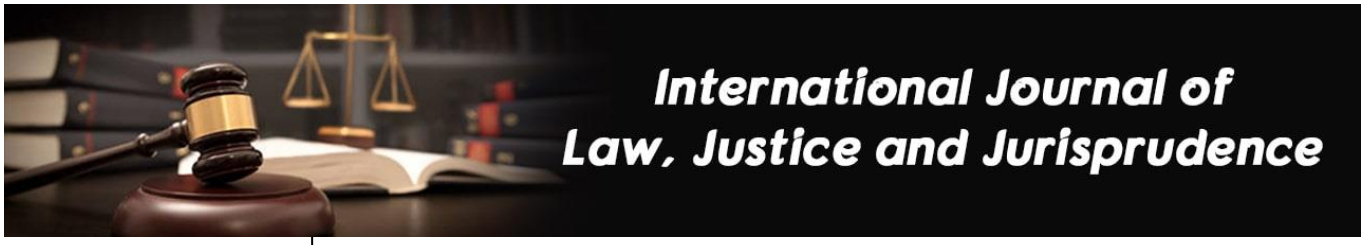

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Diana Asgele Gebremariam
School of Law, Zhejiang Gongshang University, Hangzhou, China

Fang Xu
School of Law, Zhejiang Gongshang University, Hangzhou, China

Correspondence Author:
Diana Asgele Gebremariam
School of Law, Zhejiang Gongshang University, Hangzhou, China

A legal analysis of historic waters under international law: Nile river dispute between Ethiopia and other riparian countries mainly Egypt

Diana Asgele Gebremariam and Fang Xu

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Abstract
Since the phrase historic bays have been used more frequently than historic waterways in the past, case law on the former has emerged, in contrast to the essentially nonexistent case law on the latter. The issue of historic rights over waters has been a tricky topic for long in the law of the sea. This is because even some of the basic definitions have been vague and interchangeably used in the past. Following the adoption of the Law of the Sea Convention (LOSC), which resulted in the endorsement of a significant expansion of the coastal state's jurisdiction and the consolidation of the maritime zone's jurisdictional regime, the contemporary relevance of historic titles and rights has been questioned and due to the existence of historical right over waters, many tensions and disputes regarding the validity of such titles has been ongoing for a long time. This idea is the most challenging legal challenge for coastal states to preserve their title to their marine zones if their territory is lost owing to sea level rise under existing international law of the sea. This research examines historic rights and historic titles in the law of the sea and suggests a way of clarification of these concepts with contributions of international tribunals.

Keywords: Historic water, Nile river dispute, historic rights, historic title, UNC

1. Introduction
For a long time, the issue of historic rights of waters and historic titles has been a contentious problem in maritime law. This is because, in the past, even some of the most basic meanings were ambiguous and used interchangeably. Many tensions and disagreements about the validity of historical rights overseas have existed for a long time because of their presence. One of the conflicts is over the Nile River. For decades, there has been a debate over how the Nile River's waters should be distributed. The Nile River Agreements govern the 10 countries that make up the Nile Basin. The Nile is the world's longest international river system. The Nile River dispute is primarily between Ethiopia and Egypt, and it has lasted this long due to Egypt and Ethiopia's continued opposition to one another over the allocation of Nile River basin waters, despite the fact that other countries have been involved in arbitration and mediation proceedings. Officials in Cairo want that Egypt's "historic rights" to two-thirds of the river's flow be guaranteed, while their counterparts in Addis Ababa demand that water be distributed "equitably" among all riparian countries.

Since ancient times, the concept of historic rights of waterways, also known as historic waters, has existed. However, the problems exist because the legitimacy of ancient water rights is being questioned. Another factor is that international courts and tribunals have not adequately addressed historic claims. They have been used by litigants in the context of marine delimitation, and their legitimacy has been tested by courts and tribunals. Several issues remain unresolved such as the scope and meaning of historic waters, claims, and rights the LOSC's current relevance considering such allegations, as well as the conditions and qualifications for their establishment.

We decided to explore this topic because of our conflicted opinion on historic waters and as to why they should exist and because of a long-running conflict between Ethiopia and Egypt over the use of the Blue Nile River. The issue of historic waters is still to this day a problematic topic and the Nile River dispute also has lasted a long time and continues to this day. For Ethiopians, it means a lot that the Grand Renaissance dam is built because this has been our hope for a long time. All Ethiopians, young, old, rich, poor, middle class have been contributing for this dam since the idea was put forward by former prime minister of Ethiopia Meles Zenawi.

It has been bothering all Ethiopians that the Blue Nile River originates from their country and yet its citizens weren't able to use it to better the country's economy and living standards. If used, the Nile River will help the country develop and Ethiopia have been contributing to its development despite the various political turmoil's that took place in the country since the introduction of the Grand Renaissance dam to the world. Many riparian countries specially Egypt didn't take the news well and have threatened war if we moved forward with the idea. Despite that Ethiopians haven't given up hope and have been moving forward and have almost completed the building of the dam. Therefore, we wanted to explore this topic very dear to our heart in hope of understanding the depth of the problem and recommending possible solutions that could mutually benefit all Ethiopians and the riparian countries.

The Nile River Dispute is producing a lot of problems for both countries because they are unable to come to an agreement. The fundamental issue is lack of validity of the claim of historic rights of waters and lack of a legal framework for water allocation. As a result, the purpose of this paper is to investigate why the issue of historic rights to waters has not been addressed by competent international courts and tribunals, as well as the validity of these rights, including the requirements that coastal states must meet to claim historic title. It will also make recommendations to help resolve the Nile River conflict by making recommendations that would potentially benefit both parties and bring the conflict to a close.

It is important to conduct this research because the topic of historic titles, historic waters and the Nile River dispute has been a controversial issue even though they are not a recent occurrence. Due to that whenever such cases appear counties face difficulties in solving them while other countries such as Ethiopia and Egypt are still in this type of dispute for decades. The idea remains a difficult subject in the law of the sea, both philosophically and practically, to this day. These problems are such as:

The purpose of this paper is to examine the notion of historic rights and titles of waters under international law, specifically the law of the sea, with a focus on the Nile River conflict between Ethiopia and Egypt. In addition, it will examine the Nile River Dispute between Ethiopia and other riparian countries, primarily Egypt, from the standpoint of historic right of rivers under the law of the sea. Furthermore, it will briefly assess the doctrine of historic waters and recent international practice, it identifies the relevant legal requirements that coastal states would have to fulfill in order to be able to claim in the future a historic title over their maritime zones that would have been previously governed by current international law of the sea.

2. Historic Waters

By 'historic waters, it means waters that are treated as internal waters but would not have that character if the historic title didn't exist." The legal assumption that "the land dominates the sea" is a key legal tenet under general international law that requires coastal countries to have sovereignty over the land, from which all their marine rights flow.

Under existing international law of the sea, this idea is the most difficult legal hurdle for coastal states to keep their title to their maritime zones if their territory is lost due to sea level rise. Historic right is the idea of using historic seas as a legal basis for coastal states to safeguard their sovereignty and sovereign rights over their marine zones as they exist today, regardless of the elimination of their landmass. In the absence of a codified definition of historic waters, it is necessary to rely upon customary international law, and the opinion of jurists and judicial bodies. In this regard, Bouchez has defined historic waters as "waters over which the coastal State, contrary to the generally applicable rules of international law, clearly, effectively, continuously, and over a substantial period, exercises sovereign rights with the acquiescence of the community of States".

The definition made by Bouchez reflects the legal requirements of historic waters: effective and continuous exercise of sovereign rights and international acquiescence. Over two decades ago, Professor Soons also defined historic waters as "waters over which the coastal State, in deviation of the general rules of international law, has been exercising sovereignty, clearly and effectively, without interruption and during a considerable period of time, with the acquiescence of the community of States". More recently, these requirements have also been recognized by the Bureau of Oceans and International Environmental and Scientific Affairs of the United States of America in its document "Limits in the Seas No. 143 "Maritime Claims in the South China Sea". The UN Juridical Regime summarizes the background of the concept of historic waters in a description that would very much fit a situation such as the one under study, that is, a State losing the entirety of its territory, and therefore, its maritime zones.

According to UN Juridical Regime the key element in the development of the notion that waters could be claimed under a historic title, is the fact that States continued to claim and effectively maintained sovereignty over an area that was considered "vital" for their national interests despite the evolution of the law towards other completely opposing notions.

2.1 Background and development history of Historic waters

Traditionally, the term historic bays have been more frequently used than historic waters and therefore the case law on the former has been developed, in contrast to the virtually non-existence case law on the more general term of historic waters. This allusion to the lack of a single regime, on the other hand, appears to infer that the theory of historic waters is not confined to claims of historic bays, implying that there are no reasons why a State might not claim historic rights over other marine areas besides bays. The theory of historic bays has a broad application.

Historic rights are asserted not only in the case of bays, but also in the case of maritime areas that are not bays, such as the waters of archipelagos and the water area between an archipelago and the mainland. Historic rights are also asserted in the case of straits, estuaries, and other similar bodies of water. These places are increasingly being referred to as "historic waters," rather than "historic bays.

The present memorandum will leave out of account historic waters which are also not bays. It will, however, deal with certain maritime areas which, though not bays stricto sensu, are of particular interest in this context by reason of their special position or by reason of the discussion or decisions to which they have given rise. The origins of this hypothesis can be traced back to nineteenth-century studies to identify the territorial sea's baseline in bays. Due to the close

interaction between bays and their surrounding land formations, as well as the rules of municipal legislation and agreements controlling the issue, proposals were made with the goal of moving the territorial sea's starting line closer to bay openings. The intention was that, in bays, the territorial sea should not be measured from the shore the method proposed in the case of straight coasts but should, rather, be reckoned as from a line drawn further to seaward. On this point agreement was virtually unanimous, though the exact location of the line from which the territorial sea was to be reckoned continued to be the subject of controversy.

According to various proposals put forward, the territorial sea was to be measured from a straight line drawn across the bay at a point at which its two coasts were a specified distance apart (six miles, ten miles, twelve miles, etc.); the waters lying to landward of that line would be part of the internal waters of the coastal State. This attempt to limit the maritime area claimable by the coastal State as part of its internal waters in the case of bays clashed with existing situations.

There were bays of considerable size, the waters of which were entirely the property of the coastal States concerned, the territorial sea in these cases being reckoned from the opening of the bay in question towards the sea. As a result, for the purposes of codification, the choice was between allowing for these cases via an exception to the general rule to be formulated or ignoring them by making the rule apply to all bays, regardless of their de facto status. The second course was thought to be arbitrary and capable, if used in practice, of causing international difficulties. Most of the draft codifications which dealt with bays endorsed the first solution. There remained, however, and there remains, the question which bays are covered by the exception.

The mere fact that a State claims the ownership of a bay which is not already territorial by virtue of the general rule does not ensure acceptance of the claim. The claim would have to be substantiated by reference to a specific criterion. And, according to the theory as originally conceived, this criterion was to be essentially historic.

The modern view, however, has gone beyond this conception. The proprietary title may be founded either on considerations connected with history or else on considerations of necessity, in which latter case the historical element might be lacking altogether. It's worth noting that in the Fisheries case between the UK and Norway, both parties agreed that the theory of "historic waters" did not apply only to bays. It will be seen below that the legal status of "historic bays" differs from that of other "historic waters," but this does not weaken the position that a historic title can exist over waters other than bays. Many of the problems and difficulties inherent in the theory of "historic waters" can be traced back to or are conditioned by the circumstances under which the theory arose and developed.

2.2 Historic rights, historic title and historic waters

Historic title is historic sovereignty to land or maritime areas, and “historic waters” is simply a term for historic title over maritime areas, typically internal waters or territorial sea. The Distinction between Historic Rights in the Narrow Sense as Defined in Philippines v. China and Historic Waters Despite some similarities in the rules, such claims differ from claims to historic waters in several ways. Under the UNCLO's regime, claims to historic waters may not even have the word "historic" attached to them. Indeed, one of the unsatisfactory characteristics of historic claims to or in maritime areas is that, as previously stated, there is no consistent terminology used in past State practice.

Historic Waters Connote Claims to Sovereignty in a Sea Area. Historic rights differ from historic waters' because they do not amount to zonal claims of jurisdiction or sovereignty. As Judge De Castro said in the Fisheries Jurisdiction cases, historic rights of States concerned with "high seas fishing" do not give them "acquisition over the sea by prescription": merely "respected" rights by "long usage" Similarly, for example, in Qatar/Bahrain, the ICJ held, in relation to Bahrain's alleged historic rights over pearling banks in an area of seabed in dispute that these had never led to the recognition of a quasi-territorial right to the fishing grounds or the super jacent waters.

This most important distinction was stressed in the Philippines v China case, as mentioned above; namely, that in the case of historic waters a claim to sovereignty (in whatever form) is automatically implied; whereas a claim to historic rights' (in the narrow sense) "implies a (lesser) jurisdictional claim in certain (often international) waters" Thus such a claim may not necessarily (in the past at any rate) have involved an intention to exclude foreign State.

Exploiting natural resources in the same claimed area, as was discussed by the ICJ in Tunisia/Libya. For example, in the Eritrea/Yemen arbitration the Tribunal described certain historic rights' which "accrued in favor of both parties through a process of historical consolidation. f Here the Tribunal clearly treated such rights as "non-exclusive historic rights". In Philippines v China, the Tribunal described this difference even more strongly, saying that: historic title is used to refer specifically to historic sovereignty to land or maritime areas", 'historic waters' as seen, being "simply a term for historic title over maritime areas, typically exercised either as a claim to internal waters or as a claim to the territorial sea.

2.3 Types of water that can be claimed

2.3.1 Historic Bays

Historic bays are usually thought of as a subset of historic waters, and as the International Court of Justice (ICJ) noted in the Fisheries Case, "by "historic waters" are usually meant waters that are treated as internal waters but would not have that character if it weren't for the existence of a historic title". Historic waters, including historic bays, are defined as waters that are classified as internal waters because of historic titles that allow for exceptions to the general norms that govern the calculation of the baselines from which the territorial sea's breadth is calculated.

The concept of historic bays, and later the broader concept of historic waters, first appeared in state practice in the second half of the nineteenth century, in order to allow specific rights of sovereignty, which had been acquired on the basis of pre-existing rules, to survive an alleged on-going change in the law whereby derogations from the low-water mark, which is considered the normal baseline for the measurement of the territorial sea, would only be allowed in the case of natural disasters. The benefit of declaring a bay 'historic' in the past - at least until the law of the sea rules on definitions of juridical bays evolved into treaty law was that it did not have to comply with the ostensible legal criteria of the time and/or those presently contained in treaty law (Art. 10 of the LOSC, or previously Art. 7 of the TSC). The way

Art. 10(6) of the LOSC is worded - "the foregoing provisions do not apply to so-called 'historic' bays" - could be interpreted as meaning that objective criteria relating to so-called 'juridical' bays, such as the 'semi-circle test' and the 24mile closing line rule, but also the definition of "natural entrance sites of a bay,

Furthermore, the 'historic' exception could influence para. (1) of Art. 10 of the LOSC, which states that the Article "relates only to bays whose shores belong to a single State." For example, Honduras opined at UNCLOS III that the conventional idea of "historic bays" should be updated because it was developed in response to a previous necessity for a legal definition of bays "within the exclusive competence of a coastal State." Similarly, the Special Master in the Alaska v. US (2005) case opined18 that while "article 7(1) [of the TSC] would appear to prevent application of article 7(6)," at least one influential source stated that two nations "jointly may" apply article 7(6) in some cases.

It is therefore plausible that even the restrictions can be disregarded in the case of historic bays when the claim predates treaty law. In the famous 1910 North Atlantic Coast Fisheries Case, the Permanent Court of Arbitration (PCA) conceded that 'convention and established usage might be considered as the basis for claiming as territorial those bays which on this ground might be called historic bays, and that such claim should be held valid in the absence of any precluded claim.

2.3.2 Historic Mid-Oceanic/ Coastal Archipelagic Waters

Oceanic archipelagoes

Inasmuch as any "archipelago" means a group of islands so closely interrelated that they - and their "waters" - form an intrinsic geographical, economic, or political entity "or which have been historically regarded as such" (Article 46(b)), historicity of claim may be relevant to a claim to "archipelagic waters" under Part IV of the LOSC in the case of an archipelagic State. Aside from that, it has been proposed in the past that the length of individual baselines encircling an archipelagic entity may be justified based on a "historic" waters claim, even if the baselines were longer than the maximum allowed. The US judicial decision in CAB v. Island Airlines supports the idea that historic waters can exist (if the relevant criteria are met) within waters in a mid-ocean archipelagic situation, such as the waters between the Hawaiian Islands, where distances between islands ranged from just over 7 miles to 62 miles. The argument was that when the United States seized Hawaii in 1898, the inter-insular canals between the islands of the former republic of Hawaii formed historic waters due to historical claims. This claim was, however, judicially dismissed in this case, mostly due to a lack of evidence; yet there was no rejection of the premise that a historic claim might, in principle, be made to archipelagic marine areas in that case.

Coastal archipelagoes

A reading of Article 7(4) of the LOSC (in respect of low-tide elevations without lighthouses), where the drawing of baselines to and from such elevations has "received general international recognition" - an implicit reference to a particular straight baseline having been generally recognized as a historic claim - may indicate the possibility of making some sort of historic claim relating to permissible basepoints in coastal archipelagic waters. Because the only references to historic title in the 1958 TSC apply to bays (Article 7) and territorial sea delimitation (Article 12) (this also applies in the LOSC), the intention must have been to simply maintain the (historic) status ante quo in these aspects alone, at least between parties to the convention: so that historic title in conflict with a treaty provision is "superseded as between parties to the convention".

In the larger context, this is a restricted and unsatisfactory interpretation, and it is challenged by other seemingly opposing statements in the same document: The fact that Article 4 of the TSC (on straight baseline systems) (now Article 7 of the LOSC) makes no specific reference to such a 'bay 'related 'historic' proviso (i.e. to an express 'historic title' exception) should not override established claims of this nature (as, for example, concerning pre-treaty claims to areas within the Norwegian skjaergaard.

The preamble to the LOSC (1982), which clearly states that "matters not covered [by the Convention] continue to be governed by the rules and principles of general international law," supports this interpretation. Indeed, the LOSC now exempts not only issues involving "historic bays," but also historic "titles" in general from mandatory judicial settlement procedures (Article 298(1)(a)(i)). This last phrase, in and of itself, may imply a greater applicability of current law to historic seas in general.

2.3.3 Straits

Even straits twice the length of the territorial sea could be claimed as historic seas in theory, as the UK conceded in the Fisheries case. The Norwegian filings in that case stated that the skjaergaard's "historic titles" included the Indreleia (a large strait) as well as other areas of the skjaergaard, which were historically internal waters. While conceding that a State might gain a "historic title" to a strait in theory, the UK asserted that Norway had taken no consideration of the "location of straits" in imposing its long baselines. As a result, earlier historic assertions appear to have included some straits in rare situations. Strohl, for example, notes that Palk Bay, which was mentioned in the 1904 case of Pillai v. Muthupayal, is "really a strait" between India and Ceylon (now Sri Lanka).

By historic prescription, the former Soviet Union claimed the Laptev and Sannikov Straits (both supposedly "never used for international shipping") in recent years. In the United States, previous political opinions have been voiced that allow for historic ownership to territories such as the straits in rare circumstances. Such a notion might have "application with respect to waters of bays, straits, or sounds, when a state can prove by historical use that such waterways have been customarily subjected to its exclusive sovereignty," according to a 1951 US Department of State policy statement. It went on to say that at the 1930 Codification Conference, the US had specifically retained this right.

Later US of cial pronouncements confirmed that this 'proviso' allowed for probable historic ownership even when straits connect open seas; and it was also cited in the 1964 US Brief in US v. California. The United States' rationale for this proviso appears to be its concern about the status of the waters in the Strait of Juan de Fuca.

Apart from the issue of historic waters, the question of whether a strait that only leads to internal waters can be considered internal waters itself has arisen, particularly if

the so-called 'strait' leads only to such waters in a 'cul de sac' and the strait is less than 10 miles wide. The United Kingdom highlighted the allegedly-enclosed straits' international use in the Fisheries case. Because, in theory at least, a State may claim the waters even of a 'territorial' strait (i.e. one that is not more than twice the width of the adjacent territorial seas) as historic internal waters (despite provisions in the TSC of 1958 and customary international law prior to it) this clashes, of course, with the recognised right of non-suspendible innocent passage for all foreign States where such a strait joins two parts of the high seas (or even high seas to a territorial sea under Art. 16(4) of the TSC).

The TSC's article 16(4) prohibited suspension of innocent passage in the instance of "straits used for international navigation" between two areas of the high seas (or from the high seas to the territorial sea), and the LOSC has confirmed this tendency. While straits may theoretically qualify as historic internal waters, this is unlikely to be the case in practice because, at least in the case of truly international straits, the past inherent navigational rights of innocent passage (or now, under the LOSC, even transit passage) will have historically ruled out any possibility of such historic title accruing to the adjacent coastal State.

More particularly, in the case of the straits, its legal framework may militate against any historic claim relating to them. The usage of waters for international navigation in a strait by foreign vessels will invariably imply a lack of necessary sovereign powers or dominion being exercised by that State to form internal waters - rendering them, at most, a historic territorial sea. In this respect, the issue is inextricably linked to one of the most important prerequisites for establishing historic title to internal (inland) waters: efficient control of foreign navigation.

2.4 Summary

From the discussion in this chapter, it appears that ancient maritime claims and the same or equivalent legal norms that apply to them may in theory extend over a wide range of territorial waters, notably coastal archipelagoes, albeit there are few actual precedents in this area. "It may safely be concluded that the factors underpinning the juridical regime of historic bays do apply to historic waters in general," however, as will be seen, the type of jurisdiction that is enforceable in such waters varies depending on the type of waters historically claimed. Therefore, according to the UN Memorandum of 1957, historic waters did not have to be limited to bays, but could also include straits, waterways within archipelagoes, and other similar bodies of water.

3. International Laws and treaties regarding historic waters

3.1 Historic waters and UNCLOS

The doctrine of historic waters as such has not received much academic attention in the past. Under the international law, there is no primary definition for “historic waters”. It defines bays under article 10.

3.1.1 Article 10 Bays of UNCLOS

1. This article relates only to bays the coasts of which belong to a single State.
2. For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.
3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.
4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.
5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.
6. The foregoing provisions do not apply to so-called "historic" bays, or in any case. Although Article 10 (6) of the UNCLOS provides for “historic bay”, it acknowledges only the existence of such concept under the public international law. Consequently, it does not provide for the definition of such concept.

According to UNCLOS and Professor O’Connell, the following three categories of seaward areas have been claimed as historic waters:

1. Bays which are greater than standard bays provided for in Article 10 of the UNCLOS;
2. Areas of waters linked to a coast by offshore feature but which are not enclosed under the standard rules;
3. Areas of seas which would, but for the claim, be high seas because not covered by any rules specially concerned with bays or delimitation of coastal waters.
4. As distinctive in the third category, the category of historic waters has not been supposed to be a general doctrine under the international law. Instead, it plays a role as a concept to explain the individual institution which was established in the historical context.

3.2 International Judicial Decisions, proceedings before international tribunals

3.2.1 El Salvador/Honduras and the Gulf of Fonseca

In the case El Salvador/Honduras and the Gulf of Fonseca, a specific finding by an international tribunal regarding the historic status of specific waters may (in time) have an effect erga omnes and beyond the parties to a specific dispute submitted to an international tribunal. As stated by the Memorial of El Salvador in El Salvador/Honduras regarding the Gulf of Fonseca, which was found in the famous 1917 judgment of a Latin American regional court (the Central American Court of Justice) to be a historic bay with the three riparian states as co-owners), "even if initially the judgment was binding in respect of the direct parties to

the litigation, Nicaragua and El Salvador, the legal status recognized therein has been consolidated over time, it and, in particular, to Honduras." El Salvador went on to say that "as to third States in general, the objective legal regime established on the basis of the judgment relies on the acquiescence and, in some cases, express recognition of third States, particularly the great maritime powers."
The ICJ did, however, mention reasons for continuing to consider the Gulf to be historic waters "apart from the reasons and effect of the 1917 decision of the Central American Court of Justice." In other words, it considered 'independent' factors. This appears to be consistent with El Salvador's position, as expressed in its Reply in the case, that the 1917 judgment, while not binding on Honduras as such, was evidence of "the rule of customary international law applicable to the Gulf of Fonseca" that bound all three riparian States; and that the reasonings and conclusion of that judgment "reflect the pre-existing rules" of such law that "operated independently of the judgment." Similarly, an international tribunal may rule against any alleged 'historical' violation.

3.2.2 The (Behring Sea) Fur Seal Arbitration (1893)
In the Fur Seal Arbitration, the US argued (in part) that its claim to jurisdiction beyond the 3-mile limit was based on extensive "exclusive" jurisdiction in that area, which Russia and later the US could have exercised. 10 According to Jessup, the United States 'inherited' certain special rights from Russia, and these rights were recognized by the United Kingdom.
In this regard, Mr Phelps, US Minister in London, dismissed any "mare clausum claim" by the US and mentioned "the right of self-defense as to person and property" as prevailing in this case (in September 1888). At the time, any sporadic seizures by the US of British/Canadian sealing ships outside the 3-mile limit were vigorously opposed by Britain as illegal under international law. Significantly, at the time (in the 1889/90 period), the US explicitly stated that it was not necessary "to de ne the powers and privileges ceded [by Russia]" in the treaty of cession in order to advance its broader 'contra bonos mores' argument. And, at least in the Behring Sea, the Tribunal held that Russia had "admitted" the cannon shot rule in 1824/5 negotiations, and that "..it appears from that time up to the cession of Alaska to the United States, Russia has never asserted in fact, or exercised any exclusive jurisdiction" in those seas beyond "ordinary" territorial waters, though such rights could have passed "unimpaired to the United States."
According to one Alaskan viewpoint, the 1893 Fur Seal Tribunal made "no ruling on the status of the interior seas, gulfs, harbors, and creeks," so we must assume.. that the Tribunal intended, and properly so, that the three-mile limit in such cases began not from the low water mark, but from some closing line." This assertion, however, is completely unfounded because it begs the question of the inland waters issue and what 'closing lines' existed at the time.

3.2.3 International arbitral tribunal decision of 1903(ABT) and the case of Alaska v. US (2005)
The arbitral tribunal in the ABT case (1903) made no judicial examination of a 'particular regime' in the waters of the Alexander Archipelago, much less a decision on same, and certainly none of the arbitrators referred to any alleged US 'claim' to these waters in their decisions (perhaps the most damning factor as to any US 'claim' being made in the 1903 case which Alaska proposed in Alaska v. US (2005).41 The simple reason for this was that any such outer line around the islands did not fall within the essential terms of reference of Article III of the 1903 Arbitration treaty, which asked, among other things, whether it was the intention of the 1825 US/Russia treaty that where the "mainland coast" was "indented by deep inlets," the width might be measured from "the line separating the waters of the ocean from the territorial waters of Russia". The outside of the Archipelago was clearly not considered "mainland coast" here. As stated by the Special Master in US v. Alaska (1996), "The Tribunal's opinions did not address the political coastline's location."

3.3. Summary
Usually, evidence of the origin of a historic claim can come from extraterritorial actions in the claimant State, such as decrees, legislation, or judicial decisions, but it can also come from an external source, such as an international treaty or adjudication, in whole or in part. This can be seen as the case mentioned in this chapter from Alaska v. US (2005), to demonstrate the variety of evidence offered to show (or disprove) a claim to historic waterways.
From the case of Alaska v. US and the explanation above, we can determine that the cases various exhibits contain details on hundreds of historical events in the past such as international treaties, comments made before international tribunals or during international negotiations, and records chronicling the experiences of seamen working the seas in the nineteenth and twentieth centuries Historical records of Russia's policies previous to the cession of Alaska to the United States in 1867, congressional reports and other papers, agency regulations, executive branch letters and memoranda, geographical charts, and magazine articles have also been included as a part of the evidence. From this we can gather that in the past there have also been many disputes regarding historic waters and many adjudications have taken place and resulted with different decisions by the tribunals.

4. Understanding the crux of the Nile River
4.1 Background on the Nile River

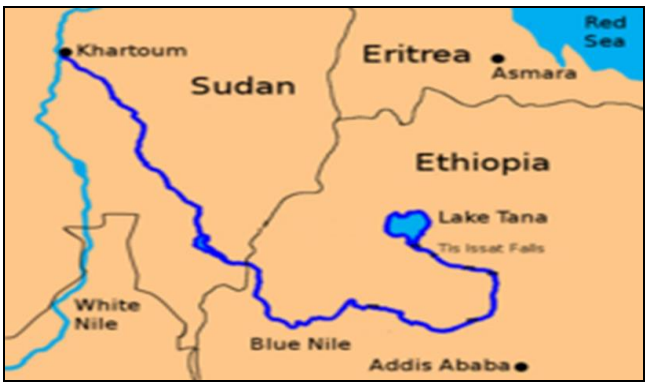

Fig 1: Nile River

The Nile River, the longest river in the world, is called the father of African rivers. It rises south of the Equator and flows northward through northeastern Africa to drain into the Mediterranean Sea. It has a length of about 4,132 miles (6,650 kilometers) and drains an area estimated at 1,293,000

square miles (3,349,000 square kilometers). Its basin includes parts of Tanzania, Burundi, Rwanda, the Democratic Republic of the Congo, Kenya, Uganda, South Sudan, Ethiopia, Sudan, and the cultivated part of Egypt.

The Nile is formed by three principal streams: the Blue Nile and the Atbara which flow from the highlands of Ethiopia, and the White Nile, the headstreams of which flow into Lakes Victoria and Albert. The Nile River basin, which covers about one-tenth of the area of the continent, served as the stage for the evolution and decay of advanced civilizations in the ancient world.

On the banks of the river dwelled people who were among the first to cultivate the arts of agriculture and to use the plow. The basin is bordered on the north by the Mediterranean; on the east by the Red Sea Hills and the Ethiopian Plateau; on the south by the East African Highlands, which include Lake Victoria, a Nile source; and on the west by the less well-defined watershed between the Nile, Chad, and Congo basins, extending northwest to include the Marrah Mountains of Sudan, the Al-Jilf al-Kabīr Plateau of Egypt, and the Libyan Desert (part of the Sahara).

The Blue Nile is a river originating in natural springs above Lake Tana in Ethiopia. The river has played a significant role in human history by supplying the majority of the water for the Nile River, providing the means for the land through which it flowed to be agriculturally productive. Having the Nile's floodwaters to depend on gave rise to stable early human settlements and the ancient Egyptian civilization. Today, dams along the Blue Nile in Sudan produce 80 percent of that country's electric power. The Sudanese dams also help irrigate the Gezira Plain, which produces cotton, wheat, and other crops.

The Blue Nile flows generally south from Lake Tana and then west across Ethiopia and northwest into Sudan. Within 18.6 miles (30 km) of its source at Lake Tana, the river enters a canyon about 400 kilometers (250 miles) long. This gorge is a tremendous obstacle for travel and communication between the northern and southern halves of Ethiopia. Despite being the source of most of the Nile's water, Ethiopia has had limited rights to it. Egypt and Sudan, through the Agreement of 1959, split use of these resources. In 1999, the Nile Basin Initiative was created to foster cooperation between all ten countries in the Nile basin. The Blue Nile is vital to the livelihood of Egypt.

Though shorter than the White Nile, 56 percent of the water that reaches Egypt originates from the Blue Nile branch of the great river; when combined with the Atbara River, which also has its source in the Ethiopian highlands, the figure rises to 90 percent of the water and 96 percent of transported sediment. The river is also an important resource for Sudan, where the Roseires and Sennar dams produce 80 percent of the country's power. These dams also help irrigate the Gezira Plain, which is most famous for its high-quality cotton. The region also produces wheat and animal feed crops.

4.2 History of allocation of the Nile River including treaties and international agreements

4.2.1 History of water allocation of the Nile River

The Nile has been vital to Egypt's and Sudan's civilizations. There would have been no food, no people, no state, and no monuments without that water. "Egypt is the gift of the Nile," wrote Herodutus in the 5th century B.C.E. Egyptian civilization has sustained itself utilizing water management and agriculture for some 5,000 years in the Nile River valley. Egypt has been mainly using the waters of the Blue Nile River in the past for a long time now. There were no nations in Eastern or Central Africa to oppose Egypt's access to Nile waters in 3000 B.C.E., when the first Egyptian dynasty combined the lower and upper regions of the Nile River. The Egyptians practiced basin irrigation, a form of water management adapted to the natural rise and fall of the Nile River. Egyptians have built earthen banks to make flood basins of varying sizes since around 3000 BCE, which were regulated by sluices to floodwater into the basin, where it would sit until the soil was saturated, the water was then drained, and crops were planted.

This farming practice did not deplete the soil of nutrients or generate the salinization issues that modern farming systems do. Disagreements have arisen over the years, particularly as the populations of the other Nile River Basin countries have grown and these countries have developed the capacity to more effectively harvest the Nile River's waters for national development, over Egypt's insistence that the water rights it acquired through the 1929 and 1959 agreements (collectively referred to as the Nile Waters Agreements) be honored and that no construction project be undertaken. Several Egyptian officials have even threatened to go to war to safeguard these "earned rights." Kenya, Tanzania, Uganda, and Ethiopia, for example, have maintained that they are not obligated by the treaty.

4.2.2 Treaties affecting Nile water use

There have been previous treaties in the past signed between different countries regarding the use of the Nile River. These treaties have resulted in an inequitable right to use Nile water among the Nile Basin countries. The following are the relevant treaties based on their chronological order.

4.2.2.1 April 15, 1891 - Article III of the Anglo-Italian Protocol.

Article III states that "the Italian government engages not to construct on the Atbara River, in view of irrigation, any work which might sensibly modify its flow into the Nile". The language used in this article was too vague to provide clear property rights or rights to the use of water.

4.2.2.2 May 15, 1902 - Article III of the Treaty between Great Britain and Ethiopia.

Article three states “His Majesty the Emperor Menilik II, King of Kings of Ethiopia, engages himself towards the Government of His Britannic Majesty not to construct or allow to be constructed any work across the Blue Nile, Lake Tana, or the Sobat, which would arrest the flow of their waters except in agreement with His Britannic Majesty’s Government and the Government of Sudan" This agreement has become one of the most contested agreements over the use of the Nile waters. The aim of this treaty was to establish the border between Ethiopia and the Sudan. One of its articles, number III, related to the use of Nile water.

4.2.2.3 7 May 9, 1906 - Article III of the Agreement between Britain and the Government of the Independent State of the Congo. Article III states "The Government of the independent state of the Congo undertakes not to construct, or allow to be constructed, any work over or near the Semliki or Isango river which would diminish the volume of water entering Lake Albert except in agreement

with the Sudanese Government". Belgium signed this agreement on behalf of the Congo despite the agreement favoring only the downstream users of the Nile waters and restricting the people of the Congo from accessing their part of the Nile.

4.2.2.4 December 13, 1906 - Article 4(a) of the Tripartite Treaty (Britain-France-Italy).
Article 4(a) states "To act together.. to safeguard;.. the interests of Great Britain and Egypt in the Nile Basin, more especially as regards the regulation of the waters of that river and its tributaries (due consideration being paid to local interests) without prejudice to Italian interests". This treaty, in effect, denied Ethiopia its sovereign right over the use of its own water. Ethiopia has rejected the treaty their military and political power was not sufficient to regain its use of the Nile water.

4.2.2.5 The 1925 exchange of notes between Britain and Italy concerning Lake Tana which states "..Italy recognizes the prior hydraulic rights of Egypt and the Sudan.. not to construct on the head waters of the Blue Nile and the White Nile (the Sobat) and their tributaries and effluents any work which might sensibly modify their flow into the main river."
Ethiopia opposed the agreement and notified both parties of its objections: "To the Italian government: The fact that you have come to an agreement, and the fact that you have thought it necessary to give us a joint notification of that agreement, make it clear that your intention is to exert pressure, and this in our view, at once raises a previous question. This question which calls for preliminary examination, must therefore be laid before the League of Nations." "To the British government: The British Government has already entered into negotiations with the Ethiopian Government in regard to its proposal, and we had imagined that, whether that proposal was carried into effect or not, the negotiations would have been concluded with us; we would never have suspected that the British Government would come to an agreement with another Government regarding our Lake."
When an explanation was required from the British and the Italian governments by the League of Nations, they denied challenging Ethiopia's sovereignty over Lake Tana. Notwithstanding, however there was no explicit mechanism enforcing the agreement. A reliable and self-enforcing mechanism that can protect the property rights of each stakeholder is essential if the principle of economically and ecologically sustainable international water development is to be applied.

4.2.2.6 May 7, 1929 - The Agreement between Egypt and Anglo-Egyptian Sudan.
This agreement included: Egypt and Sudan utilize 48 and 4 billion cubic meters of the Nile flow per year, respectively; the flow of the Nile during January 20 to July 15 (dry season) would be reserved for Egypt; Egypt reserves the right to monitor the Nile flow in the upstream countries; Egypt assumed the right to undertake Nile River related projects without the consent of upper riparian states. Egypt assumed the right to veto any construction projects that would affect her interests adversely. In effect, this agreement gave Egypt complete control over the Nile during the dry season when water is most needed for agricultural irrigation. It also severely limits the amount of water allotted Sudan and provides no water to any of the other riparian states.

4.2.2.7 The 1959 Nile Waters Agreement between the Sudan and Egypt: for full control utilization of the Nile waters. This agreement was about the controversy on the quantity of average annual Nile flow was settled and agreed to be about 84 billion cubic meters measured at Aswan High Dam, in Egypt. The agreement allowed the entire average annual flow of the Nile to be shared among the Sudan and Egypt at 18.5 and 55.5 billion cubic meters, respectively. Annual water loss due to evaporation and other factors were agreed to be about 10 billion cubic meters. This quantity would be deducted from the Nile yield before share was assigned to Egypt and Sudan.

4.2.2.8 Nile Basin initiative the Nile Basin initiative: (NBI) is a partnership among the Nile Riparian states that "seeks to develop the river in a cooperative manner, share substantial socioeconomic benefits, and promote regional peace and security". It was formally launched in February 1999 by the water ministers of 9 countries that share the river like Egypt, Sudan, Ethiopia, Uganda, Kenya, Tanzania, Burundi, Rwanda and the Democratic Republic of Congo with Eritrea as an observer.

4.2.3 Effects of treaties and policies on Nile basin water use
During the colonial period, Britain effectively controlled the Nile through its military presence in Africa. Since Sudanese independence, Sudan has renegotiated with Egypt over the use of the Nile waters. The 1959 agreement between Sudan and Egypt allocated the entire average annual flow of the Nile to be shared among the Sudan and Egypt at 18.5 and 55.5 billion cubic meters respectively, but ignored the rights to water of the remaining eight Nile countries.
Ethiopia contributes 80% of the total Nile flow, but by the 1959 agreement is entitled to none of its resources. However, the agreement between Egypt and Sudan is not binding on Ethiopia as it was never a party to it. Since the early 1990s, Ethiopia has successfully countered Egyptian and Sudanese resistance to water development projects in Ethiopia to increase irrigation and hydroelectric potential. Since May 2010, Ethiopia and the other upper riparian states have launched the Nile Basin Cooperative Framework Agreement in a bid to ensure an equitable utilization between all the riparian states of the Nile. Egypt has historically adopted an aggressive approach to the flow of the river Nile.
Cairo considers the Nile a national security matter and statements continue to include threats of military action against Ethiopia should it interfere with the flow as set out in agreements signed in 1929 and another in 1959. To this day Egypt argues that the 1929 Anglo-Egyptian Treaty and its modified version, the 1959 Agreement, are still valid. The 1959 agreement, signed by Egypt and an independent Sudan, increased Egypt's share to 55.5 billion cubic meters and Sudan's to 18.5 billion. These bilateral agreements totally ignored the needs of other riparian countries including Ethiopia which supplies 70% to 80% of the Nile waters. Consequently, none of the other Nile basin countries has ever approved the agreements. On the other hand, the Cooperative Framework Agreement signed by four Nile

basin countries in 2010 was strongly rejected by both Egypt and Sudan.

5. The Nile River dispute between the riparian states under law of the sea

5.1 Problem statement

The reason why both countries haven't still come to a solution is because of national pride, regional power and economic development at stake. Both Ethiopia and Egypt think that the Nile is important to their country's development and want a larger portion of the water that flows from the Nile River. Egypt is bent on claiming the historic water rights Egypt's claims of a historical right to the waters of the Nile have been challenged by Ethiopia and other upstream countries that demand a more equitable utilization of the river.

After extensive dialogue, 10 riparian countries formed the Nile Basin Initiative in 1999; however, this multilateral approach for developing the Nile has been stalled by Egypt's insistence to maintain a veto power on future upstream projects, though it is a part of the initiative. It is in this context that Ethiopia unilaterally launched the GERD in 2011. Another reason why these two countries haven't come to an agreement is due to the complication of the validity of historic water rights.

This is because historic claims have not been addressed comprehensively by international courts and tribunals. They have been invoked by litigants within the framework of maritime delimitation, and courts and tribunals have examined their validity. However still a number of issues are uncertain: the definition and scope of historic waters, the conditions and requirements for their establishment. Therefore, even Egypt keeps claiming historic water right to the Nile River since the issue of the validity of the historical right is vague, it won't be accepted by Ethiopia or by any other country.

Furthermore, the lack of a legal framework for water allocation is another reason. The main problem in the Nile River dispute is that officials in Cairo insist that Egypt be guaranteed its "historic rights" to two-thirds of the river's flow, while their counterparts in Addis Ababa demand an "equitable" distribution of water among all of the riparian countries. This could have easily been solved if a tangible legal framework for water allocation existed but unfortunately, such legal framework doesn't exist. Although Egypt has persistently argued that the 1959 agreement between Egypt and Sudan is the legal framework for the allocation of the waters of the Nile, Ethiopia and other upstream riparian states reject that argument. This is because neither Ethiopia nor the other upstream riparian states were a part of that agreement. The 1959 agreement allocated all the Nile River's waters to Egypt and Sudan, leaving 10 billion cubic meters for seepage and evaporation, but afforded no water to Ethiopia or other upstream riparian states. Perhaps even more consequential is the fact that this agreement granted Egypt veto power over future Nile River projects.

5.2 Applicable Rule

The relation between Nile River dispute and historic water rights is because mainly Egypt is claiming historic water right to the Nile River. For a country to claim historic water right they must satisfy three elements.

These requirements are the making of a formal claim, the continuous and effective exercise of relevant jurisdiction and international acquiescence.

i. Formal claim

A formal claim must be understood as an action that "must emanate from the State or its Organs". It must be public and must have the notoriety proper of an act of a State. Additionally, in order to able to claim a historic title over the maritime zones the actions of the coastal State shall be of an authoritative nature, i.e. exercise of sovereignty or sovereign rights over the relevant areas. The need for clarity in respect to the extent of the historical claim is essential in two ways.

a. It defines the area over which the State should enforce its jurisdiction and
b. It allows for the possibility of a State to acquiesce the claim.

ii. Effective exercise of relevant jurisdiction

The formal claim requires an effective exercise of relevant jurisdiction over the maritime zones on the part of the claiming coastal State. One imperative element is that the claim should be in accordance with the exercised jurisdiction. In other words, "if the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea". Following this logic, if the sovereign rights exercised were sovereign rights corresponding to those over the EEZ, the claimed area would be EEZ.

iii. Continuity exercise of relevant jurisdiction

The steadiness and repetition in time of the activity undertaken by the State is essential to sustain the claim of an existence of a historical title. However, that activity is not just any activity, but it should be understood as an effective exercise of sovereignty.

Moreover, the usage must not only be effective but also prolonged. It must develop into a national usage as any sporadic enforcement of relevant jurisdiction over the maritime zones would not be sufficient for the claimant State to support the continuity of its formal claim. This notion establishes a link between the continuity of a claim and the effective exercise of the relevant jurisdiction over the area for a considerable time.

iv. International acquiescence

International acquiescence requires knowledge by third States, without which there can be no true acquiescence. The Cook Inlet case demonstrated that in the absence of any awareness on the part of foreign governments of a claimed territorial sovereignty over a body of water the failure of those governments to protest is inadequate proof of the acquiescence essential to historic rights", thus international acquiescence of the community of States is required. As has been indicated above, international acquiescence depends on an adequate publicity of the claim. In order to be considered as such, enough available evidence on the historic claim should exist. One mechanism that could be adopted by the coastal State is the publication of an eventual regional agreement or declaration on the historical character of their maritime zones, as well as the publication of relevant charts of the relevant maritime areas.

5.3 Analysis

In the Nile River dispute Egypt is claiming historic right over the Nile River, and according to the applicable law there must be three elements that need to be satisfied. Let's analyze the elements one by one and see if Egypt has fulfilled the requirements. The first element that needs to be satisfied is the formal claim. A formal claim means an action that "must emanate from the State or its Organs". It must be public and must have the notoriety proper of an act of a State. Additionally, to be able to claim a historic title over the maritime zones the actions of the coastal State shall be of an authoritative nature, i.e. exercise of sovereignty or sovereign rights over the relevant areas. The need for clarity in respect to the extent of the historical claim is essential in two ways; (1) it defines the area over which the State should enforce its jurisdiction and (2) it allows for the possibility of a State to acquiesce the claim.

However, the Blue Nile River is not within the jurisdiction of Egypt's geographical location. The Blue Nile originates at Lake Tana in Ethiopia where it is called the Abay River. The river flows generally south before entering a canyon about 400 km long, about 30 km from Lake Tana. The river loops across northwest Ethiopia, before being fed by numerous tributaries between Lake Tana and the Ethiopia-Sudan border. We can see in the picture below for reference. Since the Blue Nile doesn't originate within Egypt's geographical location, Egypt fails to meet the element that requires the exercise of sovereignty or sovereign rights over the relevant areas and cannot claim historic rights over the Blue Nile River.

Furthermore, there are still two elements that need to be satisfied. They are continuity and international acquiescence. Continuity means that an effective exercise of sovereignty with steadiness and repetition in time of the activity undertaken by the State. For this second element we can agree without any hesitance that Egypt has satisfied this element. This is because Egypt has been using the water that flows from the Nile River until Ethiopia decided to build a dam. Egypt has been trying to claim that they have the historic right over the Blue Nile River since the past and have been trying to sign treaties with other riparian states of the Blue Nile River although the validity of these treaties is questionable. So, we can conclude the second element is satisfied and move on to the next one.

The third one is international acquiescence requires knowledge by third States, without which there can be no true acquiescence. In this case the only other state that thinks Egypt has historical right over the Blue Nile River is Egypt itself. Before some riparian countries like Sudan use to think Egypt and themselves have historical rights over the waters but that has changed since the recent negotiations between the riparian states. Until the time that Ethiopia decided to build the Grand Ethiopian Renaissance Dam, Egypt has had full control and has been signing some treaties with some countries however none of the states recognize that Egypt has the historic right over the Blue Nile River and therefore we can claim that the third element has also not been satisfied.

5.4 Conclusion

In Conclusion, for a country to claim historic right over waters they must satisfy the formal claim, continuity and international acquiescence. In this case Egypt has only satisfied the second element which is continuity, however one country must satisfy all three elements to claim historical rights and Egypt has failed to do so. Thus, Egypt's historical right over the Blue Nile River is invalid. The leaders and the people of Egypt should accept that and try to come into negotiation with other riparian countries with that understanding in mind.

5.5 Status of the Blue Nile River dispute

Currently the Construction of the Grand Ethiopian Renaissance Dam began in April of 2011 and finished in July of 2020. Ethiopia has completed the filling of a massive, controversial dam on the Blue Nile River for a second year, a move that is likely to anger Egypt and Sudan who have long opposed the project.

So far, despite international negotiations, there's been little progress in the decadelong dispute. The three-way dispute among Ethiopia, Egypt and Sudan over the sharing of the Nile waters remains deadlocked. An April 2018 leadership transition in Ethiopia eased tensions between Cairo and Addis Ababa. But the parties have made little headway in resolving the crisis triggered by Ethiopia's 2011 decision to build the Grand Ethiopian Renaissance Dam (GERD), expected to be the largest hydropower plant in Africa. Egypt fears that the dam will drastically reduce water flow downstream and thus imperil its national security. Ethiopia and Sudan assert their right to exploit the Nile waters to further develop their economies. The three countries need to act now to avert a graver crisis when the dam comes online. They should accede to immediate steps to mitigate damage, particularly during the filling of the dam's reservoir, when water flow to downstream countries could decline. Next, they and other riparian states should seek a long-term transboundary agreement on resource sharing that balances the needs of countries up and down the Nile basin and offers a framework for averting conflict over future projects.

The crux of the controversy is Ethiopia's $5 billion Grand Ethiopian Renaissance Dam, which is nearing completion at the Nile headwaters. Now in the second phase of filling, it will be the largest hydropower project in Africa and would create a reservoir containing 74 billion cubic meters of water.

It's so vast that it will take years to fill, and depending on how long it takes, the water diversions could have devastating impacts downstream. Egypt and Sudan have had water rights to the Nile, while Ethiopia was not allocated a quantifiable share. But as water and energy demand grows in the Nile River basin, Ethiopia is asserting its needs for hydropower and irrigated agriculture to promote development. Ofcourse, this doesn't sit well with Egypt and there is a growing concern that the countries might end up in a war since they can't come to an agreement.

6. Recommendations

6.1 Possible recommendation from previous researcher's perspective

Since the situation remains unchanged and there is little development what can be done to move forward and avoid a possible military action from the involved countries? The three countries should adopt a two-step approach: first, they should build confidence by agreeing upon terms for filling the dam's reservoir that do not harm downstream countries. Next, they should negotiate a new, transboundary framework for resource sharing that can benefit all the parties and can possibly avert future conflicts.

The stakes in the dispute are high. Egypt relies on the Nile for about 90 percent of its freshwater needs. Its government argues that tampering with the river's flow would put millions of farmers out of work and threaten the country's food supply. In Ethiopia, engineers estimate that the GERD will produce about 6,450 megawatts of electricity, a hydropower jackpot that would boost the country's aspirations to attain middle-income status by 2025. Authorities have sold the dam as a defining national endeavor: millions of Ethiopians bought bonds to finance its construction, helping implant the initiative in the national psyche. Fervent public support for the dam has recently cooled, however, following allegations of financial mismanagement.

Between 2011 and 2017, Egyptian and Ethiopian leaders framed the GERD dispute in stark, hypernationalist terms and exchanged belligerent threats. Politicians in Cairo called for sabotaging the dam. Media outlets in both countries compared the two sides' military strength in anticipation of hostilities.

A recent approach has quieted the row. Ethiopia's new Prime Minister, Abiy Ahmed, visited Cairo in June 2018 and promised to ensure that Ethiopia's development projects do not harm Egypt. In turn, Egyptian President Abdel Fattah al-Sisi said his country recognizes that the dispute has no military solution. But despite the warming relations, there has been little substantive progress toward a resolution.

Political upheaval in all three countries complicates this task to varying degrees. In Sudan, President Omar al-Bashir, in power since 1989, is clinging precariously to his job amid the most sustained wave of protest the country has seen in decades. In Ethiopia, Abiy, while enormously popular with the public, is struggling to consolidate his hold on power. Egypt's Sisi is relatively secure in his position, but his drive to extend his stay in office until at least 2034 has divided the military establishment, his key domestic constituency. These internal dynamics mean that the leaders dedicate less time to the Nile dam issue than they should. They could blunder into a crisis if they do not strike a bargain before the GERD begins operation.

Egyptian, Ethiopian and Sudanese authorities should consider a phased approach to agreeing on a way forward. Most urgent is the question of how quickly to fill the dam's reservoir. At first, Ethiopia proposed filling it in three years, while Egypt suggested a process lasting up to fifteen. To achieve a breakthrough on this question, Ethiopia should fully cooperate with its downstream partners and support studies seeking to outline an optimal fill rate timeline. If necessary, the three countries should seek third-party support from a mutually agreed-upon partner to break the impasse. Ethiopia should also agree to stagger the fill rate so that it picks up pace in years with plentiful rains, which would minimize disruption of water flows.

To reduce mutual suspicion, leaders should take a number of confidence-building measures. Prime Minister Abiy should invite his Egyptian and Sudanese counterparts to tour the GERD construction site, thus highlighting Ethiopia's willingness to address downstream countries' concerns. Such a demonstration of Ethiopian good-will could afford the Egyptian authorities the space to make necessary adjustments, notably improving inefficient water management systems. For its part, Cairo should declare that it will not support armed Ethiopian opposition groups, to allay Addis Ababa's fears.

6.2 Possible recommendations from the author's perspective

The first author is a citizen of the country of Ethiopia. We seek to recommend a solution that can mutually benefit not only Egypt and Ethiopia but also the concerned riparian countries. We suggests that the governments involved in the Nile River conflicts have to realize that this trans-boundary issue requires trans-boundary solutions. With Better management within countries and cooperation between countries the issue can be solved. Both Ethiopia and Egypt can put aside their pride and stubbornness as that will only result in war and destruction.

The countries involved can improve the management and efficiency for water usage and that can help address the water crisis. According to various reports, several trends are emerging to improve water sustainability in North Africa and the Middle East. The first focuses on using solar powered irrigation to boost water, energy and food security. The second is to treat and reuse wastewater. This largely untapped resource can be productively used in forestry, agriculture, landscaping and replenishing aquifers. Therefore, if the countries approach these ideas with an open and cooperative mindset, they will come to an agreement that can benefit both parties and end this conflict once and for all without resorting to war and diminishing the lives of the innocent citizens of both countries.

7. Conclusion

As can be seen, the historical origins of the doctrine of historic bays are hazy and appear to be relatively recent, i.e., appearing at the end of the nineteenth century, when a distinct category of such bays was clearly distinguished from ordinary bays, with the term 'historic bay' most likely dating back to Dr Drago's dissent in the 1910 North Atlantic Fisheries Arbitration. The origins of ancient waters claim to 'non-bay' places are even more hazy, not just because they are rarer, but also because they are more complicated. This is not only because instances have been rarer, but also because most academic and the historical origins of the doctrine of historic bays are hazy and appear to be relatively recent, i.e., appearing at the end of the nineteenth century, when a distinct category of such bays was clearly distinguished from ordinary bays, with the term 'historic bay'. The origins of ancient waters claim to 'non-bay' places are even more hazy, not just because they are rarer, but also because they are more complicated. Because the main requirements for showing historic title to waters are derived from international customary law, the ostensibly international legal principles are in any case ambiguous and difficult to implement in practice.

The supposed three rules - formal claim, continuous and effective exercise of relevant jurisdiction, and international acquiescence as laid out in the UN Juridical Regime have, it is true, received the imprimatur of approval in the international legal context of the El Salvador/Honduras case; but unfortunately, the ICJ's reference to a particularized regime for historic waters in that case merely muddies the already unclear rules at customary law relating to historic bays, to the extent in fact of even watering down basic traditional rules on necessity of proof as to uni-national control of foreign navigation therein. Despite scholarly and some judicial misgivings about the theory of historic waters' existence, it is widely regarded as an

established aspect of international maritime law, even if just as part of a State's acquired rights, this is despite the evident reality that new provisions in marine treaty law and new zones like the EEZ may now be interpreted as providing for "activities that have previously lacked proper basis in international law".

Therefore, to avoid many conflicts and disputes an accepted and world-wide tribunal or a convention that most countries are member of should make a definition that would bind all the countries. Thus, if this definition is binding, many countries will refer to this and the conflict won't be as long and muddy.

And for the Nile River dispute between Ethiopia and Egypt, the countries involved can enhance water usage management and efficiency, which will aid in resolving the water problem. Several movements are growing in North Africa and the Middle East, according to various reports, to increase water sustainability. The first focuses on increasing water, energy, and food security through solar-powered irrigation. The second method involves treating and reusing wastewater. This largely underutilized resource can be put to good use in forestry, agriculture, landscaping, and aquifer replenishment. As a result, if the countries approach these concepts with an open and cooperative mindset, they will be able to reach an agreement that benefits both parties and puts an end to the issue once and for all, without resorting to war and endangering the lives of innocent individuals in both countries.

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