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**“On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.”**

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## **Acronyms**

ADR-Alternative Dispute Resolution

Art. -Article

Arts. - Articles

AU- African Union

BBC-British Broadcasting Corporation

DoP-Declaration of Principles on the Filling and Operation of the Grand Ethiopian Renaissance Dam

GERD- Grand Ethiopian Renaissance Dam

ICJ-International Court of Justice

IPoE-International Panel of Experts

IR-International Relations

IWM-Integrated Water Management

MoFA-Ministry of Foreign Affairs of Ethiopia

NBI-Nile Basin Initiative

UN Charter-United Nations Charter

UNECE Convention- Convention on the Protection and Use of Transboundary Watercourses and International Lakes

UNFC-The 1997 United Nations Framework Convention on the Non-navigable Uses of International Watercourses

UNSC-United Nations Security Council

US- United States of America

VCLT-Vienna Convention on the Law of Treaties

VOA-Voice of America

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## **Abstract**

*How do riparian states manage water conflicts? Why countries in some river basins have been able to effectively manage the conflict whilst the riparians of the Blue Nile Basin could not do so? These are the main questions this research dealt with.*

*Water conflict has attracted the attention of numerous scholars over the past few decades. However, the vast majority of them have, very disproportionately and regrettably, focused on the possibility of water war or cooperation among the riparians of the transboundary rivers. This conceptualisation of water conflict resulting in scant exploration of low intensity water conflict. Even so, the theoretical frameworks employed appear to be narrow and inadequate to explain pertinent issues pertaining to water interactions among the riparians of the transboundary rivers and the dynamics of hydro politics.*

*By drawing on existing scholarly works and applying a 'richer view of law and politics', this research seeks to examine the theories, concepts, and strategies on the management of conflicts arising from the use of transboundary water resources in general and water conflicts in the Blue Nile Basin in particular. To put the theoretical discussions into context and provide an illustrative case study, the (intractable) water conflict between Ethiopia and Egypt is critically analysed.*

*Accordingly, this research argues that effective management of water conflicts depend, inter alia, on the power asymmetry among the Riparian States, the existence of and the extent to which the emerging water use norms are entrenched into the legal framework and state practices, the relative strength of and the mandate bestowed upon institutions regulating the Basin, and the level of convergence (divergence) of state identities and interests of the Riparian States. More particularly, within the Blue Nile Basin, Egypt has been able to establish and maintain an unstable hydro-hegemony in the Blue Nile Basin. To this end, it used colonial treaties, informal institutions, the discourse of 'historic rights' and securitisation of the river. In recent years, however, the upper riparian countries (mainly Ethiopia) have started challenging the Egyptian hegemony by using various counterhegemonic strategies, mainly through the combination of legal and political mechanisms. These counterhegemonic moves especially following the construction of the GERD has brought the two riparians, i.e., Egypt and Ethiopia, at a loggerhead.*

*Finally, it asserts that the management of conflict between Ethiopia and Egypt has become very complex in nature and intractable to resolve owing to the competing norms, incompatible state identity, and securitisation of the Nile, coupled with weak institutions with limited conflict management roles such as the NBI and AU and ineffective conflict management efforts, as evidenced in the protracted negotiation process and the failed US-brokered mediation. It is, therefore, imperative that future Ethiopia-Egypt water conflict management endeavours should take the aforementioned necessary, albeit not sufficient, conditions into account; to leash the dogs of war!*

**Keywords:** *conflict management, securitisation, norms, identity, mediation, water conflicts, hydrohegemony, transboundary water resources*

## **Abstract**

*Die gegenständliche Arbeit widmet sich insbesondere der Frage wie Anrainerstaaten Wasserkonflikte managen und warum manche Länder derartige Konflikte effektiv managen konnten und andere, wie jene rund um das Blaue Nilbecken, dazu nicht in der Lage scheinen.*

*Wasserkonflikte haben in den letzten Jahrzehnten die Aufmerksamkeit zahlreicher Wissenschaftler auf sich gezogen. Der Großteil der Arbeiten bezieht jedoch eher auf die Möglichkeit eines Krieges oder jene der Zusammenarbeit zwischen den betroffenen Staaten. Es scheint hingegen, als würden Wasserkonflikte mit niedriger Intensität kaum untersucht. Darüber hinaus macht es den Eindruck, als wären die verwendeten theoretischen Rahmen eher ungeeignet, um relevante Fragen der Wasserinteraktionen zwischen den Anrainerstaaten zu erklären.*

*Diese Arbeit versucht die Theorien, Konzepte und Strategien zum Management von Konflikten zu untersuchen, die aus der Nutzung grenzüberschreitender Wasserressourcen im Allgemeinen und Wasserkonflikten im Blauen Nilbecken im Besonderen entstehen. Um die theoretischen Diskussionen in einen Kontext zu stellen und eine illustrative Fallstudie zu liefern, wird der (unlösbare) Wasserkonflikt zwischen Äthiopien und Ägypten kritisch analysiert.*

*Im Lichte dessen argumentiert diese Arbeit, dass eine effektives Management von Wasserkonflikten unter anderem von der Machtasymmetrie zwischen den Anrainerstaaten, der Existenz und dem Ausmaß der Verankerung der entstehenden Wassernutzungsnormen im rechtlichen Rahmen und in der staatlichen Praxis, der relativen Stärke und dem Mandat der Institutionen, die das Becken regulieren sowie dem Grad der Konvergenz sowie Divergenz der staatlichen Identitäten und Interessen der Anrainerstaaten abhängt. Insbesondere innerhalb des Blauen Nilbeckens konnte Ägypten eine instabile Hydro-Hegemonie aufbauen und aufrechterhalten. Zu diesem Zweck nutzte es Kolonialverträge, informelle Institutionen, den Diskurs über "historischen Rechte" und die Versicherunglichung des Flusses. In den letzten Jahren haben die Anrainerstaaten, darunter insbesondere Äthiopien, begonnen, die ägyptische Hegemonie durch verschiedene gegenhegemoniale Strategien herauszufordern, hauptsächlich durch die Kombination von rechtlichen und politischen Mechanismen. Diese gegenhegemonialen Schritte, insbesondere nach dem Bau des GERD, haben die beiden Anrainerstaaten Ägypten und Äthiopien in Richtung eines Konflikts geführt.*

*Abschließend kann festgehalten werden, dass das Konfliktmanagement zwischen Äthiopien und Ägypten aufgrund der konkurrierenden Normen, der inkompatiblen Staatsidentität sowie der Versicherunglichung des Nils sehr komplex und schwer lösbar geworden ist. Hinzu kommen schwache Institutionen und deren begrenzte Rolle im Konfliktmanagement, wie die NBI und die AU, sowie ineffektiven Konfliktmanagement-Bemühungen, wie der langwierige Verhandlungsprozess und die gescheiterte US-Vermittlung. Es ist daher zwingend erforderlich, dass laufende oder zukünftige Bemühungen zur Bewältigung des äthiopisch-ägyptischen Wasserkonflikts die oben genannten notwendigen, wenn auch nicht hinreichenden Bedingungen berücksichtigen.*

**Schlüsselwörter:** Konfliktmanagement, Verbriefung, Normen, Identität, Mediation, Wasserkonflikte, Hydrohegemonie, grenzüberschreitende Wasserressourcen



## **Management of Conflicts over Transboundary Water Resources: Egypt, Ethiopia, and the Blue Nile Basin**

“Peace is not absence of conflict; it is the ability to handle conflict by peaceful means”

Ronald Reagan

### **Introduction**

As causes of conflict are multifaceted, so does its management. Rarely do interstate conflicts; be it a dispute over borders, access to the Sea, economic competition, or conflict over the use of transboundary waters, involve a single issue. It is in the nature of any conflict to encompass elements of competition and cooperation, to varying degrees. This denotes that the main difference between two conflicts lies in their *degree* of cooperation or competition. Consequently, effective management of a conflict depends, *inter alia*, on the underlying causes of the conflict, the issues involved, the identity of the parties, the strategies employed and the role(s) of third parties in the resolution of the conflict.

In the case of conflicts pertaining to transboundary water resources (hereinafter water conflicts), interactions among riparian states are characterised by a high level of interdependence or what conflict theorists call ‘positive linkage’ such that what one party does directly affects the interests of the other party (Peter T. Coleman 2014, 41). It entails the riparian states either swim or sink together (Tekuya 2020).

There are about 275 transboundary rivers in the world that covers half of the earth’s surface, supplying 60% of the freshwater and shared by two or more sovereign states, according to the UN estimate (UNESCO 2015). Exponential population growth, the ever-increasing demand for freshwater, environmental stresses, and asymmetrical power relations between the upper and lower riparian countries, among other factors, gave rise to both cooperation and conflict.<sup>1</sup> However, whether tensions over transboundary waters result in enduring conflicts or greater cooperation is still the subject of a heated debate (Mirumachi 2008).

When it comes to long rivers with many riparian countries, cooperation even becomes more difficult not least because it involves complex interactions, many issues, and competing interests.

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<sup>1</sup> The term ‘conflict’ is used here in its sociological sense and at the interstate level. Hence, it refers to confrontations between riparian states that are aspiring towards competitive ends and using incompatible means. See generally Frederick W. Frey, “The Political Context of Conflict and Cooperation Over International River Basins”, *Water International*, Vol.18, No.1 (1993), pp.54-68.

The Nile River is one of such transboundary rivers typified by intractable conflicts and poor cooperation among riparian states. It is the longest river in the world, made up of two tributaries (the Blue Nile and the White Nile) and it is shared by 11 countries.<sup>2</sup> The Blue Nile, which is also known as the *Abbay* in Ethiopia, is the major tributary (supplying more than 86% of the water) and it originates from the highlands of Ethiopia. In the past, more than 7 bilateral treaties (no basin-wide treaty) have been signed to the effect of governing the Nile issues.

Even though the Nile is a shared water resource, only Egypt has extensively utilised it. This could be *partly* explained by the following reasons. Firstly, Egypt being a downstream country, is highly dependent on the Nile to meet more than 90% of its consumption. The Egyptian civilisation is unthinkable without the fresh water and fertile soils of the Nile Delta. Arguably, this is probably why Herodotus described Egypt as “the gift of Nile” or Gemmill went as far as stating “Egypt is the Nile” (Gemmill 1928). Secondly, Egypt being the colony of Great Britain, has been able to safeguard its interests over the Nile through great power politics. Thirdly, even after decolonisation, Egypt remained one of the great powers in the region. For these reasons, it should not be surprising that Egypt has been able to establish and sustain *hydro-hegemony* (Warner 2006) over the Nile River.

This hegemonic order over the Nile was built by applying different mechanisms, through the combination of both hard and soft powers. Notably, Egypt relied on the international water law doctrines of prior appropriation (by building Mega Dams and artificial lakes), invoking the principle of ‘not causing significant harm’ and the claim of ‘historical rights’ (Deng 2007). These norms were further institutionalised by various bilateral treaties (which will be discussed in chapter two). By virtue of these legal norms and existing power asymmetry, the vast majority of the upstream countries were excluded (until very recently) from claiming the fair share of the Nile water (Swain, 1997).

So, the status quo could not be maintained due to the growing tension between the forces of change and continuity.<sup>3</sup> Since the water interactions between the upper riparian and lower riparian countries are underpinned by a power structure, the lower riparian countries use force to secure their rights while the upper riparian countries tend to use water to gain more power (Warner 2006).

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<sup>2</sup> These countries are Ethiopia, Egypt, Sudan, South Sudan, Eritrea, Kenya, Tanzania, Uganda, the Democratic Republic of the Congo, Rwanda, and Burundi.

<sup>3</sup> The notion of forces of change vis-à-vis forces of continuity is borrowed from David Thompson, *Europe Since Napoleon* (Penguin Books, 1990).

Accordingly, the upper riparian states (as spearheaded by Ethiopia) have started challenging Egypt's hydrohegemony over the last few decades (Casca˜o 2008). To do so, the upper riparian states have profusely relied on the contemporary international law norm of 'fair, equitable and sustainable utilisation' of transboundary water resources and sovereignty over the natural resources within the territory of the riparian states as enshrined in various international instruments and adopted various counter-hegemonic strategies.

Even though the Nile River Basin (hereinafter the basin) is mostly dominated by conflicts, a temporary basin-wide cooperation was achieved with the establishment of the NBI in 1999. The NBI aimed at ensuring 'benefit sharing' (W. Teshome 2009), facilitate dialogues and lay down the foundation for the subsequent negotiations for a comprehensive agreement. The NBI, for example, has somehow contributed to the diffusion of emerging norms, facilitated cooperation among the riparian states and important of all, has played a significant role in the signing of the Cooperative Framework Agreement (CFA). Unfortunately, and to the dismay of many, Egypt has introduced a 'water security' clause<sup>4</sup> that would be incorporated in art. 14(b) of the agreement (Mekonnen 2010) as a tool to safeguard the statusquo. As a result, the CFA was ratified by the majority of the riparian countries but failed to achieve its original purpose; water sharing and conflict management. It rather ironically, as Salman (Salman 2013) noted, solidified the differences between the upper and lower riparian states. In any case, the NBI has remained an Adhoc institution with limited roles mainly owing to the lack of a political will on the part of the member states and poor institutionalisation.

In the Basin, the water interactions between Ethiopia and Egypt appear to be unique in many respects. Both countries are recognised as one of the oldest civilisations in the world, embodying rich history, culture, mythology, and state identity (Gershoni 2000); those historical interactions are marred with strategic cooperation and confrontations, including water wars (Jesman 1959); (Erlich 2001) and most significantly, Ethiopia is the main supplier of the Blue Nile whilst Egypt is highly dependent on the continues flow of the river.

These interactions have taken a different course following Ethiopia's commencement of the construction of the Great Ethiopian Renaissance Dam (GERD) in April 2011. As the name

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<sup>4</sup> Water security should not be conflated with securitisation of the water resources (as Mekonnen did), although a perception of threatened water security may serve as an element of securitisation.

indicates, the renaissance dam<sup>5</sup>, it has as much symbolic value as its economic return for Ethiopia. Thus, Ethiopia's move to reclaim the Abbay has led Egypt to perceive it as a unilateral measure to question Egypt's hydro-hegemony and significantly escalated the hitherto simmering dispute between the two (Mbaku 2020). Consequently, in the ensuing years, the process of *securitisation* of the Nile (Fischhendler 2015) has continued, reaching its peak with the lodging of a complaint by Egypt to the UNSC on June 19, 2020. The process of securitisation has already culminated in the incorporation of the Nile issue in the 2014 Egyptian Constitution, which elevated the Nile water to the status of the national security issues. Now, there is a great fear that Ethiopia and Egypt may go to war over the Nile issue, echoing what Ismail Serageldin said way back in 1995: "If the wars of this century [20<sup>th</sup> century] were fought over oil, the wars of the next century [21<sup>st</sup> century] will be fought over water (Conversation 2009). The cliché of 'water war' is a typical example of the securitisation of transboundary water.

On the other hand, Goal 6, target 6.5 of the 2030 Sustainable Development Agenda stipulates that, by 2030, all countries should "implement integrated water resources management (IWM) at all levels, including through *transboundary cooperation* as appropriate" (United Nations 2015). Moreover, access to clean fresh water and sanitation has been recognised by the international community as a basic right for all (Ralph P. Hall 2014); (Assembly 2010); (Committee 2003). To ensure human security through access to water and sanitation and realisation of the SDG Goals, however, the IWM strategies and effective conflict management are of the utmost importance.

The question is, then: how do riparian countries manage conflicts arising from the utilisation of transboundary water resources? Why the riparians of the Nile Basin, especially Egypt and Ethiopia, could not manage water conflicts thus far? These are the main thrust of this research, and I will attempt to provide explanations to these questions from a politico-legal perspective.

The remainder of this research proceeds as follows. Following this introduction, chapter one deals with a critical review of the existing body of literature, theoretical framework, and research methodology. Chapter two examines issues, concepts, and theories on conflict management in general and transboundary water conflicts in particular. More specifically, how some jurisdictions have managed water conflicts, the factors that contributed to intractable water conflicts, the role

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<sup>5</sup> Following the dispute between Ethiopia, Egypt, and Sudan over the first filling of the Dam, the narrative has drastically changed from 'the Dam' to 'It is my Dam', serving as a potent tool of public mobilisation to counter the Egyptian narratives and fight the digital war.

of legal norms, river basin institutions and power structure among riparian states in effective conflict management will be critically analysed. Building on this conceptual framework, chapter three discusses the dynamics of cooperation and conflict in the Blue Nile Basin. In particular, the failed project of the ‘‘Nile Basin community of interest’’ and the hydro-hegemonic order are thoroughly analysed. Then, after having laid down the general conceptual framework in the preceding chapters, chapter four will zoom in on the case study of Egypt and Ethiopia in light of the concepts of state identities, norms, and securitisation, with the view to explaining the issue of intractability and reflect on conflict management efforts. Finally, in the concluding remarks, the major issues are highlighted and issues for further research are suggested, which is followed by some specific recommendations.

# Chapter One: Research Design

## 1.1.Literature Review

The causes, nature, and management of conflict has been studied for centuries (Thakore 2013). However, the existing works on conflict management lack systematic analysis and interdisciplinarity as well as it suffers from methodological flaws. Most theoreticians and practitioners approach conflict management from an interpersonal, psychological, political, or legal points of view. Similarly, the existing body of literature on water conflicts are mostly binary in nature; they either exclusively focus on the notion of water war (Bruce et al (eds) 2013); (Gleick 1993); (R.Starr 1991); (Shiva 2002) or conversely, on the absence of it (Swain 2001); (Wolf 2002); (Tortajada 2019); (Jacob D. Petersen-Perlman 2017). Even then, the theoretical frameworks employed are usually narrow, resulted in neglect of other relevant variables that may explain the success(failure) of conflict management strategies.

There are many important issues germane to shared water resources. Gupta has identified three common issues that arise in relation to the use of transboundary water resources, namely: water pollution, water scarcity, and border dispute related to rivers (Gupta 2016),118). To this list, one could add the causes and nature of water conflict, mechanisms of management of conflicts among riparian states, and power relations between the upstream and downstream countries.

Nowadays, the problem of water scarcity induced by various factors (including climate change) and the mechanisms employed by riparian states to share the available water to avoid and/or manage conflicts are overarching issues. Most of the transboundary rivers in the world “are shared by two or more countries where *non-comprehensive bilateral agreements* are common” (Netanyahu 1998, 2)(emphasis added). This entails that a fragmented unilateral approach and bilateral cooperation have become the default rule. Indeed, Ashok Swain (Swain, 2002) observed that a sub-basin model is more effective than a comprehensive basin-wide approach.

Concerning the causes of conflict and obstacles to cooperation, different reasons have been proffered. For Just and Netanyahu (Netanyahu 1998, 8), the transboundary nature of the water, lack of common goals among the riparian states, and the dwindling water resources are the main factors. Paul R. Hensel et al singles out two important variables (scarcity and institutions) and argued that management of water conflict depends on the abundance of the resource and the efficacy of the institutions (which includes regional and international organisations) by taking the case study of North America and the Middle East (Paul R.Hensel et al 2006). They concluded

scarcity leads to confrontations and a weak institutional framework. But this conceptualisation is simplistic as it ignores the contrary claim that when faced with water scarcity riparian states may engage in cooperation.

Moreover, power asymmetry among riparian countries, especially the existence of hydro-hegemon within the river basin, has been pointed out as an effective conflict management strategy. The notable case in point is India. As Paula Hanasz observed, “India’s superior power position effectively discourages any violent resistance against the order” (Hanasz 2014, 96), but without critically reflecting on the counter-hegemonic strategies to be used by other riparians and the obstacle hegemony poses against cooperation. A rather good theoretical framework on water conflict management has been developed by Wolf; what he called the 4 stages of water conflict transformation: adversarial, reflexive, integrative, and action (A. T. Wolf 2010, 6). These stages, though not mutually exclusive, help understand the complex nature of conflict and cooperation over transboundary water resources.

Water interactions in the Nile Basin share most of the above-mentioned elements. Nonetheless, the Nile Basin is mainly characterised by limited cooperation between the two lower riparians (between Egypt and Sudan), tensions between upper Riparians and lower Riparians and a glaring lack of comprehensive legal and institutional frameworks to manage water conflicts.

Notwithstanding the general water issues discussed above, the literature on conflict management in the Nile River could be categorised into four main issue areas: *legal claims*, *resource sharing scheme*, *hydro-politics*, and *environmental issues*.

In the realm of legal controversies, extensive discussions are made concerning competing legal arguments and the need for a comprehensive legal framework on benefit sharing and dispute resolution mechanisms. For instance, Woldetsadik (Woldetsadik 2013) and Zeray Yhedego (Yihedego 2013) have made an in-depth analysis of the pertinent legal regime that governs the relationship between the upper and lower riparian countries, with a particular emphasis on the interpretation of the colonial treaties. Mekonnen has examined the failure of the CFA. He argued that the securitisation of the Nile has obscured the already *intractable* nature of the Nile dispute (Mekonnen 2010). But he conflated two distinct but interrelated concepts: water security and securitisation. Untouched are the issues of how securitisation comes into effect and under what conditions de-securitised might be possible (Balzacq(ed) 2011); (Barnet 1998); and the power of narratives and state identity in the process of securitisation (Subotić 2013).

Cascao & Nicol (Nicol 2016) have done the general overview about the legal and political significances of the GERD, whereby they asserted that the GERD is both the outcome of the changing political landscape in the region and a catalyst for forging a new legal norm. Significantly, by relying on the ‘normative turn’ (Yesnowitz 2006) in political science, Brunnee and Toope (J. B. Toope 2002) have succinctly pointed out how the emerging norms have paved the way for more cooperation in the basin, including the establishment of the NBI. They specifically asserted: “the evolving normative framework for shared freshwater has helped to redefine both the *identities and interests* of key state actors in the Nile Basin, moving them more recently toward more cooperative behaviour” (J. B. Toope 2002, 110) (emphasis added). As interesting as it is, the scope their research was narrow and dealt only with the cooperative interlude of the 1990s.

When it comes to resource-sharing schemes, a paradigm shift has taken place; a move from water sharing to benefit-sharing, building on an interdisciplinary approach to the norm of ‘fair and equitable utilisation’ of water resources (Morgera 2015). In this regard, good research has been conducted by Mason (Mason 2003), whereby he critically engaged with an effective communication system among the three riparian states (Ethiopia, Egypt, and Sudan) and an innovative resource management system in Egypt and Sudan, to avoid potential ‘water war’. Similarly, and more concretely, a recent study has suggested that there would be a prospect of cooperation among the riparian countries (Dale Whittington 2014) on the filling and operation of the GERD, provided that Egypt recognises the principle of fair and equitable utilisation and Ethiopia shows more transparency.

With regard to the hydro-politics of Nile, much has been written with exclusive focusing on geopolitics. The notable piece of work is that of Yacob Arsano, which puts national and regional hydro-politics at the centre of the conflict between Ethiopia and Egypt (Arsano 2007). He has argued for more cooperation, strengthening institutional framework, devising a common security framework, and a move towards economic integration. On a similar line of argument, other researchers (Neef 2016); (Carles 2006) have analysed Egypt’s quest to maintain hydrohegemony over the Nile Basin and Ethiopia’s quest to challenge it. They contended the construction of the GERD has intensified the conflict and recommended power-sharing schemes as a way out.

Finally, the issue of environmental stresses, especially the impacts of climate change on the livelihoods of the people in the basin, has caught the attention of various developmental agencies



such as the OECD (Agrawala et al 2004) and policymakers. For instance, Kristin Wiebe (Wiebe 2001) is of the view that the degradation of the basin may exacerbate the conflict over the use of the water among the riparian countries.

In a nutshell, the existing corpus of literature, though very helpful in explaining some of the issues surrounding water conflict management, fail short of addressing other aspects of the dynamics of the conflict. For one thing, the works examined above are primarily non-interdisciplinary in nature and limited in their scope. Secondly, except for the article by Toope and Brunnee, none of them has explicitly dealt with the *constitutive* effects of legal norms, the relative salience of state identity, the social construction of hydrohegemony and the extent to which securitisation of the transboundary rivers affects water conflict management, particularly in the Blue Nile Basin.<sup>6</sup>

### *1.2.Theoretical Framework*

Building on some of the aforementioned works and within the general framework of the constructivist paradigm of IR, this research approaches water conflicts from a '*richer view of law and politics*' (M. F. Toope 2001). This framework contends that legal norms have constitutive effects on riparian states. It has been argued that "international law can and does result from *belief and reasoning* that compels a response" (Zeitoun 2008, 110), emphasis added), signifying the constitutive effects of legal norms in international relations. But these beliefs and reasonings are found not only in the commonly identifiable foreground knowledge (treaties, national laws, court judgements, constitutive instruments, formal institutions, etc), but also as embedded in the repertoire of background knowledge (customary norms, informal institutions, state practices, national discourses, historical narratives, etc).<sup>7</sup> Indeed, relations among States, including *transboundary water interactions*<sup>8</sup>, are determined by multifaceted interactions at various levels. These complex interactions sustained over time, mould the identities of the actors and by extension, national interests. The argument is that "norms, laws, economic interdependence, technological development, learning, and institutions can fundamentally change state interests" (Mercer 1995, 231). It is worth noting that state identity, once formed, would tend to remain stable

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<sup>6</sup> Norm, culture, and identity are usually used interchangeably within the constructivist paradigm. However, in this research, norms and state identity will be discussed as interrelated but distinct concept. For the sake of simplicity, when international water norms are internalised (taken for granted), it affects the identity of the state, which, in turn, will shape states' interests and guide their behaviour at a systemic level.

<sup>7</sup> I am extremely indebted to my Advisor, Professor Markus Kornprobst, for bringing this concept to my attention.

<sup>8</sup> The term 'transboundary water interactions' was first coined and applied by Mark Zeitoun and Naho Mirumachi, "Transboundary water interaction I: reconsidering conflict and cooperation", *Int Environ Agreements*, Vol.8 (2008) pp. 297–316.

because of its institutionalisation (Zehfuss 2001), subject to evolution through the intersubjective process (Wendt 1999) and *practical* intersubjective interactions and understandings (Adler 2019). Contrary to the prevailing (realist) understanding, legal norms are one of the mechanisms used to establish *hydro-hegemonic* order. Once established, hydrohegemony is continuously sustained by discursively entrenching into the common sense of the mass (Hopf 2013) and through effective use of power. Indeed, that is precisely what has prevailed throughout the 20<sup>th</sup> century in the basin. By imposing colonial treaties, institutions, and sanctioned discourses on other riparian states, Egypt has been able to effectively establish and maintain hegemony in the basin (Tekuya, 2018). As to the securitisation moves, this research aims at unpacking the discourses of water security and the attendant practices in the basin, in light of the Copenhagen School (Buzan 1998) and its more refined version, the sociological approach (Balzacq(ed) 2011) on the social construction of *security*. The securitisation moves, and its success is partly dependent on the material power. However, ideas—as used in framing security discourses—should not be taken as an object. Instead, this research employs a conception of ideas as a social construct, as opposed to an individual phenomenon (Weldes 1997, 195).

More specifically, it examines the process of securitisation of the transboundary water resources; the deliberate moves made by governments in which the referent object (water scarcity) is portrayed as though it poses an existential threat that should be dealt with by extraordinary measures (Naho 2013). To further illuminate this, the nexus between the construction of the GERD and the securitisation of the Blue Nile, on the one hand, and its ramifications on the management of the water conflict, on the other, will be analysed. Furthermore, the relentless *process or acts* of securitisation of the Nile River and its effects on the intractability of the conflict will be discussed against the backdrop of competing narratives, prevailing discourses, issue framing and the ‘power of the better argument’ in the political forum (Johnstone 2003; Risse 2000; Crawford 2009)). In short, it argues that “‘water conflicts, in fact, depend on the contingent construction of, for instance, ‘scarcity’ or ‘threats’ emanating from water” (Stetter et al 2011).

As depicted in table 1, power<sup>9</sup> lies at the heart of transboundary water interactions. Power is, in the words of (Pouliot 2011, 30), “‘not a capacity but a relation and that it is both material and

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<sup>9</sup> Here, power refers to a smart power, which encompasses the combination of hard power of coercion and soft power of persuasion and attraction to achieve the desired goal. For a general background on smart power, see Joseph S. Nye, *The Future of Power* (Library of Congress, New York, 2010).

symbolic.’’ It is to say that, in addition to being material and symbolic, power is inherently *relational*. How such power is exercised, however, is constrained (or enabled) by other factors: norms, institutions, state identity and water security. Thus, depending on the interplay between some or all of these factors, the water interactions among the riparian states could be more of hydrogemony or hydroharmony.<sup>10</sup>

More generally, this research applies an *eclectic paradigm* (Katzenstein 2002, 577) of IR theories, in which the material and rational approach to interstate relations is enriched by the ideational factors having a bearing on the management of water conflicts. Thence, it aims at problematising state identities and preferences with a view to alleviate the poverty of neo-realism (Ashley 1984) and neo-institutionalism (Gorges 2001). This is in tune with the prevailing view that no single theory of IR or for that matter, international law could address the complex issues surrounding the management of water conflicts.

**Table1: Framework of Hydrohegemony vs. Hydroharmony**

Description	Hydrohegemony	Hydroharmony	Effects on Conflict Management
Legal Norms	Mostly no comprehensive and basin-wide legal frameworks, norms are rhetorically invoked for instrumental purposes (mainly to sustain hegemonic order), mostly predicated upon the inequitable distribution of water resource, and highly contested until such time it will be replaced by other competing norms.	Commonly there exist comprehensive basin-wide legal frameworks, norms are deeply internalised (taken for granted), they shape the preferences and identity of the actors, ensures equitable utilisation of water resource, and tend to endure for a long period but evolves as practice selectively changes.	Divergent interpretations of existing norms (as driven by historical narratives and grounded in background knowledge vs. concordant interpretation (with the possibility of varying practical implementation) and the power of persuasion; resort to costly litigation vs. frequent informal deliberations and the use of ADR mechanisms.
State Identity and national interests	No or less common identification between the disputants, a community of practice within the basin is unthinkable and the prevalence of competing, at times mutually exclusive, interests.	Disputants tend to exhibit strong common identification, relatively high possibility of forming a basin-wide community of practice and relationship based on shared values and interests.	Characterised by zero-sum game vs. win-win approach; preservation of relationship vs. winning the battle at any cost.

<sup>10</sup> For the definition of hydrohegemony (the term coined by the Author), readers may refer to the glossary of terms.

Institutions	In most cases, there are no institutions, institutions with no or limited mandates, poor cooperation, or hostile interactions among riparians and no or weak dispute settlement mechanisms.	In most cases, strong and resilient institutions, extensive mandates, regular cooperation, or positive interactions among riparians, and effective dispute settlement mechanisms.	Delegitimization of institutions (if there are any) vs. strong trust in the institutions, poor management of conflicts vs. effective management of conflicts.
Water Security	Securitisation of water resources; unilateral approaches to water utilisations and competition to control of water resources.	Treating water scarcity as common security; integrated resource management and prioritisation of efficient use of water resources.	Little room for compromises, hostility, and a threat of war vs. sustained dialogue, pacific resolution of disputes and a negotiated settlement.
The Role of Power	Power over others: more hard power exerted, and coercive diplomacy used.	Power with others: more soft power exerted, and holistic diplomacy used.	Conflictual relationship and demonstration of power politics vs. acquiescence and common security framework.

Therefore, the central *theme (hypothesis)* of this research is that, in addition to water scarcity, competing interests, lack of resilient institutions<sup>11</sup>, and hydro-hegemonic order, which can be partly explained by Neorealist and Liberal Institutional Paradigms in IR, competing norms and incompatible state identities among riparian states and securitisation of water resources significantly contribute to the intractability of water conflict and make its management a complex project to deal with. This is because the bases for building “trusting relationships” (Hoffman 2002), cooperation in good faith, and establishing a strong institutional framework would be unlikely without bridging those differences. More to the point, the involvement of competing norms and incompatible identities, on top of an already existing competition over scarce resources and mutual distrust, make cooperation hard to come by. *A fortiori*, within the climate of mutual distrust, competing norms, and incompatible state identities, securitisation of shared waters would

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<sup>11</sup>Institutions and regimes play crucial roles in facilitating cooperation and providing for dispute resolution mechanisms. However, institutions are political constructs whose efficacy depends on, among others, common identifications, the normative strength of the constitutive documents, existence of mutual trust among the members, the existence or lack of regional hegemon, the principal-agent problem, and the level of regional integration and thus, the transformative power of the institutions. In the Blue Nile Basin, for instance, there is the NBI, but its transformative power has been crippled by factors overlooked by conventional explanations. For a detailed discussion on this, see chapter two.

become much easier and even more so, proxy warfare is more likely than it would otherwise be.<sup>12</sup> Thus, taken together, these factors further complicate disputable issues and negatively affect the conflict management process.

In sum, the richer view of law and politics brings together the legal framework, state identity, institutions, hydro-politics, and background knowledge and the practices therein, to critically analyse approaches to and strategies of water conflict management in general and unpack the causes of the intractability of water conflict between the two major riparian states of the Blue Nile Basin (Egypt and Ethiopia) in particular.

### *1.3. Research Methodology and Methods*

#### **A. Research Methodology**

This research is interdisciplinary in nature and will employ a hybrid model; analytical, qualitative, and empirical research methodology. Analytically, it will make an extensive review of the normative turn in IR theories and the constructivist view of (water) conflicts. The methodological utility of the legal analysis lies in the decisive roles of ‘practical and legal reasoning’ in the decision-making process, by which domestic politics and international relations are affected, as propounded by Friedrich Kratochwil (Kratochwil 1989) and the power of arguments in multilateral diplomacy. To this end, a cursory look at the role of a ‘community of practice’ in the evolution of water use norms and the formation of the NBI will be assessed. Moreover, how various jurisdictions managed water conflicts and why some riparian states, as is the case with the Blue Nile Basin, have failed to do the same, will be examined through the lens of legal doctrines and the normative turn. In essence, a critical assessment of how the prevailing legal instruments, concepts, and doctrines on transboundary water resources are used to construct *hydro-hegemony* (Zeitoun 2008) and the role of power asymmetry, as broadly conceptualised (Duvall 2005) among the riparian countries is carried out. The existing international water law regime solely deals with the mechanisms through which riparian states share water resources without explaining what may inhibit states from internalising those norms. To rectify this inherent limitation, an appraisal of the hydro-hegemonic order in the Blue Nile Basin will be made.

To bolster the empirical discussion, particular attention is given to the intractability of the conflict between the two riparian states (Ethiopia and Egypt). In this regard, pertinent theories on how state

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<sup>12</sup> In the aftermath of the Cold War period, proxy war is considered as the cheapest and most effective means to achieve political ends, particularly in the regional political dynamics.

identity is formed, the extent to which the norms of water use have affected the interests of the two riparians as well as the role of norms and identities in making cooperation more(less) likely shall be analysed. Furthermore, the case of the GERD and its ramifications on *mutual securitisation*<sup>13</sup> of the Blue Nile River will be thoroughly analysed.

The case study *mainly* focuses on the period between the establishment of the NBI (1999) to August 2020(the time when the conflict management was deferred to the AU). This period is characterised by Egypt's strong objections to multilateral cooperation (including the CFA) and Ethiopia's counter-hegemonic strategies, recourse to unilateralism, intensified water interactions in the basin and subtle securitisation moves and generally, the intractable water conflict between Ethiopia and Egypt. Also, historical water interactions between the two riparians, as it formed the background knowledge of the actors and shaped the respective identities will be carefully assessed. However, since the overriding aim of this research is to make a *plausibility probe*, the case study may not provide adequate empirical evidence to draw a generalisation. Consequently, I am attempting to provide an illustrative case. This will, I hope, serve as a springboard for a broader research agenda that will focus on the constructivist view of water conflicts and their management.

### ***B. Research Methods***

This research relies on both primary and secondary sources. To this end, the following methods are used. Secondary sources directly relevant to the research question are extensively reviewed. The existing body of literature from the discipline of IR, international water laws and history (in so far as it is relevant to state identity) are consulted. Among others, journal articles, books, book reviews, and online electronic sources constitute secondary sources that are widely used.

Four categories of primary sources are identified. Firstly, legal instruments such as the constitutions of Ethiopia and Egypt, international water treaties and selected judgments of international tribunals are consulted. Secondly, relevant materials available on the official websites of the Ministry of Foreign Affairs, the NBI, the International Tribunals, and Online News Platforms are reviewed. Thirdly, to show the process of securitisation and the official representation of state identity, analysis of selected speeches, official exchange of notes and letters

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<sup>13</sup> Mutual securitisation refers to the process of making the Dam a national symbol and security by Ethiopia as a response to Egypt's continuing securitisation and intransigence. This, in turn, has made negotiations between the parties difficult, prolonged, and unyielding. Even though most Ethiopian scholars might not agree with this assertion, this will be shown in chapter three of this research.

and social media campaigns are done. And finally, semi-structured interviews <sup>14</sup>with public officials, journalists, experts, and political analysts are conducted during the month of April and May 2020, with a view to understand and explain the roles of identity, norms, and narratives in the intractable water conflict.

#### *1.4. Scope and Limitation(s) of the Research*

Although this research deals with the management of water conflicts in general, the greater emphasis had to be on the causes of conflict and its management in the Blue Nile Basin. As such, the case study of the research will be limited to the conflict between Egypt and Ethiopia, for the following main reasons.

First and foremost, Ethiopia and Egypt are the two major players in the basin. Because Ethiopia, besides being the major supplier of the water resource, it has become the major challenger of the hydro-hegemonic order in the basin. Egypt, on the other hand, is the main user of the water resource and has established hydro-hegemony in the basin. As a result of these historical interactions, conflictual narratives, competing norms and incompatible state identities, the interactions between the two countries have been mainly dominated by intractable conflict (including war) and hegemonic rivalry.

Secondly, owing to the growing concern that these two riparian states might engulf themselves in “water war”, making the stakes very high. This case deserves a timely intervention so that the source of intractability can be unravelled, and effective conflict management will be devised.

Thirdly, though Sudan is also one of the major players in the basin, I shall exclude it for the reasons that: (1) Sudan’s role has been mainly limited to legitimising Egypt’s hegemony (bandwagoning); (2) Sudan has had no significant water interactions with Ethiopia but border issues; (3) alongside Ethiopia, Sudan is the member of the Intergovernmental Authority on Development (IGAD)<sup>15</sup>; and (4) Sudan itself has contested the hegemonic order in the past. Thus, Sudan’s case generally falls outside the scope and theoretical framework of this research.

Finally, the case study is selected since I have personal knowledge about the conflict, which greatly helped me to make sense of the complex issues surrounding the conflict.

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<sup>14</sup> A sample of the semi-structured interviews is attached as annex 1.

<sup>15</sup> This is based on the premise that IGAD plays the role of constraining the behaviours of the actors (Ethiopia and Sudan) in their interactions and reduces the chances of a conflict.

This research has the following limitations. To begin with, it is obvious that conducting interdisciplinary research, which is methodologically robust and theoretically rich, would run the obvious risk of being incomplete. Besides, due to limitations of space, time, and resources, an in-depth analysis of all pertinent factors may not be possible. And, due to a lack of proficiency in the Arabic language (which is the official language of Egypt), I have solely relied on materials written in English.



## *Chapter Two*

# **Management of Water Conflicts: Beyond the Remit of Existing Approaches**

Conflict management is a multidimensional and complex process, which involves various parties, issues, and strategies, such that there is no one-size-fits-all approach to conflict management. The efficacy of management of water conflicts depends on the way the disputed issues are framed and conceptualised, the roles of underlying norms and identities of the disputants, and the extent to which third parties intervene in the management of the conflict. Of course, the very concept of success in conflict management is elusive and tricky (Kleiboer 1996, 361). Accordingly, this chapter critically examines concepts, theories, and approaches to conflict management in general and water conflict in particular.

### *2.1. Conceptual Framework for Conflict Management*

Insofar as interactions exist between two or more parties, some sort of conflict bound to arise for conflict is considered to be part of such interactions. This is particularly evident in the context of interactions among States at international fora, where they continuously struggle to aggrandize power in order to ensure their respective national interests (Morgenthau 2004). As noted by one scholar, “Countries have always competed for wealth and security, and the competition has *often* led to conflict” (N.Waltz 2000, 35), emphasis added). This should not be, however, taken to mean that international relations are inherently characterised by conflict; rather, conflict is one of the aspects of international politics. Even though it could be said states strive to safeguard their national interests within the anarchic international structure (Waltz 1979), what gives rise to conflict is not the existence of competing interests *per se*, but the nature of the interactions among the actors themselves and the means used to achieve those ends. From this transpires that cooperation or competition among states is the result of a particular ‘culture of anarchy’ (Wendt1999) that governs the relationship among the actors at a systemic level and hence, neither competition nor cooperation could be determined *a priori*. As the culture of anarchy gradually evolves through interactions among actors, so do identities and interests. In effect, with a high level of internalisation and strong institutionalisation of norms, the identities of the actors tend to remain relatively stable over time, the argument goes. This is ought to pave the way for cooperative

engagement among states and if disputes arise, then an amicable settlement of disputes takes a centre stage. Conversely, if the interactions lead to enmity, then the opposite becomes true.

In general, as history shows, world politics has been characterised by both conflict and cooperation among actors, to varying degrees. Put differently, cooperation and conflict are two variables on the same spectrum; it is practically impossible, even with the assumption of deep regional integration (or extreme hostility), that interactions among states would take the nature of complete cooperation or total conflict.

Some systematic studies have been done concerning issues such as how states manage conflicts, under what circumstances conflict management strategies, including international mediation, become more or less effective, and why some conflicts take complex dynamics and appear difficult to deal with (Deutsch 1990); (Peter T. Coleman 2014); (Himes 1980). Nevertheless, although the conflict management system is as old and common as interstate relations itself, there is no coherent theoretical framework and common conceptual understanding. For instance, there is a trend of using two interrelated concepts—conflict management and conflict resolution—interchangeably (Robbins 1978). Even so, the vast majority of research disproportionately deals with violent conflicts such as interstate wars, border disputes, or civil wars, in which peacekeeping missions and peace-making processes have become the common research agendas. International wars may have attracted the attention of many scholars and practitioners for the mere fact that war is dramatic, destructive, and emotionally exciting.

Pondy identified a model of conflict management within the organisational setting in which he conceptualised five dynamic processes: “(1) latent conflict (conditions), (2) perceived conflict (cognition), (3) felt conflict (affect), (4) manifest conflict (behaviour), and (5) conflict aftermath (conditions)” (Pondy 1967, 300). These are conflict episodes wherein one or more of these elements may manifest in a given context and most of them, by way of extrapolation, can be used to explain the dynamic nature of conflict beyond the organisational setting. Particularly relevant to the nature of water conflicts are the latent conditions of conflict, perception between the parties (riparian states) and its behavioural aspect.

Regarding the structure of and approaches to conflict management, Bercovitch and Regan identified two important factors that highly inform the process of conflict management: (a) contextual factors and (b) behavioural factors (Regan 1999, 6). The contextual factors include the type of international system, the nature of the conflict such as conflict on salient issues and the

internal characteristics of the actors such as state identity, whereas behavioural factors encapsulate a range of past and present interactions between the parties to the conflict (Ibid). Simply stated, these factors have a significant bearing on the dynamics of a given conflict and the responses to such conflictual situations.

In the lexicon of the United Nations conflict management practice (and to some extent, regional organisations), conflict prevention, peace-keeping missions, and third-party interventions are passionately studied (Smidt 2019). Among these third-party intervention strategies, international mediation has been extensively practiced (J. Bercovitch 1985, 742). In the context of internal conflict, it has been noted that “...the most appropriate mechanism to resolve internal wars when compared to all the other third party and even non-third-party conflict resolution devices is mediation” (Assefa 1987, 8). For non-violent or low intensity conflicts, including tensions over transboundary water resources, however, other conflict management mechanisms such as negotiation, good office by third parties, arbitration and litigation are efficient depending on the circumstances of each case.

Challenging the conventional ‘neutral mediator’ notion, the concept of an *insider-partial mediator* was practically tested in the case of Nicaragua (Lederach 1991). The legitimacy and effectiveness of this process emanates from the personal knowledge of the mediator about the conflict situation and his/her relationship with the parties to the conflict. In other words, the mediator is trusted by the parties because s/he is personally interested in the resolution of the conflict and in most cases, will continue to live with the consequences of the mediation (Lederach 1991, 87). That is to say, the insider-partial mediation hinges on the level of trust the parties have in the mediator, irrespective of whether the mediator is an individual or an organisation. Most importantly, in a highly communitarian society like Africa, strong identification of the mediator with the disputants is as much important as the outcome of the dispute itself. Zartman and Touval (Touval 1985, 36) took it a bit further and argued that “third parties are accepted as mediators only to the extent that they are thought capable of bringing about acceptable outcomes” and they have empirically shown that international mediators are mostly motivated by their own underlying interests in resolving the conflict.

Thus, if theories and concepts, as discussed above, provide the general framework for conflict management, what might make the nature and management of water conflicts different? What

approaches and strategies are amenable to the management of water conflicts and if so, under what set of circumstances?

Most of the theories and discussions on international conflict management are relevant to water conflicts, not least because “almost all states in the international system share at least one river basin” (M. B. Gleditsch 2012, 525) and conflicts, irrespective of its nature, exhibits common pattern and call for similar approaches. However, management of water conflicts is different from other conflicts *mainly* because water resources have no substitutes unlike other natural resources; disputant parties share scarce resources under growing environmental stresses; transboundary waters do not respect political and administrative boundary; the existing international rules on transboundary waters are contradictory and fragmented; riparian states tend to cooperate even in the face of high political tensions, the issue of ripeness of conflict is less relevant and most conflicts over transboundary waters are intractable (as cooperation exists in tandem with conflict). Moreover, since most water conflicts do not manifest themselves in the form of military confrontations and in extreme cases, involve war by proxy, the ‘either-or’ approach could not fully capture it. As it has been observed, the prevailing conception of either cooperation or conflict about transboundary water interactions has resulted in “dozens of low-intensity transboundary water conflicts that fall short of an all-out war have often gone under-considered in the process” (Zeitoun 2008, 111). Hence, it is safe to argue that excessive reliance on violence as the primary indicator to assess the existence or absence of interstate conflict has led to an incomplete understanding of water conflicts (Stetter 2011, 444).

Closely related to this, management (preferably joint management at river basin level) is part and parcel of the water conflict management process (J. D. Wolf 2009). An integrated water resource management (IWRM) contributes towards endeavours to prevent and mitigate water conflicts (Ravnborg 2004) and riparian countries, even those engaged in hostile political relations, are interdependent due to hydrological facts. To put it another way, “transboundary water management can be considered a type of conflict management and/or conflict prevention” (Jacob D. Petersen-Perlman 2017, 2) and the way water resource is managed and governed within the River Basin may lead to tensions between riparian states. This is particularly true in Africa where, owing to the extensive coverage of the continent by transboundary rivers (62%), water management is, in essence, conflict management (Giordano 2005, 1054). Significantly, the causes of and strategies devised to contain potential water conflicts are part of the broader water conflict

management. This can be seen from Art.18(3-6) of Agenda 21 (United Nations Sustainable Development 1992), wherein cooperation among riparian states and the IWRM are strongly envisioned for managing water conflicts.

Water conflicts usually take the form of verbal and economic hostilities (Jacob D. Petersen-Perlman 2017, 3), typically where an upper riparian state tries to use or divert the course of the river (Argentina vs. Paraguay) or plans to dam the river (Ethiopia vs. Egypt, Turkey vs. Syria). Thus, in stark contrast to a conventional understanding whereby conflict that ensues from a 'direct and imminent threat' posed by one state against another state (Sadurska 1988), conflicts arising from transboundary waters take an indirect form and more often than not, it is difficult to establish any direct attribution under international law. For one thing, utilisation of shared water by one of the riparian states, *ipso facto*, does not tantamount to a direct threat. For the other reason, even if it is considered as a threat, the nature of such threat is not directed against any specific state, unless, of course, the diversion of the water is unequivocally used as a weapon of war. This is one of the reasons why an all-out war has never fought solely over water. And as will be discussed, this is partly caused by contradictory norms that govern transboundary water resources.

Various water conflict management mechanisms have been employed by riparian countries within different River Basins. The most common ones are: (1) an entire water allocation via bilateral treaties (India and Pakistan, Egypt and Sudan); (2) basin-wide comprehensive legal and institutional framework for benefit sharing and joint management (Danube River Basin) (Murcott 1996); establishment of a Joint Commission for monitoring the river and dispute settlement process (Colorado River Commission) (Sabadell 1986); joint project initiatives within the River Basin (Mekong River Basin) (Weatherbee 1997); litigation before International Tribunals (Case Concerning Gabcikovo-Nagymaros Project 1997); and unilateral appropriation and hydro-hegemonic order (Blue Nile Basin, the Ganges River Basin, Euphrates and Tigris River Basins) (Lowi 1993); (Warner 2006).

The Danube River Basin is one of the success stories of effective water conflict management, from which other regions may take some lessons. The unique features of the Danube River Basin management are related to the existence of a comprehensive legal regime, strong institution, and an innovative approach of public participation in the decision-making process. Moreover, the socio-economic integration among the riparian states and *common identity* could have positively contributed to the equitable utilisation of the river, prevention of potential conflicts and peaceful

resolution of conflicts. If the hypothesis of a modern strand of ‘democratic peace theory’ (Gat 2005) and the ontology of security community (Barnet 1998, 31) holds, then the common democratic culture, the evolving European identity and common understanding as to collective water security have helped the riparians of the Danube River Basin; joint conservation of shared resources<sup>16</sup>, effective management of conflicts, and the practice of peaceful settlement of disputes. The legal norms and institutions put in place, i.e., the Danube River Protection Treaty and the Commission of the Danube), in turn, have played pivotal roles in socialising (Checkel 2005) the less democratic members of the basin.

## *2.2. Management of Interactable Water Conflicts*

Much of the existing literature on conflict management does not engage with the impacts of the past on the intractability of the conflict; focusing instead on mechanisms and strategies to deal with the problems of the present and the future-forward looking (Tint 2010, 247). But the past, at times, does matter as it affects the nature of the conflict. It should be noted that “memory is therefore not a passive process or simple recall of facts but an active process, calling for its participants to engage selectively with the objects and experiences of the past” (Tint 2010, 242). Intractable conflicts are complex in nature, with the sources of intractability being numerous. To mention but a few, the prolonged nature of the conflict, the identity of the parties, the competing norms and the nature and framing of the issues, are the notable sources of intractability. As to the time frame, I use the modified version of ‘enduring rivalries’ developed by Gary Goertz and Paul Diehl (G. G. Diehl 1993), in which the conflict situation has endured for 20 or more years but short of direct military confrontations and various attempts have been made to manage the conflict. This definition is apt for intractable water conflicts, particularly in the Blue Nile Basin.

Water conflict can be considered as one of the intractable conflicts for the same reason that border disputes or territorial claims become salient. As Dreyer argued, “[r]ivalries driven by salient territorial issues likely tend to be enduring due to broad bases of domestic political support for continuing to pursue territorial claims and loose connections between territorial issues and particular governments or regimes” (Dreyer 2012, 472). As opposed to ideological or regime-related issues, disputes over water resources tend to last for long and permeates through successive regimes. I argue that claims over transboundary water resources are an indirect attempt to establish

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<sup>16</sup> For instance, the joint management of aquatic resources was evidenced in the Ten Riparian States’ common resolve and unity of purpose to conserve the migratory fish in the Danube River Basin in 2018.

jurisdiction or sovereignty over the resource which does not respect the boundary of the state, through the instrumentality of water sharing treaties, damming the rivers, ensuring regular flow downstream, prior appropriation of the resource (property rights), etc.

The intractability of the conflict affects not only the issues at stake and the success (failure) of the conflict management, but also determines the role of third-party in the management of the conflict. It has been pointed out that intractable conflict is not amenable for a direct and coercive third-party engagement in resolving the conflict (Regan 1999, 8). This means that the more intractable the conflict gets, the lesser the efficacy of a 'directive mediation strategy' employed by the third-party. As noted above, what constitutes success or failure in the mediation of conflict has been vaguely defined and as such, the outcome of every conflict management needs to be assessed against its own set goals and yardsticks. This is even more so in the case of intractable water conflicts where direct military confrontations are rare, conflictual interactions are common and finding lasting solutions is hardly possible for the reason that strong interdependence continues to exist between the riparian countries after the 'settlement of the disputes' and as water resource gets more scarce, new issues inevitably arise.

Furthermore, incompatible state identity<sup>17</sup>, competing norms and securitisation of water resources, among others, significantly contribute to the intractability of water conflicts. The culture of militarism (Berger 1993), especially when compounded with historical animosities, hinders the parties from engaging in a pacific settlement of disputes and it sows the seeds of distrust and mutual suspicion. It is worth noting that, even in case of historical defeat in war, the 'mentality of war' (Hedetoft 1993) serves as a symbol of strength, heroism, and mobilisation of the nation for revenge.

In the same vein, authoritarian states with fewer check and balance mechanisms and a poor democratic system enable elites to frame issues sensationally and adopt a combative strategy of dispute resolution. This argument is partly informed by the democratic peace hypothesis. But this does not necessarily imply that less democratic states wage wars at will; instead, it indicates the possibility of making the conflict management process intractable through belligerent state behaviours and jingoistic official discourses. Control over or attachment to water resources, apart

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<sup>17</sup> As it is used here, state identity encompasses the history of (anti)militarism, the way the state defines and portrays itself, the extent to which democratic culture has penetrated the governance system and the role of transboundary water resources in the socio-political make-up of the state.

from its economic values, has a social and identity aspect to it. In extreme cases, when historical claims to the international river constitute the pillars of national identity, the river does not remain merely an economic resource. It also serves an additional purpose- identity marker. Indeed, one of the issues that have been and still derailing the Israeli-Palestinian peace process is the symbolic value of the Sea of Galilee. Negotiation over identity issues is hard to imagine though not impossible. As Kelman poignantly noted, “changes in identity over the course of a protracted conflict come about through a combination of changed perceptions of the necessity and the possibility of resolving a conflict that has become increasingly costly to the parties” (Kelman 2001, 195). In other words, “identity-based conflicts are the most susceptible to intractability” (Tint 2010, 244) and hence, pose a formidable challenge to conflict management efforts. Similarly, where riparian states rely on competing legal norms and exclusionary narratives to justify their claims, the issue moves away from how much a riparian state gets from the available resource to who gets or controls it (exclusive rights). As long as parties fail to recognise the legitimate claims of the other, conflict tends to endure and conflict management becomes less effective.

On top of these, when one or both of the parties engage in constant securitisation of the water resource, management of conflict becomes a very daunting task. With *‘felicitous’* securitisation of the transboundary river, the issue joins the league of national security; the relationship between parties tends to be extremely polarised; negotiation process is marred with intransigence and combustive approach; and any gesture of compromise has to be considered as an act of negotiating on sovereignty itself. At this stage, the conflict transforms from issue-based to subordination conflict, which means that the “parties construct disaccord as an existential threat to the Self which they, therefore, need to counter by all means, including threats of violence” (Stetter 2011, 447).

And frames (issue framing, in the language of conflict resolution), the interpretative lenses through which we make sense of the world, are used by elites to strategically construct water issues in a particular way to garner public supports. It has been asserted that “frame divergence often contributes to the intractability of conflicts. Disputants differ not only in interests, beliefs, and values but also in how they perceive the situation at the conscious and preconscious levels (...) polarisation is reflected in the parties’ frame, feeding the stakeholders’ sense that they are in the right and should not compromise” (Doborah Shmueli 2006, 209).

These result in the politics of othering, overshadowing common identification, shared interests, and common destiny, leading to a zero-sum competition as opposed to negotiation on underlying



interests, and prolongation of conflict management process-calling for an innovative and interdisciplinary conflict management approach. This is to argue that, in addition to other factors, the efficacy of managing intractable water conflicts seems to be “substantially influenced by the historical patterns of persistent conflictual interaction” (Regan 1999).

### 2.3. *The Roles of Norms, Institutions and Third-Party in Water Conflict Management*

#### A. **Norms on the Use of Transboundary Water Resources**

Legal norms on transboundary water resources are fragmented, poorly defined, mostly exist in the form of customary rules and general principles of international law (Rahaman 2009) and even when codified, they are fraught by contradictory principles and interpretations. Simply stated, the international water law regime is characterised by contradictory norms and doctrines and has significantly evolved over the recent decades.

The most notorious doctrine in the international water law jurisprudence is the ‘*Harmon Doctrine*’. According to this doctrine, a riparian state has absolute sovereignty over the portion of water resources located in or originates from its territory (S. C. McCaffrey 1996). The implication is that a state can use the water resource in the manner it deems necessary, irrespective of the consequences of its actions, and without any need to consult or cooperate with other riparian states within the basin. This doctrine had been profusely (in the past) invoked by upstream countries in their quest to unilaterally appropriate the water resources. Even after the emergence of new norms and fundamental changes of state practices, this doctrine has been relied upon by some states to justify their actions. However, this doctrine has lost its traction as contrary state practices came into being and owing to an overwhelming codification of emerging norms by states across the world. Especially in Europe, this doctrine never had any support ever since 1815 as it directly contradicts the well-established principle of freedom of navigation.

The other rival doctrine is known as ‘*absolute territorial integrity*’, which states that downstream countries have a right to a regular flow of an international river so that its territorial integrity may not be compromised. Thus, any interference with the natural flow of the river, as per this doctrine, would require a prior authorisation from the downstream countries. This doctrine, like its obverse, has little normative force in the contemporary international water law jurisprudence (Patricia Birnie 2009, 540) and for it is impracticable to elicit any cooperation from the upstream countries in the absence of binding agreements, institutional framework, and some form of regional political and economic integration.

The other doctrine on transboundary water resource, which is widely supported by the contemporary jurisprudence is the theory of *'limited territorial sovereignty'*, which holds that states are free to utilise the shared water resources as far as such activities do not prejudice the rights and interests of the co-riparian states (Rahaman 2009, 210). This doctrine treats international watercourses as shared resources and river basin as a hydrological unit that is subject to equitable and environmentally friendly utilisation. Basically, this theory puts a limit on both the above-mentioned doctrines with a view to reconcile the interests and rights of the upper and lower-riparian countries, by qualifying sovereignty over the transboundary water and recognising the competing interests of all riparian countries. Thus, it is taken as a middle ground doctrine on which principles of sustainable use of resources, cooperation and information sharing among riparian countries and principle of 2 of the Rio Declaration<sup>18</sup> are based.

In conjunction with the aforementioned doctrines, several principles on the utilisation of the transboundary rivers have emerged. According to the widely accepted source of international law (as enshrined under Art. 38 of the ICJ Statute), in the absence of treaties, the Court shall resort to the international practices (customary norms) and general principles of law accepted by “civilised nations.” Nonetheless, unlike other areas of international law where treaties play primary roles, when it comes to international water law general principles and customary practices serve as the main sources of law. Among the principles that attained the status of the customary norm, the principle of ‘reasonable and equitable use’ of transboundary water is the prominent one. Ever since its adoption in the 1966 Helsinki Rules on the Uses of the Waters of International Rivers, this principle has undergone extensive evolution and continues to be refined by subsequent state practices. This principle has been incorporated in various multilateral conventions, bilateral treaties, and national water legislation. For instance, it has been incorporated into Art. 2(2)(c) of the European Convention (UNECE 1992), Art. 5 of the 1997 Watercourse Convention, Art. 12(1) of the Berlin Rules (International Law Association 2004)<sup>19</sup> and Art. 4 of the CFA (NBI 2010). Currently, this principle virtually cuts across the corpus of national water laws and Court

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<sup>18</sup>Principle 2 of the Rio Declaration on Environment and Development reads: “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

<sup>19</sup>The Berlin Rules added the sustainable use; hence, the principle of ‘equitable, reasonable and sustainable utilisation’ of transboundary rivers.

jurisprudences<sup>20</sup>, indicating the existence of strong state practices and *opinio juris* and therefore, a binding customary international law of transboundary freshwaters (Dellapenna 2001).

It should be noted, however, that this principle is circumscribed by a corollary principle of ‘not causing a significant harm’, which has been extensively invoked by downstream countries. The no significant harm rule is incorporated in various international water Conventions, Bilateral Treaties and national laws, *inter alia*, Art. 7 of the UN Watercourse Convention, Art. 10 of the Helsinki Rules, Arts.12(1)&16 of the Berlin Rules, Art. 2(1) of the UNECE Convention and Art. 3 of Mekong Agreement. Like its counterpart, this principle, too, constitutes part of the customary international law of transboundary water resources. However, the pervasive problems of this norm are the lack of a clear definition and the absence of standards to assess what may constitute ‘appreciable harm’ under a given circumstance. In other words, it remains too vague and its contour is not properly delineated.<sup>21</sup>

Apart from its vagueness, an important question remains: in case of a conflict of law between the two principles, i.e., the equitable, reasonable and sustainable use *vis-à-vis* no significant harm, which one shall prevail? This is indeed a difficult issue to grapple with as there are no clear-cut rules on the ‘hierarchy of norms’ in the jurisprudence of customary international law. Nevertheless, there seems to be an overwhelming understanding that the principle of ‘equitable, reasonable and sustainable use’ is taken as a general rule while the corollary principle, as the name indicates, is considered as a limitation to the rule. It imposes limitations of how and to what extent riparian states utilise the transboundary water, in accordance with environmental protection obligations and the needs of the other riparians and future generations. This line of argument is also supported by the jurisprudence of international tribunals (S. McCaffrey 2019, 15); (Bréthaut 2020, 638).

There are more than 650 treaties in the world, according to the report of Transboundary Freshwater Dispute Database (TFDD) (University, Oregon State 2016). The vast majority of these treaties are bilateral in their scope, however. It is interesting to note that, despite continues tensions among riparian states, they have been able to sign binding agreements on the use of transboundary waters and management of disputes arising thereof. But, experience shows, the very existence of treaties

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<sup>20</sup> Generally, see the Judgements of the ICJ in the cases of *Gabcikovo-Nagymaros Case* (Hungary v. Slovakia), ICJ Reports (1997), para 55; *Pulp Mills on the River Uruguay* (Argentina v. Uruguay, ICJ Reports (2010), para. 175.

<sup>21</sup> On top of its vagueness, the usage of the term lacks the consistency of practices as different legal instruments and policy documents use contradictory languages. For example, the UN Convention uses the term ‘significant harm’ or ‘significant adverse effects’, the UNECE Convention uses ‘transboundary harm’, and the World Bank Policy Document uses ‘appreciable harm’.

neither guarantees cooperation among riparian states nor stands for an embodiment of justice for sharing common resources. Actually, treaties are commonly used to reinforce the prevailing hydro-hegemonic order or inequitable distribution of water resources as the rules contained in the treaties could well be the manifestation of bargaining power. Treaties, especially bilateral ones, are usually tools to establish and/ or maintain hydrohegemony. Indeed, it has been argued that “signing of an agreement to institutionalise the status quo may be to the hydro-hegemon’s advantage, even if the weaker riparian will benefit enough to justify signing” (Hanasz 2014, 99).

Be that as it may, it is worth noting that one of the striking features of treaties on transboundary water resources is that, once widely accepted and institutionalised, they tend to be resilient, even in the face of strong political animosity between riparian states. The case in point is the Indus Waters Treaty (Water Treaties 1960), which was signed between India and Pakistan in 1960, but has survived three wars, various political tensions, recurrent conflicts and growing environmental stresses over the last 6 decades (Sarfranz 2013, 205). This treaty is considered by many scholars on water conflict management as a living testimony for the transformative power of legal norms in shaping the behaviours and interests of states regarding sharing common resources and managing potential conflicts. In the same way, the level of political hostility between India and Pakistan would not have allowed for the water-sharing treaty, but the ‘common understanding’ (Water Treaties 1960), preamble) between the two parties as to the necessity of sharing the scarce resource and avoiding mutually destructive water conflicts has led to the emergence of particular water-sharing norm.

Similarly, cooperation over the Danube and Rhine Rivers has survived the two notorious world wars in Europe, which entails that particular norms on water sharing and conflict management can endure political waves, provided that they are internalised and institutionalised by the riparian states. The resilience of the water treaties could be explained by the *ambiguity* deliberately incorporated into the treaties because, as Fischhendler argues, doing so would serve the purpose of diffusing domestic pressures, breaking a gridlock in the negotiation process, partially making everyone a winner and above all, providing for flexibility mechanisms to deal with changing circumstances and manage ensuing conflicts (Fischhendler 2008, 93).

In sum, to manage water conflicts, almost all water treaties provide for cooperative mechanisms such as data sharing and early warning, joint management of projects, institutions to oversee the activities of the riparian states and dispute settlement clauses; all of which contribute to effective

conflict management. As a consequence, the legal norms on water sharing and conflict management have both regulative and constitutive effects, that is, constraining riparian states' behaviour and shaping their identities, preferences, and actions.

### **B. The Role(s) of Institutions<sup>22</sup> and Mediation in the Management of Water Conflicts**

Institutions do play crucial roles in the management of water conflicts. Arguably, water conflicts occur in large part due to a lack of strong and constitutive institutions within the River Basin or similar regional arrangements. For instance, owing to the existence of strong and resilient institutions that shape the interactions among riparian states and provide for mechanisms for peaceful settlement of disputes, water conflict is less common in Europe and North America than in the Middle East and the Nile Basin (Paul R. Hensel 2006, 384). Similarly, cooperation over and sustainable development of the Mekong River, the basin which was dubbed as the 'Balkans of Asia', was initially possible because of the direct support from international institutions which eventually resulted in the establishment of the Mekong River Commission and the subsequent integration of the water management issues into the ASEAN structure (Weatherbee 1997, 171). In addition to tackling the problem of the 'prisoner dilemma', institutions appear to play decisive roles in (re)constituting the identities of the riparian states-paving the way for conflict prevention and diffusion of the norm of peaceful resolution of conflict. More generally, international organisations are successful conflict managers if they are highly institutionalised, members have similar preferences<sup>23</sup> and that they exhibit democratic cultures (Holley E. Hansen 2008).

Within the UN system, mechanisms for pacific settlement of disputes are enshrined in chapter VI of the UN Charter. Art. 33(1) of the Charter provided: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of *international peace and security*, shall, first of all, seek a solution by negotiation, enquiry, *mediation*, conciliation, arbitration, judicial settlement, resort to *regional agencies or arrangements*, or other peaceful means of their own choice" (United Nations 1945) (emphasis added). Pursuant to this provision, parties shall manage their disputes through a peaceful means, and they shall exhaust regional arrangements before bringing the matter to the attention of the global community. This shows the *primacy* of alternative dispute resolution mechanisms (ADR) and regional arrangements as well as the principle that it is only when these

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<sup>22</sup> An institution is used in its broader sense, encompassing the rules on conflict resolution and regional and international organisations with the mandate to manage conflicts arising between or among its members.

<sup>23</sup> I avoid using the term 'homogenous interest' for the simple fact that members of any institution would hardly develop such a level of convergence of interest.

complementary mechanisms have proven to have failed that the UNSC intervene under Art. 38 of the same Charter. Even then, the conflict must be considered as endangering international peace and security; the situation that should likely lead to armed conflict.

To the extent that water conflicts have never been *explicitly* treated as posing a direct threat to international peace and security, it follows that such conflicts are normally managed within the institutions existing at River Basin levels, with the help of financial institutions (Syed S. Kirmani 1990) and in some cases, through regional organisations. Regional arrangements are preferred by the parties, not necessarily because of their inherent efficacy but owing to their perceived *legitimacy* in managing regional issues (P. F. Diehl 2008, 540). Besides, some regional institutions explicitly oblige parties to exhaust regional conflict resolution procedures before engaging third parties. For instance, this is envisioned by the African Union (AU 2000), Art.4) and the Arab League (Charter of the Arab League, Art. V).

With regard to the management of water conflicts, it has been pointed out that “building institutional capacity is the strongest method to prevent and resolve water conflicts, despite its imperfections” (Jacob D. Petersen-Perlman 2017, 2). The efficacy of institutions in managing water conflicts is predicated upon the premises that “international water conflicts may happen when there is no institution that delineates each nation’s rights and responsibilities with regard to the shared body of water, nor any agreements or implicit cooperative arrangements” (Ibid, 7). This is the case because “once cooperative water regimes are established through treaty, they turn out to be resilient over time, even between otherwise hostile riparians and even as conflict is waged over other issues” (J. D. Wolf 2009, 23). For the most part, it is the resilience of the institutions that help with the management of water conflicts. And of course, as international institutions are born to be mediators, they frequently involve in the conflict mediation process (Touval 1985, 34). Primarily, institutions provide forums for interactions, negotiations of water sharing schemes and mechanisms for dispute resolution. As a result, the starting point for conflict resolution is the negotiation between or among the riparians of transboundary rivers. For the process of negotiation is a learning avenue, it may also serve as a potent tool of socialisation so that “parties can educate each other in their interests and thus become re-educated in their own interests in the process” (J. D. Wolf 2009, 33) through the process of intersubjective understanding. Then, this sustained dialogue will, to a great extent, help parties to re-examine their previous negotiation positions and

modify their interests. For this process<sup>24</sup> to bear fruits, conflict mediators play important roles by helping parties move from a zero-sum game (position-based negotiation) towards interest-based negotiation strategies. Indeed, if what is hindering the parties from engaging in an *integrative negotiation* aimed at problem-solving (Hopmann 1995) is their irreconcilable positions and mutual distrust, which is very common in international negotiations, it stands to reason that a mediator can bring in fresh perspectives (proposals), enhance the *legitimacy* of the dispute settlement process (Roger Fisher 2011) through confidence building strategies such as informal interactive mechanisms, identifying problems and re-framing the issues (especially where water is subject of securitised). More specifically, *active mediation* is more effective than simple facilitations for conflicts characterised by polarisations and involving high politics to break *cul-de-sac* and bring about constructive dialogue. Furthermore, the success of the mediation process depends on the complexity of the issue(s), that parties have had reached a stalemate, parties own conflict management procedures have been exhausted and the adversaries show some level of cooperation and ready to communicate (J. Bercovitch 1985, 738).

It is worth stressing that the overriding goal of mediators in any conflict is to modify the nature and structure of the dispute, thereby altering the behaviours and the mode of interactions between the disputants. Mediator with referent power, that is, “the power to influence one or both sides because the parties to the conflict value the relationship with third party” (Aall 2008), is more suitable to bring about change of behaviour and modify the structure of the conflict. Contrary to conventional wisdom, the mediator may manipulate the process (Touval 1985, 39), in addition to the roles of facilitating and framing the issues, to achieve a breakthrough. Thus, every strategy devised by the mediator to resolve the conflict should be geared towards achieving this goal; otherwise, there is no need to initiate the mediation process in the first place.

The success or failure of the mediation process in water conflicts is contingent upon various factors, *inter alia*, the nature of the dispute such as issues at stake, duration of the conflict, distribution of power (the existence of hydro-hegemon in the conflict) (Ott 1972), the identity of the parties, and the legitimacy of and roles entrusted with the mediator. That is, without the legitimacy of the process and mutual trust of the mediator by the parties, the entire process is a *fait accompli*. Parties may not need to trust each other (mostly that is why they seek the help of third

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<sup>24</sup>In this context, mediation is understood as a continuation of the negotiation process with the involvement of a third party to enhance parties' effort to reach a negotiated outcome.

parties), but the mediator. Equally important, the efficacy of international mediation also depends on the timing of the intervention. It seems that there is a general understanding that, for the mediation process to be more effective, it should follow adversaries' own settlement and not the other way around (J. Bercovitch 1985, 748).

At regional levels, the AU is one of the organisations with its own conflict management architecture. It advocates for the norm of “African solutions to African problems”, which denotes the capability of the African continent to manage its problems without external intervention (Lobakeng 2017, 2). The origin of this principle can be traced to Arts. III (4) and XIX of the OAU Charter which provided for a procedure of conflict management. According to this norm, member states are obliged to exhaust African solutions (if available) before resorting to international dispute settlement mechanisms (OAU 1963).

However, the AU appears to have shown a poor track record in managing African conflicts, especially interstate conflicts, though it has been presented with multiple opportunities on different occasions to lead the way. This deficiency partly stems from poor institutionalisation of norms, lack of political will and commitment and the mantle of “non-interference in domestic affairs.” Notably, the very notion of African solidarity hinders African Heads of States from taking initiatives to manage inter-state conflicts. Similarly, as a result of sub-regional competition, “the tension and power politics at play between regional *hegemons* often prevents them [African States] from coming together and acting with one voice in times of conflict” (Lobakeng 2017, 6), (emphasis added). And AU's capability to resolve water conflicts remains to be seen.



## Chapter Three

### *The Blue Nile Basin: Cooperation, Conflict and Hydro-politics*

The Nile valley is a home for ancient civilisations, lifeblood for over 250 million of people, source of tensions and cooperation for years. The Blue Nile is known for its enormous capacity for hydroelectric power generation in the highlands of Ethiopia and modern irrigation in Egypt and Sudan. Despite this unique potential, cooperation among riparian states in the basin remained limited and intractable conflict has defined states' interactions. As upstream countries become more assertive and the demand for freshwater by downstream countries has increased, the hydro-politics of the Nile basin has intensified more than ever. In short, both cooperation and unilateral approaches have coexisted in the Blue Nile Basin for decades but have proven to be *unsustainable*, as noted by Cascão (Cascão 2009), emphasis added). This chapter critically examines the norms, institutions, and hydro-politics of the Blue Nile Basin.

#### *3.1. Norms Governing the Blue Nile Basin*

Like many other river basins in other parts of Africa, the norms governing the utilisation of the Nile have been highly shaped by the colonial legacy. One of the areas where the hungover of imperialism is still strongly felt is in the colonial treaties that are perpetuating hydrohegemony in the basin. Characteristically, all treaties concluded between riparian countries in the basin are bilateral in nature, have excluded all upstream countries, and reinforced the hydrohegemony of Egypt for over a century. The major milestones of the evolution of norms in the Blue Nile Basin are given in Figure 1 below.

The first formal agreement on the regulation of the basin was the Anglo-Ethiopian treaty of 1902 that demarcated the border between Ethiopia and Sudan. Even though it was a treaty about the delimitation of an international border, the British Government wanted the inclusion of a clause that would ensure the flow of the Blue Nile downstream to Sudan and Egypt [then British colonies]. As a result, Art. 3 was incorporated, which states that the King of Ethiopia [Emperor Minilik] undertook "...not to construct or allow to be constructed, any work across the Blue Nile, Lake Tana, or the Sobat which would *arrest the flow of their waters* into the Nile except in agreement with His Britannic Majesty's Government of the Sudan" (House of Commons 1902). More than a century has passed since its conclusion, but this provision is one of the sources of contentions among riparian countries of the basin due to divergent interpretations. Ethiopia argues,

by relying on the relevant provisions of the VCLT and ICJ jurisprudence, this provision is not binding on it because of the following reasons. First of all, since the scope of the treaty is about border delimitation, its legality of governing water issues is highly questionable. Secondly, even if it applies to water uses, there has been a fundamental change of circumstances<sup>25</sup> caused by decolonisation (United Kingdom is no more a party). Thirdly and more compellingly, the wording and context of this provision refer to a total blockade of the river, not a reasonable, equitable and sustainable use of the river.<sup>26</sup>

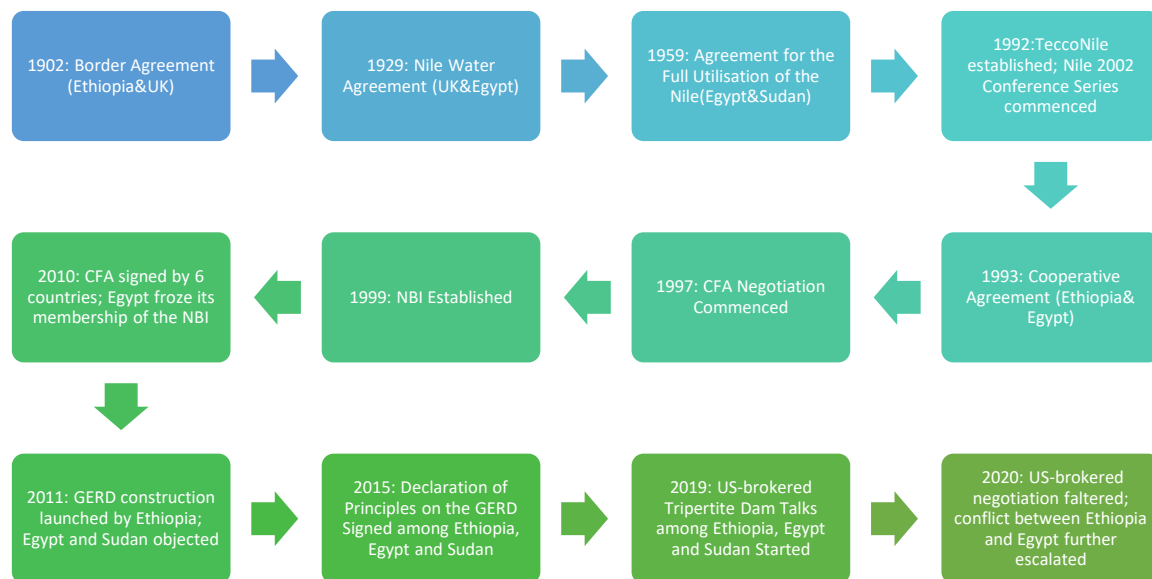


Figure 1: Major Timeline of the Blue Nile Basin Hydro-politics

Following the partial independence of Egypt from the British colonial rule, a new agreement was signed between Egypt and United Kingdom (on behalf of Sudan) in 1929. This treaty was aimed at solidifying Egypt’s claim of ‘historic and natural rights’ over the entire Blue Nile (Tekuya 2018,12). To this end, the agreement provided for Egypt’s unfettered rights to control the Nile, the veto right to block any projects proposed by upper riparian states and recognised the right of Sudan to use the water as long as it does not adversely affect the interests of Egypt.

In 1959, at a time when all riparian countries of the basin had gained their independence and after three years of tensions (including military confrontations) between Egypt and Sudan, they

<sup>25</sup> See Art. 62 (1) of VCLT; Gabcikovo-Nagymaros case, paras. 56 and 65.

<sup>26</sup> Furthermore, there is a discrepancy between the Amharic version (Ethiopian official language) and the English counterpart in that the former clearly use the term total diversion or blockade of the Blue Nile.

concluded a treaty that abrogated its predecessor and apportioned the entire Blue Nile between the two. As it is discernible from its title, a “treaty on the full utilisation of the Nile”, 55.5 cubic meters was allocated to Egypt, 18.5 CM to Sudan and the remaining 10 cubic meters was what is lost to evaporation (United Nations Treaty Series 1963, Art.4(4)). Thereafter, almost all upper riparian countries had continued to openly denounce this move, leading to the formation of Hydromet (Council of Ministers of Water Affairs) in 1967 (later on replaced by TeccoNile in 1992), tensions, polarisation, and alliance formation.

To ease the growing discord between Ethiopia and Egypt in the late 1980s, the Framework Agreement on the Nile Waters was concluded in 1993. Among others, the parties agreed that ‘Each party shall refrain from engaging in any activity related to the Nile waters that *may cause appreciable harm* to the interests of the other party’ (Ministry of Foreign Affairs 1993, Art.5), emphasis added). The vocabulary of not causing significant harm, purportedly informed by the Rio Declaration of 1992, was recognised by both parties for the first time; leading to rapprochement between the two parties for years to come. However, as what constitutes appreciable harm has never been clearly defined, and it gave rise to contradictory interpretations and competing narratives (more on this in chapter three).

In a global arena, the landmark achievement in the governance of transboundary water resources and conflict management was the codification of the customary norms of international water law by the 1997 Watercourse Framework Convention. This convention has remained the most impactful legal regime concerning the transboundary water resources, owing to its codification of all pertinent customary norms and noticeably, because even those countries which did not ratify it has been vociferously invoking it to justify their claims (be they upstream or downstream countries). Surprisingly enough, none of the riparians of the Nile Basin have signed the treaty: denying it the normative force of positive law, though its customary status remains intact.

Seemingly to fill this legal lacuna, the riparian states of the Blue Nile have negotiated the CFA for 13 years (from 1997-2010). The underlying tenet of the CFA is 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” (CFA 2010, the preamble). The CFA also envisaged the establishment of the permanent Nile Basin Commission that would replace the NBI, which could have institutionalised water management and dispute resolution mechanisms. In practical terms, the signing of the CFA

could be regarded as one of the major manifestations of the changing political and normative dynamics in the basin, thereby emboldening the upstream countries' resolve to entrench the norm of equitable, reasonable, and sustainable utilisation of the Nile.

To the dismay of many observers, nevertheless, the highly proclaimed CFA and the resultant institutional arrangement have failed. Even though many reasons have been proffered to explain this anomaly, two factors stand out.

The first reason is the lack of internalisation of the prevailing customary norms, including the UN Framework Convention. By drawing on the framework of the norm life cycle (Sikkink 1998, 896), I argue that the main stumbling block for the failure of the norms of 'equitable, reasonable and sustainable utilisation' and 'benefit sharing and cooperation' to be adopted by the Nile Basin riparians is due to strong resistance from the downstream countries and the revival of the old norms of sovereignty and unilateralism, for the fact that "new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest" (Sikkink 1998, 897). The major riparian states, or the 'critical actors' (Ethiopia, Egypt, and Sudan) came together to form the NBI and set the negotiation process of the CFA in motion due to the harsh sticks and tasty carrots used by the World Bank. To a lesser extent, the imprecise nature of the norms of 'equitable, reasonable and sustainable utilisation' has contributed to its own demise. The failure of the CFA pronounced a death sentence (at least temporarily) to the potential institutionalisation of the customary international law norms. Thus, without adoption and internalisation of norms beyond its instrumental values, it is hardly possible to have a common normative framework on the utilisation of the Blue Nile and the management of ensuing conflicts.

The second reason is related to the infamous 'water security' clause introduced by Egypt at last-minute to maintain the status quo. No doubt, "as the United Kingdom was a signatory to all Nile Basin agreements in the colonial period, one could make the case that no more than one true Nile riparian [Egypt] is included in any single treaty" (Giordano 2005, 1059), Egypt has been adamant to become "one among the equals" in the basin by forgoing its hegemony.

Thence, following the failure of the CFA, an attempt to regulate the filling and operation of the GERD was made, culminating in the 2105 Declaration of Principles (DoP). The Declaration has incorporated the contemporary principles, norms, and doctrines on the use of transboundary water resources and also provided for dispute resolution mechanisms and procedures under Art.8, which

states that parties shall resolve their dispute amicably through “consultation or negotiation in accordance with the principle of good faith. If the Parties are unable to resolve the dispute through consultation or negotiation, they may jointly request for conciliation, mediation or refer the matter for the consideration of the Heads of State/Head of Government” (Ministry of Foreign Affairs of Ethiopia 2015). But the parties are disputing over the legal status of the DoP under international law and the scope and nature of obligations incumbent upon Ethiopia; thereby raising more questions than it is purported to answer.

### *3.2. Hydro-hegemony and Conflict Management in the Blue Nile Basin*

The hydro-politics of the Blue Nile is dominated by power asymmetry. Indeed, water interactions are partly determined by power asymmetry, which, in turn, shapes both the water-sharing schemes and conflict management mechanisms. One of the major factors that hamper cooperation among riparian states is the existence of a hydro-hegemon in the basin. The notable cases are China in the Mekong and Egypt in the Nile.

Hanasz pointed out that hydrohegemony rests on three main pillars: *power*, riparian *position*, and resource exploitation *potential* of the riparian (Hanasz 2014, 98). At the core of hydrohegemony lies the presence of a powerful actor in the basin. In this regard, a nuanced framework for hydro-hegemony has been conceptualised by Woodhouse and Zeitoun, in which they argued that the presence of a hydro-hegemon within the basin is not problematic *per se* because interactions among riparians ranges from *benign* to oppressive, depending on the fairness of the outcome for the less powerful riparians and the level of control established over the shared resource by the hegemon (Zeitoun 2008, 112). Benign as it might be, I argue that hydro-hegemonic order is not stable<sup>27</sup>, especially in the Blue Nile Basin, for the following reasons: (1) perceptions do change and power configurations are bound to shift, (2) for hegemonic order is mainly a social construct, it can be deconstructed, too, particularly by a ‘rival’ riparian, (3) shared resources are not amenable for stable hegemonic order, and (4) hegemony founded on a manifest injustice lacks a legitimacy. Furthermore, as indicated in the framework for hydrohegemony vs. hydroharmony, in the face of contesting norms and constant use of power over others, conflicts become frequent and the hydro-

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<sup>27</sup> For a general discussion on hegemonic order and its stabilising effects, see Robert O. Keohane, *After Hegemony: Cooperation and Discord in World Political Economy* (Princeton University Press, 1984); Duncan Snidal, “The Limits of Hegemonic Stability Theory,” *International Organisation*, Vol. 39, No.4 (1985), pp.570-614 and Michael C. Webb and Stephen D. Krasner, “Hegemonic Stability Theory: An Empirical Assessment,” *Review of International Studies*, Vol.15, No.2 (1983), pp.183-198.

hegemonic order faces challenges. If there is stability in the basin, that could only happen through hydroharmony (of course which requires a lot of efforts).

Egypt has been a hydro-hegemon in the Nile basin for a long because it has created and maintained its 'historically acquired rights' through a combination of material, structural and discursive powers. To this end, it used its soft power to keep water issues off the regional and international agendas by virtue of sanctioned discourses and resorting to effective securitisation. Fundamentally, Egypt has been able not only to utilise the river, but also to prevent the upstream countries from claiming their fair shares (Dessu 2018). Thus, like many downstream countries commonly do, Egypt has maintained its hegemony through the strategies of resource capture, containment of upper riparians and integration (Warner 2006).

Notwithstanding, the hegemonic order was not benign in nature or has never been regarded *as such* by the upper riparians. What has maintained the status quo is mostly the power asymmetry. If one applies Lustick's typology of hegemony (Lustick 2002), it is safe to contend that Egypt's hegemony was built more of on coercive and utilitarian hegemony than normative and ideological hegemony-making it highly unstable. What is more, given the unfairness of the colonial treaties that ignored the interests of all upper riparian states (Arsano 2007, 89), it is not and should be surprising that other riparians would challenge it, as soon as they get the means and *zeitgeist*.

Even though Egypt's hydro-hegemony had been partially questioned by Sudan as early as 1959, strong challenges have come from Ethiopia, which seeks to change the status quo and replace it with equitable, reasonable, and sustainable utilisation of the water. At the end of the cold war,<sup>28</sup> the China factor in the basin and the relative political stability and economic growth in Ethiopia have created a conducive political environment to challenge the status quo. As Cascaño (2008, 21-24) pointed out, Ethiopia used four strategies to counter Egyptian hydrohegemony, which are reactive diplomacy such as the deconstruction of discourses, open protest, refusal to cooperate; proactive diplomacy such as agenda-setting in regional and international organisations, lobbying, garnering support from other riparians; cooperation (through the NBI, CFA negotiations and bilateral relations) and securing alternative sources of funding. In addition, Ethiopia has also used the strategy of resource capture, notably through the construction of the GERD, public mobilisation and diffusion of new norms and counter-narratives. This counter-hegemonic move

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<sup>28</sup> Immediately following the downfall of the communist regime in 1991, Ethiopia became a strategic partner for the United States in fighting terrorism in the Horn of Africa.

by Ethiopia, along with other factors, fed into the intractability of the conflict, as will be elaborated further.

### *3.3. The NBI: A Community of Practice or an Illusion?*

The NBI was established in 1999, after many years of interactions, dialogue, and cooperation among the riparians, with financial and technical supports from the international community. More than any organisations, the World Bank played an *indispensable* role in bringing the parties together and help create the NBI (Iyob 2010). The overriding objective of the NBI is to “achieve sustainable socio-economic development through the equitable utilisation of, and benefit from, the common Nile Basin water resources” (NBI 2021). And its motto is “One river, one people and one vision.” It has also recently adopted the 10 years Strategy (NBI 2017), with the following ambitious goals: (1) ensuring water security, (2) energy security, (3) food security, (4) environmental sustainability, (5) climate change adaptations and (6) strengthening transboundary water governance. As can be seen from the list, the NBI predominantly strives to ensure the common security of the basin.

To be fair, the establishment of the NBI has immensely contributed towards the de-escalation of conflict in the Blue Nile, by bringing riparian states together, providing platforms for dialogue and cooperation, fostering trust, entrenching new norms of water sharing and treating the basin as one hydrological unit to be utilised for the common good. The World Bank dubbed the NBI as an exemplary success story (Swain 2011, 695); (World Bank 2015).

But at a practical level, the question remains as to whose common resource, how to ensure equity and what role to be played the NBI to achieve the same. One way to ensure equity is through the adoption and practical application of the norm of ‘equitable, reasonable and sustainable use’ of the transboundary river. However, as noted above, none of the NBI riparian countries has translated this norm into action, neither at a bilateral nor multilateral level.

Interesting to note is principle 9 of the CFA which envisaged the ‘community of interest’ in the basin. But what does it really mean? Has such a norm ever existed in the Nile basin? More specifically, is it a community of practice, as constituted and constrained by law, or a rhetorical usage?

The international community, within the meaning of international law, is defined as a “common, conscious system of reciprocity between their constituents and *shared* moral rules and imperatives” (Franck 1995, 10-11), (emphasis added). Any community (*gemeinschaft*), be it

international or regional, a community of states or economic community, is conceptually imagined, deliberately constructed and intersubjectively evolves such that a community of practice will be created, maintained, and maybe dissolved (actively or through disuse). Community evolves through intersubjective processes and practice; some values are retained while some others are disregarded altogether. In other words, by virtue of cognitive evolution (Adler 2019, 14), some shared norms (on the use of transboundary water) are retained while the less relevant ones are discarded in due course; meaning, the international community is both a thing and a process (Onuf 1994). And this community, once well entrenched, “shapes how the participants relate to and interact with one another in a given domain of human activity” (Hakimi 2017, 5).

Legal conflicts or to use Hakimi’s expression, ‘ethical conflict’ is a common phenomenon in international law, which may “help construct the community as a *going concern* that binds the participants together” (Hakimi 2017, 4) (emphasis added). The conception of the community as a going concern mirrors the cognitive process pointed out above and may help comprehend the role of international law in constructing the community of practice. However, when the ethnical conflict goes beyond the interpretation of the norm so as to challenge the very existence of such norm (Zimmermann 2020), then it is hardly possible to talk about the existence of a community. This is particularly true for the NBI, where there has been and still is tense conflict as to the *validity* of norms of water use.

While it is true that community does not mean unanimity (Kritsiotis 2002, 990), nonetheless, there should be a sense of community for it to come into existence in the first place. The NBI community of interest has never been formed and if there was one, it remained within the contour of rhetorical use due to various reasons. Among others, the emerging norms have not been internalised by all members of the community to the same degree, common identity (the discourse of shared vision, common destiny) has been curtailed by competing national interests and the existence of hydro-hegemon (Egypt) within the basin has contributed to the perpetuation the statusquo.

By the same token, complete dependence on external funding, absence of Joint Commission and weak institutionalisation have further crippled the NBI. In this regard, Swain argues that one of the reasons why the NBI remained dysfunctional is because it “receives still very little contribution from the basins states themselves, exposing the lack of interest of the basin states towards joint management of the shared river resources” (Swain 2011, 698). This shows the lack of ownership of the project by the riparians from the outset. Furthermore, while Ethiopia considers



itself as the prime victim of the unfair and illegitimate colonial treaties and portrays its foreign policy as the guardian of the black nations (by invoking its high noon of independence), the downstream states remained the staunch stewards of the past regime.

In a nutshell, as social action (practice) is co-determined by structures and deliberations of agents (Wendt 1987,365), it is plausible to argue that the NBI structure has been further delegitimised by the practices of the agents (riparian states). This can be deduced from the unilateral actions taken by riparian states which have greatly affected the fledgling community of practice (Grandi 2017); (Cascão 2009).

## Chapter Four

### The Case Study of Ethiopia and Egypt

Ethiopia and Egypt, being the two oldest states in Africa and major riparian states in the Blue Nile Basin, have a long history of cultural, economic, and political interactions. These interactions, which are characterised by both cooperation and conflict, have, for the most part, been defined by the River Nile. Henceforth, the ‘Nile question’ has played its part in the constitution of the identity of the states and has continued to inform their foreign policy to this day. Building on the foregoing discussions, this chapter analyses the issue of how and the extent to which incompatible state identities, competing norms and the securitisation of the Blue Nile, have contributed to the intractability of the conflict between Egypt and Ethiopia.

#### *4.1. Interactions over the Blue Nile*

##### *A. Historical Water Interactions: cooperation and conquest*

Thucydides (Thucydides 1972) described Egypt and Ethiopia as areas encompassing the vast geography spanning from the highlands of present-day Ethiopia through the Nile delta to the Arabian Peninsula. Although trade, cultural exchange and ancient civilisations have formed part of the historical relationship between the two countries, the Nile had served as the main thread connecting the two countries. For centuries, Ethiopia used to receive top religious leaders from Egypt in return for the natural flow of the Nile to Egypt. The Nile and the Cross, as Haggai Erlich argues, has always been inextricably linked from the time when Christianity was introduced to Ethiopia (5<sup>th</sup> century) until such a relationship severed (1950s) (Erlich 2001). Hence, the Coptic Church had served as a traditional institutional arrangement through which the use of the Nile had been governed for long.

With the advent of Arab nationalism and the seizing of power by the ultra-nationalist Khedive Ismail, the Egyptian dream of controlling the source of the Nile and uniting the Nile Delta reached its pinnacle. As Jesman succinctly noted, “Just like the Egyptian extremists of today he [Ismail] was inflamed with the idea of the unity of the Nile valley from the great lakes [Lake Tana] to the delta under the green flag of Egypt” (Jesman 1959), 77). This quest to control the entire Nile Delta led the two countries to the devastating wars in the 1870s. The notable wars with far-reaching consequences were fought at the Battles of *Gura (1875)* and *Gundet (1876)*, resulting in the total defeat of the Egyptian forces. Similarly, at the heart of the Ethio-Italian war of 1896 (Jonas 2011)

lay the geopolitical interests of the major powers (Italy, France, and Britain) to control the source of the Blue Nile (H. G. Marcus 1994), 95). This geopolitical competition had emanated from the Anglo-Italian Protocol of 1891 (H. Marcus 1963) which provided for the British mandate to control the Blue Nile on behalf of Egypt and formal recognition of the Italian sphere of influence in the Horn of Africa. Soon after, the second Italian invasion of Ethiopia in 1935 undergird by the geopolitical schism between Britain (to safeguard the rights of the two Arab nations over the Blue Nile) and Italy (to control the Lake Tana Project (McCann 1981, 667).

Furthermore, all Egyptian Presidents have justified the need to go to war should Ethiopia tempers with 'Egypt's water'. In 1979, Anwar Sadat clearly stated: "We are not going to wait to die of thirst in Egypt. We will go to Ethiopia and die there" (New York Times 2020). A decade later, Hosni Mubarak warned: "If Egypt thought about fighting Ethiopia, there will not be one Ethiopian after the war to tell the story" (Deutsche Welle 2013). This rhetoric of water war has been more pronounced following the construction of the GERD (as will be discussed shortly).

Apart from the above-mentioned military confrontations and the constant beating of war drums, Egypt has also actively engaged in sponsoring proxy wars to destabilise Ethiopia. For instance, the government of Egypt openly admitted supporting Somalia's war of aggression (1977-78) in the eastern part of Ethiopia (Addis Zemen Gazette 1986) and the 2015-2018 mass protests against the Ethiopian government (by supporting political dissidents and Islamic movement factions). It could be argued that this is just a continuation of the water war through a different means.

Compounding these historical animosities are the treaties which did not take the interests and rights of Ethiopia into consideration, i.e., all the colonial and the subsequent bilateral treaties have totally removed Ethiopia from the scene of the Blue Nile hydro-politics. As noted in chapter three, with a view to rectifying the historical injustice, Ethiopia has persistently objected on many occasions against what it calls the 'intolerable' state of affairs. For example, the statement from the government of Ethiopia addressed to Egypt and the UN in protest to Egypt's diversion of the Nile to the Sinai desert partly reads: "...the measures taken by Egypt in regard to the use of the waters of the Nile will in no way affect its legitimate rights to the waters of the Nile..." (Ministry of Foreign Affairs of Ethiopia 1980), para.7). However, apart from denouncing the unequal treaties and inequitable utilisation of the Blue Nile, Ethiopia had (until very recently) remained a 'silent partner' (Waterbury 2002).

Thus, from the foregoing, it is plausible to argue that the longstanding tensions and historical animosities between the two riparians over the utilisation of the Blue Nile have played a significant role in shaping relations dominated by mutual distrust between the two riparians.

### ***B. State Identity and Intractable Water Conflict***

The most prominent factors that have shaped the identity of the respective states and contributed to the intractability of the conflict are: (1) the Nile (2) the nature of the two regimes and (3) the discourses of Pan-Africanism vis-à-vis Pan-Arabism.

To begin with, the Blue Nile is not just water traversing boundaries and replenishing the ecosystem. Surely, the Nile issues are more than that. The Nile (Abbay), beyond its geographical representation, has fundamentally shaped the Egyptian image of Ethiopia and *vice versa*, through its social embodiment. The Egyptians had considered the people living to the south of their ancient territory as *al-habasha* (Ethiopians in Arabic); who are intent to curtail the flow of the Nile. For Egypt, the people of the Nile Valley included the united Arabs (Egypt and Sudan), whose civilisation had flourished based on the riches of the Nile. The best strategy to control the Nile, Egyptian nationalists assert, is to regain its lost historical territory of Sudan (Warburg 2000, 229) and neutralise any threat posed by Ethiopia. The common myth constituting the identity of Egypt, and which has continued to serve as a practice for Egyptian elites in their foreign relations is that of treating Egypt as the Nile. About a century ago, Gemmill argued that “Egypt is the Nile, and the Nile is Egypt, just as truly today as two thousand years ago” (Gemmill 1928, 311). Today, this assertion is equally relevant, if not more. As a result, the Blue Nile has become a nightmare of foreign policy for successive Egyptian Leaders (Rasheedy 2007). Moreover, the myth of Egypt as the Nile was grounded in the spiritual practice, which holds that god *Hapi* would be offended if a drop of the Nile water is touched by the upstream countries.

All the same (though not to the same extent), Abbay (the father of rivers) occupies a unique place in the Ethiopian culture, literature, folklore, history, and national symbols. It is common to hear from the Ethiopian people whereby they personify and (regretfully) call Abbay as a notorious traitor, who endlessly washes the fertile soils from the Ethiopian highlands and constantly feeds the ungrateful Pharaoh and the unruly child of Ethiopia which should be tamed as soon as possible (Gershoni 2000, 9); (Shibabaw 2011). Hence, it is no wonder that many parents name their children after the river; *Abbay*, *Abayneh* and *Abbaynesh* are some of the common Ethiopian names throughout the country. It has to be noted that Abbay is the symbol of the nation, not necessarily

because of its enormous values (as many other smaller rivers have been utilised by far as compared to Abbay in the past), but for its unparalleled symbolic value of national identity (Tafla 2000, 154). However, after the construction of the GERD, the priceless role of Abbay to lift millions of Ethiopians out of abject poverty, ensuring access to electricity for more than 65% of the Ethiopian population and the hydro-politics of the Blue Nile has gained currency.

Nonetheless, there is one striking difference between Ethiopia and Egypt in regard to the perceptions of common identity and destiny in the Blue Nile. For Ethiopia, the Nile has always been regarded as a shared resource. This has been pointed out in the letter of 14<sup>th</sup> May 2020 which states: “We [the people in the Nile basin] are ancient civilisations *inseparably* linked by the Nile River” (Ethiopian Ministry of Foreign Affairs 2020, 1), emphasis added). This conception of common identity on the Blue Nile is rarely found in either the official discourses or practices of the Egyptian government. For example, Abdullah Alashaal, former Deputy Head of the Ministry of Foreign Affairs of Egypt, and an expert on international water law indicated the following: “as an Egyptian, I can tell you that we feel that Ethiopia will cut off the Nile River to hurt the interests of Egypt. The massive Dam [GERD] is part of that broader plan of Ethiopia. And this, we shall not allow happening” (Alashaal 2021).

As to the nature of the regime, both Ethiopia and Egypt are dubbed as an authoritarian states according to the latest report of the World Democratic Index (The Economist 2021), ranking 123<sup>rd</sup> and 138<sup>th</sup>, respectively. Authoritarian states have, in principle, poor records in regard to embracing the norms of peaceful resolution of disputes, including through third-party mediation (Dixon 1993). This argument is partly informed by the democratic peace hypothesis discussed in chapter one. Less constrained by democratic deliberations and institutional hurdles, both states have engaged in securitisation of the Dam (as further elaborated section 4.4) to sway public opinion and consolidate their domestic political power. Moreover, Egypt’s culture of aggressive militarism (Lokesson 2013) and Ethiopia’s social-psychological make up of constantly defending itself against foreign invaders, appear to have negatively affected the water interactions between the two countries. Above all, in the aftermath of the 2011 Egyptian revolution, the hitherto opaque and limited role of the Egyptian Armed Forces (EAF) in the political and economic affairs of the country has taken a historical turn (Marshall 2015); (Harb 2003), such that the military has involved in every aspect of the foreign policy decision-making process. This change of circumstance, I contend, has had meaningful repercussions on the securitization of the Nile issue.

Lastly, the competing discourses of pan-Africanism (as propounded by Ethiopia) vis-à-vis Pan-Arabism (Egypt acting as its guardian) have noticeably affected the negotiation process over the GERD dispute. In fact, the modern state of Egypt is the assemblage of Ottoman Turks, Western influence, Islamic state, and Arab nationalism (Pratt 2005); (Abdulla 1999), a state in a constant search of its identity.

This is discernible from the press release of the Arab League Council on 5 March 2020 where it issued a strong resolution condemning Ethiopia for trying to temper with ‘Egypt’s historical right over the Nile water’ and regarded Egypt’s water security as the collective security of the Arab nation. It called upon all the Arab countries to show pan-Arab solidarity towards Egypt and put every possible pressure on Ethiopia (Amin 2020). Seemingly prompted by Egypt’s move to internationalise the dispute, the Congressional Black Caucus issued a press release, wherein it called up on the U.S. government and the international community to respect the sovereignty of Ethiopia, let the disputes between African states to be resolved within the AU framework and stressed that the US government should act impartially and fairly (Congressional Black Caucus 2020). Jesse Jackson, the Chairman of the Caucus went as far as asserting: “No matter how much I tried, I found it harder to rule out race as a factor in the international play” (Ibid). Yonas Biru, a regular analyst of the Blue Nile Hydro-politics and the founder of the Nile Club, shares Jackson’s view and contended: “Egypt’s demand on the Nile is *outright racist*. 100% of the water belongs to 9 Black African nations, but two Arab countries (Egypt and Sudan) are given 100% of the right to use the Nile” (Biru 2021).

Thus, Egypt’s threat perception of Ethiopia and vice versa is highly grounded in the subjective assessment of the adversary, in addition to the objective realities on the ground. This means that “both a shared sense of identity and power interact with each other when influencing people’s threat perceptions” (Rousseau 2007, 751) and henceforth, contributed to the complex dynamics and intractability of the conflict.

#### 4.2. *Competing Norms and the Water Conflict*

The water interactions between Ethiopia and Egypt are characterised by competing water use norms and/or irreconcilable narratives. Among others, Ethiopia heavily relies on and ruthlessly advocates for the norms of ‘equitable, reasonable and sustainable use’, of ‘not causing significant harm’ and ‘sovereignty over natural resources’ and the narratives of ‘win-win solutions’ and the right to ‘sustainable development’. Egypt, on the other hand, has been constantly invoking the

norms of ‘historically acquired rights’, ‘not causing significant harm’ and ‘Egypt’s water’ and the official narratives of ‘water security’ and threat to ‘regional peace and security’. It is interesting to note that both countries recognise the transboundary nature of the river and the duty not to cause significant harm to the environment and interests of other countries. In essence, the difference lies in the mode of assessment of what constitute significant harm and how to share the common resource. For example, Ethiopia officially proclaimed that the Nile is a shared resource which belongs to all countries in the basin (Ethiopian Ministry of Foreign Affairs 2020, 5), whilst Egypt has refused to sign a basin-wide multilateral treaty (the CFA) that explicitly acknowledges the interests of all the 11 riparian countries in the Nile basin. So perplexing is that, unlike many other basins where the lower riparians seek greater cooperation and call for comprehensive legal agreement for the efficient and equitable utilisation of the international river, the reverse has been the case in the Blue Nile basin (as explained in section 3.3 above).

Over the last 3 decades, Ethiopia has been officially advocating for the norm of “‘equitable, reasonable and sustainable utilisation of transboundary water resources, of not causing significant harms and of cooperation” (Ethiopian Ministry of Foreign Affairs 2020, 7). In support of its advocacy for equitable, reasonable, and sustainable use of the Blue Nile, Ethiopia has been persistently objecting to unilateral actions taken by Egypt. Ethiopia is of the view that it “‘did not and still does not have any agreement with downstream countries over water utilization and management of the Nile waters” (Arsano 2007, 90). With a view to persuade Egypt to abandon the colonial norms and come to terms with the new realities, Mr. Meles Zenawi contended that ‘the Egyptians have yet to make up their minds as to whether they want to live in the 21st or the 19th century” (Malone 2010).

Furthermore, Ethiopia claims exclusive ownership of the GERD and an obligation to ensure the needs of its present and future generations-the narrative of sustainable development. Beyond the official discourses, sustainable development has been incorporated in the national constitution of Ethiopia. The relevant provision reads: “‘All international agreements and relations concluded, established or conducted by the State shall protect and ensure *Ethiopia's right to sustainable development*” (Federal Negarit Gazetta 1994, Art. 43(3)) (emphasis added). The economic importance of the Blue Nile could not be more emphasised than in the statement of Mr. Gedu Andargachew, the then Minister of Ethiopian Foreign Affairs, who boldly stated: “‘Abbay used to be a wandering river. Now, we have tamed it so that it will serve both as an international river,

which flows naturally, and as a lake [referring to the reservoir of the Dam] that we will hereinafter be used for any developmental purposes. Indeed, now we can proudly say that we [as a nation] have reclaimed the Abbay River” (translation mine) (Ethiopian Broadcasting Agency 2020).

The narrative of a win-win solution has been serving as the basis for foreign policy instruments as well as informing the negotiation positions of the Ethiopian government. This fact is reiterated by one senior Ethiopian Diplomat who stated a “win-win negotiated outcome has always been our guiding principle and it deeply reflects the official position of the Ethiopian government, because it is concordant with the principle of equitable and reasonable utilisation of the Blue Nile” (Anonymous 2021). And as the GERD discord continues, the narrative of ‘It is My Dam’ has gained more traction.

For its part, Egypt has argued that any utilisation of ‘its water’ tantamount to causing harm to its well-established national interests. More specifically, it asserts that more than 100 million people are entirely dependent on the Nile water for their survival and the GERD poses an existential threat (Foreign Ministry of Egypt 2020, 2). It has become a common practice that whenever negotiation processes falter or when the Egyptian elites believe that domestic pressures are mounting, they frequently revert to their extreme positions of historical and natural rights and the doctrine of territorial integrity by activating what (Senn and Kornprobst 2016) calls ‘background knowledge or ideas’. In explaining this practice, William Davison has made the following observation:

“Egypt’s extreme positions could not be supported by neither the existing political dynamics nor by contemporary water discourses. Even though water security is more acute in Egypt than in the upstream countries, the claim of historical rights seems implausible. Actually, one of the major obstacles to resolving the dispute over the Blue Nile in general and the GERD, in particular, is the competing narratives which leave no room for compromises (Davison 2021).

Moreover, in tandem with the narrative of Egypt as Nile and Nile as Egypt, Egypt has been frequently linking the Nile issues with the broader regional security. In fact, it went as far as regarding any reduction in the flow of the Nile as an assault against the Arab civilisation and a plan to exterminate the Egyptian people by denying them the right to life (Egyptian Ministry of Immigration 2020). This has continued despite Ethiopia’s repetitive assurances that the GERD would not cause appreciable damages (and after all, GERD is a hydropower dam) and amid the unprecedented rainfall of the summer of 2020 that coincided with the first filling of the dam.



In general, both parties (especially Egypt) are caught up in their competing and at times, irreconcilable norms, and narratives, resulting in extreme polarisation.

#### *4.3. The GERD and Securitisation of the Blue Nile*

The securitisation of the Blue Nile has been there for millennia, as noted above. What the GERD brought about are the changing dynamics of the Nile hydro-politics and the escalation of the conflict owing to mutual securitisation processes. Even though the parties have been negotiating for many years to resolve the disputes pertaining to the operation of the dam, three outstanding issues—the filling period of the dam, mechanisms of mitigating prolonged drought and the future operation of the dam—still remain unresolved.

Significantly, following the construction of the GERD, the perception of the downstream countries (especially Egypt), has dramatically worsened, even though it was observed that “contrary to Egyptian and Sudanese perceptions, everyone would benefit from increased regulation of the Blue Nile flood in Ethiopia” (Whittington 2007, 112). If anything, this partly proves the important role perceptions play in foreign policy (Neumann 1996); (Herrmann 2013). One may argue that Egypt’s source of anxiety emanates from its historical insecurity concerning the flow of the Blue Nile. In this respect, it should be stressed that “all collective traumas have some bearing on national identity; they can either strengthen or weaken a group identity and either be unifying or fragmenting” (Tint 2010, 245).

Immediately following the commencement of the GERD in April 2010, Egypt threatened to defend its ‘national security’ by all necessary means, including destroying the dam and waging war. This statement infuriated Ethiopia and consequently, Ethiopia warned Egypt in the following words: “Nobody who has tried that [going to war with Ethiopia] has lived to tell the story. I don’t think the Egyptians will be any different and I think they know that” (Malone 2010). Then, the coming into power of the Muslim Brotherhood to power has further exacerbated the relationship. In 2013, Mohammed Morsi, the then President of Egypt, justified the morality to die while fighting for the Nile in his strong statement. He said: “If the Nile diminished by one drop, then our blood is the alternative” (BBC News 2013). Thus, by treating one drop of the Nile as constituting the corresponding blood of the Egyptian people and in total disregard for the rights of the upper riparian countries to use the shared resource, the Egyptian government had set the stage for the embattled relationship with Ethiopia.

Nevertheless, with the signing of the DoP in 2015, the relationship between the two countries has shown some sign of reproaching. This was achieved because of the depoliticization of the GERD whereby international experts were involved and more discretion was given to the technical and legal team. Unfortunately, this constructive engagement had only lasted for a short period as parties could not agree on technical issues. When the tripartite negotiation on the GER faltered in September 2019, the government of Egypt had fallen back to its default modus operandi; the threat of war. Ostensibly rebuffing Egypt's discourse of water war, Abiy Ahmed, the Prime Minister of Ethiopia, responded forthwith: "No force can stop Ethiopia from building the dam. If there is a need to go to war, we could get millions mobilised. But we should note that going to war is in nobody's best interest" (Aljazeera 2019). Until this time, Ethiopia has been on the defensive-only responding to Egypt's provocative statements and war rhetoric.

Needless to state, Egypt has been securitising the Nile through the narrative of 'Egypt's water', as noted earlier, whereby the Nile has been discursively equated with Egypt. But since securitisation does not happen in a vacuum, there have been enabling factors—the prevailing material condition, and the attendant discourses—that made it possible. The material condition is related to Egypt's high dependence on the water which comes from beyond its border (Stetter 2011, 450) that made the discourse of 'Nile as the matter of survival for Egypt' easily resonate with the general public. At different point in time, all the three elements for effective securitisation; context, audience, and power of agency (Thierry 2005, 171), were readily available for the Egyptian government to use. For example, concomitant with the construction of the GERD, there was a global discourse of water security, the domestic audience needed political change (the Arab Spring) and the seizing of power by military government brought water as a national security into the spotlight of the parliamentary debates, which was mostly used to divert public attentions (Maher 2013). All of these had culminated in the amendment of the constitution of Egypt, which incorporated the Nile water as one of the overriding national security (The Constitution of the Arab Republic of Egypt, 2014, Art.44) to be defended by all means.

On the media war front, the battle of narratives through what can be called the "politics of blaming" (Qiaoan 2020) has intensified. It gave a new impetus to the hitherto conventional mechanisms of securitisation. Cognisant of this fact, some argued that Ethiopia and Egypt are already at war through different means; a digital war or a war on cyberspace (Mersie 2020).The digital war employed strategies such as dissemination of facts and figures, sensational stories,

inundation of social media platforms with tailored messages and well-coordinated mis(dis)information campaigns. Among multiple ‘social media warfare’, the campaigns of *ItsMyDam*, *FillTheDam*, *EgyptNileRights* and *SupportEgyptSaveLives*, have been observed as the prominent ones. In one of the *ItsMyDam* campaigns, the symbolic value of the GERD was depicted as follows: “The GERD is not just a dam. It is the structure which symbolises the blood and sweat of millions of Ethiopians. It is not a mere water reservoir. It is the reservoir of history, survival, and life. It is a symbol of Ethiopian renaissance” (GERD 2020). A similar sentiment was reflected in *EgyptNileRights* campaign which asserted: “We appeal to the world to safeguard Egypt’s Nile rights. Egypt is the gift of the Nile. The GERD will jeopardise our right to survival” (Daily News Egypt 2020). These are just a glimpse of the wider digital wars.

In addition to the social media campaigns, regular debates, documentaries, and commentaries have dominated the major international media. Some of the headlines on the international media outlets read: “Will Egypt attack Ethiopia?”, “Could Ethiopia and Egypt go to war?”, “Egypt and Sudan Are Ganging Up on Ethiopia”, “Egypt and Ethiopia Are Heading to Conflict over the Dam Dispute”, and “Water Conflict between Ethiopia and Egypt Will Destabilize the Entire Region.” What can be deciphered from these sensational stories are the perpetuation of the conception of ‘if no cooperation, then follows water war’ and the competition for framing the GERD dispute for effective securitisation.

At the same time, the power of the better argument was demonstrated at regional and international fora, albeit to a lesser degree. By seeking the intervention of the UNSC, Egypt wanted to internationalise the conflict, whereas Ethiopia argued for the doctrine of non-interference in domestic affairs and insisted on the resolution of conflict through ADR mechanism within the ambit of the AU. On the other hand, the government of Egypt argued before the UNSC that the unilateral filling and operation of the GERD causes significant harm and such an act “constitutes a clear and present danger to Egypt, which could have serious repercussions for that threaten international peace and security” (Foreign Ministry of Egypt 2020, 3) and called upon the international community to intervene promptly. In response to this, the Ethiopian government asserted that “The dam is a national project which is designed to help extricate the people from abject poverty and is *by no means a threat to peace and security*, justifying the invocation of the mandate of the Security Council under Article of 35 the Charter” (Ethiopian Ministry of Foreign Affairs 2020, 6)(emphasis added).

Most certainly, in regard to the cyberwar, both countries have ruthlessly been fighting the battle to winning the ‘hearts and minds’ of the international community. Indeed, Ethiopia was successful in keeping (or delaying) the matter outside the realm of the UNSC, which shows the rise and fall of narratives in international relations (Krebs 2015).

When these factors are coupled with the growing nationalistic passion from the Ethiopian side, one could hardly tell who is on the offensive or the defensive anymore. Therefore, the process of *mutual securitisation* has come into play.

#### 4.4. The GERD Dispute and Conflict Management

For more than a decade, various efforts have been made to resolve the dispute over GERD. To this end, political, legal, and technical avenues have been utilised, at different times and to varying degrees. Summary of the timeline on GERD controversies, negotiation processes and activities are provided in table 2 below.

Until the DoP was signed, parties had frequently engaged in political discussions. After many rounds of deliberations, involvement of technical teams and with the help of AU facilitation, Ethiopia, Egypt, and Sudan were able to craft the DoP, which was hailed as a great leap forward (Zeray Yihdego 2016). The DoP has envisaged dispute resolution mechanisms under Art. 10, with negotiation as the preferred avenue. Indeed, the parties have been negotiating in accordance with this stipulation and they commonly refer to the dispute settlement clause. However, its main achievement has turned out to be one of its major limitations in that the final arbiter of the dispute is the Head of States, the political body as opposed to the quasi-judicial or judicial organ.

Table 2: Major Timeline of the GERD Controversies

Year	Activities	Effects
2011	Construction of the GERD commenced, Egypt and Sudan objected to it.	Hostile reactions, securitisation strategies, war drums.
2012	The 3 countries (Ethiopia, Egypt, and Sudan) constituted a 10-member independent Panel of Experts (IPoE).	Confidence building measures undertaken.
2014	A Tripartite Committee was established to carry out studies on the Dam.	Political involvement, a move from experts to political decision-making.
2015	DoP signed; 2 companies (BRLi and Deltares) contracted to make EIA of the Dam.	Tensions diffused temporarily.

2017	The findings of the IPoE were submitted to the Tripartite Committee.	Egypt snubbed it as inadequate, biased, and shallow.
2018	National Independent Research Study Group (NIRSG) established; change of government in Ethiopia.	Tensions(disagreements)persisted but cooperation continued.
2019	Egypt put forward a unilateral ‘comprehensive’ proposal, which was rejected by Ethiopia; tripartite negotiation started.	Distrust came to the foreground.
2020	From October 2019 to February 2020, a total of 12 meetings were held under the auspices of the US Treasury; Ethiopia pulled out of the negotiation process; Ethiopia announced the filing of the Dam; the Arab League issued resolution; Egypt brought the matter before the UNSC; and the UNSC deferred the matter to the AU on June 29, 2020, with the consent of all parties.	The US government openly sided with Egypt and blamed Ethiopia, withheld grants from Ethiopia; securitisation became rampant, the AU brought the parties together, Ethiopia advocated for ‘African Solutions to African Problems’ whilst Egypt actively engaged in delegitimising the AU-led process.

In the absence of the River Commission endowed with conflict management mandates and the limited role of the NBI, as noted above, the better alternative to Head of States should have been international arbitration or activating the jurisdiction of the International Court of Justice as a last resort once other mechanisms are exhausted. This comes on top of the precarious normative status of the DoP itself. In any case, other than its contribution to the negotiation process and the relative change of discourses, the DoP has an inbuilt defect that compounded the GERD dispute.

A turning point in the resolution of GERD dispute occurred in October 2019 when the US offered “mediation” upon the request of Egypt (VOA News 2019). From the outset, there had been confusion as to the role of the US government; it was not clear whether the US offered active mediation, conciliation, or good office. Ethiopia officially accepted the dispute settlement process with the understanding that the role of the US government was merely facilitation or good office. However, during the course of the GERD negotiations, the Trump administration started acting as an active mediator. The U.S. team went as far as preparing a draft agreement and informing the parties to sign it. When the Ethiopian delegate had requested further consultations, the other two parties categorically objected to it and the US government accused Ethiopia of refusing to sign the draft agreement. Consequently, on February 12, 2020, the US Secretary of Treasury, Steven Mnuchin, issued a press release critical of Ethiopia and warned that the “final testing and filling of the dam should not take place without an agreement” (VOA News 2020). This was a clear

indication of the active mediation role of the Trump administration. After realising this, the Ethiopian government had officially pulled out of the tripartite talks.

A number of issues beg questions here. Why did the US government involve the Department of Treasury when mediation is within the mandate of the State Department? How could a mediator play the role of manipulator without ever defining his/her roles? And even then, how could it be possible to blame one party openly and selectively while appearing as a neutral mediator?

As pointed out in chapter one, it is not a necessary condition that the Mediator or a third-party intervener should act impartially at all times, for the *Insider-Partial Mediator* could be more effective than the impartial one under some circumstances.<sup>29</sup> Most certainly, the close relationship between the US and Egypt would have greatly enabled the former to extract necessary concessions from the latter because “closeness to one party implies the possibility of “delivering” it, thereby stimulating the other party’s cooperation” (Zarman 2008, 162). Instead, the main problem of the US-brokered mediation is the lack of a common understanding as to the role(s) of the mediator and the conditions attached to the negotiated outcome. For mediation, by its very definition, is a continuation of the negotiation process, the Trump administration must have respected that line unless agreed otherwise. In terms of leverage, which is one of the important elements of effective mediation, the U.S. government has both the carrots and sticks at its disposal to put necessary pressure on the parties. The involvement of the Department of Treasury in the mediation process was used to attain this very objective.

Nonetheless, economic incentives and manipulative strategies may not work for conflicts where sensitive matters embodying symbolic values, as is the case with GERD, are at stake. This is apparent from the official statement of the Ethiopian government and the public outcry that ensued immediately after the failed mediation (Seyoum 2020). To be more precise, the ‘U.S. factor’ has changed the tone of the official discourse; every Ethiopian citizen across the board started to say “with or without an agreement, we shall fill the dam. It is our dam and we do not need anyone’s approval.” It should be stressed that the primordial role of the mediator is to change the behaviour of disputants, but the Trump administration has failed to do so. Rather than bowing to the mounting pressures, the Ethiopian government instead used the opportunity to mobilise the public; rally-

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<sup>29</sup> From the vantage point of Ethiopia, it is plausible to assert that it accepted the “mediation” offer in order not to risk the U.S. align itself more with Egypt for the obvious fact that all successive U.S. administrations have been by far closer to Egypt than Ethiopia. Of course, that is what can be deduced from U.S. administration’s subsequent actions, notably the harsh chastisement of the Ethiopian delegates and suspension of aids.

round-the-flag effect. At any rate, the US-brokered mediation under the Trump administration has not achieved its intended purpose, if not worsen it.

Following the failed mediation process and amid the stumbling negotiations, the GERD dispute was brought to the attention of the UNSC by Egypt in June 2020, to put more political pressure on Ethiopia so that either (1) the parties reach a binding agreement on the filling and operation of the dam or (2) alternatively, the filling of the dam should be delayed until a binding agreement is reached. Concerning the involvement of the UNSC, two issues, namely the tension between the delegitimization of the regional conflict management efforts by Egypt and Ethiopia's insistence on the AU-led process and the politicisation of the Nile, are worth emphasising.

While Egypt submitted its complaint to the UNSC before exhausting the regional remedies as enshrined under Arts.33-37 of the UN Charter, Ethiopia advocated for the doctrine of African solutions to African problems and resolution of the outstanding issues through the ADR mechanisms as set out in the DOP and the UN Charter. This can be gleaned from the letter of the Office of the Prime Minister of Ethiopia, which stated: "the GERD is an affirmation of Ethiopia's commitment for equitable and reasonable utilisation of the Abbay River (...) The Prime Minister appreciates the resolve to African Solutions to African Problems undertaken through existing regional mechanisms..." (Office of the Prime Minister 2020). This preference for regional primacy for resolution of the GERD conflict was further reinforced by the AU Communique in the following words: "The meeting of the Bureau of the Assembly of the AU Heads of State and Government was held in a fraternal spirit guided by the principle of *Pan-African Solidarity* and Cooperation and the attendant desire to find an *African solution to an African problem*" (AU Commission 2020), emphasis added). The norm of Pan-African solidarity (Tieku 2013, 7) seems to have profoundly shaped the identity, interests, and dispute resolution preference of the vast majority of the African states, but Egypt has not fully joined the club due to its conflictual identities and since it actively advocates for the greater roles of the non-African actors (Davision 2021).

To sum up, the intractability of the conflict between Ethiopia and Egypt over the Blue Nile appears to be rooted in historical animosities, competing norms and conflictual identities, as compounded by securitisation of the Nile, particularly following the construction of the GERD.

## Conclusion and Recommendations

### *Conclusion*

This research has attempted to shed new light on the theoretical framework of conflict and cooperation among riparian states over transboundary water resources and prevailing approaches on water conflict management. I have shown that, although the existing theoretical frameworks can partly explain the transboundary water interactions, drivers of cooperation and conflict among the riparian states and mechanisms of managing water conflicts, they suffer from some limitations and hence, remain inadequate. The fundamental limitations of the existing theoretical frameworks and methodology are related to the narrow conceptualisation of (water) conflict management; taking norms, the identity and preferences of the riparian states, the discourse of hydrohegemony and water security as given; and the acute scarcity of interdisciplinary research on water conflict.

Consequently, I have argued that the conventional either cooperation or conflict approach to the management of water conflict falls short of accounting for multifaceted water interactions among riparian states: in reality, both cooperation and conflict co-exist (Mirumachi 2008, 312). Related to this and more problematic, is the conceptualisation of water conflicts in terms of conventional military confrontation or an all-out war. One could find numerous conflictual situations if water conflict is broadly defined to encompass low-intensity hostility, proxy wars, digital warfare, hegemonic and counter-hegemonic frictions, securitisation moves and protracted legal and political disputes. In this regard, the illustrative case study (the intractable conflict between Egypt and Ethiopia) has shown that a low-intensity conflict and limited cooperation can, indeed, co-exist. Yet, whether cooperative or conflictual relation prevails across time and space, depends on, among others, whether the water interactions is defined by hydrohegemony or hydroharmony, the nature of the conflict itself and conflict management approaches used.

With regard to the norms governing the Blue Nile, though contestation is a common feature of norm evolution and may even enhance the robustness of the emergent norm (Zimmermann 2020, 70), the norm of equitable, reasonable, and sustainable utilisation of transboundary rivers could not be institutionalised due to the fact that the contestation is more about the validity of the norm than to its discourse of applicability.

The water interactions in the Blue Nile are highly characterised by hydrohegemony, which is not benign and unstable in nature; growing water scarcity; lack of constitutive norms and strong



institutions, colonial legacies, unilateral utilisation of shared water, and incompatible state identities; and poor conflict management practices. On top of this, the NBI, which could have constrained the behaviour of the riparians, served as a forum for sustained dialogue, initiated joint development of projects and ultimately, contributed towards timely and effective management of conflicts, remained an illusion (at least as it stands now).

Within this context, the conflict between Egypt and Ethiopia in the Blue Nile Basin is not entirely surprising. An analysis of this conflict remains incomplete unless the factors that made it intractable and the applied conflict management strategies are carefully assessed. As I have tried to show in this research, in addition to the problems that bedevil the basin, negative historical interactions, competing narratives and norms and securitisation of the GERD, have contributed to the intractability of the conflict, and made it difficult to resolve.

Finally, three caveats shall be in order. Firstly, while I have broadly discussed how some riparian states were able to effectively manage water conflicts and analysed why Egypt and Ethiopia have, thus far, been unable to amicably resolve their differences, comparative case studies are necessary if general inferences are to be made. To this effect, further research projects need to be undertaken. Secondly, since the conflict is still ongoing and parties are engaged in an AU-led negotiation, a full assessment as to the efficacy of the conflict management strategies is impracticable. Finally, alternative explanations for some aspects of the conflict are plausible. I can suggest two of them here. The reason why the NBI has been paralysed can be *partly* explained from the rationalist point of view in the sense that, for Egypt (as a hydro-hegemon and a downstream country), supporting basin-wide governance appears to be irrational, albeit in the short-term. And the rationale behind the mutual securitisation of the GERD, can be explained through the lens of a *diversionary theory of conflict*, in which states use fear-producing and greed-producing targets (Jung 2014) in order to consolidate their own domestic power, which is the case both Egypt and Ethiopia. Although the diversionary tactics can be subsumed under the securitisation moves, as I have tried in this research, in-depth research into this issue is welcome.

## 5.2. Recommendations

Based on the foregoing discussions and concluding remarks, I put forth the following recommendations: -

- For the fact that “water and blood do not flow together,” countries in the Blue Nile Basin must engage in undertaking trust-building measures (Bar-Tal 2016) during pre-negotiation stages.
- Institutionalisation of norms on transboundary water use and conflict management is quintessential as the lesson from the Colorado River Basin shows.
- Bolstering the NBI, enhancing regional conflict management system, ratification of the CFA and devising a mechanism for cooperation and data sharing on the GERD can help parties engage in good faith.
- Integrated Water Management, the establishment of a community of interest, sustainable development of the scarce resource and greater public participation are the best practices from the Danube and Rhine River Basins that may help to bring about communality of interests and gradual regional integration among the riparian countries of the Blue Nile.
- Countries with acute water supply shortages may consider ‘virtual water’ (Allan 2003) or import of food to partly alleviate water insecurity.
- Treatment of the Nile as one basin, investing in efficient utilisation of the water resource and planning of joint projects would connect the Blue Nile riparian countries.
- Depoliticization of the water interactions, establishment of epistemic community, streamlining to people-to-people relationship and devise trust-building activities as the GERD negotiations suffer from chronic trust deficits (Davision 2021).
- At the domestic level, building a democratic system, changing narratives and revitalisation of economic sectors appears important.
- To move away from hydrohegemony and cultivate the culture of hydroharmony, international law plays a crucial role. As Zeitoun (Zeitoun 2008, 118) asserted, “for the ‘carrot’ of international law to be attractive, the ‘stick’ of hegemony has first to be removed.” But for this to materialise, irreconcilable narratives need to be tamed and the downstream countries, especially Egypt, have to acknowledge the legitimate rights and needs of the upper riparian countries fully and unequivocally.

## Glossary of Terms

**Conflict:** it is commonly defined as a process in which one party perceives that its interests are being opposed or negatively affected by another party.

**Conflict Management:** refers to a broad range of strategies to contain water conflicts from becoming destructive and mechanisms to resolve disputes between riparian parties, including but not limited to, negotiations on water use treaties, the establishment of institutional framework, a stipulation of dispute settlement mechanisms and third-party interventions, where necessary.

**Equity:** refers to the tenets of justice used to interpret vague or absurd legal provisions to ensure a fair outcome for the disputant parties.

**Hydro-harmony:** this is a term coined by the author of this research and it refers to a state of affairs whereby the conflicting riparian states move away from hydro-hegemonic order to a mutual and sustainable co-existence with each other and in harmony with the ecological system through an innovative basin-wide water management system.

**Hydro-hegemony:** the situation where one riparian state becomes politically dominant within the river basin and controls the means and manner of utilisation of the shared water.

**Mediation:** refers to a process in which a person or an entity, called a mediator, intervenes in the ongoing dispute between two or more parties to help the parties identify and frame the issues and suggest possible options to resolve the disputes.

**Norm:** collective expectations about proper behaviours for a given identity, amongst which a legal norm is the highest and most consolidated form of social norms with a binding effect on the members.

**Proxy War:** a war instigated by a major (regional) power in which it does not directly involve and the relatively weaker power, with its interests, triggers a war with another state according to the terms and conditions laid down by the major power (the principal) and the proxy (the agent).

**Riparian States:** are states within the transboundary river basin through whose territory the river traverses, irrespective of their contribution towards the river and the extent of utilisation of the resource by a respective state.

**River Basin:** refers to a drainage system constituting surface and underground waters forming one hydrological unit and shared by different parties for multiple uses.

**Securitisation of water:** the discursive construction of water issues or disputes as an existential threat that should be dealt with immediately and through extraordinary means, which may include going to war.

**Transboundary Water:** means any surface or ground waters that mark, cross or are located on boundaries between two or more States.

**Treaty:** is an agreement between two or more states which stipulates the obligations incumbent upon the parties to it and governed by the VCLT.

**Water Security:** refers to the capacity of a population to safeguard sustainable access to adequate quantities of acceptable quality water.

**Water Conflict:** a conflict between two or more riparian states arising from and in relation to the use of transboundary water that falls short of direct military confrontations.

## **Annexes**

### **Annex 1: Sample Semi-structured Interview**

#### **Semi-structured Interview for the Research (Thesis)**

My name is Mr. Moges Teshome, a postgraduate student at Vienna School of International Studies and I am currently conducting a research entitled “Management of Conflict Over Transboundary Water Resources: The Case Study of Ethiopia and Egypt in the Blue Nile Basin”. And I need to reinforce my findings by the opinions of experts from both countries with a view to seek scientific body of knowledge and reach at objective analysis.

Therefore, thank you for agreeing to participate in this semi-structured interview and for taking your time to provide your valuable insights. As you may be aware of, there is a longstanding dispute between Ethiopia and Egypt in regard to the effective utilisation of the Nile River. Accordingly, your answers and perspectives will help me better understand the causes of the conflict and how to manage it. Hence, please take your time and try to provide your answer as detailed as possible. You may skip the questions not relevant to your background or profession.

Q: 1: What is your name and the most appropriate profession? (e.g., Researcher, Political Analyst, Diplomat, Policy Advisor, Lawyer, Journalist, think thank group, etc). Please provide.

Q: 2: Based on your answer to the above question, what is your previous experience in relation to the Nile Issues? Please describe it briefly.

Q.3: How do you think the Nile River should be utilised and shared? (e.g., Multilateral cooperation, unilateral appropriation, joint projects, etc)

Q.4: Which international law rule(s) or doctrine(s) do you think governs or ought to govern the effective utilisation of the Nile River among the riparian countries and why?

Q: 5: Do you think Egypt’s claim of ‘acquired and historical rights’ over the Nile River justified by the contemporary international law and international relations theories, norms, or rules? How do you reconcile it with the norm of “equitable, reasonable and sustainable use’ of international river? Please explain your answer.

Q.6: Do you think ‘water security’ should be considered as a national security? If yes, do you believe it may be justifiable to resort to use of force in order to resolve the water use related disputes, if amicable means of resolving dispute fail to produce acceptable outcome?

Q.7: In your view, what is the main factor (e.g., scarcity of water, historical animosity, hydro-hegemony, or any other considerations) that makes cooperation between Ethiopia and Egypt



# The Grand Ethiopian Renaissance Dam (GERD)



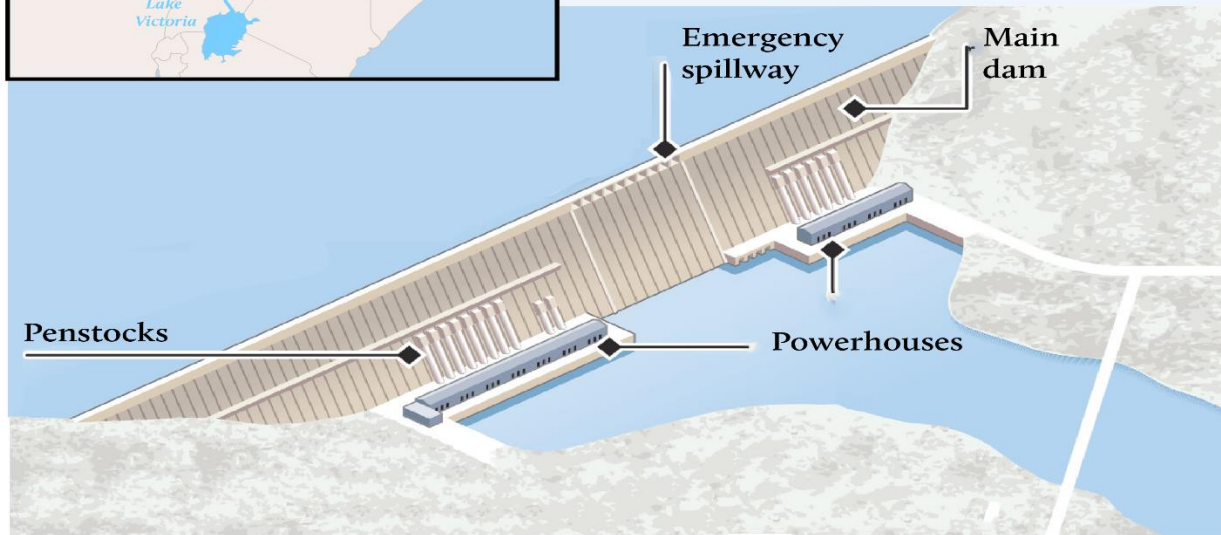
**Construction:** Construction began in 2011 and it is now 70% complete. Once finished, it will be the most powerful hydroelectric dam in the Africa

**Estimated Cost:** \$4.6bn

**Location:** 15 km east of Sudan's border

**Reservoir:** The reservoir will be bigger than Greater London, covering an area of 1,874 km<sup>2</sup>, with total and active storage volumes of 74 billion cubic metres

**Capacity:** The dam has a capacity to generate 6,000 MW of electricity



Source: Google maps, Ethiopian government



[middleeasteye.net](http://middleeasteye.net)

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