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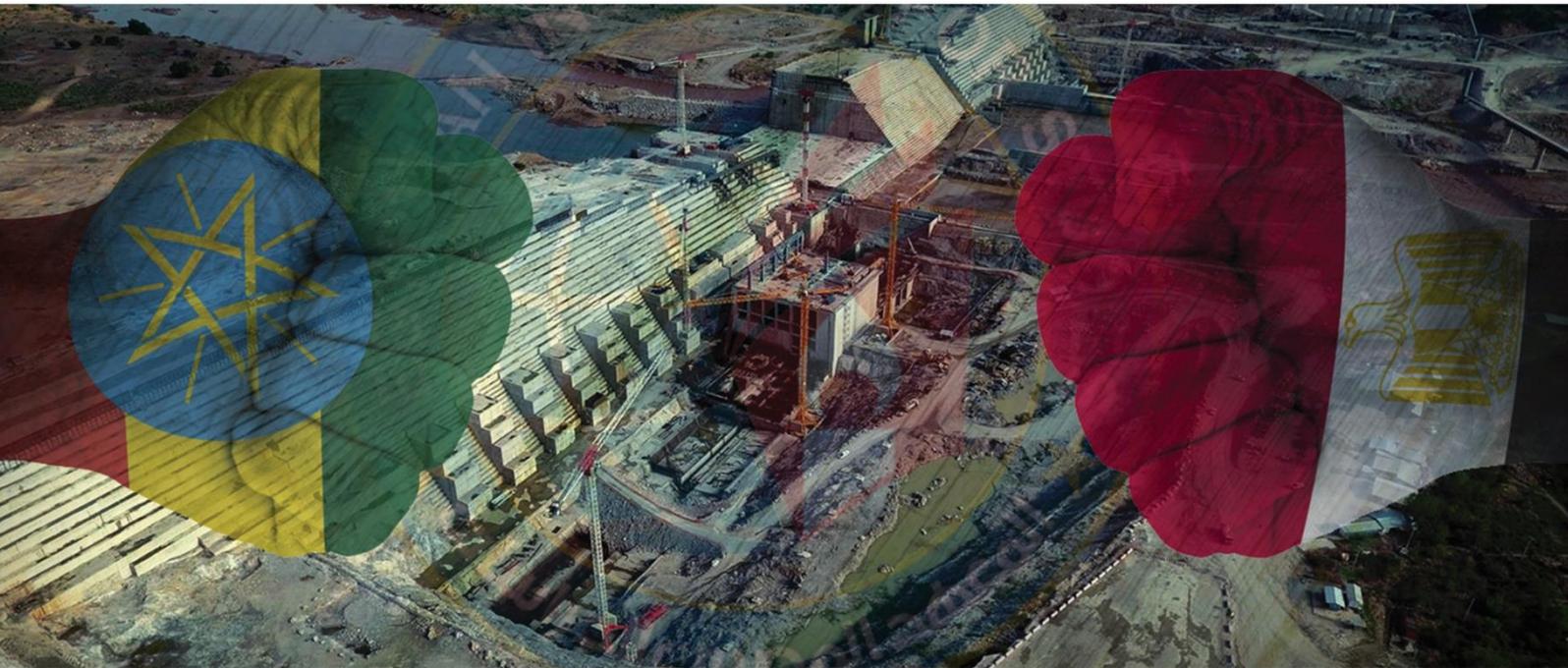
30 OCTOBER  
2019



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EGYPTIAN INSTITUTE FOR STUDIES

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## Egypt: GERD and the Predicament of Int'l Mediator

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The [Egyptian presidency](#) said in a statement on its Facebook page on October 5, after failure of Khartoum negotiations on the Grand Ethiopian Renaissance Dam (GERD), that it was looking forward to an active role by the United States in this regard.", especially in light of the deadlocked negotiations between the three countries (Egypt, Ethiopia and Sudan). Egyptian presidency spokesman Bassam Radhi said Egypt was looking forward to an "instrumental role" by the U.S. in the talks. He said because there was no breakthrough in negotiations, there was a need for an "international instrumental role to overcome the current deadlock.

Radhi stressed that negotiations did not achieve any tangible progress, reflecting the need for an effective international role to overcome the current stalemate in negotiations, to bring the three countries closer, and to reach a fair and balanced agreement. He also stressed that Egypt is open to every international mediation effort to reach the desired agreement. This came in the backdrop of an unusual statement released by the US State Department on October 03 in which the US said it "supports Egypt, Ethiopia, and Sudan's ongoing negotiations to reach a cooperative, sustainable, and mutually beneficial agreement on filling and operating the Grand Ethiopian Renaissance Dam," a move many saw as tilting the balance of negotiations in favor of Egypt.

However, the Egyptian request was quickly rejected by both Ethiopian Ministry of Irrigation and Ministry of Foreign Affairs. Ethiopian Minister of Water, Irrigation and Electricity Dr. Seleshi Bekele said that negotiations have not reached a deadlock, that his country refuses mediation from any side, and that negotiations will continue between the three countries to reach agreement. According to some of media men who covered the negotiations, Sudan has also rejected the idea of mediation. While the statement of the Ethiopian Foreign Ministry rejected the idea of a third-party intervention in the ongoing negotiation process, but the statement accused Egypt for the first time of following [disruptive tactics](#) to destroy negotiations. "This approach by the Government of Egypt is not new. Rather, it is yet another instance of a disruptive tactic it applied to halt the hydrology, environmental and social impact assessment on the GERD. Ethiopia maintains its stand on the possibility of resolving the issues based on trilateral technical consultation and the invocation of principle X of the DOP is

premature,” the statement read, adding “The proposal by the Government of Egypt to invite third party in the discussions is an unwarranted denial of the progress in the trilateral technical dialogue and violates the Agreement on the Declaration of Principles signed by the three countries on 23 March 2015.”

In fact, Ethiopia's position stems specifically from the Declaration of Principles agreement, Article 10 in particular, which severely restricted the idea of third-party or resorting to legal settlement through international jurisdiction: The Court of Justice or international law.

Principle 10 of the principles stated in the Agreement on Declaration of Principles, signed in Khartoum, Sudan, on Monday the 23<sup>rd</sup>. of March 2015, by Egypt, Ethiopia, and Sudan on GERD, states that: “The Three countries will settle disputes, arising out of the interpretation or implementation of this agreement, amicably through consultation or negotiation in accordance with the principle of good faith. If the Parties are unable to resolve the dispute through consultation or negotiation, they may jointly request for conciliation, mediation or refer the matter for the consideration of the Heads of State/Head of Government.”

### Two things are to be noted here:

First, the need for all parties to agree on the request for conciliation or mediation, which means that Egypt will not be able to pass any resolution on the dam individually, and achievement of consensus on this is very difficult, not to mention that the likely settlement will also be political through a request for conciliation, which requires formation of a committee to review all aspects of the conflict and submit a report to the States concerned with non-binding proposals; the second is to resort to a third-party mediation, whose proposals for solution will also be non-binding; otherwise, the whole matter will be referred to heads of states/governments of the three countries for consideration. It was supposed to state here the likeliness of resorting to legal means such as arbitration and international jurisdiction for settlement of the dispute; but this was not provided for Ethiopia's prior refusal.

This means that arbitration or international jurisdiction will not be resorted to, although they are one of the tools provided for in article 33 of the 1997 UN Convention on the Non-Navigational Uses of International Watercourses, on which the Declaration of Principles was based, for its most part, but it seems to have been gutted by Ethiopia, and unfortunately signed by Egypt's Sisi. It is noteworthy

that Article 33 of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997 – paragraph 2 states that: "If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice."

*In short, the differences are likely to remain confined to diplomatic efforts.*

### American Mediator

One might argue that the United States can play the role of mediator as the world's largest power, and that it can impose itself on everyone, including Ethiopia. Although that is true by virtue of the American logic of power, however, Washington is not yet determined to do so. This is evident from the response of the US State Department, which came one day before negotiations, which confirmed that the US administration supports ongoing negotiations and encourages the three parties to reach agreement. The statement said: "The United States supports Egypt, Ethiopia, and Sudan's ongoing negotiations to reach a cooperative, sustainable, and mutually beneficial agreement on filling and operating the Grand Ethiopian Renaissance Dam. All Nile Valley countries have a right to economic development and prosperity. The Administration calls on all sides to put forth good faith efforts to reach an agreement that preserves those rights, while simultaneously respecting each other's Nile water equities."

### This American position can be attributed to several reasons, including:

- 1- The Trump administration is not enthusiastic about the file, especially amid facing internal crises related to the likeliness of impeachment of the president, not to mention other external concerns, especially with regard to the file of Iran and the US withdrawal from northern Syria.
2. Washington does not want to pressure Ethiopia because there is no harm caused by GERD to its strategic interests, especially since Addis Ababa is an authorized agent of the United States in the face of terrorism and political Islam movements in the Horn of Africa, as happened when Ethiopia intervened on behalf of Washington in 2006 to confront the Islamic Courts in Somalia, in addition to enjoying very good relations with Israel, Washington's ally in the region.

*This means that Washington, as an international power, can play the role of an effective mediator, but it does not want to do so. The question arises whether the qualities of mediator, including neutrality, are realized in the United States, and whether Washington's intervention can be in favor of Egypt?*

I think the answer is no, especially since the Americans had sent a mission from the Land Reform Office, which stayed in Ethiopia in 1958-1963, and designed 33 dams, including GERD, to reduce the usefulness of the Aswan High Dam, which makes the US position more biased to Ethiopia in mediation.

### African Mediator

Another question may arise: Is it possible for Egypt to request the intervention of the African Union directly since it is currently chairing it, or to request the intervention of the UN Security Council based on Article 52 (on regional arrangements), paragraph 3, which states that "The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council."

As for the African Union, as already mentioned, it seems difficult for Egypt to seek its intervention due to Article X of the Declaration of Principles. Given the likeliness of Egypt's resorting to AU alone, it may be difficult for the AU to reach a decision in favor of Cairo, especially in light of the weight of Ethiopia, not to mention its hosting of the AU headquarters.

Referring the issue to the African Peace and Security Council as the body responsible for settling disputes is also difficult as regional peace and security is not at risk, not to mention that the two disputing parties have committed themselves to negotiation and have not yet failed in this.

### Referral to the Security Council

The Charter of the United Nations permits any State to submit a complaint to the Security Council, which may intervene at the request of Parties to conflict, according to Article 33, which states that "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other

peaceful means of their own choice. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means." UNSC intervention may take place under provisions of Chapter VI or VII of the UN Charter, and is therefore reflected in the resolutions and mandates issued by the Council.

UN Charter's Article 35, paragraph 1 states that: "Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly – as Article 34 states that "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security."

#### Under UN Charter's Chapter VI, Article 36 states that:

- 1- The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
- 2- The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
- 3- In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

This means that, in accordance with Article 36, paragraph 2, of the Charter, the Council must take into account the findings of the parties to the conflict. This means, in our case, what is stated in Article 10 of the Khartoum Declaration of Principles. In accordance with Article 36, paragraph 3, it is recommended that the dispute be referred to a legal settlement, which requires the consent of the parties and here we are again confronted with Ethiopia's refusal.

Therefore, the Security Council may not intervene and, in the event of its intervention, it would issue a "non-binding recommendation", especially since the issue does not fall under Chapter VII, as well as the fact that the process of negotiations is still continuing, and the threat or damage that

constitutes a threat to peace and security has not yet occurred, let alone China's likely veto in this regard, as it has played a significant role in the GERD construction.

## Referral to the International Court of Justice

Some argue that one of the options available to Egypt is to refer the matter to the International Court of Justice as one of the principal organs of the United Nations, and its rulings are binding on all parties.

However, "The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways: by entering into a special agreement to submit the dispute to the Court; by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court; or through the reciprocal effect of declarations made by them under the Statute, whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. A number of these declarations, which must be deposited with the United Nations Secretary-General, contain reservations excluding certain categories of dispute," according to the [court](#) itself – but unfortunately, none of these criteria is met by the Khartoum Declaration of Principles on GERD.

This means that Egypt cannot go to the International Court of Justice alone, and the same for international arbitration which requires consent of parties to the dispute as well, which Ethiopia absolutely rejects.

**In conclusion**, the question remains: while regional or international mediation options, the idea of Security Council intervention, or referral to the International Court of Justice face serious difficulties, could the last solution left for Egypt be withdrawal from the Declaration of Principles? Is that possible or it is a damaging solution to Cairo?