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ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW
PUBLIC INTERNATIONAL LAW

**THE LEGAL EFFECT AND IMPLICATIONS OF THE
DECLARATION OF PRINCIPLE ON THE GRAND ETHIOPIAN
RENAISSANCE DAM (GERD)**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS OF LL.M. DEGREE IN PUBLIC INTERNATIONAL
LAW**

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DECLARATION

I, Feven Samuel By signing this, certify that the thesis, titled; ‘THE LEGAL EFFECT AND IMPLICATIONS OF THE DECLARATION OF PRINCIPLE ON THE GRAND ETHIOPIAN RENAISSANCE DAM (GERD)’ is entirely my original work and has never been submitted to another university for a degree or examination. Every time another source has been cited or used, it has been properly acknowledged.

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ACRONYMS

BCM	Billion Cubic Meters
CFA	Cooperative Framework Agreement
DoP	Declaration of Principles
DRC	Democratic Republic of Congo
ENSAP	The Eastern Nile Subsidiary Action Project
GERD	Grand Ethiopian Renaissance Dam
GERDP	Grand Ethiopian Renaissance Dam Project
GW	Gigawatt
IABA	Inter-American Bar Association
ICJ	International Court of Justice
ILA	International Law Association
ILC	International Law Commission
IIL	Institute of International Law
IPOE	International Panel of Experts
Km	Kilometer
Km ²	Kilometer square
m	meter
NBI	Nile Basin Initiatives
Nile-COM	Nile Council of Ministers
NELSAP	The Nile Equatorial Lakes Subsidiary Action Project
NILE-SEC	The Nile River Basin Secretariat
NISRG	National Independent Scientific Research Groups
PCIJ	Permanent Court of International Justice
SAP	Shared Action program
SVP	Shared Vision Program
TECCONILE	Technical cooperation committee for the promotion of the development and Environmental protection of the Nile Basin
TNC	Technical National Committee
UN	United Nations
UNDP	United Nations Development Programme
UN ILC	United Nations international law commission
UNWC	United Nations Watercourses Convention
USA	United States of America
USD	United States Dollar
WB	World Bank

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Abstract

Natural resources are unevenly and erratically distributed throughout the earth. Even worse The Nile Basin has been considered as a potential hotspot for conflict on a resource. The Ethiopian Grand Renaissance Dam is a powerful counter-hegemonic force to change the unfair status quo in the region.

But The signing of the Declaration of Principles (DoP) presents difficulties because of the reformulation of the provision, The DOP is a loss in a way that it made possible a purely national project subject to trilateral negotiations, the DOP is a strategic mixer against the National Interest of Ethiopia. This could be seen as the declaration aims at holding another purpose, which is providing detailed yet vague procedures for the use of the GERD which had a great power to change the long-standing and inequitable utilization of the basin, by which Ethiopia was not obliged to agree to build the Dam.

Introduction

The history of international water Law is a very recent phenomenon, which is only be resolved by pursuing power-related tactics and techniques, not by engaging in water battles.¹ Freshwater is essential to all aspects of modern society, including the production of food, transportation, waste disposal, energy, and industrial advancements. However, this natural resource is unevenly and erratically distributed throughout the earth. Some regions, like the Middle East and North Africa, have a problem with water scarcity, which is still increasingly important for the advancement of agriculture and the economy.²

The customary international law and the most common states' claims to almost complete sovereignty over the waterways inside their borders were state practices.³ The global population seems to be increasing exponentially, while environmental change affects both the quantity and quality of natural resources worldwide. Additionally, there is no substitute for water, and the international legal framework governing the issue was not well developed. Moreover, there were no sufficient standards for allocating and sharing international waters that are universally recognized.⁴

With a length of 6650 kilometers from an equatorial lake to the Mediterranean Sea, the Nile is the world's longest river.⁵ It is estimated that about 450 million people are living there. More than 200 million people are thought to rely solely on the Nile for their food and water security.⁶ The Blue and White Nile, which are found in humid areas of the Ethiopian highlands and the Great Lakes of East-Central Africa respectively, are the two sources of the Nile.⁷ The river basin composes eleven sovereign states making it the largest number of basin countries involved: Ethiopia, Egypt, Sudan, South Sudan, Eritrea, Kenya, Rwanda, Burundi, Tanzania, Uganda, and the Democratic

¹ Mark Zeitoun and Jeroen Warner, 'Hydro-Hegemony - A Framework for Analysis of Trans-Boundary Water Conflicts' (2006) 8 Water Policy 435-460. P-436

² Peter H. Gleick, 'Water and Conflict: Fresh Water Resources and International Security' (1993) 79. P-79

³ Ludwik A Teclaff, 'Evolution of the River Basin Concept in National and International Water Law' (1996) 36 Natural Resources Journal 359-391. P-388

⁴ Aaron T Wolf, 'Criteria for Equitable Allocations: The Heart of International Water Conflict' (1999) 23 Natural Resources Forum 3-30. P-3

⁵ Jack Di Nunzio, 'Conflict on the Nile: The future of transboundary water disputes over the world's longest river' (2013) Future directions international P-2

⁶ Ibid

⁷ United Nations Economic Commission for Africa, 'Transboundary River, Lake Basin and Water Development in Africa: Prospects, Problems, and achievements' (2000) P-19.

Republic of Congo. The Nile basin makes up 2.3% of the planet's land area and nearly 10% of Africa. The enormous amount of annual rainfall in the upstream region travels to the downstream countries.⁸

The degree of influence that each riparian has over water resources is mostly determined by the power relationships between the riparian.⁹ Nile Basin has been considered a potential hotspot for conflict on a resource due to its widely uneven water use and tense inter-riparian relations. The conflict has increased as a result of the lack of a comprehensive legal and institutional framework controlling the management of the basin's limited water resources. This basin is vulnerable to violent conflict because the basin countries have a history of suspicion and mistrust. The distinguishing characteristics of the basin are still unilateralism and incompatible riparian claims are considered to be the core principles of international water law.¹⁰

In 2011, Ethiopia started construction on the Ethiopian Grand Renaissance Dam to produce hydroelectric power, which worsens the situation and causes the flames to flare up once more. By doing this, Ethiopia acts as a powerful counter-hegemonic force that has the ability to convert the unfair status quo in the basin. This can be taken as an outcome of multilateral cooperation and can also be considered as the much more changes that can happen in the future.¹¹ however, on March 5, 2015, Ethiopia, Egypt, and Sudan managed to agree on GERD, the declaration of principle, which sets out several guiding principles. Although the agreement eased the tension, it was a milestone in the history of cooperation on the Nile, and some rules in the document made its application controversial.

This study aims at examining the problems of signing the DoP, to show its legal effects and legal implications. The findings will hopefully contribute to understanding the status, content, and legal implications of the principles of the declaration.

⁸ <https://nileforpeace.africa/1310/integration-in-the-nile-basin-nile-for-peace-initiative/> accessed on Thursday, March 23, 2023, 8:37:15 pm

⁹ Zeitoun and Warner (n 1). P-436

¹⁰ Dereje Zeleke Mekonnen, 'Declaration of Principles on the Grand Ethiopian Renaissance Dam: Some Issues of Concern' (2018) 11 Mizan Law Review P-255.

¹¹ Ana Elisa Cascão and Alan Nicol, 'GERD: New Norms of Cooperation in the Nile Basin?' (2016) 41 Water International 550. P-550

CHAPTER ONE

1. FUNDAMENTAL PRINCIPLES OF INTERNATIONAL WATER LAW

The history of international water law, which is a recent phenomenon when seen in relation to other international law branches and development, began in the 19th century. At first, the concern was all about navigation, and it is only after the first decade of the 20th century that the issue of non-navigational uses became the subject of international water laws.

The UN International Law Commission (ILC), The International Law Association (ILA), the Institute of International Law (IIL), and The Inter-American Bar Association (IABA) have all made significant contributions to the development of international water law.¹² After almost thirty years of continuous endeavor by the UN ILC, the General Assembly adopted the UN Watercourses Convention in 1997 as a result of these attempts at codification and progressive development.

State practice in the area of international water law is abundant and includes a sizable body of treaties, customs, and comprehensive legal Theories. Water-related cases involving riparian states have been subject to international arbitration and adjudication, including the River Oder case (United Kingdom, Czechoslovakia, Denmark, France, Germany, Sweden v. Poland), the Lake

¹² - The General Assembly created the International Law Commission in 1947 to carry out its responsibilities under the United Nations Charter, which provides for the Commission to "initiate investigations and make suggestions with the aim of... promoting the gradual advancement of international law and its codification." Example of the work can be the 1997 UN Watercourses Convention See <https://legal.un.org/ilc/>. accessed on Thursday, March 23, 2023, 9:40:10 pm

- The International Law Association (ILA) is an association whose goals include studying, clarifying, and promoting both public and private international law as well as fostering a sense of concern for international law on a worldwide scale. In 1873, it was founded in Brussels. Examples of the work are 1954 Edinburgh Conference, 1956 Dubrovnik Resolution, 1958 New York Conference, 1972 New York Articles on Flood Control and 1972 New York Resolution on Maritime Pollution of Continental Origin and so on. See <https://www.ila-hq.org/en>. accessed on Thursday, March 23, 2023, 9:55:18 pm

- On September 8, 1873, the Institute of International Law was founded. Eleven eminent international lawyers planned to form a non-governmental organization that might both enhance international law as well as attempt to ensure its implementation. Examples of the effort include the Madrid Declaration from 1911 (International Rules Regarding the Use of International Watercourses) and the Salzburg Resolution of 1961. Have a look at <https://www.idi-iil.org/en/a-propos/>. accessed on March 23rd, 2023 at 10:10:25

- The Inter-American Bar Association (IABA), A group of distinguished lawyers and judges founded IABA on May 16, 1940 as a permanent platform for the sharing of legal insights and knowledge among lawyers in order to enhance the Rule of Law and defend the region's democratic institutions. Examples of the work are 1933 Montevideo Declaration on the Industrial and Agricultural Uses of International Rivers, 1965 OAS Convention (Draft) on the Industrial and Agricultural Uses of International Rivers and Lakes and 1967 European Water Charter. See <https://ilacnet.org/organisations/inter-american-bar-association-iaba/>. accessed on Thursday, March 23, 2023, 10:20:23 pm

Lanoux Arbitration (France v. Spain), the Case Concerning the Gabckovo-Nagymaros Project (Hungary v. Slovakia), and the Case of the Pulp Mills on the Uruguay River (Argentina v. Uruguay).¹³ Each of the above cases, as demonstrated by state practice in the past, calls for cooperation between the Parties and the development of an institutional framework to facilitate this activity.¹⁴

The customary international law is one of the sources of international water law and the equitable use and utilization, as well as the duty not to cause significant harm principles. These are the two main accepted international law principles of water law.¹⁵ Some efforts were made at different times to come up with generally accepted international law that is binding and codified. From these efforts, the major ones that laid stepping stones for the current international water law are the Helsinki Rules, the Berlin Rules, and the UN Watercourse Convention, which are discussed below.

1.1. THE 1966 HELSINKI RULES

The International Law Association (ILA) adopted the Helsinki Rules on the Uses of the Waters of International Rivers in Helsinki, Finland in August 1966 as the first comprehensive international

¹³ - The Permanent Court of International Justice found in favor of expanding the Commission's jurisdiction in the Oder dispute, relying on the concept of a collective of riparian states' interests. See *United Kingdom, Czechoslovakia, Denmark, France, Germany, Sweden v Poland* (1929), PCIJ Series A No. 23-Series C No. 17-11. The judgment from the case, dated September 10, 1929.

- According to the Lake Lanoux Arbitration, changing the course of the Lake which naturally drained into Spain for maximum hydropower generation. Monetary compensation for potential harm to Spanish irrigation interests offered by France to modify the project to return, by an underground tunnel, was accepted by the Ad Hoc Tribunal by giving the ruling stating "The French Project would not violate the Treaty's provisions." See *France v. Spain* (1957) Ad Hoc Tribunal. International Court reference number R.I.A.A. 281 COU-143747E Judicial Portal.

- 1977 Agreement for a Major Project on the Danube, Enabling Wider Use of the Danube's Natural Resources Between Bratislava and Budapest. Development of energy, transportation, agriculture, and water resources. Recent unilateral action was Slovakia's decision to continue construction of the Gabčíkovo dam, despite intense opposition from Hungary, and to divert the Danube to Slovak territory. International Court of Justice decision on the Gabčíkovo-Nagymaros Project decided that "Hungary is not entitled to suspend and abandon works on Nagymaros & Slovakia's operation of Variant C is unacceptable." See *Hungary v. Slovakia* (1997) Ryan Law Case Brief 1 9/16/09 Case Concerning the Gabčíkovo-Nagymaros Project International Court of Justice 1997 25 September General List No. 92 Fact Reports 319 (Order of 14 July 1993).

- The International Court of Justice gives a ruling that in the case of the pulp mills on the Uruguay River that the 1975 Statute of the River Uruguay was essential for the Parties to continue cooperating through CARU while providing them with the resources necessary to identify the remedies necessary to ensure the equitable utilization of the river while maintaining its environment. See *Argentina v. Uruguay* (1975) International Court of Justice case concerning pulp mills.

¹⁴ Patricia K. Wouters, 'An Assessment of Recent Developments in International Watercourse Law through the Prism of the Substantive Rules Governing Use Allocation' (1996) 36 Natural Resources Journal 417. P-437

¹⁵ Wolf (n 4). P-4

guideline governing the use of rivers and the associated groundwater that cross national boundaries.¹⁶

The rules, which cover every aspect of utilization, are the most thorough discussion of the provisions. An international river's whole watershed limit, including the surface and subsurface water flowing thereto, is subject to the drainage basin approach.¹⁷ It offers the justification for recognizing and finale usage based on discontinuance or incompatibility with earlier uses. “By requiring both pollution control of the water basin and compensation for the same, the rules established the foundation for the considerable no-harm rule principle”.¹⁸ A chapter on procedures, both for dispute resolution and dispute prevention, is also included in the Rules. It is regarded as a significant development in the evolution of international water law, representing a significant attempt to codify and gradually create international legal norms in the area.¹⁹

1.2. THE BERLIN RULES

The International Law Association adopted the Berlin Rules on water resources in August 2004.²⁰ This Rules, which speak of a new paradigm of international water law, are centered on ideas of ecological integrity, sustainability, public participation, and minimization of environmental harm. Which are included in limited form in the Helsinki Rules and were only partially dealt with under transboundary waterways developed in the UN Convention.²¹

Some of the Berlin Rules apply to the management of all waters, whether national or international,²² it is also important to note, this is a significant departure for the ILA from all of its

¹⁶ <https://www.britannica.com/topic/Declaration-of-Helsinki> accessed on Saturday, March 25, 2023, 9:45:33 am

¹⁷ International Law Association publication Helsinki Rules on the uses of the waters of International Rivers, London, 1967, [hereinafter The Helsinki Rules (1966)] under Chapter 2 on Equitable Use of Waters of a basin in the international drainage including article IV, V, VI, VII, and VIII

¹⁸ Under Article X of the Helsinki rules According to the principle of an international drainage basin's waters being used equitably, each State must: (a) prevent any rise in the amount of present pollution of water in an international drainage basin that would seriously harm the territory of a co-basin country, or any water pollution, and (b) must implement every practicable step to reduce current water pollution in an international drainage basin.” The no harm principle is said to be founded on this rule.

¹⁹ Salman MA Salman, ‘The Helsinki Rules , the UN Watercourses Convention and the Berlin Rules : Perspectives on International The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules : Perspectives on International Water Law’(2007) 625-640. P-629

²⁰ International Law Association Berlin Conference (2004) Water Resources Law [hereinafter The Berlin Rules (2004)]

²¹ Joseph W Dellapenna, ‘The Berlin Rules on Water Resources : The New Paradigm for International Water Law’ (2006). World Environmental and Water Resource Congress, P-1

²² Regardless of the waterways in question are part of an international drainage basin, "all waters" refers to all surface waters and groundwater, excluding marine waters. See usage note 2 of The Berlin Water Resources Rules.

prior work, which was focused solely on transboundary groundwater, international rivers, and international drainage basins.²³ The Berlin Rules address a range of concerns relating to all waters, from the participation of those who may be impacted by management-related choices. It pertains to waters that are used by several nations. Some of the Berlin Rules apply to the management of all waters,²⁴ According to the Berlin Rules, basin states must in their separate territories manage an international drainage basin's water equitably and reasonably while keeping in mind the duty to prevent material harm from occurring to other basins States.²⁵

1.3. THE 1997 UN WATERCOURSES CONVENTION

The convention was adopted to promote sustainable development while preventing and resolving disputes over transboundary water resources. "A framework convention, which strives to ensure the use, development, conservation, management, and preservation of international watercourses while fostering their optimal and sustainable exploitation for both the present and the future."²⁶ The Helsinki Rules in particular, as well as certain Institute of International Law (IIL) work, served as the foundation for the Convention.²⁷ The focus is gradually shifting to a more comprehensive strategy, where integrated water resources management is emerging as the primary concern.²⁸

Under the conventions, article 10(1), provides; "No use of an international watercourse enjoys inherent priority over other uses."²⁹ However, in paragraph two it is provided in the event of a dispute over the use of an international watercourse, the provisions of articles 5

Additionally, as stated in Article 3 Subparagraph 21 of the Berlin rules "Waters" means "all surface water and groundwater other than marine waters." In a combined reading it could be understood as National waters being all surface water and groundwater on one's state and international waters to mean extending two or more states including surface water and groundwater.

²³ Salman (n 19). P-635

²⁴ Chapter II of the Berlin Rules (2004) addresses various issues related to all waters, under its articles 4, 5, 6, 7, 8 and 9 ranging from participation of persons likely to be impacted by decisions made regarding the control of waterways; simultaneous management of surface waters, groundwater, and other waters in an integrated and thorough manner; and integration of the management of waters with the management of other resources, as well as the sustainable management of water and the prevention or minimization of environmental harm and interpretation of this rules are discussed under this chapter.

²⁵ The Berlin Rules (2004) Article 12

²⁶ Salman (n 19). P-632

²⁷ Ibid

²⁸ Francisco Nunes Correia and Joaquim Evaristo da Silva, 'International framework for the management of transboundary water resources' (1999), Volume 24, Water International Number 2, Pages 86-94, P-90

²⁹ The UN Convention on the Non-Navigational Uses of International Watercourses (Adopted by the UN General Assembly in resolution 51/229 on May 21, 1997), available at http://www.internationalwaterlaw.org/intldocs/watercourse_conv.html. [hereinafter The UN Watercourses Convention (1997)] Article 10(1)

to 7 shall apply, with special consideration for the demands of essential human needs.³⁰ Certain water uses, including drinking and sanitation, that cannot be used without sustaining human life are considered to be essential human requirements.³¹

The final draft articles and a resolution on transboundary confined groundwater were adopted by the ILC in 1994. The General Assembly's (GA) members voted in favor of the convention by a majority vote. of the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses. Articles 5, 6, and 7 as a three-article bundle were ultimately approved by a vote of 38 to 4, with 22 abstentions and 33 states absent.³² The Nile riparian states Eritrea, Uganda, and Zaire (DRC) were absent, while Ethiopia, Egypt, Tanzania, and Rwanda chose to abstain. Sudan and Kenya voted in favor Burundi voted against Entering into force.³³

The 1997 UN Convention on Watercourse provides the fundamental principles incorporated in both Customary international law and the draft rules. These are the principle of equitable and reasonable utilization, the principle of cooperation, the principle of not causing significant harm, and the principle of peaceful settlement of disputes. The details of each will be covered below.

1.3.1. THE PRINCIPLE OF EQUITABLE AND REASONABLE UTILIZATION

Article 5 of the UN Convention on transboundary water stipulates this principle,³⁴ The new concept of equitable utilization is added in 5(2) and indicates “a right to seek the assistance of other nations that share a watercourse in preserving an equitable share of the watercourse's uses and benefits.”³⁵ “This principle could be said to have the rights of riparian states to use the water of an international watercourse with their territories as an attribute of sovereignty.”³⁶ Protection

³⁰ The UN Watercourses Convention (1997), Article 10(2)

³¹ Water for drinking is the most basic need for humans. It suggests that using water for cleaning and cooking while upholding public health standards are also essential human needs. see Abiy Chelkeba ‘The Influence of the UN Watercourses Convention on the Development of the Nile River Basin Cooperative Framework Agreement (CFA)’ (2018) Vol. 12 Mizan Law Review, No.1 P-183

³² Stephen C. Mccaffrey, ‘The UN Convention on the Law of the Non-Navigational Uses of International Watercourses: Prospects and Pitfalls’ (1998) 2 World Bank Technical Paper 17 P-20

³³ Lecture note from the international water law class

³⁴ The UN Watercourses Convention (1997), Article 5

³⁵ The UN Watercourses Convention (1997), Article 5(2)

³⁶ Attila Tanzi, ‘The UN convention on international watercourses as a framework for the avoidance of settlement of water law disputes’ (1998) 11 Leiden Journal of International Law, pp 441-472, P-457

of Human Needs attempts to supply the quality adequate drinking water and water required for the production of food to prevent starvation.³⁷

State practice, legal rulings, and international codification all provide a strong foundation for this principle. The riparian States are required to use the water resources on their soil in a way that does not conflict with the interests of other riparian States. It upholds the equality of all riparian States and is intrinsically tied to the idea of a "community of interest" among basin states, a concept that calls for balancing those interests to take into consideration each State's needs and uses.³⁸ The main point which needs to be given emphasis here is that the riparian states have to often cooperate and work together to use the transboundary waters.

Equitable and reasonable use is based on equal rights and does not always entail an equal share of the waters. Relevant variables in defining an equitable and acceptable share include the geology and hydrology of the basin, the population depending on the waters, economic and social needs, and the current use of the resources. Future requirements, climatic and ecological elements that affect a natural character, and the availability of other resources should all be considered according to Article 6 of the UN Watercourses Convention.³⁹

Its ratification as a component of the Convention is useful because it contributes to the message that collaboration is required to establish a regime of equitable use of an international watercourse system and to safeguard and preserve its ecosystems.⁴⁰ Since the distribution of goods takes place in the context of an almost unlimited number of possible geographical, geological, topographical, economic, political, strategic, demographic, and scientific variables are the "tempering role" that fairness might play.⁴¹

³⁷ Abiy (n 31). P-183

³⁸ Stephen C Mccaffrey and Mpazi Sinjela, 'The 1997 United Nations Convention on International Watercourses' (1998) Vol. 92 American Society of International Law, pp 97-107, P-99.

³⁹ The UN Watercourses Convention (1997), Article 6

⁴⁰ Mccaffrey and Sinjela (n 38). P-100

⁴¹ Owen McIntyre, 'Utilization of Shared International Freshwater Resources - the Meaning and Role of "Equity" in International Water Law' (2013) 38 Water International, pp 112-129. P-127

1.3.2. THE PRINCIPLE OF NOT CAUSING SIGNIFICANT HARM

This principle is provided under Article 7 of the UN Watercourses Convention,⁴² which imposes an obligation by saying in sub 1 “Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.”⁴³ And sub 2 The States whose use results in significant harm to another watercourse State shall, “in the absence of an agreement following paragraphs 5 and 6, work with the affected State to take all necessary steps to eliminate or reduce such harm and, where appropriate, to discuss the issue of compensation.”⁴⁴ The Issue of compensation has been a point of controversy during the negotiation and drafting process & has remained to be a source of contention amongst states.

No state within an international drainage basin may use the watercourses within its borders in a way that would materially harm other basin states or their environment, including harm to the safety or health of people, to the beneficial uses of the waters, or the life forms that inhabit the watercourse systems. It is widely recognized by international water law. However, it is still unclear what is meant by the term "significant" or how much harm qualifies as "significant harm." This notion is incorporated into the majority of current international water conventions, treaties, and agreements.⁴⁵

An actual loss of the user, with a negative impact of some consequence upon the environment or the socio-economic development of the injured state, is what constitutes harm rather than just an unpleasant effect. “So, the existence of significant harm must be demonstrated by objective evidence and should be assessed on a case-by-case basis.”⁴⁶ Article 7(2) states that compensation is not given as restitution for the wrongdoing and is not even the subject of the primary obligation

⁴² The UN Watercourses Convention (1997), Article 7

⁴³ The UN Watercourses Convention (1997), Article 7 (1)

⁴⁴ The UN Watercourses Convention (1997), Article 7 (2)

⁴⁵ Muhammad Mizanur Rahaman, ‘Principles of International Water Law: Creating Effective Transboundary Water Resources Management’ (2009) 1 International Journal of Sustainable Society 207-223. P- 211

⁴⁶ The UN Watercourses Convention (1997) user ‘s guide fact sheet series No 5, Para.5

that is automatically triggered by the occurrence of the legal harm; rather, it arises in connection with the ancillary obligation of consultation to balance the interests of the concerned states.⁴⁷

According to the convention, any dispute between usages of an international watercourse is to be addressed. Considering articles 5 to 7,⁴⁸ which supports the idea that the no-harm criterion does not have inherent preeminence. “So, a state's compliance with Article 7 of the UN watercourses convention is judged by the state's reasonable behavior in terms of preventative behavior to avoid relevant harm rather than just the harm being created.”⁴⁹

The language finally adopted is an effort to strike a balance between equitable utilization and "no-harm" rules. According to the premise that it offers them more flexibility in putting new uses for their watercourses, upstream governments usually supported the equitable utilization principle of Article 5. In contrast, downstream states favored Article 7 no-harm provision in general because it gives them and their established uses more protection.⁵⁰

The conflict between hydrology and chronology is subtly expressed in the relationship between the no significant harm rule and the ideal of equitable use. This is because the states downstream frequently relied on climatic conditions. Downstream riparians have had priority in developing the banks of rivers from irrigation and established agriculture, depending on the humid watershed or suit of the soil. As a result, the theory that each state has a right to the natural flow of river systems crossing borders was more supported by the downstream states. Additionally, it stipulates that "first in time, first in right" applies when acquiring rights through earlier use. On the contrary, the idea of having unrestricted rights to water flowing through their territory is mostly supported by the upper states.⁵¹

1.3.3. THE DUTY TO COOPERATE

This principle is provided in Article 8 of the UN watercourse convention.⁵² International conventions, agreements, and treaties generally recognize these ideas. Naturally, the majority of

⁴⁷ Salman (n 19). P-634

⁴⁸ Supra note, 30

⁴⁹ Mccaffrey and Sinjela (n 38). P- 102

⁵⁰ Girma Amare, ‘Contentious Issues in the negotiation process of the cooperative framework Agreement on the Nile’ (2009) presented for discussion in the consultative meeting to be held in Addis Ababa, P-8

⁵¹ Ibid P-7

⁵² The UN Watercourses Convention (1997), Article 8

upstream nations frequently disagree with this principle. It is noteworthy that only three upstream riparian nations Ethiopia, Rwanda, and Turkey opposed these principles throughout the negotiations for the 1997 UN Watercourses Convention.⁵³

The ideas of sovereign equality, territorial integrity, mutual benefit, and good faith are prerequisites for the general need to cooperate. This broad definition of the principle is meant to increase the prescriptive weight of other convention provisions that address specific cooperative characteristics.⁵⁴ “Establishing a clear connection between the laws on usage and the rules on the protection, preservation, and management of international watercourses is therefore essential to collaboration.”⁵⁵ According to the ILC, one of the elements of the responsibility of participation is the duty of states to cooperate. The suggested method of cooperation is the creation of joint commissions or mechanisms to make it easier to cooperate on pertinent policies and practices.

The broad obligation to cooperate requires Riparian States to notify and discuss with other riparian States when considering any economic activity that will have negative effects on the international watercourse under the notice and consultation procedures set down in universal and regional water agreements. This method enables the riparian States to reduce and avoid potential conflicts over the uses of international watercourses.

1.3.4. THE PEACEFUL SETTLEMENT OF DISPUTES

This principle, which is outlined in Article 33 of the UN water convention,⁵⁶ encourages those parties that share an international watercourse to seek a peaceful resolution to their differences, in case the states concerned cannot reach an agreement by negotiation.

Cooperation is aimed at attaining, “optimal utilization”, on the one hand, and “adequate protection” of an international watercourse, on the other hand.⁵⁷ Two processes are required for international dispute settlement, binding arbitration, and adjudication. Any more techniques are optional. Yet, as stated by the ICJ in the Gabčíkovo-Nagymaros case, parties are required to

⁵³ Rahaman (n 45).P-212

⁵⁴ Maria Manuela De Franca Doria and Farrajota Luciano Koberwein, ‘The principle of cooperation in the law of international Watercourses’ (2008) a thesis submitted in fulfillment of the requirements for the degree of doctor of philosophy University of London P-137

⁵⁵ Ibid

⁵⁶ The UN Watercourses Convention (1997), Article 33

⁵⁷ Tanzi (n 36). P-466

negotiate in good faith and in a way that the conversations are relevant. Given that it calls for a fact-finding investigation to be conducted at the request of any party to a dispute, has generated controversy. Any required dispute-resolution process will inevitably face substantial opposition from some nations.⁵⁸

It should be noted that many states protested this provision during the adoption of the UN Watercourse treaty. Some argued for a more forceful provision, while others said they had no issues with "fact-finding" in and of itself but objected to any provision for resolving disputes that may in any way compel a sovereign state to act. Contrarily, there weren't many disagreements on this matter during the watercourse convention's negotiation stage.⁵⁹

⁵⁸ Mccaffrey and Sinjela (n 38). P-104

⁵⁹ Girma (n 50). P-18

CHAPTER TWO

2. THE HYDRO-POLITICAL HISTORY OF THE NILE BASIN

The controversy over the use of the Nile among Ethiopia, Egypt, and Sudan is not a recent issue. The basin has been a very sensitive area which would likely be the area for the breakout of conflict. This is because the area is a very poor area with a high population and low per capita income with a higher dependence rate on the river.

In earlier times, Ethiopian leaders, who were aware of how important the Nile floods were to Egypt's survival, used them as a blunt political hammer to force their Egyptian rivals on issues that were then their top priorities.⁶⁰ Numerous geographical, historical, developmental, social, and cultural literature have discussed the Nile River and its strong connection to Egypt. These conjectures had led its lower-class societies, who preferred to refer to the waterway as the "Egyptian River," to yearn for and create a distinctive identity around the resource. Such ideas are prevalent now in Egypt as essential elements of the national consciousness, influencing viewpoints and behaviors at all levels of the cultural and political establishment.⁶¹

Instead of assuming a dominant position, Egypt has taken a hegemonic one. Combining political dominance in the Basin, formidable negotiating abilities, and significant capacity for information and discourse construction, are ways that Egypt's hegemony may be better understood. The power to authorize discursive processes, create information, and sign agreements to defend the Egyptian viewpoint are some of their advanced techniques.⁶²

Egypt is by far the most potent riparian nation. As it has been successful in maintaining the status quo for many decades. Egypt has implemented several coercive methods to maintain the status quo, including trade embargoes, diplomatic isolation, the threat of military action, espionage, and

⁶⁰ Dereje Zeleke Mekonnen, 'The Nile Basin Cooperative Framework Agreement Negotiations and the Adoption of a "water Security" Paradigm: Flight into Obscurity or a Logical Cul-de-Sac?' (2010) 21 *European Journal of International Law* pp 421-440. P-423

⁶¹ Tadesse Kassa Woldetsadik, 'The Grand Ethiopian Renaissance Dam and Ethiopia's Succession in Hydro-legal Prominence: A Script in Legal History of Diplomatic Confront (1957-2013)' (2015) *Mizan Law Review*, Vol. 9, No.2 P-380

⁶² Ana Elisa Cascão, 'Ethiopia-Challenges to Egyptian Hegemony in the Nile Basin' (2008) 10 *Water Policy supplementary* 2 pp 13-28. P-20

propaganda.⁶³ Ethiopia did little to compel states further downstream to engage in substantive diplomatic negotiations or to carry out thorough surveys of the Nile waters under its control.⁶⁴

2.1.HYDROLOGY

The Nile River is the longest in the world at 6650 km (3080 km in Sudan, 1400 km in Ethiopia, and 1300 km in Egypt, and the rest in the other basin states). It drains an area of 3 million km², or 10% of Africa, of which 62.7% is in Sudan, 12.1% is in Ethiopia, 9.9% is in Egypt, 7.7% is in Uganda, 3.8% is in Tanzania, 1.8% is in Kenya, and the remaining 2% is spread across the remaining riparian states. Four significant sub-basins, Sobat (Baro-Akobo-Pibor), Blue Nile (Abay), Atbara (Tekezzie), and Bahr-el Jebel (White Nile), contribute a total of 14% of the yearly flow. In all, Ethiopia contributes roughly 86% of the flow, which rises to 95% during the flood seasons.⁶⁵ Ethiopia features over 12 large swamps/wetlands, over 12 major lakes, 11 freshwater lakes, 9 saltwater lakes, 4 crater lakes, 123 BCM of yearly surface water, 70% of which is located in the Nile basin, and just 3% of the 123 BCM is retained in the country while 97% flows out as runoff.⁶⁶

East African country Ethiopia is landlocked and has a 1.13 million km² surface area. Arid and semi-arid regions make up about 67% of the area, while humid and semi-humid regions make up 33%. 85% of the population is rural and depends on agricultural methods with low crop productivity; the majority of people reside in highland regions.⁶⁷ Agriculture is the backbone of Ethiopia's economy contributing 80% of employment and 40.2% of the country's gross domestic product.⁶⁸

⁶³ Zeitoun and Warner (n 1). P-447

⁶⁴ Tadesse (n 61) P-376

⁶⁵ Salman MA Salman, 'The Grand Ethiopian Renaissance Dam: The Road to the Declaration of Principles and the Khartoum Document' (2016) 41 Water International pp 512-527. P-512

⁶⁶ Gashahun Mola Shako, 'Ethiopia Water Resources Quantitative Potentials, Management Issues and Challenges. A literature Review Article Paper' (2021) International Journal of Scientific and Research Publications, Volume 11, Issue 2, P-1

⁶⁷ Anmut Enawgaw Kassie, 'Challenges and Opportunities of Irrigation Practices in Ethiopia, A Review Challenges and Opportunities of Irrigation Practices in Ethiopia: A Review'.(2020) Journal of Engineering Research and Report P-2

⁶⁸ Dagninet Asrat and Adugnaw Anteneh, 'Cogent Food & Agriculture the Determinants of Irrigation Participation and Its Impact on the Pastoralist and Agro-Pastoralists Income in Ethiopia: A Review Study the Determinants of Irrigation Participation and Its Impact on the Pastoralist and Agro- Pas' (2019) 5 Cogent Food & Agriculture. P-2

Actual irrigated land in the country only makes up 6.2% of the 2.5 million hectares of irrigable land overall. Access to clean water is only available to 57% of the population. Only about 10% of hydropower's potential is used. There are just 40–45% of people who have access to power. The Blue Nile in Ethiopia's highest flow in August is 60 times more than its minimum runoff, yet just 0.6% of the potential large-scale irrigation has been realized, with the highly irregular flow with significant soil erosion.⁶⁹

2.2. THE EXISTING TREATY REGIME

There have been many bilateral as well as trilateral treaties and agreements that were made in the Nile basin. mention is often made of the 1891 treaty between Great Britain and Italy, the 1902 treaty between Ethiopia, Great Britain, and Sudan, the 1906 treaty between Britain & the Independent State of the Congo, the 1934 treaty between Tanganyika (British colony) and Ruanda-Urundi (Belgian colony), 1949 treaty between the United Kingdom & Egypt, 1925 Exchange of notes between England and Italy, the 1929 treaty between UK & Egypt, 1959 treaty between Egypt & Sudan and The 1993 Agreement for General Cooperation Between Ethiopia and Egypt can be mentioned. From the above agreements, the ones that need to be given focus to have a clear view of the issue at hand are the treaties that are signed by the three countries that are a signatory of the Declaration of Principles; Ethiopia, Egypt, and Sudan. they are the 1902, 1929, 1959, and 1993 treaties and agreements.

2.2.1. 1902 ANGLO-ETHIOPIAN TREATY

The Treaty is a bilateral agreement reached between Ethiopia and Britain on behalf of Sudan to define their shared border.⁷⁰ Even though the agreement is about drawing boundaries, it contains a clause relating to the waters of the Nile that states “Ethiopia shall not, without the consent of His Britannic Majesty's Government and the Government of Sudan, construct or let be built any work in the Blue Nile, Lake Tana, or the Sobat that would restrict the flow of their waters into the Nile.”

⁷¹ Ethiopia disputes it, claiming that Ethiopia did not ratify it and that Ethiopia is still permitted to use the waters and there is nothing that prohibits Ethiopia from using both Amharic and English.⁷²

⁶⁹ Ibid, P-3

⁷⁰ 1902 Anglo-Ethiopian Treaty

⁷¹ 1902 Anglo-Ethiopian Treaty article 3, and see also Mahemud Eshtu Tekuya, 'Sink or Swim: Alternatives for Unlocking the Grand Ethiopian Renaissance Dam Dispute' (2020) 59 Columbia Journal of Transnational Law 65. P-75

⁷² Salman (n 65). P-513

2.2.2. 1929 TREATY

On behalf of its holdings in Africa, notably in Sudan and other Eastern African nations, Britain accepted the bilateral agreement with Egypt. It listed two needs that have been crucial throughout the river basin's history. It first established limits on how much water Sudan may withdraw from the Nile before it entered Egypt. Second, it gave Egypt the right to deny any upstream project that it believed might have an impact on how the Nile flows. "According to the agreement, Egypt and Sudan both received "acquired rights" to the entire annual outflow, which amounts to 48 and 4 billion cubic meters, respectively."⁷³

"The relative stability that these provisions had given Egypt is at the core of the issue that is referred to as "water security." The most debated argument about water security and rights in the area continues to center on this subject."⁷⁴ The goal of these agreements was to establish power over the water of the Nile, "which would ensure the prosperity of these European powers' holdings in Africa, and to ensure that no project upstream would disturb Egypt's water supply, which was then under British authority."⁷⁵

"The Vienna Convention on Succession of States' disapproval of the doctrine of universal succession serves as the foundation for the argument that it continues to have a binding effect over the former British colonies."⁷⁶ "The Convention applies the clean slate principle in the normal cases of state succession & a distinct legal regime based on the optional theory applicable to newly independent states."⁷⁷ The mere fact that a treaty was in effect concerning the territory covered by the succession of states at the time of the succession does not obligate a state to be bound by it, openly rejected by the former colonies of Great Britain that chose not to be obligated by it. The treaty has no binding effect on Ethiopia because it was never a colony of the British Empire.⁷⁸

⁷³ Exchange of Notes Regarding the Use of Waters of the Nile for Irrigation Purposes, May 7, 1929, Egypt-U.K., 93 L.N.T.S. 43 [hereinafter 1929 Exchange of Notes]
Text available at: < <http://ocid.nacse.org/tfdd/tfdddocs/92ENG.pdf>>.

⁷⁴ Scott O McKenzie, 'Egypt's Choice: From the Nile Basin Treaty to the Cooperative Framework Agreement, an International Legal Analysis' (2012) 21 Transnat'l L. & Contemp. Probs. P-581

⁷⁵ Ibid, P-579

⁷⁶ Dereje Zeleke Mekonnen, 'From Tenuous Legal Arguments to Securitization and Benefit Sharing: Hegemonic Obstinacy – the Stumbling Block against Resolution of the Nile Waters Question' (2010) Vol. 4 Mizan Law Review No.2, P-239

⁷⁷ Ibid

⁷⁸ Dereje (n 60). P-434

2.2.3. 1959 WATERS TREATY

It was the first treaty signed by Egypt and Sudan as independent riparian states, and its goals included ensuring the complete utilization of the Nile waters left unutilized by the 1929 treaty and improving the flow of the Nile waters through several Nile Control Projects, including the Sudd el-Ali (Aswan), Rosaries dam in Sudan, the Jonglei Canal, etc.

Distribution of the Nile waters as acquired rights between Egypt and Sudan 48 BCM and 4 BCM, a 22 BCM net benefit from the Aswan dam split between Egypt and Sudan at 7.5 BCM and 14.5 BCM, respectively, and a 55.5 to 18.5 BCM split of the total Nile flow with a 10 BCM annual loss due to evaporation and leakages.⁷⁹

Their drive to complete control and exclusively exploits the Nile waters has been accurately termed as irrational. “The strange thing about it is that although being strictly bilateral, It tries to divide up the entire Nile's flow between Egypt and Sudan, disregarding the needs of any other riparian nations, including Ethiopia.”⁸⁰ The amount of "acquired rights" was consequently “subtracted from the total annual flow, and the net benefit, after another deduction of 10 billion cubic meters as a loss of over-year storage, Egypt and Sudan received 7.5 and 14.5 billion cubic meters of the 22 billion cubic meters that were to be recovered from the Sudd el Ali reservoir, respectively.”⁸¹

The main adjustment made in 1959 was to increase the water allotted to Sudan. A slight improvement over the allotment of the majority of the waters under the 1929 Treaty. Although still bilateral in character, the 1959 Treaty aimed to clarify and fortify the relationships between the nations and their approaches to the river. “It's vital to remember that the amount of water that the treaty permits for each nation is fixed as a minimum amount, as a result, the irrigation and hydropower generation plan Egypt and Sudan created will be more secure than those of other nations, that may find themselves having to share the majority of the flow in their territory during

⁷⁹ United Arab Republic and Sudan Agreement (with annexes) for Full Utilization of the Nile Waters, November 8, 1959, United Arab Republic-Sudan, 453 U.N.T.S. 6519 [hereinafter the 1959 Agreement] Text available at: <<http://ocid.nacse.org/tfdd/tfdddocs/230ENG.pdf>>

⁸⁰ Dereje (n 60). P-435

⁸¹ The 1959 Agreement, Article 2(4)

periods of low precipitation, including drought. This unfair distribution of water from the Nile assumes that upstream nations do not utilize any water.”⁸²

2.2.4. THE 1993 AGREEMENT FOR GENERAL COOPERATION

Ethiopia concluded a bilateral treaty with Egypt in 1993 after a protracted period of exclusion from any agreement relating to the waters of the Nile.⁸³ It was the first time the two states which are the biggest supplier and user, respectively, are in negotiations and came to an agreement. The agreement's primary focus, however, was on potential applications for the waters of the Nile in the future. The agreement's preamble specifies that collaboration between the two riparian contracting parties is required to realize a common economic goal.⁸⁴

The majority of the provisions in the agreement's substantive section refer to international law. For instance, it is stated in Article 4 of the agreement, that the two parties agreed that the usage of the waters of the Nile issue will be thoroughly handled by consultation and the involvement of experts from both sides, following the rules and guidelines of international law.⁸⁵ And Article 5 makes a distinctive reference to the obligation not to cause significant harm.⁸⁶

2.3. RIPARIAN COOPERATION

The fact that there is no basin-wide agreement is still an issue but there were some riparian cooperations made in the past. For better understanding, they are discussed below.

2.3.1. HYDROMET

It was a 1967 undertaking with headquarters in Entebbe, Uganda. Egypt, Sudan, Kenya, Tanzania, and Uganda were the project's founding members. But eventually, in 1971, Zaire, Ethiopia, Burundi, and Rwanda joined as observers.⁸⁷ The United Nations Development Programme

⁸² McKenzie (n 74). P-582

⁸³ Framework for general cooperation between the Arab republic of Egypt and Ethiopia, [hereafter called the 1993 agreement]

⁸⁴ The 1993 agreement preamble

⁸⁵ The 1993 agreement Article 4

⁸⁶ The 1993 agreement Article 5, reads as each side shall refrain from engaging in any Nile-related activity that may materially harm the interests of the other party. Which can be related to the principle of not causing significant harm provided under Article 7 of the UN Watercourses Convention and Article 5 of the CFA text

⁸⁷ Imiru Tamrat, 'Prospects and Problems of the Ongoing Cooperation in the Nile Basin and the Way Forward – A Personal Ethiopian Perspective', (2009) Discussion paper presented at the National Consultative Workshop held in Addis Ababa, Ethiopia, P-3

(UNDP), in response to the flood calamity, made it feasible to build the project.⁸⁸ The goal of the project was to analyze meteorological data on the Equatorial Lakes and determine what impact (if any) would such lakes have on the riparian states around the equator. And also, had planned for intergovernmental cooperation for the storage, regulation, and use of the Nile as a long-term objective. It seemed as if the need for the Nile water use for the upstream states were not the main concern but the two downstream states managed to use the Nile water through international funding. Being exclusionary in nature, its planned objectives remained unattained.⁸⁹

At this point, it is important to point out that due to the previous government's political inclinations, the majority of international organizations were not ready to listen to Ethiopia's perspective at the time. The majority of this international organization supported the two downstream states' viewpoint. As a result, neither Ethiopia nor its representatives were present at any of these meetings. Therefore, one may argue that the HYDROMET was not all-inclusive.⁹⁰

However, there was no discussion of Nile waters as a result of the HYDROMET summit. The Ethiopian delegation reportedly warned its government in its report about the political repercussions of Egypt and Sudan's involvement in the lake's region of Africa, outside of their respective political borders, because the two nations were spending time and money to demonstrate that they were the main users of the Nile waters.⁹¹

2.3.2. UNDUGU

The idea to start an unofficial group called UNDUGU, a term taken from the Swahili word, which means "brotherhood" was proposed by Egypt, and it eventually led to the creation of the first basin-wide cooperative effort in 1983.⁹² At its yearly ministerial meetings, UNDUGU's official mission was to "promote economic, technical, and scientific cooperation among the riparian states while also discussing issues including the Nile rivers, agriculture, and resource development."⁹³

⁸⁸ Wondwosen Michago Seide, 'Dividends of Cooperation: The Case of Nile River' Case studies document can be found at <https://unece.org/fileadmin/DAM/env/documents/2014/WAT/05May_22-23_Geneva/case_studies/6.3.W.Seide_Nile_River_case_study.pdf> P-1 accessed on Saturday, March 25, 2023, 4:30:35 pm

⁸⁹ Ibid

⁹⁰ Imiru (n 87). P-6

⁹¹ Teferi Mekonnen 'Ethiopia's Quest for and Efforts at Building a Nile Basin Cooperation' (2018) Vol. 51, Journal of Ethiopian Studies, pp. 67-104 P-72

⁹² Robert O. Collins, The Nile (2002), P- 224

⁹³ Ibid

UNDUGU had managed to assist in the creation of a comprehensive economic plan that included the development of water resources, it also conducted fact-finding efforts. Due chiefly to Egypt's lack of sincere commitment and its perception of the program as "an exercise in hegemonic dominance," it did not, however, result in significant and tangible riparian cooperation. On Egypt's demand, the prime priority of UNDUGU remained as, electricity generation and cooperative hydroelectric projects connecting the national electrical systems. "On the contrary, Egypt kept on developing giant irrigation and land reclamation projects without any consultations with the other riparian, which makes things not go as planned."⁹⁴ In addition, the major source state of the basin, Ethiopia has only an observer position.

2.3.3. TECCONILE

Following UNDUGU, Egypt, Rwanda, Sudan, Tanzania, Uganda, and Zaire (DRC) founded the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile (TECCONILE) in 1992, with the other riparian nations participating as observers.⁹⁵ A permanent institution for the entire basin was intended to be built after the three-year transitional phase, which is when TECCONILE was established.⁹⁶ In reality, due to its intensely technical focus, and The group's major participant, agenda-setter, and guide was Egypt important riparian nations like Ethiopia were discouraged from becoming full members. In light of this, the TECCONILE's goals were established to serve, first and foremost, the interests of the downstream nations of Egypt and Sudan and to lay aside the extremely delicate problem of the Nile waters allocation of the upper stream states, primarily Ethiopia.⁹⁷

The Nile River Action Plan stands out in this regard. Because of resource limitations and "ongoing riparian rivalry, Regional Cooperation, a piece of the Action Plan's fourth component, which called for the creation of a basin-wide framework for institutional arrangements, was never implemented." Ethiopia has contrasting feelings about providing specific feedback on the TECCONILE member states' proposal for inclusion in the action plan. Ethiopia frequently stressed throughout the meeting that creating an agreement on the proper institutional and legal framework should be the top priority. Specific project plans were not acceptable as long as there was no

⁹⁴ Dereje (n 60). P-426

⁹⁵ Ibid, P-426

⁹⁶ Imiru (n 87). P- 8.

⁹⁷ Teferi (n 91). P-79

agreement on the rights and obligations associated with the usage of the Nile basin. And doing so would entail accepting the status quo as it is in the Nile basin right now.⁹⁸

The determination of the riparian's fair entitlement to the Nile's waters was listed as a priority problem rather than as a long-term goal at Ethiopia's insistence unanimously agreed upon as a project of priority. Key accomplishments of the Nile River Action Plan, which consists of building, training, regional collaboration, environmental preservation & enhancement, and planning and development of irrigated water resources.⁹⁹

2.3.4. THE NILE BASIN INITIATIVE

In 1998, Ethiopia, Sudan, and Egypt officially started the Eastern Nile Subsidiary Action Project (ENSAP) in Dar es Salaam. To promote sustainable socio-economic development through the advantages and fair use of the water resources in the Nile basin, there existed a shared vision and a strategic action plan. Beyond just "water sharing," NBI also aimed to increase regional benefits, cooperation, and integration.¹⁰⁰ To establish enduring cooperation with co-riparian states, particularly with Egypt and Sudan, and to uphold positive relations with international organizations, which sponsored the NBI, Ethiopia changed its strategy and became an official member state of the NBI.¹⁰¹ NELSAP, the Nile Equatorial Lakes Subsidiary Action Project, includes Egypt, Sudan, and the Six White Nile riparian countries.¹⁰²

The NBI is a crucial turning point in that, while breaking from history in certain ways, also builds upon the past. Its designation as "a remarkable and fragile first step" alludes to the danger it poses as well as the leap in riparian cooperation along the Nile that it represents.¹⁰³ The Nile River Basin Strategic Action Program (NILESAC), which includes the "Shared Vision Program" (SVP) and "Subsidiary Action Program" (SAP), was adopted by the Nile Basin Initiative.¹⁰⁴

⁹⁸ Imiru (n 87). P- 8

⁹⁹ Teferi (n 91). P-10

¹⁰⁰ Wondwosen (n 88). P-2

¹⁰¹ Teferi (n 91). P-88

¹⁰² Nile Basin Initiative-Socio-economic Development and benefit Sharing Project Document, SDBS, 2001

¹⁰³ Dereje (n 60). P -428

¹⁰⁴ The "Shared Vision Program" was established to give the Nile's neighboring states a chance to discuss a shared vision for the basin's future use of the Nile's water resources. This program's environmental management, power trade, efficient water uses for agriculture, planning and management of water resources, stakeholder engagement and confidence building, applied training, socioeconomic development, and benefit sharing have been identified as the key drivers of basin-wide cooperation.

The NBI is intended to act as a temporary institutional vehicle while a permanent cooperative legal and institutional framework is being worked out.¹⁰⁵ The sustainability in pursuing socio-economic development, equitability in utilizing the Nile, acquiring benefits to the Nile basin states, and the recognition of the Nile basin as a common resource is the main shared visions of the NBI.¹⁰⁶ Egypt refused to accept the draught agreement after ten years of negotiations and referred to the 1959 water accord instead. Egypt claimed in this way that the current share of the Nile River would not be contested and that any construction upstream required Egyptian approval before implementation.¹⁰⁷

Riparian cooperation along the Nile was transformed when the essential problem of fair (re)allocation of the Nile waters was introduced into the cooperative agenda for the first time. Although it was stated earlier in 2006 that the two unresolved issues were the standing of current treaties and the protocols for planned measures “the unresolved issue that poses a formidable barrier to any advancement in Nile riparian cooperation is, in fact, the status quo as represented and reinforced by the current, primarily colonial-era treaty regime”¹⁰⁸ The NBI's main accomplishment was getting all of its members to the negotiating table. Additionally, riparian nations are highly committed and have great political will.¹⁰⁹

The most obvious issue with NBI, however, is the lack of a solid exit strategy to move the process from current accomplishments to the next level. What matters is where the NBI leaves the process at this crucial point, without putting a figure for future utilization. Moreover, there is concern about the institutional and legal framework.¹¹⁰

2.3.5. THE COOPERATIVE FRAMEWORK AGREEMENT

The other significant framework for the usage and distribution of the Nile watercourse is the Nile Basin Cooperation Framework Agreement (CFA). The riparian states' desire to establish a basin-

- The "Subsidiary Action Program" was focused on implementing the Shared Vision through collaborative development initiatives for irrigation, hydropower, drinking water, etc. on the main basin or sub-basin levels with the support of donor countries and the World Bank. See Nile Basin Initiative Secretariat, “Nile Basin Initiative: Strategic Action Program”, Addis Ababa, Ethiopia, May 2001, P-2&5.

¹⁰⁵ Imiru (n 87). P-19

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Dereje (n 60). P -428

¹⁰⁹ Wondwosen (n 88). P-2

¹¹⁰ Musa Mohammed Abseno, ‘The Nile River Basin cooperative framework agreement: contentious issues and future strategies for Ethiopia’ (2009) presented at the national consultation workshop on the Nile, P-3

wide institutional and legal framework to control the administrative use and management of the Nile River led to the CFA. Early in the 1990s, CFA negotiations started, and in 1995, the CFA Project formalized the negotiations. Except for Eritrea, all riparian Nile governments took part in the project at the time. The Nile Basin Initiative ("NBI"), a distinct but concurrent track backed by the World Bank, focused on development in the area and featured the same nine states that took part in the CFA process (the "Nile Basin States").¹¹¹ Under the supervision of the Nile Basin Initiative, the Nile's riparian nations have been actively negotiating for a cooperative framework agreement.¹¹²

The framework agreement's primary goal was to develop the Nile River's water resources to define the relationships between the various riparian governments since developments without cooperation would bring conflict between basin states. Additionally, a framework for cooperation must be agreed upon to prevent a war conflict with another nation. And that the Nile basin states' long-term sustainability depends greatly on capacity creation.¹¹³

The upstream countries perceived the CFA Project's objective as the development of a comprehensive agreement to supersede and replace the Nile Waters Treaty. Lower riparian States Egypt and Sudan recommended that the new agreement must acknowledge the previous agreements, known as "existing arrangements," which would continue to be obligatory in all riparian nations. To bond this breach, the CFA's negotiators replaced the clause describing the CFA's connection to the existing treaties, on which no consensus could be reached, with the "water security" clause. Which was formulated to be defined as the right of each riparian state of the Nile to guaranteed access to the use of the Nile water.¹¹⁴

As a result, the conflicting opinions of the upstream and downstream riparian states about the subject of equitable reallocation hampered the entire process from the start. The idea of equitable

¹¹¹ Mahemud (n 71) P-77

¹¹² Yacob Arsano, 'Negotiations for a Nile-Cooperative Framework Agreement, International Security' (2011) Study Paper 222, P-4

¹¹³ Annex 2. Minutes of the nine meetings of the Panel of Experts, Minutes of the first meeting of the Panel of Experts, Kampala, January 13-17, 1997

¹¹⁴ Girma (n 50). P-13

reallocation was primarily resisted by Egypt and, to a lesser extent, Sudan; nonetheless, they "were pushed to accept it because of the overwhelming support of the other upstream countries."¹¹⁵

The CFA intended to provide the appropriate multidisciplinary framework for legal and institutional agreements. The way it governs the relationship between the protocols and the framework itself. And the way it provides the rights and the responsibilities of the basin states consistent with the UN Convention on the non-navigational uses of international watercourses made the CFA the best framework text ever produced in the African River basin.¹¹⁶

The other point which needs to be discussed here was that Ethiopia has been expressing strong opposition to the CFA's planned measures provision, which is a reflection of its long-standing stance on the adoption. It should also be noted that Ethiopia has voiced considerable opposition to the Aswan High Dam's building without its consent. Ethiopia would therefore never consent to any restrictions on its freedom of action, especially at this moment when it is placing a high importance on its development ambitions.¹¹⁷

The provision on water security found in Article 14(b) of the draft CFA, however, was unable to find consensus among the Nile Basin States.¹¹⁸ Particularly, the lower riparian states objected to the provision in Article 14(b) by suggesting that all Nile Basin States should be required by the phrase "not to adversely affect the water security and current uses and rights of any other Nile Basin State."¹¹⁹

To obtain unequivocal acknowledgment of the colonial Nile Waters 'Treaties' legitimacy against upstream governments, the position of lower riparian states reopened the long-running conflict over them. Water security is now one of the controversial principles of the agreement under which the Nile River Basin shall be protected, used, conserved, and developed.¹²⁰

¹¹⁵ Imiru (n 87). P-13

¹¹⁶ Musa (n 110). P-4

¹¹⁷ Girma (n 50). P-10

¹¹⁸ Agreement on the Nile River Basin Cooperative Framework, opened for signature May 14, 2010, INT'L WATER L. PROJECT, text available at http://internationalwaterlaw.org/documents/regional_docs/NileRiverBasinCooperativeFramework_2010.pdf [<https://perma.cc/7X3DGGXY>] [hereinafter the CFA]

¹¹⁹ The CFA Annex on Article 14(b) to be resolved by the Nile River Basin Commission within six months of its establishment

¹²⁰ Dereje Zeleke Mekonnen 'Between the Scylla of Water Security and Charybdis of Benefit Sharing: The Nile Basin Cooperative Framework Agreement – Failed or Just Teetering on the Brink?' (2011) 1 Goettingen Journal of International Law 3, pp 345-372 P-360

CHAPTER THREE

3. THE DECLARATION OF PRINCIPLES

The Declaration of Principle is an Agreement signed by three riparian states of the Nile basin, Egypt, Ethiopia, and Sudan on The Grand Ethiopian Renaissance Dam Project (GERDP). Ethiopia has been constructing the GERD since 2011, a hydropower dam around 700km northwest of the capital Addis Ababa and 40 kilometers from the Sudanese border.¹²¹ It was signed in 2015 after long and tiresome negotiations and meetings in different states and at different times. It was recognized as major and very important because there is no basin-wide agreement among the basin states, and also between the three signatory states. In addition, there is no project or Dam that was made in the Nile basin in the upstream states, the mistrust between the states and the scarcity of the water resource seems to make things worse in this matter take the DOP a crucial document.

3.1. THE GRAND RENAISSANCE DAM PROJECT

The GERD is the first major project that was made on the Blue Nile of Ethiopia. This project is the eighth-largest dam project in the world and the largest in terms of hydropower generation in Africa. GERD is estimated to cost around 5 billion USD, it is 1,800 m long and 145m high and is envisaged to produce 6,450 megawatts of hydropower.¹²² As announced by Ethiopia currently the Dam started to generate two turbines, after the third fill of its reservoirs, by these two turbines the GERD can produce the same amount as the Gilgal Gibe and the Tana Belles hydroelectric power generated from them. The construction of the main Dam, the saddle Dam, and the turbines are 90 percent complete and it is expected to be 100 percent over in the coming 2016 of the Ethiopian calendars.¹²³

Its reservoir, a man-made lake 1874 km² in size, can hold 74 billion cubic meters of water. According to a statement made by the Ethiopian government's Ministry of Water, the hydro-electricity plan run by the GERD is planned to have a capacity of more than 6GW and a yearly estimated output of more than 15 000GW when the GERD becomes fully operational.¹²⁴ This

¹²¹ Michael Asiedu, 'Global Political Trends Center (GPoT) The Construction of the Grand Ethiopian Renaissance Dam (GERD) and Geopolitical Tension between Egypt and Ethiopia with Sudan' (2018) P-3

¹²² Ibid

¹²³ Interview with Kifle Horo: the new Project Manager of GERD; Ethiopian Broadcasting Corporation live stream on March 13, 2023, 9:30:33 pm

¹²⁴ Ibid

potential production is more than twice as powerful as Egypt's Aswan High Dam. In addition to supplying over half of Ethiopia's population, or more than 55 million people, with energy, the GERD would promote industrial growth and generate around \$1.2 billion yearly from selling the excess to surrounding nations.¹²⁵

Because disagreements over the Cooperative Framework Agreement for the Nile Basin (CFA), and the subsequent decision of Egypt to suspend its membership in the NBI, have impacted how cooperative frameworks were carried out within the context of the initiative.¹²⁶ Thus, it was not a surprise that Ethiopia moved through with the GERD's construction outside of the initiative's framework.¹²⁷

Since the project's launch on April 2, 2011, Egypt has expressed opposition to it. "The dominant status quo, which has been fostered and solidified by a century of exclusive exploitation of a common resource, is the cause of the concern."¹²⁸ Hence, Egypt's aggressive response and Ethiopia's unnecessary entry into the trap have helped the GERD to become recognized as a global issue.¹²⁹

The three riparian states began complicated discussions after the announcement of construction, which lasted for more than a decade and resulted in a political deadlock.¹³⁰ Thus, GERD is viewed as both a result of change and a driver of further change.¹³¹

3.2. THE ROAD TO THE DECLARATION OF PRINCIPLES

There was a significant outcry from the two downstream countries following the 2011 announcement of the GERD. The three nations participated in some negotiations starting in 2012 that involved dozens of experts, international organizations, and other states. Yet, the lack of

¹²⁵ Ibid.

¹²⁶ Felix Makonye 'The Grand Ethiopian Renaissance Dam (GERD) as a Solution for Sustainable Hydroelectricity Generation' (2021), Vol. 8 Journal of African Foreign Affairs, No. 2 61-74 P-71

¹²⁷ Rawia Tawfik 'The Grand Ethiopian Renaissance Dam: a benefit-sharing project in the Eastern Nile?' (2016), Water International, 41:4, 574-592, P-577

¹²⁸ <http://www.meleszenawi.com/ethiopian-pm-meles-zenawi-speech-on-launching-gerdtext-and-videos/> accessed on Saturday, April 1, 2023, 1:30:55 am

¹²⁹ Hana Attia and Mona Saleh German 'The Political Deadlock on the Grand Ethiopian Renaissance Dam' (2021) Institute of Global and Area Studies (GIGA) P-3

¹³⁰ Ibid

¹³¹ Zeray Yihdego, Alistair Rieu-Clarke & Ana Elisa Cascão 'How has the Grand Ethiopian Renaissance Dam changed the legal, political, economic and scientific dynamics in the Nile Basin?', (2016) Water International, 41:4, 503-511, P-506

appropriate legal tools to resolve transboundary water conflicts, state-centric and radical views entrenched in historical legacies, and a lack of mutual trust, and these factors have prevented an equitable and fair solution from arising.¹³²

During the ongoing impasse in September 2011, Egypt, Sudan, and Ethiopia endorsed Ethiopia's plan to create a 10-member international panel of experts, consisting of two representatives from each of the three Nile Basin countries and four others. The panel's mandate included identifying any detrimental effects of the GERD on Sudan and Egypt and making recommendations for methods to lessen those effects. The panel was created in November 2011, and it got to work right away.¹³³

The establishment of the International Panel of Experts (IPOE) in 2012, in which the three parties agree to include representatives from the three nations in addition to the foreign experts, marked the beginning of the negotiating process.¹³⁴ The intention was to ascertain the detrimental effects of GERD on the downstream nations, but because this didn't have any fundamental effects on them, the report calls for additional research to be done.

Ethiopia kept building the GERD without stopping, and on May 28, 2013, it started by diverting the Blue Nile from its normal direction of flow so that it could start building the GERD. Egypt vehemently objected to the Blue Nile's diversion and said Ethiopia should have delayed taking any significant action regarding the GERD until the release of the panel's findings.¹³⁵ After 4 years of repeated negotiations and different strategical actions, the DoP was signed by the two Presidents of Egypt and Sudan, as well as the Prime minister of Ethiopia on 25 March 2015.¹³⁶

¹³² Francesca Caruso, 'Ethiopia ' s Grand Renaissance Dam . The Law , History , Politics and Geopolitics behind Africa ' s Largest Hydropower Project' (2022) Istituto Affari Internazionali (IAI). P-1

¹³³ Attia and Saleh (n 129). P-4

¹³⁴ Ibid.

¹³⁵ <https://www.brookings.edu/blog/africa-in-focus/2020/08/05/the-controversy-over-the-grand-ethiopian-renaissance-dam/> accessed on Saturday, April 1, 2023, 2:47:13 pm

¹³⁶ The Khartoum Declaration on GERD, 'Agreement on Declaration of Principles between The Arab Republic of Egypt , The Federal Democratic Republic of Ethiopia And The Republic of the Sudan On The Grand Ethiopian Renaissance Dam Project (GERDP)' 1 text available at <<http://phe-ethiopia.org/admin/uploads/attachment-2054-Final-full-text-of-egypt-sudan-ethiopia-agreement-on-nile-use.pdf>>. [hereafter called The Dop]

3.3.THE LEGAL EFFECT OF THE DOP

The legal effect of the DoP, the first thing to be looked at is the DoP's status with international law. And to deal with this There are different types of arguments about the status, and for better understanding, it needs to be seen in detail. The first argument is that it is a soft law without any legal force.¹³⁷ This is because Declaration is a statement recognizing a universally valid principle. Unlike a convention, it is a statement of principles by which nations bind themselves under international law. Conventions are subject to ratification by the nations that are party to the convention, whereas declarations are not. So, the DoP is considered a soft law that does not have a binding effect on the parties.¹³⁸

The second argument claims that even though declarations are often thought of as "soft law," a document's title is not always a guarantee of how it will be dealt with under international law.¹³⁹ When it comes to the development of customary international law, what governments do always matter more than what they say.¹⁴⁰ It must be provided just how crucial state practice is. The focus is on the mere repetition of principles in subsequent declarations to which states give their approval. This means that for the DoP to be enforceable, Ethiopia, Sudan, and Egypt do not necessarily need to ratify it because doing so is "governed by international law." And In fact, it seems that the three states intended to be bound by the DoP based on later state practice.¹⁴¹ States have accepted that the principles reflect how they understand the declaration's duties by approving the corresponding texts. In those instances, in which it was stating words further supports the view that the states involved intended to assert binding rules of law where they used the language of firm obligation.¹⁴²

According to the third argument, the DoP is a reflection of watercourse-related customary international law. The DoP ties together the three states by endorsing current international

¹³⁷ Mahamud (n 71). P-79

¹³⁸ Ibid

¹³⁹ Ibid P-80

¹⁴⁰ Stephen M Schwebel, 'The Effect of Resolutions of the UN. General Assembly on Customary International Law (American Society of International Law), Cambridge University Press On' (1979) 73 301. P-302

¹⁴¹ Mahamud (n 71). P-81

¹⁴² Related reading of Robert Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations' (1971) Vol. 65 The American Journal of International Law, Oct., 1971, No.5 713. P-715 with the DoP: - the words stated under the DoP like the three states "respect the Technical National Committee's results," article 5 of the DoP "the three countries shall cooperate," under article 9 of the DoP and "the three countries shall take" article 4 of the DoP are examples of such statements.

customary law governing transboundary watercourses. Even if the DoP isn't legally enforceable, Ethiopia, Sudan, and Egypt must abide by the two customary rules of equitable utilization and not causing significant harm principles of international customary law.¹⁴³

We can therefore say with certainty that the DoP which Ethiopia, Sudan, and Egypt signed on the Grand Renaissance Dam is binding because the parties have expressed their willingness to be bound by it following its articles, and the countries generally behave as though it is binding. The famous case on Maritime Delimitation and Territorial Questions between Qatar and Bahrain.¹⁴⁴ By which the ICJ ruled that the impact of nomenclature or the Name doesn't matter to have a legal effect to be binding treaties. As a result, the issue of the Declarations' non-binding status as soft laws and because of the nomenclature under international law will not arise. This makes the situation more serious as a result, the DoP is legally binding. If the signatories' intentions are not sincere, this will undoubtedly have a significant impact. If the DoP doesn't appear to be fair to Ethiopia, Ethiopia is under obligation to comply with the DoP.

3.4. PROBLEMS ENTAILED BY THE SIGNING OF THE DOP

The primary challenges and issues that the DoP poses to Ethiopia are presented in this section of the thesis. Three sides of this may be viewed. The problems that are evident in the Provisions of the DoP, problems that will be viewed from the perspective of the CFA, and The Subsequent Problems will be discussed in detail.

3.4.1. INHERENT PROBLEMS

The DoP contains ten articles that express the States' willingness to collaborate. The preamble Explains how the Nile River is relevant to the three nations and doesn't appear to offer a unique viewpoint to any of them; rather, it appears to be of equal importance to all three signing governments. The first, third, fourth, and tenth articles of the DoP provide the main principles of

¹⁴³ Mahamud (n 71). P-82.

¹⁴⁴ The court's ruling on the maritime delimitation and territory disputes between Qatar and Bahrain was made public on July 1, 1994. The court determined that the "Minutes" agreement signed in Doha in December 1990 and the letters exchanged in December 1987 between the Amirs of Qatar and Bahrain and the King of Saudi Arabia each constituted international agreements that conferred rights and obligations on the Parties. It further determined that, by virtue of the language of those agreements, the Parties had consented for the court to be informed of every detail of their disagreement." See *Qatar v Bahrain (1994) ICJ case concerning Maritime Delimitation and Territorial Questions*. <https://www.icj-cij.org/case/87> accessed on Wednesday, April 5, 2023 10:13:23 pm

the international water law that are included in articles 8,5,7, and 33 respectively under the 1997 UN watercourse convention.

For convenience purposes, it is better to see each article in the DoP one by one. The first article which is about the principle of cooperation provides: “To cooperate based on common understanding, mutual benefit, good faith, win-win, and principles of international law. And to cooperate in understanding upstream and downstream water needs in its various aspects.”¹⁴⁵ This article states that the signing states must cooperate for the benefit of all parties, which is convenient and may be interpreted as recognizing the states' equality. However, when we look at subparagraph two of this article, says that the states must cooperate "in various aspects," which is ambiguous and very open to interpretation because it provides a pathway for the downstream states to bring up issues like the scarcity of water, their irrigation, and their new industry projects to be taken into account by arguing as if it is their lifestyle and a crucial water need. And also, the fact that there is no clear-cut definition provided for it would make it difficult to have a threshold as to what constitutes “various aspects” or not. This would affect Ethiopia’s interest if not interpreted narrowly since they have a reputation for wanting to conserve every last drop of water from the Nile, the Egyptians consume more water than they should for they are accustomed to using it in a variety of ways.¹⁴⁶

The second article is the “Principle of Development, Regional Integration, and Sustainability which provides: the purpose of the Grand Renaissance Dam is to the generation of sustainable and reliable clean energy supply.”¹⁴⁷

The problem which can be seen from this article is that the GERD was started in 2011 and the DoP was signed in 2015, which was after 4 years. Ethiopia declared the construction of the GERD was for hydroelectric generating purposes before agreeing with the downstream states. Thus, it could be understood as the inclusion of the purpose of the GERD in the provisions of the DoP has other purposes which could be interpreted as the downstream states agreed on the GERD only because it is for hydropower generation. Which would send back the water to the downstream states without minimization of the water, and they would not agree otherwise. In addition to this,

¹⁴⁵ The DoP Article 1

¹⁴⁶ Endalcachew Bayeh, ‘Agreement on Declaration of Principles on the Grand Ethiopian Renaissance Dam Project: A Reaffirmation of the 1929 and 1959 Agreements?’ (2016) Arts and Social Sciences Journal 7:2, P-2

¹⁴⁷ The DoP Article 2

the absence of the phrase "major purpose" may be interpreted as meaning that other additional purposes, such as fishing, small-scale irrigation projects, and tree-planting to mitigate soil erosion will have their own risk.¹⁴⁸

The Third article is Principle Equitable and Reasonable Utilization.¹⁴⁹ It could be applied in a way that the upstream states may benefit from because it recognizes not only the existing uses of the basin but also the potential uses as well. This article is copied verbatim from the UN watercourse convention article 6. By which the factors listed are not an exhaustive list and do not have any priority given for the factors.¹⁵⁰ but under its listed factors sub (a) provides: "Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character"¹⁵¹ Egypt's lack of water resources, the desert places they have, the climate conditions like little rain, and these factors together will result in favorable conditions for forcing Ethiopia to compromise its interests to utilize the natural resource if not interpreted narrowly. Because Egypt has been arguing as if Ethiopia has an abundant source of rainfall to minimize the equitable use of the country which needs to be considered carefully.

The other important point which should be discussed here is that under this article the signatory states need to have an equitable allocation of water use among themselves. Which in the current scenario could be referred to as reallocation, because the allocation of the Nile was distributed only to the downstream states.¹⁵² And in this case, the reallocation could be taken as significant harm. Which needs to be interpreted narrowly.

Article 4 of the DoP provides the "Principle of Not to Cause Significant Harm; The Three Countries shall take all appropriate measures to prevent the causing of significant harm in utilizing the Blue/Main Nile"¹⁵³ but under sub-2, the provision does not expressly connect severe harm to the principle of equity, unlike Article 5 of the CFA and Article 7 of the UN Watercourses

¹⁴⁸ Minga Negash, Seid Hassan, Mammo Muchie and Abu Girma 'Perspectives on the Declaration of Principles regarding the Grand Ethiopian Renaissance Dam' P-2

¹⁴⁹ The DoP Article 3

¹⁵⁰ Text that the International Law Commission endorsed at its 46th session in 1994 and delivered to the General Assembly as part of the Commission's report outlining the work of that session (at para. 222). The report can be found in Yearbook of the International Law Commission, 1994, vol. II, part 2 together with commentary on the draft articles. P-101

¹⁵¹ The DoP Article 3(a)

¹⁵² Dereje (n 10). P- 272

¹⁵³ The DoP Article 4

Agreement. This raises the issue of how similar-topic provisions should be handled. The ILC made the following note in this regard: It is a commonly acknowledged principle that when many standards bear on a single issue, they should, to the extent practicable, be read to give rise to a single set of compatible responsibilities.¹⁵⁴ And the reference to the Principle of Equitable and Reasonable Utilization would function as a key determinant of the prohibited harm category being under the scope of the principle.¹⁵⁵

This leads, as a result, to the line between harm causing factual injury and harm causing legal injury becoming blurred. Since any harm would inevitably be deemed serious and forbidden due to factual considerations, the unworkable status quo would be made legal by forbidding any upstream consumption and becoming justified.¹⁵⁶ then the adjustment of this principle on the DoP can be considered intentional and a way to keep the status quo maintained.

Furthermore, it is still unclear whether structural issues with the Dam or genuine natural disasters constitute serious harm according to the DoP. In addition, this article uses the terms "the Blue Nile/Main River," which are also ambiguous as to whether they refer to tributaries to the Blue Nile or not.

Article 5 of the DOP provides the "Principle to Cooperate on the First Filling and Operation of the Dam; To implement the recommendations of the International Panel of Experts (IPOE), respect the outcomes of the Technical National Committee (TNC) Final Report on the joint studies recommended in the IPOE Final Report throughout the different phases of the project."¹⁵⁷ A significant problem occurs in this Provision; thus, it is important to interpret it carefully to avoid misunderstandings. The downstream states have realized that the Dam is operating and that there is nothing they can do to halt the process. However, subparagraph (2) states that "The three nations will use the final results of the joint studies, to be completed following the recommendations of the IPOE Report and agreed upon by the TNC."¹⁵⁸

¹⁵⁴ Zeray Yihdego and Alistair Rieu-Clarke, 'An Exploration of Fairness in International Law through the Blue Nile and GERD' (2016) 41 *Water International* 528. P-541

¹⁵⁵ Dereje (n 10). P- 272

¹⁵⁶ Ibid

¹⁵⁷ The DoP Article 5

¹⁵⁸ The DoP Article 5(2)

This provision of the DoP certifies that the GERD, which is a unilateral national project funded only by the government of Ethiopia and the people of the country, is open for trilateral negotiations and the filling process. This clause demonstrates the degradation of Ethiopians' ownership rights. This is because the agreement requires the dam to be managed jointly by the three nations.¹⁵⁹ Because there is no agreement on Ethiopia's use of the water, no basin-wide agreement, and both Ethiopia nor the other two countries have not signed the UN watercourse convention, Ethiopia's agreement to limit the filling of the water on the Dam in its reservoirs is unnecessary. and in no way could building GERD could have been considered to be a significant harm. What if the nations do not agree on the report of the Technical National Committee (TNC), this is another problem, The DoP doesn't offer a solution. This issue has arisen after the DoP was signed, and according to the TNC's analyses, the three nations don't appear to be able to reach an agreement. Even though There is nothing in the DoP that prevents Ethiopia from unilaterally filling the Dam in the event of a disagreement, the downstream states are still referring to this article for the suspension of the GERD. Hence, this article could be used as evidence to show the Inherent problems of the DoP's provisions Ethiopia is facing.

Article 6 of the DoP states that “Priority will be given to downstream countries to purchase power generated from GERD”,¹⁶⁰ However, this article lacks the word "when" and doesn't even have parameters or requirements for giving priority, which could be a problem in future cases because the downstream states may come up with an idea as a result of the obligation to sell the power to them without even fulfilling the countries' needs.¹⁶¹ And this article can also be seen in the way that Ethiopia gives the downstream countries this benefit without a justification regardless of receiving anything in return from them. Additionally, this can be read as Ethiopia giving priority to them because they are prepared to compromise their historical right to use the Nile's water, which they are not, and do not have the legal right to use the Nile alone.

Article 7, of the DoP provides the principle of exchange of data and information by requiring the states to act in good faith and supply all data and information that are necessary for the TNC joint

¹⁵⁹ Endalcachew (146) P-2

¹⁶⁰ The DoP Article 6

¹⁶¹ Minga & Seid (n 148). P-5

study.¹⁶² This principle is not objectionable as it is provided in the UN Watercourse Convention and the CFA.

Article 8 of the DoP provides: The three nations congratulate Ethiopia for its current implementation of the IPoE recommendations related to GERD safety.¹⁶³ This article seems fair because the safety of the Dam is crucial to all three countries.

Article 9 of the DoP provides: “the Principle of Sovereignty and Territorial Integrity.”¹⁶⁴ which must be interpreted broadly.¹⁶⁵ and the last article which is article 10 of the DoP provides the “Principle of Peaceful Settlement of Disputes”,¹⁶⁶ which can be taken as important for the three countries so it doesn’t seem to have a problem.

3.4.2. PROBLEMS VIS-À-VIS THE CFA

The CFA was a very crucial instrument that was aimed at bringing the equitable utilization of the Nile basin. Even though 6 states signed, 4 only ratified but still 2 ratification is needed.¹⁶⁷ The two downstream states Egypt and Sudan proposed an amendment to article 14 (b) which would change the word “significant” to the word “adversely” and the word “current use of The Nile” to be added to reduce the level of equitable utilization. On the other hand, the DoP doesn’t refer to the CFA in any way, which is recognized by most of the Nile basin states as aiming to assure equitable utilization in the basin. Ethiopia was one of the countries that were active participants in the CFA and one of the upstream states which signed the CFA before starting to build the GERD.

Even though Egypt tried to stop the GERD from being built, it was impossible, so they came up with a new way which is limiting the upstream state Ethiopia to use the water for only hydropower

¹⁶² The DoP Article 7

¹⁶³ The DoP Article 8

¹⁶⁴ The DoP Article 9

¹⁶⁵ For instance, the proclamation warns Ethiopia to proceed with extreme caution or risk having to pay Egypt compensation for any harm the usage of Nile water may cause. As Minga wrote the agreement also includes tributaries of Blue Nile within its ambit. This is against the power of Ethiopia over the natural resources found in its territory. The fact that the declaration gives the downstream states control over how the dam is operated also appears to be abandoning Ethiopian control over its own national project. See Endalcachew (n 146) P-3

¹⁶⁶ The DoP Article 10

¹⁶⁷ CFA is subject to ratification and 6 states Ethiopia, Kenya, Tanzania and Uganda signed in May 14, 2010. Kenya signed in May 19, 2010 and Burundi signed in February in 2011. but 2 states Kenya and Burundi did not ratify it. This means that still 2 states are required to ratify it and will be deposited to African union after 6 months it will enter in to force. See <https://nilebasin.org/index.php/81-nbi/73-cooperative-framework-agreement> accessed on Tuesday, April 11, 2023, 10:10:25 pm

under the DoP, which The GERD would have marked the beginning of a counter-hegemonic method by bringing cooperation between the Nile basin countries through the CFA. However, the DoP institutionalizes the existing status quo, because this will become the law that Ethiopia must abide by.¹⁶⁸

The DoP came along and provided the fact that the downstream states still have the hydro hegemony and can still come up with different kinds of strategies and ways to solve the occurred problems faced in the Nile. The CFA, which could have been a very impressive way of solving the long-standing and ongoing Nile basin problems for good, could have done so by applying pressure to the downstream states to achieve a win-win situation for all basin riparian states.¹⁶⁹ So, the DoP poses an obstacle to the CFA's fate.

3.4.3. SUBSEQUENT PROBLEMS

Following the signing of the DoP, the three nations had not reached an understanding regarding the Dam's long-term operation and coordination mechanism, as required by the DoP's articles. Ethiopia moved forward with the initial filling despite there being no prior agreement. Because of this, the downstream states started to act as a victim and claim the international society for Ethiopia to stop the unilateral filling of the Dam.¹⁷⁰

Due to this, the US government sends a warning to Ethiopia, stating that “In Consistent with the principles outlined in the DoP, and in particular, to the principle of not causing significant harm to downstream countries, final testing and filling should not take place without an agreement.”¹⁷¹ Additionally, the Sudanese foreign minister reportedly said that “Ethiopians instance on such unilateral move represents a violation of international law.” Moreover, “the Ethiopian intransigence requires Sudan to consider all possible options to protect its security and citizens”.¹⁷²

¹⁶⁸ Dereje (n 10). P-273

¹⁶⁹ Ibid

¹⁷⁰ Ethiopia announced that the second filling of the dam's reservoir, which will bring the total storage capacity to 4.9 billion cubic meters, will be finished in July 2021 while the GERD was still under construction. The reservoir can hold 13.5 billion cubic meters of water. Ethiopia declared in February 2022 the reservoir held 13.5BCM water making the dam would be partially operational through limited energy production, and the third filling began in July of that same year bringing the volume of water in the reservoir approximately to 22BCM.

see <https://ethiopianmonitor.com/2022/08/12/third-round-filling-of-gerd-reservoir-complete/> accessed on Tuesday, April 18, 2023, 11:43:7 pm

¹⁷¹ Us department of treasury

¹⁷² <https://english.alarabiya.net/News/middle-east/2021/04/06/Latest-round-of-three-way-talks-over-Ethiopian-dam-fail-in-Kinshasa-says-Egypt/> accessed on Friday, April 21, 2023 12:44:32 pm

Then, Egypt's president said, "There will be inconceivable instability in the region if Egypt's water supply were affected by the Dam."¹⁷³ Even while the downstream governments are inquiring about what the DoP does not offer, we can still see that if Ethiopia had not signed the DoP, all of the pressure on political, economic, and diplomatic concerns might not have become any worse. This may be interpreted as demonstrating how the downstream states use the DoP as a tool or a new strategy to keep the hydro-hegemony.

Ethiopia's action to fill the dam unilaterally without consulting Egypt or Sudan showed that the DoP, rather than resolving the conflict due to the variety of interpretations of its contents, has created new trouble. It became one of the key reasons why negotiations stalled out rather than a legally binding agreement.¹⁷⁴

After the DoP, The GERD Negotiations are a manifestation of all sorts of coercion, as the tactic of forcing a state to accept a contract against its will. Through Egypt's repeated warnings to use all necessary means to safeguard Egypt's interest in the Nile Water, there was military coercion (in the form of threats). Beyond threatening to use force, Egypt is working to increase its military power every year.¹⁷⁵

The overall problems of the signing of the DoP could be generalized as the principles stated under the DoP are principles of customary international law and the principles which are stated under the UN watercourse convention with a bit of modification. This could be seen as the declaration aims at holding another purpose, which is providing detailed yet vague procedures for the use of the GERD which can be open for interpretation and can in some cases hold Ethiopia liable, and restrict the power of the GERD which had a great power to change the long-standing and inequitable utilization of the basin, by which Ethiopia was not obliged to agree to build the Dam.

This is because after Ethiopia's unexpected announcement of the GERD, the unbalanced power that Egypt had in the basin was lost for a while, then Egypt managed to come up with a new

¹⁷³ Ibid.

¹⁷⁴ Caruso (n 132) P-8

¹⁷⁵ Dejene Yemane Messele 'The Mystery of the GERD Negotiations: From Coercion to Obligation of Treaty Conclusion' (2021) Vol. 15 Mizan Law Review, No. 2 P-527

approach to maintain its dominance in the basin.¹⁷⁶ And the DoP is the new strategy that Egypt used to return the hegemony.

The other issue here is that even if Egypt has to accept the GERD as a fact, they made pressure on Ethiopia which was building the hydroelectric Dam to an agreement. And Ethiopia's action to the Egyptian pressure to agree on GERD makes things worse by giving Egypt the right that they don't have in the first place.¹⁷⁷ the DoP is still not clear about the future utilization of the Nile Basin because it is an agreement on a project, the whole basin states particularly the three countries will still face problems while the use of future further projects on the natural resource.

On the other hand, Ethiopia's decision to begin filling the GERD without first reaching an agreement with the countries downstream does not establish a violation of international law. None of the DoP's provisions or any other international law imposes such a requirement on Ethiopia. Also, there are no factual or legal disputes related to the construction and operation of the Ethiopian dam.¹⁷⁸

Thus, the DoP cannot be viewed as a success; rather, it was a trap, as the Egyptian President, after the agreement said "You will develop and grow and I am with you, but be aware that in Egypt the people live only on the water that comes from this river." And also adds "For Egyptian farmers, the issue of Nile is a matter of life and death and not a choice of livelihood."¹⁷⁹ We can understand that the intention was not only to cooperate but has its aim in influencing the utilization of the Nile basin.

3.5. THE LEGAL IMPLICATIONS OF THE DOP

The above evaluation of the DoP is done to come to this point which provides the implication of the DoP, which is referred to as a step forward for the countries who have signed it. To have a clear idea of the implications of the DoP concerning the past agreements on the basin, future utilizations of the Nile basin, and the CFA will be discussed.

¹⁷⁶ Ibid P-530

¹⁷⁷ <https://addisstandard.com/commentary-the-2015-declaration-of-principles-is-not-a-treaty-and-ethiopia-does-not-have-obligations-therefrom/> accessed on Friday, April 21, 2023 11:13:18 pm

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

The DoP could not be interpreted as if it suspends treaties that were made before, in which case Egypt and Sudan relied. This could be supported by the fact that after the DoP was signed Egypt's foreign affairs said "It will not affect historical agreements and the water share allocated in those existing treaties."¹⁸⁰ Consequently, the absence of explicit rules for managing past treaties gives the implication that the downstream countries don't have any willingness to give up the status quo. Hence, they are still trying to institutionalize and strategize the way by which the downstream states can make use of the Nile basin alone. By making pressure on Ethiopia which is building the GERD to come to sign the DoP after a long-standing cry for help is clear evidence that the downstream states don't seem to agree ever for equitable utilization.

On the other hand, the CFA was an effort to reach a basin-wide agreement, and Ethiopia's decision to go and sign an agreement with the two states that have been protesting against the CFA for refusing to come together for utilization is the other implication that the DoP is not an agreement that supports the decade-long work that was done by the Nile basin states, including Ethiopia. It advocates that Ethiopia is similar to the other two who are unwilling to work together with the other basin riparian states to find a solution to the basin's problems. It also implies that Ethiopia is undermining the CFA to the point where the country no longer has faith in the organization to resolve problems that arise on its projects. The impact has been described as follows: -

"The rejection of the CFA portends a much more severe issue the rejection of international water law as the proper legal framework for resolving the Nile River dispute. As a result, reaching an agreement with two riparian states that are opposed to the CFA and show no signs of softening does not promise well for the CFA and weakens the shared upstream position against the status quo that has been painstakingly developed over time under the leadership of Ethiopia."¹⁸¹

The DoP's implications for Ethiopia or the upstream states' use of Nile water in the future are another matter that needs to be addressed in this context. The GERD is designed for a distinctive non-consumptive claim of power generation that does not embrace a reduction in flow. Ethiopia's decision to sign the DoP may suggest that the nation is required to abide by the project-specific agreements. Even though the nation is not required to inform the states downstream, this move

¹⁸⁰ Endalcachew, (n 146), P-3

¹⁸¹ Dereje (n 10). P-273

may suggest that Ethiopia is required to communicate with them and reach an understanding regarding future Nile exploitation projects. The generation of energy for non-consumptive uses cannot be limited to Ethiopia's undeniable sovereign right to an equitable suitable use of the Nile, to which it supplies 86% of the yearly flow. Every agreement should take into account the unavoidable loss in the Nile's flow caused by consumptive use upstream because it is firmly established in international law.¹⁸² Not only that but also as discussed before in chapter 2 of this thesis even though Ethiopia frequently pointed out throughout the TECCONILE meeting that creating an agreement on the proper institutional and legal framework should be the top priority. Specific project plans were not acceptable as long as there was no agreement on the rights and obligations associated with the usage of the Nile basin. And doing so would entail accepting the status quo as it is in the Nile basin right now.¹⁸³ But yet went back and make a deal that could be taken as proof for signing an agreement on a specific project which will imply accepting the status quo.

As a result, one should question why Ethiopia would sign an agreement of this type when the nation is not legally required to do so to reach agreements with other nations to use the Nile's water. This is because there is no basin-wide agreement on the basin, which Egypt and Sudan have opposed, and there is no past legal treaty that obligates Ethiopia to come to such agreements. Thus, the declaration of principle can be seen as the Ethiopian government's willingness to work with the rest of the world, especially with the US, which can be taken as a measure to gain international acceptance of the government. which is a political advantage that is used not to keep the countries' interests but only for the government that concluded the agreement.

To make things clear even after Ethiopia signed DoP Egypt was not satisfied by only limiting the GERD to hydropower generation, so started to claim an agreement to suspend the project at the international level. Hence, even if Ethiopia's government aimed at acquiring political interest, by gaining international acceptance but the pressure is still at hand. The three States did not work together to bring the GERD as a reality. Second, before the GERD project is launched, there is no prior trilateral or basin-wide agreement that can oblige to have the GERD discussions. It should

¹⁸² Ibid.

¹⁸³ Imiru (n 87). P-10

be highlighted that even the 2015 Declaration of Principles does not impose an obligation on Ethiopia to engage in negotiations.¹⁸⁴ But still, the pressure is on Ethiopia.

It also has a diplomatic implication that the Ethiopian by signing the DoP have proven the fact that they are willing to work together with the downstream states on a project basis. Which could be good at first sight without being seen in detail. But having a closer look, the CFA which could be considered a very step forward in the fairness and equitable use of the Nile was not in force. Because the two countries Egypt and Sudan are not willing to cooperate, raising the issue of the past treaties. This shows us that the downstream countries are not and will never be in a position to accept the equitable utilization of the upstream states. In Ethiopia's context willing to work with them is impossible and they are just providing a better strategy and ways to make the DoP a precedent for further negotiations and agreements.

When we see the Economic value of the GERD, the reservoirs could have been filled within 2 years. But because of DoP, the filling process is open for negotiations and agreements. As a result, the TNC has come up with a 5-10 years period for filling. To make things worse the DoP doesn't even include the compensation for the lost opportunities or economic values so as for Ethiopia to ask for the lost probable economic gain.¹⁸⁵ This costs Ethiopia a huge amount of Money.¹⁸⁶ So, the main reason that the Ethiopian government signed the declaration of principle which in any way Ethiopia will not benefit from was signed for political reasons and not for legal or economic benefit. And it can be said that Ethiopia should have not signed the DoP just to get the political benefits of signing it without considering the undesired outcome.

When some Egyptian experts claim that Egypt is destined to lose from this agreement since it does not address Egypt's historical rights in the Nile waters and because it does not assure that there will be no decline due to the vast storage capacity of the GERD.¹⁸⁷ This is not a fact because this declaration is their new strategy of them to make a new way to keep the status quo in a precedent manner. The political environment of today and the historical relationships in the Nile basin are

¹⁸⁴ Dereje (n 10). P-273

¹⁸⁵ Ethiopia filled the reservoirs of GERD within 2 years then the estimated benefit that Ethiopia would get will be 1.2 billion USD every year for the lost minimum of 3-5 years. See supra note, 123

¹⁸⁶ supra note, 123

¹⁸⁷ Rawia Tawfik, 'The Declaration of Principles on Ethiopia's Renaissance Dam: A breakthrough or another unfair deal?' (2015) German Development Institute P-2

essential considerations when evaluating the Declaration. The power dynamic in the Nile basin has shifted in Ethiopia's favor over the past ten years. And a government that cares for the country's interest from an independent upstream nation, would not sign the trilateral Agreement that is so unbalanced and dangerous. Hence, Ethiopia suffered a loss as a result of taking an uncalculated risk by signing the DOP, without receiving any benefits from it, and it is not even provided with a way out.

Conclusion

In conclusion, Ethiopia is adversely affected by the declaration of principle because the declaration included clauses regarding compensation for damages, the reformation of article 4 which have another intention, and other above-listed problems that makes the downstream states to be more favored. Egypt must not be let to fragment and preserve its dominance by weakening the established regional cooperation framework. The three countries do not agree on the filling process, which is stated under Article 5 of the DOP and it does not have a way out in case of disagreement in the filling process. Hence, the effect of the DOP in Ethiopia is a setback and is still causing issues; it doesn't appear that it will soon be able to be resolved. Making matters worse, the GERD is almost complete, which will make things tight and severe. A natural disaster like a drought or a lack of rainfall in any place will make things extremely unlikely.

The DOP is a loss in a way that it made possible a purely national project subject to trilateral negotiations, it was an exclusive project of Ethiopia, which was made open for trilateral negotiation without gaining anything. So, the DOP is a strategic mixer against the National Interest of Ethiopia, and diplomatic image among the Nile riparian states. The fact that needs to be clear here is that they reject justice, equity, and fairness. Despite this, they were still able to come to an agreement with Ethiopia, this has much more meaning and implication that Ethiopia is the same as the two states.¹⁸⁸

The principle dictating the purpose of the Dam will set a very dangerous precedent of negotiation and agreement on a project-by-project basis and not the usual way of water agreement, which will not be an international water utilization agreement, which helps Egypt to make a separate move to every single upstream state. The combined and collaborated way of the upstream states will be of much strength and would have more power to over through the hydro-hegemony of Egypt on the Nile. finally, the three states didn't come to an agreement on the filling and seemed as if they are frozen, Ethiopia might not get away easily from the consequence of the DOP. The only reason that could be seen from it is the political perspective of the regime.

¹⁸⁸ Dereje (n 10) P-273

Recommendation

I suggest that this problem happened to Ethiopia because of the need for political gain over economic one, to get out of this, Ethiopia should stick with not signing an agreement on the filling of the Dam. and also, Ethiopia should finish the construction of the Dam as much sooner as possible. In addition, get through with the filling of the reservoirs. This could mitigate the loss of Ethiopia's rights. If there is an agreement on the years, drought minimization, and the dispute settlement mechanism then the efforts that were made in the building of GERD may not be disowned. In addition, the interest of the downstream states must be inconsiderate whenever concluding any agreement, so that Ethiopia could have secured rights to use the Nile equitably.

Other related recommendations could be

- There should be national discussions and consensus must be reached on the national interest that the country must follow regarding the Nile basin before concluding any treaty or agreement that affects the national interest.
- Ethiopia should take the declaration of principle as a lesson and be cautious of the interest and intentions of the downstream states while concluding agreements and be careful not to undermine Ethiopia's national interests during water negotiations.
- Future negotiations on the Nile Basin are better to be formed on the admirable Nile Basin Cooperative Agreement, which should be the basis, and by not signing any agreement Ethiopia could gain the lost trust by the back deal;
- Ethiopia needs to not sign project-based agreements for a further deal on the Nile or even in any other project;
- In Ethiopia, all political parties should refrain from utilizing the Nile's shared waters for self-serving purposes;
- The legal effects and legal implications should be taken into account in concluding future agreements.
- Persuading the international community that If Ethiopia doesn't use its water resources properly, the country will suffer from frequent droughts due to climate change. and making sure that utilizing the Nile is the best way to get rid of floods and famine.

BIBLIOGRAPHY

Books

- Collins, R. *The Nile* (2002).
- Gleick, P. 'Water, and Conflict: Fresh Water Resources and International Security' (1993) 79.
- Mccaffrey, S. 'The UN Convention on the Law of the Non-Navigational Uses of International Watercourses: Prospects and Pitfalls' (1998) 2 World Bank Technical Paper 17.
- Salman, S. 'The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: Perspectives on International the Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: Perspectives on International Water Law' (2007) 625-640.

Articles, Journals, and Publications

- Abiy Chelkeba, 'The Influence of the UN Watercourses Convention on the Development of the Nile River Basin Cooperative Framework Agreement (CFA)' (2018) Vol. 12 Mizan Law Review, No.1.
- Anmut Enawgaw, 'Challenges and Opportunities of Irrigation Practices in Ethiopia, A Review Challenges and Opportunities of Irrigation Practices in Ethiopia: A Review'. (2020) Journal of Engineering Research and Report.
- Attia, H. and German, M. 'The Political Deadlock on the Grand Ethiopian Renaissance Dam' (2021) Institute of Global and Area Studies (GIGA).
- Caruso, F. 'Ethiopia's Grand Renaissance Dam. The Law, History, Politics, and Geopolitics behind Africa's Largest Hydropower Project' (2022) Istituto Affari Internazionali (IAI).
- Cascão, A. 'Ethiopia-Challenges to Egyptian Hegemony in the Nile Basin' (2008) 10 Water Policy supplementary 2 pp 13-28.
- Cascão, A. and Nicol, A. 'GERD: New Norms of Cooperation in the Nile Basin?' (2016) 41 Water International 550.
- Correia, F. and Silva, J. 'International framework for the management of transboundary water resources' (1999), Volume 24, Water International Number 2, Pages 86-94.
- Dagninet Asrat and Adugnaw Anteneh, 'Cogent Food & Agriculture the Determinants of Irrigation Participation and Its Impact on the Pastoralist and Agro-Pastoralists Income in

Ethiopia: A Review Study the Determinants of Irrigation Participation and Its Impact on the Pastoralist and Agro- Pas' (2019) 5 Cogent Food & Agriculture.

- Dejene Yemane, 'The Mystery of the GERD Negotiations: From Coercion to Obligation of Treaty Conclusion' (2021) Vol. 15 Mizan Law Review, No. 2.
- Dellapenna, J. 'The Berlin Rules on Water Resources: The New Paradigm for International Water Law' (2006) World Environmental and Water Resource Congress.
- Dereje Zeleke, 'Between the Scylla of Water Security and Charybdis of Benefit Sharing: The Nile Basin Cooperative Framework Agreement – Failed or Just Teetering on the Brink?' (2011) 1 Goettingen Journal of International Law 3, pp 345-372.
- Dereje Zeleke, 'Declaration of Principles on the Grand Ethiopian Renaissance Dam: Some Issues of Concern' (2018) 11 Mizan Law Review.
- Dereje Zeleke, 'From Tenuous Legal Arguments to Securitization and Benefit Sharing: Hegemonic Obstinacy – the Stumbling Block against Resolution of the Nile Waters Question' (2010) Vol. 4 Mizan Law Review No 2.
- Dereje Zeleke, 'The Nile Basin Cooperative Framework Agreement Negotiations and the Adoption of a "water Security" Paradigm: Flight into Obscurity or a Logical Cul-de-Sac?' (2010) 21 European Journal of International Law pp 421-440.
- Doria, M. and Koberwein, F. 'The principle of cooperation in the law of international Watercourses' (2008) a thesis submitted in fulfillment of the requirements for the degree of Doctor of Philosophy University of London.
- Endalcachew Bayeh, 'Agreement on Declaration of Principles on the Grand Ethiopian Renaissance Dam Project: A Reaffirmation of the 1929 and 1959 Agreements?' (2016) Arts and Social Sciences Journal 7:2.
- Gashahun Mola, 'Ethiopia Water Resources Quantitative Potentials, Management Issues and Challenges. A Literature Review Article Paper' (2021) Volume 11, International Journal of Scientific and Research Publications, Issue 2.
- Mahmud Eshtu, 'Sink or Swim: Alternatives for Unlocking the Grand Ethiopian Renaissance Dam Dispute' (2020) 59 Columbia Journal of Transnational Law 65.
- Makonye, F. 'The Grand Ethiopian Renaissance Dam (GERD) as a Solution for Sustainable Hydroelectricity Generation' Journal of African Foreign Affairs, (2021), Vol. 8, No. 2 61-74.

- Mccaffrey, S. and Sinjela, M. 'The 1997 United Nations Convention on International Watercourses' (1998) Vol. 92 American Society of International Law, pp 97-107.
- McIntyre, O. 'Utilization of Shared International Freshwater Resources - The Meaning and Role of "Equity" in International Water Law' (2013) 38 Water International, pp 112-129.
- McKenzie, S. 'Egypt's Choice: From the Nile Basin Treaty to the Cooperative Framework Agreement, an International Legal Analysis (2012) 21 Transnat'l L. & Contemp. Probs.
- Minga Negash, Seid Hassan, Mammo Muchie and Abu Girma, 'Perspectives on the Declaration of Principles regarding the Grand Ethiopian Renaissance Dam.
- Nunzio, J. 'Conflict on the Nile: The future of transboundary water disputes over the world's longest river' (2013) Future directions international.
- Rahaman, M. 'Principles of International Water Law: Creating Effective Transboundary Water Resources Management' (2009) 1 International Journal of Sustainable Society 207-223.
- Rosenstock, R. 'The Declaration of Principles of International Law Concerning Friendly Relations: The American Journal of International Law, (1971) Vol 65, No. 5, 713.
- Salman, M. 'The Grand Ethiopian Renaissance Dam: The Road to the Declaration of Principles and the Khartoum Document' (2016) 41 Water International pp 512-527.
- Schwebel, S. 'The Effect of Resolutions of the UN. General Assembly on Customary International Law' (1979) 73 American Society of International Law, Cambridge University Press 301.
- Tadesse Kassa, 'The Grand Ethiopian Renaissance Dam and Ethiopia's Succession in Hydro-legal Prominence: A Script in Legal History of Diplomatic Confront (1957-2013)' (2015) Vol. 9, Mizan Law Review, No.2.
- Tanzi, A. 'The UN convention on international watercourses as a framework for the avoidance of settlement of water law disputes' (1998) 11 Leiden Journal of International Law, pp 441-472.
- Tawfik, R. 'The Declaration of Principles on Ethiopia's Renaissance Dam: A breakthrough or another unfair deal?' (2015) German Development Institute.
- Tawfik, R. 'The Grand Ethiopian Renaissance Dam: a benefit-sharing project in the Eastern Nile?' (2016), Water International, 41:4, 574-592.

- Teclaff, L. 'Evolution of the River Basin Concept in National and International Water Law' (1996) 36 Natural Resources Journal 359-391.
- Teferi Mekonnen, 'Ethiopia's Quest for and Efforts at Building a Nile Basin Cooperation' (2018) Vol. 51 Journal of Ethiopian Studies, pp. 67-104.
- United Nations Economic Commission for Africa, 'Transboundary River, Lake Basin, and Water Development in Africa: Prospects, Problems, and Achievements' (2000).
- Wolf, A. 'Criteria for Equitable Allocations: The Heart of International Water Conflict' (1999) 23 Natural Resources Forum 3-30.
- Wondwosen Michago, 'Dividends of Cooperation: The Case of Nile River' (2014) Case studies.
- Wouters, P. 'An Assessment of Recent Developments in International Watercourse Law through the Prism of the Substantive Rules Governing Use Allocation' (1996) 36 Natural Resources Journal 417.
- Yacob Arsano, 'Negotiations for a Nile-Cooperative Framework Agreement, International Security' (2011) Study Paper 222.
- Zeitoun, M. and Warner, J. 'Hydro-Hegemony - A Framework for Analysis of Trans-Boundary Water Conflicts' (2006) 8 Water Policy 435-460.
- Zeray Yihdego and Clarke, A. 'An Exploration of Fairness in International Law through the Blue Nile and GERD' (2016) 41 Water International 528.
- Zeray Yihdego, Clarke, A. & Cascão, A. 'How has the Grand Ethiopian Renaissance Dam changed the legal, political, economic and scientific dynamics in the Nile Basin?', (2016) Water International, 41:4, 503-511.

Internet Source

- <https://addisstandard.com/commentary-the-2015-declaration-of-principles-is-not-a-treaty-and-ethiopia-does-not-have-obligations-therefrom/> Accessed on Friday, April 21, 2023 11:13:18 pm
- <https://www.britannica.com/topic/Declaration-of-Helsinki> Accessed on Saturday, March 25, 2023, 9:45:33 am
- <https://english.alarabiya.net/News/middle-east/2021/04/06/Latest-round-of-three-way-talks-over-Ethiopian-dam-fail-in-Kinshasa-says-Egypt/> Accessed on Friday, April 21, 2023, 12:44:32 pm

- <https://ethiopianmonitor.com/2022/08/12/third-round-filling-of-gerd-reservoir-complete/>
Accessed on Tuesday, April 18, 2023, 11:43:7 pm
- <https://ilacnet.org/organisations/inter-american-bar-association-iaba/>. Accessed on
Thursday, March 23, 2023, 10:20:23 pm
- <https://legal.un.org/ilc/>. Accessed on Thursday, March 23, 2023, 9:40:10 pm
- <https://nilebasin.org/index.php/81-nbi/73-cooperative-framework-agreement> Accessed on
Tuesday, April 11, 2023, 10:10:25 pm
- <https://nileforpeace.africa/1310/integration-in-the-nile-basin-nile-for-peace-initiative/>
Accessed on Thursday, March 23, 2023, 8:37:15 pm
- https://unece.org/fileadmin/DAM/env/documents/2014/WAT/05May_22-23_Geneva/case_studies/6.3.W.Seide_Nile_River_case_study.pdf Accessed on Saturday,
March 25, 2023, 4:30:35 pm
- <https://www.brookings.edu/blog/africa-in-focus/2020/08/05/the-controversy-over-the-grand-ethiopian-renaissance-dam/> Accessed on Saturday, April 1, 2023, 2:47:13 pm
- <https://www.icj-cij.org/case/87> Accessed on Wednesday, April 5, 2023, 10:13:23 pm
- <https://www.idi-iil.org/en/a-propos/>. Accessed on Thursday, March 23, 2023, 10:10:25
pm
- <https://www.ila-hq.org/en>. Accessed on Thursday, March 23, 2023, 9:55:18 pm
- <http://www.meleszenawi.com/ethiopian-pm-meles-zenawi-speech-on-launching-gerdtext-and-videos/> Accessed on Saturday, April 1, 2023, 1:30:55 am

Cases

- France v. Spain (1957) Ad Hoc Tribunal R.I.A.A. 281 COU-143747E Judicial Portal.
- Qatar v Bahrain (1994) ICJ case concerning Maritime Delimitation and Territorial Questions.
- Hungary v. Slovakia (1997) Ryan Law Case Brief 1 9/16/09 ICJ No. 92 Fact Reports 319.
- United Kingdom, Czechoslovakia, Denmark, France, Germany, Sweden v Poland the (1929), PCIJ Series A No. 23-Series C No. 17-11.
- Argentina v Uruguay (1975) ICJ case concerning pulp mills.

Treaties, Conventions, and Agreements

- Agreement on the Nile River Basin Cooperative Framework, opened for signature May 14, 2010, INT'L WATER L. PROJECT
- Exchange of Notes Regarding the Use of Waters of the Nile for Irrigation Purposes, May 7, 1929, Egypt-U.K., 93 L.N.T.S. 43
- Framework for general cooperation between the Arab Republic of Egypt and Ethiopia, 1993
- International Law Association Berlin Conference (2004) Water Resources Law
- International Law Association publication Helsinki Rules on the uses of the waters of International Rivers, London, 1967
- Nile Basin Initiative-Socio-economic Development and Benefit Sharing Project Document, SDBS, 2001
- Text adopted by the International Law Commission at its forty-sixth session, in 1994, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 222). The report, which also contains commentaries on the draft articles, appears in the Yearbook of the International Law Commission, 1994, vol. II, Part Two.
- The CFA Annex on Article 14(b) is to be resolved by the Nile River Basin Commission within six months of its establishment
- The Khartoum Declaration on GERD, 'Agreement on Declaration of Principles between The Arab Republic of Egypt, The Federal Democratic Republic of Ethiopia and The Republic of Sudan on The Grand Ethiopian Renaissance Dam Project (GERDP)'
- The UN Convention on the Non-Navigational Uses of International Watercourses was Adopted by the UN General Assembly in resolution 51/229 on May 21, 1997.
- United Arab Republic and Sudan Agreement (with annexes) for Full Utilization of the Nile Waters, November 8, 1959, United Arab Republic-Sudan, 453 U.N.T.S. 6519
- 1902 Anglo-Ethiopian Treaty

Others

- Girma Amare, 'Contentious Issues in the Negotiation process of the cooperative framework Agreement on the Nile' presented for discussion in the consultative meeting to be held in Addis Ababa, 12 February 2009.

- Imiru Tamrat, ‘Prospects and Problems of the Ongoing Cooperation in the Nile Basin and the Way Forward – A Personal Ethiopian Perspective’, Discussion paper presented at the National Consultative Workshop held in Addis Ababa, Ethiopia, 12–13 Feb. 2009.
- Interview with Kifle Horo: the new Project Manager of GERD; Ethiopian Broadcasting Corporation live stream on March 13, 2023, 9:30:33 pm
- Lecture note from the international water law class
- Michael Asiedu, ‘Global Political Trends Center (GPoT) The Construction of the Grand Ethiopian Renaissance Dam (GERD) and Geopolitical Tension between Egypt and Ethiopia with Sudan’. (2018).
- Musa Mohammed, ‘The Nile River Basin cooperative framework agreement: contentious issues and future strategies for Ethiopia’ presented at the national consultation workshop on the Nile, 12 February 2009.
- Nile Basin Initiative Secretariat, “Nile Basin Initiative: Strategic Action Program”, Addis Ababa, Ethiopia, May 2001.
- US department of Treasury.