

The Grand Ethiopian Renaissance Dam : Between the Burdens of Sovereignty and the Constraints of Neighborhood

By Mohammed Loulichki

Summary

Against the backdrop of mutual accusations of a lack of political will to bring the tripartite negotiations on the commissioning of the “Grand Ethiopian Renaissance Dam” (GERD), to a successful conclusion, Egypt and Ethiopia continue to alternately send signals of provocation and appeasement. This tension is growing in intensity as the rainy season (July to September) draws nearer. On the one hand, Ethiopia intends to seize this opportunity to fill the dam; on the other hand, Egypt and Sudan consider the conclusion of a final and binding agreement as a precondition. While Egypt, for which the Nile is a matter of life and death, claims “historic rights” on the waters of the Nile in accordance with the 1929 and 1959 Agreements, Ethiopia, which does not consider itself bound by these instruments, claims its sovereign right to exploit its natural resources for the benefit of its socio-economic development. In this crisis, Sudan is trying to play a role of appeasement and rapprochement to avoid having to take sides with one or the other neighbor. In order to avoid an escalation that could lead to open conflict, the three countries have embarked on a negotiation process that has been going on since 2011, when the GERD was launched. This process, which has made significant progress, has now reached an impasse. According to the Sudanese mediator, the June 2020 meetings between the three countries have resulted in trade-offs being reached on 95% of the outstanding issues. The remaining points concern the duration of filling (5 to 7 years, according to Addis-Ababa, or 12 to 20, for Egypt), the dispute settlement mechanism, the nature of the legal framework in which the agreed arrangements will be recorded and the presence of Egyptian observers at the dam site to supervise the implementation of the Final Agreement. The Security Council meeting on 29 June, at the request of Egypt, and the Summit organized on 27 June by the current Chairperson of the African Union succeeded in bringing the three countries back to the negotiating table. The next three weeks offer a last chance for the parties to reach a full and final settlement and open a new page of cooperation in the tumultuous history of relations between these two former Empires. Such an agreement could set a precedent for other similar situations. It could, for example, serve as a source of inspiration for the nine states of the Congo River, to make their Basin, whose potential is greater than that of the Nile, a vector of development for the entire region.

Pressed both by time and by their respective public opinions, Egypt is undertaking the final maneuvers to preserve its “historic rights”, at a time when Ethiopia, for reasons of national prestige and electoral calculations, is displaying an inflexible attitude as to the deadline for commissioning the dam, ignoring the Egyptian-Sudanese request to await the conclusion of a final agreement.

The relaunching of negotiations two weeks ago, at the initiative of the Sudan, does not seem to have provided the necessary impetus for the resolution of the outstanding technical and legal issues relating mainly to the pace of filling and the guarantees to be provided in Cairo in the event of an acute drought. While the impasse in the process of settling this multidimensional dispute between two important African states is unlikely to evolve into open conflict, it is nonetheless a cause for concern and a source of uncertainty, the consequences of which are difficult to calculate for the entire eastern region of the Continent.

In order to explore the prospects for an amicable solution to this crisis, a reminder of the foundations of the positions of the three protagonists (I) will enable us to better identify the issues at stake for each of them (II), before taking stock of the progress of the negotiations and identifying the stumbling blocks whose solution will condition the success of the ultimate efforts recommended by the African Union (AU) and the United Nations to conclude the process in the coming weeks (III).

I. Rights related to history and geography

While Egypt refers to history to assert vested rights, based on the « Principle of Prior-appropriation »¹ of the Nile waters, Ethiopia invokes arguments related to the domiciliation of the sources of the great river on its territory and its right to benefit first from this natural resource on the basis of « absolute territorial sovereignty ».²

1. Pierre Blanc, “De l’Égypte à l’Éthiopie, quand la puissance se déplace en Afrique nilotique”, in *Confluences Méditerranée* 2014/3 (N° 90), pages 123-139

2. Pierre Blanc, *op. cit.*

A. Rights justified by history

The distribution of the Nile waters has, for a long time, been governed by ancient agreements involving Egypt and Sudan, to the exclusion of the other riparian countries of the great river. The first of these agreements, signed on 15 May 1902, between Ethiopia, on the one hand, and Great Britain and Italy, on the other, concerned the borders between Anglo-Egyptian Sudan, Ethiopia and Eritrea. Under Article III of this Treaty, the Ethiopian Emperor Menelik II undertook not to authorize the construction of any works likely to interrupt the flow of the Nile waters without the agreement of London and the Government of Sudan.

Following Egypt’s independence on 28 February 1922, Cairo was keen to secure its rights over the Nile waters by concluding, in 1929, an Agreement with England as the occupying power of Sudan. The new Agreement allocated 48 billion cubic meters to Egypt, compared with 4 billion to its southern neighbor, and guaranteed the former a veto right over any dam, pumping station or major irrigation works planned upstream. Paragraph 4 (b) of the Agreement provides that « no irrigation or power generation works may be constructed in the Sudan or the British-administered territories except the peaceful consent of the Egyptian Government. »

After its independence, and considering itself aggrieved by the sharing of waters under the 1929 Agreement, Sudan tried to get Egypt to accept a change in the status quo, sometimes threatening to ally itself with Ethiopia to that end.

It was only when Egypt decided to build the Aswan High Dam in September 1953 that it accepted the idea of renegotiating the sharing of waters with Sudan. On 8 November 1959, the talks led to the signing of an Agreement amending the 1929 Agreement and providing Egypt with 69.5 billion cubic meters, and Sudan with a total of 18.5 billion cubic meters, the unconsumed quantity of which was ipso facto Egypt’s.

Feeling that this situation might not continue, the two countries included in the same Agreement a provision that: “The Sudan and Egypt should deal with claims together...” and that “if the claim remained and the water of the Nile was to be shared with another riparian State, the amount allocated would be deducted from the shares of the Sudan and Egypt in equal shares on the volume of the Nile measured at Aswan”.

By capitalizing on these conventional achievements, Egypt has been able to benefit, for more than a century, from a significant share of the Nile waters and a real right of veto to prevent the construction of any work likely to reduce the quantity of water that it has granted itself under these instruments.

Egypt's attachment to maintaining the current regime and the uncompromising stance it is showing in the ongoing negotiations are justified by the existential stakes that the Nile represents for the 100 million Egyptians. Isn't it said that the country of the Pharaohs is a "a gift from the Nile"?

B. Rights rooted in geography

In response to the historical rights claimed by Egypt, Ethiopia has based its position on the rejection of the 1929 and 1959 Agreements, to which it does not consider itself committed, and on its inalienable right to exploit the natural resources of the river.

In conventional terms, Ethiopia has considered that the two above-mentioned Agreements constitute oppressive agreements which cannot be opposed to it under international law, and in particular the Vienna Convention of 25 May 1969 on the Law of Treaties.³ This instrument, which codifies a widely accepted customary rule, provides that "A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides" (Article 36 ,1).

Consistent with this principled position, Ethiopia has refused to participate in any regional coordination mechanism set up by Egypt and Sudan to promote collective management of the Nile Basin.

Parallel to this conventional argument, Ethiopia has consistently asserted « natural rights » over the waters of the Nile which originate in its territory and of which it considers itself the « original possessor » for us in its socio-economic development. This geographical argument is supported, from the Ethiopian point of view, by the principle of the permanent sovereignty of

States over natural resources enshrined in particular in Resolution 1803 (XVII), adopted in 1962 by the United Nations General Assembly. This principle, according to which the State has permanent, constant, exclusive and inalienable powers which give it « the right to decide, in the last resort and in complete independence, on the fate of the natural resources on its territory and on the economic activities carried out there ».⁴

Such an argument did not fail to seduce and whet the appetite of other riparian countries that joined the protest movement led by Addis Ababa. This led to an awareness on the part of these countries of the need to elaborate a new conventional framework for a fair distribution of the Basin's wealth. This approach benefited from the momentum created by the adoption, on 21 May 1997, by the United Nations General Assembly, of the Convention on the Law of the Non-Navigational Uses of International Watercourses, in which the concept of fair distribution among riparian countries occupies a central place.⁵

This « Coalition for change », which was clearly directed against Egypt and Sudan, resulted in the signing of a Cooperative Framework Agreement (CFA) on 14 May 2010 by Ethiopia, Uganda, Rwanda and Tanzania, followed later by Burundi and Kenya. The Agreement establishes the basic principles of cooperation between the signatory States, the main ones of which relate to the right of each State Party to use, on its territory, in an optimal way, the waters of the Nile River Basin to prevent the occurrence of any significant damage to the other states of the Basin and to the obligation to adopt the necessary measures for the conservation of the ecosystem of the Basin. Finally, the Agreement provides for the settlement of any disputes through recourse, in particular, to negotiation, mediation, arbitration and, where appropriate, the intervention of a Fact-Finding Commission, the modalities of which are set out in the Annex to the Agreement.

The new Agreement, which has been negotiated during a whole decade, due to the Egyptian-Sudanese resistance, opened the first breach in a regime that was able to survive for almost a century and is now facing an Ethiopian ambition to emerge.

4. Jean Salmon "Dictionnaire de Droit international public" (Dictionary of international public law), p.1046,

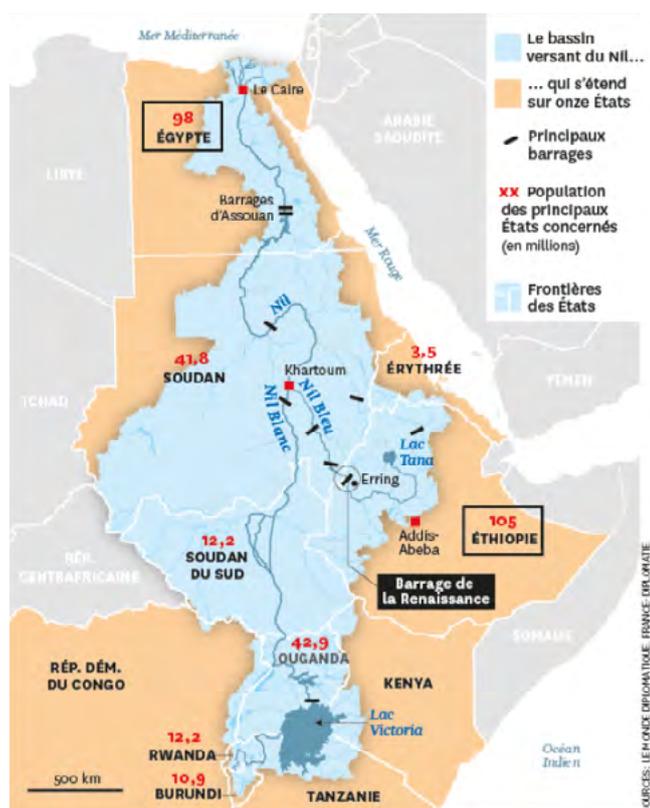
5. See Resolution 51/229 of the UN General Assembly, Annex, Official Documents of the General Assembly, 51st Session, Supplement 49 (A/51/49).

3. Guillaume Le Floch, "Le difficile partage des eaux du Nil", French Annuary of international law, volume 56, 2010. p. 480

II. Differentiated challenges around the Nile

The waters of the Nile represent an enormous potential for the economic and social development of the riparian states. However, the realization of this potential has always been hampered by the disputes and conflicts that have marked the history of the region and the inability of these states to devise a collective plan to develop this source of life, ensure equitable sharing of benefits⁶ and attract the investment needed to make this region a pole of African co-development.

However, the Nile occupies the first place among the 260 existing international water basins by its length, estimated at 6700 km (contested only by the Amazon River which claims 6800), the surface area of its basin, estimated at 3.1 Km², the richness of the soils it crosses and the multiple uses of its fertilizing waters.



Taking its source at Lake Tana in Ethiopia, the Blue Nile joins the White Nile (which comes from Rwanda) in Khartoum to form the Nile which flows through Sudan and Southern Egypt before flowing into the Mediterranean Sea. The river flows through a total of 11 countries home

6. Babacar all, "L'Égypte était-elle un don du Nil ?" ANKH n° 14/15 2005-2006 page 35

to 40% of Africa's population: Burundi, the Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, South Sudan, Uganda and Tanzania.

However, these countries benefit unequally from the river. For example, the upstream States of Rwanda, Tanzania, Burundi and Kenya benefit very little from the river's waters, much of which is lost, in part, in marshes in South Sudan. The same cannot be said of Egypt, Ethiopia and Sudan, which are in a special position for historical, demographic, economic, climatic and strategic reasons.

A. Egypt, a gift of the Nile

Due to the desert and arid nature of its soil, Egypt draws almost all of its water resources from the Nile, and its entire economy revolves around the great river. This dependence is reflected in Herodotus' ancient expression that the country is "a gift of the Nile".⁷ For this vast country, the mythical river represents an existential challenge, especially in view of the climate changes that are intensifying in North Africa and threatening the country with a shortage of fresh water by 2025, according to forecasts by the Food and Agriculture Organization of the United Nations (FAO).⁸

At the agricultural level, the improvement of the irrigation system and the control of the flow of the Nile thanks to the Aswan dam have allowed an extension of the harvested areas and the development of the double harvesting system, with a constantly improving productivity.

As a result, the commissioning of the Ethiopian dam presents three main threats to Egypt. The first is food insecurity, which would result from a decrease in the volume of water needed for food and irrigation. The second relates to the decline in electricity production generated by the Aswan dam. The third, of an ecological nature, would result in a risk of salinization of the Nile Delta.

It is in anticipation of a certain reduction in the amount of water arriving in Egyptian territory that the country has been working for some years to rationalize the use of the Nile's waters through measures aimed at substantially reducing water-intensive crops, including rice, installing a new irrigation system and building a treatment plant on

7. Daniel Abebe, "Egypt, Ethiopia, and the Nile: The Economics of International Water Law," 15 Chicago Journal of International Law 27 (2014) page 34.

8. Kieran Cooke, "Le grand barrage renaissance éthiopien : l'Égypte se prépare à une crise hydrique majeure" (The Grand Ethiopian Renaissance Dam: Egypt is preparing for a major water crisis), 28 December 2018.

the river. In addition, Egypt has planned to invest, with the help of the Gulf countries, US\$ 50 billion to build the largest seawater desalination plant in the world.⁹

B. The Nile, “A Gift from Ethiopia to Egypt”

Ethiopia considers that the 86% of the Nile waters, which originate from the Ethiopian territory, are a contribution of this country to the development of Egypt, and that it is time for the other riparian countries, starting with Ethiopia, to re-appropriate the amounts of water from the Nile corresponding to their development needs.

The decision taken by this country to build the Renaissance Dam is the result of a logic that seeks to rebalance the benefits derived from the exploitation of the resources of the great river, with the main objective of guaranteeing its energy self-sufficiency and making it a lever for its sustainable development. It is also the symbol of a renewed power and the instrument of an economic emergence that serves the objectives of internal legitimization and regional and international positioning.

For the launch of this pharaonic project, the then Prime Minister, Meles Zenawi, took advantage of the beginning of the “Arab Spring”, in which Egypt was also involved, to lay the foundation stone of the project. The willingness of this high Ethiopian official to proceed with the project was thwarted by the reluctance of the World Bank (WB) and major donors to finance the high cost (4 to 5 billion dollars) of building a controversial dam. This attitude forced officials to turn, out of national pride, to internal sources of financing through public borrowing, levies on civil servants’ salaries and a lottery dedicated to the dam.

When completed, the Renaissance Dam will be the largest hydropower facility in Africa and the 7th largest in the world. With a length of 1.8 km, a height of between 145 and 170 meters and a depth of over 100 meters, the dam can store 74 billion cubic meters of water, which, when converted into electrical energy, can largely cover the needs of Ethiopia and neighboring countries.

The GERD will enable 40% of the Ethiopian population, who live on subsistence farming in the country’s highlands

9. Jean Nicolas Bach and Jean Pierre Bat “Diplomaties du Nil dans la Corne de l’Afrique, Égypte – Éthiopie – Soudan” (Diplomacies of the Nile in the Horn of Africa, Egypt, Ethiopia, Sudan), 20 January 2020 www.arerionews.24

with heavy rainfall, to increase the yield of their land. More importantly, the dam’s electricity production will generate an annual income of 70 million dollars, corresponding to exports of the surplus to neighboring countries with which Ethiopia has already concluded supply agreements.

Finally, completion of this project, which will structure its economy, will enable Ethiopia to consolidate its economic growth, convey an image of power vis-à-vis the other countries of the region and to assert itself in relation to Egypt as a dominant power in the eastern part of Africa.



C. Sudan, between the hammer and the anvil

Sudan, once described as the “breadbasket of Africa and/or the Arab world”,¹⁰ has suffered the consequences of the civil war and secession that have weakened it. The country is in an undesirable situation between two rival neighbors, with whom it has border disputes over the Halayeb and Alfashqa regions, and between whom it is obliged to maintain a dynamic balance according to circumstances and issues, without alienating either of them.¹¹ While relations with Cairo remain marked by history and have oscillated between tension and reconciliation, those with Ethiopia have often provided a back-up in times of crisis with the northern neighbor.

In this crisis around the dam, Sudan is trying to play a role of appeasement and rapprochement to avoid having to take sides with one or the other neighbor, being

10. Raimbaud Michel “Le Soudan dans tous ses états : L’espace soudanais à l’épreuve du temps”, 2019, p.122.

11. Pierre Blanc and Wahel Rashid, “Hydro Politique du Nil : la sortie du statu quo hydro-hégémonique de l’Égypte”, Note n. 15 Avril 2016 page 17.

assured of the positive repercussions of the dispute resolution on the improvement of its agricultural sector thanks to regulation of the water level to avoid floods and the opportunity that opens up for Sudan to build other dams on its territory and to rent the high voltage lines to Ethiopia to export its surplus electricity.

So much so that it is in the best interests of all three states to find a reasonable, fair and forward-looking solution.

III. The inevitable diplomatic solution

Since the start of the dam construction, direct talks have been held between Egypt, Sudan and Ethiopia and mediation has been sought from the United States, China, the African Union and the European Union (EU) in an attempt to defuse the tension created by the start of construction. This tension peaked in 2013, when the Egyptian President Morsy threatened to use force to halt the progress of the work.¹²

To avoid such a risk, a negotiation process has been in place since 2014, which has enabled important steps to be taken towards a comprehensive and final agreement. With 70% of the dam being completed, the remaining differences relate to the timing of filling, the mechanism for resolving conflicts of interpretation and the nature of the legal instrument in which the future arrangements agreed will be recorded.

Concerning the filling of the dam, while the parties have finally accepted the principle of its scheduling, they differed on the maximum time required to complete the operation. Ethiopia proposed 5 to 7 years (which would result in a 25% reduction in the amount of water arriving in Egypt),¹³ while Egypt is asking for a period of 12 to 20 years to ensure the filling of the Aswan dam. In relation to this point, both parties are stumbling over the guaranteed minimum for periods of drought.

On the point of dispute settlement, Ethiopia refuses to tie its hands through a pre-established mechanism and prefers an ad hoc mechanism negotiated on a case-by-case basis, while Egypt insists on an institutionalized and permanent system.

12. Franck Galland, "Le Nil au cœur de la stabilité politique et sociale égyptienne, *Géoéconomie* 2015/3 (N° 75), page 170.

13. Mahmoud Farouk, "The Renaissance Dam negotiations: an Egyptian view", *Policy Watch* n.3215, November 2019, The Washington Institute.

With regard to the legal framework, the alternative is between a formal agreement (Egypt) and simple non-binding guidelines which remain dependent, for their implementation, on the will of the parties (Ethiopia).

A final point of contention between the two countries concerns the presence of Egyptian observers at the site of the dam, which Addis Ababa regards as an infringement of its sovereignty.

Sudan's ultimate efforts during the month of June 2020, and the compromise proposals developed to resolve the few outstanding issues, provide a reasonable platform to bring the positions of Cairo and Addis Ababa closer together. It is incumbent on both parties to seize this opportunity to find arrangements that will enable them to save face and build the foundations for lasting cooperation based on trust and common interests.

If, for Ethiopia, challenging the status quo is an irreversible achievement, Egypt, which is seeking to strengthen its domestic front and preserve what remains of its regional influence, cannot afford a diplomatic failure on an issue that is so vital for the whole country.

The recent referral by Egypt to the Security Council, the reply by Ethiopia and the letter sent by the Sudan to the same body do not reflect an escalation in tension between the three countries. Those initiatives reflect a desire on the part of the three countries to see the Council urge them to return to the negotiating table.

The Egyptian approach is in line with the provisions of Chapter VI of the UN Charter on the peaceful settlement of disputes, which recognizes the right of any member State to bring to the attention of the Council a dispute or situation whose continuance could threaten international peace and security. The Charter also gives the Council the authority to intervene, on its own initiative or at the request of one of the parties to the dispute, to recommend appropriate methods of adjustment, including referral to the International Court of Justice (ICJ).

Ethiopia's reserved attitude towards the Council's intervention, and the concern of South Africa, a member of the Council, to leave room for its Head of State, in his capacity as current Chairperson of the African Union, to attempt mediation, make the adoption of a binding resolution.

On 26 June, media outlets reported that the three protagonists committed, following a mini-summit held

on the same day under the auspices of the African Union, to resume negotiations with a view to reaching a final agreement within the next two to three weeks. According to the agreement reached, the first week will be devoted to negotiations between technical committees to work out trade-offs on the outstanding issues. In case of complete or partial disagreement at this level, the Heads of State of the three countries will have one week to finalize the Agreement. In view of the reactions that followed this announcement of African mediation, it must be recognized that the absence of a joint communiqué and the publication of separate communiqués by Cairo and Addis Ababa cast doubt on the scope of such an announcement.

The 29 June meeting of the United Nations Security Council on this dispute brought the Council's unanimous support for the African Union's efforts and increased pressure on the parties to reach a mutually acceptable agreement.

Conclusion

Ethiopia's decision to build the Grand Ethiopian Renaissance Dam, and its intention to begin filling it in early July, even without an agreement with Egypt, represents an unprecedented challenge for the Egyptian Government. Unable to prevent the completion of the GERD, Cairo has resigned itself to taking the path of negotiation to preserve what can be gained from the achievements and come out with the best possible "Deal". The two countries cannot go so far as to provoke conflict in a region of the Horn of Africa already destabilized by the situations in Somalia, South Sudan and Yemen. The Ethiopian Prime Minister has been forced to keep his promise to commission the dam and the Egyptian President, concerned about the situation in Libya, cannot open a new front with Ethiopia. Diplomatic clashes between the two countries are likely to continue and a return of Egypt to the Council after two or three weeks is not excluded. What is certain is that the two countries are condemned to reach, as soon as possible, an agreement and a trade-off that could open a new page of cooperation in the tumultuous history between these two former Empires. Such an Agreement could set a precedent for other similar situations. It could, for example, serve as a source of inspiration for the nine States of the Congo River to make their basin, whose potential is greater than that of the Nile, a vector development for the region.

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The views expressed in this publication are those of the author.



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