

## Dispute Settlement on International River Uses River Nile Uses as an Example

Dr. Ibrahim M. Al-Anani  
Professor of Public International Law



**D**isputes over the use of international rivers do not differ from other international conflicts in terms of the possibility of resorting to traditional means of peaceful settlement, yet they are additionally characterized by their exclusive importance related directly to the vital interests of the riparian states because of being related often to the substantial needs of their peoples. Thus, some may prefer diplomatic settling channels instead of legal or judiciary alternatives which depend subjectively on the power of law without regarding the interests or the self-considerations of a particular state, or without paying concern to harming any riparian state. Hence, it is aroused sometimes the argument of the incapability of resorting to arbitration or to judiciary i.e., arousing the non-arbitration or non-judicial concepts.

Anyhow, tackling the preventive diplomatic means to evade the appearance or the exacerbation of the dispute may be convenient, while the means of consultation and direct or indirect negotiation may be the best channel. It is seemingly that resorting to international arrangements or regulations, particularly the regional or sub-regional entities concerned is the appropriate means to reach an accepted settlement by the parties in dispute.

The peaceful settlement of international disputes is a basic principle of the international law; a principle affirmed by peace conferences held in The Hague, Netherlands in 1899 and 1907 and stipulated on by many international agreements and charters of international organizations, on the top of which is the United Nations (UN) Charter. The realization of this principle is based on a set of rules to be observed; namely:

The duty to search for an early and just settlement of international disputes intended not to leave conflict exacerbated; making it difficult to reach a peaceful settlement.

In case of failing to reach a peaceful settlement, the parties in dispute should continue seeking to resolve it in any other way agreed upon, i.e., agreeing upon any peaceful way to whereas the means of force is prohibited by law.

Like other states, the parties in international dispute should refrain from any

action that would increase the seriousness of the situation or would endanger the maintenance of international peace and security.

The international disputes should be settled on the basis of respecting the principle of equality of sovereignty among states and in accordance with the principle of free choice of the means of settlement, taking into account the state's non-despotism to choose the means as long as the settlement offered is an appropriate way to resolve the dispute.

The peaceful settlement is mainly divided into political or non-judicial means, and legal or judicial channels.

#### **General principles and rules on the uses of international rivers**

##### **Mutual and full utilization:**

The concept of this principle resulted from the practices of the riparian states as a contradicting idea of their absolute utilization. This is resulted from the application of the principle of absolute territorial sovereignty of the state. The sticking to the idea of the absolute use by the upstream state is more effective than the downstream state.

Despite the multiplicity of manifestations of river utilization, yet the maritime exploitation occupied the larger interest of the states. Thus, the theme of a lot of relatively old international agreements is the means of organizing

maritime utilization, as well as the guarantee of free navigation in international rivers.

To cope with the international economic and social developments, and their consequences changing the perspective of river uses, the use of the river is no longer confined to transportation, it goes beyond to include different types of exploitation, on the top of which is the economic exploitation. Therefore, it was normal that the riparian states in concluding international agreements, set common regulations that aim to achieve full utilization of the river water, such as the Agreement for the Full Utilization of Nile Waters concluded by Egypt and Sudan on February 8, 1959, the Indus Waters Treaty between India and Pakistan in 1960, and the Chad Basin Treaty in 1964.

##### **The Innocent Use:**

Also, the international river law has adopted a number of rules tackling the necessity of innocent use of international river water. The idea of this principle agrees with the principle of the non-harmful use which does not entail any tort towards the interests of the other states. The use of a riparian state is considered innocent if it would not cause adverse changes or modifications i.e., pollution in the river water.

In general, what has been approved by international jurisprudence and work on the innocent use of water can

be crystalized in the following points:

- A** - It is not permitted to the watercourse state to take any action or conduct that would affect the due rights and interests of other states without previous consultation or agreement with these states.
- B** - No state is permitted to take arrangements that would harm other watercourse states, as in the case that a state may cause a flood or a decrease in the share of other states in the amount of water.
- C** - Each state should prevent any action that would pollute or increase the contamination of water in the watercourse in a way that would harm other states. Moreover, it should cooperate with other states to prevent or mitigate the contamination.
- D** - Any State shall act outside the principle of innocent use of water shall bear the international responsibility.
- E** - Water utilization is considered non-innocent in the case that it involves any abuse of right.

**The Integrated Use:**

This principle is based on the concept that deals with the waterway as an integrated unit and all states on the waterway have the right to benefit from it as a whole unit. Times ago, this concept has been related to using the international river, even though it has been developed recently, where it was

associated to the freedom of navigation in the international river by the riparian and, sometimes, non-riparian states.

The jurisprudential studies have been interested in this idea of integration. The International Law Association in its session in 1956 stressed the necessity of cooperation, as possible, among the riparian states aiming at guaranteeing the optimum use of water resources. For this purpose, these states should consider the river basin as an integrated whole on one hand and should not neglect any possible use of water where all stakeholders shall gain the utmost benefit on the other hand. Moreover, the Expert Committee constituted by the United Nations (UN) Secretary-General in 1956 to prepare a report on integrated development of river basins supported these principles to prepare a project in this concern.

**Just and reasonable utilization and share of international watercourses:**

In terms of the United Nations interest in modifying the international law and the studies made by the International Law Commission, since its session in 1974 on the law of the non-navigational uses of the international watercourses. After those studies were confined to legal problems related to using and utilizing international rivers, the framework agreement related to the non-navigational uses of the interna-

tional watercourses came based on a new concept of the optimal cooperation among various international watercourse states i.e., the just and reasonable utilization and share.

The idea here is that each watercourse state justly and reasonably enjoys the stream that crosses or located on its territory, and particularly uses and develops this part in order to optimally benefit from it, taking into account the interests of the watercourse states concerned, in a manner consistent with adequate protection of the watercourse. On the other hand, watercourse states shall share using, developing and protecting this waterway in just and reasonable manner. This participation includes the right to use and the duty to cooperate in both protecting and developing the watercourse, within the framework of acceptable public order for the use of international waterways.

To achieve just and reasonable use of an international watercourse, all related factors and conditions should be taken into account during setting any regulation. Among these factors and conditions as outlined in the agreement:

Natural factors including geographical and meteorological factors.

Social and economic needs of the watercourse states concerned.

The population depending on the watercourse in each waterway state.

The impacts of a watercourse state's

utilization) of the waterway on the others.

Existing and potential uses of the watercourse.

Maintaining, protecting, developing and rationalizing in using and in costs of measures taken towards the watercourse resources.

The availability of alternatives of comparable quantity for planned or already-existing use.

#### **Rights and Obligations of the Watercourse State**

The watercourse state shall not enjoy absolute sovereignty over the waterway passing in its territory. Thus, the concept of the absolute sovereignty of a state is no longer accepted recently for it might entail serious torts to the interests and rights of other states concerned.

#### **Measures to Be Taken on the International Watercourse:**

In terms of the complementary outlook to the uses of the international watercourse adopted by the international jurisprudence and activated by the provisions of its Framework Agreement, the latter did not overlook the recent emphasis on the inevitability of exchange, consultation and negotiation between the watercourse states on the planned measures to be taken on the status of an international watercourse. For this purpose, each watercourse state, before implementing any

measure that is likely to have a grave negative impact on other watercourse states, should send a prior notice to these states in proper time. This notice should be accompanied by available technical data and information, including the results of the environmental impact assessment studies, in order to give the opportunity before these states to evaluate the potential effects and the appropriate means to deal with these measures.

In order not to hinder the interests of the state aiming to implement a certain measure referred to previously, the agreement determines a set period of time when the state(s) receiving the notification to decide and inform its stance to the state sending the notification. Except for cases where there is an agreement between the states concerned about the deadline of notification, the agreement has decided to grant the state receiving the notification a period of six months and can be extended to a maximum of six month further period at the request of this state in case of facing difficulties on evaluating measures to be taken. That time is specified to study and evaluate the potential impacts of the measures referred to and to report the achieved results.

During that period known as “period reply to notification”, the state sending the notification should cooperate with the state(s) receiving it, by providing available and necessary additional data

and information, upon request. This is done in order to make a proper evaluation and not to initiate the implementation of any of the measures to be taken or to give a permit before obtaining the approval of the states receiving the notification. This is happened except in extremely urgent case of protecting public health, sanity or other interests on the same degree of importance. The agreement allowed the state concerned to proceed immediately to the implementation without waiting for a reply to its notification on a condition not to harm the interests of the watercourse states concerned, pursuant to the principle of just and reasonable use and share. The same rule is applied in the case of failure to respond to the notice during the settled or agreed deadlines.

**The procedures to be taken in case of failing to notification:**

In some cases, a watercourse state might have acceptable reasons that led to believe that another watercourse state is planning to take measures of grave negative implications on its interests. In this case, the former may demand from the latter to respect the necessity of notification, providing that a document-proved explanation should be attached to the notification request setting forth its grounds. If the latter is convinced that it is not committed to send a notification, it has to inform the former state with a document-supported stating-reason explanatory

statement. In case of disagreement between the two states i.e., in the absence of the approval of the former which believes that it should be notified to the taken measures, including the justifications of the latter for its rejection, the two states, under the request of the former should immediately begin consultations and negotiations in good faith to reach a just settlement for the problem. Henceforth, the state intends to take measures should refrain during the consultations and negotiations on implementing or allowing the implementation of these measures for a period of six months on the demand of the other state upon its demand of consultation or negotiation, unless the two parties agreed otherwise.

**Protection, conservation and management:**

The watercourse states bear the responsibility to take necessary measures either individually or, if necessary, in conjunction with other states concerned, for protecting and conserving systems of environmental implications and effects on the vital presence in the international watercourse. For this purpose, the watercourse states shall take the necessary steps to coordinate their policies in this regard. Among these steps is that the watercourse states shall consult with each other, at the request of any of them, in order to reach measures and methods to be agreed upon to prevent, reduce

and control the contamination of the international watercourse. Among these measures and methods are:

- Developing goals and challenges of common standards for water quality.
- Developing practical technologies and practices to address water contamination resulting from specific or non-specific sources.
- Developing lists of substances that should be prohibited, reduced, investigated or monitored to enter to the international watercourse.

Concerning the case of the armed conflict among states on the international watercourse or related to it, where there is the element of surprise, which leads to a case of emergency, and where it is considered one of the harmful cases to the interests of the watercourse states, it should take into account the previous disciplines and commitments in such cases. In non-emergency cases i.e., the involuntary cases that may harmfully affect the interests of natural or legal persons, the law in this case gives them the right to claim compensation or other forms of equity by resorting to judicial or other proceedings. Thus, the agreement obliged watercourse states to guarantee this right to all natural or legal persons without distinction, and to ensure the right to watercourse states to agree on any other way to protect their interests.

**The Nile Basin Initiative (NBI)**

In 1999 NBI was formally launched under the resolution of the Council of

Ministers of the Nile Basin States and has been supported by the World Bank (WB). This new initiative showed the progressive vision of the Nile Basin States, where the need to actually engage in stages of implementing projects, rather than to limit efforts on studies and consultations. The initiative has raised the slogan of improving rates of economic development and fighting against poverty. The organization structure consisted of the Ministerial Council and the Technical Advisory Committee and the General Secretariat based in Entebbe, Uganda. Eritrea did not participate in this organization and merely played the role of the observer. The basic purpose of this organization is the development of an action program of the Nile Basin strategy to reach its future vision and take advantage of the shared water resources of the River Nile.

The initiative includes 22 projects distributed on two axes:

- 1 - The Shared Vision Projects (SVP) at the level of the Nile Basin States that aims at achieving a comprehensive cooperative management to develop the Nile Basin. These projects are distributed on the basin states; each to tackle its role while Egypt is schemed to adopt practical training projects.
- 2 - The Nile Basin Subsidiary Action Programs are held in parallel with the Common Vision to achieve cooperation and development through these development projects. These pro-

grams include the following projects:

The Nile Equatorial Lakes Subsidiary Action Programs (NELSAP) that incorporate eight states; Burundi, Congo, Kenya, Rwanda, Tanzania, Uganda, Sudan and Egypt,

Projects to improve agricultural productivity and Fisheries on Lake Albert and Kyoga, and

Projects of integrated management of water resources of both Mara and Kagera Rivers on one hand and Malakisi, Malaba and Sio Basins on the other hand, as well as the abatement of water hyacinth on Kagera River.

Egyptian effort goals focus on water conservation of the River Nile, as the primary objective of the Egyptian foreign policy calls on security, stability and development that coordinates with the Egyptian national objectives topped by the objective of development and reconstruction. Aiming to achieve this goal, Egypt adopted a deliberate approach about ensuring stability in the Nile Basin by seeking to peacefully resolve conflicts and to support mechanisms for cooperation among the Nile Basin states. As being governed by general principles of constant framework that ruled any Egyptian orientation of cooperation with the Nile Basin States, particularly Ethiopia, Egypt fully respects its water policy towards these states as follows:

- A - Considering the Nile Basin as a whole unit where there is no conflict of interests between its states, and

integrating to achieve the maximum benefit for all.

- B - Applying the principle of just utilization, not fixed water shares.
- C - Being administered without prejudice to the principles in the agreements governing the use of the Nile.
- D - Implementing its water projects within the framework of its determined share (55.5 billion cubic meters).
- E - Supporting the principle of non-transfer of the Nile Basin water outside its states' borders in accordance with the principles of the Helsinki in 1966.

These principles can be based on two foundations:

Recognizing the acquired rights within the framework of the existing international agreements, and

Acquiring a just share of the additional revenue of the river, this does not mean that the distribution of water is in equal proportions but it takes place in just rates taking into account the following factors:

- The topography of the basin,
- The general meteorological conditions around the river basin,
- The previous and the current use of the river water,
- The economic and social needs of each Nile Basin state,
- The population component,
- The extent of the existence of alternative water sources,
- The need to avoid the unnecessary excessive use of water or causing torts to other benefiting countries.