

## **Trilateral Talks on the Filling and Annual Operation of the GERD: Competing Demands and the Need for Revisiting the *Status quo* towards a Negotiated Settlement**

Ermyas A. Wolde\* and Abiot D. Habte\*\*

### **Abstract**

*The Nile River Basin, with eleven riparian countries, lacks any agreed-upon basin-wide legal framework. Attempts at effective management and utilization of water resources inclusive of all countries along the basin have not been possible due to lack of consensus on the legal basis of already existing colonial-era agreements that allocate an absolute share of the Nile water to Egypt and Sudan by excluding most of the upper riparians. The review has specifically focused on the trilateral negotiation processes between Ethiopia, Sudan, and Egypt since November 2019 on the filling and annual operation of the Grand Ethiopian Renaissance Dam, which Ethiopia has been constructing since 2011. It has made a thorough review of a series of events and processes through which the negotiation has passed to conduct a critical analysis of facts, and has suggested reflections on the way forward. It considers the need for political will and flexibility of the negotiating parties to reconcile existing contradictory positions. To this end, pursuing a revisionist approach to take the dynamic socio-economic realities and development needs of co-basin countries is commendable. This further requires renegotiating long existed colonial-era agreements and formulating a basin-wide legal framework in line with existing international standards. Focusing on technical and expertise level of discussions and outcomes would minimize over politicization and specifically would help to address the negative impacts of Grand Ethiopian Renaissance Dam and optimize positive externalities. Peace is a necessity than any other option among the co-basin countries and the only avenue towards sustainable resolution of disputes. Negotiating in good faith and in a 'give and take' modality needs to be a second to none alternative to the parties. The international community may also need to play a neutral and genuine role to assist the parties to settle their differences amicably and reach a final negotiated settlement.*

**Keywords:** *Agreement, Dam-filling, Negotiations, Nile Basin, Transboundary*

### **Introduction**

The demand for fresh water is increasing steadily at a global level with the increasing growth of the population at an alarming rate. Fresh water is an essential resource for human survival and the demand for it is growing at an unsustainable rate as populations have grown and nations industrialized. Readily available fresh water is a strategic resource to fulfill domestic needs, food production, livelihoods, power generation, industry, and navigation purposes. However, increasing population pressure added with effects of climate change made water resources subject to change over time and space that results in competition over access and use of such resources (Perlman *et al.*, 2017; Warner & Zawhari, 2012; Biswas, 2008). Especially, developing countries' demand for swift development and economic growth

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\* Jimma University, Ethiopia, Email: [ermyad@yahoo.com](mailto:ermyad@yahoo.com)

\*\* Jimma University, Ethiopia, Email: [abiot.habte@ju.edu.et](mailto:abiot.habte@ju.edu.et)

cannot be realized without the availability of adequate energy resources. Large-scale generation of electric power requires a large quantity of water. The reliable availability of adequate quality and quantity of water for agricultural production is also vital to feed the increasing demand for food in these countries (Biswas, 2008). In response to these changing circumstances, there has been an alteration of water resources through various mechanisms by users with the cumulative effect of changing the availability, quantity and quality of water resources for other users. Such alterations are potential sources of conflict (Perlman *et al.*, 2017).

Transboundary river basins, in this regard, are experiencing rapid physical and economic changes generating a new era of relationships among the nations sharing them (*Ibid.*). Nations, according to Benvenisti (2004), are faced with the choice between conflict and cooperation as regulation of transboundary resources became desirable due to hiking demands and advancing technology. Countries sharing an international river basin share a complex network of environmental, economic, political, and security issues carrying with it the potential for interstate conflict and opportunities for cooperation (Dinar, 2008).

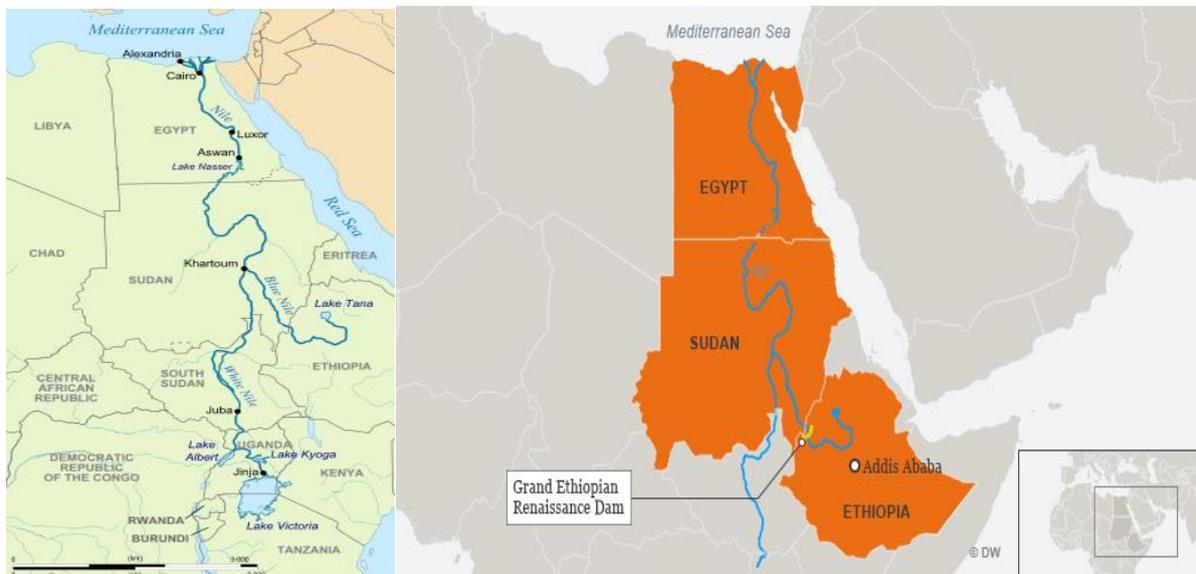
Efforts at water resource developments are complicated by existing conflicts among riparian states regarding economic development, infrastructural capacity, and political interests. This could be the reason why Biswas (2008) underlined that development and management of transboundary water resources sustainably and efficiently to ensure full cooperation and agreement of co-basin states resulting in a win-win situation is a very challenging and difficult task in the 21<sup>st</sup> Century. The actual process of allocating water among co-basin countries is the most difficult part in materializing a basin-wide cooperative agreement, particularly in the developing nations.

The Nile River Basin, which is the main focus of this review, is one of the most controversial river basins without a negotiated legal framework for water sharing and management. The existing colonial-era agreements are understood by most upper riparian countries as favoring mostly to the lower riparian countries, Egypt and Sudan, by distributing the entire water resources of the basin while the other nine riparian ones (Burundi, DR. Congo, Ethiopia, Eritrea, Kenya, Rwanda, South Sudan, Tanzania, and Uganda) are not parties to such agreements and are excluded from any meaningful utilization of the basin. Weibe (2001) posits that early agreements on the Nile River are very inadequate for managing and conserving the basin resources as they are basically formulated to entertain colonial

aspirations of the British on the basis of optimizing the economic and political importance of the Nile for a successful occupation. Hence, such treaties are being considered as an impediment to current day negotiations (Perlman *et al.*, 2017).

This article focuses on assessing and analyzing the negotiation process among Ethiopia, Egypt, and Sudan as co-basin states of the Nile, on the filling and annual operation of the Great Ethiopian Renaissance Dam (GERD), a 4.8 Billion USD hydroelectric power generation dam with 6450 Mega Watt capacity being constructed along the border with Sudan since 2011. The competing demands of the three countries over the filling and annual operation of the dam led to a deadlock diplomatic stalemate which may lead to destructive conflict unless a negotiated settlement is reached.

**Figure 1: The Nile River Basin**



Source: Google Map, 2020.

### **Rationales and Objectives of the Article**

Ethiopia's launching of the construction of the GERD in 2011 has been considered a watershed in changing the political landscape in the negotiation process towards a comprehensive legal framework in the management and utilization of the water resources along the Nile River Basin. The GERD marked a new era of trilateral negotiation process among Ethiopia, Egypt, and Sudan focusing on its probable impacts on downstream countries. The trilateral talks mainly focused on dealing with technical and legal matters of filling and operation of the dam. The three countries engaged in series of negotiations since 2013 that resulted in the formulation and signing of the Declaration of Principles (DoP) in

2015, a document that is specifically dedicated to set a framework for future agreements on setting guidelines for the filling and annual operation of the dam (Perlamm *et al.*, 2017).

This has demonstrated the choice of cooperation in action among historically rival countries to come to the negotiation table over shared Nile water resources (*Ibid.*). Trilateral talks have been going on since the signing of the DoP but the ongoing negotiation process has started in May 2018 and several discussions were held at technical, expertise, ministerial and Heads of States/ Governments levels. Ethiopia's announcement to start the first phase of filling of the dam in July 2020 intensified the tones of the diplomatic process and the frequency with which the trilateral talks are taking place.

The inability of the United States of America (USA) and World Bank (WB) led negotiation process, from November 2019 to February 2020, to bring a breakthrough has further exacerbated the political stalemate and broadened the differences among the negotiating parties at times even escalating in threats of war. In this regard, the appeal letters presented by all the parties to the United Nations Security Council (UNSC) exhibit the prevailing disparities in terms of demands and interests that are unreconciled and unmet due to the state of intransigence character that each party points against each other (MoFA, 2020a; MoFAARE, 2020a; MoFARS, 2020a).

Conflicts over the Nile water would spread out into already existing conflicts in the Horn of Africa adding more complexity to the instability of the region and making it harder to address peace and security challenges in the region (Mbote, 2007). Hence, the review is conducted on a very timely issue that has dragged the attention of politicians, policymakers, experts, the general public, and regional and global multilateral organizations. Capturing the series of events of the trilateral negotiation process and analyzing the ups and downs in a comprehensive manner could contribute to improve understanding regarding the point of views of the three actors and may indicate future directions.

To this effect, the paper was specifically aimed at: (i) describing and analyzing the context and processes of the ongoing trilateral negotiations on the filling and annual operation of the GERD; (ii) exploring and identifying the factors that hinder a negotiated settlement among the parties, *i.e.* Ethiopia, Egypt and Sudan, on the GERD talks; and (iii) suggesting the way forward by pinpointing basic issues that negotiating parties should take into account for a peaceful settlement of the dispute. In doing so, the paper has produced a more or less full-

fledged document on the incidents and series of events of the trilateral talks in a more analytical manner beyond a mere presentation of facts.

### **Theoretical Framework**

Transboundary water conflicts vary significantly across different basins and times reflected in the form of hostilities having effects on participants and even sometimes beyond. These conflicts usually occur alongside with different forms of cooperation. Transboundary water interactions are also accompanied by complex interests, illusions, power games, and distrust in a political process (Zeitounae & Mirmachi, 2008).

The literature reveals the nature and magnitude of interactions among riparian countries in a river basin categorized in value-based terms as negative, neutral and positive interactions. *Negative interactions* exhibit a state of interactions with a significant degree of resentment among one or more of the co-basin states characterized by high conflict and low cooperation kind of interaction “driven by attempts to capture control of the resources or to contain asymmetric outcome” (*Ibid.*, p. 309). The desire to maintain control and historically existed distrust may reinforce negative interactions. *Positive interaction*, on the other hand, indicates the set of interactions that accommodates the interest of all actors ensuring sustained relations at a broader political level characterized by low conflict and high cooperation. Transboundary water that represents an interaction having little or no effect on the broader political context and characterized by a minimally cooperative and conflictual relationship is *neutral interaction* (*Ibid.*).

Sustainable and efficient management and development of transboundary water resources with full agreement and cooperation among co-basin riparian countries is not an easy task due to constraints arising from various factors of which state sovereignty and absence of agreement on the modalities of managing such resources are major ones (Biswas, 2008). Nonetheless, there are three major notable theories that are being used to define the relationship among countries sharing transboundary water resources and from which water conventions, treaties and agreements are originating. The *absolute territorial sovereignty* theory holds the idea that co-basin states enjoy exclusive authority over the water of an international watercourse within their territory. Hence, they consider themselves of not being duty-bound to consult impacts of utilization on other riparian countries. This entails

utilizations without bearing the needs of downstream countries in mind. *The absolute territorial integrity* theory favors the interests of downstream countries entrusting them with the right to the natural flow of the water into their territories. Therefore, interfering with the natural flow of the upstream country requires the consent of downstream countries. The third theory, *limited territorial sovereignty*, accommodates the interests of all riparian countries by stating that the right to use an international watercourse is limited by the rights of other riparian countries to use the watercourse. It empowers every co-basin state to use shared rivers flowing on its territory as long as such utilization does not violate the rights and interests of other co-riparian (*Ibid.*).

In practice, most upstream countries tend to go along the theory of absolute territorial sovereignty, while downstream countries favor the principles of absolute territorial integrity. However, the doctrine of limited territorial integrity is reflected most in the vast majority of international water agreements including the UN convention on non-navigational use of international watercourse upholding major principles such as equitable and reasonable utilization, obligation not to cause significant harm, exchange of data and information and peaceful settlement of disputes (UN, 1997). Considerations of national sovereignty issues might escalate the controversial nature of transboundary water management issues while such resources must be treated as shared and regulated by norms beyond each nation's unilateral measures to gain optimal and sustainable resources (Benevenisti, 2004; Biswas, 2008).

### **Materials and Methods**

This review is conducted with the aim of capturing the negotiation process between Ethiopia, Egypt and Sudan on the filling and annual operation of the GERD, and analyzing the series of events, revealing the major points of departure among the three parties and commenting on the way forward. Though the review is limited to explicating the trilateral talks since November 2019, it established historical facts on already existing treaties and agreements on the Nile Basin to enable a comprehensive understating of the ongoing process. It, therefore, made a thorough investigation and analysis of legal frameworks and treaties in the past and the possibility of their applications in the existing circumstances.

The review mainly depended on the extraction of facts from treaties, agreements, cooperative frameworks, and principles that have been established among the Nile Basin riparian countries across different periods and under various circumstances. The investigators have also made all possible efforts to capture a series of events of the negotiation process from

varieties of media outlets, official letters, communiqués, press releases and official statements from governments and international organizations. The facts are organized in a systematic manner and maintained in chronological order, which is supplemented with analysis by indicating directions towards achieving a negotiated settlement of the matter. The facts are also cross-examined and triangulated with the existing literature on cooperative frameworks and conflicts on transboundary water resources to forward critical reflections.

## **Results**

### ***The Nile: A River Basin without a Legal Framework***

The Nile is one of the river basins where conflicts are persisting over distribution, co-management and utilization of water resources among its riparian countries (Zeitoun & Mirumachi, 2008). Legal frameworks on the utilization and distribution of water shares have been formulated since the early 20<sup>th</sup> Century among some of the actors and stakeholders, which in most cases are conducted either under the influence of colonial forces of the time or with the exclusion of most countries along the basin when concluded between downstream countries.

Three such agreements, concluded in 1902, 1929 and 1959, are notable. The 1902 treaty was signed between Ethiopia and Britain representing its colony, Sudan with the aim of demarcating the boundary between the two countries. However, the agreement included a provision that precluded Ethiopia from constructing or allowing any construction across the Blue Nile, Lake Tana and the Sobat that could arrest the flow of the water down streams. Such a project, according to the treaty, can be carried out only in agreement with the British colonial administration in Sudan (Wiebe, 2001). Later, in 1929, Egypt and Britain concluded a bilateral agreement with the later representing its East African colonial boundaries (Sudan, Kenya, Uganda and Tanganyika). The treaty outrightly recognized the historical and natural rights of Egypt giving it uncontested veto power over construction projects along the Nile and its tributaries. Moreover, the 1959 bilateral treaty between Egypt and Sudan nailed the historical and natural rights of the two downstream countries by respectively allocating 66% and 22% of the Nile water (*Ibid.*).

The first post-colonial era initiative towards basin-wide cooperation along the Nile basin was launched in the 2010s when the “riparian entered into a multi-stakeholder bargaining process” with the facilitation and support of bilateral and multilateral aid institutions. The initiative finally came with the Nile Basin Initiative (NBI) in 1999, setting the platform for a

basin-wide treaty (Warner & Zawahri, 2012, p. 219). The NBI paved the way for a new comprehensive legal framework for the management of the Nile basin (Mbote, 2007) named as “the Comprehensive Framework Agreement (CFA)”. Egypt was for the first time forced to engage in multilateral relations over the Nile along with other basin states (Zeitoune & Mirumachi, 2008).

The CFA recognized the importance of the Nile River to the economic and social wellbeing of the people in the riparian countries and stressed the importance of strengthening cooperation among them. The framework formulates the establishment of “the Nile River Basin Commission” as an intergovernmental organization to “promote and facilitate the implementation of the principles, rights and obligations provided in the framework” (CFA, 2010, p. 26). The CFA can be considered as the first all-inclusive and organized effort to institute a legal framework for fair and equitable utilization of the Nile River basin water resources. The agreement has been open for signature since May 14, 2010 at Entebbe, Uganda, and it was supposed to become operational after signing and approval by six of the then ten riparian countries. Till now, six countries signed it, and four have already ratified.

Securing and sustaining existing water share has been an obstacle to the realization of the CFA. The major sticking point was on the water security where many of the upper riparians advocated putting each state in the basin under obligation “not to significantly affect the water security of the other.” On the other hand, lower riparian countries, such as Egypt proposed the inclusion of a provision that “obliges all basin states not to adversely affect the water security and current uses and rights of any other Nile Basin state” (Mahemud, 2020). The other lower riparian countries equated this claim to sustaining the already existing colonial-era treaties along the Basin.

### **The GERD and Declaration of Principles**

Ethiopia launched the construction of the GERD in 2011. Prior to this, most of the projects along the Nile Basin for the use of the Nile water resources were undertaken mainly by Egypt and Sudan. Warner and Zawahri (2004, p. 219) opine “Egypt’s hegemony on the Nile has long impeded hydraulic development along the Nile” and Ethiopia pursued the construction of the dam over objection by the downstream powerful nation of Egypt as well as Sudan (Perlman *et al.*, 2017).

After the launching of the GERD, concerns were raised by Egypt and Sudan over the operation of the dam. Then, the three actors were engaged in series of negotiations since 2013 that resulted in a specific legal framework involving only the three countries focusing only on the filling and annual operation of the dam, the Declaration of Principles (DoP) signed in March 2015 (Perlman *et al.*, 2017). They are expected to agree on guidelines and rules on the first filling and annual operation of the dam, a process that should be accomplished within fifteen months since the launching of technical and expertise level studies (DoP, 2015). The other important provision of the DoP is regarding the peaceful settlement of disputes whereby any dispute arising out of the implementation and interpretation of the DoP shall be resolved in consultation and amicably with the spirit of cooperation and good faith. If such attempts fail, the matters could be forwarded for considerations by heads of states/governments of each country or may jointly request for conciliation and mediation (*Ibid.*).

The application and interpretation of the DoP have become a major sticky point in the negotiation process since November 2019 at the point where Ethiopia is finalizing the construction of the dam and officially announced its plan for first-round filling in July 2020. Diplomatic wrangling and, at times, the threats of war are being experienced due to the absence of negotiated settlement and polarized demands made it more complex and difficult to reach compromise.

### **Competing Demands on the Filling and Operation of the Dam**

Though the DoP (2015) provides a fifteen months timeline for the preparation of rules and guidelines on the filling and annual operation of the dam, this has not been achieved due to lack of conclusive agreement for which both parties accuse each other. The process, therefore, has been lingering until Ethiopia's announcement of the first step filling of the dam set to take place in July 2020.

Such a move triggered a new round of diplomatic discord where the downstream countries demanded Ethiopia not to take any "unilateral action" in filling the dam before a settled agreement is reached among the three actors. It is with this background that the United States of America (USA) and World Bank (WB) initiated a negotiation process in November 2019, assuming observer status. Many rounds of trilateral talks took place among the three parties on the filling and annual operation of the GERD which finally ended without resulting in any settlement acceptable to the three parties with Ethiopia withdrawing from the process rejecting the draft agreement proposed by the USA and WB on condition of its inability to

address issues of fundamental concern to its national interest (MoFA, 2020a). Egypt, after a failed attempt to convince Ethiopia and Sudan to sign the agreement, took the matter to the United Nations Security Council (UNSC) by writing a letter of appeal on 1<sup>st</sup> May 2020.

In a letter addressed to the UNSC on 14<sup>th</sup> May 2020, Ethiopia stated that 86% of the Nile water originates from its mountains, but its need for use has been arrested for centuries on the basis of colonial-era treaties to which it is not a party but allocated lion's share of the water resources of the basin to Egypt. Egypt, based upon such treaties, introduces a "self-claimed notion of historic rights and current use" (*Ibid.*, p. 1). The GERD, according to Ethiopia's view, is a "vital project of the enormous potential for cooperation and regional integration", the benefits of which are going beyond Ethiopia, including Egypt itself. It should be noted that it is very crucial for the survival, development and prosperity of Ethiopia and its people.

The country is in urgent need to lift millions of its citizens out of extreme poverty struck frequently with recurrent drought and food insecurity. It is yet to provide electric power to 65% of its population and meet the demands for energy that is growing by 19% annually with the majority of its rural population depending on firewood as a source of energy accelerating deforestation. This may reduce the vitality of the Nile and should be a matter of high concern for Egypt as well. The GERD, therefore, is instrumental to the national development efforts of Ethiopia in spurring development through industrialization and alleviation of chronic energy deficit. Ethiopia has legitimate and sovereign rights to use the Nile water without causing significant harm to downstream countries (*Ibid.*).

Egypt has also addressed its concern to the UNSC in a letter officially released on 1<sup>st</sup> May 2020. In the appeal letter, Egypt mentioned its "hydrological precarious situation" due to high dependence for fresh water on the Nile basin. An upstream project, according to the letter, that comes with a shortage of water could be catastrophic in terms of cultivation, food security, high urbanization and migration. It, generally, underlined Egypt's vulnerability to any waterworks undertaken in the Ethiopia highlands (MoFAARE, 2020a, p. 9).

The commencement of the construction of the GERD on the 2<sup>nd</sup> April 2011, for Egypt, is a "unilateral action", to which downstream countries that could be invariably affected by such a project are not consulted, so it represents a breach of Ethiopia's international legal obligation. The unilateral filling of the dam was regarded as a development that jeopardizes the water and food security of 100 million Egyptians. It could cause significant harm to downstream

countries and pose threat to the peace and security in the region. Hence, the international community is deemed to put pressure upon Ethiopia to refrain from unilateral actions (*Ibid.*).

The Sudanese side of the story was expressed in a letter addressed to the UNSC on 2<sup>nd</sup> June 2020. It emphasized that Sudan is an important riparian country to the Blue Nile and an immediate downstream country to the GERD, and it could be impacted the most by it. The Blue Nile is the lifeline of Sudan's 40 million people serving 70% of irrigated land and the heart of agricultural activities in the country (MoFARS, 2020a). Sudan understood the dam to be "a towering permanent structure presence with the potential of bringing both positive and negative impacts to Sudan." The GERD, for Sudan, will have positive impacts in terms of regulating the water flow of the Blue Nile reducing the annual flow of floods and ensuring better management of its dams. It also enhances the navigational depth of both the Blue Nile and the main Nile rivers. However, for Sudan, the dam effects change in the "flow regime of the Blue Nile." It raised technical and safety-related matters of the dam and the risks associated with faulty design, construction and operation which might threaten the lives of its people and safety and operation of its dams. It also indicated environmental impacts across the basin alongside its boarder (*Ibid.*, p. 2). Sudan recognized Ethiopia's right to develop its water resources but underlined the vitality of addressing negative impacts in consultation with downstream countries (*Ibid.*).

The three parties also reflected contradictory positions on the understanding and interpretation of the DoP as Ethiopia announces the first round impoundment of the dam in July 2020. Ethiopia clearly underlined that its decision is in line with the DoP quoting principle five from the document where filling of the dam is part of the construction process to which Egypt is fully informed and fully consented by signing the agreement (MoFA, 2020a). Egypt's position, on the other hand, reflects that the DoP puts Ethiopia under a full international obligation not to commence the impoundment of the dam before reaching an agreement governing the filling and operation of the dam with Egypt (MoFAARE, 2020a). Such misinterpretations and understandings of the DoP escalated the conflicting demands and put the three actors in stark diplomatic spats hindering the success of the negotiation process.

### **Contradictory Views on the USA and WB Brokered Deal Process**

The USA and WB joined the negotiation process in November 2019 as observers with the aim of supporting the three countries reach a final agreement on the filling and operation of the dam. Twelve rounds of meetings were held at the Ministerial and experts level with the

attendance of the representatives from the USA and WB that finally resulted in the formulation of agreement on the filling and operation of the GERD (MoFAARE, 2020a).

The three parties have different and contradictory positions about the final outcome of the negotiation process brokered by the USA and WB. The proposal by the two observers was questioned by Ethiopia, which requested for postponement of the meeting scheduled to take place on February 28, 2020 (MoFA, 2020a). However, the meeting went on and Egypt took a strong stand for all the parties to accept and sign the agreement. In the eyes of Egypt, “the agreement is fair, balanced and mutually beneficial and prepared on the basis of positions espoused by the three parties”. It satisfies Ethiopia’s demand to expeditiously generate hydropower and, at the same time, protects downstream states from the adverse effects of the GERD (MoFAARE, 2020a).

Sudan, on the other hand, took a position of both a ‘party’ in the negotiation process and also a ‘mediator’ to convince the two parties to resume talks when the process is stalled. Sudan viewed the process as instrumental in helping to achieve major progress on key issues but only unfortunately stalled due to “the escalation in rhetoric statements from both Egypt and Ethiopia” (MoFARS, 2020a). It expressed its efforts in convincing the other two parties to come back to the negotiation table to resolve a few of the remaining differences standing on the way of a final negotiated settlement. A comprehensive deal involving all the three parties is expressed to be the core interest of Sudan in the trilateral talks.

Ethiopia’s withdrawal from the USA and WB brokered negotiation process, which Egypt claimed to fairly address all fundamental matters of significance to the three parties, is on the ground of its inability to resolve “outstanding difference on matters of fundamental importance that have far-reaching consequence for the interests of Ethiopia and contravening the DoP” (MoFA, 2020a, p. 10). The proposal, from the viewpoint of Ethiopia, severely limits the capacity of the dam to generate electricity by imposing rules that are impractical for filling and operating the dam. Moreover, it curtails the rights of any future efforts of upstream water resources development and undermines its sovereign rights to operate its own dam. This is in line with Egypt’s request to open an office at the GERD site for joint management and insistence to shift all draught time burdens towards Ethiopia by obliging to maintain the water level at High Aswan Dam (HAD) to 165 meters Above Sea Level (ASL). The official communication from Egypt’s side about the completion of the negotiation is blatant disinformation as the negotiation cannot be completed before addressing Ethiopia’s

fundamental concerns and no mediation has taken place as no mediator is invited in line with the principles of the DoP (*Ibid.*).

### ***The Role of the USA and WB: Observers or Mediators?***

Though the DoP prioritized an internal dispute resolution mechanism, Egypt, has unilaterally called for the international mediation of the USA and WB through its letter to the UNSC on 1<sup>st</sup> May 2010. Ethiopia stated that it accommodated Egypt's unilateral move "in good faith and to show flexibility" and to give a chance to the success of the trilateral talks, though the move is not in line with the DoP (MoFA, 2020a, p. 9).

The USA and WB observership, however, took a different form and came under question after the USA Treasury Department's official announcement of warning Ethiopia to sign the agreement and not to proceed with the first filling of the dam before reaching an agreement with the other two parties (US Department of Treasury, 2020). This has reiterated Egypt's stance on the matter and casted doubt on the neutrality of the USA as an 'observer' of the trilateral talks. Ethiopia, in line with this, raised its concerns on the legality of the USA's role stating that "negotiation is not completed and no mediator is invited as the DoP requires" (*Ibid.*, p., iii). In the eyes of Ethiopia, the WB and USA played only an observer role during the negotiation process and would not be in a position to impose a proposal on any of the parties.

The USA has again expressed its position on the matter after the failed video conference trilateral discussions from 9-17<sup>th</sup> June 2020. A tweet from the United States National Security Council restraining Ethiopia from filling the dam "unequivocally echoes Egyptians interest on the issue and again indicated US's clear position" (Solomon, 2020, p.11). In line with this, seven former African Affairs Assistant Secretaries, in a letter addressed to the Undersecretary of State Political Affairs of the USA, urged the USA to embrace neutrality in the negotiation process. Any perception on the absence of the US neutrality in the process, according to the letter, will limit its ability to support efforts to reach a negotiated settlement. Any pressure on Ethiopia "would harden position and makes compromise difficult" (Worku, 2020, p. 2). Ethiopia has suggested three major avenues including: discussions between heads of states, the continuation of already started NBI and the AU to find a regional remedy for regional disputes (MoFA, 2020a).

### **The Video Conference and Ensuing Outcomes**

The three parties agreed to resume the trilateral talks through a virtual video conference with Sudan taking the initiative to mediate between Ethiopia and Egypt itself being one of the parties to the ongoing talks. Sudan held a bilateral talk with the other two parties to finally arrange the virtual discussions which were held from 9-17<sup>th</sup> June 2020. The Republic of South Africa, the European Union (EU) and the USA were invited as observers. The countries, in the first few days, reached understanding on the first stage of filling, the volume of environmental flow, guidelines for first stage of filling and approaches to draught management rules (Kiram, 2020).

Diplomatic discords and conflicting understanding of the negotiation process were being however reflected sooner than expected. Within two days into the negotiation process, Egypt's Ministry of Water Resources and Irrigation released an official statement that no fruitful outcome will be expected from the ongoing trilateral negotiation due to Ethiopia's "intransigent position" even though an agreement has to be reached before Ethiopia starts first filling in July 2020. The statement indicates that "consensus is reached on none of the discussion points" and Ethiopia is trying to force Egypt either to sign an agreement of its interest or else it will fill the dam anyways (Egypt Independent, 2020a).

Sudan and Ethiopia have a very different understanding of the negotiation projecting positive and constructive explanation regarding its outcomes. Sudan confirmed that the three countries reached an agreement on 90% of issues related to the GERD except for a few outstanding legal matters (Egypt Independent, 2020b). Ethiopia, on the other hand, criticized Egypt's pessimism on the latest round of talks and expressed that understanding was reached on many important matters and also urged Egypt to stop issuing confusing statements and continuing diplomatic pressure while negotiating (Addis, 2020).

The key issues of disagreement as presented by Ethiopia constitute few major points. This relates in the first place with the annual operation of the dam where the release from the storage during drought years should not impede the operational flexibility of the GERD. Sharing of draught season water shortage burden among the three countries is also the second point of departure. Ethiopia thirdly took a stand not to tie the future water resources development of upstream countries with the GERD negotiation process and the current negotiation process not to contradict the basic tenets of the CFA as a promising basin-wide legal framework. It also took a firm stand on the inseparability of the impoundment of the dam from the construction process as per the DoP (FBC, 2020a).

With these developments, Egypt on 19<sup>th</sup> June took the matter officially to the UNSC for the second time in less than two months. As per the appeal letter, filling the GERD without a negotiated settlement poses a “clear and present danger to Egypt and threatens international peace and security”. It based its request on Article 35 of the UN Charter which allows a member state to alert the Council on any update that threatens international peace and security. Egypt requested the UNSC “to urgently consider the issue under agenda item peace and security in Africa” (Egypt Today, 2020; MoFAARE, 2020b, p. 3).

Ethiopia, similarly, submitted its appeal to the UNSC in a letter addressed on 22<sup>nd</sup> June 2020. It primarily condemned Egypt’s withdrawal from the negotiation process while it was going on. Egypt also bypassed all regional and continental mechanisms of settling disputes by taking the matter to the highest possible institutional mechanism undermining the possibility of finding “African solution to African problem” (MoFA, 2020b). As per Ethiopia’s stand, “nothing can be further from the truth” than suggesting that the issue constitutes a threat to international peace and security. The negotiation is only about filling and operation of a single dam and “can’t by any means invite invocation of the mandate of the Security Council under article 5 of the charter”. Lack of progress in the trilateral talks, for Ethiopia, is due to Egypt’s insistence on “historic rights and current use” principles. Ethiopia accommodated Egypt’s demand at the expense of the optimal operation of the dam and its own benefits. Ethiopia requested the UN to “reject Egypt’s unwarranted demand to ensure the continuity of unequal colonial-era agreement” (*Ibid.*, p. 4).

Sudan, on its part, announced its unreserved diplomatic efforts to convince the other two parties to resume the trilateral negotiations in a letter addressed to the UNSC on 24<sup>th</sup> June 2020. The virtual negotiations, for Sudan, “succeeded in bridging the divergent views and positions” and progressed towards the major technical matters while fundamental legal issues are yet to be resolved (MoFARS, 2020b, p. 1).

The UNSC, as per the call from Egypt, held a video conference on 22<sup>nd</sup> June 2020 but failed to agree on an open discussion in the presence of all concerned parties and finally ruled the three parties to continue their trilateral negotiation. Divergent views were reflected in the UNSC where the USA pushed for the open discussion favoring Egypt’s stance. China suggested for the principle of subsidiarity recommending on the importance of looking for “African Solution to African problem”, while South Africa and Nigeria similarly advocated the resumption of the trilateral talks and the African Union (AU) to play its own role in

resolving the matter (EBC, 2020). A strong statement or resolution from the UNSC restraining Ethiopia from filling the dam was in the best interest of the USA aligning with Egypt (Addis Standard, 2020).

The Arab League has also been brought to the diplomatic front by Egypt as an instrument of putting more pressure on Ethiopia and securing Egypt's interest in the trilateral talks, though, Qatar, Somalia and Djibouti failed to support Egypt's proposal to take the matter to the UNSC and restraining from unilaterally filling the dam (FBC, 2020b). Egypt, later on, made a statement that it will be "explicit and clear about its position if the UNSC intervention to resolve the disputes arising from Ethiopia's GERD is not successful", hinting the possibility of military measure (Middle East Monitor, 2020a).

### ***Coming Back to Africa with the AU Brokered Deal***

The idea of finding an "African solution to African problem" has got prominence when the three parties once again resumed the trilateral talks through the mediation of the AU. The extraordinary meeting of the AU Assembly regarding the ongoing trilateral negotiation process among the three parties was held virtually on 26<sup>th</sup> June 2020. The meeting was convened by Cyril Ramaphosa, President of the Republic of South Africa and Chairman of the African Union Assembly. The leaders of the three states presented on the status of the negotiation process after underscoring the importance of seeking African solution to African problem. Thus, the UNSC requested to take note of the AU seizing the matter (PM Office, 2020).

The heads of states accordingly agreed to reconvene in two weeks' time to report on the outcome of the trilateral talks (African Union, 2020, p.3). A press release from the Office of the Prime Minister clarified that "Ethiopia scheduled to begin filling the dam within two weeks during which the remaining construction work will be done." It is within this period that the three countries are expected to reach an agreement on the pending matters (PM Office, 2020, p. 1).

The three countries' agreement for an AU-led negotiation process was followed by UNSC's open discussion on 29<sup>th</sup> June 2020 where the three countries forwarded their points of view. Most of the member countries in the UNSC called for a "continued dialogue" under the initiative of South Africa led the AU negotiation process. The UNSC applauded the AU's effort and emphasized the importance of the parties' full commitment and political will for a

compromise to reach a final agreement focusing on their remaining differences (Al-Monitor, 2020a; UN News, 2020).

The AU led first-round talks started on 3<sup>rd</sup> July 2020 and ended after eleven days. Reports came out that the three countries have not been able to resolve their differences reflecting continued disagreements. They have at the end agreed only to submit reports to South Africa regarding the final outcomes of the first round talks and possibly restart the talks to decide on the next steps (Egypt Independent, 2020c). The most persisting matters are still attached to technical and legal disagreements, the amount of water to release during a multiyear drought and future dispute resolution mechanisms. The legally binding nature of the agreement is construed by Ethiopia as an obstacle to its future development efforts along the Nile Basin (Aljezeera News, 2020).

Ethiopia's announcement of the initial filling of the GERD on 14<sup>th</sup> July 2020, just after the reported deadlock of the first round talks, invited political outrage and demanding clarification by Egypt and Sudan regarding the validity of the information. The Ethiopian Ministry of Water, Irrigation and Energy stated that construction and filling of the dam are "one and the same" process and filling should not wait for completion and the water level rose from 525 to 560 meters (Middle East Monitor, 2020b). Later on, the information was rephrased by the Ethiopian authorities that "filling had not begun" and the heavy rainfall that led to the huge flow of water to the dam is the major source of confusion. However, in only a week's time, Ethiopia announced the completion of the first round filling of the dam on an official press release on 22<sup>nd</sup> July by PM Abiy Ahmed. The filling was attributed mainly to highly increasing precipitation leading to an increase in water level overtopping the dam well ahead of the schedule (Ethiopian Herald, 2020).

The PM stated that Ethiopia has no intention of harming Sudan and Egypt in the process of construction and operation of the dam. The dam's first filling is completed without reducing the water flowing to them. This, according to him, shows to the world the soundness of Ethiopia's argument that the dam poses no harm to downstream countries (*Ibid.*). Ethiopia's move faced strong criticism from Egypt and Sudan, which questioned the feasibility of continuing the negotiation process and the possibility of reaching a fair agreement. Sudan expressed it as "a harmful and disturbing precedent in the course of cooperation between the countries concerned" (Al-Monitor, 2020b; Tesfalem, 2020).

The 2<sup>nd</sup> round of AU-led talks started on 27<sup>th</sup> July 2020 while Egypt and Sudan were expressing their concern on Ethiopia's first filling of the dam and underlining its official announcement of "not seeking a binding agreement but a guiding agreement that can be modified as needed." Ethiopia's stand is counter to their need to reach a comprehensive agreement seeking assurance to their long-existed water share rights (Al-Monitor, 2020b). The 2<sup>nd</sup> round of talks, later on, came to a halt on 5<sup>th</sup> August after Egypt and Sudan announced the suspension of talks due to Ethiopia's new proposal constituting draft guidelines on rules of filling the dam neglecting provisions on operating rules and the legally binding nature of the agreement (Arab News, 2020). The proposal reflected Ethiopia's firm stand of not wanting to sign a legally binding agreement under international law with a capacity to subject its future projects on the Blue Nile to the consent of Sudan and Egypt. It also took a stand that a sustainable water-sharing agreement should involve the other basin countries (Sudan Tribune, 2020).

### Discussion

The theoretical discussion in the review indicated three major scenarios of interactions among countries in a river basin namely: *positive, negative and neutral interactions* (Zeitounae & Mirmachi, 2008). The results implied that the Nile Basin countries in general and three countries involved in the current trilateral talks, in particular, have been exerting efforts to formulate a cooperative basin-wide framework to address their conflicting interest. This shows that they are in the process of transiting from negative interaction characterized by "high conflict and low cooperation" to positive interaction with the ability to accommodate the interest of all the actors ensuring sustained relations at a broader level. However, this all depends on the outcome of the ongoing and upcoming negotiation processes to formulate an all-inclusive benefits packages to interested parties which again all depends on the political will and commitment to accommodate each other's interests and redefine existed relations and legal frameworks.

The results also indicated that in the Nile Basin, Egypt as a lower riparian country asserts the "prior" or "historical use doctrine" as well as the "no harm" doctrine emphasizing the upper riparian countries should not use the water resources in a way that harms the interests of downstream countries, which takes its stand closer to the *absolute territorial integrity* theory. On the other hand, even though Ethiopia is expected to uphold the principles of *absolute territorial sovereignty* that advocates the unconditional use of the water by an upstream

country, in reality, it is involved in benefit sharing and cooperative agreements with the downstream countries. This may demonstrate that Ethiopia as a country, which has never used a river basin to which it contributes a significant share of the water, is trying to renegotiate the *status quo* claiming a fair share of the water resources from the basin. The discussions below also confirm the alignment of the existing scenario among the basin countries with the available theoretical literature.

According to Mbote (2007), co-basin states are highly interdependent and their ability to gain benefits is linked with the hydrological cycle of the river crossing their boundary. In light of this, the Nile Basin countries can achieve sustainable development and regional stability “under a sound legal and institutional framework” inclusive of all parties (*Ibid.*, p. 5). Cooperative water regimes, once formulated among riparian, remain to be resilient over time even when countries are in conflict due to other issues. Such frameworks help to resolve tensions arising out of the “distributional nature of water conflict” avoiding the scramble for a larger share of water resources from the basin (Zeitoune & Miruachi, 2008, p. 300).

International transboundary water conflicts may be resolved through benefit sharing. The main idea of benefit sharing is that “the riparian states should not seek the water itself, but instead share various benefits from the water itself” and through such agreement “a zero-sum game of water sharing is being replaced by a positive-sum game of benefit-sharing” (Dombrowsky, 2009, p. 125). The discussions best explain the existing conflicts among the Nile co-basin states indicating the importance of basin-wide legal frameworks inclusive of all parties. Transboundary river conflicts are more of an outcome of how water is governed than a scarcity of water (Perlman *et al.*, 2017).

However, the most important issue is how to achieve a cooperative framework of agreeable outcome to all the parties involved. In this regard, countries sharing transboundary river may be convinced in formulating equitable and fair legal framework, but may not agree on the how. Ethiopia’s practical move by starting the construction of the GERD in 2011 is considered by many as a breakthrough and altered the political landscape over the Nile Basin as no such meaningful developmental project has been previously attempted by any of the other upper riparian countries. This is the reason why Egypt and Sudan entered into intensive trilateral talks in order to regulate the filling and operation of the dam. According to Warner and Zawahri (2012), the interest in negotiation and the potential outcome might be influenced by their geographical location along the river and distribution of military and economic

power among the riparian countries. Upstream countries tend to use water to gain political control, while their downstream counterparts may use military power to gain more control of the water.

In the current negotiation process, Ethiopia is asserting its right to use a water resource significantly originating from its territory due to its pressing need for achieving development and reducing poverty. Egypt, on the other hand, has been insisting to maintain its historical rights. Hence, the negotiation process is stalling in between maintaining and revising the *status quo*. Zeitoune and Mirumachi (2008) highlighted the nature of transboundary interactions as a political process subject to the whims of power. This is mainly true in the absence of legal constraints and well-defined rights (Benevenisti, 2004).

Regardless of perceived power positions, negotiating parties cannot rule the importance of flexibility and readiness to concede to the needs and demands of others in order to resolve contradictory views and reach a negotiated settlement of sustainable outcome. Allan and Mirumachi (2007) argue that a successful water management and allocation scheme should take changing circumstances such as intensities of conflict and cooperation and politico-economic dynamics into account. Intensification of conflict over the use and management of the Nile Basin and evolving needs to achieve swift economic development by many upper riparian countries implies the need for new thinking and legal framework than sticking to long existed trends.

The modalities, with which negotiations have to continue, could emerge as a potential area of controversy and source of disagreement among negotiating parties. This has exactly happened in the current trilateral talks among the three parties. The involvement of ‘observers’ such as the USA and WB with an invitation from Egypt but the form of interventions induced by them casting doubt over their neutrality in the eyes of Ethiopia, emerged as a point of hot areas of discussions backsliding the process from achieving a breakthrough. Therefore, dispute resolution mechanisms among the parties now, and in the future, have become another sticky point in the negotiation process. Biswas (2008) provides that negotiating parties on transboundary rivers prefer to resolve their disputes on the basis of bilateral and multilateral forums other than intermediary actors and international organizations.

This could be in line with Ethiopia’s push to exhaust internal dispute resolution mechanisms primarily among the negotiating parties and invite observers of their choice when such

avenues have failed. The review, however, reveals Egypt's continued effort to resolve the matter through external actors such as the USA, WB, and the UNSC and at times through the Arab League to put diplomatic pressure on Ethiopia. For Perlman *et al.* (2017), two sides of power inequalities could be reflected in transboundary water negotiations. One could be inequality in the interactions between riparian countries and the other in terms of relationships with powerful actors outside the region. Some parties might be more important to powerful external actors than others whose involvement might influence the form, directions and possibly also the final outcomes of the negotiation. Third-party involvement in the transboundary water negotiation process is appreciated when it helps to break deadlocks and provides assistance in the form of technical expertise and platforms to host the talks.

There has not been a time when the Nile water resource utilization was not politicized (Zeitoune & Mirumachi, 2008). The review reveals that even during the current trilateral talks, there has been a tendency most often to drift away from scientific and technical aspects of water management and utilization in the filling and operation of the GERD. Exhaustive discussions at the scientific and technical levels could have helped to find out ways of optimizing positive externalities and minimizing the negative environmental and water scarcity impacts on downstream countries. Politicization has been projected through a stringent emphasis on the legality of existed colonial-era agreements and exaggeration of the negative impacts of GERD from downstream Egypt and Sudan and questioning the fairness and equitable nature of the previous agreements under existing circumstances from upstream Ethiopia.

Benvenisti (2004) opines that upstream and downstream relationships could at times be constrained by the upstream threat to the use of force to protect their water shares while downstream countries may refuse to recognize their duty to share water with their downstream counterparts. He mentioned Egypt as the best instance of issuing military threats against its relatively weaker neighbors to restrain them from interfering in the natural flow of the water. For a fair observer of the matter, the current dispute on the Nile Basin is more of an upstream country trying to assert its right for the utilization of the water resources and a downstream country insisting to maintain its century's old absolute control and use of the water along the basin.

Conflicts over the utilization and co-management of transboundary water resources still persist along several water basins of which the Nile Basin is a prominent one. However,

many studies indicate that, in recent decades, states tend to cooperate over shared water resources than entering into military confrontations. Tensions over the utilization of water resources are gradually being replaced by cooperation (Zeitoune & Mirumachi, 2008). The very nature of transboundary water resources entails collective action leading to more beneficial shared regulatory mechanisms providing optimal and sustainable results (Benivenisti, 2004).

### **Concluding Remarks**

The Nile is one of the most controversial River Basins without an inclusive and effective legal framework entirely depending on the old and exclusionary colonial-era agreements favoring the lower riparian countries. This has made management and utilization of water resources along the Basin with the full participation of all riparian countries a very difficult task. Many authors reflect the insufficiency of the colonial era agreements formulated to entertain the aspirations of the then colonial forces and are nowadays becoming an impediment to effective management, utilization and water-sharing schemes that can accommodate the interest of all riparian countries.

Ethiopia's move to construct the GERD in 2011 has altered the political and diplomatic landscape of the Nile Basin. No other upper riparian ever before attempted such a groundbreaking project of high significance to achieve development. The move, however, is to the dismay of lower riparian countries that perceived the dam as a threat to their 'historical rights' and 'existed and current water use security'. That is why the trilateral negotiation process has been going immediately after the launching of the GERD project. The concerns of lower riparian countries are understandable as they depend for the most part on the water resources from the Nile Basin. However, a balance should also be maintained to the socio-economic needs of Ethiopia and its immediate need to uplift more than half of its population from abject poverty. The trilateral talks on the filling and annual operation of the GERD could not lead to a final negotiated settlement due to a lack of flexibility and continued insistence to maintain existing water share. The political will and commitment to follow a revisionist approach basing premises on newly emerging socio-economic realities along the basin could help to break the deadlock. Working towards formulating an all-inclusive and efficient basin-wide legal framework benefiting all riparian countries in a fair and equitable manner according to existing international legal standards may ensure to resolve the matter sustainably.

One effect of over politicization of GERD talks is externalizing the matter and attempting to find solutions through diplomatic and political pressures. Seeking technical and advisory assistance from observers, mediators and negotiators on transboundary water conflicts is normal international practice, but on conditions of consensus among the parties involved. Real political commitment and negotiation in line with the baseline principle of give-and-take could help to address the competing interest of all parties. Externally imposed solutions may not sustainably resolve the matter or may even drag it to already prevailing global power play among competing powerful actors.

Conflict and cooperation go all the way along among co-basin countries sharing transboundary water resources. Empirical evidence shows a rare possibility of full-scale destructive conflicts among such countries. This specifically holds true to the Nile Basin where a significant portion of the water originates from upper riparian Ethiopia, and the lower riparian excessively depends on it for fresh water. Their fates are inextricably intertwined and only a more cooperative scheme would help them to achieve each other's goals. A protracted conflict that could escalate into war would be much more destructive and would severely destabilize the already fragile and unstable region of the Horn of Africa. Therefore, the riparian countries and specifically those with relatively stronger military power should restrain from considering war as an alternative to resolve the matter. The international community also needs to remain neutral and provide the negotiating parties with genuine support in their efforts to amicably resolve their differences.

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