

The Conflict over the Management and Use of the Nile  
Waters and the influence of the 1929 and 1959 Treaties on  
the Riparian States.

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## DEDICATION

I dedicate this dissertation to my beloved Mother, Selina Apondi, whom without her sacrifice I would not have seen the inside of a classroom.

I also dedicate this piece of work to my dearly loved children who were always understanding and supportive of me.

I love you all.

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## TABLE OF ABBREVIATIONS

AU -	African Union
CIDA -	Canadian International Development Agency
COMESA -	Common Markets for East and Southern Africa
DANIDA -	Danish International Development Agency
DRC-	Democratic Republic of Congo
EAC -	East African Community
ENSAP -	Eastern Nile Subsidiary Action Program
HIV/Aids -	Human Immunodeficiency Virus/Acquired immune deficiency syndrome
IGAD -	Inter-Governmental Agency for Development
NBCBN-RE -	Nile Basin Capacity Building Network for River Engineering
NBI -	Nile Basin Initiative
NELSAP -	Nile Equatorial Lakes Subsidiary Program
Nile-Com	Council of Ministers of Water Affairs of the Nile Basin Countries
NRBAP -	Nile River Basin Action Plan
OAU -	Organization of African Unity
OLFE -	Oromo Liberation Front of Ethiopia
SADC -	Southern African Development Community
SPLM -	Sudanese Peoples Liberation Movement
TECCONILE -	Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile basin
UN -	United Nations
UNEP -	United Nations Environmental Programme
UNESCO -	United Nations
USA -	United States of America

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# CHAPTER ONE

## 1.0 INTRODUCTION

### 1.1 Background:

The Nile is the world's longest river with a length of about 6,700 kilometres, covering 2.9 million cubic kilometres and serving a population of approximately 300 million within its basin<sup>1</sup>. The river has two main arms namely; White Nile, which has its source in the Great Lakes region (the area occupied by Lake Victoria, Lake Albert, Lake George and Lake Kyoga water systems) and the Blue Nile whose source is in the highlands of Ethiopia and Eritrea. Although the Great Lakes are said to contribute only 15% of the annual Nile waters while the Blue Nile and its two tributaries Atbara and Sobat contribute 85%, Lake Victoria acts as a reservoir. The Blue Nile and its tributaries are subject to seasonal fluctuations especially during drought – a phenomenon that would otherwise leave the Blue Nile dry if not for the reservoir. Among other important functions “Lake Victoria is home to 300 endemic fish species; provides natural storage for the White Nile, acts as a purifier and oxygenate for the Nile River through its large surface area and insulation”.<sup>2</sup> Hence the significance of the upstream countries to the Nile question.

A number of treaties have been signed for transboundary water systems such as the Nile Treaties of 1929 and 1959 that allocated the control of the Nile waters to Sudan and Egypt. As a result many transnational organizations have been established in line with these treaties. Some of these organizations function well while others suffer from

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<sup>1</sup> World Bank Report, Nile Basin Overview - <http://www.worldbank.org/afr/nilebasin/overview.htm>

<sup>2</sup> Rose Janet Ayugi – Masinde (2003) Background Paper on Issues of Environment Change in the Nile Basin Affecting Kenyan Stakeholders, Especially the Poor. - University of Nairobi.

structural shortcomings inherited from the treaties. For instance, the Nile Basin Initiative has been accused of having a narrow focus because of its exclusion of some of the riparian stakeholders in decision-making. The current hurdles facing the efforts towards managing the conflict have been marred by a mood of mistrust and suspicion surrounding the conflict over the use and management of the Nile waters.

## **1.2 Statement of the Research Problem**

The long-standing conflict among the riparian states of the Nile River over its use and management is increasingly being blamed on the lack of authentic information on the mundane issues concerning the conflict. Several authors, politicians, leaders and journalists have cautioned on the looming conflict based mainly on conjecture and biased statements. “The issue of water and conflict is the focus of frequent media reports, usually written by ill-informed journalists keen to cover column inches. The publication of such reports is often proportional to concerns over water scarcity in various regions of the world,...Some reports even portray impending ‘water wars’ quoting out-of-context statements made by politicians and technocrats who mostly have vested national interest”<sup>3</sup>. The manifestation of this has been lack of a proper understanding of the conflict. This coupled with the alleged bottlenecks of the Nile treaties of 1929 and 1959 are believed to be the main reasons for the inequitable use and management of the Nile waters, hence the protracted dispute among the Nile riparian states.

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<sup>3</sup> Alan J.A. and Nicola A.. The Dynamics of River Basin Cooperation: The Nile and Okavango basins – 2004 London: IB Tauris

In addition, though initiatives towards cooperation of the riparian states in the management of the Nile are on-going, discontent about the measures taken so far is still evident among the riparian states. The triggers of unilateral decisions by the riparian states, that may not be necessarily sustainable, are indications of dissatisfaction. Yet unilateral actions by the states have been based on raw information in the public domain. Unilateralism, in this regard, has been pursued as an effort to counter Egypt's unwillingness to review its stand on the Nile waters. Uganda has recently (2005) passed a Bill, which renders the Nile Treaties signed before independence invalid. Kenyan legislators have added their voices to the raging debate calling for the review of the Nile Treaties to allow for the use of the Lake Victoria waters for development. Tanzania on the other hand is being threatened by perennial famine and its interest in the waters has heightened. At a ministerial meeting in Nairobi on the 23<sup>rd</sup> August 2004, Tanzanian Water Minister Edward Lowassa expressed that his country will demand an equitable share of the Nile following the launch of her \$85 million project that will rely on the Nile waters<sup>4</sup>. At the same meeting Kenya's Vice President Hon. Moody Awori noted that "the Nile is the most important single asset shared by all the ten countries lying within its basin and as such, the Nile is not a property of any state"<sup>5</sup>.

Essentially, the unilateral actions by the riparian states and conflicting information threaten the very cooperation that should prevail in a shared resource. Notably, the media is a crucial element in policymaking by virtue of the fact that it shapes public opinion, therefore when political statements are presented as policy it becomes very difficult for

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<sup>4</sup> Ministerial meeting on the management of the Nile Waters held in Nairobi on the 23<sup>rd</sup> August 2004

<sup>5</sup> "Egypt Refuses to Pass on waters" – News24.com – Africa News – South Africa. 3rd March 2004 – <http://www.news24.com/news24/Africa/news>

reporters, writers and the public to draw a line between the two. One such instant is the pronouncement by Kenya's Assistant Minister for Foreign Affairs Hon. Moses Wetangula that his government considered the Nile Treaties invalid, a statement that elicited immediate coercive response from Egypt's Water Minister Mahmud Abu-Zeid, who regarded Kenya's stand as a "declaration of War"<sup>6</sup>. Such statements not only have significant impact on policy but in effect also a backlash on foreign relations between countries, and as such manifest in incompatible demands that mirror the conflict in question.

### **1.3 The Objectives of the Study:**

Broadly this study seeks to:

1. analyse the conflict over the management and use of the Nile waters;
2. determine the influence of the Nile Treaties 1920 and 1959 on Nile River riparian state;
3. Examine the efforts made on cooperation on the shared water resource.

It is hoped that these three objectives will fill some information gap and will assist in policy formulation.

### **1.4 Justification and Significance of Study**

This study has both policy and academic significance. The research will be a contribution to the raging debate on the conflict, with the view to having a positive influence on the stakeholders, policy-makers and managers of conflict by generating shared understanding

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<sup>6</sup> "Egypt Refuses to Pass on waters" – News24.com – Africa News – South Africa. 3rd March 2004 – <http://www.news24.com/news24/Africa/news>

on the conflict. In addition, the common understanding will be an essential input to the on-going and future negotiations on the Nile water question.

#### 1.4.1 Policy Justification

In order to mitigate the conflict, cooperation based on sound policies must be employed as management strategy to circumvent the conflict be for it becomes dysfunctional, as observed by the former UN Secretary General Boutros Boutros Ghali, then Egypt's Secretary for Foreign Affairs in 1979 when signing a peace treaty with Israel that the Nile question was the only matter that could take Egypt to war.

The need for a critical analysis arises from the premise that misinformation and disinformation to different publics about the conflict will impact negatively on negotiations, policymaking and in turn to the parties involved. Reliable information is not only vital for policymaking but also for mitigation, management of conflict and basically in the understanding of the underlying conflict dynamics. As noted here, "it is crucial that policy decisions should be based on sound evidence. Good quality policy-making depends on high quality information, derived from a variety of sources - expert knowledge; existing local, national and international research; existing statistics; stakeholder consultation; evaluation of previous policies; new research, if appropriate; or secondary sources, including the internet."<sup>7</sup> A research institute on early warning indicators system for preventive policy notes that "there is no such a thing as a 'sudden

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<sup>7</sup> A Practical Guide to Policy Making in Northern Ireland <http://www.ofmdfrni.gov.uk/cpubrochure/looking.htm>

crisis', only a lack of information or analysis"<sup>8</sup>. With this understanding therefore the information obtained from the analysis of this conflict, it is assumed that there will be better guiding policies that would eventually mitigate on the conflict to a manageable level.

In addition as the conflict is moving towards the violent stage, preventive diplomacy based on a clear understanding of the conflict is no doubt crucial as a strategy to de-escalate the conflict. Therefore the importance of a critical analysis in this conflict cannot be overemphasised as aptly underscored by Boutros Boutros Ghali, former Secretary General in his 1992 Agenda for Peace "fact finding and analysis – to identify at the earliest possible stage the circumstances that could produce serious conflict and the need for preventive diplomacy to resolve the most immediate problems with attention to underlying causes of conflict"<sup>9</sup>. It is hoped that the study will also be used as a reference point for the very much needed civic education for the public, especially those within the Nile basin.

#### 1.4.2 Academic Justification

The academic justification is derived from systems theory and the theories on causes and management of conflict and will attempt to fill the theoretical gaps necessitated by the absence of a common understanding of the conflict. Among the five kinds of violent conflicts identified by Thomas Homer-Dixon, a scholar in conflict management, on the

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<sup>8</sup> An Internet-Based Early Warning Indicators System for Preventive Policy Stockholm International Peace Research Institute (SIPRI), March 2003

<sup>9</sup> Boutros Boutros Ghali. "Agenda for Peace. preventive diplomacy. peacemaking and peace-keeping" – Report of the Secretary General to the UN members – June 1992

root causes of various kinds of conflict in developing countries, two are at the centre of the Nile waters conflict namely: “scarcity induced between States and disputes arising from local environmental degradation, and logging or dam construction”<sup>10</sup>.

Water issues touch lives of people and hence its vulnerability to conflict between sharing states. “Population and development pressures are placing increasing strain on world water supply. Population growth alone has resulted in an 80% decline in per capita water availability over the past century”<sup>11</sup>. With this understanding, the riparian states concerns are real and therefore need to unite in mapping out strategies for the sustainability of this water source that their lives depend on.

In addition, mutual misperceptions of intentions that arise from lack information, raises concerns for the urgent need for proper communication strategies that include free information exchange. The perception of nations about each other is therefore based on suspicion and sometimes distorted information. Communication failure and exaggerated fears are systemic elements that contribute in exacerbating the conflict. The presumption of having a reliable communication system will be key in winning back the trust among the nations sharing the Nile water resource in the cooperation efforts.

Some of the resolution in this conflict will lie in parties embracing a liberal view. Liberalism recognises that all nations are not equally endowed with the same resource and therefore embraces the idea of exchange of resources. In this case there would be a

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<sup>10</sup> Thomas Homer-Dixon, Valerie Percival, *Environmental Scarcity and Violent Conflict: The Case of Rwanda*. Project on Environment, Population and Security.

<sup>11</sup> Measured in terms of average runoff. ‘water availability’ was approximately 30,000m<sup>3</sup>/person in 1900 and declined to 7,000 m<sup>3</sup>/person in 2000 (Gleick, 2000)

mutual agreement for Egypt to buy water from the other riparian states whose water resource is in abundance.

In light of the foregoing this study adds to an existing body of knowledge by giving a conceptual insight through its analysis of the conflict.

### **1.5 Scope and Limitation of the Study**

In order to be more accurate in its findings the study ought to have endeavoured to collect primary data by way of interviewing key officials from the Nile Basin countries and Institutions to understand the present positions or the co-riparian against the backdrop of their historical background on the Conflict. This would indeed have given a clear insight on initiatives, progress and the dynamics of this conflict through the eyes of the major actors, “conflict analysis and transformation requires direct participation of the involved actors”<sup>12</sup> This was unfortunately not achieved due to the limitation of resources - financial, human and time.

Secondly, although the legal regimes that control the Nile waters are many the study chose to focus on the two that have been said to have had a major influence on the use and management of the waters namely; the 1929 and the 1959 Treaties of the River Nile. The choice of the two legal regimes will serve as a case study on bottlenecks brought about by legal structures that opt for bilateral approaches as opposed to multilateral ones.

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<sup>12</sup> Simon A. Mason. *From Conflict to Cooperation in the Nile Basin*, courtesy of the Paul-Klee Stiftung, Kunstmuseum Bern –ETH Zurich



## 1.6 LITERATURE REVIEW

### 1.6.1 Structure

This literature review is drawn from books, academic materials, conference information materials, organisations' documents, position papers and the internet. The review is on the main theoretical perspective which the study anchors on, through the identification of gaps from which the hypotheses have been formulated. A description on how they have inspired the project in part or wholly is stated. The review will give brief highlights first on waters rights and the implication of the two legal regimes to the riparian states of the Nile. Secondly, about the conflict under scrutiny, and finally, arguments on water as a potential source to violent conflict as opposed to the reason for cooperation.

### 1.6.2 The Review

A major problem in the management and use of a shared natural resource like the river Nile is the sovereignty of states. This is because cooperation will be anchored first on the national interest of these states economically, politically and even ideologically. According to the United Nations Office in New York<sup>13</sup> in claiming their rights to international waters, states have adopted four theoretical positions namely: territorial integrity, absolute territorial sovereignty, community of so-riparian states and limited territorial sovereignty.

The concept of territorial integrity is based on the old common law of private waters right where a lower riparian is entitled to demand continuous natural resources flow of river

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<sup>13</sup> United Nations New York . *Natural Resources Water Series No.20 River and Lake Basin Development Proceedings*, - Addis Ababa Ethiopia 10-15 October 1988

waters even when the state itself has interfered with the natural flow within its territory, either quantitatively or qualitatively. This, put in the context of the conflict, would mean that Egypt has a right to complain when countries of the East African countries and Ethiopia interfered with the flow of the Nile waters despite the fact that Egypt was doing the same within her territory by virtue of being a lower riparian. This is absolute violation of the upper riparian states' right and would not be acceptable in modern international relations.

The concept of absolute territorial sovereignty contends that a state is free to use and dispose of the natural resource within its territory according to its needs and wishes and under no restraint whatsoever, from external sources. This theory though nationalistic in nature is in conflict with the rights of the lower riparian. In this case the East African countries and Ethiopia can build dams, use the water for irrigation among other activities without due regard that they would be strangling Egypt to its knees since the Nile is its lifeline. This law was invoked to take care of political sentiments but is no doubt a highly potential cause of disagreements.

The theory of co-riparian states on the other hand takes a communal approach where the basin states are regarded as an economic and geographic unit irrespective of national boundaries and that the water is vested in the community at large and is to be divided amongst the co-riparian states by agreement. The theory takes into account that as a hydrological unit, the river ought to be managed as an integrated system because very often the ideal location for construction of dams for storage, hydraulic power, or flood

control may not be within the state in need of such structures - like in the case of Egypt where the Aswan dam was built to restore water due to its full dependency on the Nile waters despite the fact that it does not contribute to the amount of water being the furthest downstream. Thus the agreements may in some instances provide for the construction of structures by a lower riparian in the territory of an upper riparian and depending on the structure to be constructed, the agreement may include sharing of costs and benefits among the states involved. In some instances the financing of the project may involve external donors. An example of this is the 1929 Nile waters agreement between Egypt and Sudan. The same principle is used to rationalise Egypt's control of the levels of the Lake Victoria from a vantage point in Jinja, Uganda. This remains a bone of contention especially with the upper riparian states.

Limited territorial sovereignty theory gives every co-riparian a right to "reasonable" use of the waters of the river flowing through the states territory. This theory in essence is opposed to the theory of absolute territorial sovereignty. It argues that each co-riparian is under obligation to permit equitable and reasonable access to each other despite the fact that they may have a joint management or share of the cost and benefits. Similar to the community of co-riparian states theory, it allows for international cooperation and suggests that the vagaries of geography such as Egypt being the lowest riparian as well as being situated in the hot desert should not be reason for its extinction.

However, on the same token it is untenable for a lower riparian to demand absolute rights all the waters to the exclusion of the upper riparian states as is the case with Egypt's use

of 90 per cent of the waters of the Nile while only 10 per cent is left for the rest of the riparian states which logically brings about discomfort unless it is mutually agreed upon.

Okidi <sup>14</sup> argues that underlying the theoretical positions mentioned above, there are two principles in international law which is said to consolidate the legal framework in guiding the conduct of state in instances where a resource is international like in the case of the Nile. First, is the principle that a state should use the resource located in its territory in a manner that ensures its activities do not cause injury beyond the limits of its national jurisdiction. This principle has been acknowledged as a rule of general international law to facilitate good neighbourliness and the prevention of abuse of rights.

Nonetheless, Egypt is not taking any chances and does not lay her trust on co-riparian states to adhere to this principle hence the posting of an overseer based in Jinja Uganda. The Owens's Falls dam in Uganda, having raised the water table of Lake Victoria, has been viewed by some scientist as the cause of the perennial floods in Budalangi and Nyando plains in Kenya. Uganda in this case did not consider the injury it would cause its neighbour Kenya.

This principle has also been entrenched in more than 24 different conventions and declaration; the popular one being principle 21 of the Stockholm conference on Human Environmental Rights which states that: "States have in accordance with the character of the United Nations charter and the principle of International law on the Sovereign right to exploit their own resources pursuit to their own environment policies, and the

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<sup>14</sup> O. Okidi. *Legal and Policy regimes of the Lake Victoria and Nile Basin*. Fourth Edition. Institute for Development Studies, University of Nairobi 1980 Kenya

responsibility to ensure that activities within their jurisdiction on control do not cause damage to the environment of other states or of areas beyond the limits of national Jurisdiction”<sup>15</sup>.

With specific reference to international rivers, the principle was adopted by the Helsinki rules of 1966 where articles state that:- Consistent with the principle of equitable utilization of waters of an international drainage basin, a state must:-

- (a) Prevent any form of water pollution or any degree of existing water pollution in an international drainage basin which could cause substantial injury in the territory of a co-basin state and
- (b) Should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial drainage is caused in the territory of a co-basin state.

Second is the principle of Equitable Utilization that affirms the basin state to allow another reasonable and equitable sharing of the waters of the basin. The principle relates both the qualitative aspects and sharing of the resource.

Okidi<sup>16</sup> explains the character of the Nile basin as an international drainage basin and why it is special. This special character is the fact that it is shared by a number of states. He discusses the problems of law that may arise in international drainage basins which depend so much on the use by the upper or lower riparian states, that may affect the

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<sup>15</sup> Principle 21 of Conference on Human and Environmental Rights, Stockholm July 3 1972 – Doc. A/CONF 48/14

<sup>16</sup> O.Okidi, *Problems of Law in Relation to International Drainage Basins* (2004)

quality and quantity of the waters. These problems are actually the root causes of the conflict and the reason why certain countries like Egypt and Sudan want to be in control of the Nile waters.

Pundits say the Nile Treaty is technically obsolete owing to the fact that it was a treaty signed when most of the riparian states were under the colonial rule; and after attaining independence countries like Tanzania have since rendered all the colonial treaties invalid. However, Shaw<sup>17</sup> explains the role of treaties by correctly affirming that treaties are an important source of international law. Therefore, in terminating or reviewing a treaty there are rules that must be adhered to. This is a process that cannot be done unilaterally but by involving all stakeholders.

The Vienna Convention of 1969 on the Law of Treaties, stipulates the principle governing laws on treaties that are found in the procedure for deciding that a treaty is invalid and the grounds for termination (article 45 – 72)<sup>18</sup> giving insight to this project and putting emphasis on an all-inclusive approach that is lacking in the treaties and the management of the conflict so far. The object and purpose of a treaty, it says, is to involve all stakeholders through consent and reciprocity. A part from Egypt and Sudan all the other riparian claim they did not consent to the 1929 and 1959 Nile agreements.

Though international law lacks a structure to make and enforce laws there are some areas of agreement in terms of laws. The United Nations Convention on the Law of Non-

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<sup>17</sup> Malcom Shaw, *International Law* - Fourth Edition. A Grotius Publication, Cambridge University Press

<sup>18</sup> The Vienna Convention on Law on Treaties. 1969

Navigable Uses of International Water Courses sets basic rules of internationally shared water which are: the principle of “equitable utilization and due diligence to avoid causing ‘significant harm’ (article 5 and 7)”<sup>19</sup>. One of the influences of the Nile Treaties on the riparian states is the inequitable use and management that the conflict anchors on. Though Egypt may claim its historical rights over control of the Nile the more significant point on a Human Rights perspective is that she is actually fighting for her survival.

An important aspect of transboundary water conflict is how this water is to be controlled with the involvement of each country. “The Nile is a river shared by ten riparian States. Out of these countries, five are among the ten poorest in the world. Their state of poverty, coupled with the alarming population explosion and environmental degradation, necessitate the development of the Nile Water resources by all riparian States.”<sup>20</sup> Lemma attributes this status the riparian states of the Nile finds themselves to the policies of the international financial institutions like the World Bank who have made it difficult for the upper riparian states to access finance for development projects without the consent of the downstream riparian states. This has ensured the maintenance of the status quo in which Egypt and Sudan are the only ones with the veto power. However, despite all these problems Lemma, like other scholars, argues that water sharing gives better reason for cooperation than conflict.

He further notes that though the United Nations and the World Bank have been perceived by the riparian states as part of the problem in the development of the Nile projects, they

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<sup>19</sup> United Nations Convention on the Law of Non-Navigational Uses of International Waters Courses, article 5. approved May 21, Un Doc. No. A/51/869. Printed in 36 International Legal Mat’ Is 700 (1997) (‘UN Conventions’)

<sup>20</sup> Lemma, Scifesciaissic. 2001. Cooperation on the Nile is not a zero-sum Game. United Nations Chronicle Vol. 38

have actually been part of the solution in their funding of such projects like the Nile Basin Initiative, Nile Cooperation Framework among others that are all-inclusive programmes initiated to united all riparian states. To attain equitable and legitimate rights of the water Lemma sees institutionalization of cooperation between riparian states as imperative.

However, Catherine Ferrier seeks possible initiatives for sustainable management of international water basins by studying, the participation of stakeholders and the legal regimes of Lake Geneva as a case in point. Her conviction is that “the challenges that transboundary water courses face are the lack of co-ordination between national water policies, creating barrier in information exchange and diverging economic and political interests”<sup>21</sup> which are some of the problems being witnessed by the riparian states of the Nile. She notes that the fact that states take different approaches in dealing with their sovereignty over water sources is subject to their interpretation of the law, was the reason for the adoption of the Helsinki convention on transboundary watercourses and international lakes. The convention was passed with the view that water is a public good and therefore should be made accessible to everyone.

Diversity should be taken into account in the planning and management and use of the waters to ensure sustainability. Key to this is the management of quality and quantity of the water course harmonise the legal instruments, economic and financial instruments (taxation, price of water management of structures that enable the participation of all actors.

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<sup>21</sup> Catherine Ferrier, *Towards Sustainable Management of international Water and Basins: The case of Lake Geneva*. Blackwell Publishers Ltd, 2000, 108 Cowley Road, Oxford OX4 1JF, UK and 350 Main Street, Malden, MA 02148, USA



Also central is the use of public information and participation as a tool for policy implementation. The case study of Lake Geneva show the impact of a concerted effort of a transboundary water course whose legal regimes (European, French and Swiss) have been harmonised leading to common action that has improved the lake's water quality. In cooperation in management of transboundary waters Ferrier cites the following as critical in the operation:

- Clear legal basis that harmonise the interpretation and application of the law by the riparian states
- Financial resources which is the clear definition of shares of investments and running costs.
- Administrative services sharing information in order to have a common agenda
- Information and participation of the public for awareness of their responsibilities and how to handle violations.

In light of the above there is need to understand the provisions of the legal regimes that control the Nile waters. The Nile Water Agreements (1929) and The Nile Water Agreements (1959)<sup>22</sup> provide for the legal framework that exists in reference to the use and management of the Nile waters legitimising the relationship of the parties involved. The 1929 agreement was signed between Egypt and Britain (on behalf Sudan) and its other colonies within the Nile basin. Britain pledged not to undertake works that would reduce the volume of the Nile waters before reaching Egypt.

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<sup>22</sup> The Agreement between Egypt and Anglo-Egyptian Sudan of 1929  
The 1959 Agreement between Egypt and Sudan for Full Utilization of Nile Waters

The Agreement regulates the usage of the Nile waters in the ten riparian states. After Sudan gained independence in 1956 it demanded for a review of this treaty for a rational and fair distribution of the Nile waters, hence the 1959 agreement. This agreement was signed in 1959 giving Egypt and Sudan the mandate to control the use and management of the Nile waters. In essence it is the reason for the existing inequality that has triggered the current conflict. The treaty lays down the legal framework that guides the running of the Nile waters against the backdrop of the competing demands of the riparian states.

The Treaty was drafted with the awareness of its limitation to the other riparian states and has a provision on how Sudan and Egypt should handle the review of the Treaty in case the other riparian states seek redress. In light of the awareness of the unfair distribution, one would have expected this conflict to be much easier to resolve since Egypt and Sudan had already foreseen the likelihood of counter actions from other riparian states. On the contrary, the conflict is more complex and these two treaties have sighted as key causal factors to this conflict.

Mwagiru<sup>23</sup> contributes to the growing literature in Conflict Management that is a fairly new discipline. He examines the process, approaches and identifies factors that explain or predict outbreaks of conflict. Drawing from a rich literature by great scholars like Johan Galtung and Zartman .I.W.; he gives an in-depth comprehension on Conflict analysis. Mwagiru advances the view that “it is not possible to understand, analyse, or even manage conflict before defining its nature and content”. Conflict is said to arise when the parties have incompatible goals. The Nile riparian states have been planning

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<sup>23</sup>Makumi Mwagiru. *Conflict Theory, Processes and Institutions of Management*, Watermark Publication

unilaterally on how to use the Nile waters. Looking at their demands, most of their goals are incompatible.

Though several interventions have been made towards having an integrated approach to development, the conflict has continued to escalate because of the different interest and demands. "The tendency, in most cases, is to see only the dysfunctional effects of conflict. Dysfunctional conflict leads to the breakdown of social order" – which is indeed one of the presuppositions of the project and the justification for the need for a proper analysis. Part of the theoretical framework of this research is based on the understanding that "structural conflict has much to do with the question of who or what is responsible for the generation of the conflict"<sup>24</sup> Therefore it is essential to analyse the causes of this conflict.

Castelein and Otte<sup>25</sup> stress in this document that when analysing conflict it is important to capture its memory. The document indicates the importance of history in conflict analysis and management of International shared waters. Historical evidence shows that shared waters are a catalyst to cooperation rather than armed conflict. However with this understanding water remains a potential cause of conflict because it is about life. History mirrors the past giving an understanding of current events in analysing the conflict over the Nile waters. The past informs our present and the present informs our future, this is why the project has heavily relies on history for fact gathering.

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<sup>24</sup> Makumi Mwangi, *Conflict Theory, Processes and Institutions of Management*, Watermark Publication

<sup>25</sup> Edited by S. Castelein and A. Otte. *Conflict and Co-operation Related to International Water Resources: Historical Perspectives* – Selected papers of IWHA Conference on the Role of water in History and Development: IHV-VI/ Technical Document in Hydrology (TDH) No.62 - Bergen, Norway 10-12 August 2001 UNESCO, Paris, 2002.

The Consortium of Humanitarian Agencies Forum on Early Warning and Early Response, International Alert and Safer world<sup>26</sup> documents recent practices in conflict-sensitive-approach which basically means being aware of the negative and positive impact of the interventions being taken to resolve conflict. Chapter 2 of this pack examines conflict analysis, its importance, key elements of the Conflict analysis, indicators and tools for conflict analysis. It serves as a reference point in the critical analysis stage of the project. This is due to the fact that conflict analysis informs interventions, monitors and evaluates outcomes in a conflict and is therefore essential to policy and decision makers.

The Convention on the Law of Non-navigable uses of International Waters<sup>27</sup> stresses "equitable and reasonable utilisation and participation of the waters courses states". States should therefore use the water course equitably and reasonably with regard to other users. The Convention also provides for "states to cooperate on the basis of sovereign equality, territorial integrity , mutual benefits and good faith in order to attain optimal utilization and adequate protection of International water courses".

Mutual cooperation would be enhanced through exchange of information on the courses and this is stated in article 9 of this Convention which states that "water courses states shall on regular basis exchange readily available data and information on the condition of

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<sup>26</sup> Africa Peace Forum Centre for Conflict Resolution, Consortium of Humanitarian Agencies, Forum on Early Warning and Early Response, International Alert and Saferworld. A Conference Resource Pack – A 2-year process by consortium of partner organisations: *Conflict- Sensitive Approaches to Development, Humanitarian Assistance and Peace building* – – January 2004.

<sup>27</sup> The Convention on the Law of Non-navigable uses of International Waters -1997 (IRIN 2003)

the water course, and if not readily available, the state concerned shall employ its best efforts to comply with the request. The most perturbing issue is that though this convention would provide for a way forward on how to use the water equitably none of the Nile Basin states had ratified it by 26<sup>th</sup> August 2003. This could have been occasioned by the suspicions surrounding the conflict. The request for states to avail information is an indication that some states hoard information causing speculation

One of the mechanisms the co-riparian states are initiating does address the inequality evident in the use and management of the Nile water resource is the reviewing of the law. The riparian states believe that if the treaties are reviewed to address the current needs and realities then cooperation amongst them would be easy to nurture. One of the mechanisms the riparian states of the Nile are pursuing is trying to review the Nile treaties in a way that reflects the riparian states current needs and realities. Treaties are important because they “permit states to define with greater specificity the rules governing, potentially all aspects of their fluvial relationship”.<sup>28</sup> Though even in the absence of the treaties or when a treaty does not cover certain aspects co-riparian states will depend on the customary international law especially those in the 1997 United Nations Convention on the law of non-navigational uses of International Watercourses.

Stephen C. McCaffrey, however argues that it is noteworthy that treaties have their disadvantages too. Unlike rules of customary international law that are flexible to change “treaties are in principle rigid instruments that are modifiable only pursuant to their

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<sup>28</sup> Stephen C. McCaffrey. *The Need for flexibility in Freshwater Treaty Regime*. Natural Resources Forum 27 (2003) United Nations. Published by Blackwell Publishing.

terms or by mutual agreement, and that may not be suspended or terminated except under certain very limited conditions”<sup>29</sup> stipulated in the Vienna Convention of 1969. With this background therefore the riparian states of the Nile need to go through their demands for the review of the treaties that control the Nile waters with a fine tooth comb before any concrete decisions are made. However, flexibility in treaties can be tailored made to suit the negotiating parties’ needs.

From a database of transboundary fresh water disputes Jesse and Aaron give an account and trends of the resource water treaties that have taken place prior to 1997. Noting that water is a vital resource, with no substitute whose needs a constant and immediate yet has poorly developed laws thus the need for an insight of these laws to understand their problems. In the findings 86 per cent of these treaties are bilateral while only 14% are multi-lateral. There is no clear indication as to the reason to this proportion. However due to selfish interest of Egypt and Sudan the Nile agreement of 1959 was bilateral instead of multi-lateral as would have been the case since it involved ten countries.

Also from the findings, out of the 145 treaties that govern the world’s international watersheds and the International Law in which they are based are said to be in their respective infancies, more than half exclude monitoring provisions consequently “two-thirds do not delineate specific allocations and four-fifths have no enforcement mechanism”<sup>30</sup> It is no wonder then that these treaties have been a source of disagreement

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<sup>29</sup> Vienna, 1969, *Vienna Convention on the law of treaties* 23<sup>rd</sup> May i.h.m 679

amongst the riparian states. However it is observed that “The fortunate corollary of water as an inducement to conflict is that water, by its very nature, tends to induce even hostile co-riparian states to cooperate... and the weight of historic evidence tends to favour water as a catalyst for cooperation”<sup>31</sup>

According to Dr. Patricia Kameri-Mbote<sup>32</sup> the very nature of transboundary waters traversing several national boundaries poses a great potential for conflict hence the need for cooperation. The fact that water has no substitutes makes it very vulnerable to conflict. However, like other scholars (Yoffe, S. et al among others) Mbote argues that there is more cooperation in the management than there is conflict. With specific reference to the 1929 and 1959 Nile water agreements and livelihood of the Nile Basin communities Mbote agrees that there are challenges that need to be overcome through cooperation for peace to prevail in the region. In other words cooperation is lacking amongst the Nile Basin States and is a threat to peace.

One of the main principles she quotes as the means of achieving cooperation among the stakeholders is “Principle 10 of the Rio Declaration, namely access to information by all, public participation in decision making, freedom of association and access to justice” this is a pointer to the need for reliable sources of information – the projects takes the

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<sup>30</sup> Jesse H. Hamner and Aaron T. Wolf. *Patterns In International Water Resource Treaties: The Transboundary Freshwater Dispute Database*, Published in Colorado Journal of International Environmental Law and Policy, 1997

<sup>31</sup> *ibid*

<sup>32</sup> Kameri-Mbote - chapter on *Conflict to cooperation in the Management of Transboundary Waters: The Nile Experience*, International Environmental Law Research Centre, Nairobi, Kenya and Heinrich Boll Foundation North America. *Linking Environment and Security: Conflict Prevention and Peacemaking in East and Horn of Africa*, December 2004

option of a critical analysis to fulfil this need. The literature reviewed demonstrates there is need for more research to filling the obvious gaps.

## **1.7 Theoretical Framework**

Conflict is a social phenomenon that is complex and multi-dimensional and therefore must be analysed using a number of approaches. The architecture of the conflict over the use and management of the Nile waters is complex due to the fact that the actors are many while the issues and interests keep mutating due to the change in socio-economic and climatic factors being witnessed currently within the basin.

The study therefore opts for a paradigmatic guide, which is currently being pursued by many scholars in this post-positivism era. Systems theory, which is about a relationship that is interrelated and serving a particular purpose, is just one of the theories. “Systems theory is based upon the idea that the whole is different from the sum of the individual parts. It stresses the interdependent and interactional nature of the relationships that exist among all components of a system. The family, for example, is viewed as consisting of subsystems (parents, siblings, grandparents) in which events affecting any one member will have an impact on all family members.”<sup>33</sup> In reference to this conflict therefore, the subsystems are the profile, actors, issues, causes, interests, mechanisms and dynamics which impact on the conflict as a whole, and thus gives a road map to analysing the conflict.

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<sup>33</sup> © 2001 Paul H. Brookes Publishing Co., Inc. All Rights Reserved <http://textbooks.brookespublishing.com/losardo/chapter1/keyterms.htm>



A systemic approach in the nature and conduct of the conflict and cooperation between the parties involved will assist in the understanding of the underlying structural causes of the conflict, “a systemic approach can transform conflicting problems into significant opportunities for cooperation between all parties involved”<sup>34</sup>. Systems theory focuses on equilibrium and order that is so much needed in the structures of governance in the Nile basin institutions. In the words of James Rosenau, “governance is a system of rule that works only if it is accepted by a majority (or, a least by the most powerful to those it affects) . . . governance is always effective in performing the functions necessary to systemic persistence, else it is not conceived to exist (since instead of referring to ineffective governance, one speaks of anarchy or chaos)”<sup>35</sup>.

The need for cooperation and consensus as a mechanism in managing this conflict is paramount. Rosenau and other scholars like Kaplan contribute to the systems theory in various ways. In Kaplan’s view, systems refer to “a set of variables so related, in contradistinction to its environment, that describable behavioural regularities characterize the internal relationship of a set of individual variables to combination of the external variables”<sup>36</sup> proceeding from this understanding the nonlinear dynamics in the conflict become visible which will be discussed in the following chapter. In Kaplan’s six models of hypothetical international system he pays attention to:

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<sup>34</sup> KDW Nandalal and SP Simonovic: *Resolving Conflicts in Water Sharing: Systemic Approach to Water Conflicts*, Water Resources Research , 2003

<sup>35</sup> Rosenau James N. and Ernst-Otto Czempiel (1992) *Governance Without Government: Order and Change in World Politics*. Cambridge University Press.

<sup>36</sup> Kaplan M.A., *Systems and process in international politics*, New York: Wiley 1962

- i) the organisational focus of decisions, including the nature of actors, objectives and the instruments to attain them
- ii) the allocation of rewards, including the extent to which they are allocated by the system or by the sub-system
- iii) the alignment preference of actors
- iv) the scope and direction political activity and
- v) the flexibility or adaptability of units in their behaviour<sup>37</sup>

All these are factors that should be considered in the management of this conflict if positive results are to be realised.

However the efficacy of systems theory fails in reference to the sovereignty of the riparian states due to the assumption that all actors have similar characteristics and motives, hence the need for another approach. The study will also explore the conflict research paradigm whose theoretical foundation lies in the world society paradigm of international relations. World society argues that relationships in the international system should be legitimised and that recognised relationship should fulfil a need as should be the case with the treaties and the institutions established by the Nile riparian states to manage the use of the waters.

The view that if the environment were to change the way people perceive each other then conflict would cease encourages dialogue amongst the involved parties, recognising that states have different perceptions and motives. Burton one of the founders of conflict

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<sup>37</sup> Morton. A. Kaplan, *The New Great Debate: Traditionalism vs. Science in International Relations* *World Politics*, Vol. 19, No. 1 (Oct., 1966)

research paradigm school argues that “the imperative to war does not come from the nature of state or the external relation but from the way in which environment acts on an individual...”<sup>38</sup>

The assumptions in this paradigm is that conflict behaviour is learnt and therefore can be unlearned to encourage the involvement of all actors in the management of the conflict and legitimisation of relationships so that they are self-sustaining. Key also to this concept is the fact that diverse levels of decision making centres that operate independently, make independent decisions that may be incompatible causing conflict. This is demonstrated by the unilateral decisions taken by the Nile riparian states to meet there selfish ends. The method suggested here is the use of conflict management mechanism where all parties achieve satisfaction and not at the expense of one another. This should be based on the parties perspective thus the conflict management mechanism’s role is to see if the parties can change their goals because of the changing circumstances.

The perceptions of the parties can be changed through critical analysis and negotiations based on valid information. However, complications in the analysis are eminent because this conflict is embedded in three triangles of the Great Lakes, East Africa and Horn of Africa conflict systems. In addition to this, the internationalisation of this conflict is very visible in the media, compounding the issues, interest and actors.

This study’s main concern lies within the confines of the Nile Basin taking a multi-level approach with emphasis on the national and international levels.

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<sup>38</sup> Edited by J. Burton and F.Dukes *Conflict in Management and Resolutions*, Hound Mills Macmillan, 1990

## **1.8 HYPOTHESES**

This study will be guided by the hypotheses below:

1. A critical analysis of the Nile water conflict will yield information for sound policies in the shared water resource.
2. Without informed negotiation on the use and management of the Nile waters, conflict among the riparian states over the shared resource will become dysfunctional.
3. Reliable information will enhance communication and sustainable peaceful co-existence among the Nile riparian states.

## **1.9 Methodology**

The project was based on the use of both primary and secondary data. The primary data was gathered by way of multiple contacts with authorities and scholars in the field of research through non-structured discussions and reference to primary materials like treaties, conventions and statutes. However, this study has relied heavily on secondary data because there is a lot of information on the subject. The secondary information were from authoritative sources such as books of renowned authors found in libraries of institutions of higher learning in Nairobi, Ministry of Foreign Affairs, foreign missions, technical documents of international organisations such as the United Nations, Nile Basin Initiative, African Union amongst others, papers on experts opinion, print and electronic media reports, including the internet.

The secondary data was used for verification of the primary data and to supplement by filling the gaps left by the primary data.

## CHAPTER 2

### 2.0 THE CONFLICT OVER THE MANAGEMENT AND USE OF THE NILE WATERS AND THE INFLUENCE OF THE 1929 AND 1959 TREATIES ON THE RIPARIAN STATES.

#### 2.1 An Overview of the riparian states of the River Nile

Egypt is a fairly dry country located furthest downstream of the Nile Basin countries. It is heavily dependant on the Nile waters, with most of its population living within the basin. Egypt clings to the 1959 Agreement on The Nile waters as the legitimate regime because its gives it powers to dominate the use and management of the waters. It is one of the only two countries who signed this Treaty (Nile Agreement of 1959) and thus recognizes Sudan's entitlement as the other country in the agreement. Egypt has made clear its intention to increase her irrigation projects, "Government agencies concerned with water and land reclamation strongly protect the notion that they have options for substantial increased use of water and propose a 25% increase in area of irrigation"<sup>39</sup> going by such reports.

Next downstream is Sudan which is the largest country in Africa lies in the middle of the basin "with 85 per cent of its population"<sup>40</sup> living here. The two main arms of the river the White Nile and the Blue Nile converge in its capital Khartoum forming the main Nile. Its Northern part is a semi-desert with low rainfall. Sudan has never really utilized her

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<sup>39</sup> Alan J.A. and Nicol .A., *The Dynamics of River Basin Cooperation: The Nile and Okavango basins* – 2004 london: IB Tauris

<sup>40</sup> *Nile Basin* – <http://www.worldbank.org/afr/nilebasin/countries.htm>

entitlement to its fullest as is in the Nile water agreements and its Jonglei Scheme of the 1980s that was intended to stop evaporation of the White Nile was abandoned halfway. This has been attributed to the over 20 years of civil war that it has experienced. Sudan is currently being run by an interim government after the signing of a peace accord by the South and Northern warring faction. Ethiopia is located east of the Nile and the Ethiopian highlands are the source of the Blue Nile and its main tributaries Sobat and Atbara. The rainfall here is fairly heavy and seasonal. Like all the upstream co-riparian it wants the 1959 Agreement on the Nile waters renegotiated as a starting point. Though several small dams have been constructed in the highlands Ethiopia is yet to exploit her hydropower and agricultural potential using the waters. Eritrea is found in the North-Eastern part of the basin. It experiences seasonal rainfall and shares the Atbara River with Ethiopia and Sudan. Having just seceded from Ethiopia, Eritrea brings new dimensions to the sharing equation of the Nile waters.

Kenya covers a small portion of the South Eastern part of the Basin. It is densely populated in this region and the wettest part of this country. Kenya's unique characteristic is that though it has the smallest portion of the Lake Victoria, which is the source of the White Nile, seven of the rivers that drain in this lake, six are lie in Kenya. It is considered an upstream country.

Situated South, Uganda lies largely within the basin and is an upstream country to Sudan and Egypt, as well as a downstream country to Kenya, Tanzania, DRC Rwanda and Burundi. It experiences heavy rainfall. Uganda utilizes the waters of Lake Victoria

through an agreement with Egypt and has projects like the Owen Falls Hydroelectric project running. Tanzania is located at the Southern end of the basin and has the largest portion of Lake Victoria. It has a number of water resources such as Lake Tanganyika and it is humid. Despite having the biggest part of the Lake Victoria that acts as a reservoir to the Nile waters, Tanzania features no where in the control of the waters. Rwanda is located on the South Western side with 80 per cent of the country lying within the basin. It is home to Lake Victoria's largest tributary the Kagera River and is the most densely populated of the basin countries.

Burundi located at the furthest South-West of the basin is a mountainous country with fair heavy rainfall and a high population density. It is a downstream country. Located at the further South western side of the basin with high rainfall patterns is Democratic Republic of Congo (DRC), DRC's most populated region is within the basin. It has other water resources like the Congo River, Lake Edward and Lake Albert at the Uganda/DRC border. "The total area of the Nile basin represents 10.3% of the area of the continent and spreads over ten countries"<sup>41</sup> yet it is home to a third of the continents population, this means that this region is significant to the socio-economic, ecological and political equation of the continent of Africa.

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<sup>41</sup> FAO. Irrigation Potential in Africa -A basin Approach, FAO Land and Water Bullentin 4, 1997

## 2.2 The Location of the Study Area

### 2.2.1 Map of the Nile Basin



## **2.3 Background of the Conflict**

The Nile Water conflict can be traced back to the colonial times when the British were on an expansionist mission in Africa, which saw them take control of most of the Nile basin countries. During this period the conflict was latent. However, after the independence of the riparian states there has been an upsurge of various disputes on the inequitable use and management of the Nile waters. Sudan, after its independence in 1956, negotiated for a review of the 1929 Treaty, which ushered in the 1959 Agreement. Tanzania on the other hand, declared all treaties invalid at independence. Whether the rest of the riparian states are still bound by the 1929 and 1959 Treaties is a matter in contention. The time frame of this conflict therefore focuses on the conflict post-independence period.

This chapter will be imperative to the analysis of the nature, and the influence of the 1929 and 1959 treaties, in this conflict. According to FEWER, International Alert and Safe world, 2003 the key elements of conflict analysis comprise of the conflict profile, actors, causes and dynamics,<sup>42</sup> which will be the focal point of this chapter.

## **2.4 The nature of the Conflict**

It is important to understand the nature and content of a conflict because it influences not only the strategies of fighting the conflict but also the conflict management mechanisms. This conflict is centred on finding a balance between competing interests, constraints of the legal regimes and the freedom of states to manage their natural resources.

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<sup>42</sup> FEWER. International Alert and saferworld.2003 – *Conflict Sensitive Approaches to development, humanitarian assistance and peace building*

Conflicts may be perceived or real and it is critical therefore to establish the existence of a conflict and its contents upfront before laying down any strategies to manage it. As observed by Mwagiru that “While it is easy to identify a violent conflict (because we can for example see people fighting, or see the effects or results of the conflict), it is less easy to identify a structural conflict”<sup>43</sup>. Structural violence is eminent where there is a disconnect between relationships in the laid down structures. In this case, the frictions in the relationship of the riparian states can be said to be rooted in the legal structures like the treaties, socio-economic and the management structures set up to control the Nile water resource. Other structures that come into play in this conflict are political structures, and all these structures somehow have a systemic relationship.

## **2.5 Indicators of the existence of the Conflict**

The existence of a conflict will depend on whether the debate takes an objectivist or subjectivist view. “The objective view of a conflict argues that we can be in a situation of conflict even though we do not realize, ...the subjective view of the conflict takes the view on the other hand, that it is necessary for us to realise that we have conflict (or are in a situation of conflict) for that conflict to exist”<sup>44</sup>. This study will take up this debate from an objectivist point of view.

The indicators are consequently those signals that are used to establish the existence of a conflict they also assess the progression in the conflict. “Indicators are useful in this respect, as they help reduce a complex reality to a few concrete dimensions and represent

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<sup>43</sup> Makumi Mwagiru, *Conflict Theory, Processes and Institutions of Management*, Watermark Publication

<sup>44</sup> M Mwagiru et al. *Understanding Conflict and its Management*. (CCR/WLEA, Nairobi. 1998. Published with the support of DANIDA

valuable pointers to monitor change.”<sup>45</sup> Like any other complex conflict the indicators in this conflict are numerous – perceived or otherwise. According to Ibn Ravn “one party is in conflict with another when he or she 1. experiences psychological or physical pain, 2. holds the other party to be responsible for this pain, and 3. does not accept this situation. This definition is nested in a theoretical perspective that sees pain as a signal that something is wrong and needs to be changed”<sup>46</sup>. Going by this understanding then there is no convincing that there is a conflict. This is evident following the perennial wrangles and negotiation efforts by the riparian states of the Nile over the control of its waters because some parties feel aggrieved or hurt by others decisions to dominate.

In addition, the social cultural factors within this conflict such as the ethnic tensions and divisions among the Nile Basin countries over the waters are implicit of conflict. The political exploitation of ethnic, cultural and identity differences dates back to the western colonization and scramble for Africa where the continent was divided into colonies. The colonial boundaries did not take into consideration that the same ethnic community was to stay together, instead one ethnic community would be found in several states. The Tesos in Kenya and Uganda, the Oromos in Kenya, Ethiopia and Somalia, Tutsis of Uganda, Rwanda and Burundi. Others are the Kakwa in North Western Uganda, South Sudan and Uganda-Zaire border. These ethnic tribes though in different states have continued to relate to their kin across the border raising concerns on national security and causing tension among the states. “Kakwa because of their membership of two sovereign

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<sup>45</sup> [http://www.conflictsensitivity.org/resource\\_pack/2\\_3\\_working\\_with\\_indicators\\_327.html](http://www.conflictsensitivity.org/resource_pack/2_3_working_with_indicators_327.html)

<sup>46</sup> Ib Ravn. *Understanding Conflict as a (Missed) Opportunity for Social Development*. International Journal of Conflict Management, June 1998

states, Uganda and Sudan influence internal politics and dictated the changing nature of the relationship between the two countries”<sup>47</sup> In relation to the use and management of the Nile water and taking the Kakwa as a case study it is therefore obvious that this situation (multi-membership of ethnic groups in sovereign states) must be considered in the conflict management strategies.

The issue of legitimacy of Egypt’s domination in the use and management of the Nile waters is paramount in the conflict. The fact that there were no proper checks and balances by the structures that govern the water system is not only a recipe but an indication of structural conflict. Moreover the lack of inclusiveness in the administrative power as demonstrated by the two legal regimes on the use and management of the Nile waters are clear areas that generate dispute and tension.

Several writers have contributed to the debate on the use and management through articles in the print and electronic media where majority of the writers have expressed their opinions against retaining the status quo. The general result has been the growing calls to review the treaties and an escalation of the conflict despite the conflict management mechanisms in place.

However, it is important to note that the independence and professional standard of media especially in Africa has been in question owing to unreliable sources and the constant political interference as demonstrated earlier in the study. These media information have led to blatant coercive remarks from leaders of the riparian states. The realities of the

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<sup>47</sup> A. I. Asiwaju. *Partitioned Africans: Ethnic Relations Across Africa's International Boundaries, 1884-1984*. Lagos Nigeria: Lagos University Press, 1985

rising conflict are reflected in the reactions to the different perceptions brought to fore by the writers and stakeholders. What is obvious though is that the conflict has continued despite the on-going negotiations and the establishment of the multilateral structures to manage the conflict. The internationalisation of the conflict through the media is also implicit of the introduction of external actors and issues to the conflict making it of world concern.

## **2.6 Profile of the Conflict:**

### **2.6.1 Physical geography as a tension point**

Countries of the world are not equally endowed with natural resources hence the various conflicts arising from competition over scarce resources especially those that are shared across borders like the river Nile. The fact that the Nile meanders through ten countries and is linked to the second largest fresh water lake in the world; Lake Victoria makes it not only one of the most conspicuous geographical sites in the world but also a potential source for conflicts. There are many actors who want to share this resource is a recipe for disagreements.

The physical geography of the Nile also determines which countries are riparian states and which of them are the upper or lower riparian. The upper riparian in this case are countries where the White Nile begins namely, Kenya Uganda Tanzania and Ethiopia and Eritrea which are the source of the Blue Nile. The lower riparian countries include Egypt, Sudan and Burundi, which are located downstream. The upper riparian countries are normally viewed as having the strongest positions since they can alter the quality and

quantity of the waters significantly. Ironically this is not the case in the Nile waters where Egypt, the lowermost riparian and the country that does not contribute to the quantity of the water dominates and has the strongest position on use and management.

The fact that these countries share the river reduces the degree of freedom they may have over the resource. Uganda's geographical position gives another dimension, being a landlocked country that relies on Kenya and Tanzania harbours for imports and exports. Whatever bargaining chips Uganda may have; it must consider its dependence on the two countries for other crucial services. The Nile drains into the Mediterranean Sea through its delta in Northern Egypt. However, the geographical and political linkages are said to go beyond the basin " The ten Nile countries link processes in the southern Africa to northern Africa and the Mediterranean, development in Central Africa to the West African Atlantic coast, and the regional systems of the Middle East to the Indian Ocean."<sup>48</sup> This brings in the influence of exogenous actors in the conflict.

### 2.6.2 Population make-up of the Nile basin

According to the World Bank Population report '*Science in Africa*' the Nile Basin has a population of about 160 million people as per the, whereas the ten riparian states of the Nile population is approximately 300 million. This population is expected to double within the next 25 years and will certainly put more stress to the Nile waters. The increase in population would then translate to increase in industries, agricultural development and urbanization that pose environmental hazards to the river. This report

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<sup>48</sup> A. Nicol. M. Sahin, *The Nile: Moving Beyond Cooperation*, [Webworld.unesco.org](http://Webworld.unesco.org)

also puts the poverty level within the basin at 50% of the population leaving below the international poverty line of one dollar a day. All these reasons pose threats to the stability of this region.<sup>49</sup>

## 2.7 The Issues in the Conflict

The issues in this conflict are linked to the inequitable use and management of the shared natural resource – the Nile waters. “Though the major supplier of the Nile waters Ethiopia was not considered in the agreements (Nile water agreement of 1959), a country with a population of more than 60 million (projected to be 120 million by the year 2025) and which contributes about 86% of the annual discharge of the Nile - to date use only less than 1% of it.”<sup>50</sup> Such statements are a reflection of the inequity in the sharing of the waters.

Ethiopia is not the only casualty in this case. The Nile Basin lies within ten States namely: Egypt, Sudan, Ethiopia, Eritrea, Kenya, Uganda, Tanzania, Democratic Republic of Congo, Rwanda and Burundi, yet only Egypt and Sudan have authority to control the use and management of the Nile waters. Egypt draws about 90 per cent of its waters from the Nile River, as has been earlier explained in the Study, and is therefore reluctant to make compromises because of its over-dependency on the river. The restrictions that are in the Nile Treaties are directed to some of the riparian states while others (Egypt and Sudan) enjoys the waters, and this has been viewed as a major obstacle in the cooperation efforts and development.

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<sup>49</sup>World Bank report on Population. Copyright 2002, Science in Africa- May issue, Science magazine for Africa CC. All Rights Reserved

<sup>50</sup> Lemma, Seifeseleassie, 2001, Cooperation on the Nile is not a zero-sum Game, United Nations Chronicle Vol. 38

The Nile Basin states primarily are agricultural economies, the upper basin states, Ethiopia, Kenya, Uganda, Tanzania, Zaire, Rwanda and Burundi settled in agriculture as the general economic activity supplemented by pastoralism in some of the countries. The lower basin states of Sudan and Egypt are also agricultural economies, but in contrast with the upper basin states agriculture is largely irrigation based, in the case of Sudan and entirely so in the case of Egypt. Egypt is a desert agricultural country solely dependent on the Nile waters for there is hardly any rainfall.<sup>51</sup> 86% of Egypt is classified as arid, and the only exception to the extreme aridity are the narrow band of the Nile Valley and the narrow coastal strip where some 150mm of winter rainfall. Hence the only cultivatable parts of Egypt are the narrow alluvial valley, the Fuyoum depression and the great Oasis. All the above, account for more than 3.3% of the total land area<sup>52</sup>. According to some Comptes the complete control of the Nile by Egypt's economy has been characterised as unique feature of the Nile, setting it apart from other International rivers.

In Sudan the scenario is a little different from Egypt. The well-watered south of Sudan, the rivers are not as useful in fact there are swamps and flooded areas. The desert north entirely depends on the river, as one proceeds northwards. Sudan is divided into three rainfall zones, the extreme south of the country has about 1200mm to 1500mm of rainfall, the fertile central plain resource 400mm to 800mm annually and thirdly the desert in the north receives an average of 200mm annually<sup>53</sup>. It is in the North that

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<sup>51</sup> Godana. Bonaya Adhi. Graduate Institute of International Studies / Geneva. *Africa's shared water resource : legal and institutional aspects of the Nile, Niger and Senegal river systems* / Bonaya Adhi Godana. 1985

<sup>52</sup> Comptes-Rendus. [www.afes-press.de/pdf/Sec\\_Env\\_Med\\_1095.pdf](http://www.afes-press.de/pdf/Sec_Env_Med_1095.pdf) - 1958

<sup>53</sup> Godana. Bonaya Adhi, *Water and Society: Conflicts in Development* Part 2. London F. Printers. 1980.



agriculture is largely practised through irrigation. Here again the Nile is a dominant factor to the national economy.

The upper-basin states of Uganda, Ethiopia, Rwanda and Burundi have increasingly been viewing the Nile River as a principal feature of economic development. These states in the upper riparian are not only agricultural but also geared towards the production of hydroelectric energy. Nonetheless, these countries show an increasing interest in the abstraction of water for the purpose of irrigating the dry parts of their territory whenever possible. "Ethiopia insists that it has every right to develop its natural resources. It has bitterly reproached Egypt for building the Aswan dam without even consulting it, as well as for appropriating the lion's share of the river resources."<sup>54</sup>

Tanzania is also one of the upper riparian that hopes to implement an irrigation plan whose feasibility was originally studied by the Germans before the First World War to use the Lake Victoria waters to irrigate the relatively low and dry steppes of Central Tanzania. The leftist government of Ethiopia equally considered making greater demands on the water of the Blue Nile, not only for the purposes of general development but also plan to divert waters for irrigation.

In Kenya the situation is unique in the sense that apart from having the smallest section of Lake Victoria in her territory, six of the seven rivers that carry water into the lake are in Kenya. The government in the past few years has begun to treat the lake resource within her territory more seriously that lead to the establishment of the Lake Basin Development

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<sup>54</sup> UNESCO – *Averting Conflict in the Nile basin* – The New Courier, October 2003

Authority<sup>55</sup> The high population growth rate has elicited increasing demand for fresh water. Hence a number of projects are being considered by the Kenyan government so as to utilize the waters of the Lake to irrigate areas within the basin.

The East African countries' concern is why Egypt should control the use of the Lake Victoria waters yet the resource does not lie within its territory. Egypt watches over the use of the Lake Victoria waters because apart from being one of the main sources to the Nile it also acts as a reservoir allowing for irrigation all the year round in Egypt. Claims have been made by East African politicians, that Kenya is importing food from Egypt which uses the Nile water for irrigation while Kenya is not allowed to use the same waters to grow food for its people.

The East African newspaper commentator, Onyango Obbo wrote that "Egypt can't enjoy the benefits of having access to the sea, while blocking a landlocked country like Uganda from profiting from the fact that it sits at the source of the Nile"<sup>56</sup>. The Ugandan parliament is asking Egypt to pay for the costs of maintaining the reservoir. It is also contemplating building another dam along the Nile waters. Ethiopia like Tanzania is witnessing a looming famine and is threatening to abstract the Blue Nile for her use.

Overall, it can be said that it is the history of the development and management of the irrigation in the two-lower most basin states and particularly the lower most one (Egypt) that has been the source of controversy and the birth of bi-lateral treaties designed to

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<sup>55</sup> O. Okidi, *Legal and Policy regimes of the Lake Victoria and Nile Basin*, Fourth Edition, Institute for Development Studies. University of Nairobi 1980 Kenya

<sup>56</sup> Onyango Obbo.

control the use of the Nile waters. These bilateral treaties are now being contested by the riparian states of the Nile.

### 2.7.1 The Agreement between Egypt and Anglo-Egyptian Sudan of 1929

Past Treaties and Agreements on the Nile river waters can be traced as far back as the '15<sup>th</sup> April 1891'<sup>37</sup> when the Anglo Italian Protocol was signed between two colonial powers, Britain and Italy. The focus of this research is however, on the Nile Treaties of 1929 and 1959. The 1929 Agreement between Egypt and Britain signing on behalf of Sudan and its East African colonies was realized on the 7<sup>th</sup> May in Cairo and came into force the same day. This agreement was based on the recommendations of the chair of the Nile waters Commission (set up in January 1925), a Briton, and an Egyptian member. This was done without any contribution from the rest of the other Nile riparian states. Moreover, Sudan's political instability, owing to the civil war, at that time was of concern hence Egypt being granted the authority to renegotiate in future should the scenario change.

In principle the Agreement was temporary depending on the future political and socio-economical unfolding of the Sudan. This gave an indication as to what period the agreement should be in force. Egypt's natural and historical rights are emphasized in this document but with due respect to Sudan's right to development through the utilization of the Nile waters.

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<sup>37</sup> The River Nile Treaty: *The Agreement between Egypt and Anglo-Egyptian Sudan of 1929*

The Agreement would depend on the needs of the moment of negotiations, a principle based on historic rights. Any other changes would have to be renegotiated a fresh. No major utilization of the Nile waters would take place without consultations with Egypt. "Save with the previous Agreement of the Egypt government no irrigation or power works or measure are to be constructed or taken on the river Nile and its branches, or on the lakes from which it flows, so far as these are in the Sudan or in countries under British Administration, which would, in such a manner as to entail any prejudice to the interests of Egypt either reduce the quantity of water arriving in Egypt, or modify the date of its arrival, or lower its level"<sup>58</sup> In a nutshell no major works that depended on the use of the Nile water resource would take place without the authority of Egypt.

Cognizance of the fact that in 1929 Egypt was still under the influence of Britain, while the rest of the riparian states were under colonial powers with the exception of Ethiopia, as a mediator in this case Britain, there has been suspicions that Britain was partial and would therefore have favoured Egypt over Sudan. The existing inequality in the management and use of the Nile waters are attributed to the underlying restrictions of this treaty. These restrictions meant that the riparian states in not mentioned in this treaty would depend on Egypt' good-will which has not been forthcoming.

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<sup>58</sup> Okidi C O.: The Nile Sharing A Scarce Resource. Institute for Development Studies. University of Nairobi. 1994

### 2.7.2. The 1959 Agreement between Egypt and Sudan for Full Utilization of Nile Waters

The Objective of this Treaty was for Egypt and Sudan to gain authority to fully utilize the Nile waters. This was necessitated by Egypt's plan to build Aswan High Dam " to collect the entire annual flow of the Nile water"<sup>59</sup>. The other factor that necessitated the review of the 1929 Nile waters Agreement was Sudan's Independence in 1956. At this time Sudan insisted on having previous Agreements that were unfair to be reviewed leading to the signing of the *Agreement of the Full Utilization of the Nile Waters* being signed in 1959 between Sudan and Egypt yet again without involving other riparian states. Egypt had the authority to utilize up to 87 per cent while 13 per cent was awarded to Sudan.

The irony of it all was the two, Egypt and Sudan, were not contributors to the Nile waters but just users. "Irrigation, hydroelectric power, and water supply projects developed under the Aswan Dam project have become the basis for Egypt to claim historical water rights over and above those of the remaining riparian in the basin."<sup>60</sup> The Aswan Dam Project thus strengthened Egypt's case on historical rights. It is puzzling that there was no mention of or provision made to other Nile riparian states which Britain had represented in the earlier agreement. This omission, tactful or not, has caused a lot of discomfort amongst the sidelined states and have termed the Treaty invalid. It is the conviction of most experts in conflict resolution that a good agreement should involve all concerned partners. Nonetheless, the two treaties failed to address the issue of all-inclusiveness of

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<sup>59</sup> Collins. <http://www.ethiopians.com/abav/engin.html>. 1993

<sup>60</sup> Collins. <http://www.ethiopians.com/abav/engin.html>. 1993

stakeholders and equity in the management and distribution of the Nile waters. They have remained bi-lateral treaties that have been the reasons for the stalemates witnessed in the prior negotiations.

## **2.8 Triggers and Catalysts in the Conflict**

### **2.8.1 Disruption of social networks**

The Nile basin is trapped in three conflict systems namely The Great Lakes Conflict System, The Horn of Africa Conflict System and the East Africa Conflict System. These interstate conflicts have occasioned a mass exodus of persons from their home countries to neighbouring countries disrupting the very fibre that runs through their social network. The exit or return of refugees and internally displaced persons interferes with the cohesion and mobilization of group towards any course. This has weakened the unity in the Nile Basin region with the focus turning to human survival, away from cooperation and development of the water resource. Human and financial resources that could be otherwise used to develop the Basin end up being used for reconstruction of the dilapidated social network.

Advocacy for equity in the distribution of the Nile waters has thus not received the deserved attention. This situation has just served as a catalyst in this conflict by deepening the cracks among the communities of the Nile basin, while postponing the already grave environmental concerns that can only be described as a time bomb.

### 2.8.2 Mistrust

Mistrust among the leaders in this region still lingers especially where there has been the involvement of exogenous actors in attempted coups in some of the Nile basin countries. Egypt is said to have played an instrumental role in supporting Eritrea in its secession from Ethiopia. Tanzania had a hand in getting rid of Idi Amin's government in Uganda, whereas Kenya's giving home to Milton Obote former Uganda President was viewed as being partisan by some Ugandans and meddling in Uganda's internal affairs. Some Ugandan leaders also assisted Kenyans in the 1982 attempted coup on Daniel arap Moi's government. Among other reasons, these meddling in other countries affairs have generated mistrust in the region. Bilateral agreement on the control of the Nile between - Egypt and Sudan, Egypt and Uganda, Egypt and Ethiopia have also raised eyebrows in among the sidelined riparian states because of the shared interest. This mistrust may most likely be carried on to the negotiation table, hence the need to take this into account when nurturing the cooperation efforts.

### 2.8.3 Elections in the Region: as an issue that can fuel tensions

The fact that conflict boundaries are porous, other issues in a conflict like elections that are sometimes taken for granted may be a source of tension. The porosity of these boundaries allow for a spillover of the conflict as noted by Mwagiru "First it requires the acknowledgement that every conflict is interconnected with the other conflicts in the region"<sup>61</sup> This internationalization of conflict bring with it other aspects to this conflict, regional elections being one of them.

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<sup>61</sup> Makumi Mwagiru, Conflict Theory, Processes and Institutions of Management, Watermark Publication

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<sup>61</sup> Makumi Mwangi, *Conflict Theory, Processes and Institutions of Management*. Watermark Publication



Most democracies in Africa hold elections under extremely tense environment, most marred by violence and the Nile Basin countries are no exceptions. The colonial boundaries that left communities spilt over to several territories made it easy for the communities to have dual identities. This has enabled them to vote in any of the territory where there kin are, causing conflicts and insecurity amongst neighbouring countries, for instances Somalis could vote both in Kenya and Somalia.

The massacre in Marsabit Kenya in June 2005 of the Gabra and Borana was triggered by the retaliation of the Oromo Liberation Front of Ethiopia (OLF). This political movement has a membership from both Kenya and Ethiopia (Boranas) and has a bearing in Ethiopia's Elections. The Teso from Uganda and those of Kenya have also in the past voted in both countries. This has caused political tensions within the Nile Basin region and must be considered as a catalyst to this conflict. The connectivity of the Nile water conflict to other regional conflicts compounds its nature and content, and in turn complicates matters for the conflict managers.

#### 2.8.4 .Military and civilian deaths

The presence of armed force has been heavy in the Nile basin region due to the proliferation of small arms in the civil strives for instance in the Sudan, Ethiopia, Uganda, the Democratic Republic of Congo over the Diamond mines and the Rwanda Genocide that took place in 1993-1994. These civil strives have left millions of military officials and civilians dead, thus having a tremendous negative impact on development. The re-construction of these countries also takes up the resources that would otherwise be invested in the development of the Nile water system.

### 2.8.5 HIV/AIDS

The HIV/Aids pandemic is no doubt a development challenge that is systemic and a global disaster that has paralyzed a lot of Africa's development activities due to the large financial and human burden that comes with it. The scourge, a major characteristic present in the countries in this conflict, has attracted most funding towards awareness creation and mitigation, and is the reason of abject poverty in some regions within the Nile Basin. The Nile Basin countries constitute approximately a third of Africa's population and are therefore hard hit. Issues in the Nile water conflict that need early intervention have been pending for sometime now since they were not a priority hence the delayed negotiations on the management and use of the waters.

## **2.9 Causes of the Conflict**

Managing water that transcends national boundaries poses a unique challenge in that the transboundary waters are subjected to politics, cultures, and different stages of development and development goals of the various riparian countries. Since the cause of this conflict cannot therefore be attributed to a single factor but rather to multiple causes and are subjected to other intervening variables, for this reason this conflict should be analyzed at different levels using different perspectives.

However, this does not refute the fact that there are key causal-factors, which are the major contributors to the conflict and are somehow interlinked by their interactions. Therefore, to have a deeper understanding of this conflict there is need to have a systematic analysis to the causes.

The study looks into the influence of the Nile Agreements of 1929 and 1959 that have been mentioned by a number of the riparian states as one of the major obstacles to development in the Nile basin and therefore a key subject in the Conflict.

### 2.9.1 Nile Treaties 1929 and 1959 as key causal factors

Mwagiru describes the causes of conflicts as “essentially a question of the motives and reasons for the conflict”<sup>62</sup> These causes can be studied from a point of view of historical, economical, social, political and anthropological levels. However, the one causal factor that has drawn a lot of attention raising more heat than light is the Nile Treaties of 1929 and 1959. This has been so following a myriad of explanations the main one being the inequity stipulated in the two treaties.

In this conflict, the two treaties are referred to as key causal factors. Ten countries lie within the Nile basin, but only two of these countries have veto authority to manage and use the Nile waters. The legal framework lays down the principles that are lacking in transparency, equity and equality in the use and management of this resource. As earlier, noted in this study, the riparian states of the Nile are calling for a review of these treaties to address what they believe is the root problem of this conflict. The 1959 Nile Treaty was between Sudan and Egypt, it gave Egypt rights of 87 percent of Nile waters while Sudan the remaining 13 percent, again without a thought of the other riparian states. The rejection of the Treaty by the other states in the Nile Basin therefore comes as no surprise.

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<sup>62</sup> Makumi Mwagiru, Conflict Theory. Processes and Institutions of Management, Watermark Publication

### 2.9.2 Other Causes

Within the understanding of the multi-causal and multifaceted nature of conflict the linkages of the key causes to other causes must be captured. There are several other drawbacks from sharing transboundary water resources that bring about conflict among the communities living along the basin other than the treaties that provide for a legal framework.

Firstly, the exploitation of water resource by upstream countries affects downstream countries through water shortages, floods and pollution. This explains Egypt's reason for inspecting and wanting to control the activities on the Lake Victoria. The Nile is Egypt's lifeline and because of this Egypt is taking no chances and has deployed overseers who are based in Jinja, Uganda and whose terms of reference is to inspect the utilization of the Lake Victoria waters. However, in Kenya for example the fish industry has about 30, 000 fishermen and the industry employs 0.5 million, directly or indirectly. Kenya's earning on the fish exports up to 7 billion Kenya shillings per year before the European Union ban on fish exports in recent years and that is why the Nile question is very crucial to the East African Community. Indeed Kenya is not about to disrupt such an economic activity in favour of Egypt. Allowing Egypt to take control of Lake Victoria would disrupt the economies of the communities living around this lake.

Secondly, a similar situation, that is the exploitation of the water resource, may result to reclamation and replanting of wetlands upstream. At present the upstream countries namely Uganda, Tanzania, Kenya, Ethiopia have no such plans other than exploiting the

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resource. Should this happen then the flow of the waters into the White and Blue Nile will be reducing significantly and Egypt will be affected a great deal.

Thirdly, a group among the riparian countries contribute to and suffer from the damages like water shortage, pollution and services; hence the intensifying complaints from other riparian states. The deterioration of the environment and the lack of civic education on conservation amongst these communities is a time bomb, one that may explode anytime if the countries to not embrace sustainable development projects.

Fourthly, the global effects – the pollution and global warming and acid rains affect not only the riparian states but also the world climate as a whole. Therefore the Nile Conflict is not just a concern of only the ten riparian states but rather a global issue. This conflict is internationalized from this point of view bringing the concerns of global institutions like the United Nations Environmental Programme (UNEP) into the picture.

Apart from this, riparian countries have different interest and priorities on the use of the Nile waters that may affect Egypt adversely. For this reason, Egypt fears the equitable distribution of the Nile waters because it has enjoyed having the lion share and has made itself totally dependent on the Nile waters.

Further to this, the development of small and large-scale irrigation schemes in Sudan and Egypt, which are the most downstream country, and with very little rainfall depends entirely on the Nile for hydroelectricity power generation, domestic, irrigation, leisure

and industrial water supplies these are all programmes taken by the two countries without agreement with the rest of the riparian States.

Other causes that display a systemic relationship to the conflict as a whole are:

## **2.10 Actors in the Conflict**

The actors in this conflict will be considered both at the international and national level of analysis, the main national governments in the conflict are Ethiopia, Eritrea, Egypt, Sudan, Democratic Republic of Congo (DRC), Kenya, Uganda, Tanzania, Rwanda, and Burundi. The other group of actors is the national security sector composed of the military and police stationed at every border of these countries to care of the interests of their country. Donor agencies which include Canadian International Development Agency (CIDA) that funded the Nile River Basin Action Plan (NRBAP), United Nations Development Programme (UNDP) who are the funders of the implementation of Project 3 (whose objective is to develop a cooperative framework for the management of the Nile) endorsed by the Nile-COM of 19<sup>th</sup> February 1995 meeting in Arusha, The World Bank that partners with other donors, International Advisory Group that supported the review of the NRBAP among others are also actors by extension.

The regional diplomacy at play in the conflict is the work of the foreign embassies who are actors by virtue of being representatives of the state in foreign land. Regional organizations such as the East African Community (EAC) and multilateral organization like the African Union (AU) and Nile Basin Initiatives are actors by virtue of the fact that Nile River as a catalyst to development of the region is part of their agenda and they

provide forums for negotiations. The neighbouring states to the Nile Basin countries become actors through the regional integration (Common Markets for East and Southern Africa -COMESA, Southern African Development Community (SADC), Intergovernmental Authority on Development (IGAD) among others that links them to the Nile Basin Communities.

The other groups of actors that may easily be overlooked are Internally Displaced Persons. Large numbers of internally displaced persons have been witnessed in Africa like in the case of Sudanese, Rwandese and Somali refugees who have in many cases found a safe haven in Kenya during the civil wars in their country. Living in this context cultivates a unique relationship between the displaced and the recipient countries. This is to say that even though Somali may not be one of the riparian states to the Nile it may be an actor through its relationship with one of the riparian states. The civil society groups both nationally and internationally champion human rights, social and economic justice, good governance, equity, transparency, accountability among other courses that are central to this conflict hence their actor role.

### 2.10.1 Interests

The goals in a conflict can be unilateral, bilateral or multilateral depending on the interest of the parties. The riparian countries have opted to pursue unilateral goals to achieve their selfish needs should Egypt continue to be defiant about not having an equitable arrangement in the sharing of the Nile waters. Bilateral goals have been pursued by Ethiopia and Egypt, Uganda and Egypt, Sudan and Egypt in the signing of the 1959 Nile



water agreement. Multilateral goals have however been achieved through negotiations by all parties in the conflict through initiatives like the Nile Basin Initiative among others. Sustainable development of the Nile water resources can reduce the high poverty levels of this region through employment creation. This however can only be achieved through multilateral goals.

## **2.11 Positions on the Legitimacy of the Nile Treaties of 1929 and 1959**

Egypt's lifeline, the Nile River, has become a borne of contention between the Nile riparian States "While some downstream powers consider the 1929 and 1959 Agreements to be binding legal documents, many lawyers, politicians, academics and politicians have argued otherwise."<sup>63</sup> The legitimacy of the treaties has therefore been in question since the Nile Basin countries attained their independence. Though some of the riparian states have vehemently opposed the legality of the treaties the calls for the review of the treaty and their participation in the meetings on the review of the treaties have in a sense insinuated the existence and recognition of these laws. However, the position of the riparian countries, on the Nile question differs and is influenced by a number of factors as stated below:

### **2.11.1 Egypt**

Egypt's position is that with or without the Agreement it is entitled to the Nile waters by virtue of her natural and historical rights. She quotes the principle of *Pacta sunt servanda*

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<sup>63</sup> Chris Huggins. Background paper on Issues of Access to Nile Waters and Constraints to Water Development in Kenya

in international law as one that the riparian states should adhere to. The Vienna Convention on the Laws of Treaties codified the pre-existing customary international law and also sets out the provision on reviewing of these of the parties as “by consent of the parties, or by a fundamental change of circumstances”<sup>64</sup>. Prof. Saleh El-din, an Egypt scholar has referred to the Agreements as territorial treaties and therefore binding and are not affected by succession. However, the other parties to the conflict who want the status quo changed have a case if they argue that independence of any nation is a fundamental change of circumstance and should be considered in this case.

### 2.11.2 Sudan

Sudan like all other African states at independence rejected all Agreements concluded by their former colonial administrators, who could not have acted in their interest. This was one of reason why the riparian countries would want to have fresh negotiations done by themselves in the interest of their nations. Independence was a fundamental change of circumstance that also warranted a review of the 1929 Agreement. Sudan argues that the temporary nature of the 1929 treaty should not even be debated because it has been captured in the preamble of this document, stated earlier in the study, the reasons for the 1959 Agreement between Egypt and Sudan. Sudan’s negotiations for better terms are a clear indication of the inadequacy of the 1929 Agreement.

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<sup>64</sup> Tough Talk over a Defunct Treaty: The Case of the 1929 Nile Waters Agreement  
<http://www.tigray.org/News?Article2004/TheNileByYacob.html>

### 2.11.3 The Other riparian States

The rest of the Nile Basin states adopted the Nyerere Doctrine on succession of Treaties with some variations that stated the “acceptance of all obligations for a short period, followed by a declaration of those that were to be accepted”<sup>65</sup> The Nyerere Doctrine rendered the 1929 Treaty invalid whereas the 1959 Treaty was a bilateral treaty and therefore not binding to the other riparian states. Therefore the issue of consent does not arise. The independence of the riparian states can also be viewed as a ‘fundamental change of circumstance’ as stipulated in the Vienna convention on Laws of Treaties.

However, with the above understanding a lot of confusion has been created by the riparian countries’ insinuation of the existence of the Treaty and endorsing Egypt’s harp on its legitimacy. Uganda for instance still sought Egypt’s authorization when it undertook the Owen Fall Dam project contradicting her stand at independence. Kenya on the other hand has had no major plans for the use of the Lake Victoria waters other than fishing since independence, going by her records in the Ministry of water, but has nonetheless joined the fray in calling for a review of the Nile Treaty, probably to guard its future plans.

There are evidently some political ties between Egypt, Sudan and to some extent Uganda following Egypt’s support in the building of the Owens Fall Dam, in the control of the Nile water resource. This has raised suspicion amongst the rest of the parties in the Conflict. America on the other hand though an external force has close ties with Egypt. It

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<sup>65</sup> Tough Talk over a Defunct Treaty: The Case of the 1929 Nile Waters Agreement  
<http://www.tigray.org/News?Article2004/The NileByYacob.html>

is not by accident that 85% of America's Aid to Africa goes to Egypt. Egypt is America's launch pad to the Middle East; in return Egypt has acquired military might in the region that is a threat to the other riparian states. In a policy paper of 1999 titled *Soothing the waters* Collins argues that "It is in the best interest of the United States to use its influence among Nile basin states to encourage the development of Nile waters as a whole, rather than only for its principal and most powerful user."<sup>66</sup> This suggests that the US has realised that its obvious support for Egypt was hurting its interest.

This statement explains the dilemma most of the riparian states find themselves in "An Ethiopian policy paper in 1997 stated, "the stark inequality prevailing in the Nile basin cannot remain." The one thing holding back Ethiopia from developing irrigated agriculture on a large scale is the threat of military action, which Egypt would regard as an act of self-defence. When Ethiopia brought in Israeli water engineers in 1989 to survey its water resources, it received a stern warning from Cairo."<sup>67</sup> The Egyptian technocrats dealing with matters of the Nile River are heavily funded by the United States. Egypt has been accused of using coercive diplomacy to maintain her hold on the Nile.

Other factor that impacts on this conflict is the global networking that is apparent. The world is today a global village following the interconnectivity amongst countries. The internationalization of conflict is one such challenge that arises from this connection,

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<sup>66</sup> Robert O. Collins, *Soothing the Waters – The Nile Conflict*, IGCC Policy Brief, University of California, 1999

<sup>67</sup> UNESCO – *Averting Conflict in the Nile basin* – The New Courier, October 2003

regional issues thus become issues of international concern increasing the number of players. This makes the management of the conflict more difficult.

Nonetheless, there are institutional capacities for peace that can be identified in this conflict, these are the civil society groups such as the human rights society, informal approaches to conflict resolution by the development partners, traditional authorities such as mediation through the use of elders of communities, political institutions - that is the Presidents of the respective riparian states and their parliament as tools of preventive diplomacy, and lastly the Judiciary and multilateral bodies such as – Intergovernmental Authority on Development (IGAD), International Court of Justice, and the African Union (AU) that are forums that the riparian states can seek redress.

These structures have however not fully been utilized by the parties in the conflict. “There is a particular need for a better understanding of the phenomena or ‘spoiler’ and ‘spoiling’: groups and tactics that actively seek to hinder, delay, or undermine conflict settlement through a variety of means and for a variety of motives.”<sup>68</sup> The international system is said to be unipolar at present following the end of the bipolar system after the Cold war and the collapse of the Soviet Union. The hegemony by the United State of America (USA) is a course for worry for any nation in the world today that is why its close ties with Egypt sends fears to the rest of the riparian states. Egypt can afford to apply coercive diplomacy because of the donor funding for the Nile projects and military power gained from its relationship with the USA. The USA has been benefiting from war

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<sup>68</sup> Edward Newman and Oliver Richmond . Policy Brief -*Impact of Spoilers on Peace Processes and Peacebuilding*, United Nations University, 2006

economy not only in the Middle East but also in Africa and are therefore are arguably termed as spoilers in this conflict. There are obviously other spoilers but the most important point is for those managing the conflict to be aware these facts to avoid delay or disruption of the peace process.

## **2.12 Dynamics of in Conflict**

Conflict dynamics basically refers to the changes in a conflict pattern it “can be described as the resulting interaction between the conflict profile, the actors and causes”<sup>69</sup> The systemic relationship is evident when there is a change in the sub-components of the conflict which then changes the dynamics in the conflict as a whole. For instance the secession of Eritrea from Ethiopia meant the entry of an additional actor in the conflict which meant additional issues and interests and the sharing equation of Nile waters. This change in the architect of the conflict would either bring about an escalation or de-escalation.

### **2.12.1 Escalation or de-escalation**

The current increase in tensions in the conflict can be attributed to the coercive remarks and the unilateral decisions by leaders from the riparian countries. Escalation may also arise from isolation of some parties in the conflict, aggression, communication failure causing suspicion and mistrust that leads to unilateral actions that are currently being planned by the Nile riparian states. Such pressures result to violence which then increases or add to the issues in contention. The Ethiopia civil strife in which Egypt is said to have

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<sup>69</sup> FEWER. International Alert and saferworld.2003 – *Conflict Sensitive Approaches to development, humanitarian assistance and peace building.*

armed the rebel groups to shift Ethiopia's attention from the Nile is one such instance. The porousness of national borders is also a factor that enables the fuelling of discontents to a continental conflict other than just within the Nile basin.

The other factors that have been a source of tension in the conflict include: the proliferation of small arms in Africa by those benefiting from economies of arms fuelling civil strife; the political instability of neighbouring countries like Sudan, Ethiopia, Uganda, DRC and Rwanda; the lack of an independent media due to interference by state; weak systems for conflict management due to lack of capacity; and the increase in competition over the shared waters arising from the rapid population growth within the basin.

De-escalation on the other hand refers to the decrease in tensions of a conflict following such actions as increase in communication, negotiations, all-inclusive approach to management and even through preventive diplomacy. These measures are more beneficial at the early stages of the conflict. The on-going talks on the review of the Nile Treaty by the Nile basin states are some of the initiatives that have reduced the misperceptions, and thus encouraging the much needed cooperation.

### 2.12.2 What are the windows of opportunity

Following the outcry by the riparian states to have the colonial treaties reviewed or have them rendered obsolete several negotiations are taking place. Decision makers responsible for the Nile River Affairs have used this as a window opportunity to bring all

stakeholders to the negotiation table with the aim of having a new pragmatic approach towards cooperation. Likewise the drought and flooding in some of the riparian states have given reasons for joint efforts towards sustainability of the Nile resource. “In the Nile, major floods in the Blue Nile in 1998, 1999 and 2001 promoted joint efforts and concrete plans for cooperation on flood early warning systems by the ‘Eastern Nile’ countries.”<sup>70</sup>

### 2.12.3 Positive developments

The launching of the Nile Basin Initiative in 1999 after consultations with the ten riparian states is a positive move by the countries. The Umbrella organization’s role was to promote cooperation and development in the basin. Supported by the need for the parties to secure their interest and coupled by the funding from donors the capacity of the organization is now being strengthened.

Though the division of the organization into Eastern Nile Subsidiary Action Program (ENSAP) and Nile Equatorial Lakes Subsidiary Program (NELSAP) brings with it structural problems in the organization. The concern is that the two bodies, though they have joint projects, will undergo separate decision making process and hope to come to a consensus on management issues. The irony is, in the event that a consensus is not arrived at then there is bound to be tension and the drawing of boundaries between the two subsidiaries – structures that are meant to ease the management of the conflict. However, this is a structural problem that can be harmonized by having a joint board.

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<sup>70</sup> *Summary of the Round Table – The Nile* <http://www.inwent.org/ef-textc/nile/rep.htm>



Zartman has also suggested how to deal with such problems in the earlier section of this study.

The other evident positive development is the fact that the actors in the conflict are now willing to talk to each other rather than at each other – which makes it possible for meaningful negotiations to take place. The strengthening of NBI will very much depend on the all-inclusive and conflict sensitive approaches in running the organization, free flow of communication regarding the Nile water resources from all the stakeholders, capacity building of officials, encourage more participation of the communities involved especially on environmental conservation.

However, it is imperative to note that there are possible scenarios that can be developed from the analysis of the conflict profile, causes and actors. The best case scenario to this conflict would be the involvement of all stakeholders in serious negotiations where issues of concern to all sides are being addressed. In addition to this is the need to have a legal framework for the cooperation agreed upon by all parties to the conflict, to guide the conduct of Nile Basin countries. The full participation of the public especially in conservation for sustainability is also crucial.

A worst case scenario would be the secession or the trigger of any kind of civil war within the Nile Basin countries. Sudan being one of the endogenous actor in the conflict is very vulnerable at this stage following its recent return from forty years of civil strife to form an interim government. Just before the Southern Sudan people, most of who have

been in exile, could settle doubt is cast as to whether the people can fully trust the government that is dominated by Southern Sudanese following the suspicious death of the Country's First Vice President and leader of the (SPLM) Dr. John Garang, in July 2005. The involvement of Uganda in this whole saga and the pronouncement by Uganda's President Yoweri Museveni that he cannot rule out foul play in the death of Garang is bound to create mistrust and hostility this are effects that can easily trigger an escalation in the conflict. It is not surprising that "analysts have put forward numerous scenarios regarding the implications of John Garang's death for peace in Sudan....The most negative of the scenarios put forward was that the country would return to generalised civil war. This scenario was largely based on the assumption that Garang represented the "face of moderation" favouring the unity of Sudan."<sup>71</sup>

In addition, should the all-inclusive interim government fail to achieve its aim of uniting the people of Southern and Northern Sudan then the Southerners would secede to form a new country thus adding to the number of actors, issues and interests in the conflict.

Rwanda, Sudan Burundi and Somali are currently going through reconstruction of the war torn country. The exodus of Internally Displaced Persons back to their countries is a good sign to the peace in this region however should this process be reversed due to insecurity in the region the conflict could be intensified. The split of the country into two as a result of secession would only complicate the problems of the Nile basin countries

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<sup>71</sup> Mariam Jooma, *Feeding the peace: Challenges facing human security in post-Garang South Sudan*, (Humanitarian Relief and Development Issues) at the African Security Analysis Programme, Institute for Security Studies, 2005

by adding more actors and issues to the conflict on the use and management of the waters.

### **2.13 Regional Diplomacy at Play in the Conflict**

The transboundary nature of the Nile puts the forces of diplomacy into play which includes: International Law which delineates the rules of the international system such as the Nile treaties and conventions in reference, the negotiation processes that are taking place amongst the riparian states to realize peaceful settlement of disputes; concerns with the foreign policies of these states, among others. One of Egypt's foreign policy is that the Nile River is an issue of national security to her country; the study of conflict between states is also a vital part of diplomacy, issues of peace and how to manage the conflict are the reason for the cooperation the riparian states have adopted; and the understanding of International Relations which explains the fundamental principles such as nationalism in the case of Tanzania and how this ideology affects other actors in the conflict.

Regional politics has also contributed to the slow pace of negotiations over the use and management of the Nile. The establishment of Organization of African Unity (OAU) now the Africa Unity (AU) necessitated the attention shift from the Nile Basin to the organization and Pan Africanism. Change in political systems and governments have also shifted the focus to ideological considerations. Conflict in the Horn of Africa and the Great Lakes region just aggravated the situation leaving the Nile concerns unattended.

The Nile-Com is a Council of Ministers from the riparian states, whose mandate is to give consent on behalf of their countries to implementation of projects of the Nile. This

Committee is an official representation of the states therefore an example of Track one diplomacy. States however, are not the only actors and others that have been involved in the conflict are Regional organisations like EAC, NBI and AU, international non-governmental organisations like the UN and other donor agencies who practice track two diplomacy, in this case with the hope of getting resolutions to the Conflict.

In regard to the on-going negotiations on the review of the Nile treaties, it is important to recognize the significance of the treaties and their role in diplomacy. Treaties are a source of International Law and by casting doubt on their adequacy to the international system means a fresh look at the character of international law. Since the world is dynamic, reviews of treaties that have proved to be inadequate enables the international society to have relevant and applicable laws, encouraging the development of international law. Multi-lateral and bi-lateral treaties are also tools of diplomacy that have been used in cooperation efforts among the riparian states of the Nile.

## CHAPTER 3

### 3.0 EFFORTS OF MANAGEMENT OF THE CONFLICT

In order to manage a conflict it is important to get a proper analysis of the important issues. “Conflict analysis is the process of dealing with these issues in a coherent manner, comparing relationships between parties and applicability of solutions”<sup>72</sup> The riparian states have awakened to the need of a common understanding to manage this conflict that threatens the stability and socio-economic activities of the region, and the need for unity in this matter. Several interventions have taken place as efforts towards managing this conflict, of which some have already been highlighted by this study.

Conflict management is “a generic term that refers to all interventions in a conflict with the aims of solving problems transforming relations, and changing structures”<sup>73</sup>. In retrospect some critical events have taken place with regard to this conflict as efforts to manage it. Some landmark events in this conflict are the bilateral Nile treaty of 1929 and the bilateral treaty of 1959 that marked the beginning of cooperation in the management and use of this transboundary natural resource shared by ten countries.

This has however been criticised as a move that excluded majority of the actors and hence just generated more controversy around the use and management of the Nile water. “Fortunately, there has been a trend toward greater cooperation among Nile area governments, international organizations and bilateral donors over the last three

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<sup>72</sup> F. Angila, C. Odote Oloo, *Traditional Values and Mechanisms of Conflict Management – Legal Education Foundation*. 2001

<sup>73</sup> Simon A. Mason, *From Conflict to Cooperation in the Nile Basin*, courtesy of the Paul-Klee Stiftung, Kunstmuseum Bern –ETH Zurich

decades”<sup>74</sup>. This is no doubt seen as a positive move towards resolving differences. However, the last three decades have also witnessed the riparian states of the Nile voice their grievances even more, and going by the issues in the conflict these efforts are yet to come to fruition.

### **3.1 Recent history of some initiatives**

The regional cooperation among the riparian states to manage this conflict led to the establishments of structures to run the affairs of the Nile River. Some of these Institutions were the Hydromet of 1967 to 1992, as explained here “an early regional project called Hydromet, launched in 1967 with support from the United Nations Development Program, allowed for coordinated collection of meteorological data”<sup>75</sup>, the others were; Tecconile 1993 to 1999 and the Nile Basin Initiative 1998 to present. Efforts have also been made by institutions to unite the riparian states in the operations of the Nile water resource. “There have been efforts deployed by some to bring about cooperation over the Nile-cooperative endeavours such as Hydromet, Undugu and Tecconile. However, attempts at cooperation under these arrangements were doomed to failure, mainly because they could not win the confidence of the riparian States and get them on board.”<sup>76</sup> The seed of mistrust still remains a challenge that continues to negate the efforts being made.

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<sup>74</sup> [http://www.waterforfood.org/pdf/Nile\\_Brochure.pdf](http://www.waterforfood.org/pdf/Nile_Brochure.pdf)

<sup>75</sup> [http://www.waterforfood.org/pdf/Nile\\_Brochure.pdf](http://www.waterforfood.org/pdf/Nile_Brochure.pdf)

<sup>76</sup> Lemma. Scifesciaissic. 2001. Cooperation on the Nile is not a zero-sum Game. United Nations Chronicle Vol. 38

However, this discontent has its positive side by virtue of the fact that it has led to many talks through several initiatives by the involved parties to the conflict, the assistance of other actors as explained here “After living with tensions and the threat of war for many years, the countries of the Nile basin are talking around the table - with help from UNESCO.”<sup>77</sup> In fact the riparian states have been more critical on the issues relating to this natural resource and as such pushing for improvements in the existing structures. In the last decade initiatives and structures for cooperation amongst the riparian states have been put in place. The establishment of the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile basin (Tecconile) in 1993 was to promote development.

However, the intervening variables already discussed in chapter 2 have impeded on the process of development in this region. In 1999 the Regional partnership for the management of the Nile was later formed, dubbed Nile-COM under the umbrella of the Nile Basin Initiative (NBI) whose secretariat was established in November 2002 Entebbe, Uganda with its objective being sustainable and effective use of the Nile for development. “The NBI has both built on and added to a basic underlying set of enabling relations between states and the willingness of key basin states to move from ‘unilateralism’ to ‘multilateralism’ in resource development”.<sup>78</sup> This was no doubt a move in the right direction if the all-inclusiveness was to be achieved, but still the inequity is still in contention and a glaring reality.

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<sup>77</sup> UNESCO – *Averting Conflict in the Nile basin* – The New Courier, October 2003

<sup>78</sup> A. Nicol, M. Sahin, *The Nile: Moving Beyond Cooperation*, 2003, [Webworld.unesco.org](http://Webworld.unesco.org)

In the recent years the inequitable use and management of the Nile water resource has caused a lot of friction between the ten riparian states and a thorn in the flesh for Egypt who has been fighting hard to retain the status quo. Events like the secession of Eritrea from Ethiopia meant the introduction of an additional actor in the conflict. The Rwanda genocide of 1994 of the Hutus and Tutsis and the Sudan Civil war over the last 21 years shifted the focus of the International community from the Nile water problems to Rwanda and Sudan.

The end of the Rwandese war and the formation of the Sudanese all-inclusive interim government after the Peace Accord signed in Nairobi, Kenya by Sudanese Peoples Liberation Movement (SPLM) and government has raised hopes for the reconstruction and development of the two countries. In which case, the attention-shift back to the Nile waters is predictable. Should Southern Sudan secede as would be the case in two years if they fail to work with the Northerners, one can anticipate an additional actor to the Nile equation which may complicate matters further in management. The more the actors the more the issues and interests, making the conflict even more complex. The on-going Darfur civil strife is indeed a threat to Sudan's peace process and would have an impact on the multilateral negotiations on the Nile waters – one being the slowing down of the negotiation process since the international community needs to attend to the Darfur crisis first.

It is obvious from the foregoing that all these initiatives need proper communication and collaboration among the actors to harmonise and maximise their gains rather than compete amongst each other. It is also clear that the inequality in the use and



management of the Nile waters has not yet been addressed despite the apparent efforts. Therefore, there is urgent need to have some equity arrangement and the inculcation of the benefits that the riparian states can accrue if there is a proper sharing arrangement amongst them. More communication policies and extensive civic education on water use to the communities is vital for implementation and adherence to the laws.

### **3.2 Why Efforts Towards Averting the Conflict Have been Elusive**

The current hurdles facing the efforts that have been made towards resolving the Nile Treaty conflict have taken various forms, one being the legal framework hence the calls for reviewing of the treaties. However, this process of review has been deeply rooted in the political maneuvers by Egypt and other actors, to maintain the status quo on arguments of 'natural' and 'historical rights'. Egypt is reluctant to make compromises because of the country's over-dependence on the Nile waters and has continued with its desert reclamation programmes, irrespective of objections from its co-riparian states, as has earlier been discussed.

In addition, Egypt has also capitalized on its military clout to keep the other riparian states at bay and basically insisting that the treaties stand as was at the time they were signed. Boutros Boutros Ghali remarks that 'the Nile question was the only matter that could take Egypt to war'<sup>79</sup> gives the indication of what this resource means to Egypt and that they were willing to safeguard their interest using whatever means including violent conflict. This kind of statement however, is tantamount to coercion and can only stir disagreements among the riparian states considering Egypt's contribution to the quantity

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<sup>79</sup> <http://www.kentimes.com/insight/ins3.html>

of the waters of the Nile. Egypt's close ties to America and Britain has been perceived by the other riparian states as superior military power, which has been cited as the reason to its confidence and arrogance in taking on any riparian state that goes against the Nile treaties.

Egypt has been consistent on its position on the Nile; this is because apart from the support they get from America, there has been lack of assertion by the riparian states, other than Sudan. This lack of assertion cannot wholly be blamed on Egypt's coercion but also on the absence of a proper collective vision on the part of the other riparian states who have failed to speak with one voice. Moreover, the inabilities of Sudan and Ethiopia's to solve their domestic problems that is, the Sudan conflict of 40 years and the internal wars of Ethiopia that led to the eventual secession of Eritrea, deprived them of a competitive edge in negotiations giving Egypt even more clout because of its stability.

As expected Egypt's historical involvement in the management of the Nile water system over the years has encouraged it to engage qualified hydrological experts, who are absent in the upstream countries. "Some of the countries in the basin have very few trained engineers"<sup>80</sup> due to lack of investment on technical capacity locally and is linked to lack of finances for such projects – displaying the systemic nature of variables in this conflict. These experts are knowledgeable in details on the Nile and have effective kits. Moreover, the lack of databases in these areas and the fear of being outmaneuvered by the Egyptian

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<sup>80</sup> UNESCO – *Averting Conflict in the Nile basin* – The New Courier, October 2003

team of negotiators, which include knowledgeable engineers and diplomats, has also been a hurdle to the other riparian state.

During the Cold War, the bi-polarism of the international system did not encourage bringing of the real issue of the Nile water resource to the fore. The containment policies pursued by the then two superpowers, the Soviet Union and United States of America that favoured one country over the other made unity very elusive among the Nile riparian states. As observed by scholars like Meredith A. Giordano and Aaron T. Wolf that 'for international basins, regional politics can exacerbate the already formidable task of understanding and managing complex natural systems, and disparities between riparian states – can complicate the development of joint management frameworks''<sup>81</sup>

Beyond the political view, several initiatives have been taken by the ten riparian states to integrate development through peaceful means. Though, currently the increase in population poses new challenges of strained diplomatic relations, food security, environmental degradation, and socio-economic and political developments. In addition, the Nile River institutions like the Nile Basin Initiative (NBI), which were established to provide security and sustainable water supply for downstream states and development opportunities for the upstream states like Ethiopia, Uganda, Kenya, have not achieved much. "Critics of the NBI have argued that the initiative has been a closed affair in which only the states involved and the World Bank have had input into decision making, largely ignoring the voices of ordinary people whose livelihoods depend on use of the

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<sup>81</sup> Meredith A. Giordano and Aaron T. Wolf, *Sharing waters: Post-Rio international water management*, Natural Resources Forum, 27 (2003)

Nile basin's resources."<sup>82</sup> This has led to more mistrust among the riparian states and frustration and full-fledged unilateralism among them. Uganda, as mentioned earlier, intends to disregard colonial treaties, which include the Nile Treaty while Ethiopia and other riparian countries, because of its population needs, have reached a stage where they have been left with no choice but to utilize the Nile waters.

In light of the fore-going the perennial disagreements; questions are being raised on the adequacy of the Nile River institutions in managing the conflict following its continued escalation. Consequently with the growing concern and threats from the other riparian states on disregarding the Nile treaties, Egypt's wish to maintain the status quo is untenable.

### **3.3 Improving on the Mechanisms**

More communication on policies on water to the communities is vital for the implementation and adherence to them. As initiatives to manage conflict over water shared by many countries, Mederith and Aaron<sup>83</sup> suggest while developing a cooperative management network the key factors that should be considered are: adaptable management structure i.e. it should be flexible in its management style, have clear and flexible criteria for water allocation and water quality management, have equitable distribution of benefits, have concrete mechanisms to enforce treaty provision and to have detailed conflict resolution mechanisms.

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<sup>82</sup> Science in Africa. *The Nile: Water Conflicts* – Science magazine for Africa CC Copyright 2002.

<sup>83</sup> Meredith A. Giordano and Aaron T. Wolf, *Sharing waters: Post-Rio international water management*, Natural Resources Forum, 27 (2003)

Catherine Ferrier<sup>84</sup> however contends that the following should be clarified when establishing water management in an international water basin: a clear legal basis in reference to the legislation of riparian states and thereafter harmonise them, common financial resource that gives a clear definition of share of investments and running expenditure, better co-ordination of administrative services at the level of the whole international water basin, Information and participation of the public for awareness to mitigate the application of water legislation.

### 3.3.1 The Win-Win Strategy

Participatory governance is about the involvement of all stakeholders in the decision-making processes, including the negotiations for cooperation of a shared resource. The win-win strategy starts on the premise that a loss for one party in a negotiation is a loss for all. "In conflict resolution a win-win strategy is a conflict resolution process that aims to accommodate all disputants".<sup>85</sup> Therefore all parties in the conflict must benefit, hence the need for an all-inclusive approach to governance that embraces the idea of 'give and take' as opposed to 'winner take all'. The win-win strategy thus, is intended to have all parties sit at a negotiating table as equal partners.

In this regard, policy makers and conflict managers should build on the various demands by the riparian states, without attempting to create competitions based on their differences. Novel ideas could be created from the divergent views and channeled by way of civic education. This is expected to enrich the quality and flow of information being disseminated to the different publics.

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<sup>84</sup> Catherine Ferrier. *Towards Sustainable Management of international Water and Basins: The case of Lake Geneva*, Blackwell Publishers Ltd. 2000, 108 Cowley Road, Oxford OX4 1JF, UK and 350 Main Street, Malden, MA 02148, USA

<sup>85</sup> [http://en.wikipedia.org/wiki/win-win\\_strategy](http://en.wikipedia.org/wiki/win-win_strategy)

## CHAPTER 4

### 4.0 CRITICAL ANALYSIS OF THE CONFLICT

In recent times water conflict has been a common subject for scholars and writers as demonstrated by the study. The much hyped eminent 'water wars' have put the Nile basin on the spotlight as one of the potential pressure points in the world today. Though, some scholars have argued that shared waters provide more reason for cooperation than war, drawing from the analysis this study cautions on the blanket application of the concept of cooperation without looking at the other side of the coin, that is, shared waters, without proper structures to control its use and management is a recipe for violent conflict, as demonstrated here "talk of water wars reverberates around the globe these days. United Nations Secretary-General Kofi Annan said last March that "fierce competition for fresh water may well become a source of conflict and wars in the future," and a recent report of the U.S. National Intelligence Council concludes that the likelihood of interstate conflict will increase during the next 15 years "as countries press against the limits of available water.""<sup>86</sup> It would therefore be prudent to use these early warning signs to prevent the occurrence of war over water. Further to this, it is also important to note that the systemic relationships of the causes of the disagreement among the actors must also be taken into account in order to understand the dynamics in the conflict.

The consequences of a conflict may be vast, depending on the success or failure of the conflict management mechanism in place. They may include: loss of human lives, loss of

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<sup>86</sup> Dehydrating Conflict By Sandra L. Postel\* and Aaron T. Wolf, Global Policy Forum *Foreign Policy* September 18, 2001

property disruption of socio-economic activities, heightened hatred amongst communities, environmental threat, high dependency syndrome by the victims and a threat to international peace and security. Whereas the consequences of conflict are apparent the causes are a result of a complex web of multiple intervening variables, both visible and invisible. For instant, the taking up of unsustainable projects to try and solve the problems of poverty. Poverty may in this case be remotely connected as a causal variable in this conflict whereas the population growth is directly linked to the quantity and quality of the Nile waters. Ethnicity is also an invisible variable due to the biological link as the common saying goes “blood is thicker than water”, which was the reason behind the multiple membership, as discussed in chapter 2 of the study. It is thus essential to understand the broader context of the different effects and the competing demands of riparian states in order to draw out sound policies.

Therefore, beginning from the premise that this conflict is multi-causal the critique of the situation will include the assessment of the significance of the different indicators and their systemic relationship. This conflict has been largely systemic in orientation where some coercion remarks, unilateral action and some civil wars in the region have been largely viewed as products and creations of disagreements over the control of the Nile waters. The indicators used in this project will be predictive of conditions that might lead to further dispute.

It is noteworthy that the unjust nature of the legal regimes in question (The Nile Agreement of 1929 and 1959) is obviously a reason for distress among the involved

parties in the conflict. However though the treaties have served as a legal deterrent to an extent for majority of the riparian states it is just but one of the many intervening variables in the conflict.

That notwithstanding, how information is handled has been an underestimated variable in most conflicts. Information is power and is therefore crucial in any kind of negotiation and any kind of structural formation especially where a resource is shared amongst several sovereign countries. However, there is no clear indication whether the water resource has been scarce or abundant, due to unconfirmed technical data, or whether this has been the reason for the escalation of the conflict. The study can only predict that the use of the water is directly proportionate to the population growth. This is to say that; the population growth will lead to more use of the Nile waters and by extension scarcity and environmental degradation.

What is clear however, is that whenever there are statements from one of the riparian states on their position on the waters there is a reaction from an opposing party, most of these statements are based on questionable sources of information, for instant political statements in the media. This raw information has then been channelled through the public domain as half-truths causing confusion and stalemates on the progress already made in bringing the states to a common understanding. This suggests that the communication system being used is inadequate for the riparian states to achieve the much-needed cooperation.



Though, it was hoped that with the establishment of all-inclusive normative structures like NBI, the parties involved would be reading from the same script, the study has demonstrated that these structures still operate like the said treaties which were selective and therefore partial in their management style. The Nile basin is a unique site as noted here "the Jordan, Indus, Nile, and Aral basins have all been sites of conflict. They also all represent internationalized basins."<sup>87</sup> And as such the international community should pay attention to the problems here just like in the other basins of the world.

This study has demonstrated that perennial grievances by the riparian states of the Nile over access to and control of the waters have elicited unilateral action from the co-riparian. These actions are being driven by emotions rising from lack of attention to the concerns raised by some riparian states of the Nile and greed on the part of other co-riparian states who would rather maintain the status quo. Evidently some of the countries have resorted to taking up projects using the waters of the Nile regardless of whether they are sustainable or not, as has been demonstrated by the study.

Yet, the overarching lesson to draw from the basins of the Jordan, the Nile, and the Tigris and Euphrates rivers and other regions of water dispute is not that worsening scarcity will lead inevitably to water wars. It is rather that unilateral actions to construct a dam or river diversion in the absence of a treaty or institutional mechanism that safeguards the

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<sup>87</sup> Water resources and indicators of conflict: A proposed spatial analysis Yoffe S., and B. Ward. *Water International*, Volume 24, Number 4, December 1999.

interests of other countries in the basin is highly destabilizing to a region, often spurring decades of hostility before cooperation is pursued.

In the late 1950s, hostilities broke out between Egypt and Sudan over Egypt's planned construction of the Aswan High Dam. The signing of a treaty between the two countries in 1959 defused tensions before the dam was built. But no water-sharing agreement exists between Egypt and Ethiopia, where some 85 percent of the Nile's flow originates, and a war of words has raged between these two nations for decades. Along with civil war and poverty, such verbal threats have likely inhibited Ethiopia's water development, leaving the Horn of Africa more vulnerable to drought and famine. Meanwhile Egypt, the regional power, has continued to pursue large-scale river basin schemes unilaterally. As in the case of the Jordan, only in recent years have the Nile nations begun to work cooperatively toward a solution.

## **4.1 Concepts for development**

An in-depth analysis of this conflict also crystallises certain concepts that may be of use in formulating strategies to manage the incompatible goals. These concepts include:

### **4.1.1 Image and Perception**

Another global concept in development is Image and Perception. Image refers to what we see while perception refers to our interpretation of what we see and especially the raw information being publicised about Nile waters. Since perception is subjective there is need for the parties involved in this conflict to understand the difference between image and perception to make them “sensitive to effects of bias” says Susan Fountain. Image

and Perception are global concepts key to analysis of a conflict. When taking a critical view about this conflict it is imperative therefore to separate perceptions and realities about the water and the conflict. Debates on “water wars” as a vision of the future have been the subject of many writers “The main conflicts in Africa during the next twenty-five years could be over that most precious of commodities – water, as countries fight for access to scarce resources...the possible flashpoints are the Nile, Volta, and Zambezi basins.”<sup>88</sup>

However, Nicol argues despite the hype on the eminent “water war” evidence have shown that the basin countries continue to move towards greater cooperation than conflict. Those who take Nicol’s view obviously subscribe to the cooperation view as the way forward in managing this conflict and are against procrastination on what the future is likely to hold. Nonetheless, there are parties in this conflict who may come to the negotiation table to champion Nicol’s view i.e. that there is more cooperation than conflict in a shared natural resource.

In the event that parties have different opinions on the ways to go about the water-sharing it is incumbent upon the managers in the conflict to reconcile all the views in all fairness. The role of the odipus complex plays in prediction is important because it explains how gives explanations and deductions on how the actors arrive at potential points of conflicts, planning using early warning signs - to mention a few. With this understanding therefore it is requisite that the conflict managers and policy makers are creative in blending the national and international interest without ignoring the different schools of thoughts.

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<sup>88</sup> A. Nicol, M. Shalin, *The Nile: Moving Beyond Cooperation* - 2003- Webworld.Unesco.org

### 4.1.2 Interdependence

The other important concept in cooperation and development is interdependence. The fact of the matter is none of the riparian states can leave in isolation and therefore understanding their interdependence to the co-riparian states as one of the basic concepts for development is crucial. “An understanding of interdependence allows us to perceive the systemic nature of the world we live in”<sup>89</sup> With this background therefore the cooperation of all players in the conflict is the avenue through which sustainability and good governance can be realised by all stakeholders in the conflict. None of the riparian states of the Nile can live in isolation and therefore understanding their interdependence to the co-riparian states as one of the basic concepts for development is crucial. ‘An understanding of interdependence allows nations to perceive the systemic nature of the world we live in’<sup>90</sup>. It is hoped that the understanding should yield good neighbourliness.

### 4.1.3 Social Justice

The other concept that stands out in this conflict is that of social justice, social justice refers to fairness and observation of human rights or the lack of it. Majority of the Nile basin countries feel that there has been unfairness in distribution of the Nile waters and in supporting development projects initiated by upstream countries (as mentioned in an earlier chapter). “It is only in the presence of justice that individuals can develop to their

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<sup>89</sup> Susan Fountain, *Education for Development – A teachers resource for global learning*. Heinemann 1995

<sup>90</sup> Susan Fountain, *Education for Development – A teacher’s resource for global learning – Heinemann 1995*

full potential, and that the conditions for lasting peace can exist”<sup>91</sup>. This is to say that unless the underlying structures in this conflict are just then it will be difficult to realise lasting peace among the riparian states.

## **4.2 Resolving Transboundary Water Conflicts**

Critical also in the analysis of the use and management of the Nile waters is the understanding of not only the conflict generating factors but also the factors that generate harmony and peace. It is said that at an international level the resources that has the highest potential to cause international conflict is water. Dr. Deogratias M.M. Mulungu and Prof. Damas A. Mashauri – Water Resources Engineering Department, University of Dar es Salaam argues that “international shared water resources conflicts can be resolved through negotiations and arbitration”<sup>92</sup>. Currently, there is no recognized international authority or judicial system to deal with the disputes arising from any differences that arise in the conflict. The United Nations (UN) convention on the law of non-navigational use of 1997 covers the International Agreement on transboundary waters, which provides a legal framework of peaceful resolution of International conflicts.

However, due to the complex nature of these conflicts hydrological, environmental, economic, legal and political factors have been given a consideration as methodologies towards conflict resolution. New technologies can however enhance the work of decision-makers. Negotiation and arbitration and incorporation of game theory technique

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<sup>91</sup> Ibid

<sup>92</sup> paper on water conflict by Dr. Deogratias M.M. Mulungu and Prof. Damas A. Mashauri

have been recommended by scholars to break the current impasse for equitable and fair utilization and management of shared waters.

It is necessary that the riparian states to criticise and check the strategy of Nile Basin Initiative on management and use of the water of the Nile. The NBI is said to have been managing resource by giving some of the riparian states priority while discriminating on others making their situation similar to those without any water resource. "Cooperation is about changing paradigms from water-sharing to benefit-sharing"<sup>93</sup>

The upper riparian states excluded from the treaties are the countries that have been in the forefront in questioning the inequities in the distribution of the benefits from this natural resource. This is because these countries have realised a need, the potential of the water resource and historical injustices they have suffered in this regard, and have decided to speak out about the management and use of the Nile from a development perspective to contribute in lowering the poverty levels in these countries. There seems to be a strong belief that a change in the legal regimes is the starting point. Therefore the NBI will only win the trust of its members by treaty all members equal in all aspects of its management, there participation notwithstanding.

In order to comply with the law that regulate the use of the Nile waters a review of the Nile treaties is necessary. "We argue that there is considerable benefit in bringing the problem of regulatory conflict to centre stage, since by doing so we can tease out how

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<sup>93</sup> Alan J.A. and Nicol A., *The dynamics of river basin cooperation: The Nile and Okavango basins* London, 2004

regulatory techniques are used (or ignored) in the context of conflict”<sup>94</sup> In order to satisfy the demands of the competing constituencies, addressing the problems of how to deal with those that fail to comply and those seeking redress in law is key to maximise on compliance.

It also provides a forum for justice for all parties involved. At the moment the current laws (the 1929 and 1959 Nile Agreements) are not being complied with to an extent because it suffers the problem of re-entry. Since only Egypt and Sudan were the only countries present when these laws were being formulated, domesticating the regulations by the rest of the riparian states of the Nile has been an uphill task. It is therefore equally important that the riparian states also challenge the issue of representation to any of the discussion-making forums to ensure legitimacy especially those that formulate laws on management and use of the Nile waters.

It is clear from the findings that lack of proper and honest communication among the riparian States has also been a key issue in the Nile water conflict. There has been lack of dialogue, or selective dialogue like in the case of Sudan/Ethiopia Agreement of 1999 on use of the Nile waters. There has also been the adverse effect of propaganda that has clouded the mood of negotiations. In a workshop held in Cairo 13-16 June 2004 on the Nile Basin Capacity Building Network for River Engineering (NBCBN-RE), in their declaration titled *A design for the way ahead*, one of their commitments was to “call upon the Nile Basin countries to develop a protocol and modalities for sharing relevant

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<sup>94</sup> LAW & POLICY, Vol. 25, No.4, Blackwell Publishing Ltd., October 2003, UK.

data in a transparent fashion'<sup>95</sup>, and to "commit themselves to support research clusters and nodes in each of the Nile Basin Countries, to strengthen communication"<sup>96</sup> .

However there are areas of agreement which include the attempt by the institutions to have an all-inclusive approach in the management, forcing the reluctant Egyptians to join in the common vision, which is the focus to an integrative approach where consensus can be built around where interests meet; and the review of the current legal regimes on the Nile waters. A great deal of resources is being put towards the management of conflicts.

The current mode of ad hoc implementation of agreements like the bilateral treaties of the Nile discussed in this study only serve as future bottlenecks and can be prevented from taking place if there is transparency and the will for a common good for all involved parties, as captured by this statement "The key is establishing a process of cooperation early in the trajectory before serious hostilities erupt that make it difficult for nations to sit around a negotiating table together. The Indus basin offers a good example. After their independence in 1947, India and Pakistan nearly went to war over the waters of the Indus, which were awkwardly divided by the new political borders. World Bank President Eugene Black used his good offices to mediate the dispute, a long but ultimately successful effort that culminated in the 1960 Indus Waters Treaty."<sup>97</sup>

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<sup>95</sup> Nile Basin Capacity Building Network for River Engineering (NBCBN-RE).- *A design for the way ahead*

<sup>96</sup> Nile Basin Capacity Building Network for River Engineering (NBCBN-RE).- *A design for the way ahead*

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## **CHAPTER 5**

### **5.0 SUMMARY, CONCLUSION AND POLICY**

#### **RECOMMENDATION**

This chapter comprises summaries of the study, conclusions, policy guidelines and possible areas for further research. The summaries will highlight the contents of each chapter of the study; the conclusions will be on the findings of the study in regard to the hypotheses herein and the eminent gaps following the study. While the policy recommendations are geared to both the riparian states, conflict managers, policy makers and the international community as a whole.

#### **5.1 Summary**

This study comprises wholly of five chapters:

In Chapter one it is stated that the intent of the study is to investigate, by way of analysis of the conflict over the management and use of the Nile waters the influence of the Nile Treaties 1920 and 1959 on Nile River riparian state, and the efforts so far made on cooperation on the shared- water resource. Chapter One presents the general background to the research problem which the study sought to investigate, the Objectives, Rationale/Justification, Methodology Theoretical Framework and Hypotheses. It also provides a map of the study area i.e. the Nile Basin.

Derived from the systems theory as the main theoretical guide in the study, the hypotheses were that the more accurate the information generated for policy makers the

better the policies and the more peaceful relationships among the riparian states of the Nile, and vice versa. The methodology in chapter one states the study would rely on secondary data and hence the method of analysis is qualitative rather than quantitative.

Chapter two focuses on the Conflict over the Management and Use of the Nile Waters and the Influence of the 1929 and 1959 Treaties on the Riparian States. It gives an analysis on the Profile, Actors, Issues, Interests and Causes in the conflict among the riparian states of the Nile River. In this chapter the systemic relationship that coalesce around the conflict and how each sub-component determines the dynamism in the conflict. This chapter also gives highlights of the possible scenarios and regional diplomacy at play in the Conflict.

Having analysed the conflict broadly chapter three sought to look at the efforts so far taken to manage the conflict and why despite these mechanisms the conflict has been perceived to escalate. It is in light of this that chapter four purposefully informs by giving an in-depth analysis of the findings, noting that a number of variables have been responsible in the escalation of the conflict, the two treaties in question notwithstanding. The study concludes with chapter Five, which would act as policy guidelines.

## **5.2 Conclusions**

Partial reliance on qualitative analysis has its pros and cons, one of the cons being the fact that there are no statistical data to justify how one arrives at a certain conclusion therefore making it insubstantial to measure the hypotheses of the study. However, it is possible from the analysis to validate whether the dependent and the independent

variables in the hypotheses demonstrate a positive, negative or no relationship whatsoever.

Though the analysis of the conflict clearly depicts that there are several intervening variables, the positive relationship between the dependent and independent variable in the three hypotheses is exhibited in this manner:

There are indications that the information being channelled to the parties in the conflict is not always from a reliable source hence the escalation of the conflict has been conditioned to a large extent by misunderstandings coming from lack of authentic information. Going by the qualitative data in the study there is a definite positive relationship between reliable information enhancing communication and sustainable peaceful co-existence among the Nile riparian states by virtue of the fact that peace dividend has paid off since the riparian states have agreed to have negotiations on the sharing of the Nile water resource. The parties in the conflict are now sharing information in workshops and meetings.

However, the study also noted that though the two Nile Agreements of 1929 and 1959 serves as a legal frame work in the control of the Nile waters it is incorrect to attribute its influence as the main cause of the conflict because by and large the conflict is systemic in nature with other intervening variables that keep mutating. Indeed, the influence has had both its negative and positive side. On one hand it has deterred states from exploiting this natural resource for development and on the other hand, it has enabled the reservation of

this precious commodity by restricting the overexploitation of the resource. However, this should be done in an equitable manner for peace to prevail.

By and large, the political, environmental, diplomatic and socio-economic underpinnings of the collective involvement of all parties in the conflict must be paramount, especially given the fact that selective approaches have led to parties being ill-informed and thereby releasing ill-reactions.

### **5.3 Policy Guidelines**

Owing to the complex nature of this conflict the study will not endeavour to confer conclusive prescriptions in terms of policy but rather tease out critical issues that would then be used as policy guidelines. In understanding these issues, it is hoped that the policy makers and conflict managers will realise the existing gaps which they will attempt to fill while formulating policies.

The increase in population and the drought and famine situations in some of the riparian states continue to lay a lot of stress on the Nile water system. The dynamism of conflicts allows for reshaping of the elements and thus “the notion that the ‘beginning’ and ‘end’ of a conflict can be identified is inappropriate in contemporary conflicts.”<sup>98</sup> It would therefore be more useful to approach this conflict from the management point of view, baring in mind that we can only manage, and not end it, using conflict management instruments.

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<sup>98</sup> DFID, Conducting Conflict Assessments: Guidance Notes

As the demographic alarm ticks on with the rapid increase of population in the ten riparian States of the Nile, more and more pressure is being exerted on Egypt to allow for the reviewing of the Nile treaties. Water, says Islamic law, is a source of life, and food security is unthinkable without land and water. It would therefore, be immoral, unethical and a political blunder for the riparian states to endorse the status quo for the fear of causing violent conflict with Egypt, over the current provisions in the Nile Water Agreements. The masses in these states will definitely cause a greater conflict by defying the odds and revolting against the treaties, by using the law of the jungle in their exploitation of the resource. This may seem far-fetched but environmental degradation that is currently being witnessed in the Nile Basin is a cause for worry.

According to Beach and others 2000 and UNESCO IHP and Green Cross International 2002b) findings “shared waters offer more potential for cooperation than for conflict”.<sup>99</sup> The findings confirmed by an examination of the history of water-related treaties. Conflict managers should therefore put emphasis on areas of cooperation and exploit the strengths and opportunities available as a matter of priority. In this case, the conflict areas may fade away with the gains. This is not to say that the early warning signs of a violent conflict breaking up should be ignored. On the contrary both interventions should run concurrently to avoid being caught by a ‘sudden crisis’. Aaron T. Wolf notes that “water is the only scarce resource for which there is no substitute, over which there is poorly-developed international law, and the need of which is overwhelming, constant, and immediate”. That being the case then conflict managers should not bask in the glory of

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<sup>99</sup> Beach and others 2000 and UNESCO IHP and Green Cross International 2002b

cooperative dividence but rather continue working around the early-warning signs for future policies

Though history has given evidence that there has been more cooperation than conflict in water sharing nations as noted in a UNESCO periodical that “in fact Aaron Wolf and Sandra Postel, two American academics who have studied this issue in great detail, have found only one outright war over water in the past 4,500 years. That was between two city states, Lagash and Umma, in the region now called southern Iraq. There have been many skirmishes and conflicts in which water was a factor, but the authors have identified more than 3,600 water treaties signed in the past 12 centuries, many of which have survived wars over other issues.”<sup>100</sup> historical data alone cannot be used conclusively as scientific evidence to predict the future especially in social sciences research where their several intervening variables.

Moreover there are certain limitations in historical data, for instant historicists look back at historical facts tainted with present lenses and therefore there is no definitive history here, certain events cannot be predicted using historical trends for instant the Rwanda genocide of 1994, out breaks of the HIV/Aids pandemic, or Pluto loosing its status as a planet for that matter. These phenomena some of which are accidents, others may be discoveries, making them complex just like the conflict in discussion. Therefore when never we make predictions it is important to note that we are speculating about the future on the basis of speculation about the past. This is very common in international relations where we make generalization are made from past studies hence the relativity of the end results

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<sup>100</sup> UNESCO – *Averting Conflict in the Nile basin* – The New Courier, October 2003

The same periodical however also observes that “population and economic pressures are mounting faster than the Nile’s capacity to sustain civilization, and as a result the choice is becoming more and more stark between conflict over an increasingly scarce resource or co-operation to manage that resource more equitably”.<sup>101</sup> This is to say that there should not only be cooperation but also conflict management preparedness. Having said that, the question therefore is not whether to predict or not to predict but rather how best predict with the limitations in mind. The policy makers and conflict managers should not be complacent and tied up in self-limiting tendencies by extrapolating trends for example the trend of more cooperation than war may change in future due to water scarcity. It would be more useful to adopt a multi-level and a multi-disciplinary approach in drawing policies.

In choosing to cooperate as one of the mechanisms to manage this conflict, winning the trust of the parties in the conflict, the importance of transparency in the running of the Nile water institutions and in sharing information amongst the stakeholders to ensure ownership by the riparian states cannot be overemphasized. Key also is the involvement of all parties in the negotiation on the Nile Treaty to ensure equity, sustainability and efficiency in the management and use of the Nile water resource. The Nile Basin Initiative – like all multilateral organizations – is supposed to serve all its members equally and its success is partly dependent on its capacity to be impartial and independent.

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<sup>101</sup> UNESCO – *Averting Conflict in the Nile basin* – The New Courier, October 2003

The two Nile treaties of 1929 and 1959 rendered the Nile waters a private resource by giving authority to Sudan and to a larger extent Egypt. It then technically ceased to be a shared-water between the ten riparian states as ideally should be the case. Given the economic and social-political importance of the Nile waters to the international system it is incumbent upon conflict managers and diplomats to ensure that the steps are taken to streamline the legal framework in order to achieve democratic governance in the operations of this resource. In this respect, a review of the Nile Treaties from an informed point of view seems inevitable if the looming crisis is to be tamed.

In undertaking a new framework therefore, the ten riparian states must focus on an all-inclusive approach especially in the institutions charged with the management and use of the waters and the conflict managers. Zartman in *Ripe for Resolution* offers an insight to various approaches to conflict management. He emphasises on policies based on pre-emptive treatment rather than military intervention. In his advice to policy-makers is to devise policies that avoid the dilemma of where small state conflicts can pull great powers towards unwanted outcomes. The main interest of the riparian states of the Nile is obviously equitable distribution; other dynamics at play are secondary. “a unilaterally selfish policy challenged leaves everyone worse off whereas a cooperative agreement is better for both parties (and here for the third parties as well) than every other alternative except the unilaterally selfish policy if it can go unchallenged”.<sup>102</sup>

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<sup>102</sup> I. William Zartman. *Ripe for Resolution: Conflict and Intervention in Africa*. Updated Edition. A Council of Foreign Resolutions Book, Published by Oxford University Press US - 1989



As the demographic graph continues to move upwards with the rapid increase of population in the ten riparian States of the Nile, the more complex the conflict gets. Water is a source of life and food security is unthinkable without land and water. It would therefore be immoral, unethical and a political blunder for the riparian states to endorse the status quo for the fears of causing violent conflict. The expectations of this project is that the analysis of the Conflicts based on the effects of the treaty to the riparian states in relation to their competing demands, will inform views that will converge towards good policies, that are all-inclusive and ultimately de-escalating the conflict to a manageable level by reviewing the Nile Treaty.

It is imperative for the riparian states of the Nile to criticise and check the strategy of the institutions that manage the waters like the Nile Basin Initiative and have a consensus on the management policies. The NBI has been managing resource by giving some of the riparian states priority while discriminating on others whose situation can be compared with those without any water resource.

Zartman argues that “looked at from the African stand point, the states on the continent are developing greater military power, thereby raising their conflicts to higher levels of unilateral effectiveness but also to higher levels of bilateral stalemates.” Going by this statement therefore the need for a multilateral approach cannot be overemphasised. Indeed the past bilateral negotiations have only led to stalemates and should be seen as some of the lessons learnt in the conflict.

Much has and can be said about natural resource based conflicts and how they can be managed. It is certainly useful to note that correct information exchange between the riparian states and the conflict managers is essential. On benefits of communication Deutsch, Burrell, Kahn et al.<sup>103</sup> “show that the most important aspect to peaceful relations are communication and transactions”. The Nile Basin countries will therefore have to inculcate the culture of sharing information by building up a body of shared information and knowledge about the Nile water resource. Though acknowledging this as critical to win the trust of all parties is not to deny constructive criticism and novelty from circulation. Policy makers must also keep in mind the propensity of having policies that cannot be domesticated due to lack of consultations with all parties including communities within the basin.

Whether these policies bear fruits of equitability and sustainability in the near future depend on a combination of factors and remain to be seen, but one thing is certainly clear, the status quo, where Egypt and Sudan control the Nile waters, must be changed to include the other riparian states if this conflict is to be managed.

The importance of civic education in conflict management, especially where communication and information flow is inadequate, cannot be gain said. Civic education empowers citizens to participate in the process that govern their well-being. As a matter of urgency the conflict mangers should work out strategies that will include the communities of the Nile basin in their civic education. Currently, meetings a held in

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<sup>103</sup> *Introduction to Conflict Management – Dynamics and Progression* <http://cmtoolkit.sais-jhu.edu/index>

boardrooms and the information is not relayed to the common man who are the users of the waters.

This is an important component in streamlining effective communication and understanding among the riparian states. The role that the civic educators will play is to educate the parties on the importance of managing the conflict by understanding the concepts that come to fore.

The study has demonstrated that there is a clear gap that needs to be filled by the engagement of the citizenry in a rigorous civic education exercise to allow the discourse of the Nile waters to continue from a point of knowledge. The absence of technical experts in some of the riparian states as earlier noted by the study suggests that their representatives have not been well equipped in terms of technical skill and hence the need to step down the available information. This raises questions on the capacity of actors to negotiate. Indeed it is not enough for the representatives of riparian states to lock themselves in meetings discussing technical issues they do understand.

#### **5.4 Areas for Further Research**

This study has raised issues which need further investigation. These areas include:

Carrying out research on the methods of application of the already formulated policies of the Nile institutions. This would be to find out whether and how they are being implemented, in light of the all-inclusive approach. It would be interesting to attempt to inquire whether these policies reach the target group and whether they understand them.

A lot of policy makers ignore the lay people.

The other area of interest through education as a mechanism for Nile waters understand the areas would give policy makers policies.

boardrooms and the information is not relayed to the the waters.

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#### **5.4 Areas for Further Research**

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A lot of policy makers ignore the stepping down of language to allow understanding by the lay people.

The other area of interest that would complement this study is exploring the role of civic education as a mechanism of conflict management. Do the communities who utilize the Nile waters understand the dynamics at play in the conflict? The findings from these areas would give policy makers ideas on how to ensure compliance with the laws and policies.

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