

## **Why Ethiopia Rejected the validity 1929 and 1959 Agreements?**

**By: Memar Ayalew Demeke, 17 June 2013**

The Nile river, being international and trans-boundary in nature, has been the subject of various agreements. However, there is no internationally agreed up on treaty on the management and utilization of the Nile River which secures the benefit of all riparian countries. Therefore, the legal instruments for the utilization and the management of the water consists disputed bilateral agreements concluded amongst the basin countries. The treaties and legal regimes regulating the use of Nile River can be divided into different categories. For instance, Yacob Arasano in his book *“Ethiopia and the Nile: Dilemmas of National and Regional Hydro-politics, 2007:95”*, divided the agreements related to the utilization of the river in to three categories based on historical sequence. These are:

1. Agreements between colonial powers. This category consists of the Anglo-Italian protocol of 1891, The 1906 agreements, The 1925 Anglo-Italian agreement and The 1934 Agreement concluded between Britain and Belgium.
2. Agreements between colonial powers and regional states. It includes the 1902 Anglo-Ethiopian Agreement, The 1929 Agreement signed between Britain and Italy and The 1952 Agreement.
3. Agreements between independent states of the basin. In this category one can three treaties such as The 1959 Agreement signed between Egypt and The Sudan, the 1993 Ethio- Egyptian Agreement and the Comprehensive Framework of Agreement (CFA) signed among the seven basin countries in 2010. The bilateral agreements in the first and the second category signed were primarily initiated by the then colonial powers.

The colonial powers which had involved in the making of the agreements were Britain, France, Italy and Belgium. It is important to look the colonial possession these countries in the political map of the Nile basin to understand why they engineered the agreements. Britain had colonized Egypt, Sudan, Kenya, Uganda and Tanzania. It had a greater interest on the Nile waters. Italy had territorial possession in the Horn of Africa such as Eritrea and the Italian Somaliland in Somalia. France had a monopoly over the present day Djibouti. Among the Nile basin countries, Ethiopia is the only which has never been colonized by any colonial master of the region. The overall intension of the colonial powers in signing the agreements was to exploit the resources to the extent possible for their colonial project.

In 1929, for instance, Britain and Egypt signed an agreement on the utilization of the Nile water to exploit the river independently. They concluded this agreement without consulting the upper riparian countries. It gives a veto power to Egypt. Article 4 sub article 2 of this states that:

*“Except with the prior consent of the Egyptian Government, no irrigation works shall be undertaken nor electric generators installed along the Nile and its branches nor on the lakes from which they flow if the lakes are situated in Sudan or in countries under British administration which could jeopardize the interest of Egypt either by reducing the quantity of water flowing into Egypt or appreciably changing the date of its flow or causing its level to drop.”*

This agreement granted absolute control of the Nile water to Egypt. It also recognizes the right of Egypt to supervise any activities in the entire basin and its “historical rights” in utilizing the water of the Nile. Moreover, the agreement imposes legal obligations on the upper riparian countries to respect Egyptian’s “natural rights” on the utilization the Nile River.

Ethiopia rejected the legal effect of this agreement at least two for main reasons. **First**, Ethiopia had never been colonized by Great Britain or part of any British colonial territory, and therefore, it does not produce direct or indirect legal consequences on Ethiopia and its inviolable right to use the Nile water. **Second**, Ethiopia, which contributes 85% of the Nile water, had never been consulted when Britain and Egypt sign the agreement. It excluded Ethiopia. Thus, the agreement has no any legal effect on Ethiopia. It can never compromises the rights of Ethiopia to utilize the river for its socio-economic development. It is up to the legitimate right of Ethiopia to exploit the Nile water to improve the life conditions of its own people without requesting permission from any external power. Ethiopia as an independent state has a sovereign power to decide on its domestic and external matters and utilize its resources.

The 1959 agreement was another treaty on the Nile River. It was signed between the United Arab Republic of Egypt and the Republic of Sudan on the Full Utilization of the Nile Waters. The agreement, similar to the 1929 agreement, allocated majority of Nile waters to Egypt. It was allowed to take the lions share. The Second Part, Article 4 of the agreement, for instance, mentions that the following.

*“.....By adding these shares to the vested interests, the total share of the net output of the Nile after the Sudd el Aali*

*reservoir has gone into full operation will be 18 billion ½ for the Republic of Sudan and 55 billion ½ for the United Arab Republic”.*

This article, in other words, has allocated 55.5 billion cubic meters of water to Egypt, 18.5 billion cubic meters for Sudan, and 10 billion cubic meters to evaporate in the Sahara desert to keep the ecological balance of the environment. The hilarious part of this agreement is that it had never gave a little of water to Ethiopia which contributes the majority of the water while allocating water to the downstream countries (Egypt and Sudan).

Like the 1929 agreement, the legal consequence of the 1959 agreement is totally unacceptable to Ethiopian. Successive Ethiopian governments have clearly expressed their stand as to the invalidity and unfairness of this agreement to the upper riparian countries. The Imperial government of Haile Sellassie, for instance, declared Ethiopia's sovereign rights to utilize the water of the Nile within its territorial limits by sending a diplomatic mission to Egypt in 1957. Emperor Haile Sellassie announced that *“Ethiopia has the right and the obligation to exploit its water resources of the Empire, for the benefit of the present and future generations of its citizens, in anticipation of the growth in population and its expanding needs and, therefore, reassert and reserve 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”.*

The EPRDF government of Ethiopia also rejected the validity and the legal sanction of the agreement. The government foreign policy document clearly mentions that *“The agreement signed between Egypt and The Sudan in 1959 does not provide for Ethiopia to use even a single liter of water. The Egyptian mentality is framed by the mantra “if Ethiopia uses the water, Egypt will be endangered. If Egypt is to use it, Ethiopia has to take her hands off the water.” The Egyptians scenario regarding the Nile is a classic example of the politics of “I win if you lose”, the zero-sum game.”* According to the document, making reference to the terms of 1959 agreement to use the Nile water is unacceptable and against international conventions.

The terms of the 1959 agreement cannot be applied on Ethiopia and upstream countries. This is to say, the principle of *“Pacta sunt Servanda-every treaty in force is binding upon the parties to it and must be performed by them in good faith”* cannot be imposed on Ethiopia and other

upstream countries. Ethiopia has been rejecting the 1959 agreement arguing that any treaty or agreement will not be binding because Ethiopia has never given its consent. Ethiopia's argument is based on international conventions. The 1969 Vienna Convention on the Law of Treaties provided a legal guarantee to Ethiopia and the upstream countries which enable them to reject the validity and binding nature of the agreement. Article 11 of the Convention states that: *"The consent of a state to be bound by the treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means is so agreed"*.

Ethiopia's rejection of the agreement is absolutely right and acceptable in that, **First**, Ethiopia was not represented by any authoritative authority (Head of State, Head of government, Head of diplomatic mission, representative accredited by states to an international conference or to an international organization or one of its organ) or person who had "full powers" in the formulation and making of the agreement. **Secondly**, Ethiopia is not the signatory of the agreement. **Thirdly**, Ethiopia has never given its consent to the agreement in question. . In this connection, Article 34 of the Convention states that *"A treaty does not create either obligations or rights for a third state without its consent"*. This implies that any treaties signed between states, if they do not receive the consent of various states, their provisions will not be binding upon them. One can argue that Ethiopia's rejection of this agreement is correct. Its argument has international legal grounds.

Therefore, the 1929 and 1959 agreements cannot be applicable on Ethiopia and the legal consequences are baseless. The agreements cannot be table for negotiation. Recognizing and negotiating on these agreements is end of mutual benefits. In modern diplomacy, it is ridiculous to negotiate on old-fashioned colonial agreements of the Nile River where upstream countries had not given any chance of participation. Let me conclude by Egyptian proverb saying "Repetition teaches (even) a donkey".

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