

**Security Council**

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**Letter dated 1 May 2020 from the Permanent Representative of
Egypt to the United Nations addressed to the President of the
Security Council**

Upon instructions from my Government, I would like to transmit herewith a letter from the Minister for Foreign Affairs of the Arab Republic of Egypt, Sameh Shoukry, addressed to you, regarding the latest developments related to the Grand Ethiopian Renaissance Dam (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Mohamed **Edrees**
Permanent Representative of Egypt to the United Nations



Annex to the letter dated 1 May 2020 from the Permanent Representative of Egypt to the United Nations addressed to the President of the Security Council

I am writing to apprise you of the latest developments relating to a matter of the greatest consequence for Egypt, which is to the Grand Ethiopian Renaissance Dam.

The Federal Democratic Republic of Ethiopia has announced that it intends to commence the impoundment of waters for the purposes of filling the GERD reservoir for the Grand Ethiopian Renaissance Dam in July 2020. The unilateral filling of the dam, before agreeing with downstream States on the rules governing both the filling and operation of this dam, is inconsistent with the spirit of cooperation between co-riparians that share an international watercourse and amounts to a material breach of Ethiopia's international legal obligations.

This is a situation that potentially poses a serious threat to peace and security throughout the region. The unilateral filling and operation of the Grand Ethiopian Renaissance Dam, which is slated become the largest hydropower dam in Africa, could cause significant harm to downstream communities. This would jeopardize the water security, food security, and indeed, the very existence of over 100 million Egyptians, who are entirely dependent on the Nile River for their livelihood. The prospect of being subjected to significant harm to its riparian rights and interests would be wholly intolerable to Egypt.

Ethiopia's announcement of its intention to fill the Grand Ethiopian Renaissance Dam without an agreement is consistent with its policy of unilateralism that it has adopted since it commenced the construction of the dam in 2011 without notifying or consulting with its downstream co-riparians in violation of its obligations under international law. Since then, Egypt has, in the spirit of good faith, engaged in extensive negotiations with Ethiopia on the dam. However, as explained in the attached aide-mémoire (see enclosure), those negotiations were unsuccessful due to Ethiopian obstructionism and prevarication. Conversely, throughout this process, Egypt has exercised considerable flexibility, showed limitless goodwill, and demonstrated a genuine political commitment to reach a fair and balanced agreement on the dam. Such an agreement would ensure that Ethiopia achieves its developmental objectives by generating hydropower from the dam, while preventing the infliction of significant harm on downstream riparian States.

In the light of the failure of negotiations between the three countries, Egypt invited the United States of America and the World Bank Group to assist in reaching an agreement. This led to the launch of intensive negotiations during which significant progress was achieved towards concluding an agreement on the Grand Ethiopian Renaissance Dam. Unfortunately, however, Ethiopia did not attend the final ministerial meeting that was called for by the United States with the objective of finalizing the agreement. Ethiopia also refused to accept a compromise text that was formulated by our American partners with technical input from the World Bank on the basis of the positions expressed by the three countries during the negotiations. On the other hand, consistent with its desire to conclude an agreement on the dam that preserves the rights and interests of all riparian States, Egypt initialled the final agreement formulated by the United States and the World Bank on 28 February 2020.

Moreover, the Government of Ethiopia has proposed that Egypt and the Sudan accept a plan that it has prepared, but that has not hitherto been shared, on the first two years of the filling of the Grand Ethiopian Renaissance Dam. Unfortunately, a partial agreement of this sort is untenable. Not only does this proposed plan ignore the operational rules of the dam, it does not even regulate the entire process of filling the dam. This proposal is also inconsistent with the agreement on declaration of

principles of 2015, which was concluded between Egypt, Ethiopia and the Sudan, and which requires the three countries to reach a comprehensive agreement on both the filling and operation of the dam, before the commencement of the filling of the dam.

I am, therefore, writing to inform you of these regrettable developments. It is imperative that the international community impress upon Ethiopia the seriousness of the situation, and to call upon it not to undertake any unilateral measures, including the filling of the Grand Ethiopian Renaissance Dam, without an agreement with downstream riparian States. The international community must also encourage Ethiopia to accept the agreement that was reached during the negotiations facilitated by the United States and the World Bank. This agreement provides an equitable and mutually beneficial formula that preserves the interests of all three countries. Signing this agreement will mark a turning point in the history of Nile River Basin. It promises to unlock boundless horizons of the cooperation between the three countries and will promote efforts to realize the aspirations of over 240 million citizens of Egypt, Ethiopia and the Sudan to achieve peace and prosperity.

(Signed) Sameh Shoukry
Minister for Foreign Affairs
Arab Republic of Egypt

Enclosure

AIDE MEMOIRE

Executive Summary

1. Egypt has engaged in intensive negotiations on the Grand Ethiopian Renaissance Dam (GERD) for almost a decade. Since Ethiopia unilaterally commenced the construction of the GERD in 2011, Egypt has negotiated in good faith and with a genuine political commitment to reach a fair and balanced agreement on the GERD. These negotiations went through several phases and were undertaken in numerous forums. Regrettably, in each and every round of talks, Ethiopia adopted a policy of obstructionism that undermined these negotiations.
2. Despite the fact that an International Panel of Experts issued a deeply troubling report on the GERD and recommended undertaking studies on its transboundary and environmental effects, Ethiopia has effectively thwarted every attempt to conduct these studies. It undermined the work of a Tripartite National Committee that was overseeing the completion of these studies. It violated an agreement reached by the Nine-Party Meeting reached during a meeting of the ministers of foreign affairs and water affairs and the heads of the intelligence agencies of the three countries on the necessary steps to enable an international consultancy firm that was hired to conduct these studies. Ethiopia's policies and positions also prevented the National Independent Scientific Research Group, which was an independent group of scientists who were tasked with agreeing on the technical modalities of the filling and operation of the GERD, from fulfilling its mandate.
3. As a result, we have now reached a stage where the construction of the GERD is almost complete and the commencement of the filling of its reservoir is imminent without having conducted studies on the effects of this dam.
4. In an attempt to facilitate the reaching of an agreement on the GERD, Egypt concluded an international treaty with Ethiopia and Sudan titled the Agreement on Declaration of Principles on the GERD (DoP) on 23 March 2015. This agreement obliges Ethiopia to reach an agreement on the rules governing the processes of the filling and operation of the GERD. Pursuant to this treaty, Ethiopia is under an obligation not to commence the impoundment of waters for the purposes of filling the GERD reservoir without an agreement with Egypt.
5. Since the conclusion of the DoP, negotiations have been held with Ethiopia in various settings and formats. Throughout all of these negotiations, Egypt showed immense flexibility and sought to address Ethiopia's concerns and presented numerous technical proposals that were designed to enable Ethiopia to achieve the objective of the GERD, which is the generation of hydropower, while preventing the infliction of significant harm on downstream states.
6. Unfortunately, five years of talks proved futile. Every effort to complete the studies on the GERD failed, and trilateral discussions aimed at agreeing on the rules on the filling and operation of the dam did not lead to fruition. Moreover, attempts by African states to exercise good offices to assist in bridging the gap between the three countries were unsuccessful. Therefore, in accordance with article ten of the DoP, Egypt called for international mediation to facilitate discussions between the three countries. This led to the launch, in November 2019, of a new process of negotiations in which the United States of America and the World Bank Group participated.

7. After twelve rounds of meetings, including at the ministerial and expert levels, that were attended by our American partners and by representatives of the World Bank Group, the U.S. administration, in coordination with the World Bank, formulated a final agreement on the filling and operation of the GERD. This agreement is fair, balanced, and mutually beneficial, and was prepared on the basis of the positions espoused by the three countries during the discussions. This agreement satisfies Ethiopia's priority, which is the expeditious and sustainable generation of hydropower, while protecting downstream states against the adverse effects of the GERD. Accordingly, on February 28th, 2020, Egypt accepted and initialled this agreement, which further demonstrates our goodwill and good faith commitment to reach an agreement on the GERD.
8. Regrettably, Ethiopia decided not to attend the ministerial meeting that the U.S. administration called for on February 27th-28th, 2020 to conclude an agreement on the GERD, and refused to sign the final agreement prepared by the U.S. and the World Bank. This position is entirely consistent with Ethiopia's longstanding posture of obstructionism and its overall desire to establish a fait accompli that enables it to exercise unfettered and unrestrained control over the Blue Nile.
9. In a further demonstration of its unilateralist posture, Ethiopia has declared that it intends to commence the filling of the GERD during the summer of 2020, which constitutes a material breach of the DoP. Also in contravention of the DoP, Ethiopia has announced that it will not enter into an agreement on the long-term operation of the GERD, and affirmed that it will not accept any constraints on its future projects upstream of the GERD. These positions are wholly inconsistent with international law, and are unacceptable to Egypt as a downstream riparian that will be invariably affected by these projects.
10. On April 10th, 2020, the Ethiopian Prime Minister sent a letter to the President of Egypt and the Prime Minister of Sudan to propose concluding a partial agreement that covers the first stage of the filling. This proposal was not accepted by either Egypt or Sudan. Any agreement on the GERD must, as per the DoP, be comprehensive, and must regulate the complete process of filling the dam and its operation after the completion of the filling.
11. At no point in history has Egypt sought to obstruct the implementation of water projects by its co-riparians. This reflects Egypt's unwavering commitment to supporting its fellow African states, especially the Nile Basin states, in their endeavours to achieve development, peace, and prosperity. However, in pursuing these developmental objectives and in utilizing the resources of the Nile, Egypt believes that, in keeping with the established rules of international law, riparian states are required to consult their co-riparians on planned projects and to ensure that these projects are undertaken in a manner that is both reasonable and equitable and that minimizes the harm that may be inflicted on other states.
12. We call upon the international community to encourage Ethiopia to reconsider its position, and to impress upon Ethiopia the importance of signing the agreement on the filling and operation of the GERD that was prepared by the U.S. and World Bank. As a shared resource that is co-owned by all the riparian states, Ethiopia must not undertake any unilateral measures, including the impoundment of waters for the purposes of filling the GERD, without an agreement with its co-riparians.

AIDE MEMOIRE

April 2020

1. This aide memoire provides an overview of the negotiations that have been held between Ethiopia, Sudan, and Egypt on the Grand Ethiopian Renaissance Dam (GERD) and identifies the principal reasons for the current impasse in these discussions. It highlights how Ethiopia's policy of obstructionism and prevarication has undermined attempts to reach a fair and balanced agreement on the GERD. Ethiopia's posture throughout the past decade since the commencement of the construction of the GERD has been, and remains, one of unilateralism that is designed to impose a fait accompli on its co-riparians to enable it to exercise unfettered control over the Blue Nile.
2. On the other hand, Egypt has engaged in negotiations on the GERD with its partners in Ethiopia and Sudan in a spirit of good faith and with a genuine political will to reach a mutually beneficial agreement. Egypt has repeatedly affirmed its wholehearted support of Ethiopia's right to development, including by harnessing the benefits of the Blue Nile. However, this must be undertaken in a cooperative manner and in accordance with the applicable principles of international law.
3. In the latest example of its goodwill, Egypt accepted and initialled, on February 28th, 2020, an agreement on the filling and operation of the GERD that was formulated by two international mediators, namely the United States of America and the World Bank Group. Regrettably, Ethiopia has rejected this agreement. This is evidence that Ethiopia lacks the requisite political will to reach a fair and balanced agreement that is mutually beneficial. Instead, it demonstrates its bad faith and its desire to deploy the GERD as an instrument of a policy of hydro-hegemony that it is seeking to implement throughout the region.
4. On April 10th, 2020, the Prime Minister of Ethiopia sent a letter to the President of Egypt and the Prime Minister of Sudan proposing that the three countries agree to an Ethiopian plan that would cover only the first stage of the filling of the GERD. This proposal was not accepted by either Egypt or Sudan. Any agreement on the GERD must be comprehensive, and must regulate the complete process of filling the dam and its operation after the completion of the filling.

First: Background Information on the GERD:

5. The GERD is projected to become the largest hydropower dam in Africa. It is located on the Blue Nile river approximately 20km upstream from the Ethiopian-Sudanese border. It has a full supply level of 640 m.a.s.l. with a total storage capacity of 74BCM, and its reservoir is expected to cover 1,874km² and is projected to extend for 264km upstream of the GERD. The sole purpose of the GERD is the generation of hydropower. It has a total power production capacity of over 6450MW with an energy generation capacity of 15,692GWh/yr.
6. These technical specifications of the GERD are a cause for concern. Originally, Ethiopia had planned to construct a dam called the "Border Dam" in the current location of the GERD. That project was the subject of a study undertaken in 2007 by the Eastern Nile Technical Regional Office (ENTRO) titled "Prefeasibility Study of Border Hydropower Project, Ethiopia." That study concluded that the optimum storage capacity for a hydropower dam at the location of the GERD is 14.47BCM.
7. Despite the fact that sufficient energy would have been efficiently generated by the GERD at the storage level proposed by the ENTRO, the technical

specifications of the GERD were altered and its storage capacity was progressively increased to 74BCM. This dramatic increase in the volume of the storage reservoir of the GERD is unjustified and raises questions about the actual purpose of the dam and its projected uses, and dramatically increases its potential adverse effects on downstream uses.

8. Indeed, technical studies have shown that retaining 19BCM in the GERD reservoir would have been a sufficient volume to generate electric power. A study by an Ethiopian expert has demonstrated that the GERD is a highly inefficient and oversized project for the purposes of power generation (*Mehari Beyene, How Efficient is the Grand Ethiopian Renaissance Dam? Jul. 20, 2011*). According to this study, the hydropower generated from the GERD will be equivalent to that produced by a power plant with the much lower capacity of 2872MW that operates at 60% efficiency. Therefore, the total cost of the GERD could have been reduced by at least 40-45% by building a smaller dam with a higher efficiency to generate the same amount of hydropower.

Second: Egypt's Water Vulnerabilities:

9. Reaching a fair and balanced agreement on the GERD is not only necessary under the applicable rules of international law, but it is also imperative given Egypt's hydrologically precarious position. Protecting Egypt against the potential adverse effects of the GERD is necessary in light of the following facts:

First: Egypt is essentially a desert oasis. Although its territory is slightly over 1 million square kilometres, the inhabited area of Egypt is no more than 7% of its territory. With a population of 104 million, this makes Egypt one of the most densely populated countries in the world. Moreover, of that 7% of inhabited territory, a mere 4%, totalling around 3.8 million hectares, is arable land.

Second: Egypt has a dependency ratio of 98% on the Nile, which is one of the highest in the world.

Third: Egypt already suffers from acute water scarcity. The water share of Egyptians is currently 570 cubic meters/per capita/per year, and is projected to drop to below 500 cubic meters/per capita/per year by 2025. Moreover, the water available for Egypt is already insufficient. Although Egypt releases 55.5 billion cubic meters annually from the High Aswan Dam, the reality is that Egypt's water needs are over 80 billion cubic meters. This deficit is bridged by intensive water-recycling and reuse, which makes the water management system in Egypt incredibly efficient.

Fourth: 85% of the Nile waters that reach Egypt flow from the Ethiopian Highlands through three main rivers, the most important of which is the Blue Nile. This means that Egypt is particularly vulnerable to waterworks undertaken in the Ethiopian Highlands, especially on the Blue Nile.

10. The impacts of water shortages in Egypt caused by projects undertaken by Ethiopia could be catastrophic. Millions of jobs would be lost, thousands of hectares of arable land would disappear, cultivated land would experience increased salinization, the cost of food imports would increase dramatically, and urbanization would sky-rocket due to rural depopulation, which will lead to an increase in unemployment, crime rates and transnational migration. Indeed, a decrease of only 1 billion cubic meters of water would lead, in the agricultural sector alone, to 290,000 people losing their incomes, a loss of 130,000 hectares of cultivated land, an increase of \$150 million USD in food imports, and a loss of \$430 million USD of agricultural production. As water shortages increase and

continue over an extended period, the ripple-effects on every sector of Egypt's economy and its socio-political stability are inestimable.

Third: Overview of Negotiations on the GERD:

11. The groundbreaking ceremony to commence the construction of the GERD was held on 2 April 2011. The decision to construct the GERD was taken unilaterally. Egypt and Sudan, the downstream states that will be invariably affected by the introduction of such a major project into the hydrological system of the Blue Nile, were neither notified nor consulted.
12. This represents a breach of Ethiopia's international legal obligations. Under general conventional and customary international law, a state planning to undertake major waterworks on an international watercourse is duty-bound to notify its co-riparians of its planned projects and to engage in consultations to review the design specifications of these planned projects. The purpose of these rules is neither to prevent nor to obstruct the development projects of upstream states. Rather, the objective is to identify the economic, social, and environmental impacts of these projects, and to agree on mitigation measures to minimize the adverse effects of these projects on both the quantity and quality of shared water resources. Indeed, the International Court of Justice has affirmed that the duty to undertake environmental assessments of the impacts of waterworks is a rule of customary international law.

A. The International Panel of Experts (IPoE)

13. Following protests by Egypt, Ethiopia agreed to establish an International Panel of Experts (IPoE) to assess the impact of the GERD. The IPoE was composed of ten experts, two from each of the three states and four international experts.
14. The IPoE issued its report on 31 May 2013. The findings of the IPoE were deeply troubling. It expressed concerns regarding the adequacy of studies undertaken by Ethiopia on the GERD, including on the structural integrity and safety of the dam, its design features, the hydrological and geological models that were used in the construction plans, and the lack of environmental assessment reports or studies on the socio-economic impact of the dam on downstream states. Indeed, the IPoE report described the Ethiopian studies as "very basic, and not yet at a level of detail, sophistication and reliability that would befit a development of this magnitude." The report also noted that the "potential downstream impacts result from reservoir first impoundment and actual operation strategy which have not been adequately addressed."
15. Therefore, the IPoE recommended conducting additional reports including a "more comprehensive assessment of downstream impacts of the GERDP, based on a sophisticated water resources/hydropower system simulation model. Potential positive and adverse impact should be quantified and confirmed by a detailed study. Furthermore, the impact area should extend down to the Nile Delta." The report also stated that a "comprehensive study of the GERDP in the context of the Eastern Nile System using a proven, sophisticated and reliable water resource system/hydropower model is strongly recommended to be able to assess and quantify the downstream impacts in detail with confidence."

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

16. During the months following the submission of the IPoE report, little progress was achieved in talks between Egypt, Ethiopia, and Sudan. This impasse was broken on 26 June 2014 when the President of Egypt and the Prime Minister of Ethiopia issued a Joint Statement in Malabo, Equatorial Guinea. This led to

forming a Tripartite National Committee (TNC) that was charged with overseeing the conducting of the further studies recommended by the IPoE.

17. To do so, it was agreed that the TNC would appoint an international consultant to undertake these studies. During this period, the TNC held four meetings that failed to achieve any notable progress. It did not succeed in appointing an international consultant due to Ethiopian obstructionism on procedural Issues such as the short-listing of the international consultants and the timeline for the conclusion of the studies recommended by the IPoE.

C. The 2015 Agreement on Declaration of Principles (DoP):

18. To overcome this stalemate and accelerate the process of completing the studies recommended by the IPoE, a treaty called the Agreement on Declaration of Principles on the Grand Ethiopian Renaissance Dam Project (DoP) was concluded between Egypt, Ethiopia, and Sudan in Khartoum on 23 March 2015.
19. Article 5 of this treaty obligates the three countries to “implement the recommendations of the International Panel of Experts (IPoE), respect the final outcomes of the Tripartite National Committee (TNC) Final Report on the joint studies recommended by the IPOE Final Report throughout the different stages of the project.” The DoP also identifies the purposes for which the studies recommended by the IPoE would be used. It stated that the three countries shall “utilize the final outcomes of the Joint studies, to be conducted as per the recommendations of the IPoE Report and agreed upon by the TNC, to:
 - a. Agree on guidelines and rules on the first filling of GERD which shall cover all different scenarios, in parallel with the construction of GERD.
 - b. Agree on guidelines and rules for the annual operation of GERD, which the owner of the dam may adjust from time to time.
 - c. Inform the downstream countries on any unforeseen or urgent circumstances requiring adjustments in the operation of GERD.
 - To sustain cooperation and coordination on the annual operation of GERD with downstream reservoirs, the three countries, through the line ministries responsible for water, shall set up an appropriate coordination mechanism among them.
 - The time line for conducting the above mentioned process shall be 15 months from the inception of the two studies recommended by the IPoE”
20. Pursuant to these provisions, Ethiopia is treaty-bound to reach an agreement that governs both the filling and operation of the GERD on the basis of the studies that were recommended by the IPoE, and which the TNC was supposed to oversee. Moreover, these provisions make it incumbent on Ethiopia not to commence the first filling of the GERD without an agreement with its downstream co-riparians on the rules governing that process. Indeed, the wording of article 5 of the DoP is such that, while the *construction* of the GERD may proceed while the studies recommended by the IPoE are being completed, the *first filling* of the GERD cannot commence without an agreement on the rules governing the filling and operation of the dam.
21. Ethiopia has recently declared that it intends to commence the impoundment of waters in the GERD reservoir and to begin the filling process without an agreement with downstream states. Ethiopia has sought to justify this position by citing article 5 of the DoP. This position is untenable. Any reading of article 5 that purports to permit the unilateral filling of the GERD is inconsistent with the plain meaning of the text, its context, and the object and purpose of this

provision and the DoP as a whole. As aforementioned, article 5 regulates the process of conducting the studies recommended by the IPoE, which are to be utilized to agree on the rules governing the filling and operation of the GERD.

22. Ethiopia is also arguing that the filling of the GERD is part of the construction process. Not only is this a disingenuous and distorted reading of the DoP, it is also wholly inconsistent with the any scientific understanding of the concepts of construction and filling of the dam. While the former refers to the various stages of the physical construction of the roller-compacted dam and other related facilities, the filling of the dam is the process of impounding waters in the dam reservoir. As the DoP clearly states, the filling and the construction are two distinct processes. The construction was permitted to proceed while the studies recommended by the IPoE were being completed, while the filling is a process that should be governed by rules to be agreed-upon by the three countries.
23. Accordingly, it is the view of the Government of the Arab Republic of Egypt that the unilateral filling of the GERD reservoir would constitute a material breach of the DoP.

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

24. After the conclusion of the DoP in March 2015, numerous rounds of negotiations were held to agree on an international consultant to undertake the studies recommended by the IPoE. After over a year of talks, a contract was finally signed with the French firm BRLi in September 2016 to complete the studies recommended by the IPoE within a period of eleven months. However, this deadline was not met due to Ethiopia's prevarication. While Egypt accepted BRLi's inception report, Ethiopia rejected it because of its objection to the inclusion in the inception report of plans to conduct studies on the impact of the GERD on the Nile Delta. Ethiopia also sought to alter the 'baseline scenario' that would be used as a reference-case (i.e. the current status of the Blue Nile system) to measure the impacts of the GERD. This Ethiopian stance was in breach of both the recommendations of the IPoE and BRLi's terms of reference that were agreed by the three countries.
25. During this period, and in a further demonstration of its unilateralism, Ethiopia sent a letter to Egypt and Sudan dated 19 December 2017 in which it sets-out a filling plan for the GERD, which envisioned filling the dam reservoir in 5-6 years. This filling plan was devised unilaterally without taking into consideration the results of the studies recommended by the IPoE which had not yet been undertaken.
26. To overcome this situation, during a summit meeting of the leaders of Egypt, Ethiopia, and Sudan in January 2018, Egypt proposed the creation of a Nine-Party Mechanism that includes the Ministers of Foreign Affairs, the Ministers of Water Affairs, and the Directors of the Intelligence Agencies of the three countries to deliberate on the means to overcome disagreements over the process of conducting the studies recommended by the IPoE.
27. The Nine-Party mechanism met twice and decided in its second meeting on 15 May 2018 that the three countries will send queries and observations to BRLi regarding its draft inception report, and that BRLi shall be given three weeks to consider these queries and observations and resume the studies recommended by the IPoE. It was also decided that Ethiopia, in its capacity as the Chair of the TNC at that point, would transmit these queries and observations to BRLi. A cover letter to BRLi in the form of an email was even drafted and signed by the members of the Nine-Party mechanism. However, Ethiopia refused to refer these

queries and observations to BRLi. As a result, the effort to complete the studies recommended by the IPoE has failed.

28. The track-record of these negotiations, which were held at various levels and in numerous formats, reveals a consistent pattern of Ethiopian policy. Whether at the TNC or in its positions regarding BRLi's inception report or in the GERD filling plan that it unilaterally developed, Ethiopia's overall objective has been to establish a fait accompli and to avoid any restraints that might be placed on its freedom of action in relation to the GERD.

E. The National Independent Scientific Research Group (NISRG)

29. Despite Ethiopia's obstructionism and equivocation, Egypt proposed during the meeting of the Nine-Party mechanism that was held on May 15th, 2018, the establishment of the National Independent Scientific Research Group (NISRG). This was a non-governmental group of five scientists from each of the three countries that was required to hold nine meetings to discuss and develop "various scenarios related to the filling and operation rules" of the GERD. The NISRG held five of its required nine meetings, the last of which was held in Khartoum during the period 30 September-3 October 2019. Like the earlier negotiation tracks, the NISRG also failed to produce an agreement on the filling and operation of the GERD. In fact, the discussions held by the NISRG showed that the gap between the three countries was expanding. This is due to Ethiopia's backtracking and its failure to respect commitments and agreements reached during the successive rounds of the NISRG negotiations.

F. Mediation Efforts by the United States of America and the World Bank Group

30. Article 10 of the DoP includes mediation as one of the dispute resolution mechanisms that the three contracting states could invoke to overcome difficulties in the implementation of the DoP. Therefore, in light of the continued failure of trilateral forums to reach an agreement, Egypt called upon the United States and the World Bank Group to join the discussions between the three countries as mediators. Accordingly, the U.S. administration extended an invitation to the three governments to attend a ministerial meeting in Washington D.C. on November 6th, 2019. This launched a new negotiating process in which representatives of the U.S. and the World Bank participated as observers and, especially in meetings held in Washington D.C., became actively engaged in facilitating discussions and working to bridge the gap between the three countries.
31. Ten ministerial meetings were held as part of this process. Four of these were meetings of the water affairs ministers, while six were meetings of the ministers of foreign affairs and water affairs that were chaired by the U.S. Secretary of the Treasury Steven T. Mnuchin. In addition, two meetings of legal and technical working groups were held in Khartoum and Washington D.C. to finalize the text of an agreement on the filling and operation of the GERD.
32. The dates and locations of these meetings were as follows:
 1. November 6, 2019: Meeting of the Ministers of Foreign Affairs and Water Affairs – Washington D.C.
 2. November 15-16, 2019: Meeting of the Ministers of Water Affairs – Addis Ababa
 3. December 2-3, 2019: Meeting of the Ministers of Water Affairs – Cairo

4. December 9, 2019: Meeting of the Ministers of Foreign Affairs and Water Affairs – Washington D.C.
 5. December 21-22, 2019: Meeting of the Ministers of Water Affairs – Khartoum
 6. January 8-9, 2020: Meeting of the Ministers of Water Affairs – Addis Ababa
 7. January 13-15, 2020: Meeting of the Ministers of Foreign Affairs and Water Affairs – Washington D.C.
 8. January 22-23, 2020: Meeting of the Legal and Technical Working Groups – Khartoum
 9. January 28-31, 2020: Meeting of the Ministers of Foreign Affairs and Water Affairs – Washington D.C.
 10. February 3-10, 2020: Meeting of the Legal and Technical Working Groups – Washington D.C.
 11. February 12-13, 2020: Meeting of the Ministers of Foreign Affairs and Water Affairs – Washington D.C.
 12. February 27-28, 2020: Meeting of the Ministers of Foreign Affairs and Water Affairs – Washington D.C.
33. These negotiations were both fruitful and frustrating. In four months of intensive discussions, the three countries accomplished more than they had achieved in five years of talks since the conclusion of the 2015 DoP. Agreements were reached on various technical aspects of the filling and operation of the GERD and on the institutional and legal architecture that would ensure the effective implementation of the agreement.
34. On the other hand, these negotiations were frustrating because, ultimately, they did not lead to the signing of a final agreement on the filling and operation of the GERD by all three countries. This is because, in spite of the progress that was achieved and despite having accepted many of the technical and legal components of the agreement, Ethiopia rejected the comprehensive agreement that was formulated by the U.S. with technical input from the World Bank. On the other hand, in a show of good faith, on February 28th, 2020 Egypt initialled the agreement formulated by the U.S. and the World Bank. This agreement that was initialled by Egypt includes the following components:

First: Filling of the GERD:

- a. It was agreed – upon Ethiopia’s insistence – that the GERD will be filled in stages that will be executed in an adaptive and cooperative manner that takes into consideration the hydrological conditions of the Blue Nile and the potential impact of the filling on downstream reservoirs. Overall, the stage-based filling plan enables Ethiopia to fill the GERD in the vast majority of hydrological conditions, including during periods of drought. Moreover, in years where the annual yield of the Blue Nile is at average or above-average levels, the filling plan enables Ethiopia to complete the filling in a total of five years.
- b. As requested by Ethiopia, the initial stage of the filling, at the end of which the GERD will reach a level of 595m.a.s.l., will be executed over two years. It was also agreed that during this initial stage, mitigation measures would be undertaken to protect downstream states if an extreme drought coincides with this first stage of the filling.

- c. The three countries engaged in extensive discussions on the mitigations measures to be implemented during prolonged periods of dry years, or droughts, or prolonged droughts that may occur during the subsequent stages of the filling. On January 30th, 2020, after considering the positions of the three countries, the U.S. mediators proposed a compromise text that includes a comprehensive mitigation mechanism that includes specific amounts of water to be released from the GERD to assist downstream countries in addressing drought conditions. Initially, the three countries accepted this compromise text. Regrettably, however, later that evening and the next morning, the Ethiopian delegation backtracked and announced that it would not accept the text proposed by the U.S. mediators.
- d. Ethiopia's rejection of the mitigation measures formulated by the U.S. in coordination with the World Bank was deeply disappointing, especially given the reality that these measures ensure that the GERD would continue to generate hydropower at a minimum of 80% of its capacity in all conditions, including during the worst cases of droughts. The fact that Ethiopia rejected the proposal demonstrates its unilateralism, its lack of willingness to cooperate, and its desire to fill the GERD regardless of the impact on downstream riparians.

Second: Operation of the GERD:

- a. The operational rules of the GERD include three components. The first is a general rule for the long-term operation of the GERD during normal hydrological conditions. The second is the mitigation mechanism for the annual and long-term operation of the GERD in drought, prolonged drought, and prolonged periods of dry years, and the third is the rules for the refilling of the GERD.
- b. Regarding the long-term operation of the GERD during normal hydrological conditions (i.e. when the Blue Nile system is not experiencing droughts, prolonged droughts, or prolonged periods of dry years), the three countries agreed that the GERD should remain at its optimum operating level of 625m.a.s.l. and release the total quantity of water entering the GERD reservoir each year. This reflects the reality that the GERD is a non-consumptive project that is designed solely for hydropower generation.
- c. Similar to the mitigation measures for the filling, on January 30th, 2020, the U.S. and World Bank mediators proposed a compromise text that included mitigations measures to be implemented during prolonged periods of dry years, or droughts, or prolonged droughts that may occur during the long-term operation of the GERD. These measures, which ensure that the GERD would continue to generate hydropower at a minimum of 80% of its capacity, stipulate specific amounts of water to be released from the GERD to assist downstream states in mitigating the effects of droughts.
- d. As with the mitigation measures for the filling, after initially accepting the drought mitigation mechanism for the long-term operation of the GERD, Ethiopia backtracked and rejected the U.S. compromise text. This demonstrates Ethiopia's unilateralist posture and its desire to operate the GERD without any consideration of the impact of the GERD on downstream riparians.

- e. Indeed, despite the fact that successive documents adopted by the three countries, including the joint statements issued at the end of each of the ministerial meetings held in Washington D.C., indicate that the final agreement must include rules on the long-term operation of the GERD, Ethiopia has recently announced that it “will not enter into any arrangement depicted as ‘the long-term operation’ of the GERD.” Not only is further evidence of Ethiopian bad faith, but it also reveals its desire to operate the GERD in an unrestrained, unfettered, and unregulated manner.

Third: Institutional Architecture:

- a. The three countries agreed on establishing a coordination mechanism composed of a Technical Committee and a Ministerial Committee. This mechanism was mandated to monitor and verify the implementation of the agreement and to ensure that the relevant hydrological and technical data was exchanged effectively.

Fourth: Legal Components:

- a. Extensive discussions were held on the dispute settlement provisions of the GERD agreement. While Egypt called for including compulsory and binding dispute resolution mechanism, Ethiopia insisted on limiting it to political processes and consultations. Ultimately, the U.S. mediators proposed a text that included elements of political consultations, but that culminated in binding arbitration if non-judicial means are exhausted. Regrettably, in another example of its desire to be unrestrained in its filling and operation of the GERD, Ethiopia rejected the dispute settlement text proposed by the U.S.
 - b. Ethiopia also rejected a text that was proposed on future projects upstream of the GERD. This matter is of central important to the agreement on the GERD because future upstream projects will invariably alter the amount of water entering the GERD reservoir, thereby affecting the level of water release from the GERD, which are regulated by the GERD agreement. Therefore, a single provision stipulating that future projects upstream of the GERD shall be undertaken in accordance with international law was proposed. Despite the commonsense nature and equitableness of this simple provision, Ethiopia rejected it.
35. Like any compromise text that is fair and balanced, the agreement formulated by the U.S. and the World Bank is imperfect and does not completely satisfy Egypt’s needs. Nonetheless, given its genuine political commitment to reach an agreement, and in light of the fact that the text prepared by the international mediators is equitable and mutually beneficial, Egypt opted to initial this agreement. On the other hand, Ethiopia rejected this text and declared that it will unilaterally commence the filling of the GERD in breach of its obligations under the 2015 DoP.

Fifth: Conclusion:

36. As demonstrated in this aide memoire, for almost a decade, and especially during the five years since the conclusion of the 2015 DoP, Ethiopia has adopted a policy of obstructionism and prevarication that has undermined the negotiating process and that has sought to establish a fait accompli. Ethiopia’s overall objective was, and remains, the exercise of unfettered control over the Blue Nile, including by filling and operating the GERD without taking the interests of downstream countries into consideration, and by securing an unrestrained right to undertake future projects upstream of the GERD, even if to the detriment of downstream riparian rights and Interests.

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37. Ethiopia's unwillingness to conclude a fair and balanced on the GERD was further demonstrated when, on April 10, 2020, the Prime Minister of Ethiopia sent a letter to the President of Egypt and the Prime Minister of Sudan proposing that they agree to an Ethiopian plan for the execution of the first stage of the filling of the GERD. This plan was not shared with either Egypt or Sudan. On April 15, 2020, the Egyptian President sent a letter to the Prime Minister of Ethiopia to reiterate Egypt's unwavering commitment to concluding a mutually beneficial agreement on the GERD and to reaffirm that the 2015 DoP obligates the three countries to reach a comprehensive agreement that regulates both the filling and operation of the GERD, and not a partial agreement that is limited to merely the first stage of the filling. It is noteworthy that the Prime Minister of Sudan sent a similar letter to his Ethiopian counterpart on April 15, 2020, that stated that "signing a partial agreement covering only the first stage filling may not be tenable."
38. In light of the above, Egypt calls upon the international community to:
- Call upon Ethiopia to respect its international legal obligations, including the 2015 DoP, and not to undertake any unilateral measures, including the commencement of impoundment and the filling of the dam, without agreement with downstream riparians.
 - Encourage Ethiopia to reconsider its position and to accept the agreement on the filling and operation of the GERD that was initialed by Egypt on February 28th, 2020.
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