

Nile Waters: The Threat of War Is Not Justifiable in Modern Times

by Charles Odidi Okidi*

Beginning in May 2013, strongly worded press statements, bordering on the threat of war, have been issuing from the leadership in Egypt, directed at Ethiopia. Egypt is upset by the fact that Ethiopia is constructing a dam on the Blue Nile for the production of hydroelectric power and that the dam is likely to interrupt the flow regime of the river and thereby reduce the quantity of water for consumptive use in Egypt. Clearly that is an issue at the heart of contemporary international water law.

This paper will discuss the nature of the Egyptian claim as expressed in the press communications. Since the issue is current and therefore without formal documentation yet, the article relies largely on publicly available reports, with all the *caveats* that attend such dependence. The author is hopeful, however, that the paper will be a significant contribution to the history of the Nile.

For these reasons it is important that this paper records the statements emanating from the Egyptian authorities, and the responses from the upper riparian peoples. The paper briefly discusses the historical/governance context in which Egypt has utilised the water, and seeks to ascertain the origins of the right to use the Nile waters and when the quantitative prescription of the water originated. In its official position, Egypt's claim of a right over Nile water is based on treaty law therefore the paper outlines the profile of past treaties and what they said about the contrasting parties. The upper riparians, for their part, have rejected all those agreements inherently without binding force on them. The final section will outline the salient features of the new, comprehensive Framework Agreement that has been negotiated by all the riparian States but not signed by Sudan and Egypt.

Facts about the Dam

The outrage expressed by Egypt that prompted the preparation of this paper, has arisen from Ethiopia's construction of the Grand Ethiopian Renaissance Dam on the Blue Nile. The dam is located in the Benishangul-Gumuz region of Ethiopia, approximately 40 km east of the Sudan-Ethiopia border. The site was originally identified by the United States Bureau of Reclamation during the surveys done for Emperor Haile Selassie in 1956 and 1964.¹ The Ethiopian government re-evaluated the site in 2004 and 2010 and, convinced of its viability, completed a design in November 2010.

On 31 March 2011, a day after the project was made public, a contract amounting to US\$ 8 billion was awarded to an Italian construction company for the dam project

with the understanding that the first two generators should be operational 44 months after commencement of construction. It is funded entirely by the Ethiopian Government. The foundation stone was laid on 2 April 2011 by Prime Minister Meles Zenawi for the project which was slated for completion in July 2017. Given exclusively governmental funding, the project was subject to considerable governmental discretion and is unlikely to be held hostage by the usual requirements of a statement of "no objection" from upper riparians. No doubt, were the situation different, Egypt and Sudan would most likely prevail upon external funding agencies not to provide funds for the dam project.

The planned dam will be 170 m tall and 1,800 m long. Its reservoir capacity will be approximately 63 billion m³. Its principal purpose is the production of electricity. The overall hydroelectric potential on the Blue Nile is estimated at 10,000 MW. The initial plan was to produce only 5,250 MW but later, in March 2012, planned production was raised to 6,000 MW. Most of that power is to be sold to local consumers in Ethiopia; the rest, exported to Sudan and Egypt. Other expected benefits of the dam include navigation on the river, tourism and fisheries.² Curiously, agriculture and irrigation are mentioned only in passing and this is important because it suggests that irrigation, a major consumptive use of water, is not the main purpose of the dam.

The Ethiopian highlands from which the Blue Nile flows contribute, on an annual basis, the largest amount of water to the Nile. In his paper on legal and policy issues of the Nile, Albert Garretson once observed that run-off from the Ethiopian highlands is spectacular in the river's rise from April to September. In July, August and September, the Blue Nile is one enormous river rushing over the greater part of its course from the shallow Lake Tsana.³ He estimates that, at peak flood, the Blue Nile supplies 90 percent of the water passing Khartoum, but that in April it supplies only 20 percent. The distinguished water expert, Yahya Abdel Mageed,⁴ gives 85 percent as the proportion of water from the Ethiopian plateau going past Khartoum at peak flood. That does not seem a big difference. However, he breaks down that total and tells us that, over a normal year, the Blue Nile contributes only 59 percent. Other rivers flowing from the plateau into the Nile contribute flows as well: the Sobat contributes 14 percent, while the Atbara contributes another 14 percent. In all, nearly 41 percent of the normal yearly flow from the Ethiopian plateau into the Nile does not flow through the Blue Nile and, therefore, is not threatened by the dam. In addition to the 41 percent of water coming from the highlands directly to the Nile, there is another 15 percent of steady flow from the Equatorial Lakes;⁵ so that approximately 56 percent of the Nile's waters are guaranteed to Egypt and Sudan.

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