



**ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES**

**HYDRO POLITICAL DYNAMICS IN THE NILE BASIN IN
THE CONTEXT OF NILE BASIN INITIATIVE**

**BY
MOGES MEKONNEN ALEMU**

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POLITICAL SCIENCE AND INTERNATIONAL
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Table of Content

Acknowledgement	i
Acronyms	ii
Abstract	iii
Chapter One	
Introduction	
1. Background.....	1
2. Statement of the Problem	4
3. Objective of the study.....	6
4. Research Questions.....	6
5. Research hypothesis.....	7
6. Significance of the Study.....	7
7. Scope of the Study.....	8
8. Research Methodology and methods of data collection.....	8
8.1. Research Methodology	8
8.2. Methods of data collection.....	8
8.2.1. Data recording, transcription and data processing.....	9
8.2.2. Ethical considerations	10
9. Organizations of the study	10
Chapter Two	
Literature review and Conceptual Framework	11
2.1. Conceptualization and Definition of terms	
A. Equitable and Reasonable Utilization	12
B. Water Security	13
C. Water Cooperation	13
D. Institutional and Legal Framework	14
2.2. Cooperation in the Nile	14
2. 2.1. Pre- NBI Hydro Political Initiatives of the Colonial Era	15
2. 2.2. Pre - NBI Hydro Political Initiatives of the post - Colonial era	18

A. Hydro-Met.....	19
B. Undugu	19
C. TECCONILE	20
2. 2.3. Fresh Institutional and Legal Framework in Nile Basin.....	21
2.3.1. The Nile Basin Initiative	22
2.3.2. The Nile Cooperative Framework Agreement	24

Chapter Three

The Nile River basin and International Hydro political Interactions	28
3.1. The International water regime	28
3.2. The CFA and International Hydro political practices in the Nile River basin	32
3.3. Unilateral Water Development Projects on the River Nile	34
3.4. Prospects and challenges of NBI	36
3.4.1. Prospects of NBI	37
A. Cooperation in the Nile Basin	37
B. Regional energy integration	39
3.4.2. Challenges of NBI	41
A. Pending Legal and Institutional Issues	41
B. Hydro-hegemonic competition	43
C. Mistrust between upstream countries and downstream countries	45

Chapter Four

The Nile Cooperative Framework Agreement and International Hydro-political Interaction	48
4.1. Basic Principles of the Nile Cooperative Framework Agreement	49
4.2. The state of affairs of the CFA	51
4.3. Areas of differences over the Cooperative Framework Agreement	53
4.4. The challenges and opportunities of the Grand Ethiopian Renaissance Dam	54

Chapter Five

Conclusion 58

Bibliography 61

Appendices

Appendix I: Interview questions

Appendix II: List of Informants

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Acronyms

BCM	Billion Cubic Meter
CAR	Central African Republic
CFA	Cooperative Framework Agreement
DRC	Democratic Republic of Congo
EIIPD	Ethiopian International Institute for Peace and Development
ENSAP	Eastern Nile Subsidiary Action Program
GERD	Grand Ethiopian Renaissance Dam
Hydro-Met	Hydro Meteorological Survey Project
ICPDR	International Commission for the Protection of the Danube River
NBI	Nile Basin Initiative
NELSAP	Nile Equatorial Lakes Subsidiary Action Program
Nile-CoM	Nile Council of Ministers of Water affairs
NRBC	Nile River Basin Commission
SADC	Southern African Development Community
SAP	Strategic Action Program
SVP	Shared Vision Program
TECCONILE	Technical cooperation Committee for the promotion of the development and environment protection of the Nile
UN	United Nations
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Science and Cultural Organization
UNWC	United Nations Watercourses Convention
WMO	World Meteorological Organization

Abstract

The Nile River basin covers over 3 million km² and encompasses 11 countries: Burundi, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania, and Uganda. As the populations and economies of these countries are projected to grow, pressures on water resources are likely to increase. In recent years, there has been a promising move towards basin wide cooperation, particularly with the launch of the Nile Basin Initiative in February 1999. It was only intended to be a transitional mechanism pending establishment of a Nile Basin Commission. In 2010, the Cooperative Framework Agreement was signed by six upper riparian states and it is expected that DRC will soon join, Egypt and Sudan rejecting the agreement. All basin states participating in the CFA negotiation process have unanimously agreed on every aspect of the agreement except Egypt and Sudan disagreeing on the water security clause. Their disagreement concerns whether the new treaty would nullify the existing Nile agreements that had allocated the Nile waters only for Egypt and Sudan. The present study, among other things, looks in to why Egypt and Sudan refrained from signing CFA and how the principle of equitable and reasonable utilization of shared Nile waters would promote cooperative mechanism in all riparian states. The study is mainly based on qualitative research and has consulted both published literature and unpublished documents. The main findings include that since the establishment of NBI the hydro political interaction has become active and changing.

Key words: *Nile Basin Initiative, Cooperative Framework Agreement, Water cooperation, Nile waters agreements, equitable and reasonable utilization.*

Chapter One

Introduction

1. Background of the Study

The Nile is one of the longest rivers in the world, flowing nearly 6,700 km from its source to Mediterranean Sea (Kameri, 2005). The Nile Basin, drains an area of approximately 3.3 million km², covers about ten percent of the area of Africa, and 2.3% of the world's land surface area (Peterson and et al. 2008: 44). The Nile basin countries are eleven, which include Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, South Sudan, Tanzania and Uganda.

Egypt and Sudan concluded an agreement for the full utilization of the Nile waters, signed at Cairo, 8 November 1959. The agreement allocated 55.5 BCM water per year to Egypt and 18.5 BCM water per year to Sudan, under condition that the Nile flow, measured at Aswan (Mason, 2003: 2). The average discharge of the Nile is about 300 million cubic meters per day (Owiro, 2004:45). Approximately about 160 million people depend on the Nile River for livelihood and about 300 million people live within eleven riparian countries that share and depend on the Nile waters (Kameri, 2005).

The Nile River has been subject to different treaties, most of which were from the colonial era. Over the last 120 years, there have been different treaties addressing Nile water rights, however, currently most of them are considered as obsolete. As they are seemingly violating international customary practices which are considered as a law such as equitable and reasonable use of water. The treaties include the April 15, 1891 –The Anglo-Italian Protocol, May 15, 1902 - treaty between Great Britain and Ethiopia, the 1901 Agreement between Britain and Italy over the Use of the River Gash, May 7, 1929 - The Agreement between Egypt and Anglo-Egyptian Sudan, and the 1959 Nile Agreement between the Sudan and Egypt for Full Utilization of Nile waters (Abbas, 2006:13-14). In those agreements the question of equitable allocation of waters of the Nile remains unaddressed (Kinfe, 2004:88). The 1929 and 1959 agreements empowered Egypt to use and control the water of the Nile. In

addition to this, inexistence of basin-wide agreement and water governing body, as other major international rivers do placed Egypt in a hydro-hegemonic position and created mistrust between Nile riparian states (Yacob and Imiru, 2005). After years of negotiation, riparian countries have strived towards cooperation based on a common vision. The Nile Basin Initiative (NBI) was launched in February 1999. The mission of the NBI is “to achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources”.¹ The ambitious goal of NBI is establishing regional cooperation and mutually beneficial relationships among all Nile Basin countries.

In 1997, the Nile riparian states initiated a dialogue on a long term Cooperative Framework Agreement, and in 1999 the Ministers of Water Affairs of the Nile Basin States launched the NBI as interim institutional mechanism to jointly pursue the sustainable development and management of the Nile waters. The NBI was created with the intention of forming a permanent Nile River Basin Commission (NRBC) within three years’ time. However, the countries of the NBI have still worked to formalize legal agreement to form such a body. The rationale for the creation of NBI is that the Nile has a long history of confrontation and cooperation. In colonial era it tended to be one sided, mainly reflecting the interests of metropolitan power and their colonies (Kinfe, 2004:89).

The NBI was established to address the issue poverty reduction and promote economic integration (Pottinger, 2004). In 1999, the Nile riparian countries launched the Initiative, a joint program of action whose aim is to ensure cooperation and economic integration, sustainable resource development and security. The NBI, according to its own declaration is a “transitional arrangement until a permanent legal and institutional framework is in place” (NBI, 2000 quoted by Nicole, 2003: 25). The principal objectives of the NBI, as Sileet et al (2007) explained: (1) to develop the Nile River water resources in an equitable and sustainable manner in order to ensure prosperity, security and peace for the inhabitants; (2) to guarantee effective water management and optimal resources use; (3) to promote cooperation and joint action between member countries; and (4) to combat poverty and promote economic integration.

¹. NBI official website, Available online at: www.nilebasin.org, accessed November 2013

In terms of water utilization, Egypt argued that as a desert nation it had no other option for survival but to depend on the river, while Ethiopia and other riparian countries have other water sources including torrential rain to satisfy their water and agricultural needs. In response, Ethiopia and other upstream riparian countries base their argument on the equitable utilization principle, which is regarded as part of customary international law. Customary international law strongly favors the principle of equitable and reasonable use of trans-boundary Rivers. The principle of equitable and reasonable use of water by upstream and downstream countries of a trans-boundary river, enshrined in article 5(1) of the 1997 UNWC on the Law of Non-navigational use of international watercourses(UNWC, 1997)². Egypt's main argument of utilizing water is based on historic right to use water.

However the legal entitlement of this right must not inflict a significant harm on riparian states, as stated in article 7 of the 1997 UNWC. In this respect Ethiopia tried to assure the water development projects on the Nile, mainly the Grand Ethiopian Renaissance Dam (GERD), does not inflict a significant harm on Egypt and the Sudan, and it initiated a technical committee to study the impact of the dam. The committee mandated to examine potential impacts of the construction of the GERD and reported its findings on 1st June 2013. Following the report the three countries showed their interest to work closely.

The dynamics in the Nile basin is further elaborated in terms of reduction in the volume of water flowing from upstream countries as a result of water extraction and new projects in downstream countries (Kidane, 2012). The Nile basin may face two pressing issues that will likely have a major negative effect on potential development: the anticipated population explosion and the effects of climate change. The rapid population growth in the basin will exert additional pressure on the Nile waters flow and management. Predictions of future water demand are uncertain. This point is further explained as “[a]round 370 million people are living in the Nile Basin countries and approximately 200 million in the basin itself. It is estimated that in 2030 around 600 million people will be living in the Nile Basin countries” (Oestigaard 2010:10). This will create pressure on the water resources and influenced

² . United Nations Convention on the Law of the Non-navigational Uses of International Watercourses. Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf

partially by changes in the demand for food by existing populations (UNESCO, 2002: 3). Over the past two decades, North Africa as a whole and the Nile River Basin specifically have been singled out as areas likely to experience water resource issues via high population growth. As a result, more water development activities are being undertaken in addition to the existing Ones (Kidane, 2012). Therefore, the study is mainly dealt with hydro political dynamics in the Nile Basin in the perspective of the Nile Basin Initiative (NBI).

2. Statement of the Problem

The Nile basin is characterized by the rampant poverty encircling basin states hence the use of the water resource has become of a paramount importance more than in any time before. However unilateral development of the water would lead to tension and dispute in the region, a region which has always been a center of controversy. Since February 1999, the riparian countries of the Nile have been engaged in serious negotiations for a Cooperative Framework Agreement under the auspices of the Nile Basin Initiative (Yacob, 2011:4). Though the riparian countries in the Nile Basin in principle agree on water sharing, the question of how to share the water has remained very complicated and controversial (Wondwosen, 2009:134). In addition to the issue of water use by the riparian states another pressing tension lies in the need to conserve the water resource for both present and future generations.

There are a range of issues that need to be considered in the sustainable development of an international cross-boundary river. These issues range from reconciling conflicting interests of riparian states to the protection of the water resource and to the management of these competing interests, all the Nile riparian states, including Egypt and the Sudan, took an initiative to establish a permanent legal institution which would be responsible for Nile Water governance. The legal framework adopted by the NBI, which is known as the CFA, is to replace colonial agreements on the Nile. It is hoped that these negotiations will finally abolish the colonial treaties, agreements and assumptions that legitimize the lingering downstream hegemony that persists in the Nile basin (Yacob, 2011:4). Ethiopia and other upper riparian states rejected the unjust status quo that gave Egypt and Sudan a lion's share of Nile River. Thus, the CFA intends to correct those 1929 and 1959 agreements on the Nile.

Each NBI country has been engaged in negotiating the draft CFA for more than ten years, which is composed of fifteen general principles and thirty-nine articles. All the principles and articles have been discussed by the countries and consensus has been reached on all except Article 14(b) on water security (IPI, 2010:3; Yacob, 2011:4). Following the negotiation of CFA, the upstream riparian states have challenged Egypt's monopolization of the Nile water by taking forward unilateral water development projects. According to Kidane Kiros (2012), influential developments in the Nile Basin, such as Ethiopia's establishment of large-scale water development projects on the river Abbay is believed to have major implications for the politics of the Nile region. Other upstream countries have similar plans to use the water resources of the basin.

Thus, Egypt and Sudan are rejecting the CFA on the basis of water security. Egyptians fear the loss or reduction of Nile water may threaten their food security and existence, because, 100% of Egyptian farmland is irrigated using water from the Nile (UNDP, 2010). Therefore, the main research problem to be answered in this research is how hydro-political dynamics in the Nile River Basin and/or the ratification of CFA could affect the relationship between riparian countries by oscillating the issue of water security and cooperation.

In spite of the fact that, there is growing tendency in the study of cooperation in the Nile Basin, many literatures in the area are focusing particularly on the issue of applicability of Nile water treaties and water conflict. Therefore, how the issue of water cooperation in the Nile Basin is benefiting the riparian states yet not well studied. Particularly, CFA, as the legal environment of cooperation and its effect in the basin countries has shortages of literature and is a lacuna or gap to be filled in this research. Hence, the study of NBI and hydro political dynamics in the Nile Basin is therefore essential to come up with action in the ground, and this study will reduce the aforementioned gaps.

3. Objective of the Study

The overall objective of the study is to analyze hydro political dynamics in the Nile Basin in the context of NBI. Specific objectives of the study is to

- i. examine the role of NBI in promoting cooperation in the Nile Basin and in search of a new legal framework for the management and utilization of the Nile waters;
- ii. examine the implementation of the principle of equitable and reasonable use of trans-boundary waters in the Nile basin;
- iii. study the impact of NBI in the relationship of the riparian countries;
- iv. examine the opportunities NBI in bringing basin-wide cooperation; and
- v. address the effect of signing the CFA,

4. Research Questions

The core research question of this study is how one can describe the NBI has served as a catalyst for cooperation and a bridge for the establishment of cooperative framework agreement. The study also attempts to address the following research questions:

- i. How the international hydro political interactions influenced the relationship of Nile Basin countries?
- ii. Is the principle of international water agreements addressed in the Nile Basin Cooperative Framework Agreement?
- iii. In what circumstances the principle of equitable and reasonable use of trans-boundary waters is implemented in the Nile basin?
- iv. What factors prevented Egypt and the Sudan from signing the CFA when all other riparian states signed it?

5. Research Hypothesis

The Nile Basin countries have come to realize the benefits that will ensue from cooperative endeavor. They seek the cooperative solution in search of a new legal framework for the management of common resource, the Nile. The majority of the basin countries are willing to cooperate and move forward on the basis of Cooperative Framework Agreement (CFA). They, by coming together, aspire to jointly manage shared water resources and build trust and prevent conflict. This is a dynamic situation created with the emergence of NBI through the multifaceted interactions under the auspices of the Organization. It is, therefore, assumed that the NBI and the negotiation for the CFA have changed the unjust status quo and the interaction of the Nile riparian states.

6. Significance of the Study

The study will provide findings regarding the “Water security” which means the right of all Nile Basin States to reliable access to and use of the Nile River system for different uses such as health, agriculture, livelihoods, production and environment. In addition to this, the study will address how the principle of equitable and reasonable utilization of Nile water promote cooperation in the basin and show how natural, hydrological, social, economic and other factors affect the utilization of water resources and the relation between riparian States. Additionally, the present study will clearly looks into why Egypt and Sudan rejected the CFA.

The findings of the study are significant because it contributes an input for policy makers and negotiators on the Nile Basin. The researcher believe that, this study in one way or another serves as an indication to the nature of water management in the sub basin, and it will show how the water resource can be sustainably developed. The research could also serve as bases for further studies and policy formulations as well related to the subject. Finally, it will also serve as source of information and be an addition to knowledge on the current debates on the hydro politics of the Nile River.

7. Scope of the Study

The study is primarily aimed at analyzing hydro political issues of the Nile River Basin. Its focus is mainly on current developments for use and management of the River. The study comprises both the principle and practice of equitable and reasonable use of trans-boundary waters and practical analyses with regard to the changing dynamics in the hydro-politics of the Nile. In terms of time frame the study mainly covers the period since 1999, the establishment of NBI until now, unless as a matter of necessity some remote events are mentioned in passing.

8. Research Methodology and Methods of Data Collection

8.1. Research Methodology

The study employs entirely a qualitative approach of research. This approach consists of a set of interpretive practices that make the situation visible. Qualitative research allows a series of representations, including field notes, interviews, conversations, photographs, recordings and memos to the self. It also favored methods like unstructured interviews, focus groups, textual analysis and content analysis. Considering the subject of this study which needs wording and interpretation, it could focus on descriptive sub approach of qualitative research. Data which obtained mostly from secondary sources such as books, Journal Articles, Reports, Archives and Internet sources could be analyzed using qualitative approach. With respect to the subject of the study it could be difficult to depend primarily on first hand data as a source, since it is at large a desk works. Therefore, the researcher believes that it is reasonable to focus on secondary data to meet the intended objectives of this study.

8.2. Methods of Data Collection

Data will be collected from both primary and secondary sources. Secondary data constitutes the basis of the study. With regards to secondary sources; books, journal articles,

monographs, published and unpublished thesis, newspapers, different legal documents, study reports, publications currently on the hand of the researcher and available at different libraries as well as Website sources will be consulted. Most of secondary sources of data will be accessed from Addis Ababa University library, library of Ministry of Foreign Affairs and library of Ethiopian International Institute for Peace and Development (EIIPD). The researcher will also use different media outlets and broadcasts. Document analysis will be used to seek out relevant information that is needed for this study.

In depth interviews using open ended questions will be the major instrument of data collection because open ended questions will provide an opportunity to follow up questions from the responses of key informants. The interviews will be conducted with Dr. Dereje Zeleke, Dean of College of Law and governance at Addis Ababa University and FekAhmed Negash, Director of boundary and Trans-boundary Rivers, Ministry of Water, Irrigation and Energy. The rule of citation followed is APA Citations, and particularly the combination of short notes in the footnotes and full information about the source used in the bibliography.

The tool that will be used to select key informants is purposive sampling technique in which respondents are selected on the basis of certain predefined purposes. The grounds for choosing this sampling procedure comes from the nature of the issue to be studied and the type of data required. The study, as noted elsewhere in this proposal, deals with analyzing the hydro-political dynamics in the Nile basin, which require more of qualitative investigation on the basis of in depth interviews. In line with the above argument, the adoption of qualitative research which allows purposive sampling of key informants becomes appropriate because the relevant informants that can provide meaningful information on the issue under study. In addition snowball sampling will be used to reach out key informants.

8.2.1. Data Recording, Transcription and Data Processing

The interview will be held on the willingness of key informants and the interview location. The researcher will use tape recorder and note-taking techniques to record the interviews. In order to make the data processing mechanism easy, the data obtained through interviews will

be transcribed in a written text. The empirical data collected will be analyzed after reducing, and conceptualizing the information. Data reduction is done at different levels that involve editing, categorizing and summarizing the data. Caution will be taken not to lose significant information whilst reducing the data. After the analysis is made, the data will be interpreted in combination with secondary data, where applicable, so as to produce the intended document or a Master's thesis.

8.2.2. Ethical Considerations

Key informants will be consulted to give an interview on a voluntary basis. They will also be informed that at any time during the interview they could decline to answer any question. The researcher will not engage in any form of deception regarding the aim, content, or nature of the study. Ethical measures such as ethics of justice, fairness and objectivity, and respecting the privacy of the participants will be adhered to.

9. Organizations of the Study

The final outcome of this paper would appear consists of the following main chapters. Chapter one will provide an introduction concerning the background, statement of the problem, objectives, hypothesis, and the methodology and methods adopted in this study. Chapter two discusses Literature review and conceptual framework in which extensive survey of literature related with the subject area of the study. The third chapter analyzes the Nile River basin and International Hydro political Interactions; as part of the main body of the paper it could focus on a brief description of the existing situations in the basin. Fourth Chapter deals with the effects of ratification of the CFA and the state of affairs of the agreement. The fifth chapter, which is the last chapter of the research, may be finalized with a short summary of conclusion.

Chapter Two

Literature Review and Conceptual Framework

Water is a resource which ignores political boundaries (Kitissou, 2007: 12). The 1997 UN Watercourses Convention (UNWC) on the Non-navigational Uses of transboundary Waters define transboundary waters or “International watercourse” means a watercourse, parts of which are situated in different States (UNWC, 1997). Transboundary waters cover 45% of the world’s land mass, most of which are located across two or more countries (Puri and Aureli, 2009). Around the world, there are around 276 major transboundary watersheds, crossing the territories of 145 countries and covering nearly half of the earth’s land surface (MacQuarrie and Wolf, 2013). Sixty three of these transboundary river basins are located on the African continent. At least 40 percent of the world population lives in river basins shared by two or more countries, and at least one fifth of the world population is under potential threat from upstream neighbors (Abbas, 2006: 4). Today there are international agreements in effect for 20 of Africa's 63 river basins, and in 16 river basins there are institutionalized forums that have the task of coordinating national initiatives (Scheumann and Neubert, 2006:2).

The Nile River is a common property and wealth which belongs to all basin countries on an equal basis. The Nile Basin countries are historically, politically and economically interdependent and tied by the Nile River umbilical cord. The countries surrounding the Nile River have an estimated population of more than 300 million (Hanke, 2013), which accounts about 40 per cent of the African population. It is estimated that by 2025 the number of people who depend on the Nile River will increase to 859 million.

Despite the fact that, lack of genuine cooperation that has so far characterized the Nile basin. The Nile is no exception to other international rivers which have managed to find an amicable breakthrough and reached a winning formula for the reasonable and equitable utilization of their water resources. The proper utilization and management of the Nile basin resources requires coordination, integration and mutual agreement for the benefit of all the

peoples living in and around the basin (Tesfaye, 2001:66). Therefore, the following section attempts to look into conceptual framework of hydro political terms and initiatives in the Nile Basin in brief. Its purpose is clarifying and defining concepts that are being used in the remaining parts of the study.

2.1. Conceptualization and Definition of terms

A. Equitable and Reasonable Utilization

The principle of equitable and reasonable utilization is universally accepted as basic to the management and utilization of transboundary waters. The principle was first formulated in the original Helsinki Rules, Article IV. It was also reformulated in UNWC, Article 5(1) and entitles a watercourse State to an equitable and reasonable share of the uses and benefits of the particular watercourse, and also creates the reciprocal obligation not to deprive other States of their respective rights in this regard. “Equitable” utilization does not necessarily mean an equal portion of the resource or equal share of uses and benefits. The application of equitable and reasonable utilization in a particular watercourse will not prohibit a use that causes damage unless it exceeds the limits of the using State’s equitable share of the watercourse (UNWC Factsheet).

Equitable utilization is governed by the principle of sovereign utilization of the watercourse which stipulates that every riparian State has a right to the utilization of the watercourse which is qualitatively equal to the rights of the other riparians. The term reasonable use, in other terms, is becomes relative concept. It encompasses the contemporary conception of rationality and takes factors such as the socio-economic development of a State into consideration. Yet, even if a use of an international watercourse has been identified as reasonable, it might still be challenged when balanced with other uses through the lens of equity.

B. Water Security

Many parts of the world are experiencing significant water shortage or stress, and the situation is likely to worsen as global populations, economies and consumption rates continue to grow. During the past century, the global population has tripled and our water utilization has increased six-fold. At the same time, the quality of available water resources has been degraded through human activities, including the excessive use of agrochemicals and the release of untreated sewage and industrial wastewater (Rio+20, 2012:4). Unless action is taken now, water insecurity is likely to occur.

Water security is defined here as the capacity of a population to safeguard sustainable access to adequate quantities of acceptable quality water for sustaining livelihoods, human well-being, and socio-economic development, for ensuring protection against water-borne pollution and water related disasters, and for preserving ecosystems in a climate of peace and political stability (UN Water. 2013). Water security “means ensuring that freshwater, coastal and related ecosystems are protected and improved; that sustainable development and political stability are promoted, that every person has access to enough safe water at an affordable cost to lead a healthy and productive life, and that the vulnerable are protected from the risks of water-related hazards.”

C. Water Cooperation

One of the aims of transboundary water resources management is to facilitate cooperation. The peaceful management of shared transboundary water resources is encouraged by the fundamental tenets of the UN constitutive act is to promote regional peace and security, to achieve cooperation and to ensure the fundamental freedoms of all (UN Charter, Art. 1). Further the UNWC includes a duty to cooperate under its Article 8, with this elaborated upon in Article 5 which introduces the obligation to “participate in the use, development and protection of an international watercourse in an equitable and reasonable manner”, and “includes both the right to utilize the watercourse and the duty to cooperate in the protection and development there of”.

D. Institutional and Legal Framework

Bilateral or multilateral agreements and/or arrangements concluded by riparian Parties would provide for the establishment of institutional and legal framework. Under the UNWC, a joint body means “any bilateral or multilateral commission or other appropriate institutional arrangements for cooperation between the Riparian Parties”. Additionally, agreements would give legal personality and establishes a joint commission where its duty and responsibility is determined by the law or agreement.

Historically, transboundary water cooperation has been difficult. However, several examples from across the globe demonstrate that transboundary waters agreement provide opportunities for cooperation and support political dialogue on broader issues such as economic integration and sustainable development (UN Water, 2013:8). For example, the Southern African Development Community (SADC) coordinates transboundary water cooperation on 15 basins across Southern Africa. In Southeast Asia, the Mekong River Commission has decades of cooperation on river basin management among the lower Mekong countries. In Europe, degrading water quality and transboundary pollution prompted a move towards greater cooperation on the Danube River Basin (ICPDR, 2012). In Latin America, transboundary cooperation has taken place over hydro-electric development on the Paraná River between Brazil, Paraguay and Argentina. International watercourses, particularly when supported by international instruments such as the 1997 UNWC, can help to alleviate increased incidents of water insecurity as a result of the pursuit of sovereign interests that may threaten regional peace and security (UN Water, 2013:8). In the Nile Basin, however, there is inadequate water agreements and management structure.

2.2. Cooperation in the Nile Basin

The Nile River has been the subject of numerous treaties, many of which were from the colonial era. Prior to the emergence of the NBI in 1999, collective cooperation and development in the basin had been constrained by disagreements of the riparian states. The distribution of Nile water between Egypt and Sudan is on the basis of 1959 bilateral

agreement which has been rejected by upstream countries. Under this agreement, Egypt and Sudan are apportioned 55.5 BCM and 18.5 BCM per year, respectively. The average annual storage losses due to evaporation and other factors were estimated to be about 10 BCM, and this quantity would be deducted from the yield of the Nile River before allocation (Waterbury, 1979; Kidane, 2012:4). The 1959 agreement also established a Permanent Joint Technical Commission which was tasked with devising a fair water allocation scheme for persistent low-flow periods and established to ensure the technical cooperation between the two countries.

Building a cooperative environment in the Nile basin is not an easy task not only because of scarcity of the water resource but also due to the prevalence of mistrust among the riparian states (Kibrom, 2011: 47). This is very much reflected in the many activities undertaken in order to come up with a basin-wide cooperative framework. There were some initiatives to create a platform for future negotiations. Such initiatives included the establishment of Hydro-met in 1967, Undugu in 1983 and TECCONILE in 1993. All these are Pre- NBI initiatives aimed to favor downstream countries. The NBI is different initiative attempt aiming to promote socio - economic development through equitable utilization of the common Nile waters to all the riparian countries.

2.2.1. Pre- NBI Hydro-Political Initiatives of the Colonial Era

British made a series of dramatic concessions to Egypt at the expense of other Nile riparian countries. Between 1891 and 1925, the United Kingdom of Great Britain entered into five agreements on the utilization of the waters of the Nile (Owiro, 2004: 6). For example, the Anglo-Italian Protocol was signed on April 15th, 1891. In Article 3 of this protocol, the issues concerning the Nile River were addressed as “the Italian Government does not engage to construct any work on the Atbara River in view of irrigation, which might sensibly modify its flow into the Nile” (Kinfu, 2004). This agreement also allowed United Kingdom to maintain control over the head waters of the Tekeze (Atbara) River (Yacob, 2011: 3).

The Treaty between Great Britain and Emperor Menelik of Ethiopia, regarding the waters of the Blue Nile [Abbay River] and other Nile head waters was signed on May 15th, 1902, in Addis Ababa. This agreement basically regulated the frontiers between Ethiopia and the Sudan (Debay 2008: 6). It also contained a peculiar Article 3 on the use of the waters of the Nile which stated:

His Majesty the Emperor Menelik II, King of Kings of Ethiopia, engages himself towards the Government of His Britannic Majesty not to construct or allow to be constructed any work on the Blue Nile, Lake Tana, or the Sobat, which would arrest the flow of their waters except in agreement with His Britannic Majesty's Government and the Government of Sudan.³

Under this agreement, Emperor Menelik assured that no unilateral and complete "stoppage" of the Nile would occur before a mutually acceptable agreement was reached.

On May 9, 1906, the United Kingdom and the colonial ruler of Congo, King Leopold II of Belgium, concluded a treaty to re-define their respective spheres of influence in eastern and Central Africa. Article III of the treaty provided:

[T]he government of the independent State of Congo undertakes not to construct or allow to be constructed any work over or near the Semliki or Isango Rivers, which would diminish the volume of water entering Lake Albert, except in agreement with the Sudanese government (Owiro, 2004:7).

On December 13th, 1906, the agreement between Great Britain, France and Italy was signed in London (Debay, 2008:7). This tripartite agreement was signed without consulting Ethiopia. In Article IV of this agreement, the three colonial powers agreed to act together more particularly as regards the regulation of the waters of that river and its tributaries.⁴ Emperor Menelik II of Ethiopia immediately notified the contracting parties that he rejected the agreement. The Emperor stated: "But let it be understood that this arrangement in no way limits what we consider our sovereign rights."⁵

³ . Article III, 1902 Agreement and see also UN Legislative Series 1963:112

⁴ . Okidi, C.O.: "History of the Nile & Lake Victoria Basins through Treaties", In Howell, P.P. & Allan, J.A. (eds), *The Nile: resources evaluation, resource management and hydropolicies & legal issues* London School of Oriental and African Studies & The Royal Geographical Society, 1990, pp. 193-224.

⁵ . Tilahun, W.: *Egypt's Imperial aspirations over Lake Tana and the Blue Nile*, United Printers Ltd., Addis Ababa, 1979, p. 75

On December 1925, there was also an exchange of Notes between Italy and the United Kingdom by which Italy recognized the prior hydraulic rights of Egypt and the Sudan in the headwaters of the Blue Nile and White Nile rivers and their tributaries and engaged not to construct on the head waters any work which might sensibly modify their flow into the main river (Owiro, 2004: 7).

On May 7th, 1929, an exchange of notes took place between the Egyptian Prime-Minister, Mohammed Mahmud Pasha, and the British High Commissioner, Lord Lloyd, who was acting on behalf of Sudan. This exchange became known as the 1929 Nile Water Agreement. According to this agreement “Egypt's share was 48 billion cubic meter (BCM), whereas that of Sudan was 4 BCM (Yacob, 2007); Egypt would supervise all water-related activities in the entire basin from source to mouth and Britain recognized the “historical” and “natural” rights of Egypt with respect to the waters of the Nile (Kidane, 2012:4). The purpose of the 1929 Nile Waters agreement was to guarantee and facilitate an increase in the volume of water reaching Egypt (Owiro, 2004: 8).

Thus, this agreement was made mainly to secure the Nile water for Egypt by limiting the rights of Sudan and by rejecting those of the remaining riparians. Ethiopia in particular did not recognize the agreement, nor did it ever accept Egypt's claim to acquired or historic rights. Moreover, as the agreement was signed between Egypt and Britain, it could not have a binding effect on Ethiopia. According to the principle of treaty making, an agreement made between two parties cannot have a binding effect on a third party without its consent. Other riparian countries have also questioned the validity of the 1929 agreement and had eventually repudiated it after attaining independence. After independence, Sudan criticized the agreement as having been motivated by Great Britain to maintain good relations with Egypt at the expense of Sudan's interest.

On November 22nd, 1934, an agreement was signed in London between Great Britain and Belgium. This treaty addressed the distribution of the waters of the Kagera River in the then colonies of Tanganyika and Ruanda-Ulundi (now Rwanda and Burundi). The treaty

stipulated that water withdrawn from the Kagera basin in one territory ought to be restored back before entering another territory. This treaty, unlike the majority of Nile treaties, it had no direct objective to protect the interests of Egypt or the Sudan.

2.2.2. Pre - NBI Hydro-Political Initiatives of the post-Colonial Era

The 1959 agreement was concluded between Egypt and Sudan, which was bilateral and did not include any of the other riparian countries of the Nile (Debay, 2008:9). This agreement gave a chance to Egypt and the Sudan for full control and utilization of the annual Nile flow (Yacob, 2011:3). The agreement also distributed the water only to Egypt and Sudan, and allowed Egypt to construct the Aswan High Dam for “long term” water needs (Owiro, 2004:28). This agreement further granted to the Sudan the right to construct the Rosaries Dam on the Blue Nile, and to develop other means of irrigation and hydro-electric power stations until it fully utilized its Nile share. Additionally, permanent joint technical commission was to be established to ensure the technical cooperation between the two countries (Waterbury, 1979, Kidane, 2012:4).

The 1960^s was considered as the year of African independence. Tanzania became independent in 1960, Uganda in 1962, Kenya in 1963 and the Congo (DRC) in 1960. The other two former Belgian colonies: Burundi and Rwanda also got their independence in 1962. The non-recognition of the colonially inspired treaties was also shared by other upstream riparian states, particularly Tanzania, where Julius Nyerere (the first president of Tanzania) repeatedly dismissed the treaties as null and void and non binding. The most notable expression of this determination was contained in the so-called Nyerere Doctrine, which rejected any obligations that might be construed from the 1929 Agreement and which described them as ‘a living ghost’ (Yacob, 2011:4). Egypt made successive efforts to create platforms to maintain the status quo as established in the colonial and post colonial agreements which favored Egypt's interests. These platforms are discussed in the following section.

A. Hydro-Met

As a result of the floods in the 1960s in the East African countries, the hydro-meteorological survey project (Hydro-Met) of lakes Victoria, Kyoga, and Albert was launched by Egypt, Kenya, Sudan, Rwanda, Tanzania and Uganda in 1967 (Swain, 1997: 298). Ethiopia participated as an observing member as of 1971. The project was supported by two UN agencies, the United Nations Development Program (UNDP) and the World Meteorological Organization (WMO) (Milas, 2013:100).

The objective of Hydro-met was to collect and analyze hydro-meteorological data of those catchments in order to study the water balance of the upper Nile (Ahmed, 1994:357). Furthermore, the objective of this initiative as observed was “to evaluate the levels of water in the Lake Victoria catchment areas in order to assist in their control and regulation, as well as the ensuing flows down the Nile” (Swain,1997:690). This should assist the riparian states in the planning of water conservation and development and in providing the groundwork for future intergovernmental cooperation in the regulation and utilization of Nile Water.

B. Undugu

The Undugu (in kswahli ‘Brotherhood’) and other similar initiatives were widely seen in the region as part of Egyptian efforts to maintain and expand its control of the Nile waters, or “more of the same” (Milas, 2013:100). This was formed as an extension of the Permanent Joint Technical Commission created by the 1959 Nile Waters Agreement (Debay, 2008: 17) and it consisted of Burundi, the Central African Republic (CAR) (the CAR is not a Nile basin country), Egypt, Rwanda, Sudan, and Zaire (Kibrom, 2011:47). Ethiopia and Kenya were just participating as observers and was expected to include, in later stages, countries such as Ethiopia, Kenya, and Tanzania in forming a Nile Basin Economic Community (Debay, 2008: 17). It seems that without active participation of riparian states and without focusing on the fundamental question of water utilization and management, it was clear that this grouping wouldn’t have had a lasting effect (Yacob and Imiru, 2005: 19).

The objective of Undugu was to create cooperation in such common fields as culture, environment, telecommunication, electric power trade, and water resources development while maintaining the status quo intact (Yacob 2007: 213). The purpose of Undugu was to foster economic, social, cultural and technical ties between the countries. The end result was to be a permanent sub-regional economic organization. Not much substance came out of it (Brunnee and Toope, 2003). The Undugu Commission held numerous meetings⁶ but could not substantively produce ground breaking resolutions with respect to the equitable distribution of the Nile waters (Yacob 2007: 213). However, at its sixty seventh meeting in Aswan in 1993, the water resources ministers decided to dissolve the Undugu and in its place established the Technical cooperation Committee for the promotion of the development and environment protection of the Nile (herein after TECCONILE)(Deng, 2007: 54).

C. TECCONILE

There have been different attempts among countries to cooperate on the use of the resources of the Nile (Yacob, 2001:8). In December 1992, Ministers responsible for water affairs in the Nile basin countries met in Kampala, Uganda, and agreed that future cooperation for the Promotion of the Development and Environment Protection of the Nile Basin on water resource matters should be pursued (Metawie, 2004 54). This initiative was called the TECCONILE. Egypt, Sudan, Rwanda, Tanzania, Uganda, and Congo participated as founding members while the rest basin states participated as observer.

In its short span of time, TECCONILE managed to successfully complete a number of projects that it had set itself up to achieve (Deng, 2007: 54). It had strong technical focus and it took part in the preparation of an atlas map of the Nile Basin. It provided a requisite series of training for staff members of water resources agencies in the countries of the Nile Basin in areas of Geographical Information Systems, Hydrological Modeling, Monitoring, Forecasting, and Simulation. The major significant achievement of the TECCONILE, as some suggest is, its modest contribution towards the Nile Basin Action Plan activities (Yacob, 2007:216).

⁶. The group held some 66 meetings at technical and ministerial levels between 1977 and 1992.

The other hydro political interaction, not an initiative, is the Ethio-Egyptian Accord, i.e. "Framework for general cooperation between Ethiopia and Egypt" was signed on July 1st, 1993, in Cairo. The agreement was neither a binding nor has it settled all the disputes between the two countries; though it has symbolic value. The 'no harm' rule principle was mentioned in it and for this reason, some Ethiopians criticized it as favoring Egypt and compromising Ethiopia's sovereignty over the Nile.⁷ Egypt tried to use the word "appreciable harm" as a blocking mechanism to prevent Ethiopia from implementing various projects on the [Abbay River] or on other tributaries. They insisted on not doing anything to the Nile that would do "appreciable harm" to the other side. Ethiopian Prime Minister Meles Zenawi said in an interview with Pan-Arab-Al-Hayat:

What we need is to basically treat the Nile Basin as a single region and a shared natural resource. If we deal with the issue of the Nile on that basis, then we can discuss and agree a framework that allows the countries along the Nile to find the best ways of exploiting its water to the maximum.⁸

The Nile riparian states are moving towards a joint action targeting cooperative management of resources of Nile for a just and equal benefit for all riparian states. To this effect the Nile riparian states established Nile Basin Initiative (NBI) in 1999 at Entebbe, Uganda.

2.2.3. Fresh Institutional and Legal Framework in Nile Basin

There are two parallel and interdependent processes that contributed to the establishment of the NBI, which included TECCONILE and the Nile 2002 series of annual conferences (Milas 2013:98). The NBI was considered as an institutional framework that is formally launched in February 1999 in Dares Salaam and by May 1999 this transitional mechanism for Nile river basin cooperation was officially named the Nile Basin Initiative (NBI). The CFA, in the other way, is a legal framework which transformed the NBI in to Nile River Basin Commission (NRBC). These legal and institutional frameworks are explained in the next section.

⁷ . Tafesse, *The Nile Question: Hydropolitics, Legal Wrangling, Modus Vivendi and Perspectives*, p. 80

⁸ . Pan-Arab-Al-Hayat interview with Ethiopian Prime Minister Meles Zenawi, May 1998.

A. The Nile Basin Initiative

The NBI is a recent river basin cooperation and river management program initiated by the Nile basin riparian countries. The idea of establishing the NBI was put forward in 1997 following years of negotiation among the Nile basin countries in the quest for cooperative Nile water regime (Milas, 2013:97). In 1999 the then Nile riparian countries⁹ launched a transitional institution called the NBI and they jointly established an inclusive transitional mechanism for cooperation until a permanent Cooperative Framework should be established (Debary, 2008:18). The aim of the initiative is to ensure cooperation and economic integration, sustainable resource development and security (Wondwosen, 2008: 35).

The NBI is a regional intergovernmental partnership that seeks to develop the River Nile in a cooperative manner, share substantial socio-economic benefits and promote regional peace and security. It provides a unique forum for the countries of the Nile to move towards the cooperative process to realize tangible benefits in the basin and build a solid foundation of trust and confidence (Milas, 2013). It provides riparian countries with inclusive regional platform for multi stakeholder dialogue, information sharing as well as joint planning and management of water and related resources in the Nile Basin.¹⁰ Prior to the emergence of NBI, there was no common institutionalized and structured mechanism that was not inclusive, doesn't bring together all riparian countries to address a common agenda.

The self-proclaimed mission of the NBI is “to achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources” (Nilebasin.org). The objective¹¹ of the NBI is to develop the water resources of the Nile Basin in a sustainable and equitable manner, to ensure efficient water management and optimal use of the resources, to ensure cooperation and joint action among

⁹ .In 1999, nine riparian nations (Burundi, Democratic Republic of the Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda), South Sudan becomes a new member after getting its independence from Sudan in 2011. with diplomatic and financial assistance from the World Bank, the United Nation Development Program (UNDP), and the Canadian International Development Agency (CIDA), took the initiative and utilized this new spirit of cooperation to create the Nile Basin Initiative (NBI). Eritrea, having never approved the Nile River Basin Action Plan, joined as an observer. South Sudan, recently joined the initiative on July 2012 the 20th regular meeting of members of the NBI; you can also see <http://www.greatlakesvoice.com/> 10:25; 24, 12, 2012 /

¹⁰ . <http://www.nilebasin.org/index.php/about-us/nile-basin-initiative>, Accessed June 2013

¹¹ . Ibid

the riparian countries, to target poverty eradication and promote economic integration (Weyler, 2004: 30-31; Milas, 2013:135). The establishment of NBI heralded a positive chapter in the hydro political history of the Nile Basin. Under the NBI, the 1929 and 1959 Nile Waters Agreement is being renegotiated and upstream countries had hoped that the new agreement which would give them more rights to Nile water (Dereje, 2014)¹².

NBI have four goals, including building confidence among the basin states, changing perceptions on the issues of the Nile waters, realizing that cooperation is more beneficial than confrontation, and knowing the extent of the water resource potential for interstate collaboration, and its explicit motto is “sustainable development of the river Nile for the benefit of all” (Yacob, 2007: 216- 217). Milas (2013:98) further stated that the goal of NBI is to support communication among the Nile basin countries over the river’s use, to help the basin countries to merge their economic interests through joint agriculture and hydropower projects.

The NBI has attempted to reach a legal solution for the Nile Basin states. After one year of its official work, NBI prepared an “Agreement on the Nile River Basin Cooperative Framework.” The agreement will pave the road to form the Permanent River Nile Basin Organization called the “Nile River Basin Commission”¹³ (Milas, 2013:149). It should be noted that NBI aimed at a range of projects and activities, some of these may involve all the basin countries, and others may involve groups of two or more countries. Some projects will focus on such areas as capacity building, confidence building, policy development etc., while others aim at development of infrastructure, river management, flood protection, watershed restitution, hydropower etc.

The Nile-CoM, which is the highest authority of the NBI, endorsed the Nile Strategic Action Program (SAP) in March 2001. This comprised the basin wide Shared Vision Program (SVP)¹⁴ and Subsidiary Action Programs (SAP). The SVP, which is defined by all riparian

¹². Interview. Dereje Mekonnen. (PhD), Assistant Professor and Dean, Law School at Addis Ababa University. The interview is held in his office at A.A.U. and it takes 35 minutes. May 7, 2014.

¹³. Article 15 of the Nile Basin Cooperative Framework Agreement(CFA)

¹⁴ . The shared vision program comprises of seven thematic projects which are; Nile Trans-boundary Environmental Action project, Water Resource Planning and Management Project, Socio-Economic Development and Benefit Sharing Project, confidence Building and Stakeholder involvement project, Nile basin regional power trade project, Applied training project, and efficient use of water for agriculture project.

states for sustainable socioeconomic development through the equitable utilization of, and benefit from the common Nile water resources (Weyler, 2004: 30-31). The Subsidiary Action Programs (SAP) to initiate concrete investments and action on the ground at sub-basin levels. The two programs are reinforcing in nature (Ibid).

The SVP is a multi-country, multi-sectoral, grant-funded program of collaborative action, exchange of experience, and analytical work intended to build a strong foundation for regional cooperation (Shema, 2009:11). The SAP, on the other way, has a purpose of initiating joint investments at the sub-basin levels. This comprises of the Nile Equatorial Lakes Subsidiary Action Program (NELSAP), and the Eastern Nile Subsidiary Action Program (ENSAP) (Wondwosen, 2008:36). The NELSAP have identified twelve multi-country projects which is implemented basin wide technical assistance and capacity building projects. The countries seek to achieve joint action on the ground to promote poverty alleviation, economic growth, and the reversal of environmental degradation in the sub-basin.

The ENSAP is also expected to realize water development projects, which are jointly designed by the Eastern Nile countries of the sub-basin. Its objectives of are to ensure efficient water management and optimal use of resources through equitable utilization and causing no significant harm; to ensure cooperation and joint action between the Eastern Nile countries seeking win-win gains; and to target poverty eradication and promote economic integration (Mohamed and Loulseged, 2008: 4). Therefore, since February 1999, the riparian countries of the Nile have been engaged in serious negotiations for a CFA under the umbrella of the NBI. The negotiation process of the CFA was extended over 10 years. It is hoped that these negotiations will finally abolish the existing Nile agreements that legitimize downstream hydro hegemony over the Nile River. The next sub-topic will give a very brief summary of the CFA.

B. The Nile Cooperative Framework Agreement

Since 1997, the ten riparian States of the Nile Basin have been negotiating a Cooperative Framework Agreement (CFA) that would allow all riparian states to benefit from the Nile's waters (Milas, 2013:14; Hagazi, 2011:10). The CFA is also known as the Entebbe

Agreement. As Wiebe (2001: 751) stated, the NBI is a transitional arrangement which mandated to serve as a forum where deliberation among stake holders take place until a permanent legal and institutional frame work is in place. Consequence to this, the negotiation for a CFA is supposed to change the existing legal and institutional landscape within the Nile basin. All the Nile countries were on board and this negotiation proceeded through different stages (Yacob, 2012:3).

In 2003 Nile Basin states established the CFA negotiation committee to recommend a comprehensive legal agreement for reallocation of the Nile waters (Fasil, 2008: 38). The main target of such negotiations is to come up with an agreement or convention to establish a Nile River Basin Commission. This situation led to the negotiations of the Nile CFA forward. The draft CFA was submitted to the Nile-CoM which met in Entebbe, Uganda, in June 2007. Despite extensive discussions, agreement could not be reached on the question of ‘water security’ introduced by Article 14 of the draft (Dereje 2010: 428). The text of Article 14 adopted by the Nile-CoM reads:

Having due regard for the provision of Articles 4 and 5, Nile Basin states recognize the vital importance of water security to each of them. The States also recognize that cooperative management and development of the waters of the Nile River System will facilitate achievement of water security and other benefits. Nile Basin states therefore agree, in a spirit of cooperation: (a) to work together to ensure that all States achieve and sustain water security; (b) not to significantly affect the water security of any other Nile Basin state.

The Nile-CoM negotiations could not make progress as the other riparian states rejected the Egypto-Sudanese amendment to Article 14(b) which would instead obligate them ‘not to adversely affect the water security and current uses and rights of any other Nile Basin State’ (Dereje, 2010:428). The draft was discussed again at the sixteenth Nile-CoM meeting held in July 2008 in Kinshasa, the DRC. The meeting was convened ‘to forge a way forward in finalizing the outstanding issue of water security of the draft CFA which will pave the way to the establishment of a permanent River Nile Basin Organization’ (Ibid).

The signing of the agreement had already been planned during a Ministerial meeting in 2007, but had been delayed at the request of Egypt.¹⁵ Upstream countries then decided at another Ministerial meeting in Kinshasa in May 2009 to sign the agreement without having all countries sign at the same time. In 2009 the CFA was accepted by a majority of seven to one votes, with one country abstaining (Yacob, 2012:3). However, the signing was delayed and at the next Council of Minister meeting in April 2010 in Sharm el-Sheikh, Egypt again asked to postpone the signing. The framework now stands with six countries having signed it, three yet to sign, and two countries having rejected it. Egypt's former Ambassador to Ethiopia Robert Iskandar told the Cairo Post.¹⁶ "The Egyptian government rejects the agreement, as it does not ensure Egypt's historic share of the Nile water. However, it ignores the legal rights of the other basin countries."

The CFA opened for signature in Uganda as of the 14th of May 2010 and will remain open for one year until the 13th of May 2011. As of February, 2011, six of the ten riparian states signed the final version of the CFA. Ethiopia, Tanzania, Rwanda and Uganda signed on the same day.¹⁷ In the meantime Kenya became the fifth country when its minister of waters signed the CFA on May 19, 2010 (Milas, 2013:142). After Burundi signed the CFA in February 2011, the agreement has achieved the necessary majority in order to be ratified and implemented in the region.

There are some indications that this stalemate could be a blessing rather than a curse in opening up a new chapter in the upstream-downstream dialogue and bring about a breakthrough. Egypt is now engaged in diplomatic efforts with the upstream riparian states (Kidane, 2012:6). Its signing is a milestone in the hydro-political history of the Nile Basin and marked "the beginning of the end of the status quo" (Nicol and Cascao, 2011: 323). For Egypt it means the loss of its historic dominance over the Nile's utilization as well as the

¹⁵. AllAfrica.com:[Rift Widens as Egypt, Sudan Delay Signing Nile Basin Pact](#), 23 February 2009

¹⁶. The Cairo post, a youm7 Arabic publication: Kenya to ratify Entebbe Agreement, Egypt experts express fear;http://thecairopost.com/news/103055/inside_egypt/kenya-to-ratify-entebbe-agreement-egypt-experts-express-fear ; posted Mar. 20, 2014 17:48 accessed May 1, 2014

¹⁷. <http://www.nilebasin.org/index.php?option=com-frontpage&Itemid=1>, accessed June 03 2010.

veto rights with regard to Nile issues going back to the 1929 agreement (FekAhmed, 2014)¹⁸. In order for Sudan to develop, they also need to use more water than was allocated in the 1959 agreement for hydropower and irrigation systems (Milas, 2013).

Finally, the CFA prevents countries from using the flow of the Nile in ways which would harm downstream states, a principle which aligns with other trans-boundary river treaties. But importantly, the new treaty removes Egypt's absolute veto power over upstream projects. The conclusion of the negotiations over the CFA is hoped to lead to the establishment of a permanent Nile River Basin commission. In addition to echoing the principles of international water law, the CFA allows the NBI to be transformed into a permanent Nile River Basin Commission (NRBC) that would have legal status so that it can enter into agreements and oversee the implementation of the CFA. Before the NBI, Egypt effectively controlled the development of the Basin's water resources by threat of intimidation, blocking financial approval via its influence with the World Bank and African Development Bank, and asserting the existing agreements that grant Egypt with the lion's share of Nile Water. However, these agreements have been rejected by the upstream countries. In chapter four, the thesis explains the details of the CFA, its state of affairs and its contents in line with principles of international hydro political practices.

¹⁸. Interview. FekAhmed Negash, Director General of Boundary and Trans-boundary Rivers Affairs Directorate of F.D.R.E. Ministry of Water, Irrigation and Energy. The interview is held in his office at the ministry and took 45 minutes. May 7, 2014

Chapter Three

The Nile River Basin and International Hydro-political Interactions

The Nile basin is a classic example of competition for resources; intensified by historical and legal factors and political dynamics. The issue of water utilization has long been a source of contention among the Nile Basin countries, who disagree on what constitutes an equitable distribution of the river's waters. For decades, the answer to that question has been troubled by the 1929 and 1959 agreements that heavily favored Egypt. A recently negotiated CFA by Nile countries could alter the historic water sharing arrangements. Trans-boundary regime formation is primarily an issue of bilateral or multilateral negotiations between the riparian states, possibly supported by third party mediators. The Nile water is regulated by bilateral agreements, which excludes other basin states. A new way of dealing with the issue of Nile waters came about in the form of the NBI, a cooperation platform with a shared vision of managing the Nile resources in a sustainable and equitable way. The basin countries have agreed on a Shared Vision: "To achieve sustainable socio-economic development through the equitable utilization of Nile waters".¹⁹ The purpose of this chapter is to analyze the Nile Basin interactions and International water practices. The analysis responds to questions, how the NBI has influenced the relationship of basin states? And how the purpose of equitable and reasonable use of trans-boundary waters is implemented in the Nile basin?

3.1. The International Water Regime

This section introduces international watercourse practices in general and the Nile Basin similar endeavors in particular. The utilization and management of trans-boundary waters is governed by bilateral or multilateral agreements. Before the adoption of the UN Convention on the Law of the Non-navigational Uses of International Watercourses (herein after UNWC), the International Law Association (ILA) codified the 1966 Helsinki Rules on the uses of waters of international rivers to assist in addressing disagreements over non-navigational uses of international watercourses (Deng, 2007: 57). Helsinki Rules on the uses of waters of international rivers are relatively important in the development of international

¹⁹. Supra note 10, re - accessed November 2013

water law (Biswas, 1999: 438). It is predominantly relevant for non-navigational uses of international watercourses, even though Articles 12–20 address the navigational uses (Rahaman, 2009: 214). Article 4 of the Helsinki Rules ascertains the principle of equitable and reasonable utilization of the water resources of the international drainage basin by stating, “Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin” (Abu-Zeid, 2001:26). Articles 5, 7, 10, 29 (4) also advocate this principle (Rahaman, 2009: 214).

The UNWC²⁰ on the Law of the Non-navigational Uses of International Watercourses of 1997 was the first legal regime that acquired wide support from all the regions of the world. However, the provisions of the Convention are not binding on Member States (Deng, 2007: 57). It is the only Convention adopted at international scene to govern the uses of international water courses for the purposes other than navigation. It is based on the 1966 Helsinki Rules (Rahaman, 2009: 216) and establishes a framework for the utilization, development, conservation, management, and protection of international watercourses.

The convention deals mainly with the non-navigational uses of international watercourses. The goals of the Convention, espoused under its preamble²¹, are to ensure the utilization, development, conservation, management, and protection of international water courses, and the promotion of their optional and sustainable utilization for the present and future generations. Following a considerable discussion on the International Law Commission’s draft, on 21st May 1997, the UN General Assembly adopted with one hundred three (103) countries in favor²², three (3) against²³ and twenty seven (27) abstentions²⁴ (Birnie and

²⁰ . The United Nations Convention on the Law of the Non-navigational Uses of International Watercourses (UNWCC) adopted by the UNGA on 21 May 1997, Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf

²¹ . Ibid.

²² . **In Favor:** Albania, Algeria, Angola, Antigua and Barbuda, Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Cameroon, Canada, Chile, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Estonia, Federated States of Micronesia, Finland, Gabon, Georgia, Germany, Greece, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Lao Peoples Democratic Republic, Latvia, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Norway, Oman, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Samoa, San Marino, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Sudan, Suriname, Sweden, Syria, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Yemen, and Zambia.

²³ . **Against:** Burundi, China, and Turkey.

Boyle, 2002: 319). According to Article 36(1) the Convention requires 35 instruments of ratification, approval, acceptance or accession are necessary to bring the Convention into force. The Convention was open for signature from 21 May 1997 until 20 May 2000, however, counting today the convention is not ratified.

Abu-Zeid (2001:27) stated that downstream states appeal to the doctrines of prior appropriation (vested rights that would provide them with unaltered flow of the waters that enter their territories. While the upstream states support rules that give them control of the waters that originate in their territory, in line with the doctrine of absolute territorial sovereignty. Article 5(1) of the Convention adopts the principle of equitable and reasonable utilization as: “Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner.” The paragraph commences the terms ‘equitable’ and ‘reasonable’ use. Article 6 of the convention taking into account all relevant factors and circumstances including the geography, hydrology and population dependent on the waters of the basin; the past utilization of the water; the economic and social needs of each basin state and the availability of alternatives, of comparable value, to a particular planned or existing use (Ademnur, 2002:71; Rahaman, 2009: 214; Milas, 2013:114). The Article interprets ‘equitable and reasonable’ use by taking those factors.

Article 7 deals with the need not to cause significant harm and is an expression of the *sic utere* principle. In paragraph 1 it states that “watercourse states shall take all appropriate measures to prevent the causing of significant harm to other watercourse states”. In paragraph 2 the possibility of significant harm actually occurring is accepted.²⁵ In such a situation the state causing the problem is expected to “take all appropriate measures ... to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation”. (Beaumont, 2000:482). The wording of paragraph 2 of article 7 suggests the expectation that ‘equitable and reasonable utilization’ may result in appreciable harm to

²⁴ . **Abstaining:** Andorra, Argentina, Azerbaijan, Belgium, Bolivia, Bulgaria, Colombia, Cuba, Ecuador, Egypt, Ethiopia, France, Ghana, Guatemala, India, Israel, Mali, Monaco, Mongolia, Pakistan, Panama, Paraguay, Peru, Rwanda, Spain, United Republic of Tanzania, and Uzbekistan.

Absent: Afghanistan, Bahamas, Barbados, Belize, Benin, Bhutan, Cape Verde, Comoros, Democratic People's Republic of Korea, Dominican Republic, El Salvador, Eritrea, Fiji, Guinea, Lebanon, Mauritania, Myanmar, Niger, Nigeria, Palau, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Solomon Islands, Sri Lanka, Swaziland, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Zaire, and Zimbabwe.

²⁵ . Supra note 20, article 7

another state. (Ibid: 482). Optimal is a key word as it implies the best use of the resources. Beaumont (Ibid: 483) noted that Article 8 is interesting as it talks once again about ‘optimal utilization’ of water resources. Article 8(1) states that “Watercourse states shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefits and good faith in order to attain optimal utilization and adequate protection of an international watercourse.”²⁶

Part three of the convention consisting of nine articles, Article 11–19, considers how plans to develop water management structures within an international watercourse are to be dealt with. Articles 11–19 describe the detailed procedures for the information exchange, notifications, consultations and negotiations on any planned measure in an international watercourse. The emphasis is given to the idea of exchanging information and the necessity to consult with other states prior to any measures being undertaken. Watercourse states planning any management measures have to notify other states if such actions are likely to have an adverse impact on another state (Beaumont, 2000:484). In addition to this, Articles 24(1), 26(2), 27, 28 and 30 of the Convention incorporate the principles of cooperation, information exchange, notification, consultation and negotiation.

The Berlin Rules on water resources is addressing the principles of international law governing the management of all waters. It was approved in ILA’s 71st conference, held in Berlin, on 21st August 2004. It recognizes the need for conjunctive and integrated water resources management and appropriate measures that states should take to prevent or minimize environmental harm. Particularly, article 10 ascertains that basin states have the right to participate in the management of waters of international drainage basin in an equitable reasonable and sustainable manner.

²⁶. Supra note 20, article 8

3.2. The CFA and International Hydro-political practices in the Nile

River Basin

The presence of a legal framework constitutes an important component of cooperation and contributes to the means of finding solutions. However, it has so far been difficult to find a legal framework acceptable to all Nile basin states. The 1929 and the 1959 bilateral Agreements are out rightly rejected by upstream countries. In so far these two bilateral agreements failed to represent a complete hydro political practice to be adopted by all Nile basin states sharing the water resources. For long period of time, the two downstream countries, i.e. Egypt and the Sudan, have utilized the maximum share of the waters of the Nile. The basic problem here is that there are 11 riparian states in the Nile basin, yet the total flow of the river was allocated between and among Egypt and the Sudan in the two Nile Waters Agreements, with what might be said as a total disregard of other riparian states,. This obviously is not a case of ‘equitable and reasonable’ allocation of resources (Beaumont, 2009:491).

Egypt argues that it has “acquired rights” arising from its prior use of Nile waters (Milas, 2013:117). This reasoning, however, is unlikely to hold water. There is no indication in international law that the mere fact that a downstream country the first to utilize the waters of a shared river can prevent an upstream country from using that water source at any given time. The other argument by Ethiopia and other upstream countries has it that it is their every right to make use of the waters of the Nile being the source of it. This argument is seemingly to hold true as it is justified by Absolute territorial sovereignty doctrine.²⁷

Amidst the claim and counter claim across the board it was proved even more difficult to ensure a genuine cooperative platform. That was more obvious when looking at the action of those two downstream states undermining the efforts of the Nile Basin Initiative, which has been perceived as a promising start by all. The issue of water security is the main point of

²⁷ . This doctrine determines that a state is fully free to use the water flowing through its territory as it deems necessary without the need to take in to account restrictions or prohibitions on such use (Upreti, 2006: 103). Every nation can utilize the waters of an international river flowing on its territory, as it likes, regardless of the consequences in other countries and without the duty to consult (Correia and Silva, 1999). According to this theory, the upstream states would be free to divert all the water from a shared watercourse without considering the need for downstream states (McCaffrey, 1996: 549).

controversy in the negotiation for CFA. Downstream countries want to defend their water security under the cover of a right to full utilization of the Nile waters. Egypt, in particular, uses the issue of water security to maintain its hydro hegemonic status quo.

The language of the CFA appears to target the expressions of the UNWC. It can be called a verbatim copy of the 1997 UN watercourse Convention. The convention recognized a number of general principles that may inform and help riparian countries in their effort to come up with a regional treaty that will be acceptable to all. In this respect, the Convention has adequately highlighted the principle of equitable and reasonable utilization and participation, by which Member States are required to use their international watercourse within their territories in an equitable and reasonable manner.²⁸ Similarly, as enshrined in Article 5 (1) of the 1997 UNWC, some of the Articles of the Helsinki Rules, for instance, the principle of ‘equitable and reasonable use’ addressed the current challenges of the NBI.

Article 4 of the UNWC enunciated the rule of equitable and reasonable apportionment, while Article 5 provided some elements of the apportionment process. As codified under Article 5 (2), it obliges watercourse States to cooperate in using and utilizing an international river, through information sharing, notification of projects and establishing joint commissions. Additionally, it requires that upstream and downstream states participate equitably in the use, development and protection of a watercourse (Debay, 2008:11). Article 6 establishes factors to be considered in assessing whether utilization is equitable and reasonable. These factors consisted of geographical, hydrological, climatic, historical, social, economic, and technical elements.

The Convention’s other principle that is critical as far as the NBI process is concerned is the principle of obligation not to cause significant harm.²⁹ It requires that states exercise due diligence in utilizing international watercourses so that they do not cause significant harm to other riparian states. Even if the convention never enters into force, it already has generated considerable influence on states, which is apparent in the drafting of new agreements or the diplomatic negotiations between states regarding their shared water courses. The influence of

²⁸ . Supra note 20, Article 5 and 6

²⁹ . Supra note 20, Article 7

the Convention is also visible in the Nile basin. The foundations of the Shared Vision and the Subsidiary Action Programs of NBI are the outcomes of the principles of equitable and reasonable utilization, no significant harm, cooperation in the management and development of the water of the Nile and its sustainable utilization.³⁰ This promotes different water development projects in the Basin.

3.3. Unilateral Water Development Projects on the River Nile

Hydro-power is the single most important source of electricity in DR Congo, Ethiopia, Burundi, and Uganda, and it also provides a substantial share of total power production in Kenya, The Sudan, Tanzania, and Rwanda. However, South Sudan and Eritrea operate no hydro-power facilities, although South Sudan has vast untapped hydro-power potential.³¹ Before the signing of CFA, Countries of the Nile basin take unilateral measures to develop Nile waters within their jurisdiction (Yacob, 2012:3). Many large dams are planned, both on the main stem and on tributaries, to support hydro-power and irrigation development (McCartney, M. 2012, 2). Existing hydro-power generation facilities only represent a small portion (26%) of the potential capacity.³² The main schemes currently operational are at Aswan and Merowe on the Main Nile, Tekezze on the Atbara (Tekezze), Roseires, Tis Abbay, and Tana-Beles on the Blue Nile (Abbay), Jebel Auliaon on the White Nile, and Owen Falls (Kiira and Nalubaale) on the lake Victoria. Several hydropower plants are under construction in the Nile Basin. These include the Bujagali power project in Uganda and a number of projects in Ethiopia.

In November 2009, Ethiopia completed the construction of a hydro-power dam on the Tekeze River, a tributary of the Abbay River. Ethiopia also built the Tana Beles dam in the Abbay tributary, a hydro-power dam inaugurated in 2010 and designed to provide irrigation for nearly 400 square miles of land (Swain, 2013). Chemoga Yeda and Fincha Amerti Neshe, are another hydro-power projects in the Abbay River, aimed to produce 278 MW and 100 MW respectively. The study of a Beshlo, Mandaya, Karadobi multi-purpose hydropower

³⁰ . Policy Guidelines for the Nile Basin Strategic Action Program Available online at: www.nilebasin.org/ Accessed October 2012

³¹ . <http://nileis.nilebasin.org/system/files/Nile%20SoB%20Report%20Chapter%206%20-%20%20Hydropower.pdf>. Accessed May 1, 2014

³² . Ibid

generator dam is still going on Abbay River.³³ The main objective of the project is to promote regional economic development and regional cooperation in the power sector by increasing transmission networks between Ethiopia, Sudan, and Egypt.³⁴

Sudan, on its part, rebuilds the Merowe Dam on the Nile system (FekAhmed³⁵, 2014). This dam is primarily a hydro-power project, but in the future Sudan expects to use the dam for irrigation purposes as well. Since 2008, it is also working to raise the height of the Rosaries Dam by an additional 30 feet or so to increase the irrigation and power generation potential of the structure, as well (Swain, 2013). The construction of hydro-power projects in Ethiopia and Sudan indicates that there are measures taken to move forward with unilateral water development infrastructure in the basin. Incidentally, Ethiopia's and other riparian states position on the utilization of the Nile is that they have sovereign right to use the Nile waters for hydro-power generation and irrigation to meet rising power needs for domestic and industrial purposes and to feed its rapidly growing population by boosting food production (Kidane, 2012:8).

Ethiopia's economic growth have initiated on a unilateral hydro-power projects on the Abbay River and it has successfully financed its own water development projects, of which, the biggest and most contested is the Grand Ethiopian Renaissance Dam (GERD). The construction of the GERD on the [Abbay] River is creating serious tension among Egypt, Sudan and Ethiopia. There is a fear in Egypt that the large storage capability of the dam will put control of valuable Nile water in the hands of Ethiopia (Swain, 2013). The main purpose of GERD is generating hydro-power, which is planned to produce 6000 MW (Monem, 2011:36). There is no planned irrigation scheme tied to this project and there is no irrigable land around it, thus, it doesn't have significant negative impacts on downstream countries have been verified (Yacob, 2012:4).

The Ethiopian government has outlined that the GERD will be beneficial not only for Ethiopia but in many respects also for the downstream countries. It will reduce seasonal

³³ . "Baro and Karadobi hydropower projects," Ministry of Water and Energy, Web site last updated Nov.04, 2010, accessed April 19th, 2014, <http://www.mowr.gov.et/index.php?pagenum=4.3>

³⁴ . Ibid

³⁵ . Supra note 18

fluctuation of the river flow; the flow of Nile water will be regulated because of this the dam will protect Sudan from the danger of flooding. Secondly, clean and cheaper energy will be supplied from it and made available to the region. It is also benefiting downstream countries by removing silt and sedimentation, regulating the water flow and conserving water in Ethiopian highlands (Belachew, 2013:5). The GERD would prevent such threats from occurring as it controls the flow of the water. Thus, once the Dam is filled with water, the flow would be regular.

In contrast to the aforementioned fact, the GERD caused concern among the downstream countries. Egypt has expressed its concern about the project. For example, the country expressed its concern about the possibility of changing such hydro-power dams into multipurpose use dams, which would have an impact of reducing the flow of water to Egypt (Monem, 2011:35-36). However, the Ethiopian government assures that the dam is going to be only for hydropower purposes. Recognizing Egypt's concerns, Ethiopia, in turn, has allowed the establishment of a tripartite team of technical experts to review the impact of the GERD (Kidane, 2012:8). The Ethiopian government initiated an International Panel of Experts (IPE) led by Ethiopia, Sudan and Egypt (Yacob, 2012:4). Studies show that the problem with water management in downstream countries is the loss of water due to heat and evaporation, and also because of how the water is stored and used in the desert (Yacob, 2012:4). Downstream and upstream countries face a difficult task to ease these challenges through technical and political cooperation. Therefore, the researcher believes that unilateral measures to develop Nile waters within their jurisdiction Countries of the Nile basin take

3.4. Prospects and Challenges of NBI

In the past years, water utilization in the Nile Basin has been unilateral, and no comprehensive inter-riparian legal or institutional modalities to facilitate cooperative development were created. The absence of adequate and fair basin wide arrangements to deal with shared water resources leads to the possibility of water disputes which in turn will further undermine any future sustainable use of water resources. This will be reinforcing the question of cooperation and also taken as the opportunity to boost basin wide dialogue. Inversely, as the populations grow and as countries economically develop, inevitably,

competition for the use of the water and between the different users in the Nile Basin is increasing (Dereje, 2014). And climate change, with its variations in temperature, rainfall and other extreme occurrences, will certainly put extra pressure on sustainable water resource management. This will, in turn, raise the issue of utilization and continue to grow with concerns about climate change. Issues such as Pending legal and institutional matters, hydro-hegemonic competition and mistrust between Nile riparian countries are considered the main challenges of NBI and may affect the use of the Nile waters. This sub-topic will address the main opportunities and challenges of NBI.

3. 4.1. Prospects of NBI

The NBI is an important step forward in creating a forum to maintain cooperation and peaceful negotiation among the riparian countries. In affirmation of the importance of the Nile Basin to the economic and social well-being of their peoples, almost all the riparian countries set up committees to help prepare for a constitutive document of cooperative agreement, to be based on the principles of equitable and reasonable use of water and sustainable development on the international conventions and experiences of trans-boundary Rivers. The basin countries accepted the CFA to govern their relations with regard to the Nile River Basin to promote integrated management, sustainable development and harmonious utilization of the water resources of the basin, as well as conservation and protection for the benefits of present and future generations. These have also played a significant role in Nile basin cooperation in general and regional energy integration in particular.

A. Cooperation in the Nile Basin

The effect of Nile treaties was to deny the upper riparian states rights to use the waters of the Nile without prior approval of Egypt (kameri, 2005: 5). Not surprisingly, other riparian states have objected to this state of affairs. However, legal principles such as ‘equitable use’ and ‘obligation not to cause harm’ enunciated in the 1997 UNWC on the Non-Navigational Uses of International Watercourses have not been of much help as they place upper and lower riparian states in absolutely opposing sides (Aaron, 1998: 251). For Ethiopia, cooperation on the water of the Nile is rely on a the need to renegotiate the 1929 and 1959 Agreements,

since it allocated the whole water to Egypt and the Sudan alone. Both agreements favored Egypt in particular. Despite these disputes, the Nile riparian states started looking at the ways of working together.

The initiative started with the meetings in the mid-1960s to discuss the rising levels of Lake Victoria that led to the Hydro-met project (Salman, 2013,19). It was continued and proceeded through the Undugu in the 1970s and 1980s; TECCONILE; and the Nile 2002 conferences in the 1990s (Brunnee and Toope 2002). However, these efforts did not go beyond attempts to improve communication between the Nile riparian states. Building on these efforts, the World Bank and the UNDP, together with some other donors, started in 1997 to facilitate the establishment of a more formal setting for cooperation among the Nile riparian countries. This mechanism was called the Nile Basin Initiative (NBI).

It is established as an intergovernmental organization, and has been viewed as a transitional arrangement to foster cooperation and sustainable development of the Nile River for the benefit of the inhabitants of those countries. Therefore, the establishment of NBI has presented numerous opportunities for the riparian nations to engage in discussions over the new Nile water agreement, called the CFA. During the last decade, as official interaction between the riparian nations increased, frequent press release have provided insight into the status of negotiations over a new Nile water agreement and a permanent water management institution.

Benefits of the Nile cooperation include building cooperation, Water Resource Management and Water Resource Development.³⁶ NBI provides Building a Cooperation platform upon which the Nile CoM has been discussing on management and development of the shared water resources of the Nile. This would become a forum for technical exchange of ideas and experiences within water resources, natural resource management, power generation and trade. In terms of Water Resource Management, the NBI facilitates a mechanism for basin wide exchange of information for water resources development. Identification of development opportunities also focused on power trade and generation, agriculture and river basin management and preparation of investment projects which contribute to economic

³⁶ . <http://nileis.nilebasin.org/content/ethiopia>

growth and poverty reduction, assessing costs and benefits of participation in proposed projects and facilitate agreements on how to share costs and benefits with other beneficiary country are considered as outcomes of cooperation from water resource development.

B. Regional Energy Integration

Africa has abundant renewable and non-renewable energy resources such as oil, coal, hydro-power, natural gas, biomass and others. The search for cheap, abundant energy in Africa should focus on rationalizing the territorial distribution of energy resources through greater regional cooperation in expanding networks of gas pipelines and electricity transmission lines (ECA, 2004:155). Currently, some countries in the Nile Basin are exhibiting rapid economic growth as indicated in the recent growing GDP trends; which in turn, has increased demand for water, energy and food. The Nile Basin landscape offers huge potential for hydro-power generation exceeding 20 Giggawatts, which largely remains untapped; with existing facilities representing about 26% of potential capacity.³⁷ The main electrical energy resources that have stimulated interest in regional power sector integration in the Nile Basin region are the hydro-power resources of the Nile River itself. The region is also well endowed with hydropower potential which is estimated to 660,000 Giggawatt-hour (NBI, 2010:6).

The development approach adopted in NBI has been to combine a top-down Shared Vision Program (SVP) with two bottom-up Subsidiary Action Programs, one located in the Eastern Nile called Eastern Nile Subsidiary Action Program (ENSAP) including Egypt, Ethiopia and Sudan and the other in the Equatorial Lakes region known as Nile Equatorial Lakes Subsidiary Action Program (NELSAP) comprises Burundi, DR Congo, Kenya, Rwanda, Uganda and Tanzania. The projects being promoted under the subsidiary action programs are Ethiopia Power Trade Project which interconnects the Ethiopia and Sudan electricity systems via 454 km dual 230 kV lines; Nile Equatorial Lakes Interconnector Project: construction and upgrading of 769 km of 110 kV and 220 kV lines connecting Burundi, DRC, Kenya, Rwanda

³⁷.National Energy Challenges: Opportunities in Trans-boundary Water Cooperation; Available online at:<http://nilebasin.org/index.php/trending-topic/22-national-energy-challenges-opportunities-in-trans-boundary-water-cooperation>; accessed May 1, 2014

and Uganda; regional Rusumo Falls Hydro-power and Multipurpose Project: electricity component is to be 60 to 80 MW hydro-power station with transmission links to Burundi, Rwanda and Tanzania. Feasibility study still underway; total cost may be on the order of US\$355 million. When these projects have been completed, they are expected to result in cross-border electricity trade of at least 220 MW in 2013, rising to 620 MW by 2030 (NBI, 2010:1-2).

The NBI has conducted a comprehensive study in December 2011, focused on basin-wide Power Development Options and Trade Opportunities in the Nile Basin that indicates the total energy demand in the Nile Basin countries is expected to increase from 183,711 Giggawatt-hour in 2010 to 1,170,328 Giggawatt-hour by the year 2035. This implies that the demand will show an increase of 300% and higher than present demand.³⁸ Although, the Nile Basin remains the only region on the African continent without a functional regional power grid with very insignificant volumes of power traded among the countries. This slow pace of hydro-power development constrains economic growth in the riparian countries; especially those that are highly dependent on it such as Burundi, DR Congo, Ethiopia and Uganda that rely on it for 80% or more of their power³⁹.

Regional energy interconnection would enable Nile riparian countries unlock and optimize the hydro-power potential and allow for a more efficient location and operation of hydropower infrastructure.⁴⁰ The basin wide energy integration would have the following merit to the basin countries. Through cooperation, riparian countries would exchange technical know-how and share related costs for large hydro-power infrastructure investments which are required to meet the region's power demand. Countries would then go aboard on constructing transmission lines and interconnectors that would greatly enhance cross border power trade and markets amongst riparian countries as well as promote regional integration.⁴¹

³⁸. Ibid

³⁹. Ibid

⁴⁰. Ibid

⁴¹. Ibid

Ethiopia's national strategy coupled with cooperative legal agenda to become major hydro-electricity exporter to neighboring countries. This is a sign of a wider regional development, from which Ethiopia will also benefit. For instance, electricity interconnections and export with Sudan and Djibouti are completed (Dawit, 2011:52). The Ethiopia-Sudan transmission inter-connection facilitates cross border power trade between the two countries and optimizing the utilization of existing and planned generation capacity was commissioned in 2013. Correspondingly, investments are already obtained to link Ethio- Kenya hydro-power interconnection project (Ibid). Implementation of a further 1500 kilometers of interconnection grid for Burundi, DRC, Kenya, Rwanda and Uganda is on-going. Preparation of other interconnections between Kenya and Tanzania; Uganda (Nkenda) and DRC (Beni); and Tanzania and Zambia are at advanced stage with most of the studies completed and resource mobilization on-going.⁴² All the aforementioned facts show that, energy integration in the region could promote and move forward in a better way.

3. 4. 2. Challenges of NBI

In spite of its success in terms of bringing all the riparian states together, there are challenges ahead for the Nile Basin Initiative. It has been recognized that, successful implementation of the NBI projects is challenged by a number of issues, such as size and complexity of the basin; high population pressure; food insecurity; extreme poverty; political instabilities; limited understanding of the management of shared natural resources are among other factors. Some of the major recent developments in the Nile Basin will influence the interaction in NBI, include [in]stability in South Sudan, the changing face of Egypt's revolution and Ethiopia's launch of major water-resource development projects on the [Abay River] (Kidane, 2011:5). In this sub-topic, the research tries to deal with the following challenges of the NBI.

A. Pending Legal and Institutional Issues

One of the challenges facing the NBI is the lack of a legal framework involving all Nile basin states. The lack of a basin-wide agreement urges to look for a legal springboard that could

⁴². *Ibid*

address the problems in the basin. The upstream countries want a fresh agreement on the basis of equity (Yacob, 2012:4). The UNWC⁴³ could be a good base and provides the basin states with a foundation in terms of searching for a legal framework capable of resolving the problems. The Convention could be referred and applied to the Nile basin in order to look for a means to resolve the existing problems. Hence, the Convention provides them with appropriate framework which the Nile Basin states could negotiate and reach an agreement.

To tackle this problem, the CFA, which is within the purview of the NBI's Shared Vision Program, aims to reach an agreement on legal principles which will lay the ground for determining a reasonable and equitable solution. Article 3 of the UNWC of 1997, paragraph 1, states that "[I]n the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse state arising from agreements in force for it on the date on which it became a party to the present Convention."⁴⁴

Historically, Ethiopia has been heavily influenced by Nile water agreements, which were never inclusive of all Nile River Basin riparian states. From the legal point of view, the 1959 Agreement guarantees the allocation of 55.5 BCM per year to Egypt and 18.5 BCM per year to Sudan and reinforces the "natural and historical rights" to the Nile waters, which is the baseline for any possible negotiations with upstream states (Casaco, 2009:245). Egypt have always been classified Nile waters as a matter of "national security" in order to skip the negotiation process, because national security did not come in to the negotiating table (Dereje, 2014). Since 1999, Ethiopia used the "equitable" and "no-harm" legal principles as a driving force to change the status-quo. These principles are included in CFA and as of June 13th, 2013, the Ethiopian parliament unanimously ratified it.⁴⁵ The ratification occurred in the middle of the growing tension between Egypt and Ethiopia. This signals Ethiopia's determination to seek equal footing in water sharing arrangements while sending a cooperative message to downstream states (Dawit, 2011: 48).

⁴³. Supra note 20

⁴⁴. Ibid

⁴⁵ "Ethiopia ratifies River Nile treaty amid Egypt tension", BBC News, Accessed June 18th, 2013, file:///C:/Users/User/Desktop/BBC%20News%20%20Ethiopia%20ratifies%20River%20Nile%20treaty%20amid%20Egypt%20tension.htm

The NBI is expected to succeed by the Nile River Basin Commission (NRBC) in all its purposes and functions. The CFA stated that the NRBC has three main objectives⁴⁶ i.e. promote and facilitate the implementation of the principles, rights and obligations of the agreement; serve as an institutional framework for cooperation among Nile Basin States in the use, development, protection, conservation and management of the Basin and its water; and facilitate closer cooperation among states and peoples of the Nile River Basin in Social, economic, and culture fields. Besides the main objectives and purpose of the NRBC, it was given extra functions in regards to dispute settlements, information exchange, and mutual cooperation. The agreement gives the Commission a reasonable role in dispute settlement. It urged the states' members to use the Nile River Basin Commission as mediator or conciliator between the quarreled parties.⁴⁷

Another point that should be raised is the issue of ratification of the CFA. Ratification of 2/3 or six riparian states would result in entry into force of the CFA. It establishes the NRBC to promote and facilitate the implementation of the principles, rights and obligations set forth in the CFA, and to serve as an institutional framework for cooperation among the Nile Basin states.⁴⁸ Article 30 of the CFA states that upon entry into force of the CFA the commission shall succeed to all rights, obligations and assets of the NBI. The immediate question that arise is what will happen to the rights and obligations under the NBI of the states that are not parties to the CFA? The answer is clear, i.e. any treaty shall have a binding effect on the parties to the treaty. Since Egypt and Sudan rejected the agreement, they will become a third party and they cannot enjoy the benefit arising from the agreement.

B. Hydro-Hegemonic Competition

The concept of “hegemony” was first developed by Antonio Gramsci.⁴⁹ Hegemony is a “political power that flows from intellectual and moral leadership, authority or consensus.” It is also defined as a political power obtained subsequently become the dominant hegemony

⁴⁶. Article 16 of the Nile River Basin Cooperative Framework Agreement

⁴⁷. Article 33 of the Nile River Basin Cooperative Framework Agreement

⁴⁸. Article 16 of the Agreement on the Nile River Basin Cooperative Framework, 2010

⁴⁹. Thomas R. Bates, “Gramsci and the Theory of Hegemony”, *Journal of the History of Ideas*, Vol. 36, No. 2 (1975): 351.

by authority rather than by coercion.⁵⁰ Historically, Egypt has exercised various hegemonic strategies to control the water resources of the Nile. One of them is through “resource capture”, for example the construction of Aswan high dam is one instrument of capturing hegemony (Dereje, 2014). The Meroe dam, Rosaries dam and the GERD could serve as hegemony capturing instruments (Ibid). The motivation behind resource capture can be greed or fear of rising scarcity. Throughout history, one of Egypt’s fear is that the emerging capabilities of upstream states, particularly Ethiopia, to develop the water of the Blue Nile [Abbay River] will subsequently reduce the regular amount of water flowing into Egypt.

A hydro-political relation in the Nile River Basin is asymmetric due to unequal development and distribution of water resources between upstream and downstream riparian states. The 1959 Agreement guarantees the allocation of 55.5 BCM per year to Egypt and 18.5 BCM per year to Sudan and reinforces the “natural and historical rights” to the Nile waters, which is the baseline for any possible negotiations with upstream states (cascao, 2009, 245). However, upstream riparian states, such as Ethiopia, claim to use this hegemonic instrument, the water. In this regard, Ethiopia expressed its plans for building dams on the Abbay River: Fincha hydro-power development project; Tekeze hydro-power project (Arsano, 2010); Mandaya hydro-power project and Karadobi (Monem, 2011:35-36). Egypt has expressed its concerns about the water projects in Ethiopia; however, the Ethiopian government assures that the dam is going to be only for hydro-power purposes. According to different experts, this might possibly reduce the flow of water to Egypt and the possibility of changing such hydro-power dams into multipurpose dams (Ibid).

Ethiopia is challenging the unequal hydro-political configurations by boldly promoting a contemporary idea of equitable and reasonable use and management of the Nile Waters. This new idea and knowledge underpin the construction of mega hydroelectric dam on the Abbay River, called GERD. The construction of the GERD on the Blue Nile River could be demonstrated as important as a result of the benefits it brings to the basin-wide region, including to Egypt. However, both downstream states, especially Egypt, are concerned with their historical rights that guaranteed them volumetric cubic of waters (Dawit, 2011: 53).

⁵⁰ . Antonio Gramsci, “Selection from the Prison Notebooks”, (London: Lawrence & Wishart, 1971), 212, Edited and translated by Quentin Hoare and Geoffrey Nowell Smith.

This dam has an impact to change the existing hydro-hegemony but it is not the only instrument to change the power balance equation between Egypt and Ethiopia (Dereje, 2014). In addition to this, Ethiopia's emerging influence in the Nile basin could be valuable to challenge the existing relation and addressing local, regional and global issues like poverty, climate change, population growth, environmental degradation, soil erosions, rain fall variability, extreme poverty etc. (Dawit, 2011:51). This will add a fuel to Ethiopia's ongoing influence on Nile (Dereje, 2014). Because increased economic growth and political stability is a led to challenge the status quo. It should be noted that the current development activities in the upstream countries, particularly in Ethiopia can be considered as the lead to narrow down unfair utilization of water resources and asymmetric hydro hegemonic relation.

C. Mistrust between Upstream Countries and Downstream Countries

There is a problem between the upstream and downstream countries, which arises from mistrust between both sides. This mistrust appeared in Nile-COM meetings of the Nile Basin during the past negotiations for CFA, where the Nile Basin countries were asking for equitable shares of water and building dams for their economic development, while the upstream countries wanted assurances that their historical rights will not be affected, prior notification and approval of any projects that might affect the Nile flow (Monem, 2011:34). The mistrust between the upstream and downstream countries, also exhibited in the signature and ratification of the CFA. Egypt and Sudan, announced their intent of rejecting the CFA and other six Riparian states to sign the agreement.

According to an Article by a Sudanese expert, Dr. Salman Mohamed Salman, Burundi signed the CFA when South Sudan voted for separation and announced the birth of a new state, in July 2011. Burundi wanted to be the 6th country to sign, to have the privilege of being one the pioneers who signed the agreement, before South Sudan would sign (Salman, 2011). During the same time, the uprising in Egypt gave a chance for Burundi to sign the agreement, while the Egyptian politicians were focusing on the internal issues in Egypt (Ibid).

Trans-boundary Rivers like the Nile have governed by international laws and principles. The 1997 UNWC on the law of non-navigational uses of international watercourses has motivated the need for basin wide watercourses agreements in many parts of the world. The negotiation for a permanent basin-wide legal and institutional arrangement in the Nile was characterized by contestable issues that divided opinions among the basin States. This chapter discussed the Nile River Basin practices and international hydro political practices. To conclude the chapter, the possibility of cooperation of all the basin countries needs to be strengthened and concluded with a legally binding agreement through collective understanding.

Incidentally, NBI was an important step forward in creating a forum to maintain cooperation and peaceful negotiation among the riparian countries. In affirmation of the importance of the Nile Basin to the economic and social well-being of their peoples, almost all the riparian countries set up a forum to help prepare for a constitutive document of cooperative agreement, to be based on the principles of equitable and reasonable utilization, as well as sustainable development on the basis of international practices and experiences of trans-boundary river utilization. They accepted a legal, comprehensive framework agreement to govern their relations with regard to the Nile River Basin to promote integrated management, sustainable development and harmonious utilization of the water resources of the basin, as well as conservation and protection for the benefits of present and future generations.

The researcher believes that Colonial and other previous agreements on the Nile have resulted in inequitable rights to the use of Nile water between the countries of the Nile Basin. However, the agreement between Egypt and Sudan is not binding on other riparian states of the Nile as they were never a party to it. For the sake of peace and future development cooperation, the nations of the Nile River Basin have launched the CFA in a bid to ensure an equitable utilization between all the riparian states of the Nile. Taken from the hydro-hegemony perspective, the platform created by the CFA negotiations enabled the upstream countries to substantially increase their collective bargaining power as well as allowed to take unilateral measures to develop the waters of Nile. Therefore, the cooperation in the basin could have never taken place without a political will that sincerely worked for promoting the wellbeing of riparian populations. Cooperation needs to recognize the widest possible range of potential benefits. These includes that cooperation enables better utilization and

management of ecosystems. Trans-boundary Rivers, like Nile, can be as agents of cooperation that yields benefits from the river and reduces costs because of the river can pave the way to greater cooperation between states, even economic and energy integration among states, generating another type of benefits beyond the river.

Chapter Four

The Nile Cooperative Framework Agreement and International

Hydro-Political Interaction

This chapter will analyze the evolution, the provision and current status of the CFA and show its significance in the establishment of permanent legal and institutional framework in the Nile Basin. It concisely gives the answer to what are the existing hydro political dynamics in the Nile River Basin concerning the CFA and areas of differences over it. Since 1997, the then ten riparian States of the Nile Basin have been negotiating for a CFA, known as the Entebbe Agreement, that would allow all riparian states to benefit from the hared Nile waters (Milas, 2013:14; Hagazi, 2011:10). All the Nile countries were on board and this negotiation proceeded through different stages (Yacob, 2012:3).

The utilization of Nile water has been a source of debate among the Nile Basin countries, who disagree on the existing Nile agreements that entirely favors Egypt and the Sudan. The current cooperation initiative knows as the NBI facilitates the dialogue between the Nile riparians. The accord was prepared during 11 years of negotiations among nine of the then 10 countries in the basin. Eritrea did not participate directly in these negotiations but was present as an observer. The agreement marks the culmination of years of negotiations among the Nile Basin countries. The process was launched by the six upstream countries, which see existing treaties favoring Egypt and Sudan as an unfair.

The CFA was officially opened for signature on the 14th of May 2010 at Entebbe. The Four riparian states: Ethiopia, Rwanda, Tanzania and Uganda signed the Agreement on this very first day. Five days later Kenya joined them. South Sudan and Burundi also joined the signatories. These countries see the deal as an instrument to pave the way for an equitable share of the Nile waters. Egypt and Sudan rejected the agreement outrightly and the DRC is still mulling over it. After Burundi signed the CFA, the agreement has achieved the necessary majority in order to be ratified and implemented in the region.

The present Framework applies to the use, development, protection, conservation and management of the Nile River Basin and its resources and establishes an institutional mechanism for cooperation among the Nile Basin States.⁵¹ The CFA, as provided in its preamble, is a framework agreement to strengthen cooperation and govern relations among the basin countries with regard to the Nile River Basin to promote integrated management, sustainable development, and harmonious utilization of the water resources of the Basin, as well as their conservation and protection for the benefit of present and future generations.

The CFA provides for the establishment of a permanent Nile River Basin commission. The CFA also provides the rights and obligations of the riparian states, which are based on the fundamental principles, among others, of equitable and reasonable utilization, obligation not to cause significant harm, prior notification of planned measures and water security of each riparian state.⁵² The signing of the CFA is a significant development in the process of negotiations on the utilization of the Nile Waters. For the upper riparian, the signing of the CFA marks the realization of a goal toward which all the riparian's have been negotiating for over a decade. It governs the relationship among the riparian countries, with regard to the harmonious utilization of the shared Nile Water resources, their conservation and protection. The CFA is expected to enter in to force when two-third of the riparian signatories ratified it. Once the signing process is completed, the accord goes before the legislatures of the countries for ratification.

4.1. Basic Principles of the Nile Cooperative Framework Agreement

The CFA lays down some basic principles for the protection, use, conservation and development of the Nile waters. These different principles of the CFA can be said that verbatim copy of the 1997 UNWC on the Law of Non-navigational Uses of International Watercourses (Dereje, 2014⁵³). Each of the then NBI countries has been engaged in negotiating the CFA, which is composed of fifteen general principles and thirty-nine articles (FekAhmed, 2014). It includes the principles of equitable and reasonable use and no significant harm (Milas, 2013). In so doing the agreement declares the Nile belongs to all the riparian states and there is no state to

⁵¹ . Agreement on the Nile River Basin Cooperative Framework of 2010 , Article 1

⁵² . Ibid, preamble

⁵³ . Supra note 12.

claim veto against the other. Article 4(1) affirms that Nile Basin States shall in their respective territories utilize the water resources of the Nile River system and the Nile River Basin in an equitable and reasonable manner.⁵⁴ Each Basin State is entitled to an equitable and reasonable share in the beneficial uses of the water resources of the Nile River system and the Nile River Basin. To ensure such equitable and reasonable utilization, the agreement under Article 4(2) outlines a number of relevant factors and circumstances to be considered.

The CFA, furthermore, includes obligations on riparian states to refrain from causing a significant harm on the utilization of the waters of the Nile by other riparian states. According Article 5(1): “Nile Basin States shall, in utilizing Nile River System water resources in their territories, take all appropriate measures to prevent the causing of significant harm to other Basin States.” Its provisions obliges the Nile Basin states to take all appropriate measures not to cause significant harm to other basin states. This provision is exactly the same as those of the UNWC (Salman, 2013: 21). As a general rule, the lower riparians favor the no-harm rule, since it protects their existing uses against impacts resulting from activities undertaken by upstream states. Conversely, upper riparian countries favor the equitable utilization principle because it provides more scope for states to utilize their share of the watercourse for activities that may impact downstream states (Salman, 2013:21).

The CFA further stipulates different principles such as protection and conservation of the Nile River Basin and its ecosystems (article 6), regular exchange of data and information (Article 7), planned measures (Article 8) and so on which are basis for trans-boundary watercourse management. By and large the aim of the CFA is to establish Nile River Basin Commission (NRBC) as permanent intergovernmental organization “to promote and facilitate the implementation of the principles, rights and obligations provided for in the CFA” (Article 15). Each country is entitled to an equitable share from the river without causing appreciable harm to the other riparian states. In doing so, Egypt claims its prior appropriation right against the violation of the other Nile Basin Countries water rights. Clearly, the NBI has much more to achieve in regional cooperative and trust building

⁵⁴. Preamble of Agreement on the Nile River Basin Cooperative Framework, 2010

measures. In light of the fact that the earlier agreements have been the bone of contention among basin states, an acceptable basin-wide legal agreement will be the glue that holds the cooperation through the NBI.

4.2. The State of Affairs of the Cooperative Framework Agreement

As of April 2014, six upstream states (Burundi, Uganda, Tanzania, Rwanda, Ethiopia and Kenya) have signed the CFA. Paul Mayom Akec, South Sudan's Minister of Irrigation and Water Resources said that “the signing of the agreement was "inevitable". He said South Sudan would implement the agreement as soon as parliament ratifies it.”⁵⁵ DRC is believed to sign the Agreement soon. However, Egypt and Sudan⁵⁶ are still opposed the agreement and have stated that they will not sign the Entebbe agreement until its wording meets their interest, Minister of Irrigation and Water Resources Mohamed Bahaa Eddin said.⁵⁷ The main reason for disagreement between the signing upstream states and the rejecting downstream states is Article 14 (b). As far as Egypt and Sudan are concerned they do not agree, even though, if six signed, by default the agreement become binding.

A former Egyptian minister of water resources and irrigation, Mahmud Abu-Zeid, sees the CFA as a positive beginning, saying that “everybody agreed to more than 95 percent of the articles” (Ashenafi, 2011). All riparian states except Sudan and Egypt have agreed on Article 14 (b) i.e. “not to significantly affect the water security of any other Nile Basin State.” But Egypt proposed that Article 14(b) should be replaced by the “not to adversely affect the water security and current uses and rights of any other Nile Basin State.”. The phrases “current uses and rights” are meant the status quo on the Nile Basin and if upstream states were to accept these phrases it would make throw the 10 years negotiation in to basket.

The main words of disagreement in the formulations are on the current uses and rights (IPI, 2010:3). The 1929 and 1959 agreements sought to divide waters of the Nile between Egypt

⁵⁵.Aljazeera, South Sudan set to sign new Nile agreement; <http://www.aljazeera.com/news/africa/2013/06/201362075235645727.html> posted 20 Jun 2013 09:44 accessed May 1, 2014

⁵⁶. [BBC: East Africa seeks more Nile water from Egypt](http://www.bbc.com/news/1/2010/05/100514_eafrica_nile_water_egypt.shtml), 14 May 2010, retrieved on May 13, 2013

⁵⁷. [Egypt Independent](http://www.egyptindependent.com/news/minister-egypt-will-not-sign-entebbe-agreement-current-form), Minister: Egypt will not sign Entebbe agreement in current form. <http://www.egyptindependent.com/news/minister-egypt-will-not-sign-entebbe-agreement-current-form> accessed May 1, 2014

and the Sudan. Egypt's argument is that these agreements are binding on all Nile River basin countries under international law. But this argument is not legally justified. Both countries have refused to sign the CFA which, if signed and ratified, could make them lose their hegemonic control over the Nile waters. Egypt wants to maintain its 'historic rights' that emanated from a 1929 colonial-era treaty signed with Britain. The treaty gave Egypt veto rights over all upstream projects. A subsequent 1959 treaty between Egypt and Sudan also gave the two downstream countries over ninety percent control of Nile waters.⁵⁸ . Egyptian experts claim the Entebbe Agreement poses a serious threat to Egypt's historic rights Nile water rights.⁵⁹ Therefore, article 14 (b) is determined the status and fate of "previous agreements" (Zerihun, 2011).

The CFA, which had been negotiated for years under the auspices of the NBI. Ethiopia ratified it in June 13, 2013.⁶⁰ Concurrently, Kenyan President Uhuru Kenyatta revealed the intention of his country to ratify the agreement during his visit to Ethiopia in March 2014, , MENA reported Dina Mufti, Ethiopia's Foreign Ministry spokesperson, as saying. All parliaments of the signing states are expected to ratify the CFA.⁶¹ The CFA negotiations are the most crucial in the life of the NBI. So, the conclusion of the negotiations over the CFA is hoped to lead to the establishment of a permanent Nile Basin Commission. Nevertheless, it is still unclear how the Nile Basin countries will settle their disagreement. On one hand, downstream countries such as Egypt and Sudan still adhere to their historical rights based on 1929 and 1959 treaties; on the other hand, upstream countries in both the Equatorial Lakes and Eastern Nile watersheds claim that their basic rights for socio-economic development are blocked by the water shares of downstream countries.

⁵⁸ . Ibid

⁵⁹ . The Cairo post, a youm7 Arabic publication: Kenya to ratify Entebbe Agreement, Egypt experts express fear ; http://thecairopost.com/news/103055/inside_egypt/kenya-to-ratify-entebbe-agreement-egypt-experts-express-fear ; posted Mar. 20, 2014 17:48 accessed May 1, 2014

⁶⁰ . BBC News. June 13, 2013. Ethiopia Ratifies River Nile Treaty amid Egypt Tension, retrieved from: <http://www.bbc.co.uk/news/world-africa-22894294>.

⁶¹ . <http://grandmillenniumdam.net/ethiopia-begins-process-to-ratify-framework-agreement-on-nile/> posted March 7, 2013, accessed January 1, 2014

4. 3. Areas of Differences over the Cooperative Framework

Agreement

The CFA defines ‘water security’ as “the right of all Nile Basin States to access reliably and use the Nile River system for health, agriculture, livelihoods, production and to the environment” (Article 2 of the CFA). All the principles and articles of the CFA have been discussed by the then member countries and consensus has been reached on all except Article 14(b) on water security (IPI, 2010:3). Of the then nine Nile River basin countries, only Egypt and Sudan disagree with this proposal. They propose that Article 14(b) be amended to read as follows: “Not to adversely affect the water security and current uses and rights of any other Nile Basin State”⁶² (IPI, 2010:3-4). The current use implies that the upper riparian countries should not use the Nile waters for their survival and development and no water is allocated to other basin states (Dereje, 2014; FekAhmed, 2014). Thus, this kind of argument does not have legal, ethical and moral foundations.

The main reason that Egypt and Sudan rejecting the CFA was “water security”. They demanded and insisted that Article 14 of the CFA include a specific provision, to be added at the end of the article, which would oblige the basin states “not to adversely affect the water security and current uses and rights of any other Nile Basin State” (Salman, 2013: 21). Article 14 made the interpretation of both principles of equitable utilization and no harm connected to the water security of the states. Egypt and Sudan proposed the phrase that connect ‘water security’ of states with “current uses and rights of any other Nile basin state,” which was maintained in Article 4 paragraph 2.e “existing and potential uses of the water resources” (Al hajjaji, 2013:145). Egypt and Sudan want the article to read "Not to adversely affect the water security and current uses and rights of any other Nile Basin States" without the qualification "significantly".⁶³

For Dereje Zeleke (2014), in factual terms the disagreement of downstream countries arises from Article 14(b) but in substance the difference emerged from the negotiation process.

⁶². Article 14(b) of the CFA

⁶³. AllAfrica.com: [Rift Widens as Egypt, Sudan Delay Signing Nile Basin Pact](#), 23 February 2009

Egypt and Sudan want to maintain the status quo. The proposed phrases, ‘current uses and rights’ imply the uses of Nile water in the 1959 agreement (Ibid). Accepting this proposal means pulling back the 10 years negotiation process backwards (FekAhmed, 2014). He asked that why they did negotiate for years if no water is allocated for you? Besides the issue of water security, Egypt and Sudan demand that the CFA include explicit provisions on the prior notification of other riparians of planned measures which may cause significant adverse effects to other riparians (Salman, 2013: 22). Ethiopia opposed prior notification principle because of its concerns that such notification may be construed as recognition of the previous treaties.

Another major difference between the parties relates to the manner in amendment process of the CFA. Egypt and Sudan demand that the CFA be amendable by consensus or a majority that includes both Egypt and Sudan, while the other riparian countries insist that should be amendable by a simple majority of the riparian states, whether that includes Egypt or Sudan or not, with no veto power for any riparian(Salman, 2013,23).

4.4. The Challenges and Opportunities of the Grand Ethiopian Renaissance Dam

Besides to the dispute over the CFA, another tension is erupted in 2011, when Ethiopia announced its plans to build the Grand Ethiopian Renaissance Dam (GERD) (Salman 2013:24). In March 2011, Ethiopia began building the GERD on the [Abay] River in a place called Guba, 60 kilometers from Sudan, which hold 74 BCM storage capacity and about 60 BCM live storage which will produce 6000 MW electric generation (Belachew, 2013:2). The GERD is to generate 6,000 MW of hydro-electric power, equivalent to ‘at least six nuclear power plants’ (Zeray, 2013, 1). Immediately after the announcement was made, Egypt and Sudan vehemently opposed the dam, claiming adverse effects on their Nile water rights and interests. However, Sudan later softened its position and now seems to support the project (Salman, 2013: 24).

With regard to the construction of the dam various assertion were given in both official and non-official terms by Ethiopian and non-Ethiopian officials. The ultimate end of this

rhetoric's is an assertion to show the impact of the GERD positively and negatively. The mere fact is the GERD is planned for hydro-power, not for irrigation. Ambassador David Shinn⁶⁴ in his interview with Youm7, an Egyptian privately owned Arabic newspaper on June 1, 2013 said adding that "the dam will be filled gradually with no interruption in the flow of the river; the Ethiopian Minister for Water, irrigation and Energy, Alemayehu Tegen, estimates it will take five to six years to fill the reservoir behind the dam. This will be done over a long period of time in order to minimize the annual reduction of water reaching Sudan and Egypt while it is being filled" (Horn Affairs, 2013). Once the reservoir is full, the impact on Sudan and Egypt should be minimal. Because its purpose is hydropower, water will continue to flow through the dam. There will be some evaporation from the reservoir, but because of the higher altitude and cooler temperatures prevailing at the location of the dam, the effect will be less than if the dam had been built in Sudan or Egypt (Ibid).

Ethiopia has abundant water resources and hydro-power potential. However, as of 2001, only 3% of its hydro-power potential had been developed. It has been reported that 83% of Ethiopians lack access to electricity, with the overwhelming majority of the population relying on biomass fuel for cooking and heating, which creates other health and environmental problems (Block, P. and K. Stzepek, 2010). The World Bank has argued that increased investment in multipurpose water infrastructure would make Ethiopia more "water-resilient", and promote long-term economic growth. Such multipurpose infrastructure could include hydro-power production facilities, irrigation systems, and storage capacities that could mitigate the impacts of both droughts and floods (Hammond, M. 2013:2). However, Ethiopia has embarked on an extensive dam construction program on most of its rivers, particularly the [Abbay River], in an attempt to harness some of its huge hydro-power potential which is estimated 45,000 MW (30,000 in the [Abbay] Basin); and to become a regional hydro-power producer and exporter (Salman, 2013, 24).

The concern for Egypt and Sudan is that their available water resources will be reduced by the construction of the dam. However, there is limited understanding of how the dam would affect downstream flows. Egypt's main argument is based on the 'principle' of historic or inherent right to use the Nile in

⁶⁴. David Shinn, who served as US Ambassador to Ethiopia is currently an Adjunct Professor at Elliott School Of International Affairs, George Washington University

general, and further argues that as a desert nation it has no other option for survival but to depend on the River in particular, while Ethiopia and others have other options including torrential rain to satisfy their water and agricultural needs (Zeray, 2013:5-6). In sharp contrast, Ethiopia and other riparian countries base their argument on the equitable use and utilization principle, which is regarded by many as part of customary international law (Ibid). Surprisingly, Egypt developing the desert using the Nile water, harvesting and exporting large amount of rice; 100% of Egyptian farmland is irrigated using water from the Nile (UNDP, 2010). And it released extra water to the desert through Toshka cannal. Additional paradox to their claim is the country's plan to sell Nile waters to Israel. The late Prime Minister of Ethiopia, Meles Zenawi once said: "While Egypt is taking the Nile water to transform the Sahara Desert into something green, we in Ethiopia, who are the source of 85% of that water, are denied the possibility of using it to feed ourselves."⁶⁵

In September 2011, months after GERD construction announced, the establishment of a trilateral team of experts from Egypt, Ethiopia and Sudan was announced to assess the impact of the dam on the Nile flow. The Ethiopian initiated tripartite Technical Commission, mandated to examine the potential impacts of the construction of the Ethiopia dam on downstream countries, and submitted its report to all concerned on 1st June 2013 (Zeray, 2013: 6).). This was viewed as a positive step, indicating a major shift in an attempt to resolve the dispute over the GERD in a peaceful and constructive manner (Salman, 2013:24). Egypt formally requested Ethiopia to halt the project until further studies are carried on. Ethiopia, while accepting the need to conduct further studies on possible impacts of the project, insists that not only will the flow of water not be reduced, but also the dam will benefit riparian countries. Apart from sharing the generated electricity, the dam and its nationwide conservation projects will increase the flow of the Nile (Ibid, 7).

The researcher, in conclusion, completely agrees with the analysis and observations of the CFA, which is intended to be the legal document regulating the relations between the Nile riparian states. Indeed, although the upper riparian states have rejected the existing bilateral agreements, they have reiterated that the CFA is benefiting all the states of the Basin.

⁶⁵. BBC News.'Nile restrictions anger Ethiopia' posted 3 February 2005.available online at <http://news.bbc.co.uk/1/hi/world/africa/4232107.stm>. [Accessed 12 September 2013]

Equally, Egypt and Sudan are still rejecting the CFA to maintain their status quo over the Nile waters. In the absence of signatures from Egypt and Sudan, the upper riparian states have gone ahead, signed the CFA. The core disagreement of the downstream countries with the CFA rests on different justifications. First, Egypt believes that upstream countries should get the approval of downstream countries i.e. Egypt and Sudan, before starting any water development project that may affect the flow of the Nile. The other point is, Egypt wants the CFA to guarantee its status quo, which is based on the 1959 agreement signed by Egypt and Sudan. So that, Egypt feels that Article 14(b) of the CFA should oblige Nile Basin states ‘not to adversely affect the water security and current uses and rights of any other Nile Basin state’.

The CFA has to be implemented and it may have significant legal or political effect in the short term, and/or, it can certainly provide legal and institutional cooperation for the Nile riparian states. The Nile riparian states must agree to work together in the spirit of cooperation and ensure water developments that will utilize the water resources of the Nile river system in an equitable and reasonable manner. The question of equitable sharing is a concept that stipulates every riparian country shall have the right to use the river fairly. But the matter of who gets to use what amount is a question that is going to be addressed through negotiation. Furthermore, Ethiopia’s diplomatic successes, such as the alliance with five other upstream states in the CFA, have given it the opportunity to change and challenge the status quo.

Chapter Five

Conclusion

International rivers can elicit cooperation or conflict. The choice between the two will in large part be determined by perceptions of their relative benefits. Despite enormous potential of the Nile, massive poverty and food insecurity high population growth, environmental degradation and water scarcity has been an enduring feature of the Nile basin. As the population of the Nile basin continues to expand, water scarcity will be at the forefront of the region's problems. The basin countries development potential is further reduced by the fact that it has one of the lowest accesses to energy. Ethiopia and other riparian states must find ways to both feed their future generations and reduce their poverty.

The management of rivers is complicated by the fact that they cross political boundaries indiscriminately. Rivers intersect or even form borders between the many different users that must share their water. There are different ways of enforcing compliance if riparian states of a river basin fail to establish a common institutional and legal framework. International treaties provide for some remedies, depending on the parties. Compliance with these treaties should first of all be ensured through the usual diplomatic methods for dispute resolution: negotiations, good offices, mediation, and fact-finding or a conciliation procedure. Employing a commission created by the treaty for a particular river is also one of the possibilities. Generally speaking, the outcome of these methods of dispute resolution is not legally binding. In order to achieve a legally binding result, the parties to a treaty can use arbitration or the courts if diplomatic methods have failed.

Ethiopia contributes 86 percent of the Nile flow but virtually it uses none from the river. In irrigation, Ethiopia uses 0.2 BCM compared with Egypt's 40 BCM. In terms of utilization, Egypt takes more than 75 percent of the Nile waters and Sudan uses the rest. Other riparian countries, including Ethiopia, use nothing. This created unbalanced water share between Nile countries. As a result need for equitable and reasonable utilization of Nile waters had given the way to the CFA. The signing of CFA marked an important turning point in the cooperation effort between Nile Basin Countries.

Basically Egypt and Sudan demand to maintain the status quo by claiming ‘historic rights’ to Nile waters, established and maintained through the 1929 and 1959 agreements, which have been excluding all basin states. The upstream countries, however, had rejected the downstream countries claim of ‘historic rights’ of the Nile waters. This is true that Ethiopia and other upstream countries didn’t use the water because of the 1929 and 1959 agreements. Besides the existing agreements, upstream countries did experience neither economic strength nor political stability. In this regard Egypt was successful and worked hard for the refusal of funding to Nile water development projects. This and other situations in the basin call for cooperation to change the status quo and create a reasonable and equitable use of Nile waters.

After the signing of the CFA, Ethiopia started the construction of GERD. It is constructed adhere to international standards and gives advantages to Basin countries and to the others by allowing clean energy production and reducing climate impact, improving regional cooperation through energy trading and interconnection and provision of substantial energy contribution to the regional East and North Africa power pools as part of the continental plans to integrate Africa. In general, the basis of the CFA is the principle of equitable and reasonable utilization. As a result, the CFA discard the unfair status quo and the so called prior agreements which have been claimed by downstream states as binding and legally accepted. This, however, has never been accepted by upstream Nile states. It is this unfair status quo which for long impedes the Nile riparian’s from working together and promoting unilateralism directly or indirectly. Thus, the CFA will fix all the unfair relation of the Nile riparian countries.

The GERD will reduce climate impact by providing clean energy. It will improve regional cooperation through energy trading and interconnection. Thus, the success of the dam will be symbol for integration of the region. So that, Egyptian professionals should confirm the leaders on GERD benefits based on full analysis of the dam. The recommendations which forwarded by international panel experts was to undertake further analysis on the environmental impacts of the GERDP on Sudan and Egypt should proceed. The three countries experts also need to come together to address the issues with their available data on the Nile water use and utilization.

Both Egypt and Ethiopia need to work closely together to settle the disagreement that arise from the construction of GERD. Egypt ought to recognize that Ethiopia and other upstream countries are entitled to their equitable share of the Nile waters. The ‘no drop of water’ to be reduced argument is not legality and morally justifiable. A wise diplomatic engagement and leadership is expected of both upstream and downstream nations to move forward. The mere solution to the Nile tensions is to negotiate and agree on the diplomatic way for a fair and equitable use of Nile waters. Egypt’s position of ‘you sit while I eat’ approach is wholly unacceptable and obsolete. Ethiopia, Sudan and Egypt must discuss on the technical issues of how to optimize the ongoing construction of the GERDP for the benefit of the three countries instead of arguing in trivial issues. They need to develop systems which help working together based on agreed principles by the three riparian states. They must work together to make the shared water, Nile, central point for integrating the regional development in East and North Africa.

Ethiopia’s policy on the Nile waters is based on establishing cooperation and equitable and reasonable utilization of shared water , the Nile. The researcher suggests that further negotiation on the Nile waters will provide for all basin countries the opportunity to pursue equitable share and reasonable use of Nile waters. Ethiopia ought to work to satisfy the concerns of Egypt and Sudan on the Nile waters, this in turn strengthen basin wide cooperation. In doing so, Egypt should change its traditional policies aimed at threatening, undermining, and destabilizing the upper riparian countries to maintain the Nile water status quo.

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Appendix I: Interview Questions

- What do you think about the negotiation process of the Cooperative Framework Agreement (CFA)?
- Six member states have signed on the CFA) and but Egypt and Sudan rejected the agreement. Do you see any incompatible interest for rejecting the CFA?
- The disagreement between Nile riparian states is emerged from Article 14 (b) “not to significantly affect the water security of any other Nile Basin State.” During negotiation Egypt proposed that Article 14(b) should be replaced by the “not to adversely affect the water security and current uses and rights of any other Nile Basin State.” What is the main difference between these two phrases?
- How can the CFA be implemented given the difference in Article 14(b) of the CFA unresolved?
- Does the implementation of the CFA nullify the previous agreement?
- Do you think that the countries that signed the CFA will implement it excluding Egypt and Sudan? What do you think if happen upper riparian countries would proceed to implement the CFA?
- Some scholars argue that the signing of the CFA marked “the beginning of the end of the status quo”. What does it mean?
- How can equitable use of Nile waters be ensured without causing significant harm?
- The principles of the CFA emerged from the 1997 United Nations Convention on the Law of Non-navigational Uses of International Watercourses. Six upstream states have signed the agreement and South Sudan has notified its decision for accession to the CFA, while Egypt and Sudan are still in opposition to the CFA. Could it be considered that Egypt and Sudan are rejecting the UN water convention?
- What are the impacts of the large dams on the relations of upstream and downstream countries, taking the cases of Aswan high dam and the GERD?
- What will be the most likely and probable scenario of CFA concerning the legal and diplomatic issues?

Thank you Very Much!!

Appendix II : List of Informants

Dereje Zelekei, PhD, Addis Ababa University. School of Law and Governance Assistant Professor and Dean . Interviewed on 07 May 2014 from 02:00- 02:35 pm. at his office, Addis ababa University

FekAhmed Negash. Director General of Boundary and Trans-boundary Rivers Affairs Directorate of F.D.R.E. Ministry of Water, Irrigation and Energy. Interviewed on 07 May 2014 from 10:00- 10:45 pm. at his office, Addis Ababa Ministry of Water, Irrigation and Energy.

Declaration

I, the undersigned, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used for the thesis have been duly acknowledged.

Moges Mekonnen Alemu

May, 2014

This thesis is submitted for examination with my approval as an advisor of the candidate.

Yacob Arsano, Ph. D.

May, 2014