

International Water Rights on the White Nile of the New State of South Sudan



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- South Sudan's International Water Right
 - – what is it about?
- What is the status quo of South Sudan's water rights to the Nile River?
- Is the new state bound by any rights and obligations established by the 1959 Nile Agreement?
- May South Sudan accede the Cooperative Framework Agreement to supplement the unbalanced colonial treaties with modern principles of international water law?

- Overview:
 - A. The hydropolitics of the Nile Basin
 1. Conflicts of the states of the Nile Basin over colonial water treaties
 2. The birth of South Sudan
 - B. Application of Customary International law of state succession to the 1959 Nile Agreement
 - C. Possible water allocations between Sudan and South Sudan and the way forward towards accession to the Cooperative Framework Agreement

- Hydropolitics of the Nile River
- Longest river – 6, 650km long – 443 million inhabitants
- Since 19th century, allotment of the Nile waters under dispute
- Nile lacks an international water agreement that includes and satisfies all riparian states
- South Sudan is the 11th riparian state claiming its share on the river's flow



- Hydropolitics of the Nile River
- Strong rivalry between downstream and upper riparian states
- Egypt and Sudan have disadvantageous location as downstream states
- **But:** they benefitted from an advantageous colonial treaty setup:
- the **1929 Nile Agreement** between Egypt and Britain
 - Britain practically bound all its East African colonies on its behalf
- the **1959 Nile Agreement** between Sudan and Egypt
 - has incorporated the main provisions of the 1929 Agreement
- Among others: The 1959 Agreement **allocates the entire flow of the Nile** with **74.5 bcm to Egypt and Sudan**
- **Egypt** was allotted **55.5 bcm** of water and Sudan **18.5 bcm**
- **A share of the 18.5 bcm could be claimed by South Sudan**

- Hydropolitics of the Nile River
- Upstream riparian states find it extremely difficult to identify any international law validating Egypt's claim to almost allocate all waters for itself
- Several East African states persistently refused to be bound by these treaties, to which they were forced into under colonial rule
- Egypt insists on the validity of the colonial treaties and to use force against water projects of riparian states

- The birth of South Sudan
- From 1955 until 2005: over two million Southern Sudanese were killed in armed conflicts
- South Sudan has become independent from Sudan on the 9th of July 2011
- It falls geographically in between the rivalry of up- and downstream states
- South Sudanese feel a strong link to its upstream neighbors, but are historically bound to Sudan and Egypt



- Cooperative Framework Agreement on the Nile River
- In 2010, the Nile Basin Initiative presented its Cooperative Framework Agreement (CFA)
- CFA has not entered into force, yet
- It would incorporate the principles of equitable water use by all riparians
- Aims to finally supplement the unbalanced colonial treaties of the 20th century with modern principles of international water law
- Egypt and Sudan, however, strongly oppose the CFA

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▪ Accession to the CFA?

- Egypt and Sudan consider South Sudan to be bound by the 1959 Nile Agreement
- and have tried to persuade South Sudan not to accede the CFA
- **Can South Sudan claim a share of the 18.5 bcm of water allocated to Sudan by the 1959 Nile Agreement?**



- Customary International Law of State Succession
 - Allocation of water was not part of the Peace Agreements between Sudan and South Sudan
 - Analysis of Int. customary law and the 1978 Vienna Convention on the law of state succession
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- Questions are:
 - **Which rules are applicable when a new state “is born”?**
 - **Are all treaties of the predecessor binding upon the new state *ab initio*?**
 - Answers given by international law and state practice are still in many regards “confused and uncertain”

- Customary International Law of State Succession
- State succession is often a result of very political and emotional circumstances, therefore:
 - state practice is highly variable and
 - is strongly based on national policy considerations
 - hardly follows general normative principles of international law
- However: **Article 12 of the 1978 Vienna Convention** is identified as international customary law and applies to:
 - cases of state separation like South Sudan from Sudan
 - to treaties, which establish territorial rights and obligations that have a direct effect to the territory of another state

Is South Sudan bound by the 1959 Nile Agreement?

- The Status quo of South Sudan's Water Rights
- **Yes**, South Sudan is bound by parts of the 1959 Nile Agreement
- What is the rationale **of Article 12 of the 1978 Vienna Convention?**
 - to protect most territorial obligations, especially those for the benefit of other states, irrespectively of the new state's past
 - to ensure continuity of those rights and obligations attached to the territory

The water allocation provisions of the 1959 Nile Agreement is a typical example of such a territorial right and obligation

- South Sudan automatically succeeded Sudan in its water allocation rights of the 1959 Nile Agreement
- **But:** only to provisions, that have a direct effect to the territory of another state

- The Status quo of South Sudan's Water Rights

Conclusion:

- The provisions of the water allocations of the 1959 Agreement **remain binding upon South Sudan**
- Sudan and South Sudan will have to enter in **negotiations in good faith to allocate their share of 18.5 bcm of water**

What is a possible way forward for South Sudan?

- What is a possible way forward for South Sudan?
- South Sudan is in the midst of a cruel and devastating civil war without a functioning central government
- Therefore its international water rights on the Nile is not on the political agenda
- Suggestion for a way forward:
 - it enjoys the right for an equitable share of the 18.5 bcm of water allocated to Sudan, **therefore**
 - it should enter into negotiations with Sudan on an apportionment of their share of water according to international water law

A bilateral agreement between the two Sudans is a prerequisite for whichever route South Sudan chooses to proceed with

- What is a possible way forward for South Sudan?

If South Sudan wishes to become a full party to the **1959 Nile Agreement**

- it needs a clear definition of its existing rights and obligations

and if it considers **acceding the CFA**

- it needs to ensure to comply with its territorial rights and obligations of the 1959 Nile Agreement towards Sudan and Egypt



- Conclusion

- South Sudan should accede the CFA, because:
 - it would benefit from the CFA and the 1959 Nile Agreement

 - CFA corresponds with international water law and guarantees for an equitable use of all riparians in the long term

 - it could trigger new dynamics in the ratification process of the CFA

 - it could be a wake-up call for negotiations for a comprehensive agreement to overcome the colonial treaty regime that includes all riparians

 - it might also help to overcome the decade long disputes between Egypt/Sudan and the remaining eight East African upstream states

- Thank you for your attention!

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