

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

MASTERS OF ARTS IN DIPLOMACY

SUPERVISOR: DR SIMON KINYANJUI

NAME: JOHN PHILIP G. KAGUCHIA

REG NO: R51.63667/2010

PRESENTED ON: NOVEMBER 2012

RESEARCH TOPIC: IMPLICATIONS OF SOUTH SUDAN AS A NEW STATE TO THE

NILE BASIN POLITICS

University of NAIROBI Library



0532923 0

DECLARATION

Declaration by the student

I declare that this project has not been previously presented for a degree in University of Nairobi, or in any other University. The work reported herein has been carried out by me and all sources of information have been acknowledged by means of reference.

John G. Kaguchia

Signature 

Date 22 Nov 2012

[R51/63667/2010]

Declaration by the supervisor

This project has been submitted for examination with my approval as the University supervisor.



Dr. Simon Kinyanjui

22/11/2012

Date

Table of Contents

RESEARCH PROPOSAL	10
I. Introduction	10
II. Statement of Research Problem.....	11
III. Objectives	12
IV. Literature Review	12
a. Political and Legal Perspectives on the Nile Basin Treaties	12
b. The Role of Climate Change in the Nile River Basin Politics.....	17
c. National and Regional Impacts of the 1959 Nile Treaty	18
V. Theoretical Framework.....	20
a. Transnational Dispute Resolution Mechanisms	23
VI. Hypothesis	23
VII. Methodology.....	25
a. Event Data Formula	25
b. Study of Public Opinion	26
c. Environmental Impact Analysis.....	27
d. Chapter Outlines	27
i. Nile Basin Treaties (Colonial and Postcolonial Treaties).....	27
ii. Climate Change and its Impact on the Nile Basin	28
iii. Diplomatic Issues and Challenges in the Nile Basin.....	28
iv. Analysis of the Diplomatic Options of South Sudan in Nile Basin Politics and the Response Options of the Riparian States.....	29
v. Emerging Issues in the Nile Basin Politics	31
TREATIES IN THE COLONIAL AND POST COLONIAL ERAS	32
I. Introduction	32
II. Treaties in International Law.....	33
III. Overview of the Nile Basin Treaties.....	38
Colonial Era treaties	39
1. The Anglo-Italian Protocol (1891).....	39
2. The British and Ethiopian Agreement (1902).....	40
3. The Tripartite Treaty of 1906 between Britain, France, and Italy	40

4.	The Anglo Italian Agreement of 1925	41
5.	The treaty Between Britain and Egypt (1929)	42
	Post Colonial Era Treaties.....	43
6.	The 1959 Agreement for the Full Utilization of the Water of the Nile.....	44
7.	The 1993 Framework for Cooperation between Egypt and Ethiopia	45
8.	The Nile Basin Initiative	46
	South Sudan's Options on these Treaties.....	47
IV.	An Idealist Perspective on the Treaty Making Process	48
	Approaches to Treaty Making in the History of the Nile Basin.....	48
	The Application of an Idealist Perspective by South Sudan.....	50
	Policy Directions.....	52
	Nile Basin Treaties in the Context of Climate Change.....	53
V.	Conclusion.....	53
	THE ROLE OF CLIMATE CHANGE IN NILE BASIN POLITICS.....	54
I.	Introduction	54
II.	Significance of Climate Change in Nile Basin Politics.....	55
III.	Biomechanics of Climate Change.....	57
IV.	Impacts of Climate Change in the Nile Basin.....	61
	Primary Impacts	61
	1. Precipitation	61
	2. Temperature	62
	Secondary Impacts	63
	3. Socioeconomic Impacts	63
	4. Political impacts.....	65
V.	Analysis of the Impact of Climate Change.....	66
VI.	Climate Change and Institutionalism.....	67
VII.	Consequences of Climate Change on Nile Basin Politics	69
	Escalation of the Potential for Conflict between Riparian States	69
	Climate Change in Development	71
	Impact on Local Politics.....	72
	Increasing International Interest in the Nile Basin.....	73

VI. Conclusion	75
DIPLOMATIC ISSUES AND CHALLENGES IN THE NILE BASIN	77
I. Introduction	77
The Nile Basin Conflict	78
II. Parties to the Nile Basin Conflict	80
A. Egypt.....	81
B. Sudan	82
C. Ethiopia.....	83
D. The East African States.....	84
E. South Sudan	85
III. Diplomatic Issues Surrounding the Nile Basin.....	86
A. Validity of the Historical Rights of Egypt and Sudan	87
B. Sovereignty versus Regional Responsibilities.....	88
C. The Question of the Historical Treaties.....	89
D. The Credibility of Armed Conflict	91
E. The Need for Mediation.....	92
IV. Diplomatic Challenges.....	93
A. Pace of progress of the formation of the Nile Basin Commission.....	94
B. Pending issues in the Sudanese CPA.....	95
C. The Aftermath of the Arab spring on Egypt	95
V. Diplomatic Approaches	96
A. Resolution	96
B. Conflict Management	97
VI. Conclusion	99
DIPLOMATIC OPTIONS IN THE NILE BASIN	100
I. Introduction	100
II. Factors Affecting Juba’s Diplomatic Options: PESTLE Analysis.....	101
A. Political Factors	101
1. Newly Created State.....	101
1. Nationalist sentiments	102
2. Devolved Government	102

B.	Economic Factors	103
1.	Oil Dependence	103
2.	Unemployment	103
3.	Poor Health Infrastructure	104
4.	Agriculture	105
C.	Social Factors	105
1.	Poverty	105
2.	Returnees	106
3.	HIV and AIDs	106
4.	Crime and Small Arms Proliferation	107
D.	Technological Factors	107
E.	Legal Factors	108
F.	Environmental Factors	108
III.	Juba's and East Africa's Diplomatic Options	109
A.	Enjoining the 1959 Treaty	109
B.	Supporting the Nile Basin Initiative	112
C.	Agitate for New Treaties based on its Needs	115
D.	Pursuit of Unilateralism	117
IV.	Conclusion	120
	EMERGING ISSUES IN THE NILE BASIN POLITICS	122
I.	Introduction	122
II.	Impact of the Arab Spring on Nile Basin Politics	122
III.	The Revival of the Jonglei Canal Project: Is this a White Nile Alliance?	125
IV.	Renaissance Dam: A Confluence of Sino-American Interests in the Blue Nile	128
V.	South Sudan's Security: Petty Crime, Armed Rebellion and Regional Stability	130
	CONCLUSION	132
I.	Findings	132
II.	Recommendations	133
III.	Areas of Further Research	133
	References	135

ACKNOWLEDGEMENTS

First, I would like to thank God for his immense mercies and grace during this period in my life. I have enjoyed good health and peace of mind in the course of pursuing my Masters degree. If it were not for God, I would not have been able to get this far in life. I am eternally grateful for this opportunity

Secondly, I would like to acknowledge the support offered to me by Dr. Simon Kinyanjui. His positive criticism and insightful comments shaped the thinking behind this work.

Thirdly, I would like to thank my wife Susan and daughter Tehille for their patience during the long hours of work and study this project demanded. I am also indebted to Viola Sugut for her assistance in accessing vital resources, which have proved very useful in the development of this project.

DEDICATION

I would like to dedicate this work to my dear wife Susan and lovely daughter Tehille. You are the reason why I live.

CHAPTER 1

RESEARCH PROPOSAL

I. Introduction

River Nile has been the cradle of life for the countries that border it. It is responsible for the emergence of the ancient Egyptian civilizations where it supported both agriculture as a result of the annual flooding cycle¹. It played a very important role in the migration patterns of the communities that settled in its shores in the pre-colonial era. Out of the 300 million people that live in countries associated with the Nile, 150 million of them depend on it for their livelihood².

The Nile as a shared resource is a potential cause of conflict among the eleven riparian states which are Rwanda, Burundi, Democratic Republic of the Congo (DRC), Tanzania, Kenya, Uganda, Ethiopia, Eritrea, Sudan and Egypt. Indeed, it has been the subject of many conflicts in the past between nations regarding its usage. In order to stem these conflicts, countries have signed treaties to govern its use. The most important treaties that are the subject of contemporary debate are the treaties signed between Egypt and Great Britain in 1929 and another treaty signed between Egypt and Sudan in 1959. These treaties gave Egypt the right to use the river almost unilaterally, to the disadvantage of the other upstream riparian states³. The treaties, signed during the colonial era, restricted the activities that the other riparian states could engage in using the

¹ Button, K. (2010). *Transport Economics*. Cheltenham, UK: Edward Elgar Publishing.

² Fellman, J. D., Getis, A., & Getis, J. (1997). *Human Geography: Landscapes of Human Activities*. New Delhi: Surendra Kumar.

³ *Ibid*

waters of the Nile and its sources. As a result, the upstream riparian states have sought to review these treaties to enable them use the resources of the Nile to address their domestic concerns.

The situation surrounding the use of the river Nile brings several issues of concern in international diplomacy to the fore. There are questions regarding the legality of the colonial era treaties signed between Egypt and Great Britain. Do these treaties legally bind post independence countries? Secondly, is it justifiable for the riparian states to continue suffering from various development concerns which they can address using the waters of the Nile because of the treaties? Finally, what is the best way to address these issues after taking into account the consequences of the continued enforcement of these treaties?

II. Statement of Research Problem

This research project will address itself to three issues. First, it will seek to explore the political issues surrounding the use of the waters of the Nile. This will include an examination of the legality of the existing treaties, and the consequences of their enforcement or otherwise, and the socio-economic consequences of the treaty. Secondly, the paper will examine the critical change in the balance of power within the Riparian states caused by the creation of South Sudan as a new state, alongside the Sudan. Egypt signed a bilateral agreement with Sudan. How does this relate to the new state of South Sudan? The third issue the paper will address is how the creation of South Sudan as a nation in the Nile Basin affects the place of the East African countries in the politics of the Nile basin. The research question for the project is:

Implications of the Post Independence Sudan to the Nile Basin Politics

III. Objectives

The objectives for this research project are as follows:

1. To analyze the key political events and their potential impact on Nile cooperation, within the framework of the Nile Basin Initiative (NBI), with a specific focus on the independence of South Sudan.
2. Impact of the post independence Sudan in the 1929 and the 1959 treaties
3. To analyze political events that provide input for further analysis of the political economy of water in the Nile basin.
4. To identify the effects of climate change on the communities surrounding the lake Victoria basin
5. Development of recommendations for the climate change debate regarding coping strategies for East Africa in relation to water scarcity

IV. Literature Review

This section covers literature relevant to the issues of Nile Basin politics. The literature reviewed covered among other issues, theoretical issues relating to the Nile basin and historical records of the treaties signed by various plenipotentiaries.

a. Political and Legal Perspectives on the Nile Basin Treaties

The main legal instruments that govern the use of the Nile waters are a set of treaties signed between Great Britain and various riparian states. Eleven colonial era treaties exist in regards to the waters of the Nile. In the nine treaties, five of them concern Egypt, two between Great

Britain and Italy while four of them concern Great Britain and Ethiopia⁴. It is important to note that all these treaties were bilateral, and Great Britain was always a party to the treaties. Their treaties had the colonial interests of Great Britain in mind, and not that of the indigenous people. In 1959, Sudan signed a treaty with Egypt relating to the sharing of the downstream waters of the Nile without regard to the upstream states⁵. The effect of these treaties was that they assured the needs of Egypt at the expense of the needs of the upstream countries forming the Nile basin. Egypt depends on the Nile entirely for its survival hence its aggressive diplomatic efforts to control the use of the Nile waters.

The question of the legality of these treaties rests on the challenge of whether the riparian states inherited the treaties signed by their colonial masters as stipulated by the international law of succession, or otherwise as stipulated by the Nyerere doctrine⁶. In many cases, the solution to this challenge is simple because most of the treaties signed by colonial powers were bilateral. The treaties relating to the Nile on the other hand excluded all riparian states except Egypt, in their capacity as sovereign states⁷. In this sense, the states that became independent after the signing of the treaties are not signatories parse. However, the treaties govern a resource that existed, and still exists. Britain, as a signatory of the Nile basin treaties, no longer carries any

⁴ Howell, P. P., & Allan, J. A. (1994). *The Nile: Sharing a Scarce Resource : A Historical and Technical Review of Water Management and of Economic and Legal Issues*. Cambridge: Cambridge University Press.

⁵ Abdalla, I. H. (1971). The 1959 Nile Waters Agreement in Sudanese-Egyptian Relations. *Middle Eastern Studies* , 329-341.

⁶ UNEP. (2012). *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements: State Succession and the Nyerere Doctrine*. Retrieved May 25, 2012, from <http://www.unep.org/dec/onlinemanual/Compliance/Resource/tabid/594/Default.aspx>

⁷ Abdalla, I. H. (1971). The 1959 Nile Waters Agreement in Sudanese-Egyptian Relations. *Middle Eastern Studies* , 329-341.

enforceable interest in the colonial territories. This is the source of the legal uncertainties regarding the Nile basin treaties.

The states that have interests in the waters of the Nile include Kenya, Tanzania, Uganda, Rwanda, Burundi, Democratic Republic of Congo (DRC), Ethiopia, Djibouti, Eritrea, Sudan, South Sudan, and Egypt. With the exception of Egypt and Sudan, the rest of the riparian states contribute to the waters of the Nile. The single largest contributor to these waters is Ethiopia, which contributes 85% of the Nile waters through the Blue Nile⁸. The rest of the countries contribute to it by virtue of drainage of rivers from their territories into the Lake Victoria basin.

The waters that come from Ethiopia follow a seasonal pattern. The flow from the White Nile is the one that provide the base load for the river hence its significance to the downstream countries⁹. The political questions that arose after independence came from the fact that Egypt and Sudan signed treaties between themselves to share out the downstream waters of the Nile without involving the upstream countries, especially Ethiopia. The waters of the Nile mean a lot to the upstream countries if they plan to meet their socioeconomic aspirations. While Ethiopia contributes eighty-five percent of the Nile waters from its territory via the Blue Nile, the country regularly suffers from some of the worst droughts and famines, which the waters of the Blue Nile can help alleviate¹⁰. It is a matter of time before the political pressure mounts on Ethiopia to

⁸ Fellman, J. D., Getis, A., & Getis, J. (1997). *Human Geography: Landscapes of Human Activities*. New Delhi: SURENDR KUMAR.

⁹ Howell, P. P., & Allan, J. A. (1994). *The Nile: Sharing a Scarce Resource : A Historical and Technical Review of Water Management and of Economic and Legal Issues*. Cambridge: Cambridge University Press.

¹⁰ *Ibid*

utilize the waters of the Nile for irrigation, which may affect the levels of water available for use in downstream countries.

The case of Kenya is that up to seventy-five percent of the land area is arid and semi arid¹¹. The country can also improve the livelihood of its population along the Lake Victoria basin by developing irrigation schemes along its six main rivers that drain water into Lake Victoria. The political pressure to do this will mount in the context of recent changes in the country's governance structures devolving power from central control to county governments. Tanzania also has had plans to use the water of the Nile in its development plans. In particular, the country has rejected at various points the 1959 Treaty declaring it incompatible with its aspirations as a sovereign state¹². Instead, Tanzania seeks to use the water available to it from the Kagera River Basin to irrigate its farmlands¹³. In addition, the country even planned to use the waters of Lake Victoria to irrigate the Vamberre Steppe in central Tanzania.

The case of Uganda is a little different from the rest of the riparian states because it seems to be the only country with a functioning treaty relating to the Nile. Great Britain signed the Owen Falls Agreement with Egypt on behalf of Uganda. Under this agreement, the Owen falls dam came up to make use of Lake Victoria as a reservoir for Egypt. In turn, Uganda got the

¹¹ Mwanika, P. A. (2010). *Natural Resources Conflict. ISS Paper 216*, pp. 1-12.

¹² Twongo, T. K., & Bugenyi, F. W. (2006). *Freshwater Related Issues of the Lake Victoria Basin. In Environment for Development: An Ecosystems Assessment of Lake Victoria Basin Environmental and Socio-Economic Status, Trends and Human Vulnerabilities*. Nairobi: UNEP and PASS.

¹³ *Ibid*

opportunity to generate 180 MW of power from the dam for its own use¹⁴. Uganda seems to have acknowledged the treaty by virtue of its continued use of the Owen fall dam to generate power. Uganda is also a reluctant party to the Organization for the Management and Development of the Kagera River Basin (Better Known as the Rusumo Treaty) that also brings together Tanzania, Rwanda, and Burundi.

The latest entrant to the Nile river politics is the republic of South Sudan. South Sudan is of interest concerning its place in the Nile River treaties because of its status as a newly created sovereign state. The country was hived off from Sudan, which was party to the 1959 treaty. Does it remain a part of that treaty because its territory formed part of the Sudanese territory that was to benefit from the Nile River allocation to Sudan? Does it negotiate with Sudan for a share, or does it disregard the treaty and join the other upstream riparian states in seeking a more equitable water sharing arrangement? These questions illustrate the impact of the entry of South Sudan into the foray of Nile Basin politics. The new nation will need to develop a strategy to deal with the Nile issue to take care of its development interests. More importantly, its entry into the community of nations will also affect how the rest of the East African States handle the issue of the Nile waters.

The final questions regarding the force of the Nile Basin Treaties comes from the reluctance of the East African Countries to accede to the bilateral treaties signed on their behalf by the British Colonialists. Achieving independence meant the attainment of sovereign rule for these countries. Each of these countries have sovereign jurisdiction over their territories and by extension all the

¹⁴ Mwanika, P. A. (2010). *Natural Resources Conflict. ISS Paper 216*, pp. 1-12.

resources found within their borders. The question of treaties governing the downstream use a river without the active participation of the upstream territories seems to infringe on the sovereignty of the upstream countries. This is the basis of recent efforts to find new ways of sharing the Nile Basin waters among the upstream countries such as the Nile Basin Initiative (NBI). Is there an infringement on the sovereignty of the upstream nations by the 1959 treaty?

b. The Role of Climate Change in the Nile River Basin Politics

Climate change is having an impact on the politics of the Nile River Basin. The last fifteen years have seen the increase in instances of climate change related disasters in the Horn of Africa¹⁵. In particular, Ethiopia has been the worst affected riparian country because of drought and famine. In the last wave, OXFAM and the UN issued alerts and spearheaded the international relief efforts for the country. On the other hand, Kenya in 2011 had one of the worst famines in recent history. This saw the private sector take initiative through the Kenyans for Kenya campaign to help sort out the famine situation. A vicious cycle in the weather patterns in the riparian states that swings from extreme rain (El Nino) to prolonged drought (La Nina) seem to take the states off balance threatening food security in the region¹⁶. Rain fed agriculture is becoming more and more unreliable because of the erratic weather patterns. In fact, Kenya's long-term development plan, vision 2030, plans to move the country from rain fed agriculture to irrigation-based agriculture. In part, this is a response to the erratic weather patterns brought about by climate change. Climate change is also responsible for the emergence of new disease strains. This change is threatening to wipe out huge chunks of maize crop in Kenya in the current planting season.

¹⁵ Mwebaza, R. (2009). The Impacts of Climate Change in East Africa. In R. Mwebaza, & L. Kotze (Eds.), *Environmental Governance and Climate Change in Africa: Legal Perspectives*. Pretoria: Institute for Security Studies.

¹⁶ *Ibid*

The use of river Nile for irrigation can change the fortunes of the riparian states when it comes to the issue of food security. The western Kenya Belt is fertile but the reliance on rain fed agriculture makes the region dependent on food aid¹⁷. The situation in Ethiopia is even worse. The fact that the country contributes 85% of the waters of the river Nile demonstrates its potential to feed its own people¹⁸. The country has more arable land than Kenya. In the case of South Sudan, the need to use the Nile to help it to adapt to the changes caused by climate change go hand in hand with its aspirations as a newly created country. The country's current reliance on oil exports to finance 95% of its national budget can change to a more balanced portfolio if it utilizes its water resources availed by the Nile¹⁹. The success of the Kenana sugar factory in neighboring Sudan along the Blue Nile is testament to the potential the country has in agriculture. As its people transit to the formal economy from its pastoralist roots amidst pressure from climate change, Nile based agriculture can form a long lasting opportunity for development for South Sudan.

c. National and Regional Impacts of the 1959 Nile Treaty

The consequences of the existing treaty, signed between Egypt and Sudan are far reaching. In the socio economic sphere, the treaty has the potential of impeding development in the Nile River

¹⁷ Twongo, T. K., & Bugenyi, F. W. (2006). Freshwater Related Issues of the Lake Victoria Basin. In *Environment for Development: An Ecosystems Assessment of Lake Victoria Basin Environmental and Socio-Economic Status, Trends and Human Vulnerabilities*. Nairobi: UNEP and PASS.

¹⁸ Fellman, J. D., Getis, A., & Getis, J. (1997). *Human Geography: Landscapes of Human Activities*. New Delhi: SURENDRA KUMAR.

¹⁹ Twongo, T. K., & Bugenyi, F. W. (2006). Freshwater Related Issues of the Lake Victoria Basin. In *Environment for Development: An Ecosystems Assessment of Lake Victoria Basin Environmental and Socio-Economic Status, Trends and Human Vulnerabilities*. Nairobi: UNEP and PASS.

basin, which is home to 150 million people²⁰. Most of the riparian countries along the Nile River are among the world's poorest. The extreme limitations on the use of the waters of the Nile River make it impossible for these countries to invest meaningfully in the areas served by the Nile. This limits their economic options. Considering that all the riparian countries with the possible exceptions of South Sudan, Sudan, and Egypt have agriculture based economies. Limiting the development of irrigation projects along the source rivers is a sure means of limiting economic growth in these countries. The need for resource based planning for poverty alleviation projects leads to the natural conclusion that the Nile basin can help solve local problems²¹.

The construction of hydropower projects on these rivers can also make life much more bearable for the countries in question. This is especially true in places where dams can act as reservoirs because of the increased generation capacity of dammed power plants. Kenya is currently operating at near capacity and will need much more power input to realize the development aspirations enumerated in vision 2030.

It is worth noting that most of the riparian states have a large number of unemployed youth, which is slowly becoming a source of extreme social problems for these countries. The increasing number of unemployed youth is a recipe for disaster because of the ensuing insecurity, increased need for social support, increase in vices such as drug abuse and petty crime, and loss of social balance because of the high number of defunct young adults. Health is

²⁰ Fellman, J. D., Getis, A., & Getis, J. (1997). *Human Geography: Landscapes of Human Activities*. New Delhi: Surendra Kumar.

²¹ Kerzner, H. (2009). *Project Management: A Systems Approach to Planning, Scheduling and Controlling* (10 ed.). Hoboken, NJ: John Wiley and Sons.

also a serious development issue in the riparian states²². There is a dire need for the development of strong social policies to stabilize the Riparian states²³. While the Nile water is not a solution to all these problems, projects along the river can help to alleviate these problems.

In the politic scene, the Nile Basin crisis can lead to several severe consequences such as xenophobia pitching Egypt and Sudan against the rest of the Riparian States. The upstream Riparian states form an important market for Egyptian products. Part of the reason that makes Egyptian products attractive for the upstream riparian states is their lower relative cost. Egypt can offer products at a low cost because of its lower cost of energy. Egypt generates its power from the Nile, while the treaty it has limits the use of the Nile waters for power generation among the upstream riparian states. Therefore, these states can choose to boycott Egyptian products to the detriment of the whole region. This point demonstrates the need to develop a solution that takes into account the needs of each member of the riparian states. If the upstream riparian states take unilateral action regarding the use of the waters of the Nile, then they will be threatening the economy of Egypt. It can escalate into a conflict of international proportions.

V. Theoretical Framework

The main elements of the theoretical concepts that will govern this paper include the treaty making processes in international relations and transnational dispute resolution mechanisms²⁴.

This theoretical perspective covers most of the issues that will require analysis in this project.

²² Goldstein, M., Zivin, G., Habyarimana, J., Pop-Eleches, C., & Thirumurthy, H. (2009). *Health Worker Absence, HIV Testing and Behavioural Change: Evidence from Western Kenya*. Unpublished Manuscript.

²³ Chapin, R. (2010). *Social Policy for Effective Practice: A Strengths Approach*. New York: Francis & Taylor.

²⁴ Zenter, M. (2011). *Design and Impact of Water Treaties: Managing Climate Change*. Berlin: Springer.

The main theory that will apply to the work is the theory of idealism. Significance of these two theoretical positions is that they represent the contrasting ways in which the Riparian states approach the Nile basin issues. Egypt's policies are steeped in idealism, while the Nyerere Doctrine also finds its basis in idealism. On the other hand, most of the countries under the Nile Basin Initiative seem subscribe to realism in as far as these issues goes. However, South Sudan is yet to make a formal commitment on the issues of the Nile hence the need to explore the implications of their eventual position based on these two theoretical paradigms. This work will generally be done using the idealism theory. This theory applies where the concerned Riparian states believe that a review of the existing treaties can only be mutual benefit to all the concerned parties including Egypt and Sudan as well.

The theory of idealism is founded on the tenet of the understanding and use of power by sovereign states to negotiate for favorable positions in any matter²⁵. Hence, we shall not look at the interference or alteration of the existing treaties between Egypt and other nations as a threat to the physical security of Egypt or any other country. This is how Egypt has all along looked at the Nile basin issues and has from time to time threatened to use its military might to resolve any dispute that may arise because of alteration of the existing arrangements. Egypt has used the realism lens to look at the Nile basin issue and has equated the any increase in the usage of the upstream water to a threat to its own security and that of its citizens. It has been categorical that it cannot compromise on this aspect. Egypt has also resisted efforts aimed at creating any

²⁵ Griffiths, M. (1995). *Realism, Idealism, and International Politics*. London: Routledge.

institutions that can govern and oversee the development and implementation of new Nile basin agreements among the riparian states.

From the idealistic point of view, institutions should be charged with the role of using diplomatic options to create new agreements, implement them, and enforce compliance. would be ideal. This would ensure that any issues that arise from the use of the Nile waters is addressed through proper mechanisms as there would be a structure in place to handle the same. This would be a more structured institution comparable to the Nile Basin Initiative at Kampala.

The legal basis for making international treaties is International law. International law refers to internationally accepted legal tools and expressions that govern the conduct of international relations²⁶. International law is very important in defining how individual countries interact with each other. It looks at countries as specific entities with the capacity to enjoy certain rights and privileges. It also assigns the duties of states towards other nation states. Some of the rights nations enjoy include the right to determine its type of internal rule, the methods used to install leaders and the forms of government functions they need²⁷. This freedom brings about ideological positions that form the overarching systems that govern the setting up of nations. Nations also enjoy the right to a territory and the right to assure its territorial integrity. This right encapsulates the need to maintain an army to defend the country from external threats. In this sense, a properly constituted country can define its priorities and use its military capabilities to defend these interests. A good example of a country defending its interests is the United States

²⁶ Griffiths, M., O'Callaghan, T., & Roach, S. C. (2008). *International Relations: The Key Concepts*. London: Taylor and Francis.

²⁷ *Ibid*

and its allies using the war on terror as a sufficient justification to invade other territories to rid itself of the threats to its existence.

a. Transnational Dispute Resolution Mechanisms

International diplomacy calls for the use of certain dispute resolution mechanisms. These dispute resolutions approaches form part of the integral elements of this research project because they provide the means through which the issues affecting the Nile Basin will be resolved. As such, dispute resolution methods and approaches will undergird the options that this project will unearth and the recommendations that this project will develop in response to the diplomatic issues surrounding the use of the waters of the Nile basin.

VI. Hypothesis

Based on the literature reviewed, this project envisages to find more evidence that will be consistent with the following set of hypothesis.

a. Juba will be favorably disposed to working with the East African States

Juba has demonstrated interest in working with East African states based on its application to join the East African Community and its interest in exporting its products via the East African coast. A case in point is the LAPSSET project, which will enable it to export oil via the port of Lamu. Juba has also had long-standing military relations with Uganda, which supported its armed rebellion against the Khartoum. On the other hand, diplomatic relations between Juba and Khartoum have been tense even before the referendum on statehood. Juba is also not diplomatically attached to Cairo hence there are very few diplomatic options for it to pursue an

agreement with the downstream countries. Juba will be more willing to work with the East African countries because of its strategic interests.

b. The 1959 treaty between Egypt and Sudan will collapse because it no longer assures either country the resources they agreed to share because of territorial loss.

Based on the referendum that split the Sudan, it is impossible for the 1959 treaty to assure either Cairo or Khartoum of the resources they agreed to share. Egypt will seek an option that assures its strategic interests hence it will seek to negotiate a pact with the south to reassure it of the water resources it needs. However, this option will only work for Cairo if Khartoum plays ball. This situation will lead to the collapse of the 1959 treaty.

c. The need for climate change adaptation will escalate the existing tension to precipitate conclusive negotiations between the riparian states

The upstream countries are under increasing pressure to use the resources of the Nile for power generation and food production to counter the effects of climate change²⁸. Rain fed agriculture is not sustainable if to judge from the recent spate of drought and famine experienced by the riparian states in the horn of Africa. In effect, using up the upstream water of the Nile will reduce the effective quantity of water available for use by the downstream states. In the absence of a negotiated settlement, the tensions between the riparian states may result in military conflict²⁹. With escalating tension, diplomatic efforts will grow in significance to guide the process of

²⁸ Wyk, J.-A. v. (2010). The African Union Response to Climate Change and Climate Security. In D. A. Mwiturubani, & J.-A. v. Wyk (Eds.), *Climate Change and Natural Resources Conflicts in Africa*. Pretoria: Institute for Security Studies.

²⁹ Mwanika, P. A. (2010). *Natural Resources Conflict*. ISS Paper 216, pp. 1-12.

formulating an agreement that will balance the use of the Nile waters for the benefit of all the riparian states.

d. The African Union will play an increasing role in the diplomatic efforts required to resolve the Nile Basin crisis.

The role of the African Union in resolving the Nile Basin Crisis will grow in significance. The scope of the problem is too wide and the interests of the countries are too strong to allow a solution to come from the riparian states themselves. As parties to the conflict, a transnational mediator will be the best person to engage with the riparian states in the journey towards a negotiated settlement. This means that there will be need to expand the mandate of the Intergovernmental Panel on Climate Change (IPCC) formed by the AU in 2007 to deal with climate change adaptations challenges³⁰.

VII. Methodology

a. Event Data Formula

The issues that this project plans to address have a strong relationship to the political events in the riparian states. Examining these events will be a good way of finding out the long-term policies and diplomatic perspectives of the riparian states in relation to the Nile Basin. Event Data Formula requires the study of events relevant to the research questions to answer issues of context, strategy, and efficacy of diplomatic positions fronted by different parties. This method

³⁰ Wyk, J.-A. v. (2010). The African Union Response to Climate Change and Climate Security. In D. A. Mwiturubani, & J.-A. v. Wyk (Eds.), *Climate Change and Natural Resources Conflicts in Africa*. Pretoria: Institute for Security Studies.

will provide sufficient historical scope and evidence in relation to the diplomatic options pursued by the riparian states.

To implement this method, data will come from newspapers and government publications. The newspapers selected for this study are the Daily Nation, the East African weekly newspaper, and the Standard. On the other hand, government publications will come from government pressrooms covering issues of hydrology and water resource allocation and conflicts. The adoption framework for the materials will be their contribution in outlining the changes that will occur due to the formation of a new state in the post referendum Sudan in the context of the Nile basin treaties.

b. Study of Public Opinion

The need to study public opinion relating to the changes that the Nile Basin will undergo because of the emergence of South Sudan comes from the fact that public opinion affects political direction. A questionnaire will form the basis of collection of public opinion relating to the different aspects of the prescribed impact. The questionnaire will provide data to test institutional capacity of the riparian states to handle the issues of water resource allocation and sharing. Information from the public will come from social blogs developed to capture input from the members of the public. Social media is proving to be a useful data collection platform³¹. This data collection method will employ Facebook and Twitter as data collection platforms³².

³¹ Holmes, D. (2005). *Communication Theory: Media, Technology, and Society*. London, UK: SAGE.

³² Wilson, H. J., Guinan, P. J., Parise, S., & Weinberg, B. D. (2011). What is your Social Media Strategy. *Harvard Business Review*.

c. Environmental Impact Analysis

Climate change is easily the most significant influence on the Nile basin politics because of the projected consequences it will have on the riparian states. As such there will be need to gather data on the social economic impacts of climate change as it relates to the Nile basin. Again, these changes will influence government policy in the riparian states relating to the Nile waters hence the need to explore the full extent of the projected impacts of climate change. The study of the environmental impacts affecting the riparian countries will call for a visit to Western Kenya to collect information relating to these effects. This region forms the epicenter of the national issues surrounding the use of the resources of the Nile in relation to the Nile water treaties.

d. Chapter Outlines

The full treatment of this subject will require five chapters. These are as follows.

i. Nile Basin Treaties (Colonial and Postcolonial Treaties)

There are several treaties signed by various riparian states along the Nile both in the colonial and postcolonial eras. These treaties influence the position various countries take as they engage in the Nile Basin Politics. There is need to explore the entire extents of these treaties as a way of uncovering the full impact of the existing treaties on the efforts underway to resolve the issues surrounding the Nile basin. In addition, there is need to consider the legal and political position of South Sudan in the context of these treaties by examining its liabilities and exemptions in law. The country is not a direct signatory to any of these treaties hence there is need to examine whether it is bound by any of them because of territorial history.

ii. Climate Change and its Impact on the Nile Basin

The impact of climate change on the riparian states is increasing the pressure these countries have to utilize the waters of the Nile basin to solve their internal development needs. Currently, the treaties in existence do not take into account the interests of any of the riparian states except in the context of the interests of Egypt. Climate change is affecting the way countries operate hence the need to examine the impacts climate change will have on the riparian states. In this context, it is necessary to identify the ways in which the riparian states can adapt to climate change without affecting the delicate balance of the Nile basin. In addition, climate change will eventually affect the flow rate of the river Nile. How should this change affect the relationship between the riparian states?

iii. Diplomatic Issues and Challenges in the Nile Basin

At its core, the issue of the utilization of the waters of the Nile River is a diplomatic issue. Therefore, a study of the impact of the entry of South Sudan into this foray must include a look at the diplomatic issues surrounding the issue of the Nile Basin resource sharing. The situation of the River Nile presents several challenges to the diplomats involved. To understand these challenges, it will be necessary to look at the way in which diplomats from the parties to this conflict conceptualize the issues. Each of the parties to this conflict has a way of looking at the issue of the Nile waters. What diplomatic approaches can help to solve the problems and to bring all the parties to a lasting solution relating to these issues? What additional diplomatic issues (problems and options) does the post referendum Sudan bring?

iv. Analysis of the Diplomatic Options of South Sudan in Nile Basin Politics and the Response Options of the Riparian States

South Sudan has four main options as it engages in the Nile basin politics based on the international law of succession and the Nyerere doctrine. The international law of succession demands that each new country formed inherits the obligations of the former state³³. On the other hand, the Nyerere doctrine gives a new state the right to accept or reject the obligations of the former state. Its basis was the fact the colonial masters undertook international obligations based on the interests of the colonial powers and not the colony³⁴.

The four options for Juba are as follows. First, South Sudan may stake its claim on the 1959 treaty signed between Sudan and Egypt, and claim a portion of the Nile waters for its domestic uses. The second option will be for South Sudan to join the diplomatic efforts underway by the East African States under the Nile Basin Initiative (NBI) to renegotiate the treaties covering the Nile basin. The third option is for the country to take its own stand as a country and make fresh demands for a resource sharing treaty based on its individual needs in relation to those in the existence. The final option for South Sudan is to ignore the existence of treaties and to derive its national policies on the use of the Nile waters from its own needs without regard to the existing treaties.

³³ UNEP. (2012). *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements: State Succession and the Nyerere Doctrine*. Retrieved May 25, 2012, from <http://www.unep.org/dec/onlinemanual/Compliance/Resource/tabid/594/Default.aspx>

³⁴ *Ibid*

Depending on the option or set of options that Juba settles on, the East African countries will have different situations in their hands. If Juba goes with the international law of succession, it will be party to the 1959 treaty and will negotiate with Sudan on its rightful share of the Nile waters, and will seek membership to the Permanent Joint Technical Commission that oversees the enforcement of the hitherto bilateral treaty between Sudan and Ethiopia. In this sense, South Sudan will become part of the problem to the East African Nations since they want the treaty renegotiated in total. If Juba decides to follow the Nyerere doctrine strictly, then it will emerge as the third party to this conflict. If its goal is to renegotiate the treaties based on its needs, then diplomatic efforts will start at an advanced stage, on the other hand, if it ignores the need for treaties, then the first diplomatic step for the East African countries will be to bring Sudan to the negotiating table. The best position that Sudan can take from the point of view of the East African States is to join them in the push for a joint water sharing agreement. This option will increase the negotiating power of the East African States, which will now have joint control of a longer stretch the Nile compared to the time the 1959 treaty came into force.

Juba has demonstrated its interest to integrate into East Africa as a member of the East African Community. Its application is under review in Arusha. This position comes from the fact that South Sudan received plenty of help from the East African Nations, mainly Kenya and Uganda in its struggle towards statehood. On the other hand, the attitude of Egypt towards the creation of South Sudan was somewhat reserved because of the threat the new nation posed to the 1959 treaty. Juba may be reluctant to negotiate with its Northern Neighbors and may feel safer working from the confines of the East African Community. This chapter will review the issues

that will inform the decision that Juba will take in relation to the Nile and the potential responses of the East African States.

v. Emerging Issues in the Nile Basin Politics

Many other factors will inform the impact that South Sudan's entry into the community of nations will bring into the politics of the Nile Basin. First, Egypt is in a transitional process after the ouster of Hosni Mubarak due to popular revolt during the Arab Spring³⁵. Does this change in political balance in Egypt constitute a change in the diplomatic stance taken by Egypt in relation to the Nile? Second, after the split of Sudan into two states, are Khartoum's interests in the Nile the same as they were in 1959? This requires interrogation to check if Sudan still needs the 1959 treaty with Egypt. Thirdly, there has been a resource sharing conflict in regards to oil in the Abyei region where forces from Khartoum and Juba clashed. Is this an indicator of what might result in the event that the riparian states cannot share the waters of the Nile equitably? Fourth, Juba is dealing with armed rebellion in some of its states. How will these internal conflicts play out in the context of the allocations of resources in the Nile basin? Fifth, what roles can the African Union play in the politics of the Nile Basin? Does it have any role in this matter? These and other emerging issues will require brief analysis to bring out the complete picture of the state of relations among the riparian states.

³⁵ Malone, B. (2010). *Ethiopian PM warns Egypt off Nile war*. Retrieved August 15, 2012, from Reuters: <http://www.aljazeera.com/news/middleeast/2010/11/20101124152728280839.html>

CHAPTER 2

TREATIES IN THE COLONIAL AND POST COLONIAL ERAS

I. Introduction

The Republic of South Sudan celebrated its first anniversary as a nation on 9 July 2012. The Jubilant celebrations were reminiscent of the independence celebrations one year earlier, attended by heads of states, diplomats, and high-ranking officials from various international agencies. One of the highlights of the anniversary celebrations was the football match between the South Sudanese and the Ugandan national teams³⁶. The match was the first FIFA sanctioned international match involving the South Sudanese national team. It ended in a two-all draw. The country got admission to FIFA two months earlier. The South Sudan admission to FIFA is a fitting symbol of the process of getting recognition in the community of nations. It indicates that South Sudan intends to ratify agreements and conventions that govern international relations as an independent country. This development provides this work with a fitting backdrop for the issues surrounding the Nile Basin Treaties that Juba must address itself. On the other hand, Khartoum is yet to give an indication of whether it plans to renegotiate any of its international obligations based on the territorial loss it experienced after the referendum on the secession of South Sudan. Sudan is free to think of itself as a new country too. This thought will inform some of the arguments presented in this chapter.

The Nile basin treaties form the legal framework upon which Nile Basin Politics stand. In order to examine the implications of the Post Referendum Sudan on Nile Basin Politics, this chapter

³⁶ Daily Nation. July 11 (2012). *Newest Nation South Sudan Proud after Debut Draw*. Retrieved July 16, 2012, from Daily Nation: <http://www.nation.co.ke/sports/football/Newest+nation+South+Sudan+proud+after+debut+draw/-/1102/1451038/-/je5lq4/-/index.html>

looks at the existing treaties and the treaty related issues that will inform Juba's approach to the thorny issue of Nile Basin politics. The climax of the chapter will be the consideration of Juba's approach to the Nile Basin Treaties from an idealist perspective.

II. Treaties in International Law

a. Definition of Treaty and its Essential Elements

The United Nations (UN) identified two possible meanings of the term treaty based on international usage. The UN stated that, "The term "treaty" can be used as a common generic term or as a particular term which indicates an instrument with certain characteristics"³⁷. This definition recognized that the meaning of terms emerge from usage hence the distinction between the words "generic" and "particular" in reference to treaties. In the generic sense, the term treaty refers to all instruments of negotiation between two entities enforceable by international law. The entities in this case do not have to be governments, as long as they are international in nature. As a "particular" term, a treaty is signed by two governments and usually underlies some matter of gravity relating to territorial integrity, international commercial interests, and decisions on peace or war, among others³⁸.

³⁷ UN. (2012). *Definition of Key Terms used in the UN Treaty Collection*. Retrieved July 12, 2012, from United Nations Treaty Collection: http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml#treaties

³⁸ *ibid*

A treaty must have the following elements. It must be a binding agreement between the parties involved, it must be between states or international agencies with the power to make treaties, and it must also be under the jurisdiction of international law³⁹.

b. Roles of Treaties

Treaties play a very important role in the conduct of international relations. They are the basis for international law and order. The need for treaties came from the realization that no country could survive on its own. In addition, many countries realized that they needed the support of other countries, or at least certain assurances from other countries to secure their national interests. With the globalization of relations, treaties have become more important because of the increasing interdependence between nations. Treaties play three important roles in international affairs.

First, treaties make it possible for countries to have a reliable relationship based on a legally binding document⁴⁰. The reliability of the relationship is fundamental to the trust countries have for each other. Country A can protect its international interests with the help of country B without deploying its own resources to protect those interests. This makes it possible for country A to enjoy certain benefits that it could never have enjoyed without a treaty.

³⁹ Malone, B. (2010). *Ethiopian PM warns Egypt off Nile war*. Retrieved August 15, 2012, from Reuters: <http://www.aljazeera.com/news/middleeast/2010/11/20101124152728280839.html>

⁴⁰ Bruch, C. E., & Mrema, E. (2006). *Manual on Compliance With and Enforcement of Multilateral Environmental Agreements*. Nairobi: United Nations Environment Programme.

Secondly, treaties make peace possible. Many wars have ended after the signing of a peace treaty. States consider treaties a reliable way of obtaining agreement from an adversary. If there were no treaties for this purpose, then there would have been no way of guaranteeing the agreements made by warring factions. Treaties are a way out of war and other difficult circumstances. Two countries that sign a peace treaty do not have to be friendly for them to enjoy peace. If they have a treaty that spells out their terms of engagement, they do not need to become allies for them to coexist in peace. In the same vein, treaties avert war when they become the basis for sharing of cross border resources⁴¹. In the Nile Basin, the Nile Basin treaties seem to be the only deterrents that prevent the riparian states from going to war over the shared resource.

Finally, treaties encourage international cooperation on various issues. Since countries trust that all signatories to a treaty will keep to the terms of the treaty, they are comfortable getting into international ventures because the treaty protects their interest. The treaty is a very important tool in international relations and diplomacy.

c. Legal Force of Treaties on Khartoum and Juba

The referendum on South Sudan essentially created two new countries. South Sudan's identity is more obvious than that of Sudan because Sudan did not hold a referendum. While South Sudan is creating systems to govern itself, Sudan is adjusting its systems to fit its new realities. Sudan seems intent to carry on as though the referendum did not alter it appreciably. It is important to

⁴¹ Mwanika, P. A. (2010). *Natural Resources Conflict. ISS Paper 216*, pp. 1-12.

consider the status of Sudan because it is a signatory to the 1929 and the 1959 treaties that Egypt uses to lay a claim on the Nile.

An area of interest in this project is the determination of the force of law that the pre-existing Nile treaties have on Juba and to some extent, Khartoum. The two variants of international law in the matter of state succession are the International law of succession and the Nyerere Doctrine of Selective Succession⁴² (UNEP, 2012). When African countries attained independence from colonialists, they had to deal with questions of succession. In international law, when a new state emerges, the international law of state succession should apply. The new state picks up the international obligations of the predecessor state. In this sense, existing treaties and other forms of international obligations entered into by the predecessor state binds the new state. Nigeria is an example of an African country that followed the international law of succession in its pure form (Bruch & Mrema, 2006). It took up the treaties that the British signed on Nigeria's behalf during the colonial era.

Julius Nyerere, the first president of Tanzania sought to free his country from the unreasonable international obligations entered into by the colonialists before Tanzania attained its independence. He determined that a new state should not have to accede to all the treaties and international obligations of the predecessor state unconditionally. Nyerere held that a new state must have the right to choose which obligations it wants to carry forward, and the ones to discard. This application of the international law of succession became known as the Nyerere

⁴² UNEP. (2012). *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements: State Succession and the Nyerere Doctrine*. Retrieved May 25, 2012, from <http://www.unep.org/dec/onlinemanual/Compliance/Resource/tabid/594/Default.aspx>

Doctrine of Selective Succession⁴³. Many African countries used the Nyerere Doctrine after they became independent. The cardinal rule that gave basis to the Nyerere Doctrine was that the State was in no sovereign position to enter into a treaty as long as it was under the power of a different state. Therefore, the new state needed leave to interrogate all the preexisting treaties in light of its new status.

South Sudan is a new state. For that reason, Juba needs to decide on which of the two forms of international law of succession to apply. If Juba chooses to follow the Nyerere Doctrine, then it means that Juba will have to ratify or renegotiate all the Nile Basin Treaties that Khartoum signed before the referendum. In addition, Juba may choose to negotiate afresh with all the interested parties if it feels the treaties as they stand cannot meet its needs. On the other hand, if Juba chooses to follow the international law of state succession in its pure form, Juba will be party to all the treaties that Khartoum signed. In this case, it will need to identify the roles it needs to play as a party to those treaties.

On the other hand, Khartoum has a weaker legal basis to pursue the Nyerere Doctrine concerning its international obligations on the Nile Waters. In fact, Khartoum can uphold the treaties to retain all the benefits. However, the other parties to these treaties will seek some kind of redress because Khartoum cannot deliver the guarantees it made during the signing of the treaties. This situation also points to a need to renegotiate the Nile treaties with the parties involved to avert conflict. Based on this analysis, this paper will carry on with the assumption that the renegotiation of all the Nile treaties is imminent provided Sudan was a signatory.

⁴³ Bruch, C. E., & Mrema, E. (2006). *Manual on Compliance With and Enforcement of Multilateral Environmental Agreements*. Nairobi: United Nations Environment Programme.

The consequences of a breakdown in the Nile treaties are dire. Legal consequences include the suing of parties seen to renege on their international obligations. This can result in various forms of legal redress such as UN sanctions or some sort of diplomatic deterrence against the errant states. On the other hand, the breakdown of the Nile Basin Treaties can lead to military action. Egypt in the past indicated a willingness to use military intervention if any riparian state violates the terms of the Nile Basin Treaties. In order to draw conclusions on the options available for Juba in the Nile Basin politics, there is need to review the Nile Basin Treaties.

III. Overview of the Nile Basin Treaties

The Nile Basin is the lifeline of 150 million people⁴⁴. The need for treaties became apparent after the riparian states realized that there was need to develop a framework for the sharing of the Nile Basin resources. Much of the disagreements today surrounding the use of the Nile waters come from the fact that most of the treaties came into effect during the colonial era. Most riparian states argue that the treaties did not involve them at all since the colonial masters signed them without considering the needs of the natives. Egypt considers the treaties valid because they are fundamental to its economic functions, coupled with its historical reliance on the Nile for survival.

⁴⁴ UN. (2012). *Definition of Key Terms used in the UN Treaty Collection*. Retrieved July 12, 2012, from United Nations Treaty Collection:
http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml#treaties

Colonial Era treaties

During the Colonial era, there were several international agreements signed between the colonial powers. These treaties served the interests of the colony only as far as they served the interests of the colonial powers in questions. The treaties often put into consideration issues that were not directly related to the well-being of the colony, but had the interests of the colonial power in mind. There were five major treaties signed during the colonial era relating to the use of the Nile Basin resources as discussed below.

1. The Anglo-Italian Protocol (1891)

The Anglo Italian protocol of 1891, signed between Britain and Italy was used to create the boundaries of Sudan and Eritrea⁴⁵. As such, it was not a water-sharing agreement *per se*. However, the issue of the Nile waters formed part of the treaty after its mention on article III of the agreement. By the inclusion of the water use phrase in this agreement, the protocol marked the creation of the first legal document that governed parts of the Nile⁴⁶. In this treaty, Italy undertook to desist from carrying out any works on the Nile that would alter the flow of the Nile. The treaty was bilateral. This treaty set several precedents in the making of treaties governing Nile. Many of the treaties governing the Nile after that date ended up as bilateral treaties usually with Britain as a signatory. It also set the stage for the protection of the interests of the downriver states, Egypt and Sudan. Britain's intentions seemed to be the protection of its Egyptian colony because of its strategic importance.

⁴⁵ Abdo, M. (1994). The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin. *Perceptions* .

⁴⁶ *Ibid*

2. The British and Ethiopian Agreement (1902)

In 1902, Britain signed an agreement with Ethiopia to demarcate the Sudanese-Ethiopian boundary⁴⁷. Just like the 1891 agreement, there were clauses that bound Ethiopia from undertaking any construction work along the Blue Nile and its tributaries that could lead to a reduction in the flows into the Nile. This agreement was contested by both parties because of difference in meaning in the word “arrest”, used in the English version⁴⁸. Its Amharic translation did not include a total ban or any restriction whatsoever on the use of the Nile. This treaty further consolidated Britain’s interest in securing uninterrupted water flow to the lower riparian states, where it was the colonial master. With this agreement, Britain was slowly consolidating the control of the Nile to Egypt.

3. The Tripartite Treaty of 1906 between Britain, France, and Italy

This treaty, signed between Britain, France, and Italy was unusual. The three countries signed it to protect their interests in the Ethiopian basin. Britain sought to protect its interest in the waters of the Nile found in the Ethiopian basin without prejudicing the interests of France and Italy⁴⁹. What made the treaty that was signed in London unusual was that it also sought to protect the interests of Ethiopia, but they did not invite Ethiopia to the talks. Ethiopia protested vehemently to this proposition by saying that no one can determine for it how it would use its own water. Once more, this treaty only served to protect the interests of the colonial powers. Britain was still working on its greater strategy of assuring Egypt’s water supply.

⁴⁷ Abdo, M. (1994). The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin. *Perceptions* .

⁴⁸ Abdalla, I. H. (1971). The 1959 Nile Waters Agreement in Sudanese-Egyptian Relations. *Middle Eastern Studies* , 329-341.

⁴⁹ *Ibid*

In the same year, an agreement between the British and the Belgians (acting for Congo), limited the scope of works that Congo could undertake on the Semliki and the Isango River that would limit construction work affecting water flow to Lake Albert⁵⁰. Once more, the agreement did not take into account the future needs of the Congo republic, but only sought to protect the interests of the British and the Belgians.

4. The Anglo Italian Agreement of 1925

In 1925, Britain once more signed a treaty with Italy in Rome. In this treaty, Italy undertook to recognize all previous rights Britain had acquired related to the Nile headwaters⁵¹. Similar to its reaction the 1906, Ethiopia opposed this treaty vehemently. Britain retracted its position by stating that the treaty was bilateral and was not meant to bind Ethiopia.

Up to this point, all the treaties signed regarding the Nile took place between the colonial powers representing the interests of their homeland as projected through their colonies. As such, the treaties did not have the national interests of the colonies in mind. The interests of the colonies were relevant only to the point where these interests coincided with the interests of the colonial powers. The most influential colonial power in the Nile Basin was Britain, hence the treaties reflected the British interests in Egypt, which was a strategic outpost for British commerce. Up

⁵⁰ Bruch, C. E., & Mrema, E. (2006). *Manual on Compliance With and Enforcement of Multilateral Environmental Agreements*. Nairobi: United Nations Environment Programme.

⁵¹ Abdo, M. (1994). The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin. *Perceptions* .

to this point, Britain was always a signatory to the Nile Basin Treaties. The main goal of these treaties was always the protection of water reaching Egypt.

5. The treaty Between Britain and Egypt (1929)

The most significant treaty at the time affecting the use of the Nile was the 1929 treaty signed between Egypt and Great Britain⁵². In this treaty, Britain represented Sudan, which was its colony. Since Britain was also colonial master in Egypt, it was effectively catering for its interests in the Mediterranean region. This treaty signed off the use of the waters of the Nile to Sudan and Sudan, with Egypt getting the lions share. In fact, Egypt received several unreciprocated rights to monitor the use of the Nile water in the upriver states, and to veto any developments on the Nile. On the other hand, Egypt had no obligations to seek the consent of upriver states when it wanted to undertake any construction on the Nile. This treaty informs Egypt's position on the Nile up to date. This treaty was essential to the construction of the Aswan High Dam, which would guarantee year round water supply for both Egypt and Sudan⁵³. Egypt's right to veto developments on the Nile emanates from this treaty. Similarly, it got exemption from receiving the consent of the other riparian states when undertaking projects on its section of the Nile.

The main problem with this treaty was the exclusion of the other riparian states, and its lack of recognition that these states also had interests in the waters of the Nile flowing in their countries. This situation informs the current efforts to develop a common water sharing agreement among

⁵² *Ibid*

⁵³ Abdalla, I. H. (1971). The 1959 Nile Waters Agreement in Sudanese-Egyptian Relations. *Middle Eastern Studies*, 329-341.

the riparian states. Egypt has so far demonstrated an unwillingness to include the rest of the riparian states in the sharing of the waters of the Nile causing simmering tension in the region. All the riparian countries are dealing with various challenges which they can mitigate using the waters of the Nile.

The 1929 treaty is the first treaty, which the Sudan is a signatory. It is the basis for the country's claim to the Nile waters since it was party to the 1929 treaty by virtue of the international law of succession. This treaty created obligations on Khartoum, which it can no longer guarantee. The territory seceded to South Sudan has a significant portion of the Nile, and any works on it will limit Khartoum's ability to fulfill its commitments to the 1929 treaty.

All the treaties signed on the Nile up to this point included the British, who had entrenched interests in the Egyptian Nile waters. From then on, the riparian states signed new treaties based on their national needs. However, Egypt retained its acquired role as the custodian of the Nile Basin treaties.

Post Colonial Era Treaties

In the postcolonial era, the Plenipotentiaries of the treaties were the new states emerging after attaining independence from the colonial masters. After the Second World War, Britain became the most influential colonial master, governing the riparian states. As it wound up its colonial pursuits in Africa, Britain left in its wake a set of tilted treaties covering the sharing of the Nile waters. The new states sought to develop fresh frameworks for the sharing of the Nile Basin resources.

6. The 1959 Agreement for the Full Utilization of the Water of the Nile

In 1959, Egypt and Sudan went back to the negotiating table to review the 1929 treaties in light of their interests in a post independence setting. The two countries sought to divide the entire flow of the Nile waters between themselves just like the name of the treaty implies. The unity of the two states was meant to achieve full monopoly over the use of the Waters of the Nile. The 1959 treaty served to smoothen out several issues that were not well addressed by the 1929 treaty⁵⁴. It gave Egypt the right to use 84 billion cubic meters of water, up from 48 billion, for its uses, and Sudan got 18.5 billion cubic meters, up from 4 billion⁵⁵. Sudan and Egypt agreed to deal jointly with any claims from the other riparian states for use of the Nile Waters. The two countries agreed to a proportional reduction in their shares to meet the claims of any riparian state that successfully asserts its rights to use the Nile waters. To enforce this agreement, Sudan and Egypt created the Permanent Joint Technical Commission.

This treaty will be very important for Juba during the assessment of the position it should take on the Nile Treaties. The reason for this is that Juba, by following the law of international succession, can demand the inclusion of its representatives in the Permanent Joint Technical Commission as part of its inherited international obligations. It will be interesting to see whether Khartoum will argue that South Sudan is a new state, hence its claims should be met by a proportional reduction in the Quota of the two signatories to the 1959 treaty, or whether Egypt will assert that, the treaty had territorial assumptions therefore Khartoum must share its quota

⁵⁴ Abdo, M. (1994). *The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin*. *Perceptions*.

⁵⁵ Zenter, M. (2011). *Design and Impact of Water Treaties: Managing Climate Change*. Berlin: Springer.

with Juba. Either way, the 1959 treaty will call for a renegotiation of the treaty because Juba can simply decide to ignore it to the detriment of both Cairo and Khartoum.

7. The 1993 Framework for Cooperation between Egypt and Ethiopia

In 1993, Ethiopia and Egypt signed a framework for cooperation⁵⁶. This was an attempt by the two countries to develop a structure to govern their relations in the context of the Nile. The framework was not a binding document. It only spelt out the terms of engagement of the two nations on issues regarding the Nile Basin. There was some opposition to the Framework from some Ethiopians because it promoted the “no harm” principle⁵⁷. The opponents felt that this principle weakened Ethiopia’s sovereign claims on the Nile since it would have to consider Egypt’s interest in the Nile before undertaking any projects on it. The proponents argued that there was no problem with this because the two countries also agreed that any future agreements between the two countries would have to be made under principles of international law. The proponents further felt that the best way of utilizing the Nile waters was by the Treaty hence Egypt’s interests would still form part of this treaty. This bilateral approach to treaty making in the Nile regions seems like Egypt’s way of consolidating its interests. It should therefore not be surprising if Cairo approached Juba to sign a bilateral agreement to secure its interests.

⁵⁶ Wyk, J.-A. v. (2010). The African Union Response to Climate Change and Climate Security. In D. A. Mwiturubani, & J.-A. v. Wyk (Eds.), *Climate Change and Natural Resources Conflicts in Africa*. Pretoria: Institute for Security Studies.

⁵⁷ Abdo, M. (1994). The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin. *Perceptions* .

8. The Nile Basin Initiative

The Nile Basin Initiative (NBI) was launched in 1999 by the water ministers of the Nile Riparian states. The members of the Initiative include Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, and Uganda, with Eritrea as an observer (NBI, 2012). South Sudan has formally joined the NBI on 5 July 2012⁵⁸. The vision for NBI is "to achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources"⁵⁹. The initiative was the result of exasperation experienced by the riparian states based on the requirement to consult with Cairo before undertaking projects on the Nile Basin. The Initiative enjoys international recognition, with the World Bank managing its multi donor funding processes⁶⁰.

Six countries in the Nile basin signed a Cooperative Framework Agreement (CFA) whose aim is to seek more water from the Nile. The countries include Ethiopia, Kenya, Uganda, Rwanda, Burundi, and Tanzania⁶¹. The Democratic Republic of Congo (DRC) is expected to sign the Framework. Sudan and Egypt remain vehemently opposed to this Framework because it does not guarantee the supply of the Nile waters to Egypt and Sudan in the levels it enjoys under older treaties. The goal of the CFA is transform the NBI into the Nile River Basin Commission. This

⁵⁸ NBI. (2012). *South Sudan admitted to the Nile Basin Initiative*. Retrieved July 13, 2012, from Nile Basin Initiative: http://www.nilebasin.org/newsite/index.php?option=com_content&view=article&id=127%3Asouth-sudan-admited&catid=40%3Alatest-news&Itemid=84&lang=en

⁵⁹ *Ibid*

⁶⁰ Malone, B. (2010). *Ethiopian PM warns Egypt off Nile war*. Retrieved August 15, 2012, from Reuters: <http://www.aljazeera.com/news/middleeast/2010/11/20101124152728280839.html>

⁶¹ NBI. (2012). *About Us*. Retrieved July 13, 2012, from The Nile Basin Initiative: http://www.nilebasin.org/newsite/index.php?option=com_content&view=section&layout=blog&id=5&Itemid=68&lang=en

commission should then take up the roles of the NBI as a multinational organization protecting the interests of the Nile River Basin Countries.

Egypt and Sudan have been opposed to the enactment of the CFA because of its water sharing clauses. Cairo insists that any negotiations on the sharing of the Nile waters should be under the existing treaties because all the issue the riparian states could raise can be met under the articles of the existing treaties. As such, Egypt does not think that the CFA will take care of its interests. Egypt opposes the CFA because if it signs the CFA, then it will become a peer with the other riparian states hence it will lose its sweeping powers over the Nile. However, failure to join the CFA is compromising Egypt's future hold on the Nile because the CFA may not fully cater for Egypt's interests if it is not part of the negotiations. The weakened position of Khartoum in the Nile basin after South Sudan's secession also weakened the power of the 1929 and the 1959 Nile Basin Treaties. It is therefore important for Egypt to consider its involvement with the CFA because it may be the best means of protecting its upstream interests.

The NBI is peculiar to the other Nile Basin Treaties because it is a multilateral approach to the sharing of the resources of the Nile Basin. It has no precedence in the Nile Basin. Peculiar enough, it is the first effort towards developing an international agreement that does not have the interests of Egypt as its primary concern. The NBI also has the broadest support for any treaty signed in the Nile Basin.

South Sudan's Options on these Treaties

In respect to the effective treaties covering the Nile Basin, South Sudan must make choices based on the 1929 and the 1959 treaties, and in relation to the CFA as fronted by the NBI. Juba must

make this decision in light of its status as a new nation, and in the context of its international obligations. In this sense, it has to decide whether it should pursue its international obligations based on the international law of succession or to follow the Nyerere doctrine. One of the goals of this project is to examine the implications of Juba pursuing their interests in the Nile Basin using an idealistic approach.

IV. An Idealist Perspective on the Treaty Making Process

Approaches to Treaty Making in the History of the Nile Basin

Britain was responsible for most of the Colonial era Nile Basin treaties. Britain had a clear strategic goal of controlling all of the Nile waters to benefit its Egyptian interests. As such, Britain pursued a realist philosophy to implement its treaties. In all the treaties, Britain always came up with ways of reducing the legal power of the co-signatories to the treaties. In the end, Egypt ended up with a powerful treaty with powers over the riparian states. Egypt upholds its historical rights to the Nile as its basis for insisting on the validity of the treaties. After the departure of the British, Egypt continued to use the lens of realism to tackle Nile Basin politics. Pre-referendum Sudan also followed Egypt's example by cooperating in the establishment of a two-nation monopoly over the waters of the Nile.

The NBI has provided the Nile basin with a common initiative to deal with the issues of resource sharing and conservation. Egypt and Sudan are members of the NBI but they are not ready to sign the CFA because they feel it will threaten their current hegemony on the Nile. The two countries are still led by their realist approach and are more concerned with what they will lose

than what the situation should be like⁶². Britain, and later on Egypt and Sudan, have pursued a realist approach to treaty making in their Nile Basin affairs.

On the other hand, the NBI emerged from the riparian states that wanted a share of the Nile waters without the need to pass their projects through Cairo for approval. These countries believed that an intergovernmental agency would be the best-placed institution for establishing some kind of long-term management program of the Nile Basin⁶³. In other words, these countries did not come to the negotiating table primarily based on their interests, but based on certain ideals about the sharing of cross border resources. The NBI has followed idealist principles since its inception. In fact, its attempt to have all the member countries sign the CFA at the same time was rather idealistic. Since it weakened Egypt's role in the Nile basin, Egypt felt that its interests would be jeopardized by the CFA hence it remains opposed to the water sharing clauses.

South Sudan now finds itself in the middle of this crisis. Should it seek to take care of its interests as a sovereign state by taking a realist stance, or should it join the CFA and pursue its ideals under the NBI? If Juba opts for realism, then it is likely to antagonize the other riparian states because it would put its interests above those of the other countries⁶⁴. This can only escalate the tensions currently experienced in the Nile Basin by the Riparian states based on the position of Cairo and Khartoum. However, an idealist approach may not guarantee Juba's share of the Nile, because it would have a share in the Nile based on the needs of other countries. It

⁶² Donnelly, J. (2000). *Realism and International Relations*. Cambridge: Cambridge University Press.

⁶³ Griffiths, M. (1995). *Realism, Idealism, and International Politics*. London: Routledge.

⁶⁴ Donnelly, J. (2000). *Realism and International Relations*. Cambridge: Cambridge University Press.

seems that this approach will at least reduce tensions because all the countries will have some share in the Nile and will be working cooperatively, rather than competitively. Juba needs more friends now hence it is likely to pursue an idealist stance through the NBI, and then the CFA. For this reason, the focus of this paper will now shift to the issues that will surround an idealist approach to treaty making that will inform Juba's decisions on the Nile.

The Application of an Idealist Perspective by South Sudan

The question at the heart of the efforts to find out the scenarios Juba will contemplate is whether South Sudan is an idealist or a realist state. Idealism refers to a philosophy of ideals and aspirations towards the emergence of an "imagined society"⁶⁵. Idealists will start with the perfect picture and work backwards to find the path there. Realists on the other hand start from present needs. At the international level, these needs form a set of "interests" around which State policy converges⁶⁶.

South Sudan is a new country. It recently emerged from one of the longest running civil wars in the world. Under its first government, the country is building the infrastructure necessary for it to operate as a modern nation. After independence, most African countries took on idealism as a guiding philosophy⁶⁷. The countries sought to find ways of achieving their aspirations based on the high ideals of humanity. The colonial era was difficult for many natives. Most colonialists

⁶⁵ Griffiths, M., O'Callaghan, T., & Roach, S. C. (2008). *International Relations: The Key Concepts*. London: Taylor and Francis.

⁶⁶ *Ibid*

⁶⁷ Wyk, J.-A. v. (2010). The African Union Response to Climate Change and Climate Security. In D. A. Mwiturubani, & J.-A. v. Wyk (Eds.), *Climate Change and Natural Resources Conflicts in Africa*. Pretoria: Institute for Security Studies.

limited the rights of the natives and controlled their opportunities. Independence meant self-rule and internal self-government. Since many countries had gone through dehumanizing treatment or living conditions, they looked forward to the newfound freedom. In other words, many African countries held freedom as one of the fundamental human ideals. Many of the first governments used the philosophy of idealism to paint the vision they had for the country.

South Sudan is going through a similar set of circumstances as the other African countries at independence. The optimism in Juba is palpable. This predisposes the country to idealism as the guiding principle in its international relations. In that regard, South Sudan will make decisions on the Nile from an idealist perspective. The NBI will offer it more security since Juba is still sensitive to the need for peaceful coexistence, having just come from war. Just like the League of Nations succeeded the First World War, and the United Nations succeeded the Second World War, the NBI is the institution that will guarantee peaceful and equitable sharing of the Nile waters in the eyes of Juba. The Sudanese war was a conflict over resources. The Nile Basin can lead to eruption of conflict in the Nile Basin. Juba is not likely to make a decision that will lead to war now because of the consequences the country is handling. Therefore, it is reasonable to expect that Juba will support the NBI full heartedly rather than enter into a bipartisan deal with Cairo or Khartoum.

Idealism tends to be the default philosophy used by new states because of their high level of optimism. Since many countries normally become states after a period of war, idealism usually seems very attractive. Idealism tends to give the hope for the restoration of a dignified human existence for the populace. Similarly, it makes a sense of humanity more desirable than the basal

instinct of war. Juba is going through this situation. It is at the point in its history where the country needs hope and inspiration. It is ripe for idealism. After many years of hard work and the discovery of new challenges, the country will slowly move away from those ideals into a realist stance, unless there are interludes of serious conflict.

Policy Directions

South Sudan will pursue two policy directions in its engagement with the Nile Basin Politics. First, it will engage in the pursuit of the Nyerere Doctrine of Selective Succession. Its main justification will be that at previous treaties did not have the interest of South Sudan in mind. This is because of the marginalization experienced by the South under Khartoum. Juba will use the documented injustices as proof that Khartoum never cared about the South. Rather, it used the South to bolster its negotiating power in order to benefit Khartoum. This is a position consistent with idealist thinking. Under ideal circumstances, every new state requires the right to determine which obligations it will keep from those the predecessor state took commitments to keep.

Secondly, Juba will pursue the path of equitable sharing of resources because the other options it has are not ideal. Unlike Cairo, Juba is not just concerned with its own interests. It desires to enjoy its newfound freedom and to acquire dignity as a new country. Therefore, Juba will pursue a path that promises long-term peace and stability for the region. A pact with the plenipotentiaries of the 1929 and the 1959 treaties will not guarantee South Sudan the relationships it desires with the other riparian states. Therefore, following an idealist philosophy, South Sudan will participate in the NBI rather than in the renegotiation of the 1929 treaty. It is possible that Egypt would prefer to negotiate with South Sudan to assure it of some share of the

Nile. It is easier for Egypt to influence one country rather than the entire NBI countries about the Nile waters. Juba will have to disregard such overtures even if they promise a greater portion of the Nile waters compared to the portion it will get under the NBI.

Nile Basin Treaties in the Context of Climate Change

In the broader context of development issues that will influence the decision of Juba, Climate change is also a critical factor⁶⁸ (Zenter, 2011). The riparian states are under an increasing burden to find ways of managing climate change. In its quest for survival, part of Juba's climate change adaptation mechanism will be by participation in the NBI. Once more, Juba will find it ideal to deal with the NBI than to make deals with Egypt and Sudan as it finds ways of dealing with the consequences of climate change. The role of climate change in Nile Basin Politics will form the subject matter of the next chapter.

V. Conclusion

In the final analysis, Juba has a predisposition towards idealism because of its stage of growth as a nation. The country is recovering from the consequences of prolonged war. It desires to achieve stability and to find its place in the community of nations. As part of this desire, South Sudan will make decisions that promote the most harmony in the region. It will do its best to avoid antagonizing other nations around it. It is however not going to be a pushover state. It will still be led by its ideals and is likely to go to great lengths to achieve these ideals.

⁶⁸ Zenter, M. (2011). *Design and Impact of Water Treaties: Managing Climate Change*. Berlin: Springer.

CHAPTER 3

THE ROLE OF CLIMATE CHANGE IN NILE BASIN POLITICS

I. Introduction

One of the significant discussions that took place in the recently concluded international summit on the environment, Rio+20, was the need to elevate the United Nations Environmental Program (UNEP) to a fully-fledged UN agency⁶⁹. This discussion underscored the increasing apprehension that many scholars and development agencies feel in relation to the inadequacy of existing environmental conservation efforts. There was a feeling that the world needs to do more to stem the tide of global warming. This apprehension is not limited to researchers and environmental experts.

Politicians and policy developers in many countries also share the anxiety related to the uncertainties emanating from global warming and climate change. While developed countries such as the USA and Canada are reluctant to commit themselves to significant reductions in emissions because of the potential effect on manufacturing in their countries, they promote climate change adaptation as a response option to global warming. Despite these efforts, developing countries are least prepared to deal with climate change. Most of the Nile Basin countries are already suffering from the consequences of climate change. The objective of this

⁶⁹ Lean, G. (2006). *Disappearing World: Global Warming Claims Tropical Island*. Retrieved September 5, 2012, from The Independent: <http://www.independent.co.uk/environment/climate-change/disappearing-world-global-warming-claims-tropical-island-429764.html>

chapter is to examine the effects of climate change on the Nile Basin, and to analyze the efficacy of existing efforts towards dealing with global warming, in the context of Nile Basin politics.

II. Significance of Climate Change in Nile Basin Politics

The overall concern of this paper is the examination of the effects of the creation of a new state within the Nile Basin in the resource sharing politics of the region. Several broad themes encapsulate this discussion because of their significance in Nile Basin diplomacy. In this regard, there are four compelling reasons necessitating the inclusion of a discussion of climate change in the discussion of Nile Basin politics. These reasons include the increasing possibility of international resource conflicts, greater demand for Nile Basin resources for climate change adaptation, and the fact that Nile Basin is an active political and diplomatic issue. South Sudan is an active participant in this process, and its decisions in regards to the Nile will have an effect on the progress of negotiations involving the East African countries and their Northerly neighbors.

First, climate change is an aggravating factor in the ever-increasing potential for resource conflict in the Nile Basin.⁷⁰ From the macro- level, climate change is affecting almost all the operations of businesses and institutions across the world. Going green is an ever-recurring theme for corporations and non-profits. At the local level, small holders are experiencing extreme conditions affecting their capacity to provide for their needs. One of the high profile conflicts that had roots in climate change was the unresolved trans-boundary dispute between Kenya and Uganda regarding the Migingo Island⁷¹. While the immediate circumstances of the

⁷⁰ Mwebaza, R. (2009). The Impacts of Climate Change in East Africa. In R. Mwebaza, & L. Kotze (Eds.), *Environmental Governance and Climate Change in Africa: Legal Perspectives*. Pretoria: Institute for Security Studies.

⁷¹ Mwanika, P. A. (2010). Natural Resources Conflict. *ISS Paper 216*, pp. 1-12.

conflict was the question of the position of the international border between Kenya and Uganda along Lake Victoria, the underlying issue was protection of fishing grounds. Fishermen from both countries found themselves in each others' way as they sought to access richer fishing grounds within the lake. There is a reduction in the yield from the lake occasioned by changing climate, among factors such as destruction of spawning grounds, and an increase in fishing activities because of unreliable agricultural output.

Secondly, strategies for climate change adaptation require greater use of Nile Basin resource by the riparian states. Agriculture is the main economic activity for the Nile Basin Countries. Most of the water used for agriculture comes from rainfall. This is despite the fact that in most regions of the world, rain-fed agriculture is no longer the model used for crop production. Most countries in the Nile basin are actively planning to move to irrigation-fed agriculture to increase yields and to reduce the impact of erratic climatic patterns.⁷² Naturally, the catchment areas of the Nile are the best sites for irrigation. In addition, the destruction of forestland in the Nile Basin also requires a new energy generation strategy. The use of firewood and charcoal is responsible for the destruction of forests in the Nile basin. As such, development plans in the region envisage increased power production from the rivers some of which form part of the Nile Basin. In this regard, climate change is an important issue in the politics of the Nile Basin.

⁷² Wesangula, D. (2012). *Food Crisis Looms, Warns UN Report*. Retrieved September 3, 2012, from Daily Nation: <http://www.nation.co.ke/News/Food+crisis+looms++warns+UN+report+/-/1056/1320406/-/2ysk8x/-/index.html>

The third reason why climate change is an important element of this work is that climate change is an active political and diplomatic issue. The history of treaties associate with the Nile Basin is a history of diplomacy and international politics. Therefore, it is imperative to include a discussion of climate change as part of the analysis of the effect of the creation of South Sudan in Nile Basin Politics. South Sudan is as vulnerable to climate change as the rest of the riparian states that lay along the Nile Basin. Its response to the current negotiations surrounding the use of Nile basin resources will take into account the effects of climate change on its existence. As the impacts of climate change increase in magnitude, there will be more resource related conflicts relating to land use, the management of water catchments, international boundaries, and jurisdictions. Most of these issues have political and diplomatic perspectives that will require appropriate interpretation.

III. Biomechanics of Climate Change

The terms “climate change” and “global warming” have become part normal discourse for many professionals regardless of their disciplines.⁷³ This is the result of incessant environmental diplomacy led by environmental activists and environmental scientists. These efforts are responsible for the widespread acknowledgement of the need to conserve the environment for posterity. Climate change refers to shifts in climate patters usually lasting several decades. There are natural, and man-made causes of climate change. Global warming is the most significant driver of climate change. When global warming is the result of human activity, the term used to

⁷³ Mwiturubani, & J.-A. v. Wyk (Eds.), *Climate Change and Natural Resouces Conflicts in Africa*. Pretoria: Institute for Security Studies.

refer to it is anthropogenic climate change.⁷⁴ However, many natural processes also contribute towards global warming.

In the Nile Basin, climate change is part of the significant forces shaping the nature of debates into the use of the Nile Basin resources. There is need to examine the biomechanics of climate change in order to contextualize the issues that will drive policy in the Nile Basin. With climate change, countries undergo severe disruptions in weather patterns which affect the pace and direction of development. In recent years, there has been an increase in proponents of climate change adaptation. These proponents realize that it might be too late or too costly to reverse the effects of man's activities on the climate over the last two centuries. They contend that it is easier to prepare to live with the consequences, and to make the best out of the existing situation.⁷⁵

The earth receives all its recurrent energy requirements from the sun, with the exception of geothermal energy, which was locked up inside the earth during the formation of the earth. The recurrent energy supply to the earth comes in the form of shortwave radiation from the sun during the day. This radiation is part of the solar radiation spectrum that includes ultraviolet radiation, infrared radiation and the visible spectrum. When the shortwave radiation hits the surface of the earth, it is converted to heat, and long wave radiation. Most of the long wave radiation escapes into space provided there is no cloud cover. In this case, the clouds reflect back

⁷⁴ Twongo, T. K., & Bugenyi, F. W. (2006). Freshwater Related Issues of the Lake Victoria Basin. In *Environment for Development: An Ecosystems Assessment of Lake Victoria Basin Environmental and Socio-Economic Status, Trends and Human Vulnerabilities*. Nairobi: UNEP and PASS.

⁷⁵ Adar, K. G., & Check, A. N. (2011). *Cooperative Diplomacy, Regional Stability and National Interests: The Nile River and the Riparian States*. Pretoria: Africa Institute of South Africa.

the long wave radiation and cause the atmosphere to heat up. This mechanism makes life possible on earth by ensuring that sufficient heat from the sun remains trapped in the atmosphere to support life.

Apart from the clouds, the atmosphere also contains greenhouse gases in minute quantities. These gases play a vital role in maintaining the atmospheric temperature of the earth within a range that supports life. The temperature change on the surface of the earth is responsible for atmospheric conditions. The earth's hydrological cycles depend on these temperature changes to work, as we know it. If for some reason, the earth retains more heat than it should, the result is an increase in global temperatures. The phenomenon where a condition exists that encourages the retention of heat in the earth's atmosphere is what experts call global warming. This phenomenon affects weather patterns across the world. It is responsible for adverse weather such as flooding, droughts, excess precipitation resulting in excessive snow and rainfall. The two main manifestations of the weather extremes are La Nina, which brings about extreme drought, and El Nino, which results on prolonged and heavy rainfall.

The main greenhouse gases are Carbon dioxide (CO₂), Methane (CH₄) and Ozone (O₃)⁷⁶. Other gases of growing significance include the NO_x Gases (Various compounds of Nitrogen and Oxygen), Sulfur gases, and chlorofluorocarbons (CFCs).⁷⁷ CFC's are suspected to be behind ozone depletion. Ozone acts as a UV filter for the earth. Its destruction increases the exposure of plant and animal life to UV rays. This radiation can cause skin cancer in humans. The

⁷⁶ Jindal, R., Swallow, B., & Kerr, J. (2006). *Status of Carbon Sequestration Projects in Africa: Potential Benefits and Challenges to Scaling Up*. Nairobi: World Agroforestry Center.

⁷⁷ *Ibid*

greenhouse gases occur in nature but human activities relating to the burning of fossil fuels have led to an increase in their quantities. On the other hand, the destruction of forests is reducing the capacity of the earth to maintain the carbon balance.

Climate change is a global phenomenon. Once greenhouse gases go into the atmosphere, the effects are not localized in the area of production. The new gases join the global gas cycle leading to effects in other places around the world. This means that a localized strategy is insufficient in the management of the effects of climate change. This is also the thinking behind the buying and selling of carbon credits in the global market. One region may have a carbon deficit, while another has carbon surplus. The deficiency arises from exceeding carbon quotas set by an environmental management body. The two regions enter into an agreement to exchange the extra carbon from the region with carbon surplus to the needy region. This exchange is the drive behind the international carbon markets.

The Nile basin is not heavily industrialized compared to world standards. However, it is one of the most vulnerable regions of the world to the effects of climate change. Adverse weather linked to climate change is responsible for flooding and drought, which in turn leads to famine.

Recently, OXFAM led a worldwide appeal for Ethiopia as a response to the devastating famine in the country. In Kenya, the private sector came together through the Kenyans for Kenya Initiative to help alleviate the suffering of 3.75 million Kenyans especially in the in the Northern region, who faced starvation.⁷⁸ The incidents of drought and famine in the Horn of Africa seem

⁷⁸ Wesangula, D. (2012). *Food Crisis Looms, Warns UN Report*. Retrieved September 3, 2012, from Daily Nation: <http://www.nation.co.ke/News/Food+crisis+looms++warns+UN+report+/-/1056/1320406/-/2ysk8x/-/index.html>

to be on the rise. The resources of the Nile basin, especially for use in irrigation, are one of the long-term solutions to this challenge.

IV. Impacts of Climate Change in the Nile Basin

It is important to differentiate the primary and secondary impacts of climate change because of the complexity of isolating the role of climate change in socioeconomic trends. Primarily, climate change, through the agency of global warming affects the distribution of weather patterns. Its main agents are shifts in wind patterns, changes in volume of precipitation, and temperature variance. These changes set in motion several secondary impacts affecting plant and animal life. Historically, human beings have organized themselves according to their climatic circumstances. People in different places adapted to their local climates or migrated to regions with more adaptable climates. This took hundreds of years. The Egyptians for instance planned their economy around the cycles of the Nile water. With changes in the hydrological and thermal cycles, rapid shifts in the climate will bring about changes in local climates that will upset the existing economic and social patterns. There is no time to move to other regions to adapt. If anything, every locale is dealing with local climate changes. Below is a detailed look at two of the three primary impacts of climate change.

Primary Impact

Primary Impacts

1. Precipitation

Precipitation refers to all wet weather activities. It includes all forms of rainfall, snow, fog and mist, and Increase in precipitation in the Nile basin will lead to more instances of severe

flooding. It will have an effect on the local plant and animal life especially those adapted to low precipitation. On the other hand, reduced precipitation in some regions will also lead to loss of some plant and animal species adapted to higher levels of precipitation.⁷⁹ While these two situations are clearer to analyze, there is the problem associated with varying levels of precipitation. This is common with alternating cycles of drought and floods becoming more prevalent in the Nile basin. This fluctuation is more dangerous because it precedes crop failure, plant and animal disease outbreaks and other weather related catastrophes.

2. Temperature

Temperature is a very important aspect of climate. By far, the temperature increase is the greater result of climate change but with some regions experiencing a reduction of temperature. The most significant effect of rising temperature is the increase in the volume of water in the oceans occasioned by the melting of glaciers in the Polar Regions. The glaciers in the poles have been melting leading to widespread fears that some low-lying islands and continental coastal regions will submerge. In fact, India lost an inhabited Island in 2006 called Lohachara Island due to rising sea levels.⁸⁰ Temperature differentials also will affect the major trade winds, which depend on temperature differential to operate as they currently do. The result is that some regions will experience drier weather because of shifts in the direction of the major trade winds. At local levels, changes in prevalent temperature will affect the rate of growth of plants, animals, and microorganisms. It may result in the introduction of new pests and diseases to new areas because of local conditions changing to provide optimum conditions for the infestations.

⁷⁹ Zenter, M. (2011). *Design and Impact of Water Treaties: Managing Climate Change*. Berlin: Springer.

⁸⁰ Lean, G. (2006). *Disappearing World: Global Warming Claims Tropical Island*. Retrieved September 5, 2012, from The Independent: <http://www.independent.co.uk/environment/climate-change/disappearing-world-global-warming-claims-tropical-island-429764.html>

Secondary Impacts

Apart from the primary impacts, climate change brings about secondary impacts. The discussion below focuses on the Socioeconomic and political Impacts of climate change.

3. Socioeconomic Impacts

a) Loss of Sources of Livelihoods

Many people in the Nile basin will lose their livelihoods because of climate change. In the Lake Victoria basin, fishing is one of the main economic activities employing about 1 million people directly and indirectly.⁸¹ With changes in local weather patterns, there is a change in the breeding patterns of fish. This is increasing the cross border conflicts between fishermen from the three countries sharing the resource. Apart from the weather, there is increasing concern that there is a reduction in the fish stocks held in the lake caused by over-fishing. Apart from fishing, farming is also becoming less productive because of erratic rainfall. In the last few years, rivers draining their waters into the lake have caused flooding of increasing severity because of heavy rainfall in the catchment areas. On the other side, the same regions suffer from crop failure because of inadequate or irregular rainfall. With reduced fish and agricultural yields, many inhabitants of the Nile basin will soon have no economic activity to support their livelihoods. In the Horn of Africa, the last two decades have been very difficult for livestock farming. This region depends on livestock rearing as the main economic activity. The government of Kenya has intervened severally through livestock off take programs to reduce the losses pastoralists may incur during the drought years⁸².

⁸¹ Mwanika, P. A. (2010). Natural Resources Conflict. *ISS Paper 216*, pp. 1-12.

⁸² *Ibid*

b) Increase in Crime and Social Dysfunction

Whenever there are insufficient job opportunities, social ills become more prevalent. Already, the unemployment levels in the Nile basin are high. Further reduction in economic opportunities because of the consequences of climate change will aggravate the problem of unemployment. The consequences of this will include increasing levels of crime in the Nile Basin.

c) Increase in Disease Prevalence

Some diseases are specific to certain locations. For instance, malaria thrives in the tropical climate. The mosquito bearing the disease prefers warm and wet regions for optimal reproduction. Therefore, malaria tends to be endemic in areas with the suitable climatic conditions. With the advent of climate change, new regions are becoming more susceptible to malaria because they are becoming wetter or warmer than usual. The residents tend to be poor adapted to these diseases hence the disease burden increases. Plant and animal diseases and infections also follow these patterns. Disease strains previously non-existent in certain regions are becoming more prevalent. The result is that there are reduced yields from farming activities and livestock rearing. The cost of prevention is increasing. In addition, the cost of research and surveillance is also on the rise. This is because of shifts in traditional disease trajectories and maps.

d) Loss of Energy Resources

Climate change is also leading to a loss of traditional energy sources. Most of the area around the Nile basin still relies on firewood and charcoal for energy. Changing plant life is making it difficult for local communities to find sufficient quantities of energy resources. This effect is

closely embedded to the fact that cutting down of trees also causes environmental degradation, which further aggravates climate change. As it is, the two aspect of climate change are part of a vicious cycle.

4. Political impacts

a) Increased political agitation

Climate change is already the subject of many international level conflicts pitting industrialized countries against developing countries. This comes from the feeling that the developing world is paying the price for the development enjoyed by developed countries. The industrialized world depends in vast quantities of fossil fuel to keep their mechanized economies growing. Combined, the richest countries are responsible for most of the world's greenhouse gas emissions.

Within the Nile Basin, the political issues emanating to climate change are not related to industrialization. Rather, they come from the consequences of climate change. The high profile diplomatic conflict between Kenya and Uganda over the Migingo Islands was a conflict over fishing grounds in as a much as it was a conflict about territory. The rocky outpost in Lake Victoria happens to be a rich fishing ground too. In the same vein, the resource wars in the South Sudan and the Sudan may become worse if the two countries come under pressure to utilize more of their oil to combat climate change.

At the local level, there may be an increase in the number of militias and the emergence of rebel groups. The current dire situation of proliferation of small arms can only make the situation worse. Kenya has seen many gangs emerge espousing radical ideologies. These groups include the Sabaot Land defense Force (SLDF), which was vanquished by the Kenyan military in 2008.

Other groups in this category include Mungiki, Kamjesh, among other outlawed terror outfits. The most recent incarnation of increasing political agitation, with demands hinges on land resources is the Mombasa Republican Council (MRC), which is advocating for cessation. While land ownership is the thread that weaves these groups together, a keen look at these conflicts reveals an attempt to gain and control resources in order to adapt to economic challenges that are worsening as a result of climate change. In fact, the Kenyan Post Election Violence (PEV) of 2007, also had land issues as the main factor fuelling the conflict. Land as a basic resource is becoming more precious because of the need to use it for economic activities. In the minds of many, land is the best resource to use to adapt to climate change.

V. Analysis of the Impact of Climate Change

Climate Change is Aggravating Development Challenges

Climate change is making development challenges worse for the riparian states. Through the agency of global warming, the countries are dealing with a severe form of the same challenges that hinder development efforts. In addition, the secondary impacts of climate change such as disruptions in agriculture, loss of livelihoods, increase in disease burden all serve to worsen the poverty incidence and life expectancy. Most of these development challenges already form serious bottlenecks to the riparian states. However, climate change is making the situation even worse. As every country tries to move out of the vicious cycles affecting development priorities, they will need to use more of the Nile basin resources, which may culminate in conflict.

Climate Change is Increasing Competition for Resources

Competition for resources is already very high in the Riparian states. The cross border conflict between the pastoralist communities of North Western Kenya, and those from Western Uganda have existed for a long time. However, these conflicts seem to be on the rise because of dwindling stocks and greater difficulty to access pasture and water. This conflict is symptomatic of the challenges that the Nile Basin will face. A similar conflict exists between Kenyan pastoralists of North and North Eastern Kenya, and the Oromo people from the South of Ethiopia.

Climate change advocacy will increase in importance

There is also increasing need for environmental diplomacy both in the Nile Basin and internationally. There are concessions such as financial incentives for countries that can offer carbon credits to industrialized nations. As time passes, the value of carbon credits will increase because of greater restrictions on emissions and the reduction carbon sinks across the world. The riparian states have a greater negotiating power in the carbon markets if they negotiate as a block rather than if they go to the carbon markets individually.

VI. Climate Change and Institutionalism

The emergence of the Nile Basin Initiative (NBI) demonstrates the faith that most of the riparian states have in institutions. Institutionalism is an approach to international diplomacy, which promotes the use of institutions in the economic and political processes of a society.⁸³ The basic tenet of institutionalism is the belief that institutions exert influence over nation states wherever

⁸³ Encyclopaedia Britannica. (2012). *Institutional Economics*. Retrieved August 14, 2012, from Encyclopaedia Britannica: <http://www.britannica.com/EBchecked/topic/289311/institutional-economics>

their interests coincide, or collide.⁸⁴ This theory has its foundation in idealism. The most important institution in the Nile Basin is the NBI. From the perspective of institutionalism, the role of the NBI in Nile Basin Politics is very significant. While it may not have much power over each independent nation, it still represents the best efforts towards a just and civil appropriation of Nile basin resources among the member states. It is important to note that NBI is not supposed to bring about agreement among the Nile Basin states. Rather its role is to find an acceptable position among these states to deter conflict. Proponents of institutionalism accept that in negotiations, agreement is not as important as concurrence. More often than not, parties to a conflict have divergent and often opposing views.⁸⁵ Negotiators, while harnessing the power of institutions, aim at securing a point of concurrence, something acceptable, even if not very in perfect alignment with the interest of the parties in the conflict. In the case of the Nile basin, institutionalism promises to yield the most amicable solution to the issues involved. If the rest of the countries adopt a realist stance, as Egypt is wont, then the conflict can only escalate further.

The NBI is the central institution around which the Nile Basin politics is anchored. The NBI is yet to become a fully-fledged authority until all the members of the Initiative sign a charter geared towards this end. However, the existence of the NBI has made it possible for the region to develop coordinated efforts towards combating climate change. There is an active program between the NBI and the UNEP, Sponsored by SIDA to help combat climate change. The project dubbed, "Adapting to climate change induced water stress in the Nile River Basin" started

⁸⁴ Adar, K. G., & Check, A. N. (2011). *Cooperative Diplomacy, Regional Stability and National Interests: The Nile River and the Riparian States*. Pretoria: Africa Institute of South Africa.

⁸⁵ *Ibid*

operations in 2009 and will be active until 2012.⁸⁶ The other partner in this project includes Global Water Support (GWS) who provides the technical advice and policy support for the implementation team. The NBI encapsulates the institutional initiative by the riparian states to find a lasting solution to the resource-sharing imperative.

The African Union is also an important institution in African diplomacy. The African Union has a stronger focus on armed conflict. In recent time, the AU has been on the forefront of negotiations in Libya during the Arab spring, in Somalia through the presence of AMISOM, and in Ivory Coast. It is however an important institution in the affairs of African diplomacy and can act as an arbiter in case the NBI collapses. In fact, the AU has the capacity to encourage the formation of the NBC to forestall such a collapse.

VII. Consequences of Climate Change on Nile Basin Politics

The focus of this paper has been the impact the inclusion of South Sudan in the Nile Basin has on the East African countries. In this chapter, the focus is how climate change affects the political climate of the Nile Basin and by extension the diplomatic efforts underway to resolve the Nile Basin conflict. The following issues relate to these issues.

Escalation of the Potential for Conflict between Riparian States

Climate change is increasing the potential for large-scale conflict between the riparian states.

Local level conflicts are already in play based on competition for resources. The resources include grazing lands, farmlands, and water. With greater changes in the environmental

⁸⁶NBI. (2012). *About Us*. Retrieved July 13, 2012, from The Nile Basin Initiative: http://www.nilebasin.org/newsite/index.php?option=com_content&view=section&layout=blog&id=5&Itemid=68&lang=en

landscape caused by global warming, incidents of conflict are likely to increase. In the event that any two riparian states declare war on each other, progress towards the NBC will be slow or may stagnate altogether. In fact, if such a war broke out after the creation of the NBC, it would still adversely affect the operations of the NBC.

Climate change adaptation will require greater use of the Nile basin resources by the riparian states. If these demands are not processed through a credible process such as what the NBC promises, then the countries in the Nile Basin may resolve to use other means to access these resources. The worst struggle that can result from this situation is if the Nile Basin resources are insufficient to meet the demands of each country. This situation may lead to intimidation by the stronger states and a loss of effectiveness on the NBI, or NBC.

Cross-border conflict is commonplace in the Nile basin involving local communities. For instance, the Pokot and Turkana people of Northwestern Kenya have been in long-standing conflict with the Karamojong people of Eastern Uganda. On the other hand, there have been several incursions into Kenya by ethnic Ethiopian raiders propped by the Oromo Liberation Front based in the South of Ethiopia. These conflicts are restricted to the community level. They have never brought serious national responses from the countries. However, with increasing pressure to adapt to climate change, the local level conflicts are likely to become wider in scale. It is important to note that these conflicts do not just happen across international borders, but they also take place within the countries between various communities.

The East African region will need to develop robust systems stem the potential for conflict. The recent independence of South Sudan will increase the potential for cross border conflict with communities in Northern Uganda and Northwestern Kenya. If the countries fail to find permanent solutions to their local conflicts, then the NBI will fail to reassure the entire region of the aspirations that led to its creation. This situation would be the precursor to a full-scale resource conflict.

Climate Change in Development

Climate change is having a growing impact on the development priorities of the Nile Basin states. All the countries in the Nile basin with the possible exception of Egypt are classified as developing countries. They are the key targets of the UNDP's millennium development goals. There will be increasing pressure for governments in the Nile Basin and regional authorities to step up poverty eradication efforts. The resources of the Nile will obviously become more attractive as the solution to the development challenges. A failure by the NBI to arrive at a conclusion regarding the formation of the NBC will lead to desperation from member states. These states will seek ways of using the Nile basin resources to solve their local problems. The problem with this is that such efforts will fail to optimize the use of these resources and will lead to the uncoordinated exploitation of the Nile Basin resources.

On the other hand, the credibility of the threat of military action by some states against others may also limit the degree to which the region can benefit from the resources of the Nile Basin. While there are sustainable ways of using the resources, the fear that some upstream nations will misuse the Nile may make it very difficult for downstream nations to allow their counterparts to

exploit the resources of the Nile Basin. Egypt and Sudan stand to suffer the most if downstream countries do not utilize the resources of the Nile sustainably. As such, they will tend to resist any efforts that allow the upstream states to exploit the resources of the Nile Basin. This position will have a negative effect on the development prospects of the East African states.

South Sudan is a late entrant to the competition for resources in this region. However, the country needs its share of the Nile to develop its economy. The country has some of the worst indicators on the MDGs and needs to expand its economy very fast. Juba will be very motivated to use its share of the Nile to solve its food problems, and its unemployment challenges.

Ironically, the country with the best example of the capacity of the Nile waters to develop a country is Egypt. The country relies on the Nile for its agricultural and industrial production. If South Sudan uses Egypt's model to develop its resources, then the conflict in the Nile can only escalate.

Impact on Local Politics

There is no doubt that as the impact of climate change becomes more pronounced, there will be increasing pressure in all the riparian states to act to mitigate the effects of climate change on their economies. National and local politics in the regions situated along the Nile basin will become more radical when it comes to the use of the resources of the Nile. In each of the riparian states, climate change calls for mitigation measures to ensure that the locals are able to survive the global phenomenon. One obvious result of this situation is that the use of the Nile will form part of the strategies needed to enable countries to deal with climate change. Consequently, there will be greater political rhetoric regarding the inequalities of the existing resource sharing agreements. With pressure from their constituencies, politicians will tend to support policies that

encourage the use of the resources of the Nile in their own regions. This situation will precipitate a resource competition among the Nile Basin states.

As stated earlier, the pressure of climate change and the resultant need to mitigate the impacts of climate change in the riparian states will lead to a coordinated effort towards the management of the resources of the Nile Basin, or it will increase the tension existing between the riparian states. South Sudan is particularly vulnerable to this pressure because of its existing nationalist sentiment after its recent ascension to statehood. The national mood in South Sudan is such the country wants to assert its sovereignty in international issues. National politics in South Sudan will tend to follow a nationalist streak.

For the East African countries, the effect of climate change on local politics is dangerous only to the extent that it promotes tension in the region. These countries prefer a negotiated settlement to the issue of the Nile. In this respect, if eventually there is no coordinated effort towards the sharing of the resources of the Nile Basin, then the countries may resort to local policies on the use of the waters of the Nile to meet the local political demands. This will lead to an escalation of tension between the states as each struggle to make the most out of the Nile Basin resources in its territory.

Increasing International Interest in the Nile Basin

The Nile basin is an increasing region of interest to the international community. The region is not only a large market, but is fast becoming a focal point in the fight against global warming. Both the East, led by China and India, and the West, led by America and Britain have a lot of interest in the region. On the surface, the west primarily pushes for democratic ideals while the

East tends to have a sharper focus on trade. However, the main issue at play is the entrenchment of international influence in the African continent.

In the issue of global warming, the Nile basin is seeing a rise in carbon sequestration projects. Currently, there is an effort by Uganda to benefit from carbon trading through the Nile Basin Reforestation project.⁸⁷ The green belt movement runs several projects of that nature to benefit local communities in Kenya.⁸⁸ The East African region is becoming an important region in carbon trading because of its natural forests. This is increasing the international attention that the region is enjoying.

This interest in the Nile Basin because of the potential of the region to help in the fight against global warming is good news to the entire region. This is because countries with a carbon deficit will have to take into account the socioeconomic needs of the locals as they engage in carbon trading. These countries will invest in the social stability of the riparian states to deter any developments that can jeopardize the carbon exchange agreements. With increasing focus on the region, foreign countries will seek to ensure local communities have sustainable livelihoods. This will lead to greater foreign direct investment and increase in development aid to the Nile Basin. On the other hand, the international interests in the region may also frustrate local efforts towards pursuing indigenous solutions to local problems. If the Nile Basin countries revert to the overreliance on development aid for its development, then the progress in this regard will not be different from the situation after independence.

⁸⁷ Jindal, R., Swallow, B., & Kerr, J. (2006). *Status of Carbon Sequestration Projects in Africa: Potential Benefits and Challenges to Scaling Up*. Nairobi: World Agroforestry Center.

⁸⁸ *Ibid*

For South Sudan, increasing international interest will lead to greater awareness of the development challenges in the country and the trading opportunities available. This can result in the creation of development opportunities that otherwise would not have become available to the country. At the same time, a nationalist sentiment in the country can lead to xenophobia and a reactionary streak as a response to suspected neocolonialism. The leaders of the country will have a great role to play in the conduct of international relations to ensure that nationalism does not degenerate to Jingoism and Xenophobia.

The East African states will in all likelihood benefit from such attention. Carbon trading and environment based development assistance should lead to better living conditions for the local communities. Carbons sequestration projects encourage local communities to maintain their environment hence it allows the microclimate to remain more or less unaltered by global warming. The immediate benefit is a healthier environment. The benefits of this include a lower disease burden. On the other hand, the projects attract foreign exchange, which if well used can spur economic development for the local populations. Based on the successful implementation of carbon sequestration projects, the Nile Basin seems set to benefit from the resources of the Nile.

VI. Conclusion

Climate change is undoubtedly a very important factor in Nile Basin politics. This global phenomenon is escalating resource competition in the Nile Basin. As the world transits to climate change adaptation, the Nile Basin countries are in a situation where they must take advantage of the opportunities presented by climate change adaptation. If they do not make this opportunity work for them, then the current crisis will spiral into a resource conflict. Climate

change diplomacy is an important part of this process. All the riparian states need diplomats well versed in the issues of climate change to champion for climate change adaptation strategies.

CHAPTER 4

DIPLOMATIC ISSUES AND CHALLENGES IN THE NILE BASIN

I. Introduction

The Nile basin supports 40% of the entire African Population.⁸⁹ It is a wonder that there has been no war yet regarding the use of this resource. Egypt depends on the Nile entirely for its economic life. The country cannot support itself without using the waters of the Nile. The other riparian states depend on the Nile to varying degrees. This chapter takes a closer look at the conflict situation that the riparian states in the Nile Basin find themselves in the context of the emergence of South Sudan as a new state in the Nile Basin.

The use of the word “conflict” is deliberate. The word does not mean war, but represents the diplomatic tension present in the Nile basin. It provides a firm basis for the discussion of the relevant diplomatic choices the East African countries have. There is a growing disenchantment against Egypt’s monopoly in the use of the Nile waters. The basis of the existing tension is a set of colonial era treaties signed between the British government on behalf of Egypt and other riparian states. In addition to this conflict situation, it is imperative to consider the position of each country in the matter of sharing of the Nile Basin resources.

The riparian states are the parties to this conflict and each of them has a position in this matter.

This chapter outlines the diplomatic issues that arise because of the claims of each of these

⁸⁹ UNEP. (2012). *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements: State Succession and the Nyerere Doctrine*. Retrieved May 25, 2012, from <http://www.unep.org/dec/onlinemanual/Compliance/Resource/tabid/594/Default.aspx>

states. The position of each country on the Nile has an effect on the overall diplomatic climate surrounding the use of the Nile waters. There will be an attempt to group the countries into interest groups based on the similarity of their relative needs and diplomatic position on the Nile Basin. The discussion on diplomatic issues will give way to an examination of the diplomatic challenges presented by the relative positions of each country. The final section of the chapter covers the diplomatic approaches available for resolving the Nile Basin conflict using the theories of conflict resolution.

The Nile Basin Conflict

This chapter takes the view that there is an ongoing conflict in the Nile Basin. A conflict does not have to be violent. A conflict becomes one as long as the parties to it have demonstrated conflict behavior.⁹⁰ Bartos and Wehr provided a useful basis for defining conflict by identifying the essential elements of a conflict that were, "parties, issues, dynamics, and contexts".⁹¹ Parties refer to the agitators in a conflict. These can be individuals or groups. In the context of the Nile Basin, the parties to this conflict are the nation states. However, this conflict also includes other parties that are not direct beneficiaries of any resolution process. These parties include the African Union, the British Government, and international environmental agencies.

The main issue causing tension among the riparian state is the use of the Nile basin resources. These resources include fresh water, the flora and fauna of the Nile Basin, and manmade works. The dynamics of this conflict includes the changing nature of arbitration mechanisms, pressure

⁹⁰ Bartos, O. J., & Wehr, P. (2002). *Using Conflict Theory*. Cambridge: Cambridge University Press.

⁹¹ *Ibid*

from climate change, changes in political dispensations, and the increasing role of institutions in conflict resolution. The context of this conflict refers to the overarching issues surrounding the discussions in resource sharing. In addition to these elements, Bartos and Wehr, stated that a conflict comes about because of goal incompatibility or hostility and manifests in the use of conflict behavior by the parties.⁹² Conflict behavior in this sense can be violent or non-violent. So far, there has been no violent conflict behavior at the state level. At the local level, resource related conflicts pitching various communities dependent on the Nile have become more common.

On the other hand, Egypt and Ethiopia are on record stating their willingness to take up arms to protect their interests in the Nile waters. While defining conflict, Bercovitch and Jackson went further to identify the goal of conflict resolution as the identification and resolution of structural causes of conflict, which includes poverty, social, political, and economic inequality, and corrupt governance.⁹³ These issues form the undercurrents defining the Nile Basin conflict because many of the Nile Basin states are suffering from the listed ills and feel that Egypt, which so far enjoys the monopoly over the use of the Nile waters, has better economic stability.

⁹² Bartos, O. J., & Wehr, P. (2002). *Using Conflict Theory*. Cambridge: Cambridge University Press.

⁹³ Bercovitch, J., & Jackson, R. D. (2009). *Conflict Resolution in the Twenty-first Century: Principles, Methods, and Approaches*. Michigan: University of Michigan.

II. Parties to the Nile Basin Conflict

In any conflict, it is possible to map out three classes of parties, namely, primary, secondary and third parties.⁹⁴ Primary parties refer to those who display conflict behavior, and have a direct stake in the outcome of the conflict. Secondary parties are those who have an indirect stake in the outcome of the conflict. Secondary parties are usually allies or sympathizers of the primary parties, and may have an indirect interest in the outcome of the conflict such as trade opportunities. The third group among the parties to a conflict is third parties. Third parties are the arbitrators or mediators in the conflict. Depending on the complexity of a conflict, it is usual to have several subgroups within each class of parties. These subgroups are the specific groups that will suffer or benefit from one or several of the consequences arising from the resolution of the conflict.⁹⁵ Usually, a group within a conflict represents a constituency such that the issue the group articulates extends beyond the interests of the immediate group. Based on the above discussion, the primary parties to the Nile Basin conflict are the riparian states. Each of the ten countries that lie along the Nile basin has a clear interest in the long-term outcome of the negotiation process.

The secondary parties in this conflict are the countries with an interest in the outcome of this conflict. Two countries come in mind. These are Eritrea and Britain. Eritrea does not form part of the Nile Basin hence it is not a direct beneficiary of the outcome of the conflict. However, it has an interest in the outcome of the negotiation because it needs access to the Nile to grow its

⁹⁴ Wehr, P. (1998). *Conflict Mapping*. Retrieved August 8, 2012, from International Online Training Program On Intractable Conflict: <http://www.colorado.edu/conflict/peace/treatment/cmap.htm>

⁹⁵ Ramsbotham, O., Woodhouse, T., & Miall, H. (2011). *Contemporary Conflict Resolution*. Cambridge: Polity Press.

own economy. A large-scale outbreak of war over the Nile will disrupt its national programs. Britain in the other hand has a legacy interest in the Nile. The existing treaties, which precipitated the current crisis, were nearly all signed by Britain. The outcome of this conflict will raise questions regarding British legacy in Africa.

Third parties to the Nile Basin conflict include the United Nations, The IMF and the World Bank, and the United States and Canada. Most of these parties are interested in the Nile Basin because of its relevance to Environmental conservation. There is criticism that this involvement of third parties causes a loss of focus from the fundamental issues in the conflict because of skewed funding of conflict resolution components.⁹⁶ These parties, in the case of the Nile basin, provide resources towards environmental conservation, thereby making it a stronger element of the response without providing balanced support towards the resource sharing elements of the conflict.

A. Egypt

In many ways, Egypt is the protagonist in the Nile Basin Politics. Egypt depends on the Nile waters for up to 97% of its freshwater needs.⁹⁷ In fact, without the Nile, Egypt would not exist, as we know it. The early civilizations of Egypt depended on the Nile hence the historical rights claim in Egypt's arguments regarding the waters of the Nile. Egypt is signatory to the Nile Basin

⁹⁶ Adar, K. G., & Check, A. N. (2011). *Cooperative Diplomacy, Regional Stability and National Interests: The Nile River and the Riparian States*. Pretoria: Africa Institute of South Africa.

⁹⁷ Mwebaza, R. (2009). The Impacts of Climate Change in East Africa. In R. Mwebaza, & L. Kotze (Eds.), *Environmental Governance and Climate Change in Africa: Legal Perspectives*. Pretoria: Institute for Security Studies.

Treaties. Britain signed most of them on its behalf during the colonial era. Egypt inherited these treaties, and went in to sign a few more with Sudan after the independence of both countries in 1929 and 1959.

In this conflict, Egypt contends that it deserves the greatest share of the Nile waters because of historical and practical reasons. Its existence depends on the Nile hence any actions by any state to deprive it of the waters of the Nile is a threat to its national security. In this sense, Egypt reserves the right to protect itself from possible annihilation caused by resource deprivation. Egypt is the most reluctant country to sign the framework for cooperation that needs to clear the way for the establishment of the Nile Basin Authority (NBA).

B. Sudan

The Sudan, before the referendum, had a water sharing treaty with Egypt administered by the Permanent Joint Technical Commission for Nile Waters (PJTC).⁹⁸ This treaty apportioned the Nile water flow between Sudan and Egypt. The ratios protected by the treaty were 18.5 and 55.5 billion cubic meter per annum for Sudan and Egypt respectively.⁹⁹ Sudan's claim on the waters of the Nile compare to those of Egypt. However, since Sudan depends on the Nile for much less of its fresh water supplies as compared to Egypt, it seems content with its current share. Sudan is in a dilemma because of the provision in the 1959 agreement that stated that any claims by the

⁹⁸ Abdo, M. (1994). The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin. *Perceptions* .

⁹⁹ *Ibid*

lower riparian starts would be reduced proportionately from the overall flow protected by the 1959 treaty.¹⁰⁰

Considering that Sudan has lost a huge chunk of its territory after the referendum, Egypt must be worried about the effectiveness of the existing treaty because Sudan is no longer able to guarantee that Egypt will receive the volume of water reserved for it by the treaty. In addition to this, Egypt has to decide on whether its alliance with Sudan is strong enough to help it to control the waters of the Nile as it envisaged during the formation of the PJTC. Sudan is in a weakened position to negotiate because of the territorial loss experienced after the referendum on cessation by the South.

C. Ethiopia

Ethiopia is one of the main antagonists in the Nile Basin conflict. Historically, Ethiopia has resisted attempts by other countries to control its use of the Nile Basin waters within its territory. Ethiopia contributes 90% of the Nile waters through the Blue Nile hence it is a key state in as far as the downriver politics go.¹⁰¹ Ethiopia has suffered some of the worst droughts in the last century, which it can reverse by using the resources of the Nile. However, the country had a very troubled history with violent regime changes and experiments with socialism and military dictatorship over the twentieth century, which continues to affect its economic development. As such, the stability of the country in the last twenty years has led to more agitation for it to address

¹⁰⁰ Abdo, M. (1994). *The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin*. *Perceptions* .

¹⁰¹ Adar, K. G., & Check, A. N. (2011). *Cooperative Diplomacy, Regional Stability and National Interests: The Nile River and the Riparian States*. Pretoria: Africa Institute of South Africa.

its development challenges. The waters of the Nile form part of these plans, hence it is on a conflict path with Egypt and Sudan.

Ethiopia is a cooperative member of the NBI. It feels that its interests will be served best by a regional agreement as opposed to bilateral agreements. Ethiopia approaches the Nile issue with the view that as a sovereign country, it has a right to utilize the resources of the Nile within its territory in whatever way it deems fit. It however shows respect for international institutions such as the NBI.

D. The East African States

The East African states find themselves in a jam today because of the historical efforts of the British to control the waters of the Nile as part of its colonial interests. This party to the conflict includes Tanzania, Kenya, Uganda, Rwanda, Burundi, and the Democratic Republic of Congo. Combined, the territories of these countries contribute about 10% of the flow into the Nile that reaches Egypt.¹⁰² Most of the water from these regions evaporates in South Sudan in the Sudd Swamp. While each of these countries has specific claims on the waters of the Nile and hence deserves treatment as separate parties, the interest of this work is in the collective impact of their claims in the Nile. For that reason, this group forms a single party to the Nile Basin Conflict in this work. The most nagging issues propelling claims for the use of the Nile by this party come from development challenges associated with this region of the world. In the Nile basin, unemployment, climate change, and political instability contribute towards the fomenting of the crisis.

¹⁰² Abdo, M. (1994). The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin. *Perceptions* .

The claim of the East African states to the waters of the Nile also border around sovereignty and free use of natural resources within the territories. It is important to mention that Kenya, Uganda, and Tanzania already have local level conflicts over the sustainable use of the Lake Victoria basin. However, there are robust institutions in each of the three countries championing the sharing of the lakes resources, hence reducing the potential of large-scale conflicts. The trans-border dispute relating to the Migingo Island located in Lake Victoria escalated because of the issue of national integrity. However, there is a much larger scale of internal conflicts involving neighboring communities within the Nile Basin. While these conflicts are valid, and contribute to the overall crisis, most of them do not have international significance. The East Africa countries do not consider the Egyptian treaties on the Nile waters as binding. However, none of the countries has undertaken any projects that can cause discomfort to Egypt. This leads to the impression that while the countries do not formally recognize the treaties, they appreciate the sensitivity of the matter hence the creation of the NBI to promote cooperation among the riparian states.

E. South Sudan

South Sudan is a new party to the Nile Basin Conflict. The country was part of the Sudanese territory when Sudan and Egypt signed the 1959 treaty. This means that it can make a claim to the waters of the Nile by invoking the doctrine of state succession. However, the actual volumes of water it will have must be negotiated with Khartoum, and possibly Cairo. However, it is unlikely that Juba will try to join the 1959 treaty. Juba is already a member of the NBI and is in

the process of joining the East African Community.¹⁰³ This shows a Southern orientation by Juba. As such, Juba's claim to the Nile will depend on its immediate and strategic needs. In all likelihood, Juba does not need to take any hard-line stance on the issue because most of the hard work in the NBI has taken place. In summary, Juba has two choices, to look north, or to look south. So far, everything points to looking south.

III. Diplomatic Issues Surrounding the Nile Basin

In order to have a fair view of the challenges bedeviling the NBI in its march towards becoming the NBC, it is important to consider the diplomatic issues surrounding the process. These issues come from the claims of the parties in this conflict regarding the Nile and its resources. It is important to note that the resources of the Nile do not just mean the water resources. It also means all the related benefits that come from the Nile Basin hydrological cycle. The main claims on the Nile are as follows.

Egypt claims to have "historical rights" over the use of the Nile water.¹⁰⁴ The basis of this claim is that the country has used the Nile for a very long time. In addition, the country is almost fully dependent on the Nile for its fresh water needs. Sudan accedes to this claim in the hope that this will bolster its position on the Nile basin politics because of its own reliance on the Nile waters. The upriver countries feel that the treaties signed by the colonial masters on their behalf are not enforceable because the colonies did not have the sovereign capacity to enter into treaties. In

¹⁰³ Daily Nation. June 6 (2012). *Juba to be Assessed for Readiness to Join EAC*. Retrieved September 4, 2012, from Daily Nation: <http://www.nation.co.ke/business/news/Juba+to+be+assessed+for+readiness+to+join+EAC+/-/1006/1422172/-/c8ieroz/-/index.html>

¹⁰⁴ Abdo, M. (1994). *The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin*. *Perceptions* .

addition, these countries are facing many development challenges, which the Nile can help them to address.

There is the question of whether the treaties are binding to any other countries apart from the direct signatories of the treaties. In international law, for a treaty to be binding, all parties in a treaty must have the sovereign capacity to enter into treaties. This was not the case when the existing treaties were signed.

An important question that all diplomats involved in the Nile basin politics must have in mind is the potential for war in the Nile basin because of the existing conflict. Certainly, Egypt and Ethiopia are on record stating their willingness to take up arms in defense of their rights to the Nile.¹⁰⁵

Finally, there is the question of whether there is need to involve third parties in the conflict or to leave it to a negotiated settlement brokered by a joint process through the NBI. These issues deserve in depth treatment.

A. Validity of the Historical Rights of Egypt and Sudan

Is Egypt and Sudan's historical right to the use of the Nile justified? Egypt has a twofold basis for its claim on the Nile. First Egypt contends that it has been using the Nile for thousands of years. This fact is impossible to deny since there are historical records, including the bible, demonstrating Egypt's use of the Nile. None of the Riparian states has a longer recorded history compared to Egypt. Secondly, Egypt's economy relies in the waters of the Nile for productivity.

¹⁰⁵ Malone, B. (2010). *Ethiopian PM warns Egypt off Nile war*. Retrieved August 15, 2012, from Reuters: <http://www.aljazeera.com/news/middleeast/2010/11/20101124152728280839.html>

Without the Nile, Egypt cannot survive as a nation. Its economy will crumble and it will become uninhabitable unless it imports everything it needs. All the other significant water sources for Egypt such as the Mediterranean Sea and the Red Sea are salty.¹⁰⁶ These water bodies cannot sustain agriculture except after desalination at a very high cost.

The case of Sudan is very similar to that of Egypt. The main difference is that Sudan has alternative water sources. However, the Nile is still Sudan's most significant source of fresh water. It supports agriculture and is useful for power production.

The claim to livelihood on the Nile by both Egypt and Sudan seem well justified considering the consequences of complete loss of the Nile waters. Egypt's economy would collapse while that of Sudan would enter into severe depression. There is a serious question on the issue of historical right in Egypt's claim. Historical rights to the Nile did not always include the power to veto upriver uses. Historically, the riparian states in whatever form they were did not have to refer to Egypt in order to exploit the waters of the Nile. This claim is sensible but it is difficult to sustain as a legal argument.

B. Sovereignty versus Regional Responsibilities

Does sovereignty mean a country can unilaterally exploit its natural resources? In the context of sovereign nations against the backdrop of international obligations, it is important for diplomats to consider what sovereignty means in the context of shared resources. One of the claims by Ethiopia and the East African states is that they are sovereign nations that do not need to refer to

¹⁰⁶ Fellman, J. D., Getis, A., & Getis, J. (1997). *Human Geography: Landscapes of Human Activities*. New Delhi: SURENDR KUMAR.

another country to exploit natural resources in their territories. This position is a response to the unilateral action by Britain and later Egypt to sign bilateral treaties with various riparian states that had clauses binding the other states that were not signatories to these treaties. It smacked of diplomatic mischief. Britain did not foresee the conflicts these treaties would cause if the colonies became independent.

However, under international law, all countries have a duty towards their neighbors obliging them to avoid actions that may interfere with regional stability. Indeed, all the riparian states have acted in a way that demonstrates this appreciation of international law. By forming and joining the NBI, these states demonstrate that they appreciate the need to have an equitable model to share the resources of the Nile basin.

Therefore, the best way to treat the assertion of sovereignty by Ethiopia and the East African States is to consider the action as a manifestation of conflict behavior, meant to ripen the conflict. Once a conflict ripens, then resolution mechanisms such as the NBI can come into play. However, Egypt needs to consider the implications of threatening the sovereignty of other states before furthering its interests. There is no guarantee that the other states will respect the 1959 treaty.

C. The Question of the Historical Treaties

To what extent are the previous Nile treaties binding to the current parties in the Nile basin conflict? Chapter 1 dealt with the treaties signed in the Nile Basin over the past century. In this section, the question of interest is the extent to which these treaties are binding. One of the basic tenets of the treaty making process is that parties to the treaty must have the sovereign capacity

to enter into the treaty. This means that a colony cannot have the sovereign capacity to enter into a treaty simply because there is another power running its affairs. This is the basis of the Nyerere doctrine of selective succession, which gives a new state the power to discard preexisting treaties and to renegotiate all agreements afresh.

It is also true that the international law of succession requires new states to carry in the obligations of the predecessor state.¹⁰⁷ Depending on persuasion, there seems to be a stalemate on this matter relating to the law that should apply in the Nile basin issue.

The best conclusion possible to this matter is that the 1959 treaty is binding to Sudan and Egypt. The two countries were clearly acting in full sovereign capacity hence they cannot renege on their obligations. The East African states must be allowed the option of deciding whether the colonial era treaties bind them considering the treaties were not signed on their behalf, but by the colonial power. Britain did not sign the treaties in behalf of any East African country. Rather it signed them in its capacity as the colonial master, to take care of its own interests in the Mediterranean.

The case of South Sudan is more difficult to consider. This is because South Sudan was part of Sudan during signing of the 1959 treaty. Sudan was then an independent state hence it had the sovereign capacity to enter into treaties. This imputes some kind of obligation on South Sudan to

¹⁰⁷ UN. (2012). *Definition of Key Terms used in the UN Treaty Collection*. Retrieved July 12, 2012, from United Nations Treaty Collection:
http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml#treaties

recognize the 1959 treaty. However, since there is already a process of repealing the Nile Basin treaties through the NBI, South Sudan is not under pressure to take a position on this matter. If the NBI collapses, then South Sudan will have to reconsider its international obligations relating to the 1959 treaty.

D. The Credibility of Armed Conflict

Is the threat of war real? Every diplomat dealing with the Nile Basin issues needs to be clear about the credibility of threats by certain riparian states to take up arms to defend national resources and livelihoods. The worst war rhetoric in the Nile Basin has been between Egypt and Ethiopia. Ethiopia is the catchment area for the Blue Nile, which contributes almost 90% to the Nile waters, which flow in Egypt¹⁰⁸. In 2010, there was a bitter exchange pitting Ethiopia's Prime Minister Meles Zenawi and Egypt's Foreign Minister, Ahmed Aboul Gheit where Zenawi warned Egypt of the futility of pursuing armed warfare over the Nile.¹⁰⁹ Egypt denied the claims that it was considering military action over the Nile. Egypt has also made statements akin to a threat of war to the upriver states that interfering with the volume of flow of the Nile is a matter of national security for Egypt.

Deciding whether the threat of war is real and credible is very difficult. In the case of Egypt and Ethiopia, the threat certainly sounds very real and credible. The two countries have a militarized leadership, with foreign policies made using military thinking. Egypt is the regional superpower

¹⁰⁸ Adar, K. G., & Check, A. N. (2011). *Cooperative Diplomacy, Regional Stability and National Interests: The Nile River and the Riparian States*. Pretoria: Africa Institute of South Africa.

¹⁰⁹ Malone, B. (2010). *Ethiopian PM warns Egypt off Nile war*. Retrieved August 15, 2012, from Reuters: <http://www.aljazeera.com/news/middleeast/2010/11/20101124152728280839.html>

and it is keen to swing its might in the protection of the Nile waters. While Egypt and Sudan have been allies in regards to the Nile waters, the relationship has also been rocky. Sudan and Egypt have good reasons to go to war with each other because of their dependence on the Nile. Sudan has the capacity to interfere with flow of the Nile since Egypt receives all its Nile water via Sudan. With this kind of power and stakes in the hands of the two countries, the threat of war is very real. There is much less incentive for an armed incursion to the East Africa states based on the Nile. Only 10% of the flows to the river come from this region, and the flow from each individual country is even lower.¹¹⁰ This does not make military action an appropriate means to resolve Nile basin politics.

E. The Need for Mediation

Is there need to involve third parties? The final diplomatic issue requiring clarity is the need to involve third parties, and the extent of their involvement in the Nile Basin. Third parties tend to come into a conflict either as mediators or as observers. Eritrea has been an observer in the NBI. However, there are no mediators in the NBI. The need for a mediator would arise only if the conflict escalates. Apparently, no country has ever taken any action that added credibility to the threat of conflict. A brief look at the history of war in the Nile Basin shows that water is not yet a good reason to go to war.

Sudan and South Sudan have engaged in bombing campaigns against each other over oil, while Egypt was involved with Arab nations in the attack against Israel in the six-day war of 1967.

¹¹⁰ Adar, K. G., & Check, A. N. (2011). *Cooperative Diplomacy, Regional Stability and National Interests: The Nile River and the Riparian States*. Pretoria: Africa Institute of South Africa.

Tanzania invaded Uganda to help rebels oust Idi Amin, while in Somalia, through the Africa Mission for Somalia (AMISOM), Ethiopia, Rwanda, Uganda, and Kenya have troops pursuing the Al-Shabaab. The history of war in the region is limited to armed conflict as response to credible military and national security threats. None of the conflicts so far has emanated from water resources, except at the local level. In situations of war, or high-level diplomatic differences, mediators tend to provide the best approach to manage the immediate war. However, mediators do not offer long-term support. A case in point is the National Accord mediated by Koffi Annan. It was clear that after the signing of the accord, the mediation team largely left the parties to deal with the issues that arose, providing only periodical reviews of progress on the issues agreed upon.

In the Nile Basin, resource sharing will be an ongoing matter requiring regular agreements. This situation is best left to the parties in the conflict. The involvement of a mediator must be limited to short periods or to specific aspects such as securing agreement on contentious issues. In the long term, the best way to manage the Nile basin is by using negotiated instruments managed by a joint body along the lines of the proposed NBC.

IV. Diplomatic Challenges

Despite the progress made in the Nile Basin to transition the region from colonial era treaties to an independent era institution, there are several challenges bedeviling the process. These issues relate to the slow pace of progress in the formation of the NBC. The issues also come from the pending issues in the implementation of the Comprehensive Peace Accord (CPA), affecting the relationship between South Sudan and Sudan. The third issue is the aftermath of the Arab spring

on Egypt. Egypt is undergoing a transition, which may include a shift in its approach to the Nile basin politics. With the transition from a militarized leadership, to a western democracy, it is possible that Egypt will tend towards institutionalization in order to improve its ties to the Nile Basin states. In more detail, the following issues affect the pace of progress in the Nile basin negotiations.

A. Pace of progress of the formation of the Nile Basin Commission

The formation of the NBC is overdue as a regional authority managing the use of the resources of the Nile basin. This authority should take up from the NBI with a broader mandate and greater power to enforce compliance. However, the interests of the individual states continue to hamper progress. As of February 2012, Sudan and Egypt were yet to sign the Comprehensive Agreement Framework, which is the precursor to the NBC.¹¹¹ Egypt and Sudan have been very reluctant to sign the agreement and have been seeking to reopen discussions on the framework, which the other countries are reluctant to do. So far, six countries have signed the framework, making it operational.

The NBC is the planned successor of the NBI, and can only function effectively if Egypt and Sudan signs it. Before the NBI came into play in 1999, the lower riparian states had no avenue to champion for their rights to utilize the Nile waters for their needs. The NBI has made it possible

¹¹¹ Salman, S. M. (2012). *Outcome of the Nairobi Nile Council of Ministers Meeting – An Inevitable Consequence of a Level Playing field?* Retrieved August 15, 2012, from International Water Law Project Blog: <http://www.internationalwaterlaw.org/blog/2012/02/14/outcome-of-the-nairobi-nile-council-of-ministers-meeting-%E2%80%93-an-inevitable-consequence-of-a-level-playing-field/>

for them to achieve some degree of power to negotiate over the use of the waters of the Nile.¹¹²

As things stand, the NBC can start operations pending ratification by the remaining countries.

However, it may not be very effective until all the countries sign the agreements.

B. Pending issues in the Sudanese CPA

Another matter of significance to Nile basin diplomats are the pending issues in the CPA signed between Sudan and South Sudan. The issue of sharing of oil resources is important to the stability of both countries. In this regard, the process of drawing the borderline in the Abyei region is yet to kick off in earnest.¹¹³ This is because the two countries claim the oil rich region each for itself. Lack of cooperation between Khartoum and Juba can lead to a break down in the cooperation need to pursue the objectives of the NBI, and the NBC. Other outstanding issues include debt sharing and oil-revenue sharing between the two states.¹¹⁴ The implementation of the NBC can succeed only to the extent that Juba and Khartoum achieve harmony.

C. The Aftermath of the Arab spring on Egypt

Another important issue affecting the future of the Nile Basin is the effect of the Arab spring on Egypt. It is beyond the scope of this paper to examine the effects of the Arab spring on Egypt in sufficient detail. However, it is clear that the country needs to go through a period of restructuring in order to fit elements of democracy into its governance structure. Egypt's military is still powerful; hence, it will be important to see whether the new president can transition Egypt's foreign policy from its military disposition to a civilian model consistent with western

¹¹² *Ibid*

¹¹³ Suleiman, M. A. (2011). *Darfur, a Crisis of Identity & Governance*. Bloomington, IN: AuthorHouse.

¹¹⁴ *Ibid*

style democracy, or some other form of democracy acceptable to Egyptians. It is also important to note that Egypt may undergo a period of Islamization because of the influence of the Muslim Brotherhood, which currently has a majority in parliament. In addition to this, there is need to see how Egypt responds to the Middle East conflicts because the position it takes, especially on Israel, may affect its relations with countries like Ethiopia, Kenya and South Sudan, which have strong ties with Israel.¹¹⁵ The point here is that Cairo is in transition, much like Khartoum and Juba, hence the direction of the negotiations over the sharing of the Nile basin resources may depend on the outcomes of the transition processes. The most important aspect of these changes is whether they will increase Egypt's interest in negotiating with the other riparian states.

V. Diplomatic Approaches

A vast body of knowledge in the area of conflict management exists, which Nile Basin diplomats can use to develop options for tackling the Nile Basin conflict. In a conflict situation, the two main objectives that a diplomat has are either working towards a settlement in the conflict, or simply managing the conflict to reduce the severity of the inherent risks.¹¹⁶

A. Resolution

In the Nile basin, it is impossible to resolve the existing conflict. The simple reason is that the cause of the conflict cannot be removed. All the riparian states need the waters of the Nile hence, it is impossible to remove it as a source of future conflict. Resolution may also mean arriving at a

¹¹⁵ The Economist. (2010). *Iran and Israel in Africa: A Search for Allies in a Hostile World*. Retrieved September 4, 2012, from The Economist: <http://www.economist.com/node/15453225>

¹¹⁶ Schellenberg, J. A. (1996). *Conflict Resolution: Theory, Research, and Practice*. Albany: SUNY Press.

settlement on how the waters of the Nile will be used. If the Nile were a fixed resource, then it would be possible to settle the conflict by apportioning the Nile waters to each party in the conflict. However, the Nile is a dynamic resource, and so are the needs of the parties to the conflict. Settlement cannot work for this case.

B. Conflict Management

The idea of developing a transnational commission to manage the Nile waters is an indication that the riparian states recognize that the Nile basin conflict cannot be bought to resolution.

Rather it requires a conflict management approach. This will be a long-term issue hence the need for a permanent institution to manage it.

In terms of the approaches available to resolve this conflict, Schellenberg provided five options for diplomats. These options were coercion, negotiation, adjudication, mediation and arbitration.¹¹⁷ Coercion involves forcing parties in a conflict to accept a condition. This is what the NBI is doing in relation to Egypt and Sudan because of their reluctance to go along with the resolutions of the NBI. Negotiation in this situation represents the process the riparian states entered with the view of coming up with a transnational authority to deal with the Nile Basin issues. Adjudication requires the involvement of a third party, whose goal is to listen to both sides of a conflict and to render a judgment on the matter in question. Usually, an adjudicator renders an authoritative opinion on the matter in question. The UN serves as an arbiter in international conflicts. It may be called upon by the riparian states to force Egypt and Sudan to act on their part in the formation of the NBC.

¹¹⁷ Schellenberg, J. A. (1996). *Conflict Resolution: Theory, Research, and Practice*. Albany: SUNY Press.

Mediation is also possible in the existing situation. A mediator is also a third party to a conflict and tries to provide an avenue for both parties to express their views with the hope of finding common ground in the conflict. In Africa, the African Union has been playing the meditative role and can also be called upon to help resolve the existing issues. Finally, Nile Basin diplomats can also consider arbitration. An arbiter makes a decision on a matter based on prior mutual consent by parties to a conflict.¹¹⁸ It is important to note that the Nile Basin conflict is a complex conflict where certain aspects may best be resolved using one means, while others may require a different approach. There will be need to refer to a judicial authority to render opinions on some aspects of the conflict. One such issue is Egypt's historical right to the Nile.

In all these matters, South Sudan is a party to the conflict. While this chapter looks at South Sudan as an independent party, it is not entirely separated from the other parties. The options South Sudan has in this conflict depend on its national needs. It can decide to take sides with Egypt, or to side with the East Africa states. Alternatively, it can also decide to raise issues peculiar to it hence come up as a separate party to this conflict. However, its interests will best be served by cooperating with the NBI since this is the most comprehensive effort to date to manage the Nile Basin conflict. Joining Egypt and Sudan may undermine its diplomatic and trade ties with the East African countries, which makes this option unattractive.

For the East African communities, their current unity of purpose should provide them with the momentum needed to establish the NBC. It is clear that the status quo serves Egypt and Sudan well hence their reluctance to support the NBC. The East Africa States need to escalate the

¹¹⁸ *Ibid*

conflict against Egypt and Sudan using diplomatic means to force them to act. Egypt and Sudan are in a comfort zone, which they do not want to give up. It will take some force to remove them from this zone.

VI. Conclusion

After this discussion, the stage is now set for an analysis of the diplomatic options Available for South Sudan and the East Africa states to move the process forward. The creation of the new state has complicated the diplomatic efforts that the East African states put in place. However, depending on the stance South Sudan takes, there is a chance that the new republic will support the cause of the East African States. South Sudan has more to fear from forming an alliance with Egypt and Sudan than what it will gain by supporting the East African States. This notwithstanding, it is important to consider all the possible options available to South Sudan and the position each of those options puts the East African states.

CHAPTER 5

DIPLOMATIC OPTIONS IN THE NILE BASIN

I. Introduction

South Sudan deserves some sympathy from the community of nations because of the sheer work it has in its hands to emerge as a nation worthy of its status in the community of nations. The country must set up new diplomatic infrastructure including foreign missions to take care of its international interests. In addition to this, the country has to address all its local and regional concerns including the Nile Basin. A process of prioritization is important for the country to ensure that it is able to take care of its needs.

On the issue of the Nile, Juba has four strategic options that it can adopt to pursue its interest in the Nile. First, Juba can decide to ratify the 1959 treaty between Cairo and Khartoum to stake a claim on the water resources covered by this agreement. Secondly, Juba may decide to support the efforts of the NBI in the establishment of the NBC. In addition to these options, Juba may also decide to work towards the development and ratification of new treaties with the riparian states away from the existing efforts. Juba can argue that there is no place for it in the 1959 treaty or in the NBI. Finally, Juba can simply decide to look inward, and fail to work towards any treaty in relation to the Nile. Coupled with a refusal to accede to previous treaties signed by Khartoum, Juba can choose to pursue its interests in the Nile in relation to its needs alone, and without deference to the rest of the riparian states.

Regardless of the position Juba takes, several factors will influence the decision Juba goes with. In reality, Juba may resolve to pursue solutions that encompass more than one of these positions.

However, any decision must bear in mind the possible reaction of the rest of the parties to the Nile Basin conflict. This chapter takes a detailed look at the potential diplomatic strategies Juba can use to handle the Nile basin crisis. At the same time, it looks at the contextual issues likely to affect Juba's decisions.

II. Factors Affecting Juba's Diplomatic Options: PESTLE Analysis

Before looking at the specific options Juba has in the process of making a decision on its long-term policy on the Nile, there is need to examine the environment within which Juba sits. The best tool for this analysis is a PESTLE analysis. A pestle analysis covers the environmental factors influencing operations. In this case, the physical environment is a single factor in the PESTLE analysis. The use of the term "environmental" in a PESTLE analysis refers to the sum total of the factors affecting the operations of the South Sudanese republic.¹¹⁹ A PESTLE analysis addresses Political, Economic and Social challenges.¹²⁰ In addition, it looks at the technological, legal, and Environmental factors in the operating environment of an establishment.

A. Political Factors

1. Newly Created State

The fact that South Sudan is a new state will play an important role in its policy formulation processes. As a new country, Sudan must address very many issues relating to development

¹¹⁹Cullen, J. (2011). *Multinational Management: A Strategic Approach* (5th ed ed.). Mason, OH: Cengage Learning.

¹²⁰ *Ibid*

challenges, security, finance, economics, and diplomacy.¹²¹ In addition, there are legislative issues it needs to deal with such as ratifying international treaties on various matters including international resource sharing. The new country is in the process of setting its foundation as a modern state. This situation will be a key consideration that Juba will make as it decides on its long-term Nile Basin policy.

1. Nationalist sentiments

Juba is still basking in the glory of its newfound independence. This means that there is still a very strong nationalist sentiment within the citizenry and in its government. At this point, rifts in the society are not yet well defined and power struggles are at a minimum because of the attendant hope and optimism that accompanies newly formed states. This means that Juba is likely to have populist stands on many issues. As time moves on, opposition to the current regime will slowly form. It is not popular to be in the opposition just yet, because the country is barely two years old. In the next few years, opposition groups will come together as the country's democracy matures and will lead to shifts in its international policy.

2. Devolved Government

Sudan has ten regional governments.¹²² The Nile does not pass through all these regions. The individual states will have a voice in the use of the Nile as it passes through their territories. This will affect the type and speed of decisions that Juba makes in relations to the Nile. Whenever the national government is at variance with the state governments, some delays in decision-making

¹²¹ GOSS. (2012). *Government of the Republic of Southern Sudan*. Retrieved August 30, 2012, from Infrastructure: <http://www.goss-online.org/magnoliaPublic/en/Business-and-Industry/Infrastructure.html>

¹²² *Ibid*

will come into play. In the same vein, Juba's policy must take into account the needs of the states within which the Nile passes. However, the central government retains the power to negotiate international treaties.

B. Economic Factors

1. Oil Dependence

Oil revenues finance 92% of South Sudan's economy.¹²³ The region was neglected since independence by the Khartoum government. The only viable economic investments were in the oil sector because Khartoum needed the resources to finance its projects. As at the time of South Sudan's independence, it had very little infrastructure, a situation compounded by the war between the then Sudanese government and the Sudan's People Liberation Army (SPLA). Juba is interested in expanding its economic portfolio hence it needs the waters of the Nile to expand its agricultural and industrial sectors. The country needs to develop other economic sectors to diversify its economy.

2. Unemployment

After the South Sudanese independence, many people, originally from the South, migrated back to the newly created country. This increased the number of people without jobs. The country also has many educated citizens in the Diaspora, some with very strong patriotic sentiments. They are either planning to go back to Sudan or are already there. Already, there is an effort to ensure that youth without jobs do not swamp major cities leading to increase in crime by advising the youth

¹²³ UNOPS. (2008). *South Sudan Operations Centre*. Retrieved August 29, 2012, from UNOPS: What We Do: <http://www.unops.org/english/whatwedo/locations/africa/pages/sudanoperationscentre.aspx>

to go back to the villages and practice agriculture.¹²⁴ Most South Sudanese nationals are undereducated because there was little education during the years spent in the war. They find it difficult to find jobs in the formal economy, which is too small to absorb even its educated nationals.

3. Poor Health Infrastructure

Health is a serious concern in South Sudan. Most of the health services in the country at community level is in the hands of international agencies such as the World Health Organization (WHO), Medecins Sans Frontiers, UNICEF, and the African Medical Research Foundation (AMREF).¹²⁵ According to UNOPS, only twenty percent of South Sudanese nationals have visited a health institution of any kind in their entire lifetime.¹²⁶ The country has one of the highest infant mortality rates in the world, along with the highest maternal mortality rates. The health infrastructure is lacking, at best. There is a huge deficit of health facilities in the country, and even fewer medical professionals.¹²⁷ The lack of other critical infrastructure such as roads and telecommunication worsens the situation.

¹²⁴ Olukya, G. (2012). *South Sudan Finds a New Way of Tackling Unemployment*. Retrieved August 29, 2012, from Africa Report: <http://www.theafricareport.com/index.php/20120503501810668/east-horn-africa/south-sudan-finds-a-new-way-of-tackling-unemployment-501810668.html>

¹²⁵ Bubenzer, F., & Stern, O. (2012). *Hope, Pain & Patience: The Lives of Women in South Sudan*. Sunnyside/Auckland Park: The Institute for Justice and Reconciliation.

¹²⁶ UNOPS. (2008). *South Sudan Operations Centre*. Retrieved August 29, 2012, from UNOPS: What We Do: <http://www.unops.org/english/whatwedo/locations/africa/pages/sudanoperationscentre.aspx>

¹²⁷ Bubenzer, F., & Stern, O. (2012). *Hope, Pain & Patience: The Lives of Women in South Sudan*. Sunnyside/Auckland Park: The Institute for Justice and Reconciliation.

4. Agriculture

South Sudan has a high potential in agriculture, but its agricultural sector is not developed enough to meet its food requirements. The country relies on grain imports from Uganda and Kenya to meet its food requirements.¹²⁸ Almost 85% of South Sudanese nationals rely of subsistence agriculture, while country has 90% arable land, which can meet all its needs and provide much more for export.¹²⁹ The banks of the White Nile have some of the most fertile lands and supports between 10-20 million head of cattle.¹³⁰ The area also has more than adequate rainfall, in addition to the permanent flows from the river Nile.

C. Social Factors

1. Poverty

The poverty levels in South Sudan compare with the worst in the world. This is because of the devastation caused by the two prolonged wars between the Khartoum government and the SPLA. The poverty incidence is bound to worsen with returning refugees, growth of urban centers occasioned by informal settlements, and competition for few jobs. In addition to these, most South Sudanese youth are poorly educated hence; they are unable to compete well in a formalized economy. Women and children remain vulnerable. They have endured the most from the wars, and disease.

¹²⁸ Olukya, G. (2012). *South Sudan Finds a New Way of Tackling Unemployment*. Retrieved August 29, 2012, from Africa Report: <http://www.theafricareport.com/index.php/20120503501810668/east-horn-africa/south-sudan-finds-a-new-way-of-tackling-unemployment-501810668.html>

¹²⁹ IFDC. (2011). *South Sudan*. Retrieved August 29, 2012, from IFDC: http://www.ifdc.org/Nations/South_Sudan

¹³⁰ *Ibid*

2. Returnees

A second social issue of importance to South Sudan is the consequences of returnees. During the war, many South Sudan nationals fled the conflict by either going to Khartoum, or by fleeing to the neighboring countries of Kenya, Uganda, and Ethiopia. Some went abroad, mainly to Europe and America. After the referendum, many of those who fled, especially to the neighboring countries, chose to go back to build the new nation. The result is that there is a new class of citizens who have not lived in South Sudan, coming back home. Those from the North have the added communication problem caused by their Arabic education, whereas in South Sudan English is the dominant language.

3. HIV and AIDs

The prevalence rate of HIV AIDS in South Sudan as at 2010 was 3%.¹³¹ This rate is significantly lower than most sub-Saharan countries. The reasons for this low prevalence may be explained by low population mobility and minimal contact with outsiders during the conflict periods. The rates are not uniform across the country. They tend to be higher in urban areas compared to rural areas. They are also higher among the soldiers, sex workers, refugees, and younger girls.¹³² This situation may change with increasing population mobility, and increasing contact with nationals from other countries coming to trade and work in South Sudan.

¹³¹ Bubenzer, F., & Stern, O. (2012). *Hope, Pain & Patience: The Lives of Women in South Sudan*. Sunnyside/Auckland Park: The Institute for Justice and Reconciliation.

¹³² *Ibid*

4. Crime and Small Arms Proliferation

There is likelihood of increase in crime levels with time as more youth fail to find gainful employment in the nascent economy. There is increase in the frustration felt by youth who go to urban centers in search of jobs.¹³³ The situation will become worse because of the number of weapons in civilian hands after many years of war. The country will complicate the issue of small arms proliferation in the horn of Africa, which has led to increased insecurity in the region. South Sudan's police force is still very small to enforce the law effectively in the whole country.

D. Technological Factors

Electricity is a good indicator of the technological status. Most technologies rely on some form of electrical power to operate. South Sudan has an acute shortage of electricity. Only three towns, Juba, Malakal and Wau have diesel generated power to meet the needs of the country.¹³⁴ The national grid covers only six states and is still inadequate. Investors have to generate their own electricity to operate in South Sudan.¹³⁵ Many of them rely on wind and solar power for solar generation. There are several telecommunication carriers in the whole of Sudan. Many of them are still expanding in order to develop a countrywide footprint. In other sectors that drive technological development of a country, South Sudan is still very underdeveloped. Lack of industries and the lack of formalized markets contribute towards South Sudan's underdeveloped technological sector.

¹³³ Olukya, G. (2012). *South Sudan Finds a New Way of Tackling Unemployment*. Retrieved August 29, 2012, from Africa Report: <http://www.theafricareport.com/index.php/20120503501810668/east-horn-africa/south-sudan-finds-a-new-way-of-tackling-unemployment-501810668.html>

¹³⁴ GOSS. (2012). *Government of the Republic of Southern Sudan*. Retrieved August 30, 2012, from Infrastructure: <http://www.goss-online.org/magnoliaPublic/en/Business-and-Industry/Infrastructure.html>

¹³⁵ *Ibid*

E. Legal Factors

The legal landscape of South Sudan is still in its nascent stage. The country is developing laws that will apply in its life as a nation. However, the country has been getting a lot of legal assistance from international bodies in relation to legislation to develop its institutions. In the international scene, the two laws that will influence South Sudan's options in the development of a policy towards the Nile basin politics will be the International law of state succession and the Nyerere doctrine. These two laws were the subject matter of chapter two. The legislature of South Sudan is robust and stable, and can be relied on to make necessary laws relating to the Nile.

F. Environmental Factors

The physical environment of South Sudan is one of the best in Africa. With 90% arable land, the country has huge potential to develop a green economy.¹³⁶ However, there is a risk that the continued mining of oil in the region will lead to environmental consequences. The abundance of oil may encourage the country to develop diesel driven power generation plants, which will lead to environmental degradation. In addition to these, the impacts of climate change will have an effect on the environment of South Sudan.

¹³⁶ IFDC. (2011). *South Sudan*. Retrieved August 29, 2012, from IFDC: http://www.ifdc.org/Nations/South_Sudan

III. Juba's and East Africa's Diplomatic Options

Juba has four main options in its response to the Nile basin conflict. While these options form the bulk of the discussion in the upcoming sections, the primary area of interest is the implications of these options to the East African States.

A. Enjoining the 1959 Treaty

The 1959 treaty is still in force, at least between Egypt and Sudan. This treaty gave the two countries certain rights regarding the use of the waters of the Nile. Chapter 1 dealt with this treaty in detail. In this chapter, our interest is not its material content but in its relevance to the diplomatic strategy of South Sudan.

The basis Khartoum has in this treaty is the International Law of State Succession. This law of succession demands that a new state must take up the liabilities, commitments, and responsibilities of the predecessor state.¹³⁷ During the signing of the treaty, South Sudan was part of the Sudan. Therefore, the country was part of the negotiations and is bound by the outcome of the treaties. In addition, the Sudan was a sovereign state having acquired its independence from Britain; hence, it can use this to disclaim the Nyerere doctrine.

Juba can also claim that it has a part in the share of the Nile waters negotiated by Khartoum because the calculations at the time included the territory that is now under Juba. This means that Juba can make a claim to Khartoum for its share of the Nile waters based on the quantities the treaty gave Sudan.

¹³⁷ UNEP. (2012). *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements: State Succession and the Nyerere Doctrine*. Retrieved May 25, 2012, from <http://www.unep.org/dec/onlinemanual/Compliance/Resource/tabid/594/Default.aspx>

Khartoum's consent will be a precondition in the success of this strategy. Acceding to a claim by Juba may mean that Khartoum will have less water for its needs. However, there is a reduction in the volume of water needed by Khartoum because of the territorial loss experienced after the referendum. This is because of the reduction in size of its territory caused by the cessation of South Sudan. Khartoum can choose to divide its allotted share with Juba, something that is highly unlikely if to judge from the difficulties the two countries have run into in their attempts to share oil resources.

On the other hand, Khartoum may invoke the clause in the treaty, which requires Cairo and Khartoum to share out any claims from the other riparian states on a proportional basis. If Khartoum invokes this clause, it will precipitate a crisis in the Permanent Joint Technical Commission (PJTC) because Egypt will question Khartoum's capacity to assure it of the quantities of water protected by the treaty. In addition, Egypt will argue that the treaty covered the entire area currently comprising Sudan and South Sudan. Therefore, the sharing of a claim by other states does not include South Sudan, but the other riparian states not covered in the 1959 treaty. In essence, this dispute alone, without the involvement of Juba, can lead to the collapse of the 1959 treaty.

Juba is unlikely to pursue this option. There are three reasons for this. First, the NBI is superseding the 1959 treaty. The NBI represents a regional effort, using a trans-national institution to address the Nile Basin crisis. This is a more acceptable way of resolving the crisis. Secondly, Juba's relations with Khartoum have been very difficult. Juba will not favor a decision

that increases the areas of conflict it has with Khartoum. The exception to this situation is if Cairo invites Juba to discuss the treaty. This will still require the endorsement of Khartoum. Thirdly, the treaty may not assure Juba of the water supply it needs because the treaty does not recognize the rights of the lower riparian states. This situation makes it a moribund treaty for Juba in the context of rapid development in East Africa.

The East African states will not take kindly to an attempt by Juba to become party to the 1959 treaty. This treaty did not recognize their rights to the Nile hence the establishment of the NBI. Any news that Juba is negotiating with Cairo and Khartoum will attract protests from the East African States. The implications of Juba joining Cairo and Khartoum include a reduction in the negotiating power of the lower riparian states. The number of signatories in the 1959 treaty will increase to three, increasing the treaty's credibility and the negotiating power of the three states. The signatories of this treaty will have one extra seat in any future negotiations. The second implication is that future negotiations will become increasingly difficult because of the interests of the three signatories. Juba will bring its own interests to the already existing interests of Cairo and Khartoum.

The NBI will also come under the threat of collapse if Juba makes this move. With three out of ten states signing a joint treaty, the risk that the NBI will become irrelevant will grow. The East African countries may each decide to negotiate with this northern block for a share in the resources of the Nile. This will lead to the disintegration of the NBI and any future prospects of the creation of the NBC. Alternately, this situation may create a North-South conflict pitting the parties of the 1959 treaties against the East African states. This is reminiscent of the existing

situation before the splitting of the Sudan. The total territory covered by the two Sudan states formed part of the original territories covered by the treaty.

In conclusion, it is highly unlikely that Juba will opt to negotiate with Cairo and Khartoum. However, this option may be activated by either Cairo or Khartoum to increase their bargaining power in the NBI. The three countries can take this direction to assure themselves of their interests in the Nile. The East African countries under the auspices of the NBI, in all likelihood, will oppose such a move.

B. Supporting the Nile Basin Initiative

Juba is currently a member of the NBI, along with the other nine riparian states. This membership does not come with any treaty-level obligations on the part of the individual members. However, the NBI has acceded to a number of initiatives and protocols that may have the force of law binding to the member countries.

The decision to join the NBI was not a difficult one for Juba. The process was already underway, and the rest of the states were eager to include the new nation in the initiative. However, the question of whether Juba is willing to support the NBI to the end is a different matter all together. Egypt and Sudan are members of the NBI but they are not very cooperative in the creation of the NBC. This demonstrates that diplomats must be careful not to confuse Juba's membership in the NBI with its commitment to the creation of the NBC. This notwithstanding, there are many incentives for Juba to support the NBI. First, the NBI has international support because of its approach to the Nile Basin crisis. The NBI is an inclusive platform that gives a voice to all the riparian states to air their views and to promote their interests. As such, Juba will

attract international goodwill if it is seen to support this initiative. The initiative has the support of the international community.

Secondly, Juba can trust the NBI to take care of its interest as compared to any other option it may have. As a regional initiative, the NBI will make it possible for Juba to have the assurance that the other countries will honor their obligations towards it in relation to the Nile waters. The third reason is that the NBI is superseding all the other Nile basin treaties. Seeking to be enjoined in the older treaties will only make southern Sudan appear opportunistic, and it will expose it to political manipulation by Cairo and Khartoum. Therefore, the soundest option Juba has is to support the NBI.

On the other hand, it is not a foregone conclusion that Juba must support the development of a NBC. Juba has every right to consider the options it has in this regard before making a commitment as to whether it wants to participate in the formation of the NBC. Some of the reasons Juba may put forward are as follows. First, Juba may join the calls by Cairo and Khartoum to renegotiate the terms of the NBC. This is because Juba was not involved in the creation of the proposal for the NBC. It is possible that it does not cover Juba's interests well enough. Secondly, Juba can simply arrive at the conclusion that the NBC is not implementable given the hostilities between Cairo and Khartoum on one hand, and Addis Ababa and the East African States on the other hand. In this case, Juba may opt to find another way to assure itself of the water flows it needs from the Nile apart from the NBC. However, this will expose Juba to international condemnation since it will appear uncooperative to international conflict resolution mechanisms. Thirdly, Juba lacks the international experience needed to evaluate the efficacy of

the proposed NBC towards its national needs. In addition to this, Juba is dealing with several foundational issues related to its recently acquired statehood. It may lack the focus needed to deal with the complexities of the Nile Basin politics.

If Juba chooses to join the East African states in the formation the NBC, then the East African states will have increased negotiating power. As it is the, South Sudan referendum weakened the 1959 treaty, which gave Cairo and Khartoum the confidence to negotiate in the NBI. Such support will reduce the claims Sudan can make on the Nile waters because originally, their claims included the needs of the South Sudanese territory. It will also increase the numerical strength of the Nile Basin countries seeking to establish the NBC. If Juba takes this decision, it will also improve diplomatic relations with the East African countries. The relationship between Juba and the East African States has been comfortable.

On the other hand, if Juba chooses against joining the East African states, then it will crack open the ongoing negotiations. The East African States, together with Ethiopia have been able to create and maintain diplomatic pressure against Cairo and Khartoum by choosing to move on with the creation of the NBC.

Juba is highly expected to support the creation of the NBC because of its long-standing relations with the East African states. Juba has close relations with Kenya and Uganda, which it forged during the difficult times it endured as it fought against the Khartoum government. All Nile basin diplomats still need to bear in mind that Juba may make some fresh demands for renegotiating aspects of the NBC because it was not involved in the negotiation process. Allowing Juba to

reopen talks will encourage Cairo and Khartoum to continue agitating for renegotiation. Juba's claim would have more credibility compared to that of Cairo and Khartoum, which seem to be interested in maintaining the status quo. In addition, Cairo and Khartoum may decide to move in to win Juba over to their side because of the convergence of their interest to renegotiate aspects of the proposed NBC.

C. Agitate for New Treaties based on its Needs

Apart from the decision either to join Cairo and Khartoum, or to support fully the formation of the NBC, Juba can also decide on negotiating a fresh with all the parties based on its own policy. It is conceivable why Juba could decide to handle the matter in this way. The claims can range from nationalist views of sovereignty, to incompatibility of the NBC with Juba's policies and interests. If Juba decides to negotiate afresh, apart from the existing efforts, then this decision can emanate from nationalist claims to the country's sovereignty. It can be the result of a pure application of the Nyerere doctrine of state succession. Juba can decide to start from a clean slate simply because the two treaties do not respect its sovereign rights. The 1959 treaty ignored the needs of all the riparian states except Egypt and Sudan, while the NBI, although inclusive, did not have the input of South Sudan. The country can now claim that it does not take care of the aspirations of its people. Secondly, Juba can also highlight its unique needs not covered by the NBI or the 1959 treaty. For instance, Juba may feel that to meet its needs, the Sudd wetlands need reclamation at a scale not anticipated by the NBI. Finally, Juba may decide to negotiate afresh as a way of walking on the diplomatic middle line. Choosing between the 1959 treaty and full support for the creation of the NBC inevitably makes Juba to pick a side. Juba needs all the friends it can get; hence, it can choose to define its own path as a way of avoiding getting embroiled in the diplomatic difficulties of the Nile Basin.

This option is dangerous for Juba because it cannot predict or control the outcome. The other countries must be willing to engage in a negotiated settlement with Juba for this option to work. Cairo and Khartoum may be willing to do this because it will increase their power in the NBI negotiations. However, this does not assure Juba that the outcome of such a process will be favorable. The East African countries are not likely to support such a move. It will weaken their place in the Nile Basin negotiations and will jeopardize the emergence of the NBC.

Juba may also suffer from international condemnation if it opens up new fronts in the Nile Basin process. The international community supports the NBI and wants the establishment of the NBC because it has the best chance of averting a resource conflict in the Nile Basin. Juba can insist on negotiating afresh if it feels very strongly that its needs are not covered by any of the existing processes. However, it is safer for it to do this within the existing frameworks as opposed to starting new processes. That said, negotiating with multiple parties would be very difficult for Juba, especially because of the number of issues it needs to deal with in its formative stages as a country. Negotiations do not always end with a positive outcome for the parties. In fact, some processes collapse midway leaving the parties in a worst state than before.

If Juba decides to pursue its own path in the Nile Basin process, the impacts on the East African states will be as follows. First, it will reduce the negotiating power of the East African states. The numerical strength of the Northern countries will increase from two to three. While this may have a small effect on the negotiating table, it will increase the interests that the East African countries need to take care of in the NBI. Secondly, it can lead to the collapse of the process, if

Cairo, Khartoum, and Juba pull out of the NBI. This will escalate the potential for conflict, and will pit the three countries against the other seven riparian states.

Juba is not likely to pursue the option of opening a completely new front in the diplomatic issues of the Nile. The costs for this will outweigh the benefits it can get out of the process. However, Juba may be interested in opening fresh negotiations within the NBI to take care of its interests as a new state. Nile Basin negotiators must be careful how this request is handled considering that Cairo and Khartoum also want to reopen negotiations.

D. Pursuit of Unilateralism

A fourth option Juba may consider is simply ignoring the need to enter into any treaties. This approach has precedence in the colonial era treaties of the Nile Basin. Ethiopia, in response to the Anglo-Italian treaty of 1891, stressed on its sovereign rights over the resources found within its territory.¹³⁸ Ethiopia protested the signing of a treaty relating to its resources without its inclusion despite the fact that it was an independent state. Using this example, South Sudan may choose to assert its sovereignty over the sections of the Nile, which lie within its territory.

A move by Juba to establish a national policy relating to the waters of the Nile without deference to the existing treaties will be the result of lack of confidence in any of the existing processes or treaties.

¹³⁸ Abdo, M. (1994). The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin. *Perceptions* .

If Juba finds that the existing processes will not yield a favorable outcome, it may consider developing its own national policy relating to the use of the Nile resources. This condition may arise if the NBI refuses to accede to demands by Juba to renegotiate any sections that it finds unacceptable. Egypt and Sudan are on record as requesting for the renegotiation of the NBC. Another set of challenges that may encourage Juba to pursue an independent path is the squabbles within the NBI. These squabbles, pitting Cairo and Khartoum against the rest of the riparian states, have made progress towards the NBC very slow. Juba might consider the process impotent, or too slow to answer its existing needs. In this situation, a unilateral effort might offer more promise to Juba's efforts to utilize the Nile waters to answer its development needs. Juba may also be forced to this situation if the NBI collapses. The NBI is the only institution that is addressing issues of the Nile comprehensively. Its collapse may trigger action by Juba towards unilateralism.

Unilateralism will lead to several problems for Juba. First, it will adversely affect Juba's relations with the East African states. So far, Juba has been developing strong relationships with its east African neighbors as the means to access resources, and as possible gateways for its imports and exports. Choosing to act unilaterally will make the East African countries rethink their cooperation with Juba. Secondly, the international community favors institutional solutions to unilateral action whenever there is a conflict. The international community backs the NBI. This community will be happier if all the riparian states worked within the NBI framework. If Juba pulls out, or ignores this process, then it faces prospects of international condemnation, which may have economic and political consequences. Juba currently needs all the friends it can find hence it is unlikely to antagonize the international community in this way. Thirdly, Juba

may choose the unilateral direction at the behest of either Cairo or Khartoum, as a strategy to get Juba to join the 1959 treaty in a new arrangement. This option can be the result of a covert effort by Cairo and Khartoum to frustrate the formation of the NBC. If Cairo and Khartoum offers Juba assurances that the NBI cannot offer, then this will be the likely result.

In the event that Juba chooses a unilateral direction, the impact on the East African countries will be as follows. First, the East African countries will feel betrayed by Juba. They will look at Juba as an opportunist in international affairs. This may have serious ramifications on the diplomatic relationship between Juba and rest of the countries. In regards to the NBI, it may bring about a reduction in the power of the NBI because of the territory controlled by South Sudan. The most important part of this territory is the Sudd Swamp located in South Sudan, which influence the flows of the Nile into Sudan and Egypt. The second impact, depending on the position of Cairo and Khartoum in relation to the unilateral action by Juba may be a permanent split between the East African States and their Northern neighbors. This situation may make it easier for the East African countries to negotiate because it will clarify the parties to the conflict. On the other hand, it may escalate the conflict further because it will raise the stakes for the riparian states. The East African countries, without the support of Cairo and Khartoum, may choose to make joint declarations on how to utilize the waters of the Nile within their territories. As it is, these countries do not depend on foreign flows as compared to their three northerly neighbors. In summary, any action by Juba to act unilaterally in the issues of the line will throw the entire diplomatic efforts into a spin.

This option is open to Juba, and should not be dismissed. If Juba does not feel sufficiently included in the NBI, then it can decide to take unilateral action. However, Juba is unlikely to favor this option because it will create many more problems for the country. However, the situation in the Nile Basin can deteriorate to the extent that Juba has no option but to take unilateral action. Cairo and Khartoum will have the biggest role in the development of the circumstances precipitating Juba's decision to act unilaterally. If the two countries support the creation of the NBC, then Juba will follow this direction. However, if Cairo and Khartoum frustrate the formation of the NBC, then Juba may be forced to take unilateral action to secure its own interests. In conclusion, Juba is unlikely to take unilateral action unless it is provoked into it. Rather, Juba is more likely to support a regional effort that secures most of its international interests.

IV. Conclusion

South Sudan has several options in its table as it engages in the Nile Basin politics. Based on its policies up to now, the policies the country will adopt in relation to the Nile will have the following aspects

First, it will be strong on nationalism. The country still has a very strong nationalist sentiment given its recent independence. The freedom fighters will be keen to see that any agreement respects South Sudan's independence and its sovereignty. Secondly, the country will prefer to deal with the international institutions because in its experience, international processes have achieved the most success. Thirdly, the country will take a decision that will promote regional harmony with its neighbors. If it must choose, the country will choose to work with the lower

riparian states, to the exclusion of Egypt and Sudan. The country will have increasing dependence on the East African states as it seeks trade opportunities, access to the Indian Ocean to process its imports and exports, and access to human resource from the region. Fourth, the internal pressure from its own populace will force Juba to think through every agreement it makes in relation to the resources of the Nile to forestall social collapse of a society grappling with high unemployment, increasing xenophobia, and low literacy levels in the wake of limited job opportunities. Finally, South Sudan will work from an institutional perspective as opposed to a pragmatic approach to the Nile Basin politics. So far, the country has recognizable respect for international organizations and NGOs, which run its key sectors such as Health and education. It is unlikely to rattle these relationships before it has developed the full capacity to tackle these challenges.

CHAPTER 6

EMERGING ISSUES IN THE NILE BASIN POLITICS

I. Introduction

The Nile Basin is a very dynamic region. This chapter covers some of the emerging issues affecting the politics of the region. The main issues that constitute this discussion is the implication of the Arab Spring in Egypt's international relations, the relations between Ethiopia and Egypt in the wake of plans to construct the Great Millennium dam, and the recent revival of the stalled Jonglei Canal project. In addition to these, the internal situation in South Sudan needs some analysis to determine its impact on Nile Basin politics. The issues that constitute the politics of the Nile basin politics keep changing according to the geopolitical activities in the region.

II. Impact of the Arab Spring on Nile Basin Politics

The Arab spring took the world by surprise. When former Tunisian president Ben Ali stepped down from power due to popular revolt, it dawned on the political oligarchs of the Middle East and North Africa (MENA) region that their regimes were not invincible. The fall of Hosni Mubarak came after much struggle, bloodshed, and jostling for control of the country by civilian and military officers. These events started a process that will affect Nile Basin diplomacy. The full impact of these events in the Nile will only be clear in the next few years. In order to understand the current impact of the Arab spring on the Nile, there is need to examine, albeit briefly, the political landscape of the MENA region. The Middle East is a very fragile region. The power play within the regional powers has created a perpetual imminence of war. The conflicts between Israel and the Arab Nations in the last century led to a precarious balance of

power that still exists to date, with Egypt playing a harmonization role. The Mubarak era served as a stabilizing power in the region.

During the Mubarak era, Egypt was the highest beneficiary of American aid, which acted as a pacifier against Egypt's war rhetoric of the late sixties. Egypt and Israel top America military aid budget accounting for about one-third of annual expenses.¹³⁹ The fall of Hosni Mubarak may result in changes to Egyptian foreign policy, and in effect, Egypt's policy towards the Nile Basin. Traditionally Egypt did not shy from swinging its military weigh and diplomatic might in the region. As a regional superpower, Egypt virtually intimidated the upriver states into inaction on the Nile, until the emergence of the Nile Basin Initiative (NBI) in 1999.

Recent activity by Egyptian diplomats can give an indication of the future stance of Egypt as a Nile River state. Egypt recently sent its foreign minister in a whirlwind tour to reestablish relations with the lower riparian starts. Significantly, part of the issues discussed was the reopening of the Jonglei canal project, which stalled during the Sudanese wars (Schnurr & Swatuk, 2012). The issue if the Jonglei canal is the subject matter of a subsequent section below. The new president of Egypt, Mohamed Morsi, has been seen to take aggressive stances on various foreign policy issues. The most dramatic of these positions is the open declaration that Syrian president Bashar Al-Assad, needs to quit power. This statement was even more spectacular because of the choice of Iran as the place to make the declaration during a state visit

¹³⁹ Myers, S. L. (2012). *Once Imperiled, U.S. Aid to Egypt Is Restored*. Retrieved September 12, 2012, from New York Times: http://www.nytimes.com/2012/03/24/world/middleeast/once-imperiled-united-states-aid-to-egypt-is-restored.html?_r=1

there. Iran is an ally of the Assad regime. The visit to Iran also raised questions about Mohamed Morsi's foreign policy because of the international tension surrounding the Iranian Nuclear program. Israel is especially worried about this situation because its treaties with Egypt have been providing Israel with the necessary assurances to organize its diplomatic, military, and political strategies.

Egypt seems keen to increase its international influence both in the MENA region, and in the NILE Basin. Egypt realizes that its economic survival depends on its relations with the upriver states in the Nile Basin, specifically Ethiopia, South Sudan, and the East African states. This is why Egypt tends to shift the Nile Basin discussion from simply looking at the Nile, into looking all the water sources within the riparian states.¹⁴⁰ On the other hand, its political survival depends on its relations in the MENA region, especially the Middle East. The Comprehensive Framework Agreement (CFA) of the NBI which is the operational protocol towards the formation of the NBC, has the support of six states, which means that its establishment can commence, what this means for Egypt is that it can no longer rely on its twentieth century leverage to control the waters of the Nile. It is time for Egypt to unleash its soft power by sponsoring projects in the Nile Basin aimed towards streamlining the flow of the Nile, while at the same time helping downriver states to meet their development needs.

South Sudan is of particular interest to Egypt because of the White Nile. Egypt needs to develop strong relations with South Sudan to assure itself of the water supply from the White Nile. The

¹⁴⁰ Schnurr, M. A., & Swatuk, L. A. (2012). *Natural Resources and Social Conflict: Towards Critical Environmental Security*. New York: Palgrave Macmillan.

East African countries need Egypt's expertise in terms of Nile Basin Hydrology, development of power and irrigation works and the management of watersheds. Egypt can use these needs to negotiate with these states. Egypt can provide the expertise in exchange for some assurances on water flow.

In conclusion, the political changes in Egypt seem to have led to a new dispensation in Egyptian Nile Policy. Egypt wants to reassert itself as the leading country in the Nile Basin, but it is keener on using its soft power, rather than its military might. This position will sit well with most players as opposed to the hitherto reluctance of the Mubarak administration to resolve the Nile Basin crisis.

III. The Revival of the Jonglei Canal Project: Is this a White Nile Alliance?

Hydro geologists conceived the Jonglei Canal in the 1930's.¹⁴¹ The canal was to divert water from entering the Sudd wetlands, in order to increase annual flow rate from the White Nile into the main river at Khartoum by 4.7 Billion cubic liters.¹⁴² Initially, Sudan and Egypt were to share the extra output equally. When the Canal was conceived, its construction would have provided what is now Sudan and Egypt with more water to address local problems. However, the environmental consequences of the construction of this canal would fall squarely in the territory of South Sudan. The Jonglei canal can increase the annual flow into Egypt by about 7%.¹⁴³ This would help Egypt to decrease the impact of any construction of dams and irrigation schemes in

¹⁴¹ Sa'oudi, M. A.-G. (2001). An Overview of the Egyptian-Sudanese Jonglei Canal Project. *The International Politics Journal (Al-Siyassa Al-Dawliya)* (141).

¹⁴² *Ibid*

¹⁴³ Sa'oudi, M. A.-G. (2001). An Overview of the Egyptian-Sudanese Jonglei Canal Project. *The International Politics Journal (Al-Siyassa Al-Dawliya)* (141).

the Blue Nile in the territory of Ethiopia. For Sudan, the canal can help to irrigate thousands of acres for grain production.

The environmental consequences of the construction of this canal are varied. The entire Sudd Wetlands, together with its flora and Fauna would be at risk. The wetland is a complex ecosystem with over 400 species of birds.¹⁴⁴ Apart from the wildlife, the area is the lifeline of local communities, mainly the Dinka, the Nuer and the Shalak.¹⁴⁵ These communities practice agriculture during the rainy season, and keep livestock to meet their needs during the dry season.¹⁴⁶ The communities have developed complex migratory lifestyles based on the hydrological cycle of the Sudd. Apart from the life in the Sudd, the area also provides precipitation that result in rainfall in a much larger hydrological cycle covering a wider area. This means that draining the Sudd will not only disrupt the life in the immediate communities, but it will also affect life in a much larger area by interfering with the hydrological cycle.

Egypt recently agreed with the government of South Sudan to restart the stalled Jonglei Canal project. Initial construction on the canal started in the 1978 and went on at a steady pace until 1984 when the outbreak of war halted all works.¹⁴⁷ By this time, the excavation works had

¹⁴⁴ Howell, P., Lock, M., & Cobb, S. (1989). *The Jonglei Canal: Impact and Opportunity*. Cambridge: Cambridge University Press.

¹⁴⁵ Sa'oudi, M. A.-G. (2001). An Overview of the Egyptian-Sudanese Jonglei Canal Project. *The International Politics Journal (Al-Siyassa Al-Dawliya)* (141).

¹⁴⁶ *Ibid*

¹⁴⁷ Sa'oudi, M. A.-G. (2001). An Overview of the Egyptian-Sudanese Jonglei Canal Project. *The International Politics Journal (Al-Siyassa Al-Dawliya)* (141).

covered 240km out of the total 360 Km.¹⁴⁸ The new deal between South Sudan and Egypt gave the timeframe for the completion of the work as 24 years. It shows that the countries have agreed in principle but the project is being approached with a lot more caution. If Egypt took six years to cover two thirds of the distance, it needs just less than four years to finish the remainder. Therefore this agreement is sign that there are still underlying issues to sort.

For South Sudan, this is a mixed pot. On one hand, if the project moves to completion, it promises food and water, and more importantly jobs for its population. The Jonglei canal can support a vibrant agricultural sector export program because it can produce grain on very large scale. However, the catastrophic environmental consequences of draining the Sudd will lead to greater problems in the rest of South Sudan, and all areas reliant on the Sudd's hydrological cycle. Apart from these issues, the Jonglei Project encourages South Sudan to look North instead of its current Southern Focus. Egypt can offer South Sudan technical assistance to establish its agricultural sector. In addition, Egypt can use its resources to offer South Sudan military assistance. Egypt's educated population can also offer South Sudan the human resource skills it needs to develop its economy in areas such as health, education, and environmental management.

For the East African countries, a Juba-Cairo alliance will not be a comfortable eventuality in the Nile Basin politics. Juba has so far been south centric, with a pending application to join the East African community. Juba can upset the current progress towards the NBC if Egypt convinces Juba to either stall or withdraw from the process. However, Egypt is likely to pursue a wider agreement along the lines of a White Nile alliance. Both Egypt and Ethiopia tend to frame their

¹⁴⁸ *Ibid*

issues around the Nile as survival issues, explaining why these two countries have had the worst war rhetoric in the Nile Basin.¹⁴⁹ This is because the upriver states have a stake in the quantity of water reaching the Sudd wetlands in the first place. The actual approach each of these parties will take on this matter remains to be seen.

IV. Renaissance Dam: A Confluence of Sino-American Interests in the Blue Nile

Ethiopia chose the height of the Egyptian revolution in the Tahrir square to announce plans to start works on the Renaissance Dam, in conjunction with China. In fact, China has already finished the feasibility plans and is willing to finance the largest water works in Ethiopia.

Chinese interest in the dam must be viewed with the wider interests of China in Africa in mind.

China is the most populous country in world, and its population is still growing. The Chinese economy has been growing tremendously in last decade. The Chinese strategy in Africa is to secure relationships that will assure Chinese long terms interest. The Renaissance Dam has the capacity to support an agricultural sector producing produce for export at a mammoth scale. By participating in its creation, the Chinese government is cementing its place in Ethiopia so that when it will need agricultural exports from the country, it will have a willing partner.

Chinese involvement in Africa also seeks to secure natural resources for its industries. China has been hard pressed as it seeks to establish diplomatic relations with Juba after its history of close

¹⁴⁹ Schnurr, M. A., & Swatuk, L. A. (2012). *Natural Resources and Social Conflict: Towards Critical Environmental Security*. New York: Palgrave Macmillan.

relations with Khartoum.¹⁵⁰ The Renaissance dam has not moved as fast as it could have because of lack of funding from international aid agencies and other governments. The official reason has been problems with Ethiopia's human resource record. However, at the political level, America, which plays a key role in international financing, seems to have been doing the Cairo's bidding. America's close relationship with Israel explains Washington's interest in the stability of Cairo. Since Cairo is against the construction of the dam, America is not free to support it. IN fact, failing to support it achieves economic stability for Egypt, and hence a more stable Israel.

Cairo's worries with the renaissance dam is that in itself, it will reduce the flow that Egypt receives from the Blue Nile, which is the contributor more than 90% of the Nile waters.¹⁵¹ After the dam is complete, it will instigate the development of agriculture because of the presence of electricity. The dam will also influence municipal development. The effect of these developments will be that Ethiopia will utilize more of the Nile waters leading to a permanent reduction in the quantity of water that flows from Blue Nile into the main river.

South Sudan will be hard pressed on the position to take in the Renaissance dam issue. Its involvement, either to support or oppose the construction of this dam will be symbolic. The two countries are not linked by any of the Nile water systems directly. However, Juba still wants to have peaceful relations with her neighbors. Ethiopia will increase its electricity generation

¹⁵⁰ International Crisis Group. (2012). *China's New Courtship in South Sudan*. Retrieved September 12, 2012, from International Crisis Group: <http://www.crisisgroup.org/en/publication-type/media-releases/2012/africa/china-new-courtship-in-south-sudan.aspx>

¹⁵¹ Twongo, T. K., & Bugenyi, F. W. (2006). Freshwater Related Issues of the Lake Victoria Basin. In *Environment for Development: An Ecosystems Assessment of Lake Victoria Basin Environmental and Socio-Economic Status, Trends and Human Vulnerabilities*. Nairobi: UNEP and PASS.

capacity to 15 MW, through the Renaissance Dam.¹⁵² Juba might be able to import some power for its local uses.

The East African states on the other hand are also caught in between by this development. The dam represents an opportunity for the East African countries to study the reaction of Egypt and Sudan towards the development of upstream projects. One event that can confuse diplomats in the Nile basin is if Egypt and Ethiopia enter into a water-sharing pact under the guise of a Blue Nile Alliance. Such a pact can reduce the impact the NBC would otherwise have, and may even make it redundant. The developments in Ethiopia, especially around the renaissance dam, is an important aspect of Nile Basin diplomacy and politics

V. South Sudan's Security: Petty Crime, Armed Rebellion and Regional Stability

The final issue that has a lot of impact on the Nile Basin politics is the security situation in South Sudan. In chapter four, through the PESLTE analysis, it was clear that the security situation in South Sudan is bad. South Sudan has a potent mix of low literacy levels, high rates of unemployment, and presence of small arms as the legacy of the Sudanese civil wars. These conditions predispose the country to long-term instability and insecurity. In addition to these, there is a strong nationalist sentiment in South Sudan that is leading to Xenophobia. A number of Kenyan nationals have been killed under questionable circumstances in South Sudan and many

¹⁵² Malone, B. (2010). *Ethiopian PM warns Egypt off Nile war*. Retrieved August 15, 2012, from Reuters: <http://www.aljazeera.com/news/middleeast/2010/11/20101124152728280839.html>

others complain of poor treatment by South Sudan nationals.¹⁵³ With the porous borders between the East African states, the South Sudanese situation will aggravate the problem of small arms proliferation in the horn of Africa. In addition to these issues, there are armed militias in South Sudan controlling pockets of rebellion against the Juba government as a result of a fallout with during the transition to statehood. This will also increase the state of insecurity inside South Sudan.

The relationship between the emerging circumstances in South Sudan and the Nile Basin is that the security situation in South Sudan may undermine Juba's capacity to engage well with the Nile Basin countries. In fact, the insecurity within South Sudan is already showing signs of diplomatic strain with its long-term allies such as Kenya. The prevailing mood in Kenya is becoming "anti South Sudanese" because Kenyans feel they are not being appreciated for the support that they showed South Sudan during the war years. Lack of strong control over arms may also increase cross border crime and with that, relations between South Sudan and the East African Countries will face further strain. The security situation in South Sudan is a matter which will influence the pace and direction of engagement with the riparian states.

¹⁵³ Jamah, A. (2012). *State Mum as Kenyans Murdered by South Sudan police*. Retrieved September 12, 2012, from Standard Digital: http://www.standardmedia.co.ke/?articleID=2000064016&story_title=State-mum-as-Kenyans-murdered-by-South-Sudan-police

CHAPTER 7

CONCLUSION

The goal of this project was to explore the implications of the post independence Sudan on the Nile Basin Politics. The main findings, based on the objectives of the project are as follows.

I. Findings

The main political events of sufficient influence in the Nile Basin include the independence of South Sudan, the fall of Hosni Mubarak in Egypt as a result of the Arab spring , and the signing of the Nile Basin cooperation framework by a majority of the riparian states, paving the way for the creation of the Nile Basin Authority. Other political issues include the growing influence of China in Africa, and the long-standing interests of western powers in Africa.

Another objective of the project was the determination of the impact of the post independence Sudan on the 1929, and the 1959 treaties. The main finding here is that South Sudan can tip the scale in any of three ways. First, it can join the lower riparian states in the quest for new treaties.

Secondly, it can join Egypt and Sudan as the third member of the two treaties, or thirdly, it can simply ignore the need for international treaties in order to pursue a unilateralist direction.

However, the most likely direction that South Sudan will take will be towards supporting the Nile Basin Initiative in its efforts to create the Nile Basin Commission.

On the issue of climate change, it is clear that each of the riparian states faces climate change related risks. The incidence and risks of flooding will increase with time, just like drought and

famine. The riparian states are in serious risk of resource conflicts if a sustainable way to share out the resources of the Nile is not found.

II. Recommendations

The recommendations emanating from this project are as follows

First, the riparian states need to take the threat of armed small-scale inter-communal and large scale international conflict serious as they deal with the issue of the Nile. Already, there are incidents of armed conflict between different communities living along the Nile Basin. These conflicts can escalate to full-scale wars.

Secondly, the riparian states need to push forward with the plans to create the Nile Basin Commission to secure the long-term sustainable use of the waters of the Nile. The creation of the state of South Sudan has presented the Nile Basin Initiative with the opportunity to force Egypt and Sudan to the negotiating table

Thirdly, all the riparian states need to pay more attention to their national interests in order to reduce the impact of the interests of foreign countries in the resources of the Nile. In particular, the riparian states need to be wary of the Sino-American policies that may affect the balance of power in disfavor to the riparian states.

III. Areas of Further Research

Some of the areas that warrant further research concerning the impact of the post independence Sudan on the Nile Basin Politics include an examination of Egypt's policy on the Nile, and an

examination of Juba's position in the Nile Basin politics. Egypt is still in a transitional mode after the ousting of Hosni

Mubarak. This means that it may take some time for the new regime to clarify its position on the Nile, especially in relation to the formation of the Nile Basin Commission. On the issue of Juba, the country is also in the process of defining its international relations with both African and world powers. The final position Juba takes on the Nile will depend on how these relationships develop. There is a need to keep an eye on the developments in Juba in order to determine the emerging changes.

References

- Abdalla, I. H. (1971). The 1959 Nile Waters Agreement in Sudanese-Egyptian Relations. *Middle Eastern Studies* , 329-341.
- Abdo, M. (1994). The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin. *Perceptions* .
- Adar, K. G., & Check, A. N. (2011). *Cooperative Diplomacy, Regional Stability and National Interests: The Nile River and the Riparian States*. Pretoria: Africa Institute of South Africa.
- Bartos, O. J., & Wehr, P. (2002). *Using Conflict Theory*. Cambridge: Cambridge University Press.
- Bercovitch, J., & Jackson, R. D. (2009). *Conflict Resolution in the Twenty-first Century: Principles, Methods, and Approaches*. Michigan: University of Michigan.
- Bruch, C. E., & Mrema, E. (2006). *Manual on Compliance With and Enforcement of Multilateral Environmental Agreements*. Nairobi: United Nations Environment Programme.
- Bubenzer, F., & Stern, O. (2012). *Hope, Pain & Patience: The Lives of Women in South Sudan*. Sunnyside/Auckland Park: The Institute for Justice and Reconciliation.
- Button, K. (2010). *Transport Economics*. Cheltenham, UK: Edward Elgar Publishing.
- Chapin, R. (2010). *Social Policy for Effective Practice: A Strengths Approach*. New York: Francis & Taylor.
- Cullen, J. (2011). *Multinational Management: A Strategic Approach* (5th ed.). Mason, OH: Cengage Learning.
- Daily Nation. July 11, (2012). *Newest Nation South Sudan Proud after Debut Draw*. Retrieved July 16, 2012, from Daily Nation:

<http://www.nation.co.ke/sports/football/Newest+nation+South+Sudan+proud+after+debut+draw/-/1102/1451038/-/je5lq4/-/index.html>

- Donnelly, J. (2000). *Realism and International Relations*. Cambridge: Cambridge University Press.
- Encyclopaedia Britannica. (2012). *Institutional Economics*. Retrieved August 14, 2012, from Encyclopaedia Britannica:
<http://www.britannica.com/EBchecked/topic/289311/institutional-economics>
- Fellman, J. D., Getis, A., & Getis, J. (1997). *Human Geography: Landscapes of Human Activities*. New Delhi: SURENDRA KUMAR.
- Goldstein, M., Zivin, G., Habyarimana, J., Pop-Eleches, C., & Thirumurthy, H. (2009). *Health Worker Absence, HIV Testing and Behavioural Change: Evidence from Western Kenya*. Unpublished Manuscript.
- GOSS. (2012). *Government of the Republic of Southern Sudan*. Retrieved August 30, 2012, from Infrastructure: <http://www.goss-online.org/magnoliaPublic/en/Business-and-Industry/Infrastructure.html>
- Griffiths, M. (1995). *Realism, Idealism, and International Politics*. London: Routledge.
- Griffiths, M., O'Callaghan, T., & Roach, S. C. (2008). *International Relations: The Key Concepts*. London: Taylor and Francis.
- Holmes, D. (2005). *Communication Theory: Media, Technology, and Society*. London, UK: SAGE.
- Howell, P. P., & Allan, J. A. (1994). *The Nile: Sharing a Scarce Resource : A Historical and Technical Review of Water Management and of Economic and Legal Issues*. Cambridge: Cambridge University Press.
- Howell, P., Lock, M., & Cobb, S. (1989). *The Jonglei Canal: Impact and Opportunity*. Cambridge: Cambridge University Press.

- IFDC. (2011). *South Sudan*. Retrieved August 29, 2012, from IFDC:
http://www.ifdc.org/Nations/South_Sudan
- International Crisis Group. (2012). *China's New Courtship in South Sudan*. Retrieved September 12, 2012, from International Crisis Group: <http://www.crisisgroup.org/en/publication-type/media-releases/2012/africa/china-new-courtship-in-south-sudan.aspx>
- Jamah, A. (2012). *State Mum as Kenyans Murdered by South Sudan police*. Retrieved September 12, 2012, from Standard Digital:
http://www.standardmedia.co.ke/?articleID=2000064016&story_title=State-mum-as-Kenyans-murdered-by-South-Sudan-police
- Jindal, R., Swallow, B., & Kerr, J. (2006). *Status of Carbon Sequestration Projects in Africa: Potential Benefits and Challenges to Scaling Up*. Nairobi: World Agroforestry Center.
- Kerzner, H. (2009). *Project Management: A Systems Approach to Planning, Scheduling and Controlling* (10 ed.). Hoboken, NJ: John Wiley and Sons.
- Lean, G. (2006). *Disappearing World: Global Warming Claims Tropical Island*. Retrieved September 5, 2012, from The Independent:
<http://www.independent.co.uk/environment/climate-change/disappearing-world-global-warming-claims-tropical-island-429764.html>
- Malone, B. (2010). *Ethiopian PM warns Egypt off Nile war*. Retrieved August 15, 2012, from Reuters:
<http://www.aljazeera.com/news/middleeast/2010/11/20101124152728280839.html>
- Mwanika, P. A. (2010). Natural Resources Conflict. *ISS Paper 216* , pp. 1-12.
- Mwebaza, R. (2009). The Impacts of Climate Change in East Africa. In R. Mwebaza, & L. Kotze (Eds.), *Environmental Governance and Climate Change in Africa: Legal Perspectives*. Pretoria: Institute for Security Studies.
- Mwiturubani, & J.-A. v. Wyk (Eds.), *Climate Change and Natural Resources Conflicts in Africa*. Pretoria: Institute for Security Studies.

- Myers, S. L. (2012). *Once Imperiled, U.S. Aid to Egypt Is Restored*. Retrieved September 12, 2012, from New York Times:
http://www.nytimes.com/2012/03/24/world/middleeast/once-imperiled-united-states-aid-to-egypt-is-restored.html?_r=1
- NBI. (2012). *About Us*. Retrieved July 13, 2012, from The Nile Basin Initiative:
http://www.nilebasin.org/newsite/index.php?option=com_content&view=section&layout=blog&id=5&Itemid=68&lang=en
- NBI. (2012). *South Sudan admitted to the Nile Basin Initiative*. Retrieved July 13, 2012, from Nile Basin Initiative:
http://www.nilebasin.org/newsite/index.php?option=com_content&view=article&id=127%3Asouth-sudan-admitted&catid=40%3Alatest-news&Itemid=84&lang=en
- Olukya, G. (2012). *South Sudan Finds a New Way of Tackling Unemployment*. Retrieved August 29, 2012, from Africa Report:
<http://www.theafricareport.com/index.php/20120503501810668/east-horn-africa/south-sudan-finds-a-new-way-of-tackling-unemployment-501810668.html>
- Ramsbotham, O., Woodhouse, T., & Miall, H. (2011). *Contemporary Conflict Resolution*. Cambridge: Polity Press.
- Salman, S. M. (2012). *Outcome of the Nairobi Nile Council of Ministers Meeting – An Inevitable Consequence of a Level Playing field?* Retrieved August 15, 2012, from International Water Law Project Blog:
<http://www.internationalwaterlaw.org/blog/2012/02/14/outcome-of-the-nairobi-nile-council-of-ministers-meeting-%E2%80%93-an-inevitable-consequence-of-a-level-playing-field/>
- Sa'oudi, M. A.-G. (2001). An Overview of the Egyptian-Sudanese Jonglei Canal Project. *The International Politics Journal (Al-Siyassa Al-Dawliya)* (141).
- Schellenberg, J. A. (1996). *Conflict Resolution: Theory, Research, and Practice*. Albany: SUNY Press.

- Schnurr, M. A., & Swatuk, L. A. (2012). *Natural Resources and Social Conflict: Towards Critical Environmental Security*. New York: Palgrave Macmillan.
- Suleiman, M. A. (2011). *Darfur, a Crisis of Identity & Governance*. Bloomington, IN: AuthorHouse.
- The Economist. (2010). *Iran and Israel in Africa: A Search for Allies in a Hostile World*. Retrieved September 4, 2012, from The Economist: <http://www.economist.com/node/15453225>
- Twongo, T. K., & Bugenyi, F. W. (2006). Freshwater Related Issues of the Lake Victoria Basin. In *Environment for Development: An Ecosystems Assessment of Lake Victoria Basin Environmental and Socio-Economic Status, Trends and Human Vulnerabilities*. Nairobi: UNEP and PASS.
- UN. (2012). *Definition of Key Terms used in the UN Treaty Collection*. Retrieved July 12, 2012, from United Nations Treaty Collection: http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml#treaties
- UNEP. (2012). *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements: State Succession and the Nyerere Doctrine*. Retrieved May 25, 2012, from <http://www.unep.org/dec/onlinemanual/Compliance/Resource/tabid/594/Default.aspx>
- UNOPS. (2008). *South Sudan Operations Centre*. Retrieved August 29, 2012, from UNOPS: What We Do: <http://www.unops.org/english/whatwedo/locations/africa/pages/sudanoperationscentre.aspx>
- Wehr, P. (1998). *Conflict Mapping*. Retrieved August 8, 2012, from International Online Training Program On Intractable Conflict: <http://www.colorado.edu/conflict/peace/treatment/cmap.htm>
- Wesangula, D. (2012). *Food Crisis Looms, Warns UN Report*. Retrieved September 3, 2012, from Daily Nation:

<http://www.nation.co.ke/News/Food+crisis+looms++warns+UN+report+/-/1056/1320406/-/2ysk8x/-/index.html>

Wilson, H. J., Guinan, P. J., Parise, S., & Weinberg, B. D. (2011, July). What is your Social Media Strategy. *Havard Business Review* .

Wyk, J.-A. v. (2010). The African Union Response to Climate Change and Climate Security. In D. A. Mwiturubani, & J.-A. v. Wyk (Eds.), *Climate Change and Natural Resouces Conflicts in Africa*. Pretoria: Institute for Security Studies.

Zenter, M. (2011). *Design and Impact of Water Treaties: Managing Climate Change*. Berlin: Springer.