

The Post-1990s Water Diplomacy in Eastern Nile Basin: Changing the Power Asymmetry

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Abstract: There have been diplomatic tensions and instances of threatening and concerned rhetoric between the countries of the Nile, especially between Egypt, Sudan and Ethiopia. The main purpose of this paper is to examine the post 1990 water diplomacy in eastern Nile River basin in relation to changing the power asymmetry. For a long period of time in eastern Nile basin Egypt used to contain and influence the behavior of Sudan and other Nile River riparian states, particularly over issues pertaining to the utilization of the Nile's waters. This paper argues the post 1990 multi-lateral water diplomacy especially NBI reduce the established power asymmetries, while contributing to the "sustainable socio economic development of all riparian's through the equitable utilization of, and benefit from, the common Nile basin water resources. On the other hand, following NBI, Ethiopia shifted from 'silent partner' to 'bargaining power' so that it involved through a successive water deal among the nine countries. Consequently, in 2009, the discussions among the Nile riparian are on establishing a cooperative framework agreement reached and the constructions of Ethiopia Grand Renaissance Dam on the Blue Nile near the Ethiopian- Sudanese border transforming Ethiopia from "silent partner" to "influential partner and it is considered as a historic event not only for Ethiopia but also for the members of NBI's. Drawing from lesson this article suggested that the Egyptians stand might not be consistence and the discussions and negation of Ethiopia on GERD project increasingly signaled a more flexible position on cooperating with the upstream states and harnessing its own water resources, away from Egypt.

Keywords: Eastern Nile, Cooperation, Tension, Trans-Boundary, Diplomacy, Riparian

1. Introduction

Cross-boundary water is one of the most desirable natural resources that should be utilized based on the principle of equity and the rules of international law [29]. Water diplomacy provides a means to prevent and mitigate water-related political tensions by making simultaneous use of water know-how and diplomatic tools and mechanisms [30]. Water diplomacy, according to Hefny, and OSCE can help in reconciling and balancing these interests and negotiate solutions for people residing in different countries and advocating for more efficient water allocation in various sectors [56, 28] integrate prevention and peace promotion, and water resources management (WRM) with the security question as the aim of water diplomacy.

The Nile is the longest river in the world (6,825 km), its basin connecting 11 riparian countries: Egypt, Ethiopia, Sudan, South Sudan, Burundi, Eritrea, Kenya, Republic of

Congo, Rwanda, Tanzania and Uganda. The Nile has two major tributaries: the Blue Nile, originating in Lake Tana, Ethiopia; and the White Nile, originating in Lake Victoria and the mountains of Burundi, Rwanda and the DRC. Both the Blue and the White Nile meet at Khartoum in Sudan to form the main body of the Nile, which then flows through Egypt to the Mediterranean) [57, 45]. The right to utilize Nile water has historically been dictated by three bilateral treaties the 1902 Nile Agreement, the 1929 Anglo-Egyptian Agreement and the 1959 Agreement on the 'Full Utilization of the Nile Waters' [35]. Egypt has maintained that the 1929 and the 1959 agreements are legally binding and resisted any alteration to the status quo. Ethiopia and other African states gaining independence from colonial rule were however unwilling to acknowledge the colonial era agreements that unfairly offer advantage to Egypt over the share of water. These states have challenged the past agreements calling it non-binding due to their non-representation as colonial

subjects. Ethiopia, the most important water producer in the basin, was not a signatory and refused to acknowledge it [45, 16]. Sudan did not, however, come well out of this bargain and resentment against the 1929 agreement grew until it was rejected in 1958 by the government of the newly independent Sudan. 1959 agreement also reinforces Egypt's claim to "natural and historic" rights [45, 10].

In the late 1990s, representatives from all 13 Nile Basin countries came together to draft a comprehensive and fully inclusive legal agreement on the 'equitable and reasonable use' of the Nile the Nile Basin Cooperative Framework Agreement (CFA). Despite ten years of negotiation (2000-2010), the countries were unable to reach consensus. The downstream countries (Egypt and Sudan) rejected the CFA and refused to sign. The upstream countries, on the other hand, signed a version of the CFA that included all the articles to which the countries had agreed to during negotiations, while leaving the most contentious article for future resolution [13, 54].

In 2011, a year after the CFA negotiations ended, Ethiopia announced unilaterally to construct the Grand Ethiopian Renaissance Dam (GERD) on the Blue Nile. Ethiopians perceive this dam to be critical in terms of their economic development, poverty alleviation, and regional influence [54]. Egypt, after the GERD dam was announced, challenged Ethiopia's efforts by internationalising the dispute, raising environmental concerns and issuing military threats. Despite these political threats and tensions, Ethiopia has continued the construction of the dam [55]. On the contrary, there are still ongoing efforts in making multilateral and bilateral agreements so as to achieve cooperation between Eastern Blue Nile countries. One of these developments is an agreement declaring to end the water dispute on the Nile River signed on March 2015. This agreement mainly focuses on the GERD signatories have reached a 'Declaration of Principles' on regional cooperation, sustainable use of the water resources on the Blue Nile, peaceful settlement of disputes, and principle of developing trust among those nations [20].

The main purpose of this paper is to examine the water diplomacy since 1999 to present over trans-boundary water management along the Eastern Nile River basin. The paper theoretically approaches is based on hydro-hegemon theory; to describe the legitimacy of power asymmetry; to justify the transition of tension and cooperation issues during negotiations. My research focuses on these two Nile-based negotiations: the basin-wide Cooperative Framework Agreement drafting and negotiation process (1997-2010) and the ongoing three-country (Egypt, Sudan, and Ethiopia) project-specific negotiations on the filling and operation of the Grand Ethiopian Renaissance Dam (2011 – present). In so doing, the contribution of this article to the current state of art in the discipline of water management will be two-fold: first, a conceptual contribution to the advancement of water diplomacy over the management of potential water conflict and second, an innovative empirical insight of cooperation over the specific context of the Nile Basin, currently

considered one of the most dynamic trans boundary context worldwide.

2. Conceptual Framework

The term water diplomacy is often used interchangeably with 'water cooperation' or 'trans-boundary water management', although there is a fine, yet rarely specified line between them [32]. According to UNESCO [32] water diplomacy has been defined as "the practice of arriving at water management for complicated water cases. It is one of the modern diplomatic styles that rely on a much dense approach to diplomacy towards water crises particularly; that the negotiator groups identify water problems, recognize the points that are for intervention, and suggest potential and sustainable solutions which takes into account all points of view, target values, areas of ambiguity and uncertainty, as well as urgent changes in terms of competition between countries in the areas of water, knowing the needs required in each case" [32]. As the research [27] (2015) elaborate; water diplomacy can lead to water cooperation. In cases where riparians are in a cycle leading to conflict, water diplomacy can disrupt escalation and reduce tensions. In the same sense, water cooperation could easily lead to water diplomacy, as a natural continuation of friendly relations between two states, or with a third party acting as a catalyst to capitalize on water-related coordination in expanding the range of issues on which states work together [32].

Water diplomacy is considered in both policy arenas and by the academic community [40, 31]. Some important conceptual contributions include the Multitrack Water Diplomacy Framework [23] the Water Diplomacy Framework [40] as well as initiatives linking water and peace (Blue Peace, 2020). The main water diplomacy actors typically consist of riparian country governments and related intergovernmental organizations such as river basin commissions, often coupled with other actors across multiple diplomacy tracks [23]. Water diplomacy can be both preventive in nature and also used as an approach for conflict management. As a preventive tool it can support trust-building, provide a platform for joint studies and collaborative risk assessments by riparian countries [32, 56] combine various elements of water diplomacy highlighting first of all its preventive nature or peaceful resolution of conflicts related to water availability, for the purposes of deterring conflict and promoting cooperation [17]. For water diplomacy processes to be effective they need to be flexible enough to respond to changing political landscapes and climate change. Many water diplomacy processes take place in a context of so-called informal diplomacy with non-state actors (Track 2) or with official actors in informal roles (Track 1.5). These tracks are complementary to the formal processes (Track 1) and tend to be most impactful if they are well linked. Effective and sustainable solutions require better cooperation across and between actors and sectors; foremost the political and technical tracks of trans-boundary water management [31].

Framework of Hydro-Hegemony

The concept of “hegemony” was brought to academic world by the famous Italian theoretician Antonio Gramsci. For Gramsci, hegemony is a political power that flows from intellectual and moral leadership, authority or consensus as distinguished from armed force.¹ A state is considered hegemonic if it is able to assume a regional leadership position by means of its authority rather than solely by force or intimidation [58]. The degree of hegemony obtained depends on a dominant states capacity to legitimize its position by exploiting its existing material and non-material capabilities. For this reason, regional power relations cannot be considered static among other the existence of resistances as well as counter hydro-hegemon applied by countries’ [14]. Hydro-hegemony simply refers to hegemony at the river basin level [59].

Hydro-hegemony simply refers to hegemony at the river basin level [59]. The Eastern Nile Basin is known by the existence of power asymmetry, in which Egypt has remained as the hydro-hegemon [8]. The Eastern Nile Basin, the hydro-hegemon (Egypt) had been suppressing upstream infrastructural development while it has improved its own hydraulic infrastructural development in the Basin by means of resource capture, reclamation, etc. [59]. In post 1990, the weaker riparian’s in the Basin (mostly Ethiopia) started to challenge Egypt’s hydro-hegemony to further bring more equitable and reasonable regime in the Basin. Ethiopia has been applying various counter hydro hegemonic mechanisms in order to challenge and further to change the existing status quo in the Basin [10, 11]. In order to examine the changing “power relation” in the Basin and the “counter hydro-hegemony” applied by Ethiopia, this paper examine the post 1990 water diplomacy in eastern Nile basin.

3. The Post-1990 Water-Diplomacy in Eastern Nile Basin

For a long period the Power asymmetry is a characteristic of the Eastern Nile Basin. Egypt has been able to establish a hydro-hegemonic standing in the basin relative to other riparian countries and to preserve the regime that best served its national interests over the course of many years because to a combination of stronger material, negotiating, and ideational strength [41, 42]. Egypt avoided attempts at multiparty accords while retaining power through bilateral treaties. Ethiopia, on the other hand, was for a while the “silent partner” in Nile hydropolitics [49]. Several factors explain Ethiopia’s absence from the race for utilization of the Nile water. There have been protracted internal conflicts, a lack of financial resources, weak institutions, a lack of priority and strategy for the water sector, and dependence on rain-fed agriculture which has reduced the need for irrigation [12, 38]. However, following the post cold period Ethiopia

has begun contesting and challenging Egyptian hegemony in the Nile basin [9].

Ethiopia first joined a multilateral cooperative institution in the Nile basin in the middle of the 1990s [52, 53]. The multinational negotiations on the Nile River that took place after 1990 are therefore characterized as “a conflict between hegemonic powers and non-hegemonic riparian’s.” The new cooperation process started in the bring a novel approach to Ethiopia towards cross-border cooperation with two parallel water diplomacy tracks: a political track, driving negotiations for a CFA, which would support the establishment of a functional basin-wide framework for legal and institutional arrangements; and a technical track, with the NBI as a transitional cooperative arrangement. Egypt was obliged to return to the negotiating table, which confirmed the legitimacy of the Sudan and Ethiopia [21]. On the other hand, the multilateral shift away from Egypt’s hegemony drove the basin towards more genuine collaboration [22]. The following section describes the two-track approach adopted in the Nile Basin countries to change the hydro political relations and to develop their water resources.

3.1. Multilateral Water Diplomacy Along Two Tracks: CFA and NBI

Legal difficulties were purposefully disregarded in all previous cooperative initiatives in the Nile basin since they were focused solely on technical matters. Additionally, the institutional frameworks have failed due to the cooperative platform’s exclusivity and hegemonic bias [43, 2]. However, non-hegemonic riparian’s, particularly Ethiopia, have challenged the hegemonic status quo due to the shifting environment (internal, regional, and international) of the post-1990’s period. The intention behind Ethiopia’s decision to join the NBI was to create a parallel multilateral cooperative legal framework in the Basin, allowing Ethiopia to implement its long-held position in favor of “equitable and reasonable” utilization of Nile waters [52, 13]. The fact that Egypt and Sudan decided to talk with specific conditions in order to create a new legal and institutional framework that was started in 1997 gave Ethiopia a tremendous opportunity to bargain. As riparian’s started to bargain on an equal basis as a result of this scenario, new circumstances arose in the Nile Basin. As a result, Ethiopia and other upstream nations started to put legal concerns back at the top of the hydro-political priority list for the Basin [6].

The post 1990 water diplomacy in Nile basin is significant particularly for Ethiopia. It is self-evident in the past Ethiopia has been endowed only with the geographic power in the Basin. In order to challenge and eventually change the existing status quo in the Eastern Nile Basin (which favors Egypt), Ethiopia and other upstream states (non-hydro-hegemon states) applied various counter hydro-hegemonic mechanisms and strategies unilaterally as well as multilaterally [9-11]. One of these instances is the role the Ethiopia played as an instrument to convince the six equatorial Nile riparians to vote in favor of the draft CFA that validates the tenet called “equitable utilization” of water

¹ Antonio Gramsci developed the notion of hegemony in his critique of the deterministic economist interpretation of history.

resources. This agreement also counters and modulates the past agreements and treaties that confer Egypt and Sudan historical and acquired rights. Below this paper discusses the new all-inclusive multilateral cooperation process is initiated in Nile basin. The first track focused on establishment the Nile Basin Initiative, a temporary institution created to enable on-the-ground confidence building and basin-wide development and the second track focused on the need for a new basin-wide legal framework for 'equitable and reasonable utilization', known as the Cooperative Framework Agreement (CFA).

3.1.1. *The Establishment of Nile Basin Initiative (Since 1999)*

"Before the Nile Basin Initiative, no one would talk in meetings because of the suspicion. But now we can disagree without becoming enemies. We can move forward because we recognize that we are different, with different interests, so we need to try to harmonize them²."

The Nile Basin States have made a number of attempts at cooperation before the establishment of NBI. These efforts include Hydromet (Hydro-meteorological Survey of the Catchments of Lakes Victoria, Kyoga, and Mobuto Sese Seku), Undugu (1983–1993), and its replacement TECCONILE (1992–1998), which are similar to coalitions due to the specificity of the issues they address. Uganda, the Democratic Republic of the Congo, the DRC, Egypt, and Sudan were all included in Undugu. Egypt, Sudan, Rwanda, Tanzania, Uganda, and the DRC were all part of its successor, TECCONILE. Undugu and TECCONILE were both started by the Egyptian government. Ethiopia decided against taking part in TECCONILE and opted for an observer role in Undugu due to the extent of these cooperation agreements on a bilateral and sub-basin level. Therefore, Ethiopia disqualified itself from the procedure as well as possible hydro-coalition partners who did take part [16]. Egypt allegedly used a combination of threats and offers to affect the motivations of the members of both Undugu and TECCONILE, according to Underdal [46] referenced also by Andreas [4]. Additionally, Egypt was the one to spearhead earlier cooperative efforts, and their focus on technical cooperation resulted in the purposeful omission of legal difficulties.

The Nile Basin Initiative (NBI) was founded in February 1999 by the Nile Council of Water Ministers (Nile-COM) as a stand-in for TECCONILE. The NBI's mission statement reads, "To achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources" [34]. In contrast to prior cooperative institutions pertaining to the Nile river basin, the Nile Basin Initiative (NBI) is a new initiative. The NBI includes all of the states in the Nile river basin, which is the primary distinction. Ethiopia and Egypt made an official effort for the first time to work together, or at least negotiate,

on Nile-related concerns [44]. The NBI was intended to serve as a temporary framework for cooperation until a long-term framework for cooperation was constructed [10, 16].

The NBI is a project that resulted from years of altered political debate. It appeared that Nile collaboration was entering a new and more fruitful period with the NBI programme [10, 13]. The fact that NBI respects the principles of "equitable utilization" and "no appreciable harm" sets it apart from other systems. This is a crucial component that earlier joint efforts lacked since they were dominated by Egypt's lower riparian nations, which prefer to keep things as they are. In that it had support from almost all riparian governments and explicitly focused on issues of equitable water allocation, collaborative management, and resource development, NBI represents a shift from the prior tendency of unilateral usage and management of the water [26]. Securing the participation of all the states concerned in the Nile issues under the auspices of the NBI is a significant step in the direction of collaboration and changing the view of the ongoing disagreements, mistrust, and suspicion among riparian states that characterize the basin.

Increased confidence and cooperation through a Shared Vision Programme and financial assistance for national hydro-development through a Subsidiary Actions Programme are the two formal objectives of the NBI. Eight basin-wide projects made up the Shared Vision Programme, a US\$100 million grant-funded programme that operated from 2003 to 2012 and had as its goal the development of member countries' "trust, confidence, and capacity as well as the creation of an enabling environment for trans-boundary investments [51]. The Subsidiary Action Programmes were created with the intention of making 'on the ground' investments in agriculture, energy, environmental risk reduction, and river basin management. The projects were divided into two sub-groups based on the two main sub-regions of the Nile Basin. All projects pertaining to Egypt, Ethiopia, Sudan, and South Sudan—the nations that make up the Eastern Nile sub-basin—are included in the first, known as the Eastern Nile Subsidiary Action Programme (ENSAP). The Eastern Nile Technical Regional Office (ENTRO), established in Addis Abeba, Ethiopia, in 2002, is in charge of it. The Nile Equatorial Lakes Subsidiary Action Programme (NELSAP), the second programme, is in charge of all 170 projects involving the nations along the White Nile (Burundi, the Democratic Republic of the Congo, Kenya, Rwanda, Tanzania, Uganda, Sudan, and Egypt) [15]. The NELSAP Coordination Unit (NELSAPCU), situated in Kigali, Rwanda, is in charge of it. In the last 20 years, NBI has changed the basin. Additionally, the NBI's work has increased each nation's technical capabilities. Second, the Nile Decision Support System (Nile DSS), a software tool used by the member states to share information and collectively plan hydraulic projects along the Nile River, has been established to overcome the lack of data about the basin. Third, cooperation among the nations of the Nile Basin helped build mutual trust and understanding and helped make the advantages of cooperation more palpable [54].

2 Quote from Dr. Callist Tindimugaya, Uganda's Commissioner for Water Resources and Nile Technical Advisory Committee (Nile-TAC) member (World Bank 2015).

3.1.2. Legal Framework for Cooperation: The Cooperative Framework Agreement (CFA)

Although cooperative efforts to collectively manage the Nile water resources started in the late 1960s, the drafting of the Nile Basin Cooperative Framework Agreement in the late 1990s represented the first basin wide and inclusive effort to create a legal framework that would guide all hydraulic development in the Basin [52]. Parallel to the workings of the NBI the member states were negotiating a new Cooperative Framework Agreement (CFA) which when concluded would enable the establishment of a permanent cooperation institution – the Nile Basin Commission (NBC). When and if the CFA is ratified by all basin states, the NBC will have legal and institutional authority regarding the use, development, and protection of the Nile water resources [10]. The CFA does not include any figures about water sharing. It establishes a framework for cooperation among the Nile River Basin states [50]. The CFA was designed to replace the treaties of 1929 and 1959 and to create a new form of cooperation within the Nile Basin. Despite ten years of negotiation, the countries were ultimately unable to achieve consensus on a single issue – Article 14 (b) on Water Security, a provision that outlines how the CFA will interact with prior agreements in the Basin. The downstream countries – Egypt and Sudan – wanted to protect their water security by maintaining the status quo (as defined by the 1959 Nile Agreement).

The negotiations began in 1997 and were completed in 2007. It has, however, not been accepted by all basin states. The main sources of disagreement are still the 1929 and 1959 agreements [25]. The Nile-COM approved Terms of Reference for a Panel of Experts (PoE), whose members were appointed by each of the Nile countries, to help write the initial text of the Cooperative Framework Agreement. The PoE met nine

times from January 1997 until March 2000. Informal discourse among the POE members was also encouraged by the UNDP and World Bank through funding their participation in the Nile 2002 series of conferences between 1997-1999 and through three basin study tours (of the Mekong, Gambia, and Senegal River Commissions). Presumably because the donors believed that regular, informal dialogue among the experts would help promote mutual understanding and build trust. The text of the CFA was largely informed by the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses, hereafter the 1997 UN Watercourses Convention or 1997 UNWC [54].

3.2. CFA Negotiation Process

The CFA process started in 1997 when the Nile Council of Ministers of Water (Nile-COM) established a Panel of Experts (POE) with the support of United Nations Development Program and the Canadian International Development Agency (CIDA). The POE was comprised of three (two legal and one technical) experts per Nile Basin country and tasked with drafting a Cooperative Framework to help the Nile countries establish a way of achieving equitable utilization. Twenty-five of the original drafted articles received reservations. The majority of negotiating and reservation behavior came from Egypt, Ethiopia, and Sudan. The POE met ten times during 1997 to 2000 and, drafted 36 provisions that outlined legal and institutional elements that would help ensure equitable utilization of the Nile Waters [54]. The following information about what took place during the eleven years of negotiation was informed by Nile basin officials, state ministers of water, and professional negotiators who were present at the negotiation table.

CFA Drafting and Negotiation Process

Table 1. CFA Drafting and Negotiation Process.

Date	Description	Number of individuals	Consensus building
1997	Panel of Experts (POE) drafted the Cooperative Framework.	Three experts per country; 2 international experts UNDP facilitator	Of the 36 provisions that are drafted, 17 are disputed.
2001	Transitional Committee (TC) converted the Cooperative Framework into legal text, the 'draft Cooperative Framework Agreement' (CFA)	Two legal experts per country 1 international legal expert UNDP facilitator	N/A
2003-2005	Negotiation Committee (NC) negotiated on the draft CFA from 2003 to 2005.	Five per country with 1 spokesperson 1 international legal expert World Bank facilitator	Of the 39 provisions, 8 remain disputed.
2005-2007	Nile Basin Council of Ministers of Water (Nile-COM) negotiated the disputed portions of the draft CFA.	NC members 8 Water Ministers 1 international legal expert World Bank facilitator	Of the 45 provisions, 1 remains disputed (Article 14 (b) on Water Security)
2009	A joint Negotiation Committee and Nile Technical Advisory Committee (NileTAC) team negotiated on the disputed portion (s) of the draft CFA	Nile-TAC: 2 experts from each country NC: ~40-50 individuals World Bank facilitator	Egypt raises three issues: existing agreements, prior notification, and amendment by consensus
2010	Final negotiations by the Nile-COM in Kinshasa, Alexandria, and Sharm El Sheikh.	Eight Water Ministers World Bank facilitator	Upstream/downstream divide occurs as upstream countries decide to sign a 'clean' draft of the CFA
May 19, 2010	CFA open for signature		Four countries (Ethiopia, Rwanda, Tanzania and Uganda) signed
June 13, 2013	ratification		Ethiopia ratified

3.2.1. *Egypt, Sudan and Ethiopia Disputed Position on CFA Drafted Provisions*

Egypt and Sudan defended the unfair status quo in an egotistical manner throughout the discussion process. Regarding the CFA, the first point of contention was that the downstream nations of Egypt and Sudan wanted to legitimize their use of the Nile by recognizing the 1959 Agreement, while the upstream nations, particularly Ethiopia, saw this as an opportunity to establish guidelines for fair water use in the Basin. The clause stating that "existing agreements which are inconsistent with the framework shall be null and void to the extent of their inconsistency" was accepted by all nations with the exception of downstream nations. This sentence has drawn objections from Egypt and Sudan, who instead advocated that "the cooperative framework shall be without prejudice to existing agreements".

The second disputed principle was that of 'equitable and reasonable utilization'. The POE originally recommended that this be defined by the same factors outlined in the 1997 UNWC. Ethiopia lodged a reservation, claiming that the criteria should be changed to account for "Nile realities." The third point of contention concerned Article 17 (the "Prevention of Causing Significant Harm" clause). Egypt requested that the phrase "obligation not to cause significant harm" be used in place of the current title, as it appears in the 1997 UNWC. Additionally, the POE said that "Nile Basin States shall... take all appropriate measures to prevent the causing of significant harm"; Egypt suggested tightening the language by changing the underlined text to "refrain from and prevent." Ethiopia wanted the clause to be completely excluded, while Egypt requested stronger language. Ethiopia maintained that because every country had the right to "equitable and reasonable utilization," the clause on "equitable and reasonable utilization" already guaranteed that countries would not severely hurt others. The 'duty of averting severe harm' placed an excessive amount of responsibility on upstream countries, according to their earlier criticism of the 1997 UNWC. In general, Egypt supported "no significant harm," whereas the upstream nations supported "equitable and reasonable utilization." [54].

The fourth disputed area was related to 'planned and existing measures' also commonly referred to as 'prior notification'. Article 12 of the 1997 UNWC is comparable to the original POE wording, but it does not include a specific process for exchanging information about proposed measures. Ethiopia has expressed disapproval throughout the negotiations and has demanded that all sections of article 8 be removed. According to the reasoning, the supply of "information and data exchange" as described in Article 7 is sufficient for the existing framework and the question of planned actions would only be brought up and relevant if fair water sharing that is acceptable to all countries is put into practice³. In short, Ethiopia pushed back on the inclusion of

this provision because it felt the procedures for 'planned and existing measures' put too much pressure on the upstream countries, and that the same practices were not being followed by downstream countries. The Egyptian and Sudanese members, on the other hand, suggested that Articles 11-19 of the 1997 UNWC be used in place of this provision.

The fifth and sixth disputed provision is 'Environmental Assessments and Audits' and 'Water Has a Social and Economic Value' – were major sources of dispute. '[t]he principle of environmental impact assessment of new actions and environmental audits of existing projects,' the original (POE) wording stated in reference to environmental assessments. Ethiopia wanted environmental assessments to be carried out in accordance with each country's national laws rather than being mandated by the Nile Basin River Commission. Egypt and Sudan wanted the principle to only be applied to proposed projects (i.e., omitting existing projects) and Sudan wanted it to only apply to proposed projects. Given that they can use the Nile to generate electricity for economic gain (via hydroelectric generation), it stands to reason that Ethiopia and Kenya both wished to emphasize the economic importance of water. Egypt, on the other hand, wished to omit the following phrase since it would have given priority to upstream water use: "whose utilization should give priority to its most economic use." [54].

The seventh point of dispute is on use of terms: Nile River Basin vs. Nile River System. Ethiopia's position is that both titles should be used appropriately dependent on the context, meaning that "Nile river system" refers to how the Nile's waters are used and their effects, while "Nile River basin" refers to the region's territories, protections, and conservation efforts. 'Nile River basin' is a term used in Article 3 of the original draught of the agreement. Reps for Ethiopia requested that any mention of "the waters of the Nile River Basin" be changed to "Nile watercourses." They fought for this in part to prevent Egypt from claiming that it was not getting its fair share of water by limiting the definition of water to blue water. Ethiopia intended to guarantee its own usage of the Nile, while Egypt wanted to uphold its ancient rights to utilize it.

3.2.2. *Signing and Ratification of the CFA: The Beginning of the End of Egyptian Hydro-Political Hegemony*

The Nile-COM May 22, 2009 in Kinshasa, DRC meeting was identified by many a major turning point in the CFA negotiations. It was during this time the 'upstream' and 'downstream' positions would be formally splintered [54]. Following, Kinshasa meeting the NBI Secretariat, Nile-SEC, prepared the CFA text for signature on July 3, 2009 and the Nile Basin countries were given one year from the Sharm el Sheikh meeting to sign the CFA. On April 13, 2010, Nile-COM met the day after the final Nile-TAC and Negotiation Committee meeting, in Sharm el Sheikh, Egypt. The Water Ministers of the seven upstream countries reiterated their position from the Kinshasa meeting. While the downstream

3 Ministry of Water Resource (May 1998). Supra Note 20, p 19; Minutes of the seventh negotiation committee meeting. Supra Note 23, Article 8 reservation Note.

countries pushed again for renegotiation of the three points – Article 14 (b) on water security, prior notification, and amendment through consultation. The upstream countries interpreted these actions as a strategic move by Egypt to stall the negotiation.

The lack of progress in establishing a permanent cooperative institution through the NBI caused four upstream states Ethiopia, Kenya, Tanzania, and Uganda to sign a new Nile Cooperative Framework Agreement (CFA) in 2010, and they were followed by Burundi in 2011. This was accomplished despite strong objections from Egypt and Sudan, the two states who significantly benefit from the status quo. The upstream states argue that the CFA of 2011 replaces the 1929 and 1959 agreements while Egypt objected and reacted with threats of violence [48, 4]. For the first time the upstream water producing states joined a coalition against the traditional downstream hegemon. Egypt and Sudan subsequently removed their membership from the NBI. This time Egypt is on the outside and its power to dictate the agenda and influence the discourse by threats and promises is reduced considerably [7]. In 2013 Ethiopia became the first Nile basin state to ratify the CFA, followed by Rwanda, and, most recently, Tanzania on March 26, 2015. Recently South Sudan has declared to join it and Democratic Republic of Congo is expected to join soon. However, Egypt and Sudan have still persisting not to sign the agreement with the aim of maintaining the status quo. Ethiopia had been playing a leading role for upstream states to come to negotiation and for the signing of CFA.

3.3. The Role of CFA and NBI in Shifting the Power Asymmetry Relation in Eastern Nile Basin

The development of the CFA (a legal framework) concurrent with the efforts to build trust through the work of the NBI (a transitional basin-wide institution) is the most important enabling factor for engaging all the Basin countries to cooperate for more than a decade. This two-track approach to water diplomacy in the Nile Basin that began after 1990. The CFA and NBI's formative years might be considered as the beginning of a counter-hegemonic trend in Nile Basin politics. It caused the upstream nations to reevaluate how the 1929 and 1959 treaties affected how the Nile's advantages were shared. The CFA itself can be employed by upstream nations [36].

Overall, the CFA is mostly viewed as the NBI's upstream riparians' counterpoint. As previously said, this change in geopolitical discourse was brought about by the CFA. As a result, CFA offers an equitable, just, and fair principle as an alternative to the unfair and dysfunctional principle of "acquired and historic rights." In this instance, CFA is involved in developing a narrative that challenges hydro hegemonic power. The adoption of the CFA is more about countering hegemonic value than legal value, according to Abadir [1] the "CFA is best explained as a first step to counter and undo the hegemonic actions of Egypt that have been instigated since the beginning of the nineteenth century," they wrote. The CFA's most crucial tenet is that

each nation is allowed to use the Nile's waters on its own territory as long as it adheres to several standards for fair and reasonable use [36]. Second, it will make it possible for riparian upstream to gather their resources and take part in significant hydraulic missions [1]. Furthermore, Salman [36] claims that the CFA helped balance the power by giving the upstream nations a voice. First and foremost, by bringing together multiple upstream states around a single objective, it has diminished Egypt's capacity to set the agenda. One may also argue that the alliance and their justification for equitable utilization provide upstream hydro-development more credence [24].

Egypt has significantly lost its power to influence upstream states' hydro-policy as a result of their signing the CFA. Ethiopia, on the other hand, who made the decision to stay outside of TECCONILE and Undugu, is now ideally located in this new alliance of upstream governments. Finally, it appears that the Sudan will renegotiate, which will cost Egypt a significant ally in the Nile Basin [4].

The combination of the aforementioned elements seems to have significantly strengthened Ethiopia's negotiating position. However, Ethiopia saw the CFA as a chance to change the geopolitics of the Nile Basin, and as a result, they had a say in the procedures that led to its implementation. The CFA and its provisions, such as article 14, to diminish the significance of the historical accounts of Egypt's and Sudan's right. Last but not least, the CFA offered Ethiopia more soft power by giving it a legal foundation on which to advance agendas and basin-wide discussions over the use of the Nile River.

3.4. The Commencement of GERD: The End of the Old Asymmetry Power Relations to Towards Balanced Power Relation in Eastern Nile

Ethiopia revealed its intention to construct the 6000 Megawatt Ethiopian Renaissance dam in April 2011. With a capacity of 63 billion cubic metres of water, the reservoir will be twice as huge as Lake Tana, the largest natural lake in Ethiopia [19]. The CFA's signing and the GERD's start were hailed as victories by hydro-hegemony researchers, who saw it as a "contestation of both the rules of the game and the sanctioned rhetoric underpinning the prior and long-standing hegemonic arrangement maintained by Egypt [58].

Building the GERD in particular was seen as a milestone that would end the era of "veiled" and "apparent" permission and shift not just the realities on the ground but also the discourse and agenda on hydraulic projects in the basin. In line with this assessment, other scholars variously described the signing of the CFA and the construction of the GERD as the culmination of 'an African spring' that would engender "more balanced power relations vis-à-vis the downstream riparian" [36], a 'revolution' that would help Nile riparian states transcend the 'hydro-political stalemate' and work for greater regional integration [47], and the beginning of a "end to Africa's oldest geopolitical rivalry" [18]. The unilateral construction of the GERD was viewed as a natural reaction to the failure to reach a compromise between upstream and downstream countries on a legal framework to organize the

utilization of water resources and to deliver tangible results from cooperative institutions. It was deemed an exercise of Ethiopia's right to use the water resources within its territorial jurisdiction in the interests of its nation [53, 33].

Besides Ethiopia's apparent hegemonic aspirations, this shift toward unilateral actions might also be fuelled by disappointment in the regional framework [13]. The GERD is an interesting case for evaluating counter-hegemony from a benefit-sharing perspective for two reasons. First, as noted earlier, the Nile River was studied as one of the cases of 'negative hydro-hegemony' where the long-standing hegemon, Egypt, utilized water resources at the expense of upstream riparian's. Given its unprecedented scale, the GERD constitutes a real challenge to this Egyptian hegemony and signals a remarkable rise in Ethiopia's potential for exploitation of the Nile water. The launch of the project cannot be seen in isolation from other significant changes in power relations in the Nile Basin over the last decade. It is particularly significant that the GERD was initiated just one year after five Nile Basin countries, including Ethiopia, signed the Cooperative Framework Agreement for the River Nile Basin (CFA), a step that Egypt regarded as a threat to its historical rights in the Nile water. Egypt's subsequent withdrawal from the Nile Basin Initiative, the regional platform established in 1999 for basin cooperation, and the freezing of plans for joint hydropower projects, are cited by Ethiopia as reasons for proceeding with the unilateral construction of the GERD.

The situation after the announcement of the commencement of the GERD started to change in the in eastern Nile Basin hydro diplomacy. In the aftermath of the 2011 Egyptian revolution, Egypt scrambled to react appropriately to Ethiopia's announcement of the GERD. A few weeks after the GERD's inauguration, an Egyptian Public Diplomacy Delegation visited Ethiopia. The following month, Former Egyptian Prime Minister Essam Sharaf traveled to Addis Ababa, Ethiopia and then hosted Meles in Cairo in September. Despite Egypt's initial surprise at the announcement of the GERD, Sharaf made a point to express his support for Ethiopia's right to develop and for regional cooperation on the dam: 'this dam, in conjunction with the other dams, can be a path for development and construction between Ethiopia, Sudan, and Egypt' [3]. On the other, hand, following the launch of GERD, Ethiopia has been tried to build trust in the early stages of the GERD negotiations in three ways. First, Ethiopia attempted to rebuild trust by emphasizing the possibility of a 'win-win' outcome for the GERD; Second, delaying Ethiopian ratification of the CFA (signaling a willingness to cooperate as a region) and establishing the IPoE. Ethiopia also gained Sudan's trust by conducting public consultations in Khartoum and by changing the dam's design to address Sudanese concerns about the structural integrity of the dam.

3.5. The Turning Points and Difficulties on the Negotiation Track of GERD from 2012 to Present

The three Blue Nile countries (Egypt, Ethiopia, and Sudan)

sent representatives to a meeting in November 2011 to establish an International Panel of Experts (IPoE) to review the dam design documents and studies carried out by Ethiopia to evaluate the safety and downstream effects of the dam. The IPoE, was composed of four international experts and two experts from each nation (for a total of six national experts), began meeting in May 2012. When the IPoE's Final Report was made public a year later, Egypt rejected it while Ethiopia and Sudan accepted it. The key turning points and challenges in the negotiation track are described here.

The International Panel of Experts (IPoE) in 2012: The IPoE marked the beginning of the negotiation process, and it was at this point that the three parties decided to form a panel with representatives from each of the three states as well as international specialists. Its job was to assess the harm caused by GERD and come up with solutions to lessen it. The panel's assessment finds no fundamental issues with the GERD's design, but it nonetheless suggests doing two more studies on its effects on Egypt and Sudan [5]. The IPoE's Final Report, released one year later, was accepted by Ethiopia and Sudan, but rejected by Egypt. As a result of saber rattling by Egyptian President Morsi, tension between the three countries quickly flared until early July 2013, when Morsi was overthrown and replaced by President El-Sisi. The negotiation process did not resume again until after President El-Sisi and former Ethiopian Prime Minister Hailemariam Desalegn met at the annual African Union summit in June 2014 [54]. In August of 2014, the three Ministers of Water agreed to establish a Tripartite National Committee (TNC) (comprised of four national experts per country) to select and oversee the work of two international consultants that would conduct the studies recommended by the IPoE.

The Tripartite National Council (TNC) in 2014: The TNC consisted of members from each country tasked with selecting international consultancy groups to conduct the IPoE-recommended studies. Five months later, the countries resumed discussions through the Tripartite Ministerial Meetings, but with one key change: the Ministers of Foreign Affairs were also now officially included in these meetings (i. e., now 6-party meetings). The TNC failed due to disagreements on selecting international consultants to conduct the studies. Egypt demanded the construction of the dam be halted until the studies were completed, a request that Ethiopia rejected [5].

The Declaration of Principles (DoP) in 2015: The Signing of Declaration of Principles Declaration of Principles (DoP) is a signed document between Egypt, Ethiopia and the Sudan on the 23 March 2015 for the first time in the history of Eastern Nile Basin, and seen as a step forward in enhancing cooperation in the Basin [37]. The DoP is a remarkable milestone in the relations of the Nile Basin states, following the failure of the Cooperative Framework Agreement (CFA) in 2010, which provided the first legal framework signed by Egypt, Sudan, and Ethiopia for Nile Basin management. The DoP reiterates the necessity of implementing the IPoE studies and commits the parties to peacefully resolving the conflict based on principles that recognise Egypt's and Sudan's water

needs. It also commits the parties to not cause significant harm and to equitably and reasonably utilise Nile waters. This was signed on March 23, 2015, by the three Heads of State – El Sisi (Egypt), Desalegn (Ethiopia), and al-Bashir (Sudan). The DoP diffused regional tension and reflected political commitment, at the highest levels, to reaching a peaceful solution to the GERD conflict [20]. The DoP also consists of Ethiopia's policy on trans-boundary water courses namely "equitable and reasonable utilization", "no significant harm" and "win-win" (DoP document).

The Declaration of Principles represents a compromise with some of the states in the Eastern Nile Basin. Because in truth, no nation ever received everything it asked for or consented to accept an absolute loss. It's interesting to note how similar many of the DoP's guiding principles are to those found in the Nile Basin Cooperative Framework Agreement [54]. The DoP thus includes some principles that strike a balance between the rights and interests of the signatories. As a result, a sizable portion of the proclamation deals with cooperation, fostering confidence, information and data sharing, as well as the peaceful resolution of disputes [20]. The DoP's signing can be seen as a development with the potential to ease the tension presently plaguing regional ties in the Eastern Nile Basin. And as a matter of fact, the DoP ought to be viewed as the signatories' expression of political as opposed to legal commitment [39]. Due to this, Ethiopia has succeeded in getting downstream states to ratify its long-held ideal of "equitable and reasonable" utilization of its trans boundary waters. This demonstrates how Ethiopia started to take advantage of the problems in the Basin once the GERD started. After the GERD's start date was announced, the Basin's situation began to alter. Above all, the Eastern Nile Basin states have agreed to compromise on their previous stances about the usage of the Nile by signing the Declaration of Principles over the GERD. Additionally, with the GERD project, Ethiopia has developed a very original and ground-breaking strategy for overthrowing the hydro-hegemonic order and establishing a Nile Basin regime with "equitable and reasonable" water usage [20].

The National Independent Research Scientific Group (NIRSG) in 2018: The NIRSG, a nine-party mechanism, was created to select international consultancy groups that would conduct the IPoE studies. The NIRSG made significant progress in discussing the procedures for the first filling. Although the Ministers again reached a deadlock, they agreed to create a National Independent Scientific Research Study Group, a group comprised of experts and academics from the three countries, to work on developing proposals for filling the dam in time for the adjusted date of the first filling (July 2018) [5]. The National Independent Scientific Research Study Group met for the first time at the start of June in 2018 and submitted their final report a few months later, on August 15. However, three main parties were also unable to reach a compromise on the long-term operation and coordination mechanisms of the dam. Egypt did not accept their recommendations and negotiations broke down again [54].

The Washington Round in 2019: Egypt invited the United States and the World Bank to the negotiations process as observers. Ethiopia withdrew from the process in 2020 and refused to sign the final US-proposed agreement that was drafted in Ethiopia's absence. The agreement sketches out the technicalities of the filling and the operations of the dam based on the positions of the three parties. Ethiopia later claimed it was technically impracticable and would severely limit the energy-generation capacity of the GERD. Ethiopia reluctantly participated in the US led discussion. It broadly agreed with the preliminary agreement over stages for filling the reservoir. It however backed out from the succeeding US led negotiations citing favoritism towards Egypt during the negotiations. Ethiopia claimed that the said proposal hinders use of the Nile waters within its territory. Ethiopia maintained its hesitation over internationalising the dispute and rejected arbitration by the World Bank earlier in January 2018 [5].

The process led by the African Union (AU) in 2020: After Egypt brought the dam issue to the United Nations Security Council (UNSC) in 2020. A UNSC session urged the three parties to restart talks within the AU's framework [5]. The negotiations were derailed by multiple rounds of talks that focused on the structural aspects of the process rather than the contentious issues. The first years of negotiations were spent on the creation of successive bodies tasked with the procedural aspects of conducting the IPoE studies. The IPoE studies have still not been conducted. Ethiopia has rejected an Egyptian request to halt the filling of the dam until an agreement is reached [3] and has proceeded with the second and third filling. The current negotiations on the GERD are at an impasse for two reasons. First, the countries are unable to agree on how to conduct the necessary studies needed to mitigate the downstream impacts of the dam. Second, they are unable to agree on how to fill or operate the dam [54].

4. Conclusion

This study attempted to examine the water diplomacy and tension in Eastern Nile basin from NBI to GERD projects. Accordingly, it argues the contemporary hydro politics of the Eastern Nile basin, Ethiopia challenged the Egyptian hydro-hegemony via 3 ways first by playing a leading role in the Basin's hydro-politics by bringing the legal issues of "equitable and reasonable" into the hydro-politics of the Basin. Second, Ethiopia has been leading the upstream states to a united front for the signing of the CFA. On the other hand, through the unilateral construction of the Grand Ethiopian Renaissance Dam Ethiopia have played crucial roles not only in challenging but also in foreshadowing the end of the inequitable trans-boundary water management. CFA has the role of breaking of hegemonic consent and transformative. Along to this, CFA has a role in creating counter hydro hegemonic narrative: downgrading the narrative of historical and acquired rights via narrative of equitable and reasonable utilization, securitization via de-securitization, win-lose via win-win, and you can live

without Nile via we need Nile for development. After the commencement of the GERD as a fact on the ground Ethiopia has also been able encounter against Egypt's hydrohegemony in a more coordinated manner (including proposing for the formation of the IPOE) in the hydro-political agenda of the Basin. As a result, Egypt began to negotiate with Ethiopia concerning issues related to the construction of the dam. And, further by compromising from its former stance as a sole player in the Basin it has signed the DoP concerning the GERD with Ethiopia and Sudan. This trend shows that a significant challenge to the established and stable Egyptian hydrohegemony by upper riparian states is leading to better cooperation record, at least seen in historical context. Thus, CFA and GERD foreshadow a new emergent order capable of superseding the existing inequitable hegemonic order. Nevertheless, three Blue Nile countries faced several challenges. Therefore, this study calls for: First, scientific communities within all three countries need to work closely with politicians to craft an agreement that is both technically and politically feasible. International experts can help to conduct some of the technical analyses to improve the decision making process.

Second, Trust building needs to occur, not only among negotiators and Heads of State, but also among the publics of the three countries. Media plays a critical role in improving the public's technical understanding of the potential distribution of costs, benefits, and risks of longer-term cooperation of the Blue Nile dams. Concurrently, efforts should be made to reduce Egypt's dependence on the Nile over time.

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