

The Nile in Legal and Political Perspective

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The Nile in Legal and Political Perspective

Between Change and Continuity

By

Mahemud E. Tekuya



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This book is printed on acid-free paper and produced in a sustainable manner.

*To all civilians who died due to the armed conflict in Ethiopia,
and
To my brother, Mohammed Eshetu Tikuye, who died because of the war*



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Foreword

It is often said today that the world is running out of water. This is not true literally, of course. The quantity of water on Earth has remained the same for billions of years. Yet as human populations grow and water is put to new uses shortages will inevitably occur in many countries.

The present work by Dr. Mahemud Tekuya, a son of Ethiopia, studies this reality in the fraught context of the Blue Nile and other watercourses flowing from Ethiopia to Egypt. Most schoolchildren know something of Egypt, given its fascinating history and culture. This cannot be said of Ethiopia to the same extent, however, despite that country's own highly developed society and, like Egypt, a history free of colonialism.

Egypt has been called the "gift of the Nile." But while most lay people think of "the Nile" referred to in this aphorism as the so-called "White Nile," which originates in the Lake Victoria basin and flows north to Egypt, more water by far, some 85 per cent, comes to Egypt from Ethiopia, via the Blue Nile, and also other rivers, notably the Atbara and the Sobat. It is thus understandable that Egypt would be alarmed by Ethiopia's announcement in 2011 that it would begin constructing what came to be called the Grand Ethiopian Renaissance Dam (the GERD). This action precipitated a tectonic shift in relations among Nile Basin States, and in particular among Egypt, Ethiopia and Sudan.

Given its importance to Nile riparian states, it is perhaps not surprising that a number of agreements have been concluded among those states. Ethiopia's bold move to construct the GERD puts some of those agreements to the test. They will also be stress-tested by climate change, which will no doubt alter the flows of the Blue and White Niles more powerfully than any dam or other human instrumentality could.

For all of these reasons, and others that will emerge with the reading of the present volume, Tekuya's work is of particular importance today. It should form part of the library of anyone interested in how states share fresh water, and indeed how relations between those states can be transformed by natural and artificial events.

Stephen C. McCaffrey
Sacramento, California
March 2023

Preface

Growing up in Wollo, Northeastern part of Ethiopia, I always wondered why my country could be so underdeveloped, despite its resources like the Nile River, while others were blossoming. Being from Wollo, a province adversely impacted by the 1983–1985 famine and where hundreds of thousands of Ethiopians perished as a result, I know firsthand the catastrophic impacts of drought and heavy reliance on rain-fed agriculture.

Although I was born after the 1983–1985 famine and did not lose immediate family members due to the famine, I remember mothers on the playground sobbing, “if it had not been for those evil days, my child would be here playing with you all.” In school, I often heard students respond with, “one of my brothers or sisters died during the famine,” when asked how many siblings they had. The school I went to was named “Bati Red Cross 77” to honor the organization that saved the lives of many Wolloyes through food and medical aid.

As a child, I remember asking why we (Ethiopians) experienced hunger and my father responded with an Amharic proverb, “*Yabayin lij wuha temaw*,” which literally means “Nile’s child got thirsty.” What my father was saying is that citizens of a country with a valuable resource like the Nile River were dying from hunger. An epiphany I had as I grew older was that the only way to prevent famines in the future was to use the Nile River for irrigation.

In 2011, while in law school, I heard about the beginning of the construction of the Grand Ethiopian Renaissance Dam (GERD), the first-ever large-scale Ethiopian dam to be built on the Blue Nile in Ethiopia. Like many students, I gave up some of my breakfast funds to raise money to support the project. The construction of the GERD caused me to reflect on how I could do more to help my country. I realized how few Ethiopian experts specialized in international watercourses law and decided to specialize in this field. Upon graduation in 2013, I started working at Dire Dawa University as a lecturer and taught various courses relevant to the subject matter. In 2015, I completed a research paper on the agreement on the declaration of principles between Ethiopia, Sudan, and Egypt; I presented it at a national conference organized by Dire Dawa University.

My teaching and research introduced me to a renowned scholar of international watercourses law, Prof. Stephen C. McCaffrey, who teaches at McGeorge School of Law; I decided to pursue my Ph.D./JSD study under his supervision. In 2017, I began a multidisciplinary study on the legal and hydro-political trajectories of the Nile Basin. From the beginning, I found that the academic discourse regarding the Nile watercourse is primarily dominated by monodisciplinary

research. This current research aimed for a broader approach and attempted to provide a retrospective and prospective look at the Nile watercourse through multidisciplinary lenses—commingling history, hydro-politics, climate change, and law.

Indeed, since the Nile Basin presents multifaceted problems, solutions and alternative proposals must deal with myriad issues influencing the legal and hydro-political interest of the Nile Basin States. Throughout this book, I have addressed several intertwined issues that cannot be dealt with in isolation while ensuring that the book does not lack focus.

Given my background as an Ethiopian, it was difficult to be dispassionate on many of the issues discussed in this book. However, I aimed to be as objective, thorough, and non-partisan as possible and tried to avoid subjective and speculative biases, and provided supporting authorities, facts, and figures for all my claims.

Acknowledgments

This book is based on my dissertation written in fulfillment of the requirements for the Ph.D./JSD (Doctor of Juridical Science) in International Water Resources Law at McGeorge School of Law, University of the Pacific, in Sacramento, California. I am extremely grateful to my supervisor, Professor Stephen C. McCaffrey, for allowing me to study under his supervision and tirelessly guiding my academic endeavors. Professor McCaffrey, one of the foremost authorities in the world on international watercourses law, was extremely supportive: This book could not have been completed without his critical review and precious comments. I sincerely appreciate his keen interest in the topic and his unwavering support throughout the development of this book.

I express my deepest gratitude to my distinguished JSD Dissertation Committee—External Examiner, Professor Daniel Magraw, President Emeritus of Center for International Environmental Law (CIEL) and Senior Fellow at Foreign Policy Institute, Johns Hopkins University; Committee Chair, Professor Omar Dajani, Director of Global Center for Business & Development at McGeorge School of Law; and Professor Rachael Salcido, Director of the Environmental Law Program and Sustainable Development Institute at McGeorge School of Law.

My sincere appreciation is also extended to McGeorge School of Law for awarding me the McGeorge Merit-Based Institutional Scholarship and Professor Stephen McCaffrey Scholarship for Water and Environmental Law. I am also grateful to the Open Society Foundations for the Civil Society Scholars Award they awarded me during the 2017/18 academic year. I would not have joined the JSD program at McGeorge School of Law and completed this book without these financial supports. Thank you so much all.

Finally, I would like to thank the two anonymous reviewers of the book for their insightful comments and Zoe Rosenblum, Ph.D. Candidate at Oregon State University, for proofreading the final draft of the book.

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Earlier versions of portions of this book have appeared in the following publications: *Governing the Nile Under Climatic Uncertainty: The Need for a Climate-Proof Basin-Wide Treaty*, 59 Nat. Res. J. (2019), and *Sink or Swim: Alternatives for Unlocking the Grand Ethiopian Renaissance Dam Dispute*, 59 Colum. J. Transnat'l L. (2020).

Table

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Abbreviations

AHD	Aswan High Dam
AU	African Union
BCM	Billion Cubic Meters
CFA	Cooperative Framework Agreement
CIDA	Canadian International Development Agency
COM	Council of Ministers
CPA	Comprehensive Peace Agreement Development and Environmental Protection of the Nile
DoP	Declaration of Principles
DRC	Democratic Republic of Congo
EIA	Environmental Impact Assessment
ENTRO	Eastern Nile Technical Regional Office
EPLF	Eritrean people's Liberation Front
EU	European Union
GDP	Gross Domestic Product
GERD	Grand Ethiopian Renaissance Dam
GNI	Gross National Income
HDI	Human Development Index
Hydromet	Hydrometeorological Project
IBRD	International Bank for Reconstruction and Development
ICJ	International Court of Justice
ILA	International Law Association
ILC	International Law Commission
IPCC	Intergovernmental Panel on Climate Change
IPoE	International Panel of Experts
JNC	Joint Negotiation Committee
MASL	Meters Above Sea Level
MW	Megawatt
NASA	U.S. National Aeronautics and Space Administration
NBI	Nile Basin Initiative
NBRAP	Nile River Basin Action Plan
NELSAP	Nile Equatorial Lake Subsidiary Action Program
NELSAPCU	Nile Equatorial Lake Subsidiary Action Program Coordination Unit
Nile COM	Nile Basin Council of Ministers
Nile-SEC	NBI Secretariat
Nile-TAC	Nile Technical Advisory Committee
NISRG	National Independent Scientific Research Group

NRBC	Nile River Basin Commission
OAU	Organization of African Unity
PJTC	Permanent Joint Technical Committee
POE	Panel of Experts
RBOS	River Basin Organizations
SAP	Subsidiary Action Programs
SVP	Shared Vision Program
TAC	Technical Advisory Committee
TC	Technical Committee (TC)
TECCONILE	Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile
TNC	Technical National Committee
TPLF	Tigray People's Liberation Front
UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
US	United States
USA	United States of America
USAID	United States Agency for International Development
USBR	U.S. Bureau of Reclamation
VCLT	Vienna Convention on the Law of Treaties
VCSSRT	Vienna Convention on State Succession in Respect of Treaties
WMO	World Meteorological Organization

