



ADDIS ABABA UNIVERSITY
Institute for Peace and Security Studies

Negotiations on the Grand Ethiopian Renaissance
Dam: Security Implications for Ethiopia

By: Melat Assefa

**Advisor: Dr. Yonas Adaye (Associate
Professor of Peace Studies)**

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ADDIS ABABA UNIVERSITY
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Approval Sheet

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By Melat Assefa

Approved by:

Advisor's name

signature

Examiner/Reader's name

signature

Examiner/Reader's name

signature

Declaration

I, the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been duly acknowledged.

Declared by:

Melat Assefa

Signature_____

Date_____

Confirmed by:

Dr. Yonas Adaye (Associate Professor of Peace Studies)

Signature_____

Date_____

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Acronyms

AU	African Union
AUC	African Union Commission
BCM	Billion Cubic Meters
CFA	Cooperative Framework Agreement
DOP	Declaration of Principles
ENTRO	Eastern Nile Technical Regional Office
EU	European Union
GERD	Grand Ethiopian Renaissance Dam
HRDROMET	Hydro-meteorological Monitoring System
ICJ	International Court of Justice
ILA	International Law Commission
ISS	Institute for Security Studies
IPOE	International Panel of Experts
JMP	Joint Multipurpose Program
NBI	Nile Basin Initiative
NRBAP	Nile River Basin Action Plan
NISRG	National Independent Scientific Research Group
SAP	Subsidiary Action Plan
SVP	Shared Vision Program
TECCONILE	Technical Cooperation Committee for the Promotion of Development and Environmental Protection of the Basin
TNC	Tripartite National Committee
OAU	Organization of African Unity
UN	United Nations
UNDP	United Nations Development Program
UNSC	United Nations Security Council
US	United States
VCLT	Vienna Convention on the Law of Treaties

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Abstract

The objective of this thesis is to assess the economic and political security implications of the Grand Ethiopian Renaissance Dam (GERD) negotiations for Ethiopia. The nature of the study is primarily doctrinal research. The research design is qualitative research and explanatory and predictive approaches are employed to conduct the study. The sources of data are interviews with experts on the issue under study and a range of literature that are of primary and secondary sources.

The GERD project is backed by a series of negotiations since its inception unlike projects conducted by Egypt and Sudan on the Nile River. Here, issues of negotiations kept broadening and third-party actors started engaging in trilateral negotiations which resulted in proposed and adopted agreements. The study unfolds the security implications of those negotiations for Ethiopia. In doing so, it answers questions on patterns of major treaties on the Nile River, security implications of major treaties and the GERD negotiations for Ethiopia, the ways major treaties on the Nile River inform negotiations in the GERD, and the outlooks of future negotiations as well as projects on the Nile River.

Negotiations on GERD started at a trilateral level but attracted the intervention of regional and international negotiation platforms including the United Nations Security Council (UNSC) forum. The UNSC has redirected the dispute to the AU-led platform which is a good stance toward implementing the ‘African Solutions for African Problems’, maxim. Yet, negotiations failed to result in a binding cooperation agreement which, among other things, is attributable to the perceived risk of the parties constituting fear of being disadvantaged upon cooperation, and the sustained suspicious relationship of the parties manifested through unwillingness to make a meaningful compromise.

The study concludes the contents of the proposed and adopted agreements of negotiations in the GERD compromise the security of Ethiopia by imposing onerous obligations that are not backed by reciprocal protection measures imposed on the lower riparian countries. Hence, it recommends a carefully designed negotiation approach to tackle the security threat posed by negotiations and adopt a legal framework to establish a usage right of Ethiopia on the Nile River.

Chapter One: Introduction

1.1. Background

Theories of negotiation could be of prescriptive, descriptive, or normative nature and these theories are implicated in the formal definitions of negotiation thereby making the definitions of the term reflective of the functional, conceptual, and disciplinary origins of the theories developed to explain it and in effect, vary (Alfredson & Cungu, 2008). Accordingly, Henry Kissinger, a well-known negotiator defined negotiation as “A process of combining conflicting positions into a common position, under a decision rule of unanimity, a phenomenon in which the outcome is determined by the processes” (Meerts, 2015, pp 20). A study comment on this definition asserts that, rather than conflicting positions, there is a conflicting need expressed in terms of conflicting positions. Moreover, the decision should not necessarily be unanimous, i.e. consensus suffices (ibid). Also, theorists define the term as a rational decision-making process that involves diplomatic engagements, mechanical expressions of bargaining power, and interaction between personality types (Alfredson & Cungu, 2008). Here, the negotiating parties are persuaded that they have a better chance of meeting their needs and interests through negotiation than unilateral actions.

Maxim Kaplan found 161 different definitions of negotiations and the most common elements in these definitions are ‘agreement’, ‘communication’, ‘conflicting interest’, and ‘process and behavior’ (Meerts, 2015). The agreement is the outcome of the negotiation that the parties agreed upon to meet their conflicting needs while the conflicting interest is the cause that necessitated the negotiation process. Communication is the means through which the negotiation is conducted that can be expressed in the forms of discussion, dialogue, and diplomacy. Besides, negotiation is a process that requires compromise from the negotiators to amicably address conflicting needs.

One of the factors for the existence of conflicting needs at the international level is the use of transboundary water resources that warrants the issue being dealt with by the international water law. Article 38 (1) of the 1946 Statute of the International Court of Justice (ICJ) which is recognized as a source of international law, among other things requires the court to apply the general principles of law recognized by civilized nations, (1) (c). Accordingly, one of the principles regarding transboundary water resources is the principle of equitable and reasonable utilization that entitles each basin state to reasonable and equitable use of water resources within its territory (Article IV, International Law Association the Helsinki Rules on the Uses of the Waters of International Rivers Helsinki, (1966), (hereinafter called the Helsinki rules) & Article 5, Convention on the Law of the Non-navigational Uses of International

Watercourses, (1997), (hereinafter called the UN watercourses Convention). The other principle is the obligation not to cause significant harm which prevents basin states from using the watercourse in a way that causes significant harm to other basin states (the Helsinki Rules, Articles V, X, XI, XXIX (2) & the UN Watercourses Convention, Articles 7, 10, 12, 15, 16, 17, 19, 20, 21.2, 22, 26.2, 27, 28.1, 28.3). A higher standard of 'significant harm' is adopted to qualify any adverse effect on the co-riparian countries cognizant of the nature of the river as a shared resource that results in the usage of the same by the upper riparian countries inevitably compromising the lower co-riparian states.

The third one is the principles of notification, consultation, and negotiation that entitle every riparian state in an international watercourse to prior notice, consultation, and negotiation when there is a proposal to use the resource that may cause serious harm to its interest (the Helsinki Rules, XXIX (2), XXIX (3), XXIX (4), XXX, XXXI) & the UN Watercourses Convention, Articles 3.5, 6.2, 11–19, 24.1, 26.2, 28, 30). The GERD project has been backed by a series of negotiations since its commencement despite none of the projects implemented on the river by Egypt and Sudan having been subjected to the same negotiation process. Besides, there is a principle of cooperation and information exchange that obligates every riparian state to share information regarding the watercourse along with the present and future planned use (the Helsinki Rules, Articles XXIX (1), XXIX (2), XXXI) & the UN Watercourses Convention, Articles 5.2, 8, 9, 11, 12, 24.1, 25.1, 27, 28.3, 30). Finally, there is a principle of peaceful settlement of disputes that obligates member states to resort to a peaceful means of dispute settlement when they fail to settle the same by negotiation (the Helsinki Rules, Articles XXVI–XXXVII) & the UN Watercourses Convention, Article 33).

One of the transboundary water resources that raise conflicting needs between the basin states is the Nile River which is the longest river in the world, stretching over 6800km across the length of north-eastern Africa (Swain, 1997). It goes through Rwanda, Burundi, Zaire/Congo, Tanzania, Kenya, Uganda, Eritrea, Ethiopia, Sudan, and Egypt before reaching the Mediterranean. It has two main tributaries, namely, the White Nile, which 'originates from Burundi and flows through the Equatorial Lakes, provides a small but steady flow that is fed by the eternal snows of the Ruwenzori (the 'rain giver') mountains' and the Blue Nile that slopes from the lofty Ethiopian 'water tower highlands, and is exposed to high seasonal fluctuation. It provides 86% of the waters of the Nile, i.e. Blue Nile 59%, Baro-Akobo (Sobat) 14%, Tekeze (Atbara) 13% while the contribution from the Equatorial Lakes region is only 14% (ibid).

Yet, Egypt and Sudan have built a dam on the Nile River, the major ones being, Aswan (1960) and Sennar (1925) respectively. The former is 3,600 meters long, 980 meters wide at its base, 40 meters wide at the top, and 111 meters tall (Arsenault et al, 2007). The reservoir behind it is called Lake Nasser and its

base is the Nile River. The dam is a hydroelectric power plant and is equipped with 12 turbines, each capable of producing 175 megawatts of electricity or 2.1 Giga Watts total (Arsenault et al, 2007). Similarly, Sennar Dam has a structure of 3025 meters in length with a maximum height of 39.5 meters, and the foundations are carried 12 meters down below the river bed (the Sennar Dam and the Gezira Irrigation Project, 1926). The central portion of the dam across the river channel is 1800 meters in length. The reservoir formed by the dam is capable of containing 636 million cubic meters of water, or, after allowing for evaporation, 485 million cubic meters. Further, Sudan had built the Roseires Dam on the Blue Nile, 630 km upstream of Khartoum, is a 1000 m long and 68 m high concrete dam with the crest at 482.2 m which was completed in 1966 and that provides for storage for irrigation, hydroelectric power, and flood retention (Kamalddin & Mohanad, 2010). The hydro-electrical potential of the dam amounts to 212 MW. Additionally, Sudan has built the Jebel Auliadam situated 45 km south of Khartoum and whose inflowing river is the White Nile (Knaap, 1994). The dam was constructed 377 m above sea level with a length of 500 km, an estimated width of between 6 and 7 km, and for a fishery.

Then, Ethiopia launched the Grand Ethiopian Renaissance Dam (GERD) project in 2011 which still is under construction. The dam is a large-scale hydropower project with a height of 155 meters, 1,800 meters long, a storage capacity of 74 BCM, and an upgraded installed capacity of 5150 megawatts (MW) in electricity (Zeray Yihdego, Rieu-Clarke & Cascao, 2017; Basheer et al, 2021). Upon successful completion, the dam will be the largest in the continent.

The construction of the dam has been accompanied by a series of negotiations between Ethiopia, Egypt, and Sudan since the beginning, and Ethiopia has completed the second phase of filling the dam in the summer of 2021. The three countries have undergone a series of negotiations before the filling of the dam by Ethiopia, some of which were conducted in the United States (US) with the participation of the US and other international organizations as an observer and/or facilitators of the negotiation. Since the negotiation that involved the US and other international organizations failed to resolve the dispute, the next negotiation process attracted the intervention of regional and international organizations, i.e. the African Union (AU) and the United Nations Security Council (UNSC), respectively. The participation of the AU demonstrates an attribute toward the 'African Solution for African Problems' maxim as the dispute involves three African countries over the usage of transboundary water resources found in Africa. Therefore, the patterns of the previous negotiations on the Nile River in general and on the GERD in particular and their effect on the ongoing and future negotiations and projects as well as implications on the economic security of Ethiopia need to be studied and explained.

1.2. Statement of the Problem

Despite the Nile River and its tributaries flowing through eleven countries, the lower riparian countries of the river, i.e. Egypt and Sudan took monopoly over the river based on the colonial treaties signed between them and their colonizers as well as treaties among themselves. For instance, Egypt was entitled to an annual water quantity of 48 billion cubic meters while Sudan was eligible for 4 BCM as per the 1929 agreement between Egypt and Britain (Ivan, 2014). Further, the agreement prohibits East African countries from constructing any water utilization projects in the equatorial lakes without consulting Egypt and Sudan (Swain, 2011). In 1959, a new agreement was entered into force between Egypt and Sudan that increases the quota of Egypt to 55.5 BCM and that of Sudan to 18.5 BCM (Ivan, 2014). That in effect prevents the upper riparian countries including Ethiopia from using the water source that emanates from and falls across their territory.

Since all colonial treaties on the Nile River were signed and entered into force before the adoption of the Vienna Convention on the Law of Treaties (VCLT) and Egypt and Sudan were not parties to the same while signing the 1959 bilateral treaty (United Nations Treaty Collections, Chapter XXIII), examination of them against the VCLT implies the retroactive application of the convention. The same is true for any of the agreements signed by Ethiopia as it is not yet a party to the VCLT despite being a signatory without legally being bound by the terms and provisions of the treaty (ibid). However, we can briefly evaluate its fairness based on the general principle provided under the VCLT, specifically for the sake of theoretical purposes. As per Article 2 of the VCLT, the adoption of a text of a treaty should follow the consent of all states participating in the drawing. Here, we can infer that the terms of the treaty only bound participants of the same, and only when they give their consent, i.e. treaty creates neither obligation nor rights on a 3rd state that is not a party to the treaty. In the case at hand, a colonial agreement or agreement between the lower riparian states of the river, Egypt and Sudan with terms entitling them with monopolized power over the Nile and excluding the upper riparian states including Ethiopia from utilizing the same shall not bound Ethiopia since it is not part of the treaty let alone giving consent to be bound the provisions. Further, the terms of the treaty they put on the resource that Ethiopia has a significant share of compromises the sovereignty of Ethiopia thereby disobeying the international principle of ‘sovereignty’ of states. Also, Ethiopia which has never been colonized in its history shall not be bound by the colonial agreements as well as bilateral treaties between Egypt and Sudan as Ethiopia is not a party to it that any attempt to impose the same on Ethiopia amounts to implied colonialism. Here, we should note the fact that Ethiopia has never been colonized which results, among other things, in the absence of any powerful western state standing on the side of Ethiopia on the utilization of the Nile River, as is the case regarding Egypt and Sudan, (Kieyah, 2007).

Regarding the position of the Organization of African Unity (OAU), the only exception for the post-colonial application of colonial treaties is about boundary demarcations as per the Continuity Theory of Succession (Wuhibegezer & Sheferawu, 2014). Egypt has consistently claimed the application of such theory for the 1929 and 1959 theories (ibid). The allocation of usage rights by those treaties exclusively to the lower riparian countries does not consider the nature of the resource as a shared water resource by eleven countries. Nor does it involve boundary demarcation that it is not covered under the exception for the application of colonial treaties during the post-colonial era by the OAU.

Egypt has been using most of the Nile water in addition to the Aswan dam and has built several irrigation projects, such as the Isna Barrage, the Nag Hammadi Barrage, the Asyut Barrage, the Damietta Dam and Rosetta deltas, the Zifta Barrage, and the Id fina Barrage in the downstream which will be affected by the reduced flow from the Aswan dam (Ivan, 2014). Sudan also had its share in the utilization of the Nile River as discussed above.

This asymmetric utilization of the Nile River has been a reality that among other things was expressed through the hegemonic power of Egypt over the river. The GERD which is more than a development initiative and is a symbol of renaissance in Ethiopia challenges the hegemonic *status quo* and brings a new alternative whereby the river could be used (Cascao, 2008). Since the beginning of its construction, the GERD project was backed by a series of negotiations mainly between Ethiopia, Egypt, and Sudan unlike the projects built on the Nile River by Egypt and Sudan. Negotiations are still ongoing and Ethiopia has completed the second phase of filling the dam despite the other parties in the negotiation did not agree with that term. Numerous studies have been conducted on the GERD, however, an examination of the GERD negotiations concerning their implications on the broader economic and political security of Ethiopia has not been made and that is the concern intended to be explained by this study.

1.3. Research Questions

1. Are there patterns in the content of major treaties on the Nile River? If yes, what are the inferences of those patterns?
2. What are the security implications of the major treaties on the Nile River and negotiations on the GERD for Ethiopia? And how do they shape the relationship of Nile Basin countries, mainly Ethiopia, Egypt, and Sudan?
3. How do major treaties on the Nile River inform ongoing negotiations on the GERD project?
4. What does an outlook of future negotiations on the GERD and projects on the Nile River look like based on how ongoing negotiations are being conducted?

1.4. Objectives of the Study

1.4.1. General Objective

The overall objective of the research is to assess the security implications of negotiations of the GERD for Ethiopia based on international laws, negotiations, and treaties made on the Nile River and the GERD.

1.4.2. Specific Objectives

- To assess patterns in the content of major treaties on the Nile River and their inferences, if any.
- To explain the security implications of major treaties on the Nile River and negotiations on GERD for Ethiopia along with their impact on the relationship of Ethiopia, Egypt, and Sudan.
- To analyze how major treaties on the Nile River inform ongoing negotiations on the GERD project.
- To predict the outlook of future negotiations on the GERD and projects on major treaties on the Nile River based on how the ongoing negotiations on the GERD are being conducted.

1.5. Significance of the Study

The government of Ethiopia is giving much emphasis on the successful completion of the GERD. The project is being constructed solely by Ethiopian funds which directly or impliedly involve every Ethiopian as a stakeholder, i.e. it is a major reflection of a national consensus. Therefore, it would enable policymakers and negotiators to reassess their decisions and strategies of negotiations on GERD based on the implications this study intends to explain.

Studies have been conducted on different aspects of the GERD project and its negotiations including the use of coercive power in the negotiations between Ethiopia, Egypt, and Sudan on the filling and annual operation of the GERD (Dejen, 2021), the internal political and economic impact of the GERD project on Ethiopia, Egypt, Sudan, and their roles in the African Region (Aljishi, 2021), the implications of GERD negotiations for the ontological security of Egypt and Ethiopia (Fana & Dawit, 2021), the applicability of international law principles on transboundary water dispute on negotiations on GERD between Ethiopia and Egypt (Funnemark, 2020), and the political deadlock on the GERD (Attia& Saleh, (2021), etc. However, these and other studies conducted on the issue did not analyze the economic and political security implications of negotiations on the GERD for Ethiopia. Therefore, this study intends to unfold those implications. This study would also be a significant foundation for further academic research on the issue of the study.

1.6. Limitation and Scope

1.6.1. Limitation

The fact that the negotiation on the GERD is still ongoing limits the study from examining the concrete practical security implications of the current negotiations for Ethiopia. Therefore, the study only explains the potential security implications of the negotiations. The other limitation is the negotiation process being ongoing is that there were difficulties in finding some official documents due to the rule of ‘confidentiality’. Further, the sensitivity of issues on the negotiation, its ongoing nature, and the confidentiality rule limited the researcher from conducting empirical research since the chances of getting different data than what is already provided to the public are close to nil. Finally, time and resources are other limitations.

1.6.2. Scope

The scope of this study is limited to the area of Ethiopia whose security will either be enhanced or compromised by the negotiations on GERD. The study is further confined to two of the major state security components, i.e. economic and political security implications of the negotiations on the GERD for Ethiopia. In terms of time, the research focuses on negotiations conducted since the commencement of the GERD, i.e. since 2011 GC.

1.7. Methodology and Methods

The nature of the study is primarily doctrinal research. Peace studies are usually transdisciplinary in nature and “the peace research discipline will always have a need to continually be linked to, and apply, the insights of other disciplines” (Wabel & Galtung, 2007, pp 300). Hence, the study combines the peace study with international laws since the issue (negotiation) involves three countries entailing interstate relations governed by international laws and principles. The researcher’s ultimate interest is to assess the security implications of the negotiations of GERD on Ethiopia. Therefore, previous negotiations and treaties on the Nile River and how they have been drafted, interpreted, and implemented are addressed in addition to the ongoing negotiations on the GERD. Consequently, methods for doctrinal research (which usually apply to legal research) are employed to answer research questions and explain the security implications of negotiations of GERD for Ethiopia. Further, methods from peace research to generate empirical data that answer the research questions have been employed, due to the transdisciplinary nature of the study.

1.7.1. Research Design

Since the study aims at explaining the security implications of negotiations of the GERD on Ethiopia, a qualitative research design is adopted to gather information about the previous negotiations and treaties as well as ongoing negotiations. The study employed an explanatory and predictive qualitative research

design approaches. Since negotiations on the GERD are still ongoing, some of its security implications and potential impacts on future projects and negotiations on using the Nile River are yet to be determined. Therefore, the study first explains issues on negotiations and treaties on the Nile River in general and the GERD, in particular, to give a better understanding of the issue under study followed by an examination of implications on the security of Ethiopia. Then, it predicts the outlook of future negotiations and projects on the Nile River based on negotiations on the GERD.

1.7.2. Sources of Data and Sampling Techniques

An extensive emphasis is given to the analysis of a range of literature that includes both primary and secondary sources pertinent to the issue under study. In the former, the researcher reviewed and analyzed treaties, negotiations, principles, guidelines, international laws, and other legal documents covering the issue under study. Further, research outputs of various organizations are analyzed. Considerable reliance on secondary sources including books and academic articles, research outputs, and impact assessment reports is also made. Various authoritative internet sites are further consulted for relevant data and information.

In addition, the study has generated data from interviews. Accordingly, the study made use of key informants from Addis Ababa University and other professionals who work closely on the issue under study.

The nature of the study, i.e. qualitative research warrants employing non-probability sampling technique (Yitayew & Wondemagegn, 2013). Therefore, purposive sampling which requires the deliberate choice of a participant due to the qualities the participant possesses (Etikan, Musa & Alkassim, 2015) has been used to conduct the study. Accordingly, academicians and other professionals with expertise on the issue at hand are selected by virtue of their knowledge or experience.

1.7.3. Methods of Data Analysis

The content analysis method is adopted for the study, i.e. the content of data to be collected from interviews and thorough review and analysis of documents are critically analyzed. Then, verifiable conclusions are made as the analysis proceeds (ibid).

1.7.4. Structure of the Study

The study is organized into four chapters. The first chapter deals with a brief introduction to the concept of negotiation and transboundary water resources and identifies which one will be the subject of this study. Then, research questions, objectives, the significance of the study, methodologies and methods, and the scope and limitations of the study are included.

Chapter two provides the theoretical framework of treaties on the Nile River by discussing the major treaties, explaining the theme they incorporate, the concept of their legal status along with its implication on the rights and obligations over the river. It also analyzes the economic and political security implications of those treaties followed by the relationship of the three countries, Ethiopia, Egypt, and Sudan, before the commencement of negotiations on the GERD. Finally, it discusses cooperation initiatives on the Nile River before the GERD project.

Chapter three addresses major negotiations on the GERD project and their security implications on Ethiopia. It provides a brief introduction of the GERD project and proceeds to a review and critical analysis of major GERD negotiations and agreements. Then, it examines the contribution of those negotiations for regional integrations followed by challenges on cooperation, security implications on Ethiopia, and predictions as to the shadow of the future negotiations on the GERD, and other projects on the Nile River. Finally, chapter four provides conclusions and recommendations.

Chapter Two

Conceptual and Theoretical Framework and Treaties of Nile River

2.1. Introduction

The Nile Basin countries hold different stands on the usage of the river and the legal effect of treaties made on it. For instance, Egypt claims the binding nature of treaties made on the Nile River backing the claim with the alleged historic right it has on the river (Okoth, 2004). This implicates the treaties made on the river are enforcement instruments of the historic right Egypt has on the Nile River. This, however, neglects the right other riparian states have on the river and disregards the very nature of the resource, i.e. a transboundary water resource that falls across eleven countries. Further, some authors, Kukk and Deese, states Ethiopia opts for the Harmon Doctrine thereby claiming to do whatever it pleases with the water that falls across its territory (Okoth, 2004). This seems to be an accusation that neglects the serious commitment Ethiopia chose to assume to negotiate with other riparian countries including Egypt. Such commitment goes back to Emperor Minilik II and is still ongoing concerning the GERD project. The Harmon doctrine which asserts ‘absolute territorial sovereignty thereby allowing unlimited usage of the water resource despite the negative consequences it may cause on other riparian countries (Theories of Resource Allocation, no. 10) seems to fail to represent the stand of Ethiopia on the Nile River which could easily be demonstrated by practical realities. The counter doctrine, the Absolute Territorial Integrity, which entitles the lower riparian countries to prohibit any project in the upper riparian states that could intervene in the natural flow of water, is equally absurd. Both doctrines oversimplify the issue of transboundary water resources including the practical complications that come along with it. They neglect the duties entailed by sovereignty with their excessive and exclusive emphasis on the rights (Theories of Resource Allocation, no. 10). Therefore, the study adopts some conception of both doctrines to accommodate the transboundary nature of the river thereby ensuring the right of reasonable usage by all the riparian countries.

2.2. Major Treaties on the Nile River

The study acknowledges the existence of several treaties, colonial and post-colonial, on the Nile River, yet confines itself to the major ones namely, the 1929 agreement, the 1959 agreement, the 1902 agreement, and the 1993 agreement, to be discussed below. Such agreements are chosen for their historic value, direct and in-depth regulation of the issue, and incorporation of major themes.

The 1929 Nile Water Agreement was negotiated and concluded between the United Kingdom representing its colonies, Kenya, Uganda, Tanzania, and Egypt. As per the agreement, no irrigation or

other projects are to be constructed on Lake Victoria and the Nile which are likely to be prejudicial to the interest of Egypt (Theories of Resource Allocation, no. 10). It is worth noting that such an agreement will not have any legal effect on Ethiopia since it is not a party to the treaty, i.e. a treaty creates neither rights nor obligations on states that are not a party to the negotiation and the treaty, VCLT Article 34. However, the agreement could be used as a reference to show how the historical context of treaties and negotiations on the Nile River entitled Egypt with the monopolized power over the river. Reciprocity was not an element in the treaty that it gives rights to Egypt and creates duties on Kenya, Uganda, Tanzania, and Sudan. Additionally, it creates a precedent for the allocation of the resource between the riparian countries and serves as a base for the exclusive 'historic right' Egypt claims to have over the river. It compromises the rights of other riparian states by creating unequal bargaining power with Egypt, thereby giving them an undue burden of defying the already given exclusive right for Egypt in subsequent negotiations. Therefore, the treaty, in effect affects other riparian states which are not the parties the same.

Moreover, the 1929 agreement equips Egypt with a total of 48 BCM/year from the entire timely flow, and with the right to on-site inspectors at the Sennar dam outside its territory; based on this agreement, one dam (the Aswan High Dam) was built, and one reservoir rose with Egypt acquiescence (cross reference made under first Section, 1959 agreement). The agreement was later revised in 1959 by Egypt and Sudan but retained its stand of prohibiting the Nile basin countries from using the river for large-scale irrigation and other projects without the permission of Egypt. Here, the spirit of favoring Egypt with the monopoly power over the Nile river is maintained by the revised agreement, and so do its implications on the other Nile basin countries.

Further, the 1929 agreement was accompanied by supplementary agreements, such as the Owen Falls Agreement. It was concluded between Egypt and the United Kingdom (representing Uganda) upon the construction of the Owen Falls Dam in Uganda. The agreement aimed at controlling the control of the Nile River and the production of hydroelectric power for Uganda (Okoth, 2004). The agreement envisages for the interest of Egypt to be represented through an Egyptian engineer to be present on-site for the construction of the dam in Uganda. Besides, it reasserts the 1929 agreement to provide for the construction to not entail any compromise in the interests of Egypt. Here, the allegedly 'historic' rights of Egypt were further reclaimed and the sovereign right of Uganda was subjected to the established and future projects of Egypt which are already provided as a priority.

The salient features of the 1929 agreement between Egypt and Britain are the entitlement of Egypt and Sudan to 48 and 4 BCM of the flow of the river respectively, i.e. 93% for Egypt and 7.7% for Sudan of the total utilizable flow (first Section, 1959 agreement). Also, the flow of the river during the dry season

(January - July) is exclusively reserved for Egypt. Further, Egypt monitors the flow of the Nile River in the upper riparian countries and can construct a project on the river without the need to secure the consent of those upper riparian states. Finally, Egypt has the veto power over any construction likely to adversely affect its interest in the river, as per the 1929 agreement.

The 1959 bilateral treaty between Egypt and Sudan did not involve other riparian countries of the Nile River and consequently, Ethiopia which contributes about 85% of the water for the river was not even consulted no allocation of any water has been made to it (Muluneh & Assefa, 2011). One of the implications of such disregard is that the treaty is only binding for Egypt and Sudan but the interesting effect is its non-binding effect on Ethiopia and other Nile basin countries that are not part of it. Accordingly, the allocation of usage of the water as per the agreement cannot legally be claimed against Ethiopia. Besides, it defies the fair usage principles of using transboundary water, i.e. equitable and reasonable usage, not causing significant harm to other riparian countries, and the duty to notify, consult and negotiate with other riparian countries. Thus, according to these principles and the law of treaties, the 1959 treaty shall be of no effect. Further, the fact that Egypt and Sudan could get into an agreement entitling themselves to a right and impose a duty on other states that are not a party to the same treaty constitutes a gap in international law or at least its practical observance.

The other agreement is the 1902 Anglo-Ethiopian Treaty which aimed to define the frontier between Ethiopia, Sudan, and Eritrea. It followed negotiations between Emperor Minilik II of Ethiopia and Lt.-Col. J. Harrington, the British agent in Ethiopia (Ullendorff, 1967). Article 3 of the agreement fulfills the British interest of unrestricted water flow as the emperor agreed not to construct or allow construction or any work on the Blue Nile, Lake Tana, and the Sobat which could compromise the flow of water into the Nile except for an agreement with the British and the Sudan government to that effect.

It is argued that the agreement and the specific provision under Article 3 prohibit Ethiopia from unilaterally and fully stopping the Nile water, i.e. it does not prohibit diversion of the water by the emperor. Also, the exception for the prohibition is the agreement with the British and the Sudan government (Article 3, the 1902 Anglo-Ethiopian Treaty) that Egypt cannot claim any right out of the provision (Emmanuel, 2010). Moreover, even if the provision seems to have compromised the interest of Ethiopia for Sudan, the practical implementation of the same is prevented by the principle of *rebus sic stantibus* (in present circumstances) as observed over a century following the agreement. Some authors contend the very ratification of the agreement by Ethiopia as the Amharic version of the agreement seems to have a different connotation to Ethiopia. The Amharic version of Article 3 prohibits the Emperor from constructing or allowing the construction of any work that stops the Nile water, save for an agreement

with the British government, omitting the requirement of an agreement with Sudan. It results in a clear discrepancy between the English version and with the independence of Sudan from the British administration; the Article is of no effect, as per the Amharic version.

Further, it is argued that the British could not claim any right from the agreement as it later denied the sovereignty of Ethiopia by accepting the sovereignty of Italy over Ethiopia. The British recognition of the annexation of Ethiopia by Italy in 1935 entitles Ethiopia to argue as to the void nature of all agreements of Ethiopia in which Britain was a party and which required the approval of Ethiopia (Emmanuel, 2010). First, in the absence of a clause regarding which version would have authoritative value in an event where different meanings are implied or understood by the terms of the agreements (as it is on the 1902 agreement), it is difficult to bound any of the parties to be bound by terms they do not intend to be bound by. Ethiopia can claim to not be bound by terms other than implicated in the Amharic version of the agreement, and Britain could opt for the English version to be the authoritative agreement. However, since Article 3 of the agreement entails a seeming liability on Ethiopia, the party likely to claim to not be bound by the provision is Ethiopia. Second, the principle of sovereignty of states under international law is a founding principle for any interaction or relationship of states that the British recognition of the annexation of Ethiopia by Italy defies the existence of Ethiopia as a sovereign state thereby entitling Ethiopia to constitute any agreements entered in to with Britain as void, i.e. putting the parties in a place they would have been had the agreement not been entered into (Jesse, 2010).

The above treaties and particularly the contents of the rights and obligations they incorporate seem to reveal a paradox that begs a question of whether the interest of the Nile Basin countries is irreconcilable. The absence of any convention between the Nile Basin countries further strengthens this question. Treaties in the colonial period gave Egypt and Sudan a superior status towards the usage of the River Nile over the other Nile Basin countries; the former insisted to hold on to such superiority while the latter claimed to defy the existing treaties since it is the only way they could use the Nile water.

In 1993, Ethiopia and Egypt have agreed on the framework agreement on the Nile River. It aims, among other things, to establish a broad base of common interest, realize their full economic and resource potentials, and reaffirm their commitment to the UN and the AU charters as well as principles of international laws (Framework for General Co-operation between the Arab Republic of Egypt and Ethiopia, 1993). These aims, despite lacking a binding effect, could be a base to interpret provisions incorporated in the agreement and its recital of international laws is vital for that. Accordingly, Article 4 expressly provides that the use of Nile water should follow thorough discussions by experts from both sides and on the bases of international laws. Further, Article 5 prevents both parties from engaging in the

usage of the Nile water in a manner that causes appreciable harm to the other party. The agreement was signed by the then president of the transitional government of Ethiopia, on Ethiopia's side, i.e. Meles Zenawi who also commenced the construction of the GERD in 2011 as a Prime Minister of Ethiopia, and the then President of Egypt, Hosni Mubarak.

The most interesting provision of the agreement is Article 6 which seems to incorporate the theme promoted under other colonial and bilateral treaties. It stipulates,

‘The two parties agree on the necessity of the conservation and protection of the Nile waters. In this regard, they undertake to consult and cooperate in projects that are mutually advantageous, such as projects that would enhance the volume of flow and reduce the loss of Nile waters through comprehensive and integrated development schemes.’

The provision at a face value envisages a benefit-sharing platform (to be discussed below) and the exploitation of the water for a mutual benefit of Ethiopia and Egypt, as well as benefits towards the protection of the river itself. However, it further implies any development initiative of Ethiopia on Nile water to be subjected to approval from Egypt or at least an examination of whether it would compromise the volume of water Egypt gains from the Nile River. It incorporates the superior status Egypt has on the river thereby reinforcing the alleged ‘historic’ right Egypt claims over the river.

To amend the absence of any convention between the Nile Basin countries, save for cooperation projects to be discussed below, the adoption of the Convention on the Law of the Non-navigational uses of International Watercourses of 1997 could be of great significance. Yet, none of the Nile basin countries have ratified such a convention despite its vital significance towards the incorporation of the principles of the fair and equitable usage of transboundary water, stated above. With this, the study proceeds to examine the legal status of the above treaties to determine their legal effect.

2.3. The Legal Status of the Major Nile River Treaties

The determination of the status of the major treaties on the Nile River is significant to allocate rights and obligations to the Nile Basin countries. The validity of those treaties would enforce the stand that prevailed during the colonial era and the invalidity of the same would open a door for new negotiations and treaties thereby constituting a new allocation of rights and obligations on the river.

Contrasting views are reflected on such issues. For instance, Egypt asserts the binding nature of those treaties based on the perpetually binding nature of those agreements that should be transferred to the successor states, because of the territorial nature of the obligations emanated from those treaties and a

strong assertion of the issue of Nile to be an issue of national security to be enforced through any means including the use of force (Myers, 1989).

Other prominent publicists also supported the validity of those treaties amplifying the territorial nature of the treaties thereby imposing an acceptance by the successors (Vali, 1958; Godana, 1985). The stand of these authors is significant in spreading the application of those treaties and reflects the interests of the powerful parties of the treaties, mainly Britain. Therefore, it contributes to the power imbalance between colonial powers and the newly independent states. Here, the dispositive nature of some colonial treaties is the base for such assertion. It relates to treaties that will automatically be accepted by the successor states due to their nature, i.e. less of a contractual matter such as territory demarcation made during the colonial period (The International Law Association, 1965). It is on this base that Egypt and other publicists including the International Law Association (ILA) claimed the validity of the 1929 agreement on the Nile River. Consequently, the upper riparian countries and Sudan will be bound by the terms of the treaty and the usage of the river will be governed by the same treaty. Yet, it should be noted that dispositive treaties could be defined as treaties ‘which create real rights and obligations, i.e. rights and obligations *in rem* in territory and immune to the change of territory and *rem* with the land’ (Abiy, 2016 pp 111) are an exception to the non-transmissibility principle of treaties upon the succession of states (O’Connell, 1956). The succession of states is defined as ‘the replacement of one state by another in the responsibility for the international relations of territory (Article 2 (1) (f) Vienna Convention on Succession of States in respect of Treaties, 1978).

The other contribution to the argument of validity of the Nile treaties is the confusing stand of some upper riparian countries towards those treaties. For instance, despite Ethiopia’s stand to not accept the Nile treaties as binding, the content of the 1993 agreement it entered into with Egypt partly promotes a similar theme of those treaties the validity of which it is contending. The same is true regarding Kenya, which despite claiming the renegotiation of the pre-independence treaties for inadequately representing its interest also confirmed its acceptance of treaties entered into on its behalf by the United Kingdom during the colonial era for the Secretary-General of the United Nations dated March 25, 1964. Here such inconsistent stands beg a question of whether the issue of the Nile is an issue of national security for Ethiopia.

On the contrary, there is an argument claiming the invalidity of Nile treaties which in effect relieves the upper riparian countries of obligations provided under those treaties. Such argument had been made by most of the upper riparian countries including Ethiopia. One of the bases for such an argument is the principle of the non-transmissibility of colonial treaties upon the successor countries. Here, upon

regaining independence and sovereignty the newly independent countries will not be bound by the treaties entered into by their colonizers (Okoth, 2004). It is also claimed that the absence of an inheritance agreement between the United Kingdom and its former colonies shows an absence of intention to pursue the continuance of the 1929 treaty. Moreover, for the OAU, the only exception for the post-colonial application of colonial treaties is in reference to boundary demarcations as per the Continuity Theory of Succession (Wuhibegezer & Sheferawu, 2014). The determination of usage rights by those treaties exclusively to the lower riparian countries neglects the nature of the resource as a shared water resource by eleven countries. Nor does it signify boundary demarcation that it is not covered under the exception for the application of colonial treaties during the post-colonial era by the OAU.

The other base is the *Rebus Sic Stantibus* doctrine, a Latin term for ‘matters still standing’ which provides that agreements will only stand as long as there is no fundamental change in the circumstances (Abiy, 2016). As per this doctrine, the upper riparian countries, including Sudan, tried to argue decolonization to be a fundamental change of circumstances, therefore, constitutes the invalidation of the 1929 agreement on the Nile River (Okoth, 2004). Here, decolonization constitutes a significant change of circumstances since it entitles the formerly colonized countries with sovereignty and independence, putting them on equal footing, at least legally speaking. Therefore, those states should be able to amend, revoke, or renegotiate a new treaty, including claiming the invalidity of the existing ones. For instance, since the adoption of the 1959 treaty does not *per se* constitute the revocation of the 1929 treaty, some authors argued that it could have claimed the invalidity of the same via the *Rebus Sic Stantibus* doctrine (Abiy, 2016). The 1959 agreement supplements the 1929 agreement as it provides the need to sign the agreement (the 1959 agreement) is informed by, among other things, due to ‘the Nile Waters agreement concluded in 1929 provided only for the partial use of the Nile Waters and did not extend to include the complete control of the River Waters’ (preamble 1959 agreement). It further reaffirmed the established rights under the 1929 agreement that gave 48 BCM/annum to Egypt and 4 BCM/annum to Sudan (first Section, 1959 agreement).

Further, the state practice of most of the upper riparian countries of continuously challenging the colonial treaties on the Nile River constitutes their desire to not be bound by those treaties. This is also strengthened by the *Nyerere* doctrine proclaimed by Julius K. Nyerere, President of the United Republic of Tanzania which provides for treaties, including the 1929 treaty, to be void if not reaffirmed by Tanzania within two years from Independence Day (Shih, et al & Turack, 1984). The two years provisional period intends to give the newly independent states the chance to reflect on the content of the colonial agreements and choose which ones they intend to adopt and which ones to renegotiate with the concerned parties (Turack, 1984). The same doctrine had also been envisaged by east African countries to

declare the non-applicability of the colonial treaties on their territories. The doctrine is promoted in response to the colonial powers' advocacy for the new east African states to get into inheritance agreements and apply the pre-independence treaties concluded by the colonial powers on behalf of the colonial territories (ibid). Since Ethiopia has never been colonized, the *Nyerere* doctrine does not directly apply to it, yet Ethiopia claims to not be bound by the colonial agreements governing the Nile River as it is not a party to those treaties (Article 34, VCLT).

However, whether such unilateral declaration could suffice to practically exclude the effect of the treaty in their territories could be examined in light of the VCLT. The convention partially incorporates the 'clean slate' principle underlying the *Nyerene* doctrine based on the premise that states should not be bound by the colonial agreements entered into by their predecessors (Article 16, VCLT). Yet, Article 9 of the VCLT prohibits the unilateral declaration of the successor state from having legal effect, *per se*. be it as it may, the very claim of the doctrine by the upper riparian countries suffice at least to infer to the intent of those countries to not be bound by the 1929 treaty and whether or not that suffice to legally relieve them of obligations under the treaty is beyond the scope of this study.

This being the case, both sides of the validity arguments of the colonial treaties are very broad and open to theoretical, legal, and philosophical analysis. Yet, the study adopts the invalidity of those treaties based on the above-discussed doctrines and the defense of 'consent' to not be bound by those treaties by the upper riparian countries. It is also based on this premise that construction of the GERD and negotiations on it are possible.

2.4. Economic and Political Security: Examination of the Nile Treaties and their validity issues

The Economic Security of states is a multifaceted concept that also constitutes a foundation for the fulfillment of other security concepts. The fulfillment of economic security also lies on different functions, namely the protective function (the ability to protect one's economic system from internal and external threats), the regulatory function (the ability to regulate economic sub-systems to maintain economic security), the warning function (involving a risk assessment and tackling threats to economic security accordingly), innovative function (the ability to be creative and accelerate economic development), and the social function (the ability to meet the demands and interests of all members of the society (Mkrtchyan, 2015). These broad functions reflect the complex nature of economic security and how it could be threatened by internal and external factors (Grigoreva & Garifova, 2015). Accordingly, promoting and maintaining the economic security of states is a complex task requiring the fulfillment of the above five functions.

Political security could be defined as a reasonable space to enable one to conduct actions necessary to adopt and implement objections deemed essential by the national actors even with the presence of actual or potential external threats in world politics (Inoguchi, 2003). Here, the adoption of national objectives to be implemented by the national actors is an essential element of the definition in the absence of which political security will be of no meaning. Besides, the presence of actual or potential external threat is significant as it renders political security a matter of national security of states aggravating the same to sovereignty and independence questions. Then, the ability to conduct the national sphere without interference from external sources could be inferred from the definition. The study adopts this definition since it is comprehensive and practical within the current world politics. The presence of an actual or potential threat will not be much of an issue regarding a transboundary water resource since every basin country will claim rights if no exclusive right as seen in the Nile River case. Therefore, the ability of state actors to adopt national goals and pursue them despite an actual or potential external threat demonstrates an exercise and maintenance of political security of the state and vice versa. However, this definition of political security as absolute territorial integrity loosens when it comes to transboundary water resource management as is shared by several states that the study adopts a loose version that entails an equitable and reasonable usage of the Nile River by the co-riparian countries, including Ethiopia.

The manifest conflicting interest of the Nile basin countries on Nile water has a direct implication on the stand the countries have on the colonial treaties and other treaties particularly before the initiative of the GERD and consequently a direct impact on the economic and political security of those countries. For instance, the very act of the United Kingdom representing, promoting, and adopting a treaty allocating the usage of the Nile water manifests the fulfillment of its protective role to enhance the economic interest of its colonies. Accordingly, the stand of Egypt to claim those treaties as a valid source of its exclusive right constitutes its attempt to fulfill its economic security through the protective role of tackling external threats from the upper riparian countries, its warning function of assessing the risk that could be posed upon the invalidity of those treaties and new negotiations, and its social function of maintaining the demand and expectations of Egyptians from the Nile water which was proclaimed as an issue of national security. This analysis could be extended to infer a similar result of the content of the treaties to enforce the economic security of Egypt while posing a serious external threat to the economic security of the upper riparian countries by limiting their right to use the water. Therefore, it could be argued that the 1929 treaty and other treaties crippled the upper riparian countries from enjoying their economic security.

Conversely, the act of the upper riparian countries of not accepting those treaties aimed at tackling the external threat posed by those treaties through warning and protective functions of the government, regulatory and innovative functions of initiating new economic alternatives on how to use the Nile water,

and the social function of meeting the demands of their societies who had been deprived of their right to use the water. The social function to protect the economic security of the society could best be demonstrated by the Ethiopian proverb '*ye Abayin lij wiha temaw*' to show the frustration of the society claiming to be thirsty despite contributing 85% of the water of the Nile River. Also, the rejection of those treaties informs the innovative functions of the national actors as it opens the door for new negotiations, allocation of usage, and consequently the implementation of new initiatives such as the GERD. Therefore, challenging the treaties aimed at securing economic securities by the upper riparian states.

Similarly, the action of Egypt to maintain the content of colonial treaties and that of riparian countries to reverse the same constitutes a claim of their political security. Egypt considers the claim of the riparian countries as an external threat and vice versa. Particularly, the assertion of sovereignty and independence by the upper riparian countries in the aftermath of the colonial era is a foundation to adopt and implement actions independently and tackle the effect of external interference they considered a threat. Therefore, it constitutes a claim for political security.

The other political implication of the 1929 treaty and the other treaties is setting a precedent for consequent negotiations and claims as they are still argued as valid by Egypt and put a bargain difference between Egypt and the other upper riparian countries. Here, Egypt as an exclusive right holder is in a better position to set terms of negotiations which implicates the secondary status of the other countries whose functions highly revolve around responding to the terms provided by Egypt. The negotiations on GERD will be examined in the next chapter to reveal whether it sets an example toward an equal bargaining power for the Nile basin countries, particularly Ethiopia, Egypt, and Sudan. In the international political world, the bargaining power of states is vital that the compromise made by the 1929 treaty on the bargaining power of the upper riparian countries should not be overlooked.

2.5. The Relationship between Ethiopia, Sudan, and Egypt: Before Negotiations on GERD

The use of transboundary water resources is a complex issue that the Nile River indeed is not immune to. The fact that it crosses 11 countries entitles all of those countries to have a vested interest over the river and the complexity seems more intense between Ethiopia, Sudan, and Egypt. Ethiopia, the upper riparian country contributes about 85% of the Nile water, and Egypt and Sudan as lower riparian countries claimed to have depended on the river as a matter of life and death, particularly Egypt. Egypt's extensive reliance on the Nile River constitutes any development initiative on the river a concern for its national security (Swain, 1997); conversely, Ethiopia whose major economic base, agriculture depends on the mercy of the rainfall could not meet the hydroelectric demands of the society claims a usage pursuing its economic and political security agendas.

Here, it should be noted that legally speaking, Ethiopia could not be bound by the colonial treaties and other treaties entered into between Egypt and Sudan, save for an argument it should be bound by the 1902 treaty entered into by Emperor Minilik II and the British Government on behalf of Sudan. Be it as it may, the onerous content of allocation of usage in those treaties with exclusivity effect and the growing demand of usage by Ethiopia made a paradox making their stands practically irreconcilable. Such assertion is demonstrated by the fact that despite a cooperation agreement signed between Ethiopia and Sudan in 1991 and between Ethiopia and Egypt in 1993, the relationship between those countries continued to be characterized by tension and mutual suspicion (ibid). Such tension and mistrust are backed by the continuous threat from Egypt to employ any means necessary to maintain its veto over the River Nile, including a military enforcement mechanism. Such threat has not been successful to deter Ethiopia from initiating the GERD and even if the threat and tension seem to be increasing, none of the parties have resorted to a military alternative to secure their stand.

2.6. Co-operation Initiatives on the Nile River

There have been a few regional cooperation projects on the Nile River the varying level of participation and success. One of those co-operations is the HYDROMET 1967 project which was financed by the United Nations Development Program (UNDP) and resulted in the adoption of a catchments model including all the hydrological and meteorological data being collected (Metawie, 2004). This technical project involved seven of the Nile Basin countries excluding Ethiopia and resulted in the success of collecting the hydro-meteorological survey of the catchments of Lake Victoria, Kyoga, and Albert. It ended in 1992. Then, in 1983, the UNDUGU (brotherhood) initiative had been adopted mainly to explore ways of establishing the Nile Basin economic community, engaging nine countries including Ethiopia (Ntabana, Benefit Sharing Opportunities in the Nile Basin). The initiative did not bring together all the Nile Riparian countries as Ethiopia, Kenya, and Tanzania opted to have an observer status (Seide, 2014). The other project is the 1992 (TECCONILE) project promoting the future cooperation on water resource matters to be pursued for a transitional period with the name ‘Technical Cooperation for the Promotion of the Development and Environmental Protection of the Nile Basin’ (TECCONILE) (Metawie, 2004). The agreement was signed by Egypt, Rwanda, Sudan, Tanzania, Uganda, and Zaire while Burundi, Kenya, Eritrea, and Ethiopia participated as observers. The abstention of Ethiopia from signing the project and confining its role as an observer demonstrates the suspicious relationship between Ethiopia and Egypt, as Egypt had a dominant role in the project. Accordingly, Ethiopia and the other observers will not be bound by the terms of the project. That being the case, the agreement was backed by the Nile River Basin Action Plan (NRBAP) with major objectives including integrated water resources planning and management, regional cooperation, training, capacity building, and environmental protection.

The other significant cooperation initiative is the Nile Basin Initiative (NBI) 1999 with a shared vision of sustainable socio-economic development through the equitable utilization and benefits from, the common Nile Basin water resources (ibid). The key mandates revolve around facilitating cooperation, water resources management, and water resources development. It has two major action plan programs namely, the Shared Vision Program (SVP) which aim at setting a shared vision and cooperation towards the fulfillment of such visions, and the Subsidiary Action Program (SAP) which aims to achieve a win/win approach of utilizing the Nile water through trans-boundary co-operation and sustained political commitment. From its conception to 2019, the NBI claims to have had success in maintaining the cooperation platform, providing tools for knowledge generation and capacity building to facilitate informed decision-making on the management and development of the Nile River including the preparation of different investment projects (NBI achievements 1999- 2019). The contribution of the NBI to negotiations on GERD and its success will be examined in chapter three.

2.7. Theoretical Framework: Transboundary Water Resource Management and Conflict Resolution

Transboundary water resources are surface and groundwater resources that cut across political borders of states which entail overlapping issues of resources, survival, and sovereignty (Tyia & Madani, 2017). Water as a precious and scarce resource has always been a point of competition. The issue of sovereignty follows regarding the right of states to manage and use a resource that falls across their territories. Moreover, the way the resource is used by one riparian country affects its use in other countries which makes the issue of survival another point of contention. These overlapping issues are conveyed through the available quantity of water, the quality of water, the timing of water flows, and the environmental impacts of human activities (Watkins 2006). Consequently, those issues usually result in conflict among countries that share a water resource.

Hence, the usage of the Nile River is not immune to overlapping issues of competition as a resource, as a claim of sovereignty, and a threat to survival. The GERD project is Ethiopia's biggest claim over the Nile water resource in response to the growing hydrological demand of the population of Ethiopia and a bold statement towards exercising sovereignty over a resource that falls across its territory. However, since such usage might affect the already established usage of the water mainly by the lower downstream countries, the project is considered a threat to survival by Egypt and the Sudan that constitutes a foundation of a conflict followed by a series of negotiations. Different theories try to elaborate on the management of transboundary water resources and the resolution of water conflict to be discussed below.

2.7.1. Realism and Neorealism

As per the realist and neorealist theories, interstate relations are anarchical as countries are motivated by egoism, the need for survival, and power (Goodin, 2010). Here, states are rational actors whose actions highly resemble human nature which favors self-help, suspicion, and insecurity, when left to act independently. This makes international relations a constant struggle for relative power and gains making cooperation an anomaly. Consequently, cooperation emerges under the Hegemonic Stability theory, i.e. when a given state takes the initiative to formulate a cooperative regime on its terms. It could also emerge in the absence of regional hegemony as a mere reflection of the existing distribution of power or exceptionally when the agreement favors participants in equal measure.

Concerning the management of transboundary water resources, a realist theory characterizes the relation of the co-riparian countries as a zero-sum game manifested through suspicion. Lord Birdwood, a senior British colonial army officer summed it up in 1954 as;

“...of the elements that make for political controversy in human affairs, the control of water is one of the most persistent... The last community to get the water is always suspicious of the intentions of those upstream” (quoted by Dinar, 2008).

The statement denotes the position of the downstream countries of the Nile River towards any initiative made by the upper riparian countries, as observed in the GERD project. The reverse could also be inferred from the above statement to refer to the suspicion of the upper stream countries where the downstream ones build a project and claim historical or prior use rights, as it is the case on the Nile River. More explicitly, the realist theory explains the relationship of the Nile Basin countries that is characterized by suspicion and consequently, the absence of a meaningful comprehensive agreement between the basin countries on the management of the river. The major Nile Treaties before the commencement of the GERD project attempted cooperation mainly as a mere reflection of the existing distribution of the usage of the Nile River by the lower downstream countries and the cooperation initiative of Egypt and Sudan on their own terms constituting the Hegemonic Stability theory. However, the third alternative for cooperation as per the realist theory, i.e. cooperation following an agreement favoring all participants equally as an exception has not been attained. Coming to the GERD negotiations, are still ongoing but the decade-long negotiations have not yet resulted in a binding cooperation agreement, to be discussed below, which makes the stipulation of the Realism and Neorealism theories i.e. cooperation as an anomaly a plausible argument.

2.7.2. The Water Wars Theory

This theory emphasizes the fundamental nature of water resource and the growing human, economic, ecological, etc, demand of human being making competition over the resource inevitable. Consequently, the resource becomes scarce, and that coupled with poor management of the same results in conflict between basin countries (Dinar, 2008). Other factors also augment conflicts such as the relative power of basin states, their locations, and psychological factors, i.e. the actual or perceived unilateral overexploitation of the resource by some members makes other basin countries prone to conflict, (Baranyai, 2020).

Such theory is criticized to be based on speculations rather than the examination of the relation between water and conflict which arguably provides that water wars are neither prevalent nor inevitable (Priscoli & Wolf, 2009). Even so, Wolf provides that military attack on water rights only makes sense by downstream hegemonic power against a weaker upstream riparian stating the Nile River to be one of the examples where such a scenario could become possible.

Even if the usage of military force to claim water rights is not common globally making the Water Wars theory less plausible, the same has been claimed by Egypt against the GERD project claiming to protect their interest in the Nile at any cost including a military intervention (to be discussed in chapter three). The Nile River is also referred to as one of the transboundary water resources where the military force could be launched by the hegemonic downstream country, i.e. Egypt on the relatively weaker upstream country, Ethiopia. Therefore, the Water Wars is relevant for this study. Yet, since such a threat made by Egypt to attack GERD is not yet materialized and is less likely to be so considering the progress of the project, i.e. the third round of filling the dam is approaching in summer of 2022, and its tendency to protect itself by attacking the same could pose a safety risk for the downstream countries, it is less likely for the water wars to be directly implemented on the GERD project (interview conducted with Professor Tesfaye Tefesse from Addis Ababa University). The interview also emphasizes different tactics used by Egypt to exert pressure on Ethiopia to halt the completion of the project including supporting different rebel and terrorist groups to disrupt the peace and security of the country in pursuit of an implied effect of stopping or prolonging the completion of the project. Those attempts do not signify a direct water wars but manifest a loose version of the same. For instance, in October 2016, the Ethiopian government blamed Egypt for supporting outlawed rebel groups and claimed to have ample evidence that Egypt has been providing training and financial support to the then labeled terrorist organization in Ethiopia, i.e. the Oromo Liberation Front necessitating a declaration of a state of emergency (Elias, 2016). Ethiopia also claims that Egypt has supported the rebel groups in Beshangul Gumuz where the GERD is located and

assisted the Gumuz Militia which had unleashed brutal military attacks on ethnic minorities in the area (Africa news, 2021).

The other interview conducted with Zerihun Abebe Yigzaw, a former academician who participated in GERD negotiations, reveals the importance of the Water Wars along with its practical implementation on the Nile River. He stated ‘there had been tremendous wars on the Nile River from 1821- 1876 and 16 wars had been fought particularly between Ethiopia and Egypt over the river from 1832- 1876’. He also said there has been a proxy war between Ethiopia and Egypt since the 19th century, such as the Ethio-Somalia and Ethio-Eritrea wars where Egypt tried to influence Ethiopia. He emphasized the fundamental cause of war between co-riparian states is the utilization of the shared water resource to which Nile River is a very good example. Accordingly, he challenges the theory of Aron Wolf who claimed the water wars had never been implemented. Moreover, Egypt has been supporting different rebel and terrorist groups in Ethiopia to subjugate Ethiopia and prevent it from approaching developmental initiatives on the Nile including the GERD project, constituting an indirect water wars.

Regarding the possibility of water wars on the Nile River in the future, it depends on the cost analysis of available alternatives to resolve the issue of usage of the Nile River, i.e. the cost of cooperation vs. the cost of war; for Egypt the cost of cooperation is much less than the cost of war as the last lower riparian state since a unilateral measure will not be feasible in protecting its interest, as per Zerihun. Hence, the likelihood of getting into a war is less likely; however, indirect water wars through interference in the internal affairs of Ethiopia thereby making it vulnerable are likely persist as Egypt is inclined to a double-edged approach of resorting to cooperation at one time and making a threat of war at another, said Zerihun.

2.7.3. Social Planner Theory

When the allocation of the resource is impossible to make one better off without worsening the situation of the other, it constitutes the social or Pareto optimal allocation. To achieve the optimal, the social planner would allocate the water based on the overall efficiency of water use irrespective of the individual interests of the co-riparian countries (Tayia & Madani, 2017). The theory is significant for research and planning purposes but its practical implementation is limited. However, the Nile River is one of the two exceptions where such theory had been implemented, i.e. during the colonial period; the United Kingdom (UK) conducted a series of studies on the utilization of the Nile River, particularly for agriculture and textile industries, the result of which served, among other things, as a base for colonial treaties on the Nile River.

The Social Planner theory is criticized to be based on the basin-wide objective function ignoring the contextual and preferential differences of the co-riparian countries (Priscoli & Wolf 2009). Here, it promotes a one-size-fits-all approach assuming co-riparian countries use the river for similar functions which ignores the economic, political, and cultural background in those countries that inform how they intend to use the water. Moreover, it assumes the existence of a superior central power to allocate the resource backed by obedience from the co-riparian countries disregarding the concept of the sovereignty of those states. For instance, the allocation made of the Nile River by the UK during the colonial era is challenged by the upper riparian countries upon assuming their independence in the aftermath of colonization. Ethiopia also claimed to not be bound by those allocations and that the practical application of the theory in sovereign states of the contemporary world is close to nil. Besides, the theory replaces the conflict resolution mechanism with a single entity that determines the usage of the resource thereby further limiting its significance for practical purposes (Tayia & Madani, 2017). Save for its practical limitations, the theory is relevant to explain some of the negotiations on the GERD project, and therefore, is relevant for this study with no excessive reliance.

2.7.2 Hydro-hegemonic Theory

The definition of hydro-hegemony emphasizes on power and could be described as the success of a basin riparian in segmenting a particular discourse, maintaining its interest, and impending changes to a *status quo* (Warner, et al, 2017). Hydro-hegemony is hegemony at a river basin level to be achieved through different tactics, such as coercion-pressure, treaties, knowledge-construction, etc. (Zeitoun & Warner, 2006). Here, the outcome of competition over the resource depends on the established hydro-hegemonic power, typically in favor of the most powerful actor. The hydro-hegemonic framework has been applied to the Nile River where it is revealed that the hydro-hegemonic configuration tends toward the dominative form characterized by power asymmetries influencing an inequitable outcome (ibid). According to this theory, co-riparian in pursuit of control found themselves in either of the three control alternatives, i.e. shared (some form of cooperation exists), consolidated in favor of the dominant co-riparian, and contested (manifested through fierce competition) (ibid). The usage of the Nile has been dominated by Egypt and before the GERD project, even if some other projects had been built on the river by the upper riparian countries including the ones constructed by Ethiopia such as the Tana Beles, Fincha, and Tekeze, the control situation consolidated in Egypt's favor where there was minimal cooperation with no fierce competition. Egypt retained its hegemonic position through a unilateral historical claim leaving the rest of 201co-riparian states with less control.

The GERD project posed a serious threat to the established hegemonic position of Egypt and forced them to negotiate questionably in pursuit of a cooperation agreement. It disrupts the *status quo* where the

dominance of Egypt was ensured. Here, the control of Ethiopia over the Nile Waters is characterized by a contest over the existing arrangement of usage of the Nile River through an active and practical competition with the GERD project.

The above-discussed theories, i.e. the Realism and Neorealism, the Water Wars, the Social Planner theories (to some extent), and the Hydro-hegemonic explanations are employed to analyze issues in the study. Even if this study does not fully accept the inherent nature of conflict in all interstate relations, the relationship of the Nile Basin countries, particularly Ethiopia, Egypt, and Sudan on using the Nile Water resembles suspicion making meaningful cooperation an unattainable goal. Also, even if the launch of a military intervention is not yet attempted on the Nile River usage and seems unlikely moving forward due to practical reasons, a threat had been made by Egypt that the Water Wars theory also shapes the study to some extent, with no excessive reliance. Moreover, some of the diplomatic interventions made in the negotiations on the GERD resemble the Social Planner theory which makes it significant to the study. Finally, since GERD constitutes the biggest challenge to the hegemonic status of Egypt and sets a new alternative whereby the river could be used, hydro-hegemonic explanations are relevant.

2.8. Principles of Transboundary Water Sharing

Some of the major sources of international law are conventions (treaties), customary international laws, and general principles (Article 38 (1) (A), International Court of Justice (ICJ). In the absence of treaties binding all the parties involved in a given case, customary international laws and principles constitute water law to govern a contested issue. Accordingly, there are five principles to govern the usage of transboundary water resources. One of those principles is Limited Territorial Sovereignty which emerged from the demand of some states to have absolute territorial sovereignty and the consequent right to use the water under their jurisdiction as they please, claimed mostly by the upper riparian states of a given river as opposed to the absolute integrity of state territory stating an absolute right to get water of same quality and quantity as usually claimed by the lower co-riparian states (Dellapenna, 2001). The second principle is the no-harm principle which requires basin states to not cause harm to the other co-riparian states (ibid). This principle, however, causes complications as the excessive reliance of some states on a given river could easily be harmed by any project conducted by other riparian states, as has been observed in the Nile case where Egypt claims a survival threat posed by the GERD project. The principle is later qualified as the ‘no significant harm’ principle under the UN Watercourses Convention and other negotiation documents for the GERD project, as to be discussed below.

The third principle is the obligation to peacefully address disputes (Gupta, 2016). This principle is incorporated in one of the significant outcomes of the GERD negotiations, i.e. the first trilateral

agreement of Ethiopia, Egypt, and Sudan, the Declaration of Principles (DOP), 2015 to be discussed below. One of the ten principles it incorporates is the agreement of the parties to peacefully resolve disputes arising out of interpretation and implementation of the agreement (Section X, DOP 2015). This is a significant principle to prevent the escalation of disputes to a more adversarial or even violent means of resolving them. The fourth principle is the issue of historic rights, i.e. a state claiming the water it has been using which is common in scenarios where some of the basin countries advanced than others and used more water in the past (Brunnee & Toope, 2002). This principle has been consistently claimed by Egypt over the Nile water which is also manifested in Egypt's positions in the GERD negotiations. The fifth principle is the principle of equitable usage of the shared water resource among the co-riparian states (Gupta, 2016). this principle is the base for the usage of the Nile waters by the upper riparian countries, as it has been claimed by Ethiopia while trying to establish a usage its usage right on the Nile waters.

Chapter Three

The Grand Ethiopian Renaissance Dam (GERD) Negotiations

3.1. Introduction: The GERD Initiative

The GERD project has been announced in March 2011 and the construction began in April 2011. The project, among other things, aimed at meeting the growing electricity demand of the population that grew by 13% between 2002 and 2006 and increased to > 20% by 2017 (Ministry of Water Irrigation and Electricity, 2017). It is located approximately 600 km northwest of the capital Addis Ababa, in the region of Benishangul - Gumuz along the Blue Nile and would be the largest dam in Africa upon its completion being 1,800 m long, 145 m high, and with a total volume of 74 BCM. The estimated cost of the project is about USD 4.7 Billion to be financed entirely by Ethiopians and the government budget. The decision to finance the project entirely by Ethiopia could be examined in terms of whether it is informed by the unconventional approach of foreign sources on the project that could reject a fund, intervene in the construction of the same, setting terms compromising the independent decision-making power of Ethiopia. The discussion in chapter two reveals the preference made to Egypt by other countries inferred from the colonial treaties and the sustainability of such preference shows financing the GERD by foreign sources may not be feasible and could cripple the project before it is even started. Here, it would have amounted to giving a veto for foreign powers to determine the fate of Ethiopia on using the Nile River rather than Ethiopia deciding the same as a sovereign state, had the source of finance been foreign donations.

Besides, the decision to finance the GERD by Ethiopians, from within and abroad created a sense of ownership and a national consensus among Ethiopians which made the GERD more than just a hydroelectric project but a manifestation of 'renaissance' as the name connotes informing the project to be of national interest. Such implication is a great stance towards developing a commitment towards the Nile River comparable to the one Egyptians had since the beginning. Therefore, self-sufficiency in the finance of the project is a foundation for the exercise of the economic security of Ethiopia through the protective, regulatory, warning, innovative, and social function of the realization of economic security, discussed in Chapter 2.

The regulatory function resides on the initiative to meet the growing electricity and energy demand of the population which is increasing by more than 20% each year (Ministry of Water Irrigation and Electricity, 2017) through regulating the existing water resource through an innovative grand project, the GERD. Besides, the exclusivity of the financial funds to Ethiopian sources meets the warning and protective

functions through a risk assessment made on involving foreign funds and tackling the same by voting against it. Additionally, building a national consensus among the heterogeneous population of Ethiopia constituting over 90 ethnicities and nationalities (Reuters Graphics, 2021) meets the social function of economic security constituting unity within the diversity through the GERD project.

Regarding political security, the very initiative of the GERD defines it as per the power of the Ethiopian government to set national goals despite the presence of external threats. Here, it should be noted that water has become a security issue globally due to overpopulation and climate change (Krampe, 2020) that Ethiopia's decision to adopt the project and finance the same independently informs its intent to maintain the security interest over the Nile River and determination to not forfeit any power on that security interest.

The timing of the project itself entails an interesting issue since it coincided with the Arab Spring protest in Egypt constituting a major political challenge in Egypt that led to the end of Hosni Mubarak regime (Puspitasari, 2017). Ethiopia used the protest as an advantage to commence the project making the incident a perfect timing to start the project by attracting the least possible attention (Dunne, 2020). Further, Ethiopia claims the GERD serves the interest of the lower riparian countries by avoiding the risk of flood and maintaining a regular and sustainable flow of water with less evaporation which is significant for irrigation projects in the downstream countries (Ministry of Water Irrigation and Electricity, 2017). Yet, such assertion is not accepted by the downstream countries and resulted in a series of negotiations since 2011 which will be discussed below from the perspective of the political and economic security of Ethiopia.

3.2. Negotiations on the GERD

The GERD project is occasioned by a series of negotiations between Ethiopia, Egypt, and Sudan since its inception in 2011 following the unilateral decision of Ethiopia to adopt and implement the project. Egypt and Sudan objected to the GERD claiming they are neither notified nor consulted of the project and allege the detrimental nature of the project on the livelihood of Egypt and Sudan that highly depend on the Nile River. Consequently, negotiations between Ethiopia, Egypt, and Sudan that are still ongoing started to take place with no definite success in reaching an agreement, yet. Here, it should be noted that none of the projects conducted by Egypt and Sudan were backed by a similar negotiation process and Ethiopia was not even consulted regarding the projects.

3.2.1. The International Panel of Experts (IPoE)

The IPoE constitutes an initial technical discussion held on the GERD project among the International Panel of Experts (IPoE) (The International Panel of Experts (IPoE) on the Grand Ethiopian Renaissance

Dam Project, (hereinafter called the IPoE, 2013). The discussion was successful in terms of adopting a report established by a cost-benefit analysis of the project through a document review of the design documents of the GERD by ten experts, i.e. two experts from each country and four international experts to be nominated by those six representatives (the IPoE, 2013). The IPoE aimed at building confidence between the three countries by determining a genuine benefit of the project for the three countries and possible costs on the downstream countries, Egypt and Sudan. The panel adopted a report on findings and recommendations including the issues of dam safety and engineering, water resources and hydrology, and environment and socioeconomics. For instance, one of the findings is that the design of the GERD project to be referred from the 'Design Criteria-Basic Design 2010' provides the document to be general, not specifically showing the design of GERD, but is acceptable as an early general guideline, subjected to an update (the IPoE 2013, Section 5.2.2.2). Similarly, the report envisages the hydrological benefits of GERD in the three countries, but also mentioned the possible quantitative impact on Egypt and a qualitative one on Sudan (the IPoE2013, Section 5.3.3.1). The report recommends further research be conducted to assess the possible benefits and risks of the project (the IPoE2013, Section5.3.3.3).

This being the case, the understanding and interpretation of the report were controversial, particularly by Ethiopia and Egypt. Here, the Ministry of Water and Energy of Ethiopia claimed the design of the project meet international standards, benefited the three riparian states, and to not cause significant harm to Egypt and Sudan (Yigzaw, 2013). Egypt claimed the report to mean adequate study to not have been made on the project and further studies have been demanded on the safety of the project (Ahram Online, 2013). The paradox in the understanding and interpretation of the same report by Ethiopia and Egypt shows how contradictory the interest of the parties sought to be secured out of the negotiation. It also depicts the continuance of the tense and suspicious relationship between both countries. Therefore, the objective of the negotiation to build confidence among the three countries was not fruitful as those countries could not trust one another even on the basic interpretation of the report adopted in the presence of their representatives. Needless to say, the report only constitutes an initial negotiation document, certainly not the last one and the GERD negotiations continued.

Yet, the implication of the absence of prior notification and consultation of the GERD by Ethiopia to the downstream countries and the continuance of the construction pending negotiation could be examined. The declaration of the initiative without prior consultation shows the determination of Ethiopia to construct the dam which would have been halted by the intensive pressure from Egypt and the international diplomatic interferences as observed in the consequent negotiations. Thus, it is cognizant of the realities and reflective of the historical relationship between the three countries characterized by suspicion. The continuance of the construction while negotiating with Egypt and Sudan also illustrates

such determination and how seriously the issue of the Nile is taken by Ethiopia, arguably for the first time in history. Further, attaching the issue of GERD to the national consensus through assigning the financial obligation of the construction to domestic and Ethiopian sources is the most significant stance towards exercising political and economic security by tackling an actual external threat and international pressure.

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

Following the 2013 report of the IPoE, Ethiopia, Egypt, and Sudan established the Tripartite National Committee (TNC) to discuss issues and meet some of the recommendations envisaged in the reports. Accordingly, a series of meetings have been held since November 2013. However, on the 3rd round of trilateral meetings in January 2014, the parties failed to reach an agreement since Egypt started making demands unacceptable to Ethiopia and Sudan which ultimately resulted in Egypt's withdrawal from the ministerial negotiations (Dagnew, 2014; Tawfik, 2015). Yet, with the election of the new president in Egypt and the realization of withdrawal serving the interest of Ethiopia resulted in the moderation of Egypt's position. Then, progress towards negotiation was resumed upon the African Union Summit in Malabo, Equatorial Guinea, in June 2014 which resulted in a meeting between the new Egyptian president Abdel Fattah el-Sisi and the former Ethiopian Prime Minister, Helamariam Desalegn that is completed with seven points statement.

Hence, both countries agreed to continue negotiations and respect the report of the IPoE, Ethiopia agreed to avoid any potential adverse effect of the GERD on the water use of Egypt, and Egypt agreed to resume negotiation that acknowledges Ethiopia's developmental needs (Dagnew, 2014). Here, the initiative of both parties to reach an agreement is admirable; yet, the agreement made on Ethiopia's side to avoid any adverse effect of the GERD on the water usage of Egypt is practically difficult due to the extensive reliance of Egypt on the Nile River. This result in any development initiative on the Nile River becoming a possible threat to Egypt making the acknowledgement made on the side of Egypt somehow pointless as it is contingent upon not adversely affecting Egypt's interest. It also implicates the manifestation of the dominant position Egypt maintained since time immemorial on the Nile River enforced through the colonial and post-colonial treaties. Rather, the principle of fair and equitable usage of the river without causing significant harm to Egypt should have been the theme of the agreement so that the possible risk of compromising the interest of lower Riparian countries is also envisaged, i.e. realization of practical cost. Here, it should be noted that the degree of harm covered under phrases 'adverse' and 'significant' is quite different, much higher for the latter and which is also a standard adopted under international documents that Ethiopia should opt for it on negotiating terms of usage of the Nile River.

Consequently, the 4th ministerial meeting has been held in August 2014 and resulted in an agreement to establish a committee to oversee the implementation of additional studies recommended by the IPoE

report 2013, i.e. the Tripartite National Committee (TNC) composed of four experts from each country (Tawfik, 2015). The TNC, among other things, was responsible to select international consultancy groups to conduct the IPoE-recommended studies. Such agreement is vital for showing the commitment of the three countries to resort to negotiation and dialogue to manage their differences. Further, the continuance of the negotiation informs the invalidation of the colonial and post-colonial treaties that allocate the usage of the River Nile between Egypt and Sudan. That implies the ultimate act of rejecting those treaties and claiming the new way of using the Nile water by Ethiopia to pursue its economic and political security along with its sovereignty. However, the TNC failed because of the disagreement on selecting international consultants and the demand of Egypt on halting construction pending the completion of studies, which was rejected by Ethiopia (Attia & Saleh 2021).

3.2.3. The 2015 Agreement on Declaration of Principles (DOP)

The 2015 agreement is a breakthrough toward the cooperation of Ethiopia, Egypt, and Sudan on the utilization of the Nile River as the first trilateral agreement incorporating ten principles. It is also vital for the incorporation of international water law principles and differs from the previous negotiations on GERD that primarily focus on technical issues. Besides, since all the three countries did not sign the 1997 UN Convention on the Law of Non-navigational uses of International watercourses, the agreement sets a standard against which the actions of the three countries could be examined.

Accordingly, the principle of cooperation under the Declaration provides for the parties to act in good faith, attain mutual benefit from the river, and promote a win-win approach based on international law principles (Agreement on Declaration of Principles between The Arab Republic of Egypt, The Federal Democratic Republic of Ethiopia And The Republic of Sudan On The Grand Ethiopian Renaissance Dam Project (hereinafter called the DOP, 2015). Besides, the purpose of the GERD as an economic development initiative through power generation is envisaged in addition to its role to facilitate regional integration and transboundary cooperation under the principle of development, regional integration, and sustainability (the DOP, 2015, Section II). This principle, particularly, the acceptance of the dam as a development project entails the recognition of the right of usage of the upper riparian countries, Ethiopia's sovereign power to adopt and implement economic development initiatives in pursuing its economic and political security. Yet, the strict limitation of the usage of the river for hydroelectric power with no room to exploit the same for other uses entails a consumptive limitation on the utilization of the river by Ethiopia unlike Egypt and Sudan (Dereje, 2017). This erodes the sovereignty of Ethiopia and limits its power to implement a development initiative of its choice based on the economic and political security of Ethiopia. It rather reaffirms the absolute territorial integrity principle with the exclusive right of the lower riparian countries on the Nile River. The GERD project, despite being fully financed by

Ethiopia, its function is limited to hydroelectric power generation even if Egypt and Sudan launched huge hydraulic projects on the river without even discussing purposes of the same with Ethiopia, the prime examples being the Southern Valley (Toshka) project in Egypt and Merowe Dam in Sudan. Here, the principle at a face value seems to recognize the right of usage of the river by Ethiopia, yet, the in-depth understanding of the terms shows otherwise, i.e. is quite restrictive.

The other principle is the equitable and reasonable utilization (the DOP, 2015, Section IV) of the river further strengthens the usage right of Ethiopia. Additionally, the duty to not cause ‘significant harm’ to one another and to eliminate or mitigate the same in case significant harm is caused nevertheless and to discuss compensation is incorporated (the DOP, 2015, Section III). These measures intend to increase the benefits and reduce potential risks posed by the project save for the practical acceptance of ‘compensation’ by Egypt for the significant harm caused to its dominant status on the river. Here, the Egyptian Ministry of Foreign Affairs confirmed the 2015 agreement does not affect the historic agreement and the water allocation made upon them (Tawfik, 2016). Be it as it may, the degree of harm sought to be prohibited is qualified to ‘significant harm’ (Section III, DOP 2015) which is a higher standard than an adverse effect thereby is a good stance for Ethiopia. Moreover, the incorporation of equitable and reasonable utilization is a historic compromise made by Egypt that refused the Cooperative Framework Agreement (CFA) as it gives upstream riparian states the right to equitable and reasonable utilization without the obligation not to alter the current water uses downstream (Samaan, 2019). Some authors attribute such compromise to Ethiopia’s commitment to respect the outcomes of the joint studies and to conclude the agreements on the first filling of the dam and its annual operation, to be discussed below.

Moreover, the principle of cooperation on the first filling and operation of the dam (the DOP, 2015, Section V) requires the parties to implement the recommendations of the IPoE and respect the outcomes of the Technical National Committee (TNC). Here, the title of the principle is specific to the first filling of the dam and rules for its annual operation. The exclusivity of the agreement to the first filling, even if the filling process is not confined to a one-time process, informs either the continuity of negotiations regarding the following rounds of filling the dam or recognition of the consequent filling of the GERD as a natural consequence of the construction process. The phrase under Section V, second paragraph, (a), which reads ‘Agree on guidelines and rules on the first filling of GERD which shall cover all different scenarios, in parallel with the construction of GERD’ supports the second alternative, i.e. the recognition of filling the dam as a consequence of the construction of the dam in the shade one consideration of different scenarios. This is a major victory for Ethiopia to continue construction and fill the dam based on the agreement with no further negotiations to that effect. However, it is later observed on the second

filling of the dam that Egypt and Sudan adopted the first possibility, i.e. further negotiations to agree on the consequent rounds of filling the dam as inferred from their fierce objections to the first and second rounds of filling the dam. The provision on the agreement is framed broadly to incorporate different scenarios of constructing the dam which extends to filling the dam and the agreement of the three parties to cooperate towards the same which justifies the action of Ethiopia to fill the second round of the dam unilaterally.

The other principle is regarding dam safety which states ‘Ethiopia shall in good faith continue the full implementation of the Dam safety recommendations as per the IPoE report’ (the DOP 2015, Section VIII). The term ‘dam safety’ is a broad term that includes safety concerns that could threaten the dam itself, for instance, from risk posed by the downstream countries (as claimed by Egypt) as well as the risk posed by the construction of the dam on them. The former primarily threatens Ethiopia while the latter concerns the lower riparian countries that are exclusively addressed by the provision. Therefore, the provision at best is narrow or one-sided which protects the interest of Egypt and Sudan. A potential political, economic, diplomatic, and even military threat the lower riparian countries pose to the safety of the dam was neglected which makes the recognition of the dam as a development project and cooperation towards it as intended to be achieved through the agreement of no practical value, in terms of representing the genuine interest of Ethiopia.

The other significant principle incorporated is a mechanism of dispute settlement stipulated under Article X, declaration of agreement 2015. The principle envisages the amicable resolution of disputes arising out of the interpretation and implementation of the agreement in a good faith through consultation, negotiation, conciliation, and mediation. The principle is momentous considering the nature of the relationship between the three countries making disputes over interpretation and implementation of the agreement more likely to happen, if not inevitable. The mechanisms sought are also vital since they are the least adversarial means to amicably resolve disputes, unlike arbitration or determination by the International Court of Justice (ICJ).

Another interesting issue is the legal status of the agreement, i.e. whether it is a treaty (convention) or a declaration which has enormous implications on the status of the rights and responsibilities incorporated and their enforceability. It also is one of the contentious issues referred to in the recent negotiations to be discussed below.

The Vienna Convention on the Law of Treaties 1969 defined a treaty as ‘an international agreement concluded between States in written form and governed by international law’ (the VCLT, Article 2 (1) (a)). As per Article 38 (1) (A) of the International Court of Justice, international conventions are a source

of law that governs the relationship of the parties to the treaty. Declarations, on the other hand, are not always legally binding and are deliberately chosen by the parties to not create a legal obligation but to declare an aspiration towards the terms of the declaration (United Nations Treaty Collection). Here, the power of words chosen to sign agreements should not be overlooked as the entire status of the terms incorporated depends on it. In the case at hand, Ethiopia, Egypt, and Sudan chose to name their agreement as an ‘agreement of declaration’ as opposed to a treaty, convention, or a covenant that terms incorporated in it only have the role of guiding principle to direct the parties to act in a certain way or an interpretative role to derive the aspirations of the countries. No legally binding obligation could be derived from the agreement to force parties to act in a certain way or face legal consequences based on the agreement.

The declaratory nature of the agreement relieves Ethiopia of the onerous obligations envisaged by the agreement which otherwise would have crippled Ethiopia from pursuing its economic and political securities independently. Yet, the use of the term ‘agreement on declaration’ in the name of the document is unnecessary since the ‘declaration’ would suffice as has been practiced in international law regimes. It is ambiguous and makes a room for contradictory arguments. Since words are not randomly chosen in agreements, particularly like the 2015 agreement where the stakes are high, such a choice could be a strategic decision of the parties. It may also constitute a compromise to get the parties to sign a trilateral treaty for the first time, i.e. Egypt and Sudan could reserve a claim that the document is a treaty since it is an ‘agreement’ and Ethiopia could use the term ‘declaration’ to relieve itself of burdensome terms claimed by the lower riparian countries as of right. With that said, the DOP is a major victory for Ethiopia to continue to construct the dam and fill the next rounds of filling the dam, based on the broadly framed Section V of the declaration as a natural consequence of constructing the dam.

3.2.4. The TNC, the Nine-Party Mechanism and Studies Recommended by the IPoE

Disagreement on the technical issues of the IPoE report and recommendations continued and so did the technical negotiations. Hence, two nine-party meetings were held on April 6 and May 15 2018 in Khartoum and Addis Ababa respectively involving all of the water and foreign ministers and the heads of intelligence agencies from the three countries (Samaan, 2019). The timing coincides with the appointment of Prime Minister Abiy Ahmed for Ethiopia which was presumed reformative due to political reasons. Be it as it may, the second meeting was fruitful in a sense of producing a document stating the agreement of the three countries on five major points. The first two points sought to hold a ‘tripartite summit’ every six months to boost the general cooperation of the three states and the establishment of the ‘Tripartite Infrastructure Fund’ with the task of implementing various developmental projects. The second and third point states that every state would send comments and observations on the initial reports of the consultancy firms, i.e. the French BRL and Artelia groups for the technical studies as agreed in the

Khartoum Document (Salman, 2016). Also, the parties are provided with two weeks period to respond to queries and arrange a meeting within one week to discuss with the representative of consultancy firms. The last point envisages the establishment of the National Independent Scientific Research Study Group to work on various scenarios related to the filling and operation rules based on equitable use and the no-harm principle. The points of agreement depict the continual process of negotiation and engagement of the three countries in the operation of the GERD provided under previous negotiations.

The other interesting event in the aftermath of the second nine-party meeting is the joint press conference made by the president of Egypt, ElSisi, and the Prime Minister of Ethiopia, Abiy Ahmed in June 2018 in Egypt. As per the Reuters report (Egypt, Ethiopia agrees to settle differences over Nile mega-dam, 2018), ElSisi said “We have come a long way in building confidence and strengthening bilateral cooperation”. Abiy, on his part, confirmed Ethiopia’s commitment to ensure Egypt’s share of Nile water. He continues, “We will take care of the Nile and we will preserve your share and we will work to increase this quota”. Further, ElSisi asked Abiy to swear to God before the Egyptian people that he will not hurt Egypt’s share of the Nile to which he responded “I swear to God, we will never harm you,” repeated the words in Arabic after ElSisi. Here, Ethiopia not only officially confirmed the historic rights of Egypt over the Nile, but also agreed to increase the already existing allocation of the right of usage particularly based on the 1929 and 1959 agreements. It also demonstrates the inconsistent approach of the upper riparian countries to the Nile River showing a committed claim on the river claiming to not be bound by those treaties on the one hand and recognizing the content of those treaties on the other hand.

3.2.5. The National Independent Scientific Research Group (NISRG)

In addition to disagreement on the technical issues of GERD, the environmental and safety risks were points of concern, particularly to Sudan which leads to an agreement between Ethiopia, Egypt, and Sudan in 2015 for the establishment of the National Independent Scientific Research Group (NISRG). The group held meetings to assess different scenarios of GERD including the environmental impact assessment and was preparing to produce a consensus report and recommendation in 2019 when Egypt made an unexpected call for mediation involving a third party state as a mediator, the United States (US) (Nature, 2019). Egypt further made a unilateral proposal on the technical aspects of filling and operation of the dam which disrupts the working procedures of the NISRG, i.e. objected to the 7 years provided for the filling of the dam and suggested the same to be completed within 12- 24 years, which needless to say is rejected by Ethiopia (Professor Yacob Arsano in a meeting conducted on GERD, 2021). Here, months of negotiation on the technical and environmental aspects of the dam have failed to make any breakthrough and the tension seemed to have escalated since the tripartite negotiations now face the involvement of the US called upon unilaterally by Egypt. Ethiopia considers the approach of Egypt a ‘disruptive tactic’ to

halt the completion of the technical, environmental, and social impact assessment made on GERD. Also, the invitation of a third party by Egypt is labeled as a violation of the 2015 declaration of agreement and a disruption of the positive spirit of cooperation.

Moreover, in October 2019, the Prime Minister of Ethiopia, Abiy Ahmed made a statement saying "no force can stop Ethiopia" from building the dam which was regarded by Egypt as a shocking remark backed by an alternative of launching a war to stop the GERD through local Egyptian media (Amin, 2019). The statement of the Prime Minister amplifies the commitment Ethiopia has to the GERD and the determination toward completing the project at any cost. It is a strong statement to proclaim the national security interest Ethiopia has in the project along with the declaration of intent to protect the same, whatever it takes. The reaction of Egypt, particularly the claim to be "shocked" is somehow expected since it wants to hold on to the words the Ethiopian Prime Minister gave during the joint press conference in June 2018, i.e. to not harm Egypt and work toward the increment of its share of the quota. Yet, the threat of launching a war is extreme that defies the sense of cooperation claimed on the side of Egypt. It also violates the dispute settlement mechanism stipulated under the 2015 declaration of agreement. However, it also constitutes a strategic tactic to intentionally escalate the issue to military war so that the unilateral claim for the engagement of the US as a mediator Egypt made is somehow justified. The strategy was effective in a way it results in new rounds of negotiation in the US with the intent to de-escalate the tension between Ethiopia and Egypt.

3.2.6. Mediation Efforts by the US and the World Bank Group and the Washington Agreement

There is no publicly available evidence or statement to suggest a joint invitation has been made by Ethiopia, Egypt, and Sudan for the invitation of the US and the World Bank (Zeray, 2020). However, a plea has been made by Egypt in October 2019 requesting the involvement of the US in the GERD negotiation as part of extending the issue to the international negotiation platform (Zeray, 2020). Even if Ethiopia contested the involvement of the US initially, it was later submitted to it that the Ministers of Foreign Affairs and Water Resources of Ethiopia, Egypt, and Sudan and their delegations had a meeting on January 28-31, 2020 in Washington, D.C. The meeting involved the Secretary of the Treasury and the President of the World Bank, participating as observers in negotiations (United States Department of the Treasury, 2020). The meeting resulted in an agreement between Ethiopia, Egypt, and Sudan which will be subjected to a final act of signature of the three countries to have a binding effect. The three points of agreement are;

- A schedule for a stage-based filling plan of the GERD,
- A mitigation alternative for the filling of the dam on the occurrence of drought, prolonged drought, and prolonged periods of dry years, and

- A mitigation alternative for annual and long-term operations of the dam on the occurrence of drought, prolonged drought, and prolonged periods of dry years.

Other points of agreement include the annual and long-term operation of the dam during normal hydrological conditions, promotion of cooperation of the three countries, and peaceful resolution of disputes. It should be noted that such a proposal has not been signed by Ethiopia, therefore, never attained the status of a binding agreement. The decision is on the ground that the World Bank and the US have overstepped their role as an observer and made a proposal on draught mitigation that favors Egypt to the detriment of Ethiopia (United Nations Security Council, n.d.). Such a decision caused frustration in the US which decided to cut \$100 million in aid to Ethiopia (Zengerle, 2020). Additionally, on February 28, 2020, the US Treasury of State made a statement warning Ethiopia to not conduct the second round of filling the dam and sign the agreement sooner than later.

The very agreement of Ethiopia to accept the participation of the US and the World Bank as observers is confusing since the participation was unilaterally sought by Egypt. The principle of cooperation in good faith under the 2015 DOA requires the three countries to discuss issues about GERD, therefore, if the involvement of a mediator/observer was a necessity, the decision to invite a third party should be made upon consultation of the three parties, including the selection of participants. Ethiopia also condemned the unilateral invitation of participants by Egypt as a disruptive tactic, yet, agreed to submit to the planned negotiations. This is attributable to the diplomatic pressure imposed upon Ethiopia to accept the forum which could be intense considering how powerful the nominated participants are and the economic and developmental reliance of Ethiopia on the support of those participants. This was illustrated by the decision of the US to cut funds to Ethiopia in response to declining to sign the agreement.

This led to another question of whether a sovereign country could be coerced to sign an agreement and whether an agreement to negotiate entails an agreement to sign the discussed terms. The pressure Ethiopia was under to agree to the new negotiation platform could be inferred from the manifest pressure and threat it faced from the US and Egypt on refusing to sign the draft Washington Agreement. Also, the question of their impartiality is another concern; their clear preference of side among the negotiating parties raises suspicion on whether their roles were confined to observing or if they are imposing pressure on Ethiopia based on the economic, technical, and expertise dominance they have. Coercion could also be in a direct or implied form entailing an economic, political, or social threat to force a state into agreeing to terms that it would not, otherwise do (Dejen, 2021). Ethiopia had been exposed to a direct military threat from Egypt that claims to maintain its interest over the Nile River through any means including a military

attack which is further strengthened by doubling its military capability from year to year; the direct economic threat from the US had also been materialized.

Here, the use of coercion in treaty-making is prohibited under Article 52 of the VCLT. The same notion is incorporated under the UN Charter Article 2 (4). It should also be noted that treaty-making power is the right of sovereign states, however, is not a duty with or without a threat that a country cannot be forced to sign a treaty irrespective of the significance of the matter or the sensitivity of vested interest on the matter. Thus, the coercion imposed on Ethiopia by Egypt and the US constitutes a violation of the sovereign power of Ethiopia, and its economic, political, and even military security.

Regarding the content of the proposed agreement, it limits the period during which Ethiopia could retain Nile flows to fill the GERD reservoir to the peak of the annual flood season in July and August. It also aims at mitigating the risk of drought, prolonged drought, and prolonged periods of dry years by putting operational constraints on GERD (Basheer et al, 2021). The content of the proposal resembles a letter sent from the permanent representative of Egypt to the United Nations addressed to the president of the Security Council (ibid). This illustrates the extended reach of Egypt to enforce the terms of the Washington Agreement.

The other issue to be inferred from the content of the draft proposal is the clear preference of the US for Egypt at the expense of Ethiopia. The interview conducted with Professor Tesfaye Tefesse, Addis Ababa University, reveals such preference is the result of a strong interest the US has in Egypt. He states the significant geo-strategic position of Egypt including the Suez Canal makes it an ideal choice in terms of facilitating and easing international trade. Also, the US intends to uphold its good relations with Israel by protecting Egypt as a guarantee to maintain the status of Israel. Moreover, he added the influence Jew people have in the US including lobbying of politicians and institutions inclined the US to promote the wishes of Jew people which, among other things, resulted in the preferential treatment of Egypt to other African countries that includes strong diplomatic relations and better opportunity as a fund recipient from the US. Regarding the relationship between Egypt and Israel, the peace treaty signed between the two countries in 1979, i.e. the Camp David Accords that formally ended the state of war that existed between the two countries established a good relationship between the two countries (Carter, 2022). The agreement stipulates for Israel to withdraw From Sinai and for Egypt to establish normal diplomatic relations with Israel and open the Suez Canal to Israel ships; those provisions were duly carried out (ibid). The treaty resulted in the expulsion of Egypt from the Arab League (ibid). Such established relation between Egypt and Israel is further manifested in the good relationship of Egypt with Israel's allies one of

which is the US that preference made by the US to the former on GERD negotiations is informed by the same.

Here, Ethiopia's participation in negotiations held in the US was secured by coercion from submission to the very platform, persisted through the negotiation process, manifested in the terms of the proposed terms, and continued to entail legal effect to the agreement. It violates the economic and political security of Ethiopia entailing an actual external materialized risk. The fact that Ethiopia stood by the decision to not sign the document and filled the second round of the dam, irrespective of the economic, political, and diplomatic pressure is exemplary reclaim of its economic and political security.

3.2.7. Negotiations on GERD under the African Union (AU) platform

The involvement of the AU as a mediator in the GERD negotiations bases itself on the maxim 'African Solutions to African Problems' called upon by the South African President, Cyril Ramaphosa. The engagement was initiated by Chair of the Union, H.E. President Cyril Ramaphosa, in the aftermath of a letter addressed to the United Nations Security Council (UNSC) by Egypt, Ethiopia, and Sudan in May and June 2020 requesting the involvement of the Council on GERD negotiations, who decided to intervene and consulted with the Heads of State and Government of the three countries, Egypt, Ethiopia and Sudan (Institute for Security Studies (ISS) Report, 2020). The intervention was successful in terms of getting the three countries to submit to the suggested platform, determining the role of the Union in the negotiations, and appointing observers to take part in the trilateral negotiations. The European Union (EU) and the US were also invited as observers while outstanding legal and technical issues are left to be assisted by four African technical experts (African Union, 2020).

The chairperson of the African Union Commission (AUC), Moussa Faki Mahamat, claimed that 90% of the issues of the trilateral negotiations have already been resolved. However, the issues of dispute settlement, long-term operation of the dam, future developments on the Blue Nile, and the nature of the agreement to be signed are outstanding issues yet to be determined. Regarding dispute settlement, Egypt and Sudan would like to sign a binding agreement to external arbitration in cases of dispute that emanate from the operation of the dam. Ethiopia, on its counterpart, claimed any dispute arising from the operation of the dam to be resolved as per the dispute settlement mechanism envisaged under the 2015 declaration of agreement, Section X, i.e. based on consultation, negotiation, and mediation in good faith (African Union, 2020). The issue of dispute settlement, particularly, the submission of Ethiopia to an independent private arbitral tribunal, on issues arising out of using its natural resource is a clear violation of the sovereignty of the country. It puts an arbitral tribunal on a comparable, if not a better, footing with states, Ethiopia in this case, and the inconvenience that follows from submission to an arbitration agreement is a threat to the security of Ethiopia putting its right to use its natural resource for developmental purposes

under the scrutiny of an adversarial arbitral tribunal. Therefore, the proposal made by Egypt and Sudan for arbitration defies the spirit of cooperation and confidence intended to be achieved by the 2015 declaration of agreement and a decade-long negotiation between the three countries. Consequently, the rejection of the proposal by Ethiopia is a bold move toward claiming its sovereignty and a re-assurance of determination towards the exercise of its economic and political security.

Concerning the operation of the dam, Egypt and Sudan required Ethiopia to guarantee a minimum outflow of water from the GERD's reservoir entrenched on the historical average discharge and to compensate for any shortfall of the water flow caused by drought or future upstream use. Ethiopia took the request to be a claim for the natural flow of the Blue Nile, therefore, is untenable as it compromises the full capacity of the GERD, and confines the rights of Ethiopia to use the Nile water including future projects it intends to implement on it. Here, Ethiopia extends its rights not only on the project in question, the GERD but also on future projects it intends to implement on the Nile water which would have been hindered if the burdensome request made by Egypt and Sudan are accepted by Ethiopia. Also, the requests are far-reaching and significant those not only confine the full capacity of the GERD by Ethiopia but also attempt to set a foundation for future claims of Egypt and Sudan that the response given by Ethiopia is reflective of the nature of the request.

The other outstanding issue is the future use of the Nile water by Ethiopia, i.e. Ethiopia insisted on having a comprehensive agreement that governs the future usage of the Nile River so that future disputes could be avoided; such a request is not accepted by Egypt and Sudan (African Union, 2020). This is not surprising since a comprehensive agreement not only sets a ground for the right of Ethiopia to implement other projects (which on its own is unacceptable to Egypt and Sudan), but also for other upper riparian countries to use the same which ultimately defies the alleged historic superior position of downstream countries on Nile River. These outstanding issues are of enormous legal implications and significance that the three countries show irreconcilable positions and remained unwilling to compromise (interview conducted with Professor Tesfaye Tefesse, Addis Ababa University). Here, the parties are more inclined to technical matters of the project than legal aspects of the same which would entail legal accountability, once a binding legal framework is signed by the parties, as emphasized by the professor. In that regard, the other interview conducted with Zerihun Abebe Yigzaw revealed that Ethiopia has never been hesitant to sign any document of cooperation to adjust the injustice existing on the utilization of the Nile River as illustrated by the adoption of the CFA to which Egypt and Sudan are not a party to. Hence, he attributed the absence of a legal framework between the three countries to the hesitation of Egypt and Sudan. He attributed Egypt's hesitation in signing a legal document to the stipulation provided under Article 44 of

Egypt's constitution, which among other things, obliges the state to maintain the historic right Egypt has over the Nile which reads as,

‘The State shall protect the River Nile, preserve Egypt's historical rights thereto, rationalize and maximize its use, and refrain from wasting or polluting its water. The State shall also protect groundwater; adopt necessary means for ensuring water security; and support scientific research in that regard’.

Hence, any legal agreement that provides an equitable and reasonable utilization of the Nile River and a benefit-sharing framework would contravene such constitutional provision and therefore is precluded by Egypt. As for Sudan, Zerihun stated that it is the prisoner of the 1959 agreement as well as the long-reaching hand Egypt has in Khartoum that prevent Sudan from signing a legal document that disrupts the rights Egypt has over the Nile.

Consequently, no agreement could result from the AU-led negotiations on the GERD. Sudan ultimately decided to not attend a meeting in November 2020 for negotiations being much of a political matter than that of a technical operation of the dam, alleging the AU-led platform to be not much different than the former ones (Dam Negotiations unlikely to succeed anytime soon, 2020) even if the later rejoined negotiations in 2021 (Ethiopian Press Agency, 2021). Besides, limitations in the legal and institutional framework and the expertise to entertain matters on transboundary water resources in the Union compromised the success of the platform (Biruk, 2021). However, the AU-led negotiations were successful in terms of easing the tension between Ethiopia and Egypt in the aftermath of the US and the World Bank's involvement as mediators and getting them back to negotiation. This illustrates the very theme of ‘African Solution to African Problem’ to have a contextualized platform for fixing continental problems which is a key for regional peace, security, and development.

3.2.8. UN Security Council Sessions on the GERD

On 15th September 2021, the UNSC adopted a presidential statement calling for a resumption of the AU-led negotiations to reach a binding agreement on the filling and operation of the GERD (UNSC, 2021). On the 15th of June 2021, Egypt, Sudan, and the League of Arab States (LAS) adopted a resolution requesting the UNSC to discuss the dispute and for Ethiopia to refrain from filling the dam before the agreement is reached with the ‘countries affected’. Ethiopia rejected the resolution in its entirety amplifying the previous misguided positions held and statements made by the Arab League and condemning the internationalization and politicization of the matter for hindering regional cooperation and agreement on the equitable usage of the Nile River (Ministry of Foreign Affairs, 2021). The involvement of the Council is also challenged by other countries such as Kenya, Niger, and Mexico

proclaiming the regional platform to be the best fit to settle the issue and to avoid setting a precedent of involving the Council to determine transboundary water resource disputes in future similar cases (UNSC, 2021).

The Council's redirection of the dispute to the AU-led negotiation is a great instance, yet, dictating what the countries have to do, i.e. signing a binding agreement, constitutes *ultravires* as the very mandate of the Council to entertain the matter is not agreed upon by all parties involved. It should be noted that the issue of GERD is the first transboundary water resource dispute to warrant the intervention of the Council that careful demarcation of jurisdiction is warranted to not over entrench the mandate. Yet, the statement only has a moral or procedural value with no legally binding effect (Saied, 2021).

The issuance of the presidential statement, however, is a result of a series of consultations made on the GERD between Ethiopia and Egypt before the Council. Hence, the UNSC held its first meeting on the GERD on 29th June 2020, called upon by Egypt as per Article 35 of the UN Charter which provides for 'The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute'. The meeting was held under the agenda item 'Peace and Security in Africa' (Security Council Report, 29 June 2020). This implicates the issue of GERD to have been recognized as one agenda of peace and security which is reflective of the stakes involved for the three countries. During the meeting, the three countries presented their remarks on which Ethiopia contested the forum, i.e. the jurisdiction of the Council to entertain the matter, and claimed the Council should not be a forum to exert diplomatic pressure on Ethiopia (Al-Monitor, June 29, 2020). Ethiopia based its claim based on Article 33 of the UN Charter which provides for states to resort to regional arrangements to settle disputes first before presenting the issue to the UNSC. The argument is sound since the three countries have agreed to get back to the AU-based negotiations on the 26th of June 2020 (Security Council Report, 29 June 2020). Egypt objected to the filling of the dam before an agreement is reached and signified the existential threat the project posed to Egypt, and Sudan showed a similar stand saying the project entails a threat as it is an immediate downstream country (Al-Monitor, June 29 2020).

The second meeting of the Council followed the notification made by Ethiopia to the downstream countries regarding the second phase of filling the GERD which planned to capture an additional 13.5 BCM but failed to achieve that target and stored only about an additional 4.12 BCM of water (Samra & Ali, 2021). The meeting was requested by Tunisia, a Council Member and member of the Arab League that circulated a draft resolution on the issue on 2 July 2021 (Security Council Report, 7 July 2021). The draft makes three major proposals, i.e. a call for the three parties to make a negotiated solution and sign a binding agreement within six months, a rejection of unilateral decisions including filling of the dam, and a

more active role for the current observers in the AU-led negotiations including the US and the EU. It also calls for the Council to remain seized of the matter; two rounds of negotiations have been held to negotiate the proposed resolution. The unilateral decision of Ethiopia to fill the dam attracted fierce criticism from Egypt and Sudan to which Ethiopia responded, that filling the dam, especially during the heavy rainfall period is part of the natural construction to be inferred from Section V of the 2015 DOP (Aljazeera, 8 July 2021). Besides, Ethiopia claimed the proposed resolution “effectively scuttle” the AU-led negotiation process, therefore, worked for the resolution to not be adopted. Moreover, Ethiopia's Minister of Water, Irrigation, and Energy representing Ethiopia in the meeting, Dr. Enginner Seleshi Bekele, said “the AU has seized of the matter and is ably facilitating our negotiation that is regrettable that our sisterly countries opted to bring the matter to the Security Council” (United Nations, 2021). Additionally, he emphasized the bizarre aspect of the very forum saying “...in this meeting and the deliberation of the Council where a hydroelectric dam is under scrutiny in an unprecedented manner, I am not sure if I am not the first water minister addressing this council” (Fana Television, 9 July 2021). He elaborated on the developmental aspects of the dam informed by the needs of the population backed by the absence of any alternative to meeting those demands without relying on the Nile Water. The meeting was also accompanied by a protest from Ethiopians gathered in New York to urge the UNSC to stop meddling in the GERD and respect Ethiopia's rights to utilize its natural resources for development (Embassy of Ethiopia, 2021). That being the case, the UNSC backed the AU-led negotiations to sort the dispute on GERD out, in the meeting held on July 8, 2021 (Nichols, 2021).

The active involvement of the Arab League taking the side of Egypt, even if could be justified on the ground of peace and security issues of Egypt constituting peace and security issues of the Arab League, posed a risk of escalating the dispute paving the way to welcome the formation of allies thereby mounting the already irreconcilable differences of the dispute. Tunisia further requested the active involvement of the observers, the US, and the EU, which is inconsiderate of the previous involvement of the US and World Bank that resulted in worsening the tension between Egypt and Ethiopia. Therefore, the involvement of other third parties including the Arab League should be explicitly confined to the role of facilitation and observation, otherwise entails a concern for the peace and security of the continent and the peaceful resolution of the dispute sought to be achieved for over a decade.

The representative of Egypt in the second UNSC meeting, Mr. Sameh Hassan Shoukry, said “...Ethiopia's behaviors expose regional security and peace danger...Ethiopia refused every proposal by Egypt and Sudan...unilateral filling of the GERD will cause severe water shortages depriving millions of farmers of water...this is a situation Egypt cannot and will not tolerate ” (Daily News Egypt, 2021). He continued to elaborate the dam to pose an existential threat to Egypt thereby entailing a peace and security concern to

be determined by the Council. Similarly, the representative of Sudan, Mariam al-Mahdi, supported the Council's forum on the issue saying "...it is a matter of an imminent threat to the stability and security of an important region...the filling of the dam started last year inflicted direct harm to the people of Sudan...calling for the Council to encourage the three parties to engage in the AU-led process and to be augmented and supported by the UN, US, EU, and South Africa" (United Nations, 2021).

With paradoxical positions of Ethiopia and the downstream countries, the decision of the UNSC constitutes a major diplomatic and political win for Ethiopia despite the economic, political, and diplomatic pressure remained determined to its principles and consistent to resolve the dispute within the AU-led negotiation platform. It reveals the commitment of Ethiopia towards the implementation of the 'Africans Solution to African Problems' maxim for the continental peace and security to which the AU-led negotiations were praised when it first seized the matter as per South Africa's president Cyril Ramaphosa's engagement (Fana & Dawit, 2021).

Following the presidential statement of the UNSC, redirecting the issue to the AU-led forum, negotiations are stalled at the moment. Yet, Egypt is calling up for negotiations to be resumed and a binding agreement to be signed as per the suggestion of the UNSC (GERD: A year since talks collapsed, 2022) however, negotiations are still on hold.

3.3. The GERD Negotiations: Contribution for Regional Integration

The GERD project contested the asymmetric power relations of the Nile Basin countries challenging particularly the exclusive rights of Egypt on the river. Egypt's rights emanated from colonial treaties and bilateral treaties it entered into with Sudan allocating the usage rights. Even if there were cooperation attempts between the Nile Basin countries, the success of the same is quite limited thereby preventing a binding legal framework on the usage and administration of projects on the river from being adopted. The lack of legal framework was convenient for the downstream countries to have uncontested rights over the river before the commencement of the GERD project. Such dominance of downstream countries and lack of competition is considered a cause for the lack of cooperation on the usage of the Nile River by some Hydro-hegemony scholars (Zeitoun & Warner, 2006). Moreover, the dominant power of Egypt is provided as a cause for the lack of benefit sharing framework among the riparian countries even if benefits to be obtained from the shared resource could increase through cooperation (Hensengerth, Dombrowsky, & Scheumann, 2012). Benefit sharing in relation to transboundary water resources could be defined as the management of water more effectively across all sectors with the intent to generate benefits to all stakeholders, i.e. all co-riparian states (Tesfaye, 2009). Better management of the shared resources yields benefits to the river, enhances benefits to be obtained from the river, and eases the

tension amongst the co-riparian states (ibid). The Joint Multipurpose Program (JMP) is an undertaking by Ethiopia, Egypt, and Sudan to use shared resources as a foundation to foster economic integration through multipurpose projects that go beyond the water sector (Eastern Nile Technical Regional Office (ENTRO), 2008). Yet, there were challenges in identifying benefits and putting them in a realistic framework as funded and agreed upon by the parties on a multilateral basis (Tesfaye, 2009). Moreover, there is a need to treatise the framework to come up with the Eastern Nile Benefit-sharing Treaty (ibid) and the treaty has not yet been adopted.

The lack of a legal framework and cooperation agreement did not hinder Ethiopia from building the dam; rather, provide a potential platform for the adoption of a legal framework through negotiations. Also, the stands of the parties to the negotiation kept changing through time, for instance, Egypt was all about halting the project as an existential threat and it moved into alleging to secure its benefit during the drought and prolonged periods of dryness when it realized the inevitability of the project. Ethiopia also extended its claims from constructing the GERD to opting for a comprehensive agreement on the usage rights on Nile waters so that its future projects could be conducted without similar hustle. Moreover, the initial trilateral negotiations welcomed the intervention of the AU, UNSC, US, and the World Bank with the parties being redirected to the AU platform ultimately.

Here, the GERD negotiations effectively challenged the *status quo* on the usage rights of the Nile River and it should also be noted that the project could inform regional integration by providing opportunities to enhance shared economic benefits and trade in the field of energy (Policy Briefing, Water International, 2016). Since the dominance of Egypt was the primary cause of the lack of cooperation, a challenge to that dominance could facilitate the process of regional integration. However, regional integration requires more than just an effective challenge to the *status quo* such as a genuine compromise on contentious points and building of trust amongst one another which is proven to not exist between Ethiopia and Egypt. Yet, it made an example for the other upper riparian countries that lack of legal framework should not prohibit them from claiming their respective rights on the Nile River and informs them they could cooperate to claim the same within the current allocation of usage for the downstream countries. Thus, even if negotiations on GERD are far from necessitating the adoption of regional cooperation, it certainly sets a foundation for the potential benefit-sharing and cooperation framework. Benefit-sharing includes a comprehensive benefit sought to be achieved from and put to the resource itself rather than sharing the physical water *per se*; it is likely to bring about a zero-sum negotiation as opposed to sharing of the physical water that could yield a positive sum outcome (Tesfaye, 2009). Negotiations on the GERD revolve around benefit sharing claimed by Ethiopia and turned out to be a zero-sum game where no meaningful cooperation agreement could be reached following decade-long negotiations.

3.4. GERD Negotiations: Challenges to Cooperation

Negotiations on the GERD are attempts to induce cooperation in the regulation and management of the Nile River, despite the success being quite limited. The main attribute for unsuccessful cooperation attempts regarding transboundary water resources is the perceived risk among the negotiation participants which is defined as, ‘the perception that an act of cooperation will expose the country to harm, will jeopardize something of value to the country or will threaten the political future of individual policymakers’ (Subramanian, Brown & Wolf, 2012, pp 27). The perceived risk is further categorized into five types. The first is perceived risk in terms of knowledge and capacity where riparian states fear they will be disadvantaged either because of lesser negotiation skills or for not having adequate and accurate information about the basin. The second category of perceived risk is accountability and voice which refers to the basin states’ fear that the cooperation sought may not result in benefits or one’s interest may not be adequately represented in joint decision-making (Petersen-Perlman et al, 2017). Negotiations on GERD have shown this fear among the three participants that Egypt and Sudan disapprove of the adoption of a comprehensive agreement on the regulation of the Nile while Ethiopia refused to enter into a binding trilateral agreement. Here, the three countries proposed an ideal cooperation alternative to enhance their best interest and anything other than such an alternative constitutes a perceived risk of accountability and voice, therefore, preventing meaningful cooperation.

The other category is on sovereignty and autonomy of states which refers to a risk a threat posed in the decision-making processes, i.e. the desire to control one’s development goals, resources, and infrastructure, and the right to make independent decisions. This is a significant risk for Ethiopia as the GERD is a developmental project and negotiations are aimed at completing the same as well as ensuring the future usage rights on the Nile waters. Besides, Ethiopia chose to retain its autonomy through a unilateral declaration of the commencement of the project and the second filling of the dam that it is exercising its independent decision-making process that any cooperation might shade on that independence and the exercise of the economic and political security. Hence, such perceived risk informs the decision of Ethiopia to not sign a binding trilateral agreement on the Nile River.

The fourth category of perceived risk to hinder cooperation agreements regarding the use of transboundary water resources is a risk on equity and access. Here, parties to negotiations want to ensure fairness in terms of quantities and qualities, benefit flows including the entitlement to continue historic uses, access to a river that runs through (or originates in) its territory, and/or attaining benefits in proportion to its relative size in (or contribution to) the basin (Petersen-Perlman et al, 2017). In the case at hand, Egypt wants to retain its alleged historic rights over the Nile River while Ethiopia claims access to the river to pursue its developmental initiatives on the water that originates in its territory. Also, Egypt

fears the GERD project would affect the quality of the soil it gains from the Nile while Sudan alleges its quantitative share would be affected. These perceived risks hinder the parties from signing a meaningful cooperation agreement.

The other constraint to cooperation in transboundary water resources is the risk of acceptance. Here, states would examine the implementation of cooperation agreements based on the acceptance or opposition from major stakeholders and the positive or negative public image of the decision-maker (Subramanian, Brown & Wolf, 2012). The GERD project is more than just a developmental project for Ethiopia, i.e. a symbol of national consensus and unity among the diversified population. Similarly, the meaning of Nile waters to Egypt is a matter of life or death alleging the entire existence of Egyptians to have depended on the river. Hence, the populations of both countries are the major stakeholders in the Nile River which impose pressure on decision-makers and negotiators by scrutinizing their actions that the implications of decisions have an entrenched impact on the acceptance or opposition of the decision-makers and governments. Thus, cooperation agreements, when examined against the existing pressure, posed a risk thereby hindering the adoption of the same.

Further, there is a practical challenge of constant interference from political entities in the negotiations on Ethiopia's side. For instance, the interview conducted with Dr. Samuel Tefera (Assistant Professor at Addis Ababa University) supports the assertion that the 'negotiators are mostly composed of people from the Ministry of Foreign Affairs and Ministry of Water, Irrigation, and Energy supported by academic experts regarding the technical aspects of the matter'. Here, even if the expertise of those negotiators is not in any way contested, they are still political appointees that matters could easily be politicized. He also mentioned 'the political party was not aware of the tricks and challenges posed by the other side from Egypt and Sudan which is illustrated by the submission of Ethiopia to the very forum facilitated by the US while having a major win in the 2015 Declaration of Principles (DOP)' that gave Ethiopia an upper hand claim including the filling the dam as a natural consequence of constructing the dam. The politically informed decision to submit to the US platform for negotiations welcomed the unwarranted intervention of the US extended to drafting the proposed agreement which changed the whole outlook of the issues afterward and constitutes a politicization of the matter costing Ethiopia the upper hand it gained on the 2015 DOP.

Additionally, 'the lack of organization among the political and technical teams of the negotiation' is also the other challenge in the negotiations in the GERD project, as per Dr. Samuel. The teams meet and deliberate on issues whenever necessary but do not have a constant integration and cooperation framework that takes the stakes on the issue at hand into consideration. Moreover, 'there are independent

Ethiopian experts and elites on transboundary water resource management abroad, but effective mechanism to employ their expertise in the negotiations had not been adopted’ said Dr. Samuel. This could have prevented the politicization of the matter and enhanced the interest of Ethiopia in the negotiations. The interview conducted with Zerihun Abebe Yigzaw also stated a lack of coordinated internal communication between different stakeholder institutions including the Ministry of Water and Irrigation, the Prime Minister’s Office, the Ministry of Foreign Affairs, and the Office of Public Participation for the GERD project to be one of the challenges on Ethiopia’s side in addition to internal vulnerability at the national level that including the lagging of the construction of the dam for so long divert the attention from the GERD project to managing other internal vulnerability challenges. He mentioned the continuous service of officials in negotiation teams from the initial points of negotiations as a positive prospect that is not present in its counterpart negotiation teams of Egypt and Sudan. Finally, diplomatic pressure from the western world and international organizations is another challenge faced by Ethiopia during the GERD negotiations, said Zerihun.

That being the case, the politicization of the matter of using the Nile Water should not be overlooked as it determines the fate of the GERD project including future development initiatives depending on the political will of the government in power. Governments could change and even the political will of one government does not remain the same. This prevents consistency of positions on the issue and opens the door for external intervention, a compromise on sovereignty, and a threat to the security of Ethiopia.

Furthermore, the politicization of the GERD dispute also has an international element manifested through the unwarranted diplomatic and economic pressure imposed on Ethiopia. Issues escalated to making allies on the dispute at hand, particularly by Egypt, where the US and the Arab League showed a preference for Egypt and force Ethiopia into agreeing to terms it would not otherwise do. The contrary implication is the lack of strong diplomatic support and allies to support Ethiopia to represent its interest worsening the already asymmetric rights established on the Nile water.

3.5. GERD Negotiations: Implication on the Security of Ethiopia

Decade-long negotiations on the GERD are at a stalemate and further negotiations are expected to be resumed within the AU-led forum. The very submission of the three countries, Ethiopia, Egypt, and Sudan to negotiation to resolve their dispute over the Nile River constitutes a peaceful mechanism of settling disputes, therefore, is a good stance in preventing an adversarial means or even a military intervention thereby promoting the peace and security of the three countries. Yet, the bargaining situations in those negotiations are distributive (competitive, zero-sum, win-lose) which is a characteristic element of disputes over fixed resources where the more one gets, the less the other gets (Wertheim, n.d.).

These situations are also informed by the relationship between the three countries characterized by suspicion and mistrust. Hence, the nature of the bargaining situation hinders the parties from reaching an agreement, and consequently, the promotion of peace and security sought to be achieved through negotiations.

The other issue is the asymmetric status of the parties at the commencement of the negotiations. Here, Egypt and Sudan already had established rights over the Nile and Ethiopia was negotiating to establish one. Previous treaties on the Nile River, even though Ethiopia is not a party to them, are still relevant as the bases for the rights of Egypt and Sudan, already exercised, i.e. they established rights for the downstream countries. Hence, negotiations on GERD were between unequal parties that constitute an asymmetric power relation which in turn prevented an amicable resolution of the dispute. Further, the involvement of the US as a mediator was not successful as a symmetric relationship between the mediator and the conflicting parties is a precondition for the success of mediation to resolve conflicts that did not meet in the case at hand (Pfetsch, 2011). Conversely, it worsened the already asymmetric power relations of the parties siding with the most powerful of the three countries, Egypt. Also, dictating terms and forcing Ethiopia to sign the Washington Agreement backed by an economic sanction of withholding funds was a violation of the sovereignty and economic security of Ethiopia.

Moreover, negotiations on GERD are an attempt to provide a comprehensive legal framework for the regulation of the usage of the Nile River, as claimed by Ethiopia, in the latest rounds of negotiations. It goes beyond governing the operation of the GERD which inclines the already high stakes involved in the negotiations. This hinders the parties to make a compromise as they will be bound the same beyond the GERD, i.e. determines the fate of future projects. Ethiopia's request for the comprehensive agreement is cognizant of future projects it intends to implement on GERD and a claim for a foundation for the continual exercise of its economic and political security over its natural resource. Here, it reveals an improvement in the negotiation capacities of Ethiopia, i.e. setting terms of the agreement rather than responding to claims made against its project from Egypt and Sudan.

Further, the theme of negotiations in the GERD and the terms of the proposed agreements discussed above, impose onerous obligations on Ethiopia. They stipulate measures Ethiopia should take to not affect the usage rights of Egypt and Sudan which are further extended to priority rights of the two countries to buy hydroelectric power from the GERD project, confinement of the project solely for hydroelectric power generation purposes, and forfeiture of a specified amount of water from the GERD to mitigate occurrences of drought and a prolonged period of dry years in Egypt. Here, it should be noted that a risk the downstream countries and their allies posed for the safety of the project and on the usage right

Ethiopia is trying to establish is not recognized, let alone protected by measures imposed upon the downstream countries. The proposed measures impliedly violate the sovereignty of Ethiopia as well as its security thereby making the role and commitment of Ethiopian negotiators to not agree to those terms as a binding agreement is a vital move towards the realization of the security of Ethiopia in terms of adopting a developmental initiative and pursuing the same irrespective of an actual external threat.

3.6. GERD Negotiations: The Outlook of Future Negotiations, Developmental Initiatives on the Nile River, and the Relationship of the Three Parties

The presidential statement of the UNSC redirected negotiations on the GERD to the AU-led negotiation platform. Since then, negotiations are on hold and trilateral discussions had not been held after the second round of filling of the GERD by Ethiopia. Also, another political incident happened in Sudan, i.e. government dissolution and the continuation of political tension that results in the suspension of Sudan from the AU on the 6th of June 2019 until the effective establishment of a civilian-led Transitional Authority, as the only way to allow Sudan to exit from its crisis (African Union, 2022). Such an incident is of enormous implications for the GERD negotiations that primarily ease the diplomatic pressure imposed on Ethiopia and falter the continuation of the trilateral negotiations as one of the negotiating parties is suspended from the AU, a platform chosen to settle the issue. Besides, since the construction of the GERD is ongoing pending negotiations, the temporary stagnation of the negotiations causes nothing but convenience for Ethiopia. Ethiopia claims to respect the decision of the AU to delay negotiations as a result of Sudan's frozen membership which is criticized by Haidar Youssef, a Sudanese water resources expert, as a strategy to take undue advantage of the political tension in Sudan to delay negotiations (Aman, 2021). Be it as it may, negotiations on the GERD are on hold and it is hard to tell when they are going to be resumed.

Regarding future projects on the Nile River by Ethiopia and upper riparian countries, the GERD project and negotiations that followed enlightened the upper riparian countries that it is indeed possible to use the Nile water and enhance development. Accordingly, Ethiopia already envisaged its interest to conduct other projects on the AU-led negotiations held before the engagement of the UNSC, seeking a comprehensive agreement to be signed on the management of the Nile River. Also, Uganda is on the verge of building new hydropower dams while Kenya, Tanzania, and Uganda also seek to expand their irrigation projects on Lake Victoria (Samaan, 2019). Hence, the GERD negotiations, even if are still pending have paved the way for future projects through an equitable and reasonable usage of the transboundary water resource, the Nile River. Here, if the comprehensive agreement on the Nile sought by Ethiopia is fruitful, there could be a legal framework based on which future projects could be regulated, without the hectic negotiation process seen in the GERD negotiations. However, the adoption

of a comprehensive agreement is unbearable for Egypt and Sudan, therefore, seems unattainable in a foreseeable future. This does not mean that projects cannot be adopted and completed, but should be backed by a series of negotiations like the GERD project. Also, negotiation as a peaceful mechanism of resolving disputes on the Nile River should not be assumed the risk of Egypt resorting to other alternatives which could extend to military intervention should not be overlooked that due care should be given in approaching future projects.

The other interesting concept is the relationship of the three countries, Ethiopia, Egypt, and Sudan in the GERD negotiations which resembles a pendulum swing. The parties become cooperative and friendly at one time and rivals at the next which, among other things, prevented the adoption of a binding agreement. The suspicious relationship of the parties is informed by the past and sustained decade-long negotiations that there is no sufficient evidence future negotiations will be immune to such a relationship. Conversely, it might even get worse considering how agendas of negotiations kept changing and broadening, third parties participating in negotiations making allies, and the unwarranted escalation of tensions among the three countries.

3.8. Negotiations on the GERD: Theoretical Aspects

The decade-long negotiations on the GERD have not yet come to fruition in terms of effecting the cooperation sought to be achieved. Nor have they built confidence among Ethiopia, Egypt, and Sudan as illustrated by the escalation of tension, unwarranted diplomatic intervention, and a threat of launching a military force to secure one's interest, particularly by Egypt. Ethiopia maintains its position and continues the construction of the dam pending negotiation and escalation of issues. The GERD project successfully challenged the hegemonic status of Egypt over the Nile River and brought a new alternative whereby a new benefit-sharing framework could be asserted on the Nile River. It forces Egypt to the negotiation table to discuss the claimed usage right of Ethiopia by the GERD project. It has an enormous implication on the power structure of the basin countries as the hydro-hegemonic status of Egypt over the Nile River through a unilateral claim is successfully challenged.

As per the *Realism* and *Neorealism* theory, interstate relations are mainly characterized by suspicion and their actions are shaped by egoism and the pursuit of power. Here, cooperation could result from a unilateral cooperative approach adopted by a state when coincided with the same approach by other states or as an expression of existing power distribution. Regarding the usage of the Nile River, the riparian countries did not adopt a cooperative approach, but, Egypt and Sudan entered into bilateral cooperation exclusive of the other riparian countries in a manner that somehow shows the existing power distribution. Cooperation could also result from an arrangement that benefits all parties equally, exceptionally. This is

an approach attempted by Ethiopia, particularly the claim to adopt a comprehensive agreement to govern the usage of the Nile water thereby settling issues on future projects as well. Yet, the success of the same is quite limited making cooperation between the three countries an anomaly indeed, if not an unachievable goal. Thus, negotiations on the GERD constitute a manifestation of the *Realism* and *Neorealism* theories on the management of transboundary water resources.

Additionally, even if the urge to protect one's interest at any cost including the launch of a military attack by Egypt is not yet materialized, the very threat coupled with the Nile River being one of the exceptional transboundary water resources convenient to the *Water Wars* theory poses a peace and security concern on Ethiopia. Here, Egypt backs the threat by strengthening its military force from time to time. Such a threat even attracted support from the United States which the former president of the US, Donald Trump, following Ethiopia's rejection of the proposed agreement, said "Egypt will not be able to live that way...and should blow up that dam...they (referring Egypt) should have stopped it long before it was started" (Al Jazeera English, 2020). Additionally, the adoption of other potential projects on the Nile River, such as irrigation projects for agricultural purposes which could affect the quantity of water flow to the downstream countries, might lead materialization of the military threats. Here, the existing political instability and tension in Ethiopia could be a conducive environment for the downstream countries that the *Water Wars* theory should be considered as a possibility while formulating security strategies for the GERD project. Moreover, the intervention of Egypt in the internal affairs of Ethiopia, including supporting rebel and terrorist groups with the intent to destabilize Ethiopia and affect the construction of the dam implies an indirect attempt of the water wars theory, even if a direct military attack is less likely considering the progress of the dam and safety concerns posed upon the attempt to destroy the same.

Furthermore, the involvement of the US and the World Bank as an observer/facilitators was extended to proposing terms of the proposed draft agreement followed by economic sanction on Ethiopia for non-compliance with signing the proposed agreement resembles the *Social Planner* theory where a third party authority allocates the water usage rights based on efficiency. Here, it defies the sovereignty of states and entitles a third-party entity to make a decision and resolve conflict. The active involvement of the US and the World Bank in facilitating the negotiation forum, adoption of terms of the agreement, and attempted enforcement of the same through economic sanction and diplomatic pressure amplifies the role of those entities as superior to the parties to the negotiation, particularly Ethiopia. Hence, the *Social Planner* theory, even if seems impractical at a face value, is proven to be possible in the contemporary international relations arrangement by negotiations on the GERD. The same is true regarding the unprecedented involvement of the United Nations Security Council (UNSC) in transboundary water resource disputes which Ethiopia was pressured to submit to. Ethiopia objected to the referral of the

issues to the UNSC as “the unfitting use of the time and resources of the UNSC” (Dr. Enginner Silesi Bekele, United Nations, 2021). Even if the matter is referred back to the AU-led negotiation forum, the referral of the matter to the Council by Egypt, later on, agreed upon by Sudan, constitutes the referral of the matters for a third party determination regarding the usage allocation of the Nile water demonstrating the *Social Planner* theory.

Chapter Four

Conclusion and Recommendations

4.1. Conclusion

One of the causes of the conflicting needs of states at the international level is the use of shared natural resources. Transboundary water resources are a classic example where two or more states could have conflicting demands since, in principle, states are entitled to use and exploit natural resources that originate from and fall across their territories in pursuit of their sovereignty and exercise of economic and political securities. However, the issue is a bit more complicated as the usage of the transboundary water resource by some riparian states affects the usage rights of other co-riparian states. This inclines the usage and management of transboundary water resources to be dealt with by international laws including the United Nations Convention on the Law of the Non-navigational Uses of International Watercourses to which Ethiopia, Egypt, and Sudan are not a party to.

One of the transboundary water resources in Africa is the Nile River which stretches above 6800km across the length of north-eastern Africa across 11 countries. The river has mainly been used by the downstream countries, Egypt and Sudan, for hydroelectric and irrigation purposes through dams they have built on the River. They based their usage rights on colonial and bilateral treaties they concluded and the allocation made accordingly has not been practically challenged by the upper riparian states until the commencement of the Grand Ethiopian Renaissance Dam (GERD) project. The GERD project challenged the *status quo* that gave exclusive rights to the downstream countries and illustrated the Nile River as a transboundary water resource being a point of conflicting demands of states.

Ethiopia, Egypt, and Sudan resorted to trilateral negotiations to resolve their conflicting demands through a cooperation agreement which is yet to be achieved following decade-long negotiations. Ethiopia continued the construction of the dam pending negotiations and has successfully filled the second phase of filling the dam despite the fierce objections from Egypt and Sudan against it. Egypt and Sudan based their claims extensively on the colonial treaties and their bilateral treaty of 1959 which makes those treaties a feed for the ongoing negotiations. Therefore, the study raised questions on the content of major treaties on the Nile River along with their security implications and how they feed the ongoing negotiations on the GERD project. Also, the security implications of the GERD negotiations and how they shape the relationship of the parties including their impact on future projects and negotiations constitute questions addressed by the study.

Peace studies usually are transdisciplinary and this study is not an exception, i.e. it combines peace studies with international law thereby adopting methodologies and methods from doctrinal research which is a characteristic element of legal research, and combining the same with methods from other disciplines to generate empirical data to address the research questions. This is informed by the nature of the study involving interstate relations and the research questions revolving around interstate negotiations, treaties, and issues that are transnational. Also, an interview with an expert selected through a non-probability purposive sampling is employed to generate brief empirical data to answer the research questions. Hence, the study employed a qualitative research design with explanatory and predictive approaches to answer the research questions.

Accordingly, the patterns of the colonial treaties on the Nile River allocate the usage rights of the Nile water based on the Social Planner theory, i.e. an entity (the United Kingdom) determined the usage rights based on considerations it took to ensure the efficiency of the River. The Nile River is one of the exceptions where such theory had been employed and such allocation has served as a foundation for the alleged *historic right* Egypt claims over the Nile water. It voids the sovereignty of states resembling the timing it was adopted, i.e. the colonial era where sovereignty and sovereign equality of states was utterly violated. The continual reliance of Egypt and Sudan on allocations made based on the Social Planner theory, however, constitutes the continual violation of the sovereignty of the upper riparian countries in the contemporary era. Coming to terms of those treaties, they completely evade the upper riparian states' usage rights; they even left the surplus water after the apportionment made to Egypt and Sudan unallocated to any of the upper riparian countries. This makes the Nile River, a transboundary water resource shared by 11 countries practically relevant to two of the co-riparian downstream countries. Consequently, the allocation forbears upper riparian states from using a resource that originates from and falls across their territories, adopting a developmental initiative on the river, and responding to the needs of their populations independently in pursuit of sovereignty and the exercise of economic and political securities.

Regarding the 1959 bilateral treaty between Egypt and Sudan, it only binds the two countries and is a law to govern issues between themselves, yet inapplicable to Ethiopia since it is not a party to the treaty and a treaty neither creates rights nor obligations on third party states, as per the Vienna Convention on the Law of treaties (VCLT). However, such an argument is only of theoretical relevance as the colonial treaties and the 1959 bilateral treaty is claimed by Egypt and Sudan in negotiations on the GERD. This has a huge implication on the power imbalance of the parties in the GERD negotiations as Ethiopia while attempting to establish the usage rights is expected to defy the already existing power allocation. This power

imbalance informed by the former treaties is clearly illustrated in the GERD negotiations and terms of proposed and adopted agreements.

With that in mind, the major success of the GERD negotiations for Ethiopia is the adoption of the 2015 Declaration of Principle (DOP) which is the first trilateral agreement between Ethiopia, Egypt, and Sudan. It provides ten principles to guide the operation and management of the GERD project. It recognizes the developmental nature of the GERD initiative and guides the three parties to cooperate in the first filling of the dam cognizant of different scenarios in the construction of the dam. This enables Ethiopia to fill the second phase of filling the dam unilaterally without specific negotiation to that effect. It also serves as a base for the timely completion of the dam.

The success of the agreement to build confidence among the three countries is quite limited as their relationship continued to be suspicious and issues escalate to the point of ignoring the conflict resolution mechanism chosen initially, i.e. replacing negotiations with a threat of military intervention to protect one's interest on the side of Egypt. The negotiations also welcomed the intervention of the United States (US), the World Bank, the Arab League, the United Nations Security Council (UNSC), and the African Union (AU); the first four forums were called upon by Egypt and the AU intervention was initiated by South Africa. This shows how the trilateral negotiations failed to resolve the conflict. Egypt's attempt to involve the US, the World Bank, and the Arab League, which went beyond facilitating and observing to drafting terms of proposed agreements, reinforces the Social Planner Theory while the AU-led platform enforces the 'African Solution for African Problems' maxim. The overall relationship of the parties for the last decade is characterized by suspicion and attempts to unilaterally advance one's interest, making cooperation among the three countries indeed an anomaly.

The submission of Ethiopia to the US-facilitated negotiations is the major setback that negates the victory Ethiopia achieved upon the signature of the 2015 DOP that gave Ethiopia the upper hand in constructing the dam and setting terms in negotiations. It further escalates the tension as the involvement of the US and World Bank was not confined to observation but also to drafting the proposed Washington Agreement which Ethiopia ultimately refused followed by economic and diplomatic pressure from the US. Thus, the politicization of the matter attracted external intervention thereby contributing to the attack on the sovereignty as well as the exercise of political and economic security by Ethiopia.

Decade-long negotiations on the GERD constitute a battle to tackle a serious external threat posed to the economic and political security of Ethiopia through onerous terms incorporated in the proposed and/or adopted agreements. The threat has an extensive source that is not confined to Egypt and Sudan but also powerful third party states and international economic organizations worsening the already imbalanced

power in the GERD negotiations. Ethiopia did well in maintaining its position on building the dam pending negotiations and assuring the redirection of the case to the realm of the AU-led negotiations. However, the sustainable solution to assure the security of Ethiopia and stability of the region concerning the usage of the Nile water requires a genuine compromise to be made by the three parties which make the GERD negotiations an initial point towards wider cooperation.

Further, the politicization of the GERD negotiations at the national level made issues to be subjective to political agendas the government intends to implement from time to time that precludes the adoption of a consistent stand that survives a given government and/or political system. Also, the lack of integration and organization between the technical and political teams of the negotiations is another challenge that posed a setback to Ethiopia. Further, the negotiation teams could have used the support of Ethiopian experts and elites abroad to negotiate better terms informed by knowledge and experience. These identified gaps could be a base for further legal and empirical research to promote the broad political and economic security of Ethiopia.

These findings of the study align with the theories of *Realism* and *Neorealism* on transboundary water resource management where the last community to get the water will always be suspicious of the actions of the upper riparian states and the control of water is the most persistent controversy in human affairs. The suspicious and insecure relationship of Ethiopia, Egypt, and Sudan and their intent to achieve their goals unilaterally prevented them from negotiating in a good faith in pursuit of genuine cooperation thereby demonstrating the relations of co-riparian states on the *Realism* theory, i.e. as a zero-sum game manifested through suspicion.

The study unveils gaps in diplomacy on the side of Ethiopia which forbear it from having strong allies to promote and represent the interest of Ethiopia concerning the Nile water, unlike Egypt. Diplomatic relations are vital to advance one's interest within the contemporary globalized world where interventions are justified in terms of keeping the global and regional peace and security which allegedly is fragile enough to be affected by disputes among two or more countries. It also reveals inconsistencies in the positions and actions of Ethiopia which at times adheres to the *historical* rights Egypt claims to have over the Nile water and other times disregards the same and calls for a new allocation of the Nile water by comprehensive agreement. Further, it reveals how the agreement of the three countries on legal issues stagnates despite considerable agreement on the technical aspects of the GERD. The parties are triggered by a rights-based approach rather than a needs-based determination of the case exposing the polarized positions of the parties which prevent them from a binding agreement on the legal aspects of usage rights on the Nile River. The fact that Ethiopia, Egypt, and Sudan are not parties to international treaties on the

management of transboundary water resources has worsened the gap in the legal regime which could have resolved issues based on objective standards adopted in those treaties.

4.2. Recommendations

- One of the recommendations to ensure the long-term security of Ethiopia concerning the usage of the Nile River is the need for a comprehensive legal framework. Here, Ethiopia already raised the issue as one agenda of negotiation, yet, a consistent push towards the adoption of the same is vital. Since the absence of a legal framework is the major reason for the prolonged negotiations on the GERD, the adoption of one ensures future usage rights without a similar hectic negotiation process, if not worse.
- The other recommendation is in the area of diplomacy. Ethiopia needs to build strong partnerships and make allies with powerful states so that when tensions escalate to invite international attention under peace and security concerns, its interest would be duly represented in international forums. Ethiopia should also cooperate with other riparian countries in a meaningful way to build one stand toward the usage of the Nile River. Diplomacy and international cooperation is a key to survival within the globalized world that warrants issues to be intertwined thereby making international intervention easier than ever; Ethiopia should pursue the same.
- Consistency on stands concerning the usage rights over the Nile River is the other recommendation. Here, every statement, action, and promise from Ethiopian representatives should be informed of the stakes Ethiopia has over the GERD project and revolve around a consistent theme. Therefore, due care is expected from every representative to not contradict the outcome Ethiopia is expecting out of the negotiations.
- Negotiations in the GERD should also be de-politicized to some extent. This could be attained by involving more independent elites and experts from Ethiopia and abroad to work with the politically appointed representatives of Ethiopia. The issue of Nile water and negotiations on the GERD has a far-reaching significance that survives a given government or political ideology that matters have to be addressed accordingly in a manner that promotes an objective approach to dealing with the Nile water.
- An organized integration between the technical and political teams of the GERD negotiations is another area that needs improvement. The sensitivity of the issue and stakes involved warrant the teams to consistently meet and develop various ways of unequivocally establishing Ethiopia's right over the Nile water that meetings should not be contingent on the issues being raised. For instance, even if negotiations are at a stalemate at the moment, Ethiopia could take an advantage

of that to have an upper hand in the coming negotiations by addressing the existing and potential issues in the future negotiations.

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