



**THE CAPACITY TO MEDIATE: THE ROLE OF THE AFRICAN UNION IN THE
GRAND ETHIOPIAN RENAISSANCE DAM DISPUTE BETWEEN ETHIOPIA, EGYPT
AND SUDAN**

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ABSTRACT

Watercourses and their importance to human life and development is evident in water's role in energy generation, agriculture, cultural practices and human sanitation. In light of an increasing climate change crisis and diminishing fresh water supply, a corresponding need has arisen for freshwater to meet the demands of an ever-industrialising population. Managing water resources across borders of any scale is challenging however transboundary basins present a specific challenge. In the absence of effective management and protection of water resources, there is an increased risk of a water scarce future. Research has largely focused on how a state's non-compliance to treaties and agreements have shaped the hydro-political realities of a given basin. However, little research has paid attention to the influence of institutional capacity of supranational organisation to effectively execute their mandate of peace and security within the realm of environmental disputes between states. At the level of the African Union these incapacities have become apparent in the limited role as mediator in the Grand Ethiopian Renaissance Dam dispute between Ethiopia, Egypt and Sudan. In this regard, the research investigates how the organisation's institutional capacities have affected its efficacy as a mediator in the transboundary water dispute. Using a critical institutionalist approach, the dissertation aims to understand how issues of capacity may influence the AU's ability to manage future water disputes beyond the GERD on the continent, given the lack of a coherent legal framework on the management and use of transboundary watercourses.

LIST OF ABBREVIATIONS AND ACRONYMS

AMCOW - African Ministers' Council on Water

APSA – African Peace and Security Architecture

ASAP – African Solutions to African Problems

AU – African Union

AWV – African Water Vision

BCM – Billion Cubic Meter

CFA – Cooperative Framework Agreement

DoP – Declaration of Principles

ECA – Economic Commission for Africa

ECOWAS - Economic Community of West African States

GERD – Grand Ethiopian Renaissance Dam

GERDP - Grand Ethiopian Renaissance Dam Project

GWP – Global Water Partnership

IISD - International Institute for Sustainable Development

IPoE – International Panel of Experts

IR – International Relations

IWC – International Watercourses Convention

IWRM - Integrated Water Resources Management

KM - Kilometre

MAP – Millennium Africa Recovery Plan

MDG – Millennium Development Goals

MoU – Memorandum of Understanding

MW – Megawatt

NAI - New African Initiative

NBI – Nile Basin Initiative

OAU – Organisation of African Unity

PIDA - Programme for Infrastructure Development in Africa

REC – Regional Economic Communities

SADC – Southern African Development Community

SDG – Sustainable Development Goals

SLR – Systematic Literature Review

SQKM – Square Kilometre

TECCONILE - Technical Cooperation Committee for the Promotion and Development of the Nile

TFDD – Transboundary Freshwater Dispute Database

UN – United Nations

UNDESA – United Nations Department of Economic and Social Affairs

UNDP – United Nations Development Programme

US – United States

USA – United States of America

WRI – World Resource Institute

WWF – World Water Forum

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CHAPTER ONE – INTRODUCTION

“Fierce national competition over water resources has prompted fears that water issues contain the seeds of violent conflict.”

Kofi Annan (1938 - 2018)

1.1. Introduction

It is reported that ninety-seven per cent of the earth's water is salty. The remaining three per cent is freshwater, with two per cent [of the three] frozen freshwater trapped in ice at the poles, and only one per cent is readily available. It is within this one per cent that the dissertation lays its focus. Like many other resources that support and sustain life, freshwater is one of humanity's most vulnerable and valuable natural resources (Holden 2014; Perlman 2014). While its availability remains consistent, the demand for it has increased. Thus, water resources have become increasingly stressed, with the World Resources Institute (WRI) (2015) projecting that most of the world will not have enough water to meet year-round demands by the year 2040. Therefore, with demand comes issues of water access, distribution, and rights (Barua & Tongper 2019: 382).

Throughout history and worldwide, the competition and pursuit for vital resources such as water offer a vital mainstay in assessing how resources are controlled, distributed, and used. Research and literature on the politics of access and distribution of water have resulted in attributing a proportional relationship between the access and control of water with thriving civilizations. As the demand for the planet's limited supply has increased to unsustainable and inequitable rates, with continued population growth and industrialisation, conservation efforts are critical. The 2006 United Nations Development Programme (UNDP) report entitled *Beyond Scarcity: Power, Poverty and Global Water Crisis*, the UNDP postulated that “transboundary waters extend hydrological interdependence across national frontiers, linking users in different countries within a shared system. Managing that interdependence is one of the great human development challenges facing the international community” (UNDP 2006: 203). The quotation from the UNDP report captures the complicated aspects of managing freshwater resources, particularly transboundary river basins.

In the past, shared transboundary watercourses have been a source of interstate conflict and cooperation. There are 263 transboundary watersheds globally, the African continent, home to 63 of them. African states are by far the most hydrologically interdependent. Van Wyk (2010: 101) reports that Africa's hydrological interdependence can be quantified to ninety per cent of the total surface area is within a transboundary river basin. The Nile is longest river in the world in terms of its drainage and carrying capacity of water. It is also hosts' the highest number of riparian states than any other international river basin in the world (11, namely: the Republic of Burundi, Democratic Republic of Congo; Arab Republic of Egypt; State of Eritrea; Federal Democratic Republic of Ethiopia; Republic of Kenya; Republic of Rwanda; Republic of South Sudan; Republic of the Sudan; United Republic of Tanzania and Republic of Uganda) (Adar & Check 2011: xx).

The Nile Basin is one of the world's most crucial transboundary river basins, with its importance transcending its earthly functions (Kimenyi & Mbaku 2015; Ohlsson 1995: 20). The Nile's divinity has and continues to be a lifeline to the prosperity of many civilizations along its edges. Leif Ohlsson's (1995: 22) 'riparian problem' postulates that due to rivers having no territorial boundaries, what happens at its source will have far-reaching consequences at its mouth. Ohlsson's argument captures the essence of the reverberations of unilateral actions that occur within transboundary river basins. The rivalry and competition over its [the Nile] waters are not new, with the Grand Ethiopian Renaissance Dam (GERD) offering a contemporary iteration of the classic riparian problem¹. Examining these examples suggests a relationship between change and institutions. Change, in this context, requires the river basins to be the unit of analysis. Through this lens, we are able to observe how changes in and to the physical units - droughts, supply and demand - affect a state's ability to utilise water within the river basin. In the case of the Yarmouk River basin, the rapid change in the socioeconomic context of Jordan following 1948² resulted in

¹ The Fashoda Incident of 1898 was a territorial dispute between Britain and France over the Upper Nile River basin (Mangold 2018). The interstate tensions over the Yarmouk River between Syria and Jordan over since 1950 (Borthwick 2010). The contestation over the Itaipu Hydroelectric Project on River Parana between Brazil and Paraguay between 1962 and 1967 (Murphy & Sabadell 1986).

² The change in the Jordanian socioeconomic and political landscape was the result of an influx in Palestinian refugees following the creation of Israel in 1948. The influx of Palestinian refugees required Amman to secure social stability and to achieve this goal, water formed part of the government's strategic arsenal (Hussien & Grandi 2015: 169).

the need for Amman to increase their share of water usage to meet the increased demand. Institutions - defined as stable patterns or organisation that govern a field of action (Oxford 2013) - particularly, the capacity to absorb change is central to this analysis. Traditionally, cooperation amongst states is carried out by a given institution through agreements, laws, and customary practices. However, if swift changes in these institutional frameworks outpace the institutional capacity to absorb these changes, they often lie at the heart of water disputes. Wolf et al (2003:43) hypothesized this relationship as “the likelihood and intensity of dispute rises as the rate of change within a basin exceeds the institutional capacity to absorb that change.”

With construction commencing on the Blue Nile River in 2011, the Grand Ethiopian Renaissance Dam is set to be Africa's biggest hydroelectric project. The dam is projected to cost an estimated five-billion US dollars. Once completed, it will have reservoir area of 1,874 square kilometers (sq. km) and a total water storage of 74 billion cubic meters (Bm³). Apart from its size, the dam aims to generate an expected six thousand megawatt (MW) of electricity, offering new avenues of energy access for Ethiopians and the wider East African Community (Maru 2020: 5-6; Turhan 2021: 70). The dam's construction presents a multitude of complexities that manifest themselves in various social, economic, geographical, and political forms. Each of these manifestations plays out differently in the water identity, objectives and securities of the states involved (Ethiopia, Egypt, and Sudan). Egypt's apparent hydro-hegemony and hydro-mentality further compound the overarching complexities as the 'historical' custodian of the Nile. The colonial agreements of 1902, 1929 and 1959 have further shaped and entrenched the Nile's hydro-political reality and apparent asymmetries. Maru (2020: 6) contends that the changes in the Nile in this regard (the GERD) reflect a change in relations amongst riparian states as well as "the need to address long-standing unfair and hegemonic approaches to the use of the Nile".

The emphasis on freshwater's essential role for our survival is seen in its use pervading all functions that society performs. Literature and studies on issues surrounding water and its use and governance have focused their arguments on the conflict-cooperation spectrum and how a state's (non)compliance to treaties and agreements has shaped the hydro-political realities of a given river basin (Delli-Priscolli 1996). Thus, research has rarely paid attention to the influence of institutional capacity on an actors' ability - be it at the state, regional or supranational level - to execute their

mandates effectively. Furthermore, at the level of the African Union, these (in)capacities require interrogation, particularly in the embryonic role of the African Union in the mediatory processes regarding the transboundary water dispute involving Ethiopia, Egypt, and Sudan regarding the Grand Ethiopian Renaissance Dam.

Given the rise in interstate conflict and/or disputes around energy resources, the geopolitical circumstances around the Blue Nile River have aggravated issues around food and energy (in)security. These tensions have raised important 'water questions' related to ownership, distribution and control among the riparian states involved. These include but not limited to: “Whom does water belong to? Who gets how much water? and What are the rights of the state?” (Shiva 2002: 19). These questions are historically and politically situated with the influence of colonialism on the partitioning of the Blue Nile River and its influence on Egypt's apparent hydro-hegemony, a glaring marker. Thus, the efficacy of regional organizations as mediators in geopolitical tensions becomes important actors in resolving strained riparian relations. Using the case study of the tensions between Egypt, Ethiopia and Sudan, and their use of and claim to the waters of the Blue Nile River, the dissertation intends to investigate the institutional capacities of the African Union with a specific interest in how capacity influences its ability to participate effectively in mediation and governance of transboundary river basins on the continent.

1.2. Research Question

Nathan (2007: 11) outlines that the African Union (AU), as a supranational body on the continent, has a formal mandate to engage in matters of peace and security as enshrined in the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (AU 2002: 4), states that through the African Union, under Article 5(2) of the Constitutive Act of the AU, the Peace and Security Council plays a vital role in ensuring peace and security and stability on the continent. Nonetheless, there exists a gap between the mandate to mediate and the capacity to mediate, which is evident in the African Union's embryonic role in the dispute between the Ethiopian, Egypt, and Sudan around the Grand Ethiopian Renaissance Dam (GERD). The research question translated to how the African Union fulfils its peace and security mandate within the context of contested natural resources and whether its institutional power empowers or inhibits its ability to perform its mandate.

The main research question of the dissertation is:

Has the institutional capacity of the African Union inhibited its efficacy as a mediator in the Grand Ethiopian Renaissance Dam dispute between Ethiopia, Egypt, and Sudan?

Below are sub-research questions that guide the study.

- What is meant by institutional capacity?

What are the definitions available in the literature, and what elements are considered that make up the definition(s) of institutional capacity? Furthermore, are there any frameworks that can be contextualized within the peace and security role of the African Union?

- Why has the international community, rather than the African region, been the leading mediatory role in the GERD dispute?

To what extent do third parties influence transboundary water governance on the continent? This question recognizes that political and riparian relations are not insulated from external forces and that these forces influence the ability of the African Union to assume its role.

- What are the implications of the African Union's institutional (in)capacity beyond the dispute resolution of the Grand Ethiopian Renaissance Dam?

This question looks beyond the current case of the GERD, realizing that if the AU is to be successful, it needs to overcome the current capacity and legal impediments and develop a strategy to assist future water disputes. Given the increased risk of climate change on world affairs, the AU ought to be pragmatic and proactive in the future.

Based on the questions posed whilst taking into consideration the background of the GERD as well as the embryonic role and involvement of the AU in the dam dispute negotiation talks, the dissertation aims to **understand how issues of capacity may influence the AU's ability to manage future water disputes on the continent**. The case study of the GERD has further exposed the institutional deficiencies within the AU in dealing with issues of water governance through the lack of a coherent legal framework for the management and use of transboundary watercourses.

1.3. Theoretical Framework

The theoretical framework guiding the dissertation seeks to acknowledge the complexities in the institutional arrangements in the mediation of natural resources. Institutions' centrality (and effectiveness) can be found in the institutionalist school of thought, with mainstream and critical approaches alike. The dissertation employs a critical institutionalist approach to understanding the capacity of the African Union within the context of natural resource mediation and governance. The consideration of a critical institutional approach as opposed to mainstream institutionalism is that the former, associated with the work of Frances Cleaver, understands that institutions are context-specific, dynamic, and evolving and exist within a multi-scalar arena that is shaped by local histories and politics (Cleaver 2012: 6). Mainstream institutional approaches, on the other hand, emphasis on local level systems narrows its analytical lens without the consideration of broader structures. In this regard, its predictive form resonates around identifying the "design principles - user representation and mechanism for conflict resolution" of organizations under review (Jones 2015: 68; Nunan 2015: 58). Nunan (2015: 60) refers to critical institutionalism as the expansive approaches used in the analysis of institutional proceedings over the mediation of natural resources specifically, their control and access. Although rooted in the foundations of mainstream institutionalism, critical institutionalism draws on the various literature and disciplinary perspectives on the commons including social theory and political ecology. The essential characteristic of this school of thought is the recognition of the plurality and complexity of institutions located in socio-political and environmental histories. Furthermore, the intersection between plurality, complexity and histories may provide opportunities or constrain an organization's ability to manoeuvre effectively (Cleaver & de Koning 2015: 5-6).

Cleaver (2012) and de Koning's (2011, 2014) concept of institutional bricolage offers a good explanatory lens to understand and question assumptions about institutional effectiveness. The concept describes the manner institutions tend to emerge as a mixture of socially embeddedness and bureaucracy. Institutional bricolage is a "process through which people and organizations consciously and non-consciously assemble or reshape institutional arrangements". Bricolage involves several vital features, namely (Jones 2015: 69; Whaley 2018: 139):

- (i) The improvising of existing practices through the inclusion of innovative ideas as well as the adaptation of innovations to fit a particular context.
- (ii) Institutional organizations exist beyond their single purpose. Here in the analysis of the African Union and the Peace and Security Architecture, the continent's Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002) ought to be supplemented with other normative frameworks that expand water security issues into freshwater transboundary matters.
- (iii) The mainstream institutional assertion of a 'win-win' solution is disregarded for an emphasis on solutions that consider unequal outcomes caused by institutional changes. The influence of social theory and its criticism of binarism is apparent in critical institutionalism's regard for more nuanced resolutions.

Through the process of bricolage, institutions are neither modern nor traditional; formal or informal, but combine elements from the modern, traditional, informal, and formal to perform new functions resulting in uneven functioning and impact as no clear assemblage is established (Cleaver 2012: 45; Cleaver & Whaley 2018). The concept's merit lies in its ability to help understand whether institutions can be crafted to be efficient and result in workable interventions and arrangements.

1.4. Research Methodology

The dissertation adopts a qualitative research approach. Saldāna (2011: 3) posits that qualitative research is the all-encompassing term that describes the broad range of approaches and methodologies employed to explore and understand multiple meanings of social phenomena. Research within a qualitative approach “involves 'emerging questions and procedures; data collection in the observed environment and analyzed inductively from the particular to general themes’” (Creswell & Creswell 2014: 41). Hammersley (2012: 12) defines qualitative research design as data-driven and emphasize the role of reflexivity and subjectivity in the research process.

Punch (2005: 142) describes research design as the overall strategy for a piece of research. This includes the strategy, theoretical framework, data collection tools and analytical techniques. A case

study is a research approach that aims to generate a multi-faceted, in-depth understanding of a phenomenon in its natural setting (Crowe, Cresswell, Robertson, Huby, Avery & Sheikh 2011: 1). Yin (1984: 23) defines case study research as “an empirical inquiry that investigates a contemporary phenomenon within its real-life context, when boundaries between context and phenomenon are not directly evident and in which multiple sources of evidence are used”. Crucially, each case tends to have a pre-defined boundary which clarifies the scope and period covered by the selected case study. The Grand Ethiopian Renaissance Dam can be classified as an intrinsic case study in which it is selected on its own merits and uniqueness which is of genuine interest to the researcher (Starman 2013: 2). The GERD’s uniqueness is seen in the territorial legacy of colonialism and how this legacy has and continues to influence the positions and securitization of the Nile by Egypt and Sudan. Unlike other policy areas that have clear political, social or economic delineation, the dam and its associated environmental issues are inexplicably tied to the political economy of the Nile River basin. Furthermore, if we consider the classic riparian problem then the impact of the decisions taken regarding the dam are insulated to only the conflicting parties. Additionally, the dam dispute presents the continent's supranational body with the opportunity to truly consider environmental disputes as a core policy issue, as traditionally most environmental disputes have usually been handled on an ad hoc basis.

Data Collection

Creswell (2013) argues that the choice of methodology drives the methods used to collect data. In this regard, primary and secondary literature derived from the Internet will combine to collect relevant qualitative data sources. The dissertation uses a snowballing search strategy. Snowballing search strategy uses a key or primary document as a starting point. Wohlin (2014: 2-4) outlines the snowballing search procedure as follows:

1. **Create a start set:** The dissertation used Google Scholar and the University of Cape Town library catalogue as the primary databases to gather literature. The creation of a start set began with identifying established keywords by breaking down the main research question and sub-research questions. Thus, the following keywords: 'transboundary river basins'; 'Grand Ethiopian Renaissance Dam'; 'the Nile River'; and 'water governance' are entered into the databases. Boolean Operators form an integral part of the start set as they define the relationship between search terms

by either broadening or narrowing online searches (University of Stellenbosch, 2021). The Boolean Operators – AND, OR – were used to retrieve literature relevant to the keywords search. These operators delimited searched sources that reflect keywords and their synonyms.

2. **Iteration:** Backward and forward snowballing is initiated after the start set has been concluded. Backward snowballing refers to the appraisal of reference lists of the tentatively included papers from the start set. Here, sources are excluded from the final data collection process if they do not meet the inclusion criteria. The study's inclusion criteria were that only literature that reflected the keywords focus of the study was considered. Forward snowballing or citation tracking will not be used, as the number of times a literature source has been cited did not form part of the inclusion criteria (Kohli 2020).

3. **End iteration loop:** The iteration loop concludes once no new relevant literature sources are found. This step is also complemented by consulting specific journals and websites. In this regard, a journal dedicated to researching environmental governance, African regional governance, was consulted (Wohlin 2014: 4).

To fulfil the overall aim of the dissertation – to understand how issues of capacity may influence the AU's ability to manage future water disputes on the continent – literature that analyses the institutional and normative framework of the organization was appraised. An emphasis was placed on the AU's organs and institutions, their powers, and their functions regarding water. To do this, the following institutional and normative frameworks form the basis of the research's analysis into issues of capacity, dispute resolution and water governance on the continent, together with other literature:

- The African Union Peace and Security Council
- The New Partnership for African Development
- Constitutive Act of the African Union
- African Water Vision 2025: Equitable and Sustainable Use of Water for Socioeconomic Development.

Additionally, the nexus between food, land, water and energy may increase the scope of the literature consulted in the data collection process. The data collection process had no rigid limits in terms of a dedicated period of analysis, as the GERD's social, historical, and political context stretches between the colonial and post-colonial periods. Each informs and impacts several aspects of the involved riparian states to varying degrees throughout and beyond the dam negotiation process.

1.4.1. Data Analysis

Data analysis aims to 'reveal to others through fresh insights what we have observed and discovered.' There are multiple analytical techniques in qualitative research, and the choice of technique will aim to generate clear and sufficient answers for the research question(s) (Saldana 2014: 89). Analysis is based on the re-interpretation of secondary sources, as prescribed by the chosen research design. The dissertation makes use of thematic analysis, as patterns of meaning are guided by the outlined sub-research questions, with each question organizing the analysis accordingly. Clarke & Braun (2017: 297) define thematic analysis as the methodology of categorizing and interpreting patterns of meaning drawn from identifying and analysing qualitative data. The technique's flexibility allows for the emergence of new themes, and its deployment into critical frameworks enables the researcher to interrogate established patterns of meaning by questioning how they have impacted prior analysis (Clark & Braun 2017: 297).

1.5. Limitations of the Study

Given the circumstances around the global COVID-19 pandemic, the research could have benefited from an expanded research methodology and design. An expanded research methodology would include field research, more especially semi-structured interviews. Semi-structured interviews with relevant representatives from the African Union or respective conflicting states, mediation scholars and or civil society organisations involved at various stages of the negotiation process. This data collection approach would have offered analysis to draw from an 'insiders' view into the incapacities of the AU and its mediation of environmental disputes. Attempts to secure these interviews through computer-mediated communication such as video communication were not considered due to time constraints attached to the completion of the dissertation.

1.6. Chapter Outline

Chapter One presents the background of the research, providing detailed explanations of its focus, research questions and objectives. The theoretical framework, research methodology and research design are discussed in this chapter.

Chapter Two reviews relevant literature around the themes and discussions regarding water and, more specifically, transboundary river basins. I discuss definitions of transboundary waters that I adopt in the dissertation. This is followed by a look into the rise of water issues on the international political agenda - the influence of mega conferences and their role in shaping various national and regional water agendas and frameworks. I engage with conflict and cooperation intellectual silos that often classify the riparian relations within a given river basin.

Chapter Three provides context to the Grand Ethiopian Renaissance Dam dispute focusing on political and historical influences. Colonial and post-colonial legal regimes are essential in understanding the geopolitics of the eastern Nile River basin and how these legal regimes have influenced current proceedings around the dam.

Chapter Four engages with the normative and institutional organization of the African Union that deal with the matter of peace and security and particularly transboundary water issues. The chapter argues that the interactions between the normative and institutional impact the supranational body's capacity to fulfil its mandate.

Chapter Five considers how the current incapacities may influence similar disputes in the future and how this impact the African Union's legitimacy as the continent's steward of peace and security. The main findings of the dissertation bring together the research questions and objectives. The limitations of the study are also discussed.

CHAPTER TWO – LITERATURE REVIEW

Watercourses and their importance to human life and development are evident in water's role in energy generation, agriculture, cultural practices, and human sanitation. In light of an increasing climate change crisis and diminishing fresh water supply, a corresponding need has arisen for freshwater to meet the demands of an ever-industrialising population. (Martinon 2010:1; Newig & Challies 2014: 439). Managing water resources across borders of any scale is challenging; however, transboundary basins present a specific challenge. In the absence of effective management and protection of water resources, there is an increased risk of a scarce water future. This chapter will provide an extensive overview of water resources debates with a specific focus on international transboundary river basins. The literature review's limitation on international transboundary river basins ensures that discussion and debates maintain the dissertation's overall objective- how capacity issues may influence the African Union's ability to manage future water disputes on the continent. The literature review will begin with a historical analysis of water's rise in the international arena. Here the analysis highlights how the burgeoning of traditionally 'low-politics' has found relevance considering the increasing climate change crisis. The second section of the literature review will explore the securitisation of water discourse. The literature review will conclude with a discussion of the conflict-cooperation spectrum. Drawing on International Relation (IR) paradigms - realism and liberal institutionalism - this section explains the politics of international transboundary rivers.

2.1. Introduction

Rivers are an iteration of water's fugitive nature and hold a multitude of expressions in human society. With its ability to bring both life and death, managing rivers effectively has always been a goal. To achieve this goal, a host of institutional instruments have been developed: ranging from bilateral and multilateral treaties to river basin organisations, each with the aim to internalise the politics of distribution and control (Sadoff & Grey 2002: 390). Nonetheless, the management of rivers finds further complications and complexity because these rivers indiscriminately cross political boundaries. Their intersection and formation of borders give rise to debate and discord amongst multiple users with conflicting demands and preferences. Tensions brought about by these conflicting demands and preferences are not absent from various historical, political, cultural,

economic and environmental factors. These factors have and continue to affect relations between riparian states, furthermore, providing a catalyst for either conflict or cooperation. As control over these rivers is intimately linked with economic opportunity, national security, society, and culture. Approximately 263 surface water basins are shared between two or more states, accounting for 60 per cent of the global freshwater flow. These international river basins cover over forty-five per cent of the earth's total land surface (Wolf, Stahl & Macomber 2003: 31; Earle, Jagerskog & Öjendal 2010: 1). Continentally, most African states territory traverses at least one transboundary basin, with them accounting for about sixty-two per cent of the continent's land mass (Kimenyi & Mbaku 2015: 1). Given the pervasiveness of transboundary water basins both continentally and around the world, water management is transboundary in nature.

The conceptual foundations of rivers that transcend and or create political borders suffer from definitional incoherence. This incoherence is consequential of the epistemological framework employed to reflect the degree to which the terminology fits within the overall objective of a study. The criteria for inclusion but more specifically exclusion of what is considered raises important questions such as do rivers include watersheds? Are all water channels included? Are aquifers enclosed in the definition of freshwater flows? (Gupta 2016: 118). Four terms are used to describe the nature of these rivers across the literature consulted: international rivers, transboundary rivers, shared rivers, and watercourses. The term international rivers describe freshwater whose catchment falls within the borders of more than one state. Sadoff & Grey (2002: 390) contend that the use of the word 'international' in this context incorrectly implies that the waters do not belong to any one state. Transboundary rivers are characterised as "a river basin that cuts across two or more political boundaries" (Song & Whittington 2004: 2). Confusion over the word 'transboundary' is considered with scholars arguing that most river channels form borders rather than crossing them and include intra-national borders. However, expand the terminology to include basins, and then almost certainly, the river becomes transboundary. The terminology of shared rivers is disputed on the grounds that the word 'shared' denotes a level of equity. Here literature considers the role of power in how water in river basins is (re)constructed by hydro-hegemons. Hydro-hegemony characterises how states with water-related power control water politics in each basin. This water-related power has no clear authority between upstream and downstream riparian states. In the context of the Nile River Basin and the Grand Ethiopian Renaissance Dam (GERD),

the downstream riparian state of Egypt has apparent hydro-hegemony through its invocation of colonial 'historical and natural rights'.

In the absence of a legally binding law on transboundary waters at various scales of supra-national governance, how the politics of allocation and control are negotiated, interpreted, and implemented, rationalises the limited use of the term shared rivers (Gupta 2016: 121). Lastly, the term international watercourse constitutes a variety of meanings, especially with what is considered to form part of a water system. Watercourses are geographic areas of a watershed that spread both above and below the ground to include water stored in glacier ice on high peaks; water in rivers and lakes; wetlands, and dams. The recognition of the full scope of an international watercourse is espoused in Article 2(a) and (b) of the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourse (UN Watercourses Convention). The UN Watercourses Convention (1997: 3) defines an international watercourse as "a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus [...] parts of which are situated in different states". To that end, the rarely conclusive challenge of definitions further emphasises the importance of achieving a mutual understanding of issues relating to 'international rivers'. For the purpose and objectives of the dissertation, transboundary river and transboundary river basin are accepted terminology. This allows the fluidity of territorial characterisations to be explored and the social and political ones those transboundary settings create.

2.2. Water on the International Agenda

Freshwater ecosystems are among the most rapidly declining worldwide, making sustainable water governance a pressing practical problem. Water-related challenges are increasingly becoming difficult to resolve in the cul-de-sac of national or regional policies, due to their transnational character. The UN Educational, Scientific and Cultural Organisation (UNESCO), motions to the idea of water being multi-scalar, arguing that "water has long ceased to be a local issue" (UN 2012: 40). Since the 1970s, numerous attempts have been made at all levels of governance have been seeking to address the many challenges facing the water sector. Before discussing these efforts, the term 'governance' needs to be carefully defined. Governance can be considered an instrument;

a means to achieve certain ends or a technical, administrative toolkit that can be implemented in various contexts to achieve given objectives (Castro 2007: 106-107). Tortajada (2010) postulates that governance is a broad concept with no agreed-upon definition as it operates and is used at many levels. The *Concise Dictionary of Politics* defines governance as the "process of collective decision-making and policy implementation often involving norms and process" (McLean & McMillan 2009: 226).

Regarding water, governance transcends a narrow focus on how states exercise power as water governance involves a broad, dynamic, and complex process of formal and informal mechanisms as well as a range of actors within governments, corporations, and civil society organisations (Heywood 2013: 432 & Sneddon 2015). In 2003, the Global Water Partnership (GWP) defined water governance as "an array of social, political, economic and administrative systems at different levels of society that are implemented to develop and manage water resources and the subsequent delivery of water services". This facilitates the development of solutions between key national, regional and international stakeholders (Rogers & Hall 2003: 16; Biswas & Tortajada 2010: 132). This facilitates interaction and dialogue among key players to inform the development of solutions to problems at local, national, regional, and international levels (Cooley 2014). Thus, water governance is concerned with these socio-political, economic institutions that are invaluable to water development and management. Given the complexities of water use, its management both equitably and efficiently requires holistic and intersectional discussions, planning and implementation (Rogers & Hall 2003: 17).

The literature thus far has referenced and emphasised how governance and management of transboundary watercourses have been observed as a poignant strategy in preventing and/or resolving water disputes. Linked to this is the theme of capacity, particularly institutional capacity. The overall objective of the dissertation is to interrogate the institutional capacity of the African Union in the context of its efficacy in environmental governance issues. To achieve this objective, definitional clarity of the terminology 'institutional capacity' is paramount. The terminology of institutional capacity is the combination of two separate terms - capacity and institution. Much like all concepts used in the social sciences, the multiplicity of disciplines each result in a variation of epistemological application of the terms. There is no universal term definition; broadly, capacity

is defined as the "ability of individuals to perform functions effectively, efficiently and sustainably" Scheepers (2015: 146). Speaking within the context of municipalities, Ndletyana and Muzondidya (2009:21) state that capacity is a multi-faceted concept that includes financial resources, human capital, and social capital, which all combine to provide an organisational capacity. These can be translated into the appraisal of the AU's role in the dam negotiations between Ethiopia, Egypt, and Sudan over the GERD (Petersen-Perlman et al. 2017: 109 -110).

Martin (1998; cited in Bilate & Zou 2021: 33) argues that institutions are the formal structures for cooperation and coordination of policies and programs concerning the formulation of procedures to solve the problem of institutions. The concept of institutions has thus been narrowed only to consider formal iterations. The interaction between the two concepts and their subsequent elements, such as ability and commitment, relate to the broader theme of institutional capacity. The term institutional capacity is synonymous with 'governance capacity' and 'administrative capacity,' referring to the ability of (non) governmental institutions to perform given functions. Literature on institutional capacity fragments itself in either its analysis of organisational and procedural aspects; or institutional dimensions such as norms and values. Studies rarely consider their possible linkages (Domorenok, Graziano & Polverari 2021: 3).

The limits of 'technologically driven' water management strategies led to governance becoming the cornerstone feature in the need to address rising water challenges globally (Cooley 2004). However, it is imperative to note that water has appeared on the international agenda in fora. The inception of water on the global political agenda and subsequent dialogue began in the early 1970s, with the first wave of environmentalism seen under the banner of sustainable development. The dominant trends in the 1970s and 1980s were on the construction of infrastructures. Influential in this space were the World Bank (WB) and International Monetary Fund (IMF), funding major infrastructure projects in Africa ushered through by post-independence economic optimism (Goldman 2007; Newig & Challies year: 442).

The 1971 Ramsar Convention and the 1977 UN Water Conference were one of the first global events with a focus on the conservation of nature relevant to the freshwater topic (Matthews 2013: 4)., with their relevance is often cited in historical accounts of the international water sector. With

that, the conservation of freshwater resources in the succeeding decades entered intense debate with many political arenas tackling the water issues under a number of themes. The discussion of water with regards to other socio-economic themes, highlights its ubiquity within food, land, energy and gender themes. The 1995 UN World Conference on Women points to the interactions between the degradation of water sources and its plight on women and children (SABI Magazine 2014).

The early trend of most megaconferences followed was the logic of specialisation, with initial dialogue offering extensive considerations. However, over time, several more conferences held led to more concentrated considerations on water sub-topics including international watercourses and transboundary conflicts and cooperation having their own spotlight. Table 1 provides a selected overview of major freshwater conferences and related events held since the 1970s.

YEAR	CONFERENCE/EVENT	LOCATION
1971	Ramsar Convention on Wetlands	Ramsar, Islamic Republic of Iran
1972	UN Conference on the Human Environment	Stockholm, Kingdom of Sweden
1977	UN Water Conference	Mar del Plata, Argentina Republic
1992	International Conference on Water and the Environment	Dublin, Ireland
1997	International Water Conference	New York, United States of America
	First World Water Forum	Marrakesh, Kingdom of Morocco
2000	Second World Water Forum	The Hague, The Kingdoms of the Netherlands
2001	International Conference on Freshwater	Bonn, Federal Republic of Germany
2005 - 2015	Water for Life Decade	Global
2005 - 2015	Millennium Development Goals	Global
2015	Sustainable Development Goals	Global

Table 1: Selected International Water Conferences (Source: Biswas & Tortajada 2009 & Werner 2015)

The year 1997 was pivotal in the cementation of water as a key political objective globally. The first of several World Water Forums (WWF) took place in Marrakesh, Morocco. While the conference did not garner any significant codification of international norms and rules regarding the water sector, it did result in an attitudinal shift towards discussions around freshwater resources (Werner 2015: 17), realised through the expansion of the global debates outside the domain of the UN and its subsidiary programmes and institutions. The rise in civil society participation allowed for a diversification of actors and concerns. Parallel to this diversification, the adoption of the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourse. To date, both the UN Watercourses Convention and the 1971 Ramsar Convention form the bases of the current global freshwater governance mechanisms. The Dublin conference of 1992 (preceded the Earth Summit in Rio de Janeiro), set the precedence for introducing goals relating to water governance, quoted in **Box 1**.

Box 1: The Dublin Principles: (UN 2013, May 2013: 14):

“(1) Water is a finite and vulnerable resource, essential to sustain life, development, and the environment. (2) Water development and management should be based on a participatory approach, involving users, planners, and policymakers, at all levels. (3) Women play a central part in the provision, management and safeguarding of water (4) Water has an economic value in all its competing uses and should be recognised as an economic good”

Thus, the Dublin Principles, through the sustainable management of water resources were made in the consideration of triadic interests: economic, social and environmental (Rogers & Hall 2003: 15). This intersection between the social, environmental, and economic are a continuation of an approach set in 1987 by the Brundtland Commission following the publication of the *Our Common Future* report. The ministerial declaration³ of the Second World Water Forum, held in The Hague in March 2000, echoed this view and further identified good governance of water through the involvement of public and stakeholder interests (World Water Council 2000: 1). The ideals of good governance maintained their relevance through into the International Conference on

³ [Ministerial Declaration](#) of The Hague on Water Security in the 21st Century.

Freshwater held in December 2001, in Bonn. At the conference, ministers recommended several action areas: mobilising financial resources, capacity building and sharing with governance a critical area of focus. Nonetheless, the continued protraction of these international water conferences has not culminated into a comprehensive freshwater regime, due to the fragmentation of water governance (Rogers & Hall 2003: 15; Werner 2015 16 -18).

2.3. The Securitization of Water

Securitisation has emerged as a dominant approach in security studies. Developed by the Copenhagen School, Balzacq (2011: xiv) defines securitisation “a set of interrelated practices and the processes of their production, diffusion and reception/translation that bring threats into being”. The School's main argument resides in the idea that any “referent object can become a security issue through the process of securitisation” however not arbitrarily. What counts as a security problem and what is not, and how something becomes securitised works at varying scales (local, national, or regional), sectors (environment, health, or economics) and actors (states) (Stetter, Herschinger, Teichler & Albert 2011: 445). Leonard & Kaunert (2010: 57) argue that while the discursive process through which securitisation occurs is complex, its outcome is not ambiguous. The success of a referent object being securitised relies on the securitising speech act to be accepted by the audience. The act of ‘securitising’ water have required a theoretical re-analysis of traditional notions of security "as primarily lack of, or safety from, military threats to a concept that has been linked to a chain of 'natural' processes (such as water scarcity) and their impact on physical security and welfare" (Fischhendler, 2015: 247).

Natural resources and physical systems such as water have become saturated within security jargon. Often considered issues of national security, the discursive approach through rhetoric and language constructs water in terms of existential threats (Fischhendler 2015: 241; Weinthal, Zawahri & Sowers 2014: 4). Floyd (2008:58) argues that the construction of policy within the security framework moves discussions "out of the sphere of normal politics into the realm of emergency politics”. Buzan (1998:16) argues that securitisation occurs through the inter-subjective construction of an existential threat to have an effect on politics. Here states can use the securitisation of water as a deliberate elevation into a national security concern through framing

(Jacobs 2012:6). The contentedness' of security arises as a function of the fact that the meaning of security is not an ontological and epistemological given but changes over time.

The lack of a universal or consistent meaning results in the concept meaning something different for every tradition in the field of security studies (Floyd 2008: 51). Water security has newly materialised itself, as its' scattered normative meaning gains intellectual currency with the broader security discourses. Traditionalist approaches to security studies, whose theoretical underpinnings are drawn from realist expression of the international system, has largely focused itself on military threats with the state as the unit of analysis. Post-Cold War dynamics resulted in the emergence of a discourse critical of the narrowed application of traditionalist approaches. The rise in new transnational threats: economic, social and environmental – increased the scope and scale of security (Newman 2010: 82). The presumption of the interconnectedness between new security threats has led to many scholars calling for the national security agenda to encompass environmental concerns. This call for an expansion in the national security agenda has not been limited to the agenda itself but to the unit of analysis to include other actors.

The securitisation of water and, by extension, transboundary water has seen increased academic, policy and media coverage, particularly in regions of the world deemed as 'fragile'.⁴ Asymmetrical power defines state relations transboundary rivers basin, which manifest themselves who has access to and control of water (Lowi 1993; Weinthal et al. 2014: 296). In the eastern Nile, Addis Ababa's construction of the GERD has heightened tensions with Cairo and Khartoum. These tensions visible the securitisation of water and thus reinforcing the idea that water constitutes a national security interest. The tensions around the GERD reflect what Fischhendler (2015:247) describes as a strategic type of security. Here, the hydrological of a transboundary basin require all riparians to share a set of environmental, political and economic interdependencies. Thus, the food-water-energy nexus presents itself strongly through how the GERD could affect the Nile's water flow and availability. The second type of securitisation, referred to as tactical securitisation, argues that the linkage between traditionally 'low' and 'high' politics increases public awareness importance and urgency in mobilising support and legitimacy attempt to protect their national

⁴ State fragility in this regard is tied to Weberian understandings of the state. See [Boege, Brown, Clements, and Nolan](#) (2008)

security. Therefore, when livelihoods are tied to national security rhetoric and agenda, state legitimacy increases, and state action is rationalised.

Newman (2010: 82) describes the increase of securitisation as “normatively attractive” but conceptually weak, in caution against describing water issues under the war logic systems. The increased inclusivity of the term security, may result in its dilution and render it meaningless, making precise analysis and the prioritisation of real threats a difficult task (Newman 2010: 83). In his article: *The Case Against Linking Environmental Degradation and National Security*, Daniel Deudney (1990) concurs with the arguments against the inclusion of environmental threats that manifest themselves on transboundary rivers into traditionalist security discourse. His arguments run along three counts. The first, Deudney (1990: 461), argues that environmental problems have minimal reference to traditional national security focus. Second, the mobilisation of nationalist emotions is counterproductive to globalist sensibilities. Moreover, environmental degradation is unlikely to lead to interstate wars. Deudney's arguments have merit; however, our thinking of security requires us to critically rethink away from patriarchal and anarchic threats to the state. The polarity of the 21st century and its associated challenges have made security issues overlap rather than viewed as parallel categories. However, the inclusion of the new security sectors need not diminish the already established as in a globalised system, as the new and the old interact and influence each other.

2.4. Conflict - Cooperation Spectrum

Water conflicts are complicated with their complexity a reflection of water’s fugitive nature that evades and disregards apparent political boundaries divides. Water conflicts also exemplify the fact that humans compete for their share of water for survival, consumptive use, and economic development (Abukhater 2013: 7). Riparians of a river basin naturally occupy opposing views on its development and relations are also determined by the overall political, historical, and socioeconomic atmosphere and the riparian's willingness to share it (Abukhater 2013: 8). The literature on analysing the hydro-political reality of a transboundary river is dictated by cooperative rather than conflict inter-riparian relations (McMahon 2016: 19). This does not assume the absence water wars, but that conflict and turmoil over water are more often internal than international, often

localised between different tribes or competing water users. This also implies that there is a connection between water and political stability and that a lack thereof, for instance, could lead to instability (Haefner 2016: 17).

Examining transboundary river relations has often fallen into two distinct silos: water conflict and water cooperation. Prior to the discussion of conflict and cooperation in transboundary rivers. Warner & Wegerich (2010) caution against labelling water as an 'either or. Rather, they argue that water is a medium through which politics occurs. Politics occurs from various perspectives and vested interests attached to the river in question (Mirumchi 2015: 5). The academic disciplines of international relations and political science have an influential legacy in the development of studies on conflict and cooperation over transboundary river basins. An impressive collection of literature has attempted to articulate a clear linkage between water and warfare. Here, the question of 'what role water has in the conflict' varies with each researcher recognising the multiple categories and definitions that water disputes encompass (Hellberg 2019: 25). In the twenty-first century, nonetheless, interstate warfare has been avoided with conflict localised between tribal communities, intra-states, and provinces (Moore 2018:3). The significance of the low probability of interstate conflict over water has been quantified by the Transboundary Freshwater Dispute Database (TFDD), which of the 6400 water-related events analysed from 1948 to 2008, fewer than thirty instances of interstate violence of any kind were identified (De Stefano et al. 2010). Research on water and conflict has in the past been facilitated by the development of Environmental Security Studies and has gained momentum since the end of the cold war.

The intellectual currency of water disputes leading to violent conflict is appreciated by traditionalist security discourse need to rationalise state egoism. At first, glance, war as a mechanism to capture or safeguard water resources is rationalised - especially in the context of increased competition in scarce circumstances – with presence of violence (Kalpakian 2017: 1). The increased competition over freshwater resources inevitably entails disputes or conflict between riparian states. On the one hand, water disputes are described as a “disagreement over the allocation of water resources” (Kalpakian 2017: 3). Conflict can entail diplomatic tensions, war or insurgency. Notwithstanding the differences between water dispute and water conflict, stemming from the reductionism of traditionalist school of security studies, violence is the narrowed criterion

in which water conflicts are measured (Barnet 2001; Stetter 2011: 444). This is in spite of the literature's awareness of the typology of conflicts to include non-violent expressions of discontentment with other state behaviour. Nonetheless, becomes problematic when disputes are incorrectly categorised and analysed, as nuanced details and considerations are lost in favour of ticking off key markers.

The former secretary general of the UN and Egyptian foreign minister, Buthros Buthros-Ghai speaking in the 1980s, said that the next war in the region would be over the waters of the Nile and not politics (cited in Waterbury 2002: 9). The leading scholars in this approach are Joyce Starr (1991); Thomas Homer-Dixon (1994) underline their 'water wars' thesis. Falkenmark & Widstrand (1992) argued along the same line, with the world history full of examples of conflict over access to water resources and infrastructure such as lakes, rivers and straits⁵. Homer-Dixon (1994) argued that the increase in environmental degradation could lead to violent conflict, as the decline in both the availability and quality of water resources coupled with populations inequitable access to them, form ripe conditions for conflict. Furthermore, the likelihood of conflict is increased by the lack of appropriate capacity, as “conflicts might escalate due to incapacity of authorities to regulate growing tensions or lack of policies to deal or low-level regional cooperation” (Ludi 2002: 23).

Realist assertions of states inevitable conflict due to the anarchical conditions of the international system in the absence of a supreme government, is a position adopted by in the literature to infer a causal linkage in the water wars thesis. Transboundary water conflicts are described as “a series of tensions or specific non-cooperative acts perpetrated by” the countries regarding the others (Delborg & Strobl 2014: 12). The likelihood of disagreement over sharing international rivers increases when the actors politicise and securitise water resources (Mirumachi & Allan 2008). This includes issues that may threaten a country's economic and political development (Mirumachi & Allan 2008; Hanasz 2013). Homer-Dixon in his 1999 book *Environment, Scarcity, and Violence*: "wars over water between upstream and downstream neighbours are given the narrow set of circumstances there are very few river basins globally that meet the conditions (either currently or in the future). The central tenants of the water wars thesis are (Jansson 2018):

⁵ The Suez Crisis of 1956 between Egypt, and Britain, France and Israel, following Egypt's nationalisation of the canal. See: Mahmood, K. 1962. [Britain and the Suez Crisis](#). Pakistan Horizon. 15(2): 111 – 128.

- A nation's survival is contingent on its access to reliable water sources.
- Falkenmark's (1989) "water stress" argues that the in arid or semi-arid environments the degree of scarcity lead to political tensions or conflict – both intrastate and interstate.
- Water does not account for political frontiers as well as legal capabilities past capacity.

With the fading extreme water wars rhetoric since the 1990s, contemporary considerations including the annual *Global Risk Report* published by the World Economic Forum (WEF) maintain some degree of causality (Priscoli & Wolf 2009: 9). Taken together, transboundary water offers a critical, non-sustainable resource that flows and fluctuates across space and time, for which legal principles are vague and contradictory and are becoming scarcer with increases in population and improvements in the standard of living; the arguments are quite compelling. This is recognised by the former World Bank vice president Ismail Serageldin, who decreed that "the wars of the next century will be about water" (Serageldin 2009: 25). Water wars research since the 2000s has become more nuanced, including new unitary actors such as multinational groups. Some research has also addressed the influence of the privatisation on water resources and how this expands the conversation of ownership beyond the control of the state.

The analytical lens of realism, an influential school of thought within IR, is particularly referenced when explaining interstate relations. Realists argue that cooperation over water is hindered by state egoism, which determines a state's preferences to reduce interdependence with other basin states and the tendency to view cooperation as a zero-sum game or one of the relative gains (Dinar 2009). Realist assumptions view of the international arena as a struggle of self-interest and power, pursue their own security agenda, may make the use of force a pivotal part of their policy- instruments (Steans, Pettiford, Diez & El-Anis 2010: 62). The cooperative dimension in dealing with shared water resources under neoliberal institutionalism is an opportunity for collective security. Cooperation often results in signed treaties after prolonged periods of communication and deliberations amongst concerned parties (Pteiffer & Leentvaar 2013).

Transboundary water cooperation is a continuous non-linear process where riparian states and third parties continue to communicate even beyond sealing water-sharing agreements. Liberal assumptions and themes realise that international war remains a possibility, but the law of

comparative advantage increase the interdependence between international partners (Heywood 2014: 480). Nonetheless, hydro-politics literature has displayed a tendency to conceptualise cooperation-conflict dynamics as a linear scale (Mirumachi 2016: 34-36). This analysis equates conflict, no matter its intensity, as an undesirable outcome of riparian interaction and cooperation, no matter its outcome, as the desired conclusion. This linear approach falls into the trap of binarism, and it is this binarism that celebrates the existence of cooperative arrangements without interrogation. Here, linearity and binarism often minimise the potential impacts and influences that 'desired' outcomes on addressing the root causes of transboundary problems (Kristin & Phillips 2007: 2).

2.5. Conclusion

The chapter's overview of the discussions around transboundary river basins reveals that the scale, scope, and intensity of the social, economic, political, and environmental interactions all contribute to the complexities that describe riparian interactions. In the 1970s, freshwater issues and governance were mainstreamed on the international political agenda. The formalisation of the International Watercourses Convention in 1997 signalled a new era of water governance and how competing demands can be resolved. The securitisation of water discourse reflects a change in the security arena. We see that the securitisation of water is not insulated from externalities. This is in reference to how conflicts are understood and how discussions around scarcity need deeper consideration rather than the default scarcity leading to proportional conflict relations. The conceptual silos of conflict and cooperation have long suffered from binarism that must be treated cautiously. It would be remiss to assume that this binarism does not occur in specific river basins. However, this reductionist interpretation of riparian interactions limits a nuanced understanding of the hydro-politics of the day. Therefore, an acknowledgement of the coexistence of both conflict and cooperation allows for changing and evolving relationships and dynamics to be continually considered.

CHAPTER THREE – EASTERN NILE GEOPOLITICS

Covering ten states: Republic of Burundi; Democratic Republic of Congo; Arab Republic of Egypt; State of Eritrea; Federal Democratic Republic of Ethiopia; Republic of Kenya; Republic of Rwanda; Republic of Sudan; the United Republic of Tanzania, and the Republic of Uganda, the Nile River basin is a vast area. With a population of over 350 million people, the region's postcolonial landscape has been characterised by state failure, intra- and interstate armed conflict, severe drought and aid dependency. These issues have resulted from global political events such as colonialism, elusive and uneven growth attributed to the global political economy, whose structural function depends on neo-imperialist assertions (Ayebare 2010: 1; Zack-Williams 2013: 179). The waters of the Nile have been husbanded by a cradle of civilisations, from the Pharaonic civilisation of Egypt to the Ancient Nubian Kingdom and the Aksumite Empire of Ethiopia. Today, the Nile is tied to political and economic policies of riparian states, particularly Egypt, are influenced by what the river water provides (Arsano 2007). Water utilisation in the Eastern Nile has been historically marred by unilateralism and the lack of an extensive inter-regime legal framework that can institutionalise cooperative inter-riparian relations.

The chapter aims to focus on the hydro politics of the eastern Nile region, particularly emphasising inter-riparian relations between Egypt, Ethiopia, and Sudan. The first section describes the natural hydrology of the river basin. The second section deals with the various water agreements that have shaped the legal regime of the Nile. The discussion will stretch between colonial and postcolonial water agreements concerning the context of the Nile basin. The legal regime discussion is analysed within the context of international water law invoked by the various states in their stances on the rationality of existing water agreements and the validity of unilateral river developments. The chapter concludes with an analysis of the dynamics of the Grand Ethiopian Renaissance Dam (GERD). Here the aim is to realise that the actions of Ethiopians and the dam's construction are not insular from the culmination of continued unilateralism on the Nile River.

3.1. Hydrological Description of the Nile

The Nile is the longest river in the world, traveling an approximate length of more than 6800 kilometres (km) over eleven states (Said 1981). With a total catchment area of more than three million square kilometres (sq. km), the United Nations Department of Economic and Social Affairs (UNDESA) projects the total population of the Nile basin states to exceed 550 million by 2050 (UNDESA 2019). As 2012, the Nile Basin Initiative (NBI) reported that fifty-four per cent of the Nile population reside in the catchment of the Basin (NBI 2012: 100). The agrarian economies describe the economic landscape of most basin states with irrigation of the River's water, an essential strategy to ensure food security, with of the total irrigation in the basin, Cairo and the Khartoum accounting for over 90 per cent of irrigational yield. The Nile basin offers a compelling site to understand the interactions between states due to the legacies of conflict and hydrological variability on the one hand and the overprotection of colonial water agreements and hydro-hegemony by Egypt (and to some extent Sudan) on the other hand (Moges, Abteu & Melesse 2021: 2).

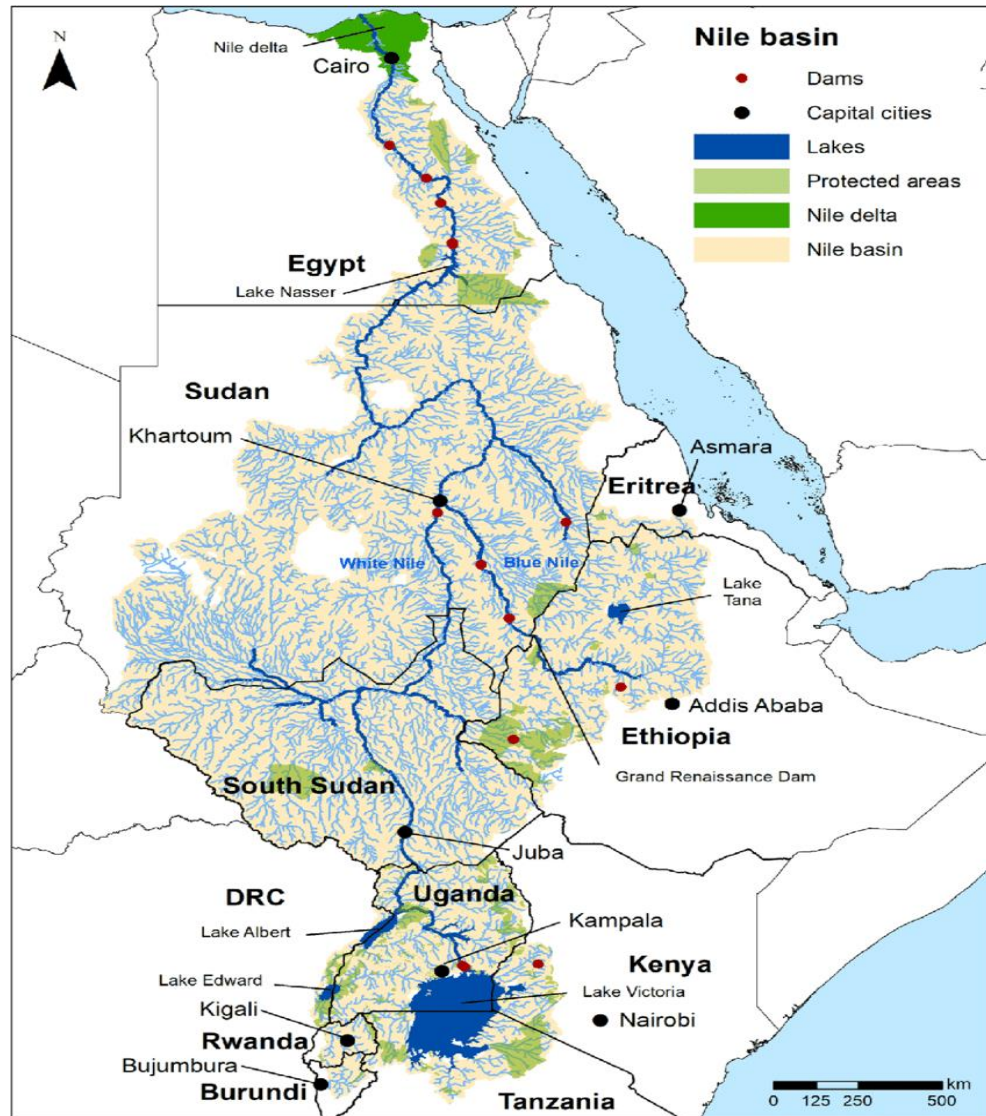


Figure 1: Nile River basin. Source: Allan, James & Levin, Noam & Jones, Kendall & Abdullah, Sherzad & Hongoh, J. & Hermoso, Virgilio & Kark, Salit. (2019). Navigating the complexities of coordinated conservation along the river Nile. *Science Advances*. 5. eaau766

The Nile Basin is expanding itself in the north-east of Africa, providing a natural linkage between riparian's. The linkage encompasses the diverse political and legal systems, development agendas and socio-cultural differences. Geographically, the Nile is the longest river in the world, flowing from south to north., with a considerable portion of the Sudanese land mass and Egypt's agricultural hub nestled in its geography. The Nile is divided into two main tributaries (and associated headwaters): the White Nile with its headwaters originating from Lake Victoria, in the Equatorial region of Africa; the Lake Tana in the north east of Ethiopia feeds into the Blue Nile (Dumont 2009: 4; Arsano 2007: 25 & 84). The tributaries meet north of the Sudanese capital and flow outwards to Cairo and out into the Mediterranean Sea (Abteu & Dessu 2018: 41). In terms

of hydrologic regimes, the two tributaries show substantial differences. The White Nile is characterised by a steady flow and contributing no more than 10-20 per cent to the average annual flow of the Nile, while the Blue Nile contributes about 80-90 per cent to the annual Nile discharge. This makes Ethiopia the main contributor to the Nile water volume (Hamada 2017: 17 -21). Given the sheer scale and scope of the Nile, it is comprehensible as the main artery of African states in the northeast of the continent.

3.2. Nile Legal Regime

The past few years have witnessed increased scholarly interest in the development of the Nile River's non-navigational uses. Despite the focus of this dissertation primarily on prominent changes over the last 15 years in the basin, it is deemed necessary to recall the significant Nile-related events in the 19th century to trace patterns of interstate relationships. Political realists argue that state behaviour, or rather state egoism, is motivated by their respective national interests. Thus, competing unilateralism describes the inter-riparian utilisation these shared water resources (Heywood 2013: 408). The resultant controversies and tensions between Addis Ababa and her two downstream neighbours, Cairo and Khartoum, have resulted from the various political expressions of the state's national interests within the basin. Hence, the current predicament in the geopolitics of the basin is either the continued entrenchment of Egypt's hydro hegemony or the push towards an equitable and cooperative future. Presently there are no sub-regional or regional institutional regime to harmonise Ohlsson's (2000) classic riparian problem at sub-basin or basin levels. The inequitable utilisation of the Nile Basin is a consequence of colonialisms legislative legacy (Turhan 2021: 72). Colonialism and its superimposed legal regime facilitated the current modern legal tensions on the River. The control of the Nile waters has been an dominant feature in regional politics since following the Second World War for the United Kingdom's spheres of influence. This realisation recounts the proportional relationship between the ability of a state or civilisation to harness water resources and prosperity. Since then, there has been substantial pressure on the Nile resources attributable to a increasing variety of economic and social development agendas in all riparian states (Lumumba 2011: 15).

Between 1891 and 1959, there were more than eleven bilateral and multilateral agreements between colonial powers and their colonies. These include the Anglo-Italian Protocol of 1891, the Anglo-Egyptian Treaty of 1902, the 1906 Tripartite Treaty and the 1934 Agreement between Belgium, Egypt, and Sudan (Freitas 2013). Table 2 is an overview of all Nile water agreements. The following section details the key legal documents that are points of contention regarding negotiating a new legal regime between riparian states around the GERD.

3.2.1. Anglo-Egyptian Treaty of 1929

The Anglo-Egyptian Treaty of 1929 continues to account as the most disputed colonial agreement regarding the waters of the Nile. Signed on May 15th, 1902, between the United Kingdom and Italy-Ethiopia, the agreement unduly prohibited Addis Ababa's right to engage in any development that would according to (Okidi 1990) "arrest the flow of water to Cairo". The agreements of 1902 and 1906 had established an unparalleled acquisition and hegemony of the flow of the Eastern Nile to Egypt. Consequently, colonial arrangements and prohibitions on other colonial territories use of the Nile, granted Cairo hegemony and inequitable control. The 1929 water agreement was the culmination of British-Sudanese and Egyptian authorities (along with then British territories of Tanzania, Uganda and Kenya) to both appropriate and control its use (Otherio & Zondi 2006: 2). The development of cotton plantations in Gezira - located between the White and Blue Nile – catalysed the realisation of the agreement, in order to ensure reliable irrigation services (Mollen 2008: 95 -96). Under British colonial control disputes over territorial water rights among colonial territories were minimal. However, this trend changed with the push towards independence, with disputes more contentious and international in character. Thus, the legal technicalities over the right to use, are further compounded by the dichotomy of water rights: natural versus sovereign.

Negotiations had begun in 1920 with the appointment of Egypt of the Nile Projects Commission, which produced a forecast of the water requirements of Egypt and Sudan. Protracted exchanges continued between the British High Commissioner in Cairo, Lord Lloyd and Egyptian Ministers of Foreign Affairs, Ziwa Pasha (Howell 1994: 84-85). The 1925 Anglo-Italian Exchange of Notes led to the United Kingdom (UK) reaching an agreement that maintained the scope of the 1902 and 1906 Agreements – including the onus the upriver territory to minimize its utilisation impact on

the Nile. The United Kingdom – on behalf of their colonial territories and Egypt became signatories of the agreement, on May 7th, 1929. The Agreement, as stipulated in Chapter II paragraphs 23 – 26 and Chapter V paragraph 88(a) of the annexed 1925 Nile Commission Report, “reserved the natural flow of the Nile for the benefit of Cairo from January 19 to July 15, every year [...] Khartoum would only commence using the Nile waters from July 16, starting with specific quantities which would increase gradually and not exceed certain specified limits” (Salman year: 150-151; Turhan 2021: 73-74). The 1929 Agreement is the first time a document refers to the hydraulic rights of the two downstream riparian’s (Acquafredda 2021: 21).

3.2.1.1. Notable features in the 1929 Agreement:

- The Egypt and Anglo-Egyptian Sudan utilise 48 cubic meters (Bm^3) and 4four Bm^3 of the flow per year, respectively. Quantitatively that is 92,3 per cent for Egypt and 7,7 per cent for Sudan of the total usable flow (Lumumba 2011: 8).
- During the dry seasons, the Nile waters are reserved for Egypt (Lumumba 2011: 8).
- Egypt can pursue unilateral development on the Nile without the consultation or consent of other riparians (Okoth Owiro 2004: 7-8).
- Monitoring of upstream utilization is reserved to Egypt (Okoth Owiro 2004: 7-8).
- Egypt veto: Article 4(b) – “with acknowledgement of previous agreements”, that “no irrigation or power works or measures are to be constructed or taken on the river Nile or its tributaries which would entail any prejudice to the interests of Egypt” (Lumumba 2011: 8; Bitsue 2012: 3-4). This stipulation allowed Egypt to deny any other riparian the ability to develop on the river under the guise of its effect on Egypt's water security.

The 1929 Agreement highlights various interplay of customary international water law and principles, such as the Harmon Doctrine and the principle of no harm. Clarification of these water laws is in the subsequent section.

3.2.2. 1959 Agreement between Egypt and Sudan

Negotiations with Egypt on the Nile waters became one of the urgent tasks of the first national government of the Sudan following the inauguration of the parliament in January 1954. The new

government was very keen on expanding the Gezira Scheme⁶ to generate more foreign currency to continue improving the socio-economic conditions of the Sudanese people and its development projects and defray the central government's costs (Salman 2014: 152). The first round of negotiations took place in September 1954. Sudan asked Egypt to agree to Sudan's proposal to build the Rosairi Dam to enable it to increase its share of the Nile to equitable levels to irrigate the extension of the Gezira Scheme. Negotiations broke down in September and resumed and concluded in November of the same year, with three more rounds between 1955-1958 (Salman 2014: 153).

The 1959 Agreement was a treaty signed between Egypt and Sudan to the exclusion of other riparians. Despite acknowledging future water utilisation claims, Cairo's conceptualisation of historical rights further entrenched its inequitable control of the shared water source, as enclosed in Chapter 2, paragraph (3) of the agreement. The foregoing analysis clearly indicates that the colonial agreements involved some but not all riparian states, prior to their independence. The binding nature of these treaties have resulted in division between upriver and lower riparians (Kasimbazi 2010: 726). For Egypt, its historical rights are vested rights afforded to it by the principle of prior appropriation. The central tenet of this principle is that the first person or state to make use of the waters, has preferential treatment to future negotiations on water allocation (Berger 1985). As a counter to this claim is the law doctrine of *res inter alios acto*, that posits that legal agreements are only binding to the signatories. Thus, colonial era agreement have no juridical authority nor create an obligation for independent states to accession. The doctrine of *res inter alios acto* is complemented by the Nyerere Doctrine.⁷; doctrine of *rebus sic stantibus*⁸ and the 'clean slate' doctrine⁹.

⁶ McLoughlin (1963) outlined that the Gezira Scheme was a large-scale irrigation project.

⁷ Worku (2016:12) argues that colonial treaties have no juridical accession if they are in accord with state interests. Views colonial-era treaties to be non-binding, if decisions are in line with states' interests (Worku 2016: 112)

⁸ A can terminate or withdraw from an agreement on the grounds of a fundamental change, here a state gaining independence constitutes a fundamental change. (Garner 1927).

⁹ This doctrine argues that when another state captures a state, the rights and obligations cannot be considered to automatically pass to the successive state (Parekh 2020).

YEAR	HIGHLIGHTS
1891	The sphere of influence over the Nile River was delimited between Italy and Great Britain.
1902	Sudan and Ethiopia's frontiers were regulated, with specific emphasis on limiting Ethiopia's unilateralism.
1906	A tripartite agreement between the United Kingdom, France, and Italy
1925	Anglo-Italian Exchange of Notes, led to the concession by the Ethiopian government from constructing a dam on Lake Tana.
1929	Quantified the total usable flow between Egypt and Sudan.
1932	The agreement resulted in the Jebel Awliya Dam construction in 1933.
1950	Between UK and Egypt to cooperate in hydrological surveys in specific basin areas
1959	An exchange of notes regarding the meteorological and hydrological surveys on the Equatorial Lakes.
1999	Nile Basin Initiative
2010	Cooperative Framework Agreement
2015	Declaration of Principles on the Grand Ethiopian Renaissance Dam

Table 2: Nile Water Agreements (Source: Turhan 2021; Lumumba 2011)

3.2.3. Nile Basin Initiative 1999

The 1960s saw genesis in the collaboration between all eleven Nile riparian states. This began with discussions under the Hydromet Project - financed by several UN agencies – to understand the impacts on people and properties near Lake Victoria due to rising water levels. Speculations around the rising water levels of the lake due to either the construction of the Aswan High Dam or the Sudd Swamps in South Sudan (Salman 2018: 158). In the 1970s and 1980s, meetings continued Hydromet Project with the Undugu Group, as well as the Technical Cooperation Committee for the Promotion of Development and Environmental Protection of the Nile Basin (TECCONILE) from the 1990s. These meetings witnessed cooperative milestones through steadily transforming legal and political dynamics within the region. The themes of deliberation were diverse, covering issues relating to national water resources to opportunities for cooperative management of the Nile waters.

In March 1998, the Council of Ministers of Water Affairs of the Nile Basin – bar Eritrea¹⁰, met and reached an agreement on the cooperative use and management of Nile Waters. The endorsed plan of Action led to the establishment of a transnational institutionalisation of the Nile Basin Initiative, in February of the following year. The disbandment of TECCONILE in September 1999 was superseded by the NBI secretariat, in Entebbe Uganda (Swain 2002: 302). In addition to the Secretariat, the NBI comprise of a Technical Advisory Committee (Nile-TAC) and Council of Ministers of Water Affairs of the Nile Basin (Nile-COM) (Wondwasen 2008: 35). The NBI is guided by the vision to “achieve sustainable socio-economic development through the equitable utilisation of, and benefit from, the Nile Basin waters” (Kimenyi & Mbaku 2015). The main objective of the NBI is to serve as a forum for all member states to formulate and agree upon a permanent institutional and legal structures for the use and management of the Nile.

3.2.4. Cooperative Framework Agreement

Suvarna (2006: 456) states that the NBI functioned as a transitional framework that aims to foster dialogue and create joint development initiatives around transboundary goals. The NBI's objective was to design and conclude on a legal framework that would be equitable and inclusive of all Nile riparians and incorporate all NBI principles, structures and institutions. Work on the Nile Basin Cooperative Framework Agreement (CFA), formerly known as the Agreement on the Nile River Basin Cooperative Framework, began in 1999, following the formal establishment of the NBI and continued for more than ten years (Kasimbazi & Bamwine 2021: 68).

The Agreement's scope are detailed in Articles 1 and 2, with the aim to establish a framework that promotes integrated development and sustainable development of Nile water resources for the use of current and future generations (NBI 2010). The remaining text of the agreement is broken down into six parts (CFA 2010; NBI 2010.):

- **Part I – General principles:** draws on the 1997 UN Watercourses Convention to establish customary principles of international water law - principles of equitable and reasonable utilization and obligation not to cause significant harm - within the river basin that serve

¹⁰ The state opted to participate as an observer (Suvarna 2006: 455).

as guidance on the implementation of the agreement as well as the sustainable development and management of the waters of the Nile.

- **Part II – Rights and Obligations:** outlines the specific rights and obligations. This includes information sharing and conducting environmental assessments for planned development.
- **Part III & IV – Institutional Structure:** provides details on establishing the Nile River Basin Commission (NRBC). The NRBC comprises the Secretariat, the Conference of Heads of State and Government, the Council of Ministers, and the Technical Advisory Committee. The establishment of subsidiary institutions are outlined in Part IV.
- **Part V – Miscellaneous Provisions,** including dispute resolution mechanisms.
- **Part VI- Final Clauses** such as legal procedures regarding amendments and ratification of the CFA.

The Cooperative Framework Agreement open for signature on May 2010, with a fixed closing date of May 14, 2011. By February 2011, the Agreement was signed by Burundi, Ethiopia, Kenya, Rwanda, Tanzania and Uganda, with the Ethiopia and Rwanda ratifying it in 2013, Tanzania in 2015 and Uganda in 2015 (NBI n.d.). Although the provisions of the agreement were agreed upon, there was disagreement between downstream (Cairo and Khartoum) and upstream riparian states over the sticking point of the recognition of historical rights to the waters of the Nile, as per 1929 and 1959 Agreements (Kimenyi & Mbaku 2015). The issues mainly surrounded Article 14¹¹ and in particular, 14(b) states: "Nile basin states, therefore, agree, in the spirit of cooperation...not to significantly affect the water security of any other Nile basin state". Egypt and Sudan proposed an alternative wording for the article: "...not to significantly affect the water security, and current uses and rights of any other Nile basin state". Upstream riparians rejected the proposed alternative, arguing that it would entrench the concept of acquired rights and effectively retain the inequities - that the CFA aimed to resolve – that have characterised the politics of allocation, use and control of the Nile waters, including those created by colonial Nile water agreements (Mekonnen 2010: 428-429, Kimenyi & Mbaku 2015).

¹¹ The NBI notes in the provisional CFA that the annexation of Article 14(b) from the Treaty is upon the recommendations of the Nile-COM following an Extraordinary meeting in Kinshasa, Democratic Republic of Congo. However, this remains an outstanding issue of the [Cooperative Framework Agreement](#).

With the objectives and hope of bringing together states under the umbrella of cooperation, the NBI and the CFA illustrate the struggle to reconcile differences to establish an appropriate legal framework for governing the utilisation of the waters of the Nile River. None of the postcolonial attempts at a new legal mechanism for the basin has fully tackled the issue of previous agreements and their implications on establishing an inequitable water regime. This further highlights the nuances involved in creating and accepting a legal regime within the context of established nationalist interests.

3.3. International Water Law Context

The basis of legal discourse is the question of ownership and the right to use a water resource. State sovereignty has been the determinant factor in the utilisation and management of a river regardless of its fluvial character. The principle of state sovereignty is the absolute claim to legal and political authority over one's territory, within the established limits of international law. However, the rise in environmental awareness has led to limitations in applying state sovereignty over natural resources, especially those transboundary in nature. This awareness has been noted in the Principle 21 of the 1972 Stockholm Declaration, which states:

"[...] states have the sovereign right to exploit their own resources pursuant to their own environment policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction".

Given the fluvial characteristics of transboundary rivers, the absolutism of state sovereignty has no freedom of application, as the actions of one state will always reverberate to another. This dichotomy raises important water questions about a state's rights within the international water law. The deployment of various theories and doctrines form an integral part of the water relations in a given basin (Mager 2015: 11), these questions are often accompanied by fluctuating geopolitical, legal and political complexities. The 1) the theory of absolute territorial sovereignty, 2) the theory of absolute territorial integrity, 3) the theory of limited territorial sovereignty, form the theoretical basis of the laws pertaining to the non-navigational uses of watercourses.

3.3.1. Absolute Territorial Sovereignty and Absolute Territorial Integrity

Upstream and downstream riparian states' have fundamentally opposed interests in the use and allocation of transboundary waters, as seen in the invocation of different legal theories that result in further deadlock (Meding 2022: 46). The doctrine of absolute territorial sovereignty postulates that irrespective of the effects beyond a state's territorial authority, its sovereign rights allow the state to make complete utilisation of all water resources flowing within its territory. Chiefly associated with former United States Attorney General Judson Harmon, who, in the late nineteenth century formulated the theory, following the 1851 dispute between the United States of America (USA) and Mexico over the Rio Grande River.¹² Harmon argued that "[...] a country is sovereign over the portion of an international watercourse within its borders. Thus, that country would be free to divert all of the water from an international watercourse leaving none for downstream states" (McCarrfrey 2019: 102). The Treaty clarifies that every watercourse state has an absolute right to use, divert, exhaust, and even pollute the water of the watercourse present within its state territory, notwithstanding its character. The doctrine naturally operates in favour of upper riparian states, with the liability of their actions transferred to lower riparian states (Jacobs 2010: 170). The doctrine of absolute territorial integrity is antagonistic to absolute territorial sovereignty. It argues that upstream riparian cannot undertake absolute liberties in their use of a transboundary river. This principle is naturally detrimental to upriver riparian states, as any development they may undertake may be deemed by lower riparians as to adversely affect both the quality and quantity of water (Arsano 2007: 45).

3.3.2. Limited Territorial Sovereignty

The UN Convention on the Law of Non-Navigational Uses of International Watercourses came into force, on August 17th, 2014. It advanced the notion of 'limited territorial sovereignty' to the use of transboundary watercourses. This idea is also reflected in the African context through the 2003 African Convention on the Conservation of Nature and Natural Resources (as well as in the 1968 version), to which Egypt and Ethiopia are signatories, respectively. The doctrine restricts the principles of sovereignty, arguing that a state, regardless of the location of the international

¹² See: <https://uttoncenter.unm.edu/resources/research-resources/the-rio-grande-as-an-international-river.pdf>

watercourse in its territory, ought to be consulted on the development of the river. It aims to balance the competing interest of the downstream and upstream riparian interests, but a problematic priority is given to states that have been utilising the river for a long time. This priority excludes the role of power and coercion in the state's utilisation and control of transboundary water (Deng 2011: 42). The quest for fairness is devolved of critical consideration of the political histories of a shared common further entrenches inequities.

Nonetheless, the doctrine of limited sovereignty introduces the principle of equitable and reasonable utilisation as well as the principle of no significant harm. According to Article 7(2) of the UN Watercourses Convention, the Convention does not prohibit the imposition of significant harm altogether; instead, a balance must be found between the lower and upriver states' competing interests. In this case of harm caused, a state ought to take appropriate mechanisms to minimise or mitigate it, which endorses the highest prevalence of the principle of equitable and reasonable utilisation (Mager 2015: 12). Thus, a breach occurs if a state "causes significant harm, without properly balancing all the equitable utilisation factors." Nevertheless, the principles remain vague, with Wolff (1999) postulating that the lack of accepted measures of equitable division diminishes the principles' ability to foster resolutions. This is seen in the tension between Ethiopia, Egypt and Sudan in the disproportionate pre-existing use of some riparians (Egypt and Sudan consequential of the 1929 and 1959 Agreements) and the intentions of other riparians to increase their use of transboundary waters (Ethiopia and its construction of the GERD).

3.4. Grand Ethiopian Renaissance Dam

Reliable energy sources have become centralised components in the quest for economic development and a pillar in the resolution of global challenges such as poverty. Africa suffers from energy poverty, although endowed with the ingredients to foster greater energy security. Described as the “lack of access to modern energy sources, services and products”, more than six million people are estimated to be energy poor (Morrissey 2017: 6). This inaccessibility to further quantified by almost 90 per cent of the East African population dependent on biomass for their domestic energy provisions (Nalule 2019: 1). This lack of access to modern energy sources is quantified by almost 90% of people in Eastern Africa dependent on biomass energy.

The Ethiopian government in March 2011, announced the construction of the GERD, a hydroelectric dam on the Blue Nile (with commencement in April 2011). This comes less than a year after becoming a signatory to the Cooperative Framework Agreement. With an expected annual production capacity of 6,000MW, the dam is located in the Benishangul- Gumuz province on the Abbay River. Once completed, the GERD is set to become the largest hydroelectric power plant on the continent (Salman 2018: 162). The dam's construction signifies Addis Ababa's intention to break Cairo's monopoly over the Nile waters. The Ethiopian government proclaims that the dam's electrical production will not only ensure greater energy security domestically but will generate a surplus that can be exported to its neighbours (Maru 2020: 5-6). The potential of regional energy power pool from the GERD could improve basin integration and cooperation whilst also decreasing the rate of energy poverty in the region. Despite the assurances by Ethiopia of the benefits of the dam for the region, the project was immediately criticised by Egypt and Sudan protesting the dam's construction, arguing it would decrease the Nile discharge (Ezega 2011).

Historically, Cairo has long opposed any water-related developments outside the scope of colonial agreements, arguing that an alteration to its quantity and quality of the Nile is an alteration to its national identity (Ejigu 2016: 40). The same sentimentally to the Nile can be attached to all riparian states – given the intimacy of their politics and economies to the Nile waters – including Ethiopia. The dam's name provides symbolism into the objectives that it ought to bring to its people. The GERD offers a platform for the Ethiopian people to set out of the darkness underdevelopment and into an aspirational and prosperous future (Gebreluel 2014: 31). Five months after the commencement of the dam's construction, at the proposal of Ethiopia, an International Panel of Experts (IPoE) was formed following a series of talks among the Parties in May 2012. The IPoE's objectives were to conduct an assessment on the dam's effects on Egypt and Sudan and recommend ways to mitigate these impacts. A ten-person group constituted the Panel of Experts, with two experts appointed from the disputing Parties and a further four from outside the Nile Basin states (Yihdego 2017: 3). The report on the dam's impact was published on May 13, 2013, with general findings concluding that the dam posed no significant harm to the Cairo and Khartoum (Yihdego 2017: 4).

3.4.1. Declaration of Principles

Tripartite meetings aimed at the resolution around the GERD resumed in June 2014, when at an African Union Summit in Malabo, Equatorial Guinea Egyptian President Abdel Fattah Saeed Hussein Khalil el-Sisi and former Prime Minister Hailemariam Desalegn agreed on general principles on the Nile waters and the GERD (Salman 2016: 166). On March 23, 2015, in Khartoum, Ethiopia, Egypt and Sudan signed the *Agreement on Declaration of Principles on the Grand Ethiopian Renaissance Dam Project (GERDP)*. The Agreement on Declaration of Principles (DoP) consists of a preamble that reiterates the significance of the Nile to the livelihoods of its riparians and ten principles. The principles are a combined focus on the dam itself as well as an invocation of international water law.

1. **Principle of Cooperation** contends with the idea of collective understanding and mutual benefits within the guise of international law, particularly the UN Convention on the Law of the Non-Navigational Uses of International Watercourses 1997. Whilst the adoption of the international convention seems promising, neither Egypt, Ethiopia, nor Sudan has either accessioned, signed or ratified this Convention (Negash, Hassan, Muchie & Moges 2015: 58). Thus, nullifying the ability of the convention to be used in further consultations or negotiation regarding the dam by either party or the African Union.
2. **Principle of Development, Regional Integration and Sustainability** states the purpose of the dam's construction.
3. **Principle Not to Cause Significant Harm** declares that it is the State's responsibility to prevent, control and reduce the risk of environmental harm to other states. Again, the IWC implicitly references Article 7(1) and (2) that stipulates watercourse States "...take all appropriate measures..." to prevent harm and where harm is caused "...eliminate where appropriate and discuss compensation..." (UN 1997: 6).
4. **Principle of Equitable and Reasonable Utilisation** is stated in general and flexible terms to accommodate the enormous range of conditions pertaining to different river basins and the diversity of disputes that might arise. So it is an almost classic case of a rule requiring the application of equitable concepts (McIntyre 2013: 113). Nonetheless, this needs to be examined in the principles enshrined in the Nile Basin framework.

5. **Principle to Cooperate on the First Filling and Operation** calls for the utilise the recommendations from the IPoE as a starting point for detailing the guidelines on the first filling of the dam.
6. **Principle of Confidence Building** through prioritising downstream states in the sale of power generation (Salman 2018: 53).
7. **Principle of Exchange of Information and Data** continues the IPoE suggestions for further study on the impact of the dam on downstream states. However, issues of transparency and data accuracy are sticking points due to the propriety of specific technical information.
8. **Principle of Dam Safety**
9. **Principle of Sovereignty and Territorial Integrity** stipulates those states are to cooperate based on sovereign equality. It also reiterates the declarations made in principle 1.
10. **Principle of Peaceful Settlement of Disputes** is standard as it requires the three states to settle disputes arising from the application or interpretation of the Agreement amicably through negotiation. If negotiations fail, states can request mediation or refer the matter to their Heads of State or Governments.

The legal status of the DoP's remains disputed, as its principles have not fully resolved the dispute surrounding the GERD. An argument against its bindingness could be made since no formal ratification, deposition, or entry into force is provided for in the Agreement, as is generally the case with any binding agreement. Nor are there any provisions regarding the possibility of reservations or means of enforcement. The DoPs are overall not hard law but instead are merely soft law. This argument is also supported by the fact that Principle 5 foresees multiple future agreements, which would qualify the DoPs as a more preliminary result of negotiations (Meding 2022: 45). The GERD is a landmark development in the basin not as an iteration of the scramble for the control over Ethiopia's share of the Nile but in how states navigate various international laws.

3.5. Conclusion

The chapter focused on the hydro politics of the eastern Nile basin, with reference to the inter-riparian relations between Egypt, Ethiopia, and Sudan. We see that current riparian relations are a consequence of colonial agreements that have inequitable granted downstream states of Egypt and

Sudan historic rights over the use of the Nile waters. This adds to the dynamic nature of the river to riparians on its edges. These rights have become significant disagreements in the continued negotiations between three disputing parties as well as in the adoption of the Cooperative Framework Agreement, coupling the lack of conventional modalities in the transboundary river basin. This leads to what game theorists analyse as zero-sum strategic behaviour by all involved as shared watercourses invite a high level of unilateralism (Negash et al. 2015: 56). The legal regime analysed within the context of international water law invoked by the various states in their stances on the rationality to existing water agreements and validity of unilateral river developments reveals several ironies given that almost all conventions referenced have not been accessioned, approved, or ratified in the respective domestic settings. The chapter concluded with an analysis of the dynamics of the GERD. Here we realise that the actions of Ethiopians and the dam's construction are not insular from the culmination of continued unilateralism on the river.

CHAPTER FOUR – THE AFRICAN UNION

States have acted concertedly under a plethora of circumstances in the pursuit of common goals. Following its popularity in the 1940s, regionalism has rising to be a mechanism among states in act varied degrees of cooperation. In the 1990s, ‘new’ regionalism emerged to incorporate a broad range of issues and actors including environment and sub-state actors (Aggad 2007: 1). Regionalism in post-colonial Africa was touted as a solution to solve many of the continent’s endemic challenges, with initial motivations to increase the principle of self-determination. This chapter considers the African Union (AU) - a supranational organisation - as actor and arena in which environmental challenges on the African continent can be tackled. The African Union has undergone a determined process of institutional, regional cooperation through regional integration via an array of progressive instruments developed to address the continent's environmental degradation. However, the chapter is critical of the major shortcomings in relation to the African Union in institutional and normative frameworks, namely the implementation (or lack thereof), which frequently arises when discussing its [AU] ability to fulfil its mandate of peace and security on the continent. The chapter begins with an overview of the institutional transformation from the Organization of African Unity to the African Union. This is followed by an analysis of the institutional and normative arrangements, their functions, and powers regarding water, specifically transboundary water. The chapter concludes with a critical appraisal of these institutional and normative framework and how they interact with the African Union mantra of African Solutions to African Problems. Here the interaction between the institution and the normative play out with regard to the institution's ability to mediate environmental disputes such as transboundary water disputes that have been playing out over the Renaissance dam between Ethiopia, Egypt and Sudan.

4.1. From the Organization of African Unity to the African Union

Regionalism is defined as the “coordination of economic, political and social objectives within the delimitations of a geographical region of states” (Heywood 2014: 489). In the African context, this is no different from decolonial and post-colonial cooperation resulting in states committing to some form of regionalism to solve their political, social, and economic problems. The establishment of the Organization of African Unity (OAU) served as a crucial moment in the process of norm socialisation on the continent through Pan Africanist ideals. Formalised on May 23, 1963, the OAU and its Charter were signed by the Heads of State and the Governments of 32

independent African states. Its composition was the amalgamation of an ideologically and geographically divided continent (Solomon 2015: 58). Geographically, this divide was between Francophone Anglophone and Arab regions. Whilst ideologically, the divide was between Casablanca, Monrovia, and Brazzaville (who later joined Monrovia).

The Casablanca bloc, considered more radical on the ideological spectrum, opposed racism, colonialism, and forms of neo-colonialism. Led by the Heads of State of Ghana under Kwame Nkrumah, Mali under Modibo Keita, Guinea under Sekou Toure, as well as Morocco, Egypt, and Algerian Provisional Government (Harshe 1988: 374). The Casablanca Charter, formally known as the African Charter of Casablanca, was a brief document that set out the aims and purposes of the organisation (Elias 1965: 243). At the international level, the preamble emphasised the principle of non-interference by foreign States in the domestic affairs of African states, with further demand for the end of all forms of colonialism. The bloc aimed to ensure socio-political and economic harmony of all member states in the international arena. Conversely, according to some commentators, the Monrovia bloc was more moderate in its appraisal of what a united Africa ought to be. The bloc comprised twenty independent states, including Cameroon, Congo (Brazzaville), Ethiopia, Nigeria and Senegal. The Monrovia bloc opposed the Casablanca's radicalism in favour developmental cooperation with Western powers as well as the protection of its members sovereignty and territorial integrity, endorsed under the Monrovia Doctrine (Edo 2012; Abegunrin 2009: 144; Endeley 2009: 9). The bloc's functionalist approach to regionalism sought to achieve integration through gradualism within specific policy items. Nonetheless, both blocs with competing visions had the same goal: how to regionalise Africa's unity.

The OAU aimed to promote peace and security on the continent but struggled in this regard by adopting the non-interference principle. This fallacy carried the tone of the organisation's ability to respond to mass atrocities (Domson-Lindsay 2015: 8). The OAU's founding charter expression of absolute sovereignty and respect for territorial integrity limited its ability to promote peace and security on the continent. This concession resulted from adopting the Monrovia vision of a regionalised Africa. Their vision reflected the geopolitical trend of a state-centric security discourse shaped by the dynamics of the Cold War, in that the state was the referent for security.

The transition of the Organization of African Union to the African Union in 2002 occasioned the long desire of the African leadership to escape the challenges that characterised the political awakenings that accompanied the continent after decolonisation and to enter the new millennium with greater optimism. The AU is the brainchild of deposed Libyan leader Mummar Gaddafi. He desired a democratic and federalist continental body with extensive legislative and judicial powers¹³. At the 1999 OAU Extraordinary Meeting of Heads of State and Government, Gaddafi called for the total replacement with a continental government of the United States of Africa (Fagbayibo 2017: 773). The AU Constitutive Act restates many of the principles of the OAU but has created some much-needed new principles and policies. The most notable change brought on by the establishment of the AU, under Article 4(h) of the Constitutive Act, is the right of the Union to intervene in “a member State, pursuant to a decision of the Assembly in the respect of grave circumstance” (AU 2000: 7). Cillers (2016: 41 - 43) does note however, that the principle of non-interference is dampened by the AU’s maintenance of - Article 3(b) – the principles of sovereignty and territorial integrity. Thus, limiting its liberties to intervene in the internal affairs of a member state.

It is instructive to note that this desire reflects an epochal change in the vision, mission, and mandates from one body to the next. While the OAU focused its energy on protecting African sovereignty after colonialism, the AU aimed to elevate its protections to include the continent's citizens. The adoption of the African Union Constitutive Act at Durban in 2002 espoused the protection and promotion of both state and people, resulting in the shift from traditional security – understood through state centric survivalism – to human security (Heywood 2014: 363). Esmenjaud (2014 :118) accords with this argument referencing the Solemn Declaration on Common African Defence and Security Policy that “common security of Africa involves [...] non-military notions informed by the new international environment and the high incidence of intra-state conflict [...] necessitates a new emphasis on human security” (AU 2004: 3). This emphasis

¹³ The federalist approach to regionalism extrapolates the principles of federalism to inter-state relations. Pooled sovereignty – the transfer of sovereign powers to a central body for decision making purposes regarding international cooperation - is used as a solution to the endemic problems faced by a region (Heywood 2014: 491). Nonetheless, Gaddafi’s proposal was rejected. The assumption being that federalist regionalism requires states to sacrifice sovereignty, of which newly independent states whose preoccupation was to safeguard their territorial integrity and independence, states elected for the Monrovia understanding of sovereignty and subsequently a functionalist approach to regionalism (Basiru, Salawa & Adepoju 2018: 107 - 108).

realises the notion to view a threat as multidimensional and enables the Union to tackle the root causes of intra-state conflict that are often social and/or economic (Tieku 2007: 29). Upon this realisation, the African Union introduced numerous programs and strategies geared to this broad ambition (Nnayera 2018: 9).

4.2. Institutional and Normative Frameworks

Disputes and conflicts often arise, not in the solely due to conditions of scarcity but rather in the absence of efficient institutions to govern the scarcity. As managing water interdependencies in transboundary settings is a monumental challenge (UNDP 2006). This sentiment is furthered within the Sustainable Development Goals (SDGs), principally SDG 6.5. – “by 2030, implement integrated water resources management at all levels, including transboundary cooperation as appropriate”. Therefore, at the level of the African Union, these proclamations manifest themselves at both the normative and institutional levels.

4.2.1. Normative Frameworks

Given the climate and context of the formation of the AU, environmental objectives and priorities did not feature high on the organisation's initial agenda. During the Lomé Summit of the OAU on 11 July 2000, the Constitutive Act of the AU placed greater emphasis on the “promotion of peace, security and stability, good governance¹⁴, democratic principles and the rule of law¹⁵”. The Constitutive Act is not explicit with its consideration of the natural resources and the environment. The topic of the environment is implicitly reference in Article 3(j) to sustainable development (AU 2002; Strydom 2014: 30). Thus, realising these objectives as a pre-condition for sustainable development, environmental priorities were regulated in favour of pressing economic and political objectives. However, much like all continental and international agendas, the logic of specialisation came into play once economic and political foundations across the continent were somewhat established.

¹⁴ Article 3(g) of Constitutive Act of the African Union.

¹⁵ Article 4(m) of Constitutive Act of the AU.

4.2.1.1. African Convention on the Conservation of Nature and Natural Resources

Five years after the establishment of the OAU, in September 1968, the African Convention on the Conservation of Nature and Natural Resources was adopted in Algiers, Algeria. The preamble of the Convention, states that natural resources – a collective term used to describe soil, water flora and fauna - "constitute a capital of vital importance to humankind". The Convention was the first and progressive multilateral instrument regarding the conservation of the African environment (Erinosho 2013: 383). The Convention makes mention of water resources, with Article V compelling Parties to establish policies for the development, utilisation and conservation of water sources, whether surface or underground (OAU 1968). Since the 1970s, both the African and international environmental space has undergone significant improvements in their scope and institutionalisation. The recognition of the improvements in environmental legislation, the Convention under Article XXIV made provisions for future revisions.

The Convention was revised in 2003 and came into force in 2016. It retained much of the original scope, text and structure (AU 2013). Regarding shared surface and underground water resources, Article VII on water has been detailed to include integrated water strategy for the regulation of water for economic development, health and sanitation (Erinosho 2013: 389). Article VII states that "the parties shall act in consultation, and if the need arises, set up inter-state commissions to study and resolve problems arising from the joint use of these resources, and for the joint development and conservation thereof" (AU 2003: 13). Article VII (2)(e) addresses the issue of water pollution and calls on the Parties to inter alia, establish water quality standards (AU 2003: 13).

The revised convention – and its preceding form under Article XVIII – make provisions for dispute resolution. In the revised convention under Article XXX, disputes emanating from the interpretation and/or application of the Convention ought to settle amongst the disputants or through a third party (AU 2003b: 31). Failure of a negotiated agreement through the abovementioned avenues, disputants can refer the matter, within a twelve-month period, to the African Union, Court of Justice. Article XXX (2) (AU 2003b: 31) further states that the decision of the court is final and not subject to appeal. The Court of Justice of the AU has preceding authority over disputes surrounding the application of AU treaties under Article 2(2) of the

Protocol of the Court of Justice of the African Union (AU 2003a: 3). In the context of the GERD, Addis Ababa and Khartoum became signatories of the 1968 Convention in 2004 and 2008, respectively. While Egypt has not signed either version of the Convention. Therefore, the Convention has application under the AU-led negotiations regarding the dam, as juridical reach is only applicable to two [Ethiopia and Sudan] of the three disputing Parties.

4.2.1.2. Sharm El-Sheikh Commitments for Accelerating the Achievement of Water and Sanitation Goals in Africa

The Sharm El-Sheikh commitments were agreed between African Heads of State and Governments at the 11th Ordinary Session of the African Union Summit on Water and Sanitation held in Sharm El-Sheikh, Egypt, from 30 June to 1 July 2008. The commitments understand the importance of water's centrality to the achievements of sustainable development. The commitments served as a mechanism in the evaluation and monitoring of national, sub-regional and regional water and sanitation sectors (IISD 2008). The commitments placed urgency on the acceleration of Millennium Development Goal 7 (MDG) - *Ensure Environmental Sustainability by 2015*. The acceleration came against the backdrop of many African states lagging their MDG targets 7.1. and 7.3. on sustainable development and water and sanitation, respectively. The challenges were experienced continent wide were country specific. The summit observed that on the one hand, some states have the capacity to scale up operations that are already in place, and some states requiring additional capacity and operational support (Water Aid 2009). Nonetheless, the commitments outlined the following regional challenges on the water and sanitation sector (AU 2008):

- Financing of water and sanitation infrastructure.
- Equitable distribution and conservation of water.
- Sanitation and hygiene education.
- Integrated management of transboundary surface and underground water – at national and regional levels.
- Information and data sharing on water and sanitation.
- Lack of political will and commitment from all stakeholders.

For action at the regional level, the Sharm El-Sheikh commitments place centrality on the African Ministers' Council on Water (AMCOW) as the key mechanism to spearhead initiatives regarding sustainable management of water resources. The commitment prevails in its normative continuity between itself and other water commitments, including the eThekweni Declaration and AfricaSan Action Plan. This allows for clear communication and coordination between normative frameworks and their ability to be implemented and maintained. Thus, it avoids issues of policy duplication and or overlaps that have long plagued the AU's ability to be efficient. However, the overwhelming commitments of this declaration focus on meeting issues of access to water and sanitation and issues of transboundary matters are given cursory consideration, thus failing to consider the impacts of adverse spill over effects given the high hydro-interdependency on the continent. Thus, the isolation of water access and sanitation as a national-level problem ignores the geopolitical shocks of water availability and quality in a transboundary setting.

4.2.1.3. African Water Vision 2025

At the Second World Water Forum at The Hague in 2000, the African water vision for 2025, along with the framework for action implement implementation, was presented by the AU, African Development Bank (AfDB) and the Economic Commission of Africa (ECA). The African shared vision is for *"an Africa, where there is an equitable and sustainable use and management of water resources for poverty alleviation, socio-economic development, regional cooperation and the environment."* (UN Water-Africa 2000: 17).

The AWV 2025 highlights several compounding issues and critical challenges. Of interest was the reformation - through good governance – of water institutions to facilitate 1) the sustainable management of national and transboundary waters and 2) “regional cooperation on water quality and quantity issues” (UN-Water Africa 2000: 18-19). The AWV 2025 argues these challenges can be addressed through its Framework for Action under four broad categories:

- Integrated Water Resource Management principles to strengthen water governance.
- Improving water wisdom through building institutional, technological, and human capacity.
- Attending to urgent water issues.
- Sustainable financing.

Access to safe and reliable water resources are key to food and energy security, health and sanitation as well as economic development. The AWV 2025 offers a general framework that encourages states to fully cooperate to ensure a reliable water future (Mutschinski & Coles 2021: 839). Nonetheless, the questions of what needs to be done are comprehensively addressed, such as improvements to governance and strengthening the financial base for water resources management. However, the dilemma of how to achieve desired outcomes remains absent. The inability to pinpoint a coordinating mechanism could lead to fragmented interpretations of the water vision informed by geophysical and geopolitical conditions at all levels, including diversity in legal systems, limited political will and insufficient national capacity (Nienaber 2014: 99).

4.2.2. Institutional Structures

4.2.2.1. The African Ministers' Council on Water

The African Ministers' Council on Water (AMCOW) was established in 2002 in Abuja, Nigeria, following the finalisation of the Abuja Declaration on Water: A Key to Sustainable Development in Africa. Its primary aim is to “promote cooperation, economic and social development, poverty eradication, and security amongst member states” (AMCOW n.d.). As a Specialised Committee for Water and Sanitation in the AU, AMCOW is a political arena for which all 54 water ministers of the African states constantly review integrated water resource management strategies, policies, and actions to address challenges facing the continent's water and sanitation sector (Elhance, Drammeh, Diop, Mimayi, Henson, Schaefer & Lindblom 2005: 70).

The body's organisational structure is broken down into four main groups: governing council, an executive committee, technical advisory committee, and a secretariat. The Governing Council is an inter-governmental body on water issues and oversees the primary objectives of AMCOW. Comprising 15 members and the President of the Council, the Executive Council deliberates on decisions and recommendations from the technical advisory committee as well as decides on strategic directions, programmes, and budgets of the Council. The Technical Advisory Committee (TAC) is constituted of twenty-five experts, five from each of the AU's subregions. The technical committee provides technical support to the Governing Council and Executive Committee in the formulation and coordination of policies, with institutional partners. Finally, the Secretariat,

headed by an Executive Secretary, are responsible for the daily operations of the Secretariat (AMCOW 2013 & Nienaber 2014: 98).

Through its accord as a Specialised Committee of the AU, all AU water-related work is facilitated through AMCOW. Thus, AMCOW's role as a mechanism for regional development and cooperation of the water sector becomes increasingly important. However, there is no clarity on its role and link with the peace and security architecture. There is no mention of AMCOW as a forum for negotiation, particularly around environmental disputes such as the GERD.

4.2.2.2. New Partnership for Africa's Development

The New Partnership for Africa's Development (NEPAD) is a policy-orientated framework formed in 2001 as the amalgamation of three key documents, namely, the New African Initiative (NAI), the Omega Plan under the leadership of former Senegalese president Abdoulaye Wade and the Millennium Africa Recovery Plan (MAP) led by former South African president Thabo Mbeki (Bach 2015: 116). Its policy objective are to eradicate poverty, “halt marginalisation of Africa in the globalisation process and place African states both collectively and individually on the path toward sustainable development and growth” (Aggad 2007: 63). NEPAD manages programmes and projects around six thematic areas, of which *Regional Integration and Infrastructure* and *Climate Change and Natural Resource Management* directly influence transboundary water management (PIDA 2020). NEPAD recognises in its Short-Term Action Plan for Transboundary Water Resources 2005 the role of water resources and their access as vital components to life, poverty alleviation and sustainable growth and development in Africa. Its various water-specific policies and outlooks¹⁶ each maintains the same language and tone regarding transboundary water resources. The continued need to 'foster', 'facilitate' and 'strengthen' institutional capacities are defined within the context of IWRM strategies as the key to regional cooperation and management of transboundary water resources.

If NEPAD is to be heralded within the context of ‘African Solutions to African Problems’, then its criticism needs consideration. Adesina (2001: 5) argues that NEPAD's adoption of a neo-liberal

¹⁶ See: [African Transboundary Water Resources Sector Outlook](#) 2040.

mindset demonstrates a weak appraisal of the continent's experience within capitalist dynamics. Particularly with its understanding of African problems and prognosis of a way out of its development dilemma. The failure of NEPAD to recognise the impact of neo-imperialism and structural dependencies of African states to non-African modalities are detrimental to its cause as a mechanism for economic and political revival on the continent (Aggad 2007: 79). Interpretations of environmental policies and frameworks have thus been moulded within the norms of neoliberal assertions with a strong emphasis on economic growth to achieve desired outcomes. This further encourages an ecological modernist water regime that affords economic growth space in environmental management and conservation. Thus, it results in the inability to codify environmental principles, norms and rules. Instead, it reflects a market-driven focus, as water-related commitments are entrenched within broader regional development and cooperation agenda (Nienaber 2014: 103).

4.3. African Solutions to African Problems

The African political economy has long been referenced to its reliance on foreign assistance and solutions to its own challenges. From the colonial to the post-colonial, her ideals, prospects and achievements have never fully been her own making. As Dersso (2012: 12) accounts “African has a history of a struggle to self-determination [...] the quest to achieve control over control over politics and culture can captures the essence of the history of the continent”. The pursuit of self-determination has been reprised in different epochs, with the transition from OAU to AU reviving its need to take control of its own affairs (Dersso 2012: 12). The maxim of ‘African Solutions to African Problems’ (henceforth abbreviated as ASAP), according to Ani (2006) recognises the disillusion with the interventions of non-African solutions to African problems. The maxim underpins itself in the political ideals of Pan-Africanism of solidarity and unity as stepping stones to progress in all its forms (Mngomezulu 2019: 13). The idea of ‘ASAP’ lies in its quest to remove African its passivity towards a proactive reclamation of the continent’s endemic challenges.

The post-Cold War international system characterised by the rise in multipolar trends that include the rise of emerging powers, globalisation, regional governance and the proliferation of non-state actors, have all added noise to an already crowded African peace and security regime (Heywood 2014: 235 -240). Dersso (2012:12) referencing Ali Mazrui’s seminal text *Towards a Pax Africana*:

A Study of Ideology and Ambition, argues that the struggle for African solutions in the onset of multipolarity is the struggle for “Pax Africana”. Pax Africana is described as the peace and security “that is protected and maintained by African herself” (Mazrui 1967: 203 cited in Dersso 2012: 12). Thus, ASAP is the indigenous expression of this ideal, of which the African Union peace and security architecture plays host to achieve “Pax Africana”.

The change in the scope and scale of conflicts has led to the need for Africa to develop proactive institutional changes that can overcome associated peace and security challenges. This desire to assume greater responsibility has been accompanied by the AU member states commitments in the Protocol Relating to the Establishment of Peace and Security of the African Union (AU 2002). This commitment to ASAP (and by extension “Pax Africana”) is seen in the determination outlined in the Protocol to “enhance our capacity to address the scourge of conflicts on the continent” (AU 2002: 3). The African Peace and Security Architecture is an overarching structure that describes the various mechanisms available to the Union, in matters relating to peace and security on the continent (Franke & Gänzle 2012: 89). It includes the Regional Economic Communities, the Continental Early Warning System, the African Standby Force and Military Staff Committee, the Peace Fund and the Peace and Security Council (PSC) (Franke & Gänzle: 89; Williams 2011: 6). The PSC is focal organisation in the architecture, whose juridical authority is outlined under Article 7 of the PSC Protocol (AU 2002: 9 - 11).

Williams (2011: 20 - 22) remarks that in spite of the institutional and normative frameworks rallying around the maxim of ‘African Solutions to African Problems’, through the peace and security architecture, it is replete of incapacities such as remaining in initiatives remaining in the developmental stages, lack of political will and commitment, institutional imbalances and general resource incapacity. One would assume that the structures in place allow the AU to have institutional grit and legitimacy to fulfil its ambitious tasks. However, the failures of the AU's inability to intervene timely on matters of peace and security are quite apparent. Moller (2009), in accord with Nathan (2007), maintains that there is an aperture between the ambitious mandate of the AU and its accomplishments. None more than in its embryonic role in mediating the dispute between Ethiopian, Egypt, and Sudan around the Grand Ethiopian Renaissance Dam. The following section considers these shortcomings.

4.3.1. Challenges to African Union Efficacy

4.3.1.1. *Lack of Political Will and Commitment*

The success of and efficacy to manage conflict resolution and mediation rely on political enthusiasm and the willingness of relevant stakeholders to provide the necessary influence and commitment. Mickler (2013: 506) postulated that the technicalities regarding capacity issues of an organisation are far easier to resolve than the political ones. As political questions extend beyond the push for bureaucratic reformation, as they ask about institutional norm-setting, practices, and areas of prioritisation in the distribution of material resources (Gardachew 2020: 80). Besides the often-cited resource and capacity shortfalls¹⁷, the main hurdle of realising ‘ASAP’ lies in the inadequacies of the AU's political leadership. These were vital in forming the OAU and AU, with influential leaders such as Nkrumah, Nyerere and Mbeki spearheading the charge for ASAP, respectively (Sharmao & Ayangafac 2011). Contemporary African politics lacks the ability to generate the necessary impetus to move beyond the current passivity caused by the lack of political cohesion and poor governance at the national level that then moves up into regional and continental goals (Ani 2016: 35). Although there is an ideological shift from non-interference to non-indifference, the AU is yet to intervene on matters without the consent of crises states. Again, the reactionary and passive posture of the AU's security architecture denies them the ability to practice preventive diplomacy. Nathan (2013: 55) argues that this disunity amongst member states and the AU-APSA opens a vacuum for foreign actors to intervene. This decreases the AU's credibility and legitimacy as an essential peace and security actor on the continent and minimises the potential impact of home-grown solutions.

4.3.1.2. *Lack of Institutional Balance and Harmonisation*

The overall concern is that the potential for Africa to take ownership of its problems depends on - among other things – its institutional mechanisms. Examining the APSA, the apparent imbalances and lack of harmonisation of its mechanisms make it harder for the AU to attain and maintain its

¹⁷ Adeniyi, Opara, Adeyemo, Ekeria & Faith-Lois (2016: 77 - 85): contend that the inept leadership, corruption, inadequate infrastructure development and the reliance on foreign aid reduce the possibility of a thriving African Union. With regards to financial shortfalls, AU member states make minimal contributions to the financial resource base of the organisation. Thus, the AU is [reliant on donor organisations](#) to compensate their financial budget.

continental agenda, outlined in its Agenda 2063 (Centre for Humanitarian Dialogue 2009: 25). The relationship between the APSA and Regional Economic Communities (RECs) plays a crucial role in ensuring peace and security, as the architecture emphasises a subsidiarity role to the RECs (Ani 2016: 28). The security partnership between the AU and sub-regions is mandated under AU Constitutive Act¹⁸ and guided by the PSC Protocol¹⁹ and the 2008 Memorandum of Understanding (MoU) on Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities- and the Coordination Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa.²⁰ (Akopari & Ancas 2014: 75).

Strategically, the normative frameworks of the AU-led APSA both envisage and place primacy on the AU leadership in peace and security issues. In practice, however, as Ani (2018: 44) outlines, this recognition suffers from power dynamics and the duplication of efforts that place the role of the AU in the peace process into further questioning. Thus, the institutional divide between the RECs of the South and West through SADC (Southern African Development Community) and ECOWAS is visualised through their ability to intervene in crises between disputants proactively. Contrast this with the North, East, and Central Africa RECs, whose institutions are far weaker, lacking effective instruments that can wrestle with transboundary basin dynamics. This further constrains the AU's primacy due to their limited political and resource leverage that arises from the ambiguity in APSA guidelines, whose predominance on "working together" fails to create a clear division of labour (Ani 2022). Therefore, the inadequate clarification of responsibilities restricts the AU from providing adequate checks and balances to sub-regional interventions or taking over peace processes when the sub-regional efforts are compromised (Ani 2018: 60).

The management of transboundary watercourses is a highly political matter than extends beyond technical considerations. As Van Wyk (2002) notes "water is politics", as fugitive characteristics increase the heterogeneity of competing claims over its allocation, use and ownership. Developing regions, often the lack of institutional capacity to develop and implement the necessary

¹⁸ Article 3(l) of the Constitutive Act of the African Union.

¹⁹ Preamble and Article 16, of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union.

²⁰ Article 5(b) of the Memorandum of Understanding on Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities- and the Coordination Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa.

frameworks, that can deal with the politics of water. The sustainability of these watercourses are contingent on resilient mechanisms that can resolve current and future disputes (Akamari & Wilson 2011: 411). Furthermore, resilient mechanisms require a level of adaptive capacity, as the homogeneity in resilience may be inadequate to in their understanding of nuanced ecological and political interactions. Given this, the dispute surrounding the GERD presents a scenario wherein the AU cannot make a timely and adequate response, thus enabling disputants to pursue avenues to address their concerns. If Nathan's (2013) caution on the impact of disunity has on peace and security on the continent is considered, the introduction of external and or preferred mediators to operate beyond their geographical delimitations makes the process of negotiations between disputants and mediators often a crowded affairs and chaotic with biases and interest not considerate of the relevant sensitives. External mediation introduces a biased and imbalanced mediation process in which the mediator, in addition to the concerns of the disputants, aims to consolidate their interests.

Addis Ababa's attempts to assuage Cairo and Khartoum's concerns over the dam, particularly the conditions for operating it and filling its reservoir, reached a dead end in October 2019. Washington's involvement under the Trump administration as an interlocutor, signals the danger involved when external mediators lead (Soto 2019). In October 2020, during a conference call between Sudanese and Israeli prime ministers (a conclusion on talks to garner a relation between the two states), President Trump's belligerence towards Ethiopia was seen through his securitisation speech instigating and supporting Egypt's view of the GERD. During the call, Trump referred to the Egyptian president, Abdel Fattah al-Sisi as "my favourite dictator." To further compound his administration's failure to broker a deal, Trump argued that Egypt would "end up blowing up the dam. [...] they have to do something...they (Egypt) should have stopped it long before it was started" (Prince 2021: 27). This weaponisation of the GERD against Ethiopia is reflective of Washington and other western powers disapproval of the Tigray turmoil in Ethiopia as it jeopardises the United States' geostrategic position (security diplomacy regarding counter-terrorism operations²¹) in the Horn of Africa facilitated through past relations with Ethiopia (Yimer & Subasi 2021: 75; Debisa 2021). Thus, the level of insincerity involved in the externalisation of

²¹ See [Negatu, G. 2022](#)

mediation needs careful consideration, as one disputant's concerns are legitimised as exemplified by the speech acts from President Trump.

4.3.1.3. Institutional Coordination

Duplicate responsibilities characterise water management in many countries. Water governance decisions are often fragmented at a variety of levels and sectors, from the formal to the informal; to agricultural and conservation sectors (Choudhury & Islam 2015; Barchiesi, Welling, Dalton & Smith 2014: 21). This form of decision-making leads to a contradiction in the management strategies between levels and sectors. These intensify between disputants, with the lack of an appropriate and coordinated response. The critical institutionalist approach is instrumental in criticising the capabilities and challenges of the AU's resolve to ensure regional peace and security. Proponents of critical institutionalism embrace the post-Cold War mediatory environment that embraces a plurality of actors and recognises that governance of resources such as water occurs at a multiplicity of levels and scales. This often blurs the national, sub-regional and continental boundaries (Clever & de Koning 2015: 6). This concession enables the AU to introduce needs-based interventions such as ad hoc peacebuilding that institutional bricolage understands as the AU's attempt to craft result in workable arrangements. Nonetheless, the lack of coherent institutionalisation of respective roles, responsibilities and mandates reduces the AU's ability to define clear division of labour between itself, RECs, and other specialised committees (Diatta, Attah-Asamoah, Woldemichael, Handy & Louw-Vaudran 2020).

The combination of disunity and institutional duplication, inhibits the AU's constitutionalised mandate enshrined in, inter alia, the Constitutive Act. Therefore, slowing down an effective and efficient response resolving any dispute (Abatan 2015: 73). In the context of the GERD, the Union has not clearly indicated whether the AMCOW or NEPAD's STAP-TWR or a combination of the two, will be used as institutional frameworks to guide the Dam's negotiations into the final stages. Additionally, how do the institutional frameworks fit into the overall peace and security architecture of the Union.

4.4. Conclusion

The chapter has considered the African Union's ability to mediate environmental conflicts through an appraisal of both normative and institutional frameworks under the maxim of African Solutions to African Problems. We see that normative framework such as the African Convention on the Conservation of Nature and Natural Resources and the Africa Water Vision 2025, are able to suffer from generic proposals in that the various articles enclosed fail to provide depth and detail and favour economic considerations instead of an integrated approach. However, much of the analysis discusses universal institutional and resource capacity issues, lack of political will and institutional objectives. These problematic concerns have and continue to plague the body's position and response to GERD. Thus, if success and efficiency are to be achieved, these concerns ought to be fully addressed. The subsequent chapter discusses recommendations that can be implemented at the AU to avoid further shortcomings in future water-related disputes.

CHAPTER FIVE – FUTURE IMPLICATIONS

The rivalry and competition over the Nile waters are not new. Given the economic intimacy of the Nile to each east African riparian state, the question of what happens after the impasse of the GERD negotiations is complete or when another similar dispute arises is critical to not only the legitimacy of the African Union as a champion of peace and security but also as an effective body to do so. Therefore, the AU is tasked with finding common ground between the disputing parties. As a regional body, the AU's successful resolution of the GERD could boost its position as the primary arbiter, where historically, the non-African intervention has become commonplace (Control Risk 2021). The chapter looks at the AU beyond the GERD dispute. Recommendations are provided to set a way forward for the continental body. The chapter concludes with an overview of the research conducted.

5.1. General Discussion

As the previous chapter has illustrated, the mantra of 'African solutions to African problems' provides great impetus to the work and legitimacy of the African Union. However, it bears the question of whether the mantra will provide inspiration it has lacked in its ability to garner the necessary and sustained political will to fulfil the organisation's mandate. The dam dispute is more than a regional spat; it is a stepping-stone into an African future wherein the nexus between water conflict, sustainability, and management manifest in the context of an ever-increasing climate crisis. The twin pressure of growth and climate change amplifies conflicts, with resource scarcity fuelling tensions within and between states. This puts existing management mechanisms under continued strain.

Miehe (2021) argues that dispute will have a lasting imprint on the transboundary river basin landscape in three ways:

1. *How the conflict is resolved*

The conflict resolution methodologies used in resolving this resource-based dispute could serve as a reference point in future water disputes, particularly transboundary resource management issues. Regional and global security definitions have informed much of the AU's conflict resolution mechanisms. These definitions have evolved with a consensus essentially shifting from state-

centric Westphalian conventions to people-centric human security agenda (Makinda, Okumu & Mickler 2016). Critical institutionalists contend that historical trajectories and policies frame contemporary actions, as behaviour and identities that proved to be established and successful will be used again to meet new challenges (Sehring 2009: 64). Therefore, current conflict resolution mechanisms draw patchily on the discourses and sanctioned meanings of previous interventions. The failure to institutionalise an appropriate legal framework to guide the mediation process of the GERD will shape the scope, intervention and resource allocation of future disputes.

2. The role of regional institutions

The establishment of the AU as an impartial mediator will be closely analysed by not only riparian states of the Nile but by other transboundary basins as well. since it has been made clear that their presence alters the structure and dynamics of the world political sphere. Its triadic role as an *instrument* for states to advance and advocate their interests; an *arena* for the articulation of their interests and as an *actor* to correlate these interests in a more proactive role, will inevitably define its abilities long past contemporary contributions (Salifu 2011: 34).

3. Substance of the agreement

Kristin & Phillips (2007) have argued that the mere existence of a cooperative arrangement is not to be celebrated but the substance of the arrangement. The dispute resolution will inform future cases concerning the rights and obligations of both upstream and downstream countries in transboundary water developments. Moreover, the AU-led negotiations have highlighted a few incapacities (discussed in chapter four). What has been emphasised thus far, is its lack of an established legal framework pertaining to the governance and mediation of transboundary rivers and basins. Diatta et al. (2020) argues that the AU Bureau recommendations delimitation on an agreement between the disputing parties is not comprehensive of all Nile riparian states. Therefore, if the AU feeds into a resolution without substance, the lack of addressing the core problems presented by transboundary waters will become a point of reference. All this, compounded with that raised in chapter four of the dissertation, all point to a need for either an improved or complete reformation of the organisation's water sector to take seriously issues that affect states beyond their borders.

5.2. Overview of Research

Chapter one presented the background of the research and set out the research questions and objectives. A brief survey of theoretical overview was concluded by the explanation of the dissertations' research methodology and research design.

Chapter two comprised of a literature review on themes and discussions around water, specifically transboundary water. The definition of transboundary water was discussed. Water's promotion onto the international political agenda only gained prominence after the 1970s, following the awareness of its intersection with socio-economic themes. The scale, scope and intensity of interactions between the social, political, economic and environmental all contributed to the complexities involved in the riparian relations of transboundary states. With the recognition of water's intersectionality, the securitisation of the water contrasts with the traditionalist view of security (viewed security in a narrow military focus) to underscore environmental issues as a conflict multiplier. The securitisation discourse further demonstrates traditional security studies' limitations in explaining environmental degradation's impact on intra- and inter-state relations. This contributes to a broadening and deepening of the notion security to include non-military and no-state actors.

Chapter Two also highlighted the conflict and cooperation spectrum used to understand transboundary water politics. Here, the research cautioned against the binary of understanding transboundary interactions as either water cooperation or water conflict, providing a partial picture of circumstances. Instead, riparian interactions coexist within the contexts of conflict and cooperation, as a reductionist interpretation limits a nuanced understanding of water politics.

Chapter three explored the water politics of the eastern Nile River basin. Analysis began with a discussion around the legal regimes that have characterised and shaped eastern Nile riparian relations. This discussion expands itself to include colonial and post-colonial legal regimes and how mainly colonial legal agreements have imposed themselves on contemporary relations. Egypt's apparent hydro-hegemony is highlighted as a continued feature in the river basins' political dynamics. International Water Law has been discussed with the intention of situation both upstream and downstream interests. International Water Law conventions operate within the limits of the principle of sovereignty but then aim to strike a balance between all stakeholders within the

context of a shared resource. The chapter concluded with an analysis of the Grand Ethiopian Renaissance Dam. The dam represents a contemporary iteration of the unilateralism that has characterised development projects in the river basin. What the dam highlights are that attempts to assuage Cairo (and to some extent Khartoum) have fallen short as none of the legal arrangements – from the Cooperative Framework Agreement to the Declaration of Principles – aim to address the sticking points of colonial agreement and their impact on Egypt's national interests.

Chapter four continues the discussion of chapter three to assess the African Union's efforts in resolving the dam dispute. The chapter centres around the main research question – has the institutional capacity of the African Union inhibited its efficacy as a mediator in the GERD dispute? A consideration of the discourse around the 'African Solutions to African Problems' and how these have informed the AU-led peace and security initiatives. The chapter highlighted various institutional and normative frameworks related to transboundary water issues. This section highlighted the impressive yet ambiguous range of these frameworks. Often bold commitments have been made, but how they are institutionalised has been limited or absent.

Furthermore, on closer inspection, each framework has varying degrees of commitment from AU member states, thus nullifying the organisations' attempts to include them in its mediatory arsenal. The chapter highlighted the challenges hindering the AU's efforts to become an effective mediator. These ranged from the lack of political will and commitment to institutional imbalances. These combined make the ability to act efficiently and timely a big task for the organisation that must deal with the influence of externalities such as external third-party negotiators that limit the body's legitimacy and credibility as the primary actor in matters of peace and security on the continent.

5.3. Conclusion and Recommendations

The following recommendations provide constructive solutions to the incapacity issues that plagued the AU's attempts to mediate the GERD dispute. These recommendations are delimited to the current consideration. However, they can be expanded to resolve future incapacities as there are no 'one size fits all' solutions to the complexities that transboundary water politics produce.

Need for Political Will and Commitment: William (2011: 20) notes that “...effectiveness results from the sum of its members”. Various normative and institutional frameworks are in place; the

political willingness and ability to implement them is often a significant shortcoming in the success of the AU in fulfilling its mandates. Thus, an attitudinal shift to close the persistent gap between rhetoric and practice circumvents not only national insecurities but also regional ones, as insecurity in the African context is tied to multiple histories and politics that are borderless. Therefore, the need to move beyond rhetorical commitments is paramount.

Need to expand its governance and security agenda: Savenije & van der Zaag (2000: 28) claim that “management of international river basins thus involves a long learning process; a process that the participating countries must go through and for which there are no short cuts. Outside assistance can only play a very modest role”. In March 2019, the Peace and Security Council (PSC) announced through a communique, included non-navigational bodies of water into the blue economy domain. However, it is yet formulate a new strategy that includes the new additions, particularly transboundary watercourses. The AU in this regard can resolve this dilemma through the expansion of both its peace and security, and governance strategies, to include relevant conflict resolutions mechanism regarding the management and use of transboundary rivers. This can be drawn from existing normative and institutional frameworks including the African Water Vision 2025 and the NEPAD Short Term Action Plan.

Need to improve coordination and communication: The fragmented approach to most dispute resolutions within the body has led to a lack of coordination and timely responses. Thus, weakening the organisation's credibility as the main arbiter as conflicting states often opt for preferred mediation in the form of international actors such as the United States, the International Court of Justice, World Bank and the European Union. Improved coordination and communication leads to a better appreciation of the sensitive geopolitical contexts involved and ensure coherent policies and framework application.

Need to build capacity: What is recommended here is a network ecosystem. A major constraint in the effective governance of water resources in Africa has resulted from the overburdening of staff and structure. Unfortunately, Africa does not have an adequate number of skilled professionals, particular mediation professionals. The reliance on former heads of states and governments to be led negotiators, diminishes the need to invest in the necessary skilled human capacity. The AU can work in collaboration with the RECs to expand its capacity-building

programme, to increase implementable solutions and frameworks that are suited to each region's needs. The expansion of skills development beyond the monopoly of the continental level can ensure that states and river basin organisations are not solely reliant on supranational structures for assistance – financial and politically.

In conclusion, water's intimacy to all aspects of society need not be understated. Water problems demonstrate a complex level of heterogeneity, as a public good with intense competition from various levels and actors, the complexity of water is illustrated in its embeddedness within a broader cultural and social context. Solutions to these problems, as demonstrated by the Grand Ethiopian Renaissance Dam dispute, are not contingent on the availability of water but on the processes through which its availability will be managed. This management occurs within dynamic social and geopolitical conditions and expectations that affect the capacity and competence of a given institutions (Biswas 2008: 5). The Nile's variability and mobility expand on the issues of access, ownership and distribution, whilst subsequently tied to the multiplicity are symbolic in its use for social, cultural and economic uses. The state identities and interests moulded by the mobility, variability and multiplicity of the Nile offer a vital mainstay in the assessment of how the African Union can manage its affairs. Under such diverse conditions institutions are required to display a balance to resilience and flexibility. The former enables institutions to absorb and recover from externalities whilst the later allows institutions to adapt and transform themselves within these externalities. Therefore, as a champion of African peace and security, the AU's ability to navigate through the impasse of competing claims and offers it the opportunity to absorb and transform itself into an institution that can proactively intervene in its own matters, both presently and in the future.

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