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## On Mr. Jackson's Letter to US Congressional Black Caucus Adel Rafik

Dr. Hala Ahmed Al-Rashidi, Assistant Professor of Political Science at the Faculty of Economics and Political Science - Cairo University, has published an article on her [Facebook](#) page in Arabic, titled, "Comment on Mr. Jesse Jackson's Letter to US Congress African Block", in response to a letter addressed by Rev. Jesse Jackson, Sr., American civil rights leader and founder and president of the Rainbow/PUSH Coalition, a US nonprofit organization that pursues social justice, civil rights and political activism, to the Congressional Black Caucus (CBC), urging the American CBC to pass resolution against the letter sent by the Egyptian Ministry of Foreign Affairs (MFA) to the United Nations Security Council early May, and calling upon them to support the Ethiopian position on the Grand Ethiopian Renaissance Dam (GERD) in this regard.

In its letter to the UN Security Council early May about the latest developments of the GERD crisis, the Egyptian MFA called for intervention to stop the unilateral action taken by Ethiopia in preparation for filling the GERD reservoir on the first of July regardless of its impact on the two downstream countries of Egypt and Sudan. In her response to Mr. Jackson's letter to CBC, Dr. Al-Rashidi said his letter included false arguments and incorrect accusations of the Egyptian government, in a clear bias towards Ethiopia.

Following is the translation of Dr. Al-Rashidi's comment which was also published in Arabic by the [Egyptian Institute for Studies \(EIS\)](#):

1- Mr. Jackson indicated in his letter to CBC that Egypt seeks to dominate the Nile waters, obtaining the lion's share of its water even though it "contributes 0% to the river flow", describing Egypt's letter to the UN Security Council, and its request to stop Ethiopia from filling the Grand Ethiopian Renaissance Dam's reservoir as "brazen reflection of Egypt's hegemonic attitude".

In fact, this fallacy can be refuted by the geographical and natural facts of the river which show bias to the estuary, that is, the river runs thousands of kilometers from its furthest sources in the south, but it rushes northward powerfully all the way up to the downstream State, Egypt.

Also, the climatic conditions of the Nile basin are in the interest of Egypt which acts as a storm drain for all upstream countries that cannot absorb the surging rainfall in some areas or control the flow of water due to slopes.

In addition, the Nile is an international river, where the joint exploitation of water resources is governed by a set of established legal norms based on custom, law, agreements and judiciary, and approved via international practices, most prominently the principle of equal legal status of Nile basin countries, and the right of each one of them to a fair and equitable share of its water, regardless of its contribution to the river's revenue.

Also among these rules is commitment of each Nile basin country to respect the uses of the rest of countries without prejudice to their acquired rights in the river waters, be obliged to consult other basin countries upon undertaking any projects that could prejudice their rights or interests.

Therefore, Egypt does not seek at all to impose a hegemonic power over the Nile River, but on the contrary, it completely recognizes all the legitimate future rights of the basin countries based on the established legal controls in this regard, particularly achieving a balance between the right to the fair and reasonable use of the river's resources and the principle of respecting the acquired rights.

2- Mr. Jackson said that Egypt "relied on colonial treaties: firstly, an agreement of 1929 with the colonial power Great Britain, which granted Egypt a veto right against water projects on the upper reaches; and secondly, an agreement with Sudan of 1959, which divided the Nile water resources between the two countries, and guaranteed Egypt 55.5 billion cubic meters annually and Sudan 18.5 billion cubic meters.", protesting that "these contracts were negotiated without Ethiopia".

This statement also implies important legal fallacies frequently promoted by Ethiopia despite its explicit violation of the rules of international law relevant to the non-navigational uses of international watercourses.

This allegation can be addressed as follows:

**First**, the legal framework regulating the exploitation of Nile waters is not limited to the two agreements of 1929 and 1959, given that several agreements were concluded with participation from

Ethiopia to regulate joint exploitation of the river's resources; and therefore, Addis Ababa could not pretend that they were concluded in the colonial era, in order to break down its obligations.

Among the most prominent of these agreements, for example: is the Addis Ababa Agreement concluded between Great Britain and Ethiopia in May 1902, regarding the borders between the Anglo-Egyptian Sudan, Ethiopia and Eritrea, under which Menelik II, Emperor of Ethiopia (1889-1913), pledged not to build or allow the construction of any projects on the Blue Nile, Lake Tsana, or the Sobat river, that would obstruct the flow of water from the Nile River, except in prior agreement with both Great Britain and the Egyptian-English government of Sudan.

Article 3 of this agreement stated that: "His Majesty the Emperor Menelik II, King of Kings of Ethiopia, engages himself towards the Government of His Britannic Majesty not to construct or allow to be constructed, any works across the Blue Nile, Lake Tsana or the Sobat [river], which would arrest the flow of their waters into the Nile except in agreement with His Britannic Majesty's Government and the (Egyptian-English) Government of the Sudan."

Although Ethiopia invokes that this treaty was not ratified by the Ethiopian parliament in order to escape its obligations under it, this argument can also be refuted by the reality of the subsequent behavior of Ethiopia itself, when it recognized the validity of this treaty according to the memos exchanged by Emperor Haile Selassie of Ethiopia with former Sudanese President Jaafar Nimeiri in May 18, 1972, for the demarcation of the borders between the two countries. Also, Ethiopia did not challenge the validity of the aforementioned treaty before the Eritrea-Ethiopia Boundary Commission during demarcation of borders between the two countries.

Also, the Framework for General Cooperation between Egypt and Ethiopia signed at Cairo, 1 July 1993, is a cooperative framework agreement concluded between the two countries to develop Nile resources and enhance their economic and political interests.

The two countries pledged that they "shall endeavor towards a framework for effective co-operation among countries of the Nile basin for the promotion of common interest in the development of the basin".

The cooperation framework included a set of obligations regarding the Nile waters as follows:

Article 5: Each party shall refrain from engaging in any activity related to the Nile waters that may cause appreciable harm to the interests of the other party.

Article 6: The two Parties agree on the necessity of the conservation and protection of the Nile waters, in this regard, they undertake to consult and cooperate in projects that are mutually advantageous, such as projects that would enhance the volume of flow and reduce the loss of Nile waters through comprehensive and integrated development schemes.

Article 7: The two Parties will create appropriate mechanism for periodic consultations on matters of mutual concern, including the Nile waters, in a manner that would enable them to work together for peace and stability in the region.

**Second**, it is true that the signatories of these agreements were - in the overwhelming majority - European colonial states, and that they signed these treaties on behalf of the African states or territories under their rule, however, the international law recognizes that the in-kind agreements in its place as part of the territory constitute an obligation and a limitation of the Contracting State, and that the transfer of sovereignty over that territory does not affect them.

According to the 1978 Vienna Convention on Succession of States in Respect of Treaties, adopted in Vienna, Austria on 23 August 1978, the provisions of Articles 11 and 12 of the convention, treaties that regulate regional situations produce material effects on the ground such as those for defining and demarcating international borders or regulating traffic in international facilities and corridors such as international canals, straits and bays – are not affected by succession, and those treaties remain in force as extended substantive agreements that represent an obligation and a limitation of the successor or successor state, and they can only be modified or canceled with the agreement of the signatory countries collectively. Also, these agreements, in accordance with established legal action and practice, are excluded from the scope of application of the rule of fundamental change in circumstances as a reason for terminating this type of treaty or withdrawing from it by individual will.

In this regard, Article 11 states that: a succession of States does not as such affect: a boundary established by a treaty; or obligations and rights established by a treaty and relating to the regime of a boundary – while Article 12 states that: a succession of States does not as such affect 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; 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. It also states that: a succession of States does not as such affect 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; 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.

In addition, all African states have accepted the international succession of states in respect of treaties, especially those regarding the validity of inherited international border agreements between them regardless of the transfer of sovereignty in them. In this regard, the Organization of African Unity (currently the African Union) has recognized since its inception the existing agreements to set borders between the newly independent African countries, in what is known as the principle of sacredness of borders inherited from colonialism; giving priority to considerations of stability and preservation of regional peace and security within the continent.

3- Mr. Jackson reviewed the attitude of the successive Egyptian governments regarding the issue of joint exploitation of the river's resources, stating that they all adhere to the existing distribution of Nile water, where Egypt accounts for a share of approximately 66% (55.5 billion cubic meters) of the annual revenue of the river, while the upstream countries have nothing, saying, "Annually, the Nile River flows 84 billion cubic meters of water, of which Egypt gets a lion's share of 66%, Sudan gets 22% and the remaining 12% is lost to seepage and evaporation. The 10 Black African nations from whose land 100% of the Nile gushes out get 0% water allocation."

To discuss this argument, it suffices to say that the volume of water resources that the Nile River basin receives annually is characterized by great abundance, estimated at about 1,600 billion cubic meters. However, about 95% of these resources, or about 1,516 billion cubic meters, are wasted and lost annually as a result of evaporation and seepage, as the remaining average annual revenue of the Nile is estimated at 84 billion cubic meters of water.

Consequently, the Nile water crisis is not a crisis of scarcity, but rather a crisis of mismanagement and misuse of river resources in the absence of strategies to achieve integrated, rational, and

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sustainable management of the river's resources, in a manner that ensures its conservation, optimum utilization and development. This means that this problem can be solved by encouraging the use of currently wasted water to respond to the development needs of the basin countries, without prejudice to the acquired historical rights of Egypt in the Nile waters.

4- Mr. Jackson referred to segmented extracts from the Egyptian leadership's speeches on several occasions to claim that Egypt will not hesitate to resort to war and mustering its military forces to demolish the dam and preserve its share of the Nile waters.

[Following are the extracts that Mr. Jackson quoted in his letter to CBC:

a- President Anwar Sadat (1970-1981) publicly stated: "Any action that would endanger the waters of the Blue Nile will be faced with a firm reaction on the part of Egypt, even if that action should lead to war."

b- President Hosni Mubarak (1981-2011) stated: "The only country that is not cooperating is Ethiopia. We are continuing to talk to them, using the diplomatic approach. Yes, we are discussing military cooperation with Sudan. ... If it comes to a crisis, we will send a jet to bomb the dam and come back in one day, simple as that. Or we can send our special forces in to block/sabotage the dam... Look back to an operation Egypt did in the mid-late 1970s, I think 1976, when Ethiopia was trying to build a large dam. We blew up the equipment while it was traveling by sea to Ethiopia."

c- President Mohamed Morsi (2012-2013) is on the record in a televised speech stating, "If our share of Nile water decreases, our blood will be the alternative."

d- Current Abdel Fattah al-Sisi (2013–Present) publicly proclaimed in a televised program "No one can touch Egypt's share of water... We are capable of protecting our national security and water to us is a question of national security. Full stop.]"

In fact, such statements must be interpreted in their right context in light of the importance of the Nile waters to Egypt and its people, given that the Nile River is considered the primary, if not the only, water source for Egypt, both in ancient and modern times, with no other water source that can be compared with.

Accordingly, there is a definite interest for Egypt in the Nile waters in the past, present and future, which made the goal of securing Egypt's acquired rights in the Nile waters a question of life or death to the Egyptian State, as one of the fundamental and ruling constants of its foreign policy over time.

Moreover, an analysis of the historical and practical experience of Egypt's relationship with the Nile Basin countries, especially the upstream countries, clearly reveals that Egypt has always upheld the principles of good neighborliness with these countries at both the bilateral and collective levels, including consultations on organizing the use of water and managing some related joint projects.

The aforementioned statements were raised only during limited periods of worsening relations with some of the upstream countries, as a result of the political employment of the Nile water issue against Egypt and threatening to deprive the latter of its fair share of the Nile waters, in flagrant violation of all relevant provisions of international law.

Egypt, on the issues raised by water conflicts, always adopts a cooperative approach based on seeking to reconcile the interests of all parties in order to reach the maximum benefit of the resources of the international river concerned, and even works to create new common interests in order to avoid any escalation in the future.

In application of this approach, Egypt has always been keen on strengthening areas of technical cooperation with the Nile basin countries, noting that many of the dams built across the river were built by Egyptians, such as the Roseires Dam in Sudan, the Owen Dam in Uganda.

Egyptian diplomacy adopts an approach that military solutions cannot be useful in addressing water disputes, especially in light of the humanitarian nature of these conflicts.

As we are talking about a common natural resource of a high degree of importance, resorting to the military machine will only result in complication of the issue and the suffering of the people of the Nile basin countries from the scourge of wars along with the consequences of water scarcity, not to mention the cost of military escalation.

5- Mr. Jackson criticizes the role played by the United States and the World Bank as mediators in this issue, overstepping their role as sponsors and observers by drafting an agreement on the GERD without being authorized by Ethiopia as the main party concerned, saying, "International mediation

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rules are unequivocal that observers cannot formulate legal opinions or offer recommendations, unless all mediating parties officially authorize them to do so. Ethiopia has neither authorized nor consented to the US or the World Bank to formulate or prepare legal text. If our government and the World Bank have formulated the claimed 'agreement' then it was done in flagrant violation of their duty as observers."

Of course, this allegation is also incorrect, in addition to the fact that it is a theoretical allegation that ignores the nature of the mediator's role in settling disputes in practice, as it must spare no effort to reconcile the parties concerned on the one hand, and the role of this mediator is directly proportional to the strength of his relationship with the parties to the conflict, which is true for the Ethiopian-Egyptian negotiations on the Grand Ethiopian Renaissance Dam. It is known that both Egypt and Ethiopia enjoy good relations with the United States, which qualifies the latter to play a role far exceeding that of an observer or even a traditional mediator. The same applies to the World Bank, which is considered one of the most important international donors concerned with settling water disputes around the world.

6- Finally, Mr. Jackson hinted in his letter that Egypt is persecuting its African counterparts of the Nile basin countries for racial reasons, saying, "No matter how much I tried, I found it harder to rule out race as a factor in the international play," Mr. Jackson said in his letter.

This is also a groundless allegation that cannot be accepted by reason or logic. In addition to adherence to its Arab identity, Egypt equally adheres to its African identity. Moreover, the African circle represents one of the main Egyptian foreign policy circles, particularly the Nile Basin countries. The history and present of Egyptian-African relations reflect this fact. Since Egypt supported the African countries to achieve its independence, it has had close ties with them on the level of governments and peoples, in addition to the fact that Egypt is a member of many relevant African international organizations.