

# THE GRAND ETHIOPIAN RENAISSANCE DAM: HOW A CROSS-BORDER PROJECT VIOLATES TREATY OBLIGATIONS AND THE INHERENT RIGHTS OF NEIGHBORING STATES' CITIZENS

WILLIAM G. KRENTZ\*

## ABSTRACT

The waters of the Nile River offer salvation amid the deserts of Northeast Africa, as well as competition and division between the rival states that share its basin. Ethiopia is nearing completion on the building and filling of the massive Grand Ethiopian Renaissance Dam at the source of the Blue Nile in the Ethiopian highlands. The downstream states of Egypt and Sudan believe that the building of this dam jeopardizes their Nile water allocations and violates colonial-era treaties. Interpretation of three of these colonial-era water-sharing treaties lies at the center of the debates. Egypt and Sudan must recognize that treaties not signed by Ethiopia cannot be extrapolated as binding upon it, while Ethiopia must recognize that the one of the three treaties it did sign is still binding. The Grand Ethiopian Renaissance Dam offers revolutionary energy and economic production, not only for Ethiopia, but also for the entire region. However, the three states must respect the historical rights of their neighbors' peoples to the Nile's waters. They must learn from other successful interstate water and energy sharing deals to actually seize the production in a cooperative way that better the lives of all three states' citizens.

|   |     |
|---|-----|
| Abstract.....   | 677 |
| Introduction .....  | 678 |
| I. Background .....   | 680 |
| A. The Relevant Hydrology of the Nile River Basin and the<br>Grand Ethiopian Renaissance Dam..... | 680 |

---

\* William G. Krentz, a 2024 J.D. candidate at the University of Wisconsin Law School, extends his sincerest gratitude to the incredible staff of the *Wisconsin International Law Journal* for their countless hours spent assisting the author throughout this writing and publication process. He also extends a heartfelt thank you to the many mentors, friends, and family that have taken the time to read this Comment's many drafts and supported him throughout this entire process.

|      |   |     |
|------|---|-----|
| B.   | Ancestral Rights to the Waters of the Nile.....   | 682 |
| C.   | A History of Treaties Concerning the Shares of Nile Waters.....   | 683 |
| D.   | Recent Attempts to Reach an Agreement Regarding the Grand Ethiopian Renaissance Dam Between Ethiopia, Sudan, and Egypt.....   | 686 |
| II.  | Analysis.....   | 688 |
| A.   | The 1902 Nile Waters Treaty signed between Egypt, the United Kingdom, and Ethiopia confers rights to unobstructed Nile waters to Egypt. ....  | 689 |
| B.   | The Grand Ethiopian Renaissance Dam constitutes an arrest as defined in the 1902 Nile Waters Treaty. ....   | 691 |
| C.   | The 1902 Nile Waters Treaty confers to Sudan rights to unobstructed Nile Waters. ....   | 692 |
| D.   | The 1929 and 1959 Nile Water Treaties do not preclude Ethiopia from building and filling the Grand Ethiopian Renaissance Dam. ....  | 694 |
| E.   | Egypt, Sudan, and Ethiopia all have mutual ancestral rights to use the Nile's waters for the sustenance of their people. ....   | 696 |
| F.   | The Grand Ethiopian Renaissance Dam falls outside of Ethiopia's territorial sovereignty because its effects are not essentially within the domestic jurisdiction of Ethiopia. ....                  | 700 |
| G.   | Ethiopia must consider its treaty obligations to Egypt and Sudan and the Egyptian and Sudanese peoples' ancestral rights to the Nile waters when building the Grand Ethiopian Renaissance Dam. .... | 703 |
| III. | Conclusion.....   | 705 |

## INTRODUCTION

It might seem natural that nations would have full authority and sovereignty over the land and water within their borders. This broad, assumed authority would include actions that could completely change the hydrology and ecology of a body of water, including dam construction, pollutant dumping, and stream redirections. This sovereignty is complicated because most bodies of water in the world span multiple states. Many rivers are either shared by neighboring states or flow from one state into another; more than 60 percent of the world's fresh water is

contained in transboundary rivers, lakes, and groundwater reservoirs.<sup>1</sup> Transboundary rivers flow into downstream states that must then deal with the consequences of the upstream state's actions. Must the upstream state consider the damages its actions might inflict upon its downstream neighbors? Or is a state free to treat the water within its borders however it sees fit?

This legal question concerning the Nile River has shaped the relationships between Egypt, Sudan, and Ethiopia for the past decade.<sup>2</sup> In a desert such as northeast Africa, maintaining water resources is an urgent challenge.<sup>3</sup> People rely on and follow the Nile, finding very little life or infrastructure in the deserts of Egypt or Sudan. The Nile River is fed mainly by two tributaries: the Blue Nile and the White Nile.<sup>4</sup> The White Nile flows north from Lake Victoria and other tributaries in Uganda and South Sudan until it meets the Blue Nile in the Sudanese capital of Khartoum.<sup>5</sup> The Blue Nile begins in the Ethiopian highlands and flows north into Sudan, providing over 85 percent of the water that flows through the combined Nile.<sup>6</sup> In 2011, Ethiopia started building a hydroelectric dam on the Blue Nile in the Ethiopian highlands.<sup>7</sup> Sudan and Egypt are heavily concerned with the short-term reduction in Nile River flow resulting from filling the dam's reservoir and the long-term evaporation of water out of the reservoir.<sup>8</sup> Historical uses and international treaty rights may also grant the downstream nations their fair allocations of the Nile's waters.<sup>9</sup>

---

<sup>1</sup> Press Release, Econ. Comm'n for Eur., Shared Management of Cross-Border Rivers, Lakes and Groundwater Is Crucial to Avert Looming Water Crises, Stress UN and Countries After 30-Year Success of Water Convention, U.N. Press Release (June 30, 2022), <https://unece.org/climate-change/press/shared-management-cross-border-rivers-lakes-and-groundwater-crucial-avert> [<https://perma.cc/F526-UEVR>].

<sup>2</sup> Marina Ottaway, *Egypt and Ethiopia: The Curse of the Nile*, WILSON CTR. (July 7, 2020), <https://www.wilsoncenter.org/article/egypt-and-ethiopia-curse-nile> [<https://perma.cc/FE9E-W3T6>].

<sup>3</sup> Daniel Kendie, *Egypt and the Hydro-Politics of the Blue Nile River*, 6 NE. AFR. STUD. 141, 142 (1999).

<sup>4</sup> Rasha M. Abou Samra, *Detection of the Filling Phases of the Grand Ethiopian Renaissance Dam Using Sentinel-1 SAR Data*, 24 EGYPTIAN J. REMOTE SENSING & SPACE SCI. 991, 991 (2021).

<sup>5</sup> *Id.*

<sup>6</sup> John Mukum Mbaku, *The Controversy over the Grand Ethiopian Renaissance Dam*, BROOKINGS (Aug. 5, 2020), <https://www.brookings.edu/blog/africa-in-focus/2020/08/05/the-controversy-over-the-grand-ethiopian-renaissance-dam/> [<https://perma.cc/RX8C-S3DE>].

<sup>7</sup> *Id.*

<sup>8</sup> Gary Polakovic, *Water Dispute on the Nile River Could Destabilize the Region*, USC TODAY (July 13, 2021), <https://today.usc.edu/nile-river-water-dispute-filling-dam-egypt-ethiopia-usc-study/> [<https://perma.cc/Y5UF-SPA9>].

<sup>9</sup> Sam Abrams, *Dammed if you Do, Damned if you Don't – The Importance of a Legally Binding Agreement to the Transboundary Nile Water Dispute*, GEO. ENV. L. REV. (Mar. 29, 2022),

Ethiopia, however, argues that the dam is fully within their borders, will not impact downstream flow as much as Sudan and Egypt fear, and is an extremely important investment in a state where over 60 percent of citizens do not have access to electricity.<sup>10</sup>

This Comment will argue that, even though the dam site is within Ethiopia's borders, a former treaty and current ancestral rights to the Nile dictate that the dam should not have been constructed without a prior legal agreement from downstream states. Part I will break down Egypt and Sudan's legal claims to the Nile's waters, mainly from former colonial-era treaties and ancestral rights. Part I will also discuss Ethiopia's claims that it is within its rights to construct the dam and, legally speaking, needed not consider the downstream effects the dam would have on Egypt and Sudan. Part II will assert that Egypt and Sudan have rights to fair allocation of the Nile's waters, and the Grand Ethiopian Renaissance Dam (GERD) violates those rights and should not have been constructed without a prior agreement among the three states. Finally, Part II will also touch on another successful water-sharing agreement from Kyrgyzstan and advocate for a similar implementation in the current Egypt-Sudan-Ethiopia situation.<sup>11</sup>

## I. BACKGROUND

### A. THE RELEVANT HYDROLOGY OF THE NILE RIVER BASIN AND THE GRAND ETHIOPIAN RENAISSANCE DAM

The Nile River basin travels through eleven African states and is over 4,100 miles long.<sup>12</sup> The Nile is fed by two main tributaries, the White Nile and the Blue Nile, which join at the Sudanese capital of Khartoum.<sup>13</sup> The White Nile begins in the tributaries of Lake Victoria in Uganda and

---

<https://www.law.georgetown.edu/environmental-law-review/blog/dammed-if-you-do-damned-if-you-dont-the-importance-of-a-legally-binding-agreement-to-the-transboundary-nile-water-dispute/> [<https://perma.cc/N4CW-8FAV>].

<sup>10</sup> Polakovic, *supra* note 8.

<sup>11</sup> Chris Rickleton, *Now with Neighbors' Support, Is Kyrgyzstan's Mega-Dam Dream Viable?*, RADIO FREE EUR./RADIO LIBERTY (Jan. 11, 2023, 2:51 PM), <https://www.rferl.org/a/kyrgyzstan-naryn-river-hydropower-plant-uzbekistan-kazakhstan/32218985.html> [<https://perma.cc/VH3P-Z2JH>].

<sup>12</sup> *Nile River*, NAT'L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/nile-river/> [<https://perma.cc/EJ4N-RKYP>].

<sup>13</sup> Charles G. Smith et al., *Nile River*, BRITANNICA, <https://www.britannica.com/place/Nile-River> [<https://perma.cc/5WFG-STTN>].

then flows north towards South Sudan.<sup>14</sup> The Blue Nile begins in the highlands of Ethiopia and flows north into Sudan where it meets the White Nile.<sup>15</sup> This tributary supplies the lion's share of the Nile waters that flow north out of Khartoum, providing 85 percent, with the other 15 percent coming from the White Nile.<sup>16</sup> In Egypt, over 95 percent of the population lives within a few kilometers of the Nile's banks.<sup>17</sup>

Ethiopia began construction on the GERD in 2011 and has been filling the dam's reservoir from late 2020 until 2024.<sup>18</sup> The GERD reservoir has a capacity of seventy billion cubic meters of water.<sup>19</sup> The Nile itself has an annual flow of around eighty-four billion cubic meters.<sup>20</sup> The Nile's total annual flowage through the GERD will initially provide Ethiopia with over 750 megawatts of electricity annually, but it has the potential for 6,000 megawatts of electricity when the reservoir is at full capacity.<sup>21</sup> The reservoir will take four to seven years to fill, depending on hydrologic conditions, and the first filling occurred in 2020.<sup>22</sup> The Ethiopian government announced in August 2022 that the third phase of filling the reservoir had been completed.<sup>23</sup> In a state where over 60 percent of the population lives without electricity, the GERD has the potential to completely reform Ethiopia's society, health, and economy. Where energy is lacking, there is "a close correlation between an inadequate supply of energy and poverty."<sup>24</sup> Ethiopia also contends that excess energy from the dam could be sold to neighboring states, providing a boost to the entire East African region.<sup>25</sup>

---

<sup>14</sup> *See id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See Mbaku, supra* note 6.

<sup>17</sup> NAT'L GEOGRAPHIC, *supra* note 12.

<sup>18</sup> Mbaku, *supra* note 6.

<sup>19</sup> John Mukum Mbaku, *Nile Basin at a Turning Point as Ethiopian Dam Starts Operations*, CONVERSATION (Mar. 6, 2022, 3:20 AM), <https://theconversation.com/nile-basin-at-a-turning-point-as-ethiopian-dam-starts-operations-178267> [<https://perma.cc/2B7K-TYCD>].

<sup>20</sup> Food & Agric. Org. of the U.N., *Hydrologic Regime in the Nile Basin* (July 19, 2011), <https://www.fao.org/3/an530e/an530e.pdf> [<https://perma.cc/YF68-GQVH>].

<sup>21</sup> Mbaku, *supra* note 19.

<sup>22</sup> Samra, *supra* note 4, at 991.

<sup>23</sup> Giulia Paravicini, *Ethiopia Completes Third Phase of Filling Giant Nile Dam*, REUTERS (Aug. 12, 2022, 7:23 AM), <https://www.reuters.com/world/africa/ethiopia-completes-third-phase-filling-giant-nile-dam-2022-08-12/> [<https://perma.cc/36VE-5AGB>].

<sup>24</sup> Huiyi Chen & Ashok Swain, *The Grand Ethiopian Renaissance Dam: Evaluating Its Sustainability Standard and Geopolitical Significance*, 3 ENERGY DEV. FRONTIER 11, 11 (2014).

<sup>25</sup> Mbaku, *supra* note 19.

Egypt and Sudan are chiefly concerned with a temporary loss of flow, due to the three-to-five-year filling period, and a long-term loss of water due to increased seepage and evaporation off the reservoir's surface.<sup>26</sup>

## B. ANCESTRAL RIGHTS TO THE WATERS OF THE NILE

The Nile River Basin is home to some of the oldest civilizations on Earth. These long-standing civilizations have always known that without the Nile, there was no life in the region; fourth century BC historian, Herodotus, observed that Egyptian civilization was a gift from the Nile.<sup>27</sup> Egyptians have also long been aware that upstream states could cut off their access to the Nile if they so desired.<sup>28</sup> However, a day like that has never come, and Egyptian and Sudanese culture has thrived on the Nile's banks since the time of Herodotus.

With the new developments on the GERD, some have argued that Egypt and Sudan cannot have their Nile water cut off because they have centuries-old ancestral rights to it. In 1929, the British government recognized that Egypt had "historical rights" to the Nile's waters.<sup>29</sup> Historical uses of water rights are a claim usually asserted by a state's native populations. In the United States, past claims have succeeded in protecting a tribe's right to fish their ancient waterways, even outside any ceded reservation.<sup>30</sup> In *United States v. State of Washington*, District Court Judge George H. Boldt held that native nations had an original right to fish the waters of Puget Sound and that any grant of this right to settlers was not a complete grant, so the tribes still held rights to fish the sound, even though it was outside of any ceded reservation.<sup>31</sup> The "Boldt Decision," as it was later dubbed, spurred other tribes across the nation, including the Ojibwe in Wisconsin, to assert their historical water rights.<sup>32</sup>

Ancestral-water-rights claims have been increasingly successful in recent years. The Chilean Supreme Court, the nation's highest court, affirmed that the Aymara indigenous community has an ancestral right to

---

<sup>26</sup> *Id.*

<sup>27</sup> Kendie, *supra* note 3, at 141.

<sup>28</sup> William Langer, *The Struggle for the Nile*, 14 FOREIGN AFFS. 259, 261-62 (1936).

<sup>29</sup> Ottaway, *supra* note 2.

<sup>30</sup> See *State v. Gurnoe*, 53 Wis. 2d 390, 192 N.W.2d 892 (1972).

<sup>31</sup> *United States v. Washington*, 384 F. Supp. 312, 407 (W.D. Wash. 1974).

<sup>32</sup> See *Gurnoe*, 53 Wis. 2d at 396.

the waters it uses for animal consumption and agriculture.<sup>33</sup> In New Zealand, the Wanganui River was granted legal personhood after heavy lobbying by the Māori People.<sup>34</sup> The Egyptian government has raised similar arguments. The Egyptian government may be able to raise similar arguments with regard to the Nile's waters.

### C. A HISTORY OF TREATIES CONCERNING THE SHARES OF NILE WATERS

States within the Nile Basin understand how important its waters are to sustaining life in the region. These states have, therefore, spent centuries trying to allocate as much of the Nile's waters to themselves through international treaties.<sup>35</sup> The first attempt to secure future use of the Nile came in 1902, when the British, Italian, and Ethiopian governments signed the Anglo-Ethiopian Treaty of 1902.<sup>36</sup> The treaty aimed to set the borders and practices allowable between British-controlled Sudan, Italian-controlled Eritrea, and independent Ethiopia.<sup>37</sup> The treaty contains one provision, Article III, that now plays a large role in Sudan's claim to the Blue Nile's waters. It states that the emperor of Ethiopia agrees "not to construct or allow to be constructed any work across the Blue Nile . . . which would arrest the flow of their waters into the Nile except in agreement with his Britannic Majesty's Government and the Government of the Soudan."<sup>38</sup> However, a mistranslation in the Aramaic version of the treaty signed by the Ethiopian emperor accidentally omits Sudan, calling into question its enforceability.<sup>39</sup> There have also been arguments that the treaty lost its authority after the Sudanese government became independent from the British Crown, as the Sudanese government was not

---

<sup>33</sup> Diego Rivera, *Supreme Court Confirms Ancestral Water Rights to the Aymara*, CHILE TODAY (Feb. 22, 2020), <https://chiletoday.cl/supreme-court-confirms-ancestral-water-rights-to-the-aymara/> [<https://perma.cc/8JSE-DFUB>].

<sup>34</sup> See Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14(1) (N.Z.).

<sup>35</sup> See Arthur Okoth-Owiro, *The Nile Treaty: State Succession and International Treaty Commitments: A Case Study of the Nile Water Treaties*, in 9 OCCASIONAL PAPERS E. AFR. 4 (2004).

<sup>36</sup> Treaties Relative to the Frontiers Between the Soudan, Ethiopia and Eritrea, art. 3, May 15, 1902, [https://m.marefa.org/images/b/bd/Treaty\\_of\\_Addis\\_Ababa\\_1902.pdf](https://m.marefa.org/images/b/bd/Treaty_of_Addis_Ababa_1902.pdf) [<https://perma.cc/2XT7-P9U4>].

<sup>37</sup> Edward Ullendorff, *The Anglo-Ethiopian Treaty of 1902*, 30 BULL. SCH. ORIENTAL & AFR. STUD. 641, 641 (1967).

<sup>38</sup> Treaties Relative to the Frontiers Between the Soudan, Ethiopia and Eritrea, *supra* note 36, art. 3.

<sup>39</sup> Ullendorff, *supra* note 37, at 652.

an original party to the treaty.<sup>40</sup> In the alternative, Ethiopia argues that the treaty does not preclude the building of the GERD because the treaty does not prohibit use of the Nile's waters, only a total blockage.<sup>41</sup>

The next major attempt to corral the Nile was the 1929 Anglo-Egyptian Treaty. This treaty measured the annual flow of the Nile as eighty-four billion cubic meters of water and allocated fifty-two of them exclusively to Egypt and Sudan.<sup>42</sup> Of those fifty-two billion cubic meters, only four billion were allocated to Sudan, while the other forty-eight billion were allocated to Egypt.<sup>43</sup> Most importantly, this treaty also gave Egypt veto power over any upstream construction projects that may affect the Nile's flow into Egypt.<sup>44</sup> This treaty made no mention of any upstream states' rights to the Nile's waters, including Ethiopia.<sup>45</sup> Ethiopia also argues that because it was never a British colony, or part of any other European power, the treaty has no binding effect on it.<sup>46</sup>

In 1959, Egypt and Sudan convened once again to discuss their allocations of Nile waters, as Sudan was now independent and wanted a larger share.<sup>47</sup> This 1959 Nile Waters Agreement raised Egypt's allocation from 48 billion cubic meters to 55.5 billion cubic meters.<sup>48</sup> Sudan's allocation was increased from 4 billion cubic meters to 18.5 billion cubic meters, and 10 billion cubic meters were left unallocated to account for evaporation and seepage.<sup>49</sup> The total allocation and evaporation earmark in the 1959 treaty amounts to 84 billion cubic meters of water.<sup>50</sup> The 1959 treaty, its 1929 predecessor, and the 1925 Nile Waters Survey estimated the total annual flowage of the Nile at 84 billion cubic meters of water,

<sup>40</sup> Okoth-Owiro, *supra* note 35, at 10.

<sup>41</sup> Mahemud Tekuya, *Colonial-Era Treaties are to Blame for the Unresolved Dispute over Ethiopia's Dam*, CONVERSATION (Mar. 25, 2020, 10:22 AM), <https://theconversation.com/colonial-era-treaties-are-to-blame-for-the-unresolved-dispute-over-ethiopia-s-dam-133538> [<https://perma.cc/6M7Q-TWGS>].

<sup>42</sup> See Mwangi S. Kimenyi & John Mukum Mbaku, *The Limits of the New "Nile Agreement"*, BROOKINGS (Apr. 28, 2015), <https://www.brookings.edu/blog/africa-in-focus/2015/04/28/the-limits-of-the-new-nile-agreement/> [<https://perma.cc/3B4H-F27Q>].

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See Exchange of Notes in Regard to the Use of the Waters of the River Nile for Irrigation Purposes, Egypt-U.K., May 7, 1929, 93 L.N.T.S. 43.

<sup>46</sup> Kendie, *supra* note 3, at 147.

<sup>47</sup> See Mahemud Eshtu Tekuya, *The Egyptian Hydro Hegemony in the Nile Basin: The Quest for Changing the Status Quo*, 26 J. WATER L. 10, 12 (2018).

<sup>48</sup> Agreement (with Annexes) for the Full Utilization of the Nile Waters, Egypt-Sudan art. 1(1), 2.4, Nov. 8, 1959, 453 U.N.T.S. 51.

<sup>49</sup> *Id.* art. 1(2).

<sup>50</sup> *Id.* art. 2(4).



effectively not leaving a drop for any of the states that were not party to the treaty.<sup>51</sup> This treaty, much like its 1929 predecessor, made no mention of Ethiopia or any other upstream states.<sup>52</sup>

These three treaties together show a trend of Sudan and Egypt claiming more and more of the Nile's waters and trying to exert control over its usage outside their borders. In 1961, the leader of the former Tanganyika (now Tanzania, following its 1964 unification with Zanzibar) said that these agreements essentially placed the rest of the Nile basin states at Egypt's mercy.<sup>53</sup> Egypt especially shows an acute fear of upstream dams and construction projects that would obstruct the flow of the Nile.<sup>54</sup> Egypt believes that the Sudan-Ethiopia 1902 agreement precludes the building of GERD, and, in the alternative, that it still has its veto power granted by the 1929 Anglo-Egyptian treaty that would allow it to halt the construction of the GERD that began without its permission.<sup>55</sup>

The 1999 Nile Basin Initiative has led to a revival in international cooperation in the basin. The initiative was meant to increase cooperation in the region and allow for a more equitable division of the Nile's waters.<sup>56</sup> The initiative produced a Cooperative Framework Agreement (CFA) for the states to sign in 2010.<sup>57</sup> This new CFA provided that the basin states could build projects along the Nile without Egypt's prior approval.<sup>58</sup> This CFA has only been signed by six of the ten initiative members.<sup>59</sup> Ethiopia, Uganda, Rwanda, Tanzania, Kenya, and Burundi have signed, while South Sudan, Sudan, Egypt, and the Democratic Republic of the Congo have refused.<sup>60</sup> In 2010, following upstream nations' signing of the CFA, Egypt froze its membership to the initiative.<sup>61</sup> Egypt and Sudan were concerned

---

<sup>51</sup> See *id.* art 2(4).

<sup>52</sup> See generally Agreement (with Annexes) for the Full Utilization of the Nile Waters, *supra* note 48.

<sup>53</sup> Kimenyi & Mbaku, *supra* note 42.

<sup>54</sup> Maggie Michael, *Dam Upstream Leaves Egypt Fearing for its Lifeline, the Nile*, AP NEWS (Oct. 2, 2017, 1:43 AM), <https://apnews.com/f2c30802d80247efa6872d5852882057/Dam-upstream-leaves-Egypt-fearing-for-its-lifeline,-the-Nile> [<https://perma.cc/56AB-SSKG>].

<sup>55</sup> See Tekuya, *supra* note 41.

<sup>56</sup> Tekuya, *supra* note 47, at 13.

<sup>57</sup> *Id.* at 14.

<sup>58</sup> See Agreement on the Nile River Basin Cooperative Framework, art. 3(6), May 14, 2010, [hereinafter Nile Basin Initiative].

<sup>59</sup> Maha El Dahan, *Who Controls the World's Longest River?*, REUTERS (Apr. 23, 2018, 11:04 AM), <https://www.reuters.com/article/us-egypt-rice-factbox/who-controls-the-worlds-longest-river-idUSKBN1HU1OE> [<https://perma.cc/5QG6-D8B2>].

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

with the definition of “water security,” as they saw it as a threat to their 1959 Nile water allocations.<sup>62</sup> The signatories and nonsignatories of the agreement once again show the general disagreements between the source states of the Nile (Ethiopia and the central African states) and the delta states of the Nile (Egypt, Sudan, and South Sudan).

The Nile Waters Treaties are subject to Interpretation under the Vienna Conference on the Law of Treaties. The disagreements surrounding the 1902, 1929, and 1959 Nile Waters Treaties will be interpreted under the Vienna Convention on the Law of Treaties (VCLT). The VCLT provides states with the rules for forming, interpreting, and responding to breaches of treaties.<sup>63</sup> Egypt and Sudan have both signed and ratified the VCLT and therefore are bound by it.<sup>64</sup> Ethiopia is one of forty-five states that have signed, but not ratified, the VCLT.<sup>65</sup> However, Ethiopia is still bound by the VCLT because Article 18 of the agreement includes that a state cannot defeat the object and purpose of a treaty during the time between its signing and ratification.<sup>66</sup> Furthermore, the VCLT has reached the level of customary international law (CIL) and therefore binds even the states that have not ratified it.<sup>67</sup> The VCLT will be the instrument used to interpret disagreements regarding any of the Nile Waters Treaties because Ethiopia, Egypt, and Sudan are all bound by it.

#### D. RECENT ATTEMPTS TO REACH AN AGREEMENT REGARDING THE GRAND ETHIOPIAN RENAISSANCE DAM BETWEEN ETHIOPIA, SUDAN, AND EGYPT

Since Ethiopia announced its intent to build the GERD in 2011, there have been many attempts among the three affected states to come to a legally binding international agreement regarding the GERD’s impact on Sudan and Egypt’s water supply. First, in 2012, Ethiopia, Egypt, and Sudan each picked two experts to form a panel to examine the dam’s

---

<sup>62</sup> Abadir M. Ibrahim, *The Nile Basin Cooperative Framework Agreement: The Beginning of the End of Egyptian Hydro-Political Hegemony*, 18 MO. ENV’T L. & POL’Y REV. 282, 302 (2011).

<sup>63</sup> See generally Vienna Convention on the Law of Treaties, May 13, 1969, 1155 U.N.T.S. 331.

<sup>64</sup> *Status of Treaties: Vienna Convention on the Law of Treaties*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en) [https://perma.cc/5HK4-RWES]; Vienna Convention on the Law of Treaties, *supra* note 63, art. 12.

<sup>65</sup> U.N. TREATY COLLECTION, *supra* note 64.

<sup>66</sup> Vienna Convention on the Law of Treaties, *supra* note 63, art. 18.

<sup>67</sup> See e.g., *The Gabčíkovo-Nagymaros Project (Hung. v. Slov.)*, Judgment, 1997 I.C.J. 7, ¶ 46 (Sept. 25).

possible impacts.<sup>68</sup> The panel's 2013 report, and its 2015 second attempt, only resulted in further impact studies.<sup>69</sup> Tensions peaked in 2013 when then president of Egypt, Mohamed Morsi, declared that Egypt "will defend each drop of Nile water with our blood if necessary."<sup>70</sup> In 2015, the leaders of the three states gathered to sign a cooperation deal.<sup>71</sup> The deal is nonbinding, but it lays out goals for future cooperation and possible principles, including downstream priority for excess energy, methods for conflict resolution, and future damage compensations.<sup>72</sup>

Second, in 2019, an international study group failed to reach an agreement between the three states.<sup>73</sup> Ethiopia, Egypt, and Sudan then began a third round of talks observed by the US Treasury and World Bank.<sup>74</sup> In 2020, Ethiopia rejected Egypt's proposed agreements, citing concerns that the US Treasury and World Bank favored Egypt in the talks.<sup>75</sup> In turn, Egypt and Sudan denied Ethiopia's counterproposal.<sup>76</sup> In 2020 and 2021, Sudan and Egypt called on the United Nations Security Council to help resolve the dispute, however, Ethiopia has refused to negotiate in any UN-led talks.<sup>77</sup> With Ethiopia refusing to come to the UN negotiating table, all the council could do was urge the parties to cooperate. In June 2022, Ethiopia stated that it was willing to resume talks with Egypt and Sudan if these talks were led by the African Union.<sup>78</sup>

One of the areas of disagreement in these negotiations concerns the status of the colonial-era Nile water-sharing treaties earlier discussed.<sup>79</sup> Egypt and Sudan believe that any new agreement should recognize and

<sup>68</sup> *The Grand Ethiopian Renaissance Dam: A Timeline*, INT'L CRISIS GRP (June 17, 2020), <https://www.crisisgroup.org/africa/horn-africa/ethiopia/grand-ethiopian-renaissance-dam-timeline> [<https://perma.cc/S4YH-EBDE>].

<sup>69</sup> *Id.*

<sup>70</sup> Sheila M. Olmstead & Hilary Sigman, *Dam Construction on International Rivers*, RES. MAG. (Jan. 7, 2016), <https://www.resources.org/archives/dam-construction-on-international-rivers/> [<https://perma.cc/8A9L-G6H9>].

<sup>71</sup> El Dahan, *supra* note 59.

<sup>72</sup> *Id.*

<sup>73</sup> INT'L CRISIS GRP., *supra* note 68.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> See U.N. President of the S.C., Statement by the President of the Security Council, U.N. Doc. S/PRST/2021/18 (Sept. 15, 2021).

<sup>78</sup> *Ethiopia Says Willing to Resume Dam Talks with Egypt, Sudan*, AP NEWS (June 10, 2022, 11:08 AM), <https://apnews.com/article/politics-africa-middle-east-egypt-kenya-1ddaf63927805e0f2aaab043008327> [<https://perma.cc/7H26-LDSA>].

<sup>79</sup> Tekuya, *supra* note 41.

comply with the 1902, 1929, and 1959 agreements.<sup>80</sup> Ethiopia believes that it is not bound to those agreements and is seeking a new agreement that would replace the 1929 and 1959 agreements and clear any confusion regarding them.<sup>81</sup>

The two sides of the argument have also taken differing mindsets when viewing the problem. Ethiopia is arguing from a “Cornucopian” approach. The Cornucopian approach to international water law believes that resources are inherently abundant, and the real problem is mismanagement, not scarcity.<sup>82</sup> If one can avoid mismanagement, there will be no scarcity. In contrast, Egypt and Sudan are arguing from a “Neo-Malthusian” point of view, which believes that resources are limited, and other issues such as high population growth and unequal resource allocation lead to scarcity and ecological disasters.<sup>83</sup> Their Neo-Malthusian approach may be a reflection of Egypt’s exploding population that has now surpassed one hundred million people.<sup>84</sup>

There have been no tripartite talks since 2020. In October 2022, Egypt and Sudan convened for the sixty-second session of the Permanent Joint Technical Commission for Nile Waters.<sup>85</sup> These talks stem from the 1959 Nile Waters Agreement, which established the commission.<sup>86</sup> The current commission is discussing how the two states can work together toward a common vision for the use of the Nile’s waters, however, there is currently no end in sight to the disagreement with Ethiopia.<sup>87</sup>

## II. ANALYSIS

Part II of this Comment will analyze the responsibilities Ethiopia owes to Egypt and Sudan. First, this part will analyze Ethiopia’s responsibilities under the 1902, 1929, and 1959 Nile Waters Treaties. This part will then interpret ancestral-waters claims that the three states may

<sup>80</sup> *See id.*

<sup>81</sup> *Id.*

<sup>82</sup> Marwa Daoudy, *Hydro-Hegemony and International Water Law: Laying Claims to Water Rights*, 10 WATER POL’Y 89, 89 (2008).

<sup>83</sup> *Id.*

<sup>84</sup> *See World Population Dashboard Egypt*, U.N. POPULATION FUND, <https://www.unfpa.org/data/world-population/EG> [<https://perma.cc/DTM3-SJB3>].

<sup>85</sup> Hagar Hosny, *Egypt, Sudan Joint Committee Resume Talks on Nile Waters*, AL-MONITOR (Oct. 15, 2022), <https://www.al-monitor.com/originals/2022/10/egypt-sudan-joint-committee-resume-talks-nile-waters> [<https://perma.cc/U8NM-V2TB>].

<sup>86</sup> Agreement (with Annexes) for the Full Utilization of the Nile Waters, *supra* note 48, art. 4(1).

<sup>87</sup> Hosny, *supra* note 85, at 3.

make before discussing Ethiopia's defense of territorial sovereignty. Part II concludes with lessons that the three states can glean and implement from a successful water-sharing agreement from central Asia.

A. THE 1902 NILE WATERS TREATY SIGNED BETWEEN EGYPT, THE UNITED KINGDOM, AND ETHIOPIA CONFERS RIGHTS TO UNOBSTRUCTED NILE WATERS TO EGYPT.

The 1902 Niles Waters Treaty, signed by the United Kingdom, Egypt, and Ethiopia, granted Egypt and Sudan rights to the use and enjoyment of the Nile's waters. As Egypt and Sudan were both British colonies at the time, in most of these treaties, the crown signed for Egypt or Sudan. Now that these former colonies are independent, these treaties consider the Egyptian or Sudanese governments to have signed for themselves. The treaty that most clearly applies to a project like the GERD is the aforementioned Anglo-Ethiopian Treaty of 1902. This treaty provides, in Article III, that the emperor of Ethiopia agrees "not to construct or allow to be constructed any work across the Blue Nile . . . which would arrest the flow of their waters into the Nile except in agreement with his Britannic Majesty's Government and the Government of the Soudan."<sup>88</sup> While this seems to clearly preclude the building of the GERD, there are some issues to which Ethiopia points as to why the treaty is not actually controlling.

First, the copy of the treaty that the emperor of Ethiopia signed was translated to Aramaic.<sup>89</sup> This translated copy accidentally omitted the final clause of "and the Government of the Soudan" from the quoted excerpt above.<sup>90</sup> The Ethiopian government now argues that this mistranslation not only effectively gave Sudan no say in the current matter, but also voided the entire treaty, as the terms were never fully agreed upon. In the alternative, Ethiopia argues that this treaty does not control its ability to build the GERD because the treaty only precludes complete blockage of the Nile, and the GERD will still allow the Nile to flow, just at a slightly diminished rate.<sup>91</sup> Finally, Ethiopia argues that the treaty did not pass to the Sudanese government after it gained its independence from the British

---

<sup>88</sup> Treaties Relative to the Frontiers Between the Soudan, Ethiopia and Eritrea, *supra* note 36, art. 4.

<sup>89</sup> Ullendorff, *supra* note 37, at 651.

<sup>90</sup> *Id.* at 652.

<sup>91</sup> Tekuya, *supra* note 41.

Crown. Therefore, the Sudanese were never an actual party to the treaty and thus cannot bring complaints pursuant to it.

While the 1902 Anglo-Ethiopian treaty does have some issues, the substance of the agreement is still binding upon the parties, and therefore it should have precluded Ethiopia from building the GERD without the prior approval of the Sudanese Government. Mistranslations of international treaties are unfortunately more common than one would hope. The United Kingdom has been party to other mistranslated treaties. In 1840, the British Crown entered into a treaty with the native Māori population of New Zealand.<sup>92</sup> This treaty, called the Treaty of Waitangi, was signed in both English and Māori and had some subtle differences between the two copies.<sup>93</sup> It took over one hundred years, but in 1975, the terms of the treaty were finally settled by the Waitangi Tribunal, which held exclusive authority to determine the meaning of the treaty and bridge the gaps between the two versions.<sup>94</sup> The tribunal held that while there were two versions of this treaty, legally, there was only one.<sup>95</sup> This holding follows Article 33 of the VCLT, which states, “when a comparison of authentic texts discloses a difference of meaning . . . the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.”<sup>96</sup>

The Anglo-Ethiopian treaty should work the same way. While there are English and Aramaic versions, there is only one legal treaty. That treaty should be read as one document, with any disagreements between the two versions being amended by following the general policy or spirit of the original agreement. Working heavily in favor of taking this approach to the 1902 treaty is that there is only one mistranslation, and it does not heavily weigh into the meaning of the treaty. The Treaty of Waitangi contained mistranslations that directly dealt with the sovereignty of the Māori people, a much more egregious mistranslation than the one at hand.<sup>97</sup> The techniques used to interpret the mistranslation in the Treaty of Waitangi can be applied to the 1902 Anglo-Ethiopian treaty.

---

<sup>92</sup> Treaty of Waitangi, U.K.-Māori, Feb. 6, 1840, <https://nzhistory.govt.nz/politics/treaty/read-the-treaty/english-text> [<https://perma.cc/M2WP-NRP9>].

<sup>93</sup> *Read the Treaty: Differences Between the Texts*, N.Z. HIST., <https://nzhistory.govt.nz/politics/treaty/read-the-Treaty/differences-between-the-texts> [<https://perma.cc/F3NC-HKY8>].

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Vienna Convention on the Law of Treaties, *supra* note 63, art. 33.

<sup>97</sup> N.Z. HIST., *supra* note 93.

The 1902 Anglo-Ethiopian treaty does not contain a mistranslation as egregious as the one in the Treaty of Waitangi. The 1902 treaty's main provision requires Ethiopia to not block to flow of the Nile. The requirement that the British and the Sudanese governments approve a blockage is not a major player in the treaty, especially since, nowadays, the colonial British government and the provisional Sudanese are now one and the same. Because the treaty applies to the states involved, even with the mistranslation, the treaty confers rights to Nile waters to Egypt and Sudan.

B. THE GRAND ETHIOPIAN RENAISSANCE DAM CONSTITUTES AN ARREST AS DEFINED IN THE 1902 NILE WATERS TREATY.

Ethiopia argues that, even if the 1902 Anglo-Ethiopian Treaty applies to the building of the GERD, the GERD does not violate the treaty, because the alleged infraction does not fit the definition of "arrest."<sup>98</sup> But this argument fails. Ethiopia argues that the treaty only bars it from completely blocking the flow of the Blue Nile, and, as the GERD will only reduce the flow of the Blue Nile, not completely block the flow, there is no violation.<sup>99</sup> This argument also fails.

To start, the treaty's exact language must be examined. Article III of the 1902 Anglo-Ethiopian Treaty states that Ethiopia may not "construct or allow to be constructed any work across the Blue Nile . . . which would arrest the flow."<sup>100</sup> The operative term here is "arrest." Ethiopia argues that arrest means complete blockage, while Sudan and Egypt argue that "arrest" means any sort of reduction in the Nile's flow.<sup>101</sup> Certain definitions of "arrest" can work in ways that support either argument.<sup>102</sup> On Ethiopia's side, one definition of "arrest" is: "to bring to a stop."<sup>103</sup> This definition would further Ethiopia's argument that the treaty only precludes total blockage of the Nile. On Egypt and Sudan's side, another definition is: "to check, slow" and "to seize, capture."<sup>104</sup> These definitions would preclude Ethiopia's building of

---

<sup>98</sup> Tekuya, *supra* note 41.

<sup>99</sup> *Id.*

<sup>100</sup> Treaties Relative to the Frontiers Between the Soudan, Ethiopia and Eritrea, *supra* note 36, art. 3.

<sup>101</sup> Tekuya, *supra* note 41.

<sup>102</sup> *Arrest*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/arrest> [https://perma.cc/54PK-PZ59].

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

the GERD. Which definition is chosen decides whether the GERD causes an impermissible “arrest.”

The GERD will reduce and slow the Blue Nile’s flowrate into Sudan and, later, Egypt. The GERD will also seize over seventy-four cubed kilometers (about 1.6 years’ worth of normal Nile output) of Blue Nile waters within its reservoir.<sup>105</sup> Article 31 of the VCLT states that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”<sup>106</sup> Here, the objective of the 1902 agreement was to ensure Egypt and Sudan’s access to Nile waters. That purpose would be almost completely defeated if the only requirement from Ethiopia was that it does not completely block the Nile. If Ethiopia’s reading is accepted, it would need to only provide a single drop of Nile waters to Sudan to comply with the treaty. That would not break the letter of the treaty but would very clearly break its “object and purpose.” Ethiopia’s reading of “arrest” would frustrate the purpose of the treaty and therefore cannot be accepted. Egypt and Sudan’s interpretation of “arrest” fits within the purpose of the treaty and therefore is a valid interpretation.

#### C. THE 1902 NILE WATERS TREATY CONFERS TO SUDAN RIGHTS TO UNOBSTRUCTED NILE WATERS.

Ethiopia also argues that the 1902 treaty is not in force between it and Sudan because Sudan was not an original party to the treaty. Sudan was a UK colony at the time of the treaty, and, therefore, the treaty was completed between the United Kingdom and Ethiopia.<sup>107</sup> International law on the succession of states and their treaty responsibilities is not entirely settled.<sup>108</sup> However, in the case of Sudan, Egypt, and Ethiopia, a past treaty has settled the matter. Egypt and Ethiopia are both parties to, and Sudan is a signatory of, the Vienna Convention on Succession of States in Respect

---

<sup>105</sup> *Ethiopia – Grand Ethiopian Renaissance Dam (GERD)*, INT’L HYDROPOWER ASS’N, [https://www.hydropower.org/sediment-management-case-studies/ethiopia-grand-ethiopian-renaissance-dam-gerd#:~:text=With%20a%20volume%20of%2074,in%20Sudan%20\(Conway%201997\)\[https://perma.cc/9WWL-DASL\]](https://www.hydropower.org/sediment-management-case-studies/ethiopia-grand-ethiopian-renaissance-dam-gerd#:~:text=With%20a%20volume%20of%2074,in%20Sudan%20(Conway%201997)[https://perma.cc/9WWL-DASL]).

<sup>106</sup> Vienna Convention on the Law of Treaties, *supra* note 63, art. 31.

<sup>107</sup> Treaties Relative to the Frontiers Between the Soudan, Ethiopia and Eritrea, *supra* note 36, art. 3.

<sup>108</sup> See e.g., Paul R. Williams, *The Treaty Obligations of the Successor States of the Former Soviet Union, Yugoslavia, and Czechoslovakia: Do They Continue in Force?*, 23 DENV. J. INT’L L. & POL’Y 1, 1–2 (1994).



of Treaties (VCSST).<sup>109</sup> The VCSST is a treaty that attempts to create rules for how a successor state will regard the treaties that the predecessor state signed on its behalf.<sup>110</sup> The VCSST has twenty-three parties and another nineteen signatories.<sup>111</sup> This treaty has likely not met the bar of general practice and *opinio juris* required to find it as CIL amongst the broader international scene.<sup>112</sup> However, because all three have signed the treaty, under Articles 12 and 18 of the VCLT, all three are bound by it.<sup>113</sup>

Article 7 of the VCSST states that it only applies to successions of states that happen after its entry into force.<sup>114</sup> While this would therefore mean it does not apply to the independence of Sudan and Egypt, as they both became independent before the treaty, the treaty can still act as CIL between the three nations, as all three have signed it and acted in accordance with it. Article 16 of the VCSST says that successor states essentially get a clean slate—they are not bound to remain in any treaties that their predecessor state signed.<sup>115</sup> However, Article 9 states that a successor state may unilaterally decide to remain bound by the treaties of a predecessor state.<sup>116</sup> That is what occurred here.

While Egypt and Sudan are successor states to their respective UK colonies, they have chosen to remain bound by the 1902 treaty with Ethiopia, as seen in their quoting of the treaty in negotiations with Ethiopia.<sup>117</sup> Under the VCSST, of which all involved states are parties, it is the right of the succeeding state to remain a party to treaties signed by its predecessor. Egypt and Sudan have chosen to do so here. Therefore, Ethiopia cannot argue that the treaty does not apply because Sudan was not an original party.

---

<sup>109</sup> *Status of Treaties: Vienna Convention on Succession of States in Respect of Treaties*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXIII-2&chaptre=23&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXIII-2&chaptre=23&clang=_en) [https://perma.cc/FRQ7-KJAW].

<sup>110</sup> Vienna Convention on the Succession of States in Respect to Treaties art. 7, Aug. 23, 1978, 1946 U.N.T.S. 3.

<sup>111</sup> *Id.*; U.N. TREATY COLLECTION, *supra* note 109.

<sup>112</sup> *Customary Law*, INT'L COMM. OF THE RED CROSS, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law> [https://perma.cc/T4YX-MLXG].

<sup>113</sup> Vienna Convention on the Law of Treaties, *supra* note 63, arts. 12, 18.

<sup>114</sup> Vienna Convention on the Succession of States in Respect to Treaties, *supra* note 110, art. 7.

<sup>115</sup> *Id.* art. 16.

<sup>116</sup> *Id.* art. 9.

<sup>117</sup> See e.g., Kalil Al-Anani, *The Conflict Between Egypt and Ethiopia: A Defining Moment for Both Countries*, ARAB CTR. WASH. D.C. (Dec. 6, 2023), <https://arabcenterdc.org/resource/water-conflict-between-egypt-and-ethiopia-a-defining-moment-for-both-countries/> [https://perma.cc/4M99-RDHA].

Finally, Ethiopia argues that the Sudanese government was not an original party to the treaty due to the mistranslation. As seen with the Treaty of Waitangi, the correct way to interpret mistranslations is to interpret them in the policy and spirit of the original treaty.<sup>118</sup> The spirit of the 1902 Anglo-Ethiopian Treaty is that Ethiopia cannot stop the flow of Nile waters to its downstream neighbors. Whether that downstream neighbor is the British Empire or an independent Sudan, the spirit of the treaty remains the same. As it does whether it needs approval of the British or the Sudanese.

D. THE 1929 AND 1959 NILE WATER TREATIES DO NOT PRECLUDE  
ETHIOPIA FROM BUILDING AND FILLING THE GRAND ETHIOPIAN  
RENAISSANCE DAM.

Ethiopia has a strong argument that the 1929 Anglo-Egyptian Treaty and its 1959 updates do not apply to the current situation with the GERD. The 1929 Anglo-Egyptian Treaty concerned allocation of the Nile's waters between Sudan and Egypt.<sup>119</sup> Of the allocated water within the treaty, the vast majority went to Egypt.<sup>120</sup> The treaty also gave Egypt a right to onsite inspections at a dam within Sudan, outside of its territory, and a veto power over any dam along the Nile that would "threaten Egyptian interests."<sup>121</sup> This treaty is weakened by the fact that the only signatories were Egypt and Great Britain (in its own interests and the interests of the colonial Sudan).<sup>122</sup> In 1959, Egypt, Sudan, and Great Britain altered the allocations of Nile Waters from the original 1929 agreement.<sup>123</sup> This new agreement allocated all of the estimated Nile waters to only two states: Egypt and Sudan.<sup>124</sup> The only unallocated Nile waters in the 1959 agreement were ten billion cubic meters that were allocated to expected runoff and evaporation.<sup>125</sup>

---

<sup>118</sup> Vienna Convention on the Law of Treaties, *supra* note 63, art. 33.

<sup>119</sup> Mbaku, *supra* note 19.

<sup>120</sup> *Id.*

<sup>121</sup> Patrick Loch Otieno Lumumba, *The Interpretation of the 1929 Treaty and its Legal Relevance and Implications for the Stability of the Region*, 11 AFR. SOCIO. R. 10, 13 (2007).

<sup>122</sup> *Id.* at 12–13.

<sup>123</sup> Agreement (with Annexes) for the Full Utilization of the Nile Waters, *supra* note 48, art. 2(3); Exchange of Notes in Regard to the Use of the Waters of the River Nile for Irrigation Purposes, *supra* note 45.

<sup>124</sup> Agreement (with Annexes) for the Full Utilization of the Nile Waters, *supra* note 48, art. 2(3).

<sup>125</sup> *Id.* art. 2(4).

Ethiopia's arguments that the 1929 and 1959 arguments do not apply to the GERD are more convincing than its arguments against the 1902 Anglo-Ethiopian Treaty. Unlike in the 1902 treaty, Ethiopia was not a party to these later treaties. Ethiopia was never able to advocate for itself in the drafting of the 1929 and 1959 agreements because it was not even given a seat at the table. Egypt, Sudan, and Great Britain also did not seem to take Ethiopia into account because the total Nile waters allocated in the 1959 agreement equals the entire yearly outflow of the Nile as calculated by the 1929 agreement.<sup>126</sup> In order to be bound by a treaty, a state must consent to the treaty by ratification, acceptance, or approval.<sup>127</sup> Ethiopia did not sign the 1929 or 1959 agreements at the time of ratification, and has not signed either document in any capacity at any time.<sup>128</sup>

Egypt and Sudan are essentially trying to extrapolate a treaty between the two of them to the rest of the Nile basin. This does not work for two reasons. First, Egypt and Sudan cannot assert that the upstream Nile states are bound by the treaty because, just like Ethiopia, none of them assisted in the drafting of the agreements, and none of them ever signed it and, therefore, never agreed to be bound by it.<sup>129</sup> Secondly, as stated above, for a treaty to go into effect, all parties intended to be bound by the treaty must consent.<sup>130</sup> Therefore, if Egypt and Sudan claim that the rest of the Nile Basin states are bound by the 1929 and 1959 Anglo-Egyptian treaties, then they must show that all of the Nile Basin states have signed the agreements. As none of them have, this treaty does not apply to the nonsignatory states. Egypt and Sudan must either accept that the treaty is not in effect because all bound parties have not signed it or accept that the treaty is only binding upon the two signatories.

Finally, some have argued that the Nile River could fall under *res Communis*, or the common heritage of mankind.<sup>131</sup> Territories that typically fall under *res Communis* are those where territorial sovereignty cannot be established, such as the oceans, Antarctica, and outer space.<sup>132</sup>

---

<sup>126</sup> See *id.* p.mbl.

<sup>127</sup> Vienna Convention on the Law of Treaties, *supra* note 63, art. 12.

<sup>128</sup> See generally Agreement for the Full Utilization of the Nile Waters, *supra* note 48, art. 2(3); Exchange of Notes in Regard to the Use of the Waters of the River Nile for Irrigation Purposes, *supra* note 45.

<sup>129</sup> See Agreement (with Annexes) for the Full Utilization of the Nile Waters, *supra* note 48, art. 2(3); Exchange of Notes in Regard to the Use of the Waters of the River Nile for Irrigation Purposes, *supra* note 45.

<sup>130</sup> Vienna Convention on the Law of Treaties, *supra* note 63, art. 12.

<sup>131</sup> Lumumba, *supra* note 121, at 12.

<sup>132</sup> *Id.* at 11–12.

If the Nile were *res Communis*, then Ethiopia would be precluded from building the GERD, as no one state could establish sovereignty over the Nile's waters. This argument fails, however, because the states up and down the Nile have been establishing their sovereignty over the Nile within their borders for centuries. The Nile water sharing agreements discussed earlier also preclude a finding of *res Communis*, because Egypt and Sudan have demonstrated their sovereignty over the Nile, and the other states have tacitly accepted this demonstration.<sup>133</sup>

In sum, of the three relevant Nile waters treaties, only the 1902 Anglo-Ethiopian Treaty precludes the building of the GERD. The 1902 treaty involved Ethiopia as a party, the mistranslation was immaterial to the main points of the agreement, and the language of the treaty clearly precludes Ethiopia from building the GERD without consent from the downstream states.<sup>134</sup> The 1929 and 1959 agreements, on the other hand, are not binding on Ethiopia's building of the GERD, as these agreements were never approved by Ethiopia or any other upstream state.<sup>135</sup> Egypt and Sudan cannot claim that parties that were not involved in any part of the treaty-making-and-ratifying processes are bound to said treaty. However, because of the 1902 treaty, Ethiopia should be precluded from building the GERD without consent from Sudan and Egypt.

E. EGYPT, SUDAN, AND ETHIOPIA ALL HAVE MUTUAL ANCESTRAL RIGHTS TO USE THE NILE'S WATERS FOR THE SUSTENANCE OF THEIR PEOPLE.

Egypt and Sudan may also have a claim that their citizens have an ancestral right to the Nile's water. The ancestors of Egyptians and Sudanese have lived in and farmed the Nile basin for over eight thousand years.<sup>136</sup> In a dry region like the Sahara Desert, the Nile serves as the lifeblood of the region. Without the Nile and its irrigating waters, Sudan and Egypt would be completely desolate deserts.

A claim to ancestral waters is closely related to the doctrine of equitable and reasonable utilization of international waters. This doctrine has been set out in the Convention on the Protection and Use of

---

<sup>133</sup> *Id.*

<sup>134</sup> Ullendorff, *supra* note 37, at 641.

<sup>135</sup> Tekuya, *supra* note 41.

<sup>136</sup> *Life Along the Nile*, US HISTORY, <https://www.ushistory.org/civ/3a.asp> [<https://perma.cc/AM6T-R48J>].

Transboundary Watercourses and International Lakes as well as the Convention on the Law of the Non-Navigational Uses of International Watercourses.<sup>137</sup> However, none of the three involved states have signed or ratified either of these treaties.<sup>138</sup> The two treaties have under sixty parties each and therefore likely do not reach the general practice needed to find CIL on the topic.<sup>139</sup> As these treaties cannot be applied to this situation through signatories or CIL, a unique angle through historical uses of water rights may prove more successful in this situation.

Various native groups around the world are typically the ones claiming historical water rights. In recent years, the practice has seen significant victories, such as the recognition of the ancestral rights of the Aymara people of Chile.<sup>140</sup> The Māori also recently successfully lobbied the national legislature in New Zealand to obtain legal personhood of their ancestral river.<sup>141</sup> However, attempting to advocate for ancestral rights on behalf of an entire country would be uncharted territory. Ancestral-rights-to-water cases also typically involve a community advocating for some added benefit, such as fishing outside of normal fishing seasons.<sup>142</sup> In the case of Egypt's and Sudan's ancestral claims to the Nile's waters, the two states would instead be arguing to take away another state's sovereignty instead of trying to grant themselves some added benefit.

Another complication to the ancestral-waters argument is that claims of this nature are usually only for amounts of water necessary for the claiming group's sustenance. The first major successful ancestral-water-rights claim came in the 1908 US Supreme Court decision *Winters*

<sup>137</sup> Convention on the Protection and Use of Transboundary Watercourses and International Lakes, art. 2, Mar. 17, 1992, 1936 U.N.T.S. 269; Convention on the Law of the Non-Navigational Uses of International Watercourses, art. 5, 6, May 21, 1997, 2999 U.N.T.S. 77.

<sup>138</sup> *Status of Treaties: Convention on the Law of the Non-Navigational Uses of International Watercourses*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-12&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-12&chapter=27&clang=en) [<https://perma.cc/5FJR-H2QC>] [hereinafter *Status – Non-Navigational Uses of International Watercourses*]; *Status of Treaties: Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg\\_no=xxvii-5&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=xxvii-5&chapter=27&clang=en) [<https://perma.cc/ZX75-BBYR>] [hereinafter *Status – Convention on Protection of International Watercourses*].

<sup>139</sup> *Status – Non-Navigational Uses of International Watercourses*, *supra* note 138, Part II, art. 5; *Status – Convention on Protection of International Watercourses*, *supra* note 138.

<sup>140</sup> Rivera, *supra* note 33.

<sup>141</sup> Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 2 (N.Z.).

<sup>142</sup> See *United States v. Washington*, 384 F. Supp. 312, 327–28 (W.D. Wash. 1974).

*v. United States*.<sup>143</sup> In *Winters*, the Supreme Court recognized that a tribe has an inherent right to draw enough water required for sustenance from all rivers that flow through its territories.<sup>144</sup> *Winters* was the first successful ancestral-waters case, and it has provided a roadmap for native peoples and independent states to make the claim in the coming years, which may be applicable to the situation surrounding the GERD.

In the GERD's case, Ethiopia could use this argument against Egypt and Sudan. As Ethiopia has argued in the past, the GERD will provide over six thousand megawatts of power to the country.<sup>145</sup> In a state where over 60 percent of the population lives without power, the GERD has the power to completely reshape the Ethiopian economy and the prosperity of its people.<sup>146</sup> Sustenance is defined as "a means of support, maintenance of subsistence" and as "a supplying or being supplied with the necessities of life."<sup>147</sup> Lack of access to electricity closely correlates to extreme poverty.<sup>148</sup> In turn, "poverty and poor health worldwide are inextricably linked."<sup>149</sup> Therefore, Ethiopia can convincingly argue that its use of the Nile within its borders is necessary for the sustenance of its people. "Necessaries" are defined as "things indispensable, or things proper and useful, for the sustenance of human life."<sup>150</sup> Ethiopia's use of the GERD on the Nile satisfies this definition. As outlined above, a lack of electrical power can lead to poverty and disease, so this resource is clearly necessary for the sustenance of human life. Therefore, Ethiopia will be able to use the claim of its historical water rights to defend its construction of the GERD.

Egypt and Sudan will be able to use ancestral-water-rights claims to preclude any full arrest of the Nile's flow by Ethiopia. The most convincing argument that Egypt has for its ancestral rights is that they have been recognized in the past. In 1929, the British government recognized

<sup>143</sup> Varsha Venkatasubramanian, *Water Rights and Indigenous Communities*, NAT'L COUNCIL HIST. EDUC. (June 1, 2021), <https://ncheteach.org/blog/uncategorized/water-rights-and-indigenous-communities/> [https://perma.cc/25CC-EBSC].

<sup>144</sup> *Id.*

<sup>145</sup> Mbaku, *supra* note 19.

<sup>146</sup> Chen & Swain, *supra* note 24, at 11.

<sup>147</sup> *Sustenance*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/sustenance> [https://perma.cc/QDY8-UMZD].

<sup>148</sup> Chen & Swain, *supra* note 24, at 11.

<sup>149</sup> Sorsha Roberts, *Key Facts: Poverty and Poor Health*, HEALTH POVERTY ACTION (Jan. 10, 2018), <https://www.healthpovertyaction.org/news-events/key-facts-poverty-and-poor-health/> [https://perma.cc/8SYN-6G9H].

<sup>150</sup> *Necessaries*, L. DICTIONARY, <https://thelawdictionary.org/necessaries/> [https://perma.cc/5SAN-6JPP].

that Egypt had historical rights to the Nile's waters.<sup>151</sup> This recognition of historical rights also applies to Sudan, as, at that time, Egypt was in control of Sudan under the title of Anglo-Egyptian Sudan.<sup>152</sup> In the 1929 Nile Waters Treaty, the chairman of the Council of Ministers stated that any allocation of Nile waters to Sudan would not infringe on Egypt's historical Nile water rights.<sup>153</sup> Thousands of years of use of the Nile's waters predates that letter, and nearly one hundred years of continued Egyptian and Sudanese use of the Nile have followed the letter. This is more than enough to establish the continued Egyptian and Sudanese use of the Nile's waters.

The period of continued use does not need to be very long to find historical uses. For example, in 2020, the Chilean Supreme Court found that the Aymara people had ancestral rights to the waters in question, despite finding that the Aymara had only been using the waters continuously since 1920.<sup>154</sup> In Egypt's case, the United Kingdom recognized Egypt's historical and ancestral rights to the Nile almost as long ago, and Egyptian use of the Nile traces back over eight thousand years.<sup>155</sup> Because Egypt and Sudan both have historical uses of the Nile, the upstream states, including Ethiopia, must provide enough water to the downstream states to support their people's sustenance. The GERD reservoir will hold over seventy billion cubic meters of water, while the average annual flow of the Blue Nile is only about eighty-four billion cubic meters of water annually.<sup>156</sup> While this is a massive amount of water for Ethiopia to use, it is not all being arrested at the same time—filling the reservoir started in 2020 and will not finish until at latest 2025.<sup>157</sup> This slow, procedural arrest of the Nile's waters by Ethiopia is massive, but it is likely not enough to preclude the sustenance of the Egyptian or Sudanese people in the short or long term.

In conclusion, both Egypt and Sudan have ancestral-rights claims to the Blue Nile's waters. Therefore, all three involved states must allow the others to arrest an amount of water necessary for the sustenance of their

---

<sup>151</sup> Ottaway, *supra* note 2.

<sup>152</sup> *Anglo-Egyptian Condominium*, BRITANNICA, <https://www.britannica.com/place/Anglo-Egyptian-Condominium> [<https://perma.cc/EEF4-L8T7>].

<sup>153</sup> Exchange of Notes in Regard to the Use of the Waters of the River Nile for Irrigation Purposes, *supra* note 45.

<sup>154</sup> Rivera, *supra* note 33.

<sup>155</sup> USHISTORY.ORG, *supra* note 136.

<sup>156</sup> Food & Agric. Org. of the U.N., *supra* note 20; Mbaku, *supra* note 6.

<sup>157</sup> Samra, *supra* note 4, at 994.

people. The GERD, while massive in its water intake, is not likely to arrest so much water to preclude Egypt or Sudan from achieving sustenance. While not the most important claim, the ancestral-water-rights claim is still useful in this situation for all three states. Ethiopia can use a claim of historical uses of water rights to argue that the GERD is necessary for its people's sustenance. On the other side, Egypt and Sudan can use a claim of historical uses to preclude any Ethiopian total or near-total arrest of the Blue Nile's waters. The claim is more useful for Egypt and Sudan because Ethiopia is the only state threatening a large-scale decrease in Nile flow with the construction of the GERD. The claim is also useful for Egypt and Sudan to argue against Ethiopia's interpretation of "arrest." Ethiopia's claim that "arrest" means only a complete blockage of the Nile would therefore violate the historical water rights of the Egyptians and Sudanese. Therefore, Egypt and Sudan can use the claim of historical uses of water rights to argue against both the building of the GERD itself and against Ethiopia's proposed interpretation of "arrest" in the 1902 treaty.

F. THE GRAND ETHIOPIAN RENAISSANCE DAM FALLS OUTSIDE OF ETHIOPIA'S TERRITORIAL SOVEREIGNTY BECAUSE ITS EFFECTS ARE NOT ESSENTIALLY WITHIN THE DOMESTIC JURISDICTION OF ETHIOPIA.

All states, including Ethiopia, are normally allowed to exercise all their powers within their territory without limitation from foreign states.<sup>158</sup> This is the principle of territorial sovereignty, the groundwork upon which modern international law is built.<sup>159</sup> This reliance on territorial sovereignty is seen even within the United Nations Charter.<sup>160</sup> Article 2, Section 7 of the charter states that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."<sup>161</sup> The International Court of Justice has also ruled that "between independent States, respect for territorial sovereignty is an essential foundation of international relations."<sup>162</sup> This International Court of Justice ruling has been used many times in international law, including in a recent 2009 United Nations request for the International Court of Justice to render an advisory opinion

<sup>158</sup> Samantha Besson, *Sovereignty*, in MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. (2011).

<sup>159</sup> *Territorial Sovereignty*, L. DICTIONARY, <https://thelawdictionary.org/territorial-sovereignty/> [<https://perma.cc/5DPS-N9BU>].

<sup>160</sup> Besson, *supra* note 158.

<sup>161</sup> U.N. Charter art. 2, ¶ 7.

<sup>162</sup> Corfu Channel, (U.K. v. Alb.), Judgment, 1949 I.C.J. Rep. 4, at 35 (April 9).



concerning the unilateral declaration of independence by the partially recognized state of Kosovo.<sup>163</sup> These historical and recent examples show that the principles of territorial sovereignty are so ingrained within international law that the assumption of the principle is often very difficult to overcome.

The powers of territorial sovereignty would naturally include the power of a state to build a dam on a river within its territory to provide power to its people. The GERD is located in the Benishangul-Gumuz region of Ethiopia, which lies entirely within Ethiopia's sovereign territory.<sup>164</sup> Therefore, the building of the dam is "essentially within the domestic jurisdiction of any state" under the UN Charter and would normally be protected from international intervention under the strong presumption of territorial sovereignty.<sup>165</sup> The complication comes when building the dam carries impacts outside any state's domestic jurisdiction because harms are placed upon downstream states outside of Ethiopian territorial control.

If the Blue Nile were entirely within Ethiopia's borders, then there would be no issue, and Ethiopia would be able to build the GERD with no international intervention. For example, the Mississippi River is entirely contained within the United States.<sup>166</sup> The Mississippi River begins in Lake Itasca in Minnesota and empties into the Gulf of Mexico in Louisiana.<sup>167</sup> Therefore, the United States is allowed to freely build dams along the Mississippi River and even fully arrest its flow if it so desires. While these actions are likely to have some impact on the few Canadian rivers and lakes that flow into the Mississippi as well as on the Caribbean states due to the change in the Gulf of Mexico's hydrology, these harms are likely too remote to be considered inside the domestic jurisdiction of the United States. The same cannot be said about the impacts the GERD will have upon Sudan and Egypt.

---

<sup>163</sup> Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of the Self-Government of Kosovo, Request by the General Assembly of the United Nations for an Advisory Opinion, Written Statement of the Republic of Azerbaijan, ¶ 20 (Apr. 17, 2009), <https://www.icj-cij.org/sites/default/files/case-related/141/15668.pdf> [<https://perma.cc/8G6R-APD6>].

<sup>164</sup> *Grand Ethiopian Renaissance Dam Project, Benishangul-Gumuz*, WATER TECH., <https://www.water-technology.net/projects/grand-ethiopian-renaissance-dam-africa/> [<https://perma.cc/WR3K-SRXH>].

<sup>165</sup> U.N. Charter art. 2, ¶ 7.

<sup>166</sup> Robert A Muller, *Mississippi River*, BRITANNICA, <https://www.britannica.com/place/Mississippi-River> [<https://perma.cc/FMX9-LAY9>].

<sup>167</sup> *Id.*

Ethiopia's treatment of its downstream neighbors is not unique. As over 60 percent of the world's freshwater is held in rivers, lakes, and groundwater reserves that traverse international boundaries, the opportunities for cross-border water disputes are plentiful.<sup>168</sup> Many states around the globe have strategically looked to inflict the negative harms of dam building projects outside of their physical territory, with dams being 27 percent more likely to be sited in areas upstream of international borders.<sup>169</sup> The dam construction projects' intensity also increases drastically in this subset of dams.<sup>170</sup> Reservoir capacity nearly doubles and dam height increases by 59 percent—two factors that increase downstream harms—when compared to dams that are not upstream of an international border.<sup>171</sup> Ethiopia has fallen into this category by trying to pass off some of the costs, called the “spillover effect,” of the GERD to its downstream neighbors, which have no control of the situation.<sup>172</sup>

The GERD will have significant impacts on the Blue Nile's short- and long-term hydrology. In the short term, the GERD will arrest significant amounts of Blue Nile water from now until 2025, when the filling of the reservoir is scheduled to be completed.<sup>173</sup> In the long term, Egypt and Sudan are concerned that the increased evaporation off the GERD reservoir's large surface will also decrease the amount of Blue Nile water that flows into their states.<sup>174</sup> These impacts upon downstream states are being felt outside Ethiopia; therefore, the building of the dam is outside the realm of Ethiopia's domestic jurisdiction and opens up the possibility of international intervention.

---

<sup>168</sup> Econ. Comm'n for Eur., *supra* note 1.

<sup>169</sup> Olmstead & Sigman, *supra* note 70.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> Sheila M. Olmstead & Hilary Sigman, *Damming the Commons: An Empirical Analysis of International Cooperation and Conflict in Dam Location*, 2 J. ASS'N ENV'T & RES. ECONOMISTS 497, 498 (2015).

<sup>173</sup> Samra, *supra* note 4, at 995.

<sup>174</sup> Mbaku, *supra* note 19.

G. ETHIOPIA MUST CONSIDER ITS TREATY OBLIGATIONS TO EGYPT AND SUDAN AND THE EGYPTIAN AND SUDANESE PEOPLES' ANCESTRAL RIGHTS TO THE NILE WATERS WHEN BUILDING THE GRAND ETHIOPIAN RENAISSANCE DAM.

The GERD has lost the territorial sovereignty protection typical of domestic energy projects because the dam's impacts will be felt outside Ethiopia's domestic jurisdiction. Therefore, Ethiopia must consider obligations it has to other states before completing constructing and filling the GERD. As outlined above, the obligations fall into two categories: (1) treaty obligations and (2) obligations arising from Egyptian and Sudanese historical uses of water.

Ethiopia must first consider Egyptian and Sudanese historical uses. These rights will not be hard to satisfy but are important for Ethiopia to recognize. Ethiopia must provide enough water for its downstream neighbors to ensure the sustenance of their people. Ethiopia has been meeting this requirement throughout the process of building the GERD. While the reservoir will require almost a year's worth of the Blue Nile's flow to fill, Ethiopia has been filling the reservoir at a slow, three-to-five-year pace.<sup>175</sup> This pace has ensured that the Egyptian and Sudanese peoples continue to have more than enough water from the Blue Nile to meet their needs. Ethiopia will still, however, need to monitor the long-term impacts of the GERD on the Nile's flow into Sudan and Egypt to ensure that they continue to meet the Egyptian and Sudanese peoples' ancestral water needs.

Sudan and Egypt are also very concerned about the increased evaporation that will occur off the massive surface of the new GERD reservoir.<sup>176</sup> Ethiopia will need to fully investigate the validity of these concerns and continually monitor this evaporation to ensure that it is not so severe as to violate the Egyptians' and the Sudanese's ancestral rights. If Ethiopia continues this slow filling process and continues to monitor the evaporation off the GERD reservoir, it will meet the historical uses of the water of the people of its downstream neighbor states.

Further, Ethiopia must consider its past treaties concerning the allocation of the Blue Nile's waters. A state is only bound by the treaties it signs.<sup>177</sup> For this reason, Ethiopia is not bound by the 1929 Anglo-

---

<sup>175</sup> Samra, *supra* note 4, at 994.

<sup>176</sup> Mbaku, *supra* note 19.

<sup>177</sup> Vienna Convention on the Law of Treaties, *supra* note 63, art. 12.

Egyptian Treaty or its 1959 follow-up treaty. Both treaties attempted to limit the amount of water Ethiopia was allowed to draw from the Blue Nile by allocating nearly the entire flow of the Nile to only Sudan and Egypt.<sup>178</sup> However, Ethiopia never signed either of those treaties, so it is not beholden to their terms.

The 1902 Anglo-Ethiopian Treaty, on the other hand, does bind Ethiopia to its terms. The 1929 Anglo-Ethiopian Treaty also limited the amount of water that Ethiopia could draw from the Blue Nile.<sup>179</sup> Article III of the 1902 Anglo-Ethiopian Treaty states that Ethiopia is “not to construct or allow to be constructed any work across the Blue Nile . . . which would arrest the flow of their waters into the Nile except in agreement with his Britannic Majesty’s Government and the Government of the Soudan.”<sup>180</sup> As mentioned above, the mistranslation of the treaty into Aramaic where the “Government of the Soudan” was omitted does not change the spirit of the agreement and, therefore, does not make the treaty unenforceable.<sup>181</sup> Unlike the 1929 and 1959 treaties, independent Ethiopia was actually a party to this treaty and had an opportunity to amend, reject, or accept the treaty as it saw fit.<sup>182</sup> Now, over one hundred years later, Ethiopia is still bound by this treaty. As outlined above, when reading the treaty in accordance with the VCLT, the operative term “arrest” would preclude the Ethiopian government from building the GERD without permission from its downstream neighbors.<sup>183</sup> Whether or not Ethiopia would need the approval of both Egypt and Sudan or just Egypt is debatable depending upon whether the Aramaic or the English form of the treaty is found to be the controlling copy. In either scenario, Ethiopia would need approval from at least one of the other states to build the GERD, because the GERD will “arrest” the flow of the Blue Nile in violation of the 1902 Anglo-Ethiopian treaty.

Finally, Ethiopia should consider granting Egypt and Sudan a share of the energy produced by the GERD. This strategy was successful in a very similar situation in January 2023.<sup>184</sup> Kyrgyzstan and its

---

<sup>178</sup> Kimenyi & Mbaku, *supra* note 42.

<sup>179</sup> Ullendorff, *supra* note 37, at 641.

<sup>180</sup> Treaties Relative to the Frontiers Between the Soudan, Ethiopia and Eritrea, *supra* note 36, art. 3.

<sup>181</sup> See Vienna Convention on the Law of Treaties, *supra* note 63, art. 12.

<sup>182</sup> Ullendorff, *supra* note 37, at 641.

<sup>183</sup> See *id.* § II.B.

<sup>184</sup> Chris Rickleton, *Now with Neighbors’ Support, Is Kyrgyzstan’s Mega-Dam Dream Viable?*, RADIO FREE EUR. (Jan. 11, 2023), <https://www.rferl.org/a/kyrgyzstan-naryn-river-hydropower-plant-uzbekistan-kazakhstan/32218985.html> [<https://perma.cc/BRF2-EML6>].

downstream neighbor of Uzbekistan have been debating about the building of a dam on the international Naryn River since the Soviet Union controlled both states.<sup>185</sup> In January 2023, the talks finally broke through with a tripartite agreement between Kyrgyzstan, Uzbekistan, and neighboring Kazakhstan.<sup>186</sup> The agreement grants Kyrgyzstan the right to build the dam while allocating a portion of the energy created to Uzbekistan and Kazakhstan through their shared Soviet legacy united energy grid.<sup>187</sup> Ethiopia could use a similar strategy when negotiating with Egypt and Sudan, gaining the goodwill of its downstream neighbors in exchange for a share of the GERD energy production and an increase in regional international cooperation.

Ethiopia should have obtained consent from Egypt and Sudan before building the GERD. The cooperation talks between Ethiopia and its downstream neighbors have been unsuccessful and sparse since the project broke ground in 2011.<sup>188</sup> The most recent round of talks fell apart, but Ethiopia is interested to continue negotiations if the African Union arbitrates.<sup>189</sup> With the filling of the GERD reservoir now almost complete, the options for a cooperative use of the dam are running out. Ethiopia must recognize that building the dam is precluded by the 1902 Anglo-Ethiopian treaty that Ethiopia itself signed. Ethiopia must work with its downstream neighbors to find a cooperative solution to the allocation of the Blue Nile's waters. Kyrgyzstan has provided Ethiopia a roadmap on how to successfully navigate an international dam agreement involving energy grid consolidation and grants of energy to affected downstream states.

### III. CONCLUSION

With the GERD nearing completion, time is running out to find a diplomatic release valve for the region's tensions. Ethiopia has already violated Sudan's and Egypt's rights promised in the Anglo-Ethiopian Treaty of 1902. Treaty obligations do not disappear unless the parties

---

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Kalil Al-Anani, *The Grand Ethiopian Renaissance Dam: Limited Options for a Resolution*, ARAB CTR. WASH. D.C. (Sept. 16, 2022), <https://arabcenterdc.org/resource/the-grand-ethiopian-renaissance-dam-limited-options-for-a-resolution/> [<https://perma.cc/6B8P-WR3C>].

<sup>189</sup> *Ethiopia Says Willing to Resume Dam Talks with Egypt, Sudan*, AP NEWS (June 10, 2022), <https://apnews.com/article/politics-africa-middle-east-egypt-kenya-1ddaf63927805e0f2aaab043008327> [<https://perma.cc/5Y5M-C9WE>].

agree to such an arrangement. No arrangement of that kind was made here. The legitimacy of international law and international treaties depends upon an understanding that states will abide by the terms by which they agree to be bound. Ethiopia is not following this understanding in its development of the GERD. Ethiopia is also in danger of violating the Egyptians' and Sudanese's historical uses of water, whose reliance on the Nile's waters for thousands of years confers them a right to regular use of the waters. In a water-starved environment such as northeast Africa, states do not take kindly to their neighbors' even minor threats to their water supply. Ethiopia must learn lessons from successful water-sharing agreements around the world to right the wrong it has committed against its downstream neighbors and to, hopefully, prevent the region from sliding into a full-scale conflict regarding the Nile's waters.