

The Effectiveness of International Water Law in Dispute Resolution in Shared Watercourses: Case of Nile River Basin

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ABSTRACT

This article assesses the efficacy of International Water Law in resolving conflicts in the Nile River Basin. The focus is on the contentious 1959 agreement, which heavily favored Egypt and Sudan, leaving other countries without basin utilization rights. The 1959 agreement allocated the majority of water to its downstream states based on the outdated concept of historical rights, disregarding the needs and future development plans of upstream states. Moreover, a lack of enforcement power undermines cooperation and leads to disputes among member states. The International Water Law aims to improve cooperation through agreements, particularly the 2011 Cooperative Framework Agreement (CFA) and Declaration of Principles (DoP). The review argues that the CFA has not been ratified by all countries and that the DoP only involves three of the eleven Nile River Basin states. These limitations hinder efforts to develop shared water resources peacefully. The review concludes that the unclear terms in the 1959 agreement, weak enforcement mechanisms, and the absence of an inclusive agreement that considers future water needs and climate change pose significant challenges. Currently, the International Water Law is struggling to ensure fair and sustainable water use in the Nile River Basin.

List of abbreviations

UN	United Nation
ILC	International Law Commission
VCSST	Vienna Convention on Succession of States in Respect of Treaties
UNWC	United Nations Watercourses Convention's
GERD	Great Ethiopian Renaissance Dam
CFA	Cooperative Framework Agreement
DoP	Declaration of Principle
GERDP	Grand Ethiopian Renaissance Dam Project

INTRODUCTION

While the Nile River has supported Civilizations in Northeast Africa for millennia, its 11 riparian states

have also seen decades of conflict. The Nile River supports more than 200 million people through agriculture, hydropower, industry, and household use.[\[1\]](#) However, its fair distribution has grown in importance owing to the expanding population and emergence of new development requirements.[\[2\]](#) This necessitates an efficient resolution under international water laws.

In 1959, Egypt and Sudan signed an agreement that divided roughly 80 per cent of the Nile's flows between them, excluding other riparian states from cooperative management.[\[3\]](#) Due to water scarcity, exacerbated by population growth and climate change, Ethiopia, Uganda, and other upstream states have pursued unilateral infrastructure projects in recent years to satisfy water demand in their regions. This has resulted in an intense conflict with downstream countries, especially concerning Ethiopia's Grand Renaissance Dam (GERD) and its possible effects on Egypt's 55.5 Billion cubic meters yearly allotment.

Despite more than ten years of dialogue, a comprehensive and long-term resolution remains unattainable. The 2015 Declaration of Principles (DoP) and the UN Watercourses Convention's principles of fair and reasonable use offer foundations for legal settlement in the basin. However, the 1959 Agreement's ambiguous provisions and lack of compliance incentives have weakened its effectiveness thus far. Furthermore, it is now critical to reach an inclusive, lasting agreement, as population pressures and climate dangers increase.

KEY PRINCIPLES AND SHORTCOMINGS OF THE 1959 AGREEMENT

Egypt's historical rights versus Natural flow concepts

During the period when European colonial powers ruled over Africa or soon after the continent gained freedom, several treaties about its waterways were negotiated. To guarantee a constant water supply for the colonies downstream of the Nile River, the British Empire, the dominant colonial power in the Nile Basin, envisioned controlling the entire basin. This resulted in treaties that heavily favored the downstream riparian states of Egypt and Sudan.[\[4\]](#)

The primary Nile treaty was signed in 1920. This set quotas for the quantity of the Nile River that Sudan could take before it flowed into Egypt. Furthermore, it gave Egyptian veto rights on any upstream project that it believed would alter the flow of the Nile into Egypt's territory.[\[5\]](#)

The 1959 Treaty reflects the major concerns of the 1929 Treaty, and shares much of its spirit and substance.[\[6\]](#) The 1959 treaty was formed following Sudan's independence in 1953 and its request for a larger share of water. The primary change in 1959 was the increase in the amount of water provided to Sudan. It guarantees a minimum of 55.5 Billion cubic meters of water for Egypt and 18.5 Billion cubic meters for Sudan leaving 10 Billion cubic meters for evaporation.[\[7\]](#)

This biased allocation of Nile River water assumes that the upstream countries do not use water from the Nile River. The treaty suggests that upstream countries have voiced a nebulous and undefined "claim" to some share of the Nile's water, but it does not grant any specific rights or provide a clear legal avenue to enforce or appeal these claims.[\[8\]](#)

No binding status and weak compliance mechanisms.

The treaties of 1929 and 1959 were highly contested. The riparian states present several arguments to support or oppose various (post-)colonial agreements. Egypt claims that all the agreements concluded during the colonial reign are valid and binding due to the process of state succession – a long-standing theory and practice in international law.[\[9\]](#)

Furthermore, Egypt states that the 1929 agreement, in addition to other colonial treaties, enjoys perpetual validity due to ‘territorial, ‘real, ’ or ‘dispositive’ treaty exceptions, which cause these treaties to survive state succession and fundamental changes in circumstances.[\[10\]](#) Egypt’s claim is supported by a statement from the UN International Law Commission (ILC) made during the drafting of the Vienna Convention on Succession of States in Respect of Treaties (VCSST). According to the ILC, “treaties concerning water rights or navigation on rivers are commonly regarded as candidates for inclusion in the category of territorial treaties.”[\[11\]](#) The commentary mentions the 1929 Nile Waters Agreement as a relevant treaty in this regard but fails to provide clarity on the ILC’s legal opinion status of the treaty. In the absence of such conclusiveness, Egypt’s claim remains highly contested.[\[12\]](#)

Additionally, upstream riparian states often mention the principle of *pacta tertiis nec nocent nec prosunt* regarding colonial agreements. This principle entails that “a treaty does not create an obligation or right for a third party without its consent.” This principle is invoked regarding the 1959 agreement as this was a bilateral treaty between Sudan and Egypt, and based on this principle, has no binding power over any of the upstream riparian states.[\[13\]](#)

Ethiopia relies on the principle of *pacta tertiis nec nocent nec prosunt* in its rejection of almost all Nile Treaties[\[14\]](#). Ethiopia is also one of the few states in Africa that has never been colonized and has remained a sovereign state throughout the scramble for Africa.[\[15\]](#) The fact that European powers signed treaties on their respective spheres of influence over resources in Ethiopian territory is not to be regarded as binding to Ethiopia because it has never consented to these treaties.[\[16\]](#)

EMERGENCE AND ESCALATION OF THE DISPUTE POST-2010

With growing economic ambitions in the last three decades, interest in the water of the Nile has started to grow, challenging the 1959 treaty.[\[17\]](#) In 2010, several nations in the Nile Basin, including Tanzania, Kenya, Ethiopia, Sudan, Burundi, Rwanda, and Uganda, contracted the Entebbe Agreement. This agreement recognized the new dissemination of resources. However, Egypt and Sudan opposed, and far ahead, Ethiopia declared, the Great Ethiopian Renaissance Dam (GERD) project, aimed at generating more hydroelectric power for the country.[\[18\]](#) However, the 1959 Nile Accord between Egypt and Sudan excluded other nations and warned that it might limit access to freshwater to other nations.

As a result, Egypt-Ethiopia relations have remained strained since the ratification of the agreement. Ethiopia seeks to consume Nile River water, and Egypt consistently reacts with the prohibitive prospect of violence.[\[19\]](#) This is the last-longer dispute in the Nile River Basin

ROLE OF INTERNATIONAL WATER LAW IN DISPUTE RESOLUTION EFFORTS

2011 Cooperative Framework Agreement (CFA)

Since the 1960s, Nile riparians have attempted to institutionalize their cooperative efforts in various organizations such as Hydromet, Undugu, and TECCONILE.[\[20\]](#) These organizations laid the groundwork for the first basin-wide organization aimed at cooperation: the Nile Basin Initiative.[\[21\]](#) This initiative resulted in a framework called the Cooperative Framework Agreement (CFA) founded on international water law principles.

The CFA is a comprehensive multilateral agreement on the principles, rights, and obligations for cooperative management and the development of shared Nile water resources. The CFA did not enter into

force at the time of writing, as it did not reach the six ratifications by riparian states required per its provisions for it to commence.[\[22\]](#)

The CFA ensures the right of use for every riparian state within its territory to the waters of the Nile River Basin. The dimensions of that use are guided by the principle of reasonable and equitable utilization, which is determined based on several factors. This design can be seen as a direct legacy of the Helsinki Rules and the UNWC.[\[23\]](#) In addition to the factors included in the UNWC, several provisions have been added, which are currently contested by lower riparian states. Concerning the delineation of reasonable and equitable uses, the CFA also explicitly considers the contribution of each riparian state to the waters of the Nile River System, and second, the geographical areas of each state that are situated in the drainage area, both as a proportion of the state's territory and as a proportion of the total basin.[\[24\]](#)

In addition to the equity principle, CFA incorporates the no-harm principle as an integral part of its legal framework. The provision concerning the principle of no substantial harm has been verbatim. A compelling reason for states to borrow provisions from reputable conventions by legal authorities, such as UNCW, is that the legal spirit behind the text has been distilled to a certain degree.[\[25\]](#)

2015 Declaration of Principales (DoP)

While debates over the legal relevance and the fairness of the CFA continued, 'facts on the ground,' in the shape of the GERD, have also shaped cooperative arrangements within the basin. In 2011, Ethiopia's announcement of the GERD construction project sparked tension with its fellow riparian states of Sudan and Egypt. To resolve the tensions, the three countries entered negotiations, which resulted in March 2015 in the Declaration of Principles (DoP) on the Grand Ethiopian Renaissance Dam Project (GERDP).[\[26\]](#)

The DoP is founded on principles of cooperation, which include common understanding, mutual benefit, good faith, and principles of international law. Relevant principles of international law referred to in the text, include the Principle of Sovereignty and Territorial Integrity, whereby the three States commit to, 'cooperate based on sovereign equality, territorial integrity, mutual benefit and good faith to attain optimal utilization and adequate protection of the river.'[\[27\]](#)

ONGOING CHALLENGES AND BARRIERS TO EFFECTIVE SOLUTIONS

To quantify the legal framework governing the allocation of shared Nile water resources, Gari et al. (2020) started with the premise of cardinality regarding the principle of reasonable and equitable utilization.[\[28\]](#) Gari et al. (2020) argued that this principle is, although in slightly different arrangements, fully integrated into both the CFA and DoP. [\[29\]](#) However, although the CFA and DoP are both established legal instruments, they lack a basin-wide binding force.

The inclusion of the no-harm principle alongside the principle of equitable and reasonable utilization in CFA led to a conflict analogous to the discourse at the UN level, namely, a debate on their relative hierarchy. [\[30\]](#) Downstream Egypt and Sudan favored the no-harm principle to take precedence as it protected their established uses and upstream nations favored the equity principle as they believed it would increase their allocation of shared water resources.[\[31\]](#) At the time of writing, the CFA had not reached the required number of ratifications to enter into force, and the DoP pertains only to three countries among 11 – Egypt, Sudan, and Ethiopia. Both documents are important, as they constitute adaptations of international customary law to the case of the Nile Basin. However, neither of them replaced the old Nile regime.[\[32\]](#)

Furthermore, the Nile River Basin currently faces challenges related to water scarcity, which are primarily attributed to climate change and population growth. As a result, competition over shared water resources is likely to intensify between Nile states.[\[33\]](#) The high population growth rates in Nilotic states exacerbate the

existing water scarcity, and the per capita water availability is decreasing as demand continues to rise. Chatterji, Arlosoroff, & Guha (2017) indicate that the average per capita water availability in each of the Nilotic states is expected to decrease by 56% to 66% between 1990 and 2025.[34]

The water stress caused by climate change, combined with demographic and socioeconomic factors, contributes to increased tensions within and between Nile nations. Declining water availability is particularly concerning, as a significant portion of the population in upstream nations relies on rainfed agriculture for subsistence.[35] As hot and dry extremes increase, water availability per capita decreases, and the uncertainty surrounding water availability increases, rainfed agriculture is likely to be progressively disrupted.[36]

The absence of a mutually recognized legal framework governing the allocation of freshwater among the countries that share the Nile River incentivizes them to adopt unilateral strategies for the development of Nile water resources. The legal mechanisms governing water allocation treaties are rigid and inflexible towards changing geophysical conditions,[37] which are expected to exacerbate the stringent effects of climate change on regional relations, as they are not suited for the associated rise in uncertainty.

CONCLUSION

This paper examines the effectiveness of the International Water Law in resolving disputes in the Nile River Basin. The regulatory framework controlling the Nile Basin and its benefits throughout the 11 Nilotic nations is fragmented and ambiguous. However, changes in International Law and regional discussions have resulted in greater clarity over time. The current state of the International Water Law in the Nile River Basin has made progress but has shown limitations in resolving disputes and ensuring fair and reasonable use of water resources. Additionally, water scarcity exacerbated by climate change and rapid demographic growth exacerbate this dispute.

To address these challenges, policymakers and stakeholders in the Nile River Basin should consider the following recommendations:

1. Nilotic nations should negotiate a comprehensive and legally binding Nile River Basin agreement based on the principles of fair and reasonable utilization to replace the old agreement. This agreement should consider future water requirements and climate change impacts, and all 11 riparian states should be included as full participants in the new agreement.
2. Nilotic states must develop a Nile River Basin Climate Change Master Plan that aligns with this new agreement. A robust monitoring mechanism should be put in place to track the progress of the climate goals outlined in the Master Plan. An independent body responsible for ensuring the compliance of governments and holding them accountable for their commitments should oversee this monitoring mechanism. The body should also be involved in tracking metrics and measuring the impact of the implemented strategies.
3. Capacity-building programs should be developed to enhance the technical and institutional capabilities of riparian states, particularly upstream countries, to sustainably manage and utilize the Nile's water resources.

FOOTNOTES

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