Commentary

Trilateral Negotiations Over a Dam on the Blue Nile: US Meddling and the ‘Role’ of the UN Security Council

Zeray Yihdego

1 Introduction

The Grand Ethiopian Renaissance Dam (GERD), under construction on the Blue Nile within Ethiopia, is 73% complete, and began reservoir filling in July 2020. A few months following the filling, Ethiopia aims to undertake power generation testing using two turbines (out of a planned total of 13 when it reaches full capacity). Upon completion, Ethiopia aspires to generate 5150 MW of electricity, making the GERD the largest hydroelectric power plant on the African continent. The cost of the project is fully funded by Ethiopia without any foreign aid or loans. When in operation, the GERD is projected to provide 65 million Ethiopians with access to electricity and support Ethiopia’s development endeavours directly as a source of revenue through energy exports to neighbouring countries, and indirectly as a critical input for industrialisation. However, the two riparian countries downstream, Egypt and Sudan, have expressed various degrees of concern, and in some cases open hostility, towards the project.

Egypt, which heavily depends on Nile waters, has expressed concerns about the dam since its inception and formal project launch in 2011. Egyptian reaction towards the dam’s construction has ranged from total rejection, to demanding reduction in the size of the dam, to insistence on longer filling period and its operation in a manner that does not infringe upon what it claims to be its historic water share. Egypt has even chosen to internationalise the issue by involving the USA, the World Bank and the UN Security Council (UNSC). Sudan also raised concerns about the Dam at the

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start but gradually softened its stance as it increasingly recognised potential socio-economic benefits that it could derive from the project (more later).

Ethiopia, on the other hand, asserts that the project will not affect the interests of downstream countries; on the contrary, it will bring benefits to the people of Sudan and Egypt in terms of access to cheaper electricity and better regulation of the river flow. Sudan largely agrees with this and other benefits of the GERD, while Egypt rejects it. As a result, although the geo-politics of the river basin is highly dynamic, and the positions and demands of the parties highly fluid, the fierce contention over the construction of the GERD today is between Egypt and Ethiopia. Despite a series of trilateral negotiations held over several years, agreement has eluded the parties.

2 The Role of the United States: Mediation or Meddling?

In the effort to reach a negotiated agreement, Egypt has long wanted to involve third parties, particularly the USA and the World Bank, while Ethiopia and Sudan maintained the position that the three countries should resolve the issues by themselves, using expert assistance on technical issues as necessary. In the end, however, Ethiopia and Sudan relented and agreed to the involvement of the USA and the Bank in the status of observers. As a result, in October 2019 these two players got involved in the negotiations, but the terms and conditions governing their involvement remained unknown. Ethiopia and Sudan have consistently maintained that the two parties merely held observer status in the negotiations. Only when the USA started acting more like a de facto mediator, in some cases going as far as showing an intention to impose Egypt’s will on Ethiopia, did Ethiopian negotiators decide to boycott the negotiations.

Between October 2019 and February 2020, a series of bilateral technical and official meetings were held among the three Nile basin countries in Washington DC with the facilitation of the U.S. Department of the Treasury. Nevertheless, despite intense negotiations and US participation as observer, the three countries were

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1Zeray Yihdego, ‘International Law Connotations of US-‘mediated’ Blue Nile Dam Negotiations and Outcomes: Background’, Global Water Forum, 16 April, https://globalwaterforum.org/2020/04/16/international-law-connotations-of-us-mediated-blue-nile-dam-negotiations-and-outcomes-background/2020 (accessed 05 May, 2020a). For the following three parts of the series by the same author see https://globalwaterforum.org/2020/04/22/international-law-connotations-of-us-mediated-nile-dam-negotiations-and-outcomes-equitable-or-arbitrary-and-coercive-reservoir-filling-part-ii/ (accessed 11 May, 2020).

2See, e.g. Mawahib Abdallatif, ‘Sudan rejects Ethiopia proposal to sign a partial agreement for the first filling of the Renaissance Dam’ (East African, 13 May 2020).

3Ibid. This is not withstanding that Sudan is a key party in the case with its own hopes and fears in relation to the GERD, as will be considered later.

4See, e.g. Aron Maasho, ‘Ethiopia leader rejects call for World Bank arbitration in dam dispute’ (Reuters, 21 January 2018).
unable to agree on the main issues that divided them. By the end of February 2020, the USA stepped in to draft and table what it called a comprehensive agreement on GERD.\(^5\) The three countries were invited to subscribe to it. Ethiopia rejected the agreement for substantive and procedural reasons, while Egypt endorsed it. Sudan neither accepted nor rejected the proposed agreement. This led the USA to warn Ethiopia not to start filling the dam and test turbines without prior agreement.\(^6\) Egypt supported this move, while Ethiopia rejected it in the strongest terms. Egypt took the matter to the Arab League in March 2020, which endorsed the Egyptian position while Sudan rejected the League’s resolution.\(^7\) The situation escalated further as Egypt requested the UN Security Council\(^8\) to apply pressure on Ethiopia not to fill the dam without an agreement with her and to accept the US-proposed draft agreement. This commentary briefly explains the substantive and procedural issues of law, the outcomes of the negotiations so far, and the communications made by Egypt, Ethiopia and Sudan to the UN Security Council with reference to the communications made to the Council and the ‘Joint Statements’ posted on the U.S. Department of the Treasury website.

### 2.1 The Two Joint Statements of January 2020

Following a series of talks within the region and in the USA among technical and political representatives of the three countries, the foreign and water ministers of these countries met in Washington DC with the U.S. Treasury Secretary and the President of the Word Bank from 13 to 15 January 2020, and issued a ‘Joint Statement’ (hereafter the ‘15 January Statement’, re-printed below). This Statement made it clear that the US Government and the Bank participated as observers and reaffirmed the desire of the three countries to arrive at a comprehensive commitment to tackle their differences and foster cooperation among them. Most importantly, the 15 January Statement set out parameters for filling the Dam. These include stage-by-stage filling, hydrological conditions and the potential impact of the filling downstream, filling during wet season, drought mitigating measures, Ethiopia’s interest to start generating electricity early, and the impact on Egypt and Sudan of severe

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\(^5\)The draft agreement is not publicly available but was reported that it was sent to the three countries see Ahmed Younes and Khalid Balola Ezrik, ‘US Submitted Final Draft of GERD Agreement’ (Al-Awsat, 25 February 2020). https://english.aawsat.com/home/article/2148611/sudan-us-submitted-final-draft-gerd-agreement (accessed 20 May 2020).

\(^6\)‘What are Ethiopian reservations about US dam mediation?’, 3 Mar 2020 Https://Www.Trtworld.Com/Magazine/What-Are-Ethiopian-Reservations-About-Us-Dam-Mediation-34270 (Accessed 11 May 2020).

\(^7\)Mahmoud Aziz, ‘Sudan refuses to endorse Arab League resolution supporting Egypt in Nile dam dispute’ (Ahramonline, 5 March 2020).

\(^8\)Note Verbal dated 1 May 2020 from the Permanent Mission of Egypt to the United Nations, UNSC Doc. S/2020/355, 1 May 2020.
drought situations in Ethiopia. The Statement refers to two layers of conditions that should dictate Ethiopia’s reservoir filling—‘severe droughts’ during the initial filling of the reservoir and ‘prolonged dry years, drought and prolonged drought’ when undertaking subsequent stages of filling. These were designed to limit the amount of water that can be impounded and what should be released from the reservoir to protect downstream interests. With respect to the operation of the GERD, too, the 15 January Statement reiterated the importance of hydrological conditions of the Blue Nile, mitigating measures ‘during prolonged periods of dry years, drought and prolonged drought’ and effective coordination and dispute settlement mechanisms. It was also highlighted that the three countries had a shared responsibility regarding drought and prolonged drought management. They committed to enhance regional and transboundary cooperation and agreed to continue with their technical negotiations.

Similarly, a follow-up meeting among the technical groups and the political leaders of the three countries was held between 28 and 31 January 2020 in the presence of the observers. In their 31 January ‘Joint Statement’ (hereafter ‘31 January Statement’, re-printed below), they reiterated what they had essentially said in their 15 January Joint Statement. However, a commitment to dam safety and completion studies on downstream environmental impact assessment was also mentioned. It was indicated in the Statement that the technical negotiators should finalise an agreement by the end of February 2020.

At face value, the two Statements appeared to be positive and legally sound. As the GERD is under construction on a transboundary watercourse, the Blue Nile which makes up 59% of the total Nile river flow, the interests of downstream Sudan and Egypt must be safeguarded. The hydrological conditions of the watercourse and the likely environmental and socio-economic impacts of filling and operation of the Dam are also appropriate issues for consideration.

However, the Statements failed to comply with the requirements of international water law in two ways. First, as per Articles 5 and 6 of the UN Watercourses Convention 1997 (UNWC) and Article 4 of the 2015 GERD Declaration of Principles (hereafter ‘DoP’) signed by the three countries, not only have the Statements deliberately omitted any reference to the principle of equitable and

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9For details of the impact of these phrases see Ethiopia Insight, ‘Why Ethiopia rejected the U.S.-drafted GERD deal’, April 2, 2020 at by https://www.ethiopia-insight.com/2020/04/02/why-ethiopia-rejected-the-u-s-drafted-gerd-deal/ (accessed 04 June 2020).
10Ibid.
11International Crisis Group, ‘Nile Dam Talks: Unlocking a Dangerous Stalemate’, 16 March 2020 https://www.crisisgroup.org/africa/horn-africa/ethiopia/nile-dam-talks-unlocking-dangerous-stalemate (accessed 06 May 2020).
12Convention on the Law of the Non-Navigational Uses of International Watercourses, New York, 21 May 1997.
13Official Text: Egypt, Ethiopia, Sudan – Declaration of Principles, March 25, 2015 https://hornaffairs.com/2015/03/25/egypt-ethiopia-sudan-agreement-on-declaration-of-principles-full-text/.
reasonable utilisation of shared watercourses, but are also biased towards Egypt in particular. Other considerations for filling and operation of the Dam should have included national socio-economic needs and water contributions to the Nile as clearly stated in the DoP and other agreements such as the Nile Basin Cooperative Agreement 2010 (CFA), among others. A simple reference to the electricity needs of Ethiopia does not sufficiently respond to the equitable right of Ethiopia to make use of Blue Nile waters to which it makes 100% contribution.

Second, the 15 January Statement used the phrase ‘potential impact’ instead of the concept of ‘significant harm’ that is well established in international water law.\textsuperscript{14} Such an attempt to apply a broader threshold to harm by the USA in the name of the three countries, and despite the apparent failure of Ethiopia to challenge it, was therefore clear evidence of a bias towards protecting downstream interests. As a result, the Statements (and subsequently tabled proposal by the USA) attempt to impose an unfairly heavy burden on Ethiopia in connection with drought. This was recognised, \textit{inter alia}, by the German Institute for International and Security Affairs when they stated that expecting Ethiopia to unduly delay filling the dam or release waters of the reservoir without compensation as illegitimate.\textsuperscript{15}

2.2 The Unilateral Statement from the USA, February 2020

Following the 31 January Statement, negotiations continued for some time and the USA, with input from the World Bank, drafted a proposed agreement and invited the three countries to meet in Washington DC to adopt and sign it. Ethiopia notified all concerned parties that it needed more time to conduct consultations with its citizens and stakeholders. However, despite such a timely notification and in the absence of the owner of the Dam, the U.S. Treasury Secretary held bilateral meetings with Egypt and Sudan separately between 27 and 28 February and issued a unilateral Statement on 28 February 2020 (hereafter ‘28 February Statement’, reprinted below). This Statement, unlike previous Joint Statements, referred to the 2015 DoP, stressed the duty to prevent significant harm (and not potential impact this time) but also warned Ethiopia not to fill the Dam and test GERD turbines without prior agreement. The Statement also praised Egypt for its readiness to endorse the US-drafted proposed agreement. The Statement did not clearly refer to the principle of equitable water utilisation as enshrined in the 2015 DoP. Ethiopia rejected the

\textsuperscript{14}UNWC, Art 7.
\textsuperscript{15}Tobias von Lossow, Luca Miehe and Stephan Roll, ‘Nile Conflict: Compensation Rather Than Mediation- How Europeans Can Lead an Alternative Way Forward’, SWP Comment, No 11 March 2020 \url{https://www.swp-berlin.org/fileadmin/contents/products/comments/2020C11_NileConflict.pdf} (accessed 28 April 2020).
Statement and, with it, the US-proposed agreement,\textsuperscript{16} right away. Although Egypt and the USA appear to have tried to use the good will of Ethiopia to cooperate on Dam filling and operation, the DoP and general international law\textsuperscript{17} recognise Ethiopia’s equitable right to utilise the fruits of its hydropower project without having to seek permission from anyone else, subject only to complying with the substantive requirements of international water law, including the principle of equitable utilisation and the duty to prevent significant harm.

Again, it may seem that the USA wanted to help the parties by tabling a proposed agreement on filling and operation of the Dam as a ‘responsible’ world power. However, in doing so, not only did the USA ignore the cardinal principles of international water law as widely reported in scholarly blogs, newspapers and even in the U.S. Congress,\textsuperscript{18} its meddling in such a manner breaches the international law principles of consent, non-intervention into the affairs of other states, and ultimately undermines the sovereignty of Ethiopia.\textsuperscript{19} The bilateral meetings the USA held with Egypt and Sudan (although the latter recently made it clear that it had refused to join the bilateral meetings without the presence of all parties), in the absence of Ethiopia, the act of drafting a proposed agreement without a mandate from all parties, and the attempt to coerce Ethiopia into accepting the proposed agreement amount to breaches of trust, neutrality, and good faith on the part of an observer.\textsuperscript{20} Hence, the US role can only be characterised as unlawful meddling in the affairs of Ethiopia and a case of attempted coercion rather than legitimate exercise of its role as a neutral observer.

\textsuperscript{16}Ethiopia Insight, ‘Why Ethiopia rejected the U.S.-drafted GERD deal’, 2 April, 2020. https://www.ethiopia-insight.com/2020/04/02/why-ethiopia-rejected-the-u-s-drafted-gerd-deal/ (accessed 6 May 2020).
\textsuperscript{17}See, e.g. Case Concerning Pulp Millson The River Uruguay (Argentina v. Uruguay) ICJ Judgment Of 20 April 2010, para 275. See also Lake Lanoux Arbitration (France V. Spain), Arbitral Tribunal November 16, 1957 http://www.lflp.org/laws666/lakelanoux.htm (accessed 07 May 2020).
\textsuperscript{18}Congressman Steven Horsford’s press release’, 4 March 2020 at https://horsford.house.gov/media/press-releases/congressman-steven-horsford-questions-secretary-mnuchin-slot-tax-grand (accessed 01 May 2020).
\textsuperscript{19}Zeray Yihdego, ‘Was USA’s involvement in Blue Nile Dam Negotiations a mediation or a coercion and intervention? Critical legal analysis and conclusions -Part IV’, Global Water Forum, 23 April 2020b https://globalwaterforum.org/2020/04/23/was-usas-involvement-in-blue-nile-dam-negotiations-a-mediation-or-a-coercion-and-intervention-critical-legal-analysis-and-conclusions-part-iv/ (accessed 06 May, 2020).
\textsuperscript{20}Cobb and Rifkin (1991), pp. 35–62.
3 Attempts to Involve the UN Security Council in the GERD Negotiations: Some Reflections

Whatever the motivations of the USA may have been in mishandling the negotiations and attempting to coerce Ethiopia to sign its proposed agreement contrary to the principles and rules of international law, it is now apparent that such an intervention has further complicated the matter. Egypt has taken the case to the UN Security Council to which Ethiopia and Sudan have responded. This section aims to highlight a few of the major issues covered in the letters and attached aide memoires (or annex) of the three countries, with emphasis on the Egyptian and Ethiopian positions.

3.1 The Major Claims, Counter-Claims and Requests of Egypt, Ethiopia and Sudan

On 1 May 2020, the Foreign Minister of Egypt brought the matter to the attention of the UNSC through a letter addressed to the President of the Council and supported by a lengthy Aide Memoire (hereafter the ‘Egyptian communication’[re-printed below]),\(^{21}\) in which it characterised the GERD issue as ‘a situation that potentially poses a serious threat to peace and security throughout the region’. The Egyptian communication further asserts that Ethiopia’s unilateral dam filling would inflict significant harm on downstream countries.\(^{22}\) After accusing Ethiopia of violating international laws, including the DoP, Egypt made its requests as considered below. As a follow-up to the above issues, the Egyptian communication asserts that the attempts made to peacefully resolve the situation were obstructed by Ethiopia, including rejection of the US-proposed agreement.\(^{23}\)

Apparently relying on Article V of the DoP, Egypt particularly noted that commencement of filling without an agreement with itself and Sudan is inconsistent with the object and purpose of the DoP\(^{24}\)—which effectively replicates the warning issued by the U.S. Treasury Secretary in his unilateral statement of 28 February 2020. Egypt further requested that Ethiopia should sign and ratify the US’s proposed agreement as it would ‘unlock boundless horizons of cooperation’ among the three countries.

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\(^{21}\)UNSC Doc. S/2020/355. The letter is accompanied with an Aide Memoire of 11 pages long document that outline the failings of Ethiopia with its international law obligations.

\(^{22}\)SC Doc. S/2020/355, letter, para 3.

\(^{23}\)SC Doc. S/2020/355, Memoire, Executive Summary, Para 8.

\(^{24}\)SC Doc. S/2020/355, Aide Memoire, para 21.
In a response sent to the Council ‘for the purposes of information’ on 14 May 2020 (hereafter the ‘Ethiopian communication’ [re-printed below]), Ethiopia asserted its rights under international law and claimed that the ‘construction of the GERD is based on its sovereign and legitimate rights to use the Nile waters and it does not cause significant harm to downstream countries’. Indeed, Ethiopia sees the Dam as a ‘non-water consumptive’ project aimed at easing ‘the country’s critical energy deficit, alleviate abject poverty and meet the dire needs of its people’. It added that ‘the GERD will also provide substantial benefits to Egypt and the Sudan and facilitate regional integration’; and ‘is fundamental to the promotion of sustainable development, peace and security’ in the region.

The Ethiopian communication submits that the first stage of filling, which has been agreed by Egypt and Sudan in the negotiations, would be limited to 4.9 billion cubic metre (BCM) and 13.5BCM in the first and second years of filling, respectively (out of an average 49BCM streamflow of the Blue Nile), and would not inflict significant harm on downstream reservoirs.

Ethiopia’s response further refers to the country’s long-standing commitment to multilateralism as evidenced by its membership in the League of Nations; the UN and the AU more generally; and its commitment to the Nile Basin Initiative (NBI) and the Nile Basin Cooperative Framework (CFA 2010) which aim to establish a Nile Basin Commission. Ethiopia also refers to the good faith initiatives it has taken to involve the two downstream countries with respect to the GERD, supported with factual details of the steps it has taken to bring the two downstream countries into close cooperation. Accordingly, Ethiopia blames Egypt for its unilateralist approach as a promoter of a monopolistic approach to the Nile waters in the name of ‘historical right or current use’, describing it as the main obstacle in the GERD negotiations.

Ethiopia’s response rejects the request of halting its dam filling, asserting that its legitimate ‘right to fill and operate the GERD by complying with the principles of equitable and reasonable utilisation and the obligation not to cause significant harm’. It further asserts that ‘Under Article V of the DoP, the three countries agreed to utilise the outcome of the Two IPoE [International Panel of Experts] recommended studies on the guidelines and rules on the first filling and annual operation of the GERD in parallel with the construction of the Dam’. Given the object of the GERD is to generate hydropower, Ethiopia also surmised how the filling of the reservoir contradicts the object and purpose of the DoP. Ethiopia also

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25Letter dated 14 May 2020 from the Permanent Representative of Ethiopia to the United Nations, Security Council Doc. S/2020/409, 14 May 2020. The Ethiopian response consists of four pages long letter from the Foreign Minister and an Aide Memoire of 16 pages.
26Ibid, Aide Memoire, Summary, para 2.
27Ibid, letter, page 2.
28SC Doc S/2020/409, para 17.
29Ibid., Aide-Mémoire, pages 10–13.
30SC Doc S/2020/409, Aide Memoire, para 12.
31Ibid.
rejects the US-proposed agreement on several grounds—notably, that the proposal is technically impracticable for dam filling and would severely limit the energy generation capacity of the GERD, detrimentally affect the rights of current and future generations of Ethiopians, and turn the narrow GERD issue to a much wider issue about sharing the Nile waters, in the process undermining the CFA and ‘Ethiopia’s sovereign right to operate its own dam’. Instead, Ethiopia’s communication calls upon the international community to encourage Egypt to (i) ‘continue the tripartite negotiation on the guidelines and rules’ for filling and operating the dam, (ii) ‘abandon its insistence to preserve its self-acclaimed “historic rights and current use” and desist [from] its relentless efforts to politicize and internationalize the remaining technical negotiations’, and (iii) sign and ratify the CFA in order to forge a genuine cooperation for equitable and reasonable utilisation of the Nile waters for the common benefits of all the basin countries’.

In a letter it sent to the Council on 2 June 2020 (hereafter ‘Sudanese communication’ [re-printed below]), Sudan on its part acknowledged the potential positive impacts of the GERD in many respects, including the increase of electricity supply, provision of reliable supply of water for irrigated agriculture, elongating the lifespan of Sudanese dams, reducing damages caused by flooding, savings in dam management in the country, and improving the navigation depth of the main Nile. However, Sudan also submitted that, ‘for the above potential benefits to materialise, closer coordination and cooperation is a prerequisite in the way GERD is operated, otherwise, all the positive impacts will be jeopardized’. Sudan’s particular concerns emanate mainly from (i) dam safety, (ii) social impacts, (iii) sediment reduction, and (iv) environmental considerations.

The Sudanese Communication underlines the country’s commitment to, and express endorsement of, the UNWC 1997 and its principles, as codifications of international law. These include: the principle of equitable utilisation, duty to

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32Ibid, para 50.
33Ibid, Aide Memoire, pages 12–13.
34Letter from the Ministry of Affairs to the President of the Council, ‘Annex: Grand Ethiopian Renaissance Dam: Sudan’s Position’, NO: SUN/201/20, June 2, 2020, page 4, para 7. The details have been presented as follows:

7. The positive impacts of the GERD results mainly because of flow regulation of the Blue Nile, i.e., the flow of the Blue Nile will be more steady with much less seasonality compared to the condition without the GERD. The positive impacts include:

• Electricity Supply: An increase of the hydropower generation from the existing hydropower plants in Sudan (Roseires and Merowe), as well as expected future supplies from the GERD.
• Irrigated Agriculture: The reliability of water supply to the existing and future irrigation schemes will improve, enhancing irrigated agriculture in the country.
• Other Positive Impacts: these include longer lifespan of our dams (with the decrease of sediment bed load), reduction of damages caused by exceptionally high floods, saving in pumping cost, and increase of navigation depth along the Main Nile’.

35Ibid, para 8.
36Ibid.
prevent significant harm, notification and information sharing, and peaceful settlement of disputes.\(^{37}\) Although Sudan is not a party to the UNWC, its unequivocal stance on the convention is not wholly surprising—it was one of the countries that sponsored the Convention when adopted by the UN General Assembly in the 1990s. It is also notable that while most of the principles of the Convention reflect customary international law, considering the fact the Framework Convention is ratified by only 36 countries, it is not tenable to argue that the whole Convention, including the rules on notification and information exchange, represents international custom. State practice in the Nile basin provides strong evidence that such procedural rules require an agreement between concerned parties based on sovereign equality and reciprocity.\(^{38}\) Sudan’s communication rightly emphasised not only the need for adhering to the UNWC rules and principles but also to the DoP that incorporated such key norms as the way forward to resolving outstanding GERD-related disagreements. Further, the communication underscores Sudan’s commitment to cooperate with both Ethiopia and Egypt in good faith throughout the negotiations.\(^{39}\)

The Sudanese communication to the Council appears to be motivated by the desire to make known, and document, the country’s position on GERD issues, emphasising the hope that, ‘with strong political will and commitment from the three parties we can address the few remaining differences’.\(^{40}\) Most importantly, the Sudanese Communication requests the Council to ‘encourage all the parties to refrain from ...taking any other action that jeopardises regional and international peace and security’.\(^{41}\) While fully and expressly recognising Ethiopia’s right to utilise Blue Nile waters including for GERD, the communication calls upon the UNSC to ‘encourage all parties from taking unilateral actions including filling the GERD prior to concluding a comprehensive agreement’.\(^{42}\)

Some of the key legal and practical questions that these submissions pose are next considered in turn.

### 3.1.1 Is the GERD a Subject of International Peace and Security?

The Egyptian communication characterised the disagreement over GERD filling and operation as a threat to regional peace and security. The Ethiopian communication strongly rejects this, and rather considers the project as a path for regional integration and development. The Sudanese communication calls upon the parties to the case to refrain from taking any unilateral measures that destabilise the region’s peace and

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\(^{37}\)Sudan Letter No: SUN/201/20, Annex, para 10–11.

\(^{38}\)Devlaeminck (2019), pp. 301–320. doi:10.2307/26800039.

\(^{39}\)Sudan Letter No: SUN/201/20, Annex, para 10.

\(^{40}\)Sudan Letter No: SUN/201/20, p. 3.

\(^{41}\)Ibid.

\(^{42}\)Sudan Letter No: SUN/201/20, Annex, para 39.
The Egyptian communication, as the first of these claims, did not refer to any specific UN Charter provision as a legal basis nor did it request the Council to deliberate on the matter and take particular action against Ethiopia within the framework of international peace and security. The same is true with the Sudanese communication, but the Ethiopian communication is critical of taking the case to the UNSC.

Here, two views can be put forward. On the one hand, it may be that Egypt’s communication to the Council falls under Article 35, Chapter VI, of the UN Charter which permits UN Member States to ‘bring any dispute, or any situation’ which is ‘likely to endanger the maintenance of international peace and security’ (Art. 34) to the attention of the Council. On the other hand, while the Council has the primary responsibility and mandate to deal with matters of international peace and security under Article 24 of the Charter, the same article obliges the Council to discharge its duties in accordance with the purposes and principles of the Charter. Among the principles of the Charter, enshrined in Article 2, are: sovereign equality, the need to refrain from the threat or use of force against the territorial integrity and political independence of another state, and non-intervention into the internal affairs of states.

On this basis, Ethiopia’s endeavour to make an equitable use of the water resources within its territory could not be said to threaten international peace and security in violation of the principles and purposes of the UN Charter. Ethiopia did not use or threaten to use military force against Egypt. In contrast, continuous Egyptian threats, which came in various forms and at different times, may well pose questions of violation of the prohibition on the threat or use of force to secure water or other national interests. International law is abundantly clear that force or the threat thereof cannot be resorted to for economic or other policy reasons. If anything, it is Ethiopia that might have sufficient legal grounds to bring a complaint before the UNSC alleging threats to its sovereignty from Egypt.

Ethiopia’s response to the Egyptian communication avoids making such a case; rather it is focused on trilateral basin-wide cooperation as the way forward to resolve the impasse. Yet, the communication characterised the Egyptian move as an unjustified politicisation and internationalisation of a single hydropower project for the sake of promoting a ‘self-claimed “historic rights and current use”’ of Nile waters. The communication further expresses Ethiopia’s regret about “the unwarranted escalation of the issues, disinformation campaign and over-politicization of what is a technical operation of a single water infrastructure built

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43 McClatchy, ‘Egypt’s potential presidential candidate threatens to use force against Ethiopia’s dam’ (Tribune Business News, Apr 7, 2014); see also J Starkey, ‘Ethiopia defies Egypt Bomb threat to back Nile dam’ (The Times, 15 June, 2013); for recent Egyptian intentions see H Hendawi, ‘Egypt’s El Sisi holds military meeting amid tension with Ethiopia’ (The National, 3 March, 2020).
44 UN Charter, Art. 2 (4); Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, General Assembly, 1883rd Plenary Meeting, 24 October 1970.
45 SC Doc S/2020/409, Aide Memoire, para 65.
exclusively through the direct contributions of the poor citizens of Ethiopia with the hope to be uplifted out of an abject poverty."\(^{46}\)

Therefore, it must be said that taking a water sharing issue to the Council, which is the first of its kind in the history of the UNSC, was not founded on any legal basis under international law. The fact that the Council has not even given a statement, by the time of this commentary being submitted for publication, is strong evidence of such a conclusion. However, the Sudanese call on refraining from any unilateral action that jeopardises international peace and security, which appears to refer to any potential military option to the situation by Egypt, would make the GERD water sharing issue an international peace and security matter.

### 3.1.2 Legality of Unilateral Reservoir Filling and Significant Harm

The Egyptian communication claims, primarily, that if Ethiopia fills the reservoir without a prior agreement with Egypt and Sudan, it would result in a significant harm on downstream countries, on the Egyptian economy and livelihood in particular. Sudan’s position is a little vague, as covered in the second point below. The Egyptian argument does not have any legal basis in international water law, nor does it make any logical sense; preventing harm can be undertaken with, or without, an agreement; what matters is the measures in place, preferably based upon an agreement among all concerned for purposes of building confidence and coordinating efforts to maximise the benefits of the hydro-project while minimising its negative impacts.\(^{47}\) This should not undermine, however, the need for taking the safety concerns that Sudan has very seriously.

The Egyptian communication claims, second, that unilateral filling violates the DoP. Sudan does not expressly say unilateral reservoir filling would violate Ethiopia’s obligation but appears to impliedly convey the message that the potential risks of inflicting substantial harm will be high if filling is done without cooperation and coordination with downstream neighbours. The communication does not make clear as to how Ethiopia’s right to enjoy the fruits of its project can be realised if doing so is dependent on reaching a comprehensive agreement by all parties since such an outcome can be prevented by reasons not attributable to Ethiopia.

Be that as it may, Egypt and Sudan would like to see the UNSC encourage Ethiopia to refrain from undertaking water impounding activity without a comprehensive agreement on filling and dam operation. Ethiopia rejects this call as discussed above. If concluding a comprehensive agreement between the three Nile riparians is not possible due to legal and other reasons, Ethiopia is still entitled to exercise its equitable right while exercising its due diligence duty owed to the two downstream countries to prevent significant harm for three main reasons; (i) it has

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\(^{46}\)SC Doc S/2020/409, Executive Summary, para 14.

\(^{47}\)Zeray Yihdego, ‘In Pursuit of Nile Justice’, Ethiopia Insight, 21 April 2020) [https://www.ethiopia-insight.com/2020/04/21/in-pursuit-of-nile-justice/](https://www.ethiopia-insight.com/2020/04/21/in-pursuit-of-nile-justice/) (accessed 15 May 2020).
never relinquished its sovereign and fundamental right to use its resources; (ii), its initial reservoir filling strategy appears to be reasonable and agreed upon by Egypt and Egypt (see above, joint statements and Ethiopian letter below); and (iii), there is no evidence that all the obstacles to the GERD negotiations are attributable only to Ethiopia, in fact to the contrary. Still, Ethiopia must continue to be open to negotiate and agree on a fair and equitable GERD comprehensive agreement before dam filling. However, the call and pressure to impose the US-sponsored agreement must be rejected as considered earlier.

3.1.3 Compliance with International Law and Cooperation

The Egyptian communication accuses Ethiopia of breaching international law and hampering cooperation. Ethiopian communication rejects this in the strongest terms and underlines that the major obstacle to successful GERD negotiations is an Egyptian ‘historical and current use right’ claim of Nile waters, as opposed to the principle of equitable and reasonable use. Ethiopia also stressed its commitment to Nile-wide cooperation and a solution to the Nile issue, and a cooperative approach to resolving the differences on GERD. The emphasis put on the UNWC and its principles, its commitment to basin-wide cooperation such as the Nile Basin Initiative (NBI)\(^48\) and its balanced nature make the Sudanese Communication profoundly different from Egypt’s. In contrast, although it differs from the Ethiopian Communication in terms of coverage given to the UNWC, both communications equally endorse the fundamentals of international water law and the need for Basin-wide cooperation. Unlike Ethiopia, however, Sudan does not endorse, or even mention, the CFA; unsurprisingly, nor does Sudan denounce the 1959 Nile treaty which apportioned the entire Nile waters between itself and Egypt.

From the evidence presented, including the endorsement made by the two downstream countries, it is true that Ethiopia displayed open and positive gestures from the beginning by inviting the two downstream countries to engage and addressed their fears in a cooperative fashion. Notable among the fruits of this cooperative stance taken by Ethiopia are the establishment of the International Panel of Experts (IPoE) in 2013, the years of comprehensive trilateral technical and political negotiations, and the agreement on the Declaration of Principles that was signed by all three parties in 2015. Even Egypt and Sudan acknowledged this much when they endorsed Article VIII of the DoP, which provides that ‘The Three Countries appreciate the efforts undertaken thus far by Ethiopia in implementing the IPoE recommendations pertinent to the GERD safety’.

\(^48\)Ibid, para 22.
4 Conclusion

First, Egypt’s attempt to use the USA and the UNSC appears to be part of its strategy to force Ethiopia not to fill the GERD and start electricity production through the involvement of powerful third parties. It is also clearly designed to put pressure on Ethiopia to accept Egyptian and US terms without its free will in contravention of the international law principle of consent considered earlier. Egypt will know this diplomatic show cannot help the UNSC to make even a simple statement about the GERD, never mind treating a resource sharing issue as a matter of international peace and security. It is in this spirit that the UN Secretary General (and not the president of the Council) released a statement encouraging the parties to ‘peacefully resolve’ their differences based upon ‘common understanding, mutual benefit, good faith, win-win, and the principles of international law’.49 Ethiopia is not asking for anything different. Even Sudan did not urge Ethiopia to sign the US-sponsored agreement; it only calls upon Egypt and Ethiopia to complete the tripartite negotiations.50 Yet, whether the US meddling in to the affairs of Ethiopia may continue or stop in relation to the UNSC remains to be seen.

Second, and irrespective of the lack of any legal basis for the Council to be involved in a natural resource-sharing disagreement that revolves around a single hydro-project, the respective Communications from the three countries also signify a message of hope and change that lead me to conclude this commentary on a positive note: (i) all countries’ communications refer to the notions of equitable and reasonable utilisation,51 the duty to prevent significant harm, and the duty of cooperation as the pillars of modern international water law. In particular, the Sudanese bold endorsement of the UNWC, the core principles and rules of international water law, and basin-wide cooperation perhaps signal the joining of the country into the CFA sooner or later; it is also encouraging that the Egyptian Communication makes no reference to the colonial-era treaties over the Nile; instead, the Nile has been described as ‘a shared resource co-owned by all riparians’.52 The Ethiopian communication also reiterated the equitable principle and its duty of due diligence.53 (ii) All sides allude to the common interest of all basin states, although their degree of emphasis on, and coverage of, Basin-level cooperation differ noticeably. And (iii) all call upon each other to return to the negotiating table and cooperate in good faith.

49Statement attributable to the Spokesman for the Secretary-General on the Grand Ethiopian Renaissance Dam, 19 May, 2020 https://news.un.org/en/story/2020/05/1064452 (accessed 20 May 2020). It has to be noted that the principles were taken from the 2015 DoP.
50Sudan Letter No: SUN/201/20, Annex, para 39.
51For Egypt see SC Doc. S/2020/355, Executive Summary, para 11.
52SC Doc. S/2020/355, executive Summary, para 12.
53Ethiopia’s communication refers to the equitable principle several times see SC Doc S/2020/409, letter, pages 2 and 4, executive Summary, 5,6, 11 and 12; and Aide Memoire, paras 11, 12, 14, 52, 58, 64 and 65.
In conclusion, it is hoped that hard lessons will be learnt from the experiences of 2019–2020 of the three eastern Nile countries.

Documents

**Joint Statement of Egypt, Ethiopia, Sudan, the United States and the World Bank, 15 January 2020, U.S. Department of the Treasury** ([https://home.treasury.gov/news/press-releases/sm875](https://home.treasury.gov/news/press-releases/sm875))

**Washington, DC**—The Ministers of Foreign Affairs and Water Resources of Egypt, Ethiopia and Sudan and their delegations met with the Secretary of the Treasury and the President of the World Bank, participating as observers, in Washington, D.C. on January 13–15, 2020. The Ministers noted the progress achieved in the four technical meetings among the Ministers of Water Resources and their two prior meetings in Washington D.C. and the outcomes of those meetings and their joint commitment to reach a comprehensive, cooperative, adaptive, sustainable, and mutually beneficial agreement on the filling and operation of the Grand Ethiopian Renaissance Dam.

Toward that end, the Ministers noted the following points, recognizing that all points are subject to final agreement:

1. The filling of the GERD will be executed in stages and will be undertaken in an adaptive and cooperative manner that takes into consideration the hydrological conditions of the Blue Nile and the potential impact of the filling on downstream reservoirs.
2. Filling will take place during the wet season, generally from July to August, and will continue in September subject to certain conditions.
3. The initial filling stage of the GERD will provide for the rapid achievement of a level of 595 meters above sea level (m.a.s.l.) and the early generation of electricity, while providing appropriate mitigation measures for Egypt and Sudan in case of severe droughts during this stage.
4. The subsequent stages of filling will be done according to a mechanism to be agreed that determines release based upon the hydrological conditions of the Blue Nile and the level of the GERD that addresses the filling goals of Ethiopia and provides electricity generation and appropriate mitigation measures for Egypt and Sudan during prolonged periods of dry years, drought and prolonged drought.
5. During long term operation, the GERD will operate according to a mechanism that determines release based upon the hydrological conditions of the Blue Nile and the level of the GERD that provides electricity generation and appropriate mitigation measures for Egypt and Sudan during prolonged periods of dry years, drought and prolonged drought.
6. An effective coordination mechanism and provisions for the settlement of disputes will be established.
The Ministers agree that there is a shared responsibility of the three countries in managing drought and prolonged drought.

The Ministers agreed to meet again in Washington, D.C. on January 28–29 to finalize a comprehensive agreement on the filling and operation of the GERD, and that there will be technical and legal discussions in the interim period.

The Ministers recognize the significant regional benefits that can result from concluding an agreement on the Grand Ethiopian Renaissance Dam with respect to transboundary cooperation, regional development and economic integration that can result from the operation of the Grand Ethiopian Renaissance Dam. The Ministers of Foreign Affairs reaffirmed the importance of transboundary cooperation in the development of the Blue Nile to improve the lives of the people of Egypt, Ethiopia, and Sudan, and their shared commitment to concluding an agreement.

**Joint Statement of Egypt, Ethiopia, Sudan, the United States and the World Bank, 31 January 2020, U.S. Department of the Treasury** (https://home.treasury.gov/news/press-releases/sm891)

January 31, 2020

**Washington, DC**—The Ministers of Foreign Affairs and Water Resources of Egypt, Ethiopia and Sudan and their delegations met with the Secretary of the Treasury and the President of the World Bank, participating as observers in negotiations on the filling and operation of the Grand Ethiopian Renaissance Dam (GERD), in Washington, D.C. on January 28-31, 2020. At the conclusion of the meetings, the Ministers reached an agreement on the following issues, subject to the final signing of the comprehensive agreement:

1. a schedule for a stage-based filling plan of the GERD;
2. a mitigation mechanism for the filling of the GERD during drought, prolonged drought, and prolonged periods of dry years; and
3. a mitigation mechanism for the annual and long-term operation of the GERD in drought, prolonged drought, and prolonged periods of dry years.

They also discussed and agreed to finalize a mechanism for the annual and long-term operation of the GERD in normal hydrological conditions, a coordination mechanism, and provisions for the resolution of disputes and the sharing of information. Moreover, they also agreed to address dam safety and pending studies on the environmental and social impacts of the GERD.

The Ministers have instructed their technical and legal teams to prepare the final agreement, which shall include the agreements reached above, for a signing of the three countries by the end of February, 2020.

The Ministers recognize the significant regional benefits that will result from this agreement and from the operation of the dam with respect to transboundary cooperation, regional development and economic integration. The Ministers
reaffirmed the importance of transboundary cooperation in the development of the Blue Nile to improve the lives of the people of Egypt, Ethiopia, and Sudan.

Statement by the Secretary of the Treasury on the Grand Ethiopian Renaissance Dam, 28 February 2020 (https://home.treasury.gov/news/secretary-statements-remarks/statement-by-the-secretary-of-the-treasury-on-the-grand-ethiopian-renaissance-dam)

Washington, DC—On February 27–28, 2020, U.S. Treasury Secretary Steven T. Mnuchin participated in separate bilateral meetings with the Ministers of Foreign Affairs and the Ministers of Water Resources of Egypt and Sudan.

The United States facilitated the preparation of an agreement on the filling and operation of the Grand Ethiopian Renaissance Dam (GERD) based on provisions proposed by the legal and technical teams of Egypt, Ethiopia and Sudan and with the technical input of the World Bank.

In separate bilateral meetings, the Ministers shared their comments on the agreement. The United States believes that the work completed over the last 4 months has resulted in an agreement that addresses all issues in a balanced and equitable manner, taking into account the interests of the three countries.

This process has built on the prior 7 years of technical studies and consultations between the three countries, and the resulting agreement, in our view, provides for the resolution of all outstanding issues on the filling and operation of the GERD. The foundation of the agreement is the principles agreed between the three countries in the 2015 Agreement on Declaration of Principles (DOP), in particular the principles of equitable and reasonable utilization, of not causing significant harm, and of cooperation.

We appreciate the readiness of the government of Egypt to sign the agreement and its initialling of the agreement to evidence its commitment. We also recognize that Ethiopia continues its national consultations, and look forward to its concluding its process as soon as possible to provide for the signing of the agreement at the earliest possible time. Consistent with the principles set out in the DOP, and in particular the principles of not causing significant harm to downstream countries, final testing and filling should not take place without an agreement. We also note the concern of downstream populations in Sudan and Egypt due to unfinished work on the safe operation of the GERD, and the need to implement all necessary dam safety measures in accordance with international standards before filling begins.

The United States reaffirms its commitment to remain engaged with the three countries until they sign the final agreement.

We note that a signed agreement on the GERD will be transformational for the region, resulting in significant transboundary cooperation, regional development and economic integration, and improvement in the lives of the more than
250 million people of Egypt, Ethiopia, and Sudan. We are pleased with the significant work by the countries over the last 4 months, which has only been possible due to the strong commitment to constructive dialogue and cooperation.

**Egyptian Communication**

Letter Dated 1 May 2020 from the Permanent Representative of Egypt to the United Nations Addressed to the President of the Security Council, United Nations S/2020/355, 4 May 2020 (https://undocs.org/en/S/2020/355)

Upon instructions from my Government, I would like to transmit herewith a letter from the Minister for Foreign Affairs of the Arab Republic of Egypt, Sameh Shoukry, addressed to you, regarding the latest developments related to the Grand Ethiopian Renaissance Dam (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Mohamed Edrees,
Permanent Representative of Egypt to the United Nations

Annex to the Letter Dated 1 May 2020 from the Permanent Representative of Egypt to the United Nations Addressed to the President of the Security Council

I am writing to apprise you of the latest developments relating to a matter of the greatest consequence for Egypt, which is to the Grand Ethiopian Renaissance Dam.

The Federal Democratic Republic of Ethiopia has announced that it intends to commence the impoundment of waters for the purposes of filling the GERD reservoir for the Grand Ethiopian Renaissance Dam in July 2020. The unilateral filling of the dam, before agreeing with downstream States on the rules governing both the filling and operation of this dam, is inconsistent with the spirit of cooperation between co-riparians that share an international watercourse and amounts to a material breach of Ethiopia’s international legal obligations.

This is a situation that potentially poses a serious threat to peace and security throughout the region. The unilateral filling and operation of the Grand Ethiopian Renaissance Dam, which is slated become the largest hydropower dam in Africa, could cause significant harm to downstream communities. This would jeopardize the water security, food security, and indeed, the very existence of over 100 million Egyptians, who are entirely dependent on the Nile River for their livelihood. The prospect of being subjected to significant harm to its riparian rights and interests would be wholly intolerable to Egypt.
Ethiopia’s announcement of its intention to fill the Grand Ethiopian Renaissance Dam without an agreement is consistent with its policy of unilateralism that it has adopted since it commenced the construction of the dam in 2011 without notifying or consulting with its downstream co-riparians in violation of its obligations under international law. Since then, Egypt has, in the spirit of good faith, engaged in extensive negotiations with Ethiopia on the dam. However, as explained in the attached aide-mémoire (see enclosure), those negotiations were unsuccessful due to Ethiopian obstructionism and prevarication. Conversely, throughout this process, Egypt has exercised considerable flexibility, showed limitless goodwill, and demonstrated a genuine political commitment to reach a fair and balanced agreement on the dam. Such an agreement would ensure that Ethiopia achieves its developmental objectives by generating hydropower from the dam, while preventing the infliction of significant harm on downstream riparian States.

In the light of the failure of negotiations between the three countries, Egypt invited the United States of America and the World Bank Group to assist in reaching an agreement. This led to the launch of intensive negotiations during which significant progress was achieved towards concluding an agreement on the Grand Ethiopian Renaissance Dam. Unfortunately, however, Ethiopia did not attend the final ministerial meeting that was called for by the United States with the objective of finalizing the agreement. Ethiopia also refused to accept a compromise text that was formulated by our American partners with technical input from the World Bank on the basis of the positions expressed by the three countries during the negotiations. On the other hand, consistent with its desire to conclude an agreement on the dam that preserves the rights and interests of all riparian States, Egypt initialled the final agreement formulated by the United States and the World Bank on 28 February 2020.

Moreover, the Government of Ethiopia has proposed that Egypt and the Sudan accept a plan that it has prepared, but that has not hitherto been shared, on the first 2 years of the filling of the Grand Ethiopian Renaissance Dam. Unfortunately, a partial agreement of this sort is untenable. Not only does this proposed plan ignore the operational rules of the dam, it does not even regulate the entire process of filling the dam. This proposal is also inconsistent with the agreement on declaration of principles of 2015, which was concluded between Egypt, Ethiopia and the Sudan, and which requires the three countries to reach a comprehensive agreement on both the filling and operation of the dam, before the commencement of the filling of the dam.

I am, therefore, writing to inform you of these regrettable developments. It is imperative that the international community impress upon Ethiopia the seriousness of the situation, and to call upon it not to undertake any unilateral measures, including the filling of the Grand Ethiopian Renaissance Dam, without an agreement with downstream riparian States. The international community must also encourage Ethiopia to accept the agreement that was reached during the negotiations facilitated by the United States and the World Bank. This agreement
provides an equitable and mutually beneficial formula that preserves the interests of all three countries. Signing this agreement will mark a turning point in the history of Nile River Basin. It promises to unlock boundless horizons of the cooperation between the three countries and will promote efforts to realize the aspirations of over 240 million citizens of Egypt, Ethiopia and the Sudan to achieve peace and prosperity.

(Signed) Sameh Shoukry
Minister for Foreign Affairs
Arab Republic of Egypt

Enclosure

AIDE MEMOIRE

Executive Summary

1. Egypt has engaged in intensive negotiations on the Grand Ethiopian Renaissance Dam (GERD) for almost a decade. Since Ethiopia unilaterally commenced the construction of the GERD in 2011, Egypt has negotiated in good faith and with a genuine political commitment to reach a fair and balanced agreement on the GERD. These negotiations went through several phases and were undertaken in numerous forums. Regrettably, in each and every round of talks, Ethiopia adopted a policy of obstructionism that undermined these negotiations.

2. Despite the fact that an International Panel of Experts issued a deeply troubling report on the GERD and recommended undertaking studies on its transboundary and environmental effects, Ethiopia has effectively thwarted every attempt to conduct these studies. It undermined the work of a Tripartite National Committee that was overseeing the completion of these studies. It violated an agreement reached by the Nine-Party Meeting reached during a meeting of the ministers of foreign affairs and water affairs and the heads of the intelligence agencies of the three countries on the necessary steps to enable an international consultancy firm that was hired to conduct these studies. Ethiopia’s policies and positions also prevented the National Independent Scientific Research Group, which was an independent group of scientists who were tasked with agreeing on the technical modalities of the filling and operation of the GERD, from fulfilling its mandate.

3. As a result, we have now reached a stage where the construction of the GERD is almost complete and the commencement of the filling of its reservoir is imminent without having conducted studies on the effects of this dam.

4. In an attempt to facilitate the reaching of an agreement on the GERD, Egypt concluded an international treaty with Ethiopia and Sudan titled the
Agreement on Declaration of Principles on the GERD (DoP) on 23 March 2015. This agreement obliges Ethiopia to reach an agreement on the rules governing the processes of the filling and operation of the GERD. Pursuant to this treaty, Ethiopia is under an obligation not to commence the impoundment of waters for the purposes of filling the GERD reservoir without an agreement with Egypt.

5. Since the conclusion of the DoP, negotiations have been held with Ethiopia in various settings and formats. Throughout all of these negotiations, Egypt showed immense flexibility and sought to address Ethiopia’s concerns and presented numerous technical proposals that were designed to enable Ethiopia to achieve the objective of the GERD, which is the generation of hydropower, while preventing the infliction of significant harm on downstream states.

6. Unfortunately, 5 years of talks proved futile. Every effort to complete the studies on the GERD failed, and trilateral discussions aimed at agreeing on the rules on the filling and operation of the dam did not lead to fruition. Moreover, attempts by African states to exercise good offices to assist in bridging the gap between the three countries were unsuccessful. Therefore, in accordance with article ten of the DoP, Egypt called for international mediation to facilitate discussions between the three countries. This led to the launch, in November 2019, of a new process of negotiations in which the United States of America and the World Bank Group participated.

7. After twelve rounds of meetings, including at the ministerial and expert levels, that were attended by our American partners and by representatives of the World Bank Group, the U.S. administration, in coordination with the World Bank, formulated a final agreement on the filling and operation of the GERD. This agreement is fair, balanced, and mutually beneficial, and was prepared on the basis of the positions espoused by the three countries during the discussions. This agreement satisfies Ethiopia’s priority, which is the expeditious and sustainable generation of hydropower, while protecting downstream states against the adverse effects of the GERD. Accordingly, on February 28th, 2020, Egypt accepted and initialled this agreement, which further demonstrates our goodwill and good faith commitment to reach an agreement on the GERD.

8. Regrettably, Ethiopia decided not to attend the ministerial meeting that the U.S. administration called for on February 27th–28th, 2020 to conclude an agreement on the GERD, and refused to sign the final agreement prepared by the U.S. and the World Bank. This position is entirely consistent with Ethiopia’s longstanding posture of obstructionism and its overall desire to establish a fait accompli that enables it to exercise unfettered and unrestrained control over the Blue Nile.

9. In a further demonstration of its unilateralist posture, Ethiopia has declared that it intends to commence the filling of the GERD during the summer of 2020, which constitutes a material breach of the DoP. Also in contravention of the DoP, Ethiopia has announced that it will not enter into an agreement on
the long-term operation of the GERD, and affirmed that it will not accept any constraints on its future projects upstream of the GERD. These positions are wholly inconsistent with international law, and are unacceptable to Egypt as a downstream riparian that will be invariably affected by these projects.

10. On April 10th, 2020, the Ethiopian Prime Minister sent a letter to the President of Egypt and the Prime Minister of Sudan to propose concluding a partial agreement that covers the first stage of the filling. This proposal was not accepted by either Egypt or Sudan. Any agreement on the GERD must, as per the DoP, be comprehensive, and must regulate the complete process of filling the dam and its operation after the completion of the filling.

11. At no point in history has Egypt sought to obstruct the implementation of water projects by its co-riparians. This reflects Egypt’s unwavering commitment to supporting its fellow African states, especially the Nile Basin states, in their endeavours to achieve development, peace, and prosperity. However, in pursuing these developmental objectives and in utilizing the resources of the Nile, Egypt believes that, in keeping with the established rules of international law, riparian states are required to consult their co-riparians on planned projects and to ensure that these projects are undertaken in a manner that is both reasonable and equitable and that minimizes the harm that may be inflicted on other states.

12. We call upon the international community to encourage Ethiopia to reconsider its position, and to impress upon Ethiopia the importance of signing the agreement on the filling and operation of the GERD that was prepared by the U.S. and World Bank. As a shared resource that is co-owned by all the riparian states, Ethiopia must not undertake any unilateral measures, including the impoundment of waters for the purposes of filling the GERD, without an agreement with its co-riparians.

AIDE MEMOIRE

April 2020

1. This aide memoire provides an overview of the negotiations that have been held between Ethiopia, Sudan, and Egypt on the Grand Ethiopian Renaissance Dam (GERD) and identifies the principal reasons for the current impasse in these discussions. It highlights how Ethiopia’s policy of obstructionism and prevarication has undermined attempts to reach a fair and balanced agreement on the GERD. Ethiopia’s posture throughout the past decade since the commencement of the construction of the GERD has been, and remains, one of unilateralism that is designed to impose a fait accompli on its co-riparians to enable it to exercise unfettered control over the Blue Nile.

2. On the other hand, Egypt has engaged in negotiations on the GERD with its partners in Ethiopia and Sudan in a spirit of good faith and with a genuine political will to reach a mutually beneficial agreement. Egypt has repeatedly affirmed its wholehearted support of Ethiopia’s right to development,
including by harnessing the benefits of the Blue Nile. However, this must be undertaken in a cooperative manner and in accordance with the applicable principles of international law.

3. In the latest example of its goodwill, Egypt accepted and initialled, on February 28th, 2020, an agreement on the filling and operation of the GERD that was formulated by two international mediators, namely the United States of America and the World Bank Group. Regrettably, Ethiopia has rejected this agreement. This is evidence that Ethiopia lacks the requisite political will to reach a fair and balanced agreement that is mutually beneficial. Instead, it demonstrates its bad faith and its desire to deploy the GERD as an instrument of a policy of hydro-hegemony that it is seeking to implement throughout the region.

4. On April 10th, 2020, the Prime Minister of Ethiopia sent a letter to the President of Egypt and the Prime Minister of Sudan proposing that the three countries agree to an Ethiopian plan that would cover only the first stage of the filling of the GERD. This proposal was not accepted by either Egypt or Sudan. Any agreement on the GERD must be comprehensive, and must regulate the complete process of filling the dam and its operation after the completion of the filling.

First: Background Information on the GERD:

5. The GERD is projected to become the largest hydropower dam in Africa. It is located on the Blue Nile river approximately 20 km upstream from the Ethiopian-Sudanese border. It has a full supply level of 640 m.a.s.l. with a total storage capacity of 74BCM, and its reservoir is expected to cover 1874 km² and is projected to extend for 264 km upstream of the GERD. The sole purpose of the GERD is the generation of hydropower. It has a total power production capacity of over 6450 MW with an energy generation capacity of 15,692 GWh/yr.

6. These technical specifications of the GERD are a cause for concern. Originally, Ethiopia had planned to construct a dam called the “Border Dam” in the current location of the GERD. That project was the subject of a study undertaken in 2007 by the Eastern Nile Technical Regional Office (ENTRO) titled “Prefeasibility Study of Border Hydropower Project, Ethiopia.” That study concluded that the optimum storage capacity for a hydropower dam at the location of the GERD is 14.47BCM.

7. Despite the fact that sufficient energy would have been efficiently generated by the GERD at the storage level proposed by the ENTRO, the technical specifications of the GERD were altered and its storage capacity was progressively increased to 74BCM. This dramatic increase in the volume of the storage reservoir of the GERD is unjustified and raises questions about the actual purpose of the dam and its projected uses, and dramatically increases its potential adverse effects on downstream uses.

8. Indeed, technical studies have shown that retaining 19BCM in the GERD reservoir would have been a sufficient volume to generate electric power. A study by an Ethiopian expert has demonstrated that the GERD is a highly
inefficient and oversized project for the purposes of power generation (Mehari Beyene, How Efficient is the Grand Ethiopian Renaissance Dam? Jul. 20, 2011). According to this study, the hydropower generated from the GERD will be equivalent to that produced by a power plant with the much lower capacity of 2872 MW that operates at 60% efficiency. Therefore, the total cost of the GERD could have been reduced by at least 40–45% by building a smaller dam with a higher efficiency to generate the same amount of hydropower.

Second: Egypt’s Water Vulnerabilities:

9. Reaching a fair and balanced agreement on the GERD is not only necessary under the applicable rules of international law, but it is also imperative given Egypt’s hydrologically precarious position. Protecting Egypt against the potential adverse effects of the GERD is necessary in light of the following facts:

First: Egypt is essentially a desert oasis. Although its territory is slightly over 1 million square kilometres, the inhabited area of Egypt is no more than 7% of its territory. With a population of 104 million, this makes Egypt one of the most densely populated countries in the world. Moreover, of that 7% of inhabited territory, a mere 4%, totalling around 3.8 million hectares, is arable land.

Second: Egypt has a dependency ratio of 98% on the Nile, which is one of the highest in the world.

Third: Egypt already suffers from acute water scarcity. The water share of Egyptians is currently 570 m$^3$/per capita/per year, and is projected to drop to below 500 m$^3$/per capita/per year by 2025. Moreover, the water available for Egypt is already insufficient. Although Egypt releases 55.5 billion cubic meters annually from the High Aswan Dam, the reality is that Egypt’s water needs are over 80 billion cubic meters. This deficit is bridged by intensive water-recycling and reuse, which makes the water management system in Egypt incredibly efficient.

Fourth: 85% of the Nile waters that reach Egypt flow from the Ethiopian Highlands through three main rivers, the most important of which is the Blue Nile. This means that Egypt is particularly vulnerable to waterworks undertaken in the Ethiopian Highlands, especially on the Blue Nile.

10. The impacts of water shortages in Egypt caused by projects undertaken by Ethiopia could be catastrophic. Millions of jobs would be lost, thousands of hectares of arable land would disappear, cultivated land would experience increased salinization, the cost of food imports would increase dramatically, and urbanization would sky-rocket due to rural depopulation, which will lead to an increase in unemployment, crime rates and transnational migration. Indeed, a decrease of only 1 billion cubic meters of water would lead, in the agricultural sector alone, to 290,000 people losing their incomes, a loss of 130,000 ha of cultivated land, an increase of $150 million USD in food imports, and a loss of $430 million USD of agricultural production. As water shortages increase and continue over an extended period, the ripple-effects on
every sector of Egypt’s economy and its socio-political stability are inestimable.

Third: Overview of Negotiations on the GERD:

11. The ground breaking ceremony to commence the construction of the GERD was held on 2 April 2011. The decision to construct the GERD was taken unilaterally. Egypt and Sudan, the downstream states that will be invariably affected by the introduction of such a major project into the hydrological system of the Blue Nile, were neither notified nor consulted.

12. This represents a breach of Ethiopia’s international legal obligations. Under general conventional and customary international law, a state planning to undertake major waterworks on an international watercourse is duty-bound to notify its co-riparians of its planned projects and to engage in consultations to review the design specifications of these planned projects. The purpose of these rules is neither to prevent nor to obstruct the development projects of upstream states. Rather, the objective is to identify the economic, social, and environmental impacts of these projects, and to agree on mitigation measures to minimize the adverse effects of these projects on both the quantity and quality of shared water resources. Indeed, the International Court of Justice has affirmed that the duty to undertake environmental assessments of the impacts of waterworks is a rule of customary international law.

A. The International Panel of Experts (IPoE)

13. Following protests by Egypt, Ethiopia agreed to establish an International Panel of Experts (IPoE) to assess the impact of the GERD. The IPoE was composed of ten experts, two from each of the three states and four international experts.

14. The IPoE issued its report on 31 May 2013. The findings of the IPoE were deeply troubling. It expressed concerns regarding the adequacy of studies undertaken by Ethiopia on the GERD, including on the structural integrity and safety of the dam, its design features, the hydrological and geological models that were used in the construction plans, and the lack of environmental assessment reports or studies on the socio-economic impact of the dam on downstream states. Indeed, the IPoE report described the Ethiopian studies as “very basic, and not yet at a level of detail, sophistication and reliability that would befit a development of this magnitude.” The report also noted that the “potential downstream impacts result from reservoir first impoundment and actual operation strategy which have not been adequately addressed.”

15. Therefore, the IPoE recommended conducting additional reports including a “more comprehensive assessment of downstream impacts of the GERDP, based on a sophisticated water resources/hydropower system simulation model. Potential positive and adverse impact should be quantified and confirmed by a detailed
study. Furthermore, the impact area should extend down to the Nile Delta.” The report also stated that a “comprehensive study of the GERDP in the context of the Eastern Nile System using a proven, sophisticated and reliable water resource system/hydropower model is strongly recommended to be able to assess and quantify the downstream impacts in detail with confidence.”

**B. The Malabo Statement and the Tripartite National Committee (TNC)**

16. During the months following the submission of the IPoE report, little progress was achieved in talks between Egypt, Ethiopia, and Sudan. This impasse was broken on 26 June 2014 when the President of Egypt and the Prime Minister of Ethiopia issued a Joint Statement in Malabo, Equatorial Guinea. This led to forming a Tripartite National Committee (TNC) that was charged with overseeing the conducting of the further studies recommended by the IPoE.

17. To do so, it was agreed that the TNC would appoint an international consultant to undertake these studies. During this period, the TNC held four meetings that failed to achieve any notable progress. It did not succeed in appointing an international consultant due to Ethiopian obstructionism on procedural issues such as the short-listing of the international consultants and the timeline for the conclusion of the studies recommended by the IPoE.

**C. The 2015 Agreement on Declaration of Principles (DoP)**

18. To overcome this stalemate and accelerate the process of completing the studies recommended by the IPoE, a treaty called the Agreement on Declaration of Principles on the Grand Ethiopian Renaissance Dam Project (DoP) was concluded between Egypt, Ethiopia, and Sudan in Khartoum on 23 March 2015.

19. Article 5 of this treaty obligates the three countries to “implement the recommendations of the International Panel of Experts (IPoE), respect the final outcomes of the Tripartite National Committee (TNC) Final Report on the joint studies recommended by the IPOE Final Report throughout the different stages of the project.” The DoP also identifies the purposes for which the studies recommended by the IPoE would be used. It stated that the three countries shall “utilize the final outcomes of the Joint studies, to be conducted as per the recommendations of the IPOE Report and agreed upon by the TNC, to:

a. Agree on guidelines and rules on the first filling of GERD which shall cover all different scenarios, in parallel with the construction of GERD.

b. Agree on guidelines and rules for the annual operation of GERD, which the owner of the dam may adjust from time to time.
c. Inform the downstream countries on any unforeseen or urgent circumstances requiring adjustments in the operation of GERD.

- To sustain cooperation and coordination on the annual operation of GERD with downstream reservoirs, the three countries, through the line ministries responsible for water, shall set up an appropriate coordination mechanism among them.
- The timeline for conducting the above-mentioned process shall be 15 months from the inception of the two studies recommended by the IPoE.

20. Pursuant to these provisions, Ethiopia is treaty-bound to reach an agreement that governs both the filling and operation of the GERD on the basis of the studies that were recommended by the IPoE, and which the TNC was supposed to oversee. Moreover, these provisions make it incumbent on Ethiopia not to commence the first filling of the GERD without an agreement with its downstream co-riparians on the rules governing that process. Indeed, the wording of article 5 of the DoP is such that, while the construction of the GERD may proceed while the studies recommended by the IPoE are being completed, the first filling of the GERD cannot commence without an agreement on the rules governing the filling and operation of the dam.

21. Ethiopia has recently declared that it intends to commence the impoundment of waters in the GERD reservoir and to begin the filling process without an agreement with downstream states. Ethiopia has sought to justify this position by citing article 5 of the DoP. This position is untenable. Any reading of article 5 that purports to permit the unilateral filling of the GERD is inconsistent with the plain meaning of the text, its context, and the object and purpose of this provision and the DoP as a whole. As aforementioned, article 5 regulates the process of conducting the studies recommended by the IPoE, which are to be utilized to agree on the rules governing the filling and operation of the GERD.

22. Ethiopia is also arguing that the filling of the GERD is part of the construction process. Not only is this a disingenuous and distorted reading of the DoP, it is also wholly inconsistent with the any scientific understanding of the concepts of construction and filling of the dam. While the former refers to the various stages of the physical construction of the roller-compacted dam and other related facilities, the filling of the dam is the process of impounding waters in the dam reservoir. As the DoP clearly states, the filling and the construction are two distinct processes. The construction was permitted to proceed while the studies recommended by the IPoE were being completed, while the filling is a process that should be governed by rules to be agreed-upon by the three countries.

23. Accordingly, it is the view of the Government of the Arab Republic of Egypt that the unilateral filling of the GERD reservoir would constitute a material breach of the DoP.
D. The TNC, the Nine-Party Mechanism, and the Studies Recommended by the IPoE

24. After the conclusion of the DoP in March 2015, numerous rounds of negotiations were held to agree on an international consultant to undertake the studies recommended by the IPoE. After over a year of talks, a contract was finally signed with the French firm BRLi in September 2016 to complete the studies recommended by the IPoE within a period of 11 months. However, this deadline was not met due to Ethiopia’s prevarication. While Egypt accepted BRLi’s inception report, Ethiopia rejected it because of its objection to the inclusion in the inception report of plans to conduct studies on the impact of the GERD on the Nile Delta. Ethiopia also sought to alter the ‘baseline scenario’ that would be used as a reference-case (i.e. the current status of the Blue Nile system) to measure the impacts of the GERD. This Ethiopian stance was in breach of both the recommendations of the IPoE and BRLi’s terms of reference that were agreed by the three countries.

25. During this period, and in a further demonstration of its unilateralism, Ethiopia sent a letter to Egypt and Sudan dated 19 December 2017 in which it sets-out a filling plan for the GERD, which envisioned filling the dam reservoir in 5–6 years. This filling plan was devised unilaterally without taking into consideration the results of the studies recommended by the IPoE which had not yet been undertaken.

26. To overcome this situation, during a summit meeting of the leaders of Egypt, Ethiopia, and Sudan in January 2018, Egypt proposed the creation of a Nine-Party Mechanism that includes the Ministers of Foreign Affairs, the Ministers of Water Affairs, and the Directors of the Intelligence Agencies of the three countries to deliberate on the means to overcome disagreements over the process of conducting the studies recommended by the IPoE.

27. The Nine-Party mechanism met twice and decided in its second meeting on 15 May 2018 that the three countries will send queries and observations to BRLi regarding its draft inception report, and that BRLi shall be given three weeks to consider these queries and observations and resume the studies recommended by the IPoE. It was also decided that Ethiopia, in its capacity as the Chair of the TNC at that point, would transmit these queries and observations to BRLi. A cover letter to BRLi in the form of an email was even drafted and signed by the members of the Nine-Party mechanism. However, Ethiopia refused to refer these queries and observations to BRLi. As a result, the effort to complete the studies recommended by the IPoE has failed.

28. The track-record of these negotiations, which were held at various levels and in numerous formats, reveals a consistent pattern of Ethiopian policy. Whether at the TNC or in its positions regarding BRLi’s inception report or in the GERD filling plan that it unilaterally developed, Ethiopia’s overall objective has been to establish a fait accompli and to avoid any restraints that might be placed on its freedom of action in relation to the GERD.
E. The National Independent Scientific Research Group (NISRG)

29. Despite Ethiopia’s obstructionism and equivocation, Egypt proposed during the meeting of the Nine-Party mechanism that was held on May 15th, 2018, the establishment of the National Independent Scientific Research Group (NISRG). This was a non-governmental group of five scientists from each of the three countries that was required to hold nine meetings to discuss and develop “various scenarios related to the filling and operation rules” of the GERD. The NISRG held five of its required nine meetings, the last of which was held in Khartoum during the period 30 September-3 October 2019. Like the earlier negotiation tracks, the NISRG also failed to produce an agreement on the filling and operation of the GERD. In fact, the discussions held by the NISRG showed that the gap between the three countries was expanding. This is due to Ethiopia’s backtracking and its failure to respect commitments and agreements reached during the successive rounds of the NISRG negotiations.

F. Mediation Efforts by the United States of America and the World Bank Group

30. Article 10 of the DoP includes mediation as one of the dispute resolution mechanisms that the three contracting states could invoke to overcome difficulties in the implementation of the DoP. Therefore, in light of the continued failure of trilateral forums to reach an agreement, Egypt called upon the United States and the World Bank Group to join the discussions between the three countries as mediators. Accordingly, the U.S. administration extended an invitation to the three governments to attend a ministerial meeting in Washington D.C. on November 6th, 2019. This launched a new negotiating process in which representatives of the U.S. and the World Bank participated as observers and, especially in meetings held in Washington D.C., became actively engaged in facilitating discussions and working to bridge the gap between the three countries.

31. Ten ministerial meetings were held as part of this process. Four of these were meetings of the water affairs ministers, while six were meetings of the ministers of foreign affairs and water affairs that were chaired by the U.S. Secretary of the Treasury Steven T. Mnuchin. In addition, two meetings of legal and technical working groups were held in Khartoum and Washington D.C. to finalize the text of an agreement on the filling and operation of the GERD.

32. The dates and locations of these meetings were as follows:

1. November 6, 2019: Meeting of the Ministers of Foreign Affairs and Water Affairs—Washington D.C.
2. November 15–16, 2019: Meeting of the Ministers of Water Affairs—Addis Ababa
3. December 2–3, 2019: Meeting of the Ministers of Water Affairs—Cairo
4. December 9, 2019: Meeting of the Ministers of Foreign Affairs and Water Affairs—Washington D.C.
5. December 21–22, 2019: Meeting of the Ministers of Water Affairs—Khartoum
6. January 8–9, 2020: Meeting of the Ministers of Water Affairs—Addis Ababa
7. January 13–15, 2020: Meeting of the Ministers of Foreign Affairs and Water Affairs—Washington D.C.
8. January 22–23, 2020: Meeting of the Legal and Technical Working Groups—Khartoum
9. January 28–31, 2020: Meeting of the Ministers of Foreign Affairs and Water Affairs—Washington D.C.
10. February 3–10, 2020: Meeting of the Legal and Technical Working Groups—Washington D.C.
11. February 12–13, 2020: Meeting of the Ministers of Foreign Affairs and Water Affairs—Washington D.C.
12. February 27–28, 2020: Meeting of the Ministers of Foreign Affairs and Water Affairs—Washington D.C.

33. These negotiations were both fruitful and frustrating. In 4 months of intensive discussions, the three countries accomplished more than they had achieved in 5 years of talks since the conclusion of the 2015 DoP. Agreements were reached on various technical aspects of the filling and operation of the GERD and on the institutional and legal architecture that would ensure the effective implementation of the agreement.

34. On the other hand, these negotiations were frustrating because, ultimately, they did not lead to the signing of a final agreement on the filling and operation of the GERD by all three countries. This is because, in spite of the progress that was achieved and despite having accepted many of the technical and legal components of the agreement, Ethiopia rejected the comprehensive agreement that was formulated by the U.S. with technical input from the World Bank. On the other hand, in a show of good faith, on February 28th, 2020 Egypt initialled the agreement formulated by the U.S. and the World Bank. This agreement that was initialled by Egypt includes the following components:

First: Filling of the GERD:

a. It was agreed—upon Ethiopia’s insistence—that the GERD will be filled in stages that will be executed in an adaptive and cooperative manner that takes into consideration the hydrological conditions of the Blue Nile and the potential impact of the filling on downstream reservoirs. Overall, the stage-based filling plan enables Ethiopia to fill the GERD in the vast majority of hydrological conditions, including during periods of drought. Moreover, in years where the annual yield of the Blue Nile is at average or above-average
levels, the filling plan enables Ethiopia to complete the filling in a total of 5 years.

b. As requested by Ethiopia, the initial stage of the filling, at the end of which the GERD will reach a level of 595m a.s.l., will be executed over 2 years. It was also agreed that during this initial stage, mitigation measures would be undertaken to protect downstream states if an extreme drought coincides with this first stage of the filling.

c. The three countries engaged in extensive discussions on the mitigations measures to be implemented during prolonged periods of dry years, or droughts, or prolonged droughts that may occur during the subsequent stages of the filling. On January 30th, 2020, after considering the positions of the three countries, the U.S. mediators proposed a compromise text that includes a comprehensive mitigation mechanism that includes specific amounts of water to be released from the GERD to assist downstream countries in addressing drought conditions. Initially, the three countries accepted this compromise text. Regrettably, however, later that evening and the next morning, the Ethiopian delegation backtracked and announced that it would not accept the text proposed by the U.S. mediators.

d. Ethiopia’s rejection of the mitigation measures formulated by the U.S. in coordination with the World Bank was deeply disappointing, especially given the reality that these measures ensure that the GERD would continue to generate hydropower at a minimum of 80% of its capacity in all conditions, including during the worst cases of droughts. The fact that Ethiopia rejected the proposal demonstrates its unilateralism, its lack of willingness to cooperate, and its desire to fill the GERD regardless of the impact on downstream riparians.

Second: Operation of the GERD:

a. The operational rules of the GERD include three components. The first is a general rule for the long-term operation of the GERD during normal hydrological conditions. The second is the mitigation mechanism for the annual and long-term operation of the GERD in drought, prolonged drought, and prolonged periods of dry years, and the third is the rules for the refilling of the GERD.

b. Regarding the long-term operation of the GERD during normal hydrological conditions (i.e. when the Blue Nile system is not experiencing droughts, prolonged droughts, or prolonged periods of dry years), the three countries agreed that the GERD should remain at its optimum operating level of 625m a.s.l. and release the total quantity of water entering the GERD reservoir each year. This reflects the reality that the GERD is a non-consumptive project that is designed solely for hydropower generation.

c. Similar to the mitigation measures for the filling, on January 30th, 2020, the U.S. and World Bank mediators proposed a compromise text that included mitigations measures to be implemented during prolonged periods of dry years, or droughts, or prolonged droughts that may occur during the long-
term operation of the GERD. These measures, which ensure that the GERD would continue to generate hydropower at a minimum of 80% of its capacity, stipulate specific amounts of water to be released from the GERD to assist downstream states in mitigating the effects of droughts.

d. As with the mitigation measures for the filling, after initially accepting the drought mitigation mechanism for the long-term operation of the GERD, Ethiopia backtracked and rejected the U.S. compromise text. This demonstrates Ethiopia’s unilateralist posture and its desire to operate the GERD without any consideration of the impact of the GERD on downstream riparians.

e. Indeed, despite the fact that successive documents adopted by the three countries, including the joint statements issued at the end of each of the ministerial meetings held in Washington D.C., indicate that the final agreement must include rules on the long-term operation of the GERD, Ethiopia has recently announced that it “will not enter into any arrangement depicted as ‘the long-term operation’ of the GERD.” Not only is further evidence of Ethiopian bad faith, but it also reveals its desire to operate the GERD in an unrestrained, unfettered, and unregulated manner.

Third: Institutional Architecture:

a. The three countries agreed on establishing a coordination mechanism composed of a Technical Committee and a Ministerial Committee. This mechanism was mandated to monitor and verify the implementation of the agreement and to ensure that the relevant hydrological and technical data was exchanged effectively.

Fourth: Legal Components:

a. Extensive discussions were held on the dispute settlement provisions of the GERD agreement. While Egypt called for including compulsory and binding dispute resolution mechanism, Ethiopia insisted on limiting it to political processes and consultations. Ultimately, the U.S. mediators proposed a text that included elements of political consultations, but that culminated in binding arbitration if non-judicial means are exhausted. Regrettably, in another example of its desire to be unrestrained in its filling and operation of the GERD, Ethiopia rejected the dispute settlement text proposed by the U.S.

b. Ethiopia also rejected a text that was proposed on future projects upstream of the GERD. This matter is of central important to the agreement on the GERD because future upstream projects will invariably alter the amount of water entering the GERD reservoir, thereby affecting the level of water release from the GERD, which are regulated by the GERD agreement. Therefore, a single provision stipulating that future projects upstream of the GERD shall be undertaken in accordance with international law was proposed. Despite the common sense nature and equitableness of this simple provision, Ethiopia rejected it.
35. Like any compromise text that is fair and balanced, the agreement formulated by the U.S. and the World Bank is imperfect and does not completely satisfy Egypt’s needs. Nonetheless, given its genuine political commitment to reach an agreement, and in light of the fact that the text prepared by the international mediators is equitable and mutually beneficial, Egypt opted to initial this agreement. On the other hand, Ethiopia rejected this text and declared that it will unilaterally commence the filling of the GERD in breach of its obligations under the 2015 DoP.

Fifth: Conclusion:

36. As demonstrated in this aide memoire, for almost a decade, and especially during the 5 years since the conclusion of the 2015 DoP, Ethiopia has adopted a policy of obstructionism and prevarication that has undermined the negotiating process and that has sought to establish a fait accompli. Ethiopia’s overall objective was, and remains, the exercise of unfettered control over the Blue Nile, including by filling and operating the GERD without taking the interests of downstream countries into consideration, and by securing an unrestrained right to undertake future projects upstream of the GERD, even if to the detriment of downstream riparian rights and Interests.

37. Ethiopia’s unwillingness to conclude a fair and balanced on the GERD was further demonstrated when, on April 10, 2020, the Prime Minister of Ethiopia sent a letter to the President of Egypt and the Prime Minister of Sudan proposing that they agree to an Ethiopian plan for the execution of the first stage of the filling of the GERD. This plan was not shared with either Egypt or Sudan. On April 15, 2020, the Egyptian President sent a letter to the Prime Minister of Ethiopia to reiterate Egypt’s unwavering commitment to concluding a mutually beneficial agreement on the GERD and to reaffirm that the 2015 DoP obligates the three countries to reach a comprehensive agreement that regulates both the filling and operation of the GERD, and not a partial agreement that is limited to merely the first stage of the filling. It is noteworthy that the Prime Minister of Sudan sent a similar letter to his Ethiopian counterpart on April 15, 2020, that stated that “signing a partial agreement covering only the first stage filling may not be tenable.”

38. In light of the above, Egypt calls upon the international community to:

- Call upon Ethiopia to respect its international legal obligations, including the 2015 DoP, and not to undertake any unilateral measures, including the commencement of impoundment and the filling of the dam, without agreement with downstream riparians.
- Encourage Ethiopia to reconsider its position and to accept the agreement on the filling and operation of the GERD that was initial[ed] by Egypt on February 28th, 2020
Ethiopian Communication

Letter Dated 14 May 2020 from the Permanent Representative of Ethiopia to the United Nations Addressed to the President of the Security Council, S/2020/409, 15 May 2020 (https://digitallibrary.un.org/record/3862715#record-files-collapse-header)

Upon instructions from my Government, I have the honour to transmit herewith a letter from the Minister for Foreign Affairs of the Federal Democratic Republic of Ethiopia, Gedu Andargachew, addressed to you, regarding the trilateral negotiations between Ethiopia, Egypt and the Sudan on the first filling and annual operation of the Grand Ethiopian Renaissance Dam (see annex).

I would be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Taye Atskeselassie Amde,
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

Annex to the Letter Dated 14 May 2020 from the Permanent Representative of Ethiopia to the United Nations Addressed to the President of the Security Council

I am writing to inform you of the status of the negotiations between Ethiopia, Egypt and the Sudan on the Grand Ethiopian Renaissance Dam. These trilateral negotiations, although challenging for reasons that I shall explain in the present letter and the attached aide-mémoire (see enclosure), have created opportunities for the three countries to discuss their concerns.

The Nile Basin countries enjoy one of the oldest relations in human history. We are ancient civilizations inseparably linked by this noble river. We believe that the Nile can deliver a new level of fraternity and cooperation for the betterment of our people.

Let me now briefly highlight why Ethiopia is building the Grand Ethiopian Renaissance Dam and the history, present-day facts and truth about the tripartite negotiations with Egypt and the Sudan.

My country, Ethiopia, is the source of 86% of the Nile waters. However, for close to a century, Egypt, through colonial-based treaties to which Ethiopia is not a party, saw to it that it received the lion’s share of Nile waters and introduced the self-claimed notion of “historic rights and current use”, leaving nothing to the remaining nine riparian countries.

In essence, Ethiopia was expected to simply generate and deliver the water, but never to touch it. This unjust state of affairs cannot continue and must be redressed. To this end, my country commissioned the construction of the Grand Ethiopian Renaissance Dam, which is a vital project of enormous potential for
cooperation, regional economic integration and mutual benefits for countries in
the region, including Egypt itself.

The survival, development and prosperity of Ethiopia and its people are inextricably linked to our ability to develop our water resources. Any visitor to Ethiopia will understand that there is an urgent need to lift millions of citizens of Africa’s second most populous country out of extreme poverty.

To put this into perspective:

- The waters of the Nile account for more than two third of Ethiopia’s surface water.
- Despite being endowed with these water resources, Ethiopia has been facing recurrent droughts, severe food insecurity and a lack of adequate water supply to fulfil the needs of its people.
- More than 65 million Ethiopians have no access to electricity, whereas almost all Egyptians have access to electricity. As a result, almost two thirds of school children in Ethiopia are forced to stay in darkness and millions of women still trek long distances to fetch water and firewood.
- Ethiopia’s energy demand is growing by 19% every year. The Grand Ethiopian Renaissance Dam is instrumental to our national efforts to address the economic, social and environmental challenges and to meet the Sustainable Development Goals and Agenda 2063 of the African Union.
- Lack of access to energy exacerbates, among others, deforestation and adversely affects the vitality of the Nile—a matter that should also concern Egypt.

The Grand Ethiopian Renaissance Dam is a national project built solely through the direct contributions of all Ethiopians because Egypt persistently blocked international financial institutions from supporting the construction of the Dam. Completion of the Dam will help to alleviate our chronic energy deficit and play a critical role in spurring development through industrialization, which is fundamental to the promotion of sustainable development, peace and security.

Ethiopia has made it clear from the very beginning that construction of the Grand Ethiopian Renaissance Dam is based on its sovereign and legitimate rights to use the Nile waters and it not causing significant harm to downstream countries. Furthermore, unlike Egypt, which did not consult Ethiopia when it constructed the Aswan High Dam and when it decided to direct the Nile out of its natural course through the Peace and Toshka canals, Ethiopia held discussions with both Egypt and the Sudan throughout the entire period of construction of the Grand Ethiopian Renaissance Dam.

As a member of the League of Nations and founding member of the United Nations, the Organization of African Unity and the African Union, Ethiopia has consistently promoted the concept of collective security and multilateralism at international, regional and subregional levels. Contrary to repeated Egyptian
assertions, throughout its long diplomatic history, Ethiopia has stood up against unilateralist approaches.

Out of its strong convictions, Ethiopia has more recently endeavoured to create a fair and balanced cooperation with the Nile riparian countries through the Nile Basin Initiative and the Agreement on the Nile River Basin Cooperative Framework Project. On the other hand, Egypt, owing to its continued unilateral approach, has rejected region-wide cooperative frameworks on the Nile River and constructed the Aswan High Dam and new canals without any consultation with regional stakeholders. It is worth noting that Egypt ignored Ethiopia’s protests in the years 1956, 1957, 1980 and 1997 objecting to the significant harm that Egypt’s water infrastructure would cause to Ethiopia and other Nile riparian States.

In the ongoing trilateral discussions on the filling and annual operation of the Grand Ethiopian Renaissance Dam, Ethiopia’s position is guided by accepted principles of equitable and reasonable utilization and causing no significant harm, as well as cooperation, as stipulated in the declaration of principles signed in March 2015 by Egypt, Ethiopia and the Sudan. Moreover, Ethiopia has taken the following important measures in the spirit of cooperation and to ensure transparency and build confidence in the Dam:

- First, Ethiopia, in an unprecedented manner, took the initiative to establish an international panel of experts in 2011 and invited Egypt and the Sudan, enabling them to participate in the evaluation of the design and study documents of the Grand Ethiopian Renaissance Dam. Ethiopia, in good faith, also accepted and applied the recommendations of the panel, which was then appreciated by Egypt and the Sudan, as recorded in the declaration of principles.

- Second, on the basis of the declaration of principles, which guides the engagement of the three parties on the first filling and annual operation of the Grand Ethiopian Renaissance Dam, Ethiopia, together with the lower riparian countries, facilitated the works of the tripartite national committee. The work of the committee was, however, curtailed due to Egypt’s insistence on “historic rights and current use” as a baseline to conduct the recommended studies of the international panel of experts.

- Third, Ethiopia took the initiative to create yet another mechanism, a national independent scientific research group, consisting of five experts from Ethiopia, Egypt and the Sudan, in 2018. The scientific research group was tasked with generating different scenarios for the first filling and annual operation of the Grand Ethiopian Renaissance Dam. Despite Egypt’s obdurate stance and unilateralism, Ethiopia remains committed to cooperation and to reaching a mutually beneficial agreement.

Concerning the draft document that Egypt claimed to have initialled in February 2020, it is crucial to note that the tripartite negotiations on the Grand Ethiopian Renaissance Dam have not resulted in any agreement. During the negotiation
process, despite Ethiopia’s request to postpone the meeting that was scheduled for 27 and 28 February 2020, consultations were held in our absence.

In the previous meetings, there were outstanding differences on matters of fundamental importance that have far-reaching consequences for the interests of Ethiopia and contravene the declaration of principles: first, severely limiting the capacity of the Grand Ethiopian Renaissance Dam to generate electricity; second, forming rules that are impractical for Dam filling and operation, which defy accepted practices; third, going beyond the scope of the negotiations on the Dam and inhibiting the rights of present and future generations by curtailing upstream development; fourth, undermining Ethiopia’s sovereign right to operate its own dam; and fifth, proffering a water-sharing agreement, sidelining the Agreement on the Nile River Basin Cooperative Framework Project and ignoring the rights of other Nile riparian countries with a combined population of over 250 million.

The Nile belongs to all the basin countries. Accordingly, over the past two decades, Ethiopia undertook indefatigable efforts to reach a basin-wide agreement on the use of the Nile, fundamentally the launching of the Nile Basin Initiative in 1999 and the signing of the Agreement on the Nile River Basin Cooperative Framework Project in 2010.

The Agreement on the Nile River Basin Cooperative Framework Project is the only viable instrument for a fair water-sharing arrangement that brings the right balance and ends Egypt’s century-old monopolistic approach to the Nile River. Two more ratifications are required for the Agreement to come into force and finally enable Nile riparian countries to enjoy the right to the equitable and reasonable utilization of the Nile waters and establish a permanent basin commission. Egypt needs to halt its relentless obstruction, embrace cooperation and join basin-wide efforts to open a new chapter in the management and use of the Nile waters.

Ethiopia will continue its unfailing efforts to ensure the success of the trilateral negotiations, with a view to building trust and confidence among all downstream countries. It is in this spirit that the Prime Minister, Abiy Ahmed, on 10 April 2020 communicated a proposal on the way forward for the consideration of the President, Abdel Fattah Al Sisi, and the Prime Minister, Abdalla Hamdok, despite the fact that we all are in the midst of the coronavirus disease (COVID-19) pandemic. The content of Ethiopia’s proposal was discussed and agreed to during previous trilateral negotiations. Thus, Ethiopia’s decision to commence the impoundment of the Grand Ethiopian Renaissance Dam reservoir is in line with the declaration of principles and Ethiopia’s “international legal obligation”.

As also highlighted in the aide-mémoire, I wish to reiterate that the Grand Ethiopian Renaissance Dam is a national project for which Ethiopians from all walks of life have put their meagre resources, with the dream that it will help them to overcome abject poverty. It is equally a project that avails many advantages to
the downstream countries, among others, controlling floods, regulated water flow and meeting the energy demands of the region. It should be embraced as a project that brings the three countries together with multiple benefits, and it does not in any way pose a threat to the security of the region. The remaining issues pertaining to the Dam are technical and could be resolved through trilateral negotiations.

The international community should encourage Egypt to continue negotiations in the tripartite forum on the pending issues to reach a mutually agreed outcome. Egypt should also reconcile itself with the new realities and ratify the Agreement on the Nile River Basin Cooperative Framework Project and work with all Nile riparian countries to ensure long-term sustainable management and development of the shared Nile waters.

Finally, I would like to assure you that Ethiopia remains committed to reaching a fair and win-win outcome.

(Signed) Gedu Andargachew,
Minister for Foreign Affairs

Enclosure

AIDE MEMOIRE

Executive Summary

1. This Aide Memoire provides the accurate information regarding the negotiation between Ethiopia, Egypt and the Sudan on the Grand Ethiopian Renaissance Dam (GERD). It also rectifies factual and legal distortions disseminated on the matter.

2. Ethiopia contributes 86% to the Nile waters. The GERD is the first major hydroelectric dam, which Ethiopia is building on the Nile. Contrary to Egypt’s allegation, as a hydroelectric dam, the GERD does not cause significant harm on downstream countries. Despite being the main source of the Nile, Ethiopia has not utilized this resource. The Dam is non-water consumptive and its objective is to ease the country’s critical energy deficit, alleviate abject poverty and meet the dire needs of its people. The GERD will also provide substantial benefits to Egypt and the Sudan and facilitate regional integration.

3. Over 65 million Ethiopians do not have access to electricity. Ethiopia’s total energy production is less than 4500 MW and rising energy demand is exacerbating its energy insecurity. Most of Ethiopia’s energy is derived from biomass resulting in deforestation and environmental and land degradation.
4. Ethiopia does not possess a significant amount of groundwater resources or aquifers, and, as a landlocked country, it does not have access to sea water for desalination as Egypt does. Due to climate change, drought and erratic rains have become continuous phenomena in Ethiopia. As a result, famine is a constant threat and around 8 million people rely on annual emergency humanitarian assistance.

5. The Nile belongs to all basin countries. Hence, Egypt must recognize the fundamental rights of other riparian states to utilize this resource. Ethiopia has a legitimate right to develop and utilize its water resources. Egypt’s insistence on maintaining unjust colonial based treaties is the overarching impediment to the equitable and reasonable utilization of the Nile waters. Ethiopia is not party to those treaties, which allocate no water share to upper riparian countries.

6. In the trilateral negotiation on the GERD with Egypt and the Sudan, Ethiopia is in full compliance with accepted principles of equitable and reasonable utilization of transboundary watercourses and the obligation not to cause significant harm and that of cooperation. On the contrary, Egypt has never accepted these principles while undertaking construction of grand water infrastructures on the Nile.

7. Ethiopia, in the interest of changing this unfair practice and in the spirit of building confidence with the downstream countries, has initiated, supported, facilitated and otherwise coordinated various trilateral mechanisms on the GERD. These include: The establishment of the International Panel of Experts (IPoE) on GERD, the Tripartite National Committee (TNC) on GERD, the adoption of the Declaration of Principles on GERD (DoP) and the establishment of the National Independent Scientific Research Group (NISRG) on GERD. Ethiopia has demonstrated its commitment to foster cooperation and attain a win-win outcome throughout the trilateral negotiations. Although Ethiopia could fill the dam in 2 years, factoring in downstream concerns, we agreed to fill the GERD in stages that could take 4–7 years. This filling schedule was accepted by Egypt.

8. Regrettably, Egypt’s responses to Ethiopia’s good-faith initiatives have been but earnest and reciprocal. Egypt has been going through motions, first for dragging, stonewalling and delaying the process as far and as long as possible, and second for turning these consultation mechanisms as avenues for the ultimate direct and indirect endorsement of Egypt’s hegemonic control over the utilization of the Nile waters.

9. Ethiopia strongly believes that there are avenues to address concerns that may arise in relation to the GERD. First, the ongoing trilateral negotiations can result in a successful outcome. Second, the option of mediation, conciliation or discussion between Heads of State and Government provided under the DoP on the GERD is yet to be utilized. Moreover, the Nile Basin Initiative (NBI) or the African Union could be resorted to for a regional remedy. Yet, any misinformation that negotiation is completed and mediation has taken place is far from the truth. Negotiation is not completed and no mediator was
invited as the DoP requires. The US and the World Bank played only an observer role during the recent negotiations.

10. Egypt’s position demanding Ethiopia to sign a document that was not agreed by the parties is not acceptable. Ethiopia remains committed to finding a lasting solution through a win-win negotiation and will not concede to an unjust and unreasonable deal. Ethiopia upholds the accepted principles on the utilization of transboundary water resources. Ethiopia also supports regional mechanisms involving all countries of the Nile Basin and stands ready to solve any dispute through negotiation.

11. It has been Ethiopia’s consistent policy to recognize the right of all riparian countries to equitable and reasonable utilization of the Nile. Ethiopia’s commitment to this principle has been amply demonstrated throughout the trilateral negotiation.

12. It is to be recalled that since the 1990s Ethiopia has been spearheading the establishment of a regional framework, in collaboration with all riparian countries of the River Nile, with financial and technical support from the international community. This was aimed at putting in place a new basin-wide water governance arrangement that would enable rules-based, equitable, sustainable, cooperative management and development of the Nile water resources. Such an arrangement would benefit all while promoting peace and security in the region. This was pursued through the NBI that supported the negotiations for a new Nile-Basin wide legal regime, namely the Agreement on the Nile River Basin Cooperative Framework (CFA).

13. This collective effort of the Nile riparian countries was not moving forward due to the persistent obduracy of Egypt. After 13 years long negotiations on the CFA, Egypt demanded acceptance of its self-claimed ‘historic rights and current uses’—euphemisms for complete control of the Nile waters and veto right over upstream projects—as a condition for signing onto the Agreement. Despite the unacceptable stance of Egypt, the six upstream countries signed the CFA. So far, four countries have ratified the agreement, hence, only two more ratifications are needed to establish a permanent basin Commission.

14. Ethiopia regrets the unwarranted escalation of the issues, disinformation campaign and over-politicization of what is a technical operation of a single water infrastructure built exclusively through the direct contributions of the poor citizens of Ethiopia with the hope to be uplifted out of an abject poverty.

15. Ethiopia as a nation with demonstrable history and present-day practice of multilateralism will pursue fraternal dialogue to address the remaining issues on the GERD through the ongoing trilateral negotiations.

To conclude:

- Ethiopia reiterates that all legitimate concerns relating to the GERD can be addressed through technical negotiations within the scope of the first filling and annual operation of the Dam as provided under the DoP.
- Ethiopia has a legitimate right to start impoundment of the Dam as per the stage-based filling plan that was shared with Egypt and the Sudan.
• Egypt should be encouraged to sign and ratify the CFA on the Nile and make an effort to strengthen regional mechanisms.

AIDE MEMOIRE
May 2020

1. This Aide Memoire provides the accurate information about the negotiations on the GERD. Ethiopia hereby proffers precise information on the status of utilization of the Nile and the real impediments for the trilateral negotiations on the GERD and basin wide cooperation.

2. The GERD is a national project currently under construction by the resources of the people and government of Ethiopia. Following the launching of the project in 2010, Ethiopia invited Egypt and the Sudan for consultations and initiated a series of platforms. However, progress in the negotiations has been hindered due to obstacles mounted by Egypt.

3. Egypt still seeks to impose, directly or indirectly, its self-claimed ‘historic right and current use’ on the Nile riparian countries. Egypt’s past and present-day water use is an outcome of colonial based water treaties to which Ethiopia is not a party. Ethiopia has repeatedly objected to these treaties and the water infrastructures constructed in Egypt without consulting and considering the water share of the upper riparian countries.

4. Ethiopia remains committed to complete the negotiations on the guidelines and rules for the first filling and operation of the GERD. It will also reinforce its efforts to strengthen the regional mechanism involving all the Nile Basin countries.

I. The Grand Ethiopian Renaissance Dam Project

5. The GERD is a hydropower dam. Construction of the Dam began in December 2010. Ethiopia began to plan to build a dam on the Blue Nile in the 1950s followed by studies in the 1960s and 1990s. More recently, in 2007, Egypt, Ethiopia and the Sudan conducted the prefeasibility study of the Dam as a Joint Multipurpose Project. An Egyptian expert led the joint study under the auspices of the Eastern Nile Subsidiary Action Program of the Nile Basin Initiative (NBI).

6. The current configuration of the Dam including its size and storage capacity of 74 billion cubic meters is a result of an optimization study based on Ethiopia’s energy needs, hydrology, and consideration of the impact of climate change. In 2013, the International Panel of Experts (IPoE) in which Egypt was represented declared “the dam size is consistent with the inflow at the GERD site.”

7. By complaining about the size of the GERD, Egypt is backtracking from its own attestations given over an official platform in the IPoE. In terms of reservoir size; GERD (with 74 billion cubic meter water storage capacity) is less than half of...
the storage capacity of Egypt’s High Aswan Dam (HAD) at Lake Nasser, one of the largest manmade lakes in the world (with 162 billion cubic meters water storage capacity). GERD is only the biggest hydropower project in Africa only when measured by its installed capacity.

8. GERD will benefit Ethiopia and the downstream countries in several ways. The Dam will: (i) improve Ethiopia’s energy availability (ii) regulate water flow that will enhance water management for irrigation and other water uses in Egypt and the Sudan (iii) allow enhanced sediment management thereby reducing cost of dredging irrigation canals and increase the life of downstream dams (iv) enable water saving and avoidance of water loss due to seepage and evaporation (v) uplift energy of existing power stations at Roseries, Sennar and Merowe dams in the Sudan (vi) serve as a buffer against climate change-induced extremes, including flooding and drought, and net reduction in Green House Gases emission (vii) strengthen regional socio-economic integration (viii) increase regional water storage capacity by 60 billion cubic meters and increases the installed capacity of power by 5150 MW (ix) increase the safety of the High Aswan Dam against major consecutive floods. Hence, GERD is designated as one of the continental projects to strengthen regional integration under the Project for Infrastructure Development in Africa (PIDA).

9. The characterizations of the impacts from GERD are baseless and exaggerated with no attribution to Ethiopia’s project. The claim that reduction of flow in the Nile due the GERD project translates into loss of agricultural land and economic gains in Egypt is fundamentally flawed and misleading. Moreover, the High Aswan Dam (HAD) was built to ensure sustainable water provision and overcome water shortage during low flow in the Nile River. Whenever there is river flow reduction, HAD provides water from its storage. During the droughts in the 1980s that led to the decrease in more than half of the average flow of the Nile, Egypt sustained negligible damage due to its reservoir at HAD. By contrast, over a million Ethiopians perished in famine that resulted from the droughts.

10. The alleged increase in soil salinity in Egypt arises from the water mismanagement and reliance on flood irrigation. It is also exacerbated by the effects of climate change and agricultural malpractices in Egypt. It cannot be attributed to the GERD.

11. More importantly, Egypt’s current utilization of the Nile is based on unfair colonial treaties that eliminate the rights of upstream countries. It is to be noted that Ethiopia has never been a party to the treaties and repeatedly objected to water infrastructures constructed in Egypt. Ethiopia reiterates that the existing water use in Egypt will not have any bearing on Ethiopia’s fair, legitimate and equitable share of the Nile waters.

(A) Initial Filling of the GERD

12. Ethiopia has the right to fill and operate the GERD by complying with the principles of equitable and reasonable utilization and the obligation not to cause
significant harm. Under principle V of the DoP, the three countries agreed to utilize the outcome of the two IPoE recommended studies on the guidelines and rules on the first filling and annual operation of the GERD in parallel with the construction of the Dam.

13. The DoP requires the countries to conduct the studies and agree on guidelines and rules on first filling and annual operation within 15 months. When it became clear that these functions cannot be carried out within the allocated time because of Egypt’s delaying tactics and inconsistent positions, Ethiopia could have cited the expiry of the timeline and halt the negotiations. Instead, in the spirit of cooperation and good neighborliness, Ethiopia continued the dialogue and proposed for the establishment of the NISRG to come up with scenarios for first filling and annual operation of the GERD. The NISRG did not succeed in its mission due to the continued disruptive approach of Egypt. The cooperative approach and good faith demonstration of Ethiopia should not be abused.

14. Egypt’s interpretation of the DoP is inaccurate. The DoP states that the first filling of the Dam will be carried out in parallel with construction. The GERD is designed in a way that allows simultaneous administration of construction and filling. Hence, the filling of the Dam is part of the construction. The same had been communicated to Egypt during the IPoE process and it should be noted that Egypt concluded the DoP with full knowledge of this circumstance. Therefore, when the DoP provides for construction to be undertaken in parallel with the process of conducting studies and agreeing on guidelines and rules, it is recognizing the filling of the Dam is part of the construction during which the studies and guidelines for filling had to be concluded. Thus, Ethiopia has the right to fill the Dam in compliance with the principles of equitable and reasonable utilization and not causing significant harm.

15. The platforms created to agree on the guidelines and rules for first filling and annual operation did not succeed due to Egypt’s refusal to reach an acceptable settlement. Clearly, Egypt cannot get away with advancing contradictory positions, first by impeding progress of the negotiations and next by blocking the filling of the dam.

(B) First Stage Filling of the GERD

16. The trilateral negotiations on the GERD were interrupted by the COVID-19 global pandemic. In the meantime, the GERD has attained the stage where it has to implement first stage impoundment in the rainy season of 2020. Considering the inability to conclude the entire rules and guidelines in such a short time, Ethiopia on 10 April 2020 made an offer for Egypt and the Sudan to agree on first stage filling of the GERD (up to 595 m above sea level). The proposal was made in line with the understanding reached with Egypt and the Sudan during the previous trilateral negotiations and in the spirit of good faith to pave the way for cooperation. Characteristically Egypt declined the offer.
17. The first stage filling will take 2 years to complete and it will allow the Dam Reservoir to retain 18.4 billion cubic meters of water. This storage is meant to begin testing of the power plant—effectively releasing the water downstream. Furthermore, the impoundment is carried out in 2 years with 4.9 billion cubic meters of water in the first year and 13.5 m$^3$ of water in the second year. This volume of water taken from the average flow of 49 billion cubic meters of water of the Blue Nile causes no significant harm on downstream reservoirs. Moreover, the rules for first stage filling are not the creation of Ethiopia. Rather, they are taken from the non-controversial sections of the entire ‘guidelines and rules’ worked out by the three countries.

18. As shown above, Ethiopia does not have a legal obligation to seek approval of Egypt to fill the Dam. Furthermore, the impoundment of 18.4 billion cubic meters of water in two rounds causes no significant harm on Egypt. Therefore, Ethiopia is in full compliance with the DoP and made a remarkable and generous gesture in offering an agreement to Egypt.

II. Ethiopia’s Water Demand and Resource

19. Recurring drought and extreme water scarcity continue to cause severe damage to the livelihood, and the physical and psychological wellbeing of Ethiopians. Due to lack of sufficient water development infrastructures, Ethiopia’s subsistence agriculture is fully dependent on erratic rains and the shortfall in grain production has forced the country to depend on foreign assistance. In Ethiopia, famine has traditionally followed periods of drought claiming millions of lives and exposing tens of millions for malnutrition.

20. Land degradation, deforestation, depletion of water resources, and infestation with insects that destroy farms of subsistence farmers are existential threats to Ethiopia. The underdeveloped water infrastructure severely tests Ethiopia’s resilience in the face of climate change, population growth and urbanization. The dominantly agrarian and pastoralist population of Ethiopia are perennial victims of water insecurity.

21. Sixty-five million Ethiopians have no access to electricity while the entire population of Egypt enjoys such access. The energy demand in Ethiopia grows by 19% every year. The most feasible indigenous resource to meet this energy demand is the water resource of the country. Currently, Ethiopia’s installed capacity is 4425 MW electric power. The GERD when completed will add 5150 MW installed capacity. Ethiopia must harness its available resource to expand its energy sector to attain energy security. Ethiopia’s economic potential on which the survival of its people hinges may only be unlocked through the supply of sufficient energy to improve agriculture and realize structural economic transformation through industrialization.

22. Despite being the source of 86% of the waters of the Nile, Ethiopia is more prone to critical water scarcity and stress than Egypt. Over 60% of Ethiopia’s
surface area is dry land with no sustaining water resources. Ethiopia’s population in 2040 will be 165 million with an estimated water availability of 685 m$^3$ per capita per year. In the same year, the per capita water availability in the central and eastern part of Ethiopia will be less than 390 m$^3$ per year.

23. Egypt by contrast is endowed with plenty of groundwater resources and has access to sea water which could be desalinated for use. Ethiopia is not only susceptible to impacts of climate change but also its underground water resources are not considerable. As a landlocked country, Ethiopia has no seawater that it can desalinate. Therefore, it is indispensable to develop the Nile basin, where more than two-thirds of Ethiopia’s water resources are found to ensure water, food, and energy security.

24. Moreover, access to energy is necessary to the attainment of most of the Sustainable Development Goals (SDGs) and the African Union Agenda 2063, which makes the completion of GERD very critical.

III. Trilateral Consultations on the GERD

25. Following the official launch of the Dam in April 2011, Ethiopia proposed setting up a tripartite committee, which later led to the establishment of the International Panel of Experts (IPoE). The Tripartite National Committee (TNC), the National Independent Scientific and Research Group (NISRG), Six Party meeting (ministers of foreign and water affairs) and Nine Party meeting (ministers of foreign and water affairs and heads of intelligence), tripartite summits of Heads of State and Government were formed, and the Declaration of Principles was signed to facilitate the trilateral dialogue over the GERD. It is Ethiopia’s unprecedented initiatives that resulted in the formation of these trilateral platforms in the Basin.

(A) The International Panel of Experts

26. The IPoE was formed to review the design and study documents of the GERD; to provide transparent information sharing; and to solicit understanding on the benefits and costs accrued to the three countries and impacts, if any, of the GERD on Egypt and the Sudan. The aim was to build trust and confidence among all parties. The Panel was composed of two experts from each of the three countries and four international experts from Germany, South Africa, France and Britain. The Panel examined more than 150 design and study documents on the GERD provided by Ethiopia and submitted its final report on 31 May 2013 to the water affairs ministers.

27. In its final report adopted by consensus, the IPoE has concluded that the design and construction of the GERD is up to international standards. The Panel also recommended that Ethiopia, Egypt and the Sudan conduct two additional
studies namely *hydropower/water resources simulation modeling at the Eastern Nile level, and trans-boundary socio-economic and environmental impact assessment*. Contrary to the assertions of Egypt, the studies were recommended not because of the negative evaluation of the IPoE on the Dam. Rather the studies had the objective of assessing the impact of the Dam, if any, based on primary data collected from Egypt and the Sudan.

28. Ethiopia and the Sudan announced their acceptance of the IPoE report. On the other hand, after their experts adopted the report, Egyptian senior officials began issuing bellicose statements against the Dam, threatening to stop its construction. This delayed further consultations by 5 months.

29. Ethiopia, nevertheless, implemented the recommendations of the IPoE. As can be seen from Article VIII of the DoP, Egypt and the Sudan expressed their appreciation of Ethiopia for implementing the recommendations in good faith. Due to the EPC contract model (Engineering, Procurement and Construction) of the GERD project, recommendations of the Panel are implemented at different levels of design and construction. While this is the fact, Egypt continues to give a distorted interpretation of the IPoE report in a bid to undermine the GERD.

**(B) The Tripartite National Committee**

30. Despite Egyptian efforts to disrupt the trilateral process, Ethiopia continued its determination to build confidence and establish trust. The Tripartite National Committee (TNC) composed of 12 experts—four from each of the three countries—was established in August 2014. The TNC was tasked to guide and follow up on the conduct of the two IPoE recommended studies. Since its establishment, over 17 TNC and/or ministerial meetings were held on a rotational basis in Addis Ababa, Cairo, and Khartoum. However, progress was slow during the TNC process due to Egypt’s continued delaying tactics at every juncture of the consultation processes.

31. During commissioning of the consultant to carry out the IPoE recommended studies, contrary to the agreed procedure, Egypt insisted on having a consultant of its own choice as a subconsultant. In a clear show of good faith, Ethiopia agreed to involve the consultant Egypt picked. Nevertheless, the consultant was not ready to work in accordance with the terms of reference and withdrew. Yet again, outside of convention, Egypt insisted on engaging another company as a sub-consultant. These unconventional and unilateral propositions of Egypt delayed progress by several months. Still, Ethiopia accepted Egypt’s request with the intention of expediting the process.

32. After the commencement of the studies and submission of the consultant’s draft inception report, Egypt again delayed the process by over 2 years by blocking transmission of the comments of the three countries to the consultant. This and preceding delays caused by Egypt disabled the TNC from carrying out its functions. In effect, the countries were prevented from conducting the joint studies.
33. Furthermore, Egypt insisted that the baseline for impact assessment shall be the current water uses of Egypt, which it claims constitutes the country’s ‘historic right.’ This claim is built on colonial based treaties (1929 and 1959) to which Ethiopia is not a party. Ethiopia has no obligation to such Treaties and does not recognize them. Egypt had and continues to invoke ‘historic rights and current water uses’—a mere assertion alien to international water laws. Since the 1950s Ethiopia persistently expressed its objection to the water development projects, which were built without consulting on its impact on the upper riparian countries. Therefore, Egypt’s “existing water use” cannot be used as a baseline for the impact assessment study over the GERD.

34. By seeking to protect the unjust status quo on the Nile Basin, Egypt is essentially preventing any water use by other riparian countries. It is a flagrant violation of international law and an absolute injustice that Egypt is committing by pushing a self-claimed ‘historic right and current use’ as a basis to determine the impact of the GERD.

(C) The National Independent Scientific Research Group

35. Given the lack of progress in the two IPoE recommended studies, (as enumerated above) Ethiopia proposed for the establishment of the NISRG composed of five scientists from Egypt, Ethiopia and the Sudan in a letter dated 05 February 2018. The NISRG was established effective 15 May 2018 by the decision of the Nine Party meeting in Addis Ababa. The Group was tasked to conduct and submit scientific studies to water affairs ministers in order to inform the first filling and annual operation of the GERD in line with the DoP.

36. After conducting four meetings and carrying out modeling and scenario-based analysis, the NISRG submitted its report to the Ministers of Water Affairs of the three countries in a meeting held on 25 September 2018 in Addis Ababa. The Ministers reviewed the report and resolved outstanding issues from the deliberations by technical experts of the three countries. An agreed minute of the meeting indicating the consensus of the Ministers on the first filling and annual operation of the GERD was jointly prepared. While Ethiopia and the Sudan were ready to sign, Egypt declined at the last minute citing the need to consult with the higher authorities in Cairo.

37. With the objective to resume the negotiations, Prime Minister Abiy Ahmed hosted a meeting with the Heads of State of Egypt (Abdel Fattah El Sisi) and the Sudan (Omar Hassen al Bashir) at his office on 10 February 2019. During this meeting, the three leaders instructed the NISRG to conduct the remaining meetings and called on the water affairs ministers to report back its outcomes.

38. Contrary to the guidance of the three leaders, on the 1st of August 2019, the Minister of Water Resources and Irrigation of Egypt delivered a document titled, “Egyptian proposal for technical aspects of the agreement on the filling and operations of the Grand Ethiopian Renaissance Dam” to his Ethiopian counterpart. Instead of building on the progress made by the NISRG, Egypt’s unilateral
submission circumvents the ongoing cooperation mechanisms and their outcomes. It appended the process and laid bare Egypt’s lack of commitment to good faith negotiations.

39. In the submission, Egypt deliberately consolidated all the lopsided proposals that had been rejected at different levels in the negotiations. Among several other objectionable details, it contained rules maintaining natural flow (foreclosing any existing and future development upstream of the GERD), guaranteed release (despite hydrological variability), maintaining HAD at 165 meters above sea level (while Ethiopia has no control over factors that determine HAD level), and opening an office at the GERD for joint management (infringement of Ethiopia’s sovereignty). Egypt then embarked on extensive diplomatic and other campaigns to pressure Ethiopia to accept its submission. Despite Egypt’s efforts to curtail the process, the three countries had to return to the NISRG mechanisms. This disruptive action wasted the invaluable time for the negotiation.

40. During subsequent meetings in Cairo (15–16 September 2019) and Khartoum (30 September to 03 October 2019), Ethiopia and the Sudan made repeated efforts to move the process forward. Encouraged by the outcomes produced by the NISRG, Ethiopia and the Sudan wished to enable the scientific group to continue its work based on previously agreed points of discussion. However, Egypt’s stubborn approach of “agreement on all or no agreement” prevented the NISRG from analyzing issues and developing scenarios for the first filling and annual operation of the dam. The Group was even unable to compile and submit the report of its work to the water affairs ministers. Eventually, Egypt’s adamant demand to involve third parties interrupted the NISRG process.

41. Egypt is solely responsible for the delay and inefficacy in the trilateral dialogue. All the delays and difficulties faced during the negotiations are of Egypt’s making.

(D) Involvement of Observers in the Negotiations

42. Egypt unilaterally requested the United States Government to get involved in the negotiation on the GERD. As the owner of the Dam, Ethiopia, in good faith and to show flexibility accommodated the persistent demands of Egypt and agreed to have the US and the World Bank as observers.

43. On 6 November 2019, the Foreign and Water Affairs Ministers of the three countries met in Washington DC with the US Secretary of the Treasury and the President of the World Bank and agreed to resume the four remaining NISRG meetings at the level of Ministers of Water Affairs with the “attendance of the US Government and the World Bank as observers.”

44. Four Ministerial level technical meetings were conducted in Addis Ababa (15–16 November 2019), Cairo (2–3 December 2019), Khartoum (21–22 December 2019) and Addis Ababa (8–9 January 2020). Although Egypt insisted that the meetings after 6 November 2019 must begin afresh (with no
reference to the previous discussions and outcomes), agreement was reached to continue from where the technical deliberation left off.

45. Initially, the participation of the observers helped the meeting to be focused. The three parties also reached consensus on the two principles of filling, i.e. (a) Filling during July and August, and up to September during wet years (b) Stage-based filling on the basis of Ethiopia’s filling schedule. The ministers signed the minutes of their meeting at Addis Ababa (15–16 November 2019) and agreed to use the outcome of the meeting as a working document in upcoming discussions.

46. Nevertheless, following the second meeting in Cairo on 2–3 December 2019 Egypt, consistent with its previous practice, refused to sign the minutes of the meeting that was signed by both Ethiopia and the Sudan. As a result, no significant progress was made in the negotiations.

47. The Ministers of Foreign Affairs and Water Affairs met again on December 9, 2019 and January 15 at the office of the US Treasury Secretary. Further, two meetings were held in Washington, DC on 28–31 January 2020 and 12–13 February 2020. However, at the end of the meetings in Washington DC, a number of issues remained outstanding that required the continuation of the negotiations between the three countries.

48. During the last meeting held in Washington DC from 12–13 February 2020, the observers proposed to formulate the “legal text on guidelines and rules on the first filling and annual operation of the GERD.” Ethiopia declined the offer on both procedural and substantive grounds and officially communicated the same to the observers.

49. Despite Ethiopia’s request to postpone a meeting that was scheduled for 27–28 February 2020, consultations were held with Egypt and the Sudan in the absence of Ethiopia. Ethiopia has learned that Egypt has initialed a document prepared by the observers. It is critical to note that there is no agreed legal document. Ethiopia rejected the outcome of the 27–28 February 2020 meeting.

50. In the previous meetings, there were outstanding differences on matters of fundamental importance that have far reaching consequences for the interest of Ethiopia and contravening the DoP. These include: First, severely limiting the capacity of the dam to generate electricity; second, forming rules that are impractical for dam filling and operation which defy accepted practices; third, going beyond the scope of the negotiations on the GERD and inhibiting the rights of the present and future generations by curtailing upstream development; fourth, undermining Ethiopia’s sovereign right to operate its own Dam; and fifth, proffering water sharing agreement sideling the CFA and ignoring the rights of other Nile riparian countries with combined population of over 250 million.
IV. Ethiopia Continues to Uphold Multilateralism

51. As the only African member of the League of Nations, a founding member of the United Nations, Organization of the African Unity, African Union and several other regional and international organizations, and the largest troop contributor to the UN Peacekeeping operation, Ethiopia is the paragon of multilateralism.

52. On the Nile Basin, Ethiopia has been consistently working with the other riparian countries to strengthen cooperation and establish a basin wide regional mechanism. Ethiopia was on the forefront for the establishment of the NBI in 1999. The NBI was established with a goal to “achieve sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources.” While the NBI is the only multilateral body that aims to bring all Nile riparian countries together for common development, Egypt withdrew from its membership in 2010. Egypt is also relentless in blocking international assistance to the NBI.

53. Ethiopia is a state party to the CFA on the Nile Basin. The CFA is signed by six and ratified by four riparian countries. CFA enshrines the cardinal principles for the utilization of the Nile River and establishes the Nile River Basin Commission. An outcome of a 13 years negotiation that involved Egypt, the CFA is the only multilaterally negotiated Framework Agreement on the Nile Basin. Egypt is yet to sign the CFA, which is awaiting two more ratifications for entry into force.

54. In relation to the GERD, the DoP that was signed on 23 March 2015, is the only instrument that provides the basis for the tripartite consultations on the GERD. In addition, trilateral platforms of cooperation, including the IPoE, the TNC, the Six Party Meeting, the Nine Party Meeting and the NISRG were all established demonstrating Ethiopia’s commitment for cooperation.

55. Ethiopia advocated for, and made a relentless effort to create and strengthen, a regional mechanism over the Nile and a platform of consultation particular on the GERD. It is critical to note that Ethiopia is not following the Egyptian approach of unilateralism that denied other riparian countries of their fundamental rights. Egypt in keeping its unilateral approach ignored Ethiopia’s objections in 1956, 1957, 1980, and 1997 to a water allocation treaty that excluded Ethiopia and wasteful water development infrastructures, including transfer of the Nile waters out of its Basin.

V. The Overarching Impediments

56. The GERD negotiation pertains to technical aspects of filling and operation of the Dam. It is not a negotiation for a water allocation treaty. The absence of a basin wide framework treaty on water allocation makes the technical negotiations complicated. This problem may only be solved if all riparian states are
committed to reach a just deal based on accepted principles on the use of transboundary watercourses as clearly enshrined under the CFA.

57. Ethiopia has made extraordinary efforts to accommodate Egypt’s unending demands and unpredictable behavior. However, Ethiopia cannot accept the unjust proposition of ‘historic right and current uses’ advanced by Egypt. This concept is not recognized under international water laws. Moreover, it denies the upper riparian countries the right to use the waters of the Nile.

58. It should be recalled that Ethiopia objected to the massive water developments in Egypt, which proceeded with no consultation with upper riparian countries of the Nile. The communications sent to Egypt and the international community in 1956, 1957, 1980, and 1997 fell on the unheeding ears of Egyptian Government officials. In the letter sent to Egypt on March 1997 copied to the UN Secretary General, the OAU and The World Bank, Ethiopia made it clear that “...In the same way as it does not recognize the 1959 agreement as having any bearing on its share on the Nile waters, so does Ethiopia, in the most categorical manner, not recognize the Toshka Project and the Peace Canal as having any consequence to what is and will always be its fair, legitimate and equitable share of the Nile waters.”

59. The refusal and unwillingness of the Government of Egypt to reach an agreement, attempts to block other riparian countries from getting finance for water development projects, the unabated campaigns of misinformation and the attempt to weaken the Nile Basin Initiative all are rooted in Egypt’s absolute desire to preserve its monopoly over the Nile. The delays and obstacles against carrying out the joint studies and agreeing on the guidelines and rules for first filling and annual operation of the GERD have their source in the efforts to preserve the “historic right and current use” of Egypt.

60. Egypt will become a valuable partner in the regional mechanism if it embraces fairness by abandoning its self-claimed ‘historic rights and current use’, that allocate ‘zero shares’ to upper riparian countries, including Ethiopia.

**VI. Agreement on the Nile River Basin Cooperative Framework**

61. A sustainable solution to the problems associated with the utilization of the Nile River can only be achieved through a basin wide treaty that ensures the mutual benefit of all the riparian countries. Ethiopia is a state party to the Agreement on the Nile River Basin CFA that is signed by six riparian countries. CFA enshrines the cardinal principles for utilization of the Nile River and establishes the Nile River Basin Commission.

62. Following two more ratifications (Ethiopia, Rwanda, Tanzania, and Uganda have already ratified) the Basin Countries will be able to agree on all-inclusive water utilization arrangements. Ethiopia is dedicated to the success of this multilateral endeavor. Although Egypt negotiated the CFA, it declined to sign
the Agreement as the document does not recognize colonial based treaties that allocated the entire flow of the Nile to Egypt and the Sudan.

63. The Nile has a tremendous potential to become a river of regional economic cooperation and integration. Egypt has a historical responsibility to join the CFA and conclude a fair water allocation agreement. Egypt should also play a constructive role towards the maximization of flow of the river for the common and sustainable benefits of the basin countries and their peoples.

**VII. Conclusion**

64. Ethiopia reiterates its firm commitment to the accepted principles of equitable and reasonable utilization and not to cause significant harm. It is Ethiopia’s legitimate right to fill its hydropower dam in accordance with the stage-based filling plan that was shared with Egypt and the Sudan.

65. Underscoring the unparalleled opportunities for cooperation and to address outstanding issues through dialogue, Ethiopia calls upon the international community to encourage the Arab Republic of Egypt to:

- Continue the tripartite negotiation on the guidelines and rules for the first filling and annual operation of the GERD in the spirit of good faith and reach a mutually beneficial agreement.
- Abandon its insistence to preserve its self-claimed ‘historic rights and current use’ and desist its relentless efforts to politicize and internationalize the remaining technical negotiations.
- Sign and ratify the CFA in order to forge a genuine cooperation for equitable and reasonable utilization of the Nile waters for common benefits of all the basin countries.

**Sudan’s Communication**

Letter Dated 2 June 2020 from the Permanent Representative of the Sudan to the United Nations Addressed to the President of the Security Council, United Nations S/2020/480, 2 June 2020 (https://undocs.org/pdf?symbol=en/S/2020/480)

Upon instructions from my Government, I have the honour to transmit herewith a letter addressed to you from Asma Mohamed Abdalla, the Minister for Foreign Affairs of the Republic of the Sudan, dated 2 June 2020, with regard to issues pertaining to the Grand Ethiopian Renaissance Dam (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Omer Mohamed Ahmed Siddig
Permanent Representative
Annex to the Letter Dated 2 June 2020 from the Permanent Representative of the Sudan to the United Nations Addressed to the President of the Security Council

At the outset, please allow me to sincerely congratulate you on assuming your responsibilities as President of the Security Council for the month of June. I do trust that, with your illustrious leadership qualities and expertise, you will be able to competently steer the work of the Council and confidently navigate through these prodigious times of the coronavirus disease (COVID-19), which represent a global health crisis. With our collective efforts, we can succeed in defeating the virus and bringing life back to normalcy.

I am writing to you with regard to the issues pertaining to the Grand Ethiopian Renaissance Dam that were raised in the letters sent to the Security Council by the Arab Republic of Egypt and the Federal Democratic Republic of Ethiopia on 1 and 14 May 2020, respectively. The Republic of the Sudan is an important riparian country along the Blue Nile, the country immediately downstream from the Grand Ethiopian Renaissance Dam, and thus stands to be impacted the most by the dam. Accordingly, Sudan feels obligated to inform the Security Council of its position and views on the issues raised in these two letters, and the details of the initiative that Sudan has taken to suggest the immediate resumption of the negotiation process.

Attached to the present letter is Sudan’s position paper (see enclosure), which details the facts surrounding the Grand Ethiopian Renaissance Dam as they pertain to Sudan and our positions on the issues at hand, as well as a detailed account of our efforts throughout the negotiation process. The position paper concludes with specific recommendations. However, in the following few paragraphs, I will try to capture the main points and messages underlining our position.

The Blue Nile is a sacred river that our region is blessed with. It is shared by the three countries of Egypt, Ethiopia and Sudan and serves as the lifeline for the 250 million people who live in these countries. Therefore, the Blue Nile is an inseparable part of the history, culture, economy and conscience of the people of our region.

For Sudan, the Blue Nile is the lifeline for most of Sudan’s 40 million people. It serves 70% of the irrigated land in the country, and as such represents the heart of the agricultural activities on which the country’s population and economy are largely dependent.

Therefore, Sudan has always believed in and advocated regional cooperation and partnership over the Blue Nile, as well as the Nile River as a whole. This is demonstrated by Sudan’s positions and actions since its independence as a leader
in all regional initiatives and programmes around the Blue Nile and the Nile River as a whole.

Ethiopia is currently in the final phases of constructing the Great Ethiopian Renaissance Dam, which is being built across the Blue Nile merely a few kilometres upstream from the Sudanese-Ethiopian border. With a storage capacity of 74 billion cubic metres and installed capacity of 6450 MW of hydropower. Once completed, the dam will be the largest in Africa, and among the 15 largest hydropower plants in the world. As such, this gigantic dam will be a towering permanent structural presence with the potential of bringing both positive and negative impacts to Sudan.

The potential positive impacts of the Great Ethiopian Renaissance Dam on Sudan emanate from regulating the water flow of the Blue Nile. This regulation of flow will reduce the annual floods during the rainy season and enable Sudan to better manage its irrigation system. It will increase the hydropower generation from existing hydropower plants. In addition, the dam will increase the navigation depth along the Blue Nile and main Nile rivers.

On the negative side, the Great Ethiopian Renaissance Dam will completely change the flow regime of the Blue Nile by flattening its hydrograph. With this gigantic size, the dam risks causing significant negative impacts on Sudan if not properly designed, constructed, filled and operated. These impacts range from threatening the lives and safety of millions of Sudanese citizens living directly downstream from the dam to the operational safety of the Sudanese dams, the flood plain agricultural system of the country and the socioeconomic and environmental impacts along the Blue Nile and the downstream main Nile River all the way up to the border with Egypt.

However, it is important to emphasize that for the positive impacts to be realized and for the negative impacts to be mitigated there has to be an agreement in place with Ethiopia on how to fill and operate the Great Ethiopian Renaissance Dam; otherwise, the dam stands to cause substantial risks to Sudan.

Therefore, while Sudan recognizes the right of Ethiopia to develop its water resources for the benefit and well-being of its citizens, it is vital that Ethiopia does so while ensuring that any potential negative impacts are properly addressed and mitigated in close consultation and coordination with the downstream riparian countries.

The discussions and negotiations with Ethiopia over the Great Ethiopian Renaissance Dam started in 2011. Sudan has engaged—in good faith—in all the stages of the dam negotiations, including organizing the main trilateral negotiation rounds in Khartoum (2013–2015) that culminated in the successful conclusion of the agreement on the Declaration of Principles on the Great Ethiopian Renaissance Dam. The Declaration was signed by the leaders of the three countries in Khartoum on 23 March 2015. The current round of negotiations started in 2018, and in November 2019 the United States and the World Bank joined the
negotiation process as observers to support the three riparian countries in reaching a final comprehensive agreement on the filling and operation of the dam. Despite the fact that major progress has been achieved throughout the negotiation process, up to February 2020, it is unfortunate that negotiations have stalled since February 2020 with escalation in the rhetoric in statements from both Egypt and Ethiopia.

Sudan is currently leading an initiative to convince Egypt and Ethiopia to resume negotiations to reach a final and fair deal before starting the filling of the dam. In this context, the Prime Minister of Sudan held bilateral (online) meetings with the Prime Ministers of Egypt and Ethiopia on 19 and 21 May 2020, respectively. All three leaders confirmed their willingness to resume the negotiations, with the objective of concluding a fair and comprehensive agreement. They also instructed the ministers of irrigation and water resources of the three countries to resume the technical discussions immediately. Since then, several bilateral meetings have taken place, and we hope that the tripartite negotiations will resume soon.

Sudan believes that the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses reflects and codifies the basic principles of customary international water law, which must be adhered to in order to resolve the remaining differences on the Great Ethiopian Renaissance Dam. The overarching principle of international water law is cooperation of the riparian States of the shared watercourse. The Convention lays down, in detail, four main principles to which Sudan fully subscribes: the principle of “equitable and reasonable utilization”; the “obligation not to cause significant harm”; “notification and exchange of data and information”; and the “peaceful settlement of disputes”. Sudan believes that the three countries are close to concluding a comprehensive deal. Accordingly, with the strong political will and commitment of the three parties, we can address the few remaining differences.

Therefore, Sudan would like to request the Security Council to: (a) encourage all the parties to refrain from taking unilateral actions, including starting filling the Great Ethiopian Renaissance Dam prior to reaching a comprehensive agreement, or taking any other action that jeopardizes regional and international peace and security; and (b) support Sudan’s efforts and call upon all the parties to resume immediate negotiations in good faith with the objective of resolving the pending issues and concluding a final comprehensive agreement.

(Signed) Asma Mohamed Abdalla
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Enclosure

Grand Ethiopian Renaissance Dam

Sudan’s Position

Executive Summary:

Ethiopia is currently in the final phases of constructing the Grand Ethiopian Renaissance Dam (GERD) which is being built across the Blue Nile, at 5–15 km from the Sudanese-Ethiopian border; with a storage capacity of 74 Bm3 and installed capacity 6450 MW of hydropower. Once completed, GERD will be the largest in Africa, and among the largest 15 hydroelectric plants in the world. The GERD located just 100 km upstream of our Roseires dam which is less than 10% the size of GERD.

The Blue Nile is the life line for most of Sudan’s 40 million people; it serves 70% of the irrigated land in the country, and as such represents the heart of the agricultural activities on which the country’s population and economy are largely dependent.

The GERD has the potential of causing both positive and negative impacts to Sudan as further explained below. However for the positive impacts to be realized and for the negative impacts to be mitigated there has to be an agreement in place with Ethiopia on how it intends to fill and operate GRED, otherwise the GERD stands to cause substantial risks to Sudan.

On the positive side, most the potential positive impacts will result from regulating the water flow of the Blue Nile which, in turn, will control the annual floods during the rainy season, and enable Sudan to better manage its irrigation system. Regulation of the flow will increase the hydropower generation capacity from the existing hydropower plants. Other positive impacts include longer life-time for Sudan’s existing dams (with the decrease of sediment load), savings in pumping costs and increase of navigation depth.

On the negative sides, the GERD will completely change the flow regime of the Blue Nile by flattening its hydrograph. With its gigantic size, the GERD poses substantial negative impacts on Sudan if not properly designed, constructed, filled and operated. These impacts range from threatening the lives and safety of millions of Sudanese citizens living directly downstream of the GERD, to the operational safety of the Sudanese dams, to the flood-plain agricultural system of the country, and to the socioeconomic and environmental impacts along the Blue Nile and downstream in the main Nile.

Therefore, while Sudan recognizes the right of Ethiopia to develop its water resources for the benefit and well-being of its citizens, it is vital that Ethiopia does so while ensuring that any potential negative impacts are properly addressed and mitigated in close consultation and coordination with the downstream riparian countries.
Since 2011, Sudan has participated in all stages of negotiations on the GERD, including organizing the main negotiations rounds in Sudan that culminated in the successful conclusion of the Agreement on the Declaration of Principles on the GERD (DoP). The DoP was signed by the leaders of the three countries in Khartoum, on 23rd March, 2015. The current round of negotiations started in 2018, and in November 2019 the United States and the World Bank joined as observers to support the three riparian countries to reach a final agreement on the filling and operation of GERD. Unfortunately, negotiations have stalled since February 2020 with escalation in rhetoric statements. Sudan currently is leading an initiative to convince the parties to resume the negotiations for reaching a fair, comprehensive and final agreement. In this context, the Prime Minister of Sudan held bilateral meetings with the Prime Ministers of Egypt and Ethiopia on May 19 and 21, 2020 respectively.

Sudan believes that the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Convention) reflects and codifies the basic principles of customary international water law which must be adhered to, during the negotiations, to resolve the remaining differences on the GERD. The overarching principle of international water law is cooperation of the riparian states of the shared watercourse. Under this umbrella, the UN Convention lays down, in detail, four main principles to which Sudan fully subscribes: the principle of equitable and reasonable utilization; the obligation not to cause significant harm; notification and exchange of data and information; and the peaceful settlement of disputes.

Based on the above principles, and throughout the process, Sudan negotiated in good faith and believed in and advocated for a comprehensive agreement inclusive of all three riparian countries. That’s why Sudan refrained from conducting trilateral negotiations in Washington in the absence of Ethiopia, the owner of the Dam. For the benefit of the process, Sudan also refused to endorse an Arab League resolution criticizing Ethiopia. In the same vain, Sudan rejected a proposal by Ethiopia for a partial agreement covering only the first stage filling as we believe any agreement has to be comprehensive and should cover all related issues to the filling and operation of the GERD.

Furthermore, Sudan strongly believes that reaching a comprehensive agreement on the guidelines and rules prior to starting the filling of GERD is extremely necessary and important for all parties; any unilateral decisions on the timing and rules of filling GERD will put millions of lives and communities at risk.

Following the Washington phase of negotiations, Sudan believes that the three countries are very close to concluding a comprehensive deal. With a strong political will and commitment from the three parties they can address the few remaining differences. Therefore, Sudan would like to request the Security Council to:
• Encourage all parties to refrain from taking unilateral actions including filling of the GERD prior to reaching a comprehensive agreement, or taking any other action jeopardizes the regional and international peace and security.
• Support Sudan’s efforts and call upon all parties to resume immediate negotiations in good faith with the objective of resolving pending issues and concluding a final comprehensive agreement.

I. Background

1. Ethiopia is currently in the final phases of constructing the Grand Ethiopian Renaissance Dam (GERD), built across the Blue Nile, very close to the Sudanese-Ethiopian border. The two parts of the GERD, the saddle and concrete dams are located at a mere of 5 km and 15 km, respectively from the border of Sudan. The GERD comprises a 155 m high dam and will create a reservoir with a surface area of 1874 km² and a total storage of 74 Bm³ (1.5 times the average annual flow of the Blue Nile); It has a total installed capacity of 6450 MW of electrical power. Once completed GERD will be the largest dam in Africa, and among largest 15 hydropower plants in the world.

2. The Blue Nile is the life line for most of Sudan’s 40 million people; It serves 70% of the irrigated land in the country, and as such represents the heart of the agricultural activities on which the country’s population and economy are largely dependent. About 70% of the Sudan’s irrigation system is mainly supplied by two dams built across the Blue Nile; namely Roseires and Sennar dams. The Roseires dam, located just over 100 km downstream the GERD has a reservoir size of less than one tenth that of GERD, while Sennar dam, located at 210 km downstream Roseires, has a capacity of less than 1% of the GERD.

3. Located just by the border, with this gigantic size, the GERD poses substantial negative impacts on Sudan if not properly designed, constructed, filled and operated. These impacts range from threatening the lives and safety of about 20 million Sudanese citizens living just downstream the GERD, to the operation of the Sudanese dams, to the flood-plain agricultural system of the country, and to the socioeconomic and environmental systems along the Blue Nile, and downstream in the main Nile River, up to the border with Egypt. Therefore, while Sudan recognizes the right of Ethiopia to develop its water resources for the benefit and well-being of its citizens, it is vital that Ethiopia addresses and mitigates any potential negative impacts in close consultation and coordination with the downstream riparian countries.

4. Since notification of the GERD Project by Ethiopia, Sudan has been engaged—in good faith—in all stages of its negotiations. Sudan has been active in the International Panel of Experts (IPoE) that reviewed the initial design documents; Sudan has played a pivotal role in the activities of the Tripartite National
Committee (TNC) formed to follow-up the implementation of the IPoE recommendations. Sudan has also actively participated in the trilateral negotiations rounds (2013–2015) that culminated in the successful conclusion of the Agreement on the Declaration of Principles on the Grand Ethiopian Renaissance Dam Project signed by the leaders of the three countries in Khartoum on 23rd March, 2015.

5. The current round of negotiations, actually started by the formation of the National Independent Scientific Research Group (NISRG) on May 2018, established by the nine-party committee (the ministers of foreign affairs, of water, and head of intelligence) from the three countries. While since November 2019 the United States and the World Bank joined the negotiation process as observers to support the three riparian countries reach a final comprehensive agreement on the filling and operation of GERD.

6. Despite the ups and downs during this long journey of the negotiations since notification of the GERD in 2011, major consensus has been reached among the three countries on a number of key issues, in particular during the last five meetings in the region, and the other six meetings in Washington.

II. Potential Impacts of the GERD on Sudan

7. Since the GERD is 1.5 times bigger than the annual flow of the Blue Nile, it will completely change the flow regime of the river by flattening its hydrograph. This will create large impacts on the river hydrology, water resources and sedimentation. In turns, these will have direct impacts, on infrastructure, land use, people and ecosystem along the Blue Nile and the main Nile. Some of these impacts are positive and some are negative, as briefly explained below.

8. The positive impacts of the GERD results mainly because of flow regulation of the Blue Nile, i.e., the flow of the Blue Nile will be more steady with much less seasonality compared to the condition without the GERD. The positive impacts include:

- **Electricity Supply**: An increase of the hydropower generation from the existing hydropower plants in Sudan (Roseires and Merowe), as well as expected future supplies from the GERD.
- **Irrigated Agriculture**: The reliability of water supply to the existing and future irrigation schemes will improve, enhancing irrigated agriculture in the country.
- **Other Positive Impacts**: these include longer lifespan of our dams (with the decrease of sediment bed load), reduction of damages caused by exceptionally high floods, saving in pumping cost, and increase of navigation depth along the main Nile.

9. However, for the above potential benefits to materialize, closer coordination and cooperation is a prerequisite in the way GERD is operated, otherwise, all the
positive impacts will be jeopardized. In addition, GERD has the capacity of causing substantial negative impacts on Sudan which can be summarized in the following:

- **Dam Safety:** failure of a dam of such a huge size as the GERD will cause devastating damages to lives, properties and agriculture in Sudan. For this reason, all dam safety measures during filling and operation stages of GERD must be in place, active, updated and followed up carefully. Emergency preparedness and planning for the GERD and the Sudanese dams should be well coordinated, jointly planned and checked, and continuously updated and tested.

- **Social Impacts:** millions of farmers rely mainly on the flood plain agriculture in the Blue and main Nile. However, the regulation of the flow of the Blue Nile will reduce the flood irrigated land by about 50%, thus affecting the farmers if this impact is not properly addressed and mitigated.

- **Sediment Reduction:** the annual sediment carried by the river flood is a good natural fertilizer, the quantity and quality of the sediment will be significantly reduced.

- **Environmental Impacts:** these include change in river water quality, morphological changes, fisheries, flood forests, and health issues.

- **Filling and Long-Term Operation of the GERD:** Sudan storage facilities are of small size, and depend entirely on the annual flow pattern of the Blue Nile. Therefore, the mode of the GERD operation during dry years, or prolong drought, greatly impacts the Sudanese storage facilities both on operation and maintenance to meet the needs of the agricultural and hydropower sectors.

10. It is important to note that the above socioeconomic and environmental impacts have not yet been fully studied and quantified by Ethiopia. Therefore, the Independent Panel of Experts recommended and the three counties agreed to as stated in the Declaration of the Principles to finalize these transboundary socio-environmental studies. Sudan believes that these negative impacts could be greatly minimized, if properly quantified, and a sound regional cooperation resulting in optimal management of the shared water resources is achieved

### III. International Law Principles Governing the GERD Issues

11. Although not yet a party to the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses(UN 1997 Convention), Sudan accepts the view that the UN Convention reflects and codifies the basic principles of customary international water law. It is Sudan’s firm belief that these principles must be adhered to, during the negotiations, to resolve the remaining differences on the GERD, in as much as they have been followed for resolving the earlier main differences.
12. The overarching of these principles of international water law is cooperation of the riparian states of the shared watercourse. The UN Convention affirms the importance of international cooperation and good neighborliness, and requires the riparian states to “cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.” Under this umbrella, the UN Convention lays down, in detail, four main principles to which Sudan fully subscribes: the principle of equitable and reasonable utilization; the obligation not to cause significant harm; notification and exchange of data and information; and the peaceful settlement of disputes.

13. During the negotiations to conclude an agreement on the GERD in 2015, Sudan worked closely and diligently with Egypt and Ethiopia to ensure that these basic and cardinal principles of international water law are incorporated and fully reflected in the “Agreement on Declaration of Principles between the Arab Republic of Egypt, the Federal Democratic Republic of Ethiopia and the Republic of the Sudan on the Grand Ethiopian Renaissance Dam Project”, concluded in Khartoum on 23 March 2015. To underscore its importance, the DoP was signed by the Presidents of Egypt and Sudan, and the Prime Minister of Ethiopia, themselves.

14. Walking on the footsteps of the UN Convention, the DoP emphasizes the principle of cooperation in the first of its Articles, and requires the three states “To cooperate based on common understanding, mutual benefit, good faith, win-win, and principles of international law.” Furthermore, the same Article requires the three states “To cooperate in understanding upstream and downstream water needs in its various aspects.” The DoP then goes on to embrace and elaborate the four ensuing and basic principles of international water law, namely: (i) The Obligation not to cause significant harm, (ii) Equitable and reasonable utilization, (iii) Exchange of Information and Data, and (iv) Peaceful Settlement of Disputes.

15. With regards to the principle “not to cause significant harm”, and in line with the UN Convention, Article III of the DoP requires the three states to “take all appropriate measures to prevent the causing of significant harm in utilizing the Blue/Main Nile.” Where significant harm is nevertheless caused to one of the three states, Article III requires the state whose uses cause such harm, to take all appropriate measures “to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.”

16. Article VII of the DoP deals with the “Principle of Exchange of Information and Data” and requires each of the three states to “provide data and information needed for the conduct of the TNC joint studies in good faith and in a timely manner.”

17. With regards to the Principle of Peaceful Settlement of Disputes, Article X of the DoP requires the three states to settle disputes arising out of the interpretation or implementation of the DoP “amicably through consultation or negotiation in accordance with the principle of good faith.” Failing that, the DoP states that the
parties “may jointly request for conciliation, mediation, or refer the matter for the consideration of the Heads of State/Heads of Government.”

18. In addition to incorporating and elaborating these basic principles of international water law as codified in the UN Convention, the DoP sets forth in Article V the “Principle to Cooperate in the First Filling and Operation of the Dam.” This Article requires the three states to “implement the recommendations of the International Panel of Experts (IPoE), respect the final outcomes of the Tripartite National Committee (TNC) Final Report on the joint studies recommended in the IPoE Final Report throughout the different phases of the project.”

19. Moreover, Article V of the DoP requires that the three states “in the spirit of cooperation, will utilize the final outcomes of the joint studies, to be conducted as per the recommendations of the IPoE Report and agreed upon by the TNC to: (i) Agree on guidelines and rules for the first filling of GERD which shall cover all different scenarios, in parallel with the construction of GERD; (ii) Agree on guidelines and rules for the annual operation of GERD, which the owner of the dam may adjust from time to time”; and (iii) Inform the downstream countries of any unforeseen or urgent circumstances requiring adjustments in the operation of GERD”. Article V adds “the time line for the above-mentioned process shall be 15 months from the inception of the two studies recommended by the IPoE.”

20. With regards to the Principle of Dam safety, Article VIII of the DoP recorded appreciation of the three parties for “the efforts undertaken thus far by Ethiopia in implementing the IPoE recommendations pertinent to the GERD safety” and requires that “Ethiopia shall in good faith continue the full implementation of the Dam safety recommendations as per the IPoE report.”

21. It is worth adding that the Memoranda to the Security Council of both the Arab Republic of Egypt, and the Federal Democratic Republic of Ethiopia (dated 1 May 2020, and 14 May 2020, respectively) have reconﬁrmed their full commitment to the DoP.

22. For these reasons, Sudan remains fully committed to the DoP, and believes ﬁrmly that its provisions afford adequate, fair and appropriate grounds for resolving the remaining differences on the filling and operation of the GERD, and its safety, as well as the two studies, and for reaching a full and final (and not a partial) agreement on the GERD. Accordingly, Sudan believes and calls for the immediate resumption and continuation of the trilateral negotiations on the remaining differences on the GERD on the basis of the DoP, as well as good faith and cooperation, as the DoP itself stipulates.

IV. Sudan’s Position Throughout the Negotiations Process

23. Sudan’s long-standing policy is that cooperation would optimize the returns and benefits for all, and that benefits from large infrastructure projects should be
enhanced in order to address water and power scarcity and shortages in the region. Historically, Sudan has constructively contributed to all cooperative projects in the Nile. For example, the HYDROMET project (1967 to 1992), was mainly focusing on hydrological measurements at the Equatorial Lakes. Next, there was the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin (TECCONILE) from 1992 to 1998. The Nile Basin Initiative (NBI) established in 1999 and is continuing up to date. Sudan considers that without cooperation, unilateral actions will result in an exceedingly harmful situation that jeopardizes the regional security.

24. Committed to the significance of the River Nile as the source of livelihood and the major resource to the development of the three countries, and affirming Ethiopia’s right to benefit from the Nile, similar to the two downstream countries, Sudan explicitly and officially supported the GERD, at the highest official level (the President, Minister of Foreign Affairs, Minister of Water Resources and Irrigation), and held a number of meetings with water authorities of the neighboring countries, which culminated in establishing the International Panel of Experts (IPOE), the Trilateral National Committee (TNC), the nine Party Committee, and the National Independent Scientific Research Group (NIRSG).

25. From 2011, Sudan supported bringing the parties together for GERD trilateral talks including high level diplomatic visits. Accordingly, Sudan organized the main trilateral negotiations rounds in Khartoum (2013–2015) that culminated in the successful conclusion of the Agreement on the Declaration of Principles on the GERD signed by the leaders of the three countries in Khartoum, on 23rd March, 2015.

26. Putting the DoP into effect, Sudan has been instrumental in establishing the NISRG whose mandate includes “Discussing means of enhancing the level of understanding and cooperation among the three countries with regard to GERD, including discussing and developing various scenarios related to the filling and operation rules in accordance with the principle of equitable and reasonable utilization of shared water resources while taking all appropriate measures to prevent the causing of significant harm”.

27. Recalling all the above commitments to regional cooperation, and recognizing the right of Ethiopia to develop its shared water resources without causing significant harm to other Blue Nile riparian countries, Sudan is firmly committed to conclude a comprehensive agreement on the filling and operation of the GERD. The main areas of concern are: the dam safety, filling plans, variability and minimum releases from the GERD, data and information sharing, operation during normal and dry years, the coordination mechanism, and the socio-economic and environmental impacts resulting from the implementation of the GERD project.

28. The NISRG has conducted five rounds of negotiation held rotationally in the capitals of the three countries. Major achievement that has been made is the agreement on the GERD first filling to be in stages, as well as studying different scenarios for the initial filling. While, details of initial filling, long term
operation, and the coordination mechanism remained the main issues of disagreement between the countries at that stage.

29. Upon the request by Egypt to include the US and World Bank representatives as observers to the negotiations process, the ministers of foreign affairs and water resources and irrigation in the three countries, met in Washington, in the presence of the observers, on the 3rd November, 2019 and agreed on the way forward. Consequently five Ministerial and several technical sessions were held in Washington, plus one meeting in Khartoum. In the meetings held on February 12th and 13th, 2020 in Washington there was a major breakthrough where the three parties reached consensus on most of the issues on the negotiations table; and agreed to discuss and finalize the remaining issues during the next meeting to be held on 28th–29th Feb, 2020 in Washington.

30. However, Ethiopia did not attend the February 28th 2020 meeting in Washington. In line with its commitment to reach a comprehensive agreement, Sudan sent its negotiations team to Washington. However, Sudan refused to take part in any bilateral negotiations in the absence of the third party, because Sudan strongly believes that meaningful negotiations can only be conducted in the presence of the three parties.

31. Sudan also believes that the three countries can bring about the necessary, fair and just agreement. Therefore, despite being an important member of the Arab League, Sudan declined to endorse a resolution by the Arab League on the issue of the GERD. Sudan felt, despite the body’s good intentions, that the resolution will be counterproductive to the process and not in the best interest of encouraging finding a solution to the pending issues that is acceptable to all three countries.

V. Sudan’s Views and Efforts on Finding Solutions

32. In November 2019 the United States and the World Bank joined the negotiations process as observers. Their constructive and supportive role to the riparian countries helped to accelerate the frequency of the meetings and accordingly the three countries made significant progress in the negotiations which led to the start of drafting a comprehensive legal agreement.

33. However, it is worth noting here that the process of drafting the legal agreement was entirely led and driven by the riparian countries themselves. The kick-off meeting of the legal teams of the three countries was held in Khartoum, on January 22nd–23rd, 2019 and the discussions and drafting process continued in Washington D.C. in various sessions on January 28th to February 13th, 2020. By the last session concluded on February 13th, 2020 a draft agreement was in a very advanced stage with 90% of the issues agreed upon, and only few differences remained to be resolved.

34. Throughout the process Sudan negotiated in good faith, believed in and advocated for a comprehensive agreement inclusive of all three riparian countries.
For this reason when Ethiopia was unable to attend the last meeting which was supposed to be held on February 27, 2020, Sudan refrained from holding any talks that did not include all three parties. Similarly, when Ethiopia, later, proposed a partial agreement addressing the initial filling stage, Sudan again insisted that a comprehensive agreement addressing all issues is the only tenable way forward.

35. Thus, Sudan strongly believes that signing a partial agreement covering only the first stage filling will not be tenable because there are many other technical and legal issues which should be included in any agreement related to the filling and operation of the GERD. These include, but not limited to, the coordination mechanism, normal operation, data exchange, dam safety measures, and the pending environmental and social impacts studies.

36. Furthermore, Sudan strongly believes that reaching an agreement on the guidelines and rules for the first stage filling, prior to starting the filling of the GERD is extremely necessary and important for all parties, as GERD is a huge dam, built just 15 km from the border, with millions of Sudanese people living downstream along the river banks. Most importantly, GERD is only 100 km upstream of the Roseries Dam which is one-tenth smaller in size. Any unilateral decisions on the timing and rules of filling the GERD will put millions of lives and communities at risk.

37. The Prime Minister of Sudan held bilateral meetings with the Prime Ministers of Egypt and Ethiopia on May 19th and 21st, 2020 respectively. The objectives of these meetings were to bring all the parties back to the negotiations table with the view of finding solutions to the few pending issues. Sudan is grateful that both governments have agreed to resume negotiations and instructed their respective Ministers of Irrigation and Water Resources to start planning for the resumption of the tripartite meetings.

38. Based on the above mandate, the Sudanese Minister of Irrigation and Water Resources held several bilateral talks and meetings with his counterparts from Egypt and Ethiopia to start planning for the resumption of the trilateral negotiations.

VI. Conclusions and Recommendations

39. Sudan believes that the three countries are close to concluding a comprehensive deal. With the political will and commitment, the three parties can address the few remaining issues. Therefore, Sudan would like to request the Security Council to:

- Discourage all parties from taking unilateral actions including filling the GERD prior to concluding a comprehensive agreement; and
- Support Sudan’s efforts and call upon all parties to resume negotiations in good faith immediately
References

Case Concerning Pulp Millson The River Uruguay (Argentina Uruguay) ICJ Judgment of 20 April 2010 Lanoux Arbitration (France V. Spain), Arbitral Tribunal November 16, 1957
Cobb S, Rifkin J (1991) Practice and paradox: deconstructing neutrality in mediation. Law Soc Inq 16(1):35–62
Congressman Steven Horsford’s press release, 4 March 2020 at https://horsford.house.gov/media/press-releases/congressman-steven-horsford-questions-secretary-mnuchin-slot-tax-grand. Accessed 1 May 2020
Convention on the Law of the Non-Navigational Uses of International Watercourses, New York, 21 May 1997
Declarations On Principles Of International Law Concerning Friendly Relations And Co-Operation Among States In Accordance With The Charter Of The United Nations, General Assembly, 1883rd Plenary Meeting, 24 October 1970
Devlaeminck D (2019) The legal principle of reciprocity in the peaceful management of transboundary watercourses: the duty to cooperate, rules of procedure and self-help measures. Nat Resour J 59(2):301–320. https://doi.org/10.2307/26800039
Ethiopia Insight. Why Ethiopia rejected the U.S.-drafted GERD deal. April 2, 2020 at by Ethiopia Insight. Why Ethiopia rejected the U.S.-drafted GERD deal. 2 April 2020
Hendawi H (2020) Egypt’s El Sisi holds military meeting amid tension with Ethiopia. The National, 3 March 2020
https://english.aawsat.com/home/article/2148611/sudan-us-submitted-final-draft-gerd-agreement. Accessed 20 May 2020
https://www.ethiopia-insight.com/2020/04/02/why-ethiopia-rejected-the-u-s-drafted-gerd-deal/. Accessed 4 June 2020
http://www.lflp.org/laws666/lakelanoux.htm. Accessed 7 May 2020
International Crisis Group (2020) Nile Dam Talks: Unlocking a Dangerous Stalemate. 16 March 2020. https://www.crisisgroup.org/africa/horn-africa/ethiopia/nile-dam-talks-unlocking-dangerous-stalemate. Accessed 6 May 2020
Letter from the Ministry of Affairs to the President of the Council, ‘Annex: Grand Ethiopian Renaissance Dam: Sudan’s Position’, NO: SUN/201/20, June 2, 2020, page 4
Starkey J (2013) Ethiopia defies Egypt Bomb threat to back Nile dam. The Times, 15 June 2013
Statement attributable to the Spokesman for the Secretary-General on the Grand Ethiopian Renaissance Dam, 19 May 2020. https://news.un.org/en/story/2020/05/1064452. Accessed 20 May 2020
von Lossow T, Miehe L, Roll S (2020) Nile Conflict: Compensation Rather Than Mediation- How Europeans Can Lead an Alternative Way Forward. SWP Comment, No 11 March 2020. https://www.swp-berlin.org/fileadmin/contents/products/comments/2020C11_NileConflict.pdf
Yihdego Z (2020a) International Law Connotations of US-‘mediated’ Blue Nile Dam Negotiations and Outcomes: Background. Global Water Forum, 16 April, https://globalwaterforum.org/2020/04/16/international-law-connotations-of-us-mediated-blue-nile-dam-negotiations-and-outcomes-background/2020
Yihdego Z (2020b) Was USA’s involvement in Blue Nile Dam Negotiations a mediation or a coercion and intervention? Critical legal analysis and conclusions -Part IV. Global Water Forum, 23 April 2020 https://globalwaterforum.org/2020/04/23/was-usas-involvement-in-
Younes A, Ezrik KB (2020) US Submitted Final Draft of GERD Agreement. Al-Awsat, 25 February 2020

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