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HOW SOUTH SUDAN'S ACCESSION TO THE CFA WILL IMPACT ITS WATER OBLIGATIONS IN LIGHT OF THE LAW OF TREATIES' SUCCESSION

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ABSTRACT

South Sudan formally acceded to The Cooperative Framework Agreement (CFA) on August 14, 2024. This accession represented a pivotal moment, since it fulfilled the legal threshold required for the CFA to enter into force. However, South Sudan came into existence only in 2011, after its secession from the Sudan through an internal referendum. Yet, the two parties neglected to address the issue of Nile water allocation between them, not only in the 2005 Naivasha Comprehensive Peace Agreement, but also in the Nine Agreements of Addis Ababa 2012. Using the doctrinal legal methodology as its analytical framework, the present study examines the legal relationship between "the new state of South Sudan" and the Nile River agreements to which the Sudan, the predecessor state was bound by, in light of the Rules of International Succession for Treaties, and the jurisprudence of the International Court of Justice (ICJ). Furthermore, it explores through the provisions of the Law on Treaties and relevant ICJ jurisprudence, the impact of the CFA's entry into force on South Sudan's international water obligations, particularly toward the Sudan and Egypt. The present paper's distinctive analysis of laws, judicial rulings, and the Nile agreements demonstrates the originality of this research paper. The conclusion is that due to the succession of treaties, South Sudan as the successor state assumes the treaties obligations and rights of the Sudan, the predecessor state. South Sudan, therefore inherits the Sudan's obligations that are enshrined in boundary agreements and the territorial legal regimes governing the Nile River, which will remain unaffected by the CFA's entry into force.

Keywords: South Sudan, Naivasha agreements, treaty succession, Nile River agreements, CFA.

INTRODUCTION

Amid the kerfuffle witnessed in the Nile Basin, as manifested by the dispute between the upstream and downstream countries over the Cooperative Framework Agreement (CFA); which was signed in 2010 by six upstream countries and represents a framework that fundamentally conflicts with the existing legal regime that governs the Nile waters, the secession of South Sudan in 2011 emerged as a pivotal event that added a new and complex dimension to the water formula in the Nile Basin. By virtue of its geographical location, South Sudan became a party to this equation from the moment of its birth. With South Sudan's decision to accede to the CFA in 2024, the Nile water issue has entered a new phase of challenges and crucial questions. These fundamental questions, largely revolve around the relationship of the new state of South Sudan with the legal regime that governs the Nile Basin, to which the Sudan, as a predecessor state, was committed; and the impact of its decision to accede to the CFA on those water commitments, particularly in the face of Egypt and the Sudan as the downstream countries that are opposed to the CFA Agreement.

In order to answer the aforementioned questions, this study will be divided into several sections, the first of which is examining the background of the emergence of the state of South Sudan. This requires identifying the factors that led to its secession, to determine whether South Sudan was a case of liberation from colonization or a state that separated from another state, which will help critically in identifying the correct rules concerning the succession of treaties thereafter. Next, it will address South Sudan's relations with the Nile River, as a secession of a state within a basin does not necessarily make the new state a basin state as well. This will be followed by the research objectives, and a statement of the research problem. After that, the authors will proceed to the legal aspect of this paper, which involves studying the rules of international succession of treaties, and the extent to which South Sudan is subject to its rules. Moreover, the CFA, and the impact of South Sudan's accession on its water obligations. Finally, this presentation will be concluded with an overview of the authors findings and recommendations.

THE EMERGENCE OF THE STATE OF SOUTH SUDAN

For long time and prior to the secession movement that emerged in the mid-20th century, South Sudan was officially an integral part of the Republic of Sudan (Ali, 2018). The first civil war dates back to 1955 (Rolandsen & Leonardi, 2014), and its objectives varied from self-administration to self-determination through horrific wars (Mohamed, 2014); all Sudanese paid the heavy price for it, more than two million were killed (Ahmed, 2016), and more than four million fled to neighbouring countries, becoming one of the longest and the most violent civil war the African continent has ever seen (Ali, 2018).

These civil wars resulted from several internal and external reasons, the most dangerous of which according to Iyman (2015) was the subversive policy practiced by Britain during its colonization of the Sudan to prevent any uprising against them. After the Egyptian revolution of 1919 against the British, the Milner Committee, which was entrusted with finding its causes, some of its committee members went to the Sudan to investigate the conditions on the ground and the possibilities of any future resistance. The Milner Committee suggested, as stated in Alsiddiq (2012), separating Sudan from Egypt financially and administratively, and separating the southern part of Sudan from its northern part, so as to preserve the British possessions in East Africa.

Consequently, the first strategy of the British, as explained by Junaidy (2020), was to disrupt and sow division in the Sudan from within by emptying the south of Sudan of Muslims and supporting the dispatch of Christian missionary missions. After that, they established the Equatoria Corps, as stated by Mazari and Salehi (2021), which was a southern army consisting only of southern Christian soldiers, with a complete withdrawal of all the northern Sudanese forces from the South (Obaid, 2020). Then, they imposed Sunday as a holiday, rather than Friday so that the Southerners could feel themselves dissimilar from the Northerners (Junaidy, 2020). Meanwhile, Christianity began to spread in the South, and the English language, instead of the Arabic language was adopted to be the official language there (Iyman, 2015). Later, when Sudanese national consciousness began to rise again, the British passed The Closed Districts Ordinances of 1922, to pursue a firm and strict policy to separate the South from the North (Muhammad, 1994). In consolidation with this move, a policy known as "the Passports and Permits Ordinance" was enacted in the same year (Abdulkarim, 2017). Accordingly, as pointed out by Amin (2014), Johnson (2009, and Leonardi (2013), North Sudanese and Egyptians were prevented from entering the South, whether for reasons of visiting or trading, even though it was a part of their country since the days of Mohamed Ali Pasha and his successor Khedive Ismail (Suleiman, 2000; Toussoun, 2011). Unless the Governor-General of Sudan gave a written permission, stating the duration and purpose of the visit, no North Sudanese and Egyptians would be allowed to enter the South (Toussoun, 2020, Junaidy, 2020). It is true that the 1899 agreement between Great Britain and Egypt for the future administration of the Sudan did not stipulate a British to be "the governor-general", but the appointee was always British, as were heads of departments, directors and governors, because the appointment to the former position by Egypt was on the recommendation of Great Britain who used to chooses/select only British on those later positions (1899, Art. 3). Egypt itself was under British occupation this situation helped the occupier, as mentioned by Hussein (2013), in his policy of separating the Sudan.

The purpose for explaining the external reasons, along with the internal reasons that will follow subsequently, is because these factors played an essential role in implementing the provisions of the international succession, based on "the Vienna Convention on Succession of States in Respect of Treaties" (VCSST, 1978). More specifically, this research paper was aimed at discussing and analyzing the issues involved, to help clarify whether South Sudan is "a newly independent state" according to Article 2/f of the VCSST (1978), or a state which was the result of the separation of part of a state, under article 34 of the same convention (VCSST, 1978).

In 1956, Sudan gained his independence after more than 50 years of British colonization (Allam, 2015; Iyman, 2015). The British finally left Sudan, but after leaving behind their distinctive colonial mark, a division and conflict among the people of the same country; they separated Sudan from Egypt first (Alsrogy, 1998; Vries & Schomerus, 2017), and as a result of intensifying the gap between the sons of the one Sudan (Mazari & Salehi, 2021), feelings of enmity between the peoples of the north and south grew worse (Jawad, 2012). In other words, the one Sudan became two Sudans before the British colonists withdrew (Musa, 2013).

The internal mismanagement of this cracking, which was gradually caused by Britain over five decades, by the government of Sudan (GOS) after independence, according to Buti (2015), had very serious consequences. The GOS tried to get things back to normal immediately, by imposing the Arabic language, not only in the southern schools, but also in its government offices (Leonardi, 2013). This was in addition to restricting the missionaries' activities, and changing the public holiday to Friday instead of Sunday (Obaid, 2020). This sudden policy changes, according to Obaid (2020), sparked a backlash among southerners and made them describe the previous government measures as aimed at persecuting the Christians and pagans, and force them to embrace other religion.

Overall, military confrontations remained the approach taken by both sides in the dispute, punctuated by periods of truce that did not last long, as this was followed by more civil wars (Buti, 2015). This was the tumultuous situation until the Comprehensive Peace Agreement (*The CPA*, 2005) was signed in Naivasha, between the GOS and "the Sudan People's Liberation Movement/Army" (SPLM/A). This agreement declared the end of the civil wars between the North and South Sudanese once and for all (Shabana, 2015).

In compliance with the CPA (2005), a secession referendum was held in 2011 (Iyman, 2015). It resulted in 98.83% voting for secession, which declared the emergency of "the Republic of South Sudan" (Alkhatib & Alshab, 2012). Contrary to the aspirations of the Southern Sudanese, the new State plunged from 2013 to 2020 into more devastating civil wars (Bahreez, 2020). This was just only two years after its secession, as pointed out by Johnson (2014), and Mazari and Salehi (2021). As a result of the renewed fighting, more than 2.5 million South Sudanese was forced to flee their homes (Mawadza & Carciotto, 2016). According to Idan (2015) the new state suffered severe economic losses. This proves that in the final analysis, secession is not always the best solution to the problems of multi-ethnic states (Shabana, 2015).

SOUTH SUDAN AND THE NILE RIVER

Initially, and in terms of their international legal status, rivers are divided into two types (Alnuaymi, 2018). Internal rivers which are located entirely within the territory of one state, belongs to the territorial state and are subject to its sovereignty alone, for example, the Volga river in Russia (Salih, 2010), and Muda river in Malaysia. International rivers are rivers which separate the territories of two or more countries, or are located in the territories of more than one country, like the Nile and the Niger Rivers in the African continent (Fahmy, 2013).

From both internal and international perspectives, of all the rivers on Earth, the Nile is the longest and also one of the most complex international watercourses, due to the large number of its basin countries, with their different interests, orientations, and geographical locations (Salih, 2010). After the secession of South Sudan, there are now eleven countries on the shores of the Nile (Fahmy, 2013). Excluding "Eritrea, Sudan, and Egypt", the remaining eight states of the Nile Basin, including South Sudan (Raafat, 2012), are considered source countries (Salih, 2010).

South Sudan has enormous water resources (Fadl, 2014). It has five hundred and eighty billion cubic meters (BCM) of rainfall annually, i.e., roughly one-third of the rainfall that falls on the entire Nile Basin (Allam, 2015). The total runoff renewable water resources is 76 BCM annually, from which 34 BCM leaves toward the Sudan; the per capita share of water for South Sudanese is up to 4382m³/yr. This means that South Sudan is in a state of water abundance (FAO, 2015; Nawara & Mokhtar, 2018). Finally, about 20% of the Nile Basin lies within South Sudan, and 97.5% of the South Sudan lies in the Nile Basin. This is due to its privileged location in the middle of the Nile Basin and the African continent (FAO, 2015).

Finally, the level of reliance on the Nile waters varies among the basin countries. This reliance decreases the further South we go, where the rains, rivers and lakes i.e. other water resources exists, and it increases the further we go north towards the downstream, starting from Sudan and reaching its peak in Egypt. Both countries depend on the Nile River to provide all of their water needs, because they have no other water alternative (Mohamed, 2014). It is worth mentioning here that the Nile River loses tens

of billions of cubic meters of water annually in South Sudan, due to the expansion of swamps and marshes. This explains why the quantity of rainfall South Sudan receives and the amount of water that eventually finds its way into the Nile River stream varies significantly (Allam, 2015).

PROBLEM STATEMENT

First and foremost, the water rights of any state in an international river, as discussed by Alashaal (2022) and Ismail (2012), are the agreed rights and the water shares that were stated in treaties with the other riparian states. Preceding South Sudan's succession, the Sudan's water rights in the Nile waters, the predecessor State, was regulated by a series of international agreements. The most significant of which is the 1959 water agreement that was concluded with Egypt (Helal, 2013).

However, the CPA did not address the issue of future water allocations between the two states after the 2011 referendum in any form (Shroff, 2019; Wendl, 2016). Moreover, the CPA (2005) only briefly addressed the issue of water resources under "The Power-Sharing Section" rather than "The Natural Resources Section" that dealt with land and oil. This highlights the fact that the GOS and the SPLM/A, as stated by Brady (2015), viewed the Nile as an issue of power first and foremost. Additionally, on September 27, 2012, after the succession of South Sudan, the Nine Agreements of Addis Ababa of 2012 was signed. These agreements included outstanding matters between both countries such as oil, transportation, border issues, banking, trade, and other commercial issues yet it had come devoid as well of any regulating to their shares in the Nile waters.

Furthermore, regarding the Nile River agreements that preserve the Water Rights of Egypt and Sudan, South Sudan's position before secession is different from that of its position after secession. Before the secession in 2011, the government of South Sudan agreed to the preservation of Egypt's water rights, and that the South would not use the Nile water, except within the limits of Sudan's share based on the 1959 Agreement with Egypt (Alnour, 2012). According to Ruben Marial Benjamin, the deputy representative of the government of the South in Cairo then, "The South does not need the Nile waters so that its secession could pose any danger to Egypt's share in the Nile" (Salih, 2010). Additionally, the Minister of Irrigation and Water Resources in the Government of Southern Sudan, Joseph Dwyer, stated in 2008 that there will not be any threat in the event of the secession of the south to Egypt's share in the Nile River (Salih, 2010).

However, after secession a new approach of dealing with the Nile River agreements had begun. In April 2013, the Ambassador of the Republic of South Sudan in Cairo, Anthony Kon, stated that: "The State of South Sudan is not obliged or required to accede, recognize or adopt a position on the Nile water previous agreement because it was not in existence at the time of these agreements" (Fadl, 2014). Also, Paul Mayom Akech, the Minister for Irrigation and Water Resources in South Sudan, stated that: "South Sudan does not recognize the 1959 agreement between Egypt and Sudan, as South Sudan was under the control of Sudan when the agreement was signed, and the people of the South could not say anything, but today we say that we have nothing to do with this agreement, and South Sudan already joined the NBI, and it's on the way to join the CFA, through which the Nile Basin countries can meet to discuss the best ways to exploit water resources" (Fadl, 2014).

Thus, South Sudan's position regarding the Nile agreements, which Sudan as the predecessor state was obligated by, is ambiguous and needs clarification under international law provisions; especially, after South Sudan's accession to the CFA (2010), as it does not recognize the Nile agreements that preceded it (Shroff, 2019).

RESEARCH OBJECTIVES

This study has the following research objectives:

1. To examine the relationship between the new state of South Sudan with the Nile River agreements that the Sudan as a predecessor state was obligated in the light of the 1978 VCSST.
2. To analyse the impact of South Sudan's accession to the CFA in terms of its water obligations with respect to Sudan and Egypt.

RESEARCH METHODOLOGY

This research paper employs the doctrinal legal research methodology, to analyse the legal relationship between the new state of South Sudan and the Nile River agreements, and to investigate the impact of the CFA's entry into force on South Sudan's international water obligations, especially toward Egypt and the Sudan as the Nile's downstream countries.

By adopting the Library-based Method of data collection, this study is based on primary data such as "the 1945 Charter of the United Nations (UN)" (United Nations, 1945); also, the "Vienna Convention on the Law of Treaties" of 1969 (VCLT, 1969), and the 1978 VCSST. Moreover, data collection included studying the 1959 water agreement between Egypt and the Sudan, the CPA (2005), and the CFA (2010), as critical regional agreements. Furthermore, the relevant International Court of Justice (ICJ) jurisprudence, for instance: the case concerning Military and Paramilitary Activities in and against Nicaragua in 1986, also the case concerning the boundary dispute between the "Libyan Arab Jamahiriya and the Republic of Chad" in 1994, and finally, the case brought by Hungary and Slovakia in 1997 regarding the Gabčíkovo-Nagymaros project over the Danube River.

On the other hand, the secondary data were gathered from other relevant resources, for example books, journal articles and reputable websites. These included for instance, the official page of the Nile Basin Initiative, as well as reports from international bodies, such as the International Law Association. By using the content analysis approach, both primary and secondary data were then analytically examined to develop legal recommendations. Finally, through the Historical and the Analytical Methods this research paper will seeks to achieve its research objectives.

THE LEGAL STATUS OF SOUTH SUDAN FROM THE NILE BASIN AGREEMENTS UNDER THE LAW OF TREATIES SUCCESSION

International succession refers to the process by which a state is succeeded by another in an international legal bond, i.e., the rights and obligations arising from it (Shaaban, 2018). As a result of changes in its territorial entity, either by separation or losing part of its territory or by uniting or annexing part to its territory (Fahmy, 2013). In all cases, it entails the termination of the sovereignty of the predecessor state over a specific territory (Jilali, 2020), to be replaced by the sovereignty of one or several successor states (Buti, 2015). For example, the Austro-Hungarian Empire dissolved in 1918, resulting in Austria, Hungary, and Czechoslovakia. The latter split in 1993 into Slovakia and the Czech Republic. Another instance was when "the United Arab Republic" became Egypt and Syria in 1961 (Omran, 2017).

The Conditions of the International Succession of Treaties

These are as follows:

According to the 1978 VCSST, "international succession only occurs between states; and in respect of written treaties" (VCSST, 1978, Art.1,3). By projecting these two articles onto the case of South Sudan, the following was found: the succession of South Sudan resulted from a state which is the Republic of Sudan, and resulted in a state, which is the Republic of South Sudan (Iyman, 2015); also, all of the Nile River agreements are in written form. For example: the 1902 agreement between Great Britain and Ethiopia (Hertslet, 1909); and the 1959 agreement Between the Sudan and Egypt (UN Treaty Series, vol. 453, No. 6519, 1964).

Based on the 1978 VCSST, international succession should occur "in accordance with the international law principles, mainly that which is embodied in the Charter of the United Nations" (VCSST, 1978, Art.6). According to Article 2 of the UN Charter: I. "States shall fulfilling in good faith the obligations assumed by them" (UN Charter, 1945, Art.2/2); II. " States shall have equal sovereignty" (UN Charter, 1945, Art.2/1); III. "States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state" (1945, Art.2/4); IV. " States shall settle their international disputes by peaceful means" (UN Charter, 1945, Art.2/3).

Regarding the first principle, it has been found that, the CPA (2005, Part B, the transition process, Art. 2.5) imposed over the GOS and the SPLM/A, an essential obligation to hold an internationally monitored referendum after an interim period of six years to confirm the unity or to vote for secession. It has been found that, this fundamental obligation was fulfilled in good faith by both parties in 2011, which resulted in the Republic of South Sudan (Iyman, 2015). Also, the Sudan was even the first country to recognize the South Sudan (Ahmed, 2016). This means the acceptance of the emergence of a new international entity, and the readiness to enter into legal relations with it (Alrushidi, 2014).

Regarding the second principle, it was the case that South Sudan was accepted as a member of the UN on July 14, 2011. Based on the July 13, 2011 recommendation of the UN Security Council, it became the latest country to join the UN. One of the most important results of this membership, according to Article 2.1 of the Charter of the UN, is that a new member will have equal sovereignty, like all the other member countries of the UN. Thus, the Sudan as the predecessor state, and South Sudan the successor state, have equal sovereignties.

With regard to the third principle, which has been confirmed also by Articles 39 and 40 of the 1978 VCSST, the CPA successfully resulted in not only the recognition of both parties to the internationally monitored permanent ceasefire, which was from 2005 till the referendum date in 2011, and as stated in Article 2 of "Chapter VI: Security Arrangements.", and Part I, Article I of "Annexure I: Permanent Ceasefire and Security Arrangements", but also the end of the civil war in Sudan after decades of fighting, destruction, and death (Abd, 2022).

Regarding the fourth principle, it was the case that the GOS and the SPLM/A dispute was settled by the CPA, which according to Brady (2015) is a peaceful tool to settle a dispute. According to the CPA (2005): "The parties are committed to a negotiated, peaceful, comprehensive resolution to the conflict based on the declaration of principles for the benefit of all the people of Sudan". In other words, the CPA was considered a peaceful tool that settled the dispute, ended the civil war, and installed an interim constitution for Sudan until the fate of the South was decided in 2011 (Thomas, 2015; Wendl, 2016).

Hence, South Sudan's secession came about through a peaceful mechanism of power transfer, with the consent of the GOS, and in accordance with Sudan's interim constitution. That mechanism granted the south the right to self-determination through an internal referendum monitored by the international community (Allam, 2022). In short, South Sudan's secession has occurred in conformity with international law principles.

Finally, based on the 1978 VCSST, succession cases must occur subsequent to "the entry into force of the Convention" (VCSST, 1978, Art.7). It is worth noting that the 1978 VCSST was concluded on August 23, 1978, and on November 6, 1996 entered into force. This means that the secession of South Sudan which occurred in 2011 was subject to the existing provisions, as it took place after the VCSST entered into force.

The Provisions of the International Succession of Treaties

Concerning Frontier Agreements

According to Articles 11 of the 1978 VCSST: "A succession of States does not as such affect: (a) a boundary established by a treaty; or (b) obligations and rights established by a treaty and relating to the régime of a boundary" (VCSST, 1978, Art.11). Thus, the boundary agreements remain valid and in-force against the successor states (Mohamed, 2017), with all rights and obligations it entailed (Alshoshan, 2018). Therefore, it is not permissible for the successor state to violate its provisions (Jilali, 2020).

In accordance with State practice and the fundamental principles of international law, Article 11 is also considered just, balanced, firmly established, realistic, and universally acknowledged (Helal, 2013); and it is nothing but the regulation of the established International Customary law (Mohamed, 2017).

It important to mention here the ruling made by the ICJ in the case concerning the boundary dispute between "Libyan Arab Jamahiriya and the Republic of Chad" dated 3 February 1994. The ICJ found that the border between Libya and Chad was defined by "the Treaty of Friendship and Good Neighborliness between France and Libya" (1955), and determined the course of that boundary accordingly. This was even though Chad was under the French occupation back then, as it only gained its independence in 1960. This means that the boundary agreements continue for successor states, even if the occupier was the one who established them in the first place. Furthermore, although the 1955 treaty was temporary "for a period of 20 years", the Court considered the establishment of these borders has in fact the beginning of a legal life of their own, regardless of the fate of the treaty establishing them; because "any other approach would vitiate the fundamental principle of the stability of boundaries".

Hence, based on the consideration that it is an established principle in the International Customary Law, and the ICJ, Article 11 is obligatory to adhere to and permissible to invoke against all, including South Sudan, regardless of their position from the 1978 VCSST (Allam, 2022). This is important to preserve global peace and stability and to prevent the potential disorder that might arise if international borders agreements were subject to change after a transfer of sovereignty over specific land (Helal, 2013).

Concerning Other Agreements

Before clarifying the 1978 VCSST provision, regarding the international succession of other agreements, it is paramount to answer a fundamental question first about whether South Sudan is "a Newly Independent State" that fell under article 16 of the VCSST, or it is the result of "a separation of a part of a State", subject to article 34 of the same convention. This is because each of the articles entails special provisions completely different from the other, as follows:

The "newly independent State" is a new State emerged after its liberation from colonialism (Alrushidi, 2014; Dumberry, 2021). Based on Article 16 of the 1978 VCSST, the "newly independent state", which has come into existence through decolonization, starts its life with a 'Clean Slate' based on the Tabula Rasa theory (Orakhelashvili, 2018). In other words, it does not necessarily inherit treaties that was in force in the face of the predecessor state when it gained its independence (Jilali, 2020), rather, it has the right to adapt its new situation in the manner it deems appropriate (Buti, 2015). That is only if the new state was formerly a dependent territory, i.e., a colony (Helal, 2013).

In contrast, the case of a state's succession that results from a separation of part of a state, it is a new state that emerged from a break-up of a state, and not in the context of decolonization (Allam, 2022; Dumberry, 2021). According to Article 34 of the 1978 VCSST, "the successor state inherits all treaties in force of the predecessor State at the date of the States' succession" (VCSST, 1978).

Based on the external and internal reasons that led to South Sudan's succession, which were previously mentioned in the introduction, South Sudan is not a newly independent state subject to article 16, rather it is a case of a state's succession that results from a separation of part of a state under article 34, "as the relationship between Sudan and South Sudan can hardly be characterized as a dependency akin to what had prevailed between European powers and their colonial possessions" (Helal, 2013).

Nevertheless, the international customary law, in this regard, has divided the international agreements of the predecessor state into two categories (Alrushidi, 2014). The first category refers to the political agreements. The successor state is not bound by these political agreements because the legal personality of states is taken into account. These treaties cease to exist for the successor states (Buti, 2015), for instance, friendship and alliance treaties (Omran, 2017). The second category is the regional agreements, also known as the territorial regimes' agreements, which will be explained subsequently due to its scientific importance for this research article. Overall, the presence of this division between political and regional agreements, is a result of the formation of the modern state and the differentiation of its three elements, namely territory, people, and governing authority with separate legal characteristics (Allam, 2022).

Regional agreements are those treaties whose legal effect is limited to a particular territory, independently from the state practicing sovereignty over it (Buti, 2015). The rights and obligations outlined in these treaties relate to the state's territory, not the governing authority that exercises sovereignty over it (Allam, 2022). These include treaties relating to boundaries (Omran, 2017), international easements (Buti, 2015), railways and the use of highways (Shawky, 1989), regulating and utilizing international rivers (Nasir, 2017; Omran, 2017), navigation freedom in rivers and maritime channels (Buti, 2015), irrigation, water supply and fishing rights (Allam, 2022). In short, any treaty which imposes specific obligations over a state's territory for the benefit of another state is a regional agreement (Alrushidi, 2014).

The established rule of the international customary law in this regard, is that these treaties remain in force-for the successor state (Jilali, 2020). It assumes the rights and obligations of that treaties as soon as it assumes sovereignty over the territory (Allam, 2022). This is why these treaties are described as dispositive treaties (Omran, 2017), as they create rights and obligations regarding a territory regardless of who is proven to have sovereignty over it (Alrushidi, 2014). Since failing to enforce that will creates tension between countries, and constitutes an explicit threat to international peace and security, which the international community seeks to emphasize and protect (Mohamed, 2017). This customary rule was codified by the 1978 VCSST in Article 12, that titled with "other territorial regimes" (Nasir, 2017).

Furthermore, the ICJ had confirmed that customary rule regarding the succession of the territorial regimes' agreement. This was highlighted in the case brought by Hungary and Slovakia 1997 regarding "the Gabčíkovo-Nagymaros project." Article 12 reflects the customary international law (Allam, 2022) and it is binding over all states, and it is not permissible to deviate from its provisions (Alshoshan, 2018). The ICJ considered that the 1977 treaty conducted between Hungary and Czechoslovakia, had established "a territorial regime" under Article 12 of the 1978 VCSST (Alrushidi, 2014), that territorial regime associated with that parts of the Danube River relating to it (Allam, 2014). In other words, the treaty of 1977 between Hungary and Czechoslovakia cannot be affected by the alteration of sovereignty between Czechoslovakia to Slovakia, since it is has become a territorial regime agreement (Allam, 2014; Omran, 2017). Thus, "the 1959 conventions of the Nile River between Egypt and Sudan" is also regional agreement, because it had established a regional regime for the utilization of the Nile waters, and entail rights and obligations for Sudan and thus, the State of South Sudan, the successor state (Allam, 2022). Additionally, "the International Law Association", in the Rio De Janeiro Conference 2008, had confirmed as well the international succession of treaties relating to territorial regimes from the predecessor state to the successor state, in its third part Treaty Law, subtitled "3.3 state succession in respect of treaties".

Hence, the regional agreements that were agreed upon by "The Republic of Sudan", the predecessor state, for example in "the 1959 agreement of the Nile River between Egypt and Sudan", constitute a restriction/ obligation on the territory of South Sudan, the successor state. The transfer of sovereignty over that territory does not lead to a dissolution of its obligations (Alshoshan, 2018), rather it has an obligatory and binding nature over the national authorities of the state of South Sudan (Quiati, 2019). This is because it is an international customary rule, as confirmed by ICJ in 1997 (Jilali, 2020).

THE IMPACT OF SOUTH SUDAN'S ACCESSION TO THE CFA ON ITS WATER OBLIGATIONS TOWARD EGYPT AND SUDAN

CFA Accession by South Sudan

In 1997, the Nile Basin Initiative was established to utilize the potential water resources offered by the Nile to its greatest extent possible (Allam, 2015). Through the establishment of mutually beneficial projects, it was aimed at minimizing the water loss estimated at approximately 96% of the total annual rainfall over the basin (Omran, 2017). The Nile Basin Initiative then worked to achieve the following two objectives. The first was to develop a framework agreement for cooperation among the basin countries (Allam, 2014). The second was to establish an institutional mechanism for cooperation, namely "the Nile Basin Commission", which will replace "the Nile Basin Initiative" upon the agreement's entry into force (Allam, 2014). Despite the agreement on the establishment of the commission, negotiations on the CFA lasted for approximately ten years (Alshoshan, 2018).

During those years, there were numerous contentious points between the downstream countries on one hand and the upstream countries on the other. Most important of these revolve around the relationship of the CFA to previous agreements of the Nile River (Allam, 2014), for example, the provision for prior notification of water projects over the Nile River and its executive procedures (Alrushidi, 2014), and the procedures for amending the framework or its protocols (Allam, 2015).

In this regard, the official spokesperson for the Egyptian Ministry of Foreign Affairs, ambassador Hassam Zaki, had announced in 2010 that what Egypt demands is the adherence to "the principle of prior notification and consultation". This was to ensure that Egypt's national interests are not harmed, as stipulated by international law (Hussein, 2017). Additionally, the Egyptian delegation insisted on including a provision in the CFA, stating that it does not contradict previous agreements of the Nile waters, such as the 1902 agreement with Ethiopia, the 1929 agreement with the Equatorial countries, and the 1959 agreement with Sudan (Allam, 2015); and, that there should be consensus among the basin countries to amend the framework or its protocols (Alshoshan, 2018).

However, the source countries of the Nile River rejected any reference to the previous agreements concerning the Nile waters, and objected to the inclusion of the prior notification's procedures in the agreement until after the redistribution of water shares among the member states; and that any amendments to the framework or its protocols have to be decided by majority (Allam, 2015). However, the corresponding author of this article argues that, the requirement to redistribute water shares between the Nile Basin countries, without a provision preventing the initiation of any planned measures on the Nile River until this condition is met, renders it an arbitrary condition and a spurious justification to overlook the principle of prior notification, which is of fundamental importance for any international river regulation.

Overall, the dispute over the aforementioned issues has remained ongoing and a subject of negotiation for several years (Woldetsadik, 2017). Even through the extraordinary meetings of Kinshasa in May 2009, Alexandria in July 2009, and Sharm El Sheikh in April 2010, the Nile Basin countries did not reach an agreement (Alrushidi, 2014).

Eventually, on May 14, 2010, the upstream countries opened the door for signature, on the CFA in Entebbe; "Ethiopia, Uganda, Rwanda, and Tanzania" signed the agreement that day (Nasir, 2017). Later, Kenya issued a statement on May 19 in Nairobi, and signed it on that date (Alrushidi, 2014). Last but not least, on February 28, 2011, Burundi signed the framework agreement (Allam, 2014). According to the official internet page of the Nile Basin Initiative, Ethiopia, Rwanda, Tanzania, Uganda, and Burundi had ratified the CFA in June 2013, August 2013, March 2015, August 2019, and October 2023 respectively (Nile Basin Initiative, 2025).

This remained the case until South Sudan acceded to the agreement on July 8, 2024; with South Sudan's accession, based on Article 43 of the CFA, the agreement entered into force on October 6, 2024, after six Basin countries ratified/ acceded to it. Consequently, what are the impacts of the accession of South Sudan and the entry into force of the CFA on its water obligations, arising from the application of the aforementioned international succession rules of treaties with respect to Egypt and Sudan?

The Relative Effect of Treaties

International treaties are not considered binding and effective, according to the established jurisprudence of international law, except in relation to the parties who have consented to be bound by its provisions. This is because they alone bear the obligations resulting from it (Hussein, 2017). In the context of international legal doctrine, this is referred to as the principle of the Relative Effect of Treaties (Alrushidi, 2014).

This principle was reflected in Article 34 of the 1969 VCLT, which states that: "A treaty does not create either obligations or rights for a third State without its consent." (VCLT, 1969). Additionally, the ICJ has affirmed the customary nature of this principle in 1986 in the case concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), as it was stated that: "... in international law there are no rules other than such rules as may be accepted by the State concerned, by treaty or otherwise, whereby the level of armaments of a sovereign State can be limited, and this principle is valid for all States without exception." (I.C.J., 1986). Furthermore, the Court reaffirmed this principle again in its Advisory Opinion issued on July 8, 1996, regarding "the Legality of the Threat or Use of Nuclear Weapons", by quoting the same text previously referred to in the above-mentioned judgment (I.C.J., 1996).

Hence, the accession of South Sudan to the CFA does not affect its water obligations with respect to Egypt and Sudan, which it inherited from The Sudan in 2011 after its successful succession, under international law provisions. The only instance based on the principle of the relative effect in which the CFA become effective for the downstream countries is when they join the treaty as well; which means that they have expressed their consent and acceptance to submit to its provisions. In other words, South Sudan's adherence to the CFA with respect to Egypt and the Sudan, is legally incorrect (Hussein, 2017), as it is inconsistent with the principle of "the relative effect of treaties" (Shroff, 2019); and it does not exempt it from its legal obligations towards the downstream countries, according to the rules of international succession treaties (Allam, 2015).

CONCLUSION

The case of the new state of South Sudan is a result of the process of state succession, through the separation of part of a State, falling under articles 11, 12, and 34 of the 1978 VCSST. Based on that lawful process, South Sudan succeeds the Republic of Sudan in all agreements in force, including that related to the Nile River, with the rights and obligations resulting from it.

Accordingly, the state of South Sudan is now a member of the Nile River agreements, in particular, "the 1959 agreement between Egypt and Sudan"; which has now transformed from being a bilateral agreement into a multilateral agreement, after South Sudan's successful succession in 2011. In other words, South Sudan has become a part of the regional system that manages the utilization of the waters of the Nile River before the CFA.

The entry into force of the CFA means that the Nile Basin Initiative will be replaced by the Nile Basin Commission (Whittington, 2024). However, the non-inclusion of Egypt, Sudan, and the Democratic Republic of the Congo presents an obstacle to its implementation (Alshoshan, 2018), rendering it impractical and possibly necessitating the need to seek a new agreement, unless the disputes surrounding the 2010 agreement are resolved (Yihdego & Rieu-Clarke, 2016). Most importantly, South Sudan in joining the CFA will not impact its water obligations with respect to Egypt and Sudan, based on the principle of the relative effect of treaties.

Overall, this research paper has recommended that the Egyptian government urge the Sudan and South Sudan to conclude another agreement besides the 27th September, 2012 conventions, to parcel out their share of the waters of the Nile River. South Sudan's demands are especially easy to accommodate under the 1959 Agreement according to Salman (2011); given the fact that Sudan has not been able to use more than 12 BCM of its share of 18.5 BCM/year according to the 1959 Agreement (Salman, 2016). Moreover, the surface water losses in South Sudan is about 42 BCM/year, as pointed out by Woldetsadik (2015). More specifically, at the Sudd and Machar swamps which are considered the most extensive swamps in the world (Salman, 2016).

In conclusion, this research paper provides legal bases for Egypt, Sudan, and South Sudan to truly understand the fate of the previous Nile River agreements. It offers valuable material based on established legal principles that will enable specialists from the three countries to negotiate on a firm foundation to reach a peaceful resolution of the issue. Additionally, international arbitrators and lawyers can also benefit from the paper's findings. They can form their best judgments or present better arguments in similar disputes concerning international rivers. Furthermore, with this integration of doctrinal methodology, comparative analytical framework, and in-depth study of the roots of the issue, this paper not only offers a profound understanding of legal issues, but also makes a valuable contribution to the library of existing knowledge on the matter at hand. The present study also provides recommendations with tangible practical value for the international legal community. Finally, the relations between Egypt, Sudan, and South Sudan should not be reduced only to issues regarding the Nile waters; rather, it should help to develop comprehensive and integrated interactions between disputing parties that serve the interests of all parties across all sectors.

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