

Analysis of Past agreements on the Nile in View of the Law of Treaty and the CFA

Nebiyu Tedla May 2nd 2013

The use of the Nile River has for centuries been monopolized by the lower riparian countries that claim 'historic right' over the waters. The hegemony over the Nile Waters has been under these countries, thus building tensions among the riparian countries. The upper riparian countries which are sources of the water were for long alienated from their own vital resource.

Colonial treaties signed between the colonies and their 'masters' as well as treaties made among themselves are often mentioned as the legal foundation of their right to monopoly of the Nile waters by Egypt and Sudan. The upper riparian countries, especially Ethiopia, strongly reject these treaties and label them as nullified and as having no legal effect on the use of the Nile.

The debate over the use of the Nile still continues. However, upper riparian countries are gaining momentum in advancing their position and there are signs that lower riparian countries, particularly Sudan, have started to listen to the arguments of the rest, and even to go as far as backing some projects on the Nile.

Though the Nile case is made more complex due to political factors involved, it would appear important to view the debate from the perspective of international law. In this regard, the law of treaties and the international legal framework will be discussed with the view to better understand and explain the issue. The claims of each side will then be analyzed in the context of the law of treaties and the Cooperative Framework Agreement.

The Nile River Basin

The Nile River is the longest river in the world. Running through 6695 km, the Nile is a major trans-boundary water in the globe. The Nile river Basin is a confluence of the Blue Nile stemming from Lake Tana in Ethiopia and the White Nile, stemming from Lake Victoria in Uganda. The Ethiopian waters constitute by far the greater share of the Nile.

The Nile and its tributaries flow through eleven countries, Burundi, Democratic Republic of Congo (DRC), Egypt, Eritrea, Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania, and Uganda. The Basin is home to different people and culture, and over 350 million people live around. The fact that the Nile Water is the lifeblood for the people who live around it makes the cooperation and interactions among the riparian countries complex.

In terms of jurisdiction and development, the Nile has been cited as one of the few international river basins with legal arrangements for sharing the waters, and has at times been portrayed as a possible model for other international river basins.

With regards to the use of River Nile, there is a huge imbalance as the lower riparian countries utilize the most of it; and the upstream countries that remained arms-crossed for centuries due to various factors such as the level of economic development and political will to do so. At the very beginning of the twenty-first century, Ethiopia uses less than one percent of the Nile basin waters, while Egypt uses 80 percent. According to the World Bank in 1997, the waters of the Nile probably constitute Ethiopia's greatest natural asset for development.

Negotiations on the river Nile: Past and Present

The geographical configurations of the Nile River has made that all riparian societies and countries are inextricably bound together by a common reliance on the shared waters of this great river. Unfortunately until very recently for too long, all of these countries have given priority to the pursuit of their divergent interests and their own agenda. The downstream nations, on one hand, have insisted on maintaining their 'historical' and 'natural' rights on the basis of colonial and unilateral agreements. The upstream countries, on the other hand, have asserted their sovereign right to utilize the water resources so long as the waters emanate from their territories and flow through their territorial jurisdiction. The all-encompassing negotiations that have resulted in the Cooperative Framework Agreement signed by almost two third of the negotiating countries reflect all of the upstream and downstream positions that still need to be harmonized.

According to Yacob Arsano, Nile expert in Addis Ababa University ,it is important to note that current controversies about the use and management of the Nile all originate in colonial and neocolonial assertions about the alleged geopolitical interests of the parties concerned. All of these players strive to control the Nile waters from the downstream vantage point and to perpetuate the alienation of the upstream nations from their legitimate national rights and interests.

Riccardo Petrella, Professeur émerite at the Brussels University of Louvain argues that the water security of one nation cannot be maintained at the expense of the water security of all the other nations in the basin. This position was formalized in the common commitment of all the Nile basin states to the establishment of the Nile Basin Initiative as an interim institutional mechanism that could work toward creating a formal treaty that would ensure the equitable and reasonable utilization of the shared waters of the Nile in perpetuity. Such commitments of all (or most) of the Nile basin states reflected the realization that they, as countries, had finally come to an age that colonial and postcolonial 'water lordism' had finally been old-fashioned.

For the past two hundred years, numerous interested parties, the majority of whom were representatives of colonial powers, negotiated among themselves about the rights and ownership of the Nile. Since all previous negotiations and the agreements that arose out of

them, were biased in favor of downstream interests, such agreements have resulted in varying degrees of tension and hostility and in unsustainable assumptions about the use and management of the shared waters of the Nile. In spite of this, the present hope is that current negotiations about the establishment of a Cooperative Framework Agreement (CFA) will pave the way for future mutually beneficial agreements and sustainable cooperative projects.

Colonial Agreements

During the last decade of the 19th century and in the first two decades of the 20th century, the colonial powers negotiated among themselves over the Nile waters in the spirit of the Berlin Conference of 1884–85. But none of these negotiations took any cognizance of the inherent security, rights and interests of the basin countries themselves.

The 1891 Anglo-Italian Protocol

In terms of the 1891 Anglo-Italian Protocol, Great Britain and Italy demarcated their 'respective spheres of influence in North-Eastern Africa'. This agreement allowed United Kingdom to maintain control over the headwaters of the Tekeze (Atbara) River.

The 1906 Tripartite agreement between Great Britain, France and Italy

In a secret tripartite agreement between Great Britain, France and Italy in 1906, the latter two countries completely ceded all Nile basin interests to the British.

The Agreement between King Leopold II of Belgium and Great Britain

The colonial ruler of Congo, King Leopold II of Belgium, formerly agreed with the British that he would not attempt to construct any structures (such as dams or other irrigation facilities) on the Semliki and Isango rivers. These inter-colonial agreements and protocols gave Great Britain a controlling influence over the Nile waters. In spite of the fact that the Ethiopians resisted these claims and the Egyptians made it clear that they were inimical to British rule, a succession of United Kingdom governments continued to play a dominating role in the Nile basin during the first half of the 20th century.

The Anglo-Egyptian Agreement of 1929

After the formal independence of Egypt had been recognized by the United Kingdom in 1922, the High Commissioner of Great Britain in Cairo, in an Exchange of Note with the Chairman of the Council of Ministers of Egypt recognized the 'historical and natural rights' of Egypt over the Nile waters. None of the upstream riparian nations was even mentioned or considered in this assertion of presumptive 'rights'. Not even Ethiopia – at that time, long independent of foreign rule – was consulted or briefed in this comprehensive assumption of rights between Britain and Egypt. Since all the other countries that should rightly have been consulted about this far reaching agreement were still under colonial rule, they were given no say whatsoever over the water resources that the Nile conferred on them because of their proximity to its waters.

The Egyptian-Sudanese Agreement of 1959

The negotiation process that culminated in the 1959 Agreement for the Full Utilization of the Nile Waters was stimulated in the 1940s when the Sudanese rejected the 1929 Anglo-Egyptian agreement that allowed the Sudan to use only what was 'left over' once Egypt's needs had been fully satisfied. Various Sudanese politicians persisted in demanding a

modification of the 1929 Agreement, which was widely perceived by the Sudanese as being too restrictive of the Sudan's obvious claims to fair usage of the water of the Nile.

According to this agreement, only Egypt and Sudan were legally recognized for the use and ownership of the Nile waters. In terms of the agreement Egypt would be allocated a lion's share of the available 55.5 bcm of the water while Sudan was to be allocated 18.5 bcm.

The 1993 Framework for General Cooperation between Egypt and Ethiopia

Signed in 1993 in Cairo between Egypt and Ethiopia, it was the first bilateral framework for cooperation regarding the Nile issues after the colonial period. It was signed by the late Ethiopian prime minister Meles Zenawi, and former Egyptian president Hosni Mubarak. The framework stipulated that future negotiations between the two countries concerning the utilization of the waters of the Nile, would be based on the rules and principles of international law.

The Cooperative Framework Agreement (1999-2010)

Recognizing the challenges facing the Nile basin countries over decades and appreciating the benefits of cooperation, various initiatives have been undertaken within the basin over the past 30 years. In 1967, the Hydromet Project was launched with the support of the UNDP and the World Meteorological Organization to foster joint collection of hydro-meteorological data in the Equatorial Lakes region. In 1983 in Khartoum Sudan, Undugu (Swahili word for brotherhood) under the aegis of the then OAU was launched to foster cooperation in the Nile Basin on infrastructure, environment, culture and trade.

In 1993, the Technical Cooperation Committee for the Promotion of Development and Environmental Protection of the Nile Basin (TECCONILE) was formed in an effort to focus on the development agenda. Also in 1993, the first series of 10 Nile 2002 conferences, supported by the Canadian International Development Agency (CIDA) were launched to provide an informal mechanism for riparian dialogue as well as with the international community.

In 1997, the World Bank, UNDP, and CIDA began operating in concert as "cooperating partners" to facilitate dialogue and cooperation among the riparian countries, creating a climate of confidence within which an inclusive mechanism for working together could be established. In 1998, all riparian countries except Eritrea joined in a dialogue to create a regional partnership to facilitate the common pursuit of sustainable development and management of the waters of the River Nile. On 22 February 1999, the Council of Ministers of Water affairs of the Nile Basin countries (Nile-COM) agreed to form the transitional mechanism for cooperation, the Nile Basin Initiative (NBI), in dare salaam, Tanzania. Accordingly, the Office for the NBI Secretariat was opened in Entebbe, Uganda.

The goal of the NBI is "to achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources". The cooperation in the Nile Basin includes two parallel processes: a) the NBI, which is a transitional institutional mechanism; and b) the negotiations for a new legal and

institutional Cooperative Framework Agreement (CFA) that, once concluded, will provide a permanent status to the Cooperative Institution.

The CFA

Whilst the implementation of the NBI Strategic Plan has been in progress, the Cooperative Framework process began to prepare legal and institutional modalities for Nile cooperation and was formalized in a project document signed in September-November 1997. This document established the Nile Basin Cooperative Framework Project. In the same year, a Panel of Experts consisting of three person teams from each country (typically senior government lawyers and water resource specialists) was formed to start developing the cooperative Framework, reporting directly to the Nile-COM.

In June 2007, in Entebbe, Uganda, during its 15th meeting, the Nile-COM concluded negotiation and agreed on all articles of the draft Cooperative Framework Agreement, except the one on water security under Article 14(b). The issue of water security under Article 14b became clear that the differences that remain were very significant, and reflected an underlying difference through the 10 years of negotiations. The Nile-COM suggested that the pending Article be referred to the heads of state of the riparian countries for consideration.

After a long discussion, the Nile-COM, with the exception of Egypt (Sudan was not present), resolved that option three presented for discussion on article 14b be adopted and that leaves the draft cooperative framework agreement as a clean text ready for presentation to the riparian countries for signature and ratification to enable the establishment of the Nile River Basin Commission.

During the Sharma El Sheik meeting Egypt strongly attacked the agreement that has been achieved through all inclusive negotiations over the past 11 years. The seven upper riparian countries mindful of the sustainable use of the Nile River, which is being threatened by ever increasing water demands due to population increase, environmental degradation, and climate change have therefore, decided that the CFA be open for signature for a one year period, starting 14 May 2010, and resolved to sign the Agreement.

The CFA was officially opened for signature on the 14th of May 2010 at Entebbe. Four riparian: Ethiopia, Rwanda, Tanzania and Uganda signed the Agreement on this very first day. Five days later Kenya joined them. Burundi also joined the signatories. South Sudan and The Democratic Republic of Congo are expected to follow suit.

The Nile River Basin Cooperative Framework Agreement (CFA), as provided in its preamble, is a framework agreement to strengthen cooperation and govern relations among the basin countries with regard to the Nile River Basin to promote integrated management, sustainable development, and harmonious utilization of the water resources of the Basin, as well as their conservation and protection for the benefit of present and future generations. The CFA provides for the establishment of a permanent Nile River Basin

Commission through which member countries will act together to manage and develop the resources of the Nile.

The CFA also provides the rights and obligations of the riparian states, which are based on the cardinal principles, among others, of equitable and reasonable utilization, obligation not to cause significant harm, prior notification of planned measures and water security of each riparian state. (Draft CFA, 2010, preamble) The signing of the CFA is a significant development in the process of negotiations on the utilization of the Nile Waters. For the upper riparian, the signing of the CFA marks the realization of a goal toward which all the riparian's have been negotiating for over a decade.

The signed Framework Agreement governs the relationship among the riparian countries, with regard to the harmonious utilization of the shared Nile Water resources, their conservation and protection. The CFA is expected to enter in to force when two-third of the riparian countries signatories to the agreement ratified it. However, as the new comer South Sudan has not yet signed the framework along with the DRC, the prospect of it seems to take some time to finalize.

The law of treaties

Article 2(1)(a) of the 1969 Vienna Convention on the law of treaties (VCLT) defines a treaty, for the purposes of the Convention, as 'an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation'.

Article 9 of the 1969 Vienna Convention provides:

- 1- The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.
- 2 -The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

Article 9(2) describes what actually happens at most modern conferences (in earlier times unanimity was the normal practice), but each conference adopts its own rules concerning voting procedures, and there is no general rule of customary law, voting procedures; Article 9(2) therefore represents progressive development rather than codification. The adoption of the text does not, by itself, create any obligations.

As to article 11 of the Vienna convention on the law of treaties, Consent to be bound by a treaty may be expressed in many different ways: by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

A treaty normally enters into force as soon as all the negotiating states have expressed their consent to be bound by it but the negotiating states are always free to depart from this general rule, by inserting an appropriate provision in the treaty itself. Thus, the entry

into force of a treaty may be delayed by a provision in the treaty, in order to give the parties time to adapt themselves to the requirements of the treaty (for example, in order to enable them to make the necessary changes in their municipal laws). The treaty may provide for its entry into force on a fixed date, or a specified number of days or months after the last ratification.

With regard to treaties and third States, the general rule is that a treaty creates neither rights nor obligations for third states (that is, states which are not parties to the treaty). It is provided that a treaty binds only the signatory states holding the exceptions provided under the Vienna Convention of Art.35.

Past agreements on the Nile in view of the Law of Treaties

The body of water law governing international fresh water river basins is relatively new. The Convention on the Law of the Non-navigational Uses of International Watercourses adopted by the UN General Assembly in May 1997 is weak. Countries surrounding international river basins tend to disagree about water law and the Nile Basin is no different.

According to Aaron Tesfaye, a political scientist of William Paterson university The 1997 convention defines and makes distinctions between the concept of “reasonable and equitable use” and the obligation not to cause “appreciable harm”. Upstream countries insist on the principled demands for “reasonable and equitable use” and “full utilization”, while downstream states call for the refrain from causing “appreciable harm” and adhere to “historic rights”.

The Nile Basin is characterized by absence of multilateral treaties or customary rules to govern the utilization and management of its waters.

The law of treaties stipulates that only states party to a treaty shall be bound by the provisions of the treaty. In this regard, the states parties to a given treaty have the obligation to respect the letter and spirit of the treaty and abide by its consequences. This also relates to non-signatory states but which later agreed to abide by the rules and principles of the said treaty by accession or any other formal form of expression of consent there to.

States not party to a treaty, in any form as discussed above, shall not be bound by the treaty in whatever way. The provisions and statements of the treaty do not relate to them. Therefore, parties to the treaty or any third party can not in any way oblige them to act according to the treaty, or hinder them from pursuing their own agenda on the issues treated in the signed treaty by quoting the same.

The colonial treaties on the Nile water which are signed by different parties at different time are not binding on all the Nile riparian countries for the reason that the upper riparian countries have never signed and ratified nor acceded to those treaties.

Egypt and Sudan have been insisting that they hold full authority and monopoly over the waters of the Nile; and for this they present as legal evidence the colonial treaties they signed with their colonial master, the UK. They do not stop there, but expect upper riparian countries to observe this 'right' fully. They are in effect saying that no other country can touch the Nile waters except them.

Fasil Amdetsion a scholar of Harvard Law School and advisor to FDRE state minister for foreign affairs, Egypt's claims of the 1929 Agreement have continued validity and its applicability to former British colonies is based on rather tenuous legal grounds. Standard principles of state succession in public international law militate against it. Many of these countries today invoke the Nyerere doctrine, which hold that colonial agreements are null and void except they enshrine principles required by international law. The Nyerere doctrine is really a re-articulation of the older and well accepted *tabula rasa* doctrine under which "successor states do not inherit obligations arising out of the treaties concluded by their predecessors. Indeed the 1978 Vienna convention on the succession of states in respect to treaties enshrines the tabula rasa doctrine in Article 16.

Once they achieved independence, Tanzania, Uganda and Kenya decisively rejected all Nile water agreements to which they had not been party and any other agreements or understandings that were prejudicial to their sovereign rights and national interests. They also explicitly declared that they would not sanction any Nile waters agreements that Britain had concluded when their countries were under colonial rule.

The 1959 Agreement was made between independent states. What makes this agreement different from its predecessor, the 1929 Agreement is it makes a reference to the right of claim of these. What makes this agreement different from its predecessor, the 1929 Agreement is it makes a reference to the right of claim of the other states of the basin in the future. Interestingly, the parties to the Agreement wanted to take into their own hands the future share of the other states in the basin. In this attempt they ruled that "once other upstream riparian states claim a share of Nile Waters, both countries (Egypt and the Sudan) will study together these claims and adopt a unified view thereon".

With this respect Ethiopia and other Nile riparian States can invoke the Harmon Doctrine to argue in favor of the principle of "absolute territorial integrity" which is linked to traditional notions of sovereignty. Under this approach States are taught to have exclusive, unrestricted, and all-encompassing sovereignty over the rivers traversing their boundaries. Adherence to this rule of customary international law is not without precedent. India invoked it in its dispute with Pakistan over the Indus, Lebanon in its row over the Yarmouk basin and Israel after 1967, Fasil Argued.

Both Egypt and Sudan argue that all Nile riparian states must abide by the agreement's terms despite the fact that no upper riparian state was a party to the 1959 agreement. The upper riparian states had a good cause to object the agreement's validity. No single upper riparian country was a signatory to the agreement and none was consulted in the negotiation leading up to the agreement. As per article 34 of the VCLT, "a treaty does not

create obligation or right for a third party without its consent". Ethiopia could also avail itself of this argument to repudiate the 1959 agreement, since it was an independent state not represented by Great Britain in negotiations .

The 1959 agreement does not accommodate the interests of all riparian States since it is bilateral and remains effective only between them. The agreement runs, therefore, counter to fundamental principles governing uses of international water resources.

As one might have expected, Ethiopia rejected both the negotiation process and the subsequent bilateral agreement to which the negotiations gave rise because this agreement deprived it of its sovereign rights and interests. The Ethiopian government's criticism of the downstream governments' exclusionary basis of the treaty approach was reflected in the words of the Emperor Haile Selassie himself when he outlined his country's intentions and plans.

As an adjunct to the words of the Emperor, the Ethiopian Government submitted a circular *aide memoire* to the diplomatic community resident in Cairo, explaining Ethiopia's legitimate rights and interests in the following way:

"... Just as in the case of other natural resources on its territories, Ethiopia has the right and obligations to exploit the water resources of the empire [Ethiopia] ...for the benefit of the present and future generations of its citizens ... in anticipation of the growth in population and its expanding needs. The Imperial Ethiopian Government ... reasserts and reserves now and for the future, the right to take all such measures in respect of its water resources ... namely those waters providing so nearly the entirety of the volume of the Nile..."

Ethiopia was never party to the said treaty and the treaty cannot be legally binding on it. According to the law of treaty, it is unambiguously clear that the provisions and articles of the mentioned treaty do not relate to Ethiopia. Ethiopia has therefore no obligation whatsoever to obey to the dictates of the treaty, and that Egypt has no legal basis to claim otherwise and expect Ethiopia to behave the way it wants it to.

As states not party to an agreement are free to do whatever is in their national interest, notwithstanding the observance of international law, Ethiopia maintains the right to utilize the Nile waters which emanates from its territory. No foreign force can tell it to do this and that on an issue it never came in to agreement to abide by.

What Egypt can lawfully do is to demand Ethiopia and other upper riparian states to ensure that any prospective project on the Nile does not harm the interest of the Egyptian state and people. And this is being handled by Ethiopia as it is engaged in trying to explain to Egypt and the international community the win-win nature of projects on the Nile and the unprecedented benefits these would entail. It also has already established an

international panel of experts to see the impact of the Grand Ethiopian Renaissance Dam, the biggest hydroelectric project in Africa.

Other than the colonial treaties, arguments forwarded by Egypt include the ill-perceived notion on its part that it has the “historic right” to use the Nile only for itself. The international law does not give it such rights as referred to “historic”. It is nothing other than a mere political motto that is aimed at confusing the international community and influence negotiations on the Nile.

Egyptian authorities have been the most vocal in support of the historic right and prior appropriation doctrine which enshrines the principle of first come-first served. but, this doctrine has had limited acceptance within international treaties such as the International Law Commission's draft (Later adopted by the General Assembly in 1997) of the Law of Non-Navigational Uses of International Water Courses.

Though the 1993 framework of cooperation agreement signed between Ethiopia Egypt indicated the basis for future negotiations, it failed to provide detailed rules. The fact that the "no harm" principle was part of the agreement, it is argued that it was not the only principle on which water divisions would be based since the rules and principles of international law are excluded. Hence, the agreement can be said entirely self-serving, fostering competition rather than cooperation.

Colonial treaties in view of the CFA

The signing of the CFA is a significant development in the process of negotiations on the utilization of the Nile Waters. For the upper riparian's, the signing of the CFA marks the realization of a goal toward which all the riparian's have been negotiating for over a decade. The signed Framework Agreement governs the relationship among the riparian countries, with regard to the harmonious utilization of the shared Nile water resources, their conservation and protection.

Unlike the previous colonial and bilateral agreements on the Nile, the CFA takes care of both the upstream needs and the concerns of the two downstream countries by anchoring itself on the twin principles of equitable and reasonable utilization and the obligation not to cause significant harm, respectively. (Draft CFA, 2010: Art5) It, therefore, believed not threatens the water security of any riparian state. It brought a new platform for the better utilization of the river and partakes more riparian countries (Ethiopia, Kenya, Uganda, Rwanda, Burundi and Tanzania). On the other hand, Egypt and Sudan wanted a sub-article to be included in the CFA to maintain the status quo of the monopoly of the Nile waters for Egypt and Sudan as had been established by the colonial powers in 1929 and by the Egyptian-Sudanese bilateral agreement of 1959.

However, the seven upstream nations consistently reiterated that they do not accept neither the letter nor the spirit of the colonial or any subsequent agreements that denied their sovereign rights and legitimate national interests on their Nile waters and, further made it clear that they wouldn't have negotiated if it were to accept those agreements through the back door

in the name of new negotiations. As a result, Egypt and Sudan rejected the Cooperative Framework Agreement they negotiated with other riparian for over ten years and finally signed by the six upstream countries because it did not include the so-called “acquired rights and current uses” proclaimed by Egypt and the Sudan.

The colonial treaty and the CFA are treaties that has been signed on the issue of the utilization of the Nile River but the problem arises with the diversity of the signatories (the lower riparian on one side and the upper riparian on the other side). Art 30(2) of the VCLT provides that, when a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail. With regard to the colonial treaty and the CFA even though they are successive treaties on similar issue, the parties that have signed them are totally unlike that makes the issue not to fall and be administered with this very provision.

According to the definition provided by the VCLT, a treaty, in order to come into existence there must be an agreement between states. In contrast, all colonial treaties signed by different countries at different times like the colonial treaty signed by England and Egypt in 1929 which gives recognition for the “Historical and Natural rights” of Egypt over the Nile River and the 1959 Egyptian-Sudanese term of agreement on the allocation of the Nile River doesn’t give recognition to other riparian countries. On the other hand, the CFA is more providing the forum for agreement for the majority of the riparian countries.

Conclusion

The Nile and its tributaries flow through eleven countries, Burundi, Democratic Republic of Congo (DRC), Egypt, Eritrea, Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania, and Uganda. It is the lifeblood for the people who live around it which make the cooperation and interactions among the riparian countries complex.

Different treaties have been made by diverse parties since the colonial era upon the issue of the utilization of the Nile water. Those treaties has been points of disagreement for the upper and lower riparian because of the fact that the colonial treaties are considering the interest of only Egypt mainly and Sudanese a little bit which totally neglects interest of other riparian countries. Now a days, natural and historical rights vs sovereign rights to utilize the water resource are the major causes of the conflict over Nile. The CFA on the other hand is about the fair and equitable utilization of Nile River by all the riparian countries. These treaties are discussed with regard to the laws of treaty.

The colonial treaties on the use of the Nile are exclusive to the lower basin countries and do not accommodate the interests of the upper riparian states. This has been a source of tension and a hindrance in the quest for mutual cooperation among the basin states. Reaching a comprehensive agreement is therefore, the call of the time with the view to break the impasse and come up with possible solutions that would ensure a win-win situation. Such a mechanism could be found in the CFA, and it is high time that all concerned states adhere to it.

Some scholars argue that the lower riparian States' claims of historical rights, and upper riparian adherence to principles of absolute sovereignty, brought about an irreconcilable difference. The answer may lie somewhere in the middle. The notion of "equitable utilization" in the face of trans-boundary resource disputes appears to attract growing support. Equitable utilization which takes in to account issues of scarcity, a resource's location, populations' varying needs, is part and parcel of the Helsinki rules and the 1961 Salzburg Resolution on the Use of International Non-Maritime Waters.

The writer can be reached at the following email address- n_tedla@yahoo.com