

## **Journey of the Nile River Basin Toward a Permanent Institution**

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### **Abstract**

The success and shortcomings of transboundary watercourse cooperation are strongly allied with the existence and effectiveness of institutional arrangements. The case of the Nile River basin is no exception from this reality. In addition to the Permanent Joint Technical Commission established by Egypt and Sudan for themselves, the basin has had *ad-hoc* organizational structures, such as HydroMet, *Undugu*, and the Technical Cooperation Committee of the Nile River Basin. Although these *ad-hoc* structures were compelled to cease operations due to limited composition and the hydro-hegemonic influence of the two utmost down riparian states coupled with other contributing factors, they laid fertile groundwork and institutional experiences for the establishment of the Nile Basin Initiative. This establishment has been operating since 1999 and intends to serve as a transitional organization until a basin-wide legal and institutional framework is in place. Fortunately, the Nile River Basin Cooperative Framework Agreement entered into force on 13 October 2024, following the accession of South Sudan, the sixth riparian state, and its deposit with the African Union. Consequently, this basin-wide legal framework will bring an end to the Nile Basin Initiative structure; instead, the Nile River Basin Commission will soon become the permanent institution of the basin.

Keywords: Nile River, Nile Basin Initiative, Nile River Basin Commission, Permanent Institution, Cooperative Framework Agreement



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### **1. Introduction**

The Nile River is geographically located in East-Northern Africa and is comparatively considered the longest-flowing one on Earth (Arsano, 2011; Lie, 2010). This river comprises two main tributaries: the White Nile and the Blue Nile, which supply about 15% and 85% of the flow, respectively (Dellapenna, 1997). The White Nile originates from the mountain of Uganda and then flows through Burundi, the Democratic Republic of Congo (DRC), Kenya, Rwanda, Tanzania

and South Sudan (Mohammed, 2017). In contrast, the Blue Nile originates from the mountain of Ethiopia then flows across Sudan and merges with the White Nile in Khartoum (Hamza, 2006; Mohammed, 2017; Werner, 2018). The two jointly flow to Egypt and finally discharge into the Mediterranean Sea (Mohammed, 2017; National Geographic, n.d.).

Although the river is blessed with magnificent natural water resources, it has been the subject of contestation. The two extreme downstream riparian states, Egypt and Sudan, contribute almost nothing but apportion the entire river flow among themselves. The remaining upstream riparian states contribute nearly the whole bulk of the Nile River flow but get no portion of it. These arrangements are deeply intertwined with the legacy of the colonial era, which mainly descends from the 1902 Anglo-Ethiopia, 1929 Anglo-Egypt and 1959 Egypt-Sudan Agreements.

The Agreement on the Frontiers (1902) were aimed to strictly restrain Ethiopia from “*arresting*” the Blue Nile flow, while the (1929) Exchange of Notes and the (1959) Agreement for the Full Utilization quantified the total Nile River flow just among the two downstream states, Egypt and Sudan (Waterbury, 1997). Although these are the only available treaty regimes dealing with watercourse quantification, they have been rejected by the upstream riparian states, asserting they serve only the best interests of the two downstream states at their expense (Bulto, 2008; Mekonnen, 2010; VCLT, 1969, Arts. 34–35). Hoping to establish common grounds and use the Nile River equitably and reasonably, upstream and downstream states have had dialogues in the post-colonial era.

These dialogues have not only resulted in numerous bilateral and trilateral treaties signed between/among some riparian states but also paved the way for some institutional arrangements in the Nile River basin. Of all, the Nile River Basin Cooperative Framework Agreement (CFA), crafted in the presence and proactive engagement of all riparian states, has been open for signature since 2010 (Mekonnen, 2010; NBI, n.d.). After getting minimum ratifications, it entered into force on the 13<sup>th</sup> of October 2024 (Mohammed, 2024; NBI, n.d.; Salman, 2024). This marks the establishment of the first-ever permanent institution, the Nile River Basin Commission (CFA, 2010, Art. 15). Against these backgrounds, this article first highlights the journey of *ad-hoc* institutional arrangements exhibited in the Nile River basin and then, addresses the permanent organizational structure that will be established in the Nile River basin.

## 2. *Ad-hoc* Institutional Structure in the Nile River Basin

In transboundary watercourses, there needs to be cooperation among riparian states. A robust institutional structure along with proper management fosters cooperation across a river basin, which proves to be resilient (Berlin Rules, 2004, Arts. 32 (e), 34 (f), 35 (d); UN Watercourses Convention, 1997, Art. 33 (2)). This seems to be the case even in a region, like the Nile River basin, where other geo-political hostilities remain intact (Vollmer et al., 2009). Having these institutional models, this section evaluates the *ad-hoc* institutional arrangements of the Nile River basin.

## 2.1 Permanent Joint Technical Commission

Among decisive colonial agreements that shaped the hydro-politics of the Nile River basin, the 1929 Exchange of Notes between the United Kingdom and Egypt is on the first row. These notes allocated the bulk of the river for the two utmost downstream riparian states, i.e., 48 - 4 Billion Cubic Meters (BCM) to Egypt and Sudan, respectively (Exchange of Notes, 1929; Mohammed, 2023; Waterbury, 1997). Considering this allocation as baseline discourse and acquired rights, the two riparian states came up with the 1959 Agreement and concurred to repartition the total river flow as 55.5 BCM for Egypt, 18.5 BCM for Sudan, and 10 BCM to evaporate into the atmosphere (Agreement for the Full Utilization, 1959, Arts. 1-2 (4); Bulto, 2008; Mohammed & Acer, 2024).

The 1959 treaty between Egypt and Sudan also established the first-ever institution, “Permanent Joint Technical Commission” (PJTC), in the Nile River basin (Hodges, 1979). This PJTC, which contains equal members and gets a budget from both states, is established to effectively implement the foregoing agreement and technically ensure cooperation between the two riparian states. It, in particular, is empowered to conduct research and a hydrological survey as well as design, execute and supervise hydraulic projects on the river course (Agreement for the Full Utilization, 1959, Art. 4 (1) (a-d)). The PJTC is also tasked with studying and negotiating a proposal for a “unified view” against any hydraulic project/s and claim/s made by upstream riparian state/s (Agreement for the Full Utilization, 1959, Art. 5).

However, this PJTC is just an arrangement for the two utmost down riparian states and does not encompass the remaining majority of basin riparian states; thus, it can not be considered a basin-wide structure serving all basin riparian states. Moreover, Egypt and Sudan have not adhered to the “unified stand” approach against upstream riparian states; instead, they have separately pursued negotiating with upstream states, notably Ethiopia (Dellapenna, 1997). Whence Sudan brokered the 1991 “Accord on Peace and Friendship” while Egypt also signed the 1993 “Framework for General Cooperation” with Ethiopia and, accordingly, agreed to use the Nile River equitably and reasonably but not to cause significant harm to each other (Dellapenna, 1997; Lencho, 2014; Mtua, 2017). The two downstream states seem to have returned to the PJTC arrangement and recently issued a joint statement via the commission on their stand on the coming into force of the CFA and expressed their objection to the basin-wide legal framework (Daily News Egypt, 2024).

## 2.2 HydroMet, *Undugu* and TECCO-Nile

Aside from the above commission, there were attempts to establish a basin-wide structure in the Nile River basin with the help of international financial institutions. The Hydrological Metrology, otherwise commonly known as “HydroMet,” was set to be the first initiative that came into existence in coordination with the United Nations Development Program (UNDP) in 1967 and was in place for about 25 years (Johnston, 2009). As the name itself indicates, this initiative was established to study the hydrological climatology of the White Nile, thus

intended to collect available data and analyze them to monitor the water level at Lake Victoria and take precautionary measure/s in case of flooding (Johnston, 2009; Mtua, 2017).

Although the HydroMet initiative attempted to include all riparian states in its structure, its scope was practically limited to the White Nile basin thus it contained other riparian state/s, notably Ethiopia and the DRC (formerly Zaire) as observers (Johnston, 2009). Moreover, there are also critiques against the initiative, arraigning it for not turning planned projects into action and not playing a positive role in exploring common grounds on diverging interests of down and upper riparian states (Arsano, 2007; Mtua, 2017).

With the HydroMet structure on one side, another initiative known as “*Undugu*,” meaning brotherhood in the African Swahili language, was established in 1983 (Paisley & Henshaw, 2013). This initiative was launched for the wider Nile River basin and structured mainly to serve not only as an information hub but also as a forum for overall experience exchange on non/watercourse areas (Johnston, 2009). However, the initiative is said to have failed due to member defects (having Ethiopia, Kenya and Tanzania as observers) and trust issues raised against Egypt’s hydro-hegemonic role (Brunnee & Toope, 2002; Johnston, 2009; Paisley & Henshaw, 2013).

When the HydroMet initiative phased out, the basin was in need of a new institutional structure. With financial incentives from the Canadian International Development Agency (CIDA), the five riparian states of the Nile River basin – DRC, Egypt, Rwanda, Sudan, Tanzania and Uganda – formed a new initiative named after the “Technical Cooperation Committee” for the Promotion of Development and Environmental Protection of the Nile River basin (TECCO-Nile) in 1992 (Johnston, 2009; Mtua, 2017).

The TECCO-Nile initiative was established to further basin-wide cooperation and advance riparian states’ commitment toward equitable & reasonable use of the Nile River basin. In this vein, the initiative strived to create a moderate connection in the basin via infrastructural projects, foster technical cooperation among riparian states through training, and craft a grand “Nile Basin Action Plan” along with its national master plan for implementation, in particular (Mtua, 2017). Despite its ambitious plan, the initiative failed to achieve its objective because of financial constraints, its composition of having four riparian states (Burundi, Eritrea, Ethiopia and Kenya) as observers and hydro-hegemonic domination of downstream riparian states (Johnston, 2009; Paisley & Henshaw, 2013).

### **2.3 Nile Basin Initiatives**

The “Nile Basin Action Plan,” designed by the TECCO-Nile initiative, had set a fertile ground for another significant structure (Mtua, 2017). This structure is called the Nile Basin Initiative (NBI), established in 1999. Unlike its predecessors, this initiative is inclusive and has had multiple donors, thus comprised of all riparian states (Except Eritrea as an observer), and received

financial assistance from the United Nations Development Programme (UNDP), the World Bank and the CIDA (Johnston, 2009).

Having the “Shared Vision” and “Subsidiary Action” programs at the center, the initiative has created two sub-structures: the Nile Equatorial Lakes (NEL-SAP) and the Eastern Nile (EN-SAP) Regions, each composed of riparian states from the White Nile and the Blue Nile basin (NBI, n.d.). Although these sub-structures are criticized for viewing the Nile River as two river systems from the Integrated Water Resource Management perspective, it has been structured as such in order to establish a proper project management system in the provided regions (Johnston, 2009).

Unlike previous initiatives, the NBI is a well-organized institution with its Nile-SEC, a secretariat office established at Entebbe, Uganda (NBI, n.d.). Furthermore, its Nile-COM structure serves as the upper decision-making body comprising the Ministers of Water from member states, while its Nile-TAC serves as a technical advisory committee, constituting one expert from each riparian state, to assist the Nile-COM with technical issues (Mtua, 2017; NBI, n.d.).

The NBI establishment was not meant to be the permanent institution of the Nile River basin. Instead, it was structured as a temporary initiative awaiting a basin-wide legal framework along its permanent institutional structure (Abdalla, 2008). Serving as a transitional institution to foster basin-wide cooperation, the NBI platform played a proactive and alternative role during decade-long negotiations on the basin-wide draft CFA.

When the draft CFA was finalized, it was made open for ratification and accession in 2010 (NBI, n.d.). While Ethiopia, Rwanda, Tanzania, Uganda and Burundi have ratified the framework, a newly independent state, South Sudan, has recently acceded to it (Muzaki, 2023; NBI, n.d.; Salman, 2024; Sudans Post, 2024). Attaining the minimum six riparian states’ threshold of ratification and accession as required by Article 43, the CFA entered into force on 13 October 2024, following South Sudan’s deposition of the sixth legal instrument of accession with the African Union (Mohammed, 2024; NBI, n.d.; Salman, 2024). This triggered the transitional process of transforming the NBI into a permanent Commission of the Basin as prescribed under Article 31 of the CFA.

### **3. Permanent Institutional Establishment in the Nile River Basin**

The Nile River basin has lacked a basin-wide legal framework. Not anymore. The CFA’s entry into force has changed this fact once and for all (Mohammed, 2024; Salman, 2024). Although it may face geopolitical and hydro-political challenges in due course of time, it offers many advantages to the basin (Okello, 2024; Tekuya, 2024). Most importantly, the framework enables the establishment of the Nile River Basin Commission (Commission), a permanent institutional organization for the basin (CFA, 2010, Arts. 2 (2) & 15). The Commission will soon take over the NBI and is expected to advance the Nile cooperation to the next level (CFA, 2010, Art. 31).



The Commission is an intergovernmental body empowered with full institutional authority to carry out its assigned responsibilities (CFA, 2010, Art. 19). Its purpose and objective are to enhance and foster “the implementation of the principles, rights and obligations” prescribed under the framework (CFA, 2010, Art. 16 (a)). Having customary international law principles like equitable-reasonable utilization and obligation not to cause significant harm as its cornerstones, the commission is authorized to oversee principles such as water/ecosystem protection and conservation, regular exchange of data and information, notification on planned measures, and protection of the watercourse during armed conflict per international humanitarian laws, among others (CFA, 2010, Arts. 3, 4–14).

In the above context, the Commission, after articulating all pertinent factors provided under Article 4 (2) along with the realities on the ground, will make sure all riparian states effectively use the Nile River equitably and reasonably per the provided rules and procedures (CFA, 2010, Art. 4 (6)). While doing so, the Commission will put in place prevention plus mitigation strategies and strive to regulate riparian state/s so as not to cause significant harm to other/ecosystems (CFA, 2010, Arts. 5 & 11). The commission will also serve as a forum where riparian states harmonize their national water policies per the basin-wide framework and exchange information on any hydraulic planned measures along its environmental impact assessment among themselves per its rules and procedural obligations (CFA, 2010, Arts. 8, 6 (2), 7 (3)).

The commission is a forum where riparian states settle their dispute amicably. As such, in case disputes arise between/among riparian states, the framework provides a procedure that needs to be observed (CFA, 2010, Art. 34). The basin states shall negotiate first to settle their differences. If their negotiation fails to bring the desired result, they may resolve their dispute/s through mediation, reconciliation, arbitration or the International Court of Justice (ICJ) within six months (CFA, 2010, Art. 34 (1) (a)). If they cannot settle as such in a given period, the Commission needs to establish a Fact-Finding Commission thus the dispute ought to be brought to this Commission when any of the concerned disputing party requests to do so (CFA, 2010, Art. 34 (a) (b)).

In connection with the aforesaid procedures, the Commission is already entrusted to resolve disputed issues related to the “water security” provided under Article 14 (b) of the CFA. Although the legalese problemata originates from Article 3 (15) of the framework stipulating the principle of “water security” given its inexistence in *lex lata* of international watercourse law, the diverging stand on the originally drafted statement vis-à-vis the proposed reservation sparked a huge debate among upstream and downstream riparian states (Mekonnen, 2010; Mohammed, 2017).

Standing on Article 14 (b) which read “*The Nile Basin States agree, in a spirit of cooperation, not to significantly affect the water security of any other Nile Basin States,*” the two utmost downstream states proposed to replace the phrase “*not to significantly affect the water security of any other Nile Basin States*” by “*not to adversely affect the water security and current uses and rights of any other Nile Basin State*” (CFA, 2010, Art. 14b: Attachment). Asserting that this reservation proposal is meant to

impose colonial treaties that serve only the best interest of downstream riparian states, the upper riparian states have rejected it (Woldetsadik, 2017).

Once the commission commences its work, it shall establish an independent Fact-Finding Commission, having one representative from each riparian state and a neutral Chairman to be nominated by the already selected representative (CFA, 2010, Annex 1). Accordingly, the Commission shall resolve the dispute at hand within six months upon the recommendation provided by the Fact-Finding body (CFA, 2010, Art. 14b: Attachment).

Like the NBI, the basin-wide Commission will have its headquarters in Entebbe, Uganda, but with more comprehensive institutional structures (CFA, 2010, Art. 18). It will have five levels of organizational structures: the Conference, Council, Technical Advisory Committee, Sectoral Advisory Committees, and the Secretariat. The Conference is a structure constituting a member of heads of State and Government of the basin tasked with the highest policy-making authority of the commission, having adopted its rules and regulations (CFA, 2010, Arts. 20–21).

The Council will comprise the Ministers of Water of the basin states, have the second decision-making authority next to the Conference and be entitled to oversee the overall management of the Commission (CFA, 2010, Arts. 22, 23, 24 (14)). While meeting once a year, the Council will take effective measures to implement the CFA fully plus authorized to provide interpretations and recommendations on the framework upon request (CFA, 2010, Art. 24 (1, 2, 13)). Moreover, it is empowered not only to review and approve administrative regulations, plans, and budgets for the Technical Advisory Committee, Sectoral Advisory Committees and the Secretariate (CFA, 2010, Art. 24 (8, 15)). The council is a vital structure responsible for effectively implementing equitable and reasonable use of the Nile River thus will determine equitable share for each riparian state, taking into account all relevant factors provided under Article 4 (2) of the framework (CFA, 2010, Art. 24 (12)). When conditions require, it will also decide to initiate joint project/s in the Nile River basin (CFA, 2010, Art. 24 (16)).

The Technical Advisory Committee (TAC) is an arrangement formed by two senior officials from each riparian state of the basin (CFA, 2010, Art. 25 (1)). Gathering twice a year for meetings, TAC serves as an engine for the Council thus it proposes, guides and provides recommendations on the overall implementation of the Commission and the CFA so that the Council can execute its functions properly and achieve its authority efficiently (CFA, 2010, Art. 25 (3), 26).

The Sectoral Advisory Committee (SAC) is a conditional structure, constituting one expert from each riparian state, established by the Council to address specific issue/s related to the Commission (CFA, 2010, Art. 27 (1-2)). The SAC will deal with issue/s in question as required by the Council per the provided rules and regulations within a given period of time (CFA, 2010, Art. 27 (3), 28).

The Commission will have the Secretariat, based in Entebbe, led by an Executive Secretary and other senior officials appointed by the Council (CFA, 2010, Arts. 24 (9), 29 (1 & 5)). The Secretariat

officially represents the Commission thus will serve as a secretariat for all official gatherings of the establishment, provide service/s to all structures of the Commission, and bridge international plus inter-organizational structures to have a smooth working environment with the Commission (CFA, 2010, Arts. 30 (1, 2, 3, 7, 8 & 10)). Furthermore, it needs to submit annual plans, budgets and studies as well as physical and financial reports to the TAC (CFA, 2010, Art. 30 (4, 5, 6 & 10)).

Apart from the above structure, the Commission will have decentralized systems and, consequently, will establish subsidiary institutions, such as sub-basin organizational structure/s and national focal point/s from each riparian state of the basin (CFA, 2010, Arts. 32–33). This arrangement will promote effective communication and cooperation between the Commission and riparian states of the basin.

#### 4. Conclusion

Effective management of a transboundary watercourse requires a proper institutional structure, as such an arrangement can usually withstand even when non-watercourse-related geopolitical issues persist in a basin (“Water Organizations,” n.d.; Vollmer et al., 2009, p. 11). In this vein, the article has contemplated the journey of the Nile River basin toward permanent organizational structures. Although this river is the lengthiest flowing one covering a huge catchment area along eleven riparian states, colonial treaties like the (1902) Anglo-Ethiopia Agreement on the Frontiers, the (1929) Anglo-Egypt's Exchange of Notes and the (1959) Egypt-Sudan Agreement for the Full Utilization have brought paramount benefits to the two utmost downstream states while disproportionately disregarding the interests of the upstream states. These, in turn, have negatively impacted the management of the Nile River basin and the journey of its institutional initiatives, in particular.

Save the PJTC structure established just for the two downstream riparian states per the (1959) Agreement for the Full Utilization, the basin has had HydroMet, Undugu, TECCO-Nile and NBI organizational structures. The first three initiatives had become defunct and ineffective due to their scope and representation in having major riparian states, notably Burundi, DRC, Ethiopia, Kenya, and Tanzania as observers, the hydro-hegemonic influence of downstream riparian states, and insufficient funds, among others. Taking advantage of the TECCO-Nile positive “Action Plan,” the NBI, in contrast, was established constituting almost all riparian states (Except Eritrea, an observer) and has more funds receiving financial incentives from the UNDP, World Bank and the CIDA. With its Nile-COM, Nile-TAC and Nile-SEC organizational structure, it has strived to achieve its “Shared Vision” and “Subsidiary Action” through the NEL-SAP and EN-SAP sub-regional structures.

However, the NBI is structured as an *ad-hoc* institution serving as a transitional structure pending the coming into force of the basin-wide legal framework, the CFA, and the permanent institution, the Commission. The CFA entered into force on 13 October 2024, after South Sudan, the sixth riparian state, acceded to the legal framework and deposited it with the African Union. With its



modest and comprehensive organizational structures (like the Conference composed of state leaders and the Council comprised of Ministers of Water along with its TAC, SAC and Secretariat structures), the Commission, therefore, will soon take over the NBI and start the journey of Nile River basin toward the permanent institutional initiative.

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