including the resources of the Nile.<sup>18</sup>

Sudan supports the NBI and has projects on the Nile. The country is co-operating with other members of Eastern Nile Subsidiary Action Plan (ENSAP) namely Egypt and Ethiopia. Sudan believes that Egypt is willing to co-operate with other riparian states concerning the utilization of the Lake Victoria Nile Basin water resources and that the suspicions of Egypt by the other riparian states are unfounded. The 1959 Agreement on the Nile was contracted solely between Egypt and Sudan, in which Egypt received the lion's share of the Nile water being 48 cubic milliards and Sudan 4 million cubic milliards. A senior official at the

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<sup>18</sup> Op.cit. pp105-113

Sudan Embassy in Kenya felt that the press is fighting Egypt.<sup>19</sup> External powers have ignored the issue on the Nile sharing and instead have expressed interest in Sudan's newly discovered oil deposits. The internal conflicts of Sudan are likely to be compounded by the discovery of oil and may linger for many years and spill over to the Nile conflict indirectly. Like Egypt, Sudan's interest would be to maintain the current position on the Nile as already seen in this Chapter.

### **THE DEMOCRATIC REPUBLIC OF CONGO (DRC)**

The DRC (formerly Zaire) is the third largest country in Africa richly endowed with natural resources. The Congo became independent on 30<sup>th</sup> June 1960.<sup>20</sup> The country is endowed with rich tropical rain forest, minerals, well drained rivers and lake Albert. Its expansive nature makes it the centre between Eastern Africa and Atlantic Ocean. River Congo is one of the few navigable rivers in Africa and is the second largest river in the world.<sup>21</sup> The experience of exploiting the Congo basin especially transport can be extended to Lake Victoria and the Nile.

Kind Leopold II's dreams for Africa were to exploit the wealth of the Congo and then stretch out his hand to the Nile.<sup>22</sup> The Congo was a treasure house, teeming with tropical produce like wild rubber and ivory.<sup>23</sup> The country

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<sup>19</sup> This Information was derived from Oral interviews by the author from a source which requested for anonymity.

<sup>20</sup> Depelchin J., *From the Congo Free State to Zaire (1885-1974): Towards a Demystification of Economic and Political History*, London, Codesria, 1992, p.85

<sup>21</sup> Vansina J., *Paths in the Rainforests: Toward a History of Political Tradition in Equatorial Africa*.

Wisconsin, University of Wisconsin Press, 1990, p.38

<sup>22</sup> Pakenham T., *The Scramble for Africa, White Man's Conquest of the Dark Continent from 1896-1912*, New York, Avon, pp.524-525.

<sup>23</sup> *Ibid*

was colonized as the property of King Leopold not for the Belgians. Belgian extremists were convinced that independence for the Congo meant the beginning of a mess. Independence was seen as a gift from Belgium to the Congo. The country was perceived as a model colony, at least in its economic development. Lumumba's pursuit to place the country's resources at the service of its people was fiercely resisted by the Belgians and the Congolese petty bourgeoisie culminating in the Congo crisis of 1960s.<sup>24</sup>

DRC has historically been linked and interwoven with the political developments in Tanzania, Rwanda, Burundi and Uganda. Linguistically, eastern Congo speaks Kiswahili, therefore extending the East Africa region lingua franca to Central Africa. Strategically therefore, the DRC provides a very vital interface between 3 trading blocs of the East Africa Community, Comesa and SADC. However, peace has eluded her. If she were peaceful and well linked to the 3 blocs by rail and road, she could be home to a very vibrant economy in the Central African heartland.

Any problem in the East Africa region is bound to affect the DRC due to this intricate historical linkage. An instance is the war in DRC in 1997 termed Africa's First World War in which Uganda and Rwanda invaded the country and were opposed by Namibia, Zimbabwe, Chad and Angola who assisted the government of the DRC.

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<sup>24</sup> Op.cit. pp.85-86

DRC is the World's largest producer of cobalt and the seventh world producer of industrial diamonds making mining the fundamental basis of DRC's economy. The copperbelt of DRC during the colonial period was placed under Belgian control.<sup>25</sup> Even after independence the country has not been in control of its resources. Multinational corporations among other external actors have dominated the mining activity in the country while its citizens remain impoverished.

The DRC's interests in the Nile are not as remote as may be supposed because it is easier to trade through Tanzania using Lake Victoria than its Western Atlantic sea route. The eastern towns of DRC actively trading in East African products, notably from Kenya and Uganda. The adoption of Kiswahili as the medium of trade in this region is a living testimony of this fact.

A senior official at the DRC embassy in Nairobi explained that whatever is done to benefit the entire population of the Victoria – Nile basin is welcome by DRC. He elaborated that Inga dam on river Congo has the capacity of supplying electricity to the entire African continent. The Congo supports the NBI because the country is keen on improving the welfare of its people. He confirmed that Eastern Congo depends on East Africa for trade, which is actually more or less part and parcel of East Africa. The country shares Lake Albert with Uganda and this is what connects the Congo to the Victoria – Nile basin. The DRC is a member of a project called *communaute des pays des grands lacs* (CPGL)

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<sup>25</sup> Birmingham D. and Martin P.M. (eds)., *History of Central Africa*, Vol.2., Longman, 1972, pp126-134.

together with Rwanda and Burundi. It is alleged that Lake Albert has plenty of oil, two thirds of which is said to be in the DRC and one third in Uganda. This resource can be a source of co-operation or conflict between the two Nile riparians.

Despite the DRC's wealth, it has been ruined by external interference and power politics of the region and the world at large. Its colonization as the Belgian King's possession has dire ramifications to the present day.

## **KENYA**

Kenya gained independence from British rule in 1963 and became a republic in 1964. The country covers an area of 582,646 km<sup>2</sup>, of which water surface occupies 13,393 km<sup>2</sup> and is located approximately between latitudes 4 degrees 21, North and 4 degrees 28 South and longitudes 34 degrees West and 42 degrees East.<sup>26</sup> Kenya's portion of Lake Victoria is the smallest amongst the East African Community states, at 6 percent. She is a chronically water scarce country. About 20 percent of its land surface area is arable. The rest is arid and semi arid. 80 percent of the population of Kenya is agrarian. Its major industries are also agro-based. Most of the Kenyan population lives in the rural areas.

About eight rivers from the highlands west of the Rift Valley drain into Lake Victoria, among them Nzoia, Yala, Nyando, Sondu and Gucha. It has been

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<sup>26</sup> Ochieng W.R. and Maxon R. M. (eds)., *An Economic History of Kenya*, Nairobi, East African Educational Publishers, 1992, p.1.



argued that it is Kenyan rivers that make Lake Victoria a fresh water lake, since they drain the waters from the highlands into the lake.

Much of Western Kenya is lowland and is prone to annual flooding. The greatest wealth of Lake Victoria for Kenya lies in its abundant lake water resource which can be fully utilized to irrigate the low rainfall areas of the margins of the lake with possibilities of extension to the rainfall deficient areas of the rift valley. Since the colonial times, Kenyan governments have been striving to control the flooding in the lake region by irrigation farming. Pioneer schemes in Yala and Ahero for instance have not been successful due to inadequate funds. Rivers Sio, Nyando, Malakisi, Gucha and Sondu-Miriu to name a few, have been sources of havoc during heavy rains when they burst their banks and flood the lowlands. Kenya has always intended to control this by constructing dykes and weirs.

Apart from controlling the floods, the government is also interested in tapping hydro-electric power from these rivers. In the past, efforts to construct dams and hydro-electric power stations by Kenya in some of these rivers have not been successful. However, in the intervening period, the government of Egypt through its embassy in Nairobi offers financial support to Kenya to dig boreholes in Western Kenya to provide for the water needs of the region. This policy of Egypt's assistance to dig boreholes for Kenya is influenced by the desire to control the Nile. Other views are that the Sondu Miriu hydro-electric Power Project stalled due to corruption. Vegetational, animal and climatic features have

changed considerably in the last centuries due to, predominantly human factors and activities.<sup>27</sup> This implies that poverty has led to deforestation and negative agricultural practices that have affected the environment like causing soil erosion.

Kenya has been an active member of the NBI and has been pushing for a re-negotiation of the colonial regime on Lake Victoria and Nile which are not in its interest.<sup>28</sup> The basis of refuting the colonial treaties on the Nile by Kenya is that by the time these treaties were concluded, it was not independent. The independent government therefore was unwilling to honour treaties it was not party to.

Egypt has always taken cognisance of Kenya's perennial water shortage and has developed a policy of assistance to Kenya through digging boreholes. The level of funding increased drastically when Kenya projected on controlling the outflow of Sondu-Miriu by constructing a hydro-electric power station.

Kenya's long term development plans have been to tap the agricultural potential of the western region by building irrigation schemes and generating hydro-electric power to increase its national grid to reduce, if not stop, its over-reliance on supply from Uganda. Western Kenya has long been held to be the country's grain basket. The entire county's sugar belt is located in the region. All the sugar farming is rainfed. If sugar irrigation farming were to be practiced,

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<sup>27</sup> Ibid p.7

<sup>28</sup> This information was contained from the oral interviews by the Author from a source in the Ministry of Water which requested for anonymity.

then the country's sugar domestic demand would not only be met but excess would be available for export to the East African and the COMESA markets.

The country therefore needs to invest in irrigation farming not only of sugar cane but cotton, fruits, horticulture and food crops to attain food security and improve its political economy. If Kenya does this, its economic interests are bound to conflict with those of Egypt. The two countries have had cordial diplomatic relations despite their mutual suspicion over the control of the waters of Lake Victoria.

When the three East African states were under British colonial rule, Kenya was the most "favoured". Most of the major industries were established in its capital, Nairobi, especially after World War II. Kenya clearly became the centre of British imperial interests in East Africa.<sup>29</sup>

Kenya was used as a platform for imperialist expansion in the region. Kenya's political economy has since the colonial era been subject to external influences. These include bilateral and multilateral donor agencies, as well as foreign investors. Its economy has become donor dependant, which coupled with declining export prices for primary commodities, has led to a debt crisis. Kenya was ranked sixth among the most externally indebted countries in Africa in 1988 with an external debt burden of Kshs.700 Million.<sup>30</sup> This has made Kenya vulnerable to diplomatic pressure exerted in favour of external interests.

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<sup>29</sup> Op.cit. p.361

<sup>30</sup> Nzomo M., *External Influence on the Political Economy of Kenya: The Case of MNCs*, cited in Oyugi W.O. (ed). *Politics and Administration in East Africa*, Nairobi, East Africa Educational Publishers Ltd., 1994, pp429-430

This position is unwarranted and would have been pre-empted if its abundant wealth in the form of natural resources were utilized wisely, including the waters of Lake Victoria, in addition to other internal water resources.

## UGANDA

In the context of the Nile basin, Uganda has a dual position. It is both an upper and lower riparian state. Uganda was declared a British protectorate in 1895. Thereafter the Imperial British East Africa Company (IBEAC) opened up a railway line from Mombasa to Port Elizabeth in 1901.<sup>31</sup> The rail line was built specifically to tap the rich economic resources from Uganda. Uganda became independent in October 1962 with high expectations about the benefits of political independence.<sup>32</sup> Indeed, Uganda was one of the fastest growing economies in East Africa until 1970 when Idi Amin took over government and began a systematic plunder of the Ugandan economy. By 1966, per capita income in Uganda was higher than that of Kenya, Tanzania and even Thailand.<sup>33</sup>

The British interests in Uganda were twofold. First, the resources of the country compelled the British to build the Uganda Railway, and secondly, the British thought Lake Victoria was the source of the river Nile. Okoth<sup>34</sup> argues that strategically, Uganda has been historically important, located at one of the major sources of the river Nile, and not so far away from the Indian Ocean,

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<sup>31</sup> National Environment Management Authority. *State of the Environment Report for Uganda, Kampala*, Print Dynamix, 2000/2001, p.2

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> Okoth P. G., *The Foreign Policy of Uganda Since Independence Toward Kenya and Tanzania*, Chapter Twelve, pp.360-361

despite being land-locked. Further, that Uganda was the object of immense imperialist interest at the close of the 19<sup>th</sup> Century in the effort to control the "Cape of Cairo Route". Uganda therefore provided a strategic linkage from the interior of East Africa to the Indian Ocean and also, the source of the most important waterway from East Africa to North Africa, specifically Egypt, because of the Suez Canal, a vital linkage between Africa, India and Europe. Uganda was therefore of strategic importance for the defence and control of Egypt by the British.

Uganda is well endowed with fresh water resources including lakes, like Victoria, Kyoga, Bisinia, Kwania, Wamala, Edward, George, Albert and Bunyonyi.<sup>35</sup> Uganda contributes to the Nile water through rivers and streams such as White Nile, Ishasha, Aswa, Manafa and Rwizi.<sup>36</sup> There are an estimated 9,000 natural springs in Uganda, of which 2,300 are protected and have the potential of becoming significant sources of water, particularly in the rural areas. There are 17 thermal and mineral springs in areas associated with volcanic activity. An estimated 20,000 more boreholes will be required if the projected future demands are to be met.<sup>37</sup>

In East Africa, Uganda receives ample rainfall throughout the year. It can be assumed that irrigation is therefore not critical, though there are some few state-run irrigation schemes. However, within the framework of Programme for the Modernization of Agriculture (PMA), small scale irrigation schemes are being

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<sup>35</sup> *Op.cit* p.50

<sup>36</sup> *Ibid*

<sup>37</sup> *ibid* p.51

planned. Currently, it is estimated that about 207 million cubic metres of water is used annually for irrigation. There is great potential for increased agricultural production using irrigation water amounting to about 247,230 hectares with an estimated ultimate water use of 2472.6 million metre cubic per year.<sup>38</sup> It is safe to suppose that a dire need for irrigation would have brought Uganda into direct conflict with lower riparian states of the Nile.

There are about four hydro-electric power stations in Uganda. The country sells electricity to Kenya and Tanzania based on colonial Agreements. The Owen Falls Dam built in the 1950s is a source of hydro-power for Kenya, Tanzania and Rwanda. Hydro-power development in the catchment areas is largely feasible. There exists ready market for electricity from Uganda and the country's topography is suitable for the purpose.

The interests of Uganda converge with those of Kenya, Tanzania, Burundi, Rwanda and DRC on concerns relating to water apportionment, whereas its interests on pollution, issues converge with those of Egypt and Sudan.

Tapping the enormous hydro-electric potential that exists along the rivers that drain into Lake Victoria to the maximum in favour of Uganda's economic interest is bound to conflict with the lower riparian states, especially Egypt, due to its dependence on the Nile. It is assumed that this would affect the water level of Lake Victoria and hence negatively impact on the volume of water that

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<sup>38</sup> Ibid

will flow downstream. This fear is criticized as unfounded given that projects like the Bujagali dam have caused no noticeable impact. Whatever the position, a geopolitical conflict should be avoided because instability in Uganda would certainly impact on the great lakes region. Armed conflict is likely to affect Uganda's neighbours as happened in 1979 during the invasion of Uganda by exiled rebels based in Tanzania.<sup>39</sup>

Similar effects were experienced during the 1979 war to oust Idi Amin, 1981-1986 Civil Conflict (the NRA bush war) in the Luwero Triangle and the 1986/87 insurgency in the North and North Eastern parts of the country. Since 1998 more suffering continues to be experienced as a result of insurgency by the Lords Resistance Army and the West Nile Rescue Front.<sup>40</sup>

A senior Ugandan diplomat in Kenya confirms that the waters and resources of Lake Victoria should be sustainably exploited in a manner not detrimental to the environment and the resources themselves. He explained that in this regard, Uganda has adopted very stringent measures against fishing especially of young fish hence the recent fishing conflicts experienced over lake Victoria. Further, that the EAC states should harness their resource, but amicably. The official indicated that Uganda's foreign policy projects this position.

On the Nile conflict, the official explained that delay in resolution may be occasioned due to difficulty of obtaining full consensus. The conflict may be

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<sup>39</sup> Ibid, p103

<sup>40</sup> Ibid pp.103-105

resolved on the basis of scientific evidence that can be obtained by commissioning hydraulic studies on the issue. Irrigation, hydro-power generation and other projects proposed by the Energy Master Plan for East Africa may necessarily not reduce the water flow to Egypt. This thinking supports the spirit behind the conclusion of the Protocol on the Sustainable Utilization of Lake Victoria and its Basin by the EAC States of Kenya, Uganda and Tanzania in which they agreed to negotiate as a bloc on matters relating to the lake.

## **TANZANIA**

The United Republic of Tanzania was formed by the union in 1964 of Tanganyika and the islands of Zanzibar and Pemba. The two countries had not been closely associated in the colonial period and their systems of government were quite different. It is situated in the midpoint on the African east coast, and is bordered by eight countries; clockwise from the south they are Mozambique, Malawi, Zambia, Zaire, Rwanda, Burundi, Kenya and Uganda. It is the largest country in East Africa. Most of Tanzania's international land boundaries follow natural terrain features. The exception, other than those that bisect bodies of water, is the northern border with Uganda and Kenya.<sup>41</sup>

There are two enduring features that have for a long time dominated Tanzania's foreign relations, and both reflect the influence of the late president Nyerere. The first is the country's effort to avoid alliances which would bind it to

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<sup>41</sup> Kaplan I., *Tanzania, A Case Study*, Washington D.C., American University, 1978, p.88



any of the major world blocs and the second, its unrelenting support for majority rule in white-dominated southern Africa.<sup>42</sup> With Kenneth Kaunda of Zambia the late Nyerere was very much the senior statesman of the front line countries of Tanzania, Angola, Zambia, Botswana and Mozambique. Tanzania has over the years supported Pan-Africanism. Almost all aspects of Tanzania's foreign policy demonstrate its efforts to avoid taking sides in the superpower rivalry as manifested by its insistence on non-alignment, even when it was economically detrimental.<sup>43</sup>

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Tanzania has also broken relations with Britain over what it saw as the latter's failure to act forcefully against southern Rhodesia's continued sale of arms to South Africa. Tanzania also seriously damaged its relations with Nigeria by supporting the Biafran secessionists during Nigeria's civil war in the late 1960's through 1970, even though Nigerian troops had helped Nyerere maintain stability after the army mutiny in 1964. The two countries reconciled later. Similar stands, whatever their risk, recur regularly in Tanzania's policy.<sup>44</sup>

Tanzania's foreign policy towards Lake Victoria and the Nile is equally uncompromising. On 4<sup>th</sup> July 1962, Tanzania addressed identical notes to the governments of Britain, Egypt and Sudan renouncing the colonial treaties on the Nile and stated its willingness to renegotiate them. On 21<sup>st</sup> November, 1963, Egypt replied to Tanzania's note and maintained that the 1929 Nile waters Agreement, which had so far regulated the use of the Nile waters, remained valid

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<sup>42</sup> *Ibid*, p.121

<sup>43</sup> *Ibid*, pp121-122

<sup>44</sup> *Ibid*, p122

and applicable arguing that it was binding between Britain and its East African colonies. Egypt however, indicated its desire for continuation of unofficial talks between its technical experts and those of the 3 East Africa Countries. This note was forwarded to the Sudan, the latter made no comment on either Tanzania's or Egypt's note. On 21<sup>st</sup> December, 1963 Tanzania indicated that it had taken note of the contents of Egypt's note. After the union with Zanzibar, Tanzania disregarded the treaty as neither real or dispositive meaning an agreement disposing of rights or territory and designed to create a permanent state of affairs. It considered the treaty to have applied to territories under British administration and that Tanzania ceased to be such a territory after its independence.<sup>45</sup> It is not surprising then that Tanzania has embarked on utilizing the waters of Lake Victoria through projects such as the Kahama project in Shinyanga region.

Tanzania's portion of Lake Victoria is the largest. A number of short rivers like Mara and Ruwama. (except for the longer Kagera river in North Western Tanzania) drain into Lake Victoria, which is the largest lake in Tanzania. The lakes are a source of food and livelihood and offer abundant water for irrigation. The area around Lake Victoria supports nearly a quarter of Tanzania's population, particularly around Mwanza, Ukerewe and Ukare islands in the south eastern part of the lake.<sup>46</sup>

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<sup>45</sup> Seaton E.E. and Maliti S. T., *Tanzania's Treaty Practice*, London, Oxford University Press, 1973, pp90-91

<sup>46</sup> Op.cit, pp146-147

Water is a critical factor in Tanzania's development. The country needs Lake Victoria's waters for irrigation due to the poor distribution and seasonal fluctuations in rainfall. Tanzania's unilateral decision in 2004 to use the waters of Lake Victoria has energized the NBI which has as a result held four meetings since then. There has been a lot of diplomatic activity between the lower Nile riparians, East Africa and the entire region on the need to review the existing controlled regimes on the Nile. Tanzania's hardline stance comes at a time when the upper riparians have been pressing for a review of the same legal regimes. This underpins the fact that future conflicts in Africa may not necessarily be on boundaries alone but shared natural resources such as those of the river Nile.

Egypt has not taken Tanzania's initiative kindly because a replication of similar action by other states bordering Lake Victoria may spell doom for its survival.

If Tanzania can transform its agriculture by using Lake Victoria, that will not only assure her economic prosperity. but also feed the large number of refugees who have overflowed its western region from the turmoil in Rwanda and Burundi. It was because of this refugee problem that the late Julius Nyerere was involved in the Burundi Peace Initiatives so as to secure peace in the country and allow refugees to return. Tanzania's strategic importance lies in the fact that it can be a linkage to the Great Lakes region of Uganda, Rwanda, Burundi and the DRC. The Kagera contributes about one third of the water in Lake Victoria.<sup>47</sup>

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<sup>47</sup> *Ibid* p.128

The development on the Kagera would be of interest to Egypt, Sudan and Ethiopia because it affects the source of the Nile.

Fishing conflicts on Lake Victoria have been experienced between Kenyan and Tanzanian fishermen on the one hand and Kenyan and Ugandan fishermen on the other. The revival of the EAC is expected to minimize these conflicts. A senior official in Tanzania's High Commission to Kenya confirmed that Tanzania supports the NBI. However, he explained that its speed on the issues being handled depends on the willpower of member states. Tanzania's position on the issues at hand in the NBI is clear and it supports the sustainable utilization of Lake Victoria for all users as it belongs to no single country. This also obtains for the Nile.

There are traditional irrigation schemes like the MIFIPRO Trust Fund. Small scale irrigation systems have been in use in Tanzania since the early 1800s. Modern irrigation began in 1930s. The government established irrigation projects like Mbarari rice scheme, Kilangari rice project and the Kilombero sugar company in early 1960s. In the 1970s irrigation was accorded a high priority in the national agricultural policy and substantial investment made in the sector. According to a UN FAO study conducted in 1985, Tanzania has more than 800,000 hectares of land which is suitable for irrigation but only 140,000 hectares has been utilized.<sup>48</sup> This potential needs to be exploited.

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<sup>48</sup> Walubengo D and Obare L. (eds), *Whose Natural Resources? Local Natural Resource Management in Tanzania*, Nairobi, Motif Creative Arts, 1997, p37

## ETHIOPIA AND ERITREA

Research reveals that there is little data on both Ethiopia and Eritrea. That is why in this section the two countries are analyzed jointly unlike in previous sections.

Some scholars have associated Ethiopia to be a symbol of African independence. They identify Africa with Ethiopia, for being the only African state that was not colonized and therefore became a bastion of prestige and hope to thousands of Africans, who were taunted by white rule.<sup>49</sup> Ethiopia is in the horn of Africa, from which Eritrea ceded in 1993. After the Second World War Eritrea was administered as a province of Ethiopia under UN trusteeship. It remained so until the fall of the Marxist regime of Mengistu Haile Mariam in the early 1990s.<sup>50</sup> Since the 1960's when most of the Victoria Nile Basin states attained their independence Ethiopia and Eritrea have been engulfed in civil wars over boundary disputes. In the late 1990's both countries fought a bitter war over a boundary dispute in which the Eritrean Peoples Liberation Front (EPLF) had an upper hand and controlled the greater part of Eritrea.<sup>51</sup> Both countries have shared a common history for a long time.

River Omo in Ethiopia drains into the Blue Nile. This means that the volume of water of the river Nile is a collection not only from the two Niles, but also from river Omo.

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<sup>49</sup> Hayford J.E.C., *Ethiopia Unbound, Studies in Race Emancipation*, 2<sup>nd</sup> ed., London, Frank Cass and Co. Ltd., 1969, Pxxiii

<sup>50</sup> Davidson B., *Modern Africa, A Social and Political History*, 2<sup>nd</sup> ed., London, Longman, 1989, pp116-117.

<sup>51</sup> *Ibid* p.117

Ethiopia supports the NBI and disagrees with the colonial regime on the Nile. The country is the largest contributor to the waters of river Nile. Over 85% of the Nile waters come from the Blue Nile in Ethiopia and its tributaries. For Ethiopia, the treaties are a matter of state succession according to a senior official in the Ethiopian embassy in Nairobi. Ethiopia belongs to ENSAP and is pursuing diplomacy to convince Egypt to disregard the colonial treaties. Member countries of ENSAP are integrating Egypt into common development plans for the region. Ethiopia has prepared 13 projects and Sudan 15, and Egypt has agreed to provide technology to assist in their development. Ethiopia, being mountainous is suitable for hydro-power generation for her own use and commercial gain. Water flow to Egypt erodes too much silt and is subject to high evaporation hence it is viable to build dams in Ethiopia to serve the above interests.

Seasonal rivers from Eritrea flow into the Blue Nile from a source at the embassy of Eritrea in Kenya. Eritrea had plans with Ethiopia to build shared hydro-power projects before the civil wars. At this stage, Eritrea does not have major projects targeting the Nile waters but the source agrees that there is no reason why others should not use the waters. Further that a country must make use of its resources to stop suffering of its people. Eritrea will in future use the water for the development of the nation. There are several small dams and irrigation projects but the government is planning to expand its irrigation

schemes to achieve food security. Only one riparian state currently uses the Nile waters from bottom to top, according to the same source.

Eritrea needs Ethiopia for survival as its hinterland. The country has been exploring the possibility of better relations in the future with Ethiopia. Economic integration is thought of as a positive step towards political integration. Both governments have entered into an agreement to co-operate in a wide range of activities, one of which is defence. The details of the Asmara pact however remain privileged.<sup>52</sup>

Ethiopia also needs Eritrea for access to the Indian Ocean though it may use the ports of Zeila in Somalia and Mombasa Kenya as alternatives. In any case before Ethiopia and Eritrea federated, the former remained landlocked.

## **RWANDA AND BURUNDI**

Rwanda and Burundi are located slightly south of the equator between East and Central Africa. Both countries became independent in 1961. They share a common history of ethnic violence. This violence has pitted the minority Tutsi against the majority Hutu. Both countries have witnessed violent *coup de tats* orchestrated by either Tutsi or Hutu military men. The most recent Rwanda genocide of 1994 highlighted the human catastrophe that looms in both countries.

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<sup>52</sup> Negash T. *Eritrea and Ethiopia, The Federal Experience*, Stockholm, Gotab, 1997, p.176

Rwanda and Burundi have a security complex. The complex pitting the Tutsi who are a minority in both countries against the Hutu majority. Both communities have seized political power through military coups which have turned out to be genocidal to those not in power. This complex has been responsible for the insecurity in both countries and the Great Lakes region. In 1990, the Rwanda Patriotic Front (RPF) staged a cross border insurgency from Uganda to topple the Hutu dominated government in Kigali. The RPF elements were mainly Tutsi exiles who had lived in Uganda since the 1960 political upheavals in the country. In 1994, two Hutu Presidents, Juvenile Habyarimana and Cyprian Ntaryamira of Rwanda and Burundi respectively were killed in a plain crash sparking the 1994 genocide.

Elements of the Interahamwe Militia who were accused of the genocide crossed over into DRC to seek refuge. The new government in Kigali disagreed with the newly established regime of Laurent Kabila, prompting a joint Rwanda Uganda invasion of the DRC in 1997. The country has ever since been dismembered into regions under rebel commanders. The peace process initiated by the Republic of South Africa under the auspices of SADC is holding despite sporadic clashes between government forces and rebels.

Both countries are landlocked and rely on Tanzania (which borders Indian Ocean) for both rail and road transport. Modern transport, the Rwanda – Burundi railway that would have linked the region to the Cape to Cairo route as the key economic success was not realised as part of the imperialist vision for



Central Africa.<sup>53</sup> Therefore any instability in Rwanda and Burundi would severely impact on Tanzania's ability to supply both water and other resources to its citizens, let alone the large number of refugees in its borders. Their stability therefore is a fundamental requisite for the stability of the Great Lakes region.

The Great Lakes region is a term acquired after a navigational survey that was conducted to establish the possibility of linking the lakes of Kyoga, Victoria, Albert and Kivu etc among others by both rail and water transport. These lakes if navigable, link the countries of DRC, Rwanda, Burundi, Tanzania, Kenya and Uganda which are part of the riparian states of the Nile. Any issue that affects one, is likely to affect the other because the epicentre of any conflict system moves. Burundi's violence is linked to a wider conflict system of the Great Lakes region through arms transfers, population movements and ethnicity. The violence has been motivated further by intense fear and mistrust between the two communities.<sup>54</sup>

A senior official at the embassy of Burundi in Kenya explained that Burundi contributes to the Nile waters. He claimed that the source of the Nile is in Burundi. According to him, it begins with river Kigira in Southern Burundi that joins river Ruvyironza and the two combined are known by the name Uvubu. This tributary flows to Rwanda and joins river Nyabarongo to form the river Kagera that flows into Lake Victoria. Other rivers that contribute to the Kagera river in Rwanda include Akanyuru, Rukarara and Kagera.

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<sup>53</sup> Loius W.M.R., *Ruanda – Urundi 1884-1919*, Oxford, Clarendon Press, 1963, pp161-175

<sup>54</sup> Kitevu R., *Burundi: The Other Genocide*, *African Review of Foreign Policy*, Vol I. No. 1 of March 1999, p106

The official further explained that Burundi uses its waters for many purposes, including inter alia, household in the sense that the water resources are given to the population and development of agriculture. Burundi needs to expand its irrigation using the waters of the Nile. Further information from a source at the Embassy of Rwanda in Kenya was that Rwanda, Burundi and Tanzania had formed an Organization for Development of Kagera Basin (OBK), that was later joined by Uganda, whose purpose was to use the water from these countries for irrigation and hydro-power generation to improve their economies. Hydro-power generation was to take place mostly in Rwanda. The organization ceased to exist but the countries still plan to use the water as earlier planned. Burundi supports a policy of sustainable utilization of the shared river Nile hence its active participation in the Nile Basin Initiative. The country is not sympathetic to the colonial treaties/regimes on the Nile, confirms the same source.<sup>55</sup>

Recent environmental and ecological studies<sup>56</sup> have revealed that the hyacinth menace that has been choking Lake Victoria is traceable to river Kagera. The economic problems associated with the hyacinth in Lake Victoria needs no emphasis and is not the major pre-occupation of this study. It suffices to say that any water related problem from any of the rivers that drain into Lake Victoria will affect the entire region.

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<sup>55</sup> This information was derived from oral interviews by the author from a source which requested for anonymity.

<sup>56</sup> Aseto O. and Ong'ang'a O., *Lake Victoria (Kenya) and Its Environs: Resources, Opportunities and Challenges*, Kendubay, Africa Herald Publishing House 2003, p 110

A senior official at the embassy of Rwanda in Nairobi elaborated that Rwanda maintains an open policy towards harnessing the shared waters of river Nile. He confirmed that a number of rivers e.g. Ruzizi, Nyabarongo etc feed into the Kagera that flows into Lake Victoria. Further, that Rwanda is not bound by the colonial regime on the Nile and the said regime is not in the interest of all the riparian states. Rwanda supports the NBI and is making efforts to control the hyacinth menace. Rwanda is party to two agreements that can be considered part of the Victoria – Nile basin. One is the Kagera Basin Organization mentioned earlier.

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## CHAPTER 5

### THE NILE CONFLICT IN THE CONFLICT CYCLE

The historical development of international water law and rules about international water resources were handled in the past chapter. In this chapter the Nile Conflict within the conflict cycle will be briefly outlined.

In order to understand a conflict, one needs to go deeper into the analysis of a conflict. Conflict is cyclic. It has a life of its own and moves in distinct stages.<sup>1</sup> This means any conflict such as the Nile Conflict has a beginning, a growth phase and an end. It starts when everything is normal and peaceful then a crisis builds up. Conflict is present in all social systems irrespective of their nature, location, time and space.<sup>2</sup> Conflicts exists in interpersonal, organizational, industrial, national and International Relations. Conflicts transform themselves in very unexpected ways.

In the context of the above, the Nile conflict can be said to have begun in 1929 following the signing of the 1929 Nile Waters Agreement between Britain and Egypt. As seen in Chapter two, this agreement ignored the concerns of other riparian states, notably Sudan. By 1957 Sudan had heightened her agitation for the proper sharing of the Nile Waters. This led to the conclusion of the 1959 agreement for the Full Utilization of the Nile Waters in which Sudan was allocated 18.5 billion cubic metres of the Nile waters annually. This agreement legally gave monopoly of the utilization of the Nile to Egypt and

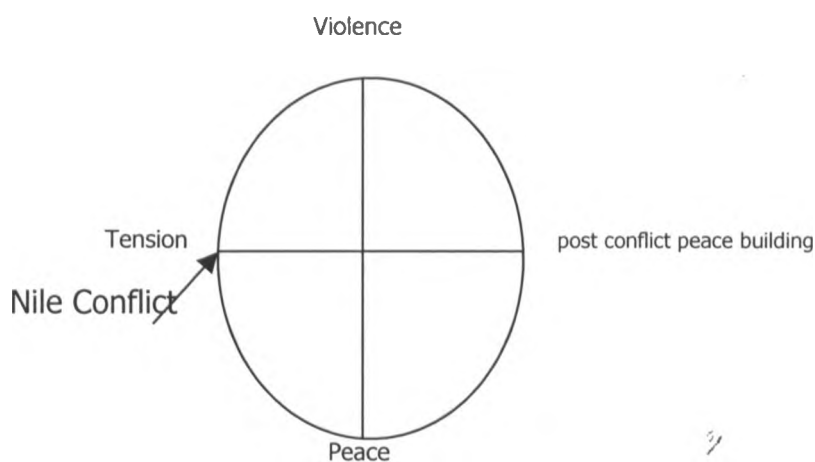
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<sup>1</sup> Mwagiru M. *Conflict Management in Kenya (Catholic Peace and Justice Commission)* p.23

<sup>2</sup> Agnoson J., J. T. and D. Wilke, *Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations*, Journal of Peace Research, Vol. 28. No.1991, p.7

Sudan to the exclusion of the other riparian states. All the other riparian states were then subjects of the British Colonial Empire. The agitation for their share was not heard until they gained independence in the early 1960's. Tanzania spearheaded the campaign for reviewing of both the 1929 and 1959 Agreements with a view to allowing other upper riparian states access to the Lake Victoria – Nile waters. Other countries followed suit leading to the MBI discussed in detail in Chapter two.

**Fig. I – The Conflict Cycle**



**NB:** The peaceful Stage if not properly managed creates tension, leading to a crisis and then violence.

From the figure above, one can say that the Nile conflict is at the stage of tension. Signs of tension are apparent. In recent times there has been too much political rhetoric about the colonial treaties from leaders in East Africa and other riparian states of the Lake Victoria – Nile basin.

Tanzania has disregarded the colonial treaties and proceeded to implement the Kahama and Shinyanga water projects. In Kenya, the masses have been encouraging leaders and government to tap waters from rivers that flow into Lake Victoria for domestic needs. Irrigation is needed as a matter of priority to guarantee food sufficiency especially in times of drought or scarcity.

Leaders from some countries have sometimes threatened to go to war over the waters of the Nile. At times there have been conflicting statements on the issue from government officials from different countries concerned, despite the NBI efforts, and other times even from officials of the same government.

Reactive efforts to reduce mounting tension have been made by reawakening the NBI which had remained passive for a considerable time. Offers have been made to construct more boreholes for some upper riparian states of the Victoria-Nile by one of the down stream states. This would imply that the state concerned would prefer the upper riparians to harness their underground water resources than the Nile or Lake Victoria waters. It is also alleged that lack of trust among the riparian states exists.

The conflict cycle shows very clearly that the evolution and development of a conflict begins from peaceful conditions, which given certain circumstances develops into violence<sup>3</sup>. The conflict cycle enables for appreciation of the distinct sets of activities to be undertaken to manage peace and prevent conflict escalation into violence.

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<sup>3</sup> Herman CIF. *International Crisis in a Situational Variable*, New York, Free Press, 1969 pg414

Governments can use the conflict cycle model to manage conflicts and prevent them from becoming violent. The cycle can assist in setting up early warning systems, which can be used as a tool for crisis management.

It is argued by Francis Deng and William Zartman<sup>4</sup> that conflict in Africa arises from problems that afflict all populations. These problems range from distribution of resources, access to power and competing definitions of what is right, fair and just. The Nile Conflict in relation to this observation needs no emphasis.

When violence breaks out, the primary concern will be controlling the violence before efforts to bring the warring parties to a ceasefire and then preserving the peace that leads to normalizing the situation. After violence has been stemmed, arbitration, negotiation, mediation and facilitation is utilized. Each stage of the conflict cycle involves several activities.

In Africa, the practice has been that conflicts are negotiated in order to arrive at settlement without taking into consideration Peace building which is paramount. Conflict resolution involves multidimensional approaches. In the case of the Nile Conflict, a settlement would not solve the issues at hand and many approaches should be explored at this stage of tension. Above all, political goodwill will most likely boost the many approaches that should be pursued.

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<sup>4</sup> Deng F and Zartman W. *Conflict Resolution in Africa* (Brookings Institute) p.299, Peace. Approach is being pursued

The Nile conflict looked at within the context of the conflict cycle can be and is resolvable. The countries to the conflict can invoke the provisions of the Helsinki rules adopted by the Convention on the Law relating to the Non-Navigational uses of International Watercourses for a peaceful resolution of the conflict. Some countries however may be unwilling to apply these rules because they are sole beneficiaries to the existing legal regime. These include Egypt and Sudan, who jointly enjoy monopoly derived from the 1929 and later the 1959 agreement for the full utilization of the Nile Waters. Within the conflict cycle it is important for a conflict researcher or practitioner not to ignore any build up of tension. For now, the tension apparent over the sharing of the Lake Victoria Nile basin resources can easily erupt into open violence amongst states, particularly Egypt and Sudan on one side vis-à-vis the upper riparian states.

Governments of the affected countries can use the conflict cycle model to solve this imminent conflict. The area in question has a young and growing population whose demand for water is immensely increasing putting a strain on the available water resources. If the conflict is not checked early, the future conflicts within the region will be those of water.



## CHAPTER 6

### CRITICAL ANALYSIS AND FINDINGS

#### Introduction

This chapter critically analyses the emerging issues relating to the politics of Lake Victoria as a shared water resource in order to draw lessons for resolution of the conflict concerning the management of the lake and its resources. The Study set out to diagnose, analyze and explain the underlying and proximate causes of the Nile Conflict.

It has been established that the Nile conflict is at the tension stage of the conflict cycle and the problem must be resolved multilaterally. Resolution of the conflict will require multidimensional approaches.

The above suggestion is because it is unclear what forms and course the Nile conflict might take, as other environmental conflicts. It might be conducted by diplomatic, political (international public opinion), legal, economic or military means. Diplomatic channels (track I and II diplomacy) are the most obvious means. Should they fail, a government may resort to political means, trying to step up the pressure of international public opinion on another country to take (or avoid) certain measures to deal with environmental degradation.<sup>1</sup>

In some cases, states that consider themselves offended or aggrieved may choose to apply what economic leverage they have over the states they regard as the offenders. This can be in the form of banning imports of certain of

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<sup>1</sup> Vayrynen R. (ed)., *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation*, London, Sage Publications, 1991, p.118

the country's goods, revoke most favoured – nation status, and so on. Such measures, however, may either be effective or even backfire. They are unwarranted unless the environmental dispute is of a sufficiently serious nature.<sup>2</sup>

A recent example is Egypt's temporary blocking of an African Development Bank loan to Ethiopia at the beginning of 1990 which was supposed to finance a project that Egypt feared could consume too much Nile water.

### **5.1 Critical analysis of the conflicts generated by the International legal regimes on L. Victoria and River Nile.**

The existing legal regime on the utilization of the Nile river runs contrary to the prevailing politics. The Helsinki rules which have been widely acknowledged and invoked as a model with regard to shared water resources have not been applied in the case of L. Victoria. If they were, no one country could claim control over the river Nile as is the case.

Identifying the sources of conflict in shared water resources gives better understanding of both the interests of the parties involved and the incentives that might lead to resolution of the dispute.<sup>1</sup> Managing conflicts presupposes that all parties involved must benefit from the changes it brings, and that the resulting processes and choices extend beyond the settlement of the conflict. The process must obviate negative changes from its activities such as accentuating power disparities.<sup>2</sup>

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<sup>2</sup> Ibid, p.119

Conflict management must be based on the assessment of the circumstances within which they occur to determine the underlying interests that are at stake in order to formulate appropriate approaches and achievable goals to resolve the conflicts.<sup>3</sup> Effective communication is a pre-requisite for the process of conflict resolution.<sup>4</sup> It is in this light that it is now widely accepted that the management of natural resources entails collaborative efforts and action of all stakeholders.<sup>5</sup> Natural resource based conflicts therefore must be approached from an appreciation of the prevailing political economy of environmental conflicts. Resources have traditionally been the object of struggles over access and control among different actors. Conflicts over water are characterized by competing demands, and added to the issue of quantity is the aspect of quality. The NBI has adopted a co-operative framework in a bid to resolve the Nile conflict. It is an ongoing initiative that is hinged on the notion of interdependence. However, though it is meant to invoke peaceful multilateral approach to resolving the conflict, it seems to have some conflicts in it. Given the individual state interests in L. Victoria and the Nile, the co-operative framework can only function to a certain extent. The Nile riparians are likely to compromise on issues that deal with pollution control, exchange of data and information, sustainable development, reasonable utilization and peaceful resolution of disputes, only but to name a few.

The principle of subsidiarity deals with the issue of competence, that is, who is best placed to implement what. Most of the riparian states still need

capacity building in matters to do with hydrology. This leaves the Key actors advantaged in this regard over the others.

Critical state interests cannot allow full operation of the scope of the NBI. With reference to existing agreements, two of the ten riparians of the Nile have remained adamant to having the colonial treaties, particularly the 1959 one, revised. One of them proposes that, "the principles and frameworks of the NBI be without prejudice to existing agreements." This position reinforces the status quo that is sought to be changed. This position if not altered undermines the whole NBI process, because the non-contentious issues are secondary to the political ones, viz the colonial treaties, and specifically the 1959 Agreement for the Full Utilization of the Nile waters.

Arising from the above is the issue of validity of the contentious treaties of 1929 and especially the 1959 one. It is an uphill task to have a new treaty drawn to allocate fresh quotas on the use of the Nile Waters. It may not be easily achieved but its an area of interest. The biased interpretation of the treaties is due to the biased treaty provisions. In any event a legal approach *per se* to the resolution of the conflict would only be a temporary settlement. Legal approaches are not the best methods to resolve natural resource based conflicts of the magnitude such as the Nile conflict. The Nile conflict was internationalized *ab initio* hence all parts of the conflict system especially the marginalized parts must be involved in its resolution or management.

The NBI is also constrained to the extent that it relies on donor funding. State contributions to the initiative are not adequate. This problem acts as a stimuli for external involvement. The external intervention is offered in pursuit of foreign interests because it is a known fact in international relations that states interact with others in pursuit of their national interests, however altruistic they may appear.

The NBI can easily be derailed in its objectives owing to the problems in Sudan. This can jeopardize its whole mission and shift the priorities of the initiative.

The NBI's institutional structure comprises the conference of Heads of State and Government, Council of Ministers, Technical Advisory Committee, Sectoral Advisory Committees and a Secretariat. This is the usual bureaucratic style of most organisations that delays implementation of objectives. Political goodwill is crucial for the initiative to be effective, which is usually not easy to achieve and has to be achieved for the NBI. Institutional arrangements in Africa have more often than not acted as barriers to the very objectives they are established to accomplish. They usually lack deterrent penalties for states/leaders that do not comply with laid down rules and procedures.

Interest in L. Victoria and the Nile is determined by changing social, environmental, economic and social conditions. It is not peculiar that environmental issues may be tightly interwoven with social, economic, political, ethnic and religious disputes. The key actors in the Nile conflict are Egypt,

Sudan and Uganda. The latter has got a special relationship with Egypt. Its dual position on the Nile makes Uganda's bargaining position in the whole matter cumbersome, complex and unpredictable. This is because Uganda's position oscillates between the upper and lower riparian states' interests depending on its own.

Sudan is key because of its vulnerable position that arises from its colonial history. The country had to be annexed to Egypt to form the Anglo-Egyptian condominium basically to protect the interest of the former as concerns the Nile waters. Sudan however gained nominally in 1959 in comparison to Egypt. The policy interest of the duo would be to pursue the present status quo or expansion of their interests if tenable.

Egypt's policy of supporting water resources in other states is a deliberate move to discourage utilization of natural water resources from rivers and lakes within the riparian states of the Nile by drilling boreholes for the said states. It is because of Egypt's interest in the Nile that it has strong bilateral assistance to the riparian states under the Egyptian technical assistance to riparian states. (Read joint commission between Egypt and Kenya).

Under the SVP, seven grant funded, technical assistance and capacity building projects have been identified and project documents (PDs) prepared with financial support from international donors led by the World Bank. The projects, with an indicative total cost of USD122 million comprise the following:

The idea of ENSAP and NELSAP is most likely to pursue the objective of status quo. It is therefore meant to dismember common goals that the Nile riparian's ought to pursue. These two are part of the NBI. But a forum for consultation, functioning only as a mediator, is inadequate due to its *ad hoc* character which does not allow framework for intergrated and multi-objective basin wide planning.<sup>3</sup>

Egypt is uncomfortable with Southern Sudan becoming independent because this would mean having an eleventh riparian state to the river Nile. The Southern region of Sudan has a lot of potential agriculturally and the discovery of oil in the region complicates the interests in the region. The crux of the matter is that Southern Sudan that has been relatively deprived will naturally engage in development activities to improve the region. To do this, the Nile is important. Oil as a natural resource will also be crucial. It is also feared that an independent Southern Sudan is likely to ally itself with the EAC States, which have been agitating against the colonial treaties on the Nile. Egypt also fears that if Southern Sudan breaks, Northern Sudan will remain fundamentalist. Egypt therefore does not support the IGAD Peace process and together with Libya have formed an initiative to prevent an independent state from emerging in Southern Sudan.

Intrusive powers and especially the USA are also interested in the Sudan. US has lost the big brother status in the middle east due to its open bias towards

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<sup>3</sup> Okidi C. O., *Environmental Stress and Conflicts in Africa: A Case Study of African International Drainage Basins* cited in Ojwang J.B and Obudho R.A. (eds), *Issues in Resource Management and Development in Kenya*, NAIROBI, East African Educational Publishers, 2000 p.43

Israel. Arabs no longer trust the superpower. Restoration of peace in the region looks like a pipe dream. For the US therefore, the status quo will guarantee its interests in the Sudan which are to exploit the oil resources owing to the instability of the Middle East. In addition if the south breaks off to have a fundamentalist northern Sudan, US and Egyptian interest will be threatened.

The interests of the DRC are bound to have spill over effects to the entire region. They are therefore more of a co-operative nature when compared to those of the three major actors which appear egocentric. The northern corridor is intended to link the Eastern Coast to the Western Coast. This sort of multi modal transport would revolutionize the economies of DRC and its neighbours with long term benefits to Africa. DRC's interests can be viewed as legitimate, at least in the short run if not in the long range.

The other riparians welcome DRC to the NBI because of the vast Congo forest that modulates the geographical weather pattern in the region. The forest is also a source of rain. A co-operative or integrated effort to manage this natural resource, is the best method to control this region's lifeline. This integrated approach could be extended to Rwanda and Burundi. Issues that hinge on sovereignty are bound to arise, but environmental security depends on international co operation. This is likely to stabilize the Great Lakes region as a whole.

Apart from Sudan, Uganda and more significantly, Egypt, the rest of the states would like change in the status quo. The success of resolving the



stalemate or the tension over the Nile heavily depends on the political will and commitment of the involved actors. The rules that regulate shared water resources were discussed in chapter 4, but have not been applied in the instant case because to do so requires the political commitment of all actors. A greater integration and harmonization of activities would emphasize the interdependence of Countries in the management and equitable sharing of international watercourses and resources. This would also fulfill the purpose of optimum use of the water in the drainage basin, which is likely to ensure sustainability of the resource. In addition, this will lead to local, national, regional and continental cohesiveness in dealing with environmental issues. The unsustainable use of resources that has resulted in pollution, depletion and resource extinction would be effectively managed and controlled.

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Countries worldwide are ingrained with the notion that water resources are diminishing. This explains the scramble and laying of claims to L. Victoria, and its basin by countries even as far as Eritrea. The long term objective of each state is to secure an uninterrupted fresh water resources for its population for present and future use. This is what has caused inter-basin water transfer, favoured by countries like Libya and Chad. The only long term interests of Eritrea are to tap water resources from L. Victoria via inter-basin water transfer, because Eritrea cannot benefit directly from the Lake. Eritrea is bordered by the Red Sea which is saline and it would be astronomical to desalinate water from the Red Sea than to transfer fresh water from L. Victoria. Basin transfers are

allowed whereas out of basin transfers are not , but since Eritrea has succeeded in being designated as part of the L. Victoria basin, it shall engage in out of basin transfers under the guise of being a Nile riparian state.

The Nile riparians must shun a reactive approach to resolving the Nile conflict in favour of a preventive approach. This would entail use of multilateral diplomacy and the invocation of the provisions of the UN Convention on Non-Navigational Uses of International Watercourses and other regional initiatives.

## **CHAPTER 7**

### **CONCLUSIONS**

The future of natural resource based conflicts may be shifting from oil to water. Many countries in the world are water scarce and the desire for fresh water is likely to heighten conflict among states that share a common water basin. Lake Victoria is Africa's largest fresh water mass and the gradual movement of the Sahel Desert to the South threatens the very source of Africa's largest water resource.

Apart from providing fresh water and aquatic resources to the population around the lake, its also the source of Africa's longest river upon which many countries depend. As the water resources therefore diminish, conflict is inevitable. These conflicts can only be resolved through a multi disciplinary approach of managing, sharing and utilizing the resource sustainability. The multi disciplinary approach will involve use of diplomacy and legal means. This is because it is unclear what forms of conflict might take place over the resources.

This study was an attempt to understand the legal implications of the utilization of shared water resources within Lake Victoria – Nile Basin. This region is characterized by drought, famine and natural resource based conflicts. The water resources on both Lake Victoria and the River Nile have not been equitably utilized by all the riparian states. The legal regimes concluded during the colonial period privileged only two lower riparian states of Egypt and Sudan. This legal arrangement has since been challenged by the upper riparian states, particularly after gaining political independence

in the 1960s. This has generated a long standing conflict that has not hitherto been conclusively resolved.

The causes of this conflict range from selfish state interest and failure to invoke the prevailing international law on the utilization of shared water resources. An examination of the present Nile legal regime as it affects the E.A. states indicates that the EA riparian states which are the source of the Nile have been peripheralised. Egypt and Sudan which are the beneficiaries of the regime to the disadvantage of the EA States are determined to uphold the status quo because they are beneficiaries to the arrangement. The Nile Conflict therefore is a natural resource based conflict and can, if not managed within the conflict cycle model, result into active disagreement among states.

The Nile Conflict is a complex one that involves ten countries. One of the ten countries is outside the basin area but has been drawn into the conflict because of its futuristic water concerns. To resolve this conflict requires a multi disciplinary approach and a decisive invocation of the prevailing international water law on the utilization of shared water resources. This is also in accordance with the interdependence nature of international relations in the world today.

The riparian states of the Lake Victoria Nile Basin will be impelled to enter comprehensive bilateral/multilateral agreements that will guarantee peaceful resolution where a conflict emerges than recourse to armed means. With the varying economic leverages amongst these states, the option to apply economic sanctions by one country upon another to achieve its interests should also be forestalled.

All countries, particularly, the upper riparian states ought to reconsider their stand on the revision of the Nile legal regimes entered during the colonial period. It is incumbent upon the lower riparian states, particularly, Egypt and the Sudan to reconsider the monopolistic and preferential status that the legal regimes bestowed upon them. In the spirit of regional co-operation through organs such as IGAD, EAC and COMESA, the areas of latent conflict can be minimized.

The NBI was a welcome and positive initiative in resolving the impending conflict. However, its split into the ENSAP and NELSAP does not augur well because of two reasons. First, it provides room for manipulation for those countries whose vested interests will be affected within the strong NBI initiative. Secondly, the strong riparian members in league with intrusive powers are likely not only to sabotage the search for final solution, but may use economic inducements to divert the weaker states from the real issues. Managing conflicts presupposes that all parties involved must benefit from the changes it brings and the resulting processes and choices extend beyond the settlement of the conflict. This is true with conflict related to water resources as well.

The countries that have higher capacities in hydrology should be willing to support those with low level capabilities to enable them develop sufficient national capacities in water resource management. Whereas the conflict over the Nile has yet to be resolved, it will be interesting to note that future studies of the conflict may wish to look into whether governments are willing and do justifiably interpret existing legal regimes. The other area worth of future research will be whether there is lack of political will to resolve the conflict or whether future energies should be concentrated

when seeking alternative sources of water such as rain water, harvesting or sinking boreholes.

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