

The Legal System of Transboundary Watercourses: the Renaissance Dam as a Model

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Abstract:

Water is a vital resource for life that cannot be dispensed with, for humans and other creatures in the entire ecosystem. However, these water resources are characterized by an unequal distribution, in addition to their mobile nature and their penetration of geographical boundaries, rendering them a shared resource for all humanity, whether within the borders of a single state or among the peoples of multiple states. The inter connected nature of transboundary waters also imposes cooperation on the concerned states for their optimal utilization and management, especially in light of scarcity and increasing competition among states to meet their diverse and growing needs, and to meet developmental needs for each state individually. Therefore, the issue of water is not only related to its quality or abundance, or the risks arising from it, but it is a problem with multiple dimensions: environmental, social, economic, and legal, especially concerning transboundary water resources. The Renaissance Dam has become a critical challenge for the Nile Basin's riparian countries. The Nile Basin, one of the most complex and distinctive river basins, is characterized by its vast expanse, varied climate, and topography. This diversity creates significant obstacles to managing the basin's transboundary water resources effectively.

Keywords: International, Legal System, Nile Basin, Renaissance Dam, Watercourses

1. Introduction:

Throughout ages, nations and states have been interested in building dams due to their numerous benefits and impacts on states, communities, and those directly affected by the construction of dams. The Renaissance Dam has garnered significant academic studies and attention, given the divergent positions of the three states: Egypt, Ethiopia, and Sudan, regarding many aspects affected by the dam's

construction. For Ethiopia, the dam represents a matter of utmost importance in its developmental program. Upon its completion, it will become the largest in Africa, producing approximately 6,000 megawatts of electricity with the possibility of exporting it. Despite Ethiopia providing 86% of the Nile's waters, 80% of its population lacks electricity, which means the dam is an urgent necessity for Ethiopia. As for Egypt, it views the dam as directly affecting its water security and, consequently, its food security, as 96% of the Egyptian people depend on the Nile River as their primary source of water. Meanwhile, Sudan's position on the Renaissance Dam file remains vague and ambiguous.

The Renaissance Dam represents one of the most difficult challenges faced by both Sudan and Egypt, despite their shared historical and fateful relationship. While both countries suffer from political and economic deterioration, Ethiopia began its developmental journey decades ago, seeking ways to unite its highly diverse ethnicities, which contradict its developmental goal. The Renaissance Dam project is a political and developmental one.

This study seeks to highlight the significance of constructing the dam in Ethiopia and evaluate its impact on downstream countries (Sudan and Egypt), while assessing the degree of Ethiopia's violation of the agreements concluded between the downstream countries regarding the construction of the dam without consulting or obtaining their approval. Moreover, reviewing the potential horizons for resolving the dam crisis.

The study focuses on the following question: **What are the motivating factors behind the construction of the Renaissance Dam, its resulting consequences, and the extent of its impact on downstream countries?**

To address the issue, we utilized the historical method, which focuses on gathering all past evidence, organizing, classifying, and narrating events, while exploring the origins of the conflict among the Nile Basin countries and the evolution of stances on the Renaissance Dam crisis, tracing its roots from the beginning. Additionally, we employed the analytical method to examine certain legal rules and agreements governing the dam, while seeking to interpret the political and diplomatic maneuvers and assess the effectiveness of mediation efforts in achieving a comprehensive and final agreement to resolve the crisis.

To present this topic, we divided the study plan into two sections:
Section One: Roots of the Renaissance Dam and its motives for construction.

Section Two: The legal system of the Renaissance Dam and its implications for the downstream countries.

2. Section One: Roots of the Renaissance Dam and its motives for construction

The Ethiopian Renaissance Dam is considered one of the most important water projects implemented in Africa. At the same time, it is the most controversial project to raise controversy and disputes between the Nile River source countries, specifically Ethiopia, and between the downstream countries, specifically Egypt and Sudan.

2.1. First Subsection: Roots of the Renaissance Dam project

The Renaissance Dam project is not a recent initiative; it was first proposed in 1926 and became a concern for downstream countries only with the rise of water scarcity. The concept's historical roots trace back to the 1940s, when the U.S. Bureau of Reclamation identified twenty-six (26) potential dam sites in Ethiopia, four on the Blue Nile, including the current Renaissance Dam. The Americans returned to their interest in the Blue Nile dams in 1964, raising their number to thirty-four dams on that river alone, which was considered by some experts as a precursor to the construction of the High Dam by the late President Gamal Abdel Nasser in cooperation with the Soviet Union (Sharaq, 2019, p. 160).

With the development of its plans, the project's name has changed, as have its capacities and scopes. From the Border Dam in the American Bureau of Reclamation study (13.3 billion cubic meters) in the years 1958-1964, to the X Project sponsored by the Ethiopian Electric Power Corporation in 2011, to the Grand Ethiopian Millennium Dam (seven billion cubic meters) in the same year, finally ending with the name Grand Ethiopian Renaissance Dam in the same year, but with significant new additions to its capacity from 62 to 67 then 70 billion cubic meters, ending at 74 billion cubic meters in 2012 (Petrov T. E., 2018, p. 59).

In April 2011, Ethiopia unveiled its plan to construct the Renaissance Dam on the Blue Nile River, capitalizing on Egypt's distraction with the January 25, 2011, revolution and its aftermath, following the Arab Spring's onset. The dam is located in the Benishangul-Gumuz region of northwestern Ethiopia, roughly 40 kilometers from the Sudanese border. It is regarded as Africa's largest dam and the world's tenth largest. Ethiopia is recognized as a country

with abundant water resources., as it is the second most prosperous country in Africa after the Democratic Republic of Congo. Its renewable water resources exceed 122 billion cubic meters annually, and the individual's share is 2000 cubic meters. Ethiopia also has 12 river basins and 22 lakes, in addition to large quantities of unexploited groundwater (Mohamed, 2011, p. 35).

It is noteworthy that 11 countries share the Nile Basin, with the Nile River drawing its waters from these sources: 59% from the Blue Nile, 14% from the Sobat River, 13% from the Atbara River, and 14% from the Bahr al-Jabal. Sudan and Egypt opposed the dam project due to its resulting harm.(Salman S. , 2011, pp. 21-23).

A tripartite committee was formed, comprising Ethiopia, Sudan, Egypt, and some international experts, to consider the potential risks of the dam. However, Ethiopia proceeded with infrastructure works without waiting for the committee's report. Ethiopia had planned to invest more than 12 billion dollars in building dams on rivers that pass through its highlands to generate more than 40,000 megawatts of electricity by 2035, thus becoming the largest source of electrical power in the African continent. The Grand Renaissance Dam was the main project in this plan (Taye, 2016, p. 1).

2.1.1. Second Subsection: Motives for Building the Renaissance Dam

The dam represents Ethiopia's ambitious plan to assume a prominent position regionally in the renewable energy sector by increasing its hydropower capacity along the Blue Nile River, which will make it a center for energy for its neighbors in East Africa.

Notably, Ethiopia ranks among the world's poorest nations in energy access, as reported by the International Energy Agency in 2020, Ethiopia ranks among 20 countries that suffer from a lack of access to electricity (Raimund, 2021, p. 402).

As 83% of Ethiopia's population still lacks electricity, and 94% of the population relies on firewood for cooking and heating, among other uses, Therefore, the Renaissance Dam represents an opportunity for Ethiopia to implement its ambitious Initiatives to develop hydropower aim to alleviate poverty and foster an environment conducive to substantial development (Asegdew & Mulat, 2014, p. 584).

The dam comes within a strategic framework adopted by Ethiopia to enhance its negotiating power and confront Egypt's water hegemony. However, it is necessary to emphasize an important fact from which

Ethiopia proceeds, which is that the Renaissance Dam project is a challenge message directed to the downstream countries, specifically Egypt. In this regard, the late Ethiopian Prime Minister Meles Zenawi (1995-2012) announced in 2011 that Egypt's policy towards Ethiopia since the British occupation has been destructive, as Britain and Egypt agreed to continue supplying Egypt with Egyptian cotton in exchange for guaranteeing the flow of Nile waters. Therefore, Meles Zenawi announced that "Egypt will not be able to prevent Ethiopia from building dams, for Ethiopia is capable and willing to build dams." He added in a message he sent to Egypt, "Egypt should not try to stop what cannot be stopped." Asnake (Tadiyos, 2021, pp. 32-33) confirmed that Meles Zenawi also stated that Egypt seeks to obstruct the construction of the dam.

It is worth mentioning that Ethiopia sought to create a national consensus towards the dam, making it a comprehensive national project for all Ethiopians. Indeed, Ethiopia's foreign policy has made it a project of national pride and identity for the Ethiopian state, and a supreme national interest. In this regard, the former Ethiopian Prime Minister Hailemariam Desalegn (2012-2018) announced in 2012 that "the dam brought about the cohesion and solidarity of the people," and that "the Renaissance Dam project represents a priority for the Ethiopian people and government, and therefore nothing can stop it." On the same note, religious leaders in Ethiopia expressed their full support for the Renaissance Dam. Sheikh Muhammad Amin Jamal, head of the Supreme Council for Islamic Affairs in Ethiopia, previously announced that "the Renaissance Dam is the great national project that made us all expect a bright and promising future."

These statements reveal a fundamental truth: there is an Ethiopian insistence on completing this dam, no matter the cost. After it became a national project, the Egyptian realization at the highest levels was of the significant risks associated with it. These risks will undoubtedly affect Egypt's future and present, as well as Sudan's (Latif, 2018, p. 92).

Amid developments concerning the dam, Ethiopia announced on February 28, 2017, revisions to the technical specifications and certain construction designs, including an increase in the number of turbines electricity generation units from 14 to 16, boosting the electricity production capacity from 6,000 megawatts to 6,450 megawatts (Report, 2019), as Ethiopian Prime Minister Abiy Ahmed announced on July 22, 2020, the completion of the first phase of filling the dam's reservoir, which he described as historical. In July

2021, the second filling of the dam's reservoir took place, despite Egypt and Sudan's repeated objections, which they considered unilateral actions. In February 2022, Abiy Ahmed announced the start of electricity generation by operating the first turbine for generation (Abdullah, 2020, p. 132).

Amidst these developments, the Ethiopian ambassador to Russia, Alemayehu Tegen, announced on June 14, 2022, the completion of 88% of the dam's construction works. The ambassador's statements came hours after Egyptian President Abdel Fattah El-Sisi affirmed that "no one will approach his country's waters." From his side, the project manager of the Renaissance Dam, Engineer KiflieHorro, confirmed on August 11, 2022, that "95% of the dam's construction works have been completed, and 61% of the electromechanical installation works have been completed, and electricity generation has begun." The third filling process was completed on August 12, 2022, reaching 7 billion cubic meters (Al-Arabi, 2022, p. 45). This coincided with Ethiopia's official announcement of operating the second turbine for electricity generation with a capacity of 375 megawatts, to increase the generation capacity to 750 megawatts (Al-Arab, 2022, p. 623).

Ethiopia expects the economic return of the Renaissance Dam to push its economy to the level of middle-income countries by 2025. With this, the cost of the dam, which amounts to nearly 6 billion dollars, remains acceptable in the eyes of Ethiopians, considering what it will yield in terms of returns, This heightens Ethiopia's drive to expedite the dam's completion, increases neighboring countries' demand for its electricity, and leads to the signing of several long-term contracts with them, including Sudan, Kenya, Djibouti, and South Sudan (Al-Bahri, 2016, p. 102).

3. Section Two: The Legal System of the Renaissance Dam and its Implications for the Downstream Countries

Presently, the water issue is among the world's most complex challenges due to its interconnected nature and the interdependence of nations, States adopt economic and political positions that affect the interests and policies of other states, Water issues affect states with their negative impacts and repercussions, The construction of dams on the mouths of rivers in upstream countries means the use of those countries as a political pressure card against downstream countries, not to mention the international and regional interventions that support some countries against others, which further complicates The resolution of the crisis, as exemplified by the Renaissance Dam issue.

3. 2. First Subsection: The Legal System of the Renaissance Dam

In 2010, a year prior to the start of the Renaissance Dam's construction, the Nile Basin countries, spearheaded by Ethiopia, pursued a framework agreement for cooperation in the Nile River Basin, where the Entebbe Agreement was signed in 2010 in Uganda by six Nile source countries, namely Ethiopia, Uganda, Rwanda, Tanzania, Burundi, and Kenya, to increase cooperation in preserving the security of the Nile waters. This agreement also invalidated the 1929 colonial treaty signed between Egypt and Britain, as well as the 1959 treaty between Egypt and Sudan, which was endorsed by colonial Britain (El-Din, 2014, p. 52).

These treaties granted Egypt and Sudan the authority to object to any project on the Nile River that might obstruct or reduce the flow of water along the river. The concern over water shortages arises from agriculture being the primary source economic activity among the downstream countries, and therefore, a decrease in water flow can negatively affect their irrigated agricultural lands, which depend entirely on the stability of the Nile water flow. Consequently, Egypt and Sudan rejected the Entebbe Agreement, arguing that the upstream countries must seek their approval before undertaking any projects on the Nile. In this way, they are allowed to assess the potential negative impacts that may affect their irrigated agricultural lands (Subaih, 2015, p. 57).

Despite these differences, the competitors agreed in 2011 (Ethiopia, Sudan, and Egypt) to study the impact of the Renaissance Dam project through a tripartite national committee. In the following years, the parties continued negotiations through the framework of the tripartite national committee. In 2012, an international expert committee was formed to exchange information impartially regarding impact assessments, including the benefits and challenges of building the Renaissance Dam. The committee comprised ten experts: two representatives from each of the three countries and four external experts. Important results of its final report for 2013 was that if the Renaissance Dam reservoir is filled during years of average rainfall, there will be no significant impact on the downstream countries. Similarly, if the dam is filled during years of scarce rainfall, the downstream countries will be negatively affected (Shafi, 2020, p. 64).

In 2014, the three countries affirmed their cooperation through the Malabo Declaration, signed in Equatorial Guinea. At the same time, they held more negotiations in 2015, which resulted in the Khartoum

Agreement, also known as the Declaration of Principles. This agreement is considered the closest document to binding treaties, as it was signed by the three countries: The agreement was signed by the leaders of Egypt, Ethiopia, and Sudan, and was specifically dedicated to addressing the Renaissance Dam issue. President El-Sisi on behalf of Egypt, President Al-Bashir on behalf of Sudan, and Ethiopian Prime Minister Hailemariam Desalegn.

The agreement consists of ten articles that affirm the commitment of the three countries to it, based on the principles of mutual benefit, common understanding, good intentions, gains for all, and the principles of international law, and cooperation in understanding the water needs of the upstream and downstream countries (Moussa, 2015).

Under the Declaration of Principles, Ethiopia was entrusted with taking maximum measures that would not negatively affect the downstream countries. Consequently, continuous reviews and negotiations were encouraged. However, a significant problem arose in 2019 when Ethiopia announced that it would begin filling the Renaissance Dam without the approval or agreement of others. This prompted Egypt to issue a warning against any attempts to start filling the dam before reaching a final agreement. Because of this development, Egypt sought to implement and interpret Article 10 of the Declaration of Principles, which states that if the three countries cannot find a solution to their dispute, they can request a third party for mediation. This led Egypt to request mediation from the United States.

When the United States intervened for mediation, several rounds of peace talks were held between 2019 and 2020. However, they also ended without any tangible agreement, which allowed tensions to continue to simmer. Similarly, the intervention talks conducted by the African Union between 2020 and 2021, chaired by South Africa and the Democratic Republic of Congo (as chair of the African Union in 2020 and 2021), yielded limited results. These talks collapsed (Allam, 2021, p. 132).

In 2021, Egypt proposed a quadripartite mediation involving the United Nations, the United States, the European Union, and the African Union. Ethiopia rejected this proposal, although it did not necessarily object to the necessity of "foreign" mediation efforts, but instead preferred that the role of external parties be limited to an

observer status in the talks, without direct participation (Mustafa, 2024).

Regarding the legal importance of the 1929 and 1959 treaties, which Egypt and Sudan frequently refer to, the enforcement of these two treaties may not be implicitly binding, Article 34 of the Vienna Convention on the Law of Treaties of 1969 partially states that a treaty does not create rights or obligations for a third state without its consent. This principle does not stipulate any exceptions in cases of obligations, although some obligations contained in the treaty may bind third states as independent rules for customary international law (Othman, 2024).

Although negotiations regarding the Renaissance Dam have largely remained without achieving progress, some achievements have been witnessed. For example, those negotiations resulted in the formation of an international expert team in 2012 and the Declaration of Principles in 2015, The ongoing negotiations relate to mitigating the effects of drought and the safety of the dam, and whether general agreements should be legally binding or not (Bouhaidel, 2025).

On Sunday, September 10, 2023, Egypt announced that Ethiopia had completed the fourth filling of the Renaissance Dam reservoir. This is considered a continuation Ethiopia has been accused of breaching the 2015 Declaration of Principles signed with Egypt and Sudan, which requires consensus among the three nations on the rules for filling and operating the Ethiopian dam prior to initiating the filling process Ethiopia's unilateral actions are seen as a dismissal of the rights and interests of the downstream countries and their water security (Magdy, 2025).

3.2.1. Second Subsection: Implications of the Renaissance Dam on the Downstream Countries

The nature of the transboundary Nile River has contributed significantly to sparking political disputes and conflicts, as it is one of the rivers most exposed to natural and climatic forces, both human and natural. The construction of new dams on the Nile will inevitably affect the river's flow levels, with the Renaissance Dam being the most prominent. Additionally, the dam will significantly alter the Nile's environmental system, posing a threat to the livelihoods of downstream countries, specifically Egypt and Sudan, causing some political tensions between Ethiopia, Egypt, and Sudan (Kamara, 2022, pp. 1-2).

Here we point out a fundamental truth, which is that Egypt is the most affected by the dam compared to Sudan. According to a study conducted by the Dutch Center for Coastal Research (Deltares) on the Renaissance Dam, it stated that a decrease of 1 billion cubic meters of water can displace more than 1 million jobs, Annual economic losses estimated at 8.1 billion dollars will be incurred in all economic sectors, which will significantly increase the rate of migration from rural to urban areas, leading to an increase in unemployment, which Egypt already suffers from. Egypt, in particular, will face significant consequences, including rising crime and migration rates, as the country is largely a desert oasis reliant on the Nile River. Consequently, Egypt views the Renaissance Dam as an existential threat (Washington, 2021).

In addition to the points raised, Egypt is primarily categorized as a country facing water scarcity. However, the issue of water scarcity in Egypt is not a recent development, what is new is the exacerbation of this scarcity with the increase in Egypt's population to more than 100 million people, and the construction of the Ethiopian Renaissance Dam. In addition to that, the fact that 97% of Egypt's water resources originate from outside its borders made the Renaissance Dam an existential threat to Egypt, threatening the already insufficient water flow (Mostafa, 2021).

Based on this, it can be said that the implications of the Ethiopian Renaissance Dam on Sudan and Egypt are varied and numerous, especially for Egypt due to its reliance on the Nile River as a primary source of fresh water in various fields. From here, the most prominent of these implications on Egypt can be mentioned:

- Ethiopia has significant control over the Blue Nile River flows.
- A 20% reduction in electricity production from the High Dam is expected. Projections suggest that during the Renaissance Dam's filling period, Egypt will face a water deficit of 10 billion cubic meters, with water flows decreasing by 12% to 25%.
- A decrease in the Nile water level will negatively affect navigation and river trips.
- Significant damage to agricultural lands.
- Water scarcity will lead to environmental imbalance, increased pollution, increased salinity, and a threat to groundwater quality (Ibrahim A. I., 2017, pp. 160-161).
- Direct impact on Egypt's land reclamation policies.

Among the many implications of this dam is that it revealed the struggle for water hegemony among the Nile Basin countries, specifically between Egypt and Ethiopia. Starting from the idea of "the absence of war does not mean the absence of conflict," Ethiopia's unilateral decision to build the dam came, which will make it a water-hegemonic power over the basin countries. With this, the dam will grant Ethiopia water political influence that it can use to affect the downstream countries by changing the amount of water supplies, which will grant it an adequate bargaining power to achieve its foreign policy goals. Thus, the dam will turn into a "water weapon" that the upstream countries, specifically Ethiopia, use, exploiting their geographical advantage to influence the policies of the downstream countries (Aslake ., E., 2016, pp. 53-54).

It is also possible to reduce the risks and damages that Sudan will incur, as the dam deprives Sudan of its water security and exposes it to destruction and drowning, mainly since the dam is located in a border area, which leaves no opportunity for the waters to be received in a safe state. It is also known that Sudan does not have lakes for water drainage. The dam was built in the Benishangul -Gumuz region, which is Sudanese land occupied by Ethiopia during the Mahdist state era. The 1902 agreement prohibits Ethiopia from establishing facilities in exchange for allowing it to administer the region and a large part of the Nile waters, specifically the Blue Nile, which originates from the region whose borders extend to Lake Tana and reaches Sudan and Egypt.

These risks are embodied in the possibility of water reaching the Roseires Dam in 8 hours, and to Khartoum in eight days, causing destruction and drowning in both areas. In addition, the damages include the retention of silt, which affects the fertility of the soil, the erosion of coasts, and the increase of Nile islands. Sudan has already been affected by the first and second fillings (unilateral actions), as Sudanese citizens suffered from water shortages and a 50% reduction in power. Farmers in the vicinity of the Merowe and Roseires dams were affected, with homes destroyed and flooding. It is necessary to have a binding agreement on the amount of water flowing from the Renaissance Dam, to exchange information, and ensure that the Merowe Dam does not lose 30% of the electricity it generates.

4. Conclusion:

It is clear that the Renaissance Dam crisis transcends technical aspects that can be resolved. It is a matter related to regional competition between the two countries. From the beginning, Ethiopia has been able to become a regional power in this century, which has pushed it to compete with the Sudanese-Egyptian influence.

Thus, this challenging Ethiopian behavior towards Egypt can negatively affect Egypt's position and influence in the Nile Basin, and may encourage other upstream countries to undertake similar unilateral projects. In light of this political situation, settlement prospects become difficult, which means that Egypt and Sudan have a long way to go.

In this context, the upcoming phase necessitates the creation of new mechanisms to enhance cooperation among Nile Basin countries under a win-win principle. Conflict-driven behavior is likely to prolong the water security crisis among the Nile Basin countries in general. Therefore, it is essential to establish frameworks for bilateral and collective dialogue among the basin countries to reach a consensual solution that ensures fair, equitable, and just utilization of water resources.

Results: Through our study, we have reached a set of results that can be summarized as follows

- Ethiopia's adoption of a unilateral water policy, disregarding the positions of Nile Basin countries, and its construction of the Grand Ethiopian Renaissance Dam without prior notification to Egypt and Sudan or awaiting their approval, constitutes a violation of Nile Basin agreements and international norms and laws governing the use of shared international river resources. Since 2011, the balance of power in the Nile Basin region has shifted, with Ethiopia exploiting Egypt's turbulent conditions to attempt to alter the legal framework of the Nile River. Employing tactics of procrastination and strategic deception, Ethiopia has sought to impose a *fait accompli* on Egypt and Sudan, denying their rights by claiming the waters as its own. However, international agreements and law affirm Egypt and Sudan's rights, as Nile Basin
- Egypt and Sudan are exposed to political crises, leading to the deterioration of their relations with neighboring countries.
- The Renaissance Dam issue has led to the deterioration of the political and economic situation of Egypt and Sudan

Recommendations:

- The Declaration of Principles of 2015 should include an acceptable and independent mechanism for arbitration and a follow-up mechanism for its implementation, to which reference is made in case of violation of the declaration, and a mechanism for paying compensation. It is also necessary to establish a comprehensive institutional framework for the integrated management and development of Nile resources for the benefit of all Nile Basin countries.
- Sudan and Egypt must move quickly towards economic and strategic integration to turn the page on differences that were represented in the disagreement over some issues.
- Diversify and support political, economic, social, and cultural relations, and support economic integration among the Nile Basin countries.

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