

EGYPT UPDATE NUMBER 11



CHRONICLES OF THE CONTINUED EGYPTIAN REVOLUTION OF 25 JANUARY 2011

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The Nile River: Water Issues and Egypt's Issues to Come

*"Egypt is the gift of the Nile"
- Herodotus*

As this writer has consistently noted in the previous three updates (Nos. 6, 7, and 8), neither the government nor the SCAF are doing anything more than day-to-day management. There is no vision for the future – not even simple foresight of events that are looming in the immediate future. Water is one such issue, and it does not appear to be on any responsible official's radar screen. However, as stated in Updates No. 7 and 8, not seeing a problem does not mean that it does not exist.

1. Physical Attributes of the Watercourse

The river commonly referred to as the 'Nile' consists of two distinct watercourses which combine to form the Nile River at Khartoum. The first of these two arteries is the White Nile, which originates in Lake Victoria and is approximately 5,611 km long. The second, the Blue Nile originates primarily from Lake Tsana in Ethiopia, and is approximately 4,588 km long. Other tributaries to the Blue Nile, such as the Atabra and Sobat rivers, both in Ethiopia, also contribute to the Nile basin system. The Nile River

Basin has eleven riparian states.¹



Figure 1 A farmer moves a load of grass across a bridge over the Nile River. (Photo credit: Max Becherer, New York Times).

The annual yield of the watercourse has been recorded since 1871, enabling specialists to calculate the average annual flow at 84 billion cubic meters. This figure has, however, fluctuated over

the past centuries with three distinct periods. Between 1871 and 1898

the average discharge of the Nile was 102 km³ (cubic kilometers), falling to 88 km³ between 1899 and 1971, before descending to 77 km³ between 1972 and 1986. The yield peaked between 1954 and 1967, averaging 98 km³ annually.

¹ They are: Burundi, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, South Sudan, Tanzania, and Uganda.

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This annual yield is substantially smaller than comparable length international waters. The Amazon River, for example, carries thirty-five times as much water as the Nile, and the Mississippi River in the United States bears seven times as much water.

Another characteristic of the Nile flow is its asymmetrically different yield throughout the year, peaking between August and October with four-fifths of its annual yield. Agriculture in the riparian states uses most of the water supply during this period, but there is also much water lost during this period because of downstream flooding of excess water. This is what necessitated the building of Egypt's first Aswan Dam in 1902, and the second dam in 1970.

Another important aspect of the hydrology of the watercourse relates to the history of its utilization. The Nile basin is unique in this regard, as the river flow developed early on in its delta and lower basin. Several thousand years later the developmental flow has increased in areas in the upper basin. This is attributed to the gentler slopes of the topography lower downstream in the basin, which allowed easier farming, with or without irrigation systems, while the lesser gradient of flows allows for easier navigation. Human use of the Nile, therefore, developed in the lower basin earlier in time, and at a faster pace than in the upper basin, and that explains the higher patterns of urbanization in the lower basin.

The contribution of each of the riparian states to the annual total flow of the watercourse varies, as 86% of the total Nile flow originates from the Ethiopian highlands, which has earned it the name 'Africa's water tower'. At the other end of the Nile is Egypt, which adds no water to the Nile, but consumes 55% of its water. The Nile flow's balance of 14% is contributed by the central African States to the upper White Nile basin.

Egypt is the largest beneficiary of the Nile waters, and its dependency on it will increase, while at the same time the demand for more Nile water in African riparian states will also increase. Egypt's dependence on the river is absolute, Sudan's is great, Ethiopia's interest is growing, while the East African and Great Lakes States' utilization is still comparatively minimal. According to the 1959 Nile Waters Agreement – discussed below – Egypt is allotted 55.5 billion km³. In addition, Egypt has utilized its full share of 55 billion km³ and sometimes even more, whereas the Sudan has so far never used its 5 billion km³ of its allocation. For Egypt, the dependence on its present allotment is vital, but it is threatened by increasing consumption by the riparian states, particularly through increased large-scale agricultural projects in Ethiopia, Sudan, and South Sudan. The first Ethiopian dam which is presently under construction in the country's west, and is referred to as the "Grand Renaissance Dam". Construction on three other dams are planned by 2015. According to some estimates, the combined maximum electric output of these four dams may well reach 45,000 megawatts. Ethiopia could become Africa's power hub, and in that case, Ethiopia could provide power to Sudan, South Sudan, and Egypt, with the potential of exporting electricity to North Africa, Kenya, Djibouti, Somalia, and even Yemen, by means of an underwater cable across the Straits of Hormuz. While this project would be of economic benefit to Ethiopia and also benefit the region and beyond, it will reduce the share of water going downstream from

Ethiopia to Sudan, South Sudan, and Egypt. Thus, Egypt's 55% share of the Nile waters is likely to be challenged by these riparian states. However, any reduction of Egypt's present allotment of 55% will have a significant impact on Egypt's Aswan High Dam, both in terms of water volume, which when reduced will also reduce electrical output, and more importantly, it will reduce the amount of water available for agriculture and other consumption in Egypt. Another unknown consequence is the increased percentage of evaporation in the more shallow areas of the Aswan High Dam and other shallow areas along the course of the river from the dam to the delta, whose height is approximately 1,200 km.

The combined population of Egypt, Ethiopia, and Sudan – currently at 208 million – is expected to rise to 272 million by 2025, and 360 million by 2050, according to U.N. projections. This means that by 2050, there will be 150 million more people to feed in the Nile region. Such dramatic increases in population will be accompanied by a rise in the demand for food, and in turn, increased demand for water. While the yield of the Nile is unable to sustain the present needs of the Nile's riparian states, recent developments show that the reality is that they are no longer the only competing interests for the Nile's scarce resources. Populations and demand for food are on the rise everywhere in the world, and quickly-growing countries have begun purchasing or leasing arable land outside of their borders for large-tract cultivation in order to feed their people. In the Nile basin alone, South Korea now owns 1.7 million acres in Sudan, and India and Saudi Arabia are leasing hundreds of thousands of acres in Ethiopia.² China is using large swaths of land across Africa. Considering that it takes 108 gallons of water to produce a pound of wheat, 168 gallons of water to produce a pound of corn, 229 gallons of water to produce a pound of rice, the consequences are self-evident. More disturbing is that it requires 12,000 gallons of water to produce a single pound of beef.

Cumulatively, these demands will lead to a situation likely to engender conflict between these states. As Egypt addresses the challenge of meeting its agricultural demands, it will be forced to contend with a growing number of non-riparian states and other commercial entities with vested interests in the water of the Nile river basin.

2. Current Developments

Treaties regulating the Nile River reveals the lack of a singular unified legal instrument and regional regime that governs the use and water consumption of the watercourse. The description of the relevant treaties is attached in Appendix I. The riparian states of Ethiopia, Sudan, and Egypt recognized this lacuna, and endeavored to draft a Nile Basin Cooperative Framework Agreement (CFA). Negotiations on this instrument commenced in 1997, and aimed at designing the legal and institutional mechanism for managing the Nile River. While there were numerous areas of disagreement between the ten riparian states, the principal contentious point was the status of previous Nile agreements, and whether the CFA would revisit the existing allocations of the rivers' waters.

² Lester Brown, *Egypt's Food Supply in Danger*, N.Y. TIMES, June 1, 2011.

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Several models and proposals were advanced in the last five decades to bridge the gap dividing the riparian states. The latest of these proposals was a suggestion presented by Egypt, and supported by Sudan, to include a provision (article 14[b]) in the CFA to prohibit the utilization of the watercourse by any of the riparian states in a manner that would adversely affect the ‘water security’ of other states. Many commentators have criticized this notion of water security as overly vague, ungrounded in law, and as being a euphemism for maintaining the status quo that, in the view of upstream states, favors Egypt and Sudan.

The negotiations remained at an impasse until Kenya, Uganda, Ethiopia, Tanzania and Rwanda decided in May 2010 to proceed with signing the CFA without waiting to reach a consensus among the riparian States. Egypt and Sudan objected to this decision, and considered a breach of the rules of procedure of the NBI, that require decisions to be taken by consensus. The Democratic Republic of the Congo however has refused call to join the CFA. Later in 2011, Burundi also signed the CFA, thereby allowing the treaty to come into force once it is ratified by all seven signatories.

There have been numerous attempts by the ten riparian states to establish technical cooperation arrangements, the latest of which is the Nile Basin Initiative (NBI). In 1967 Egypt, Kenya, Sudan, Tanzania, Uganda, the UNDP and the World Meteorological Organization signed an agreement for the hydro-meteorological survey of Lakes Victoria, Kyoga, and Albert (known as HYDROMET). Furthermore, in 1977 Burundi, Rwanda, and Tanzania concluded the Kagera Basin Agreement designed to enhance cooperation in transport, agriculture, communication, and energy. In 1983 the White Nile states and the Central African Republic, Egypt, and Sudan established UNDUGU group, an organization for the exchange of economic, development information, including water information. The UNDUGU group, however, has not made much progress on water issues.

Few developments have occurred since then, especially in light of the January 25th revolution in Egypt that ousted President Hosni Mubarak from office, which has understandably distracted Egypt from focusing on developments relating to the Nile waters regime. One important development was the announcement by the Ethiopian Prime Minister Meles Zenawi that Addis Ababa will delay its ratification of the CFA. This decision was touted as a gesture of goodwill towards post-Mubarak Egypt, especially as it came at the conclusion of visit by a delegation of Egyptian political and popular figures to Ethiopia as part of



Figure 2 A map showing the Nile basin countries.

a series of visits dubbed ‘popular diplomacy committees’.

3. Egypt’s Legal Position

Egypt’s objections to the CFA are not new. They reflect a position that has been constantly espoused by Egyptian scholars and diplomats. The claim is that international law does not permit the disruption of legally established and existing relations, rights, or obligations pertaining to the use of water resources without the consent of all parties concerned. This contention is founded on the notion that international law respects and upholds “natural and historical rights of all parties, as well as existing and acquired economic interests, and allows for their development.”³ It is, therefore, purported that customary international law recognizes a category of utilizations of international watercourses designated as ‘vested rights’, which permanently entitle watercourse states to the portion of water currently under exploitation.⁴

The term ‘vested rights’ has been used interchangeably with terms including ‘natural’, ‘historical’ and ‘acquired’ rights. In context of the Nile regime the application of this principle forebodes the following conclusion:

Actually the term ‘natural and historical rights’, means ‘vested rights’ in the waters of the Nile, that is the rights entitling Egypt to her water requirements for the irrigation of the area already under plough. The principle of vested rights (*‘droits acquis’* as continental lawyers would call them) is well known both in municipal and international law. In international fluvial law this principle has found expression in a more concrete form in the doctrine of ‘prior appropriation’, which means that a riparian State is entitled to as much of the waters of an international river as she was actually using for irrigation prior to any claim by another riparian State – first come first served.⁵

Echoing this contention, Egypt’s Ministry of Foreign Affairs asserted in 1983 that a survey of international jurisprudence, treaties, and juridical opinion demonstrates the existence of certain basic rules for the exploitation of international drainage basins. These are, *inter alia*, “respect for acquired rights of other States on the basis of the needs and requirements of each watercourse State and its degree of dependence”, and “the prohibition on all watercourse States to divert the watercourse or construct any reservoirs which might affect or lead to a diminution of the shares of other watercourse States without prior consultation and agreement with the affected state.”⁶

This assumed protection of existing uses of international watercourses, grounded in customary international law, rests on precedents emanating primarily from the U.S.

³ Ahmad Moussa, *Markaz Misr fi Masaalat Miah El-nil*, REVUE EGYPTIENNE DE DROIT INTERNATIONAL, vol. 14 (1958), p 48 [The position of Egypt with respect to the Nile question].

⁴ Gamal Moursi Badr, *The Nile Waters Question*, REVUE EGYPTIENNE DE DROIT INTERNATIONAL, vol. 15 (1959), p 97.

⁵ *Id.*, p 98.

⁶ Ministry of Foreign Affairs of Egypt, *Egypt and the Nile River*, Cairo, 1983, p 9. [original in Arabic, translation by author].

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Supreme Court that have established the prior appropriation principle.⁷ This rule was introduced in the western U.S. during the gold rush of the 1840s, and promotes what has come to be known as the principle ‘first in time – first in right’. According to this system, the senior or older appropriator of water resources is guaranteed access to the amount of water that is currently in use.

Some have confused this theory with either the “absolute territorial sovereignty” or “integrity theories”, which claim that states have an absolute right to exploit shared natural resources without regard to other states. This, however, is a misconception. The prior appropriation rule favors neither the upstream nor the downstream states, but rather the state that puts the water to use first, thereby protecting and privileging those uses which existed prior in time.

Assertions of absolute protection of existing utilizations of international watercourses by Egyptian experts do not foreclose the possibility of equitable and reasonable apportionment of the watercourse resources. However, such apportionment, in Egypt’s view, must not jeopardize vested interests; instead, apportionment should only encompass surplus waters.

One Egyptian expert notes: “A riparian who has been using water from a common river without the objection of other co-riparians will be reluctant to reassess the whole waters ignoring existing uses. And a state that has built its economy, indeed perhaps its very existence, on the waters from a common river will never accept a general reassessment of the waters of that river. Any reassessment shall be of the surplus water, the water that is not actually being used.”⁸



Figure 3 A pump in Cairo flows with water drawn from the Nile. (Photo credit: Abdallah Dalsh, Reuters).

⁷ A prime example of such cases is *Wyoming v. Colorado* in which the Court stated: “The cardinal rule of the doctrine is that priority of appropriation gives superiority of right”, *Wyoming v. Colorado*, 259 US 419, 42 S.Ct. 552, 66 L.Ed. 999.

⁸ Aziza Mourad Fahmi, *International River Law for Non-Navigable Rivers with Special Reference to the Nile*, 23 REVUE EGYPTIENNE DE DROIT INTERNATIONAL (1967), p 52.

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A further contention adopted by Egyptian governments throughout the 20th century has been the claim that treaties governing the utilization of the Nile River are unaffected by state succession. This is predicted on a rejection of position adopted by many African nations that treaties concluded during the colonial era are illegitimate, and may be unilaterally abrogated by these countries after gaining independence. This position was encapsulated in what is known as the Nyerere Doctrine, named after Tanzanian President Julius Nyerere, who declared that his country would reject all colonial treaties not deemed in the interest of his newly-independent nation. Egypt, on the other hand, claims that treaties affecting the Nile River are among a class of treaties called 'dispositive treaties' that are unaffected by state succession.

4. The Challenge of South Sudan

A new riparian state on the Nile River has been born, bringing the total number of states to eleven. South Sudan has come into existence as an independent state after a referendum in which the overwhelming number of southern Sudanese citizens voted in favor of seceding from the Republic of Sudan. While this development will be significant for Egypt for multiple reasons, the most important will be how it affects future Nile water allocations. Primarily, the Khartoum government has been a stalwart ally of Egypt throughout the various stages of the negotiations on the CFA, and has, like Cairo, rejected the treaty signed by other upstream states. The tensions between Sudan and South Sudan will cause the latter to take a different position than the former. However, objectively, South Sudan needs its water share distinguished from Sudan, and it may even have more demands. This will lead to a claim on Egypt's share. South Sudan's position will be strengthened when it accedes to the CFA.

Another question will be whether the 1959 Nile Water Agreement between Egypt and Sudan will devolve onto South Sudan under the international law doctrine of state succession. Egypt will certainly argue that, as a successor state, South Sudan should be bound by this treaty. It is not unlikely, however, that officials in Juba will claim that this treaty should be abrogated, but renegotiated. One basis for this could be the need to reapportion Sudan's share of the Nile Waters that are allotted to it pursuant to the treaty. Egypt's response could be that any reallocation of waters should be limited to Sudan's share, and could be appended to the treaty as an additional protocol to the 1959 Agreement.

More importantly, South Sudan will be a crucial player in any future water conservation efforts. One of the largest projects ever envisioned to increase the yield of the river in recent years has been the Jongli Canal, which is designed to siphon water from the vast swamp regions in South Sudan into a large canal. This would decrease the surface area of the river, and thus, decrease the amount of water lost to evaporation. Although parts of this project were implemented in the early 1980s, work on it ground to a halt due to the civil war in South Sudan, and work has not resumed since the signing of the 2005 Comprehensive Peace Agreement. Work on this project and other similar plans to conserve the water of the Nile will be impossible without the cooperation of the new government of South Sudan.

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Egypt has been careful in the past few years to develop cordial relations with South Sudan. Cairo has avoided appearing to side with Khartoum on the question of separation, and has provided assistance to the government in Juba by investing in various infrastructure projects. Egypt's policy in the run-up to the referendum was to provide possible alternatives to the full separation of the south, and suggested that southern Sudanese leaders should consider the option of opting for a confederation with the north. Egypt also insisted that if the people of South Sudan elected to secede, then the process of the separation should be undertaken peacefully and in an orderly fashion.

It is currently unclear – at least given publically available information – what the exact contours of Juba's policy regarding the Nile River will be. But it is unlikely that South Sudan will be as closely aligned to Egypt as Khartoum currently is. This means that Egypt will have to quickly initiate discussions with Juba to reach an understanding on how to proceed in upcoming rounds of discussions among the Nile Riparian states. Cairo will almost certainly have to provide incentives to the new government to ensure that it does not adopt a belligerent attitude.

5. Policy Proposals

- a. The principal guiding factor for Egypt's policy regarding both the Nile River is the reality that it has limited water resources and a rapidly growing population.
- b. Therefore, the main aim of Egyptian policy should be to increase the available water resources for the country. This principle should govern the positions and policies adopted by Egypt in discussions with the Nile riparian states about the management of the river basin. This objective should also compel Egypt to explore alternatives to the Nile, or at least to develop complementary water resources.
- c. Specifically, Egypt should encourage its upstream partners to jettison the current mentality of 'apportioning the Nile River,' and to uphold an approach that prizes the 'joint management and development of the river'. Such an approach would place lesser emphasis on the division of the waters of the Nile, and would focus on increasing of the yield of the river. While such projects have been the envisioned under the NBI, they have remained dormant due to the lack of political will. Egypt should lead the drive to reinvigorate the NBI, and to reframe the initiative as an attempt to jointly manage the river, implement conservation projects, protect the basin ecosystems, and increase the yield of the river.
- d. This approach should be presented as a precursor to the creation of a greater sphere of economic cooperation, which would integrate the economies and markets of the Nile riparian states. While this is will not be achieved within the foreseeable future due to the disparities between the economies and societies of the ten basin states, but it should be placed as the final strategic objective of water resources management projects.

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- e. Egypt should not continue to insist on the sanctity of its historically vested rights. The current quantity of water described as constituting the ‘vested rights’ of Egypt is 55.5 billion cubic meters. This quantity of water will become increasingly irrelevant and worthless as the Egyptian population and its needs continue to grow. As long as Egypt insists on the sanctity of this quantity of water, the upstream states will remain intransigent, and will adopt a belligerent attitude towards Egypt and the projects it proposes to developing the Nile and increasing its yield.
- f. Therefore, Egypt should drop its condition that previous water management treaties be unaffected by future arrangements agreed upon by the riparian states, which is the position that reflects Egypt’s position that its vested rights are untouchable. In return, Egypt should insist that any water management projects should be implemented after the approval of the basin states. By insisting on the unanimous agreement of all riparian states prior to the implementation of water utilization projects, Egypt will ensure that such projects will not adversely affect its interests. It will also be a mechanism for ensuring that projects undertaken on the Nile serve the dual purposes of conservation and increasing the river’s yield.
- g. Concurrently, Egypt must not remain hostage to the Nile River. Egypt must invest heavily in developing alternative or complementary water resources. The reality of fresh water scarcity means that Egypt must become a leader in desalination technology. Many have ruled out this option due to its financial cost. This might be true in the short term, but as Egypt starts to perfect this technology and indigenize it, the costs will recede. More importantly, the indispensableness of water means that Egypt will have no option but to develop this technology, especially as the populations of the Nile Basin increase, and as climate change further depletes available water resources.
- i. Maximizing the yield of the Nile, and increasing available water resources must become a guiding factor in Egyptian policy generally. This includes the areas of defense, foreign affairs, agricultural development, environmental protection, and human settlement.

Appendix

The Nile Treaties Regime

The Nile basin is governed by a series of international treaties. It is to these treaties, and their legal validity that we now turn. These treaties may be categorized into three distinct genres, the first of which are treaties concluded between colonial powers *inter se*. The second category comprises treaties between colonial powers and watercourse states, while the third grouping includes treaties concluded between Nile basin states.

Many of these treaties, particularly those to which colonial powers were parties, did not relate solely to the regulation of the utilization of the Nile waters. Instead, many of these instruments included political and frontier delimitation provisions. Therefore, only those stipulations of relevance to the utilization of the Nile basin will be extracted.

A: Treaties between Colonial Powers

- Protocol of April 15th 1891 between Great Britain and Italy on Demarcation of Spheres of Influence in East Africa

Article 3 of this protocol stipulates: *“The Italian government undertakes not to construct on the Atbara for the purposes of irrigation any works which might sensibly modify its flow into the Nile”*.

- Agreement between Great Britain and Belgium of May 9th 1906 Amending the Protocol of Brussels of 1894

Clause 3 of this agreement reaffirms that the ‘Congo Free State’ will not construct or allow to be constructed on or beside the Semliki or Asango rivers causing a diminution of the quantities of water flowing to Lake Albert, without the consent of the government of the Sudan.

- Treaty of December 13th 1906 between Great Britain, France, and Italy on Abyssinia

Article 4(a) of this treaty affirms that: *“in order to preserve the integrity of Ethiopia and provide further that the parties would safeguard the interests of the United Kingdom and Egypt in the Nile basin, especially as regards the regulation of the water of that river and its tributaries”*.

- Exchange of Notes Dated 14 and 20 December 1925, Between H.E. The Ambassador of Great Britain to Rome and H.E. the Prime Minister of Italy

In this exchange of notes, the government of Italy recognized: *“the precedence of the hydraulic needs of Egypt and Sudan”*, and pledged *“not to undertake any works on the main waters of the White and Blue Niles, or their tributaries or their streams which might sensibly modify their flow to the main river”*.

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- Agreement of November 22nd 1934 Between the Belgium and Great Britain on the Tanganyika, Ruanda, and Urundi frontier

Article 1 of this treaty states: *“Water diverted from a part of a watercourse situated wholly within either territory shall be returned without substantial reduction to its natural bed at some point before such watercourse flows into the other territory or at some point before such watercourse forms the common boundary”*.

B: Treaties between Colonial Powers and Nile Basin States

- Agreement May 15th 1902 between the governments of the United Kingdom and Ethiopia

This treaty, which demarcated the boundaries between Ethiopia and Sudan, included in article 3 the following provision:

“His Majesty the Emperor Menelek II engages himself towards the government of His Britannic Majesty not to construct or allow to be constructed, any work across the Blue Nile, Lake Tana or the Sobat, which would arrest the flow of their waters into the Nile, except in agreement with His Britannic Majesty’s Government and the Government of the Sudan”.

- Exchange of Notes of May 7th 1929 between the Great Britain and Egypt.

In the Egyptian note sent by Mohammed Mahmoud Pacha, Prime Minister of Egypt to the British High Commissioner in Egypt paragraph 4(b) included the following stipulation:

“Save with the previous agreement of the Egyptian Government, no irrigation or power works or measures are to be constructed or taken on the Nile River and its branches or on the lakes from which it flows, so far as all these are in the Sudan or in countries under British administration, which would, in such a manner as to entail any prejudice to the interests of Egypt, either reduce the quantity of water arriving in Egypt or modify the date of its arrival, or lower its level”.

In response to this assertion by the government of Egypt, Lord Lloyd affirmed:

“In conclusion, I would remind your Excellency that His Majesty’s Government in the United Kingdom have already acknowledged the natural and historical right of Egypt in the waters of the Nile. I am to state that His Majesty’s Government in the United Kingdom regard the safeguarding of those rights as a fundamental principle of British policy, and to convey to your Excellency the most positive assurances that this principle and the detailed provisions of this agreement will be observed at all times and under any conditions that may arise.”

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The quantity of water arriving in Egypt, which was referred to in the 1929 Treaty was determined by the findings of the 1925 Nile Waters Commission. This Commission had examined the flow of the river, and measured its output, and calculated Egypt's annual uses of the Nile as 48 bcm, which were considered Egypt's vested historical rights. The findings of this commission were based on an earlier exchange of notes between Ziwara Pasha of Egypt and Lord Allenby, in which the former asserted:

"The Egyptian Government has always maintained that this development should in no case be of such a nature as to be harmful to the irrigation of Egypt or to prejudice future projects..."

Lord Allenby later concurred with the Egyptian Prime Minister affirming that:

"I would assure your Excellency at once that the British Government, however solicitous for the prosperity of the Sudan, have no intention of trespassing upon the natural and historical rights of Egypt in the waters of the Nile, which they recognize today no less than in the past..."

Furthermore, the terms of reference of the Commission assuaged Egypt's fear of any possible diminution of waters required to sustain the then existing uses of the watercourse through stating that the Commission was established *"for the purpose of examining and proposing the basis on which irrigation can be carried out with full consideration of the interests of Egypt and without detriment to her natural and historical rights"*. In presenting its findings, the report noted that: *"it regards it as essential that all established irrigation should be respected in any future review of the question"*.

- Series of Notes Exchanged between Egypt and Great Britain concerning the Owen Falls Dam:

Throughout the series of notes exchanged, two issues of importance to the matter at hand were reaffirmed; first that both governments considered the aforementioned 1929 Nile waters treaty the governing standard in regulating the use of the watercourse. Second, the notes confirmed that any works should not cause any reduction or alteration in the quantity of water arriving in Egypt, or its time of arrival.

C: Treaties between Nile Basin States

- 1959 Agreement Between Sudan and the United Arab Republic for the Full Utilization of the Nile Waters

The treaty clearly affirms the concept of established historical rights as enumerated in the 1929 agreement. In fact the latter treaty is taken as the starting point for this new agreement, whereby the preamble states:

"And considering that the agreement on the waters of the Nile concluded in 1929 only provided for the partial utilization of the waters"

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of the Nile and did not include the total control of the waters of the river the two Republics agree that: ..."

The treaty then stipulates that the amounts of water being utilized at the date of signing of the agreement shall be the vested interests of the two states, and allocates 48 billion cubic meters per annum and 4 billion cubic meters per annum to Egypt and Sudan respectively:

"The quantity of waters of the Nile used by the United Arab Republic until this agreement is signed shall be its vested interest prior to obtaining the advantages stemming from the projects undertaken for the control of the Nile Agreement. The total amount of this vested interest shall be 48 billion cubic meters per year, measured at Aswan.

The quantity of water currently used by the Republic of Sudan shall be its vested interest prior to obtaining advantages which stem from works mentioned above. The total amount of these vested interests shall be 4 billion cubic meters per year measured in Aswan."

As for the net benefits expected from the reservoir generated by the dam, the agreement stipulated that the net profit of the reservoir would be divided:

"In the ratio of 14.5 for Sudan and 7.5 for the United Arab Republic...by adding these shares to the vested interests, the total share of the net output of the Nile after the reservoir has gone into full operation will be about 18.5 billion for the republic of Sudan and 55.5 billion for the United Arab Republic".

- 1993 Framework of General Co-operation between Egypt and Ethiopia

This latest treaty was concluded in Cairo on July 1st 1993, and included in articles 4 and 5 stipulations relevant to the Nile River:

"Article 4: The two parties agree that the issue of the use of the Nile waters shall be worked out in detail, through discussions by experts from both sides, on the basis of the rule and principles of international law.

Article 5: Each party shall refrain from engaging in any activity related to the Nile waters that may cause appreciable harm to the interests of the other party".