

THE GRAND ETHIOPIAN RENAISSANCE
DAM:
A CATALYST FOR CHANGE?

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WHAT IS CONTROVERSIAL ABOUT THE GERD?

- **Jan 2011:** Ethiopia announces dam without notifying Egypt and Sudan, and begins construction.
 - Huge dam: height = 145 m; length = 246 km; total area 1874 km²; power generation = 6,000 MW
- At Ethiopia's initiative, a consultation process begins
- **May 2013:** "The International Panel of Experts' report on the Grand Ethiopian Renaissance Dam"
 - Requested additional studies

- **Dec 2014:** Parties agree to hire international firms to conduct the studies, but contracts signed in Sept 2016.
- **March 2015:** Declaration of Principles on the GERD:
 - Article V: obligation to respect the outcome of the joint studies

**All throughout construction has continued unabated,
without regard to the studies.**

- Does **the GERD** achieve the correct balance between Ethiopia's rights and obligations under international law?
 - Arguments put forward by pro-GERD scholars:
 1. Agreements between Ethiopia, Sudan and Egypt on the GERD are non-binding because they have not been ratified. They are political understandings not international treaties.
 2. Contemporary international law strongly favours the customary international law principle of equitable and reasonable use.
 3. The duty to avoid significant harm does not protect Egypt's existing uses or its future demand for dams and hydropower. "It is only meant to ensure, for example, that 'minimum individual water requirements of human beings in downstream countries is not significantly affected.'"

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THE GERD UNDER INTERNATIONAL LAW

- Legal Framework:
 - Specifically examining the GERD and not the right to construct dams in general: GERD design, size, height, reservoir capacity, pace of construction, etc.
- International Treaties/Agreements
 - Political understandings v. binding legal obligations?
 - Decision of the ICJ in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*
- Customary International Law

- Substantive Obligations

- 'Avoid any potential adverse effects'
- 'Refrain from causing appreciable harm'
- 'Take all appropriate measures to avoid significant harm'

- Procedural Obligations:

- Prior notification, consultation, EIA, data and information sharing, etc.
- Pulp Mills: A party can violate its procedural obligations without violating its substantive obligations

OBLIGATIONS UNDER RELEVANT INTERNATIONAL TREATIES

- **Specific Agreements Related to the GERD**

- Declaration of Principles on the GERD
- 10 principles, including equitable and reasonable use.
- No robust dispute settlement clause

Principle III

- the three States '*shall take all appropriate measures to prevent the causing of significant harm in utilizing the Blue/Main Nile. Where significant harm nevertheless is caused to one of the States, the State whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures in consultations with the affected state to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation*'

DOP ON THE GERD: PROCEDURAL OBLIGATIONS

- V – Principle to Cooperate on the First Filling and Operation of the Dam
- 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 in the IPOE Final Report throughout the different phases of the project.

- The three countries, in the spirit of cooperation, will 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...
- ... The time line for conducting the above shall be 15 months from the inception of the two studies ..

- The 2014 Malabo Statement
 - avoid any potential adverse effects of the GERD on the water uses of Egypt
- **General Agreements Relating to the Construction of Works on the Nile**
 - The 1993 Framework for General Cooperation
 - refrain from engaging in any activity ... that may cause appreciable harm to the interests
 - 1902 Anglo-Ethiopian Treaty (?)
 - not to construct or allow to be constructed any work ... which would **arrest** the flow of their waters into the Nile, except in agreement with His Britannic Majesty's Government and the Government of the Sudan."

WHERE TO FROM HERE?

THANK YOU!

- For questions, please contact me on:
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