Fairness in Utilising [Blue] Nile Waters: the GERD's case

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Questions and topics

- Core questions and objectives
- The principle of fairness in international law
- Fairness in international (and regional) watercourses law
- Fairness and the GERD
- Critical remarks and implications

1. The Principle of Fairness in International Law

- Widely debated and invoked in various fields of the public international law. But what is it? It concerns 'fair dealing', and synonymous to justice and equity (Rawls, J. 1958 'Justice as Fairness').
- Two main components: legitimacy and distributive justice + No trumping and not re-distribution (Thomas Franck, OUP, 1995, 7-22).
- Why fairness?
- Problems of fairness (Franck v. Ian Scobbie)
- Is it a legal concept? (Franck v. Brownlie and Jennings). But Art. 1 UN Charter (Wolfrum in Simma, OUP, 2012), and Art 38 (1) ICJ Statute

2. Fairness in International (and regional) Watercourses Law

a. As customary law:

- *River Oder* case,1929, P. C. I. J., Series A, No. 23, p. 27).

b. In contemporary international law

- UN Watercourses Convention 1997, Arts 5,6,7

c. The Nile Basin 'regime'

- Colonial (era) treaties v. the NBI and the CFA

3. Fairness and the GERD

a. Legal/policy basis for fairness/or unfairness

(i) Colonial (era) treaties

- GERD breaches *inter alia* Art III of 1902 Anglo-Ethiopian treaty (A. Abulwafa, 2013). Conversely, as confessed by Great Britain in 1956 this treaty was unfairly imposed on Ethiopia and thus illegitimate and unjust (T. K. Woldetsadik, 2013, 103).
- The 1902 unequal treaty contrary to current international (water) law.

(ii) Post-1990 framework agreements

- In contrast to colonial treaties, the 1993 and 2015 frameworks, in particular the latter is founded on modern relevant principles including 'equality of arms'.
- The 1993 agreement and questions of fairness.

Fairness and the GERD: DoPs

- The March 2015 DoPs is procedurally and substantively robust.
- The principles adopted similar to UN Convention and CFA
- Substantive and procedural commitments tick the boxes of fairness
- Challenges re applying factors –e.g. 'water needs' of states: President Al-Sisi's articulation of the needs of Egypt and Ethiopia?

4. Critical remarks and implications

- The DoPs (and the 1993) agreement a step to the right direction. Why?
- Resistance to distributive justice: e.g. Dr. Mohamed Nasreddin and a group of Ethiopian (non-legal) scholars qualms v. the need for an optimistic attitude.
- Implications for:

(i) Nile Basin-level cooperation

(ii) International water law (e.g. Art 12)

(iii) International law (re fairness and fair dealing, dispute settlement).