Water systems, Water Agreements and State Sovereignty: The Case of the Nile Waters Agreement of 1929

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It is very likely that no society has existed without water laws of some sort. The fundamental reason for this unique situation is that water is the only truly universal resource that all societies at all times have had to control, relate to and often share. Since water, at the same time, always runs through the societies it helps to create and sustain in different ways, and these societies, when exploiting such a resource, enter into particular relationship with their water systems, different water law traditions have developed in different localities, regions and river basins. Comparative studies of water law in this perspective are an undeveloped field.

In order to understand the great variety in water law systems and their characteristics, it is necessary to analyse the water systems as well as the particular histories of the regions in which these legal traditions developed. It is crucial to understand that for a long time water law developed in a highly local manner that reflected the history, geography and political systems of the areas concerned. It is also important to understand how these contexts of time and specific localities have shaped the legal discourse. At the same time, it is striking how the different water law systems of the world exhibit certain recurring patterns. This is partly the result of the diffusion or migration of ideas about water management and water law, but it also reflects the fact that water is not only particular; it is also always universal, in the sense that water is the same everywhere: constantly in flux, always seeking a lower point, and ultimately escaping efforts to control it. This chapter will reconstruct the historical and geographical context of the Nile Waters Agreement of 1929 as a case in point.[1] One of the first places where water law developed was along the River Nile, during the time of the pharaohs. The discussions in this part will not focus on this early period, however, but on the development of Nile agreements in the modern epoch, especially during the colonial period when the British Empire was still the a dominant power in the region.

In addition to presenting a historical background to the Nile Waters Agreement of 1929 – an agreement that still is at the centre of the current

debate among the Nile Basin states on how the Nile waters should be managed and allocated – the chapter will discuss how river hydrology and river physics impacted the agreement in ways that often tend to be overlooked in legal discourses on river agreements and water laws. Due to the fact that the river systems have helped to create different man–environment relations and development patterns along long stretches of a particular river (in this case the Nile), the legality or continued validity of agreements concluded at a certain point in time will certainly be questioned somewhere down the timeline. Any accord on the use and allocation of large rivers will, of course, reflect existing power hierarchies in the basin and dominant conceptions of the river system. The problem is that areas and states along a major river basin often develop unequally, and therefore develop uneven patterns of water demands and consumption; this subsequently results in the acquisition and formulation of different conceptions of entitlements and the attributes of the river itself.

Long and complex international river systems will, due to different ecosystems or river landscapes, encourage different types of social and economic developments along the rivers' banks and tributaries, and hence influence or frame localized use of water over time; there is often a structural relationship between a particular river basin, its hydrology and geography on the one hand, and the patterns of 'established uses and rights' to the water in the same river basin on the other. In this context too, the Nile shall be a case in point.

Lastly, the Nile Waters Agreement can also demonstrate that cooperation over international river basins will, contrary to common belief, not always erode state sovereignty but might strengthen it, because it provides an excellent arena for exercising and acquiring state authority. A study of the 1929 Agreement may throw new light on the somewhat ahistorical legal debate about the relationship between sovereignty and water law.

THE 1929 EXCHANGE OF NOTES

The Nile Waters Agreement, consisting of the exchange of notes in May 1929 between the British high commissioner in Egypt, Lord Lloyd, and the Egyptian government, came to have a profound impact not only on the Anglo–Egyptian relations and relations between Egypt and the Sudan, but also on economic developments in Uganda, southern Sudan and, indirectly, on Ethiopia up to the present day. Without doubt, it has been an important moment in the history of Nile politics, international river basin management in general and in the evolution of international watercourses law. As an agreement on the use of international river waters for purposes other than navigation, and particularly in presenting a detailed water allocations regime between Egypt and Sudan, the treaty has been hailed as one of the first of its kind in the world.

On 7 May 1929, in one of the letters exchanged with the Egyptian government, Lord Lloyd emphasized that Great Britain had committed itself to guaranteeing Egypt's future water supply. Lloyd wrote to the British government regarding the safeguarding of those rights as a 'fundamental principle' of British policy, which would be observed at 'all times and under all conditions'.[2] London also accepted the judicial principle that the first user (the word 'first' being interpreted in the historical rather than in the geographical sense) of waters of the stream, i.e. Egypt in this case, should have priority in the disposal of waters it had hitherto utilized. The Treaty made it possible for Egypt to build water control works necessary to itself in the Sudan and other upstream countries, block irrigation works that could harm the Nile discharge in Egypt, and reassert historical rights to waters of the River acquired through long use.

An intriguing aspect of the agreement was that the exchange of letters did not define water rights in quantitative terms. It was, however, accompanied by a technical report of the 1920 Nile Projects Commission, which has been interpreted as 4 million m^3 of Nile waters for Egypt and 48 billion m^3 for Sudan each year.

The 1929 Nile Waters Agreement was a treaty between two consenting states who wished to regulate their relationship on certain matters; it bound those who signed it, as well as other states on 'whose behalf Great Britain assumed an undertaking' on the basis of its colonial position, i.e. the colonies of Sudan itself, Uganda, Kenya and Tanzania. Whatever regime the agreement formed, it applied only to parties to the Treaty, and no others. In legal sense, it can be described as a 'law' between those parties, although it does not constitute a corpus of 'public international law' as such.

What were the historical background and the hydrological context of the agreement on Nile waters, and why is it fruitful to analyse both the particular geopolitical situation and character of the geographical structure of the resource that had been the subject of the Agreement?

THE COLLAPSE OF A NILE BASIN REGIME UNDER ONE RULE

By the late 1920s the pioneers of British basin-wide Nile policies, Lord Cromer and William Garstin, Lord Kitchener and William Willcocks, Sir Wingate and Murdock MacDonald, had all left the scene, and the heydays of British Nile control were already a thing of the past. In 1908, Cromer had confidently declared that 'the Englishman' had taken the entire Nile in hand. For the first and only time in the Nile's history, one might talk of a 'King of the Nile waters' – Lord Cromer. At the time, his and his government's plans for taming the entire river were very ambitious in comparison with most other river systems in the world, and all the projected dams and water infrastructure installations were designed to serve the overall interests of one

imperial authority.[3] Ten years later, however, British hydro-political grip on the Nile River had loosened.

London's policy had always aimed at stability in Egypt and development of the country's irrigation infrastructure, especially related to cotton production during the summer time, or the Nile's low season. Their idea was again formulated by Lord Cromer: it was Nile control that should convince the 'Oriental Mind' that it should accept the West and Britain's leadership. London's main Nile strategy was that the White Nile, which provided almost all of the water during the summer period, was the most important river at the time and should be used by Egypt. The Blue Nile[4] could not be dammed and the flood water could not be stored for the summer season due to the high concentration of silt in the flood water. For this reason, construction of the first Aswan Dam, completed in 1902, and the crowning achievement of the Cromer–Garstin regime was built only for seasonal storage of the relatively silt-free water from the tail of the flood. During winter seasons, Sudan's Gezira area on the island between the Blue and White Niles would take water by gravity from the Blue Nile after building the Sennar Dam; at this time of the year, Egypt did not need waters from the Blue Nile. These hydrological and topographical facts shaped the foundation of British Nile policies.

The Egyptian revolution of 1919 set in motion political forces that tore apart the Imperial Nile strategy, but did not change London's analysis of the role of the River and the relative importance of its two tributaries for Great Britain's overall policy objectives. The political issue of who should control the use of the entire river system came to play an important but neglected role in the struggle for Egyptian independence. The Nile question became part of the nationalist political agenda. The revolution in 1919 and the British declaration of Egyptian independence in 1922 suddenly changed the political landscape and the context of British Nile planning.

Despite the changes, Britain's main strategic aims in the Nile valley still remained the same: to secure its political and military position at the Suez and to increase the export of long-staple cotton to Lancashire. Achievement of the two objectives was seen as being dependent upon the same factor – increased exploitation and control of the Nile waters. The strategy that had been laid down so forcefully at the beginning of the century, however, could no longer be implemented in the 1920s.

Egypt had won formal independence in 1922, but it had a vulnerable geopolitical position as a downstream state, a concern disclosed and continually articulated by the nationalist elite. The Egyptian nationalists sought control of the Nile and regarded Sudan as an integral part of Egypt, but gradually they realized that Britain's policy in the Sudan had effectively weakened Egypt's position there. Britain had 'lost' Egypt, but was still a strong upstream power on the Nile since it had occupied the whole stretch of the river from Aswan to the Great Lakes in Uganda, and worked on strengthening its position on the Blue Nile in Ethiopia. Britain was looking

for a means of maintaining its influence and military presence in a country that had opted for independence and where the opposition to Britain was very strong. What options did London have?

BRITAIN'S USE OF THE NILE AS A GEOPOLITICAL INSTRUMENT

London had both the financial and technological capacity to control, or threaten to control, the water discharges of Egypt's real lifeline because of its hold on many of the upstream countries. The following quote from archives of the British Foreign Office is an example of one of the many secret documents outlining identical visions of Nile control as a geopolitical instrument:

> His Majesty's Government are indeed in the position of being able to threaten Egypt with the reduction of her water supply, and this is sufficient in itself to create a feeling of anxiety and resentment in Egyptians; on the other hand His Majesty's Government cannot offer to increase the water supply of Egypt unless the construction of the Tsana reservoir is undertaken. Once this work is completed, they will be able, without in any way abandoning their power to damage Egypt by reducing the supply, to tranquillise Egyptian anxiety by offering to increase that supply to a very great extent.[5]

The analysis was based upon the Egyptian waterscape: there was almost no rain in Egypt. In the southern parts of the country, precipitation could be less than 10 mm per year, and in Cairo the yearly average was only 18 mm. Nearly the entire Egyptian population lived on the banks of the River, and all economic activity depended upon it. London's aims at the time concentrated on developing irrigation and cotton production in the Sudan and on encouraging a development in the Sudan that weakened Egypt's position and strengthened the hand of London. Great Britain regarded control of the Sudan as a means to control Egypt and the Suez. As was written in one secret memoranda, 'The power which holds the Soudan has Egypt at its mercy, and through Egypt can dominate the Suez Canal'.[6]

Britain wanted to use its control of the Nile as a means to develop a distinct Sudanese identity *vis-à-vis* Egypt. Hence, water withdrawals in the Sudan (and plans for the Lake Tana Reservoir) became keystones in London's efforts to maintain its regional political influence. Developments in long-staple cotton production in Egypt and changes in the international cotton market made the Gezira scheme more important to British industries and to Sudanese finances. Since the river runs through Sudan and it is possible, topographically and geologically, to build large dams on the river and divert the waters into the Sudanese desert, London understood the immense political and economic potentials of Nile control.

THE ALLENBY ULTIMATUM OF 1924

The so-called Allenby ultimatum should be accorded appropriate emphasis in any broad analysis of the 1929 Agreement and its causes. In 1925, with great fanfare but with little success, the British exploited their upstream control of the Nile as a weapon against Egyptian nationalists. In historical annals, this move has been called the Allenby ultimatum, named after the British leader of Egypt and the Sudan at the time.

While the British work on the Sennar Dam and on the Gezira scheme in Sudan went on, the radicalization of the Egyptian people continued. The enforced compromise on the upper limit of how much water the new Gezira scheme should be allowed to take did not much help to weaken the nationalist movement in Egypt, while at the same time the cotton industry both in Sudan and Great Britain found it a highly unwelcome strait jacket. Since 1912, the latter had publicly referred to the scheme's enormous potential, which became obvious to everybody when work started. The higher cost of the project also encouraged higher productivity goals. Water and cotton were still in short supply, with consequences for corporate profits and the local population. For example, the government had instructed that all the cotton should be sold abroad; local women were forbidden even to hand-spun cotton. If a man on a pumping station kept back a bit of cotton for spinning, it was regarded as stealing and punishable by prison. According to a British administrator, Sudanese women said: 'Isn't it our land? Why shouldn't we women have a bit of cotton? Truly this government is hard on women.'[7] The problem was how to get more water to the land.

Meanwhile, in Egypt the upper classes increasingly feared that the agitation of the nationalists had unleashed a political attitude among the population that could threaten their own position. To dampen this radicalization, former allies of the nationalist leader, Saad Zaghlul Pasha, were now willing to work with the British. The Liberal Constitutionalists' Party was formed and a constitution was promulgated. In the intervening time the Makwar Dam was being built, which was then regarded in Egypt as a fait accompli. The Wafd won a sweeping victory in the elections, and in January 1924 Zaghlul became prime minister. During that year, a number of British officials and Egyptian collaborationists were murdered by hard-line nationalists. Then, on November 19, Lee Stack, governor-general of Sudan and British commander-in-chief of the Egyptian Army, was assassinated. The assassination was a blow to the Egyptians, who wanted to normalize relations with Britain and a debacle to British security in the region; however, it also created an opportunity for tough action.

His Majesty's government, Allenby and the Sudan government described the murder not simply as the work of extremists, but rather as the natural outcome of a campaign of hatred mounted by Zaghlul and other mainstream nationalists. A situation had emerged in which the British thought they, with

a cloth of legitimacy, could clamp down harshly on Egyptian opposition, with some support at home and abroad. And so they did – immediately and severely. First, they implemented the scheme for the elimination of Egyptian personnel in Sudan, which had been secretly drawn up in 1920[8] hoping to remove Egypt as a partner in the running of Sudan.[9]

What shocked the Egyptians most, however, was the issuance of the Nile ultimatum on 22 November 1924. As a direct and explicit reaction to the assassination of Stack, the British representative in Egypt, Lord Allenby, on the day of Stack's funeral, went to Zaghlul's official residence making a point of not saluting on entering or leaving the residence. While trumpeters played the British national hymn outside, he read out load his famous Nile notice:.

> ...the Sudan Government will increase the area to be irrigated in the Gezira from 300,000 feddans to an unlimited figure as need may require.

What the Egyptians feared had come to pass.

The British reactivated their downstream complex. London gave Egyptians a demonstration in waterpower that would never be forgotten, and which affected the way British Nile policies were later conceived and interpreted. The area of cotton farming in the Gezira was to be increased without asking Egypt (they did not threaten unlimited irrigation in Sudan, only in Gezira), thus annulling the commitment made in 1920. Allenby later wrote that his intentions were to impress upon Egypt 'the extent of a Power which the country, to its own detriment and ours, had been too long purposely taught to despise'.[10] This extent of power was the authority to dam the Nile, and he knew that would strike at the very centre of the Egyptian downstream complex. Now the time had come to show the fist, he thought.

A number of important political changes followed. Zaghlul did not accept Allenby's demands and resigned the day after. Ahmad Ziwar Pasha formed a new government, which accepted the British demands unconditionally. At the same time as they demonstrated the power of the Nile weapon, they attacked other Egyptian positions in Sudan. All Egyptian Army units were expelled from Sudan, and a new Sudanese Defence Force separate from the Egyptian Army was established. The Sudanese battalion that mutinied in support of the Egyptians was annihilated. On 27 and 28 November 1924, more than 20 people were killed. Four officers who deserted gave themselves up, and three were sentenced to death and shot by a firing squad. The ideas of the League of Sudanese Union – which towards the end of 1922 had sent a letter to Prince Umar Tusun of Egypt in which it was stated that in Sudan there was a movement 'the purpose of which is to support the Egyptian people', expressed its belief that 'the Sudan should never be separated from Egypt' and exalted the cause of the 'the Nile Valley from Alexandria to Lake Albert' – was clamped down on.[11]

In Britain, politicians publicly disagreed about this use of the Nile power. Ramsey MacDonald, who just had stepped down as the Labour prime minister and foreign secretary (January–November 1924), criticized the ultimatum. He regretted that Britain had now told the Egyptian cultivator that they 'hold him in the hollow of our hands'. As a prime minister, Ramsey MacDonald had, on 10 July 1924, delivered a speech in the House of Commons:

> I give my word and the Government guarantee [...] that we are prepared to come to an agreement with Egypt on this subject which Egypt itself will accept as satisfactory. That agreement will be carried out by a proper organisation as to control (this did not materialize), and so on, and under it, all the needs of Egypt will be adequately satisfied. The Egyptian cultivator may rest perfectly content that, as the result of the agreement which we are prepared to make, the independence of the Sudan will not mean that he is going to enjoy a single pint of water less than if he had it and was himself working it.[12]

The Egyptians had been frightened, MacDonald admitted, but he suggested another course more in line with what he called British traditions. They should not 'take a single gallon of water required for Egypt', but should instead get a joint 'board set up to deal with the whole problem of the Nile water in the Sudan and Egypt [...] and you and we will cooperate to produce peace, happiness and prosperity'.[13]

Change in British tactics and the 1929 Agreement

In the latter half of the 1920s, the British government worked hard to improve the Empire's public image in Egypt; it aimed at establishing a system for Nile development that was realistic and expansive, and that was adapted to the new political–strategic situation. London clearly realized that there would be no chance of negotiating a new overall treaty with Egypt on outstanding issues like the Suez, unless the political damage of the Nile ultimatum was repaired. British strategists had, however, reassessed Cromer and Garstin's policy, now described as being 'too closely associated with exclusive Egyptian control' of the Nile and partly blamed it for reassuring what was called the 'monopolistic attitude' so deeply engrained in Egyptian public opinion. London realized that having 'lost' Egypt as a protectorate, it could no longer implement the basin-wide plans of the past, but the Foreign Office in London tried to maintain the role previously occupied by the Nile regime of Lord Cromer and his close associate, the water planner William Garstin. Their aim was to continue as a kind of general command of the Nile development, but in a very different political atmosphere.

During this period, the Foreign Office in London regarded itself as the natural control centre and think-tank for utilization of the Nile. When Allenby had suggested that Great Britain might consider it expedient to

seek from the League of Nations a British mandate for the Nile and its waters as distinct from any territorial question, this reflected the mood, but it was a wholly unrealistic proposal. Sitting at their desks in Whitehall close to the Thames, the policymakers and foreign policy bureaucrats in London conceived of the Nile as a river in which Britain had both an interest and a duty to control. In the 1920s they not only faced nationalists, kings, emperors and rivalling European and American powers in the Nile valley, but they also had to balance the interests of British companies, the Colonial Office and public opinion at home and abroad. The very complex imperial, political set-up did not make it easier: Britain had a high commissioner in Egypt but the country was formally independent, although London had reserved the Nile for itself; Sudan was ruled from the Foreign Office in London, Uganda was under the Colonial Office in London, Kenya was about to become a white settler state, Tanganyika was ruled by a British governor and commander in chief of Britain under the Treaty of Versailles (1919) and had received a League of Nations mandate to administer the territory. In Ethiopia, finally, London had a British representative and the 1902 agreement with Emperor Menelik II dealing also with Nile utilization. In Eritrea, Rwanda, Burundi and Congo, London had agreements with the respective colonial powers guaranteeing that these powers would not build dams on the Nile without British consent.

THE NILE WATERS COMMISSION OF 1925

To counter what the British described as Egypt's monopolistic attitude and at the same time repair the damages caused by the Allenby ultimatum, London came up with different initiatives that would enable it to maintain its role as mater of the River. The Egyptian prime minister, Ziwar Ahmad Pasha, who had unconditionally acceded to all British demands when taking power after Zaghlul resigned, complained in 1925 that the Egyptian government had always maintained that the development of irrigation in Sudan must in no way be of such a nature as to damage irrigation in Egypt or to prejudice future projects that were crucial to meeting the needs of the country. He felt that 'this principle' had been fully admitted by His Britannic Majesty's government in the past.[14] In early 1925, he asked Allenby to revoke the instructions in his Nile ultimatum, which had so infuriated and shocked the Egyptian public. This gave London an opportunity to declare a shift in policy.

Allenby replied the same day that the British government was disposed to direct the Sudan government 'not to give effect' to the previous instructions mentioned in his ultimatum.[15] The British line was now to tell Egyptians that only Great Britain could guarantee them the water they needed, a guarantee less trustworthy after the Allenby ultimatum than before, it is true, but carrying greater political weight, perhaps, since the

British had already proved its power upstream. London now wanted to be seen as a kind of broker between the more aggressive Nile policy being pursued by the Sudanese government – led by the British but with support from the Sudanese who wanted to invest in profitable irrigation agriculture, on the one hand, and Egypt, on the other. The British strategists now aimed at convincing the Egyptian general public that Egypt would be compensated for water taken at Sennar – and with London's help.

At the same time, it was strategically important to break down what London called the 'monopolistic attitude' of Egyptians to the Nile waters. Since the 1920s, they had been discussing whether to establish some kind of Nile Board or Nile Commission which could bring more actors and more countries onto the Nile scene. Cairo was sceptical, but after repeated initiatives from London and in the aftermath of the Allenby ultimatum, a Nile Water Commission was appointed in 1925. Officially, its purpose was to examine and propose a basis on which irrigation in Sudan could be carried out with full consideration of the interests of Egypt, and 'without detriment to her natural and historic rights'.[16] It should define, among other matters, what the well-informed London *Times* described in its issue of 27 January 1925 as 'the vested rights of Egypt and of the Sudan'.

The aims of the Commission became far less ambitious due to Egyptian opposition. Originally it had three members, but the chairman from the Netherlands died in June 1925. The other two members were R. M. MacGregor, the representative of the Sudanese government, and 'Abd al-Hamid Pasha Sulayman, the Egyptian representative. In February 1926, they produced a final report.[17]

The Commission, weak though it represented an important break with the past, and its report reflected the new political map in parts of the Basin. It can thus serve as an illustration of the political pedagogy of water reports in transboundary or international river basins. For the first time in the River's long history, a representative of an upstream state (the Sudan government) discussed Nile waters on an equal footing with Egypt. Sudan was also given permission to have an Irrigation Department under Khartoum's authority; after all, matters related to the Nile had until that time been undertaken under the supervision and management of the Egyptian Ministry of Public Works. The Commission also formally accepted Sudan's right to withdraw water for the Gezira scheme. The report concluded that Egypt should be 'able to count on receiving all assistance from the administrative authorities in the Sudan in respect of schemes undertaken in the Sudan',[18] and very importantly, it was underlined that Sudan should accept a limited rate of irrigation development.[19]

In the short term, it was significant that the Commission abolished the limitation on the cultivated area in Gezira and substituted it with a volumetric limitation. There were obvious technical and practical arguments for this, since it established a more controllable and flexible system. This change in how water demands were measured technically also

gave Sudan an additional benefit that neither the British nor the Sudanese government disclosed. MacGregor, the British engineer who was in charge of irrigation and Nile control in Sudan, knew that the official required water/feddan ratio in Gezira had been grossly inflated by the former boss of Egyptian water and Nile control, Murdoch MacDonald.[20] Thus, more land could be irrigated per cubic metre of water than was officially known. MacGregor calculated that it would be possible to extend Gezira by about 1 million feddans without extracting more water from the River, which meant that the scheme could be expanded without detriment to the interests of Egypt. Allenby informed the foreign secretary of this discovery. The experts disagreed about the figure of feddans that could be watered now, but the implication had been that the Allenby ultimatum turned out to have been unnecessary from a 'water demand' point of view. His Majesty's government was subsequently, due to the inflated figures produced by MacDonald, given much more leeway *vis-à-vis* the British cotton industry and the Sudan government, which both sought a bigger and more income-generating Gezira scheme.

Due to this 'mistake' in the past, they could have it both ways now; they could have an enlarged cotton farm in the Sudan, while London could try to repair the political damage done in Egypt. What has been interpreted in the literature as a rapid British 'change of mind' *vis-à-vis* Egypt was, therefore, partly an upshot of quite different factors; MacDonald's inflated water/feddans ratios, published in 1919 and 1920, turned out to be a great hydro-political advantage in the late 1920s. London could overnight, if it so wanted, almost double the irrigated area in Sudan without taking more of the Nile waters from Egypt, which Egyptians still considered as theirs.

To the Sudanese government, it was still crucial that the Commission should make it clear that their figures on Sudan water needs were not to be taken as necessarily representing the maximum quantity that the Sudan might take without prejudicing Egyptian interests. Water requirements at national level are difficult to establish anywhere in the world, and in a large, undeveloped country such as Sudan was in the 1920s, the task was almost impossible to accomplish on scientific grounds. At the end of the 1930s, the British estimated Sudan's requirements at about 6 billion m^3, or about 10 per cent of Egypt's requirements, while at the beginning of the 1920s these same requirements were considered to be less than 1 billion m^3; today, the Sudanese government argues that the demands are about 35 billion m^3 of water.

Khartoum also argued that the Commission should underline that they had not considered the question of *rights*, but had looked at the position solely from the point of view of proposing practical arrangements that could meet the actual requirements of the two countries over the next few years. Khartoum feared that possible restrictions recommended by the Commission might bind the Sudan forever to limits of water withdrawals that were not acceptable. The British government agreed, and the report

was carefully formulated in such a way that both parties could be satisfied for the present. The need to decide between conflicting interests did not arise and was postponed into the future.

The conclusions and recommendations of the Nile Water Commission of 1925 were neither accepted nor rejected by the Egyptian government, but London thought that the Nile Water Commission was at least a step in the right direction in a period when most other things were going against them in Egypt. When Allenby left office in May 1925, he was succeeded by Lord Lloyd, and in April 1927 Adli resigned and succeeded by Abd al-Khaliq Tharwat or Sarwat Pasha, a Liberal Constitutionalist. He negotiated a draft treaty with the British foreign secretary, but failed to win approval of the Wafd, the nationalist party.

THE AGREEMENT AND EMPIRE

British concern over control of the Suez Canal and the military base made the stalemate with Egypt unacceptable. Great Britain needed an agreement with Egypt that could secure its long-term interests, therefore in the midst of Lord Lloyd's authoritarian efforts to restrict the activities of opposition parties in Egypt, and as London dispatched the British fleet to Alexandria to back up its claim that the British inspector-general's service as Sirdar of the Egyptian Army should be extended, High Commissioner Lord Lloyd sent a confidential letter to Chamberlain in which he proposed to offer Egypt a Nile settlement that could form the basis of a much wider future settlement between the two countries.[21] Great Britain should confirm to Egypt that Egypt, as a result of its physical configuration, must rely to a greater extent than Sudan on irrigation works, and that it must therefore exercise a preponderating influence on the general development of works designed to store the waters of the Nile. Britain would give the Egyptian government 'all possible assistance'. In view of the news that the British had helped to spread in Egypt – about the American firm in Addis Ababa and the plans of the Emperor to build a dam at Lake Tana – these assurances, they hoped, should be regarded as important by the Egyptians. Britain should protect Egypt against a potential dam on the Blue Nile. But Lloyds' proposals were also subject to important Nile conditions: the Egyptian government should 'avail themselves of the opportunities thereby offered', i.e. work together with the British government in carrying out 'without unreasonable delay' a development programme on the Nile.[22]

The British intentions with the Nile Waters Agreement should not simply be seen as the legal institutionalization of a stroke of sudden Nile altruism, but rather as a diplomatic tactical move within a difficult and contentious political and hydro-political situation. In the literature, Lloyd's role has in general been characterized as 'champion of the rigid safeguarding of British interest in Egypt'.[23] In this case, however, he showed tactical flexibility to

secure Imperial interests. Lloyd hoped that British goodwill regarding the water question would further what was already considered a positive development in Anglo–Egyptian relations and Egyptian Nile politics. Lloyd, in line with, this also reported optimistically to his foreign secretary that Egypt apparently had concrete plans for implementing the great schemes on the Upper White Nile, which London had worked on since the late 1890s. An Egyptian Public Works Commission – of which Lloyd's man, the British water engineer A.D. Butcher, was a prominent member – had criticised the slowness of progress on the Upper Nile.[24] The Foreign Office thought it therefore possible that the Egyptian government, before it decided to heighten the Aswan Dam, would start work on the Upper Nile.[25] But London was once again disappointed. Egypt went for raising the Aswan Dam rather than developing the White Nile reservoirs in Sudan and Uganda. The Foreign Office noted that this was 'wholly detrimental to British interests'; the reason, of course, being that this undermined the strategic asset of British control of the Nile upstream. In spite of this development, the foreign secretary in London, Chamberlain, supported Lloyd's diplomatic efforts and wrote that he should 'not relax' in reaching agreement with Egypt on the water issue.[26]

I have above described the Sudanese and British Nile policy. What about the other upstream areas that Britain controlled? Since the great natural reservoirs of the White Nile were located in Uganda, and Uganda was the place where several of the planned dams were to be constructed, that country was by far the most important to British Nile strategy. Lloyd and London took steps to bring the Ugandan government on line in relation to the 1929 Agreement. It was important that Uganda should not publicly protest against British-sponsored water plans upstream or demand compensation from Egypt for the planned dams there at that particular moment. London knew that the Colonial Office and its representatives in Kampala were sceptical towards a British Nile policy giving Egypt too much power over it to the detriment of the East African territories. To London, however, such public criticism at the time was dangerous and would only help to infuriate the Egyptians. The long-term aim was said to bring about the necessity for a 'comprehensive agreement' regarding the construction and operation of works that were not in Egyptian territory, and 'for which the consent of both the Sudanese and Ugandan Governments will be necessary'.[27] Lloyd knew that Egyptians feared what they saw as unjust attempts to make use of Britain's geographical position,[28] and one way to remove this fear was to play down these territories' need for Nile waters.

It was important to London that an agreement should be in place before more control works were carried out. Instead, the Egyptian government proposed that works could be started before any such agreement was concluded, since the latter arrangements would only increase what Egypt considered its 'established rights'. Egypt wanted to raise the height of the Aswan Dam for a second time without having to discuss water allocation

issues with Sudan, while Britain wanted Egypt to take part in the upstream schemes in some way or another, but only if this cooperation was based on an allocation agreement. London thus had to win over those in Khartoum who regarded such an allocation agreement as premature. For its part, the Ministry of Public Works in Egypt told Lloyd that it could not accept any abdication of the control hitherto appertaining to it in the valley as such, due to public disapproval. To the Ministry, a new Nile Board as proposed by Allenby and London was a bad idea, and the British government ministsers in Sudan were sceptical because they feared that it would mean they were being forced to consent to dams on the Nile in Sudan built for Egyptian purposes only.[29]

In the meantime, the Egyptian political scene changed. Tharwat resigned and Mustafa an-Nahhas (Nahas) Pasha, Zaghlul's successor, became prime minister. After his resignation followed the brief interlude of Nahas Pasha's government during which time the negotiations did not make much progress. The King dismissed him in June and dissolved parliament in July. In effect, the constitution was suspended, and Egypt was again governed by royal decree under a Liberal Constitutionalist premier, Muhammad Mahmud Pasha. Now an agreement on the Nile had become more likely.

The negotiations took place against a background of serious water shortages in Egypt and conflicts over its use. The 1928 flow was very low. One example among thousands can be given: in April, Lloyd wrote to Chamberlain about the difficulties a British cotton-growing firm, the Aboukir Company, was facing due to water shortages.[30] The shortage was particularly marked in the province of Behera, where the company had its lands. The company had explained that at the time of its complaint, there were six working days and 12 days of stoppage. On 30 March, which was the last of the six working days, the manager cabled that no water had arrived within 5 km of the tail of the canals. The land would have to go for at least 30 days without water.[31] The result, it was thought, was that thousands of feddans would have to go out of cultivation. When the high commissioner was sitting down at Easter time to write a telegram to the foreign secretary in London about how water had reached no closer than 5 miles from the tail of the canals that gave life to the cotton seed in the province of Behera, the importance of breaking the deadlock on an agreement on Nile control was made evident both to London and to the new Egyptian government, whose legitimacy, as in all previous governments in Egypt, rested on its ability to bring enough waters to the fields.

THE EXCHANGE OF NOTES REVISITED

This Commission's report suggested that Egypt should be guaranteed water sufficient to irrigate the maximum acreage cultivated up to that time, 5 million feddans. On that basis, quantitative estimates were derived that

gave Egypt acquired rights to 48 billion m^3. The other Nile valley countries were left out of the picture. The entire flow of the main Nile was reserved for Egypt during the dry season. Egypt was further guaranteed that no works that might prejudice its interests could be executed on the River or any of its tributaries upstream. After 15 July, Sudan was entitled to take water for the Gezira scheme up to certain maximum daily rates in order to fill the Sennar Reservoir, and to flood the area developed under basin irrigation downstream of Khartoum. Although this increase was a far cry from the maximum demands that could be heard in Sudan, it was a step in the right direction for Khartoum. The agreement broke what they called Egypt's 'monopolistic' attitude to the Nile waters. London was to facilitate the establishment of waterworks upstream for the benefit of Egypt and the share of Sudan in the Blue Nile was dependent upon the amount of water Egypt could draw from other tributaries.

The agreement has been characterized as being 'solely for the benefit of Egypt'.[32] It was obviously, and from one point of view, strongly biased in favour of Egypt, but this assessment ignores the intricacy of Nile diplomacy and regional hydro-politics. To London, it was seen as a necessary stepping-stone towards a new general treaty with Egypt; it was far less Egypt-biased than the water policies of Salisbury, Cromer and Garstin. London succeeded in allocating more water to Sudan, and most importantly this was formally acknowledged by Egypt. An overlooked aspect of the agreement was that any extension of large-scale irrigation in either northern Sudan or Egypt was regarded as presupposing the exploitation, conservation or damming of upstream waters. By giving Sudan a legal role in Nile development, London also hoped to realize its role as the strategic-political key through which it was possible to hold Egypt – at Sudan's mercy. After all, it was only two years earlier that a leading British water expert could still justifiably write that the Sudan branch's main object was to collect hydrological information and study projects for the increase of the Egyptian water supply, while the inspector-general of irrigation in Sudan with his headquarters at Khartoum was responsible to the under-secretary of state at the Ministry of Public Works in Cairo.[33]

The exchange of notes was silent, however, on what has been called in the literature 'the real issue' – a plan for hydrological development of the entire Nile Basin. It has therefore been described as a testimony to 'a lost opportunity, a tragedy', and the 1929 Agreement's 'limited achievements' is reflected in the scant subsequent enthusiasm for more 'cement and stone for conservancy projects'.[34] At the time, however, it was unrealistic that the parties should agree to such a plan of reservoirs across the Basin – both on technological and economic grounds, and especially for political reasons. Britain wanted Egypt to implement projects upstream, while Egypt feared such projects under British actual control and instead prioritized the heightening of the Aswan Dam because it was within Egypt's borders. The Egyptian nationalists were definitely not in the mood to join hands with

their British foe to develop their life artery, although in the 1930s they grudgingly accepted the Jabal Auliyya Reservoir. The Tana Dam on the Blue Nile could not be part of an official agreement as it was placed on Ethiopian territory. 'Black Thursday' on Wall Street, just some months after the exchange of notes, made investors less enthusiastic about more cement and stone anywhere in the world.

One long-term impact was that the Agreement established the Nile Basin and Nile waters *de jure* as being more than Egypt's backyard. A clause declared that of the Egyptian government decided to construct any works on the river in Sudan, it had to agree beforehand with the local authorities on the measures to be taken for the safeguarding of local interests. Sir John Maffey, the new governor-general, immediately interpreted the agreement to the effect that no waterworks could be undertaken in Sudan without the Sudanese government's consent and that such consent must be withheld unless the Sudanese government was satisfied that the work would be carried out efficiently and with smooth cooperation. Maffey thus thought that Sudan had been given an *effective veto* on any work, unless arrangements that in its opinion were adequate were made to safeguard local interests. The British in Khartoum, Cairo and London secretly discussed this interpretation. The Foreign Office argued that Maffey overestimated the strength of the Sudanese government, since there was nothing in the agreement that forced the Egyptian government to seek consent from the Sudanese government, although in most cases this would be a reasonable interpretation of 'local authorities'.

The government of Uganda protested and 'expressed uneasiness' as did the Colonial Office, because the agreement deprived Uganda of any right to exploit the Nile waters in the country (the same was the case for Tanzania and Kenya, and in some measures Sudan as well). The Foreign Office understood but accepted that the freedom of Uganda would be 'restricted'.[35] The government of Uganda hoped the agreement would lapse when the projects described in the Nile Commission's report of 1925 had been implemented (the Jabal Auliya Dam and Nag Hammadi Barrage). They were resting their hope on an illusion that 'any obligations which it entails on the Government of Uganda will thereby be abrogated'.[36] They grudgingly accepted the limitations put on their development in the short run, since they thought it would be renegotiated in the near future.[37] Nobody asked Ethiopia about its opinions at the time, and London insisted that the 1902 exchange of notes was legally binding and still in force.

The Colonial Office in London was very sceptical about the agreement, because it hindered development in Uganda. The Foreign Office had given a verbal assurance to the Colonial Office that the Nile Agreement would only be effective until works contemplated in the report of the Nile Commission had been completed,[38] knowing full well that the final sentence of Lord Lloyd's letter of 7 May gave the most positive assurances that the Agreement would be observed at all times and under any

circumstances. The Foreign Office could not completely go back on what it had told the Colonial Office, and its top Nile bureaucrat, John Murray, subsequently wrote a proposed text to the governor of Uganda to be sent from the Colonial Office, in which it was underlined that the agreement was meant to be temporary; 'on the completion of the works contemplated in the Agreement, it will be possible to re-examine the situation as it then exists, and to take into account any requirements of Uganda and other British territories concerned which may then call for special consideration'.[39]

The Upper Nile region was still conceived by both parties as a barrel filled with water. Although Egypt was given the lion's share of the Nile water, the allocation system formulated in the 1929 Agreement was basically in line with overall British strategy in the valley. It turned their planning conceptions of the past into a binding diplomatic agreement with important implications for the future: London prioritized the central riverine Sudan over the southern periphery, and its relationship with Egypt over those with Sudan, Uganda and Ethiopia.

London hoped the exchange of notes on the allocation of the Nile waters would improve the general political atmosphere so that a comprehensive Anglo–Egyptian treaty could be reached, while Britain could continue to have strategic control over the River upstream. Egypt refused to accept any treaty agreement that did not include a broader solution of the Sudan question. Britain hoped that by guaranteeing the flow of the Nile, Egypt could accept the status quo in Sudan. Egypt saw that Sudan had become under the increased influence of London, while Cairo regarded Sudan as being under the Egyptian Crown. The Nile Waters Agreement, one of the most important basin agreements in the first half of the twentieth century, can therefore be seen, at least partly, as an expression of Britain's weakened position as compared to the years before the Egyptian revolution, and partly as a reflection of the convergence of Egyptian perceptions of the Nile as an Egyptian river and British strategic thinking.

The 1929 Agreement for cooperation on the Nile was an important step in a development that ended with the creation of Sudan as sovereign state in 1956. The countries of the White Nile and their potential developmental needs for Nile control works were sacrificed on the altar of Egypt and Sudan, the latter's since Sudan's use of Blue Nile water presupposed that Egypt got the entire White Nile. Historically, the borders of Egypt in the south had been defined by the cataracts of the Nubian Nile. During the time of the British Nile Empire, the really conflicting interests between irrigated agriculture in Sudan and Egypt were a context for and exploited by London in order to strengthen those political forces in Sudan that wanted an independent, sovereign Sudan, against those who wanted Sudan to be united with Egypt in a Nile valley state. The ideas and practice of state sovereignty were therefore strengthened by both the physical aspects of the river system and by how it had been managed and conceived during the British era in the valley.

THE AGREEMENT, INTERNATIONAL WATER LAW AND STATE SOVEREIGNTY

The much-hailed Nile Waters Agreement of 1929 should be seen as the outcome of a complex power play between a colonial power, Britain, and Egypt, a formally sovereign state but restricted in a particular way because explicitly its autonomy did not cover foreign policy and Nile-related themes. The Agreement's content was the product of a complex development where geopolitics, regional political issues and a particular river basin's hydrology and potentials for river management and control intervened. It was made politically possible in 1929 due to particular power configurations, and the final Agreement bore the stamp of the River itself and the hydrological regime of the two major tributaries. The water system in the upstream White Nile countries (much local rainfall in many places and an undeveloped irrigation sector) made it politically acceptable, although problematic.

What has been described as the general historical tension between conceptions of state sovereignty and the development of legal arrangements for cooperation over transboundary water resources was not irrelevant here, but led to a very special sequel. The accord between the two states sharing an international river was not based on a development whereby past positions grounded in traditional Westphalian notions of unrestricted sovereignty gave way to positions that recognized the need to limit the sovereign discretion of states on the basis of sovereign equality. On the contrary, the 1929 Agreement was a water agreement that, long before the 1997 UN Watercourses Convention, accepted and recognized the requirements of transboundary cooperation over international water resources. The agreement made Egypt sovereign over the whole river flow of the White Nile system, however, while at the same time it also established Sudan as a potential sovereign actor, especially in relation to rights of utilization of the Blue Nile.

This bilateral cooperative treaty was not accompanied by or did not lead to the establishment of a 'community of interests' approach normally achieved by means of some sort of joint institutional machinery. A form of cooperative arrangement seeking to manage a river basin as an integrated economic and ecological unit or to achieve the sharing of benefits deriving from shared waters was not agreed upon. Such approaches were opposed to by one of the parties to the Agreement (Egypt), and Britain was not in a position to impose it. The Agreement did not lead to supranational regimes of water resources management where policymaking authority would be lodged in basin-wide institutions.

Water remains, it is said, the sovereignty issue *par excellence* in the sense that cooperation over common goods is said to undermine state sovereignty. But that was not the case here. Sovereignty was developed, linked to and encouraged by demands and disagreements about the use of a transboundary river. The British used potential disagreements between the Sudanese elite (also the political elite) and Egypt over the Nile waters as

a means to establish Sudan as a country independent of Egypt. Here, therefore, the historical processes contradicted general theories about the impact of transboundary river management on sovereignty, and how they constitute a 'threat' to state sovereignty. As a move to weaken Egypt's monopolistic attitude to the waters of the entire Nile, encouraged by early British basin-wide, multipurpose river-basin planning when London was mostly or only concerned with the Nile and its potential utilities in Egypt, the issue of Sudan's demand for more water – also reflected in the Nile Waters Agreement of 1929 and the accompanying text of 1920 report – was a way to construct sovereignty as a political issue in Sudan. The Nile and the White Nile was for Egypt. Sudan could use some of the winter flows of the Blue Nile because Egypt did not need this water and was not in a position to store it at the time due to the silt-laden floods of the river.

The history of the British Nile Empire presents an empirical example that falsifies certain general theories about the evolution of water law and the relationship between state sovereignty and international river basins. London, as the 'command centre', placed clear limits on the authority of colonial governments to act within their borders. London's concern was not the 'human right' to water, or the optimal, equitable planning of water uses, but optimal, rational water planning as long as it was in line with British Imperial strategies in which Nile control was but one, albeit important, method by which it furthered its interests.

The actual management of transnational water resources has in general more to do with international politics and power relations than with such technical issues as water use practices, assessment of water needs or international water law. The issue is not only about interstate relations or general social relations, but also about nature and the physical characteristics of the individual river basin, a fact that very is often overlooked in discussions about general legal principles and evolutions of international water law. The history of hydro-politics in the Nile basin shows this more clearly than any other place due to the richness of this extremely fluid history. The tension between the two principles of protecting 'historic rights' and providing for development equity is evident. It is further complicated when the historical contexts for development and rights are assessed.

NOTES

1 The history of the British Nile Empire and British Nile policies is described in much greater detail in Tvedt, 2004.
2 Lord Lloyd to Mohammed Mahmoud Pasha, 7 May 1929, in *Sudan Pamphlets* 89.
3 See especially Garstin 1899 (enclosed in a despatch from His Majesty's agent and consul-general at Cairo, and presented to both Houses of Parliament, June 1899). A slightly different version was published as 'Note on the Soudan' (1899, Cairo). See also Garstin 1901, 1904; Dupuis 1904; and Cromer 1908.

4 The Blue Nile's annual inundation in Khartoum is on average estimated as 54 billion m^3 per year; at Aswan it is 48 billion m^3 per year. Ethiopia's contribution to the Nile system through the three head streams – i.e. the Blue Nile, Tekeze-Atbara and Baro-Akobo River Basins is 68.7 billion m^3 per year or 82 per cent of the total Nile flow.
5 Foreign Office Memorandum, Sperling, 'Resumption of negotiations for the construction of a dam on Lake Tsana', 8 November 1922, FO 371/7151.
6 Foreign Office Memorandum, Murray, 4 January 1923, 'Memorandum on the political situation in Egypt', FO 371/8972.
7 Crowfort, 1924: 86.
8 Kewin-Boyd to Allenby, 14 March 1920, FO 371/4984.
9 Vatikiotis, 1991: 388.
10 Allenby to Austin Chamberlain,15 December 1924, FO 371/10046.
11 Quoted in Kurita 1989: 26.
12 Quoted in Sir John Maffey to Sir P. Loraine, 15 August 1930, FO 371/4650.
13 'The Crisis in Egypt. Mr MacDonald on the ultimatum. A mandate for the Sudan', *The Times*, 29 November 1924.
14 Ziwer Pasha to Allenby, 26 January 1925. Texts of notes exchanged between Lord Allenby and the Egyptian Government on 26 January 1925 regarding the control of the Nile water, FO 371/10882.
15 Allenby to Ziwer Pasha, 26 January 1925 (as put together in the Foreign Office from Cairo telegrams), FO 371/10882.
16 Note from Lord Allenby to Ziver Pasha, 26 January 1925, in *Sudan Pamphlets*, p. 89.
17 MacGregor found the Egyptian member difficult to cooperate with. In order to come up with an acceptable report, he informed Allenby and the British government that he had had what he himself called clandestine meetings with the British water-planners Hurst and Butcher, who were employed by the Egyptian Government (Allenby to Chamberlain, 25 May 1925, Enclosure 3 in No. 1 by Mr. R.M. MacGregor).
18 Nile Commission, 1925: 30.
19 Ibid: 28.
20 MacDonald's *Nile Control* provided, during the period when the Sennar Reservoir would be in use, a water allowance at the canal head of 15 m^3 per feddan per day, including 33 m^3 for losses between the canal head and the 5,000 feddan blocks. MacGregor had worked out, on the basis of figures obtained from research at Hag Abdulla and Wad-el-Nau, that a water allowance at a canal head of 10 m^3, including 2 m^3 for losses, would suffice. Thus, only two-thirds of the water provided would be actually required, and an extension of 150,000 feddans became possible on the assumption that the reservoir drew upon the Nile from 18 January to 15 April. In terms of volume this saving amounted to 5 m^3 per feddan per day on 300,000 feddans for 87 days, i.e. 130.5 million m^3. Moreover, *Nile Control* argued that the date from which the canal would have to be supplied from storage was 18 January and the waters could be returned to the river at the end of March. MacGregor discovered, however, that the former date should be moved back to nearer the beginning of January, which also made it possible to bring the latter date forward to the beginning of March. Therefore it was assumed that the reservoir would be called upon to serve the present area for a period of 60 days instead of 87, as contemplated in *Nile Control*. This saving would amount to 15 m^3 per feddan per day on

300,000 feddans for 27 days, i.e. 125 million m^3. Assuming the period to be 65 days, the volume available would permit an extension of 190,000 feddans.

21 Lord Lloyd to Sarwat Pasha, 16 February 1928, Enclosure 1 in No. 1, Lloyd to Chamberlain, 23 February 1928, FO 371/13138.

22 Draft of a note to be addressed by His Majesty's high commissioner to the president of the Council of Ministers, Enclosure 3 in No. 1, Lloyd to Chamberlain, 23 February 1928, FO 371/13138.

23 Vatikiotis, 1991: 284.

24 He wrote a note about the Egyptian government's consideration of the report of the Parliamentary Finance Commission on the budget of the Irrigation Department for the current financial year. Under the heading 'Sudan', an estimate of £E 1,100,000, of which £E 130,000 was to be spent in 1928, had been included for the 'modification and improvement of the flow of the Nile in the Sudd region', by means of large dredgers to be purchased abroad. Lloyd to Chamberlain, 12 May 1928, FO 13138.

25 Foreign Office minute, Murray, 1 August 1928, FO 371/13138.

26 Foreign Office to Lloyd, draft, 15 March 1928, FO 371/13138.

27 Draft Note, Lloyd to the Egyptian Minister for Foreign Affairs, n.d. (July 1928, my comment), FO 371/13138.

28 Lloyd to Chamberlain, 14 July 1928, FO 317/13138.

29 Lloyd to Chamberlain, 20 February 1928, FO 317/13137. The Nile Board that should be responsible for the entire Nile should be made up of two representatives of the Egyptian government and two representatives chosen by the British government (Allenby and the governor-general of Sudan, Maffey, agreed that they should represent the Sudan government, and the salaries should be paid by Khartoum).

30 Lloyd to Chamberlain, 14 April 1928, FO 371/13138.

31 Copy of letter dated 12 April 1928 from the secretary of the Aboukir Company, Ltd., to his Excellency the Minister of Public Works, FO 371/13138.

32 Collins, 1996: 157.

33 Tottenham, 1927: 21.

34 Collins, 1996: 158.

35 Draft letter, Foreign Office to Sir W. F. Gowers, November 1929, FO 371/13857.

36 Parkinson, Colonial Office to the under-secretary of state, Foreign Office, 2 November 1929, FO 371/13857.

37 They had just organized fisheries surveys in these lakes for the first time (see Worthington, 1929).

38 Parkinson, Colonial Office to C. J. Norton, Foreign Office, 14 November 1929, FO 371/13857.

39 Murray to the Under-Secretary of State, Colonial Office, 2 December 1929 FO 371/13857.

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