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## COLLECTIVE ACTION AND POLITICAL DYNAMICS

### Nile cooperation and Ethiopia's Grand Renaissance Dam

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#### **Introduction: the wider challenge of collective action**

The Nile Basin has been at the centre of shifting political structures and spheres of influence for centuries. Since the latter half of the twentieth century, the river has come under unprecedented pressure for control in order to meet rapidly growing societal and economic demand. The pace of development within countries sharing different portions of the basin yet with widely differing dependency on the river's resources has left a variegated landscape of 'stakes' in governance of the whole basin. Increasingly, however, as climate change adds uncertainty to future hydrological systemic behaviour (Wagena et al., 2016; World Bank, 2015), interest has increased in multilateral cooperation and using collective action between states to manage and develop the basin's resources.

This represents an approach to collective action (Olson, 1965) that resonates with the work of Elinor Ostrom (1990) and others, who argue that shared commons, such as major river basins, can be managed in a cooperative manner, sharing commonly generated benefits and avoiding the so-called 'tragedy of the commons', where individual actions lead to resource depletion and degradation. Recent efforts at cooperation in the Nile Basin reflect this idea of common management and development of a shared resource at multilateral scale, and also, to some extent, support wider notions of collective management as performing a regional public good function (see Nicol et al., 2001), which builds on the idea of public goods (Kaul et al., 1999) as non-excludable and non-rival in consumption and providing a means to other goods such as greater regional peace and security. In the case of the Nile, these are often referred to as benefits 'because of the river' and benefits 'beyond the river' (Sadoff and Grey, 2002).

The intent of this chapter is to contribute to our understanding of how the complexity of power relations and politics challenges collective action efforts in the Nile Basin by examining those efforts since the 1990s.

## The Nile: background of diversity

What constitutes the ‘collective’ in the Nile Basin has not been constant over time. There have been numerous changes in the nature of the states, their affiliations to superpowers, and even the number of state entities that constitute the collective over the last half century. The current eleven countries sharing the basin represent a range of geographical, cultural, political and socio-economic ties to basin resources. The populations of Nile countries range from over 90 million in each of Egypt and Ethiopia to just under 7 million in Eritrea and just over 10 million in Burundi. Moreover, the economic and social relevance of the water, land and environmental resources of the basin varies widely. Uganda lies almost wholly within, while the Democratic Republic of the Congo has less than 1 per cent of its area in the basin; and while Ethiopia is an ‘exporter’ of some 80 per cent of all the water received in Egypt, it receives virtually none itself as a ‘water tower’ state. Nile riparians also exhibit a range of political institutions, from unitary centralized systems to different interpretations of federalism. The economic balance within the Nile also tilts heavily towards downstream states and, in particular, Egypt, whose economy almost equates to the aggregate total of the ten other countries (NBI, 2012).

The nature of this ‘collective body’ of states has changed over time. Africa’s newest state (South Sudan) was established as recently as 2010. In the early twentieth century, however, much of the Nile Basin was heavily influenced by an external power – the British Empire controlled a belt of countries from Kenya and Uganda to Sudan and Egypt. In his book *The Nile Basin: National Determinants of Collective Action*, John Waterbury (2002) captures well how the power dynamics have changed throughout the colonial, post-colonial and Cold War periods, and how national, regional and global political agendas come into play. Downstream states – and the wider development community – quickly took advantage of the so-called ‘new world order’ of the 1990s to establish technical discussions on cooperation under the banner of the Nile 2002 Conferences, inaugurated in Aswan in 1993 (Brunnee and Toope, 2002). Held each successive year, these informal conferences enabled the emergence of collective action under the Nile River Basin Action Plan between all those countries that share the basin.

Central to the challenge of establishing wider collective action in the basin, in spite of the willingness expressed, were pre-existing ‘rules of the game’, as reflected in agreements signed in 1929 and 1959 (see Agreement, 1929; Agreement, 1959). Upstream states argue that these treaties were signed during the period of colonial rule, so they are invalid under the terms of the Nyerere Doctrine.<sup>2</sup> The 1959 agreement facilitated construction of the High Aswan Dam, which enabled Egypt to capture and store more than an entire annual Nile flood, most of it within its borders. As a provider (at the time) of 50 per cent of Egypt’s energy supply, the dam became a symbol of state-led development, Egypt’s ‘mastery of the Nile’ and its political strength. Meanwhile, upstream states came to view it as emblematic of Egyptian hegemony and, in response, the United States began a comprehensive study of potential dam sites on the Blue Nile in Ethiopia (United States Bureau of

Reclamation, 1964). Though none of these projects came to fruition, the so-called ‘Border Dam’ eventually formed the basis for the GERD, which we discuss in detail below.

For Sudan, the midstream riparian with significant potential for agricultural development, the 1959 agreement guaranteed 18.5 bcm (billion cubic metres)/year (against Egypt’s 55.5 bcm), but until recently the country had been unable to utilize most of this water allocation. This has rapidly changed due to recent and ongoing hydropower and large-scale irrigation investments in the country, in particular in the strategic Blue Nile sub-basin (Cascão and Nicol, 2016b). The GERD will also enhance Sudan’s irrigation potential. Egypt, by contrast, has fully utilized its allocation under the 1959 agreement; indeed, over time its utilization has exceeded its quota with a ‘water loan’ (El-Zain, 2007: 14) amounting to almost 4 bcm/year due to Sudan’s stated utilization of around 14.6 bcm. The 1959 agreement also established a Permanent Joint Technical Commission (PTJC) between Egypt and Sudan, which oversaw provisions of the agreement and represented the most important elements of the dyadic relationship between the two downstream riparian states (Waterbury, 2002). Current political dynamics indicate that this dyad is being challenged as Sudan becomes bolder in its national plans to increase withdrawals of Nile water, and at the same time aligns more closely with Ethiopia and other upstream countries under multilateral cooperation agreements.

### Applying the Ostrom principles

If we apply some of Ostrom’s work (Ostrom, 1990; Ostrom et al, 1993, 1994) on the challenge of collective action and common-pool resources, we can understand more clearly some of the dynamics and changes that are taking place. Ostrom placed particular emphasis on overcoming the ‘free-rider’ problem. She argued for sustainable institutions based on principles of cooperation and co-organization, a central tenet of the Nile Basin Initiative (NBI) in 1999. Looking at the similarities and differences, we can reflect on both Ostrom’s ‘principles’ for collective management and the current situation in the Nile:

1. Clear boundaries: clear demarcation of boundaries that identify members of the user group as well as the actual physical boundaries of the common property resource. In the Nile these are the nation states that to a greater or lesser extent are situated within the hydrological boundaries of the Nile Basin: in brief, a population of some 200 million people actually living within these boundaries out of 370 million in total for all eleven riparian states (NBI, 2012). These boundaries changed with the secession of Eritrea from Ethiopia in 1993, and the independence of South Sudan in 2010. In both cases, the latter more so, the change in the number of members had important political consequences for the wider cooperation process and the nature of collective action solutions (Salman, 2011).
2. Match rules and conditions: congruence between appropriation and provision rules and local conditions. This is complex, but significant, because the nature



**FIGURE 3.1** Map of the Nile Basin  
Source: Wikimedia Commons

of the 'rules' and their interpretation are central to the challenge of reaching agreement on how to manage the basin collectively. Rules set in treaties signed during colonial rule (the 1929 and 1959 Nile Waters agreements) form the basis of Egypt and Sudan's claims on the Nile, but not those of upstream states (Brunnee and Toope, 2002). Collective action processes sought to sidestep this challenge by establishing a new set of rules (through the Nile Cooperative Framework Agreement, negotiated between 1997 and 2007), but, in effect, the two 'rulebooks' have failed to coexist effectively. The set of 'local conditions' that prevailed, particularly in upstream states, challenged the nature of the downstream adhered-to rules, particularly given upstream population growth and demands for water for energy and food production.

3. Participation in rule modification: making arrangements for collective choice that allow participation by all affected individuals in deciding on rules for appropriation and provision. The forms of cooperation that have emerged since the 1990s have allowed participation by all riparian countries, but willingness to participate has been challenged by disagreement on the 'rules', as reflected in the process of adoption of the Nile Cooperative Framework Agreement (CFA) since the formal end of negotiations in 2007 (discussed below).
4. Rule-making rights are respected externally: appropriators or those accountable to them are responsible for monitoring compliance with collective decisions. In this case, states and non-state actors withdrawing Nile resources would be expected to be responsible for undertaking actions that are in compliance with the 'collective'. What is interesting here is that there has been a certain degree of deliberate 'non-compliance' with a collective/joint approach, wherein it is possible to observe concomitant large-scale investment projects being undertaken unilaterally (in both downstream and upstream countries) in tandem with efforts to identify regional cooperative investment projects (Cascão, 2009; Nicol and Cascão, 2011). The GERD process (2011–2017) is an example of a change in the nature of the collective to incorporate 'non-compliance', but in this case a form of 'nested collective action' between the three Eastern Nile states, in which we observe new norms of cooperation established at the trilateral level but with impacts for the whole Nile Basin (Cascão and Nicol, 2016a).
5. System-level monitoring of behaviour: develop a system, carried out by community members, for monitoring members' behaviour, recognizing their own rights to organize institutions. In this case, the right to associate bilaterally, trilaterally or multilaterally is not hindered under the 'rules' of cooperation established under the Nile Basin Initiative, and the bilateral, trilateral and multilateral cooperation are not mutually exclusive. That parallel processes of cooperation exist at different levels appears to be accepted by all countries.
6. Graduated sanctions: sanctions are graduated to reflect the severity, frequency and context of violation. The NBI has a Foundation Act<sup>3</sup> which implicitly states that countries are cooperating in good faith and through the transitional mechanism are aiming to establish a permanent commission. Further, Article 34 of the CFA establishes a conflict/dispute mechanism:

Settlement of disputes: In the event of a dispute between two or more Nile Basin States concerning the interpretation or application of the present Framework, the States concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions ...

7. Low-cost dispute resolution: availability of low-cost and readily accessible conflict-resolution mechanisms to mediate conflicts. In this case, there are existing governance bodies currently in charge of the transboundary cooperation process, established in 1999 – technical advisory committees (e.g. Nile-TAC), councils of ministers (Nile-COM) and other mechanisms through which negotiated solutions to technical and political conflicts may be achieved.
8. Tiered responsibility for governance: the establishment of ‘nested enterprises’ – that is, sets of rules established within a hierarchy of appropriator institutions must be established for common-pool resources that are within larger systems and political jurisdictions. In this case, when the Nile Basin Initiative was established the principle of subsidiarity was embedded in the establishment of two ‘nested tiers’ – the Eastern Nile Subsidiary Action Programme and the Nile Equatorial Lakes Subsidiary Action Programme (as two separate governance institutions, besides the NBI Secretariat). These are discussed in more detail below.

From this brief assessment of the Ostrom criteria with respect to the Nile Basin, clearly some conditions for effective collective action in the basin have been incorporated into cooperation structures (both legal and institutional frameworks). But underlying these structures and processes are a number of historical and long-lasting asymmetric power relations that continue to unpick capacity for effective inter-state collective action at the whole-basin scale. These challenges and the nature of the complex power relations involved are addressed in the remainder of this chapter through the lens of the trilateral process surrounding construction and management of the Grand Ethiopian Renaissance Dam (GERD).

## **The Nile: turbulent waters and the nature of the ‘collective’**

### ***From dyad to diffusion of power***

Hegemonic control by Egypt and Sudan began to break down in the 1990s at the same time as the 1997 UN Water Convention (UN Convention on the Law of the Non-navigational Uses of International Watercourses) enshrined the notion of equitable sharing of both resources and benefits in shared river courses.<sup>4</sup> This supported the efforts of bilateral and multilateral donors to establish high-level negotiations on a new institutional and legal framework agreement for the Nile in 1997 and to launch the Nile Basin Initiative in February 1999.

The NBI's development represented strong acknowledgement by the international community that growing demands on resources had to be addressed at a collective level. The NBI established a secretariat in Uganda and two subsidiary action programmes (SAPs) in the Eastern Nile (based in Addis Ababa) and the Nile Equatorial Lakes region (in Kigali). The SAPs have been responsible for the identification of joint projects on such issues as energy, agriculture and the environment, representing important application of the principle of 'subsidiarity'. They have been able to create an enabling environment within which to build agreements at project level and identify (through feasibility studies and preparation) future cooperative investment projects at sub-basin levels (NBI, 1999). Combined with SAPs, a Shared Vision Programme (SVP) supported cooperation through promoting collaborative action, exchange of experience, and trust and capacity-building intended to build a strong foundation for regional cooperation, of which the main goal was the creation of an enabling environment for investments and action on the ground (NBI, 1999).

Later in the process, as an outcome of the SVP, the NBI would be entrusted with three core functions: water resources management; water resources development; and promotion of basin cooperation (NBI, 2014). In brief, the NBI came to embody the approach of basin-wide collective action. Even if the institution still lacks a permanent status (pending the adoption of the CFA and establishment of a permanent commission), it has contributed widely to an understanding of the need to manage and develop the Nile's water resources jointly, against 'unilateralism' and more piecemeal approaches that carry high costs and risks for riparian countries and the river system itself.

Nevertheless, unilateral project development continued outside of these various institutional umbrellas, including the Toshka Diversion in Egypt in the late 1990s, the Merowe Dam in Sudan and the Tekeze Dam in Ethiopia in the late 2000s. Part of the reason for this was the involvement of new third-party actors, including Chinese investors, who supported the construction of both Merowe and Tekeze (Cascão, 2009). This new financial landscape, with non-traditional external partners gaining precedence over 'traditional' (largely Western) partners, as well as countries gaining their own financial capacity, contributed greatly to new infrastructure development processes. Newly exploited oil wealth in Sudan – at least until South Sudan's independence – enabled the Sudanese government to pursue an investment programme in energy production in the 2000s. Meanwhile, in Egypt, domestic financing of the Toshka project sought to encourage large-scale expansion of irrigation in the southern 'new' valley to reduce pressure on the Old Valley lands, but represented more of a political gesture than an economic success story (Collins, 2006; Warner, 2012). Ethiopia also continued construction of the Tekeze Dam, with Chinese support. Then, in April 2011, it announced plans to begin construction of GERD, and stated its intention to rely solely on national financing from both government budgets and individual 'bonds' bought by the Ethiopian public. This project has since become the largest, and certainly the most controversial, example of unilateral development in the Nile Basin.

Below we examine the background to the challenges facing collective action to achieve regional investment and move beyond the unilateral projects which, to this point, have dominated actual development on the Nile since the emergence of the NBI.

### **New rules, new political impasse**

By 2010 the NBI had celebrated its tenth anniversary and the so-called ‘D3 Project’, financed by donors to establish a legal–institutional basis for cooperation (a precondition among upstream riparians, in particular Ethiopia, for the establishment of the NBI), had been long in negotiation (see Arsano and Tamrat, 2005). The CFA outcome of the D3 Project was a new ‘rules of the game’, setting new legal and institutional mechanisms for future cooperation between states, and the necessary framework for the establishment of a permanent Nile River Commission (Agreement, 2010). By 2007, all of the countries involved in the negotiations had agreed to forty-four of the forty-five articles in the document. The exception was Article 14b. This was due to Egypt and Sudan’s strong reservations about the implications of the new agreement for their bilateral 1959 Nile Waters Agreement (NWA). In 2010, the upstream riparians decided to annex Article 14b (to be resolved by the Nile River Basin Commission within six months of its establishment) and press on with signing the remaining negotiated articles under the so-called ‘Entebbe Agreement’. According to Article 43, six instruments of ratification or accession would be sufficient for the CFA to enter into force (Agreement, 2010). By early 2017, only three countries had ratified the CFA (Ethiopia, Rwanda and Tanzania), while four others were in the process of ratification/accession (Kenya, Uganda, Burundi and South Sudan).

Egypt’s objection to ‘Water Security’ (Article 14b) was based principally on a perceived threat to the 1959 agreement and the existing apportionment of the Nile water. The article states: ‘the Nile Basin States therefore agree, in a spirit of cooperation, to work together to ensure that all states achieve and sustain water security and not to significantly affect the water security of any other Nile Basin State’. In the signed agreement, a codicil was added: ‘Egypt and Sudan expressed their reservations to the ambiguous article, and considered that the last sentence of Art.14b should be replaced by the following wording: “(...) not to adversely affect the water security and current uses and rights of any other Nile Basin State”’ (Agreement, 2010). All of Article 14b in its current form was annexed to the signed CFA but not included in the main body of the agreement.

As a reaction to the so-called ‘Entebbe Agreement’, which represented agreement among seven states to sign the CFA, both Sudan and Egypt suspended their participation in all NBI activities and projects, though the former later reversed that decision and resumed full membership of both the NBI and ENTRO (Eastern Nile Technical Regional Office) in November 2012 (*Sudan Tribune*, 2012). The rules of collective action began to change substantially again in 2011,



when Ethiopia announced GERD, and even more so when the three Eastern Nile countries signed a new legal document titled the ‘Declaration of Principles’ in March 2015. This agreement binds the three countries to collaborate trilaterally on the new dam. It is examined in the next section.

## **The Grand Ethiopian Renaissance Dam: game-changer and new power-play**

### ***‘Nested collective action’ and political change***

The failure to institutionalize ‘full’ collective action under the CFA and the splitting off by upstream states from the whole basin body of states in some senses echoed wider principles of subsidiarity embedded in the NBI’s design. This response to the slow pace of change towards a new agreement and set of rules – combined with ongoing unilateral project development elsewhere – engendered the decision taken by Ethiopia to announce construction of the ‘Millennium Dam’, subsequently renamed the Grand Ethiopian Renaissance Dam.

Ethiopia had long insisted on its right to develop hydropower and fully anticipated that the Joint Multipurpose Project (JMP), studied under ENTRO/NBI, would lead to dam construction and capacity to utilize some of the country’s vast (30,000 MW) hydropower potential. Agreed in 2003, the JMP aimed to identify and select a first set of investments and included an ENCOM-commissioned (Eastern Nile Council of Ministers) independent study on the ‘Opportunities for Cooperative Water Resources Development on the Eastern Nile: Risks and Rewards’ (Blackmore and Whittington, 2008).

This scoping study was an important landmark in collective action in the Nile Basin as it represented the first time such a significant study had been jointly commissioned. Political engagement and commitment among the three key countries underlined their high levels of expectation (Cascão and Nicol, 2016a, 2016b) and included:

1. planning and implementation based on regional decision-making processes;
2. regional confidence-building based on joint communication and consultation mechanisms;
3. a benefit–cost sharing formula between the riparians under a ‘no-borders perspective’; and, ultimately,
4. that it would contribute to ensuring efficient and optimal use of the Nile waters through equitable and reasonable utilization (Eldaw and Fekade, 2009).

It was anticipated that the JMP was the transboundary project to unlock further linkages in terms of regional cooperation, trade and integration, and provide transformational socio-economic benefits to the region as a whole

(Eldaw and Fekade, 2009). However, because of numerous political obstacles to the project itself and challenges posed by signing and adopting the CFA, the JMP project came to an end before delivering any tangible results, let alone before Ethiopia achieved any of its hydropower ambitions.

### ***A new 'trilateralism'***

The emergence of this new trilateral arrangement (including a legal declaration of principles from the heads of state of the three Eastern Nile riparians) represented a new form of nested collective action within the basin. Egypt, weakened politically by internal turmoil, needed an agreement that could guarantee the GERD would not affect its national water security. Beginning in 2015, bilateral and trilateral talks eventually led to the 23 March 2015 Declaration of Principles for the GERD (DoP), signed in Khartoum. The DoP brought the three states together around an agreed set of principles on cooperative relations.

The ten principles include the 'traditional' international legal principles of 'no significant harm' and 'equitable and reasonable utilization' as well as stipulations on dam security, dam filling, operations policy and exchange of information (Agreement, 2015). The DoP was also strengthened by the Khartoum Accord, signed in December 2015 (Salman, 2016). This new 'regime' in the Eastern Nile Basin represents cooperation outside the formal institutional sphere of the NBI, but to some extent nested within the basin-wide cooperation context. The challenge now is whether these 'nested rules' reduce the incentive for key players – including Ethiopia – to complete the CFA (see Casção and Nicol, 2016a, 2016b), and suggest that collective action at full-basin scale may become the victim of more achievable political realities at ground level in the form of bilateral and trilateral arrangements.

## **Conclusions**

Our review of the collective action challenges in the Nile Basin assessed the nature of changes within the basin and then outlined the eight Ostrom principles of collective action and how they relate to Nile cooperation.

We have seen how efforts at collective action have been heavily influenced – and shaped – by power and political economic realities, including new dynamics and relationships, power resources and even new actors within this shifting landscape. A more fluid set of actors emerged in the 1990s, but early efforts to build on this situation and establish a common platform for cooperation and collective action have remained subject to historical realities and current political realities. It will take both power politics and principles of collective action to change the entrenched institutionalization of older power structures – most notably the 1959 bilateral agreement between Egypt and Sudan. At the time of writing (early 2017), the Entebbe Agreement had yet to enter into force, although expectations were that this could happen in the medium term.

Changes in the configuration of state power and wider geopolitical environments within the basin enabled the NBI to emerge. It represented a form of collective action predicated on delivering agreed development objectives over a ten-year period and succeeded in changing the discourse on cooperation, but it has been quite marginal to actual developmental change at ground level. The NBI came close to fulfilling nearly all eight of the Ostrom principles for managing a common-pool resource, but the experience of the basin in the years since has been that political exigencies and the complexity of the power structures (and change) within the basin override collective action capacity to deliver substantial benefits at the full-basin scale. Basin-scale realities of power lead states to fall back on their own individual claims over resources and positions on basin development through bilateral and trilateral ‘nested’ cooperation. This is not necessarily a failure of collective action, but rather a balancing of collective action and national political-economic realities.

## Notes

- 1 With additional input from Dr Ana Cascão.
- 2 This doctrine holds that agreements signed between entities in colonial times have to be renegotiated after independence.
- 3 See <http://extwprlegs1.fao.org/docs/pdf/uga80648.pdf>.
- 4 See [http://legal.un.org/ilc/texts/instruments/english/conventions/8\\_3\\_1997.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf).

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