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THE ROLE OF THE AFRICAN UNION IN RESOLUTION OF THE GREAT ETHIOPIAN RENAISSANCE DAM DISPUTE

A Research Paper Submitted in Partial Fulfilment of the Requirements for the Masters of Law (LL.M) in Public International Law at School of Law, College of Law and Governance Studies, Addis Ababa University

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Addis Ababa, Ethiopia

Declaration

I, WONDEMAGEGN SISAY, hereby declare that this LL.M thesis entitled '' *The Role of the African Union in Resolution of the Grand Ethiopian Renaissance Dam Dispute*'' is my original work. It has not been submitted for the award of any degree or examination in any other university. I also confirm that all sources which have been used in the thesis are duly acknowledged.

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The Role of the African Union in Resolution of the Great Ethiopian Renaissance Dam Dispute

By: Wondemagegn Sisay

A Thesis Submitted in Partial Fulfilment of the Requirements for the Master of Laws Degree (LL.M) in Public International Law at Addis Ababa University School of Law

Supervisor____________________________Signature_____________Date____________

Examiners;

1. Name_____________________________Signature____________Date___________

2. Name_____________________________Signature____________Date___________

Dedication

My thesis is dedicated to my family whose patience let me complete this study.

Acknowledgement

My gratitude goes first to the Almighty God with whom I walked all my steps. This is yours all my family and I cannot forget your favour, I owe you much. I am very much thankful to Mohammed Habib (Ass Pro.) for your genuinely intellectual and constructive guidance and comment for the accomplishment of my thesis. I am very much grateful to the interviewees whose genuine cooperation helped the progress end successfully. Also I am indebted to those who assisted me in the entire progress of this paper. Finally, I would like to gratify all my friends for your valuable motivation and support. Thank you!

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Acronyms

ADR	Alternative Dispute Resolution
APSA	African Peace and Security Architecture
ASAP	African Solutions to African Problems
ASF	African Standby Force
AU	African Union
AUPSC	African Union Peace and Security Council
BCM	Billion Cubic Meters
CEWS	Continental Early Warning System
CFA	Cooperative Framework Agreement
CIL	Customary International Law
DOP	Declaration of Principles
EU	European Union
GERD	Grand Ethiopian Renaissance Dam
IPOE	International Panel of Experts
NBI	Nile Basin Initiative
NRBC	Nile River Basin Commission
POW	Panel of the Wise
REC	Regional Economic Communities
RM	Regional Mechanisms
TWAIL	Third World Approach to International Law
U.S	United States
UNECE	United Nations Economic Commission for Europe
UNSC	United Nations Security Council
UNWC	United Nations Watercourses Convention
WB	World Bank

Abstract

Ethiopia, Egypt and Sudan are at loggerheads over the construction of Great Ethiopian Renaissance Dam (GERD) since 2011. Following the repeated attempts to involve the U.S and the UN Security Council, the concern has been handover to the African Union on account of finding 'African Solutions to African Problems' (ASAP); however, the three riparian are unable to reconcile their positions till this study finalised. This study therefore attempts to answer whether the AU's legal and institutional frameworks fit into the GERD dispute resolution process and what challenges exist in applying the ASAP principle. The researcher conducted a semi-structured interview with Ministry of Foreign Affair and Ministry of Water and Energy, and scholars of political science, international water law and peace and security. The rejection of interview request on the part of African Union, Embassies of Egypt and Sudan in Addis Ababa has; however, lessen the quality of balanced view.

Drawing on evidences from reviews of literatures, researches, and data from key informants, this study concludes that the effectiveness of the African Union's facilitation role is highly determined through the commitment of the three riparian to reach in negotiated settlement. However, the continuance of the on-going stalemate would make the attempt and role of the African Union fruitless since the role taken by the Union does not allow to exerting any significant influence beyond gathering the disputing parties unless the role is changed to some extent.

Keywords: African Union, African Solution to African Problems, Conflict Resolution, DoP GERD.

CHAPTER ONE

1. Introduction

1.1. Background of the Study

It is not a new phenomenon to observe inter-state disputes over shared trans-boundary rivers, as it was documented centuries ago.[1] Disputes range from bitter armed confrontations to verbal and diplomatic confrontations, depending on the geographic direction in which riparian states are located, the economic and technological strength, political and diplomatic leverage of states, the significance attached to the river in different contexts, and other contributing factors.[2] Furthermore, disputes stem from the existing or historically maintained unbalanced use between riparian states, as the economic significance of rivers differs across nations, besides the misunderstandings of different types of uses.

Whenever disputes arise over international rivers, usually, states tend to negotiate and solve their disputes with different sorts of mechanisms. Similarly, there are also experiences in which disputes were solved with the help of individuals as well as regional and global organizations.[3] However, there are also examples in which no solution has been reached to date despite the attempts made to end impasses. In this regard, the Nile River Basin is the typical instance where the regime stayed without an agreed platform for water sharing and management. Although the down-stream riparian Egypt and Sudan had long used the river with the assistance of colonial allies, disagreements and conflicts dated back several decades. Because the down-stream riparian relied on the water sharing agreements of the 1929 and 1959, as well as many other treaties made between colonial powers, that bequeathed the entire share of the river to them, despite the up-stream riparian's persistent rejection and opposition, the up-stream riparian were effectively barred from any kind of water use and development project over the river.[4]

Following the unprecedented insistence on the part of the up-stream riparian to establish a joint water management and reconsideration of water sharing, attempts were made to run

[1] Gleick P., 'water and conflict: fresh water resources and international security', [1993] 18(1) International Security 83.

[2] Susanne Schmeier, Governing International Watercourses: River Basin Organizations and the Sustainable Governance of Internationally Shared Rivers and Lakes, (Routledge, Taylor & Francis Group 2013) 11.

[3] Wolf A. T. and Joshua N. Newton, 'case study of trans-boundary dispute resolution: the Indus Water Treaty'.

[4] Ahmed Tayia, et al., 'the evolution of the Nile regulatory regime: a history of cooperation and conflict (Springer 11 October 2021) <https://link.springer.com/article/10.1007/s1268 > accessed 14 May 2022.

unilateral projects due to the rejection of cooperation on the part of the down-stream riparian sticking to previous agreements, as Ethiopia appealed consistently. As a result, Ethiopia, the down-stream riparian that contributes no less than 86 per cent of the total flow, began a massive hydro-electric generation project in 2011 with a capacity of 15,700 Giga Watt hours per year.[5] The down-stream states, however, were hostile to the project as it tended, as they appealed, to pose danger to their historical share of the river. Consequently, diplomatic confrontation began to disturb the region given the request made on the part of Egypt and Sudan to stop the continuance of the project. Scholars, however, argue that the unilateral move of Ethiopia is contrary to international law as it tends to disregard the 1902, 1929, 1959, 1993, and the 2015 Declaration of Principles (DoP). On the other hand argue that none of the aforementioned treaties are violated and no responsibility is attributed to Ethiopia since none of those treaties prevent Ethiopia from developmental activities.

As the hostile track did not halt the project, the three states began to discuss and negotiate to reach an agreement, though no final agreement was reached for a decade. While the situation becomes worse, global actors contribute to the concern with different roles. Primarily, the US government began to engage as a facilitator and paved the way for different rounds of negotiations between the three states. Later, it came up with a draft agreement and invited the riparian states to sign it. However, it was rejected due to disagreement between the three states. The response of the facilitator, however, was hostile to the expected tenets of facilitation as it suggested the blow up of the dam, which Ethiopia countered aggressively.[6] Later, an attempt was made to resolve the dispute with the help of the African Union, and several meetings were held to negotiate and reach an agreement, but no end was reached, though many changes and progress were observed. As the stalemate reached high, the UN Security Council (UNSC) was requested by the down-stream riparian to stop Ethiopia from undertaking its project. However, the UNSC ended up with the suggestion of peaceful

[5] Embassy of Ethiopia, 'Great Ethiopian Renaissance Dam Project' (Embassy of Ethiopia, Washington D.C, 15 February 2021) <https://ethiopianembassy.org/the-grand-ethiopian-renaissance-dam-project-gerdp/> accessed 11 September 2022.

[6] Miriam Berger, 'Ethiopia accuses Trump of 'incitement of war' over remarks that Egypt will 'blow up' disputed dam', (Washington Post, 24 October 2020) <https://www.washingtonpost.com/world/2020/10/24/ethiopia -accuses-trump-incitment-war-over-remarks-that-egypt-will-blow-up-disputed-dam/> accessed 8 September 2022.

negotiation between the parties as it had already commenced under the leadership of the African Union.[7]

The African Union, on its part, commenced to facilitate the trilateral negotiation, on June 26, 2020, on the basis of the principle of African Solutions to African Problems. Under the auspices of the presidents of South Africa, Democratic Republic of Congo, and Senegal, Chairpersons of the African Union for the years 2020, 2021, and 2022, several meetings were held face-to-face and virtually to discuss points of contention.[8] Though disparities narrowed throughout the rounds of negotiations, the dispute remained unresolved. The three states are unable to agree on the signing of a binding agreement over the filling and operation of the GERD and the concern of water release in times of drought, prolonged drought, and prolonged years of dry season.

Although attempts were made to propose several alternatives, the states are, however, in disagreement as the request to sign a binding agreement has been rejected on the part of Ethiopia, opting for a flexible and non-binding agreement.[9] This being the case, the African Union has been engaged in a diplomatic and facilitative role through its department of Political Affairs, Peace and Security. The AU's peace and security architecture is, however, blamed for its lack of well-organized structures, legal instruments, and mechanisms that can deal with cross-border natural resource-related conflicts. Furthermore, it is blamed in terms of economic, political and diplomatic leverage to achieve tangible results in the dispute, despite the fact that the extent to which the Union engages determines the required qualities and things expected of the AU.

In this regard, there are researches and literatures; however, most of them deal with the broader context of conflict within the Nile Basin, which inter-links the concern to cooperative management in the light of the Nile Basin Initiative (NBI) and the Cooperative Framework Agreement (CFA). Therefore, the issue of the African Union's capability to deal with trans-boundary natural resource-related conflicts in terms of institutional and instrumental setting is less investigated. Hence, this study, focused on the GERD dispute, examined the existing institutional structures, legal frameworks, and personnel capabilities to be involved in

[7] Video conference meeting (29 June 2020); shows the willingness of the Security Council and the International community for AU's-led negotiation.

[8] A letter addressed to UNSC from the Republic of Sudan, on April 12, 2021, Over the latest GERD negotiation (hereinafter, The Letter to UNSC from Sudan).

[9] Ibid.

regional conflicts like GERD along with the negative and positive significance of the commitment of disputing parties to the AU's role.

1.2. Statement of Problem

Resolving disputes and avoiding escalation into violent conflict is the primary responsibility of the parties at stake. However, it is worth noting that international, regional, and sub-regional organizations could play a significant role in easing resource-based tensions.[10] Similarly, the UN has included a bold emphasis on the UN and regional efforts, recognizing the need to develop partnerships and cooperation to ensure coherence and complementarity due to the growing role of regional arrangements in the global security architecture in the light of Chapter VIII of the UN charter.[11]

As regards the GERD, several attempts were made to end the disagreement through negotiations. The progress, however, slowed without reaching agreement. Despite the persistent request of the downstream riparian to involve the United Nations, European Union, and United States, the African Union, however has taken the lead to settle the dispute.[12] With regards to the need for intervention of external powers, scholars argue that there would no prospective change since United States and the European Union have been attending the process as an observer[13], while other argue for consensus based mechanism.

The African Union has been undertaking its 'Good Office' since its seizure of the concern and the three riparian had several dialogues and negotiation under the auspices of the Union. However, the riparian are unable to reach an agreement due to various reasons. The UN Charter accords legal recognition for settlement of disputes under regional arrangements. Based on this principle the AU mechanism has taken the responsibility to bring the disputing riparian to the table and end their impasse, unfortunately, the parties could not solve their disagreement through the on-going arrangement.

Therefore, the study dealt with three major problems in relation with the African Union led dispute settlement. First, sustaining uninterrupted and non-interfered AU led settlement is at stake. Despite the fact that regional organizations are accorded with primary responsibility to

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[10] Panel of the Wise, the 5th Report on Improving the Mediation and Resolution of Natural Resource-Related Conflicts Across Africa, (October 2019) 13.

[11] United Nation General Assembly, Resolution no. 68/303 (2014).

[12] Peter Fabricius, 'Could new mediators resolve the GERD dispute?' (Institute For Security Studies 05 March 2021*)* < https://issafrica.org/iss-today/could-new-mediators-resolve-the-gerd-dispute> accessed 29 January, 2022.

[13] Ibid.

deal with local disputes, disputing parties, however may resort to apply Chapter VI of the UN Charter. Likewise, parties are not to stick to a certain arrangement based on the general principles of international law. Accordingly, if the three riparian countries are unable to reach agreement under the AU led mechanism, the progress is most likely to interrupt and face other complexity.

Second, studies and reports shows that the existence of a river basin authority along with agreed legal frameworks and dispute resolution mechanisms highly helps riparian states solve their disputes easily.[14] With regards to the GERD dispute, the three riparian countries had no well-established basin wide agreement as well as institution. Furthermore, they are not parties to the UN Watercourses Convention and its mechanisms. As regards the African Union, it has no legal and institutional framework to deal with trans-boundary resource related disputes, since the Peace and Security Architecture mainly deals with tensions arising out of armed conflicts. Therefore, achieving successful dispute settlement under the notion of ''African Solution to African Problems'' is another problem.

Third, the African Union seized the concern with the role of 'Good Office' as it has been facilitating dialogue between the three riparian countries. The concept of Good Office is known for its facilitation role as it tries to bring the disputing parties together to discuss and negotiate. The role of the facilitator ends when the disputing parties commence negotiation, and the facilitator is not allowed to proceed further and intervene between parties to provide alternatives, plans, and other important options whenever parties are unable to agree, unlike the method of mediation and arbitration.[15] In the on-going GERD dispute settlement process, the three riparian are unable to agree over the necessity of signing a binding agreement on the filling, operation, and safety of the dam, and the need to conduct additional social and environmental impact assessment, and issues in relation to drought.[16] Therefore, the effectiveness of the AU led process become questionable if the three riparian are unable to compromise and reach consensus, since the role taken by the AU does not allows it to intervene in the disagreement and end the stalemate.

[14] The PoW Report (n10); Susanne Schemeier (n2).

[15] Indus Water Treaty (1960).

[16] Ben Heubl, 'why Ethiopia and Egypt can't agree over hydro dam', (Institute of Engineering and Technology 03 August 2020) <https://eandt.theiet.org/content/articles/2020/08/why-ethiopia-and-egypt-can-t-agree-over-the-grand-ethiopian-renaissance-dam-gerd-africa-s-largest-hydroelectric-power-project/> accessed 16 February 2022.

1.3. Research Objective

1.3.1. General Objective

The general objective of the thesis is:

To assess the capability of the African Union's conflict resolution mechanisms in resolving inter-state trans-boundary resource-based conflicts.

1.3.2. Specific Objectives

Specifically the thesis intends to:

- ✓ Examine the institutional effectiveness of the African Union in sustaining durable dispute resolution mechanisms and approach which support the achievement of 'African Solutions to African Problems'.
- ✓ Assess the legal and structural gaps within the conflict resolution mandates of the African Union, Peace and Security Architecture in relation to trans-boundary based inter-state conflict.
- ✓ Explore the effect and relevancy of international water laws, treaties and agreements and policies in the Blue-Nile regime in the dispute resolution progress of the GERD conflict.
- ✓ Analyse the role taken by the African Union and the scope of mandate of the AU's engagement in the conflict.

1.4. Research Questions

The following are the research questions:

1. What factors challenge the effectiveness of the notion of African Solution to Africa's Problems?
2. Whether the AU is institutionally and instrumentally capable enough to resolve the GERD conflict?
3. Whether the African Union role fit to the on-going disputes and what type of dispute settlement mechanism has to be employed by the AU led process?

1.5. Significance of the Study

This study is devoted on examining and analysing the institutional as well as legal gaps of the African Union in inter-state conflict resolution focusing on the GERD dispute. Throughout the study the paper assessed the capability of the Union in achieving the grand principles of 'African Solution to Africa's Problem' and 'Peaceful Resolution of Conflict'. Therefore, the study tries to explore the way forward and serve as an input and be a source of information

for policy makers, academia and any interested party. It also bridges the information gap in the area as most of the literatures and researches are focused on larger context of the Nile River and related issues.

1.6. Research Methodology

This study employed a doctrinal methodology accompanied by qualitative research methodology. Doctrinal research methodology is employed to assess and examine the effects and relevance of International Water Laws, AU's Conventions on peace and security affairs, Treaties as regards the Nile in general and the GERD in particular, and other legal texts in relation to the GERD dispute. A qualitative comparison of cases on dispute settlements in two basins: the Danube and Indus River Basin used to compare the experiences of dispute resolution with the African Union progress. The two basins were selected due to the need for drawing lessons from the two basins as to how they succeeded in resolving disagreement and sustaining cooperative engagement.

1.6.1. Research Approach and Design

The study employed a qualitative research method as it aimed to examine, explore and analyse the practice, experience, and existing mechanisms applied by the African Union in resolving trans-boundary resources-based inter-state conflicts, and the factors that affect the implementation of the principle of ASAP.

1.6.2. Sampling Technique

The study used a purposive sampling technique since the researcher aimed to gather adequate data from the informants. The technique is applied to answer the first and third questions of the study. Further, the technique is chosen based on the features of the problem, which data needs to be collected selectively from individuals and institutions having particular relation with the research problem. Accordingly, representatives from Ministry of Foreign Affairs, and Water and Energy of Ethiopia, Scholars from Institute for Peace and Security Studies, School of Law, and Political Science and International Relations of Addis Ababa University were selected and addressed purposely.

1.6.3. Methods of Data Collection

Primary and secondary sources of data were collected in the following methods.

1.6.3.1. Primary Sources of Data

The study employed a semi-structured: One-on-one interview to gather a first-hand data from the aforementioned informants who selected purposely considering their engagement in the negotiation process, advisory activities, and research and publication in the area. In addition, international water law conventions, African Union Convention and Protocols on Peace and Security, including the AU Charter, and treaties and declarations as regards the Nile River and the GERD, were used and examined as primary sources of data.

1.6.3.2. Secondary Sources of Data

Various researches and literatures in different books, journal articles, magazines, newspapers, electronic blogging's and other online sources used as secondary sources of data based on their relevance.

1.6.4. Methods of Data Analysis

Data collected from both sources are organized and presented in sections and sub-sections based on their relation, similarities, and differences. Theories, concepts, international and regional legal texts and other related documents were analysed through a qualitative research approach. A thematic method of data analysis is employed while a deductive approach is employed in interpreting and analysing the data gathered from key informants since analysis of data follows after the arguments and views from different discourses and literatures.

1.7. Scope of the Study

Even though the water dispute between the three states stems from the larger Nile contention, the concern at hand have eventually narrowed to project specific level. Thus, the study assessed and examined the effectiveness of the conflict resolution mechanisms and instruments of the African Union, in relation with trans-boundary resources based conflicts in general and the GERD Project in particular. Moreover, the study is limited to explore on the role taken by the African Union in the light of the notion of African Solutions to African Problems.

1.8. Limitations of the Study

The limited number of previously undertaken researches in particular emphasis on the African Union's role and its effectiveness over trans-boundary rivers based conflict resolution has challenged the researcher. In addition, the absence of well-organized information desk on the concern, well documented discussion, meeting, and negotiation

minutes and relevant data have created confusion on the reliability of information. Besides, the rejection on the part of the Department of Political Affair, Peace and Security of the African Union, Embassies of Arab Republic of Egypt and Sudan in Addis Ababa to conduct interview has lessened the quality and breadth of balanced data.

1.9. Organization of the Study

The study comprises four chapters. Accordingly, the first chapter deals with the background of the study, statement of problem, research objectives, research questions, significance, limitation, methodology and organization of the study. The second chapter provides theoretical and conceptual basis of the third world approach to international law, African solutions to African problems, trans-boundary rivers based conflict resolution mechanisms and the institutional and normative frameworks of the African Union and the Blue-Nile alongside the arguments thereto. The third chapter seeks to narrate, analyse, and examine the main points of contention within the context of negotiation progresses, the engagements and role of the African Union, and aligned arguments alongside the views of primary data collected through interview. The fourth chapter provides the conclusion and recommendation of the researcher.

CHAPTER TWO

2. Theoretical and Conceptual Frameworks and Review of Related Literature

2.1. Third World Approach to International Law

The Third World Approach to International Law (TWAIL) is a school of thought that seeks to re-contextualize international law from the perspectives of developing and least developed nations. This approach is based on the recognition that the international legal order is often designed and enforced by powerful states and institutions to serve their own interests, and that it has tended to neglect the interests of those who inhabit the 'third world'. TWAIL views international law and organizations as a tool of domination and exploitation, and seeks to challenge this status quo by advocating for the inclusion of the international legal order. It also seeks to empower individuals and communities to use international law to protect their human rights, access to resources, and promote development.

TWAIL is also understood as a scholarly community; political movement; a set of theory; a set of approaches; a chorus of voices; a network of scholars; a school of thought. Further, defined as, a strategic engagement with international law, a broad dialectic of opposition toward unequal, unfair, and unjust character of international legal regime that subject the third world to domination, subordination and serious disadvantage.[17] Similarly, Rajagopal acknowledges that the most important critique of unjust and unequal modern international law has been the charge that it is a Euro-centric regime, and he provides a TWAIL as a rubric under which various elements of critiques are discussed.[18]

For Chimni, it's the crucial role played by international law in maintaining the unequal structures and processes that manifest themselves in the growing North-South divide. He further explained international law as ''the principal language in which domination is coming to be expressed in the era of globalization''. He argues that international law served the

[17] Larissa Ramina, 'Framing the Concept of TWAIL: ''Third World Approach to International Law'', Justica Do Direito', [2018] 32(1) 7; Michael, Fakhri, 'Introduction-Questioning TWAIL's Agenda', [2012], 14(1), Oregon Review of International Law, 1.2.

[18] Rajagopal, 'Balakrishnan, International Law and its Discontents: Rethinking the Global South', [2012] American Society International Law Proceedings 176.

interests of dominant social forces and states in international relations.[19] However, domination can co-exist with varying degrees of autonomy for dominated states. Dominance is conceptualized as a growing assemblage of international law, institutions and practices coalesce to erode the independence of third world countries in favour of transnational capital and powerful states. The ruling elites of the third world, however, have been unable to devise, deploy, and sustain effective political and legal strategies to protect the interests of third world people. Here, Chemni stated that powerful states exercise dominance through ''the world of ideas'' and not the use of force.[20]

TWAIL is also explained as a multifaceted and complex third world engagement with international law, and its important task to problematize and contest the dominant, historically Euro-centric accounts of the origin of international law and its claims of universality, justice and equity.[21] Whereas, a much more detail definition and explanation of TWAIL can be inferred from the 2015 conference of TWAIL in Cairo. Accordingly, TWAIL is defined as a movement that encompasses scholars and practitioners of international law and policy who are concerned with issues related to the global South. The scholarly agendas associated with TWAIL are diverse but the general theme of its interventions is to unpack and deconstruct the colonial legacies of international law and engage in decolonizing efforts.[22] The term was coined in the 1990s through an alliance of scholars committed to critically investigate the mutually constitutive relationship between international law and the third world or global South. For legal projects operating at the margins of the mainstream discipline, the TWAIL network enables solidarity and mutual support through a shared political commitment to advocating for the interests of the global South. It endeavours to give voice to viewpoints systemically underrepresented or silenced.[23]

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[19] Bhupinder Chemni, 'TWAIL: A Manifesto', [2006] 8 International Community Law Review 3.

[20] Ibid 19, 26.

[21]Mickleson Karin et al, 'Situating TWAIL: Inspirations, Challenges and Possibilities', [2008] (10) International Community Law Review 351-353.

[22]The American University in Cairo, 'Third World Approaches to International Law: on praxis and the intellectual.' (Department of Law February 21-24, 2015), http://www.uwindsor.ca/twail2015/sites/uwindsor.ca.twail2015/files/cairo_twail_conferen-ce_program_mar_2.pdf Accessed 27 December, 2022.

[23] Ibid.

Scholars who advocates the term TWAIL are known as TWAILERS and they are characterised by their extremely diversified thoughts.[24] And, they questions important issues regarding international law, such as the role of international financial institutions and economic law at large on the reproduction of economic exploitation of third world; war laws and the redefinition of the concepts of terrorism; international criminal law; but mainly the re-reading of the history of international law and its role in the reproduction and legitimation of colonial and neo-colonial practices as well as the critique of human rights.[25] On the other hand, scholars of TWAIL have used the historical sources of international law doctrines to challenge the veracity of those doctrines, and that international law is not based on intellectual and moral commitments that reflect its global subject matter, but only European history.[26]

While analysing the purpose of TWAIL, Mutua stated that it must be to eliminate the harm that the third world would have suffered as a result of the unjust international legal, political, and economic order. It has to eliminate an aspect of third world powerlessness. In addition, TWAIL must counter the hegemony of the world by the West which legitimized by the United Nations, since the Security Council took primacy over the General Assembly which is dominated by the third world made a mockery of the notion of sovereign equality.[27] Similarly, Shetty highlights the serious democratic defects within the United Nations structures as the Security Council veto system overrides the General Assembly which is composed of the majority.[28] Generally, TWAIL believes that forming coalition with like-minded movements in all societies including the West is essential strategy for combating powerlessness and the victimization of the third world and marginalized communities in the West. It also seeks to work together with other scholarly community, such as Critical Race Theory, New Approach to International Law, and other Western movements that oppose the supremacist and Euro-centric hierarchies.[29]

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[24] Larissa Ramina (n17).

[25] Sunter Andrew, 'Third World Approach to International Law as Naturalized Epistemological Inquiry', [2007] (20) Canadian Journal of Law and Jurisprudence 480.

[26] Ibid.

[27] Mutua Makau, 'What is TWAIL?' [2000] 94(31) American Society of International Law Proceedings 34-37.

[28] Shetty V. Dayanand, 'Why TWAIL Must Not Fail: Origins and Applications of Third World Approaches to International Law', [2011-2012] 3 King's Student Law Review 76-77.

[29] Mutua Makau (n27).

2.1.1. The Rhetorical Connection between the Third World Approach to International Law and African Solution to African Problems

The concept of African Solutions to African Problems (ASAP) is defined as a rallying and emotive idea that is used as an instrument of fostering continental solutions. The idea is said to emerge during the periods of decolonization as a pan-African anti-colonialist leaders stressed on the need for establishing African responses for African security problems. It indicates a sense of self-reliance, pride, self-responsibility, and offering indigenous solutions to solve continental problems.[30] Founded on this idea the AU is believed to incorporate the new peace and security architecture in the continent. The idea is founded on three basic factors: firstly, to reduce the influence of external powers in the continent, secondly, the negligence of Western power while various problems challenged the region, and lastly, the emergence of regional hegemonic power in the continent and regional responses for African problems.[31]

Nathan stated that as the mantra enjoys a great deal of support within the civil society and governments and inter-governmental organizations, both in the continent and the UN level, the AU is most likely to achieve the goal of ASAP. However, Nathan mentions two obstacles over the attainment of success: first, the continent lacks unity in responding to conflicts, which frequently pave the way for the intervention of external powers, citing the crises in crises in Libya, Mali and Côte d'Ivoire as an instance. Second, lack of finance is the main concern in applying the goals of ASAP.[32]

The maxim has attracted a considerable debate amongst professionals, civil society and academicians on the continents affairs. Accordingly, some opined that it would be problematic to adhere to the notion given the limited capacity and financial dependence to be able to mobilise resources in resolving problems, along with the absence of unity among leaders of the region and their tendency of indifference to unacceptable conduct of fellow

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[30] Remofiloe Lobakeng, 'African solutions to African problems: a viable solution towards a unified, prosperous and peaceful Africa' (Institute for Global Dialogue, Occasional Paper 71, 2017) https://media.africaportal.org/documents/Occassional_paper_by_Remofiloe.pdf accessed December 25, 2022.

[31] Biruk K.M., 'how the concept of African solutions for African problems can be applied to resolve the GERD dispute', [2021] Open Journal of Political Science <https://www.scirp.org/journal/ojps> accessed 9 August 2022.

[32] Laurie Nathan, 'African Solution to African Problems: South Africa's Foreign Policy', [2013] 92 WeltTrends 55.

leaders.[33] Consequently, some analysts tend to suggest the relevance of "appropriate solutions to African problems" other than 'African Solutions to African Problems'.

Nevertheless, some argue the importance to not contribute towards marginalising continental efforts and to appreciate that problems are complex, cross-cutting and varied, and could not be separated from a specific context.[34] In this regard, Jacqueline opined that the notion itself lacks clarity, since it's difficult to distinguish what ''African problems'' are and the solution thereto. Further, stated that despite the presence of common problems across the continent it would be difficult to isolate Africa from the rest of the world in the era of globalisation. Besides, she pointed out the culture of African leaders where they often tend to rely on the western solutions, while African solutions must be based on African philosophy, culture, religion and values, all of which are vaguely utilised today.[35] She further opined the difficulty to attain authentic solutions for problems in the region where modernization continues to corroding African culture. She rather recommends the need to taking account of research based forecasting, ever-changing global order; compare different available models, global best practices and universal values to adapt solutions locally.[36]

2.2. Inter-State Conflict Resolution and the Prohibition of Use Force

The term 'Dispute' is defined as a 'conflict or controversy; a conflict of claims or rights'.[37] The Permanent Court of International Justice (PCIJ) in Mavrommatis Case defined a 'dispute' as a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.[38] As far as a 'water dispute' is concerned it is defined as 'any conflict of views or of interests, which takes the form of opposing claims between the states, concerning the use of a trans-boundary water resource.'[39] Whether a disagreement over an international watercourse is considered to be a 'dispute' or not has legal implication for the

[33] Lobakeng R. (n30).

[34] Fiquremariam S., 'African Solutions to African Problems', 9Institute for Security Studies (ISS), ISS Today, 180908au) https://issafrica.org/iss-today/african-solutions-to-african-problems accessed December 22, 2022.

[35] Jacqueline M. Musiitwa, 'African Solutions to African Problems', (Thought Leader, Tutu Fellows, May 30, 2011) <https://thoughtleader.co.za/african-solutions-to-african-problems/> accessed 23 December, 2022.

[36] Ibid.

[37] Bryan A. Garner, Black's Law Dictionary (4th ed., West 1951).

[38] The Mavrommatis Palestine Concessions (Greece v. Britain) PCIJ Ser. A. No. 2. 11 1924.

[39] Sergei Vinogradov, Wouters and Jones, Transforming Potential Conflict into Cooperation Potential: The Role of International Law, 26.

type of dispute settlement response. Only disputes which are 'justiciable' are suitable for resolution by legal dispute settlement methods.

A dispute is justiciable if, 'first, a specific disagreements exist, and secondly, that disagreement is of a kind which can be resolved by the application of rules of law by judicial (including arbitral) processes', otherwise a dispute is a non-justiciable.[40] Justiciable disputes are entertained through the use of judicial organ (ICJ) or arbitration tribunals, such as the Permanent Court of Arbitration by signing a special agreement called a compromise.[41] Where disputes are non-justiciable they must be resolved through other methods of peaceful settlement, such as Negotiation and Consultation, Good Offices and Mediation, Conciliation, Fact Finding and Inquiry, Arbitration, and Adjudication.[42]

The international community prohibited the use of force through the articulation of the concern under the Charter of the United Nations, which later attained the status of Customary International Law. Although disputes are inevitable, the international law advises states to settle disputes peacefully: resorting to one of or the combinations of alternatives provided under the UN Charter.[43] The same holds true for the Constitutive Act of the African Union: Article 4(f) provides the prohibition of use of force, while commending states to resort to peaceful settlement of disputes under its Article 4(e).[44] Similar principle is incorporated in the Protocol Relating to the Establishment of the Peace and Security Council of the African Union.[45]

The concept of prohibition of use of force is traced back to The Hague Peace Conference in 1907, which later articulated within the Covenant of the League of Nation of 1919,[46] and the

[40] Collier J and Lowe V, 'Settlement of Disputes in International Law: Institutions and Procedures' [1999] NILR 10.

[41] Online User's Guide, UN Watercourses Convention, https://www.unwatercoursesconvention.org/the-convention/part-vi-miscellaneous-provisions/article-33-settlement-of-disputes/33-1-8-legal-methods-of-dispute-settlment-arbitration-annex-1-unwc/ accessed December 25, 2022.

[42] Ibid.

[43] United Nations Charter (1945) Article 2(4).

[44] The Constitutive Act of the African Union, (11 July, 2000).

[45] Protocol Relating to the Establishment of the Peace and Security Council of the African Union (July 9, 2002) (hereinafter Protocol PSC).

[46] The Hague Convention II (1907): 'The Limitation of Employment of Force for Recovery of Contract Debts' and Covenant of the League of Nations (1919) Article 12.

UN Charter under its Article 2(4) obliged states to refrain from the threat or use of force in their international relations.[47] Similarly, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States provides the duty to refrain from the use of force.[48] Most importantly, a great deal of emphasis is placed on the notion in the International Court of Justice's (ICJ) judgement of the Nicaragua Case, which indicated that the principle represents an embodiment of general international and customary law.[49] However, the UN Charter provides two exceptions over the notion: in the case of self-defence and collective action through the Security Council.[50]

Peaceful settlement of disputes of international nature, according to international law, is suggested to be resolved through an uninterrupted and continuous method. In this regard the UN Declaration of Manila in 1982 requires states to resort to only peaceful means.[51] Accordingly, Article 2 Para 3 of the UN Charter provides that all international disputes must be settled through peaceful means while maintaining international peace, security, and ensuring justice is not endangered. However, the UN Charter does not describe the way or means of settling the disputes; the parties are free to choose their dispute resolution mechanism. Article 33 of the UN Charter proposes a list of pacific means for dispute resolution, including arbitration, negotiation, mediation, conciliation, enquiry, judicial settlement and resort to regional provisions. As per Article 37 (1) of the UN Charter, if the parties fail to resolve their disputes, they fall under the obligation to refer the disputed matter to the Security Council.[52] The Manila declaration underlines the legal obligation of the member states to achieve a peaceful resolution to their dispute, despite of the free choice of means, and abstain from actions that might worsen the condition.[53]

2.3. The Legal Basis and Status of Good Office, Mediation and Negotiation

Article 33(1) of the UN Charter provides variety of alternatives upon which conflicting states might base, however the list seems to include many other mechanisms since it places a freedom in the hands of the parties to the conflict to choose their own method. For the sake of

[47] UN Charter (n43).

[48] UNGA Res. 2625 (XXV) (October 25, 1970) Principle 1.

[49] The Case concerning military activity in and against Nicaragua, (USA vs. Nicaragua) ICJ 1986, Para 187-188.

[50] UN Charter (n43) Article 51 and 39.

[51] A/RES/37/10, Manila Declaration on the Peaceful Settlement of Disputes.

[52] UN Charter (n43)Article 33 and 37.

[53] Manila Declaration (n51).

this research, however the researcher seeks to analyse and emphasise on the legal basis as well as the concepts of 'Negotiation, 'Good Offices', and 'Facilitation' due to their direct relevance to the focus of the study.

The Good Office's method comes to picture where, the conflicting parties are unable to solve the conflict directly between themselves, the third party offers 'good offices' to the conflicting states to 'facilitate' dialogue and assist states towards peaceful settlement of the dispute. The offer may come from the parties or one of the parties to the conflict, or from the third party (a single individual, a group of individual, state (s) or regional or international organizations). The third party offering good office must be acceptable to all the parties. Here, the function of good offices comes to an end when the dialogue or negotiation has started between the conflicting parties.[54]

In the past, the method used to be employed with similar terminology with mediation, and later distinguished through the Pact of Bogota providing that a specific thresholds and functions stated to make good office and mediation different. Accordingly, the good office is required to bring the parties to resume dialogue or negotiation where the function of good office end until the conflicting parties invited to joining the process. On the hand, the function of good office changes to mediation if it continued in the process through the provisions of options and related facilitation.[55]

Although no mention is made under the Charter of the United Nations referring the method of 'Good Office', subsequently, however a legal base has given to the method through different treaties, such as 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes. Similarly, the 1988 Declaration on the Prevention and Removal of Disputes and Situations which may Threaten International Peace and Security also gives reference to the method of good offices.[56] Further, the method has served for long period of time as it is understood from the history of different leaders of states as well as international organizations resolved many disputes across the world. Here the good office of the World Bank in the Indus Water Treaty is one instance though there were some indications of mediation role as it used to propose options to parties.

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[54] United Nations, the Peaceful Settlement of Disputes between States, A handbook (OLA/COD/2394, New york, 1992) United Nations Publication; Vinogradov et al (n39) 42.

[55] American Treaty on Pacific Settlement (Pact of Bogota), [1948] United Nations, Treaty Series, vol. 30, 86.

[56] UN Handbook (n54) 34.

Mediation is the method of peaceful settlement of international dispute where a third party intervenes on his or its own initiative or upon request of the disputing parties to reconcile the claims of the parties and advance to his or its own proposals aimed at mutually acceptable.[57] Unlike good office mediation has a reference under the UN Charter, while other references are found in The Hague Convention of 1899 and 1907, the Pact of Bogota of 1948, the OAU Charter of 1964, the Antarctic Treaty 1959 and others.[58] In mediation the very purpose is to maintain the pacific relation of parties through the reconciliation of contending claims and interests. In mediation, the third party mediator plays an important role in bringing parties to the table, and the method give the privilege to provide options and proposals while having active involvement unlike the method of good office.[59]

Negotiation is known for is flexible approach, and it is monitored from the initiation to the end of the process through the disputing parties.[60] While it is believed to be effective, it has focused on the process with less attention paid to the substance of the conflict. Among the different perspectives of negotiations, the ADR approach can be considered as the line of thought that has provided new insights to negotiations.[61] The ADR literature focuses negotiations around interests not positions, ADR aims at reshaping the process of negotiations from zero-sum negotiations into collaborative where all parties cooperate to increase the overall outcome, allowing every party to gain from the negotiations. Most, if not all, of scholars provide four main principles of negotiation: defining the problem, focusing on interests and positions, getting parties together to generate new options, and lastly, providing objective criteria for allocating the gains among the parties.[62]

2.4. The Scope of Mandate of the AU Peace and Security Council Vis-à-vis UN Security Council

The Charter of the United Nations gives the primary mandate and responsibility for the maintenance of international peace and security to the Security Council. The Council is, together with the UN General Assembly and the Office of the Secretary-General, charged

[57] Ibid 40.

[58] Ibid.

[59] Ibid 42-43.

[60] Ibid 9-10.

[61] Deli Priscoli and Aaron T. Wolf, Managing and Transforming Water Conflicts, (Cambridge University Press 2009) 33 https://www.cambridge.or/9780521632164 accessed September 24, 2022.

[62] UN Handbook (n54) 8-15.

with the task of taking 'effective collective measures for the prevention and removal of threats to peace'. The Council operates under the auspices of the UN, whose main purpose is the maintenance of peace and security. Ensuring peace and human security is, therefore, in the broadest sense, the cardinal mission of the United Nations.[63] According to article 1 of the UN Charter, one of the purposes of the UN is

> ''to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.''

The Peace and Security Council of the African Union (AUPSC) Protocol makes reference to the UN Security Council, particularly on the 'provisions of the Charter of the United Nations, conferring on the UN Security Council primary responsibility for the maintenance of international peace and security'. This recognition by the AUPSC Protocol is important, especially when it comes to the exercise of the Peace and Security Council's mandate. The Council, therefore, cannot claim to have the primary responsibility for the maintenance of peace and security in Africa as the UN Security Council has this mandate. The AUPSC Protocol further stressed the 'need to forge closer cooperation and partnership between the United Nations and the African Union, in the promotion and maintenance of peace, security and stability in Africa'.[64]

With regards to the question of who should see inter-state conflicts first, Andemicael Berhaneykun, based on the principle of ''try OAU first'', analyses the relationship between the AU PSC and the UN Security Council. The principle is said to be founded on Article 52 (2) of the UN Charter which requires member states to make every effort to achieve peaceful settlement of local disputes through a regional organization before referring the concern to the UN Security Council. While mentioning some instances where the OAU involved and achieved a settlement, such as the conflict between the Algerian and Moroccan, Ethiopia and Somali, and other regional conflicts, member states determined ''always to seek'' a peaceful

[63] UN Charter (n43) Article 1(1) and 24.

[64] Protocol PSC (n45) Article 7(k).

settlement within the framework of the OAU, on some of which it claimed exclusive jurisdiction.

In cognizance of the responsibility and competence the OAU had to find peaceful solutions not only to disputes between member states but also to other concerns which affects the peace and security of the region, the OAU sought to cover a wider sphere as indicated in Article 51(1) of the UN Charter. This position was later confirmed by the UN Security Council and its permanent members. While explaining this move Andemicael stated that;

> First, the Security Council's expression was a conviction that the OAU ''should be able…to help find a peaceful solution'' rather than, as indicated in the OAU resolution, a conviction that the OAU had competence ''to find'' such a solution. The wording seems to reflect the view that the Security Council should defer to the OAU machinery on pragmatic grounds (ability) rather than on formal jurisdictional grounds (competence). Secondly, by referring to OAU capability ''to help find'' rather than ''to find'' a solution, the Security Council stressed the auxiliary nature of the OAU role not only vis-à-vis the role of the parties to a dispute but also as regards the role of the Council's function. Finally, by indicating that the capability of the OAU was to be conceived in the context of Article 52 of the United Nations Charter —there was no mention of this article in the OAU resolution—the Security Council made it clear that the role of the OAU was to be understood in terms of its function as a forum for initial consideration of a dispute.[65]

Andemicael, further mentions the attempt made by the then Secretary General of the United Nations to extend his good offices in the form of supporting the endeavour of the OAU. Here, the writer seems to underscore the great deal of emphasis given to the ability of the OAU handle regional concerns in a primary jurisdiction, and as far as the issue of jurisdiction or mandate of function is concerned, the two bodies were incognizant of the UN Charter and the need for greater cooperation.[66]

The OAU was succeeded by the newly established African Union in 2002. Unlike the OAU, the AU contains a mechanism to deal with peace and security concerns in the continent.

[65] Berahenykun Andemicael, OAU and the UN: Relations between the Organization of African Unity and the United Nations (Holmes & Meier Publishers 29 February 1976) 92-93.

[66] Ibid.

Although varied justifications were made for the incorporation of this new peace and security architecture, it can be said that the system is a long-term structural response to the peace and security challenges of the continent, and an affirmation to the principle of non-indifference in a normative and institutional form.[67] Due to the mechanism the AU and Regional Economic Communities (REC) have access to the tools in the prevention, management and resolution of conflicts. However, the problem lies on the issue of who shall take conflicts in priority and the scope of mandates of the two bodies as far as peace and security is concerned.[68]

According to Article 1(1) and 24 (1), the Security Council is entitled with a primary responsibility to maintain international peace and security.[69] Similarly, the Protocol establishing the Peace and Security Council of the African Union under its Article 7(1) (k) provides that the Peace and Security Council is given the task of promoting and developing 'a strong partnership for peace and security' between the AU and the UN and its agencies, as well as with other relevant international organizations. In this regard an affirmation of the above statement is found under Para 13 of the statement of commitment of African states to work together with the UN and the primacy of the UN Security Council to maintain international peace and security concerns as Africa is part of the international community.[70]

On the other side the Charter of the UN under Article 52 (1) recognizes regional arrangements for the maintenance of peace and security as appropriate for regional action so long as they conform to the purpose and principles of the Charter of the United Nations. And, under its sub-article 2, the Charter tends to advise members of a given regional arrangements to make an effort to settle their dispute peacefully within the arrangement before referring the case to the UN Security Council. Further, the Charter stipulates that it may, as it deems necessary, use the regional arrangements or agencies for enforcement purpose while requiring them to conform with the authorization issue as regards to any activities towards the

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[67] African Union, 'The Peace and Security Council' (African Union, 2022) https://au.int/en/psc accessed 24 July, 2022.

[68] Ibid.

[69] UN Charter (n43).

[70] Solemn Launching of the Peace and Security Council PSC/AHG/ST.(X) (25 May 2004), Addis Ababa, Ethiopia.

maintenance of peace and security. Here, the AUPSC is meant to appear as a representative organ for enforcement purposes as the case requires.[71]

Whether the regional arrangements serve as a representative of the United Nations, Ress and Bröhmer argue that to utilize regional arrangements or regional agencies means to utilize members of a regional organization either directly or indirectly by utilizing the agency constituted by a regional arrangement. They further argue that the regional organization functions as a subsidiary organ of the UN. They further point out that in either case, the UN Security Council retains the responsibility both for the execution of the enforcement action through the regional arrangement under article 53(1) of the UN Charter, or for the authorization of the enforcement measures taken by regional arrangements under article 53(2) of the UN Charter.[72] On the other hand, Rosenne argues that international law is unlike national law due to the fact that it has no subordination character; rather it promotes co-ordination between member states. Hence, the African Union, the Peace and Security Council and their activities are the results of co-ordination among independent states, thus activities or enforcement of a certain action of these states directly or indirectly performed through intergovernmental organ for their purpose.[73] Similarly, Girmachew argues pointing on the difference between enforcement and intervention, based on the ground and purposes, the possibility of independent activity by the AU mechanism through the decision of the AU Assembly.[74]

2.5. Comparative Study on the Danube, Indus and GERD Dispute Settlement

2.5.1. The Danube River Basin Dispute Settlement

The Danube River Basin is located in Central Europe, and it is shared by a sizable and continuously increasing number of riparian governments that have historically collaborated with opposing political blocs. With a length of 2,857 km, it flows via Germany, Czech Republic, Moldova, Serbia, Ukraine, Bosnia and Herzegovina, Italy, Switzerland, Albania,

[71] Sabelo Gumedze, the peace and security council of the African Union: Its relationships with the United Nations, the African Union and Sub-Regional Mechanisms, (Abo Akademi University Press 2011) 115.

[72] Georg Ress and Jürgen Bröhmer, 'Article 53' in Bruno Simma et al, (eds.) The Charter of the United Nations: A Commentary (2nd edition, Oxford, Oxford University Press, 2002) 859.

[73] Shabtai Rosenne, 'The Perplexities of Morden International Law' [2004] American Journal of International Law 15.

[74] Girmachew Alemu, 'A study of the African Union's Rights of Intervention against Genocide, Crimes against Humanity and War Crimes' (PhD thesis, Faculty of Law, University of Oslo, 2008) 140.

and Poland. It also passes through Romania, Austria, Slovenia, Croatia, Slovakia, Bulgaria, and Slovenia. As a result, disputes in the basin were frequently occurring, complicated, and difficult to resolve. However, the Danube River riparian nations have created an integrated program for the basin-wide regulation of water quality that, if not the first of its kind, is undoubtedly the most active and effective of its scale.[75] The Environmental Program for the Danube River is also the first basin-wide international organization to actively encourage public and NGO participation throughout the planning process, which is believed to prevent future conflicts both domestically and internationally by reducing the confrontational environment that is typical of planning.[76]

The European Commission of the Danube, established by the Treaty of Paris in 1856, was in charge of managing the river basin. Since navigation was the main goal at the time, the Commission had been successful in establishing free navigation for practically all of the European nations. Following the Belgrade conference in 1948, however, riparian changed the authority to an exclusive individual riparian level, creating a new administration method as a result of the formation of political coalition. Only with regard to navigation and inspection was the semi-legislative authority granted to the Commission by the conference.[77]

Additionally, the Commission used to work on creating various riparian plans, however these were mostly considered as recommendations when suggestions were approved by a majority vote. Over time, the worry about navigation started to deteriorate as other issues were rising such as water quality.[78] Eight riparian countries signed the Bucharest Declaration of the Danube Countries to Cooperate on Questions Concerning the Water Management of the Danube in 1985, which led them to sign the 1994 Danube River Protection Convention. The river is said to be highly polluted due to its numerous city crossings and the dissolution of the USSR.

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[75]International Commission for the Protection of the Danube River, Danube Basin, https://www.icpdr.org/main/danube-basin/river-basin accessed December 24, 2022.

[76] International Commission for the Protection of the Danube River, 'The flow of Danube Cooperation: A history of Shared Responsibility', ICPDR Secretariat, 2014, at https://www.icpdr.org/main/publications/flow-danube-cooperation-history-shared-responsibility accessed December 24, 2022.

[77] Aaron T. Wolf and Joshua T. Newton, 'Case Study of Trans-boundary Dispute Resolution: The Environmental Program for the Danube River', 3.

[78] Ibid.

Through the Bucharest Declaration, the basin states expressed how the river's environmental quality and the basin's environment interact, despite the fact that the basin management strategy evolved as a result of the post-World War II formation of political blocs. After the conference in Sofia in September 1991, the riparian started to strengthen a basin-wide coordinated monitoring and developed a strategy for the preservation of the Danube's water quality.[79] Countries and interested international organizations that were involved in developing the "Environmental Program for the Danube River Basin" initiative, which supports and strengthens national action for the restoration and preservation of the river, were present at the meeting. Participants in the program agreed that each riparian would implement a comparable monitoring method as a result.[80]

A temporary task force was also formed at the meeting, consisting of Danube countries, the European Commission, the European Bank for Reconstruction and Development, the European Investment Bank, the Nordic Investment Bank, the United Nations Development Program, the United Nations Environment Program, the World Bank, The Netherlands, the United States, and various NGOs, including the World Conservation Union, the World Wide Fund for Nature, the Regional Environmental Centre, and the Barbara G. Owens Foundation. At its meeting in Brussels in 1992, the Task Force approved a Program Work Plan to improve cooperation between governments and NGOs working under the aegis of the Commission of European Communities. In addition, two "expert sub-groups" were formed, one in charge of data administration and the other of creating an early warning system for environmental incidents.[81]

In establishing the principles of "integration" and "coordination," the Plan starts along the same approach as the Mekong Committee forty years earlier—that internal issues within each nation are not particularly amenable to international management, and that the most important contribution a unit responsible for integrated planning can make is to coordinate between the national representatives and between nations and donor organizations. The Danube Environmental Program goes one crucial step further, though, by including the principle of "participation." This inclusion explicitly recognizes the vital link between internal politics among different sectors and political constituents within a nation on the one

[79] IW:LEARN, Danube River Basin, at https://iwlearn.net/documents/legal-framework/danube-river-basin accessed 25 December, 2022.

[80] Wolf and Newton (77) 4.

[81] Ibid.

hand, and the strength and resilience of an agreement reached in the international realm on the other.[82]

For the principle was taken seriously, each riparian state helped the coordinate activity through the provision of two individuals where one works at country coordination while the other on country focal point. There was firm stand in strengthening good communication between coordinators, focal points and NGOs which at a latter points brought different Strategic Action Plans (SAP) and the concern of public participation was at top priority. In preparing the action plans the involvement of the World Bank, UNDP, and the Danube Environmental Coordination Unit was worth mentioning. While the process of drafting the Strategic Action Plan Public consultation was built into the process from the very outset inviting peoples from diverse destination. Those participants of the workshops or consultations were not only taken as a source of input rather served as part of reviewing the implementation of the plan.[83]

The European Union and the nations of the Danube River basin signed the Convention on Cooperation for the Protection and Sustainable Use of the Danube River on June 29, 1994, in Sofia. The Convention was viewed as an essential legal continuation of a regional management heritage. Additionally, as a political document, it offered a framework for integrated environmental protection and watershed management along a canal with a high potential for conflict. Later, on October 28, 1994, the Task Force approved the convention, and on December 6, 1994, it was signed. The level of collaboration between the representatives of the participating states, public engagement, and a team-based approach to issue resolution have all been crucial to success.

The Task Force and the countries of the basin agreed to the idea of a Strategic Action Plan Implementation Programme in 1996. The UNDP Global Environmental Fund helped the launch the Danube Pollution Reduction Programme (DPRP) in 1997. In order to regulate and reduce water pollution and nutrient loads in the Danube River and its tributaries with consequences on Black Sea ecosystems, the DPRP set out to establish trans-boundary measures and activities and design an investment program for national, regional, and

[82] Wolf and Newton (n77).

[83] Ibid.

international cooperation. According to the 2000 EU Water Framework Directive, the ICPDR set out to establish the Danube River Basin Strategy for Public Participation in 2003.[84]

2.5.2. The Indus River Basin Dispute Settlement (Indus Water Treaty)

The basin is well known for its enormous irrigation projects, which were managed by a single governmental body, British India, and where disagreements were formerly settled by executive orders. Due to the 1935 Indian government statute that placed water problems within the jurisdiction of the provinces, disagreements eventually started to occur in the regions of significant irrigation projects, notably in the Sind and Punjab provinces. Later, in 1942, the British government established a judicial commission to investigate Sind's concerns regarding Punjabi's development plans. However, the two provinces rejected the commission's recommendations and the efforts of the chief engineers from both sides, and the issue was subsequently reported to London in 1947.[85]

The concern was internationalized due to the break of India in to two, Pakistan and India, following the Independence Act of 1947. The dispute continued due to the effect of hostilities associated with partition issues, and the chief engineers of both states signed a ''Standstill Agreement'' in March 31, 1948, which froze the water allocation issues and allows water discharge from India to Pakistan.[86]

After the Standstill Agreement expired on April 1, 1948, India stopped supplying water to Dipalpur and the Upper Bari Daab canal. Conflict later arose over the restart of water flow or delivery to Pakistan, and on May 3–4, 1948, the Inter-Dominican Conference was held in Delhi. India agreed to continue the delivery, but argued that it had no claim to the share of water because Pakistan had agreed to pay for the water, recognizing India's right. Pakistan, on the other hand, countered that they had a previous appropriation authority and that the money was simply intended to cover operating and maintenance expenses. Later, they agreed to the Delhi Agreement, whereby India pledged to continue supplying water to Pakistan until an alternative source could be found; however Pakistan later expressed its displeasure with a note dated 16 June, 1949, and requested ''equitable apportionment of all common waters''

[84] Ibid.

[85] Aaron T. Wolf and Joshua T. Newton, 'Case Study of Trans-boundary Dispute Resolution: The Indus Water Treaty' 1-3.

[86] Maj G.A. Chaturvedi, 'Indus Water Treaty: An Appraisal', (Vivekananda International Foundation: VIF Paper 2018) 10-11.

suggesting referral of the concern to the world court which India opposed suggesting a commission of judges from both sides to try the case.[87]

The conflict resolution attempt was began through the ''Good Office'' of the World Bank under the auspices of the then President David Black following the article wrote by his friend Lilienthal's, one of the former Chairman of the Tennessee Valley Authority (TVA), because of his visit of India and Pakistan upon the invitation of India's then Premier Nehru. Black later invited both states to accept the good office of the Bank along with principles to be adhered by them. The principles were that water resources of the Indus basin should be managed cooperatively; and problems should be solved on a functional and not on a political plane, without relation to past negotiations and past claims.[88] Black suggested that India and Pakistan each appoint a senior engineer to work on a plan for development of the Indus basin. A Bank engineer would be made available as an on-going consultant.

In May 1952, engineers from both sides and World Bank specialists gathered in Washington to establish an outline for a program that would include technological solutions to boost the amount of Indus water that is accessible for economic growth. The parties agreed that any data sought by either side would be gathered and validated in order to prevent possible and frequent disagreements, but that their acceptance of the data did not obligate them to its relevance or materiality. Following five sessions in Karachi in November 1952 and Delhi in January 1953, when the two parties were unable to come to an agreement on a joint development plan for the basin, the Bank advised that each party submit its own proposal. On October 6, 1953, both parties did present their respective designs.[89]

Although the bank requested both parties to refine their initial proposals, the modified proposals of each side were left too much difference to overcome. The modified Indian plan called for all of the eastern rivers (Ravi, Beas, and Sutlej) and 7% of the western rivers (Indus, Jhelum and Chenab) to be allocated to India, while Pakistan would be allocated the remainder, or 93% of the western rivers. The modified Pakistani plan called for 30% of the eastern rivers to be allocated to India, while 70% of the eastern rivers and all of the western rivers would go to Pakistan. The Bank concluded that not only was the stalemate likely to

[87] Amit Ranjan, 'Disputed Waters: India, Pakistan and the Transboundary Rivers' [2016] 4(2) Sage Journals https://journals.sagepub.com/doi/epub/10.1177/2321023016665529 accessed 25 December, 2022.

[88] Wolf and Newton (n85).

[89] Asit K. Biswas, 'Indus Water Treaty: The Negotiation Process' [1992] 17(4) Water International 203-206.

continue, but that the ideal goal of integrated watershed development for the benefit of both riparian's was probably too elusive a goal at this stage of political relations.[90]

On February 5, 1954, the Bank issued its own proposal, abandoning the strategy of integrated development in favour of one of separation. The Bank proposal called for the entire flow of the eastern rivers to be allocated to India, and all of the western rivers, with the exception of a small amount from the Jhelum, to be allocated to Pakistan. According to the proposal, the two sides would agree to a transition period while Pakistan would complete link canals dividing the watershed, during which India would continue to allow Pakistan's historic use to continue to flow from the eastern rivers.[91]

The Bank provided a proposal in 1954, and India accepted while Pakistan given its qualified acceptance. Little progress was made until representatives from the two countries met in May 1958. Main points in contention included whether the main replacement storage facility ought to be on the Jhelum or Indus rivers—Pakistan preferred the latter but the Bank argued that the former was more cost-effective; and what the total cost of new development would be and who would pay for it—India's position was that it would only pay for "replacement" and not "development" facilities. In 1958, Pakistan proposed a plan including two major storage facilities: one each on the Jhelum and the Indus; three smaller dams on both tributaries; and expanded link canals. India, objecting both to the extent and the cost of the Pakistani proposal, approximately $1.12 billion, proposed an alternative plan which was smaller in scale, but which Pakistan rejected because it necessitated continued reliance on Indian water deliveries.[92]

The Bank after evaluating concerns of replacement and development, it suggested alternatives after a visit in both states. The Bank began then to raise additional funds among the international community for watershed development. India was offered help with construction of its Beas Dam, and Pakistan's plan, including both the proposed dams would be looked at favourably. With these conditions, both sides agreed to a fixed payment settlement, and to a ten-year transition period during which India would continue to provide Pakistan's historic flows to continue. In August 1959, Black organized a consortium of donors to support development in the Indus basin, which rose close to $900 million, in

[90] Ibid.

[91] Ibid.

[92] Ibid 207.

addition to India's commitment of $174 million. The Indus Water Treaty was signed in Karachi on September 19, 1960 and government ratifications were exchanged in Delhi in January 1961. The Indus Water Treaty addressed both the technical and financial concerns of each side, and included a timeline for transition.[93]

2.5.3. The GERD Dispute Resolution

The tension between the three riparian of Blue Nile began to escalate since the launch of the GERD in 2011. Since then the downstream riparian have been consistently accusing Ethiopia due to the fact that Ethiopia violated the water rights and interests of the downstream countries, Egypt and Sudan.[94] On the other hand the government of Ethiopia and some scholars argue that there is no violated rights of downstream countries since Ethiopia utilized its sovereign right to development, besides raise the irrationality of the claim raised by the downstream given the absence of any planned notification while constructing many hydro-power generating and irrigation projects.[95] Despite the opposition against the construction of the dam and hostile relationship between the riparian, Ethiopia sustained the continuing construction of the mega dam. Later the riparian established a tripartite committee, on November 28 to 29, 2011, to examine the concern of the downstream countries, which lasted in 2015.[96]

Accordingly, the committee presented its lengthy, detail, and technical report after investigating the required things, however the downstream riparian requested the need for additional assessments. The three states affirmed their commitment by signing the Malabo Declaration, on June 28, 2014, to respect the interests of both sides and their adherence to the principles of dialogue and cooperation, avoiding harm, and respect for the principles of international law. The three riparian were said to reach the most significant stage when they signed an agreement on the Declaration of Principles (DoP), in 2015. Consequently, the riparian met several times to discuss various concerns; they undertook joint and independent studies, dialogues, and negotiations although they failed to reach agreement. In 2019, the riparian met in U.S, following the invitation on the part of the U.S government for dialogue. Several

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[93] Ibid 208.

[94] Salman M.A. Salman, ‘how and why has the Ethiopian strategy on renaissance dam succeeded?’ The Citizen (30 March 2015) 28 (183).

[95] Interview with Yacob Arsano, Associate Professor of Political Science and International Relations, Addis Ababa University, and Negotiator on the GERD (Addis Ababa University, 4 September 2022).

[96] State Information Services, the Arab Republic of Egypt, <https://www.sis.gov.eg/section/7302/9626?lang=en=us> accessed 12 March 2022 (hereinafter the SIS).

meetings were undertaken in Addis Ababa, Cairo, Khartoum, and Washington D.C, to propose solutions, draft agreements and resolve ambiguities; however the riparian failed to reach agreement.
Following many other failed attempts of negotiations, the downstream riparian brought the concern to the attention of the UN Security Council claiming that the concern is a threat to international peace and security, which Ethiopia out rightly opposed it given the developmental nature of the concern. The Council then backed the claim to the African Union led process commending a resumption of dialogue. The African Union began to involve in the concern on July, 2020, forming a committee composed of technical and legal experts under the auspices of Cyril Ramaphosa, President of South Africa, to draft binding agreement. Unfortunately, the progress did not bring any tangible result while the upstream riparian Ethiopia continued the filling of the dam. Following the unsuccessful meeting held in Kinshasa, on April 2, 2021, an international quartet mediation proposed to some extent empowering to propose solution that chaired by the AU, however it was rejected on the part of Ethiopia. Before the end of 2022, Ethiopia has undertaken three consecutive filling and the negotiation has ceased to continue.

The major successes of the Danube River Basin dispute settlement are the establishment of the commission to protect and manage the basin, the enactment of several strategic action plans and the continuance of cooperative engagement in a way that prevents the occurrence of conflicts. Above all, the active participation of the public in every step of policy creation as well as dispute resolution has highly benefited the basin. In the entire processes of dispute resolution and planning, the engagement of the European Commission was significant. It had actively facilitated in bringing the public at one level to take part in every aspect of the basin. With regards to the Indus River Basin, the contribution of the World Bank is worth mentioning. At first, the Bank offered its Good Office to bring the two riparian discuss and reach a negotiated settlement, however when the parties failed to agree the way the Bank changed its role in to mediation has significantly helped the Bank to offer important alternatives in settling the dispute. Furthermore, the Bank has also contributed in raising funds from the global community as an incentive for the effectiveness of agreed plans as well as the bridging gaps between the two states.

The change in role was purposely undertaken since it was difficult for the Bank to involve in the process with the primary role of Good Office and facilitation. With regards to the African Union led dispute resolution on GERD the Union has been offering its Good Office in a way

to bring parties settle their dispute through negotiation. The process and the role of the Union did not bring solution so far since the three riparian are unable to manage their disagreements.

2.6. Institutional and Normative Frameworks of the African Union Conflict Resolution Mechanisms

2.6.1. Introduction

The promotion of peace and security was a tough agenda since the establishment of the late Organization of African Unity (OAU) to the present African Union (AU). The magnitude of conflicts in the continent, pre and post-Cold War periods, has made the Union incapable to halt the horrors arising out of it, despite its engagement over the political unrests. Besides, the silence of the UN and global actors led the Union to rethink its normative and institutional frameworks that followed by major reforms amongst which the inclusion of the Peace and Security Council (PSC), which handle the concern of the GERD in priority, within the Constitutive Act of the AU through the amendment protocol of the 2003.[97]

The PSC is a standing decision making organ and is endowed extensive mandates through the protocol to oversee the prevention, management and resolution of conflicts in the continent under the new peace and security architecture (APSA).[98] The APSA comprises different sets of tools that functions in complementary manner to the full range of complex cases inherent in crises on the continent. The new architecture with its components: the Peace and Security Council, Panel of the Wise, Continental Early Warning System, African Standby Force and the Peace Fund, works in collaboration with the regional economic communities and mechanisms.[99] The APSA is believed to solve the diverse peace and security related concerns taking into account its norms, instruments and institutional settings. However, there are critiques due to the low level of commitment on the part of member states, organization, technology and finance related issues.

2.6.2. Institutional Framework of the AU's Peace and Security Architecture

The APSA is said to be a set of norms, values and institutions to regulate and lead the combined action toward the peace and security concern of the continent. It is nearly two decade of establishment of the APSA since 2002 and following the transformation of OAU

[97] Maputo Protocol Amendment to the Constitutive Act of the AU 2003.

[98] Protocol Relating to the Establishment of the AU Peace and Security Council (PSC), Article 2(1) (hereinafter Protocol PSC).

[99] Ibid Art.2(2).

into AU. It can be said that the system is a long-term structural response to the peace and security challenges of the continent, and an affirmation to the principle of non-indifference in a normative and institutional form. Although the APSA is a milestone in the peace and security structure of the continent, however, Mulugeta argues that the system lacks mechanism for dealing with extra-regional organizations which overlap with Africa forming 'shared space' providing instances in Red Sea and Mediterranean regions which call it ''APSA Plus''.[100]

2.6.2.1. Components of the Architecture

The APSA comprises the following components and bodies in undertaking its task. First, the Peace and Security Council (PSC) is a central organ of the APSA established in 2002, which is a standing decision making organ in the prevention, management and resolution of conflicts, and it's a collective security and early warning to facilitate prompt response to conflicts in the continent.[101] In undertaking such activities it will be supported by AU Commission, Panel of the Wise, Continental Early Warning System, African Standby Force and a Special Fund.[102] The PSC comprises 15 members from all regions in a proportional manner where three representatives taken from the East, South, and the Central Africa, while, four and two from the West and the North respectively. Considering, its procedure, function, and powers, Mulugeta views the PSC as a counter-part to the UN Security Council, however, he commends reforms due to the overlap with the UNSC in terms of decision making, intervention and related issues, further suggests the need to focus on the criterion of membership, coordination with the AU Commission, UNSC and RECs, and strong cooperation between members of the PSC to influence the UNSC.[103]

Second, the Continental Early Warning System (CEWS) is one of the pillars of the APSA and as the name implies its purpose is to providing timely information and reports on evolving violent conflicts to the AU Commission depending on the indicators. As the organ is supposed to analyse and share information it is expected to work with REC's or Regional Mechanisms (RM's) in the continent and other global actors. Using different technologies it

[100] Mulugeta G., 'the African peace and security architecture', [2016] 1 African politics, African peace.

[101] African Union mandating process for peace support operations: the AU planning and decision making process, [2 February 2021] 2-3 <https://eeas.europa.eu/archives/docs/csdp/capabilities/eu-support-african-capabilities/documents/aide_memoire_en>. accessed 17 July 2021.

[102] Ibid.

[103] Mulugeta (n100) 672-674.

facilitate its function, however, criticised for its base on open resources than expert analysis requiring improvements on analytical capacity.[104]

The third component is the Panel of the Wise (PoW) which is established to support the PSC and the AU Commission on the affairs of preventive diplomacy. The Panel is composed of five highly respected African personalities from different segments who have contributed to the peace, stability and development of the continent. Usually they are either former heads of state or government of member states of the union.[105] It works to bring emerging conflicts to the attention of the PSC, though considered by many as a mediating body and criticised for not forecasting future scenarios as it reports on-going conflicts based on the information provided by the CEWS. Fourth, the African Standby Force (ASF) is the operational body of the APSA that support the PSC to perform its responsibilities in relation to deployment of peace support missions and enforcement of the right to intervention as per the AU Constitutive act Art.4 (h, j). The ASF has five regional brigades consisting up to 5000 soldiers, which increases gradually, in five sub-regions, and rapid deployment capacity and six mission scenarios.[106] Mulugeta, however, argues as none of the six scenarios respond to new circumstances in the continent such as piracy and transnational organized crimes.[107]

Fifth, the African Peace Fund (APF) is entrusted with provision of funds to peace support operation and other operational works linked with peace and security affairs of the continent. However, the APF is dependent on the support of donors, and some opined that costs of the APSA has to be covered by the UN since the APSA is doing the primary duty of the UN as stipulated under Chapter VIII, while others argue for Article 53 that gives powers regional mechanisms emphasising on the significance of financial independence.[108] Relatedly, the APSA contains the idea of Peace Support Operations (PSO) that refers to integrated or organized assistance initiatives to support the maintenance, management and building of peace and resurgent violent conflict. The PSO has two components: peacekeeping and peace enforcement tasks. The former monitors and support the establishment of peace in lieu of

[104] Protocol PSC (n45) Article 2 (2) and 12.

[105] Ibid Article 11.

[106] African Union, 'Policy Framework for the Establishment of the African standby Force and the Military Staff Committee' (African Union 2003) <https://www.peaceau.org/uploads/asf-policy-framework-en.pdf> accessed 19 July 2021.

[107] Mulugeta (n100) 678-679.

[108] Ibid.

peace agreement, while the latter create conditions for peace and could involve use of force under which the AU has contributed in the peace keeping and building activities in cooperation with the UN and independently as well.[109]

2.6.3. Normative Frameworks of the African Union and the Blue Nile Regime

2.6.3.1. International Water Law: It's Relevance to the Blue-Nile and the GERD Dispute Settlement

Long ago, the concept of international water law understood from two perspectives: geographical and legal, the former refers the crossing of a boundary of two or more states, while the latter refers an absence of monopoly or totalized sovereignty over the water resources. In previous time international waters often related with navigability.[110] Definitions took different forms in different times, it defined as communal (late 18th c), freedom of navigation (Barcelona convention), to show hegemony (post first world war), as a unity of physical facts to share benefit accruing therefrom and others (post 20th c). The recent one is of two types: Contiguous and Successive, where the former serve as a boundary, the latter crosses the territory of two or more states.[111] A very recent workable definition came 1950s onwards due to the need to alleviate rule and institutions seeking disputes. Accordingly, the 1966 Helsinki Rule provided the term as 'International Drainage Basin'[112] However, the 1997 UN Watercourse Convention (UNWC) defined international watercourse in differing way than Helsinki rule.

The term ''system'' which is a new concept included in the 1997 UNWC allows to defining international character of states relation since the use of watercourse by one riparian state will have repercussions on the other.[113] It serve as a source of regulatory frameworks on different aspects including dispute resolution where most of the principles constitute a general

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[109] Nicola Johnston, 'Peace Support Operations: Inclusive Security, Sustainable peace, a toolkit for advocacy and action', [2012] 34, <https://www.inclusivesecurity.org/wp-content/uploads/2012/04/38_peace_support.pdf> accessed 14 July 2021.

[110] Helsinki rules on the use of the waters of international Rivers, (1966), Article 2 general comment, <http://www.waterlaw.org> accessed 22 July, 2022.

[111] Ibid Article 3 general comment.

[112] Ibid Article 2 general comment.

[113] McCaffrey S., 'the contribution of UN Convention on the law of non-navigational uses of international watercourses', [2012] 1(3) International Journal of Environmental Issues 251.

principles and customary international law[114] The Convention also attempts to clarify the concerns of 'Planned Measures' or prior notification and consultations on works from article 11 to 20.[115] Furthermore, it tries to promote, to some extent, the principle of 'Equitable and Reasonable Utilization',[116]and serve the world aligned with the United Nations Commission for Europe Convention on the Protection and Use of Trans boundary Watercourses and International Lakes (UNECE).[117]

With regards to dispute settlement, the Conventions, primarily, allows states to use their own methods if they had agreement. In the absence of agreement negotiations is suggested, however if parties are unable to reach agreement they can opt for third party good offices, mediation, conciliation, or can submit to an arbitration or to the International Court of Justice. However, if the said options fail to work within six months states can form impartial fact-finding to see the dispute.[118] However, the 1992 UNECE Convention provides relatively relaxed mechanisms.[119]

2.6.3.2. Colonial and Post-Colonial Agreements: Their Effect and Relevance in the GERD Dispute Settlement Process

The Nile, being a trans-boundary river, is subjected to a number of agreements. According to Yakob Arsano, there are three categories of treaties with respect to Nile River. Firstly, treaties between colonial powers (Great Britain, Italy and Belgium in 1902, 1906, 1925 and 1934). Second, between colonial power and riparian state (Anglo-Ethiopian and Anglo-Egyptian in 1902 and 1929), and lastly, between independent riparian's (Egypt-Sudan and Egypt-Ethiopia in 1959 and 1993).[120]

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[114] Charles Bourne, 'the international law association's contribution to international water resource law', [1996] 36(2) Natural Resource Journal 17.

[115] Convention on the law of the Non-navigational Uses of International watercourses, (adopted by general Assembly resolution no. 51/229 1997) (hereinafter The UNWC).

[116] Salman M.A. Salman, 'the Helsinki rules, the un watercourses convention and the berlin rules: perspectives on international law', [2007] 23 (4) Routledge.

[117] Ibid; Tanzi A., 'the relationship between the 1992 UNECE convention and the 1997 un convention'; (2000) Report of the UN/ECE Task Force on Legal and Administrative Aspects, Geneva.

[118] The UNWC, Article 33.

[119] United Nations Economic Commission for Europe Convention on the Protection and Use of Trans boundary Watercourses and International Lakes (1992), Article 22.

[120] Yakob A. 'Ethiopia and the Nile: Dilemmas of National and Regional Hydropolitics' (Ph.D. Thesis, Faculty of Arts, University of Zurich, 2007); [2007] 98; Mwangi S. Kimenyi and Jhon Makes, 'governing the Nile River Basin: the search for a new legal regime', (Brookings Institution Press, Washington, D.C 2015) 47-49.

Although in practice states oriented themselves towards the middle approach, there are two extreme positions regarding historical succession of treaties: Clean Slate and Continuity theories. Clean Slate theory advocates that the successor state should assume none of the rights and obligations of the predecessor state. It entails the discontinuity of all rights and duties except agreements or treaties with regards to boundary issues. On the other hand, the Continuity Theory obliges newly formed states to inherit all the rights and obligation devolved of their predecessor. There are also other principles and concepts such as Principle of Freedom of Contract, Privity of Contract and Nyerere Doctrine, which strengthen or reject either of the preceding theories.

Accordingly, the Principle of Freedom of Contract argues that parties to a given contractual agreement could multilaterally decide to be bound by their terms of agreement or reject the old agreement. Hence, agreements concluded in the colonial rule would only be transferred with the consent of all the relevant parties.[121] On the other hand, the Privity of Contract provides that the parties to the contract cannot pose any form of damages, duty or conditions on a third party which is not a party to such agreement or contract.[122] Lastly, the Nyerere Doctrine adopted the Clean Slate Theory with slight modification providing that, as declared by Tanganyika and delivered to the UN Secretary General, states after independence could decide the validity or otherwise of the agreement unilaterally or by mutual consent.[123]

Ahmed Abulwafa argues that from the point of view of legal principles all the treaties which are concluded between riparian and colonial powers are valid once the principle of pacta sunt servanda, consent and good faith obliges the riparian to be abide by those treaties. In relation with colonial powers' agreements, he raises the two principles of tabula rasa (clean slate) and continuity, then invoking the 1978 Vienna Convention Article 11 and 12 on boarder issues, he validate and harmonized both principle with colonial treaties avoiding the principle of state sovereignty on its natural resources.[124] Further, he argues based on Article 3 and 5 of the

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[121] D'Aspremont Jean, 'decolonization and the international law of state succession; between regime exhaustion and paradigmatic inconclusiveness' [July 2013] 12 (2) Chinese Journal of International Law.

[122] The concept is well-known in the common law legal system, while called relative effect of contract in civil law legal system.

[123] Official Records of the United Nations Conference on the Succession of States in respect of Treaties, (Vol. III, doc./A/CONF.80/16/ Add.2, 18).

[124] Ahmed Abulwafa, 'commitment of international conventions on river Nile' [2013] 11(39) African Perspective Studies and Articles 7, 9.

UN Watercourse Convention and Helsinki Rules (past utilization) respectively,[125] since both instruments does not invalidate colonial treaties and complained on the absence of clear provision within the CFA and unless the downstream states ratified the CFA the previous treaties would remain valid.[126]

On the other side, Dante Caponera argues that the treaties undertaken with Ethiopia are invalid. The agreements between Ethiopia and UK have never been ratified and the state behaviour between the lower riparian and Ethiopia does not makes the agreements valid based on customary rights. Ethiopia's natural right on its own territory is undeniable and unquestionable; however, no agreement mentions this right. Ethiopia has got no single benefit out of the agreement and the 1929 agreement's viability was set to be non-viable due to the arrangement of new agreement of the 1959, and lastly, the recognition accorded for Italy's annexation of Ethiopia by Britain, invalidates the previous agreements.[127]

Contrary to Caponera's view Alice Shih and Trevor Stutz argue that Ethiopia is duty bound by the terms of the 1902 agreement rather than state behaviour or customary rights. As regards natural rights, they are sceptic given the equitable portion concept of international water law and heavy reliance of Egypt on historic and natural rights. While countering no-single benefit argument providing that Ethiopia got UK's neutrality against Italian interference and lastly, though Italy's annexation of Ethiopia does not bought recognition of several countries, it does not preclude prior treaty obligation as a clean slate theory does not work on territorial and non-navigational uses of international watercourse.[128]

Alice Shih and Trevor Stutz, firmly argue the insufficiency of arguments raised on the part of Ethiopia and some scholars: law of state succession or fundamental change of circumstances.[129] They rather suggest the possibility of invalidating the Nile Treaties through the combination of both Rebus Sic Stantibus and Jus Cogens. Accordingly, they tend to provide the test of three factors: water-security test, food security test and development test. Accordingly, in all tests Egypt is in a better position than others. Thus, the circumstances at the time of those treaties have now changed and as things, based on the tests, stands violates the Jus Cogens principle, and therefore the treaties must be abrogated.

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[125] Ibid 10.

[126] Ibid.

[127] D.A. Caponera, 'the Nile: legal and technical aspects', [1958] Mimeo Paper of August.

[128] Alice S. and Trevor S., 'Sink or Swim: Abrogating the Nile Treaties While upholding the Rule of Law' 38-39 (Yale Law School).

[129] Ibid 37, 62-66.

Wuhibegzer and Sheferawn argue for the invalid features of the treaties with different reasoning.[130] For instance, the Anglo-Italian Protocol of 15 May, 1891 is said to be non-effective in the light of Privity of Contract principle. As regards the 1902 Anglo-Ethiopian agreement, they argue for its invalidity due to its defect of consent element and the presence of fraud and corruption as the English and Amharic versions depicts different meaning. Further, the absence of ratification in both states – as they adopted a dualist approach makes it invalid.[131] In relation to the 1929 treaty, they argue that Ethiopia has nothing to do with this agreement as Ethiopia never been colony of Britain, and it gives veto power on a shared resource against international water law. Lastly, they tend to give similar effect for the 1959 agreement between the two independent states of Egypt and Sudan, trying to show the improper feature of the treaty and unveil the secret behind therein.[132] Finally, they conclude that the critical investigation of the treaties reveals legal defects, exclusivity and fraud: leading the region to face a loophole of established and effective legal regime.

2.6.3.3. The Agreement on Declaration of Principles (DoP)

The three riparian countries signed the Agreement on the Declaration of Principles (DoP) on 23rd of March 2015 in Khartoum, Sudan. The Agreement admits the rising demand of and the significance of the river Nile as a source of livelihood and development of all the three states.[133] The DoP contains ten principles of which are more or less similar with the UN Water Course Convention of 1997. To start with, the Principle of Cooperation require the states to cooperate based on common understanding, mutual benefit, good faith, win-win, principles of international law and in understanding upstream and downstream water needs in its various aspects. Principle of Development, Regional Integration and Sustainability: here, the agreement provides the purpose of the Dam as power generation through which economic development, trans-boundary cooperation, and regional integration through reliable and clean energy is promoted.

[130] Wuhibegzer F., Sheferawn A., 'The efficacy of Water Treaties in the Eastern Nile Basin', [2014] 49(1) African Spectrum <www.africa-spectrum.org> accessed 13 April 2022.

[131] Ibid 58-60.

[132] Ibid 61-64.

[133] The Agreement on the 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, (23 March, 2015, Khartoum, Sudan) (hereinafter The DoP).

The Agreement talks of the duty not to cause Significant Harm and the Principle of Equitable and Reasonable Utilization as enshrined in the UNWC.[134] Furthermore, the three riparian are duty bound to cooperate on the First Filling and Operation of the Dam. The Agreement also gives priority to downstream countries in purchasing the power generated from the Dam under the Principle of Confidence Building. Besides, the DoP places a duty on Ethiopia as to the continuation of activities in relation to the safety of the Dam, and Sovereignty and Territorial Integrity is the other principle. Lastly, disputes stemming from interpretation or implementation of the agreement are to be solved either through consultation or negotiation in accordance with the principle of good faith. However, if the riparian are unable to solve their dispute with the said means, they could jointly request for conciliation, mediation or refer the matter for the consideration of the Heads of State or Government.[135]

With regards to the DoP, there are diverse views whether the agreement is a positive step in the cooperative management of the river. While some views the agreement as a break-through between Egypt and Ethiopia after four years of tensions, others thought that Egypt is duty bound to lose from the declaration as it does not include any reference to Egypt's historical rights in the Nile water and does not ensure any reduction of the huge storage capacity of the GERD.[136] Tawfik opine that the declaration is a realistic compromise on a historical dilemma and a true reflection of the current balance of power.[137] Whereas, Minga et al in their writing argues that the DoP includes key elements of the 1929 and 1959 agreements, tend to reassert the 1993 general framework agreement with Ethiopia and it is not framed in a positive-sum game or win-win approach.[138]

The government of Ethiopia, views the signing of DoP as a changing position of Egypt to cooperate, though there are a sabre-rattling and diplomatic manoeuvring that are still used by forces in Egypt who want to set the clock back and promote self-interest at the expense of others.[139] In this regard, Salman, as quoted by Dereje Mekonnen, opined that the DoP could

[134] Sabine Blumstein and Susanne Schemeier, 'disputes over international watercourses; can river basin organizations make a difference?: a multidisciplinary approach' [2017] 222 Research Gate.

[135] The DoP (n133) Article 5-10.

[136] Tawfik R., 'the declaration of principles on Ethiopia's renaissance dam: a break-through or another unfair deal? (German Development Institute 25 March 2015) 2.

[137] Ibid.

[138] Minga et al, 'Perspectives on the Declaration of Principles Regarding the GERD dam', (Aiigaforum.com 6 April 2015) http://www.aigaforum.com/articles/Perspectives-on-the-Declaration-of-Principles-GERD.pdf.

[139] Tawfik R., 'Beyond the River: Elite Perceptions and Regional Cooperation in the Eastern Nile basin', (Water Alternatives 2019) 12(2) 666.

be taken as a success for upstream states as it tend to show recognition and acknowledgement by down-stream states for the equality of all riparian states of the right to utilize the river for sustainable development of their people.[140] Tawfik argues, however, against Salman since no part of the DoP warrants such optimistic understanding as Egypt believes the DoP would not affect the historical agreements and water share therein.[141] Similarly, Dereje argues that the DoP represents a new challenge as it attempts to institutionalise the status-quo with little concession for Ethiopia as they came to ascertain that the project is at point of no-return.[142]
Minga et al argues that the DoP is framed in a misleading manner as it deals with damages other than causing significant harm which place unfair duty on Ethiopia which they consider it as a voluntary ceding of sovereignty[143] that Dereje calls a strategic blender as it restricts Ethiopia's developmental right to non-consumptive power generation only where none of the up-stream projects purpose were neither restricted nor consulted.[144] Further argues that the DoP is not limited to the GERD affair rather it tend to include the main River Nile and its tributaries, so that Ethiopia is to be restricted from developing its resources.[145] Moreover, the DoP is said to disregard the UNWC of 1997 and the CFA, despite its reference to international law. Besides, unfair duty is said to be placed on Ethiopia due to the principles of Equitable and Reasonable utilization as it continues to be a ground for tension, while Dejen Yemane argues that the Principles are unfit to a single project like the GERD Dam rather they fit for basin wide concerns.[146]
On the other hand, Dereje criticise the deliberate omission of the phrase ''having due regard to the provisions of Art.5, 6, and 7 (2) of the UNWC of 1997'' as copied in the CFA, since it would impact the point of reference in dispute resolution and blurs the distinction between factual harm and harm constituting a legal injury, thus any injury would be considered as

[140] Salman M.A. Salman, 'The Grand Ethiopian Renaissance Dam: the road to the declaration of principles and the Khartoum document', (Water International 2016) 41(4) 514.

[141] Tawfik, R., 'The Grand Ethiopian Renaissance Dam: a benefit sharing Project in the Eastern Nile?' (Water International 2016) 41(4) 582.

[142] Dereje Z., 'Declaration of Principles on the Grand Ethiopian Renaissance Dam: Some issues of concern', [2016] 11(2) Mizan Law Review 269 < http://dx.doi.org/10.4314/mlr.v11i2.1> accessed 2 May 2022.

[143] Minga et al., (n138).

[144] Dereje Zeleke, (n142) 268.

[145] Ibid.

[146] Dejen Yemane. 'Commentary: the 2015 DoP is not a treaty and Ethiopia does not have obligation therefrom', (Addis Standard 21 May 2020) https://addisstandard.com/commentary-the-2015-declaration-of-principles-is-not-a-treaty-and-ethiopia-does-not-have-obligation-therefrom/ accessed 3 April 2022.

significant harm.[147] Relatedly Dereje argues that the DoP is beyond the specific affairs of the GERD and erode the norm building feature of international law seeking to maintain status-quo due to its treacherous redefinition of the existing core principles of international law.[148] Mwangi and Mukum, however, argue that the DoP is specific to the GERD leaving the contentious Nile issue unresolved.[149] It is opined that most of the guiding factors within the principle of equitable and reasonable utilization tend to favour Egypt in a way that protects its interest as Egypt is 97 per cent dependent on the Nile having no other alternatives.[150]

As regards the validity of the DoP Noah El Tawil referring Professor Ayman Salama and Sameh Shoukry, Egyptian Foreign Affairs Minister, argues that DoP is exclusively binding.[151] Similar statements have been heard on the side of Ethiopian government that stresses the viability and validity of the DoP.[152] Dejen Yemane, however, thoughts that the DoP is not binding and valid since it is not a treaty as it simply restate the pre-existing principles of international laws. Further opines that DoP does not establish rights and duties of parties and cannot governed by international law since a basin wide agreement is a precondition to make a single project based agreement, hence no legal dispute could be brought based on it.[153]

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[147] Dereje Z., (n142) 272.

[148] Ibid 271.

[149] Mwangi Kimenyi and Jhon Mukum Mbaku, 'Africa in focus: the limits of the new ''Nile agreement'' (Brookings 28 April 2015), ,<https://www.brookings.edu/blog/Africa-in-focus/2015/04/28/the-limits-of-the-new-nile-agreement/> accessed 05 March 2022.

[150] Bayeh E., 'Agreement on the Declaration of Principles on the Grand Ethiopian Renaissance Dam Project: a reaffirmation of the 1929 and 1959 agreements?' [2016] 2, Arts Social Sci J 7.

[151] Noah El Tawil, 'Declaration of Principles on Renaissance Dam is 'exclusive agreement' binding Egypt, Ethiopia, Sudan together: intl. law expert', (Egypt today 23 June 2020) https://www.egypttoday.com/Article/1/88909/Declaration-of-Principles-on-Renaissance-Dam-is-exclusive-agreement-binding accessed 22 March, 2022.

[152] Look at several Press Statements and releases of the Ministry of Foreign Affairs of Ethiopia.

[153] Dejen Yemane, (n146).

CHAPTER THREE

3. The Role of the African Union in Resolving the GERD Dispute

3.1. Points of Contention between the Three Riparian and Their Implication on the Role of the African Union

Generally, the basin has been experiencing fierce competition between the views and positions of the three riparian since decade ago as regards laying the foundation of cooperative engagements in every respect. However, it is also true that the scope of disagreements and negotiations has become more narrowing. As the brief on the negotiation progress indicated, the states have pinpointed three concerns while comprising broad issues therein. First, parties are at dispute as regards signing a binding agreement that regulates the filling and operation of the GERD, dispute settlement and other related procedural issues. Second, the need to conduct further studies of social and environmental impacts as the project, as appealed by down-streams, is likely bring harm. Third, as to who participate and what role third parties should play in the negotiation as well as resolution of disputes.

3.1.1. The Disagreement on the Necessity of Signing a Binding Agreement

With regards to the signing of an agreement on the filling, operation, dispute settlement and procedural issues of the GERD, the down-streams have been keen for a binding agreement, while Ethiopia argues for a non-binding agreement. In this regard, Ethiopia appeals for its persistent invitation to the down-stream riparian to join and signs the CFA as it equitably benefits all.[154] Ethiopia further argues that it had, as the down-streams are already informed of, a plan to build other additional dams on the Blue Nile where all the feasibility studies are complete, and if Ethiopia agree and sign a binding agreement, as down-streams calculated, Ethiopia is to be restricted from future development of its resources as the intrinsic purpose of the agreement is to limit Ethiopia's developmental activities on the GERD only, due to their unrealistic argument of water security.[155] This view further strengthened by other expert stating that Ethiopia needs to sign a non-binding agreement in a way that protects the

[154] Abiy Ahmed, called upon the downstream consider the signing of the CFA, Speech made on Ethiopian Parliament, on 22 February, 2022.

[155] Interview with Tilahun A., Advisor of American Affair for Ministry of Foreign Affairs of Ethiopia (MFA, 02 January 2022).

interests of all but which do not forfeits Ethiopia's sovereign power to develop, manage and regulate its own projects.[156]

The down-streams, particularly of Egypt, however, consistently appeals for an effective and binding agreement in a way that respects the water share and its water needs, while attributing the absence of an agreement and slow progress of the negotiation for ''Ethiopia's intransigency'' which is said to apply a fait accompali tactic.[157] Here, Tekuya argues that all the required objectives which are aspired through signing a binding agreement should rather left or transferred to the CFA that already establishes the NRBC that can handle it.[158] Fabiani, looking at the progress of the negotiations and the steps taken in filling the three stages, opined that reaching agreement is very unlikely unless parties avoid mistrust.[159]

In this regard, almost all informants told the same opinion opposing the signing of binding agreement on the part of Ethiopia. Here, the study has influenced in terms of unbiased data, since both Egypt and Sudan, were not willing to give their opinion despite repeated attempt on the part of the researcher. Therefore, the contention over the need for signing a binding agreement remains unresolved, as the upstream Ethiopia appeals for a non-binding agreement while the downstream riparian sticks on binding agreement, posing a greater impact on the progress.

3.1.2. The Implication of Colonial and Post-Colonial Agreements in the GERD Dispute Resolution Process

Related with the foregoing arguments the other point worth of discussion is the concern of Colonial and Post-Colonial agreements. While arguing for having a binding agreement, the down-streams especially Egypt, invoke the terms ''water share'' and ''water security'', which are stipulated under the 1929 and 1959, although does not cite these treaties technically. Besides, they argue that any work, up-stream of Nile, should prevent harms alongside prior permissions, and respect the water interests of the down-stream riparian as

[156] Interview with Tefera B. Advisor on Trans-boundary resources: the Minister of Water and Energy of Ethiopia (Ministry of WE, 26 January 2022).

[157] State Information Service (n96).

[158] Mahemud Tekuya, 'the GERD: what's at stake and what could break the deadlock, (20 July 2020) The Conversation https://theconversation.com/the-grand-ethiopian-renaissance-dam-whats-at-stake-and-what-could-break-the-deadlock-143018 accessed 23 May 2022.

[159] Ricardo Fabiani, International Crisis Group, North Africa Project Director, told Al-Monitor on 22 May 2022 https://www.al-monitor.com/originals/2022/05/ethiopia-courts-two-downstream-countries-third-filling-nile-dam accessed 12 July 2022.

agreed. Here, the down-streams require Ethiopia to act in accordance with the 1902, 1993, 2015 DoP and related agreements. Thus, the disagreement in this regard is another point of contention. Accordingly, some argue that the 1902 agreement is subject to invalidation due to its defect in consent and fraud act,[160] and even if it is given a binding effect it does not prohibit Ethiopia from undertaking projects since it only prohibits the ''full arrest'' of the river, and Ethiopia is not arresting the river as it is technologically possible,[161] while some argue that the term is not meant to refer the full arrest as it is impossible to arrest by any means.

With regards to the Declaration of Principles all the three states seems to have given a binding effect as they observed consistently invoking it,[162] though some scholars argue that the agreement is a strategic mistake[163] through which Ethiopia gave up its sovereign interests providing that it reasserts the colonial treaties, while letting an interference right to down-streams over ones national project.[164] Confirming its binding effect one interviewee told that the DoP protects the interests of Ethiopia as it govern specific project. Rather the down-streams often regret for signing the DoP citing their attempt to make non-effective.[165] In this regard, except one interviewee all the interviewees favoured the positive effect of DoP to Ethiopia.[166]

3.1.3. The Disagreement over Filling Periods, Safety of the Dam and Related Concerns

The other issue that is part of a binding agreement dilemma is the down-streams harm associated with the filling and operation of the GERD. Accordingly, the down-streams invoke the need for further study on social and environmental impact of the project as per the recommendations given by the IPoE and the DoP. Relatedly they request for extended periods of filling in a way that maintains the annual discharge more or less undisturbed paying attention for drought, prolonged droughts, and prolonged years of dry seasons, also request joint regulation of the operation of the dam seeking to avoid unilateral move. In this

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[160] Wuhibegzer and Sheferawn (n130).

[161] Interview with Dereje Z.M, Associate Professor of International law, Addis Ababa University (AAU, 6 Killo, 10 May 2022).

[162] Look at the press releases given by the Ministry of Foreign Affairs of Ethiopia and Egypt in different occasions.

[163] Dereje Z.M (n142).

[164] Minga et al., (n138).

[165] Interview with Tefera B. (n156).

[166] Except one informant all the interviewees support the effectiveness of the DoP.

regard, the study of Ben Zaitchik[167] reveals that relying on hard numbers to fill the dam is not helpful, rather suggests that there has to be flexibility depending on the availability of wet seasons proposing 5 to 9 years,[168] which is unacceptable for Wheeler, Hydrologist at Oxford University, given that the impossibility of forecasting as there are implementation challenges.[169]

Whereas, the study of U.S academic researchers revealed that the occurrence of drought during the filling periods of GERD is feasible looking at historical data and predictions.[170] Kevin Wheeler, however, provides 7 per cent of drought occurrence, while Paul Block makes a 6 per cent prediction of rainfall below normal rate.[171] Generally, these scholars disagree with the findings made by Egypt and Ethiopia providing that things will be determined based on the correlation between major droughts and El-Nino which occurs when the warm phase of the El-Nino Southern Oscillation, associated with a band of warm ocean water develops in the Central and East Central Equatorial Pacific. In those years, the odds are higher for extreme droughts in the upper catchment of the Blue Nile.[172]

Marc Jeuland further argues that a pre-agreed policy of filling might not be needed unless a serious of drought coincides during the filling stages of the GERD. Rather if Lake Nasser and GERD are empty, there will be dangerous trade-offs related with filling, where having agreement become must. Ethiopia and Egypt need to avoid mistrust, feelings and perception which are unscientific to avoid negative assumption within peoples that one is harming another.[173] Misrepresentation of scientific realities would affect the disagreement as both Egypt and Ethiopia found to prudently prepare their arguments for their own benefits.[174] Besides, partisanship in research, bad quality papers, and public campaigns in social media, in both sides may mislead the perception.[175]

As regards the filling period some argue that Ethiopia lacks the required infrastructure that holds the power generated and it may become excessive urging Ethiopia to extend the

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[167] Ben Heubl (n16).

[168] Ibid.

[169] Ibid.

[170] Ibid.

[171] Ibid.

[172] Ibid.

[173] Ibid.

[174] Ibid.

[175] Ibid.

period.[176] Finally, the down-streams accuse Ethiopia for neglecting the undertaking of the social and environmental harm study, and reject the unilateral filling in the absence of a binding agreement, generally making Ethiopia legally responsible invoking the DoP and international law as having been violated.

In this regard, Tefera argues that Ethiopia does not violate any law as the design of the GERD construction require Ethiopia continue filling while constructing. Also the social and environmental harm assessment has already been conducted, and an independent scientific group was set up to do so, but issues remain unresolved due to reasonable interest.[177] Similarly, all the interviewees were in favour of Tefera's view.[178] Concerning the comments made on grid-lines that hold the power generated the interviewees told that such comment is no more than hearsay as Ethiopia completed such infrastructure a couple of years ago.[179] Similarly, the issue of extension of filling period remain less supported as it goes against the design and study of the project. Rather stated that the main interest of Egypt is to maintain the status-quo, which Ethiopia has been challenging.[180]

3.1.4. The Implication of Contentions on the Effectiveness of the African Solution to African Problems

The concept of African Solutions to African Problems (ASAP) is defined as a rallying and emotive idea that is used as an instrument of fostering continental solutions. The idea is said to emerge during the periods of decolonization as a pan-African anti-colonialist leaders stressed on the need for establishing African responses for African security problems. It indicates a sense of self-reliance, pride, self-responsibility, and offering indigenous solutions to solve continental problems.[181] Based on this understanding, the AU Peace and Security Architecture is established to respond for regional tensions to reduce the interference of external powers and unjust consequences through cooperation with regional mechanisms and regional hegemons.[182]

In relation to resolution of the GERD dispute one writer argued that the idea suffers from legal, institutional, and personnel (expert) gaps, however, with the assistance of regional

[176] Ibid.

[177] Interview with Tefera B. (n156).

[178] Ibid.

[179] Ibid.

[180] Ibid.

[181] Remofiloe Lobakeng (n30).

[182] Biruk K.M. (n31).

mechanisms and commitment of conflicting parties the principle of ASAP can be applied in the GERD conflict which in the future can serve for other disputes in the continent if the on-going progress end up with success.[183] While three issues remain challenges to apply the principle: the previous treaties, nationalistic interests and alliance formation, and the intervention of extra regional powers in the affair.[184]

Despite the consistent request on the part of the downstream riparian to involve external powers including the UN Security Council, in the dispute resolution process, it has, however failed due to the firm position of Ethiopia to the AU led process.[185] Arguing on the irrelevance of external powers intervention, one interviewee opined that there is no any other proper organ than the AU as the biased role through the U.S[186] heightens the dispute in the past; while Cascao commends the importance of consensus based approach in opting for selection of third party. Although the down-stream countries later accepted the AU led settlement process, there are, however some confusion as to the sufficiency of the mantra of ''African Solutions to African Problems'' in terms of professionals and required instruments in resolving the dispute.

At this juncture it is worth noting the strong inter play between the rhetoric of African Solution to African Problems (ASAP) and the Third World Approach to International Law (TWAIL). TWAIL basically intends to challenge and oppose the unjust structure, activities, and progress of the international law and its offspring's, i.e. global institutions and their function toward the third world countries. As the history of TWAIL reveals, it has strong relation with neo-colonial attempts undertaken through the Western world in a systemic manner using different mechanisms. TWAIL highly opposes the arbitrary approach of the West in manipulating the economy and resources of the world at the expense of the South. It challenges unfair intervention of the West under the guise of development, modernization, globalization and related issues, while commending an active engagement of the third world in shaping the new world order in a way that respects the worth, dignity and interests of the third world people.

Similarly, the concept of ASAP emerged following the horrific consequences that the continent witnessed while the West showed its negligent behaviour. Further, to end

[183] Ibid.

[184] Ibid; The Letter submitted to the UNSC from Sudan on April 12, 2021.

[185] Fabricius (n12).

[186] Interview with Tilahun A., Advisor of American Affair for Ministry of Foreign Affairs of Ethiopia (MFA, 02 January 2022).

dependence of the continent on the Western world and the recurrence of damages in the continent, the region has established a mechanism which fits the needs of the region in every respect. The mantra of ASAP is also said to serve not only the conflict scenario, but rather it also intends to answer any questions and problems arising from the region. Therefore, ASAP has strong linkage with TWAIL since its fundamental goal is building capacity to maintain independence in every respect to resist unfair and unjust influence of the West, while strengthening collaboration in a way to sustain common good.

With regards to the concept of ASAP, however there are diverse opinions as to its relevance, sufficiency and significance to the continents problem in general and the GERD dispute in particular. Dereje considers ASAP as a slogan which tends to be parochial that attempts to delineate the continent from the rest of the world. Further, argues that the principle is not a new thing as the UN Charter already allows regions solve their disputes primarily, and it would complicate the conflict as it tries to localise a global concern where there is no organized instruments and mechanisms.[187] Similarly, an anonymous informant told that the on-going conflict over the GERD has no African element which strictly requires the enforcement of such principle. Further opined that sometimes even the UN lacks the mechanisms let alone the AU, and what matter is the political willingness of the parties as Egypt is less committed to give up the long standing status-quo and Ethiopia, too, is not totally dependent on the principle. However, the principle is said to have its own peculiarities as the continent has good indigenous mechanisms.[188]

On the other hand some argues that Africa is reach in terms of indigenous mechanisms which served for long, and in terms of experts the continent has many distinguished experts who served and are being serving very giant global organizations. Besides, the African Union, while enforcing the principle can use the precedents and experiences of Regional Economic Mechanisms (RECs) or opt for inviting or commissioning professionals, experts and any other required things if necessary for the sake of bringing solution.[189]

In terms of normative or legal frameworks the AU lacks the required legal instruments to solve the dispute. In this regard, some groups argue that the role to be played through the AU does not require such instruments as it is expected of playing a facilitator role.[190] Dereje,

[187] Interview with Dereje Z.M, (n161).

[188] Interview with Anonymous informant, Institute for Peace and Security Studies, Addis Ababa University (IPSS, 5 Killo, 09 May, 2022).

[189] Interview with Tilahun A. (n186); Interview with Tefera B. (n156).

[190] Interview with Yacob A. (95).

however, argue that the precedents mentioned above cannot serve the GERD dispute as the nature and point of contention are totally different and the RECs are simply the smaller pictures of the bigger AU that characterised by many gaps.[191] Here, Am. Ibrahim Idris opined that AU is supposed to bring the forum for the parties come together and negotiate in order to reach at common points.[192] The same holds true for the rest of interviewees providing that the owner of the case are the three states.[193]

Looking at the aforementioned arguments, it is clear that the views are divided in to two groups. Almost all the informants from government organs[194] opined that resorting for the AU led process on account of finding African Solution to African Problems is appropriate and effective. Whereas, the other group[195] opposed the move due to two major reasons: firstly, the concern has no continental element, which requires continental solution; secondly, the concept is not in a position to sufficiently respond to the problem, since the mechanism lacks the required technical, financial, and diplomatic leverages.

In this regard, the absence of the views and position of the African Union, and the two downstream riparian, Egypt and Sudan, as all failed to respond for the interview request of the researcher, has affected the balance of data. However, looking at the history and experience of both riparian states, preceding AU's seizure of the concern, any one could simply understand their position and place given to the concept of ASAP. Hence, the researcher has preferred to conclude based on the data gathered in exclusion of Egypt and Sudan. As regards the AU, it has lesser relevance to the conclusion as it is reasonably expected to support all the mechanisms under its supervision.

Even though the AU Peace and Security Architecture lack essential institutional and legal frameworks to support the peaceful settlement of dispute, the major problem lies on the very nature of the notion of ASAP. The notion by itself is not clear as to what problems are intended to be solved and what mechanisms and approach are followed. The very conception of ASAP does not define the method and manner for handling a certain problem. It is not clear whether an individual, states, group of states or institutions are allowed to engage in the

[191] Interview with Dereje Z.M., (n161).

[192] Interview with Am. Ibrahim Indris, former Ambassador of Ethiopia to Egypt, and currently working at Ministry of Foreign Affairs, African Affairs Directorate General.

[193] All informants agree that the AU needs to play a facilitator role.

[194] Informants from Ministry of Foreign Affair, Water and Energy, and Individuals who took part in different roles in relation with GERD.

[195] Informants from different field of experts.

process of dispute settlement. For instance, the GERD concern requires technical experts, since there are disputes in relation to technical issues, and then the question would be whether it is possible to invite global experts and institutions to help the process. Furthermore, the notion does not answer issues as regards the involvement of states or institution outside the continent in the provision of financial and professional support and other related concerns.

Accordingly, the effectiveness of ASAP are determined based on two factors: firstly, the essence and arrangement of the notion of ASAP affects the progress of dispute settlement. Since, the notion has a strong relation with the notion of TWAIL as it seeks to establish a sense of independency and looking at the very foundation of the notion, ASAP intends to create a strong continent which could answer questions in relation to the region without the encroachment of Western powers. If the notion strictly depends on the resource of the continent excluding the contribution of the external world, there might be difficulty in resolving the technical concerns as it requires a higher level of knowledge and technology along with finance. Secondly, unless the disputing riparian committed to compromise and reach a negotiated settlement through a cooperative sense, there would be difficulty toward the ASAP in its attempt to help parties resolve their conflict since the notion is not self-sufficient in every respect.

3.1.5. The Implication of Contentions on the Role taken (Good Office) by the African Union

The African Union seized of the concern with legal mandate as the United Nation Charter gives primacy to regional mechanisms in resolving regional disputes. This view could be learned from the decision of the UN Security Council as it backed the concern to the African Union. Accordingly, the African Union has been undertaking a 'Good Office or Facilitation' role. Applying such methods of engagement the AU has undertaken to facilitate several meetings, dialogues, and negotiations between the three riparian countries; however the parties are unable to resolve their disagreement and the process has ceased to continue while contentions remain unresolved.

The method or role attached to the African Union often relates with the act of inviting the disputing parties to resume dialogue and negotiation to peacefully resolve their dispute. The African Union's engagement is limited upon the resumption of dialogue between the riparian countries. In the GERD dispute, however the problem has been reaching at negotiated agreement. As discussed above the riparian states are unable to agree on several matters. According to the data from key informants and related literatures, the upstream Ethiopia

strongly accepts and recognizes the role attached to the AU as the proper role. Therefore, the effectiveness of the AU mechanism through the on-going role depends on two conditions; first, if the three riparian come to consensus the endeavour of the Union will bring success; second, if the three riparian remain at odd, then the role of the Union must be changed to next level.

In both conditions the AU seems to face difficulty, since the riparian countries are not likely to agree on the aforementioned contentions in the near future. Similarly, the second condition is also improbable to happen as the riparian are sticking to their positions. In this regard, the significant lesson that can be drawn from the Indus Water Treaty is that there has to be change in role as the World Bank upgraded its role to mediation from a mere good office.

CHAPTER FOUR

4. Conclusions and Recommendations

4.1. Conclusions

Looking at the very nature of the two notions: Third World Approach to International Law and African Solutions to African Problems, one can discern that both seeks to establish a sphere of independence which serves the interest of states and peoples within the framework. Furthermore, it can be concluded that the notion of TWAIL has influenced ASAP in a way the continent to delineate from the influence of the rest of the world in searching tangible and meaningful answer for regional questions. However, the notion of ASAP still faces a number of difficulties in providing effective solutions for trans-boundary related concerns as it lacks certain required structures and instruments.

Concerning the scope of mandate of the African Union in relation to the United Nations in general and the GERD dispute in particular, the UN Charter gives primary responsibility in resolving local disputes. However, it is worth noting that the three riparian are free to resort to any other mechanism as well as arrangements including the UN itself, since they are bound to stick to a specific mechanism.

Regarding the institutional framework of the AU, it serves to advance the AU's objectives of preventing inter-state and intra-state conflicts brought on by civil wars, unconstitutional changes of government, egregious violations of human rights, and other factors based on the objective and structures of the African peace and security architecture. Although the Panel of the Wise and the Continental Early Warning System function relates to preventive diplomacy and supported by highly regarded African elites, who are typically former political leaders, it cannot provide the requisite quality since the nature of the trans-boundary rivers conflict requires experts. Consequently, conclusions tend to resemble on the absence of institutional framework.

As far as the normative framework of the African Union is concerned, it is generally agreed that having clear legal frameworks for resolving dispute as well as using and developing river basins will facilitate good relations between states. The 1997 UN Watercourse Convention, the 1992 UNECE Convention and other multilateral treaties and declarations have helped the international community reach, to large extent, consensus in this area. The Blue-Nile riparian states, on the other hand, are not parties to these treaties, but they are nonetheless obliged to

abide by the rules and regulations because the majority of them have been recognized as Customary International Law (CIL). Therefore, it may be said that the international law has relevance in terms of dispute resolution in the GERD conflict since the three states are bound to respect and abide by those rules and principles which have got the status of Customary International Law. Concerning, the African Union, there is no well-defined legal framework that deals with the issue of trans-boundary rivers in general and the GERD conflict in particular, despite the presence of protocols in some of the RECs, which cannot serve the concern of the GERD conflict since the character of the basin and the riparian states' relations are completely different. Hence, arguments tend to conclude that resolving the GERD dispute under the AU leadership is problematic.

With regards to the implication and relevance of the colonial and post-colonial agreements, the regime has been hosting diverse thoughts. Colonial agreements seem to be ineffective in light of established doctrines of international law. Although the 1902 agreement argued for its invalidity, it is still disputed since territorial agreements do not fall under the purview of the clean slate theory. While the argument that combines jus cogens with the concept of fundamental changes of circumstances seems to have weight to abrogate the colonial treaties, the disagreement tend to persist since the down-streams are not ready to easily forfeit their interest. Concerning the DoP, the position of the three states needs to be considered since they are persistently praising its validity, albeit the firm argument to make it non-effective on the part of scholars.

As far as the effectiveness of the notion of ''African Solutions to African Problems'' is concerned, it is difficult to anticipate the prospective success of the notion in resolving the dispute, since there is no clearly established mechanism. The process has ceased to progress due to the disagreement between the riparian on several topics, and they are not expected to come to consensus in the near future. Since, most of the contentious issues are technical; there might be a need for professionals over the area. Similarly, there could be plans and schemes in the form of adjustment measures which requires finance to enforce them. The apparent problem is the possibility to accommodate and involve individuals, states, or institutions external to the dispute as well as the continent to contribute in the dispute resolution attempt. As discussed the notion is does not sufficiently defines as to who can involve and help the success of the notion. Consequently, the problem arises if the region becomes unable to provide the required experts for technical and related concerns. Therefore, it can be concluded that the effectiveness of the notion is highly determined by the extent it

accommodates different mechanisms and options beyond the region and the level of commitment on the part of the three riparian states.

With regards to the specific role taken through the African Union, the agreed role of the Union is facilitation in the form of Good Office. The role does not allow the AU to go further and actively engage in the process since the role stops to continue at the moment the disputing parties commence dialogue. The three riparian are unable to reach at consensus till the end of 2022 due to their disagreement over several matters. Accordingly, the probability of success of the AU's Good Office or Facilitation depends on two conditions. First, the three riparian must come to consensus and reach a negotiated settlement, so that the role played by the Union brings fruit. However, if the on-going disagreement persists, the attempt and role taken by the Union become fruitless, since the AU is not permitted to go beyond what expected of a facilitation role. Second, for the AU's role bring effect it needs to actively engage in proposing alternative ideas, plans and other significant contributions, however to do so the AU needs to upgrade its role from facilitation to any other method, such as mediation.

4.2. Recommendations

Considering the in-depth discussions, analysis and findings of this study, the following recommendations are identified for improvements with the aim of bridging the gaps.

1. The African Union needs to establish a clear definition, purpose, goal, arrangement, application, and other related issues for the notion of African Solutions to African Problem, to give effect.
2. The African Union needs to hold a better role other than facilitation in order to play a significant role in the GERD dispute settlement process as the current role limits the Unions engagement as well as influence.
3. The African Union needs to enact a continent wide set of comprehensive rules and standards that can serve as a guide for riparian states' interactions in the region generally. This is because the existence of legal frameworks that regulate the overall aspects of trans-boundary river basins, including the dispute thereof, helps to avoid tensions while encouraging cooperation.
4. Since the African Union's peace and security architecture was designed to respond to armed conflicts, it needs to undergo reform to incorporate concerns about trans-boundary resource-based tensions. Besides, the scope of function of the Continental Early Warning System needs to be revitalised to enhance its expert-based analytical capacity. And, the

Panel of the Wise needs to contain and engage different ad hoc groups of experts and trained diplomats, amongst which one is an experts on the overall aspects of trans-boundary resources. In addition, the AU needs to enhance its diplomatic leverage

5. Despite promoting the principle of African Solutions to African Problems, in the resolution of the GERD conflict, the AU needs to find a mechanism that involves well-organized international organizations, research institutions, and distinguished experts over the concern to contribute significant inputs based on scientific and study results to pose a balanced pressure on the three riparian states to reach sustainable solutions.
6. The Union has to form a group composed of selected heads of states and government, well-experienced diplomats, academicians, public delegates, and representatives from each riparian state that works to lobby and pull the three states to a negotiated agreement for the effective resolution of the conflict.
7. The three riparian states need to consider and respect the interests of the majority of the people living in each country; recognize scientific research findings in good faith and compromise for the fair use of the resource; peace and stability of the three states as well as the entire continent.

Bibliography

1. International and Regional Instruments

Agreement on the Declaration of Principles between the Arab Republic of Egypt, Federal Democratic Republic of Ethiopia and the Republic of the Sudan, Khartoum, 23 March 2015

Helsinki Rules of on the use of the waters of international Rivers, Helsinki, 1966

Official Records of the United Nations Conference on the Succession of States in respect of Treaties, Vol. III, doc./A/CONF.80/16/ Add.2, 18

Protocol on Amendment to the Constitutive Act of the African Union, Maputo, 11 July 2003

Protocol Relating to the Establishment of the AU Peace and Security Council, Durban 9 July 2022

United Nation Commission for Europe Convention on the Protection and Use of Trans-boundary Watercourses and International Lakes, Helsinki, 17 March 1992

United Nations Convention on the law of the Non-navigational Uses of International watercourses, adopted by general Assembly resolution no. 51/229 1997

Vienna Convention on the Law of Treaties no. 18232, Vienna, 23 May 1969

2. Books

Andemicael Berahenykun, OAU and the UN: Relations between the Organization of African Unity and the United Nations (Holmes & Meier Publishers 29 February 1976)

Gumedze Sabelo, the peace and Security Council of the African Union: Its relationships with the United Nations, the African Union and Sub-Regional Mechanisms, (Abo Akademi University Press 2011)

Schmeier Susanne, 'Governing International Watercourses: River Basin Organizations and the Sustainable Governance of Internationally Shared Rivers and Lakes', (Routledge, New York, 2013)

Shlomi D., 'International Water Treaties: Negotiation and Cooperation along Trans-boundary Rivers', (Routledge, New York, 2008)

3. Journal Articles

A Abulwafa, 'commitment of international conventions on river Nile' (2013) 11(39) African Perspective Studies and Articles

Bayeh E., 'agreement on the declaration of principles on the grand Ethiopian renaissance dam project: a reaffirmation of the 1929 and 1959 agreements?' (2016), Arts Social Sci J 7

Bourne C., 'the international law association's contribution to international water resource law', (1996) 36(2) Natural Resource Journal

Jean D., 'decolonization and the international law of state succession; between regime exhaustion and paradigmatic inconclusiveness' (July 2013) 12 (2) Chinese Journal of International Law

Mahemud B., 'how the concept of African solutions for African problems can be applied to resolve the GERD dispute', (2021) Open Journal of Political Science

Mekonnen D., ‘declaration of principles on the grand Ethiopian renaissance dam: some issues of concern’, (2016) 11(2) Mizan Law Review

Rawia T., ‘beyond the river: elite perceptions and regional cooperation in the Eastern Nile basin’, (2019) 12(2), Water Alternatives

Rawia T., ‘the grand Ethiopian renaissance dam: a benefit sharing Project in the Eastern Nile?’, (2016) 41(4), Water International

Sabine B. and Schemeier S., ‘disputes over international watercourses; can river basin organizations make a difference? a multidisciplinary approach’ (2017) ResearchGate

Salman, ‘the grand Ethiopian renaissance dam: the road to the declaration of principles and the Khartoum document’, (2016) 41(4) 514 Water International

Salman, ‘the Helsinki rules, the UN watercourses convention and the berlin rules: perspectives on international law’, (2007) 23 (4) Routledge

4. Online Sources and Other

Abebe Z., ‘the international panel of experts’ report on the grand Ethiopian renaissance dam’, (Ministry of Foreign Affairs of Ethiopia 17 June 2013)

African Union mandating process for peace support operations: the au planning and decision making process, (2 February 2021) <https://eeas.europa.eu/archives/docs/csdp/capabilities/eu-support-african-capabilities/documents/aide_memoire_en> accessed 17 July 2021

African Union, Policy Framework for the Establishment of the African standby Force and the Military Staff Committee, (2003) <https://www.peaceau.org/uploads/asf-policy-framework-en.pdf> accessed 19 July 2021

Arsano Y. A. ‘Ethiopia and the Nile: Dilemmas of National and Regional Hydro politics’ (Ph.D Thesis, Faculty of Arts, University of Zurich, 2007)

Caponera D., ‘the Nile: legal and technical aspects’, (1958) Mimeo Paper of August

Cascao A., ‘what is going on in the Nile has little to do with water’, (15 June 2021) Water Alternatives F <https://www.water-alternatives.org/index.php/blog/nile> accessed 24 January, 2022

Dejen Y., ‘Commentary: the 2015 DoP is not a treaty and Ethiopia does not have obligation therefrom’, (21 May 2020) Addis Standard https://addisstandard.com/commentary-the-2015-declaration-of-principles-is-not-a-treaty-and-ethiopia-does-not-have-obligation-therefrom/ accessed 3 April 2022

Embassy of Ethiopia, ‘GERDP’ (Washington D.C, 15 February 2021) <https://ethiopianembassy.org/the-grand-ethiopian-renaissance-dam-project-gerdp/> accessed 11 September 2022

Esther N., ‘Ethiopian group asks for academics support in dam dispute’, (01 July 2021) University World News, Africa Edition

F Wuhibegzer and A Sheferawn, ‘the efficacy of water treaties in the Eastern Nile basin’, (2014) 49(1) African Spectrum <www.africa-spectrum.org> accessed 13 April 2022

Facilitation and Mediation, IWRM Tool – C6.02, <https://gwptoolbox.org/learn/iwrm-tools/facilitation-and-mediation > accessed 02 April 2022

Heubl B., 'why Ethiopia and Egypt can't agree over hydro-dam' (03 August, 2020), Institute of Engineering and Technology < https://eandt.theiet.org/content/articles/2020/08/why-ethiopia-and-egypt-can't-agree-over-the-grand-ethiopian-renaissanmce-dam-gerd-africa-s-largest-hydroelectric-power-project/ > accessed 07 May 2022

Lobakeng R., 'African solutions to African problems: a viable solution towards a unified, prosperous and peaceful Africa (2017) Institute for Global Dialogue, Occasional Paper 71

Mahemud T., 'the GERD: what's at stake and what could break the deadlock, (20 July 2020) The Conversation https://theconversation.com/the-grand-ethiopian-renaissance-dam-whats-at-stake-and-what-could-break-the-deadlock-143018 accessed 23 May 2022

Minga et al, 'perspectives on the declaration of principles regarding the gerd dam', (6 April 2015) Aiigaforum.com http://www.aigaforum.com/articles/Perspectives-on-the-Declaration-of-Principles-GERD.pdf

Miriam Berger, 'Ethiopia accuses Trump of 'incitement of war' over remarks that Egypt will 'blow up' disputed dam', (24 October 2020) <https://www.washingtonpost.com/world/2020/10/24/ethiopia -accuses-trump-incitment-war-over-remarks-that-egypt-will-blow-up-disputed-dam/> accessed 8 September 2022

Mulugeta G., 'the African peace and security architecture', (2016) 1 African politics, African peace

Mwangi K. and Mbaku J., 'Africa in focus: the limits of the new ''Nile agreement'' (28 April 2015), Brookings,<https://www.brookings.edu/blog/Africa-in-focus/2015/04/28/the-limits-of-the-new-nile-agreement/> accessed 05 March 2022

Mwangi S. and Jhon M., 'governing the Nile River Basin: the search for a new legal regime', (2015) Brookings Institution Press, Washington, D.C

Nicola J., 'Peace Support Operations: Inclusive Security, Sustainable peace, a toolkit for advocacy and action', (2012), <https://www.inclusivesecurity.org/wp-content/uploads/2012/04/38_peace_support.pdf > accessed 14 July 2021

Peter F., 'Could new mediators resolve the GERD dispute?' (05 March 2021) Institute for Security Studies

Rawia T., 'the declaration of principles on Ethiopia's renaissance dam: a break-through or another unfair deal? (25 March 2015) German Development Institute

Report of the AU Peace and Security Council, 'The AU's Role beyond the GERD Negotiations' (04 September 2020), Institute of Security Studies Africa

Ricardo F., International Crisis Group, North Africa Project Director, told Al-Monitor on 22 May 2022 https://www.al-monitor.com/originals/2022/05/ethiopia-courts-two-downstream-countries-third-filling-nile-dam accessed 12 July 2022

Salman, ‘how and why has the Ethiopian strategy on renaissance dam succeeded?’ (30 March 2015) 28 (183) The Citizen

Schmeier S., ‘what is water diplomacy and why should you care?’ (2018) IHE Delft, Netherlands, Global Water Forum

State Information Services, the Arab Republic of Egypt, <https://www.sis.gov.eg/section/7302/9626?lang=en=us> accessed 12 March 2022

Tawil E., ‘declaration of principles on renaissance dam is ‘exclusive agreement’ binding Egypt, Ethiopia, Sudan together: intl. law expert’, (23 June 2020) egypttoday https://www.egypttoday.com/Article/1/88909/Declaration-of-Principles-on-Renaissance-Dam-is-exclusive-agreement-binding accessed 22 March, 2022

Tayia A., et al., ‘the evolution of the Nile regulatory regime: a history of cooperation and conflict (11 October 2021), Springer <https://link.springer.com/article/10.1007/s1268 > accessed 14 May 2022

The 5th Report of the African Union Panel of the Wise on Improving the Mediation and Resolution of Natural Resource-Related Conflicts across Africa, (October 2019)

5. Interview

Interview with Am. Ibrahim Indris, former Ambassador of Ethiopia to Egypt, and currently working at Ministry of Foreign Affairs, African Affairs Directorate General

Interview with Anonymous informant, Institute for Peace and Security Studies, Addis Ababa University (IPSS, 5 Killo, 09 May, 2022)

Interview with Dereje Z.M, Associate Professor of International law, Addis Ababa University (AAU, 6 Killo, 10 May 2022)

Interview with Tilahun A., Advisor of American Affair for Ministry of Foreign Affairs of Ethiopia (MFA, 02 January 2022)

Interview with Tefera B. Advisor on Trans-boundary resources: the Minister of Water and Energy of Ethiopia (Ministry of WE, 26 January 2022)

Interview with Yacob Arsano, Associate Professor of Political Science and International Relations, Addis Ababa University, and Negotiator on the GERD (Addis Ababa University, 4 September 2022)