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Catherine M. Ashcraft

University of New Hampshire, Durham, catherine.ashcraft@unh.edu

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5 Shifting currents in water diplomacy

Negotiating conflict in the Danube and Nile River basins

Catherine M. Ashcraft

Introduction

Rivers, according to the ancient Romans, are *limes*, frontier spaces for interaction and dialogue that divide and join different groups and are subject to inherent conflict. Rivers that cross international boundaries connect countries' ecosystems, people, and economies to one another. At times this interaction fosters competition and at other times collaboration. Water users, managers, and diplomats need practical strategies to productively manage both, especially as climate change makes already complex social–ecological systems even less predictable and more vulnerable to chronic disasters, such as droughts, floods, and ecosystem changes.

Environmental conflict emerges when two or more interdependent parties perceive differences in their interests, positions, or goals concerning how to share or preserve a limited natural resource or its benefits, or how to create something new together, and yet believe they cannot achieve their goals simultaneously (Fisher, 2014; Pruitt, Rubin, & Kim, 2003). A common myth is “all conflict is bad” and should be reduced or avoided. However, conflict, like water, is not inherently good or bad and has the potential to be both destructive and productive. Unmanaged conflict can escalate, dampen communication, and contribute to negative emotions, but productively managed conflict is also a source of creativity and change, which opens opportunities to challenge the status quo (Lewicki, Saunders, & Barry, 2015). In practice, strategies to reduce environmental conflict's destructive impacts and take advantage of its productive potential are not mutually exclusive and are often used together. This chapter's analysis of the opportunities and risks posed by three common conflict management strategies, as well as their combined effects, provides practical insights for water users, managers, and diplomats engaged in critical water negotiations, and conflict resolution theorists seeking to improve the quality of deliberation.

When conflict is perceived negatively and negotiators want to reduce its destructive impacts, they often search for “low-hanging fruit,” low-risk agreements they can reach with relatively little effort. One strategy is to

narrow the range of issues for negotiations by building only on noncompetitive similarities, shared interests over which negotiators do not compete despite their differences in other areas, and avoiding issues about which they disagree. For example, even countries that disagree over water rights share an interest in reducing the number of people within their countries without access to sanitation. A second strategy is to narrow the range of participants through “party arithmetic,” by limiting the ability of parties with dissenting interests to participate in water policy decisions. For example, countries making decisions to protect and enhance biodiversity could exclude input from other interest groups impacted by these decisions, such as hydropower generators (Lax & Sebenius, 1991; Mnookin, Peppet, & Tulumello, 2000).

Other negotiators view such narrowing strategies as leading to lowest common denominator agreements that limit the value of agreements and leave each party only a little better off in comparison to what they stand to gain by acting on their own. According to this view, negotiators should aim, instead, to “enlarge the mythical fixed-pie” (Bazerman & Moore, 2012), that is design more ambitious agreements that build on the productive elements of conflict to produce more benefits for each participant. One strategy to do so is to integrate differences among the parties’ interests (Lax & Sebenius, 1991; Lewicki, Saunders, & Barry, 2015; Mnookin et al., 2000; Susskind, 2014). Consider, for example, two children arguing over an orange. One wants it to bake a cake and the other to make juice. Instead of cutting the orange in half, they separate the peel and the pulp, each receiving greater value (R. Fisher, Ury, & Patton, 2011).

This chapter analyzes these three conflict management strategies across three cases of water diplomacy during periods of high tensions and rapid change: negotiations between 1856 and 1914 to establish the Danube navigation regime, negotiations beginning in the 1990s to create the Nile benefit sharing regime, and negotiations beginning in the 1980s to form the Danube water protection regime. Despite their unique morphologies and histories, the Danube and Nile River basins are also two of only four international river basins that drain territory from ten or more countries. The cases therefore share similar challenges for organizing international cooperation. The negotiations also share a treaty-based format typical of water diplomacy. Comparing very different cases from the Global North and the Global South, each with its own distinct historical period, institutional context, problem focus, and conflict management strategies, increases the relevance of the analysis for environmental conflict management, in general, and for negotiators seeking to manage diverse water conflicts.¹ Additionally, each water diplomacy case involved significant conflicts over access to water resources and benefits from its use, as well as over access to participate in water decision-making, and therefore provides insight into access and conflict, two of this book’s main themes. The analysis is based on over ten years of qualitative data gathered in the Danube and Nile basins, which include questionnaires, in-depth interviews, participant observation, and document analysis.

The Danube and Nile river systems

The Danube forms a single main river flowing 2857 kilometers west to east that drains a total area of 801,463 square kilometers with territories from nineteen countries and Kosovo (see Figure 5.1). From rushing headwaters and sparkling, yet dangerous, eddies, the Danube River meanders eastward across great plains, cuts its way through mountainous gorges, and finally reaches its delta, where it slowly flows into the Black Sea. Its watershed is home to 83 million people and rich biodiversity, including endemic species found nowhere else, with great ecological, cultural, and economic value for tourism and the fishing industry. Other vital uses include drinking water supply, water for agriculture, wastewater disposal, hydropower generation, and navigation.

The Nile forms two main branches south of Khartoum, the White Nile and Blue Nile (Abay), flows 6695 kilometers, and drains territories from about 3.2 million square kilometers with territories from eleven countries (see Figure 5.2). Of the 238 million people who live in the basin, many are vulnerable to water and food insecurity. The White Nile system includes Lake Victoria, the world's third largest freshwater lake by surface area, and the Sudd, a Ramsar wetland of international importance. During its rainy season, the Blue Nile's flow increases by up to twenty times and rushes downstream through a steep gorge before reservoirs, dams, and cataracts slow its flow through an increasingly arid and level plain. Downstream of Lake Nasser (Lake Nubia) and the Aswan High Dam in Egypt, the Nile becomes a regulated, year-round irrigation system that discharges into the Mediterranean Sea. Wet, mountainous areas contrast



Figure 5.1 The Danube River Basin

Source: Cartography by Gregory Woolston using data from ICPDR retrieved from www.icpdr.org (accessed 3/1/2016), and Natural Earth.



Figure 5.2 The Nile River Basin

Source: Cartography by Gregory Woolston using data retrieved from NBI, sob.nilebasin.org (accessed 3/1/2016), and Natural Earth.

starkly with arid downstream regions, creating stunningly diverse habitats for biodiversity and many endemic species important for tourism and fisheries. Other important water uses include hydropower generation, agriculture, wastewater disposal, local navigation, and shipping between Egypt and Sudan.

The three cases

The Danube navigation regime (1856–1914)²

The 1856 Treaty of Paris ended the Crimean War and created the first multilateral arrangements for the Danube. The riparian countries with territory in the basin (Austria and the Ottoman Empire) and the non-riparian countries without territory in the basin (France, Great Britain, Sardinia, Prussia, and Russia) disagreed over many issues. (Hoping to regain delta territory, Russia often sided with the riparians.) The negotiators created two commissions, the European Danube Commission (EDC) for governing the delta region, in which riparians and non-riparians participated, and the Riparian Commission (RC) for governing the entire river system. Only riparians participated in the short-lived RC, and, by 1857, they returned control of most river activities to individual riparians and restricted non-riparian ships' access between river ports, permitting them passage and commerce only between ports on the Danube and the open sea.

The Nile benefit sharing regime (1997–the present)

In the late 1990s, an alliance of upper riparian countries (Burundi, Rwanda, Tanzania, Uganda, Kenya, the Democratic Republic of the Congo (then Zaire), Ethiopia, and Eritrea), agreed to negotiate with downstream Egypt and Sudan toward a cooperative framework agreement (CFA) and transitional arrangements, the Nile Basin Initiative (NBI), to promote sharing a broad range of benefits from water access and use. A draft CFA was completed in 2007, but negotiations stalled. In 2010, over downstream objections, the upstream countries postponed resolution of the remaining contentious text until the formation of the Nile River Basin Commission (NRBC) and opened the CFA for signature. Egypt and Sudan subsequently stopped participating fully in the NBI (Sudan has since reactivated its membership) (Sewilam, 2015). The CFA will enter into force upon ratification by six signatories. Ethiopia, Rwanda, Tanzania, Uganda, Kenya, and Burundi have already signed, and South Sudan has indicated its intention to join.

The Danube water protection regime (1985–present)

During the Cold War, Danube negotiators initiated water protection discussions and, in 1985, two western countries, Germany and Austria, and six Central and Eastern European Countries (CEECs)—Bulgaria, Czechoslovakia,

Hungary, Romania, the Soviet Union, and Yugoslavia—signed the Bucharest Declaration to promote cooperation on water quality and quantity issues. Soon after, parallel negotiations began toward two treaties linking water and the environment: the Danube Basin Ecological Convention (also the Danube Basin Nature Conservation Convention), which ended without agreement, and the Convention on Co-operation for the Protection and Sustainable Use of the River Danube (also Danube River Protection Convention or DRPC), signed in 1994 by the eleven major Danube states, Austria, Bulgaria, Croatia, the Czech Republic, Germany, Hungary, Moldova, Romania, Slovakia, Slovenia and Ukraine, and the European Community. The DRPC created the International Commission for the Protection of the Danube River (ICPDR) and participants now also include Bosnia-Herzegovina, Montenegro, and Serbia. In 2000, the DRPC parties agreed to use the ICPDR to coordinate implementation of the European Union Water Framework Directive (EU WFD).

Evidence from the cases

Building on noncompetitive similarities

The following Danube and Nile cases provide very different examples of negotiators crafting agreements by narrowing the range of issues they addressed to those on which they agreed and excluding their differences in other areas. These strategies were effective for initiating negotiations, creating provisional arrangements, and realizing specific benefits of water use.

The Danube navigation regime

Both riparians and non-riparians wanted their ships to be able to access the Danube delta to engage in commerce, but it was not clear who should provide the physical and institutional conditions to ensure access. Previously, the Ottoman Empire maintained navigable conditions in the delta, but delta conditions had become dangerous under Russian control between 1829 and 1856. Sir Charles Hatley, a chief engineer of the delta's EDC, described the state of the delta:

Shipwrecks were of common occurrence, and occasionally the number of disasters was appalling. One dark winter night in 1866, during a terrific gale, 24 sailing ships and 60 lighters went ashore off the [Sulina] mouth and upwards of 300 persons perished.

(quoted in Chisholm, 1910: p.822)

In 1856, the Ottoman Empire regained its delta territory, but lacked the financial resources to maintain delta access (Jensen & Rosegger, 1978).

Austria wanted to protect delta access for its shipping interests, which transported significant quantities of manufactured goods to downstream ports and the Black Sea. Delta access was also a priority for Great Britain,

which exported wheat shipments from the lower Danubian principalities (Chamberlain, 1923; East, 1932; Jensen & Rosegger, 1978). Russia, no longer a riparian, also wanted to ensure delta access. The countries built on their shared interest in ensuring access to the Danube delta and created provisional EDC arrangements for governing the delta region.

The Nile basin benefit sharing regime

The NBI aims to further “sustainable socio-economic development through equitable utilization of, and benefit from, the common Nile Basin water resources” (Nile Basin Initiative, 2013:3), help countries build confidence, and gain much-needed experience cooperating with one another. Uganda’s Commissioner for Water Resources Planning and Regulation, an NBI participant, described the situation, “At the beginning, we would be in a room and we wouldn’t talk to each other—we saw each other as enemies. No one would talk in meetings because of suspicion” (cited in Nile Basin Initiative, 2013).

The benefit-sharing approach also shifted the focus of negotiations away from bargaining over how specific water quantities will be distributed and to negotiating over noncompetitive, win-win benefits (Interview Nile 14, 2007) from sharing the broader set of ecosystem services provided by access to water (Phillips, Daoudy, McCaffrey, Öjendal, & Turton, 2006; Sadoff & Grey, 2002). For example, the NBI conducted a basin-wide study of regional power trade, which identified (1) high regional demand for electricity for domestic, industrial, and commercial purposes, and (2) diverse power options in the basin, including solar, wind, coal, geothermal, and significant hydropower potential. The NBI then facilitated implementation of regional investment projects to connect countries’ national electric grids. Ethiopia now exports surplus hydropower power to Sudan, which Sudan uses to replace electricity sources that have higher greenhouse gas emissions. During low rainfall periods, Ethiopia can rely on Sudan’s thermal production to protect its energy security. In this example, the countries built on shared objectives to reduce costs from generating electricity and benefit from excess capacity (Nile Basin Initiative, 2014a).

The Danube water protection regime

Due to Cold War tensions, at the start of water protection negotiations the Danube countries had little experience negotiating with one another and no information about environmental issues across the basin, but the 1980s and early 1990s brought significant political changes, catalyzing a shared interest in addressing environmental and security risks. When Romania and Yugoslavia first contacted the upstream countries to discuss water management and political issues, water protection was less of a priority for upstream countries, but they were generally interested in collaborating in order to learn about the environment and politics in the Eastern Bloc (Interview Danube 17, 2006). At the same time, Ukraine’s Chernobyl nuclear accident, accidental pollution of the Rhine from

the Swiss Sandoz agrochemical warehouse, and algal blooms in the Black Sea near the mouth of the Danube provided visible evidence of transboundary risks. The countries built on their noncompetitive interest and initiated negotiations to reduce both transboundary environmental and security risks.

Integrating differences

In contrast, the following examples analyze conflict management strategies intended to build on the productive aspects of conflict with the goal of producing greater benefits, in comparison to what negotiators could achieve by focusing only on noncompetitive similarities. Negotiators identified issues over which they disagreed and integrated their preferences across four kinds of differences: sequencing, relative valuations, forecasts and risk preferences for the future.

Integrating sequencing preferences

Negotiators can sequence elements of their agreements in order to manage their different preferences for which issues to address first and which later, as well as differences over the timing of implementing new arrangements (Lax & Sebenius, 1991). In the Nile and Danube cases, specific sequencing strategies included creating provisional arrangements, splitting negotiations into parallel tracks for short- and long-term arrangements, and creating a framework agreement with easily revisable appendices. However, these strategies were effective only when they included clear timetables to demonstrate progress and benchmarks against which to evaluate it.

THE DANUBE NAVIGATION REGIME

At the end of the Crimean War, the riparians and non-riparians had no experience cooperating with one another on navigation, and neither coalition had confidence the other would protect its interests. The non-riparians prioritized an arrangement providing urgent delta access for their ships. The riparians shared this interest but prioritized long-term arrangements for governing the entire navigable river. The parties integrated these differences in a sequenced agreement. A provisional, two-year agreement ensured access to the delta for all ships and gave the riparians time to develop rules for governing the entire Danube and all countries an opportunity to gain experience cooperating with each other. At the end of the two years, a long-term arrangement could replace the provisional arrangements.

THE NILE BASIN BENEFIT SHARING REGIME

The Nile negotiators disagreed over which issues they should address first. The downstream countries wanted to start cooperating on non-competitive similarities such as technical studies, but upstream countries were concerned

negotiating only these issues would not address their priority, changing the status quo of water use across the basin (Interview Nile 03, 2004; Interview Nile 14, 2007). Ethiopia, therefore, insisted on creating legally binding arrangements for water utilization as a first step, which they also knew might take a long time (Arsano & Tamrat, 2005).

The Nile countries managed their different sequencing preferences by initiating two parallel negotiation tracks. In 1997, negotiations began on the CFA and, in 1999, on the NBI, which was intended as a “transitional institutional mechanism...pending the conclusion of a Cooperative Framework Agreement” (*The Nile Basin Initiative Act*, 2002). As one Ethiopian negotiator explained:

We need to proceed on the two-track process...It might take time to resolve those [CFA] issues. But, we need to also see the actual benefits that might come out of cooperation. So, let's proceed with the current project and also...try to see the different models of how we can negotiate and maybe that will give us a breakthrough.

(Interview Nile 09, 2004)

The provisional NBI was expected to build negotiating capacity and trust, which would facilitate negotiations on the more contentious, long-term CFA (Interview Nile 19, 2007).

However, the CFA's slow progress and the NBI's lack of demonstrable benefits led to upstream concerns that the provisional arrangements were a downstream strategy to delay changes in upstream water use and access. The NBI's arrangements did not define short-, medium-, and long-term timeframes for realizing urgently needed benefits (Cascão, 2013; Nile Basin Initiative, 2014b). An Ethiopian participant expressed this frustration: “People are engaged in trying to identify win-win projects, but so far there have been no big projects, which is causing some shortcomings in confidence” (Interview Nile 19, 2007). Additionally, the sequencing strategy did not specify a timeframe for completing the CFA negotiations, or what would happen if the negotiations failed. By 2007, the CFA negotiators agreed on all but Article 14 on water security. The upstream countries proposed another sequencing strategy: sign the CFA and postpone resolution of Article 14(b) until establishment of the NRBC. However, Egypt and Sudan rejected this suggestion, insisting that agreement on the article's text come first (Mekonnen, 2010). Although the sequencing arrangements enabled cooperation to develop, without a timetable they were insufficient, and the future of the NBI and CFA is now uncertain.

THE DANUBE WATER PROTECTION REGIME

In the 1980s, when Romania invited the seven other major Danube states to negotiate about water quality and the environment, all countries were uncertain whether they would be able to reach agreement. Even if they could reach agreement, without trust or access to information about compliance, they

knew they faced significant implementation obstacles (Interview Danube 16, 2006). The negotiators disagreed over the form of the agreement: the central and eastern countries wanted a binding treaty, while upstream Germany and Austria preferred nonbinding recommendations. The negotiators reached agreement on a provisional, nonbinding declaration (Hock & Kovacs, 1987). Germany and Austria viewed the declaration as creating an important moral and political obligation to continue cooperating (Interview Danube 01, 2006; Interview Danube 04, 2006), allowing the countries to "...first accomplish something and only later address other issues" (Interview Danube 16, 2006). The CEECs considered the agreement acceptable because, according to a Romanian participant, they saw it as the first step in a process that could lead to a future international convention (Varduca, 1997). It was "...just a beginning" (Interview Danube 20, 2006), and it could "serve as a kind of model for a future treaty" (Interview Danube 17, 2006).

In the early 1990s, all DRPC negotiators wanted to reach a binding agreement within a short period of time but recognized they didn't know enough about complex transboundary pollution issues and what it meant to address problems at the basin scale. They therefore applied a sequenced approach, agreeing to sign the convention and include technical appendices, which could easily be revised without subsequent ratification as information became available (Interview Danube 03, 2006; Interview Danube 04, 2006). The sequenced convention and appendix strategy enabled them to start "early but imperfectly" (Jansky, 2002:66), evaluate progress, and later revise. For example, negotiators included water quality standards in the initial agreement's appendix even though they could not yet implement harmonized processes for data collection and sharing. The negotiators also anticipated this flexible design would help the DRPC meet future EU WFD requirements (Interview Danube 03, 2006). Today, the EU WFD's timetable for implementation and signposts for evaluating progress provide mechanisms for ongoing adjustment of the DRPC.

Integrating different relative valuations

Even when the parties value all issues being negotiated, they may prioritize some issues over others. Negotiators can trade across these different priorities, gaining more benefits on their higher priority issues, while accommodating others' interests on issues they care less about (Mnookin et al., 2000). In the following cases negotiators effectively built on their different priorities for the geographic scope of cooperation, the scope of activities and problems they would address, the authority invested in the international implementing organization, the form of the agreement, and access to the benefits of using water.

THE DANUBE NAVIGATION REGIME

During the navigation negotiations the non-riparians' top priority was to protect their shipping interests by ensuring passage for ships from all countries along

the entire navigable length of the Danube and universal access to all ports for commerce. The British, in particular, wanted to increase grain exports from the lower Danubian principalities and prevent Austria from acquiring a monopoly over Danube commerce. Riparians wanted to protect their shipping interests by limiting non-riparian access upstream of the delta and along the river (Kaeckenbeek, 1962; Krehbiel, 1918; Sherman, 1923).

The riparians' top priority was to protect their ability to make decisions within their territories by excluding non-riparians from Danube navigation administration and limiting the authority of any international organization. Riparians especially wanted to retain control over implementation of river maintenance and improvement projects as well as the right to levy fees to pay for these projects. To protect their shipping interests, non-riparians wanted to participate in an international authority with expansive powers. France pointed to Russia's failure to maintain the delta as justification for universal participation in, at least, regulating and implementing delta maintenance (Kaeckenbeek, 1962).

The Danube countries created two separate arrangements, which together integrated the riparians' and non-riparians' different relative valuations. The EDC included participation from both riparians and non-riparians and was given two-year provisional authority to implement maintenance and improvement projects in the delta. The RC's membership was restricted to riparians and it was given authority to develop navigation rules for the entire Danube and coordinate, but not implement, navigation improvement projects. After two years, the RC was to assume the authority of the EDC (Donaukommission, 2004; Gourdon, 1857; Kaeckenbeek, 1962; Krehbiel, 1918). The riparians accepted short-term internationalization of the delta under a powerful authority and permitted passage for all ships along the entire navigable Danube in exchange for long-term, limited riparian control over the entire river system. The non-riparians accepted the arrangements because their interests in delta access and river passage were protected.

THE DANUBE WATER PROTECTION REGIME

In the Bucharest Declaration negotiations the main issues were the legal form, the scope of problems and activities, and the geographic scope. Germany and Austria's top priority was the form of the agreement and both wanted to negotiate only nonbinding recommendations. According to a German participant, "We had almost no opportunity to verify what was happening in the CEECs in practice...For us, it would have been unthinkable to bind ourselves one-sidedly" (Interview Danube 17, 2006). Germany was unwilling to commit to further action to improve water quality because it could not ensure the central and eastern countries would implement their commitments. Most CEECs wanted a binding agreement, but this was not their top priority. Many CEEC negotiators' priority interest was to address a broad scope of activities, including preventing harm to downstream countries as a result of low flows, ecological protection, monitoring, and data exchange (Varduca, 1997). The resulting declaration is

nonbinding and covers a broad scope of water quantity and quality activities. Germany and Austria would have preferred a narrower agreement, but, from their perspective, they avoided incurring nonreciprocal obligations. The CEECs would have preferred a legally binding agreement, but they could agree because of the declaration's broad scope of activities.

When all countries agreed to negotiate a legally binding agreement, they still disagreed about what scope of activities and problems to address. Hungary proposed a comprehensive agreement on a broad range of ecological issues, including sustainable resource use and the preservation and restoration of biodiversity as well as landscape diversity, especially wetlands (Temporary Secretariat Danube Basin Ecological Convention, 1998). Germany and Austria disagreed, preferring a narrower focus on protecting water and the riparian environment from transboundary pollution, which they thought was a more practical strategy to reach agreement within a short timeframe (Interview Danube 03, 2006). A Czech delegate recalled that most former CEECs wanted to include the issue of water quantity, but Germany and Austria disagreed (Interview Danube 07, 2006).

The DRPC negotiators also disagreed about whether the agreement should apply to the entire basin and how to define transboundary impacts. Austria and Germany wanted to ensure all countries incurred reciprocal obligations, and, with Czechoslovakia, wanted to include the entire basin, but Romania disagreed, preferring to include only some parts of the basin. Austria was concerned Romania would exclude its mining wastewater ponds and not control pollution from them. Austria also wanted to define transboundary impacts to ensure that all countries would be obliged to control all pollution emanating from their territories and flowing beyond their borders including their territories directly into the Black Sea (Interview Danube 03, 2006). Hungary was still concerned the Austrian approach focused too much on the main river and not enough on the basin environment.

The DRPC integrated negotiators' different relative valuations; it is legally binding and covers the entire basin and all adverse transboundary impacts but addresses a narrow range of water quality issues. Germany and Austria agreed because the scope and definition of transboundary impacts ensured reciprocal obligations over a limited range of issues. The other countries could agree because the convention was legally binding and some accommodations were made to address their interest in a broader range of activities and problems. For example, the DRPC's name was changed from *water management* to *protection and sustainable use*, and the agreement includes requirements for wetlands. Even though Austria and Germany were unwilling to include an even stronger ecological focus at the time, all negotiators expected the pending EU WFD would require them to address ecological aspects of water protection in the future (Interview Danube 03, 2006; Interview Danube 25, 2006; Interview Danube 33, 2006).

Integrating differences in forecasts and risk preferences

Negotiators may also hold different expectations about future events such as the extent of a dam's flooding impacts, and different risk preferences such as how tolerant a party is of risk that the dam will cause negative downstream impacts. In a contingent agreement, negotiators avoided arguing about uncertain future events by deferring finalization of details until the contingency occurs, essentially adopting a "wait and see approach" (Bazerman & Gillespie, 1999). For example, negotiators could monitor actual flooding impacts after dam construction and then revise the dam's operation according to a previously agreed upon strategy. As the following cases show, in order to be effective contingent agreements need to identify the issues for which negotiators have the lowest risk tolerance, minimize the appropriate risk, clearly identify the conditions triggering the agreed-upon contingency, and specify strategies for implementing and enforcing agreed-upon alternatives.

THE DANUBE NAVIGATION REGIME

The EDC was designed as a two-year arrangement for the delta region during which time the riparians would develop long-term rules for the entire Danube. However, the EDC could only be dissolved by unanimous consent of its seven riparian and non-riparian members. The non-riparians did not trust the riparians to enact long-term rules protecting their shipping interests and were especially risk-averse when it came to the possibility of being excluded from commercial access to ports. In the event the riparians enacted unfavorable rules, the unanimous decision rule meant non-riparians could refuse to dissolve the EDC and protect delta access for their ships. The riparians could not be sure the non-riparians would agree to dissolve the EDC, but the contingent arrangement limited other countries' control over the upper and middle Danube, protecting their priority interest. Instead of arguing over each other's intentions, the contingent rules minimized risk to both coalitions' priority interests.

THE NILE BASIN BENEFIT SHARING REGIME

So far, the upstream and downstream countries in the Nile basin have not been able to successfully address their differing expectations for the CFA and varied tolerances for possible future negative impacts. By signing the CFA most upstream countries indicated they expect the CFA will protect their interests, while Egypt and Sudan do not have this confidence and have refused to sign. The most contentious issue is Article 14 on water security. Negotiating as a united coalition for the first time in history (Casção, 2013), all seven upstream countries agreed on text for Article 14(b), "...not to significantly affect the water security of any other Nile Basin States." Sudan and Egypt disagreed, believing this could imply consent to future upstream developments with unknown potential harm to existing downstream uses. Egypt proposed substituting "...

not to adversely affect the water security and current uses and rights of any other Nile Basin State” (Agreement on the Nile River Basin Cooperative Framework, 2010), which is evidence of the downstream countries’ low tolerance for the possibility of negative impacts. Whether or not upstream countries expect future development to have negative downstream impacts, they have a higher tolerance for this possibility. The upstream countries rejected Egypt’s proposal, reflecting their low tolerance for the possibility that downstream countries could use it to veto future upstream water development.

Article 5 of the CFA on the obligation not to cause significant harm includes a contingent approach but lacks the implementation details needed to effectively manage differing expectations and risk preferences (Bazerman & Gillespie, 1999). Article 5 requires a state causing significant harm to another basin state to eliminate or mitigate the harm, or to provide compensation. However, it does not specify a threshold for unacceptable transboundary impacts that would trigger the need for action, a strategy for determining the appropriate response, or how these actions would be enforced. The CFA instead defers development of specific implementation measures to the future NRBC. Interestingly, Egypt, Sudan, and Ethiopia agreed to an almost identical approach in the 2015 Agreement on Declaration of Principles on the Grand Ethiopian Renaissance Dam (GERDP), in which they defer specifying the implementation measures for a contingent agreement in the event of harm (Official Text: Egypt, Ethiopia, Sudan – Declaration of Principles, 2015). Why did Egypt and Sudan sign the GERDP, but not the CFA, when both agreements include almost identical contingency clauses in the event of significant harm? A possible explanation, based on protecting dissenting interests, will be discussed later.

THE DANUBE WATER PROTECTION REGIME

Hungary and Austria held different expectations for the negotiators’ ability to reach agreement on a broadly focused ecological convention. They managed these differing expectations by deciding to initiate two negotiation tracks for separate Danube conventions. Hungary led negotiations on the broadly focused Danube Basin Ecological Convention, and Austria led negotiations on the more narrowly focused DRPC. The countries avoided arguing over what was possible by pursuing both options and seeing what happened.

Party arithmetic

In order to reach agreement, it may seem expedient to exclude parties with dissenting interests from participating in water policy decision and dispute resolution procedures. However, as these cases demonstrate, this narrowing strategy, intended to minimize the negative aspects of conflict, can instead exacerbate conflict and encourage excluded parties to retaliate and undermine collaborative efforts. Strategies negotiators can use to protect dissenting interests

include consensus decision rules, giving vulnerable countries weighted votes, and creating forums for discussing differences (Posner & Sykes, 2014).

The Danube navigation regime

The EDC members made decisions by majority vote. Their decisions did not require subsequent ratification and were binding on all members, regardless of how they voted. Although at first most of the EDC members were not riparian to the delta, the year 1878 brought many geopolitical changes: the Ottoman Empire lost its riparian status and new delta region riparians emerged—Romania, Serbia, an autonomous Bulgaria, and Russia. Romania was admitted to the EDC, but Serbia and Bulgaria were not (Russia was already a member). The EDC's decision rule enabled the coalition of non-delta riparians to exclude the new delta riparians' interests and act contrary to them, for example by expanding the EDC's geographic scope and authority against their wishes. For example, when the EDC decided to create a Mixed Commission with authority over part of the Danube flowing through Romania, Bulgaria, and Serbia, the majority decided to invite Serbia and Romania to participate in negotiations in a consultative, not voting, capacity. Romania and Bulgaria protested what they saw as an infringement of their sovereignty and refused to participate, but the majority voted against their interests. Romania subsequently stopped participating in the EDC and actively worked to undermine its authority and render it ineffective (Kaeckenbeek, 1962; Sherman, 1923; Teclaff, 1991).

The Nile benefit sharing regime

Egypt and Sudan wanted to come to an agreement on the CFA's Article 14(b) on water security before opening the agreement for signature, but the upstream majority outvoted them, opened the CFA for signature, and deferred resolution of Article 14(b) until the establishment of the NRBC. One explanation for Egypt and Sudan's refusal to sign the CFA is their lack of confidence its decision-making, dispute resolution, and amendment procedures will protect their interests from the upstream majority's future actions.

Although many of the NRBC's rules and procedures are deferred for later decision, the CFA specifies that if its governing body, the Council of Ministers (COM), cannot reach consensus on a decision, such as the text of Article 14(b), a fact-finding commission (FFC) will resolve the dispute. The FFC would be comprised of one member from each state concerned, which in this case would probably include all Nile member states, plus one member of a different nationality. The FFC would make decisions by majority vote, which could enable an upstream majority to outvote Egypt and Sudan. During the negotiations, the upstream and downstream countries also disagreed over the CFA's amendment procedure (Salman, 2013). Although many CFA elements, including Article 14, can be amended only by consensus, the CFA's dispute resolution procedures can

be amended by a two-thirds supermajority vote, which means that downstream interests could be outvoted in the event of a dispute.

Taken together, these CFA procedures provide insight into the question posed earlier, “Why did Egypt and Sudan sign the GERDP, but not the CFA?” GERDP includes participation from only Egypt, Sudan, and Ethiopia. The two downstream riparians can therefore protect their interests in any majority vote. In contrast, the CFA is open to participation from all Nile Basin countries and there are more upstream riparians than downstream riparians in the basin. According to the CFA’s provisions, the upstream riparians could act contrary to downstream interests.

The Danube water protection regime

During the DRPC negotiations, the countries required unanimous agreement on all elements, which provided confidence that all participants’ environmental interests would be protected. However, from the start, the water protection negotiations deliberately excluded navigation interests, with western diplomats intentionally deciding against expanding the existing, Soviet-dominated Navigation Commission’s mandate (Interview Danube 01, 2006). Creating separate spaces for negotiating navigation and environmental decisions has led to contemporary conflicts between these two interests. For example, as part of a European effort to better integrate national transport networks, shipping interests would like to increase the tonnage of goods transported on the Danube (European Commission, 2009). Removing the most significant barriers would require deepening some Danube segments, including the main navigation bottleneck, a 69-kilometers segment between Straubing and Vilshofen, Germany. Environmentalists view this segment, one of the only “free flowing” parts of the upper Danube not already impacted by locks, dams, and canals, as ecologically invaluable, and they mobilized opposition.

In 2007, responding to the need for a forum to manage such conflict, the countries initiated the “Joint Statement on Guiding Principles on the Development of Inland Navigation and Environmental Sustainability in the Danube River Basin” and, with it, a process for information exchange and joint studies. By creating space for negotiators to discuss and integrate differences between environmental and navigation interests, this strategy is already managing conflict more productively (Interview Danube 15, 2006).

Discussion

In the diverse cases analyzed in this chapter, no single conflict management strategy determined negotiators’ success. In all three, focusing on issues on which negotiators agreed allowed participants to gain experience cooperating with one another. However, building on noncompetitive similarities created a basis for longer-term agreements only when complemented with other strategies that took advantage of conflict’s productive potential, such as

sequencing arrangements, integrating negotiators' different preferences, and using contingent agreements with clear implementation mechanisms to manage their different risk preferences and expectations for the future. The Danube and Nile histories also offer insight into the risks of avoiding conflict through party arithmetic. These cases show that dissenting interests should be able to participate in water policy decisions and be protected if for no other reasons than to avoid encouraging excluded parties to undermine collaborative efforts and to avoid retaliation when today's dissenting interests become part of a future majority. Based on these findings, future research on conflict management should focus on the interplay between strategies by which negotiators minimize the negative aspects of conflict (without excluding dissenting interests), while also building on conflict's productive aspects. Together, as part of a comprehensive package, these strategies create opportunities for valuable interaction and dialogue in river spaces that are subject to inherent conflict.

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Notes

- 1 Even though two cases are located in the Danube River system, they have completely distinct negotiating contexts and institutions governing behavior.
- 2 Today, the Danube countries cooperate on navigation issues under distinct institutional arrangements created by the 1948 Convention Regarding the Regime of Navigation on the Danube and its amendments.

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