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Renaissance Dam Negotiations .. from A to Z

Dr. Ahmed Al-Mofti

The negotiations on the Grand Ethiopian Renaissance Dam (GERD) have gone through nine stages from 1995 to 23 July 2020. This article will address the nine phases comprehensively but at the same time briefly, as follows:

The first stage (from 1995 to mid-May 2011)

1- All of the Nile Basin countries agreed in 1995 to conclude a comprehensive agreement that would govern all uses of the Nile River (a legal and institutional framework), including any water installations that can be constructed along the Nile River, such as the Renaissance Dam.

2- Those negotiations continued with the support and participation of 13 international actors, including the United States, the World Bank, and the United Nations, until the first week of July 2012. These negotiations were supported by the establishment of the Nile Basin Initiative (NBI) – an intergovernmental partnership of 10 Nile Basin countries, namely Burundi, DR Congo, Egypt, Ethiopia, Kenya, Rwanda, South Sudan, The Sudan, Tanzania and Uganda – in 1999, with funding from those 13 international quarters.

3- These negotiations, where the author of this article was the only Sudanese who participated in all their stages, succeeded in drafting the Cooperative Framework Agreement (CFA), known as the Entebbe Agreement, which was agreed upon by most Nile Basin countries, especially Ethiopia, except for Sudan and Egypt. Therefore, in the first week of July 2012, Sudan submitted a proposal during the meeting of Nile Basin countries' irrigation ministers in the city of Kigali, Rwanda, to overcome the minor points of disagreement over the Entebbe Agreement; and that proposal found positive response from all the Nile Basin countries, and set an emergency meeting to discuss it during September 2012.

4- However, it became clear that since 2008/2009, Ethiopia has begun unilateral arrangements to construct the GERD, without announcing this, and at the same time continued to participate in the negotiations on the Entebbe Agreement.

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5- Specifically, Ethiopia had completed procedures for starting GERD construction, up to signing a contract with Salini Impregilo in mid-March 2011, and laying the foundation stone on April 2, 2011, without notifying Sudan on all these steps.

6- In a meeting on May 12-13, 2011, in Addis Ababa, Ethiopian Prime Minister Meles Zenawi notified Egyptian Prime Minister Essam Sharaf on the importance of starting technical negotiations on the Renaissance Dam through three engineers from each country.

7- On May 25-26, 2011, the Egyptian Minister of Irrigation Eng. Hussein Al-Atfi came to Khartoum for talks. The meeting was attended by Eng. Kamal Ali Mohamed, Sudanese Minister of Irrigation, Dr. Salah Youssef, Minister of State, Eng. Adam Bakr, Deputy Minister, Eng. Ibrahim Saleh, head of the technical staff for water resources, and Dr. Ahmed Al-Mofti, in his capacity as rapporteur of the Supreme Committee for International Watercourses since 1995, member of the Sudanese delegation to the Nile Basin negotiations, and legal adviser to the delegation.

8- Minister Al-Atfi explained that Ethiopia stipulates that construction should not stop during negotiations, and that the outcome of negotiations is not binding, that it is not obligated to give Sudan and Egypt advance notice, and that it does not recognize the 1902 agreement, which obliges Ethiopia to take the consent of the government of Sudan before constructing water installations on Lake Tana , the Sobat River, or the Blue Nile.

9- Sudan and Egypt agreed to these unfair conditions, which stripped them of all their water rights, but the author of this article then rejected these conditions, abandoned the Nile water file, and described the negotiations that were agreed upon as "absurd", because they gave Ethiopia everything, but did not give Sudan and Egypt any of their water rights.

The second stage (when the international panel of experts issued its report on GERD in 2013)

The most dangerous statement in the report was:

The safety of the dam is incomplete, while no economic, social and environmental studies have been conducted in this regard.

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The third stage (signing the Declaration of Principles in 2015):

1- Ethiopia has been very keen to sign the declaration, so that the unlawful construction works since 2011 could be "legalized".

2- In return, Ethiopia pledged explicitly in the Declaration of Principles, to "complete" the safety of the dam, and to carry out studies requested by the international panel of experts within 15 months; and at that time, Ethiopia had completed some security work on the dam, therefore, it promised to "complete" it in the second paragraph of principle 8 of the Declaration of Principles, but it has not yet fulfilled any of those obligations.

The fourth stage (from March 2015 until November 2019):

The direct negotiation between parties continued, but Ethiopia succeeded in limiting negotiations to discussing the first filling and annual operation of the dam, and not to address the water rights of Sudan and Egypt, namely the safety of the dam, and water security (current and future water needs). Therefore, this stage ended with failure.

The Fifth Stage (from November 2019 to April 28, 2020):

It is a stage where the United States of America and the World Bank engaged in the negotiations as observers:

This stage also ended with failure, because Ethiopia refused to sign the draft prepared by the observers, where Egypt signed in initials on April 21, 2020, but Ethiopia refused to attend the last round on 27-28 April 2020, under the pretext of the need to conduct internal consultations.

The sixth stage (from April 28, 2020 to June 2020):

It is the stage when the three countries raised the whole issue to the UN Security Council, but Ethiopia called for the intervention of the African Union; so, the UN Security Council referred the issue to the African Union, under supervision of the United States and the European Union.

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The seventh stage (the stage of the first African mini-summit):

This mini-summit was convened under the chairmanship of South Africa, the three parties and the rest of the African Union office, namely Kenya, Democratic Republic of the Congo, and Mali, on June 26, 2020. However, talks that lasted for 11 days also failed.

The eighth stage (the first filling via an Ethiopian unilateral measure, two weeks after the first mini-summit was held):

1- The first mini-summit as well as the UN Security Council directed Ethiopia not to start filling until conclusion of an agreement with Sudan and Egypt, but Ethiopia began the first filling through a unilateral procedure and announced this on Ethiopian TV, then denied this, and after that the Ethiopian Prime Minister announced the completion of the first stage of filling (via a unilateral procedure), during the day when the second AU mini-summit was held, on Tuesday, 21 July 2020.

2- Therefore, we suggested significant legal solutions to the government of Sudan on what it should do, after Ethiopia started the first filling with a unilateral procedure, in order to preserve Sudan's water rights, despite the Ethiopian tactics of affirmation and denial of filling, which completely crippled the Sudan and Egypt. Ethiopia claimed that the first filling was just due to the fall of heavy rains, but the Sudanese Ministry of Irrigation had confirmed that the water level at the Diem border station became 1.27 meters lower compared to the same time last year, which confirms that Ethiopia had actually started to fill the GERD reservoir.

The legal solution in my view is as follows:

a- Immediately suspending negotiations, so that continuation should not be considered an "implicit" recognition of the legitimacy of filling, taking into account that it can constitute a "legal precedent" that may give Ethiopia the right to continue filling and operating the dam via a unilateral procedure.

b- Immediately withdrawing from the Declaration of Principles, because filling the dam via a unilateral procedure is a violation by Ethiopia of the Declaration of Principles, in addition to other Ethiopian violations of the DoP.

c- Immediately returning the whole issue to the UN Security Council, to issue a resolution under Chapter Seven, for compelling Ethiopia to stop the first filling, or not to benefit from it, if it has taken

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place, except after Ethiopia reaches a binding agreement with Sudan and Egypt, specifying the rights and obligations of each country, given the fact that the UN Council Security had previously asked Ethiopia not to start filling the dam via a unilateral procedure.

d- Forming two Sudanese teams to study the effects of the first filling and determine its damages on the Sudanese citizens, along the course of the river to the Sudanese-Egyptian border, in order to determine the necessary compensation, with the "participation of the affected citizens", bearing in mind that Ethiopia has committed to those studies in The Declaration of Principles, but it has not done any, as follows:

- A team to conduct economic, environmental, and social studies and compensation for damages.
- A second team to study Ethiopia's "completion" of the dam's safety, as committed in the second paragraph of Principle No. 8 of the Declaration of Principles.

The Ninth Stage (the second African mini-summit, held for one day on July 21, 2020):

1- We had previously anticipated failure of the African mini-summits, but the failure was much greater than we had expected, despite the lack of recognition of failure by Sudan as usual.

2- This failure can be monitored through the following:

A- Giving "legitimacy" to Ethiopia's filling of the dam via a unilateral will, despite Addis Ababa's admission of this after it had denied it. In addition, failure to include this item on the agenda of the summit to be discussed during the meeting, despite directives of the UN Security Council and the first African Mini-Summit, to Ethiopia not to fill via a unilateral action.

B- Not resolving any of the points of disagreement, which is normal because Ethiopia has got everything it wants, so, what makes it agree to anything whatsoever?

C- In spite of this, instead of recognition of failure of negotiations, they agreed to maintain these absurd negotiations without even setting a time frame, despite failure to agree on the two easiest contentious points, namely a binding agreement, and a binding dispute resolution mechanism.

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D- In the newspapers of July 22, 2020, the Sudanese Minister of Irrigation – following the second African mini-summit that has failed par excellence – said that Sudan agrees to granting Ethiopia the right to establish “future water projects”, other than the Renaissance Dam, including building new dams.

E- However, the Sudanese minister did not call for Sudan's water rights, particularly the dam security, water security, and compensation for economic, environmental and social damages.

F- Sudan ignores “water security”, while the European Union remembers it, as the European Union, in a statement after the second mini-summit, called for “water security” for all the Nile Basin countries, one of the rights we have been calling for since 2011 that are stipulated in paragraph 15 of Article 3 of the Entebbe Agreement, a paragraph that won the unanimity of all the Nile Basin countries.

G- One of the horrific facts that emerged after the first filling, about the current discharge of the Blue Nile, compared to last year, is that the discharge of the Roseires Dam is 124 million m³ compared to 448 million m³ last year, the discharge of Sennar Dam is 73 million m³ compared to 373 million m³ last year, and in Khartoum the water level rose by 12 meters, compared to 14.6 meters last year.

H- Therefore, Ethiopia announced on July 23 that the Blue Nile has become an “Ethiopian lake”, thanks to the Renaissance Dam, that allowed it to behave as it wished; and they held huge celebrations on that occasion, and even invited Khartoum and Cairo to hold similar celebrations!

I- Khartoum and Cairo were too astonished to respond to Ethiopia’s unlawful incursion of their water rights, and neither of them responded to Ethiopia’s provocation by inviting them to celebrate their stolen rights!

J- But on our part, we have considered that the GERD waters have become “Red Waters”, from the point of view of peoples, as long as governments have surrendered. The “Red Waters” is a term we have created to refer to the water that the GERD holds, for any purpose, whether for filling, operation for generating electricity, or otherwise, without reaching a final binding agreement ensuring that these waters are used “lawfully”, in accordance with international law. The unilateral measures by Ethiopia endangers the lives of downstream people; and given the fact that water is owned by peoples, not governments, we believe that this term (Red Waters) is the most accurate description

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of the situation, from the point of view of peoples. When governments conclude a binding agreement to guarantee the legitimacy of its use, then this water returns to normal, as 'blue water'; otherwise water remains 'red', from the point of view of peoples, where no country or entity has the right to implement any project with Ethiopia, related to the use of this illegal "Red Water", because it will become a partner in illegality, exactly as it is the case in dealing in stolen money.

K- 'The Sudanese', a local newspaper, reported Thursday morning, July 23, 2020, that the American 'Foreign Policy' magazine, said, citing 6 American officials, that the Trump administration is considering withholding some aid from Ethiopia, for failure to reach an agreement on GERD that preserves the rights of the three countries. In fact, this is very surprising, because Sudan and Egypt have not announced failure of the second African mini-summit, but rather announced agreement of the three countries to maintain negotiations. However, we believe that the United States found itself committed both legally and morally to issue such statement, being an observer of negotiations, while the affected countries did not.