Arab American University

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Succession of States in Treaties (A Case Study of the Inherited Treaties Relating to the Nile River)

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Thesis Approval

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Declaration

I'm Tariq Narani a student at Department of Graduate Studies, Arab American University, hereby declare that I have completed a Master's thesis entitled: Succession of States in Treaties (A Case Study of the Inherited Treaties Relating to the Nile River).

I certify that this thesis is the result of my personal efforts, that I have not used any person or entity illegally, and that all sources and references used in preparation the thesis has been accurately documented in accordance with academic research standards.

I also confirm that I have reviewed all academic laws and regulations related to academic research and writing, and that I will abide by all ethical and scientific rules while preparing this thesis.

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Abstract

Succession of states is defined as the process of one state replacing another state in responsibility for the region's international relations. This process has several problems, the most important of which is the extent of the binding of the treaties to which the previous state was a party to the new state. This same problem led to a legal dispute between the Nile Basin countries over the extent of the binding of the treaties that it was concluded by colonial countries during their colonization of the Nile Basin countries. To find an answer to this question, custom and jurisprudential theories must be considered, in addition to the Vienna Convention on the Succession of States in Treaties of 1978, which was established by the International Law Commission in an attempt to codify previous international customs.

after researching the jurisprudential theories applied by countries, and in the Vienna Convention on the Succession of States in respect of Treaties, it became clear that the International Law Commission documented some previous international customs and practices in the 1978 Convention, where the convention stipulated in its articles the application of the continuity theory to the case of new states arising from situations of separation or union. Also, the clean slate principle was applied to the case of newly independent states. Accordingly, the Nile Basin countries are newly independent states to which the clean slate principle applies, meaning they do not inherit the treaties in which the former colonial state was a party. However, the inherited agreements related to the Nile River are agreements establishing regional systems and fall within the scope of Article 12 of the convention, which states that agreements establishing regional systems are not affected by the succession of states and remain

binding on successor states. This was applied by the International Court of Justice in its ruling on the Gabcikovo-Nagymaros case

However, the Nile Basin countries are considered independent from colonialism, and the application of this rule to them is contrary to the right of newly independent states to start a new international life free from the effects of colonialism. It also contradicts the right of peoples to self-determination and the principle of sovereignty of peoples over their wealth and natural resources, as well as the right of peoples to development.

Table of Contents

Chapter One: Introduction

1.1 Introduction

Changes usually occur in the state that affect the form of government or the ruling group within it, either through democratic means such as elections or non-democratic methods such as a military coup, but all of this does not affect the international personality of the state or its obligations towards other states arising from international treaties concluded by those states among themselves, but, the state may go through changes that lead to changing the political authority that exercises its sovereignty over a particular territory from one state to another state, that is, one state replacing another state in sovereignty over a specific region and assuming its responsibilities for the international relations of the region with other states as a result of several reasons such as the union or separation of states or Independence, and this is what is called the succession of states, or in another term that the jurists of international law have differed on, which is International inheritance.

The change in the political authority responsible for the region's international relations leads to several problems that affect the stability of transactions and relations between states, the most important of which is the fate of the property and debts of the predecessor state or the extent to which the treaties concluded by the predecessor state with other states are binding on the successor state, which leads to a legal problem that arises between the successor state and the state party to the treaty that holds rights or is subject to obligations.

Although international jurisprudence regulates this subject, jurists differed in regulating the succession of states, and their theories on the subject varied. In addition

to the jurisprudential differences, there were differences in the positions of states and previous practical practices in previous cases of succession of states. Each case differed from the other, and the position of each state differed from the states that It had a dispute over the issue of succession from other countries, and this has made the issue of state succession one of the important topics in international law that requires legal regulation to those problematic issues.

With the increase in international disagreements over the problems resulting from the succession of states, such as the binding of treaties to the successor state and the fate of the property, debts and archives of the successor state, the International Law Commission established in 1978 an agreement regulating the succession of states in international treaties, and also in 1983 an agreement regulating the succession of states in the property, debts and archives of the successor state. These agreements do not apply retroactively, that is, in cases of succession of states that occurred before the entry into force of the Vienna Conventions of 1978 and 1983, these agreements are not applied to them except with the consent of the successor state and the state party to the inherited treaty to apply the agreement to the existing dispute over the problems resulting from the succession of the state with Knowing that most of the cases of dispute over the issue of international succession, the effects of which continue to date, occurred before the two Vienna Treaties on the succession of states entered into force, as the Convention on the Succession of States in Treaties of 1978 entered into force in 1996.

As previously mentioned, state succession can result from union, separation, or independence from colonial rule. However, the case of state succession resulting from the independence of a state from colonialism is the most contentious, often

accompanied by international disputes between the newly independent state and other countries this is because the colonial countries were colonizing these countries not only for military or political reasons, but rather they saw in these colonies economic projects that included fertile lands and cheap labor. Britain, for example, saw British India (India, Pakistan, and Bangladesh) as fertile land for agricultural projects and a large market to promote its industries, Similarly, it saw the countries in the Nile Basin as suitable for cotton cultivation, and to maintain their projects. In the Nile Basin countries, treaties were made with other basin countries to ensure the continuous flow of the Nile River at abundant levels for their farms, such as the Gezira Scheme established by Britain in Sudan in 1925 for cotton cultivation, which remains operational to this day. Additionally, colonial powers entered agreements among themselves to strengthen their influence in colonial territories, sometimes making concessions to achieve this.

The British Kingdom concluded several agreements related to the Nile River, some of which were on behalf of Egypt and Sudan during its colonization, and some were on behalf of the Nile Basin countries that were colonizing (Uganda, Tanzania and Kenya) with the Egyptian government, such as the Nile Water Sharing Agreement in 1929 and also the 1925 agreement that was concluded between Italy and Britain, which included Italy’s recognition of Egypt and Sudan’s prior right to the waters of the Nile River. Most of these agreements stipulated a common matter, which is to prevent any upstream country from establishing projects on the Nile River that might negatively affect the flow of the river and the level of water reaching Egypt.

After the independence of the Nile Basin countries, their opinions varied regarding the compulsory treaties concluded by the colonial countries. Some of them had a position rejecting those agreements, and some of them insisted on adhering to the agreements. As a result of the position rejecting the compulsory inherited treaties, the countries adopting this position concluded several agreements, the most prominent of which was the Entebbe Agreement, which was signed in 2010 by 5 Nile Basin countries, including Ethiopia, Kenya, and Uganda, which negatively affected Egypt and Sudan's shares of the river's waters, which both countries consider to be acquired historical rights confirmed by the agreements concluded during the colonial period, which sparked a dispute between those countries over the binding extent of that agreement and the legality of projects established on the Nile River and its tributaries, which negatively affect Egypt and Sudan's share of the river's water.

1.2 Research Problem

As a result of the agreements previously concluded among the colonial powers regarding the Nile Basin countries, a dispute arose between the successor states regarding the extent to which those agreements were binding on the successor states. While most riparian countries claimed that these agreements were not binding on them because they did not participate in their formulation, Egypt and Sudan, as downstream and transit countries, opposed this view. They argued that these agreements were binding and confirmed their historical acquired rights. Through research into legal texts and customary legal rules, this thesis seeks to investigate the extent of binding of the agreements that the Nile Basin countries inherited from the colonial countries and to clarify the position of international law on this dispute related to a vital issue for the Nile Basin countries, while the opinion of these countries is divided into two points of

view. The first is the countries that believe that the treaties inherited by the successor states are not binding, led by Tanzania, Uganda, and Ethiopia. The second point of view is the opinion of the countries that see these treaties as binding, led by Egypt, Sudan, and Eritrea.

1.3 Research Questions

Main question: What is the position of international law on the ongoing dispute between the Nile Basin countries regarding the binding of inherited treaties related to the Nile River?

By answering the following questions:

1) What are the rules of international law regulating the succession of states in treaties?
2) What are the positions and arguments of the Nile Basin countries regarding the binding of inherited treaties related to the Nile River and the extent of their consistency with the provisions of international law?

1.4 The Importance of the Study

In the past, the state of state succession was regulated in treaties according to the jurisprudential opinion adopted by the successor state or imposed on it by the predecessor state. The difference in jurisprudential opinions and previous practices caused a legal gap in the field of state succession, which imposed on the International Law Commission a challenge to develop laws governing the state of state succession. However, the agreement drawn up by the International Law Commission in 1978 did not receive much support from states. Today, 46 years after its establishment, it includes

only 22 signatory and ratifying states. This is due to the nature of states that prefer the opinion that serves their interest, whether as a successor state or a predecessor state, which made Researching jurisprudential opinions, previous practices, and judicial precedents that regulated the succession of states in treaties is important for arriving at legal rules that regulate the state of succession of states in treaties, and here lies the scientific importance of this study.

The practical importance lies in resolving the existing conflict between the Nile Basin countries, which escalated after some upstream countries concluded the "Entebbe" agreement among themselves, which granted the basin countries the right to establish projects on the river without the need to consult other basin countries, in addition to not recognizing specific shares of the river's water. For any country, this will greatly affect the shares of the downstream countries (Egypt and Sudan) ,this also contradicts the agreements that the Nile Basin countries inherited from colonialism, so it is important to research the extent to which these agreements are binding for the Nile Basin countries in order to find a legal answer about the projects that the Nile Basin countries intend to establish, which negatively affect Egypt and Sudan's share of the river's water.

1.5 Scope of Study

International norms and jurisprudential opinions, which include jurisprudential theories regulating the issue of succession of states, in addition to the draft agreement on the succession of states in property and debts that was drawn up by the Institute of International Law at the Vancouver 2001 session, the draft agreement on the succession of states in international responsibility at the Tallinn session of 2015, and the

agreements drawn up by the International Law Commission, which relate to the succession of states in the treaties of 1978, and regarding property, archives and debts, 1983, and the nationality of natural persons, 1999, and the agreements related to regulating the use of the Nile River that were signed between the countries of the basin, and the judicial precedents of the International Court of Justice.

1.6 Research Methodology

The researcher followed the international descriptive-analytical methodology, where the state succession in treaties was described, the governing laws and jurisprudential opinions related to this situation were explained, and examples of disputes related to state succession were provided. The dispute between the Nile Basin countries over the binding nature of inherited treaties from colonial powers was then described by clarifying the texts of these treaties, the correspondences between the governments of these countries, and the different opinions of the Nile Basin countries regarding the dispute. Additionally, the legal texts governing the state succession situation were analyzed to understand how these texts are interpreted. Furthermore, the inherited treaty texts related to the organization of Nile River usage were analyzed to understand the political and historical background of these treaties, aiming to determine the binding nature of the inherited treaties regarding the regulation of the use of the Nile River.

In the second chapter, the focus will be on the inherited treaties related to the Nile River, where a general overview of the conflict will be given by clarifying the importance of the Nile River and the most important agreements concluded by the colonial countries of the Nile Basin countries to regulate the flow of the river And a

survey of the positions of the Nile Basin countries regarding the succession of states in treaties inherited from colonialism. Finally, the legal principles derived from the first chapter will be applied to these treaties to reach a conclusion regarding the legal nature of these agreements and the binding nature of inherited treaties related to the Nile River for the countries of the river basin.

1.7 Previous Studies

Sabti Butti, Ali, Succession in International Treaties, thesis to obtain a master's degree in law, Middle East University, 2015.

This thesis examined the topic of succession in general, where the researcher explained the concept of succession, its causes, and the jurisprudential opinions related to it. The researcher also explained the legal system that governs international succession in accordance with the Vienna Convention on the succession of states in treaties, explaining the rules stipulated in the agreement to regulate each case of state succession, such as separation, union, and independence. The researcher reached several results, including the importance of the issue of succession of states in treaties because of its connection to the entity of the state and its legal status and the effects that affect it as a result of a difference or change in sovereignty over its territory. The researcher explained the variation in jurisprudential opinions regulating the problems resulting from the succession of states in treaties and recommended following the inductive approach, which stipulates: Study each case of succession separately and consider all the circumstances surrounding it.

Shaaban Sayed Abdel Muttalib, International Succession in International Treaties and its Impact on the Nile River Agreements: An Applied Analytical Study on the Ethiopian Renaissance Dam, Journal of Legal and Economic Research, Issue 48, 2018.

In his research, the researcher tried to prove Egypt's right to its share of the Nile River waters stipulated in the agreements that were signed during the colonial era. To do so, the researcher clarified the definition of succession of states and the jurisprudential theories about the succession of states. The researcher also touched on the Vienna Convention for the succession of states in the treaties, where he explained the scope of its application. In addition to protecting the interests of other states parties to the treaties in accordance with the 1978 Convention, However, he did not delve deeply into explaining the legal rules governing the issues arising from state succession in treaties. Instead, the researcher focused on the principles regulating the non-navigational uses of international rivers. He attempted to substantiate his opinion by concentrating on the principle of acquired historical rights, considering it one of the most crucial factors in the equitable division of river waters. The researcher reached several conclusions, the most significant being that Egypt's share of the Nile River's waters is a legal right acquired as a result of the provisions of all agreements concluded during the colonial period regarding this allocation.

Abiy Chelkeba Worku, State Succession in International Transboundary Water Obligations: South Sudan and the Nile Water Agreements, Mizan Law Review / Vol. 10 No. (1)2016.

This research focused on the case of state succession involving South Sudan, which seceded from Sudan in 2010. The researcher posed a primary question regarding the binding nature of the 1929 and 1959 agreements between Egypt and Sudan, which were aimed at regulating and dividing the shares of the two countries from the waters of the Nile, answer this question, the researcher elucidated the general principles governing state succession disputes. Then, they delved into explaining the legal theory asserting the non-continuity of treaties and provisions stipulated in the Vienna Convention of 1978. They focused on the principle stated in the convention, which is the sovereignty of the people over their regional resources. The researcher also clarified the rule regarding the non-impact of boundary-establishing treaties and regional system-establishing treaties in the event of state succession. The researcher argued that the 1929 and 1959 agreements do not fall within this exception, contending that the 1959 agreement is a pact created to divide shares between Egypt and Sudan, which does not qualify as a regional system-establishing treaty. Additionally, there is no provision in the 1929 and 1959 agreements that obliges the agreement in the event of state succession. The researcher claimed that in this case, customary international law, stating the non-binding nature of treaties unless the successor state agrees to abide by them, should be applied. Another argument presented by the researcher is that, according to the Vienna Convention on the Law of Treaties, South Sudan is considered a third-party state in the 1929 and 1959 agreements and is not bound by these treaties unless it signs them. Based

on the above, the researcher concluded that the 1929 and 1959 agreements are not binding for the state of South Sudan.

In this research, I will differ from previous research in focusing on the inherited treaties related to the Nile River and the extent of their binding for the Nile Basin countries by researching the sources of international law, such as previous practices and relevant judicial precedents, and also researching the Vienna Convention on the succession of states in treaties1978 which, according to the International Law Commission, is considered a codification of international custom, to find a well-established legal base that regulates the legal nature of those treaties in terms of the extent of their binding for successor states

1.8 Search Plan

To reach an answer to the research questions, I will divide the research into two chapters. In the first chapter, I will explain the theoretical and legal framework for the succession of states in the treaties and the legal provisions regulating this topic by clarifying the concept of succession of states and the types of succession of states that are divided into two parts: total succession and partial succession and the effects of succession of states on international relations, in addition to researching the jurisprudential theories that regulate this subject and the organization of jurists for the succession of states in treaties, then mentioning some previous applications as there will be an in-depth explanation of the Vienna Convention on Succession of States in Respect of Treaties of 1978, by providing background information about the convention, its provisions, and explaining the principle of the "clean slate" associated with newly independent states

Chapter Two: Succession of States in Treaties

2.1 The Concept of Succession of States

Changes may occur to the state that make it either separate into two parts, or unite with another state, or be replaced by another state, or other changes that lead to a change in the legal personality that governs the international relations of the region. Jurists have differed in defining the succession of states for example, M.M. Whitman said: State Succession takes place on the total or partial extinction or disappearance of one state and appearance of another in its place in a given territory[1],As for Oppenheim has stated that a succession of international persons occurs when one or more international persons takes the place of another international person, in consequence of certain changes in the latter's condition. Such a succession may involve any category of international persons, but it is convenient here to consider only successions involving states, whether fully or partially sovereign While Feilchenfeld simply notes that the transfer of one State to another is usually described as 'State Succession [2]

Professor Dr. Hamed Sultan defined it as "research into the fate of the international relations that were linked to it with other countries, and identifying what is lost by the complete loss of sovereignty or by the transfer of part of its territory to the sovereignty of another country, and what remains of it despite the change that has occurred."

[1] Kumar, Vijai and, Amar Singh. Critical analysis of law of state succession in respect of matters to the exclusion of treaties, Doctorate in Philosophy Himachal Pradesh University, 1991, lamas, p9-10

[2] Legalserviceindia, Divyam Agarwal & Mohit Goel, State Succession In International Law-Debt, Property and Asset, accessed at 31-3-2024, https://www.legalserviceindia.com/articles/insu.htm

Dr. Hisham Ali Sadiq defined it as: “The transfer of international rights and obligations between countries as a result of the changes that occurred in their regional entity and what follows from that in the replacement of another sovereignty in the region that has been affected by the change.”[1]

While The International Court of Justice defined 'succession of states' in its judgment on the dispute concerning the land, island, and maritime boundary between Honduras and Salvador on September 11, 1992, as 'one of the ways, the methods, in which regional sovereignty of one state replaces another.'[2]

Scholars disagree not only on the definition of "international succession" but also on the appropriate terminology. Some say it is "international inheritance," meaning one state inherits another state in managing international relations for the region. Others argue it is "international succession," signifying one state succeeding another in managing international relations for the region. From the researcher's perspective, the term "succession" should be used because "inheritance" linguistically implies the transfer of property and rights from one person to another due to death, whereas "succession" means one person acting on behalf of another, either due to the latter's absence, death, or incapacity. If we associate these terms with the state, "succession" is more appropriate for the state's succession situation because "inheritance" requires the person's death, while "succession" does not necessitate it. Moreover, "inheritance" transfers property, rights, and sometimes obligations to the heir automatically, whereas

[1] Sabti Butti, Ali. Succession in International Treaties, thesis to obtain a master’s degree in law, Middle East University, 2015, p15-16.

[2] Summary of rulings and orders issued by the International Court of Justice (1992 - 1996) in the case of the land, island and sea border dispute between (El Salvador and Honduras), September 11, 1992, p. 40

"succession," according to the Cambridge dictionary, is the process by which someone automatically assumes a position or official role after another person[1]. It is closer to the concept of one state replacing another, but "succession" does not require assuming all rights and obligations. These same arguments have been used by scholars to criticize the term "international inheritance."

Despite the differing opinions among jurists regarding the definition and terminology, the International Law Commission, a body of the United Nations General Assembly, in the Vienna Conventions on Succession of States in respect of Treaties in 1978 and in respect of State Property, Archives, and Debts in 1983, used the term "succession of states." and defined it In the Vienna Convention of 1978, Article 2/b as "the replacement of one state by another in the responsibility for the international relations of an entire territory." The International Law Commission adopted this definition in Article 2/1 of the Vienna Convention on Succession of States in respect of State Property, Archives, and Debts in 1983, The Institute of International Law also adopted the same definition of succession of states during its sessions in Vancouver in 2001 and Tallinn in 2015 (Session 76), as stated in Article 1/a (For the purposes of this Resolution: (a) “Succession of States” means the replacement of one State by another in the responsibility for the international relations of territory)[2]

In this study, the term 'succession of states' will be used, along with the definition provided by the International Law Commission in the Vienna Convention on Succession

[1] Cambridge Dictionary, Meaning of succession in English, visit on 15-3-2024 https://dictionary.cambridge.org/dictionary/english/succession

[2] La succession d’Etats en matière de responsabilité internationale State Succession in Matters of State Responsibility 2015 ,article1/a

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of States in respect of Treaties in 1978, which means the process by which one state replaces another in the responsibility for the international relations of the territory.

2.2 Elements of State Succession

Based on the definition adopted by the International Law Commission, which is the replacement of one state by another in the responsibility for the rights and obligations related to the territory, several elements can be inferred to constitute a situation of state succession:

1. The predecessor state, which is: the state that was replaced by another state when state succession occurred. For example, in the case of the dissolution of Czechoslovakia into two states, the Czech Republic and Slovakia, Czechoslovakia is considered the predecessor state that was managing the international relations of the territory before the occurrence of state succession.
2. The successor state means the new state that replaces another state when state succession occurs, and in the example of the dissolution of Czechoslovakia mentioned earlier, the Czech Republic and Slovakia can be considered the successor states. They divided the territory of the predecessor state between them, and each imposed its sovereignty over its respective territory.
3. Date of State Succession: It means the date on which the successor state replaces the predecessor state in the responsibility for the international relations of the territory related to the state succession. In the example of the dissolution of Czechoslovakia, the date of state succession is January 1, 1993, which is the date when the peaceful dissolution of the predecessor state was declared.

4. Territory Subject to Succession: It refers to the land area where the successor state replaces the predecessor state in the responsibility for the international relations of that territory.
5. The entity responsible for the international relations of the territory: It refers to the state that imposes its sovereignty over the territory and is authorized to establish international relations and conclude international treaties that produce rights and obligations whose legal effects apply to the territory.

2.3 Types of State Succession

We said that the definition of state succession is the replacement of one state by another in its responsibility for the international relations of the territory of succession. The occurrence of this replacement implies a change in the legal personality representing the territory. This replacement may either encompass the entire territory of the predecessor state, leading to its complete disappearance as a legal entity, or it may involve only a part of the territory, with the legal personality of the predecessor state remaining intact. Thus, types of state succession can be divided into two cases:

2.3.1 Total succession

Also referred to as complete succession, which occurs in the event of the complete disappearance of the predecessor state and the emergence of one or several successor states to replace the predecessor in the administration of the region, which can happen for several reasons, including:

1) Total annexation

Annexation is the formal act through which a state declares its sovereignty over the territory of another state that was previously outside its jurisdiction and it is a unilateral action that becomes effective upon actual possession and gains legitimacy when there is international recognition of the state's sovereignty over the annexed territory.[1] Annexation can occur for various reasons, such as military invasion, the end of a war between states leading to the partitioning of the losing state's territory among the victorious states, or even without military intervention and one of the closest examples of total annexation resulting from a military invasion is Iraq's annexation of the State of Kuwait resulting from the Second Gulf War on August 2, 1990, after Iraq invaded Kuwait and declared it an Iraqi province. This is what the Security Council condemned in its Resolution No. (600) of 1990[2], one of the other examples is Germany's annexation of Austria in 1938 after several attempts by Hitler to carry out the annexation voluntarily by holding a popular referendum in Austria on its annexation to Germany, but it did not succeed, forcing Adolf Hitler to invade and annex Austria. [3]

An example of a total and voluntary annexation, that is, without a military invasion, is the Japanese Empire's annexation of Korea under an agreement concluded between the Emperor of Japan and the Emperor of Korea in 1910, which stipulated that the Emperor of Korea ceded the sovereignty of his state to the Emperor of Japan, as Article 1 of it stipulated:

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[1] Britannica, The Editors of Encyclopaedia. "annexation". Encyclopedia Britannica, 28 Nov. 2023, accessed at 1-4-2024 https://www.britannica.com/topic/annexation

[2] Al-Talqani ,Abu Talib Hisham Ahmed. Al-Wajeez in the Succession of States: A Legal Study in Light of the Provisions of International Agreements, first edition, Beirut, 2021, p83.

[3] Britannica, The Editors of Encyclopaedia. "Anschluss". Encyclopedia Britannica, last updated 9 Apr 2024 accessed at 1-4-2024 https://www.britannica.com/event/Anschluss

"His Majesty the Emperor of Korea makes the complete and permanent cession to His Majesty the Emperor of Japan of all rights of sovereignty over the whole of Korea"

And the second article of the agreement stipulates:

"His Majesty the Emperor of Japan accepts the cession mentioned in the preceding article and consents to the complete annexation of Korea to the Empire of Japan"[1].

2) Disintegration

This situation often occurs when the state consists of nationalities, races, and religions subject to one authority, without the desire of those races, religions, and nationalities to do so, and this leads to the division of each group into an independent state.

State dissolution can be defined as a situation where nation-states cease to exist due to the failure to transfer authority effectively to maintain unity within their constituent territories, resulting in disintegration and This can occur peacefully through independence referendums or forcibly through revolutions, international wars, or civil wars which leads to the emergence of new internationally recognized borders for two or more independent states or the formation of separatist regions not recognized as independent states by most or all of the international community[2]. Examples of forcible dissolution include the division of Germany into West Germany and East Germany after

[1] UCLA International Institute educates students, Treaty of Annexation (Annexation of Korea by Japan) , visit on 4-4-2024 https://international.ucla.edu/institute/article/18447

[2] Study smarter. "Disintegration of States," accessed at 2-4-2024 https://www.studysmarter.co.uk/explanations/human-geography/policies-geography/disintegration-of-states/.

World War II, as well as the dissolution Austro-Hungarian Empire after World War I in 1919 under the Treaty of Versailles, resulting the former Czechoslovakia, Hungary and Austria.[1] And one of the Examples of peaceful disintegration of states are the disintegration of the Soviet Union on December 25, 1991 into 15 states, and the disintegration of the state of Czechoslovakia in 1991 into the Czech and Slovak states.

3) Union or merger

The union is one of the most common and recurrent cases of state succession due to the abundance of union cases between countries, arising from the existence of common interests and affiliations that bring together countries into a union. Where the integration of countries into one state requires a free will and agreement between the united countries. The union takes several forms: personal union, confederal union, federal union, and real union. As for the forms of union that constitute a case of international state succession, they are the federal union and the real union. The first type, which arises between a group of countries, states, or emirates, has a central body with direct authority over member states and their citizens, and the federal state has legal personality in which the personalities of member states are dissolved. The federal constitution regulates the relationship between member states and the union by specifying authorities and distributing competencies (legislative, executive, judicial), and it regulates the relationship between member states. The second type, which is the real union, arises between two or more countries and has one president and a governing body responsible for managing foreign affairs, while each member state retains control over its internal affairs. Consequently, this union gives rise to a new international legal entity, and the federal government is responsible for foreign relations while each

[1]Al-Talqani, Abu Talib Hashim Ahmad. previous reference, p. 38

member state retains sovereignty over its internal affairs. Historical examples of real unions include the union between Sweden and Norway from 1815 to 1905 and the union between Denmark and Iceland from 1918 to 1944.

2.3.2 Partial succession

Partial succession occurs when a predecessor state loses part of its territory and a new state emerges to manage the international relations of this territory, while the legal personality of the predecessor state remains intact, This situation often arises after a civil war or as a result of demands for independence by a specific minority, as seen in the case of Sudan, where South Sudan seceded following a civil war between the Christian minority in the south and the Arab-Muslim majority in the north and among the causes of partial succession

1) **Partial annexation**

Full annexation is defined as a formal act by which a state declares its sovereignty over a territory that was outside its sovereign jurisdiction before the date of annexation. Partial annexation, on the other hand, differs in that the state declares its sovereignty over a part of a territory that previously belonged to another state, not over the entire territory of the other state. Like full annexation, partial annexation can be the result of conquest or it can be carried out without the use of force, but it remains coercive

One of the partial annexation example is the Israel's annexation of the Golan Heights, which were previously under the sovereignty of Syria. Israel occupied the Golan Heights following the 1967 Arab-Israeli War. In 1981, Israel enacted the Golan Heights Law, which, according to Adalah - The Legal Center for Arab Minority Rights in Israel, "is another annexation law aimed at providing a legal defense for the

application of Israeli law in the Golan Heights, which Israel occupied in the 1967 war"[1] ,The United States was the first country to recognize the Golan Heights as part of Israeli sovereignty in 2019. However, this declaration was met with Arab and Syrian rejection, aligning with the international community's stance against annexation and occupation.

2) Cession

Cession is the transfer of sovereignty over a territory from one state to another, is typically formalized through an international agreement.[2] This transfer can occur with or without compensation. When compensation is involved, it is often in the form of financial payment, a service, or a benefit to the ceding state. In cases where there is no compensation, the cession is typically against the will of the ceding state and often occurs following armed conflicts, as victors impose peace treaties on defeated nations, mandating the relinquishment of portions of their territories. Examples of such treaties include the Treaty of Versailles (1919) and the Treaty of Paris (1947) between France and Italy. In addition to that cession has specific conditions for legitimacy:

A. Full Sovereignty of the Ceding State
B. Explicit Agreement on Cession
C. Intent to Transfer Sovereignty
D. Cession, by definition, involves the transfer of land territory from the control of one state (the ceding state) to another (the receiving state). This means the ceded territory must be located on land within the ceding state's borders.

[1] Adalah, The Golan Heights Law, accessed at 6-4-2024 https://www.adalah.org/en/law/view/517

[2] Jennings, R. Y .The Acquisition of Territory in International Law, (U.S:Manchester University Press 1963), P16

Cession cannot apply to maritime or airspace, as these are considered inseparable extensions of the land territory.

Cession is exemplified by the historical case of Alaska's transfer from Russia to the United States in 1867. In this instance, the United States Secretary of State at the time, William H. Seward, accepted an offer from the Russian minister in Washington, D.C., Baron Eduard de Stoeckl, to purchase Alaska for a sum of $7.2 million. The U.S. Senate approved the purchase treaty on April 9, President Andrew Johnson signed it on May 28, and Alaska was officially transferred to the United States on October 18, 1867[1]. It is noteworthy that the British Foreign Office declared that the treaties concluded between the United Kingdom and Russia regarding trade, navigation, and fisheries matters would not bind the United States within the Alaskan territory.

3) Secession

Secession describes the act of a group within a country's territory breaking away from the existing state to form their own independent nation. Some view it as a type of withdrawal by a shared institutional unit from an established, recognized international entity. This withdrawal aims to create a new sovereign state with complete independence[2].

Often, secession stems from rebellions against the central government. Marginalization, a strong sense of nationalism, and other grievances can fuel these movements. History offers numerous examples of successful secessions, such as South Sudan's independence from Sudan in 2011, Bangladesh's separation from Pakistan in 1971, and Eritrea's secession from Ethiopia in 1993. The fight for independence continues today, with the Arab minority in Ahwaz seeking to break away from Iran and Kurdish groups in Syria and Iraq advocating for their own states.

[1] office of the historian, MILESTONES: 1866–1898 , Purchase of Alaska, 1867, accessed at 8-4-2024 https://history.state.gov/milestones/1866-1898/alaska-purchase

[2] Abdel Salam Ahmed, Maryam. Foreign Policy and Secession Issues, A Study of the Turkish Case. (Egypt: Al-Arabi Publishing and Distribution, 2024) p57

4) Independence

Independence stands as a cornerstone of state succession, the process by which one state replaces another in the international arena. The Vienna Convention on Succession of States in Respect of Treaties (1978) underscores this by defining a "newly independent state" (Article 2)" means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible".

The Vienna Convention highlights a crucial aspect – independence often emerges from a situation where the predecessor state exerted forceful control over the territory, such as through occupation or colonization. When independence is achieved, a new state emerges, complete with its own international legal identity. History provides numerous illustrations of this phenomenon, particularly among former colonies. Countries like Egypt and Uganda (British colonialism), Lebanon and Algeria (French colonialism), and Eritrea and Libya (Italian colonialism) All of these countries went through a state of independence from colonialism and became a new state with sovereignty over its land, which it took by force or other means of taking power from the colonial countries.

2.4 Effects of State Succession

State succession occurs when changes affect the state that exerts sovereignty over a territory and its people. While a state comprises essential elements, changes to one of these elements do not necessarily impact the state's position in international relations. For instance, an increase or decrease in the population does not alter the state's status. Similarly, an increase or decrease in territory doesn't hinder the state's exercise of sovereignty over that territory. Changes in political power, whether through constitutional or unconstitutional means, also do not erase the state's existence.

However, a change that does significantly impact international relations is a shift in the state's sovereignty over a territory. When a state loses sovereignty over a territory to another state, as discussed in the previous section, due to factors such as merger, independence, partition, or secession, this change leads to the transformation of the state that exercises sovereignty over the territory. Consequently, a gap arises in international relations between the newly sovereign state and the international community, which may have previously established treaties, trade agreements, diplomatic relations, debts, and other dealings with the predecessor state. This change also triggers implications for the successor state and the people residing in the territory, affecting aspects such as nationality, trade, debts, and other rights of citizens or the predecessor state. From here it can be concluded that several problems arise from the state of succession of states at the international level, namely:

1) Problems regarding state succession in treaties
2) Problems regarding the succession of the successor state to the predecessor state in the state’s debts, property, and funds
3) Problems regarding the succession of the successor state to the predecessor state in archives and archives
4) Problems regarding the succession of the successor state to the predecessor state in membership in international and regional organizations
5) Problems regarding the succession of the successor state to the predecessor state regarding the acquired rights of individuals and companies

We previously explained the definition of state succession, its types, and its effects, which include international problems surrounding the property and debts of the

predecessor state, as well as the extent to which treaties are binding for the successor state, to which the predecessor state was a party, and in view of the issue that was taken up in the subject of the thesis, which is the succession of states in inherited treaties related to the Nile River. In this research, we will focus on studying the regulation of international law regarding the extent to which inherited treaties are obligatory by considering the jurisprudential theories regulating the succession of states in treaties and practical international practices, in addition to the Vienna Convention on the succession of states in treaties of 1978, which was established by the International Law Commission of the United Nations to regulate this topic.

2.5 Jurisprudential Theories Governing State Succession in Treaties

The realm of state succession in treaties is marked by a multitude of jurisprudential disparities, encompassing both the terminology and the regulatory framework. While some scholars advocate for the automatic inheritance of all international rights and obligations by the successor state, others maintain that no such inheritance occurs. A third perspective proposes a selective inheritance, limiting it to rights and obligations pertaining to territory, such as border demarcation agreements. Yet another approach favours a case-by-case assessment, considering the unique circumstances of each state succession scenario. These diverse perspectives can be broadly categorized into two main schools of thought: traditional theories and modern theories.

2.5.1 Traditional theories

The traditional view on this topic is split into three juristic opinions. One opinion argues for the continuation of rights and obligations. Another opinion opposes this

view, advocating for their discontinuation, and a third that gives the state the option to determine whether or not rights and obligations continue. These theories are the theory of inheritance in private law (theory of universal inheritance), the theory of state will, and the theory of continuity.

FIRST: The Traditional Theories that Advocate for the Continuity of Rights and Obligations:

1) Universal Inheritance Theory:

This theory is the result of the influence of some jurists by Roman law and the subject of inheritance in private law. The first to propose this theory was (HUGO GROTIUS). Supporters of this theory have tried to transfer the rules of inheritance from private law and apply them to international law in cases of state succession. This theory is based on the idea that territory is property that is passed on by inheritance. In the case of state succession, the successor state inherits the sovereignty over a specific territory from the predecessor state. Consequently, it will transfer all the powers, rights, and obligations that it had over the relevant territory to the successor state, just as happens when ownership is transferred from one person to another under private law provisions[1]. And in Roman law, which considers the heir to be an extension of the deceased's person and their legal relationship.

Applying the rules of private law to state succession implies that the successor state inherits the legal personality and international relations of the predecessor state without any limitations. This means that it inherits all the obligations that were incumbent on the predecessor state and all the rights that it had, without any exception

[1] Al-Ghunaimi, Muhammad Talaat. General Provisions in the Law of Nations, a study in Arab socialist and Islamic thought. (Alexandria: Peace Law, 1970). p836.

or modification, regardless of the means of fulfilling these obligations and also regardless of the consent of the states concerned.

Despite this, GROTIUS distinguished between obligations undertaken by the prince, king, or president as part of their presidential office and obligations undertaken in their personal capacity. The latter, according to Grotius, were not transferable to the successor state. Some of the most prominent jurists who supported this theory include HALL, HALLECK, KENT, FILMORE, and OPPENHEIM.[1]

The theory of universal inheritance has been applied in some 20th-century cases, like the unification of Somalia and Somaliland. However, it faces criticism. Firstly, the theory struggles to differentiate between state succession and internal government changes. Secondly, applying private law rules to international law is problematic due to the fundamental differences between individual and legal personhood. Finally, equating an individual's death with state dissolution is flawed[2]. An individual loses legal existence upon death, whereas in some succession cases, like secession or independence, the predecessor state persists with its legal personality. Additionally, critics argue the theory doesn't distinguish between international succession and internal regime changes.[3] For example, the 2013 Egyptian events, considered a coup by some and a revolution by others, resulted in the ousting of President MORSI and his government. While the legitimacy of these actions is debated, the theory of universal inheritance could mistakenly interpret them as an international succession.

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[1] Recueil Des Cours, Collected Courses, Tome/Volume 200 (1986), Academie de Droit International de la Haye, Springer Netherlands,1987, pp104

[2] Mohanty, Disha. "State Succession under International Law, ipleaders , February 20, 2020. https://blog.ipleaders.in/state-succession , accessed at 11-4-2024

[3] Recueil Des Cours, p104-105

2) Popular Continuity Theory

In the 19th century, following the unification of Germany and Italy, a new version of the Universal Inheritance Theory emerged, known as the Popular Continuity Theory. This theory, supported by jurists like GABBA, ABELLON, and GIDEL,[1] distinguishes between the state's political and social personalities. The political personality encompasses the state's rights and obligations towards other governments, while the social personality refers to the state's territory and population. According to this theory, the territory and people form an inseparable entity, constituting a permanent social personality despite changes in the state's political structure. Upon state succession, only the state's political personality is affected, while its social personality remains intact, surviving political changes[2]. Consequently, this theory views state succession as impacting the state's political character, not the state as a whole. It denies the fragmentation of state identity after succession, limiting the impact to the state's political personality. This implies that all obligations undertaken by the predecessor state's political personality become binding on the successor state's political personality. Unlike the Universal Continuity Theory, this theory recognizes the distinction between state succession and government changes, acknowledging the non-continuity of obligations deemed politically motivated. Upon its introduction, this theory did not gain widespread acceptance among jurists[3].

[1] Recueil Des Cours, p-105

[2] Mohanty, Disha. "State Succession under International Law, ipleaders , February 20, 2020. https://blog.ipleaders.in/state-succession/ , accessed at 11-4-2024

[3] Duruigbo, Emeka and Remigius Chibueze and Gozie Ogbodo. International Law and Developmen in the Global South. (Switzerland: Springer International Publishing,2023), p159.

3) Organic Substitution Theory

This theory was first developed by the Swiss jurist Max Huber and Edgar von Gierke.[1] Huber argued that "upon state succession, the actual elements of the people and territory are merged into a new organic entity. What occurs is a change in the legal element. As a result, the state loses its identity, but the organic forces that previously governed the predecessor state remain unaffected. After the successor state emerges, it absorbs all the remaining actual elements of the predecessor state. Thus, the new personality replaces the previous one and assumes the rights and obligations of the predecessor as if they were its own" [2].

The Organic Substitution Theory stands out from its predecessors in several key aspects:

A. Distinguishing State Succession from Government Change
B. The Organic Substitution Theory distinguishes itself from previous theories in its treatment of the binding nature of obligations inherited from predecessor states. It introduces the concept of optionality, granting the successor state the right to choose which obligations it will assume. In other words, rights and obligations are not automatically binding on the successor state [3]
C. Max Huber, a proponent of the Organic Substitution Theory, explicitly asserted the complete extinction of the predecessor state's personality. He rejected any notion of continuity in the identity of the predecessor state. Instead, he

[1] Lawbhoomi, State Succession under International Law, June-7-2021- accessed at 2-4-2024, https://lawbhoomi.com/state-succession-under-international-law/
[2] Recueil Des Cours, p104
[3] Alfred R. Cowger. Rights and Obligations of Successor States: An Alternative Theory, Case w. Res. J. Int'l L, Volume 17,issues 2 (1985),p289

envisioned the succession process as a “replacement” of the old personality by a new one within the remaining organic elements of the state [1]

SECOND: - Traditional Theories Advocating for the Non-Continuity of Rights and Obligations:

1) Traditional Tabula Rasa Theory:

The Tabula Rasa principle, also known as the "Clean Slate" Which means Literally, clean slate and used in the context of treaty obligations not passing from a contracting party to a successor State, this principle holds that a successor state does not automatically inherit treaty obligations from its predecessor state. This principle emerged in the 19th century and was championed and developed by legal scholars such as GAREIS, CAVAGLIERI, FOCHERIN, STRUPP, KEITH, ZORN, and SCHONBORN[2]. The development of this theory was motivated by a desire to challenge prevailing theories that asserted the continuity of rights and obligations from predecessor to successor states. Proponents of the Tabula Rasa principle viewed the state as a distinct legal entity, separate from its government, people, and territory[3]. This distinction allowed them to differentiate between changes affecting the sovereign state and those affecting its government.

Legal scholar KEITH argued that in cases of complete state succession, the personality and identity of the predecessor state completely vanish, giving way to an entirely new sovereign state with no connection to its predecessor. According to KEITH, state succession is governed by international law, and the new sovereign entity

[1] Recueil Des Cours, Collected Courses,pp106
[2] Emeka Duruigbo, p160
[3] Janig, Philipp, The 1978 Vienna Convention, the Clean Slate Doctrine and the Decolonization of Sources, Austrian Review of International and European Law, Vol. 23, 2018, p2

is entirely free from any obligations of its predecessor. However, he also acknowledged that the rights, rather than the obligations, of the predecessor state may be transferred to the successor, citing examples and theories that recognized the continuity of certain predecessor state rights. [1]

In a more extreme interpretation of the Tabula Rasa principle, some scholars argue that new states are not even automatically bound by customary international law[2], as these norms existed prior to the emergence of these new states and did not play a role in their formation.

Subsequent legal scholars who adhered to the Tabula Rasa principle modified Keith's view, arguing that state succession does not involve the transfer of the predecessor state's territory or property to the successor state. Instead, both the territory and the rights and obligations of the predecessor state become res nullius (vacant property) upon dissolution, and the successor state "seizes" all rights and territory .

This refined version of the Tabula Rasa principle asserts a complete and automatic discontinuity of all rights and obligations in cases of state succession. It served as the foundation for the development and codification of the Tabula Rasa principle, which eventually became a legal norm enshrined in the 1978 Vienna Convention on Succession of States in Respect of Treaties.

Despite criticisms from legal scholars, primarily concerning its potential to destabilize international relations, the Tabula Rasa principle gained widespread acceptance and remains the most prevalent approach in practice.

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[1] Recueil Des Cours, p106
[2] Philipp Janig, ex, pp 2

4) The Will Theory

This theory derives its origins from the Italian schools, and is based on the principle of absolute sovereignty of the state and considering that the successor state acquires rights and obligations on the basis that it has become able to impose its sovereignty over the region according to its will,[1] and therefore the successor state can keep whatever rights and obligations it wants that were transferred to it from its predecessor. It may also reject whatever rights and obligations it wishes, and there is no general rule obligating the successor state to abide by the legal effects resulting from the actions taken by the predecessor state.

2.5.2 The modern theory

Modern theories on treaty succession diverge. Some scholars, advocating a "clean slate" approach, believe prior rights and obligations cease to exist. Others argue for conditional continuity, while another camp links continuation to the successor state's sovereignty. Yet another school of thought proposes examining each succession case individually to determine the fate of rights and obligations

1) Theory of Continuity of Rights and Obligations Under General Principles of Law:

This theory emerged in the aftermath of World War II, spearheaded by Professor DANIEL PATRICK O'CONNELL. O'CONNELL maintained that newly independent states are bound by the obligations of their predecessor states. He argued that the continuity and transfer of rights and obligations from predecessor to successor states is a fundamental legal principle. His rationale stemmed from the inadequacy of international

[1] Al-Dahshan, Saeed Talal, The international inheritance of treaties in Palestine in the event of the demise of the “State of Israel”, Al-Zaytouna Center for Studies and Consultations, April 2022,p9

law in addressing state succession issues. He contended that the 19th century theories of international law and statehood were, in fact, detrimental and ill-suited to resolving 20th century legal conundrums[1].

2) Moderate Continuity Theory

A group of jurists posit that customary international law rules on state succession have evolved from domestic law. While acknowledging the "clean slate" principle as the general rule governing state succession, they argue for exceptions to this principle. These exceptions encompass rights and obligations commonly recognized as real, declaratory, or local and closely tied to the successor state. This moderate group seeks to address state succession issues by adopting a middle ground between the "clean slate" and "universal succession" doctrines.

3) The Inductive Approach to State Succession

The inductive approach to state succession advocates for deriving general principles from specific instances. Proponents of this method favour a case-by-case analysis of state succession issues, meticulously examining each scenario to arrive at tailored solutions. They argue that applying rigid rules or adhering to a single legal opinion is impractical due to the complexities of international law, international relations, and the influence of political considerations [2]

However, from the researcher's point of view, relying on this approach is likely to cause instability in international relations due to the difficulty of reconciling the conflicting parties in cases of state succession regarding the obligations of the successor

[1] Recueil Des Cours,ex,p113

[2] Ramadan, Sherif Abdel Hassani, International Succession and its Impact on International Treaties, 1st edition, Dar Al Nahda Al Arabiya, Cairo, 2011,p21

state towards other states. It is in the nature of states to adhere to what serves their interests, which will lead to an exacerbation of the dispute. Therefore, there must be legal rules governing the issue of state succession in treaties to achieve stability in relations between states and to prevent disputes between them.

There are also other theories that have not received widespread acceptance, such as the theory of self-denial, which was put forward in 1900 by Jellinek. It is another version of the theory of universal continuity. According to Jellinek, the successor state agrees to respect the rules of international law and fulfil its obligations towards other states established under it. Although this theory considers the performance of international obligations to be a mere "moral duty" on the part of the successor state, it also gives other states the right to insist that the successor state fulfil the existing obligation. If the successor state refuses to accept, other states may withhold recognition or make recognition conditional on acceptance of the predecessor state's obligation towards it [1]

And the theory of (The populace benefaction theory), which was proposed by the American jurist (A.R. COWGER) in 1985, and stated that any right that accrues to the citizens of the successor state and any obligation that is a result or introduction to the right of the office is subject to succession and is binding on the successor state. Otherwise, it is not binding [2]

[1] Manank Panchmtia, The State Succession, International Journal of Political Science, Law and international Relations (IJPSLIR), 2018,p14

[2] Kumar, Vijai, Crtical analysis of law of state succession in respect of matters to the exclusion of treaties, thesis to obtain a master’s degree in law, Himachal Pradesh University,1991 ,p38-39

The organization of international jurisprudence for the case of state succession in treaties can be divided according to the theories mentioned above as follows:

1) **The Position Rejecting the Idea of State Succession in Treaties (Absolute Denial):**

Some jurists believe that the rights and obligations arising from treaties do not pass from the predecessor state to the successor state, that is, absolute denial of state succession unless the predecessor state decides to join that agreement. Supporters of this opinion rely on two main reasons, which are:

a) The legal personality of the predecessor state has ceased to exist with the demise of that state. Therefore, bilateral international treaties, for example, cannot continue based on the general rules that require the termination of such treaties if one of the contracting states ceases to exist.
b) The continuation of an international treaty from the predecessor state to the successor state conflicts with the application of the principle of "PACTA SUNT SERVANDA" (obligation to perform contracts). This is because the continuation or transfer of rights and obligations from the predecessor state to the successor state will not allow the successor state to express its own will, which contradicts the principle of state sovereignty.

2) **Position Supporting State Succession (Absolute Affirmation):**

This opinion holds that the successor state must abide by all treaties that the predecessor state has concluded with other states. If the successor state refuses to accept and fulfil the obligations imposed on it by those treaties, it will incur international responsibility under the general rules of international law. This entitles the state that has concluded a

treaty with the predecessor state to demand the fulfilment of the international obligations incumbent on the successor state or to claim compensation for the damages it has suffered as a result, and it has the right to enforce those obligations, as well as to continue to fulfil the obligations imposed on it by the previous treaties.

3) **Despite the drawbacks of this approach,** such as the difficulty of reconciling the interests of the disputing parties due to the nature of states that prefer to adhere to what serves their interests, most researchers today prefer to apply it for several reasons, the most important of which is the difficulty of finding a general rule that applies to all cases of state succession, taking into account some general rules and legal principles related to state succession.

We can conclude that each theory has criticisms and flaws that contradict international justice, upon which the international legal system is based. For instance, in the case of the independence of a state whose territory was under the occupation of another state, the continuity theory compels the successor state to bear the obligations arising from agreements concluded by the predecessor state without the successor state having any role in concluding such agreements. Additionally, if the clean slate theory is applied to the case of the secession of a state, this leads to depriving the contracting states of their rights stipulated in the treaties concluded between them and the predecessor state, despite the fact that the seceded territory was part of the form of governance and decision-making in the predecessor state.

2.6 Historical International Practices on State Succession in Treaties

A wide range of past international practices involving state succession have contributed to the establishment of customary rules that the International Law Commission relied on in drafting the Vienna Convention on Succession of States in Respect of Treaties. Due to the political upheavals and wars of the 20th century, as well as the wave of decolonization, numerous instances of state succession have occurred. The regulation of these cases has varied depending on the type of treaties involved and the reasons for state succession. Some notable examples of past practices include the dissolution of the Soviet Union, the breakup of Yugoslavia, and the independence of South Sudan. These events have all contributed to the establishment of customary rules and legal theories that states cite today, such as the NYERERE Doctrine, which will be discussed in this section:

A) The Collapse of the Soviet Union

The Soviet Union was a party to 16,000 international treaties, including 600 multilateral ones[1]. In 1991, the Soviet Union collapsed and disintegrated after several of its member states declared independence and seceded. At the forefront were the Baltic republics (Lithuania, Latvia, Estonia) in 1991. Both the Soviet Union and European countries recognized these states, which had enjoyed full sovereignty before 1917.

The Soviet Union fractured into 15 countries: Russia – Ukraine-Belarus-Estonia-Latvia-LithuaniaKazakhstanTurkmenistan-Kyrgyzstan-Tajikistan-Uzbekistan-Armenia-

[1] Abdullah Al-Hajj Hassan Ahmed, Ammar, inheritance in international law and national legislation (Sudan as an example), thesis to obtain a doctorate in public law, Shendi University, Sudan, 2014,p175

Azerbaijan-Georgia – Moldova. The position of states regarding succession to the treaties the Soviet Union participated in can be categorized into three main stances:

Russia's Position

Russia considered itself the successor to the Soviet Union and replaced it in the United Nations and took its seat on the Security Council, including the right to veto. The Russian Ministry of Foreign Affairs confirmed in a memorandum sent to the United Nations that Russia would abide by all obligations arising from international treaties concluded by the former Soviet Union, meaning that Russia would replace the Union of Soviet Socialist Republics in all international agreements. This was confirmed by the UN Secretary-General replacing the name of the Soviet Socialist Republics with the name of the Russian Federation in all multilateral treaties to which the Soviet Union was a party.[1]

Position of the Baltic States (Lithuania, Estonia, and Latvia)

These countries considered themselves to have gained independence from the former Soviet Union and that they were previously occupied by this union. Therefore, they decided to return to the situation that existed before the Soviet Union annexed them in 1940. Consequently, the three Baltic states considered themselves bound by all treaties that were in effect before 1940, that is, before they entered the Soviet Union. As for the treaties concluded by the Soviet Union, they considered them not applicable to them as newly independent states [2]

[1] Wadi, Dhaouia, international succession in international treaties, Master's thesis in the Department of Public International Law, University of Biskra, 2021,p61
[2] Wadi, Dhaouia, ex, p62

This position is similar to that of the United Arab Republic, which was proclaimed in 1958 after the union of Syria and Egypt. The new state declared that all treaties concluded by Syria and Egypt before the union would remain valid and applicable to the territory where they had been concluded After the dissolution of the state in 1961 following a coup in Syria and its separation, each state declared its return to the situation that existed before the union, that is, before 1958. In the United Nations as well, each state took its previous seat.[1]

Position of Commonwealth of Independent States (CIS) Members

The Soviet Union member states that joined the Commonwealth of Independent States (CIS), which included several former Soviet republics, namely (Uzbekistan, Moldova, Kyrgyzstan, Azerbaijan, Armenia, Turkmenistan, Georgia, Kazakhstan, Ukraine, Belarus), expressed their desire to continue the agreements concluded by the Soviet Union. This was confirmed after their declaration in the Kazakh capital "Almaty" of their respect for all international agreements concluded by the former Soviet Union. In 1992, the presidents of these countries signed a Memorandum of Understanding on matters related to the succession of Soviet Union treaties.

B) Singapore

Upon Malaya's independence from the United Kingdom in 1957, Singapore remained under British control until 1963 when it joined the Malaysian Federation. This was a short-lived union, as after only two years, Singapore peacefully separated from Malaysia to become an independent nation in 1965. This process was interpreted as a demerger rather than a dissolution of the state, as the United Nations had described

[1] Sabti Butti, Ali, ex, p108-109

Singapore's merger into Malaysia in 1963 as a mere extension of Malaysian territory rather than a fusion of two states into one. Consequently, this merger did not affect Malaysia's legal personality, and it retained the same UN membership it held prior to the merger in 1963.

Following the separation, an agreement was signed between Malaysia and Singapore on August 7, 1965. Article 13 of this agreement states the following:

> **"Any treaty, agreement or convention entered into before Singapore Day between the Yang di-Pertuan Agong or the Government of Malaysia and another country or countries, including those deemed to be so by Article 169 of the Constitution of Malaysia shall in so far as such instruments have application to Singapore, be deemed to be a treaty, agreement or convention between Singapore and that country or countries, and any decision taken by an international organisation and accepted before Singapore Day by the Government of Malaysia shall in so far as that decision has application to Singapore be deemed to be a decision of an international organisation of which Singapore is a member. In particular as regards the Agreement on External Defence and Mutual Assistance between the Government of the United Kingdom and the Government of the Federation of Malaya of 12th October, 1957, l and its annexes which were applied to all territories of Malaysia by Article VI of the Agreement**

Relating to Malaysia of 9th July, 1963, subject to the provision of Annex F thereto (relating primarily to Service lands in Singapora [1]

Despite the fact that the 1965 Separation and Succession Agreement between Malaysia and Singapore affirmed Singapore's automatic succession to treaties to which Malaysia was a party in Article 13 of Annex (B), in actual practice, Singapore adopted a different approach from that stipulated in the Separation and Succession Agreement. Instead of automatic succession to treaties to which Malaysia was a party, Singapore applied the clean slate principle and rejected or revised most of the treaties to which Malaysia was a party [2].

One example of this is the 1967 agreement between Japan and Singapore on air services. In a letter to Japan dated September 20th, 1965, Singapore initially stated that it was bound by the agreement as a result of the automatic succession of treaties arising from the Separation and Succession Agreement, in a later letter dated March 28th, 1966, Singapore informed Japan that it wished to terminate the agreement aftar that A new agreement was signed by the two parties on February 14th, 1967 [3].

C) Pakistan

Before India's independence from British India, there were violent incidents that led to the division of British India into two states: India and Pakistan. India gained independence from British India in 1947, and the September Agreement was signed

[1] Singapore and Malaysia Agreement relating to the separation of Singapore from Malaysia as an independent and sovereign State. Sign ed at Kuala Lumpur, on 7 August 1965, No. 8206, https://treaties.un.org/doc/Publication/UNTS/Volume%20563/volume-563-I-8206-English.pdf

[2] Al-Mukhtar, Taiba Jawad Hamad and Al-Qarawi, Baqir Abdul-Kadhim Ali, The Succession of Separate States to Treaties, Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, Volume 9, Issue 3, University of Babylon, College of Law, 2017,p83

[3] Al-Mukhtar, Taiba Jawad Hamad and Al-Qarawi, Baqir Abdul-Kadhim Ali, p97.

between the Governor General of British India and the representatives of India and Pakistan. India was considered the successor to British India and its heir to the treaties it had previously concluded, while Pakistan was considered a separate state from India. The September Agreement stipulated that India would automatically succeed to the treaties to which British India had been a party, while Pakistan was satisfied in the September Agreement, despite being considered a separate state from India, to continue some of these treaties. In fact, the United Nations, in addition to some states, did not accept Pakistan's succession to some treaties, as its position, like its counterpart India, is as an automatic successor to all the treaties of its predecessor, British India. However, Pakistan ultimately had to act as if it was not an automatic successor to the treaties concluded by British India and decided to ratify the treaties it wished to accede to.[1] Thus, the clean slate principle was applied to the case of Pakistan's succession.

D) Bangladesh

In March 1971, the eastern part of Pakistan declared independence to form a new state, Bangladesh. Bangladesh considered itself a newly independent state emerging from the process of decolonization and therefore applied the clean slate principle. Thus, it did not inherit the bilateral treaties concluded by Pakistan and preferred to conclude new agreements with the parties involved in this regard. Bangladesh also sent a number of notifications to international organizations expressing its readiness to succeed to a number of multilateral treaties.[2]

[1] Al-Mukhtar, Taiba Jawad Hamad and Al-Qarawi, Baqir Abdul-Kadhim Ali, ex,p80
[2] Al-Mukhtar, Taiba Jawad Hamad and Al-Qarawi, Baqir Abdul-Kadhim Ali, ex, p ,81

E) Independence of Tanzania

Tanzania gained independence from the United Kingdom on April 26, 1964. With Tanzania's independence, a new principle emerged regarding state succession to treaties: the Nyerere Doctrine, named after President Julius Nyerere. This principle was formulated in a letter addressed from the Prime Minister of Tanzania (then known as Tanganyika) to the Secretary-General of the United Nations. The relevant parts of the letter state the following:

> **"As regards bilateral treaties validly concluded by the United Kingdom on behalf of the territory of Tanganyika or validly applied or extended by the former to the territory of the latter, the Government of Tanganyika is willing to continue to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of two years from the date of independence (i.e., until 8 December 1963) unless abrogated or modified earlier by mutual consent. At the expiry of that period, the Government of Tanganyika will regard such of these treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.**

It is the earnest hope of the Government of Tanganyika that during the aforementioned period of two years, the normal processes of diplomatic negotiations

will enable it to reach satisfactory accord with the States concerned upon the modification of such possibility of the continuance or treaties"[1]

It is clear from Julius Nyerere's letter that the Nyerere Doctrine gave the parties to inherited treaties a specific period of time within which those agreements would be applied and gave the successor state discretionary power to assess whether the previous treaties were suitable for it or whether it would consider them null and void or renegotiate them. This means that Tanzania considered the Nile River agreements concluded before its independence to be non-binding on it, as the Tanzanian government sent identical diplomatic notes to Britain, Egypt and Sudan on July 4th, 1962, declaring that it considered the 1929 Nile Water Agreement to have ended upon Tanzania's independence. [2]

With regard to the positions of Nile Basin countries on this principle, the Nyerere Doctrine was adopted by some East African countries that gained their independence during that period, including Burundi, Kenya and Uganda, but in a way that met their own specific circumstances. On the other hand, although Kenya and Uganda adopted the Nyerere Principle and issued memoranda similar to that of President Julius Nyerere, these countries remained silent on the issue of the validity of the 1929 Agreement and other colonial-era agreements for a long time, leading researchers to assume that both countries considered themselves bound by the 1929 Agreement. However, this situation changed after the signing of the Entebbe Agreement in 2010, in which these countries

[1] Mohamed S. Helal, Inheriting International Rivers: State Succession to Territorial Obligations, South Sudan, and the 1959 Nile Waters Agreement, 27 Emory Int'l L. Rev. 907 (2013), p941
[2] Mohamed S. Helal, p907.

explicitly expressed their rejection of all obligations stipulated in the inherited agreements related to the Nile River.

Ethiopia, which was not subject to the 1929 Agreement because it was not a colony subject to the British Crown and was not a party to that agreement, nevertheless called on the parties to it not to comply with it on the grounds that they were agreements concluded between colonial parties. The Ethiopian government issued a memorandum to record its position on the use of the Nile waters, which stated:

> **"reasserted and reserved now and in the future the right to take all such measures in respect of its water resources and in particular . . . those waters providing so nearly the entirety of the volume of the Nile, whatever may be the measure of utilization of such waters sought by recipient States situated along the course of the river"[1]**

Finally, and reflecting its unstable position as a downstream state, Egypt has consistently rejected the Nyerere Principle and argued that all Nile water agreements, including the 1929 Nile Agreement, devolved to the riparian states after their independence. This means that Egypt has adopted the view of the binding nature of inherited treaties on the state.

Some may claim that the Nyerere Doctrine has become a regional customary law, but the Nyerere Doctrine has only been adopted by some East African countries, namely Tanzania, Kenya, Burundi, and Uganda, and has been supported by Ethiopia, while Egypt and Sudan have opposed it. Congo and Eritrea have taken a different approach, as

[1] Mohamed S. Helal, ex, p942-943

Congo has signed the 1978 Vienna Convention, which contradicts the Nyerere Doctrine in its provisions. Therefore, this principle is a position taken by some Nile Basin countries and not a customary rule.

2.7 Regulation of State Succession in Treaties in the 1978 Vienna Convention on Succession of States

2.7.1 Background on the 1978 Vienna Convention on Succession of States in Respect of Treaties:

The International Law Commission had devoted its efforts between 1963 and 1966 to completing the Vienna Convention on the Law of Treaties, which was finalized in 1969. The Commission had excluded any topics related to international succession or international responsibility from the draft Vienna Convention of 1969. The International Law Commission decided to address the topic of international succession within its program for 1967, as soon as it had completed its work on the Vienna Convention on Treaties.

The Commission considered this subtopic at its twentieth, twenty-second, twenty-fourth, and twenty-sixth sessions, held in 1968, 1970, 1972, and 1974, respectively. The Commission appointed Sir HUMPHREY WALDOCK and Sir FRANCIS VALLAT as successive Special Rapporteurs on the subtopic at its nineteenth and twenty-fifth sessions, in 1967 and 1973, respectively.[1]

The Commission paid particular attention to the second and third reports. The second report contained four articles that dealt with the use of certain terms, especially the principle of moving or changing the boundaries of the agreement, or what is known

[1] International Law Commission, Summaries of the Work of the International Law Commission , Succession of States in respect of treaties, Last update: June 30, 2023, viset 30-3-2024, 30-4-2024 https://legal.un.org/ilc/summaries/3_2.shtml

as the "regional receptivity of treaties to change" or the "regional boundaries of the treaty to change." It also included the principle of devolution or transfer of treaties and the unilateral declarations issued by the successor state.[1]

The third report included additional provisions on terminology, as well as a draft of articles concerning the participation of new states in international agreements, and the establishment of general rules governing and governing the legal status of the new state in collective treaties. The report also included a memorandum on determining the maximum deadline for declaring the exercise of the right of international succession for treaties that were in force on the territory of the state before the succession took place.[2]

In 1972, Special Rapporteur Waldock submitted his fourth and fifth reports. The fourth report included additional provisions relating to terminology and its use, as well as a draft of five other articles on the status of the new state with respect to bilateral agreements.[3]

The fifth report included rules applicable to specific categories of succession, namely the cases of protected states, states under trusteeship or mandate, colonies, and allied states. The report also included references to the formation of federal and non-federal unions, the case of dissolution of a union between two or more states

[1] Second report of the Special Rapporteur, Sir Humphrey Waldock (21st session of the ILC (1969), ILC Report, A/8010/Rev.1 (A/25/10), 1970, chap. III(B)(1), paras. 37–48, https://legal.un.org/ilc/documentation/english/reports/a_cn4_237.pdf

[2] Third report of the Special Rapporteur, Sir Humphrey Waldock (22nd session of the ILC (1970)), ILC Report, A/8010/Rev.1 (A/25/10), 1970, chap. III(B)(1), paras. 37–48 https://legal.un.org/ilc/documentation/english/reports/a_cn4_237.pdf

[3] Fourth report of the *Special Rapporteur*, Sir Humphrey Waldock (23rd session of the ILC (1971) ILC Report, A/8410/Rev.1 (A/26/10), 1971, chap. III(A), paras. 62–70 https://legal.un.org/ilc/documentation/english/reports/a_8410.pdf

(secession), and the rules governing agreements on dispossession, local and regional agreements.[1]

In its twenty-sixth session, in 1974, the Commission adopted the final text of the draft articles on succession of States in respect of treaties, together with commentaries, and submitted it to the General Assembly with the recommendation that the Assembly invite States to submit their comments and observations in writing on the draft articles and to convene a conference of plenipotentiaries to study the draft articles and conclude a convention on the subject.

After extensive and thorough discussions, the draft articles submitted by the Special Rapporteur in his second, third, fourth and fifth reports were referred to the Drafting Committee, which was entrusted with preparing the texts of some of the provisions. In 1972, the Commission, at its session, prepared a set of provisions incorporating a draft article on succession between States in the field of international agreements. The Commission then transmitted the draft article to Member States through the Secretary-General for comments and views, in accordance with articles 16 and 21 of the Statute of the Commission.[2]

In its twenty-sixth session, in 1974, the Commission adopted the final text of the draft articles on succession of States in respect of treaties, together with commentaries, and submitted it to the General Assembly with the recommendation that the Assembly invite States to submit their comments and observations in writing on the draft articles

[1] Fifth report of the *Special Rapporteur*, Sir Humphrey Waldock (24th session of the ILC (1972)), ILC Report, A/8710/Rev.1 (A/27/10), 1972, chap. II(A)(1), para. 21 https://legal.un.org/ilc/documentation/english/reports/a_8710.pdf

[2] Butti, Ali Sabti, previous reference, p. 80

and to convene a conference of plenipotentiaries to study the draft articles and conclude a convention on the subject.[1]

In 1974, the Commission submitted to the General Assembly of the United Nations the final texts of a set of draft articles on succession of States in treaties, accompanied by a recommendation that the General Assembly convene a conference of plenipotentiaries to study the draft articles and conclude a convention on the subject. Accordingly, the General Assembly adopted resolutions 3496 (XXX) of December 15th 1975 and 31/18 of 24 November 1976, in which it decided that the draft articles should be considered at a United Nations Conference on Succession of States in Treaties (the Conference) to be held in Vienna from April 4th to May 6th ,1977.

The scheduled United Nations Conference took place. However, due to some contentious issues arising from the draft articles, the Conference recommended that the General Assembly hold a concluding session in the first half of 1978. The General Assembly adopted resolution 47/32 on December 8th, 1977, authorizing this resumed session.

This follow-up session, authorized by General Assembly resolution 32/47 of December 8th , 1977, convened in Vienna from July 31st to August 23rd , 1978.[2]

A total of 100 countries participated in the conference, with 89 attending the 1977 session and 94 joining the resumed session. Two countries sent observers to both

[1] First report of the Special Rapporteur, Sir Francis Vallat (26th session of the ILC (1974)) ILC Report, A/9610/Rev.1 (A/29/10), 1974, chap. II(A)(1), paras. 42–43, https://legal.un.org/ilc/documentation/english/reports/a_9610.pdf

[2] Anthony Aust, VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF TREATIES, United Nations Audiovisual Library of International Law,p1

sessions. Additionally, the United Nations Council for Namibia was present, along with observers from the Palestine Liberation Organization. The South West Africa People's Organization (SWAPO) also sent observers, but only in 1977. Four relevant specialized agencies and one other intergovernmental organization participated as observers in the 1977 session, while two more intergovernmental organizations observed both the 1977 and resumed sessions

The conference entrusted a general committee with reviewing the draft articles adopted by the International Law Commission and assigned to the Drafting Committee. In addition to its responsibilities for drafting, coordinating, and reviewing all adopted texts, the committee was also responsible for preparing the title, preamble, and final provisions of the convention and the final document of the conference. The conference also established an informal consultations team to consider draft articles 6, 7, and 12. In the resumed session, a dedicated team was set up for the peaceful settlement of disputes. On August 22, 1978, the conference adopted the Vienna Convention on Succession of States in Respect of Treaties (9) consisting of a preamble, fifty articles, and an annex. The convention largely retains the structure and text of the draft articles adopted by the International Law Commission. The annex of the convention outlines the conciliation procedure related to article 42 of the convention.

The Convention was open for signature from 23 August 1978 to 28 February 1979 at the Federal Foreign Office of the Federal Republic of Germany until 31 August 1979

after which accession to the Convention remains open to any country. At the United Nations headquarters[1].

The 1978 Convention did not enter into force until 1996, when the necessary number of ratifications to bring it into force was reached with 15 States expressing their consent to be bound by the Convention. This occurred after nearly eighteen years since the adoption of the Convention, and was only made possible due to the accession of Estonia, Ukraine, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Slovakia, Slovenia, and Croatia to the 1978 Convention or its successor for other States therein between 1991 and 1996. To date, the number of States Parties to the Convention does not exceed 22, with the Republic of Moldova being the most recent[2].

2.7.2 General Provisions of the Vienna Convention on Succession of States in Respect of Treaties

1) Article 2 of the Convention defines the terms related to state succession, including some that have been disputed among jurists. For example, the Convention defines state succession in paragraph (b) as "the replacement of one state by another in responsibility for the international relations of a territory and a newly independent state" as "the newly independent state" meaning "the successor state to a territory that was, immediately before the date of state succession, a territory subject to the international relations for which the predecessor state was responsible." In addition, the Convention clarifies some other concepts, such as:

[1] International Law Commission , Summaries of the Work of the International Law Commission , Succession of States in respect of treaties, Last update: June 30, 2023, viset 3-2-2024, https://legal.un.org/ilc/summaries/3_2.shtml

[2] Anthony Aust,ex,p2

- A **successor state is (**the State which has replaced another State on the occurrence of a succession of State).
- A **predecessor state is (**the State which has been replaced by another State on the occurrence of a succession of States).
- **The effective date of state succession it** (means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates).
- **The notification of succession** (means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty).
- **The State party** (A State which has consented to be bound by the treaty and for which the treaty is in force).
- **The other State party** (means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates).

2) The Agreement clarifies its scope of application and the cases to which it does not apply as follows:

Scope of Application of the Convention with Respect to Subjects of International Law:

Article 1 of the Convention stipulates that "The present Convention applies to the effects of a succession of States in respect of treaties between States."

It is evident from the text of the aforementioned article that the Convention applies solely to treaties concluded between States, excluding other types of agreements entered

into by subjects of international law, such as treaties between international organizations or between a State and other subject of international law. The Convention focuses its provisions on three categories of States: the successor State, the preceding State, and the party State.

Article 3 further emphasizes that the Convention applies exclusively to treaties between States and outlines two exceptions:

1) In the event that an agreement is concluded between a state and another legal person under international law, some or all of the provisions of this agreement are binding on the state independently of the agreement.
2) In the event that an agreement includes states and other legal persons under international law, the Vienna Convention on Succession of States in Respect of Treaties applies to the agreement in question of succession between the parties to the agreement.

Scope of Application of the Agreement in Terms of Subject Matter

a) Article (3) also states that the agreement does not apply to unwritten agreements.
b) With regard to treaties establishing international organizations, Article 4 paragraph (a) states that "any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;" Therefore, treaties establishing international organizations or, as mentioned in the previous article, constituent treaties, are considered within the scope of application of the agreement, but on condition that the successor state meets the membership condition in the international organization. And

according to paragraph (b) of the article, the agreement also applies to treaties that are organized by international organizations and invite states to accede to them.

c) Article (6) states that "The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations." This means that the Convention applies only to lawful cases of succession of one state to another, such as independence from colonialism, union, secession, and cession that meets the conditions mentioned above. However, other cases that do not conform to the principles of international law, such as occupation or annexation, do not fall under its scope.

Temporal Scope of the Agreement:

Article 7, paragraph 1, states that Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

According to this article, this agreement does not apply retroactively, but only to cases of succession that occurred after the entry into force of the agreement. The agreement states in Article (49) that its entry into force shall be after the thirtieth day following the deposit of the fifteenth instrument of accession or ratification, which took place on November 6, 1996. The agreement mentions an exception to this rule, which is that the successor state declares that it will apply the provisions of the agreement to a

case of succession that occurred before the entry into force of the agreement. Paragraph (2) of Article (7) requires the successor state to issue a declaration stating that the successor state accepts the application of the agreement to that case and that the other party state issues a declaration accepting the declaration of the successor state. In this case, the agreement becomes effective between the parties that have exchanged declarations. In order for the exchanged declarations between the parties to be valid, they must be in writing and sent to the depositary designated by Article 48 of the agreement, which states that the agreement remains open for accession by any State and that instruments of accession are deposited with the Secretary-General of the United Nations, who in turn sends this declaration to the States parties. One example of a declaration by a State to apply the agreement retroactively is the declaration issued by the Czech Republic upon its ratification of the agreement.

> **"The text of the declaration stated Pursuant to Article 7, paragraph 2 and 3, of the Vienna Convention on Succession of States in respect of Treaties, adopted in Vienna on August 23rd , 1978, the Czech Republic declares that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other Contracting State of State Party to the Convention accepting the declaration"**

The agreement also establishes general rules governing the succession of states to treaties, the most important of which are:

a) The agreement, in Article 5, emphasizes the mandatory application of customary legal rules stipulated in international agreements and agreements considered customary international law, such as the Geneva Conventions and the

Convention on the Prevention and Punishment of the Crime of Genocide. This is without the possibility for the successor state to object to the non-application of these customary rules or customary agreements due to the occurrence of state succession. In the event that a treaty signed with the predecessor state includes provisions that give the successor state the option or obligation to be bound by the treaty in the event of succession, the Vienna Convention grants the successor state the right in both cases to choose whether or not to be bound by the treaties of the predecessor state by declaring notification of succession. The agreement also stipulates that in the event of an agreement that obliges the successor state to be bound by the treaties of the predecessor, it must agree to this clause in writing

b) Devolution agreement: As defined in Article 8, these are agreements for the transfer of contractual obligations or rights from a predecessor state to a successor state. Examples include the September Agreement between the predecessor state of British India and the successor states of India and Pakistan, as well as the Devolution Agreement between the predecessor state of Malaysia and the successor state of Singapore, which seceded from Malaysia in 1956.

In contrast to the previous customary practice that obligated predecessor states to the Devolution agreements, the Vienna Convention of 1978 clarified the provisions of the Devolution agreements in Article 8. Paragraph 2 of the Article states that: ” Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention”. Therefore, Devolution agreements do not apply to the successor state.

c) Unilateral declarations by the successor state regarding the treaties of the predecessor state: In addition, if the successor state issues a unilateral declaration affirming the continuation of treaties in respect of its territory, Article 9 provides the following:" Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State or of other States Parties to those treaties by reason only of the fact that the successor State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory"

According to this article and paragraph 2, this declaration is not applicable. Instead, the provisions of this Convention apply, which stipulate the requirement to notify the succession and for the State Party to declare its acceptance of the succession.

The Vienna Convention distinguishes between two types of state succession in its regulation of succession rules: the first part deals with newly independent States and the second part deals with cases of succession resulting from the union or separation of states. In this section, we will focus on clarifying the Convention's regulation of the rules of succession of newly independent states, given its importance and its relevance to the issue addressed in this thesis, namely the inherited treaties related to the Nile River, all of which are linked to states that gained independence from colonialism.

2.7.3 The Vienna Convention's Regulation of the Rules of Succession of Newly Independent States in Treaties

The 1978 Convention on Succession of States in Respect of Treaties dedicates Part III to outlining the rules governing the succession of newly independent states.

Article 2 (1) defines a "newly independent state" as a successor state whose territory, immediately prior to the date of state succession, was a dependent territory for whose international relations the predecessor state was responsible.

The Convention on Succession of States in Respect of Treaties (1978) establishes a fundamental principle governing the extent to which newly independent states are bound by treaties concluded by their predecessor states. Article 16 stipulates that a newly independent state is not automatically bound by or required to become a party to any treaty simply by virtue of the fact that the treaty was in force in relation to the territory over which the succession of states took place. This principle, known in international law and past international practice as the "clean slate" principle, is nonetheless subject to certain exceptions. The Convention allows the successor state to demonstrate its status as a party to treaties concluded by its predecessor state and categorizes treaties into two groups, with specific provisions governing each:

1) Multilateral treaties:

- The agreement allowed the successor state to prove its membership in a multilateral treaty by notifying the succession. The agreement mentioned two exceptions: the first is that the non-application of the treaty in relation to the newly independent state would be incompatible with the subject matter and purpose of the treaty or would fundamentally change its terms of operation, and the second is that if there is a condition in the agreement for the consent of all parties, the successor state does not become a party unless this condition is met.

- The aforementioned rule, including its exceptions, applies even if the multilateral treaty has not yet entered into force or will enter into force on a specific date that comes after the occurrence of the succession.
- In the case of a multilateral treaty that required ratification, acceptance, or approval to become effective for the predecessor state, the successor state may sign, ratify, or accept it and become a party to it, provided that there was an intention on the part of the predecessor state to apply the treaty to the territory subject to succession.
- When the successor state establishes its status in the treaty as a party, it inherits the reservations made by the predecessor state in the treaty, with the right to formulate reservations in accordance with its interests in the notification of succession.
- The agreement also allowed the successor state to notify the other parties to the treaty of its intention to apply the treaty provisionally. In this case, the treaty applies between the successor state and any other party that expressly agrees to the provisional application or that is considered to have agreed to the provisional application by its conduct, in accordance with the preceding provisions.
- The provisional application of the treaty terminates upon notification by the newly independent state, a party to the treaty, or all parties to the treaty, or upon the expiration of the notification of provisional application. It is permissible to agree on a successor to such provisional application.
- The provisional application of the treaty also terminates if the newly independent state gives notice of its intention not to become a party to the treaty.

2) Bilateral treaties:

- As a general rule, bilateral treaties are not inherited by successor states, except in two cases: first, when the successor state and the party state to the treaty expressly agree to the continued application of the treaty between them, and second, when the conduct of both parties demonstrates their acceptance of the continued application of the treaty.
- The continued application of this treaty between the successor state and the party state is not affected by the continued application or suspension of its application between the predecessor state and the other party state.
- The provisions of the treaty between the successor state and the party state are not affected by amendments made to the treaty between the predecessor state and the party state.
- The agreement allows the successor state to notify the party state of its intention to apply the treaty provisionally. In this case, the treaty will apply between the successor state and the party state if the party state expressly agrees to the provisional application or if its conduct demonstrates its acceptance of the provisional application of the treaty.
- The provisional application of the treaty terminates by a notification from the newly independent state or the party state, or in the case of the termination of the notification of provisional application.
- In multilateral and bilateral treaties, the notice period for terminating provisional application is 12 months from the date of receipt by the State concerned, unless otherwise agreed.

It appears from the foregoing that the Vienna Convention of 1978 has established a general rule governing the state of succession of newly independent states. This is reflected in Article 16, which states that the agreements concluded by the predecessor state do not continue to apply to the successor state. This is known in international law as the "clean slate" principle. However, this principle is not a new rule but is an established principle in international law and is the result of a theory that emerged in the 19th century and was supported and developed by many jurists such as Keith and Zuron. In its early stages, this principle stated that the new state does not inherit any obligations or rights from the predecessor state. The principle developed until it came to state, during a period of time, that the successor state does not inherit any rights or obligations arising from treaties concluded by the predecessor state, except for those that are closely linked to the territory. This principle was applied to all new states (successor states) regardless of the reason for their emergence, whether it was secession, union, or disintegration. It reached its final form, which is reflected in Article 16 of the Vienna Convention on Succession of States in Respect of Treaties of 1978, which defined the scope of application of the "clean slate" principle to newly independent states only, to the exclusion of other new states arising as a result of secession or union. According to this principle, the newly independent state in international life is free from the obligations contained in the treaties concluded by the predecessor state in relation to the territory of the new state[1].

In its efforts to codify the international customs related to state succession in the Vienna Convention on Succession of States, the clean slate principle was adopted in the preparatory work of the convention almost unanimously in the Sixth (Legal) Committee

[1] Al-Mukhtar, Taiba Jawad Hamad and Al-Qarawi, Baqir Abdul-Kadhim Ali, ex, p186

of the United Nations General Assembly. It was then adopted in its final form in Article 15 of the draft adopted at the second reading in 1974 and was adopted by the diplomatic conference provisionally without amendment on April 21st, 1977. During the diplomatic conference, the delegate of Madagascar (Ranjeva) affirmed the customary nature of the clean slate principle. The representative of Italy (Maresca) stated that Article 15 "is a brilliantly presented codification and unification of a very old principle in international law." It was approved by the delegations of many countries and became Article 16 of the Draft Vienna Convention on Succession of Treaties, which stated that "A newly independent state shall not be obliged to maintain or become a party to a treaty in force solely because at the date of the succession of states the treaty was in force in respect of the territory to which the succession of states relates." The Vienna Convention of 1978 provides for two exceptions to this principle, namely those set forth in Articles 11 and 12.

The First Exception: to the clean slate principle is for **boundary regimes**, as stipulated in Article 11 of the Vienna Convention on Succession of States. Boundary regimes refer to the legal frameworks that govern the borders between states. These frameworks are typically established by treaties and encompass both land and maritime boundaries.

Such as the Algiers Agreement of 1975, which was signed between Iran and Iraq at the initiative of Algerian President Houari Boumediene, according to which common border disputes between Iraq and Iran were settled, such as the dispute over the Shatt al-Arab and the demarcation of the borders between the two countries, as well as the rights and obligations established under a treaty that relate to the system of the border

The second Exception: The Vienna Convention of 1978, in Article 12, recognizes an exception for "other regional systems." Which mean any rights established under a treaty that stipulates or obligations established under a treaty that stipulates the imposition of restrictions on the use of the territory for the benefit of another state or countries. The Indus Waters Treaty (1960) between Pakistan and India serves as a prime example. This treaty, governing the Indus River system, establishes such a system. Notably, Article II, paragraph 2, obligates Pakistan to allow unrestricted flow of the Sutlej and Ravi rivers within its borders until they definitively enter Pakistan, preventing any diversions or disruptions in these sections.

And also, what is stated in Article 3 of the Indus Waters Treaty, paragraph (2):

India shall be under an obligation to let flow all the waters of the Western Rivers, and shall not permit any interference with these waters, except for the following uses

a) **Domestic Use**
b) **Non-Consumptive Use**
c) **Agricultural Use, as set out in Annexure C**
d) **Generation of hydro-electric power, as set out in Annexure D** [1]

However, this article contradicts the customary law and practices previously applied in the Scope of application of this principle. This principle used to be applied to all cases of state succession, while the treaty restricts its application to the case of

[1] United Nations Treaty Series, No. 6032. The Indus Waters Treaty I960 Between The Government Of India, The Government Of Pakistan And The International Bank For Reconstruction And Development. Signed At Karachi, On 19 September 1960 https://treaties.un.org/doc/Publication/UNTs/Volume%20419/volume-419-I-6032-English.pdf

succession of newly independent states. This raises an important question: how can we distinguish between a newly independent successor state and a detached successor state? Knowing that in most cases of state succession, successor states issue a declaration of independence and declare themselves newly independent states.

This question can be answered by referring to the definition of newly independent states provided in the 1978 Vienna Convention. The definition describes a newly independent state as one that, prior to the occurrence of succession, was a dependent territory. This means that the successor state, before its independence, was a dependent territory that could not exercise its sovereign powers in the management of the territory's international relations. This is the criterion by which a newly independent state is distinguished from a detached state. A detached state was not a dependent territory but was part of the predecessor state's authority in the management of the predecessor state's territory's international relations.

2.7.4 Difficulties Faced by the 1978 Vienna Convention on Succession of States in Respect of Treaties:

The Vienna Convention on Succession of States in Treaties faced numerous challenges, which can be summarized as follows, as outlined by ANTHONY AUST, the Legal Adviser to the United Kingdom Mission to the United Nations in New York from 1988 to 1991, in a research paper on the Convention[1]:

1) During the period when the Convention was drafted and opened for signature, there was no established international law governing succession issues in treaties. As a result, each newly formed state acted in accordance with its own

[1] Anthony Aust, Vienna Convention on the Succession of States in Treaties, United Nations Audiovisual Library of International Law, 2009

interests. For instance, upon the dissolution of the Soviet Union, the positions of the newly formed states regarding the binding nature of treaties to which the Soviet Union was a party diverged. Russia deemed that its adherence to the agreements concluded by the Soviet Union served its interests in establishing its position as the Soviet Union's successor, particularly given the Soviet Union's prominent role in the United Nations. Indeed, Russia succeeded the Soviet Union as a founding member of the United Nations with veto power. Conversely, other states, such as Lithuania, which was occupied by the Soviet Union during World War II in 1940, perceived their interests as better aligned with those of Western European countries. Consequently, Lithuania opted to disassociate itself from any obligations related to the former Soviet Union and joined NATO in 2004.

2) The situations of state succession vary enormously, and adopting a single approach to all cases was never appropriate at all during the period in which the agreement was created, which was the Cold War era. The multiplicity and divergence of succession theories have further increased the difficulty of drafting a text on this subject
3) Prior to the 1990s, there were only a few recent practices that could be relied upon.
4) When the Commission was drafting the articles (during the relatively short seven-year period), the most recent state practices related to former colonies were inconsistent. For this reason, the rules contained in the 1978 Vienna Convention on Succession of States in Respect of Treaties are overly complex. In addition, the decolonization process was nearing completion by 1978, while

> the 1978 Convention does not apply to cases of state succession that occur before its entry into force (6 November 1996) unless the successor state agrees to it.

ANTHONY AUST also raised criticisms of the Convention regarding the clean slate principle. The Convention emphasized this principle to an excessive degree without giving due weight to the countless state practices related to the conclusion of succession agreements or the more important practices related to the issuance of declarations of succession.

In conclusion of this chapter, it can be said that the topic of state succession in treaties, despite its importance, has not received much attention from states in terms of regulating its provisions in an international treaty. This is evident from the number of member states of the Vienna Convention on Succession of States in Respect of Treaties 1978, which has reached 22 states after 46 years of the opening of the signature period for the Convention. As for the application of the Convention in practice, the Convention has been applied to one case only, which is the case of the succession of the Czech Republic and Slovakia, which resulted from the division of Czechoslovakia. However, in other practical practices that occurred before and after the Vienna Convention of 1978, each state applied what it deemed appropriate in its own interest. Therefore, previous international practical practices differed from one case to another, in line with the different organization of legal theories on this subject. However, maintaining this situation without obligating successor states or parties to treaties concluded with predecessor states to legal rules that determine the extent of the bindingness of inherited treaties leads only to more international disputes over the application of inherited

treaties. Therefore, from the researcher's point of view, the Vienna Convention on Succession of States in Respect of Treaties of 1978 should be applied due to several reasons, namely:

1) The Vienna Convention on Succession of States in Respect of Treaties, despite facing challenges due to the inconsistency of past practices, aimed to bring order to this complex area of international law. The International Law Commission, responsible for drafting the Convention, sought to codify existing customary law and legal theories. The Convention incorporates previously applied legal rules and principles, such as the principle of continuity of treaties for new states arising from secession or unification. However, the Convention also recognizes the clean slate principle, which the ILC interprets as applying only to newly independent states, allowing them a fresh start without inheriting all the treaties of their predecessor.
2) The Vienna Convention provides protection for successor states from certain situations in which they might be coerced by the predecessor state into assuming responsibility for inherited treaties. This coercion could take the form of forcing the successor state to sign a succession agreement or to issue unilateral declarations of succession. The Convention addresses this issue by explicitly stating that such treaties or declarations are not legally binding.
3) The Vienna Convention establishes specific procedures to be followed in the event of state succession. These procedures involve the notification of succession, which is submitted to the Secretary-General of the United Nations. The Secretary-General, in turn, is responsible for informing the States Parties to the Convention.

4) The application of the Vienna Convention on Succession of States in Respect of Treaties plays a significant role in stabilizing international transactions and relations. This is achieved by obliging states to adhere to the clear and well-defined provisions of the Convention, rather than following the previous practice of each state applying what it deems appropriate in its own interest.

Chapter Three: Inherited Treaties Relating to the Nile River

In this chapter, we will be studying the extent to which the inherited treaties concluded by predecessor countries of the river basin countries are binding. To understand the topic further, we will initially talk in general terms about the Nile River, its history, geography and sources moreover we will touch the subjects of the Nile Basin countries, and the European colonization of those countries. Following that we will explain the inherited treaties related to the Nile River and the positions of the Nile Basin countries regarding those treaties. Then apply the legal rules we spoke about in the first chapter to those agreements in terms of their extent to which they are binding for the Nile Basin countries.

3.1 The Nile River

The name of the Nile is derived from the Greek word Nilus, which may have originated from the Semitic root word ‘nihal’, meaning valley or river’s valley. The Nile River formed a unique geographical phenomenon in North Africa, as it is the only river that was able to make its way across the Sahara Desert, carrying a large part of the waters of tropical Africa to the Mediterranean Sea[1], The Nile River passes through 11 countries called the Nile Basin countries. These countries are: Burundi, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, Uganda, and the Democratic Republic of the Congo. After the separation of South Sudan from Sudan, South Sudan became the 11th country. A country with an area of three million square kilometers, the basin covers about 10 percent of the African continent, and about 160 million people depend

[1]Zubaidi, Musab Attia, Al-Ajmi, Ahmed Hashush, the historical roots of the reproductive water crisis until the Egyptian initiative of 1999, Lark Philosophy, Sociology and Social Sciences, vol. 2, no. 30,p69

on the Nile River for their livelihood[1]. For example, 95% of the population of Egypt live a few kilometers from the Nile River[2], With the exception of Kenya and Egypt, all of the basin countries are among the fifty poorest countries in the world, which makes their populations much more vulnerable to famine and disease[3].

The present-day Nile basin is naturally divided into seven main regions: the Lake Plateau in East Africa, the Bahr al-Jabal, the White Nile, the Blue Nile, the Atbara River, the Nile River north of Khartoum in Sudan, Egypt, and the Nile Delta[4]. The Nile has two main tributaries: the white Nile and the blue Nile

A) The White Nile

The White Nile originates from the Lakes Plateau (Lake Victoria). The Lufirunza River in Burundi is considered the southernmost source of the Nile. It is one of the tributaries of the Kagera River, which empties into Lake Victoria, which is considered the primary source of water for the White Nile and is the second largest freshwater lake in the world.

This lake is located in an area rich in swamps on the borders of Uganda, Tanzania and Kenya, and is crossed by the equator. It is considered the third of the great lakes, and from there the river passes to Lake Kyoga and then to Lake Albert, and reaches South Sudan at the city of Nimuli, where it passes through the Fula Falls. Then it became known as “Sea Mountain”.

[1] Patricia Kameri-Mbote, Water, Conflict, and Cooperation Lessons From the Nile River Basin, navigating peace ,Woodrow Wilson international center for scholars January 2007 No. 4,pp1

[2]national geographic education, ENCYCLOPEDIC ENTRY , Nile River, accessed at 30-4-2024 https://education.nationalgeographic.org/resource/nile-river /

[3] Patricia Kameri,Mbote, pp1

[4] Margaret Stefana Drower, hysiography of Nile River, Britannica , accessed at 1-5-2024 https://www.britannica.com/place/Nile-River/Physiography

The river then enters the area of dense swamps, and the Bahr al-Zaraf branches off from it. It then connects with the Bahr al-Ghazal, then with the “Sobat” River, which originates from the Abyssinian Plateau, then resumes its course towards the north, where it is known as the “White Nile” and continues on its path until it passes the Sudanese capital. AlKhartoum.

B) The Blue Nile

The Blue Nile constitutes 85% of the water supplying the Nile River, and this water reaches it only during the seasonal rains on the Abyssinian Plateau in the summer, which is known as the Nile flood, while it does not constitute the same percentage during the rest of the days of the year as the water decreases.

The Blue Nile originates from Lake Tana in the highlands of Ethiopia and is fed with only 7% of its revenue on average, and the remainder is from a number of other tributaries. It meets the Rahad and Dinder rivers within the territory of Sudan, and continues on its path until it meets the White Nile in the Al-Muqrin area in Khartoum to form together - From that point, it passes through the territory of Egypt until the mouth in the Mediterranean Sea - what is known as the “Nile”.

Then it crosses the Sudanese-Egyptian border, and continues on its path until it reaches Lake Nasser, which is an artificial lake located behind the High Dam. In 1998, some parts of this lake separated to the west - in the Western Desert - to form the Toshka Lakes.

After Lake Nasser, it heads north to branch into two branches: the Damietta Branch to the east, and the Rosetta Branch to the west. They enclose the Nile Delta

between them, and the Nile finally empties into the Mediterranean Sea, in the Lessan area in the city of Ras El Bar in Damietta Governorate (Damietta Branch)[1]. The Rosetta Branch also empties into the Mediterranean Sea.

3.2 Colonization in the Nile Basin

All the Nile Basin countries fell under colonialism, which was represented by four countries: Britain, Germany, Italy, and Belgium. The modern colonial movement of the Nile Basin countries began with Britain's colonization of Egypt in 1882, which included Sudan within its territory. Sudan was divided into two parts, Northern Sudan, which was under direct British colonialism. And southern Sudan, which was under the colonization of Egypt and Britain. In addition to Sudan and Egypt, Britain also colonized Uganda, Kenya, and Tanganyika.

As for Eritrea, it was officially declared an Italian colony on January 1, 1890 until 1941 after Italy's loss in World War II. Then it became a British colony following the defeat of the Italian forces until 1951, after which it was annexed to Ethiopia until it gained its independence from Ethiopia in 1991[2].

Italy tried to occupy Ethiopia for several reasons, including expansion reasons and also border disputes. To do so, it fought two wars against Ethiopia in an attempt to occupy it. The first was between 1895 and 1896 which ended with Italy losing and not being able to occupy Ethiopia and the second war, which is referred to as the Italo-

[1] Al Jazeera, Encyclopedia, Nile River, 11-28-2015, date of visit 5-2-2024 https://www.aljazeera.net/encyclopedia/2015/11/28/%D9%86%D9%87%D8%B1-%D8%A7%D9%84%D9%86%D9%8A%D9%84

[2] Embassy of the state of Eritrea Washington DC -USA, Our History, accessed at4-5-2024 https://us.embassyeritrea.org/our-history/

Abyssinian War. Which began in 1935 and ended with Italy taking control of Addis Ababa on May 5, 1936, and the exile of Haile Selassie, Emperor of Ethiopia[1.]

As for Germany, it colonized Tanzania in 1885 and expanded its control to add the states of Burundi and Rwanda to its colony until it famously lost World War I and its colonies were divided among the victorious countries according to the Versailles Treaty of 1919, where Britain took control of Tanzania while Belgium took control of both Rwanda and Burundi, and in addition , the Belgian King Leopold II granted personal sovereignty over the state of the Congo under the Congo Conference, which took place from November 15, 1884 to February 26, 1885[2].

3.3 The Agreements that the Nile Basin Countries Inherited From Colonialism

During its colonization of the Nile Basin States, the colonial Powers concluded agreements between them concerning the Nile River to serve their interests, among the most important of which:

1) **Rome Protocol or other name The 1891 Anglo- Italian Protocol signed between Britain and Italy occupying Eritrea at the time[3]**

This protocol discussed delineating the spheres of influence of both countries in East Africa from Ras Kasar to the Blue Nile. However, the United Kingdom wanted to ensure unimpeded flow for all tributaries of the Nile and obligated Italy under Article 3 of the protocol not to undertake any construction works on the Atbara River. Italy

[1] Britannica, Italo-Ethiopian War 1935-1936, Article History, , accessed at4-5-2024 https://www.britannica.com/event/Italo-Ethiopian-War-1935-1936

[2] Ulrich van der Heyden, , The History of German Colonialism , archivfuehrer deutsche kolonialgeschichte, accessed at 7-5-2024 ,https://archivfuehrer-kolonialzeit.de/index.php/history?sf_culture=en

[3] Nour El-Din Muhammad, Nader, Egypt and the Countries of the Headwaters of the Nile, Nahdet Misr Publishing House, Egypt, 2014,p396

complied with this because, at that time, it controlled the northern part of the country (now Eritrea) and wanted the United Kingdom to recognize its interests in Ethiopia. Article 3 stipulated the following: "The Italian Government undertakes not to construct anything on the Atbara River, for irrigation purposes or to carry out any work that might reasonably modify its flow towards the Nile". In return for this Italian assurance, Britain recognized Ethiopia as an Italian sphere of influence.[1]

2) Addis Ababa Agreement 1902 or other name THE ANGLO-ETHIOPIA TREATY1902

The agreement was concluded between Britain, which colonized Egypta and Sudan and Ethiopia, with the aim of establishing the border line between Ethiopia and Sudan. Articles I and II of the Agreement on the delimitation of the boundary and the establishment of the Joint Boundary Commission to supervise the border. Article III provided that projects on the Nile River would not be detrimental to Egypt and Sudanas Emperor Menelik II, King of Kings of Ethiopia, pledged not to establish or allow the establishment of any facilities on the Blue Nile, Lake Tana, or the Sobat River that would affect the flow of the Nile River's waters except with prior agreement with the British government and the Sudanese Government [2] and to ensure the continuation of this Agreement between the Parties and to ensure the continuation of this agreement between the parties, its opening paragraph stipulated the desire of the King of the British Kingdom, Edward VII, and the King of Ethiopia, Menelik II, their desire to settle the borders between Sudan and Ethiopia, and to ensure the continuity of this treaty, the last paragraph of the opening paragraph stipulated "they have agreed upon

[1] Mohammed Abdo, The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin, PERCEPTIONS , Summer 2004,pp48 https://sam.gov.tr/pdf/perceptions/Volume-IX/summer-2004/4.-Mohammed-Abdo.pdf

[2] Nour El-Din Muhammad, Nader,ex, p396

and do conclude the following Articles, which shall be binding on themselves, their heirs, and successors." [1].

3) Treaty of London 1906 between Britain and Belgium, which colonized the Congo

The United Kingdom and King Leopold II, Sovereign of the Independent State of the Congo, signed a Treaty in London, on May 9, 1906

In Article 3 this Treaty provided that the Government of the Independent State of the Congo undertakes not to construct or allow to be constructed, any work over or near the Semliki or Isango Rivers which would diminish the volume of water entering Lake Albert, except in agreement with the Sudanese Government[2].

4) Treaty of London 1906

This treaty is also called the Tripartite Agreement of 1906 between France, Italy, and Great Britain. This agreement came after Italy's failure to prove control over Ethiopia, and was a reaffirmation of the terms of the Protocol of April 15, 1891 and the Agreement of May 15, 1902. The agreement defined the interests of the three contracting parties in Ethiopia and adherence to the principle of non- Interference in the flow of the Blue Nile, Sobat and Atbara[3].

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[1] Treaties of Addis Ababa, 1902." African Digital Heritage https://ardhi.unl.edu/item/ardhi.treaty.00004.

[2] Agreement between Great Britain and the Independent State of the Congo, modifying the Agreement signed at Brussels, May 12,1894, relating to the Spheres of Influence of Great Britain and the Independent Sate of the Congo in East and Central Africa.- Signed at London, May9,1906 https://s.raseef22.net/storage/attachments/1097/1906CongoandUKtreaty_688110_a2ad8145806aadf0f6b23cb58cc2b419.pdf

[3] Gebre Tsadik Degefu, The Nile(Historical, Legal, and Developmental Perspectives : a Warning for the Twenty-first Century), 2003, Trafford Publishing, p102-103

5) Exchange of notes between Britain and Italy on December 14-20, 1925.

In November 1919, Italy made an offer to Britain stating that Italy would ask Britain for its support to obtain the concession to build and operate a railway line from the borders of Eritrea to the borders of Italian Somaliland, through which the railways should pass, according to the tripartite agreement, to the west of Addis Ababa, in addition to requesting exclusive economic influence in western Ethiopia and in the entire territory that will be crossed by the above-mentioned railways, and to promise to support the Ethiopian government for all requests for economic concessions with regard to the Italian region but this offer was rejected at that time, mainly due to a strong objection to the idea of allowing a foreign power to establish any kind of control over the headwaters of rivers so vital to the prosperity and even existence of Egypt and Sudan.[1] Until the British ambassador in Rome responded on December 14, 1925, with a letter to the Italian government stating that Britain was ready to accept Italy's request, the return was to obtain a concession for Britain to build projects in Lake Tsana, along with the right to build and maintain a highway for the passage of warehouses, individuals, etc. That, from the borders of Sudan to the lake, he added in his message :

> **" In the event of His majesty's Government,, with the valued assistance of the Italian Government, obtaining from the Abyssinian Government the desired concession on Lake Tsana, they are also prepared to recognise an exclusive Italian economic influence in the west of Abyssinia and in the whole of the territory to be crossed by the above-mentioned**

[1] Exchange of Notes Between the United Kingdom and Italy Respecting Concessions for a Barrage at Lake Tsana and a Railway Across Abyssinia From Eritrea To Italian Somalilands, International Water Law Project Addressing the future of water law and policy in the 21st century,viset 5-2-2024 https://internationalwaterlaw.org/documents/regionaldocs/lake-tsana.html

railway. They would further promise to support with the Abyssinian Government all Italian requests for economic concessions in the above zone. But such recognition and undertaking are subject to the proviso that the Italian Government on their sides recognising the prior hydraulic rights of Egypt and the Sudan, will engage not to construct on the head waters of the Blue or White Niles or their tributaries or effluents any work which might sensibly modify their flow into the main river. It is understood that the above proviso would not preclude a reasonable use of the waters in question by the inhabitants of the even to the extent of constructing dams for hydro-electric power or small reservoirs in minor effluents to store water for domestic purposes, as well as for the cultivation of the food crops necessary to their own subsistence."[1]

Italy responded to this letter with another letter in which it agreed to these conditions and affirmed its previous recognition of the hydraulic rights of Egypt and Sudan over the Nile and Italy's commitment not to build any work on the sources of the Blue Nile and the White Nile and their tributaries, as stated in the text of the letter

"On their side the Italian Government, recognising the prior hydraulic rights of Egypt and the Sudan, engage not to construct on the head waters of the Blue Nile and the White Nile and their tributaries and

[1] Exchange of Notes Between the United Kingdom and Italy Respecting Concessions for a Barrage at Lake Tsana and a Railway Across Abyssinia From Eritrea To Italian Somalilands , Signed at Rome 14 and 20 December 1925 (No. 1) The British Ambassador at Rome to the Italian Prime Minister, Minister for Foreign Affairs Romeo, December 14, 1925 https://internationalwaterlaw.org/documents/regionaldocs/lake-tsana.html

effluents any work which might sensibly modify their flow into the main river"[1].

6) Egyptian-British Nile Waters Agreement (1929

On 7 May 1929, notes were exchanged between Egyptian Prime Minister Muhammad Mahmoud Pasha and the British High Commissioner in Egypt Lord Lloyd, the latter of whom was acting on behalf of Sudan. This exchange became known as the Nile Waters Agreement in 1929, and at that time Britain represented (Sudan, Tanganyika (today Tanzania), Uganda and Kenya).

In this agreement, Egypt recognized Sudan's right to obtain a sufficient amount of water for the development of Sudan as long as Egypt's historical rights to water were recognized, as stated in the second paragraph of Muhammad Pasha's letter as follows:

"Obviously, the development of the Sudan needs a quantity of water flowing from the Nile higher than used hitherto by the Sudan. Your Excellency is keenly aware of the fact that the Egyptian Government has always been desirous of encouraging such a development and shall continue in this direction. It would be ready to come to terms with her Majesty's Government on an increase in this quantity in so far as this would not infringe on neither the natural and historical rights of Egypt on the waters of the Nile nor on its agricultural development needs subject to obtaining satisfactory assurances with regard to the protection

[1] Exchange of Notes Between the United Kingdom and Italy Respecting Concessions for a Barrage at Lake Tsana and a Railway Across Abyssinia From Eritrea To Italian Somalilands , Signed at Rome 14 and 20 December 1925 , (No. 2) The Italian Prime Minister, Minister for Foreign Affairs, to the British Ambassador at Rome Rome, December 20, 1925 https://internationalwaterlaw.org/documents/regionaldocs/lake-tsana.html

of Egyptian interests as set forth in the ensuing paragraphs of the present note" [1].

The agreement also specified a strict system for managing water information and set a timetable for the flow of specific quantities of water to Egypt. Under this agreement, Egypt's share was set at 48 billion cubic meters, compared to only 4 billion cubic meters for Sudan. Egypt reserved the right to inspect and object to upstream water projects that that would affect the size of the river and its permanent flow. Thus, this agreement was one of the basic tools that Egypt used to achieve and highlight its dominant influence over the entire basin

In Britain's response to this letter, Britain affirmed the items mentioned by Egypt in its letter and also affirmed its recognition of Egypt's historical rights over the waters of the Nile River, as the letter stated the following:

(By confirming the provisions on which we mutually agreed and which were enumerated in your Excellency's note….

(In conclusion, I would like to remind your Excellency that Her Majesty's Government in the United Kingdom has already recognized the natural and historical right of Egypt to the waters of the Nile. I am entrusted with the responsibility of declaring that Her Majesty's Government in the United Kingdom considers the observance of these rights as a fundamental principle of the policy of Great Britain and wishes to assure your

[1] Exchange of Notes between Her Majesty's Government in the United Kingdom and the Egyptian Government on the Use of Waters of the Nile for Irrigation, Signed at Cairo, on 7 May 1929, No I, Mohammed Mahmoud Pacha to Lord Lloyd, office of the Council of Ministers, (Cairo, 7 May 1929 https://internationalwaterlaw.org/documents/regionaldocs/Egypt_UK_Nile_Agreement-1929.html

Excellency that the principle of this agreement as well as its detailed stipulated provisions will be observed irrespective of the time and circumstances.) [1]

7) The London Agreement of 1934 between Britain (Tanganyika (now Tanzania)) and Belgium (Bundi and Rwanda)

This agreement was concluded to determine water rights between Tanganyika and Rwanda and Burundi. The first article of the agreement stipulated that the countries that signed the agreement regarding the Kagera River, which is one of the tributaries of Lake Victoria, would return the water used in energy projects in any of the previous countries to the river. Kagera before entering the border between Tanganyika and between Rwanda and Burundi. Article VI of the agreement stipulates that if either of the two contracting governments wishes to exploit the waters of the river or watercourse on the previously mentioned borders, the government benefiting from the projects used must give notification to the other government before starting Any project 6 months prior.[2]

8) The 1953 agreement, signed between Egypt and Britain on behalf of Uganda regarding the establishment of the Owen Reservoir at the outlet of Lake Victoria, which is a collection of letters between Egypt and Britain between 1949 – 1953[3]

This agreement stipulated that Egypt would participate in building a dam and reservoir on the Awen Falls for the purpose of generating electricity for the benefit of Uganda and raising the level of the Awen Reservoir to raise the level of water and store it for the benefit of Egypt and Sudan.

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[1] Exchange of Notes between Her Majesty's Government in the United Kingdom and the Egyptian Government on the Use of Waters of the Nile for Irrigation, Signed at Cairo, on 7 May 1929, No 2, Lord Lloyd to Mahmoud Pacha) :Cairo, 7 May 1929(https://internationalwaterlaw.org/documents/regionaldocs/Egypt_UK_Nile_Agreement-1929.html

[2] Al-Zubaidi, Musab Attia ,ex, p122-123

[3] Al-Zubaidi, Musab Attia ,ex, p124

Egypt has maintained an inspection office in Jinja that monitors the stock and conducts water studies to study the water level.[1]This is in addition to Britain's pledge not to affect Egypt's share of the river's water because of these projects and its affirmation of what was stated in the 1929 agreement regarding establishing projects and maintaining Egypt's share. From river water.

These were the most prominent agreements that the Nile Basin countries inherited, independent of their predecessor countries, represented by Britain, which was colonizing Egypt, Sudan, Uganda, Tanganyika (Tanzania), Belgium, which was colonizing Burundi and Rwanda, Italy, which was colonizing Eritrea, and in a period of time Ethiopia, and We can see that all of these agreements, despite the difference in their main objective, whether it was demarcating borders or establishing projects, stipulated a common commitment between them, which is to prevent the upstream countries from establishing any projects that would affect the flow of the river and Egypt's share of the river's water. We can also see This commitment is in the interest of the colonial countries and not in the interest of the territory under colonialism. For example, the exchange of memorandums between Britain and Italy on December 14-20-1925, which became an agreement between the two parties. Italy's primary goal in these memorandums was to obtain British approval to establish a railway on the lands that Italy was colonizing it, and Britain agreed to this project, but with conditions, the most important of which was Italy's commitment not to undertake any projects on the sources of the Nile River. Italy certainly agreed to this condition, as it saw the railway line as an essential project in its plan to strengthen its trade and economic influence in the region

[1] Ali Ghanem, Ibrahim, Egypt's Water Security: Geography, Hydrology, Legal and Political, Al Manhal, Egypt, 2016,130..

without paying any attention to the need of the inhabitants of the areas it controlled to exploit the waters of the Nile River. In addition to this, Britain saw Egypt as an ally in East Africa and considered its presence as a strong military and economic country in the region to be an essential complement to Britain's influence on East Africa and also to Britain's economic power, especially with regard to British projects In Egypt, in addition to its possession of the Suez Canal, from the researcher's point of view, these reasons were a major factor in Britain's insistence on every occasion, whether agreement or exchanged letters, to protect Egypt's share of the river's waters without regard to the need of the other territories that Britain was colonizing to establish projects on the river thet would improve the lives of individuals at the economic level.

3.4 The Position of the Nile Basin Countries on the Succession of Inherited Treaties Related to the Nile River from Colonial Countries

The Nile River Basin includes the countries: "Eritrea, Uganda, Ethiopia, Sudan, South Sudan, Egypt, Congo, Burundi, Tanzania, Rwanda, and Kenya." These countries were divided into two positions, between a position supporting the compulsory inherited treaties, including (Egypt, Sudan, Congo, and Eritrea), and another position opposing the compulsory nature of these treaties, including (Ethiopia, Tanzania, Uganda, Kenya, Burundi, and Rwanda), whose positions were As follows:

3.4.1 The Position in Favor of the Binding of Inherited Treaties

This position was led by the downstream country, Egypt, which is considered the country most negatively affected in the event of non-compliance with the inherited treaties related to the Nile River then Sudan, Eritrea, and the Democratic Republic of the Congo joined it in its position. Egypt's position was clear in its disputes with the newly independent Nile Basin countries. The first dispute for Egypt Regarding the

obligatory inherited treaties was with Sudan, which was resolved when Sudan and Egypt signed the agreement on the full use of the Nile waters on November 8, 1959 in Cairo. According to this agreement, the average annual discharge of the river at Aswan, amounting to 84 billion square cubic meters, was divided between the two countries on the basis that Egypt's share would be 55%. 5 billion square cubic meters, and Sudan's share is 18.5 billion square cubic meters annually[1]. The agreement also recognized the rights of the other basin countries and arranged for confronting those rights as The second clause in Chapter Five stipulated general provisions (that, given that the countries located on the Nile Other than the two contracting republics demanding a share of the Nile waters, the two republics agree to discuss together the demands of these countries and agree on a unified opinion regarding them. If the discussion results in the possibility of accepting any amount of the river's revenues allocated to one country or another, then this amount is calculated at Aswan and deducted equally between them)[2].

After the independence of Tanzania, a letter was sent to Egypt confirming that the treaties signed during the colonial era of Tanzania were not binding. Egypt once again confirmed its position in the official memorandum in which it responded to Tanzania in November 1962, where it confirmed that the agreement 1929 is still in force and validity and reaffirmed the binding nature of the agreement and that Egypt Prefer to

[1] Tayea, Muhammad Salman, Egypt and the Nile Water Crisis (Prospects of Conflict and Cooperation), 1st edition, Dar Al-Shorouk, 2012,p399.

[2] Sudan - United Arab Republic Agreement Between The United Arab Republic And The Republic Cairo, November 8, 1959 And Protocol Concerning The Establishment Of Permanent Joint Technical Committee Signed Of Sudan For The Full Utilization Of The Nile Waters, Signed At At Cairo, January 17, 1960.
https://internationalwaterlaw.org/documents/regionaldocs/UAR_Sudan1959_and_Protocol1960.pdf

holding informal consultations between Egyptian and Sudanese experts on the one hand and experts from Tanzania, Kenya and Uganda on the other hand to agree on the necessary measures to manage and divide water on a fair basis between the Nile countries. The Egyptian government sent A copy of this memorandum to the governments of Kenya, Uganda and Sudan without recording any objection from these countries[1]

Egypt has always protested in its response to countries that reject the obligation of inherited treaties that the principle of inheritance of treaties is a principle of international law affirmed by international norms and is applied to agreements on common rivers in all countries of the world. In addition, the Vienna Convention of 1978 for the succession of states in treaties confirmed the Egyptian position. In its terms, it stipulated the principle of the white paper, which exempts newly independent countries from being bound by treaties concluded during their colonization, with the exception of agreements related to borders and agreements establishing regional systems, that is, those that impose obligations related to the territory for the benefit of another country. Egypt has signed and ratified the Vienna Convention on the Succession of States in Treaties for the year 1978 on 7-17- 1986, which entered into force in 1996.

As for the Republic of the Congo, which supports Egypt in its position on the Nile River treaties, it recognized the binding of the treaties inherited since its independence, as the Constitution of the Congo issued in 1967 in Chapter Nine, Article (6), stipulates the following:

[1] Shawqi, Mamdouh, International Succession in International Treaties: A Legal Study of the Nile River Agreements, Egyptian Journal of International Law, Volume 45, 185-206, 1989, p200

(International treaties or agreements concluded before June 30, 1960, shall remain valid only in so far as they have not been modified by national legislation)[1]

The Congo declared, based on its will, that the 1906 agreement was still in force, which stipulated that the Congo “shall not” in any way interfere with the free flow of the Semliki River to Lake Albert, where the White Nile flows towards Sudanese territory[2] , In addition to this on August 23, 1978 the Congo signed on the Vienna Convention on Succession of States in Treaties 1978.

As for Eritrea, which gained independence from Ethiopia in 1991, it declared its position to make the inherited treaties binding, not only related to the Nile River, but also all treaties signed by colonial countries. Eritrea protested in its dispute with Ethiopia over the borders in proving its argument with the 1902 agreement,[3]which stipulated the demarcation of the borders between the two countries.

3.4.2 Positions Opposing the Binding of Inherited Treaties

The position opposing the binding of inherited treaties was represented by these countries adopting the Nyerere Doctrine, which was the result of the letter of the Prime Minister of Tanzania to the Secretary-General of the United Nations stating that Tanzania would not abide by the agreements previously concluded by Britain on behalf of Tanzania and that the agreements would remain in force for two years of

[1] Wikisource. "Constitution of the Democratic Republic of the Congo (1967)." Accessed on 21/4/2024, https://en.m.wikisource.org/wiki/Translation:Constitution_of_the_Democratic_Republic_of_the_Congo(1967)_ .

[2] Mwangi Kimenyi ,John Mbaku, Governing the Nile River Basin , The Search for a New Legal Regime , Brookings Institution Press,USA, 2015, p23

[3]" CHAPTER V – 1902 TREATY (WESTERN SECTOR)," PCA Cases,pp60, Accessed on 21/4/2024, https://pcacases.com/web/sendAttach/793.

independence, after which period the agreements would be considered. Either keeping them or declaring that Tanzania is not committed to them, and this is what is known as the Nyerere Doctrine. In addition, her government wrote letters to the governments of Great Britain, Egypt and the Republic of Sudan stating that Tanzania will not be bound by the Nile Water Agreements, as she said in her letter, "The provisions of the 1929 Agreement stipulate that their implementation On the countries under British administration, it is not binding on Tanzania."[1] To this end, Tanzania concluded an agreement in 1997 called the Kagera River Agreement with both Rwanda and Burundi, and in this agreement it confirmed not to recognize the 1929 agreement[2]

Burundi followed Tanzania in this position, which expressed its position in an official memorandum issued in June 1964 and took a position similar to the position of the governments of Tanzania and set a period of two years for the validity of all agreements concluded during its colonization, ending on June 1, 1966, and stipulated that they be renewed by agreement of the parties and on the basis of reciprocity, and that the agreements in question be subject to the general conditions of United Nations law, and that these agreements do not conflict with the spirit of the Burundian constitution.

Kenya, which gained independence in 1963, also adopted the Nyerere Doctrine, as it gave the Egyptian government two years to renegotiate the 1929 agreement to reach a new agreement, but that did not happen, so Kenya announced that it was not committed to the 1929 agreement, starting on December 12, 1964, for geographical and economic

[1] Mwangi Kimenyi, ex, p22

[2] Ali Ghanem, Ibrahim, Egypt's Water Security: Geography, Hydrology, Legal and Political, Al Manhal, Egypt, 2016,150

reasons and its need to establish reclamation projects and building dams to reserve water for its benefit.[1] Kenya accused all the Nile River agreements of being the reason for the economic and social impoverishment of the western Kenya region.[2] Despite Kenya's position rejecting the 1929 Agreement, it continued to implement the agreement until December 11, 2003, when it announced its intention to withdraw from the 1929 Agreement and it passed. At that time, the Kenyan Parliament issued a statement asking the government to renegotiate the Nile Basin Treaty of 1929, and it also insisted at the meeting of water resources ministers in Sharm El-Sheikh in 2010 on rejecting all agreements related to the Nile River and the necessity of replacing them with a new agreement[3]

As for Uganda, which gained independence in 1962, it adopted the Nyerere Doctrine, sending a letter to the Secretary-General of the United Nations on February 12, 1962, in which it said that we will abide by all agreements concluded by the United Kingdom on behalf of Uganda and before October 9, 1962 until December 31, 1963. There was a feeling of optimism that during that period mentioned, efforts and diplomatic relations would be able to reach amendments to such agreements, but this did not happen.[4]

However, actual practice later showed that Uganda continued to implement those treaties and did not adhere to the Nyerere principle, which was represented by:

[1] Diab, Maghawri Shehata, The Nile River between Challenges and Opportunities, Al-Manhal, Egypt, 2012, p122
[2] Ali Ghanem, Ibrahim, ex, p150
[3] Naglaa Marai, The Ethiopian Renaissance Dam: The water conflict between Egypt and the Nile Basin countries, Al-Arabi Publishing and Distribution, 2020, 42
[4] Naglaa Marai, ex, p43

a) Uganda's commitment to the 1929 agreement and not establishing any projects on the river's waters that would negatively affect the share of Egypt and Sudan.

b) Egypt continues to implement its obligations to operate and manage the Owen Falls Dam in accordance with the 1953 agreement, where There is a permanent Egyptian mission in Uganda made up of three engineers from the Ministry of Water Resources and Irrigation to monitor the operation of the Awen reservoir in Uganda and the amount of water passing through it.[1] And this is what was stipulated in the 1953 agreement.

c) Uganda recognized in an agreement with Egypt that it signed in 1991, which was an exchange of letters between the governments of Egypt and Uganda, which stated:

"Guided by the traditional spirit of cooperation and consultation between the riparian countries concerning projects related to the Nile waters, the Republic of Uganda, and the Arab Republic of Egypt, at a meeting held in Cairo on 21 April 1991 between-the Minister of Public Works and Water Resources of the Arab Republic of Egypt and the Minister of Energy of the Republic of Uganda, agreed that the Owen Falls extension project can go forward, subject to and taking into consideration the following…

2- With the extension of Owen Falls Power project, Uganda will respect the hitherto operational storage reserve policy "as much as full 3 metres range" which was

[1] Ali Ghanem, Ibrahim, ex, p130

agreed upon at the time of the construction of the Owen Falls Dam (1953)"[1]. Here is an acknowledgment by the government of Uganda of its commitment to the 1953 agreement that was signed between Egypt on the one hand and Britain on behalf of Uganda on the other hand. In this letter, Uganda violated all the declarations and positions that it had previously taken, including declaring its non-compliance with the agreements signed in the colonial era on its behalf and adopting the Nyerere principle regarding It relates to the succession of treaties concluded by colonialism.

But Ethiopia's position differed from the positions of the countries that adopted the Nyerere principle. Ethiopia was an independent country that was not colonized until 1935 by Italy, and its colonization ended in 1936. It did not inherit any agreement stipulating restrictions related to the use of the Nile River waters from Italy, despite the 1891 agreement. In which Britain recognized that Ethiopia was a sphere of influence subject to Italy and obligated Italy not to carry out any actions that would affect the flow of the Nile River, but Ethiopia at that time was not under the actual control of Italy.

As for the 1902 agreement signed by the then King of Ethiopia, Menelik II, Ethiopia refuses to abide by it and there are two arguments for this refusal: the first is that it is a personal pledge from the King of Ethiopia to the British government and it is binding towards the British government and not the Sudanese government because there

[1] Exchange of letters constituting an agreement between the Arab Republic of Egypt and the Republic of Uganda on the Owen Falls extension project. Cairo, 12 May 1991 , Registration with the Secretariat of the United Nations: Egypt, 21 September 2010, No. 47817 https://internationalwaterlaw.org/documents/regionaldocs/owen-falls-dam4.pdf

was no legal personality for the Sudanese government at that time [1]and the second is that the agreement has not been ratified in Ethiopia so it is not binding[2]

Despite the opposition to the application of agreements inherited from colonialism and the adoption of the Nyerere Doctrine, the countries adopting this position have, since their independence, adhered to the inherited treaties and the provisions related to refraining from any actions that might affect Egypt and Sudan's share of the Nile River waters. This situation persisted until 2010 when the Entebbe Agreement was signed by most of the Nile Basin countries after the failure of negotiations that continued from 1997 to 2010 in an attempt to establish a framework agreement governing the uses of the Nile River. The failure of these efforts is attributed to the differences among the Nile Basin countries on several points, the most important of which are:

1) The disagreement over Article 14(b) of the Framework Agreement, where this article states: "(not to significantly affect the water security of any other Nile Basin State)," was agreed upon by all Nile Basin countries except Egypt and Sudan. These countries proposed that the text of the article should be as follows: "(not to adversely affect the water security and current uses and rights of any other Nile Basin State)."[3]

The basis of the disagreement over this article is that the downstream countries (Egypt and Sudan) saw the phrase "(not to significantly affect)" as giving the Nile Basin countries the right to negatively impact their shares of the river's waters, thus adversely

[1] Diab, Maghawri Shehata, The Nile River between Challenges and Opportunities, Al-Manhal, Egypt, 2012p,117
[2] Naglaa Marai,p39
[3] Agreement on the Nile River Basin Cooperative Framework, Annexe 1, Article 14b: Attachment

affecting Egypt and Sudan's claims to their historically acquired rights to the river's waters. Meanwhile, the Nile upstream countries saw Egypt and Sudan's proposal to replace the previous phrase with another one, "(not to adversely affect)," as an implicit acknowledgment of the inherited previous agreements regulating the use of the Nile River waters.

The aim of Egypt and Sudan's insistence on including this phrase was a reaction to the upstream countries' insistence on the principle of equitable and reasonable use of the river's waters, which negates the specific shares for Egypt and Sudan of the river's waters.

2) The disagreement over Article 8(b) of the Framework Agreement, which pertains to the intended procedures, is based on the fact that this article does not stipulate clear procedures for prior notification about these procedures or a specific timeframe. The article states: “Nile Basin States agree to exchange information through the Nile River Basin Commission”.

As a result of these disagreements, four of the Nile upstream countries signed the agreement in the city of Entebbe in Uganda: Ethiopia, Tanzania, Uganda, and Rwanda. They were later joined by Kenya and Burundi. However, the Democratic Republic of the Congo, Egypt, Sudan, and Eritrea rejected the agreement. As for South Sudan, which separated from Sudan in 2010, it took a neutral stance regarding the agreement.

Following the Entebbe Agreement, Ethiopia announced in 2011 its intention to begin the construction of the Grand Ethiopian Renaissance Dam, which will be

explained along with its implications on the provisions of the inherited Nile River agreements in the following section.

3.5 The Ethiopian Renaissance Dam Project

The idea of the Grand Ethiopian Renaissance Dam project dates back to the period between 1956 and 1964 when studies began on constructing the dam by the U.S. Bureau of Reclamation.[1] However, Ethiopia did not start the dam project due to several reasons, the most important of which was the continuous Egyptian threat to use military force to prevent any project that might negatively affect the level of river water reaching Egypt, which Egypt considers a national security issue. Nevertheless, the change in international circumstances, represented by political stability within Ethiopia, the cessation of wars with Eritrea and Somalia, the signing of the Entebbe Agreement, and the changes within Egypt, represented by the January 25, 2011 revolution and the deterioration of security and economic conditions within Egypt, provided Ethiopia with the opportunity to announce the commencement of the Grand Ethiopian Renaissance Dam project on March 31, 2011.

In Ethiopia's legal position regarding the Grand Ethiopian Renaissance Dam, which affected the flow of the Nile River, thus violating the inherited agreements, Ethiopia does not refer to the principle of state succession in treaties. Instead, it builds its argument based on the Helsinki Rules[2] issued in 1966 concerning the non-

[1] Khalil, Ismail Diab, The Ethiopian Renaissance Dam: A Study of Conflicts and Challenges, Tikrit Journal of Political Science, Issue 29, Pages 202-229, 2022, p. 206.

[2] **The Helsinki Rules:** These are a set of rules issued by a conference of the United Nations General Assembly in Helsinki in 1966. Some of the most important rules issued by the conference are:

navigational uses of international rivers, which govern the utilization of international river waters unless there is an agreement between the international river basin countries to regulate utilization in a specific manner or in the presence of a special regional custom among these countries in this regard[1]. Additionally, the Harmon Doctrine grants it the right to the full use of waters within its territory, as it is the source of 85 percent of the river's waters. Ethiopia adopted this principle after Sudan's independence in 1956 and reaffirmed it in response to the 1959 agreement between Egypt and Sudan. It reiterated this stance in 1977 at the United Nations Water Conference in Mar del Plata, Argentina[2]. Ethiopian authorities state that they have absolute sovereignty over the portion of the Nile River that lies within their borders, and they assert that they are not

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1. These rules generally apply to all countries participating in international drainage basins unless there are agreements or treaties between these countries that include provisions contrary to these rules.
2. Each basin state has the right within its borders to an equitable and reasonable share of the beneficial uses of the waters of the international drainage basin.
3. The equitable and reasonable share determined in the previous article can be identified in light of a set of objective considerations, including, for example:
    - The population and their water needs, and the extent of the need for economic and social development operations in each country.
    - The availability of other water sources besides the river in question.
    - The opportunity cost of providing the necessary water to meet essential needs and achieve economic and social development.
    - The rationalization of river water use and the avoidance of wasteful usage that harms the interests of other basin states.
    - The previous volume of water exploitation compared to the current volume and each state's share before the dispute arose, meaning the historical rights represented by the volume of water previously used.
    - The climatic and topographic conditions in the river basin, as well as in each basin state, ensuring usufruct rights for countries with unfavorable conditions.
    - The size of the drainage basin within each state's borders and the volume of water each basin state provides.
4. The possibility of using compensation for one or more of the basin states as a means of dispute settlement.

[1] Naglaa Marai, p36

[2] Ibrahim Ali Ghanem, p. 147

violating any laws if their use of the Blue Nile waters within their borders does not leave any water flowing into the Nile River.[1]

However, Ethiopia contradicted itself in its positions. On one hand, it rejects these agreements and claims that the 1902 agreement was between it and Britain and is not binding on it as a successor state to Britain, which is Sudan. It repeatedly calls on the Nile upstream countries not to adhere to agreements signed during the colonial era, especially the 1929 agreement, on the grounds that they were signed between colonial parties. On the other hand, it signed the Vienna Convention on Succession of States in Respect of Treaties of 1978 on the first day the convention was opened for signature in Vienna on August 23, 1978, and ratified the convention on May 28, 1980, without any reservations.[2]

As for Ethiopia's position regarding the adoption of the Harmon Doctrine, which grants a state absolute freedom in utilizing the waters flowing within its territory, regardless of any effects on other riparian states, this principle is an old one that emerged from the theory of territorial sovereignty over natural resources. It grants a state absolute freedom in utilizing the waters flowing within its territory, regardless of any effects on other riparian states. This principle is rejected in international custom as it is considered an extremely extreme principle.[3]

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[1] Kimenyi ,M ,.Mbaku ,J .(2015) .Governing the Nile River Basin: The Search for a New Legal Regime .USA :Brookings Institution Press, PP22

[2] United Nations Treaty Collection, 2. Vienna Convention On Succession Of States In Respect Of Treaties, Chapter Xxiii.2

[3] UN iLibrary, United Nations,Glossary of Shared Water Resources (English-Arabic),Technical, Socioeconomic and Legal Terminology,2013, Accessed on 19-5-2024,p80+83 , https://www.un-ilibrary.org/content/books/9789210557184

After Ethiopia began building the dam and the intensification of the dispute between Ethiopia on one side and Egypt and Sudan on the other, the three countries started negotiations in an attempt to reconcile their perspectives. This resulted in the signing of the Declaration of Principles by the parties in 2015 in Khartoum as a first step towards reaching a final agreement to resolve the dispute. The Declaration of Principles outlined general principles regarding the use of river waters, including: the principle of causing no significant harm, the equitable and reasonable utilization of the Nile River waters, cooperation in the first filling and management of the dam, and the principle of building trust, which stated the right of the downstream countries (Egypt and Sudan) to purchase the electricity generated by the Grand Ethiopian Renaissance Dam[1].

Yet, the disagreement resurfaced after the failure to reach a final agreement and the differing interpretations of the Declaration of Principles by the parties, particularly the article related to cooperation in the initial filling of the dam, which states:

"5- The principle of cooperation in the first filling and management of the dam:

1) Implement the recommendations of the International Panel of Experts and respect the final outcomes of the final report of the Tripartite Committee of Experts on the studies recommended in the final report of the International Panel of Experts during the various stages of the project.

[1] State Information Service. "The Future of Egyptian Water Policy." Accessed on 25-5-2024 . https://www.sis.gov.eg/Story/148329?lang=ar.

2) The three countries shall, in the spirit of cooperation, use the final outcomes of the joint studies recommended in the report of the International Panel of Experts and agreed upon by the Tripartite Committee of Experts, for the purpose of:

   a) Agreeing on the guidelines and rules for the first filling of the Grand Ethiopian Renaissance Dam, which will include all different scenarios, in parallel with the dam's construction.
   b) Agreeing on the guidelines and rules for the annual operation of the Grand Ethiopian Renaissance Dam, which the dam owner may adjust from time to time.
   c) Notifying the downstream countries of any unforeseen or emergency circumstances that necessitate adjustments to the dam's operation.

3) To ensure the continuity of cooperation and coordination regarding the operation of the Grand Ethiopian Renaissance Dam with the reservoirs of the downstream countries, the three countries will establish, through the relevant ministries of water, an appropriate coordination mechanism among them.
4) The timeframe for implementing the aforementioned process will take fifteen months from the start of preparing the two studies recommended by the International Panel of Experts.

Ethiopia interprets this clause as permitting it to notify the downstream countries about the dam's operation, not to consult or seek permission. Therefore, it refuses to allow Egypt and Sudan to participate in determining the long-term annual operation rules. Addis Ababa views that the sole prior notification it is obliged to provide under the agreement is to notify the downstream countries of any unforeseen or emergency

circumstances that necessitate adjustments to the dam's operation by it. Meanwhile, Egypt and Sudan consider the clause on "implementing the recommendations of the International Panel of Experts and respecting the final outcomes of the final report of the Tripartite National Committee on the joint studies recommended by the report" as a provision that allows Ethiopia only to build the dam in parallel with negotiations but does not permit it to operate the dam without reaching a final agreement on the guidelines and rules for filling and operating the dam. Filling the dam in the absence of such an agreement constitutes a fundamental breach of the Declaration of Principles.[1]

3.6 The Legal Nature of the Legacy of the Nile River Conventions

Despite the positions of the Nile Basin countries, with some rejecting the binding nature of inherited treaties and others accepting them, these stances may be legally valid or not. To determine this, one must consider the legal rules governing state succession disputes in treaties, which are inferred from previous practices and jurisprudence, both of which are considered the beginning of the formation of customary international law, in addition to treaty law and judicial precedents. Since all the Nile Basin countries were formerly under colonial rule, and the basis of their disputes lies in treaties concluded by their colonizers regarding the use of the Nile River and restrictions on its use, the laws governing this matter can be narrowed down to laws related to the succession of newly independent states. According to the Vienna Convention on Succession of States in Respect of Treaties of 1978, which defines newly independent states as successor states

[1] Al Jazeera. "The Legal Loopholes Game: Who Won the Declaration of Principles Agreement on the Renaissance Dam?" Midan, April 11, 2021. Accessed on 26-5-2024 https://www.aljazeera.net/midan/reality/politics/2021/4/11/%D9%84%D8%B9%D8%A8%D8%A9-%D8%A7%D9%84%D8%AB%D8%BA%D8%B1%D8%A7%D8%AA-%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%8A%D8%A9-%D9%85%D9%86-%D8%B1%D8%A8%D8%AD-%D8%A7%D8%AA%D9%81%D8%A7%D9%82.

whose territory was directly part of the predecessor state immediately before the date of succession, this definition applies to the Nile Basin countries.

3.6.1 The General Rule (in the Succession of Newly Independent States of Treaties) is the Clean Slate Principle

According to what has been previously explained in the first chapter, a solid legal principle can be inferred from customary practice and international jurisprudence, which is that newly independent states do not succeed obligations arising from treaties concluded by predecessor states. This principle is known as the "clean slate" or "tabula rasa" principle, which was a theory formulated by jurists in the nineteenth century and is also endorsed by Soviet jurists in their theory of the organization of state succession disputes. This theory evolved until it was applied by some countries that considered themselves newly independent, such as Bangladesh, which applied the "clean slate" principle after declaring independence from Pakistan, and also Singapore, which sought to apply this principle after its independence from Malaysia. Despite the devolution agreement between it and Malaysia, in addition to this, and in order to codify customary rules by the International Law Commission, the Commission adopted this rule in the Vienna Convention on the Succession of States in Treaties of 1978, as the agreement stipulated it in Part Three (Newly Independent States), Section One (General Rule) article 16.

> **“A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates”**

In another endorsement of this principle, the Fourteenth Committee of the Institute of International Law at its Tallinn session in 2015 reaffirmed it in its project on state succession in responsibility for state conduct. The committee discussed the exception to the binding nature of predecessor state responsibilities in the case of newly independent states, and the opinions of the committee members was divided into two groups

First opinion: Two members of the committee discussed the refusal to continue considering newly independent countries as a separate category, and their arguments were as follows:

1. that the territories under colonialism and other dependent territories no longer exist
2. that the articles of the International Law Commission relating to the nationality of natural persons in the event of succession of states did not refer to the category of newly independent states.[1]

Second opinion: This opinion stated that newly independent countries are an separate group and must have their own laws, and this opinion was based on:

1. It is still possible that there may be instances of the emergence of new states that could fall within the category of newly independent states as defined in the 1978 and 1983 Conventions.

[1] Annuaire de l'Institut de droit international - Séssion de Tallinn - Volume 76 ,La succession d'Etats en matière de responsabilité internationale 2015, Paragraph 17, page 520 https://www.idi-iil.org/app/uploads/2017/06/05-Kohen-succession.pdf

2. The responsibility of the predecessor state or the successor state for wrongful acts may manifest even after a long period from the occurrence of these acts. An example of this situation is cited in this paragraph, which is the decision issued by the British Supreme Court following the stance taken by the British Foreign Office after it adopted a position of non-responsibility for the acts of torture committed by the colonial government in Kenya during the Mau Mau rebellion in 1950. Therefore, Kenya should be held accountable for those acts that occurred before its independence on December 12, 1963. The court's decision rejected this stance, stating that it is the independent Kenyan government that decides whether it assumes responsibilities for the actions of the British colonial administration or not.
3. The issue of succession of states in international responsibility differs from the nationality of natural persons in the case of succession of states and requires the creation of a category with special rules, which is the category of the newly independent state[1].

In the end, the committee adopted the definition of the newly independent state as a separate category with special provisions, as it stipulated in the draft resolution issued by the committee in Article (16), paragraph (1), that: " When the successor State is a newly independent State, the obligations stemming from an internationally wrongful act committed by the predecessor State shall not pass to the successor State”

[1] Previous reference, paragraph 18, pages 520-521

So the general rule is that independent states do not succeed rights and obligations or even responsibility for actions resulting from predecessor states, but this rule has an exception

3.6.2 The Exception to the Clean Slate Principle

There are two exceptions to the general rule in the Vienna Convention of 1978, which are stipulated in Article 11 (Boundary regulations) and Article 12 (Other territorial regulations).

The first exception: Boundary regulations

Article 11 stipulates:

"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 regime of a boundary"

This means that the agreements related to the demarcation of the borders, such as the 1902 agreement between the King of Ethiopia and Italy, which occupied Eritrea, as well as Britain, which included provisions for the demarcation of the borders between Italy and Ethiopia, is an agreement that is not affected by the state of succession of states, and is binding on Ethiopia, and stipulates the rights of the independent state of Eritrea. Also, the agreements that guarantee obligations and rights related to borders are also agreements that are not affected by the succession of states and remain continuous and binding on the state parties.

Second exception (Other territorial regulations)

Article 12 of the Vienna Convention 1978 stipulates that:

1. A succession of States does not as such affect:

   (a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

   (b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States does not as such affect:

   (a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

   (b) Rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

The preceding article included exceptions for agreements establishing regional systems and regional treaties, which refer to treaties whose legal effects apply to a specific region, Examples of these treaties are border agreements and treaties regulating the right of association, The controversy between scholars over this article has arisen, and the Vienna Convention has been criticized, arguing that this article does not codify customary international law, but there is evidence that confirms that it is a customary rule affirmed by scholars of international law and the International Court of Justice and codified by the Vienna Convention of 1978.

1. In the draft resolution of the Institute of International Law at the 2015 Tallinn session on the transfer of responsibility for wrongful acts to the successor state, Article 16, paragraph 2, stipulates:

"When the successor State is a newly independent State, the rights stemming from an internationally wrongful act committed against the predecessor State pass to the successor State if that act has a direct link with the territory or the population of the newly independent State" [1]

2. The International Court of Justice affirmed that article 12 of the Vienna Convention on Succession of States in Respect of Treaties was a customary rule of law in its decision on the case concerning the Gabčíkovo-Nagymaros Project between (Hungary-Slovakia) This project is the result of a 1977 agreement between Hungary and Czechoslovakia on the construction and

[1] Annuaire de l'Institut de droit international - Séssion de Tallinn - Volume 76 ,La succession d'Etats en matière de responsabilité internationale 2015, https://www.idi-iil.org/app/uploads/2017/06/05-Kohen-succession.pdf

operation of an A lock-up network [1] (Gabčíkovo-Nagymaros) to achieve the general exploitation of the Bratislava-Budapest part of the Danube River for the development of water resources, energy, transport, agriculture and other sectors of the parties' national economy, In the Court's reply to a question as to whether Slovakia was a party to this Treaty as a successor to Czechoslovakia, where Hungary argued that the Treaty was no longer in force after December 31 as a result of the disappearance of one of the Parties to the Treaty, Czechoslovakia, the Court's answer in paragraphs 117-124 was as follows:

The Court began by explicating the nature of the 1977 Treaty, which was recognized as an established treaty of a regional regime due to its establishment of rights and obligations related to parts of the Danube River. Then, it referred to the article (12) of the Vienna Convention 1978 which reflected the fact that treaties of a territorial nature were considered in traditional doctrine and modern opinion to be unaffected by the succession of States. The paragraph then stated that the Court considered that article 12 of the Vienna Convention 1978 reflected a rule of customary international

[1] Lock (water navigation)A lock is a device used for raising and lowering boats, ships and other watercraft between stretches of water of different levels on river and canal waterways. The distinguishing feature of a lock is a fixed chamber in which the water level can be varied; whereas in a caisson lock, a boat lift, or on a canal inclined plane, it is the chamber itself (usually then called a caisson) that rises and falls
Locks are used to make a river more easily navigable, or to allow a canal to cross land that is not level Later canals used more and larger locks to allow a more direct route to be taken

law and that therefore the Treaty of 1977 was binding on Slovakia since its succession to Czechoslovakia on 1 January 1993.[1]

All of this confirms that Article 12 is a customary rule. According to the aforementioned, if we examine the content of the treaties inherited by the Nile Basin countries, we can conclude that those treaties were established for regional systems. For instance, the Egyptian-British Nile Waters Agreement of 1929 stipulated an increase in Sudan's share of the river's waters. Additionally, the agreement established a strict system for managing water data and set a timetable for the flow of specified amounts of water to Egypt. Therefore, this agreement constitutes the establishment of a regional system and thus falls within the framework of Article 12 of the Vienna Convention of 1978. It is binding on the successor states, namely Egypt on one side, and Kenya, Uganda, Tanzania, and Sudan on the other side, as these countries succeeded Britain in this agreement. Similarly, the 1953 agreement to establish the Owen Falls Dam at the outlet of Lake Victoria included Egypt's participation in building a dam and reservoir on the Owen Falls for the benefit of Uganda. It also stipulated Egypt's retention of an inspection bureau to monitor the reservoir's stock and conduct water studies, and it required water storage in the dam for the benefit of Egypt and Sudan. All of these agreements are also considered regional systems.

It can be concluded from all this that the Nile River agreements inherited by the basin countries, according to the legal principle stipulated in Article 12 of the Vienna Convention, which the International Court of Justice has confirmed as an established

[1] Summary of rulings and issued by the International Court of Justice 1997-2002, ST /LEG/SER.F / 1/ Add.2, paragraphs (117-124), p. 7
https://www.icj-cij.org/sites/default/files/summaries/summaries-1997-2002-ar.pdf

principle in international custom, are agreements that establish regional systems and fall within the scope of Article 12 of the 1978 Vienna Convention. This means that all these agreements are binding on the Nile Basin countries according to the 1978 Convention and the international custom, as affirmed by the International Court of Justice in its judicial precedents.

3.6.3 The Contradiction between the Principle of Continuity of Agreements Establishing Regional Systems and the Right of Peoples to Self-Determination

As mentioned earlier, the goal of the International Law Commission in establishing specific provisions for newly independent states was to "ensure these states have the right to start a new international life free from any obligations imposed by colonialism." This goal aligns with several important international legal principles, most notably the right of peoples to self-determination, the right to equality, and the principle of sovereignty of peoples over their wealth and natural resources, which is an essential part of the right to self-determination. This was affirmed by the United Nations in General Assembly Resolution 1803 (XVII) dated December 14, 1962, entitled "Permanent Sovereignty Over Natural Resources," where the text of the resolution states:

> **“Recognizing the need for any measures taken in this regard to be based on the acknowledgment of all states' established right to freely dispose of their wealth and natural resources according to their national interests and on the basis of respect for the economic independence of states...**

Declares the following:

1. The right of peoples and nations to permanent sovereignty over their wealth and natural resources must be exercised in accordance with the interest of their national development and the well-being of the people of the concerned state).”

Nevertheless, by establishing the principle of continuity of agreements creating regional systems, other than boundary agreements stipulated in Article (12), the International Law Commission imposed on newly independent states obligations that contradict the principle of sovereignty over natural resources and wealth. It obligated these states to adhere to constraints resulting from agreements made by colonial powers, without the peoples of those territories having any role in making those agreements or any mutual interest or benefit from those commitments. This directly contradicts the right of peoples to equality and the right to self-determination.

In the case of inherited treaties related to the Nile River, all these treaties impose restrictions on the basin countries, obligating them not to establish any projects on the riverbanks that affect the flow of water in the river. This Contradicts with the right to development, which is considered a complement to the right to self-determination[1]. The United Nations affirmed this in the United Nations General Assembly Resolution 41/128 of 1986, where Article 1/1 states: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized."

[1] United Nations General Assembly Resolution No. 41/128 of 1986, Declaration on the Right to Development, Article (1/2)

Chapter Four: Conclusion and Recommendation

4.1 Conclusion

The dispute among the Nile Basin countries is a deeply rooted conflict, fundamentally based on treaties made by colonial powers that impose restrictions on the use of the Nile River. These treaties resulted in an unfair distribution of the river's waters and imposed constraints on newly independent countries, preventing them from meeting their living and developmental needs from the river's waters. Decades after these treaties and the independence of the Nile Basin countries from colonial powers, the dispute among the basin countries remains unresolved. The latest of these disputes is over the Grand Ethiopian Renaissance Dam project between Egypt and Sudan on one side and Ethiopia on the other. Despite efforts and negotiations among the basin countries to find a solution regarding the inherited treaties of the Nile Basin, the conflict continues.

However, these efforts, such as the Nile Basin Initiative, have not been fruitful. The main reason is the differing intentions behind the negotiations. The upstream countries entered the negotiations with the aim of redistributing the river's waters fairly and independently of the provisions of the inherited Nile River treaties, meaning they do not recognize the terms of those treaties. In contrast, the goal of the downstream and transit countries (Egypt and Sudan) was to establish a mechanism that allows upstream countries to undertake projects on the river that do not significantly impact their share of the waters, according to the provisions of the inherited treaties regulating the use of the Nile River.

With the difficulty of reconciling perspectives among the basin countries, the dispute resurfaced in 2010 after the signing of the Entebbe Agreement by the upstream countries, which nullifies the provisions of the inherited treaties. Additionally, Ethiopia began constructing the Grand Ethiopian Renaissance Dam, which affects the shares of Egypt and Sudan as stipulated in the inherited Nile River treaties. Egypt views this as a threat to its national security, without reaching any solutions that could alleviate the intensity of the dispute between these countries.

After researching the rules of international law governing the issue of state succession in treaties in this study and examining the legal opinions and positions, in addition to the Vienna Convention on Succession of States in Respect of Treaties of 1978, which was drafted by the International Law Commission in an attempt to codify the customary law rules governing this subject, the researcher concluded that according to Article 12 of the Vienna Convention on Succession of States in Respect of Treaties, confirmed by the International Court of Justice in its judgment in the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), the inherited obligations related to the regulation of the use of the Nile River are binding on the successor states.

Although the researcher emphasizes the importance of the 1978 Vienna Convention in codifying customary rules related to state succession in treaties, we believe that the rule in Article 12 of the convention, which states that "(agreements that establish regional systems are not affected by state succession and remain binding on successor states)," is unfair to newly independent states. Just as the International Law Commission's position was to ensure that cession agreements and unilateral declarations of succession are not binding on successor states to protect them from being compelled

into such agreements or declarations by predecessor states, the Commission's goal in applying the clean slate principle to newly independent states was to guarantee these states the right to start a new international life free from obligations arising from treaties made by predecessor states to achieve colonial objectives. However, when the convention stipulated the binding nature of agreements establishing regional systems and their immunity to state succession, the International Law Commission contradicted itself and placed newly independent states in a position that prevents them from beginning a new life entirely free from the negative effects of colonialism, only partially free. This is particularly true since some of these obligations prevent newly independent states from exploiting their natural resources, which also conflicts with the right of peoples to self-determination and the principles complementary to this right, such as the principle of peoples' sovereignty over their wealth and natural resources and the right to development.

4.2 Recommendations

Accordingly, we recommend:

1) In view of the special considerations for newly independent states regarding the rules of state succession and their right to start a new international life entirely free from obligations imposed by colonial powers to serve their own interests, and considering the right of newly independent states to exploit their natural resources in accordance with international law principles, most notably the principle of peoples' sovereignty over their wealth and natural resources, we believe that the rule in Article (12) of the 1978 Vienna Convention, which

obliges successor states to adhere to agreements establishing regional systems, should exempt newly independent states.

2) Form a committee to manage the uses and projects related to the Nile River in accordance with international law principles concerning non-navigational uses of international rivers, as stipulated in the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses of 1997. The most important principles include the obligation not to cause significant harm and the principle of equitable and reasonable utilization and participation. This ensures that water allocations from the river are distributed fairly, without depriving any state of its right to exploit the Nile's waters in a manner that does not harm or conflict with the interests and rights of other basin states. Additionally, implementing the principle of prior notification guarantees that other basin states can assess the potential damages from any project on the river course and consult with the project-owning state to develop a practical plan aimed at preventing or mitigating harm.

References

Research

Abdo, Mohammed. “The Nile Question: The Accords on the Water of the Nile and Their Implications on Cooperative Schemes in the Basin, PERCEPTIONS, junaury 2004

Al-Dahshan, Saeed. The international inheritance of treaties in Palestine in the event of the demise of the “State of Israel”, Al-Zaytouna Center for Studies and Consultations, April 2022.

Al-Mukhtar, Taiba and Al-Qarawi, Baqir. The Succession of Separate States to Treaties, Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, Volume 9, Issue 3, University of Babylon, College of Law, 2017

Al-Zubaidi, Musab, Al-Ajmi, Ahmed. “the historical roots of the reproductive water crisis until the Egyptian initiative of 1999”, Lark Philosophy, Sociology and Social Sciences, vol. 2018, no. 30,pp116-131,2018

Aust, Anthony. “Vienna Convention on the Succession of States in Treaties”, United Nations Audiovisual Library of International Law, 2009

Cowger , Alfred. “Rights and Obligations of Successor States: An Alternative Theory”, Case W. Res. J. Int'l L, Volume 17,issues 2 ,1985

Janig, Philipp. “The 1978 Vienna Convention: the Clean Slate Doctrine and the Decolonization of Sources”, Austrian Review of International and European Law, Vol. 23, 2018

Kameri-Mbote, Patricia. “Water Conflict and Cooperation Lessons From the Nile River Basin”, navigating peace ,Woodrow Wilson international center for scholars No. 4 January 2007

Khalil, Ismail Diab. “The Ethiopian Renaissance Dam: A Study of Conflicts and Challenges”, Tikrit Journal of Political Science, Issue 29,pp 202-229, 2022

Mohamed S. Helal. “Inheriting International Rivers: State Succession to Territorial Obligations, South Sudan, and the 1959 Nile Waters Agreement”, 27 Emory Int'l L. Rev. 907 (2013)

Panchmtia, Manank. The State Succession, International Journal of Political Science, Law and international Relations (IJPSLIR), Vol 8 issue 3 2018

Shawqi, Mamdouh. International Succession in International Treaties: A Legal Study of the Nile River Agreements, Egyptian Journal of International Law, Volume 45, 1989, 185-206.

Thesis

Al-Hajj Hassan, Ahmed. Inheritance in International Law and National Legislation (Sudan as an Example). Doctoral thesis, Shendi University, Sudan, 2014.

Kumar, Vijai. Critical analysis of law of state succession in respect of matters to the exclusion of treaties, thesis to obtain a master’s degree in law,Himachal Pradesh University,1991

Sabti Butti, Ali. Succession in International Treaties, thesis to obtain a master’s degree in law, Middle East University, 2015

Wadi, Dhaouia. international succession in international treaties, Master’s thesis in the Department of Public International Law, University of Biskra, 2021

Books

Abdel Salam Ahmed, Maryam. Foreign Policy and Secession Issues, A Study of the Turkish Case. Egypt: Al-Arabi Publishing and Distribution, 2024

Al-Ghunaimi, Muhammad Talaat. General Provisions in the Law of Nations, a study in Arab socialist and Islamic thought. Alexandria: Peace Law, 1970.

Al-Talqani, Abu Talib Hisham Ahmed. Al-Wajeez in the Succession of States: A Legal Study in Light of the Provisions of International Agreements, first edition. Beirut :Al Rafidain Center for Dialogue, 2021

Degefu, Gebre Tsadik. The Nile(Historical, Legal, and Developmental Perspectives : a Warning for the Twenty-first Century. United State: Trafford Publishing,2003

Diab, Maghawri Shehata. The Nile River between Challenges and Opportunities. Egypt: Al-Manhal, 2012.

Duruigbo, Emeka and Remigius Chibueze and Gozie Ogbodo. International Law and Developmen in the Global South. Switzerland :Springer International Publishing,2023

Jennings, Robert Yewdall. The Acquisition of Territory in International Law. United State :Manchester University Press (1963)

Kimenyi, Mwangi S. and John Mukum Mbaku. Governing the Nile River Basin: The Search for a New Legal Regime. Washington, D.C: Brookings Institution Press, 2015.

Marai, Naglaa. The Ethiopian Renaissance Dam: The water conflict between Egypt and the Nile Basin countries. Egypt: Al-Arabi Publishing and Distribution 2020

Mbaku, John. Governing the Nile River Basin , The Search for a New Legal Regime . United State: Brookings Institution Press 2015

Mwangi Kimenyi and John Mbaku. Governing the Nile River Basin The Search for a New Legal Regime. United States: Brookings Institution Press 2015

Nour El-Din Muhammad, Nader. Egypt and the Countries of the Headwaters of the Nile. Egypt: Nahdet Misr Publishing House 2014

Ramadan, Sherif Abdel Hassani. International Succession and its Impact on International Treaties, 1st edition. Cairo: Dar Al Nahda Al Arabiya 2011.

Tayea, Muhammad Salman. Egypt and the Nile Water Crisis (Prospects of Conflict and Cooperation). Egypt: Dar Al-Shorouk, 2012.

Periodicals

Des Cours, Recueil. Collected Courses, Tome/Volume 200 (1986),, Academie de Droit International de la Haye, Springer Netherlands,1987

Agreements

Agreement between the United Arab Republic and the Republic of Sudan for the full utilization of the Nile waters, signed at Cairo, November 8, 1959 and protocol concerning the establishment of permanent joint technical committee signed at Cairo, January 17, 1960.

Agreement on the Nile River Basin Cooperative Framework.Exchange of Notes Between the United Kingdom and Italy Respecting Concessions for a Barrage at Lake Tsana and a Railway Across Abyssinia From Eritrea To Italian Somalilands,14—20 December 1925

Exchange of letters constituting an agreement between the Arab Republic of Egypt and the Republic of Uganda on the Owen Falls extension project. Cairo, 12 May 1991

Exchange of Notes between Her Majesty's Government in the United Kingdom and the Egyptian Government on the Use of Waters of the Nile for Irrigation, Signed at Cairo, on 7 May 1929, No I, Mohammed Mahmoud Pacha to Lord Lloyd, office of the Council of Ministers, (Cairo, 7 May 1929)

La succession d'Etats en matière de responsabilité internationale State Succession in Matters of State Responsibility 2015

Nationality of Natural Persons in relation to the Succession of States 1999

Singapore And Malaysia Agreement relating to the separation of Singapore from Malaysia as an independent and sovereign State. Signed at Kuala Lumpur, on 7 August 1965, No. 8206

The Cooperation Agreement between The Republic of the Sudan and The Republic of South Sudan. Addis Ababa, 27 September 2012

The Indus Waters Treaty 1960 between the Government of India, the Government of Pakistan, and the International Bank for Reconstruction and Development, signed at Karachi on 19 September 1960

Treaties of Addis Ababa, 1902

Treaty of Annexation, Annexation of Korea by Japan, August 22, 1910

Vienna Convention on Succession of States in respect of State Property, Archives and Debts 1983

Vienna Convention On Succession Of States In Respect Of Treaties 1978.

Reports of the International Law Commission

Fifth report of the *Special Rapporteur*, Sir Humphrey Waldock (24th session of the ILC (1972)), ILC Report, A/8710/Rev.1 (A/27/10), 1972, chap. II(A)(1),

First report of the Special Rapporteur, Sir Francis Vallat (26th session of the ILC (1974)) ILC Report, A/9610/Rev.1 (A/29/10), 1974, chap. II(A)(1)

First report of the Special Rapporteur, Sir Humphrey Waldock (20th session of the ILC (1968)), ILC Report, A/7209/Rev.1 (A/23/9), 1968, chap. III(C)(b)

Fourth report of the *Special Rapporteur*, Sir Humphrey Waldock (23rd session of the ILC (1971) ILC Report, A/8410/Rev.1 (A/26/10), 1971, chap. III(A)

International Law Commission, Summaries of the Work of the International Law Commission , Succession of States in respect of treaties, Last update: June 30, 2023, accessed at 30-4-2024 https://legal.un.org/ilc/summaries/3_2.shtml

Second report of the Special Rapporteur, Sir Humphrey Waldock (21st session of the ILC (1969(, ILC Report, A/8010/Rev.1 (A/25/10), 1970, chap. III(B)(1),

Third report of the *Special Rapporteur*, Sir Humphrey Waldock (22nd session of the ILC (1970)), ILC Report, A/8010/Rev.1 (A/25/10), 1970, chap. III(B)(1)

International Court of Justice cases

Case of the Land, Insular and Maritime Boundary Dispute between (El Salvador and Honduras) September 11, 1992, Summary of Judgments and Orders of the International Court of Justice (1992 - 1996)

Case of the Gabčíkovo-Nagymaros Project between (Hungary-Slovakia)1977,Summary of rulings and issued by the International Court of Justice 1997-2002

Websites

Adalah, The Golan Heights Law, accessed at 6-4-2024, https://www.adalah.org/en/law/view/517.

Al Jazeera, Encyclopedia, Nile River, 11-28-2015, date of visit 5-2-2024, https://www.aljazeera.net/encyclopedia/2015/11/28/%D9%86%D9%87%D8%B1-%D8%A7%D9%84%D9%86%D9%8A%D9%84.

Al Jazeera. "The Legal Loopholes Game: Who Won the Declaration of Principles Agreement on the Renaissance Dam?" Midan, April 11, 2021. Accessed on 25-5-2024. https://www.aljazeera.net/midan/reality/politics/2021/4/11/%D9%84%D8%

B9%D8%A8%D8%A9-%D8%A7%D9%84%AB%D8%BA%D8%B1%D8%A7%D8%AA-%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%8A%D8%A9-%D9%85%D9%86-%D8%B1%D8%A8%D8%AD-%D8%A7%D8%AA%D9%81%D8%A7%D9%82.

Britannica, The Editors of Encyclopaedia. "annexation." Encyclopedia Britannica, 28 Nov. 2023, accessed at 1-4-2024, https://www.britannica.com/topic/annexation.

Britannica, The Editors of Encyclopaedia. "Anschluss." Encyclopedia Britannica, last updated 9 Apr 2024, accessed at 1-4-2024, https://www.britannica.com/event/Anschluss.

Cambridge Dictionary, Meaning of succession in English, visit on 15-3-2024, https://dictionary.cambridge.org/dictionary/english/succession.

Embassy of the State of Eritrea Washington DC - USA, Our History, accessed at 4-5-2024, https://us.embassyeritrea.org/our-history/.

Lawbhoomi, State Succession under International Law, June 7, 2021, accessed at 2-4-2024, https://lawbhoomi.com/state-succession-under-international-law/.

Legalserviceindia, Divyam Agarwal & Mohit Goel, State Succession In International Law-Debt, Property and Asset, accessed at 31-3-2024, https://www.legalserviceindia.com/articles/insu.htm.

Margaret Stefana Drower, Physiography of Nile River, Britannica, accessed at 1-5-2024, https://www.britannica.com/place/Nile-River/Physiography.

Mohanty, Disha. "State Succession under International Law," ipleaders, February 20, 2020. https://blog.ipleaders.in/state- succession, accessed at 11-4-2024.

Office of the Historian, MILESTONES: 1866–1898, Purchase of Alaska, 1867, accessed at 8-4-2024, https://history.state.gov/milestones/1866-1898/alaska-purchase.

State Information Service. "The Future of Egyptian Water Policy." Accessed on 25-5-2024, https://www.sis.gov.eg/Story/148329?lang=ar.

Study smarter. “Disintegration of States,” accessed at 2-4-2024, https://www.studysmarter.co.uk/explanations/human-geography/policies-geography/disintegration-of-states/.

Ulrich van der Heyden, The History of German Colonialism, archivfuehrer deutsche kolonialgeschichte, accessed at 7-5-2024, https://archivfuehrer-kolonialzeit.de/index.php/history?sf_culture=en.

UN iLibrary, United Nations, Glossary of Shared Water Resources (English-Arabic), Technical, Socioeconomic and Legal Terminology, 2013, Accessed on 19-5-2024, p80+83, https://www.un-ilibrary.org/content/books/9789210557184.

United Nations Treaty Collection, 2. VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF TREATIES, CHAPTER XXIII.2, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXIII-2&chapter=23&clang=_en#5.

Wikisource. "Constitution of the Democratic Republic of the Congo (1967)." Accessed on 21/4/2024, https://en.m.wikisource.org/wiki/Translation:Constitution_of_the_Democratic_Republic_of_the_Congo_(1967).

الملخص

تعرف خلافة الدول على أنها عملية تحل فيها دولة محل دولة أخرى في المسؤولية عن العلاقات الدولية للإقليم وهذه العملية تنتج عدة إشكاليات أهمها مدى التزام الدولة الجديدة بالمعاهدات التي كانت الدولة السابقة طرفا فيها وأدت هذه الإشكالية إلى خلاف قانوني بين دول حوض النيل حول مدى التزام المعاهدات التي أبرمتها الدول المستعمرة أثناء استعمارها لدول حوض النيل، وللإجابة على هذا التساؤل لا بد من النظر في النظريات العرفية والفقهية بالإضافة إلى اتفاقية فيينا لخلافة الدول في المعاهدات لعام 1978 والتي أنشأتها لجنة القانون الدولي في محاولة لتدوين الأعراف الدولية السابقة.

وبعد البحث في النظريات الفقهية التي طبقتها الدول، وفي اتفاقية فيينا لخلافة الدول في المعاهدات تبين أن لجنة القانون الدولي قامت بتدوين بعض الأعراف والممارسات الدولية السابقة في اتفاقية 1978 حيث نصت الاتفاقية في بنودها على تطبيق نظرية الاستمرارية على حالة الدول الجديدة الناشئة عن حالات الانفصال أو الاتحاد، وأيضا تم تطبيق مبدأ الصفحة البيضاء على حالة الدول المستقلة حديثًا وبموجبها فإن دول حوض النيل هي دول مستقلة حديثا يطبق عليها مبدأ الصحيفة البيضاء أي لا ترث المعاهدات التي كانت الدولة الاستعمارية السابقة طرفا فيها إلا أن الاتفاقيات الموروثة المتعلقة بنهر النيل هي اتفاقيات منشئة لأنظمة إقليمية وتقع ضمن نطاق المادة 11 من الاتفاقية والتي تنص على أن الاتفاقيات المنشئة لأنظمة إقليمية لا تتأثر بحالة خلافة الدول وتبقى ملزمة للدول الخلف، وهذا ما طبقته محكمة العدل الدولية في حكمها حول قضية (غابسيكوفو–ناجيماروس)، وأكدت فيها على أن هذه القاعدة هي قاعدة عرفية ثابتة.

إلا أن هذه القضية كانت بين دولتي التشيك وسلوفاكيا اللتان نتجتا عن انقسام دولة تشيكوسلوفاكيا على عكس حالة دول حوض النيل التي تعتبر دول مستقلة عن الاستعمار حيث يعتبر تطبيق هذه القاعدة عليها مخالف لحق الشعوب في تقرير المصير ومخالف لمبدأ سيادة الشعوب على الثروات والموارد الطبيعية ولحق الشعوب في التنمية.