

# Water wars in Africa?

Dr. Peter Ashton

## Are water conflicts inevitable?

The simplest direct answer is an unequivocal "Yes".

Simply put, and without being pessimistic, water conflicts are inevitable if we continue to do nothing to prevent them from occurring. While this response may appear to be rather simplistic, it is guided and framed by the key insight that the continent's finite fresh water resources cannot continue indefinitely to support the escalating demands that we make of them. Competition for the available water supplies will continue to increase to a point where radical interventions are required. In addition, water conflicts that are linked to the positions of international borders will still occur in those places where the countries concerned have not yet reached joint agreements.

A critically important issue in this debate is the realization that the relative size of the problem has a definite bearing on the range of options that are available to prevent disputes over water. For example, at small (or local) scales, the individuals or communities who disagree with one another over the access to, or use of, a water source have fewer conflict prevention options available to them. This is in distinct contrast to situations at larger (national and international) scales, where treaties, accords and laws, as well as independent mediation, are available.

While water is very unlikely to be the direct or only cause of a war in southern Africa, it is very likely that water will become a contributing factor to regional instability as demands for water approach the limits of the available supplies. Inevitably, water disputes will occur first in those areas where water is in shortest supply; these will then tend to spread further afield as more and more of the scarce water resources are used directly or transferred further afield to meet rising demands.

In the light of these observations, it is important for everyone concerned to consider the potential preventive approaches that are available so that we can properly formulate and implement suitable policies, strategies and actions to avoid the prospect of water-based conflicts and their adverse consequences.

In virtually all of the water-related conflicts that have occurred in southern Africa, the role of water has been secondary to considerations of territorial sovereignty. In most cases, these disputes have been driven by perceptions that the territorial integrity of one country is compromised or threatened by the claims of a neighbouring territory.

Many of the international boundaries in southern Africa are aligned with rivers and water courses; the locations of these boundaries are the legacies of surveys and treaties conducted by earlier colonial powers. However, because rivers are dynamic systems that frequently change their courses in response to floods, we can anticipate future disputes over the precise locations of international boundaries when rivers change their shape and configuration.

We can also anticipate that almost all future disputes or conflicts involving water, or concerned with some aspect of water, will tend to be local in scale. These conflicts will be amenable to institutional and government intervention and the rights and responsibilities of individuals are well protected in national legislation. At the international scale of a water-based conflict or dispute between two or more countries, some principles of international law provide a solid foundation for negotiation and arbitration. However, it is clearly in the interests of individuals and societies that appropriate national and international institutions should jointly develop management plans for shared river basins and also derive workable protocols that can be used to prevent water-based conflicts in the region.

## **Water-related conflict**

The disputed ownership of Sedudu/Kasikili island in the Chobe River between Namibia and Botswana provides a good example of an actual water-related conflict. It highlights the scale and complexity of the problem and how other potential water conflicts could occur. The ownership of the island has been the subject of a formal dispute between the governments of Namibia and Botswana since 1996, when both governments agreed to submit their claims for sovereignty of the island to the International Court of Justice (ICJ) in The Hague in the Netherlands. Prior to this, the "ownership" of Sedudu/Kasikili Island had been disputed by local residents in Namibia and Botswana, as well as preceding colonial governments, since the Berlin Treaty of 1 July 1890. A brief outline of the grounds for the dispute has been drawn from the official press communiqué that announced the International Court of Justice's decision to recognize the territorial claims of Botswana.

The island known as Sedudu in Botswana and Kasikili in Namibia is approximately 3.5 km<sup>2</sup> in area and is located in the Chobe River. The Chobe River divides around the island, flowing to the north and south, and the island is flooded to varying depths for between three and four months each year (usually beginning in March), following seasonal rains.

On 29 May 1996, both Namibia and Botswana jointly submitted their cases for territorial sovereignty of Sedudu/Kasikili Island to the ICJ, asking the Court for a ruling based on the Anglo-German Berlin Treaty of 1890 and the principles of international law.

The historical origins of the dispute are contained in the Berlin Treaty of 1890, when the eastern boundaries of the Caprivi Strip along the Chobe River were defined in very vague terms as "the middle of the main channel" of the Chobe River, so as to separate the spheres of influence of Germany and Great Britain. In the opinion of the ICJ, therefore, the dispute centred on the precise location of the main channel. Botswana contended that this is the channel running to the north of the island, whilst Namibia contended that the channel to the south of the island was the main channel. Since the terms of the Berlin Treaty did not define the location of the channel, the Court proceeded to determine which of the two channels could properly be considered to be the main channel.

In order to achieve this, the ICJ considered both the dimensions (depth and width) of the two channels and the relative volumes of water flowing within these two channels, as well as the bed profile configuration and the navigability of each channel. The Court considered submissions made by both parties as well as information obtained from in situ surveys during different periods of seasonal flow. Against the background of the object and purpose of the Berlin Treaty, as well as the subsequent practices of the parties to the Treaty, the Court found that neither of the two countries had reached any prior agreement as to the interpretation of the Treaty nor the application of its provisions.

In reaching its verdict, the Court also considered Namibian claims that local Namibians from the Caprivi area had periodically occupied Sedudu/Kasikili Island since the beginning of the twentieth century, depending on seasonal circumstances as well as river flows and inundation levels. The Court considered that this occupation could not be seen to reflect the functional act of a state authority, even though Namibia regarded this use as the basis for claims for historical occupation of the island. The Court also found that this so-called occupation of Sedudu/Kasikili Island by Namibian residents was with the full knowledge and acceptance of the Botswana authorities and its predecessors.

The final Court ruling was given in favour of Botswana, with the ICJ indicating that the northern channel around Sedudu/Kasikili Island would henceforth be considered as the main channel of the Chobe River. Accordingly, the formal boundary between Namibia and Botswana would henceforth be located in the northern channel of the Chobe River. Botswana and Namibia have agreed that craft from both countries will be allowed unimpeded navigation in both the northern and southern channels around Sedudu/Kasikili Island.

The ICJ ruling is very welcome after a relatively long period of protracted debate and intermittent threats of military action, including formal military occupation of the island by the Botswana Defence Force. The Sedudu/Kasikili Island

dispute provides an excellent example of a water-based conflict that reached a high level of tension, preventing resolution of the problem by the disputing parties and thus requiring an independent third party to be called in to arbitrate.

However, it is important for us to note that, like all other rivers, the Chobe River is a dynamic system where the shape and position of its channels will change over time.

Natural processes of sediment deposition and erosion will continue to occur, each depending on the flow patterns in the river. Therefore, it is inevitable that the Chobe River will continue gradually to alter the position and configuration of its main channel. Changes in the position or shape of the main channel could possibly become a source of future dispute between the two countries.

In this example, the primary dispute between the two countries was one of territorial sovereignty rather than about access to water or to water-dependent resources. However, water is the physical driving force for changes to the aquatic system that forms the territorial boundary. Unless these two countries jointly develop a formal protocol to address this type of situation, similar cases of water-related conflict can be expected to occur.

There are still five islands in the Caprivi sector whose territorial sovereignty or ownership is contested; three of these islands are in the Chobe River and two are in the Zambezi River. Without wishing to pre-empt any options that may be considered by the countries concerned, we can anticipate that the legal principles upon which any decision will be based are likely to follow the same principles and logic used to resolve the dispute over Sedudu/Kasikili Island.

Dr. Peter Ashton is from the Division of Water, Environment & Forestry Technology, CSIR, P.O. Box 395, Pretoria 0001, South Africa.