

**Validity of Colonial and Other
Agreements
And Inherent Rights of Upstream
Countries**

Nile Talk Forum

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RAMSAR and SUDD Wetlands

- What is RAMSAR or Wetlands Convention?
- SUDD: Since 2006
- One of UNESCO Convention entered into force 1975.
- International heritage protected by the local government & UNESCO
- <https://rsis Ramsar.org/ris/1622#:~:text=Sudd.,section%20of%20the%20White%20Nile.>
- A paper or presentation will help.

UNESCO WORLD HERITAGE

- UNESCO World Heritage. On Tentative List.
- <https://whc.unesco.org/en/tentativelists/6276/>
- Still on tentative list. Not approved. Tentative list since 2017
- Tampering with SUDD may hamper approval.
- Compared to Okavango, Botswana, World Heritage Centre since 2014.

VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF TREATIES 1978

- https://legal.un.org/ilc/texts/instruments/english/conventions/3_3_1_983.pdf
- Entered into Force: Entered into force on 6 November 1978.
- For countries that split from a country: Typical of South Sudan. 1959 Agreement.
- What are the rights and obligations of South Sudan

UN CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

- Entered into force on 17 August 2014
- Vital to deal with as relevant to regional and neighboring countries sharing transboundary rivers.
- https://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf
- 18 pages. Done at Vienna on 23 August 1978. Became an agreement on 6 November 1996.
- Countries cannot just do what they want with transboundary waters; be it upstream or downstream.

REGIONAL TREATIES AND INTERNATIONAL TREATIES

- The critical treaties need a well-informed approach.
- The law of transboundary aquifers
https://www.un.org/en/ga/sixth/71/transboundary_aquifers.shtml
- Other 14 critical Nile Agreements.

Nile Agreements

- **The Anglo-Italian Protocol of April 15, 1891.**
- Article III states the following: "the Italian government engages not to construct on the Atbara river, in view of irrigation, any work which might sensibly modify its flow into the Nile"

- **The 1901 Agreement between Britain and Italy over the Use of the River Gash**

- The agreement states: "the Government of Erythraea, while recognizing all its rights on the waters of the Gash and having regard to the requirements of the Colony, sees no difficulty in declaring that, in so far as the regime of the waters of that river are concerned, it will regulate its conduct in accordance with the principles of good neighbourship". Evidence is scarce, however, of all the treaties and agreements made during the colonial period this agreement was the most equitable. Difficulty in ensuring "equitable water use" made the agreement be defined and reinforced later by the "the Anglo- Egyptian Exchange of Notes" with subsequent detailed arrangements of 1925.

- **Great Britain and Ethiopia of May 15,1902.**

- The aim was to establish the border between Ethiopia and the Sudan. Articles III, related to the use of Nile water. English version, as reviewed by Britain and Sudan, read: "His Majesty the Emperor Menilik II, King of Kings of Ethiopia, engages himself towards the Government of His Britannic Majesty not to construct or allow to be constructed any work across the Blue Nile, Lake Tana, or the Sobat, which would arrest the flow of their waters except in agreement with Britannic Majesty's Government and Sudan" **The Amharic version, however, gave a different meaning and understanding to Ethiopia and "was never ratified by Ethiopia"**

- **Agreement between Britain and the Government of the Independent State of the Congo on 9th May 1906**

Article III of the agreement was about the Nile waters: "The Government of the independent state of the Congo undertakes not to construct, or allow to be constructed, any work over or near the Semliki or Isango river which would diminish the volume of water entering Lake Albert except in agreement with the Sudanese Government". Belgium signed this unfair agreement on behalf of the Congo; despite the agreement entirely favoring the downstream users of the Nile waters and restricting the people of the Congo from accessing their part of the Nile water without presenting anything in return for Congo foregoing its Nile water use.

- **The Tripartite (Britain-France-Italy) Treaty of December 13, 1906**

- Article 4 (a) of this treaty dealt with the use of the Nile water in Ethiopia's sub-basin. It states: "To act together... to safeguard; ... the interests of Great Britain and Egypt in the Nile Basin, more especially as regards the regulation of the waters of that river and its tributaries (due consideration being paid to local interests) without prejudice to Italian interests". This treaty denied "the absolute sovereignty" of Ethiopia over its water resource. It resulted in Ethiopia immediately notifying its rejection of the agreement by indicating that no country had the right to stop it using its own water resource.

The 1925 Exchange of Notes between Britain and Italy Concerning Lake Tana

- Britain and Italy had signed an agreement in 1919 over Lake Tana, of Ethiopia, which read in part as follows: "In view of the predominating interests of Great Britain in respect of the control of the waters of Lake Tana, Italy offers Great Britain her support, in order that she may obtain from Ethiopia the concession to carry out works of barrage in the lake itself..". In 1925, it was expanded as follows. "...Italy recognizes the prior hydraulic rights of Egypt and the Sudan... not to construct on the head waters of the Blue Nile and the White Nile (the Sobat) and their tributaries and affluents any work which might sensibly modify their flow into the main river." Ethiopia opposed this agreement and notified the parties of its objections as follows.

- **In 1925, it was expanded as follows.**

- "...Italy recognizes the prior hydraulic rights of Egypt and the Sudan... not to construct on the head waters of the Blue Nile and the White Nile (the Sobat) and their tributaries and affluents any work which might sensibly modify their flow into the main river." Ethiopia opposed this agreement and notified the parties of its objections as follows:

- **To the Italian government:**

- “The fact that you have come to an agreement, and the fact that you have thought it necessary to give us a joint notification of that agreement, make it clear that your intention is to exert pressure, and this in our view, at once raises a previous question. This question which calls for preliminary examination, must therefore be laid before the League of Nations.”

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- **And, to the Britannia government:**

- “The British Government has already entered into negotiations with the Ethiopian Government in regard to its proposal, and we had imagined that, whether that proposal was carried into effect or not, the negotiations would have been concluded with us; we would never have suspected that the British Government would come to an agreement with another Government regarding our Lake.”
- When an explanation was required from the British and the Italian governments by the League of Nations, they denied challenging Ethiopia’s sovereignty over Lake Tana. Notwithstanding, however there was no explicit mechanism enforcing the agreement. A reliable and self-enforcing mechanism that can protect the property rights of each stakeholder is essential if the principle of economically and ecologically sustainable international water development is to be applied.

• **The Agreement (Exchange of notes) between Egypt and Anglo-Egyptian Sudan of 7th May 1929**

- Sennar Dam was finished in 1925. Egypt refused to give Sudan a drop of water until 1929.
- Egypt and Sudan utilize 48 and 4 billion cubic meters of the Nile flow per year, respectively;
- The flow of the Nile during January 20 to July 15 (dry season) would be reserved for Egypt;
- Egypt reserves the right to monitor the Nile flow in upstream countries;
- Egypt assumed the right to undertake Nile river related projects without the consent of upper riparian states
- Egypt assumed the right to veto any construction projects that would affect her interests adversely

- Egypt was still under British influence in 1929 (Became independent only in 1936-From 342 BC). Neither Sudan nor the remaining riparian (a side from Ethiopia which was too poor and weak to challenge this agreement) were independent. The roles of both referee and player were taken, in the process of this agreement, by Britain in the name of its colonial territories in order to favour one, Egypt, over the remaining riparian countries.
- It was to secure the Nile water for Egypt by limiting the rights of the Sudan and denying rights to others. The agreement became a base for The 1959 Nile Agreement giving Egypt and the Sudan the rights to Nile resources and full utilization by developing the Aswan High Dam with its huge impact on the biophysical and social (disposition of human settlement) environment of the basin.

The final blow and arrogance: 1959 Agreement between Sudan and Egypt

- It reads: •
- The controversy on the quantity of average annual Nile flow was settled to be about 84 billion cubic meters measured at Aswan High Dam, in Egypt.
- The agreement allowed the annual flow of the Nile to be shared among the Sudan and Egypt at 18.5 and 55.5 billion cubic meters, respectively.
- Annual water loss were agreed to be about 10 billion cubic meters. To be deducted from the Nile yield before sharing.
- Sudan, in agreement with Egypt, would construct projects that would enhance the Nile flow by preventing evaporation losses in the Sudd swamps of the White Nile located in the southern Sudan . The cost and benefit of same to be divided equally between them.

- If claim would come from the riparian countries over the Nile water resource, both the Sudan and Egypt shall, together, handle the claims.
- If the claim prevails and the Nile water has to be shared with another riparian state, that allocated amount would be deducted from the Sudan's and Egypt's and allocations/shares in equal parts of Nile volume measured at Aswan.
- The agreement granted Egypt the right to construct the Aswan High Dam that can store the entire annual Nile River flow of a year.
- It granted the Sudan to construct the Rosaries Dam on the Blue Nile and, to develop other irrigation and hydroelectric power generation until it fully utilizes its Nile share.
- A Permanent Joint Technical Commission to be established to secure the technical cooperation between them.

- **To add insult to injury, 1959 agreement goes on:**

- 6. The United Arab Republic agrees to pay to the Sudan Republic **15 Million Egyptian Pounds** as full compensation for the damage resulting to the Sudanese existing properties as a result of the storage in the Sudd el Aali Reservoir up to a reduced level of 182 meters (survey datum). The payment of this compensation shall be affected in accordance with the annexed agreement between the two parties.
- 50,000 Nubians were relocated against their will.
- “But if the average yield increases, the resulting net benefit from this increase shall be divided between the two Republics, in equal shares.”

• **International Law and implementability**

- **Badme: Ethiopia/Eritrea**, Permanent Court of Arbitration. Final Ruling 2006 Implementation 2018. Rulings greatly dependant on colonial records.
- **Bakassi Peninsula: Cameroon/Nigeria**, 1998. Reinforces by Obasanjo and Kofi Anan 2006. **NOT IMPLIMENTED** as we speak.
- Homegrown solutions that are implementable.
- Collective acceptance or rejection of colonial agreements.

WHAT ELSE?

- 39 (or more) other treaties
- Including 22 African Basins agreements
- Setting up competent NATIONAL (Not Governmental) bodies with strong powers. (IJC as Example)
- Include water issues in both secondary schools and universities curricula
- Build a well stocked library of water resources and governing laws.
- Create citizens' awareness and stand up to the bullies.

Which Countries make up the Nile Basin?

1. Burundi (Charges!!!!)
2. Democratic Republic of Congo
3. Egypt
4. Eritrea**
5. Ethiopia
6. Kenya
7. Rwanda
8. Sudan
9. South Sudan (90% SS Falls within Nile Basin)
10. Tanzania
11. Uganda

- **BUT: Inherent rights without a CFA?**
- **Without laws?**
- **Without unity?**
- **Without international and regional lobby?**
- **Without citizens awareness among the population of the 8 African “Truly African” states: Those are 500,000,000 people living in the 8 upstream of the Nile.**
- **Rights are taken Not given !!!!**

**Do we remember the “Roupelle” Bucket-wheel
and what became of it and CCI (Not ICC!)**

A story of African Heroism

