

Anglo-Ethiopian Treaty on the Nile and the Tana Dam Concessions:

A Script in Legal History of Ethiopia's Diplomatic Confront (1900-1956)

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Abstract

In hydro-political context, while Ethiopia had been able to propel its own canoe in the first half of the 20th century, a blend of factors worked in concert to deprive it of any meaningful prospect in the utilization of the Nile water resources within its jurisdiction. I argue that the Anglo-Ethiopian Treaty of 1902 on the Blue Nile and the stream of negotiations conducted in the immediate aftermath on the grant of Lake Tana Dam concessions have engendered deleterious impacts on the legal position and sovereign interests of Ethiopia. Ethiopia's imperial vacillation was vexatious, and British hegemonic designs of the time leaned too heavily towards Sudan and Egypt. As a result, the post-1950 period witnessed a waning influence of Ethiopia's hydro-legal posture and the molding of deeply engrained perceptions of proprietorship along the downstream Nile.

Key terms

Ethiopia, Great Britain and the Nile Treaty (1902), Sudan, Egypt, the Lake Tana Dam negotiations, international watercourses law, water diplomacy on the Nile

DOI <http://dx.doi.org/10.4314/mlr.v8i2.1>

Introduction

The Anglo-Ethiopian Treaty of May 1902 on the Blue Nile River, a pact that intertwined Ethiopian, Sudanese and Egyptian destinies in the first half of the 20th century, has greatly influenced Ethiopia's sovereign interests in transboundary water rights in the subsequent decades. For a long period, the Treaty remained the single most authoritative instrument in the definition of water rights of the states of Sudan and Ethiopia. The legal arrangement represented a key episode at the zenith of Great Britain's unremitting quest

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for physical and juridical control of the Nile basin region and for securing the unhindered flow of the Nile river course downstream.

The first section of this article examines the colonial and geo-political setting under which the 1902 Anglo-Ethiopian Treaty was concluded, and the second section analyses the factors that impelled Emperor Menelik to extend the assurances contained in the Treaty. The third section deals with the implications of the Treaty on Ethiopia's transboundary water rights. The fourth section dwells on a closely related subject: the negotiations history of the Lake Tana Dam concessions conducted in the immediate aftermath of the 1902 Treaty, and highlights the opportunities presented and challenges posed in relation to Ethiopia's hydro-legal and developmental discourse. The last two sections supplement the discussion by a methodical presentation of how events unfolded in the pre-1956 epoch, leading to a steady decline of Ethiopia's hydro-political influence in the post Tana dam periods, and the unproductive diplomatic and legal enterprises which Ethiopia staged to confront British, Sudanese and Egyptian machinations with regard to rights of utilization of the Nile River.

1. Circumstances of the conclusion of the Anglo-Ethiopian Treaty of 1902

In the immediate aftermath of the European scramble for the African continent in the 1880's, the British colonial empire expanded its African acquisitions in fierce competition with the French. At the peak of its imperial power, the British dominion had extended over large territorial stretches across the East and North African regions situated in the Nile basin.¹ By 1890, London had declared the whole Nile valley as its sphere of influence.² Yet, instead of taking control of the entire river and the banks by itself, Tvedt writes, during the stated period, the principal target of British imperialism in the eastern Nile (i.e. the Ethiopian Blue Nile) had been to keep away European powers, and specially France, from acquiring any foothold in the Nile basin.³ In the negotiations relating to east and north-eastern Africa which Lord Salisbury had conducted with a series of

¹ Tadesse Kassa Woldetsadik (2013), *International Watercourses Law in the Nile Basin: Three States at a Crossroads*. New York / Abingdon, Oxon, Routledge Taylor and Francis Group, p. 50.

² Terje Tvedt (2004), *The River Nile in the Age of the British, Political Ecology and the Quest for Economic Power*. London / New York, I.B.

³ Ibid.

European counterparts in 1890-91, the desire to safeguard waters of the upper and middle Nile occupied a predominant position.⁴ Therefore, in order to fill the vacuum created by the absence of any European footing in Ethiopia after the defeat of Italy in 1896, it was only sensible for Great Britain to tie a covenant with Emperor Menelik II of Ethiopia.

The immediate genesis of the Anglo-Ethiopian Treaty of May 1902 dates back to the negotiations conducted during the concluding years of the 19th century and the diplomatic notes exchanged in March 1902 between Monsieur Alfred Ilg, Emperor Menelik's foreign affairs councillor, and Lt. Colonel John Harrington, the British emissary in Addis Ababa.⁵ The negotiation was initiated after Emperor Menelik sent, in April 1891, a circular letter to European powers defining what he considered to be the bounds of the Ethiopian borders.⁶ For Menelik, the regularization of his country's international boundaries was only inevitable given that both Ethiopia and the European powers had been engaged in the expansion of new territorial acquisitions. The Emperor's diplomatic note intended to circumvent the incidence of conflicts of interest with European states and specially the British who had then occupied Sudan, a colony sharing a vast expanse of territory with the western parts of the Ethiopian state. In such context, the border squabble along the western corridors of Ethiopia constituted high profile mission of the British agent, Colonel Harrington, when, in 1897, he assumed office as his kingdom's representative in Ethiopia.

Judging by contents of the texts of the Treaty, the arrangement was initiated to address frontier issues. From the provisions of the Treaty and related legal and historical chronicles, it could be gathered that the most important object and purpose of the accord, the design that prompted the parties to conclude the agreement had been to settle and delineate

⁴ G. N. Sanderson (1964), 'England, Italy, the Nile Valley and the European Balance, 1890-91', *The Historical Journal*, vol. 7, p. 94.

⁵ A technocrat in engineering and diplomacy, since 1879, Alfred Ilg had rendered three decades of services to Emperor Menelik. In recognition of his contributions, he was appointed as 'Councillor of State, together with the many honours and commercial concessions' in 1896.

Harold G. Marcus (1995), *The Life and Times of Menelik II, Ethiopia 1844-1913*, New Jersey: The Red Sea Press Inc., p. 59.

⁶ Harold G. Marcus (1963), 'Ethio-British Negotiations Concerning the Western Border with Sudan, 1896-1902', *4(1) The Journal of African History*, p. 82.

Also accounted in: British Foreign Office, Circular Letter, April 1891, FO 403/155; and Menelik to Rodd, 13 May 1897, FO 1/32.

longstanding boundary issues between the Anglo-Egyptian Sudan and Ethiopia. Among others, this is evident from the Treaty's preamble which reads that the parties 'being animated with the desire to confirm the friendly relations between the two powers and to settle the frontier between the Sudan and Ethiopia...' had contracted to conclude the bilateral accord.

The achievement of a specific Ethiopian pledge of non-interference with the flows of the Blue Nile waters was appended as component of Col. Harrington's undertaking only in due course, and upon express instructions from his superiors in Cairo and London. In fact, until 1900, Harrington, Ilg and Emperor Menelik had been seriously engaged in winding-up their negotiations that covered *no other theme* than the regularization and reciprocal recognition of territorial gains.⁷ By September 1900 when the two powers appeared to have completed of the painstaking border negotiations, the British Foreign Office redefined the tasks of its representation in Addis Ababa. Harrington was instructed to approach the Ethiopian government with a view to getting hold of a guarantee for the unimpeded flow of the Blue Nile and the Sobat rivers and a right to construct a railway through the Ethiopian territory.⁸ Both the British and Col. Harrington were convinced that if they signed the frontier treaty alone, the chances of subsequently securing Ethiopia's consent on the Blue Nile would simply be unconceivable.⁹

The sequences of low-level frontier negotiations were thus followed by discussions on the content and form of Ethiopia's undertaking with regard to the Blue Nile, the Sobat and Lake Tana. On March 18, 1902, it was reported that the British Government received a note of agreement from Ethiopia,¹⁰ although the facts and specifics remained too contentious in the following years. Ilg, the Emperor's Conseiller d'Etat, allegedly dispatched the Ethiopian note although at the time he was neither a state official nor a designated agent of the Ethiopian government with a capacity to conclude

⁷ Harrington to Salisbury, 14 May 1900, FO 403/299.

⁸ Tadesse K. Woldetsadik, *supra* note 1, pp. 92-93.

⁹ Harrington to Lansdowne, 20 March 1902, No.6, FO 1/40.

¹⁰ Ilg to Harrington, 18 March 1902, FO 403/322; *also reported in*: Abyssinia, Record of meetings to discuss the method of negotiation with Abyssinian Government for the Lake Tana Concession, 4 August 1926, FO 371/13099; Lake Tana, Record of Conversation between Dr Martin and Murray, 11 November 1927, FO 371/12343.

binding pacts.¹¹ The British Foreign Office itself affirmed that on March 18, 1902, Alfred Ilg, not Emperor Menelik, had sent a note to Great Britain containing an article which established limitations on future rights of Ethiopia in the utilization of the Nile River water resources.¹²

To counter the challenges that arose in Ethiopian quarters from time to time, Great Britain had laboured ceaselessly to establish both the existence and validity of the notes exchanged between the two states. In a later address to the League of Nations in 1926, for example, the British Government admitted that ‘...notes were exchanged between the British Minister in Addis Ababa and the Ethiopian Government on 18 March 1902 wherein Emperor Menelik confirmed an oral undertaking given some days ago...that there should not be interference with the waters of the Blue Nile...’. Under the note, Ethiopia reportedly undertook a commission that ‘there is to be no interference with the flow of the Blue Nile or Lake Tana except with the consultation of His Majesty’s Government’, and that should there be any interference, ‘all conditions being equal, preference will be given to proposals of His Britannic Majesty’s Government. His Majesty Emperor Menelik has no intention of giving any concessions with regard to the Blue Nile and Lake Tana except to His Britannic Majesty’s Government, the Government of Sudan or one of their subjects.’¹³

Incidentally also, in 1926, the Foreign Office deliberated on the nature of the offer submitted to Ethiopia in exchange for water storage concession on Lake Tana wherein it took the view that Ethiopia’s own proposal ‘to build the dam is hardly in accordance with the notes exchanged on 18 March 1902 between Sir J Harrington and M Alfred Ilg, duly authorized thereto by Emperor Menelik.’¹⁴ Similarly, on November 11, 1927, Great Britain conferred with Dr Martin, named plenipotentiary of the Ethiopian

¹¹ Public international law proffers stricter rules defining the competence of authorities representing a state in negotiating, adopting and authenticating texts of a treaty, and expressing consent of a state to be bound. For specifics, see Article 7-8 of the UN Vienna Convention on the Law of Treaties (1969).

¹² Ilg to Harrington, 18 March 1902, FO 403/322.

¹³ *Ibid*; also reported in: British Foreign Office: Abyssinia, Record of Meetings to Discuss the Method of Negotiation with Abyssinian Government for the Lake Tana Concession, 4 August 1926, FO 371/13099; British Foreign Office: Lake Tana, Record of Conversation between Dr Martin and Murray, 11 November 1927, FO 371/12343.

¹⁴ British Foreign Office: Abyssinia, Record of meetings to discuss the method of negotiation with Abyssinian Government for the Lake Tana Concession, 4 August 1926, FO 371/13099.

government in the dam negotiation with J G White Engineering. On the occasion, the British sounded that an ‘exchange of notes between Sir Harrington and Monsieur Ilg in 1902 (had been effected) whereby Emperor Menelik undertook, other things being equal, only to entrust the construction of the reservoir to His Majesty’s Government or the Government of Sudan or one of their subjects.’¹⁵ On December 7 of the same year, Bentinck, the British ambassador in Ethiopia, took audience with Ras Teferi in Addis Ababa - later crowned as Emperor Haileselassie I; resentful of Ethiopia’s dealings with an American company which antagonized British longstanding propositions, Bentinck ‘reminded him (the Ras) of the notes exchanged between Ilg and Harrington.’¹⁶ He also read out to Dr Martin the text of the of the Ilg-Harrington notes which the British held as binding.¹⁷

Dr Martin denied knowledge of the existence of any such notes, and subsequently disputed their binding effect. However, on official level, Ras Teferi wanted to offset British diplomatic rhetoric against the US and in Ethiopia, and embarked on a course that aimed at clearing the legal hurdles poised upfront; he had to put the state’s house in order before he could auction his dam scheme abroad, although all along, London resisted his moves. Great Britain consistently held that the contents of the note had been duly authorised in line with the internal constitutional orders, and was properly endorsed by the respective governments of the two states.

On his part, Ras Teferi did not yield to British reading of rights. When provoked by Bentinck’s analysis of ‘assumed rights’ under the notes, the Crown Regent, who appeared to have been informed about the signature and the seal pressed on the instruments, demanded to be advised of ‘whose seal was on Ilg’s note’. He challenged the ‘right of Ilg to give assurances contained in the note of 18 March 1902 to His Majesty’s Minister on the grounds that he was merely an advisor to the Ethiopian Government.’¹⁸

Trapped off-guard, London anxiously searched for originals in state libraries and legations but to no avail. A copy produced from Harrington’s despatch was traced, and in the language of the officer who undertook the charge, it was reported the ‘seal appears to be that of Alfred Ilg, Conseiller

¹⁵ British Foreign Office: Lake Tana, Record of Conversation between Dr Martin and Murray, 11 November 1927, FO 371/12343.

¹⁶ Bentinck to Austen Chamberlain, 14 December 1927, FO 371/13099, Addis Ababa.

¹⁷ Bentinck to Austen Chamberlain, 30 January 1928, FO 371/13099, Addis Ababa

¹⁸ Bentinck, Lake Tana, 12 December 1927, FO 371/12341 Addis Ababa.

d'Etat.¹⁹ Bentinck and his colleagues at the Foreign Office conceived the chilly implication of this development on Great Britain's legal standing. In a handwritten memo scribed on the very dispatch remitted by Bentinck, an alternative line of legal argument was framed. British diplomats projected to make out a case in support of their position based on two correlated grounds. First, they held that the exchanged notes would be binding because 'it is inconceivable that Emperor Menelik, after the audience on March 13, was ignorant of the fact that Monsieur Ilg had returned a reply to Lt. Col. Harrington'. Secondly, the British argued that 'a government cannot evade responsibility for obligation which a person in their employ signs in their name and with their consent.'²⁰

As revealed in the subsequent sections, the significance of the notes exchanged rests not only on the deleterious effect they engendered on Ethiopia's sovereign interests in the subsequent decades, but the notes also constituted the essentials on which the Anglo-Ethiopian Treaty of 1902 had been founded. The literature and diplomatic records availed on the subject are too scanty to discern with reasonable certainty how the negotiations in March 1902 evolved into the Anglo-Ethiopian Treaty of May 15, 1902. However, it is evident that the talks leading to the conclusion of the Treaty had continued in the subsequent weeks - following the exchange of the notes. The formalities of treaty conclusion notwithstanding, this gives the impression that the Ethiopian note had served as a mere gesture of understanding reached on major issues, and perhaps not as an expression of a definitive commitment. In fact, weeks after the exchange of the notes, Ilg had to continue working on a complete reconstruction of the deal he submitted previously with provisions 'about Lake Tsana and the Blue Nile which absolutely knocks the bottom out of the exchange of notes on this subject ... and a clause that the treaty was to hold good for ten years and could be terminated by six months notice being given by either side'.²¹

In any event, historian Harold Marcus confirmed that on May 15, 1902, Great Britain and Ethiopia had in fact been able to conclude in Addis Ababa the 'Treaty Between Ethiopia and the United Kingdom Relative to the Frontiers between the Sudan, Ethiopia and Eritrea' with a view to settling the border issue between Sudan and Ethiopia.²² The Treaty incorporated a single provision on the rights of utilization of the Blue Nile, Baro Akobo and

¹⁹ Ibid.

²⁰ Ibid.

²¹ Harold Marcus, *supra* note 6, p. 94.

²² Ibid.

Lake Tana. A few authors challenged this story, and claimed that the Treaty was never ratified, nor put into effect in Ethiopia. In the words of James Robertson, for example, Menelik promised Great Britain in May 1902 not to interfere with the Blue Nile waters and did in fact honour this promise, but he never ratified it in an official agreement.²³

However, the accord was presented to both Houses of the Parliament in the United Kingdom in December 1902 by commands of ‘His Majesty’, and a letter of ratification submitted to Ethiopia on October 28, 1902.²⁴

A substantial moderation from the notes exchanged in March, the English version of Art. III of the resulting agreement stipulated that ‘His Majesty Emperor Menelik, king of kings of Ethiopia, engages himself towards the Government of His Britannic Majesty not to construct or allow to be constructed any works across the Blue Nile, Lake Tana or the Sobat, which would *arrest* the flow of their waters in to the Nile, except with His Britannic Majesty’s agreement and the Government of the Sudan.’ Sudan considered a partner in the English version of the agreement was left out in the Amharic version which reads:

፫ተኛ፡ ክፍል፡፡
ጃገሆይ፡ ዳገጫዊ፡ ምኒልክ፡ ገጉሠ፡ ነገሥት፡ ዘኢትዮጵያ፡
በጥቁር፡ ዓባይና፡ በባሕረ፡ ጻና፡ በሰባት፡ ወንዝ፡ ወደ
ነዊ፡ ዓባይ፡ የጫወርደውን፡ ውህ፡ በከንገሊዝ፡ ጫገሥት፡
ጋራ፡ ከሰተድዋ፡ ባይሰጫ፡ ወንዝ፡ ተዳር፡ ኦዳር፡ የጫደ
ፍን፡ ሥራ፡ ኦገዳይሰሩ፡፡ ወይም፡ ወንዝ፡ የጫደፍን፡ሥራ፡
ለጫሠራት፡ ለጫገም፡ ፈታድ፡ ኦገዳይሰሙ፡ በዚህ፡ ውል፡
ኦድርገዳል፡፡

In the succeeding years, British and Ethiopian understanding of the scope of obligation stipulated under Art. III differed; Great Britain assumed that with the exception of domestic uses and local irrigational rights, the agreement had definitively deprived Ethiopia of the right to use the resource in any way whatsoever, while Ethiopia’s reading submitted that only complete arrest of the flows of the river had been prohibited under the treaty arrangement.

²³ James Robertson (1978), ‘British policy in east Africa’, *The English historical review*, vol.93, no 369, p. 835.

²⁴ London, Printed for His Majesty’s Stationary Office, Harrison and Sons, St. Martines Lane.

2. Factors that prompted Emperor Menelik to conclude the Treaty

In understanding piercing details of the legal history on the subject, one of the elemental questions that has been put forward and hence merits investigation relates to the legal, economic and geo-political setting under which Emperor Menelik undertook the assurances offered under Article III of the Anglo-Ethiopian Treaty. Great Britain had for long considered Sudan, especially the Nile Valley in the Sudan as Egyptian Territory. In fact, between 1899 and 1955, Sudan was a colonial territory administered through a joint Anglo-Egyptian authority - so-called *codomini*, with the British having a say on key matters. The British had therefore concluded the Treaty as a protector and overseer of the interests of Egypt.

Great Britain's political machination under the Anglo-Ethiopian Treaty - which secured its hydraulic interests on the Blue Nile - had constituted only one facet of a prudently coordinated initiative across the basin for absolute control of the Nile River water resources. On different occasions, London had already obtained similar guarantees from the Belgian Congo and Italy,²⁵ who controlled *petite* constituencies in the Nile basin, as well as from the French and the Germans. Great Britain's close association with the subject, from the very early years of Lord Cromer - the British viceroy in Egypt and master architect of the Nile politics at the tail of the 19th century - till the 1950's was dictated by the overwhelming strategic, economic and political necessities of its geo-political and capitalist enterprises in Egypt, Sudan and the Near East.

On the other hand, from a closer reading of diplomatic and historical chronicles made available, it is not clear why Emperor Menelik had to reduce himself to an arrangement that ostensibly proffered far-reaching limitation on Ethiopia's sovereignty in relation to future rights of use of the

²⁵ Protocol between the British and Italian Governments for the demarcation of their respective spheres of influence in Eastern Africa, from the river Juba to the Blue Nile, 24 March 1891; Protocol between the British and Italian Governments for the demarcation of their respective spheres of influence in East Africa, From Ras Kasar to the Blue Nile, 15 April 1891; Treaty Between the United Kingdom and the Independent State of Congo to Redefine their Respective Spheres of Influence in Eastern and Central Africa, London, 9 May 1906.

Reprinted in: Sir Edward Hertslet (1894), *The Map of Africa by Treaty*, London: Harrison and Sons, vol. II. No 103-208, pp. 665-669.

Nile waters. After all, the provision of non-interference under the accord was sanctioned after intensive negotiations involving, among others, the Emperor's Swiss advisor, Alfred Ilg. The Treaty was also signed in an epoch when the Emperor had himself engaged in immense nation building enterprise, advancing bold territorial claims as far as *Khartoum* and *regions of the Blue and White Nile in the Sudan*; such facts tend to refute the assumptions that the Emperor would display a grave act of imprudence by conceding (under the Treaty) Ethiopia's sovereign prerogatives in the Nile river resources.

What is more, the Anglo-Ethiopian Treaty was concluded less than a decade after the colonial force of a major European power, Italy, was defeated at the battle of Adwa, in North Ethiopia, in 1896. This reinforces the theory that the Treaty was signed in a cordial milieu where Emperor Menelik had commanded economic and political confidence both in local and regional affairs. In fact, a detailed account of some of the diplomatic communications effected during the border negotiation confirm that Ethiopia had engaged in the treaty as a co-equal, from an angle of strength, and not submission. As compared to the immediately preceding decade, clearly discernible and impending threats to Ethiopia's sovereignty and territorial integrity was not in attendance - at least during the conclusion of the treaty.

One line of argument explaining the imperial action could be that for the Emperor, the whole treaty package constituted a legal forum for soliciting formal recognition of Ethiopia's sovereign control over the vast territories annexed during his decade-long nation building campaigns. The 'give and take' feature of the contemporaneous diplomatic engagements could have dictated such a course. Conventionally, such processes call for trade-offs between various interests of the partaking states.

Likewise, it could be submitted that the Emperor used the Treaty as part of a broader diplomatic invent to maintain the territorial integrity of the Ethiopian state by remaining neutral in his dealings with the three major European states of the time: France, Great Britain and Italy. During this period, each of the states had continually hovered around Ethiopia with conflicting strategic interests. Along with other compromises, the guarantee under Article III had been slotted to meet such objective.

Equally, it was also evident that in the early decades of the 20th century, Ethiopia had hardly had any irrigational schemes to speak of, and it would not be totally inconceivable that the complex geographical landscape through which the rivers traverse may have convinced the Emperor to underrate the significance of prospective uses of the resources for agricultural purposes in Ethiopia. This is not of course to discount the

possibility of leasing cultivable lands - at least through the employ of European capital and technology. Many sources of the time had accounted that from European perspective, the depth of hydraulic information and engineering knowledge availed during the Treaty's conclusion was not *too shallow* to prompt the Emperor to dismiss the incidence of future water resource development works in Ethiopia. In fact, in the immediate aftermath of the Treaty, there were reports which acknowledged that Italy had submitted a request for irrigational concessions along the lower lands of the basin in Ethiopia.²⁶

Whatever the geo-political setting under which the Treaty was established, Emperor Menelik knew from the outset that he was dipping his country into unchartered legal ploys which might well be interpreted as a poor bargain when viewed from the perspective of Ethiopia's national interests on the Nile. That explains why in the course of 1902-1907, the Emperor had ceaselessly endeavoured to play-down the negative implications of the Treaty through a series of negotiations. In one of the diplomatic arrangements, he not only refused to receive British offers of 'financial compensation' for his undertaking, he also worked on the 'insertion of an interpretative clause' into Article III of the Treaty.

The idea of pecuniary reward to Emperor Menelik in consideration for his pledge under the Treaty started to float following a statement by Harrington, the British emissary in Addis Ababa, that his government had 'no desire to demand from the Emperor that he should deprive himself of a valuable asset without equivalent compensation.'²⁷ Great Britain was definitively convinced that the pact validated a permanent renunciation of Ethiopian rights in respect of the use of the Nile.²⁸ Hence, in 1904, Lord Cromer authorised Harrington to enter into negotiations and extend to Emperor Menelik a British offer of fiscal subsidy as a reward for his pledges. The Anglo-Sudan government undertook 'to pay to the Emperor or his successors a sum of £10,000 sterling annually so long as the friendly relations of the two governments continue.'²⁹ The sum was raised over the years as the negotiations lingered.

Yet, in spite of the protracted efforts by the British to get the Emperor on board the subsidy scheme and some progresses in 1907, Menelik neither

²⁶ Telegram from Cromer, 7-9 March 1907, FO 371/14591, Cairo.

²⁷ British Foreign Office, Memorandum: History of the Lake Tana Negotiation, 23 January 1923, FO 371/8403.

²⁸ Tadesse K. Woldetsadik, *supra* note 1, pp. 84,88.

²⁹ British Foreign Office, *supra* note 27.

refused to accept the grant, nor approved contents of the subsidy enclosure. He simply chose to forward a new requirement: he held that an 'interpretative provision' should be inserted into the Treaty although it remained unclear why he wished to put forth such a qualification.

In February 1907, Mr Clark, London's representative in Addis Ababa, requested Lord Cromer 'if there is any objection to my giving Emperor Menelik written assurance on behalf of the Anglo-Sudanese Government that Article III of the May 15, 1902 Treaty is in no way meant to interfere with local irrigation rights of natives of districts watered by Lake Tana, Blue Nile and the Sobat.'³⁰ He did not say what 'local irrigational rights' as such involve. However, a month later, Clark reported that Menelik had made it difficult to sign the negotiated note without an unequivocal extension of the assurances contained above, and submitted his observation that the real cause that prompted him to put the signature on hold was that 'he wants to sell cotton concessions in the low country and fears that we may object to making canals for irrigation.'³¹

On advice of his irrigation experts, Cromer ordered Clark to give a guardedly framed surety to Menelik that 'the terms of Article III of the Treaty of May 15, 1902 do not imply any intention of interfering with local native rights, provided that no attempt is made to *arrest or interfere* in any way with the flow of these rivers by placing obstructions of any sort in their channels or by constructing regulators or dams of any kind across their channels or beds.'³² Surprisingly, the Emperor still chose not to accept the arrangement. Two decades later, Foreign Office officials construed in retrospect that Menelik's enterprise was an attempt to 'get something in note *watering down or interpreting* [the existing treaty] in the sense which he wishes it'³³ to imply.

Apparently, the Emperor was striving to undo or trim-down the harm supposedly inflicted by signing the Treaty with the British and exploit the occasion to convey a line of responsibility which his undertaking under Article III shall be interpreted as entailing. In view of his qualified leverage in a decentralized administrative structure in Ethiopia, the Emperor had grasped that politically, it would be suicidal to engage in private-like treaties which could be interpreted as *trading-out* sovereign interests. On one

³⁰ Draft Telegram to Cromer, 16 February 1907, FO 371/14591, Addis Ababa

³¹ Ibid.

³² Telegram from Cromer, March 7-9, 1907, FO 371/14591, Cairo.

³³ Sir Barton, Lake Tana Negotiations, 18 August 1930, FO 371/14591, Addis Ababa.

occasion, the Emperor reportedly justified his stipulation for the insertion of an interpretative clause since without such enclosure, the subsidy arrangement in return for which he would have received fiscal recompense might be identified as a price for the purchase of Nile waters for which 'he will be accused of selling his country.'³⁴

3. Connotations of the Anglo-Ethiopian Treaty on Ethiopia's sovereign interests

Issues relating to continued validity notwithstanding, the Anglo-Ethiopian Treaty, along with the subsequent developments on the Lake Tana Dam negotiations, had adversely sealed the fate of Ethiopia's sovereign interests from the outset - and continued to do so during the first half of the 20th century. This was sensed in the Ethiopian quarters.

In the immediate aftermath of the conclusion of the Treaty, the potential for interpretation of the Treaty, and particularly its English text, as forbearing meaningful scales of development of the river in Ethiopia was in the cards. In reality, Great Britain had argued its case and successfully marshalled the agreement to stifle Ethiopia's contemplations for irrigational and hydropower developments. If on a few occasions, schemes hardly suiting British imperial designs for the region had resurfaced on the political platform in Ethiopia, but in each case, London reminded the Ethiopian governments, foreign states or private enterprises drawn by prospects of concessions and joint ventures that no water control structures could be placed across the river without its sanction.³⁵ The post-independence and contemporary posture of the states of Egypt and Sudan is profoundly moulded by such imperial stratagem and philosophy.

Ethiopia's reactions to the legal and diplomatic predicament was somewhat assorted. Before the formal termination of British colonial status in the Sudan, the contents and legal ramifications of the Treaty were subjected to meticulous scrutiny, Anglo-Sudanese contentions of continued validity notwithstanding. Emperor Menelik was not alone in this diplomatic confront.

As Crown Regent, Ras Teferi pursued a cautious but aggressive policy. Following sequences of negotiations on the Lake Tana Dam concession which he consciously turned torpid, the Ras instigated in 1927 a major legal encounter drawing the British Government's attention to the particular

³⁴ Ibid.

³⁵ Tadesse K. Woldetsadik, *supra* note 1, p. 91.

composition of the words of Article III of the Treaty. He argued that ‘Emperor Menelik has [only] made a treaty not to construct a work which will block up the river *completely*’,³⁶ hence interpreting the accord as permitting the construction of edifices that entail less detriment on downstream flows. Again, as early as in 1924, in a memo addressed to the British Prime Minister, the Emperor restated his government’s formal resolve to build the dam as an Ethiopian enterprise, ‘in its own interests... and rent to the Sudan Government the surplus waters.’³⁷ The departments mirrored in the ensuing trilateral conferences dwarfed the conventional assumptions of British rights - upsetting the non-interference theory under Article III.

In diplomatic circles too, the Emperor disputed, openly, the legal basis on which British and Sudanese claims had been formulated. He decreed his case that the contemporaneous Anglo-Sudanese perceptions and initiatives had only intended to meet the economic and political calls of the downstream states - without any regard to the development needs of his nation. In fact, in the late 1920’s and throughout the first half of the 1930’s, Ethiopia’s engagement with the American J. G. White Engineering Corporation and the Sudanese government had political objectives as a platform for demonstrating Ethiopia’s ‘readings’ of the commitment under Article III of the Treaty.

Likewise, on different occasions, Emperor Haileselassie had endeavoured to deal with Ethiopia’s apparent position of submission under the Treaty. He treaded quite a length on two vital historical junctures where he pronounced the Treaty as no longer binding his country in its relations with the Sudan. In 1954, the British Embassy reported the Emperor pronounced pointedly, but only for a less convincing reason, that ‘the 1902 Treaty was not valid because, we [Great Britain] had not paid £10,000 a year’³⁸ stated in the subsidy arrangement.³⁹ The British emissary mocked over the claim and

³⁶ Teferi to Austen Chamberlain, Enclosure in Addis Ababa Dispatch 363, Bentinck to sir Austen Chamberlain, 14 December 1927, FO 371/13099, Addis Ababa

³⁷ Teferi to Ramsay McDonald, 26 July 1924, FO 371/10872, Paris.

Also reported in: The Autobiography of Emperor Haileselassie I King of Kings of All Ethiopia and the Lord of Lords, My life and the Ethiopian Progress 1892-1937 (1976), Volume I, p.107,125 (translated and annotated by Edward Ullendorff).

³⁸ Douglas to Bernand, 2 April 1954, FO 371/108264, British Embassy, Addis Ababa.

³⁹ On 14 July 1930, Belatengheta Herui Woldelelassie, Director General for Foreign Affairs of Ethiopia, demanded Sir Barton, the British representative in

proposed 'to knock the Emperor down' by making sure that Article III did not contain 'a horrid sentence in the end saying the Treaty is only valid so long as it means what I want it to mean and not what you think it means.'⁴⁰

The second occasion related to Great Britain's recognition *de jure* of the Italian conquest of Ethiopia. In the 1930's, the growing hostility between Ethiopia and Italy obliged the British to fine-tune the policies in respect of relations with both states, and adopt measures that accommodate its hydraulic interests in the basin.

In October 1935, Italy invaded Ethiopia. In spite of the prevalence of an entrenched local resistance that defied Italy's effective control, the British government recognized *de facto* the authority of the occupying force in 1936. Its Cabinet Committee on Foreign Policy convening in March 1938 dealt with the question of recognition *de jure* of Italian status in Ethiopia.⁴¹ In an annex of the Anglo-Italian Treaty signed on April 16, 1938, Great Britain 'assumed towards Italy an undertaking to recognize the Italian Government as *de jure* sovereign of the State of Ethiopia.'⁴²

In 1956, Ethiopia employed this ground - handing out a pamphlet prepared by its agent, Mr. Pierre Petridis that, among others, contested the

Addis Ababa, for the payment of an accrued sum totalling £230,000 Sterling which Great Britain 'pledged' under terms negotiated in 1907. The sum was supposed to be paid to Emperor Menelik as an annual subsidy in consideration for his undertaking under Article III of the Treaty.

Director General for Foreign Affairs to Sir S. Barton, FO 371/14591, 14 July 1930, Addis Ababa.

The British Government examined the legal and economic implications of the new opening which Ethiopia had withheld before, but considered the matter as 'blackmail' by an Emperor, who, with the 'approaching coronation [in 1930]...will resort to any expedient which seems to offer even a faint hope of producing some dollars.' Although Great Britain acknowledged that an offer was made to Emperor Menelik, it argued the proposal was never endorsed by him forthwith nor claimed for subsequently, and hence regarded as lapsed.

Sir S. Barton to John Murray, 19 August 1930, FO 371/14591, British Legation, Addis Ababa; A. Henderson to Sir S. Barton, Enclosure in No I., 31 December 1930, FO 371/14591, Addis Ababa.

⁴⁰ Douglas to Bernand, 2 April 1954, FO 371/108264, British Embassy, Addis Ababa.

⁴¹ Cabinet Committee on Foreign Policy, Draft Conclusions of the 28th Meeting of the Committee, 29 March 1938, FO 371/22010, London.

⁴² Selected Speeches of His Imperial Majesty Haileselassie I: 1918-1967 (1967), One Drop Books, New York, p.319.

validity of the Anglo-Ethiopian Treaty, given that Great Britain had recognized *de jure* Italian occupation of Ethiopia in 1938. The pertinent rules of international law that apply to state succession in *rem treaties* are obviously complicated. British officials conceived they had to contend with the intricate nature of the legal questions involving the validity of the 1902 Treaty. It is not therefore surprising that in reacting to Petridis' pamphlet, Foreign Office legal experts and the British Embassy in Addis Ababa had to belittle the legal effects of recognition. They submitted that while the matter no longer made up a principal concern of the British policy, they took the view that Article III constituted part of the context of a *boundary treaty*, and hence that the '1902 Treaty should in principle be regarded as surviving the acquisition of independence by the Sudan and as remaining in force between the Sudan and Ethiopia.'⁴³

The British approach notwithstanding, the Emperor was not in a position to take immediate actions with regard to the Treaty as Ethiopia remained under British military administration throughout 1941 - following the defeat of Italian forces; the Emperor was only partially reinstated to his throne. However, under the Anglo-Ethiopian Convention of January 1942 which discussed the restoration of Ethiopia's sovereignty, the fate of the Anglo-Ethiopian Treaty of 1902 was not addressed at all - and this despite the Emperor's previous history of robust challenge of the accord and a realistic opportunity then presented. The 1942 agreement was superseded by a more comprehensive accord in December 1944 - the Agreement for the Regulation of Mutual Relations - an arrangement which formally reinstated Ethiopia's independence; and still, no talk was held with regard to the continuity or revocation of the 1902 Treaty. Speculations were rife in the British Foreign Office establishment that Ethiopia would naturally cause its pre-existing treaty relations with Great Britain to *lapse* as the result of the latter's official recognition of Italian conquest, but the Emperor took such steps only belatedly - nearly after a decade.

The post-war and post-independence political milieu had noticeably transformed in the basin, and with it, the context of the political, economic and strategic configuration. In light of such changing circumstances and its waning clout in the region, Great Britain could not continue to impose and campaign for its long practiced non-interference policy with regard to the Nile waters upstream. Instead, against the background of the water-sharing

⁴³ P.R.A Mansfield to J.F.S Phillips, Nile Waters, 27 April 1956, FO 371/119061, Addis Ababa; *also in*: E.B. Boothby to D.L. Busk, 5 February 1954, FO 371/108264, London.

negotiations between Egypt and Sudan, the British opted to counsel Ethiopia to stake its claims of 'water quotas' with the Egyptian and Sudanese governments and work expeditiously on the complete survey of the Blue Nile River so as to pre-empt the downstream states before they can claim to have acquired prior rights. However, after fifty years of inflexible legal diplomacy, the damage to the Ethiopian state was already done; the British had succeeded in instilling a deeply ingrained possessory perception in both Egypt and Sudan. The Treaty's deleterious effect on Ethiopia's sovereignty and developmental interests had been observed both in the pre-war epoch between Ethiopia and Italy as well as since the independence of the basin states in the 1950's.

4. Negotiations history of the Lake Tana dam concessions: opportunity missed?

The Anglo-Ethiopian negotiations held for five decades with a view to securing a permit for the construction and operation of a dam facility on the Lake Tana are little accounted in historical and hydro-legal discourses. Ironically, it was the intense diplomatic rhetoric and practice of the time that shaped, so profoundly, both the nature and form of the national positions maintained by Egypt, Sudan and Ethiopia, and continued to influence perceptions of user rights in the subsequent decades.

From the very outset, Great Britain had identified the great potentials of both the Blue Nile River and the Lake Tana. In the last decade of the 19th century, the prime occupation of British foreign policy in the region had particularly whirled on the issue of obtaining two vital concessions. The first related to an Ethiopian treaty undertaking guaranteeing the unimpeded flow of the Blue Nile River (and its tributaries) downstream, while the second referred to the acquisition of a special privilege for the construction and operation of a dam on the head sources of the river at Lake Tana and the leasing of its waters. The Anglo-Ethiopian Treaty of 1902 proffered only *part* of the longstanding British aspiration.

The Lake Tana Dam scheme was designed to meet the rapid expansion of irrigational water requirements in Egypt, and later, in the Sudan. The placement of such a structure was required to retain the floods of the river during the Ethiopian summer and to permit a steady supply of the waters down the stream during the low rain-yielding seasons of the year. The dominant thinking of the time at the Foreign Office reasoned that the economic prospect of Egypt and Sudan as well as the competitive advantages of the British cotton industry, then a pillar of its capitalist

enterprise, could only be realized, among others, through the institution of water storage schemes on the headwaters of the Blue Nile River in Ethiopia.

Between 1902-03, C.E. Dupuis had already undertaken an expedition on the Lake Tana environs based on the instructions of Sir William Garstin, then Advisor to the Egyptian Ministry of Public Works. The results of the investigation presented for the first time a comprehensive review of the nature and flow of the Nile and its various tributaries, and established that Lake Tana would make an excellent reservoir.⁴⁴

Garstin had long dismissed, for 'political reasons', the option of Great Britain itself constructing 'the ideal project' for a regulation at the outlet of Lake Tana by converting the Lake in to a storage reservoir of adequate capacity.⁴⁵ In contrast, the British Foreign Office and Lord Cromer, London's viceroy in Egypt, had clandestinely laboured on the plan since the turn of the 20th Century.

One of the earliest dispatches on the subject was effected by Harrington when he was authorized to make an arrangement for a possible building of a British Dam on Lake Tana and payment to the Emperor and his successors of 10,000 Sterling annually, as long as the friendly relations between the two governments continued and Menelik agreed not to construct any work on the Nile or its tributaries.⁴⁶ The first serious articulation of such a proposal was tabled during the exchange of notes of March 1902.

Apart from the dam's potential role as a political lever against Egyptian nationalism, Lord Allenby, the British High Commissioner in Egypt (1919-1925) retrospectively depicted the long accepted financial implications of the undertaking on the British Empire. He noted 'on the assumption that three thousand million cubic meters are made available by the reservoir during the low stages of the Nile, this would be sufficient for the cultivation of about one million acres of cotton in Egypt, or alternatively, at least half a million acres in Sudan.'⁴⁷ To lock the 'millions of pounds per annum' prospect on a firm basis, and hence transform the contents of Emperor Menelik's 'pledge' under the notes, the British engaged with successive Ethiopian sovereigns to obtain a treaty for the control and use of the Nile River and Lake Tana.

⁴⁴ D. E. Dupuis (1936), 'Lake Tana and the Nile', 35.138 *Journal of the Royal African Society*, pp. 18-25.

⁴⁵ William Garstin (1905), 'Report upon the Basin of the Upper Nile with proposals for the improvement of that river', 25.1 *The Geographical Journal*, p.76.

⁴⁶ British Foreign Office, *supra* note 27.

⁴⁷ Lord Allenby, Lake Tana Negotiations, January 1923, FO 371/8403, Cairo.

On the basis of texts extracted from British diplomatic correspondences effected in the course of 1904-1914, Lord Allenby and Lord Kitchener wrote that different payment arrangements were suggested to both Emperor Menelik and Ras Teferi / Emperor Haileselassie. The maximum monetary offer was 175,000 Sterling in lump sum and an annual retention fee of 20,000 Sterling payable as water rentals for at least a 30 years concession. Under the proposed agreement, the Abyssinian government would grant permission to the Anglo-Egyptian Sudan and the Majesty's government to erect any works and buildings necessary and proper at the outlet of Lake Tana for the purpose of controlling the discharge of the Lake's water and for maintaining the facility so that Lake Tana and Blue Nile shall be used to the best advantage of the irrigational needs of Sudan and Egypt.⁴⁸ The engineering works would enable the Lake to hold no less than 8 Billion Cubic Meters of water - although subsequent investigations proved that the amount of water available for storage would merely be about 3 Billion Cubic Metres, an equivalent of the water stored at the time at the Aswan Low Dam. If one has a grasp of the profound role the Aswan Low Dam had played in the pre-1960 Egypt, it would not be difficult to envisage what position the Tana Dam project would have situated Ethiopia vis-à-vis its relations with Sudan and Egypt.

Yet, despite the rigorous negotiations conducted in the course of 1902-1913, no dam concession was dispensed during the reign of Emperor Menelik. In 1915, Colonel Dwight Wylie, London's legate in Addis Ababa approached Lij Eyasu, the short-lived designate-emperor of Ethiopia (1913-1916) with a proposal containing financial compensation and annual annuity in consideration for Ethiopia's commitment to sanction the construction of the storage facility and some limitations on latter's sovereign rights of utilizing the Blue Nile.⁴⁹ He did not succeed. Constitutional wavering in Ethiopian politics, the world war and a fine-tuned British interest over the subject prompted the stakeholders to put the matter on hold until an opportune moment ruptured for negotiation.

In 1922, in the face of mounting pressure from the cotton industry, London instructed Major Dodds, its representation in Addis Ababa 'to sound to the Abyssinian authorities as to the possibility of concluding a treaty';⁵⁰ a succession of draft agreements enclosing concrete offers were presented to

⁴⁸ T.M Snow, Memorandum: History of the Lake Tana Negotiations, 23 January 1923, FO 371/8403, London.

⁴⁹ Ibid.

⁵⁰ Ibid.

Ras Teferi. Despite the ceaseless diplomatic pressures and threats by the British, a blend of local political considerations, the concession's implication on Ethiopia's sovereignty, and eventually, the country's resolve to undertake the venture as 'an Ethiopian enterprise' worked in concert to rebuff London's enduring claim for physical control of the Nile in Ethiopia. While letting the Tana Dam scheme linger on the negotiating table, the Ras constantly put British aspirations for a footing in the Ethiopian Nile on hold that at one point Bentinck had to complain the British were in fact dealing 'with an impossible and dilatory people who would appear all to expect to live as long as Methuselah!'.⁵¹ The New York Tribune wrote that it seemed as though 'the diplomatists of the little mountain kingdom had made British policy look like a trifle foolish.'⁵²

The protracted negotiations continued, but took a particular downturn when, in September 1927, Ras Teferi pledged to honour his people's long-standing call for development and hence proposed to set up the Tana venture by employing 'Ethiopian resources.' He wrote to London's envoy in Addis Ababa that Ethiopia will 'in accordance with the suggestion made to *us* by our engineer who examined the lake build a dam on Lake Tsana, if possible with Government money', and if not, by forming a company; 'after reserving as much of the waters as we may require for our needs... (we would only) let out on hire the rest of the waters to the Sudan Government.'⁵³ In the immediate aftermath, accounts of Ethiopian negotiation and the conclusion of a contract with an American firm, the J. G. White Engineering Corporation were reported in major news channels⁵⁴ and official correspondences.⁵⁵

In unpredicted turn of events, however, high-level talks continued with the British Sudan and the J. G. White Engineering Corporation. In 1930, Ras Teferi convened discussion with MacGregor, the Irrigation Advisor of the Sudanese Government and Lardner, vice president of J. G. White Engineering Corp, in Addis Ababa. The parties, still ambivalent on details that really mattered, agreed to lay the groundwork for an 'an early settlement

⁵¹ Bentinck to Sir Austen Chamberlain, 1 August 1927, FO 271/12341, Addis Ababa.

⁵² New York Tribune, 'American Capital at Lake Tana', 23 March 1930.

⁵³ Ras Teferi to Bentinck, 22 September 1927, FO 371/12341, Addis Ababa.

⁵⁴ The Westminster Gazette, The Daily Mail, The Daily Telegraph, The Daily Express and a handful of other newspaper media covered the matter in their editions on 4 November 1927.

⁵⁵ Norton, Foreign Office Minute, 7 November 1927, FO 371/12342, London.

of the question' of dam concession. The eventual decision of the Ethiopian government shall hinge on the assessment of the final report of the engineering studies on the Lake and the proposed road to be constructed from Addis Ababa to the lake, to be compiled by the J. G. White Engineering Corporation with Sudanese finance.⁵⁶

By 1931, Ethiopia was poised to take realistic measures with a view to executing the project. It abandoned its original design that proposed to surrender a concession in favour of an American company with a power to construct a reservoir and possibly rent its waters; instead, it offered to carry out the venture as a joint Ethio-Sudanese undertaking, a very rare opportunity from a downstream perspective. Unfortunately, the new opening coincided with worldwide collapse of the prices of cotton, Sudan's chief export commodity. Economic factors rendered Sudan unable to fully engage in the scheme and denied it a chance to exploit the real prospect availed. Against 'the risk that Sudan may permanently lose ground on the Lake Tana Question', its British Governor General Sir Maffey admitted that its government's 'own circumstances would preclude it from making any move'⁵⁷ by way of committing resources for construction of works.

Apart from these botched developments, sequences of correspondences were also exchanged and new draft agreements laid based on the assumption that a third party, the Egyptian Government, shall involve in the negotiations. Although a preliminary engineering report of the White Engineering Co. was received as early as in April 1935, it was agreed that further technical investigation of the scheme should be carried out. By 1935, a draft agreement detailing the rights and obligations of the parties was framed - very much along the lines of the proposals submitted in the 1920's. With Italian aggression of Ethiopia in the same year, however, the inauspicious enterprise that consumed decades of intense diplomacy was once again aborted. Efforts to revitalize the process in the 1940's and 1950's proved ineffective. For various reasons, the Anglo-Sudanese desperation for securing the concession had either been ill-timed or greeted with unsympathetic diplomacy on the part of Ethiopia.

Clearly, none of the schemes proposed by the British had laboured on an arrangement that would have satisfied Ethiopia's legitimate requirements in the short term - without a disproportionate detriment. The grant of the Tana Dam concession, or in defiance, Ethiopia's own construction of the project

⁵⁶ Draft despatch from His Majesty's Minister to Belatengheta Herui, 4 March 1930, FO 371/14591, Addis Ababa.

⁵⁷ Sir J Maffey to Sir P Lorraine, 26 April 1931, FO 371/15388, Khartoum.

could have procured some spill-off effects, not to mention the possible threat to its independence.

However, it is evident that on a balance, Ethiopia's vacillation on the subject has negatively affected its hydro-political position in the basin. The Emperor himself had always argued that the study reports carried out in 1923 by Graham and Black and the 1931 technical reports submitted by White Engineering Co. would suffice to launch works; yet, repeatedly, the Emperor procrastinated in taking practical measures on the ground. Over the long term, the grant of the concession or Ethiopia's own construction of the dam could have brought a much-needed currency, facilitated the transfer of vital construction technology, but above all, it would have provided Ethiopia an important leverage - economic and political - over Egypt and Sudan, centre-staging the country in the management of the Nile affairs. In the development of hydraulic infrastructures and the authority of legal poses, the subsequent decades saw a stronger hegemony of the Sudanese and Egyptian states and Ethiopia's diminishing stature on the subject.

Failure of the dam negotiations also denied Ethiopia of the possibility of establishing small-scale 'user rights' on other sections of the Nile basin through the employ of analogous technology, quicker survey of water resource potentials and development of water control facilities. While it is clear that the dam alone could not proffer answer to all of Ethiopia's hydro-political predicaments of the time, the realization of new advances in water control works would have stalled, or at least countered the unabated downstream hegemony that reigned in the subsequent decades with regard to the rights of utilization of the Nile waters.

5. The post-dam developments: waning clout of Ethiopia's hydro-legal posture

The unyielding negotiations on the Lake Tana Dam and Ethiopia's failure to adopt decisive measures, coupled with new geo-political developments in the region, forced the British, the Anglo-Egyptian Sudan and Egypt to fine-tune their policies. In contrast to Great Britain's time honoured approach of instituting water control works in 'upstream Nile' with a view to providing water requirements of the 'downstream states', increasingly, Sudan and Egypt foresaw the ultimate security of their water supplies as resting on the erection of reservoirs 'within their jurisdictions'. Sudan's strategic resolve to initiate the construction and expansion of the Sennar and the Rosaries dams in 1926 and 1956 respectively, while engaging in the Lake Tana Dam negotiations with Ethiopia, gradually reduced its projected dependence on an Ethiopian dam and trumped down Ethiopia's bargaining vigour.

The fate of perhaps the 'last' diplomatic exercise on the subject - the British Memorandum on International Aspects of Waters of the Blue Nile (1954) prepared for presentation to Emperor Haileselassie was not any different. The only difference noted in the latest scheme was that it contained a specific provision on 'the possibility of working out an arrangement that would satisfy the legitimate requirements of Ethiopia [in the provision of hydropower], Egypt and the Sudan.'⁵⁸ In any event, by 1956, the Sudanese government declared it would give 'first priority' to the Rosaries Dam, effectively substituting the needs for works on the Ethiopian Blue Nile, at least for many years to come.⁵⁹

Similarly, Egypt's acquisition of alternative supply from the Gebel Aulia Dam on the White Nile in Sudan (1932), the successive heightening of the Aswan Low Dam and most importantly, the prophetic choice of its nationalist administration to embark on the construction of the Aswan High Dam - hoarding the entire Nile floods within its territories - effectively heralded the concluding stage of the age-old pleas for dispensation of a concession on the Lake Tana Dam in Ethiopia. In 1951, Egypt formally shelved negotiations on the project. At a snail's pace, Ethiopia came to grasp that the Nile hydro-politics had been orchestrated to uphold the fundamental interests of the downstream states; its perceptions of 'little national stake' in the negotiations lingered, prompting the gradual 'filing-away' of favour for the dam initiative.

More importantly, with the collapse of the British colonial establishment in Africa, it became evident that no one state could any longer exercise strong political leverage and stage-manage basin-wide development strategies on a scale and in style exercised by the British. In the post-1960 period, thoughts of grand schemes analogous to the Owen Falls Dam, Lake Tana Dam or the Equatorial Nile Projects that contemplated to institute 'water control works in upstream territories' with a view to advancing, with

⁵⁸ E. B. Boothby to D. L. Busk, Enclosure, 5 February 1954, FO 371/108264, London.

Only a few months on, the Foreign Office instructed its representation in Addis Ababa to point out to the Emperor that 'both Egypt and Sudan fully appreciate that his main interest is in hydro-electric power and that they will undoubtedly be prepared to pay generously for as much of the project as will contribute towards their needs.' T. E. Bromley to Busk, 29 July 1954, FO 371/108264, London.

⁵⁹ Sudan Government to British Embassy in Addis Ababa, 23 April 1956, FO 371/96805, Khartoum.

petite reciprocity, the economic goods of Egypt and Sudan, represented 'antiquated' approaches in river resources management - discarded out of hand. From water security perspective too, a body of opinion developed that with the 'protective role' of the British administration now unattainable, Egypt and Sudan would have to work on a plan that 'lessens their dependence' for the supply of the Nile waters on hydraulic works remotely situated across the Great Lakes and in Ethiopia.

Naturally, Ethiopia was disturbed by developments on the Aswan High Dam project; when realized, the new scheme would significantly pre-empt any future chances of utilization of the Nile waters upstream. In sharp contrast to the leverages exercised by Ethiopia in the pre-1954 period, the initiation and subsequent negotiations on the Aswan project epitomized a pinnacle in Ethiopia's declining influence over the Nile affairs. Major Dodds summarized Ethiopia's attitude of the time: the country resented the fact that the Nile brings her no material recompense, and still more the fact that Egypt and Sudan calmly sit down to negotiate a comprehensive agreement for the division of the whole water without any reference to Ethiopia.⁶⁰ In fact, the talks between Sudan and Egypt on full utilization of the Nile waters were conducted behind closed doors - in complete disregard of Ethiopia's previous engagements and national stakes. Ethiopia - who failed time after time to realize developments on the Blue Nile - was reduced to lamenting its diplomatic misfortune, with sweeping implications on its hegemonic stature as well as the hydro-political discourse in the basin. Five full decades had to elapse before it could direct, once again, its hydro-political eminence - through the commissioning of the Grand Ethiopian Renaissance Dam.

6. The diplomatic and legal confront: the final stages (1955-1957)

Caught off guard by Egypt's new initiative, Ethiopia moved to defend its rights through the employ of new diplomatic and legal manoeuvres. However, it failed to impress the downstream-oriented developmental trajectory through the placement of concrete hydraulic works on the ground.

Amid confusions, it first endeavoured to know Great Britain's view and its counsel in relation to the new developments. Left in the darks with regard to the negotiations between Sudan and Egypt, and this despite its insistent

⁶⁰ Dodds' speech before the House of Commons on 18 May 1956 was the first time Great Britain publicly considered that Ethiopia had a stake in Nile waters.

demands for information, in 1955, Ethiopia requested Great Britain if it was 'a fact that Egypt and the Sudan had now agreed to divide the waters between them and what attitude we (i.e., Great Britain) take about the rights of the countries on the upper river'.

In its reply, Great Britain asserted that it had already 'informed the Egyptian Government of our interest in respect of Uganda and Tanganyika in the event of any Sudanese-Egyptian agreement.'⁶¹ Of course, initially, Great Britain had reasoned that it would be inopportune to introduce the question of the East African states and complicate the negotiations; nevertheless, it shared the East African Governments' anxiety that 'their claim to a share in the Nile waters should not go by default.' A suggestion was made in the initial stages that 'the division of the Nile waters between Egypt and Sudan should be made on a proportionate basis and not in terms of absolute quantities, i.e. each country would be given a stated proportion of the natural flow at Aswan' when working on bringing this matter to the attention of the Egyptian Government.⁶² In November 1955, Great Britain formally registered its reservation with regard to future rights of use of its other colonies - Kenya, Uganda and the Tanganyika territory.⁶³

From Ethiopian perspective, the urgency of the situation was clearly evident that the protection of its stakes depended on legal defences as well as the physical surveying, planning and construction of hydraulic works. The British Embassy in Addis Ababa shared this position. It held that 'if Ethiopia

⁶¹ African Department, 13 June 1955, FO 371/113733, London.

⁶² W.H. Luce, Governor General Office in Khartoum to T. E. Bromley, African Department, London, 5 May 1955, FO 371/113763.

⁶³ Text of Note presented by her Majesty's Ambassador in Cairo to the Egyptian Government, 22 November 1955, FO 371/119062.

The US, too, had declared its position on the matter. On and off, the US was involved in the early stages of negotiations on the development of the High Dam. In 1956, Undersecretary Herbert Hoover asserted that his government's participation 'in any phase of the (Aswan) project affecting the interests of other countries would assume a satisfactory settlement of the problem relating to the division of the Nile waters'. Nevertheless, the truth remained that his country was deeply engaged in the funding process both on political and ideological considerations - without such assurances put in place. In spite of the pledge that 'no action in derogation of Ethiopia's legitimate rights should be taken without Ethiopia's consent', it was also open how such interest would be preserved under the circumstances.

Undersecretary Herbert Hoover, US Department of State to Aklilu Habtewold, Minister of Foreign Affairs, 26 May 1956, FO 371/119062.

stands any chance of interesting the Sudanese in their own plans for the Nile development before the Sudanese acquired some kind of downstream user rights, they would certainly be well advised to get on with the quickest possible survey... rather than adopt the Point Four program which will not give them even a basis on which to plan until 1962.⁶⁴ The Embassy was perhaps referring to the 1923 and 1931 study reports by Graham and Black and the J. G. White Engineering Corporation.

The British Embassy officials were not, however, congruent on the subject. Mansfield doubted if it was really necessary to have claims staked, despite past encouragements, for a share in Nile waters. He argued that in light of the US Supreme Court's attitude to 'prior appropriation' and the apparently respectable doctrine of the 'absolute sovereignty rule' which applied in recent cases, Ethiopia would anyway be awarded considerable shares by any international arbitration in consequence of the application of international principles.⁶⁵

On May 30, 1956, Ethiopia asked Great Britain for copy of the text of reservation it effected and the replies of Egypt and Sudan. Left in the dark by an infant regime of international law and on how to proceed with protecting its rights, Ethiopia was convinced that the best course under the circumstances would be to register a diplomatic reservation. It was ironic, however, that even after doing some research and consulting legal advisors at the Foreign Office on the subject of the use of international rivers, London itself was not in a position to say what exact obligations rest in states using waters which might otherwise be used by another upstream state. The Foreign Office seemed to hold the view that legally, it appears open to doubt whether a claim could be advanced that a state has no right to utilize the upper waters of a river to the detriment of a neighbouring state down the stream.⁶⁶ Their opinions were influenced by old commentaries composed from the great works of Oppenheim, Fenwick and Clyde Eagleton - authorities on the subject of international law.

⁶⁴ Busk, British Embassy in Addis Ababa to Foreign Office in London, 11 May 1956, FO 371/119061.

⁶⁵ P. R. A. Mansfield, British Embassy in Addis Ababa to J. F. S. Philips, African Department in Foreign Office, London, 1 August 1956, FO 371/ 119062.

⁶⁶ J. F. S Philips, Foreign Office to P.R.A Mansfield, British Embassy in Addis Ababa, 25 June 1956, FO 371/ 119062.

In any event, based on the counsel tendered by Great Britain, Ethiopia issued two reservations in 1956⁶⁷ and 1957 - the latter distributed to the diplomatic missions in Cairo.⁶⁸ Ethiopia stated its disappointment that unlike the discussions pursued in the period between 1924-1951, it has not been consulted. Ethiopia's communiqué stated that it is the source of nearly the entirety of the waters involved, and that Ethiopia once again makes it clear that the quantities of the waters available to others must always depend on the ever-increasing extent to which Ethiopia, the original owner, requires to utilize for the needs of her growing population and economy. To this end, the Imperial Ethiopian Government found it important to reassert and reserve now and for the future, the right to take all such measures in respect of its water resources whatever may be the measure of utilization of such waters sought by recipient states situated along the course of that river. In tandem, Pierre Petridis had to work on Ethiopian plans for the development of the Blue Nile in Ethiopia which proposed six alternatives of developing the Tana dam scheme for power and irrigation, to acquaint the plan to the world, and strive to involve Sudan in a joint scheme.⁶⁹ It was a measure which was indeed bold, but too late.

Uncertainties with regard to the regime of international watercourses law also meant that two schools of thought had to evolve in Ethiopia about the most effective ways to establish its right to a share in the Nile waters. The Ministry of Foreign Affairs was convinced that the Blue Nile communiqué presented above would be insufficient, and hence a clear statement advocating absolute sovereignty has to be called for. Obviously, this position did not reflect on Ethiopia's past engagements with Great Britain, Sudan and Egypt. On the other hand, the Ministry of Works advocated the doctrine of equitable apportionment - which appeared realistic in light of Ethiopia's beleaguered position in the subsequent negotiations.

Conclusions

There is no doubt that the Anglo-Ethiopian Treaty and the stream of negotiations on the Lake Tana Dam - conducted in the course of 1900-1954 - have had deleterious impact on the hydro-legal position of Ethiopia. While

⁶⁷ Ministry of Foreign Affairs, Press Communiqué, Ethiopian Herald, 6 February 1956, Addis Ababa.

⁶⁸ Aide Memoire of 23 Sept. 1957, encl. in Dispatch no. 342 from the Counselor of American Embassy in Cairo (Ross) to the Department of State, MS. Department of State, file 974.7301/10-857, 8 October 1957.

⁶⁹ P. R. A. Mansfield, *supra* note 65.

Ethiopia had been able to propel its own canoe in the first half of the 20th century, a combination of factors worked in concert to deny it of any possibility in the utilization of the Nile resources within its jurisdiction. Ethiopia's imperial vacillation was vexatious; besides, in formulating development schemes on the Nile, British hegemonic designs leaned too heavily towards Sudan and Egypt – molding, over time, deeply engrained perceptions of proprietorship along the downstream course.

Of course, with the ascent to power of Ras Teferi in Ethiopian politics, a systemic synthesis of hydraulic information was undertaken on the Blue Nile and firm plans had been flouted for its harnessing. Yet, Ethiopia failed to disengage itself from injurious effects of the 1902 Anglo-Ethiopian Treaty by taking crucial measures - even when opportune moments opened up. While the Nile River and Lake Tana had always constituted a central mainstay of the governments' developmental endeavours, little, if any, was done to transform these vital tools of foreign policy into economic gains. Hence, as milestone changes took place in Egypt and Sudan in the form of the commissioning of the picturesque Aswan High Dam and the expansion of irrigational infrastructures on inconceivable tempo, Ethiopia remained a bystander. It failed to emulate downstream policies or engage in the pursuit of a lone conduct that could have procured material impact on its sovereign interests and hydro-political posture: a comprehensive survey, design and development of the Blue Nile. In fact, it took five decades of political lamentation and deep-seated sense of exclusion before the country could embark on a serious water resources development initiative - constructing the Grand Ethiopian Renaissance Dam (GERD). The new grandiose scheme not only challenged the entrenched histories of downstream unilateralism, it also obliged Sudan and Egypt to reassess Ethiopia's hydro-political stature and strain themselves to the negotiations table over rights of utilization of the shared resource. ■
