Understanding the Preliminary Trilateral Agreement on the Grand Ethiopian Renaissance Dam

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Introduction

On the 23rd of March 2015, leaders of Ethiopia, Sudan and Egypt signed a Preliminary Trilateral Agreement (hereafter PTA) on principles which woud govern the first filling and the operation of the Grand Ethiopian Renaissance Dam (hereafter GERD) and the allocation of the waters of the Abbay (Blue Nile) River. As Sudanese president Omar Hassan El Bashir said the PTA was historic and unprecedented, since it is for the first time in history that the three countries have reached the common understanding that the Blue Nile waters are indispensable for the three countries peoples' respective national development and that they must share them on the basis of equity and reasonableness. Unthinkable three months before the conclusion of the PTA, such understanding has been possible thanks to the seismic change of attitude in Egypt's legal foreign policy. This means that, Egypt, which has always made the barefaced claim that it has a "special legal right" over the Nile waters, is now resigned to the fact that it is an ordinary riparian state with no more or no less right on the Blue Nile River than the other coriparians. To be sure, despite the war mongering attitude of its sabre rattler Islamist politicians, Egypt has known from the beginning that fighting a rearguard action against the construction of the GERD would get it nowhere, because apart from blocking the foreign financing of the dam, there was nothing else it could do. But once it became clear that the Ethiopian people and government were determined to finance themselves the construction of the GERD, Egypt did not have any other viable choice.

Form this point of view, the new Egyptian position represents a radical departure from its traditional hydro-imperialism. This must be underscored all the more so as for sixty years Egyptian leaders have vetted the war option to reportedly prevent Ethiopia from harnessing the Abbai waters to promote

its national development. There is widespread wrong opinion in Egypt that Ethiopia's economic development is synonymous of Egypt's economic decline. That is why the motto of Egyptian officials has been: "Ethiopia must perish so that Egyptian economy can flourish". Although they have always dreaded it, Egyptian leaders did not however believe that Ethiopia would be ready to even go to war in order to take the actual control of the Blue Nile. Such a belief was based on the racist attitude that Africans would never dare to provoke a "superior race" by questioning its monopoly ownership over the Nile waters. And when Ethiopia announced in 2011 its decision to build the GERD after having successfully spearheaded the signature of the Entebbe Agreement in 2010, ordinary Egyptians were taken by surprise. Of course, following the decision of Ethiopia in 2013 to divert temporarily the course of the Blue Nile, Egypt's Islamist leaders made the threat that they would declare war to stop Ethiopia from building the GERD.

That sabre-rattling doubtless showed that the present generation of Egyptians does not know its past history. It doesn't know that the Ethiopian army annihilated the Egyptian army in 1875 and in 1876 despite the fact that Egypt had already had by then several decades of experience of industrialization. And that defeat made Egypt, which was then under Ottoman suzerainty, an easy prey for British colonialism. It doesn't know either that Ethiopia has never lost a war in its very long history, although it lost some battles.

Be that as it may, thanks to the Herculean efforts made during the last twenty four years by the Ethiopian people under the able leadership of the EPRDF to set the economy on high growth path and to build credible ground and air defence forces capable of warding off any foreign aggression, the Egyptian military leaders, who overthrew the Islamist government, have realized that war with resurgent Ethiopia would not be a walkover. Does it mean that Ethiopia has come out as the clear winner? Yes. The conclusion of the PTA marks a resounding legal, political, diplomatic and economic victory for Ethiopia although that does not mean that downstream states are losers. To be sure, Sudan is the biggest winner in economic terms as well as in terms of

it being recognized by Ethiopia and Egypt as equally sovereign. In the 1959 Egypt-Sudan treaty, Sudan did not have such a status as it was forced to accept Egypt's right of inspection over any works that it might undertake.

For Ethiopia, the PTA is also a revenge against History in the sense that the days (during the Haile Selassie and the Derg regimes) when Sudan and Egypt were discussing in the African Union's Head Quarters, in Addis Ababa, about the Blue Nile River issues by ignoring Ethiopia contemptuously, are behind us. In short, the days of Ethiopia's humiliation are now a bad memory consigned to history. Egypt has also a lot more to gain from cooperation with Ethiopia than from military confrontation. It is essential to know that Ethiopia's gain is by no means Egypt's loss given the fact that Ethiopia has always defended a win-win approach. Ethiopians have never been bad-wishers for Egyptians.

If I say Ethiopia is clear winner, it is to underscore the fact that Egypt has ended up coming round to the Ethiopian position after having fought for four years a rearguard action to get either that Ethiopia halts altogether the construction of the GERD or that it scales down the height of the GERD from 145 metres to 90 meters, the storage capacity of the GERD from 74 billion cubic metres to 14 billion cubic metres and the power generation capacity of the GERD from 6 000 megawatts to less than 1800 megawatts. Egypt also demanded to participate in the building of the GERD to make sure that the GERD would not cause harm to what it calls its "water security". In other words, Egypt left no stone unturned to exercise what it calls its "right to veto" Ethiopia's national development. Ethiopia has been uncompromising on this score. It has rejected categorically Egypt's demand saying that the construction of the GERD, its height, its storage and power generation capacities were not negotiable. Put otherwise, Ethiopia's victory lies in its ability to induce Egypt to realize that its long-term interests can be best safeguarded through cooperation and negotiation, and not through a recourse to sabre rattling. The Ethiopian position has been rightly described by specialists of geopolitics as a counter-hegemonic move in the sense that

Ethiopia's unilateral decision to build the GERD points to its determination to rid the Nile Basin of hydro-imperialism.

In addition to the foregoing, Ethiopia can also be considered as clear winner since the equitable and reasonable allocation doctrine for which it has battled since 1993 has now become the cornerstone of the PTA. Personally I was not aware that the negotiations between the three states were also about the apportionment of water. And I wonder if other Ethiopians were aware of this. I thought the negotiations were only about the GERD, its size, filling and operation. Besides, the government always told us that it was not negotiating about water allocation. I took the government at its words because for me the water allocation issue was dealt with by the Entebbe Agreement signed in 2010 and which the Ethiopian parliament ratified on August 2013. And when I read the PTA first in the Egyptian government owned website, Al-Ahram online and few days later in an Ethiopian website, Aiga forum, I was surprised.

My surprise was all the more big as I could not imagine that Egypt would all of a sudden change tack and be ready to accept water allocation on the basis of equity and reasonableness. Egyptian leaders were always opposed to water allocation on the basis of this doctrine. Egypt insisted on what it calls its "historic" and "prior" rights. It is because Egypt was opposed the doctrine of equitable and reasonable water allocation that it refused to sign the Entebbe Agreement.

Besides, given the hydrological unity of the Nile River and given also that it was Ethiopia who spearheaded the signing of the Entebbe Agreement by six upper riparian states of the Nile (in fact Ethiopia may have drafted the Entebbe Agreement in a manner which suited its interests and that of other upper coriparians), it was not possible for me to imagine that Ethiopia would decide to sign alone a water sharing arrangement regarding the Main Nile (this is the expression used by the drafters of the PTA). Now I wonder if Ethiopia has not been forced to conclude the PTA because the upper riparian states of the White Nile have been dragging their feet over the ratification of the Entebbe Agreement despite the passage of several years after its signature.

Whatever may be the reasons which led Ethiopia to sign the PTA, the question that Ethiopians cannot help asking is whether or not they should cry victory. My answer is affirmative. Of course, the PTA, as its name indicates, is preliminary. Not only has the final agreement to be signed yet, but the interpretation of some of the principles of the PTA will pose formidable difficulties as each party will try to defend an interpretation which suits its own interest. It goes without saying that the interpretation of equitable utilization and the determination of the threshold of significant harm will make water allocation and utilization a difficult exercise.

However, in my view, what remains is of "less" importance[1] in comparison to what has been already agreed upon. Ethiopia has succeeded in imposing its own vision of the utilization of the Blue Nile waters. Gone is water imperialism. Ethiopia, Sudan and Egypt have engaged themselves to resolve in a civilized manner any problem related to the first filling and the operation of the GERD and problems related to water allocation. This heralds the advent of a new era in Ethio-Arab relations in general and in Ethio-Egyptian relations in particular. From this point of view, Egypt being the leader of the Arab world, Ethiopia stands to gain a lot from a healthy and friendly diplomatic relationship with Egypt. The Arabs are Ethiopia's closest neighbours; they can be a potentially huge market for Ethiopian agro-industrial exports.

Ethiopia, being the rising power in Africa, Egypt also stands to gain a lot both economically and strategically from an amicable relationship with Ethiopia. From now onwards, Ethiopia can direct its efforts, resources and time to speeding up its economic development. The GERD is, as it were, Ethiopia's nuclear bomb in that it is a guarantee that no Arab country will meddle in Ethiopia's internal affairs as was the case during the last sixty five years. What is more, the GERD is the third great historic achievement (after the Axumite obelisks and the Lalibela rock-hewn churches) by the Ethiopian people. National electrification thanks to the GERD will catapult the Ethiopian

[1] What remains concerns future agreements on guidelines and rules in accordance with which the first filling and the annual operation of the GERD will be conducted. There is also the issue of water allocation on the basis of equity. These issues are by no means less important for Ethiopia (especially the issue concerning water allocation on the basis of equity). But they are of "secondary" importance compared to the principles already agreed upon.

society and economy into the 21st century. It will also facilitate the fast reforestation of the country and the rehabilitation of its degraded environment.

For all these reasons, intellectual honesty dictates that the Ethiopians in general and members of the Ethiopian intellectual community in particular take off their hats to the EPRDF government for having displayed rare professionalism, diplomatic tact and finesse, negotiating tenacity, foresight, flexibility and endurance in its handling of the Blue Nile River issue from the day one of its decision to build the GERD until now. The PTA crowns the Herculean efforts exerted by the Ethiopian government during the last twenty three years in which it has conducted very tiring and difficult negotiations over the issue of Blue Nile. From 1993 until now, the government has been unrelenting in defending national interest.

We should not however forget that if the EPRDF government had not done its homework of building Africa's most credible ground and air defence forces and if Egyptian leaders believed that they could attack Ethiopia and get away with it, I would bet Egypt would give priority to military confrontation. By making the unilateral decision to build the GERD, Ethiopian leaders made clear their determination that Ethiopia was ready to fight for its national dignity. That was an indirect way of saying that Ethiopia was ready to give and take, but it would not seek the approval of downstream states to build the GERD. Nothing can be more illustrative of the affirmation of sovereignty.

We know that most regional agreements on water allocation reflect the configuration of power in which a hegemonic riparian state (example, Turkey vis-à-vis Syria and Iraq, China vis-à-vis the other coriparians of the Mekong River, the United states vis-à-vis Mexico, India vis-à-vis Bangladesh or Israel vis-à-vis other coriparians of the Jordan River) imposes its own vision of the river on its coriparians. Until the unilateral decision to build the GERD, observers had considered that Egypt was the hegemonic power, because, even though Ethiopia always refused to recognize Egypt's "historic", "acquired" or "established" right over Blue Nile River, the actual control of the Blue Nile waters was nonetheless in the hands of Egypt. Now, the PTA clearly says that

the contracting parties cooperate as equal sovereign states. Although Egypt is still the most economically powerful nation in the Nile Basin, the signature of the PTA points to the absence of a hegemon. Present day and future generations of Ethiopians should be very grateful to the EPRDF for having restored their battered pride in their country.

WHY SOME DIASPORA-BASED DETRACTORS OF THE PTA ARE BARKING UP THE WRONG TREE

The strangest thing, however, is that even though the Ethiopian government has been unrelenting in defending national interest against Egypt's hydro-imperialism, the PTA was greeted with deluge of criticism by some diaspora-based Ethiopian intellectuals and by politicians in nostalgia with the Old Order. However incredible it may be, some individuals even went as far as saying that Ethiopia had capitulated to Egypt. How does one explain that intellectual schizophrenia (i.e. the faulty perception of the Ethiopian government's actions) from which suffer the detractors of the PTA? The fact of the matter is that measured against any legal yardstick or against any other regional water allocation agreement, the PTA is the best treaty that Ethiopia and Ethiopians can hope for.

In this over-sized paper of 48 pages, I contend that the Ethiopian government's position from the beginning until now has been a cause for national pride for the present and future generations of Ethiopians. My purpose is to correct misapprehensions about a historic treaty which concerns a project vital to the industrialization and agricultural modernization of Ethiopia. The article can also help to strengthen the country's future negotiating position by allowing government officials to have a good grasp of the import of the various provisions of PTA. I would be grateful if someone can translate it into Ethiopian languages so that more Ethiopians can have a better grasp of the PTA. Prior authorization from the author is not required.

Aklog Birara[2], Minga Negash, Seid Hassan, Mammo Muchie and Abu Girma[3] (hereafter Minga Negash et al) and Ayalsew Dessie are among the diaspora-based intellectuals who subjected the Ethiopian government to searing criticism because, in their wisdom, it has capitulated to the interests of the downstream states. For example, Aklog Birara says Egyptian leaders scored a diplomatic coup by coaxing Ethiopia to accept the surrender of its sovereignty. In his wisdom, principle five of the PTA is an illustration of the Egyptian coup. In the same vein, Ayalsew Dessie savaged the government for having signed a treaty which, according to him, gives a legal sanction to the 1929 and 1959 treaties to which Egypt always resorted to prevent Ethiopia from harnessing the Blue Nile River to promote its national development. Likewise, Minga Negash and al argued that Egypt being the prime mover behind the PTA, it drafted it in a lopsided manner to promote its own interests while putting Ethiopia at a disadvantage.

The common denominator of all those commentators is that they are laymen, (i.e. without even a smattering of legal knowledge). Because they are laymen, it is very difficult for them to understand the letters of the PTA, much less its spirit. That is why they try to have Ethiopians believe that Ethiopia has lost its sovereignty. The undeniable truth however is that the PTA allows Ethiopia to exercise for the first time in history effective sovereignty over the Blue Nile waters. The detractors of the PTA seem to forget the painful truth that Ethiopia did not have any sovereignty over the Blue Nile before the decision of the government to build the GERD in 2011. Viewed against this, the respective positions of those commentators are clear demonstrations of the intellectual schizophrenia from which continue to suffer members of the diaspora-based "opposition" group. The position of Minga Negash et al is incomprehensible for me, because they were usually known for their sober analysis. This time however they wrote a not well thought out article tinged with demagogy. I wonder if the article was not written by one individual. It is difficult to imagine

[2] "Nile dam tripartite agreement: who loses and who benefits?" available at http://nazret.com/blog/index.php/2015/03/28/ethiopia-nile-dam

[3] "Perspectives on the declaration of principles regarding the grand Ethiopian renaissance dam, available at, http:www.ethiopia.org/index.php?option=com_content&view

that four intellectuals can have such a superficial reading of the PTA. If they were serious enough, they could have avoided several shortcomings by asking the help of specialists of international law. Their main shortcoming is methodological. Rather than setting out to prove that the Ethiopian government did not work for the defence of national interest, they could have started with the assumption that the regime works sincerely for national reconstruction. This is because, first, any government is presumed to work for the defence of national interest, second, it is the Ethiopian government which took the initiative to build the GERD with view to freeing the country from extreme power poverty and entraining it on the path of industrial and agricultural progress. Then they could have tested that assumption against the facts on the ground. But to make sure that they interpret correctly what they consider as "facts", they could have discussed them with jurists. If they had followed this right intellectual approach, I am sure their understanding of the PTA would be altogether different. Another shortcoming is that Minga Negash et al make as though the balance of power between Ethiopia and Egypt has not evolved dramatically over the last 23 years and as though the construction of the GERD is not the cause and the consequence of the shift of the balance of power in the Nile Basin.

As for Aklog Birara and Ayalsew Dessie, it is not really surprising that they make a caricature of the government's position, because they have long been known for their polemical broadsides against the EPRDF government and even for racializing problems besetting the nation. What they don't seem to realize is that when it comes to issues of national interest which affect the interests of several generations of Ethiopians such as the one under consideration intellectual honesty, sobriety and objectivity are indispensable for an informed debate. I mean, there should be no room for demagogy or breast-beating. It is very important to be able to control one's urge to exaggerate especially when one deals with an issue whose ins and outs one ignores.

From this point of view, one may wonder if the silly attempt to depict the PTA as a demonstration of the capitulation of the Ethiopia to the interests of foreigners is not part of a deliberate campaign to bring discredit on the

government and to discourage Ethiopians from financing the GERD. That said, it seems that the detractors of the PTA believe that anyone who understands the English language can comment an international legal instrument. This mistaken belief explains why some people (non-lawyers) demanded that the PTA be translated into Amharic as if any Amharic speaking Ethiopian could understand an international legal instrument by the mere fact of speaking Amharic. If that were the case, there would be no need to train lawyers in general and international (water) law experts in particular.

The fact that the above-mentioned intellectuals commented on the PTA with such confidence and certainty also points to their mistaken belief that having a good command of the English language means necessarily that one has also a mastery of law. Does that mean that because English is their mother tongue, all American or British people understand text books on economics, mathematics, astronomy, law, chemistry, accounting, etc.?

How do I know that the above mentioned commentators don't have even a smattering of legal knowledge? Any lawyer immediately realizes that the articles in question are written by laymen. That does not mean that non-lawyers don't have the right to make a comment on an international legal instrument. What it means is that one may comment, but if the commentator is not very careful and he thinks he can bring discredit on the government by writing inanities, the commentator subjects himself to ridicule. It is indeed surprising to see some intellectuals with no legal knowledge trying to cry down an international legal instrument in the negotiation and preparation of which the Ethiopian government, its diplomats, legal and water experts have invested too much time and energy for four years.

Tecola Hagos rightly warned that a specialized legal knowledge was necessary to understand the PTA. What that means is that understanding the PTA requires that one be conversant with law in general and with international (water) law in particular implicit in the various provisions of the PTA. As we will see below, it is, for example, very difficult to understand principle 4 dealing with prevention of significant harm unless one is conversant with the notion of harm under contract and tort laws. Tecola's warning was a reference, inter

alia, to a previous article by Minga negash[4] et al. But as their above-cited article entitled "Perspectives on the declaration of principles regarding the grand Ethiopian renaissance dam" and written apparently in response to Tecola's criticism, shows Minga Negash et al stick to their guns because they are very sure that they are right. However, to claim and to insist that one knows and understands a matter on which one is truly ignorant can only lead to making demagogical statements and a gross misrepresentation of the facts as the following statements amply show: "The obvious and fundamental question that arises in the minds of many observers is whether *a reasonable government representative of an independent upstream country would sign without duress, the tripartite agreement in the present form* (italics added). In the light of the above analysis, we reiterate our statement that *no free nation should be subjected to be a party to such a lopsided and risky agreement*" (italics added).

Which observers are Minga Negash et al talking about apart from themselves? If he is sharp enough, no observer worthy of the name, even a layman, can lose sight of the fact that after having been incapable for sixty five years of defending its right against Egypt's hydro-imperialism, Ethiopia has at last succeeded, thinks to the EPRDF, not only in building one of the largest hydroelectric dams in the world (which means that Ethiopia has thumbed its nose at Egypt's hydro-imperialism), but it has also forced downstream states to accept water allocation on the basis of equity and reasonableness. Despite that Minga Negash and al have accused the Ethiopian government of having failed to defend national interest. Their politically motivated but baseless conclusion is that Ethiopia is not a free country since the PTA would not be signed in its present form if the country had a reasonable and representative government. Minga Negash et al talk with confidence as if they had a recognized expertise in international (water) law. One thing is sure, though. If Minga Negash et al understood the meaning of the principle of equitable utilization and of significant harm prevention, not only would they not indulge in demagogy, but they would not pronounce an anathema upon the PTA. Like

[4] http://eriforum.com/misplaced.opposition-to-the-grand-ethiopian

Aklog Birara and Ayalsew Dessie, the problem of Minga Negash et al is not only that they talk confidently about a subject on which they don't have a grip, but worse, they try to foolish their readers into believing that the Ethiopian government has failed to defend national interest. But, if the Ethiopian government failed to defend national interest, how do they explain the construction of the GERD in the face of fierce opposition from Egypt and the latter's acceptance of water sharing on the basis of equity and reasonableness while it has moved heaven and earth for four years to force Ethiopia to respect what it calls its "historic right" or its "water security"?

In the same way, if Aklog Birara understood that principle 5 was a concession made by Ethiopia with view to reassuring Egypt, he would not try to make a mountain out of a molehill by making the ridiculous statement that Egypt achieved a diplomatic coup "that will affect Ethiopia's sovereignty, national security and economic interests for decades to come". Can one seriously argue that principle five affects even remotely Ethiopian sovereignty, national security and economic interests? Let us see principle five so that the reader can judge himself.

Under the title "to cooperate on the first filling and operation of the dam", principle five reads:

- **To implement the recommendations of the International Panel of Experts (IPOE), respect the final outcomes of the Technical 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 the GERD which shall cover all different scenarios, in parallel with the construction of the GERD

b) Agree on guidelines and rules for the annual operation of the GERD, which the owner may adjust from time to time

c) Inform the downstream countries of any unforeseen or urgent circumstances requiring adjustment in the operation of the GERD;

- **To sustain cooperation and coordination in the annual operation of the GERD with downstream reservoirs, the three countries, through the line ministries responsible for water, shall set up 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.**

Aklog's obvious difficulty to understand the letters and the spirit of principle 5 led him to distort the facts so that it can suit him to ask the following demagogic questions: "is this not a surrender of Ethiopia's sovereignty and national security to Egypt? What is the difference between the Colonial period protocol of giving veto power to Egypt and this Agreement? Is this not ceding Ethiopia's sovereignty over a national project housed on Ethiopia's territory and a river over which Ethiopia should be the only power that dictates the construction and the operation of its own dam as long as it is done in a responsible way?" The big shortcoming of Aklog's arguments is not only that he reads what is not written, but his conclusions beg the question. That is, without first trying to substantiate his claim that principle 5 gives Egypt and Sudan a veto power, he jumps to the demagogical conclusion that Ethiopia has surrendered its sovereignty.

The question now is: is there anything in the different paragraphs of principle five which can lead one to say that Ethiopia's sovereignty, national security and economic interests are affected? To help the reader reflect on this question, let us summarize briefly principle five: Ethiopia and Egypt will select experts which will be members of the international panel. The panel will be tasked with studying whether or not the GERD satisfies international safety standards and with assessing the impact of the GERD on Sudan and Egypt. Once the panel finishes its studies it will submit its recommendations to the

Technical National Committee (TNC). If the TNC (which is composed of Ethiopian, Sudanese and Egyptian experts) accepts the recommendations, then it will make a final report on the joint studies recommended. What happens next? According to principle five paragraph A, the three countries will utilize the recommendations to agree on the guidelines and rules concerning the first filling and the annual operation of the GERD. The first filling concerns the period required to fill the reservoir. The period required will depend on how the filling will affect Sudan and Egypt. In negotiating the period, the three countries will take into account the recommendations of the experts. Principle five paragraph B says Ethiopia will also utilize those recommendations if it is led to make adjustments in the operation of the GERD. Finally paragraph C says Ethiopia will inform Sudan and Egypt if it is faced with unforeseen and urgent circumstances requiring adjustment in the operation of the GERD. It is clear for anyone that the purpose of principle five is to avoid as much as possible that Egypt and Sudan suffer from economic disruption during the first filling or because of adjustments in the operation of the GERD. Unless one is paranoid, there is nothing here that can lead to say that Ethiopia has surrendered its sovereignty and national security to downstream states. Principle five underlines the necessity of cooperation and coordination in the filling and operation of the GERD.

In this connection, it is important to remember that Egyptian, Ethiopian and Sudanese experts already arrived at the conclusion that the construction of the GERD respected all international safety standards and that it would not impact negatively dams in downstream coriparians. Ethiopia was not therefore obliged to subject the GERD to another impact assessment. But for the sake of building confidence and in the interest and spirit of good neighbourliness, the Ethiopian government decided to accommodate the Egyptian demand for another study on the impact of the GERD on downstream states. Aklog says principle five will give to downstream states what he calls a “substantial right”, an overwhelming oversight”, etc., etc. But this claim is a product of his own fertile imagination. There is nothing in principle five which can lead to say Egypt will have the right to supervise the filling and the operation of the GERD. What principle five says is that the three

states will cooperate to agree on the filling and operation of the GERD. Given that the Blue Nile is a shared water resource and given also that there are reservoirs in downstream states, it is normal that the three states work in cooperation and consultation. Ethiopia cannot say to downstream states it will fill and operate the dam without regard to their interests. In this regard, it is misleading and demagogic to say that Egypt should not have any say on the GERD since Ethiopia does not have any say on the High Aswan Dam. Aklog seems to forget that Ethiopia is the upstream state, and the GERD gives it the power to prevent the Blue Nile from arriving in downstream states or to inflict on them economic disruption. The converse is not true for geographical reasons. More importantly, utilizing the recommendations of experts to agree on guidelines and rules concerning the first filling and operation of the GERD does not mean that downstream states can impose their will against Ethiopia. It only means that the three states will agree on how best to fill and operate the GERD so that no downstream state sustains significant harm. But what happens if there is no agreement? Does principle five say Egypt's view will prevail over Ethiopia's view if there is no agreement? No, that is not what the PTA says. So, rather than saying, without substantiating his claim, that principle five gives downstream states a "substantial right" or an "overwhelming oversight" over the GERD, Aklog could have asked: "what would happen if the three contracting parties were unable to reach agreement on the guidelines and rules concerning the first filling and the annual operation of the GERD?" We will see below that the answer to this is supplied by principle ten.

In the manner of Aklog Birara, Ayalsew Dessie seems to be interested more in broadsiding the government than in making serious effort to understand the letters and spirit of the PTA by asking the help of specialists. It is very difficult for me to say that he understood something about the PTA. By way of illustration, we can cite the following statements: "the reason why I oppose the treaty signed by Prime Minister Hailemariam Desalegn is that, far from putting an end to Egypt's hegemony over the Nile, it gives it a legal sanction. By the way, to which principle do EPRDFites refer when they talk about a treaty based on principles? Don't they talk about what Egypt calls its historic right

over the Nile?" If Ayalsew Dessie had shown his article to a lawyer before sending it for publication, he would have realized that he was barking up the wrong tree. To be sure, his commentary is a product of his own fertile imagination. It has nothing to do with the PTA. Ayalsew's article is the best illustration of how difficult it is for laymen to understand what Egypt calls its historic, acquired or established right, why such claim is legally baseless and why it is radically incompatible with the ten principles enshrined in the PTA.

Ayalsew is not aware of the fact that Ethiopia would not be able to build the GERD if it were bound by the 1929 and 1959 treaties. Egypt would not either be led to sign the PTA without abandoning its baseless claim of historic or acquired right over the Nile. But we should not either forget that Egypt has fought for four years a rearguard action to get from Ethiopia a guarantee that it would respect Egypt's historic right. Ethiopia has refused categorically. Ethiopia has never recognized what Egypt calls its historic right over water resources within Ethiopian territory, but Ethiopia also insisted that the so-called historic right was incompatible with the Entebbe Agreement signed in 2010. While refusing to accede to Egyptian demand, Ethiopia has carried on the construction of the GERD. The GERD has been a game changer in the geopolitics of the Nile basin. In the face of Ethiopia's determination, Egypt had three options: stage a walkout from the negotiating table which it did several times but to no avail; resort to armed confrontation or accept the new geopolitics in the Nile Basin by accepting that the actual control of the Blue Nile by Ethiopia is a fact which Egyptians will have to live with. The conclusion of the PTA clearly shows that Egypt has at last adopted a pragmatic approach by choosing the last option. Given the foregoing, Ayalsew's attack against the government only points to the impossibility for laymen to understand the PTA. That laymen don't or cannot understand an international legal instrument is normal and understandable; what is surprising is the lack of humility and the vehemence with which the gratuitous attack is made.

I also found strange that Tecola Hagos, in his commentary on the PTA[5], said it was not a treaty. Obviously, such interpretation is wrong, and it may confuse

[5] nazret.com/…./declaration-of-principles-ethiopia.got

uninitiated readers. The PTA is a treaty and it fulfills all the requirement of an international treaty. A treaty is an agreement between two or more subjects of international law. Article 2 paragraph 1(a) of the 1969 Vienna Convention of Treaties also adds that a treaty must be in written form.

From this point of view, it is hard to understand what made Tecola say the PTA was not a treaty. I cannot say that he ignores that the term "declaration" is one of the several designations of a treaty. The PTA would not provide for dispute settlement mechanism as enunciated in principle ten if it were a simple declaration of intent. We say the PTA is a treaty because the contracting parties have subscribed to a binding agreement regarding ten principles which shall govern the filling and the operation of the GERD and the allocation of the Blue Nile waters. From this point of view, it is possible to say that the PTA contains two treaties: one regarding the GERD and the other concerning the allocation of the Blue Nile waters. Tecola's argument that the PTA was not a treaty is also in contradiction with the very title of his article:" Declaration of principles. Ethiopia got loaf and half". The title itself is misleading as it implies wrongly that Ethiopia got less than that it is entitled to. In reality, there is nothing in the PTA which allows Tecola to argue that the PTA is not the best agreement for Ethiopia. It is possible that in the manner of laymen Tecola may not have realized that Egypt has been forced to abandon its historic right-based discourse and to accept equitable water allocation on the basis of need as embodied in principles 1 and 3 of the PTA. This has been Ethiopia's claim for fifty years. I mean, Ethiopia cannot demand more unless it wants to monopolize the Blue Nile waters in the manner of Egypt before the construction of the GERD. I said above that Ethiopia succeeded in imposing its own vision of the Blue Nile River on downstream states. The principles which are enshrined in the PTA are diametrically opposed to the 1929 and the 1959 "treaties".

It is also for this reason that I maintain that the position of the Ethiopian government from the beginning until now has been a cause for national pride. Only laymen or people with personal political motivation can have the nerve to criticize the irreproachable position of the government.

The purpose of this article is to help uninitiated readers in general and the above-mentioned intellectuals in particular understand the spirit and the letters of the PTA. I will take up the arguments of Minga Negash et al in the next section. Now let me discuss further the other ideas raised by Aklog Birara and Ayalsew Dessie. Aklog says the PTA is "a celebration for Egypt and of questionable efficacy for Ethiopia". In a similar vein, Ayalsew Dessie says the Ethiopian government has capitulated to foreigners. Unfortunately, the articles of both writers are marred by the fallacy of *petitio principio* (i.e. the logical fallacy which consists of begging the question) and by a mass of contradictions. Explaining how Egypt has succeeded in coaxing Ethiopia to surrender its sovereignty and national security, Aklog further states: "after listening to the Egyptian position and strategy of scuttling any form of "hydropower hegemony in Africa", a clear reference to the Grand Ethiopian Renaissance Dam (GERD) in Doha, Qatar, I came to the conclusion that Egypt would do everything in its power to preserve its colonial based agreement of "historic and natural rights". The question in my mind was what tactic it would deploy to achieve this? Finance opposition groups as it has done in the past? Use military force? …. Create new alliances in place of old ones? Opt for diplomatic solutions by restoring normal relations with Sub-Saharan African countries, including with its traditional adversary Ethiopia?"

Aklog's answer and conclusion are that Egypt has opted for a diplomatic solution as a strategy of scuttling Ethiopia's plans to build the GERD and of preserving its "colonial based historic and natural rights". The author is doubtless afraid of telling that Egypt has been forced to opt for negotiation because the EPRDF has transformed Ethiopia into a regional power. He and Ayalsew Dessie are afraid of admitting[6] the obvious fact that Egypt's option for diplomacy is not due to its internal or external weakness, but it is due mainly

[6] It seems to me that the refusal to admit the fact that a shift in the balance of power has been responsible for the signature of the PTA has led the above-mentioned intellectuals to bark up the wrong tree. If they admitted that there has been a dramatic shift in the balance of power, they would think twice before talking about "surrender" of sovereignty, because one cannot talk about a shift in the balance of power and say at the same time Ethiopia has surrendered its sovereignty or that it has signed the PTA because it has an "unreasonable" and "unrepresentative" government.

to the rise of Ethiopia to the status of a regional power[7]. Nothing is more demonstrative of the resurgence of Ethiopia than its capacity to spearhead the signature of the Entebbe Agreement, its unilateral decision to build the GERD and especially its capacity to finance itself the construction of the GERD. None of the above-mentioned commentators does seem to have realized that the construction of the GERD means that Ethiopia controls the flow of the Blue Nile waters. So how is it possible that an upstream country which controls the flow of a trans-boundary river can be said to have surrendered its sovereignty? How is it possible for Egypt to be forced to accept the GERD and to preserve at the same time its "colonial based historic and natural rights"? How is it possible to say "the obvious and fundamental question that arises in the minds of many observers is whether a reasonable government representative of an independent upstream country would sign without duress, the tripartite agreement in the present form"? Quite the contrary, the GERD has enabled Ethiopia to exercise for the first time in history effective sovereignty over the Blue Nile River. It is a sheer nonsense to say that an upstream country that has taken the unilateral decision to build one of the largest hydroelectric dams in the world has concluded the PTA under duress. No one has been in a position to coerce Ethiopia. Neither is there any indication in the PTA that Ethiopia has been pressured to sign the PTA let alone to have signed it under duress. Quite the contrary, as most of the principles of the PTA are the very ones for which the Ethiopian Government has fought since 1993, it is fair to argue that Ethiopia played an active role in preparing the PTA. It is very difficult to understand the PTA unless one takes into account the modification of the power configuration in the Blue Nile Basin that we have witnessed over the last 23 years.

From this point of view, Aklog's argument that Egypt has decided to give little recognition of the GERD smacks of bad faith, i.e. an attempt to belittle

[7] By the way, Aklog has been so jealous of the high economic growth that the nation has posted under the current regime that he tries to belittle it by attributing the growth not to the government's proven competency, but to what he calls "huge" Western financial aid. First, Ethiopia receives the lowest Western aid in terms per capita, i.e. about 30 dollars. Compare that with South Korea, which had received 600 dollars per person between 1946 and 1970. Second, if it were really a question of money, then Algeria, which earned from oil and gaz exports between 2000 and 2010, about eight hundred billion dollars, would be the fast growing economy in Africa, if not in the world.

Ethiopia's role in the preparation of the PTA. Can Egypt scuttle Ethiopia's plans to build the GERD while giving "little" recognition of the GERD? Aklog is not aware that this statement is meaningless and self-contradictory. The construction of the GERD means that Ethiopians control the flow of the Blue Nile waters. The upshot of this is that what Egypt has dreaded during the second millennium (i.e. the actual control of the Blue Nile waters by Ethiopia) has now become a reality. But it is up to our leaders to inspire Egypt to have confidence in Ethiopia. And this is what the EPRDF government has been doing. Aklog's statement is also contradictory since he says Egypt has been forced to acknowledge the right of Ethiopia to build the GERD. If Egypt has been forced to accept Ethiopia's unilateral decision to build the GERD, how is it possible to say that Egyptian leaders have scored a diplomatic coup by enticing Ethiopia to surrender its sovereignty in exchange for a "little recognition of the GERD"?

What is more, there is nothing in the PTA which enables Aklog to assert that Egypt has succeeded in preserving what it calls its "historic and natural rights", i.e. its claim of monopoly rights over the Nile. Quite the contrary, the PTA, as indicated above, embodies the principle of equitable and reasonable utilization (or fair and appropriate use according to the translated version published by Al-Ahram online), which means that there is no such thing as historic or acquired right. Both Aklog and Ayalsew don't seem to have realized that if the negotiations between Ethiopia and Egypt have been very difficult it is because that Egypt wanted a guarantee from Ethiopia that the GERD would not affect Egypt's "historic right". It is probably because Ayalsew and Aklog did not follow closely the difficult negotiations or that they have not understood the respective arguments of both countries that they say Ethiopia has capitulated to foreign interests. Their arguments are the products of their own fertile imagination.

Besides, it is important to know that contrary to conventional wisdom, Egypt abandoned its claim of "historic right" when it decided to sign the 1959 treaty with Sudan. Aklog and Ayalsew surely ignore that Egypt's misleading claim of "historic and natural rights" over the Nile is incompatible with the principle

of equitable water allocation. It was because Egypt was unwilling to share the Nile waters with upper coriparian states that it refused to sign the Entebbe Agreement. It is in reference to this that I say that the PTA represents a seismic change in Egypt's legal attitude towards the Blue Nile.

In order to help uninitiated readers understand better why the signature of the PTA points to the on-going power reconfiguration in the Nile Basin, a cursory discussion of Egypt's long standing position on the Nile is in order. We can start with the fact that Egypt always refused to share water with Ethiopia. All Egyptian leaders from Nasser to Morsi always said they would prefer to go to war with Ethiopia rather than letting it build a dam on the Blue Nile. In an attempt to give a legitimate basis for its water imperialism, Egypt marshalled "legal" and theoretical arguments. The legal argument says treaties concluded with Great Britain in 1929 and with Sudan in 1959 guarantee Egypt's historic and natural rights over the Nile. For this reason, water apportionment with Ethiopia was not possible as far as Egyptian elites were concerned. That is why Egypt said, following Ethiopia's unilateral decision to build the GERD, that it would take the case to the UN General Assembly so that Ethiopia would stop building the dam; it also threatened to refer the case to the UN Security Council, because in its view, Ethiopia's decision to build the GERD without prior notification or without prior consultation was a danger to international peace. The two arguments are based respectively on the belief that Egypt's historic (monopoly) rights over the Blue Nile are guaranteed by the 1929 "treaty" and by 1959 Sudan-Egypt treaty and that the Blue Nile River is an internationally navigable river.

Egypt also invoked two theoretical arguments to counter Ethiopia's claim to get its due share of the Blue Nile waters. The first is the theory of absolute territorial integrity according to which upper riparian states have the obligation to abstain from taking any measure that would affect the natural flow of a trans-boundary water course. The second relates to the theory of prior right. According to this theory, Egypt has been utilizing the Nile waters for thousands of years; therefore by the mere fact of utilizing the River prior to other states, Egypt has acquired a prior right and prior use over African

riparian states. The theory of prior right gives Egypt the right to curtail economic development in upstream states if it thinks that any project in upstream states would jeopardize what it calls its water security. Non-lawyers may not have been aware of it; but for the lawyer conversant with legal problems related to the utilization of the Blue Nile, it is obvious that the Egyptian elite and media discourse during the last five years reflected the above-mentioned baseless legal and theoretical arguments.

On its part, Ethiopia has always rejected categorically the Egyptian claim. Regarding Egypt's "legal" argument, Ethiopia has always rejected it categorically for reasons which we will see below. Concerning the claim that Ethiopia did not respect its obligation to hold prior consultation with downstream coriparians, Ethiopia said that the Blue Nile River was not navigable, which means that Ethiopia was not obliged to hold prior consultation with Egypt. As for the theoretical arguments, Ethiopia always invoked the theory of absolute territorial sovereignty to counter Egypt's absolute territorial integrity or prior right. The Ethiopian theory dates back to the reign of Emperor Amda Tsion (1314-1344). We should not, however, forget that Ethiopia had never exercised actual control over the Blue Nile until the decision in 2011 to build the GERD. Needless to say, Ethiopia has physical control over the Blue Nile simply because the River has its source in the Ethiopian highlands. But actual control of the Blue Nile has been in the hands of Egypt and to a lesser extent in those of Sudan. Ethiopia was not in a position to challenge the effective control of the Blue Nile by downstream states in the twentieth century because of its own extreme internal political, military and economic weakness. Concerning effective sovereignty, it is important not to confuse Ethiopia's absolute territorial sovereignty over the Awash River for example with absolute sovereignty over the Blue Nile. Ethiopia has absolute sovereignty over the Awash River because it is an inland river. But as the Blue Nile is an international non-navigable river, Ethiopia's sovereignty over it is limited by the fact that other countries also depend on it for their livelihood.

With the possible exception of Turkey and Tajikistan, no upstream country claims absolute sovereignty over a trans-boundary river[8]. If we take the international legal literature on the utilization of international rivers, theorists writing in the tradition of absolute territorial sovereignty and in that of absolute territorial integrity have become like endangered species on the brink of extinction. The Entebbe Agreement signed by African riparian states of the Nile endorses the theory of community of interests. In other words, the theory of limited sovereignty (which means equitable utilization and prevention of significant harm) is a golden mean between the theory of absolute territorial sovereignty and the theory of absolute territorial integrity. The PTA can be properly said that it reflects such a middle way position.

From the foregoing, it is clear that the PTA has put an end to the status quo ante, i.e. to the actual control of the Blue Nile River by downstream states to the detriment of Ethiopia. In support of this argument, we can cite as evidence the unilateral decision to build the GERD and the acceptance by the two downstream states of the allocation of the Blue Nile waters between the three countries on the basis of equity and reasonableness. Contrary to the laymen's argument that the Ethiopian government has capitulated to the interests of foreign countries, the signature of the PTA shows that Ethiopia has negotiated from the beginning until now from a position of strength. The credit for this goes to the patriotic people of Ethiopia who have foiled Egypt's attempts by vowing to defend the GERD and to finance the construction thereof. But without a competent leadership with smart strategizing and negotiating capacity, the patriotism of the Ethiopian people would not be sufficient. We should give credit where credit is due.

Now let us return to the discussion of why Ethiopia has always rejected Egypt's misleading legal arguments designed to prevent the building of the GERD. Egypt always referred to the so-called 1929 and 1959 treaties to justify what it calls its historic right over the Blue Nile waters. But Ethiopia has

[8] If Ethiopia had not lost the 20th century, i.e. if it had had competent and patriotic leaders determined to make it the Japan of Africa, who knows it might have followed the example of Turkey!

always said that those treaties did not have any legal existence as far as it is concerned.

Because he is unaware of this and following the example of some foreign laymen commentators, Aklog says the Entebbe Agreement which Ethiopia ratified in 2013 replaces the 1929 Colonial Agreement. However, from the legal point of view, it is impossible for the Entebbe Agreement to replace the 1929 "colonial treaty" or the 1959 Egypt-Sudan treaty. Of course, the Arab media and Western journalists have been writing about Egypt's "historic rights" "inherited" from the colonial era. The fact of the matter is that the so-called 1929 treaty was not a treaty in the strict legal sense of the word. The reason is that Great Britain (the colonial master) and Egypt (the colonized territory) could not enter into a treaty for simple reason that Egypt was not a subject of international law in 1929. Of course, Egypt was officially independent as of 1922, but it had been a *de facto* British colony until 1956. The true ruler was the British Higher Commissioner in Cairo. If that had not been the case, Great Britain would not have concluded in 1934 a treaty with Belgium on behalf of Egypt regarding the White Nile under Belgian colonial administration. What I am saying is that the 1929 "treaty" was a unilateral administrative act governed by British public colonial law and not an international agreement governed by international law. This is because, in legal parlance, Egypt, a British colony then, did not have the legal capacity to enter into international relations. To enter into international relations, a country has to be recognized as a sovereign subject by other subjects of international law. Egypt, like other colonized territories, had been until the 1950s, an object of international law. Can one seriously argue that Egypt could have prevented, as per the 1929 "treaty", the British colonial administration if the latter had decided to build huge dams in Uganda or in Sudan?

We need not belabour this point further, however. Let us assume that the 1929 "treaty" were a treaty in the legal sense of the term. Even in that case, that treaty did not concern the Blue Nile River in Ethiopia as Article 4 (b) of the 1929 "treaty" clearly provides that the treaty concerns the Nile waters under British colonial administration. More precisely, the article provides that

without the consent of Egypt, "no irrigation or power works or measures are to be constituted or taken on the River Nile and its branches, or on the lakes from which it flows, so far as all these are in the Sudan or in countries under British administration, which would in such a manner as to entail any prejudice to the interests of Egyt, either reduce the quantity of water arriving in Egypt, or modify the date of its arrival or lower its level". This means that the 1929 "treaty" did not and could not apply to the Blue Nile River in Ethiopia nor to the parts of the White Nile under Belgian administration (Kongo Kinshasa, Brundi and Rwanda). As we know, no coriparian of the Nile River signed the 1929 exchange of note between the then Egyptian prime minister and the British high commissioner in Cairo with the exception of Egypt. We know also that the Entebbe Agreement has not been signed by Egypt. It follows that the upper riparian states could not replace a "treaty" to which they were not parties. Even if they were parties to it, they would not be able to replace it without the consent of Egypt.

The above digression on the 1929 "colonial treaty" is meant to explain why it is legally impossible for the contracting parties of the Entebbe Agreement to replace (repeal) the 1929 "treaty" or the 1959 Sudan-Egypt treaty. This legal impossibility is based on the maxim that treaties neither confer rights nor impose obligations on third parties. This is well captured by the Latin adage: *pacta tertiis nec nocent nec prosunt*. Life on national and international levels would be unbearable if treaties concluded between two states or contracts concluded between two individuals were to create obligation on third parties or were to confer upon them rights without their prior express consent[9]. The Egyptians have always known that neither the 1929 "treaty" nor the 1959 treaty was binding on Ethiopia (a third party).

Aklog also makes a wrong comparison between the PTA which has sanctioned Ethiopia's sovereignty over the Blue Nile and what he calls colonial period protocol, which, on his view, sanctioned Egypt's natural right over the Nile. For him there is no difference between the PTA and the 1929 colonial "treaty"

[9] The only notable exception to this is to be found in international trade law concerning the most favoured nation principle.

concluded between Great Britain and Egypt. Aklog is saying the PTA guarantees what Egypt calls its historic right. But these are the arguments of a layman.

Rather than making such misleading statements, Aklog could have raised the question: what would happen if the three states were unable to reach an agreement concerning the filling and the operation of the GERD? As indicated previously, principle 10 supplies the answer to this question. That is, the three countries will resolve the issue either amicably through consultation or if that fails, they can submit it to a mediation, conciliation or by referring it to the leaders of the three countries. It is essential to realize that the purpose of the PTA is not to give downstream states a right of inspection over how the GERD should be filled and operated. As indicated above, the purpose is to avoid economic disruption. One question that may be raised in this regard is: how do downstream states make sure that the first filling and the operation of the GERD don't cause them economic disruption? What is absolutely certain is that there will be no Sudanese or Egyptian expert posted in Benshangul to supervise that Ethiopia's first filling and annual operation of the GERD are conducted as per principle five paragraphs A, B and C. Downstream states don't have any other choice but to trust Ethiopia and hope that it will fill and operate the GERD in accordance with principle five. If downstream states sustain disruption, they can complain. If the problem is not solved, they may resort to principle ten. This is to say that the implementation of principle five requires good faith, cooperation and coordination. Although there is no telling how the three states will behave in the future, we should assume that the parties are committed to act in good faith and in the spirit of cooperation and mutual benefit.

From the foregoing, it follows that there is nothing which can lead one to say that Ethiopia has surrendered even an inch of its sovereignty to Egypt. Ethiopia has defended its right for equitable utilization of the Blue Nile River within its territory; Egypt was strongly opposed to it. But finally Egypt has come round to Ethiopia's view.

Another principle completely misunderstood by Aklog Birara is the principle of significant harm prevention enunciated in principle 4 of the PTA (or principle 3 in the translated version published by Al-Ahram). As we will see in the next section in detail, this principle is very difficult for laymen to understand. Aklog says Ethiopia will not be able to build other dams or to use the GERD for irrigation. His argument is that the PTA allows Ethiopia only to produce hydro power thanks to the GERD, but that principle 4 of the PTA makes illegal for Ethiopia to build dams for irrigation. On this view, there will be no apportionment of water, since Ethiopia is allowed only to produce hydro power. And yet Aklog refers to principle 1 paragraph 2 of the PTA which provides: "the three states will cooperate in understanding upstream and downstream water needs in its various aspects". Then he jumps to principle 4 of the PTA and says this principle prevents Ethiopia from using the Blue Nile waters within its territory for irrigation purposes. It does not occur to him to wonder if principles 1 and 4 are really contradictory. Being a layman, it is very difficult for him to tell when two legal provisions are said to be contradictory and how to resolve a contradiction. Rather than asking the help of experts, Aklog takes his ignorance for expertise and he concludes pompously: "It is acceptable for Ethiopia to produce hydro power for export but illegal for Ethiopia to use its water for irrigation. It is acceptable for Ethiopia to build the GERD as long as Egypt exercises overwhelming oversight. I ask myself "how does the Ethiopian government justify binding itself and future governments and generations from managing its own epic hydroelectric power project without interference by Egypt and experts that Egypt approves; and from using waters within Ethiopia's own boundaries for irrigation that would meet the food requirements of 100 million Ethiopians and growing? This is patently unfair, unjust and unacceptable".

Undoubtedly, Aklog does not understand the import of principle 4. Is there any phrase or sentence which says it is illegal for Ethiopia to claim its share of the Blue Nile waters? Even if he is afraid lest the Ethiopian regime use the victory obtained by the conclusion of the PTA to boost its image tarnished indelibly by the infamous Melles-Isayyas private (Algiers) Agreement, Aklog was not obliged to make baseless comments on a legal issue which he has not

the foggiest idea. He could have asked the advice of specialists to make sure that his comments did not mislead Ethiopians. For the fact is that the PTA is the exact opposite of what he thinks it is.

By that I mean, the PTA is about the GERD and about the allocation of the Blue Nile waters. To be sure, the main aim of the PTA is to enable Ethiopia to build dams for irrigations. If Ethiopia did not have the right to build other dams for irrigation, the principle of water allocation on the basis of equity and reasonableness enunciated in the PTA would serve no purpose at all. We should not either forget that if the Ethiopian government has put up strong diplomatic fight for four years, it is not only to build the GERD, it is also to enable the nation to use the Blue Nile waters for irrigation purposes so that it will become self-sufficient in food production. Ethiopia can also use the GERD for irrigation. As long as Ethiopia does not violate the right of downstream states (i.e. as long as it does not inflict significant harm on downstream states), there is nothing in the PTA which can prevent it from using the GERD for irrigation purposes. Of course, principle 2 says the "purpose of the GERD is for power generation". In a similar vein, principle 6 also says "priority will be given to downstream countries to purchase the power generated from the GERD". But we should not forget that this is a deliberate attempt by the Ethiopian government to inspire downstream states to have confidence in Ethiopia. Aklog says principle 6 is designed to undermine Ethiopia's economic interest. In support of that he says Egyptian experts had asked their government to "negotiate so that the price of electricity sold to Egypt and Sudan would be at a cost thereby nullifying the value added from the project and negating the market itself". But that is not what principle 6 says. Egypt and Sudan can have priority but they cannot be price setters; they are price takers. For example if Kenya and Rwanda offer better price for Ethiopia, there is no reason why Egypt and Sudan would be given priority if their offer is lower than that of other countries. Sudan and Egypt can have priority only if other countries make the same offer as them[10].

[10]Aware of this, the Egyptian government of Marshal Al Sissi has been moving heaven and earth to push the Democratic Republic of Congo (ex-Zaire) to build the Inga dam with a power generation capacity of 46, 000 megawatts. The aim of Egypt is to prevent Ethiopia from becoming the only exporter of electricity.

The foregoing is to say that far from showing the weakness of Ethiopia, principles 2 and 6 are best illustrations that Ethiopia, as a strong upstream state, believes it must allay the doubts and fears of downstream coriparians. Once mutual trust is established, nothing can prevent Ethiopia from utilizing the GERD for irrigation purposes as long as that does not cause significant harm to downstream states. But it is also possible to argue that Ethiopia would not use the GERD for irrigation purposes because it will need several tens of thousands of megawatts of electricity if it is to embark on full national electrification programme and on successful full industrialization. This means that the GERD will never satisfy Ethiopia's thirst for power.

Before concluding this section, I would like to insist that the detractors of the PTA have wrongly interpreted as sign of weakness the concessions made by Ethiopia with the aim of reassuring Egypt and Sudan. I, for one, believe that the defence of the supreme interest of Ethiopia dictates that such concessions be made. We should not forget that the GERD gives Ethiopia the power to let the River flow or to arrest it. If Ethiopians put themselves in the place of downstream states they might understand why the Arabs in general and Egypt and Sudan in particular can regard with apprehension the new power that Ethiopia wields now. Given this new situation, it is in the interest of Ethiopia that the Arab world in general and downstream states of the Blue Nile in particular see it as a friendly partner, and not as a dangerous enemy hell-bent on depriving downstream states of the water on which their agriculture depends.

Can the principle of no significant harm conflict with the principle of equitable and reasonable utilization?

Confidence building between the coriparians of the Blue Nile is of paramount importance all the more so as the principles of the PTA are liable to different, nay, contradictory interpretations. Confidence between the contracting parties conduces to cooperation. Conversely, distrust makes cooperation as enunciated in principle 1 very difficult to achieve. In short, the PTA is

concluded in the hope that all parties will behave in good faith and in the spirit of cooperation; in the absence of cooperation, i.e. in the case of national egoism for example, the water sharing arrangement could be deadlocked and the PTA does not provide any means to break that deadlock. One may say that principle 10 resolves the issue. But even principle 10 is not of much help unless there is a cooperation. This does not mean that the PTA is badly drafted. On the contrary, it is drafted in the state of the art manner. If it seems to the layman that it is badly drafted it is because the layman is not aware that the PTA deals with a shared River in which riparian states have divergent national interests. To reconcile such interests, the three states have agreed to share the Blue Nile waters on the basis of equity and reasonableness.

One of the chief reasons why the above-mentioned intellectuals and other detractors of the PTA tried to be the breast-beating advocates of Ethiopian sovereignty is because of their difficulty to understand the principle of equitable and reasonable utilization, the principle of prevention of significant harm and the relationship between the two principles. If we take, Minga Negash et al, they start from the wrong assumption that the 1993 Framework Agreement for general cooperation between Ethiopia and Egypt (hereafter the 1993 Agreement) was beneficial to Egypt but detrimental to Ethiopia. They invoke Articles 4 and 5 of the 1993 Agreement to support their claim. Article 4 provides "the two parties agree that the issue of the use of the Nile waters shall be worked out in detail through discussion by experts from both sides on the basis of rules and practices of international law". Article 5 also stipulates that "each party shall refrain from engaging in any activity related to the Nile waters that may cause appreciable harm to the interests of the other party". Since Articles 4 and 5 of the 1993 Agreement have become respectively principles 3 and 4 of the PTA, Minga Negash et al believe that the PTA is as bad for Ethiopia as the 1993 Agreement was. But why do they think the 1993 Agreement was bad for Ethiopia?

Although there is no shred of evidence that the TPLF/EPRDF received military or financial support from Egypt during the armed struggle, some nostalgists of the Old Order have used Article 5 to peddle the propaganda lie that Melles

Zenawi signed the 1993 Agreement to express his gratitude to Egypt for its support to the TPLF during its struggle to topple the Derg regime. Unfortunately, Minga Negash et al have reproduced uncritically that political propaganda since they argue that "the current Agreement (i.e. the PTA) reaffirms Article 5 of the 1993 Agreement which favoured Egypt, includes terms about compensation for damages, restricts the scope of the dam project, recognizes "rights" to take action on the Blue Nile, is sloppy on water utilization in the downstream countries, and non-exclusion of tributaries from the Agreement cumulatively puts Ethiopia at a disadvantage". It goes without saying that the authors interpret the principle of prevention of significant harm as though it is designed to prevent Ethiopia from obtaining its due share of the Blue Nile waters. In short, the authors believe that principle 4 of the PTA (prevention of significant harm) gives Egypt the right to veto Ethiopia's national development.

This completely wrong view leads them to write, concerning principle 4 paragraph 1 of the PTA[11], that "downstream states are not affected by this clause as Ethiopia is. The clause is unambiguous in giving downstream countries right to take appropriate measures to prevent significant damage by the upstream country. The obvious issue that emerges here is sovereignty over the waters of the Blue/Main Nile". It is obvious that the authors have not understood the meaning of paragraph 1. It doesn't say Sudan and Egypt will take appropriate measures to prevent Ethiopia from causing them significant harm. What it says is that while utilizing the waters of the Blue Nile within their respective territories, Ethiopia and Sudan will take appropriate measures to avoid causing significant harm to Egypt.

As the source of the Blue Nile waters and as the owner of the GERD, Ethiopia can in effect cause significant harm to Sudan and Egypt, but Sudan can also inflict significant harm on Egypt. For example, it is not impossible for Ethiopia to prevent the waters of the Blue Nile from arriving in Sudan or in Egypt. The

[11] Principle 4 paragraph 1 of the PTA reads: "the three countries shall take all appropriate measures to prevent the causing of significant harm in utilizing the Blue/Main Nile".

same can be said of Sudan with regard to Egypt. Ethiopia or Sudan can also cause significant harm by polluting the Blue Nile.

On the other hand, Egypt's utilization of the Nile waters cannot cause significant harm to upstream states as it is located at the end of the course of the Nile River. So what paragraph 1 says is that if Ethiopia or Sudan cause significant harm, the wronged party can ask them to stop the harm or to mitigate it. Contrary to what may believe Minga Negash et al, paragraph 1 does not deal with the issue of sovereignty. We should stop being paranoid. The paragraph does not either say that there should be an absolute prevention of significant harm. This is impossible. Ethiopian can take all appropriate measures to prevent a *foreseeable* significant harm from taking place. Albeit Ethiopia's efforts, a significant harm can happen anyway. A significant harm can also happen because of *force majeure* or of Act of God. But in that case, Ethiopia cannot be said to have caused significant harm. One must be able to establish that Ethiopia has committed fault if it is to be held responsible. More precisely, one must demonstrate that Ethiopia should or could have taken appropriate measures to prevent a *foreseeable* significant harm from happening.

That being said, one can argue that when Egypt signed the 1993 Agreement its understanding of Article 5 was perhaps the same as that of Minga Negash et al. Egypt's refusal to sign the Entebbe Agreement and the subsequent military threat by Mubarak and Morsi governments following Ethiopia's unilateral decision to build the GERD can be considered as demonstrations that Egypt's understanding of Article 4 of the 1993 Agreement was that Ethiopia would be confined to building small dams (such as the Tekè'zè Dam) which would not in any way jeopardize Egypt's monopoly over Abbai. That is, Egypt ruled out, when it signed the 1993 Agreement, the possibility that Ethiopia would build a huge dam like the GERD. Egypt was sure that it would veto any attempt by Ethiopia to build any dam which would not have its approval. The fact that Egypt was behind the 1998 Eritrean invasion of Ethiopia is a proof that it was ready to do everything in its power to make Ethiopia economically crippled so that it would not be able to question its

hydro-imperialism. In 1993, Ethiopia could not either seriously envisage to build a huge dam like the GERD, because it had not at that time either the economic means, the military wherewithal, much less the diplomatic clout to challenge Egypt's hydro-imperialism. This is right. After all, if Egypt and Sudan have used the waters of Ethiopia for more than fifty years, it was not because Ethiopia did not have the internationally recognized right to utilize the water resources within its territory; it was because Ethiopia was too weak economically and militarily to object to the total monopoly of the Blue Nile waters by downstream states. The Amharic saying: "ke mogne dejaf mofer yikoretal" captures Ethiopia's humiliation in its relationship with downstream states.

We should not however forget that even though the balance of power in 1993 was in favour of Egypt, Article 4 of the 1993 Agreement was nonetheless of great significance for Ethiopia, since Egypt accepted the allocation of the waters of the Blue Nile in accordance with international rules and practices. From the stand point of Ethiopia, the phrase "in accordance with international rules and practices" could refer only to the principle of equitable utilization[12]. One can wonder if Egypt's understanding of article 4 was the same as that of Ethiopia. There are two ways of interpreting Egypt's intentions in 1993. One interpretation is that Egypt was not ready at all to accept water allocation on the basis of equity since an equitable allocation would run counter to what it calls its historic or acquired right. The other interpretation, which is not contradictory with the previous one, is that Egypt's understanding of article 4 was the same as that of Ethiopia. But as the interpretation of the principle of equitable utilization is a function of the balance of power, Egypt was sure it

[12] Needless to say, the principle of equitable utilization is not enunciated expressly in Article 4 of the 1993Agreement. But the phrase "rules and practices of international law" refers implicitly to equitable and reasonable use of international waters. This principle has become part of customary international law. The Permanent Court of Justice referred to it in the 1929 Oder Case. It was also enshrined in the 1966 Helenski Rules, which rules have now become positive international water law following the entry into force of the 1997 UN watercourses convention. If one admits that article 4 of the 1993 Agreement refers to the equitable and reasonable utilization of the Blue Nile waters, then it is wrong to say that the Agreement favoured Egypt.

would veto any ambitious demand by Ethiopia for water allocation that might jeopardize its "historic right". In other words, Egypt was willing to share water provided that Ethiopia's development was subordinated to its own national development.

What I am trying to show is this: contrary to the belief of Minga Negash et al, what favoured Egypt in 1993 was not Article 5, but Ethiopia's extreme economic, military and diplomatic weakness. Article 5 of the 1993 Agreement has now become principle 4 of the PTA. But the interpretation of Article 5 (significant or appreciable harm) in 1993 and in 2016 is very different. Why? Because of the evolution of the balance of power. The strange thing is that Minga Negash and al refuse to take into consideration the new geopolitics in the Nile Basin, i.e. they make as though Egypt could constrain Ethiopia to subordinate its economic development to its own agricultural development and as if Ethiopia had not carried on the construction of the GERD in the face of strong opposition, nay, sabre rattling from Egypt. But this is a decontextualized reading of the situation. That is, it disregards the fact that Ethiopia and Egypt have put up strong diplomatic fight for four years to defend what each considers as its national interest and that Ethiopia has finally won.

Another problem is that Minga Negash et al make as though the 1993 Agreement was a final agreement. The absence of Sudan from the 1993 Agreement and the absence of detailed provisions about water sharing meant that the 1993 Agreement was only a first step towards another comprehensive and detailed future agreement. The Entebbe Agreement was meant to become that comprehensive agreement. But Egypt refused to sign it because the Agreement did not guarantee Egypt's "historic right". The PTA is the final outcome of the two decades old tortuous negotiations. So, how is it possible to say that Article 5 of the 1993 Agreement favoured Egypt whereas the same Article 5 says that until the signature of a detailed agreement both parties will abstain from engaging in an activity that may cause appreciable harm to the other? Granted that Egypt wanted the 1993 Agreement as a means to prevent any serious water sharing negotiation from taking place. Ethiopia had known that, but it signed the 1993 Agreement because it was a good first step for it

in its effort to obtain its due share of the Blue Nile waters. This argument can be easily corroborated by the fact that Ethiopia decided to foil Egypt's attempts of thwarting water sharing agreement. To that end, Ethiopia spearheaded first the signature of the Entebbe Agreement, then it took the unilateral decision to build the GERD and finally it decided to finance itself the construction thereof.

As I said above, the refusal of Minga Negash et al to take into consideration this dramatic shift in the geopolitics of the Blue Nile Basin leads them to make as though the interpretation of Article 5 of the 1993 Agreement in 1993 and in 2015 was the same. The fact, however, is that Egypt's understanding of principle 4 of the PTA is far removed from that of Minga Negash et al. In 1993, it was most likely that Egypt thought Article 5 would enable it to prevent Ethiopia from building huge dams like the GERD. But in 2015, the inclusion of principle 4 in the PTA was not to prevent Ethiopia from building the GERD since the construction of the GERD started in 2011. This means that the purpose of the principle of significant harm prevention as embodied in principle 4 of the PTA cannot be to nullify the principle of equitable utilization embodied in principle 3 of the PTA. If the principle of prevention of significant harm were to nullify the principle of equitable utilization, then the PTA would serve no purpose. This shows that from strict legal point of view, water sharing arrangement in accordance the PTA can make sense only if the principle of prevention of significant harm is interpreted in the light of the principle of equitable and reasonable utilization.

Strangely, Minga Negash et al also argue that the principle of equitable and reasonable utilization enunciated in principle 3 of the PTA "…obligates Ethiopia to continue honouring Article 5 of the 1993 cooperation frame work agreement between Ethiopia and Egypt"[13]. But they don't explain why they think so. Their fear seems to be that Egypt will use principles 3 and 4 of the PTA to prevent Ethiopia from utilizing the Blue Nile waters for its national development. Such a mistaken belief can be put down to the ignorance of the

[13] Minga Negash et al ignore the fact that the 1993 Agreement does not exist anymore. Because it is replaced by the PTA.

meaning of the two principles. So what does harm mean? And when does harm become significant? As indicated previously, we can perhaps gain a better insight of the principle of prevention of significant harm if we look at it from the angle of contract and tort laws[14]. Under contract law, a contracting party has the obligation to respect his pledge towards the other co-contracting party. If he causes harm to the other party by breaching his obligation, then the party who has sustained harm can demand that it be set right. Under tort law too, one is held liable for the harm he causes to others. For example, if your dog bites your neighbour, you are liable to the acts of your dog and you have to make good the damages which your neighbour has sustained. This is because everyone has a legal right to his/her physical integrity. This is to say that one cannot complain of having sustained harm as a result of the act of another person unless the law has already defined what harm means. That is, he who says he has sustained harm must be able to show that he has the right to get law's protection against harm. When we say X has done harm to Y, we mean Y has a legal right against harm, and that X has acted in violation of the right of Y.

Mutatis mutandis, the same logic applies to the principle of prevention of significant harm in international law. This means that Egypt cannot invoke the principle of prevention of significant harm unless it can show that Ethiopia's has abused its right to use the waters of the Blue Nile in an equitable and reasonable manner. It is essential to know that the right to equitable utilization and the obligation to avoid causing significant harm are two faces of the same coin. So long as Ethiopia utilizes the water within its territory in an equitable and reasonable manner (i.e. in pursuance with principle 3), it is impossible to say that it has caused significant damage. In case Egypt complains, Ethiopia is not obliged to prove that it has not caused significant damage. The burden of proof lies with Egypt to show that Ethiopia has not made an equitable use of the water. Otherwise, there is a risk that the principle of significant harm prevention can be used as a veto power by downstream states to curtail the development of upstream states. But this is

[14] This does not mean that principles or rules concerning interpretations of municipal law can apply to issues of international law. We resort to municipal law because it can help us to shed some light on the issue.

legally unacceptable as it is inconsistent with the two bedrock principles of international law: sovereignty and equality between subjects of international law[15]. This was clearly stated in the arbitration award regarding the 1958 Lake Lanoux case between France and Spain. France decided to build a hydroelectric plant in the Lanoux Lake. But Spain was opposed to the construction of the dam invoking the principle of absolute territorial integrity and the significant harm prevention principle. The case was referred to arbitration. The arbitrators rejected Spain's invocation of the absolute territorial integrity principle because that would amount to allowing Spain to exercise veto power against France's decision to utilize its resources within its territory. At the same time, the arbitrators insisted on France's obligation to take into account the interests of Spain while exercising its sovereign right over its resources. Paragraph 1 of principle 4 of the PTA says the same thing. Because they ignore the foregoing and because also they wrongly believe that the 1993 Agreement favoured Egypt, Minga Negash et al conclude that the PTA is drafted by Egypt to promote its own interests.

Besides, the argument of Minga Negash et al that principle 3 of the PTA "…obligates Ethiopia to continue honouring Article 5 of the 1993 cooperation frame work agreement between Ethiopia and Egypt" flies in the face of the conventional wisdom that equitable and reasonable utilization favours upstream states while the principle of significant harm prevention promotes the interests of downstream riparians. The problem with this conventional wisdom is that it supposes the existence of a conflict between the principle of equitable utilization and the principle of significant harm prevention. It seems however that the two principles can be conflicting only in the case of inequitable utilization, where a hegemonic riparian state gets the lion's share of the water. In that case, the principle of significant harm prevention can be misused and abused by a hegemonic downstream state to veto a demand by upper riparians for equitable water allocation. This means that although the principle of self-determination enshrined in the UN Charter also includes the right of states to use their resources within their territory and although such

[15] One should bear always in mind that the principles of sovereignty and equality between states are formal. True sovereignty and equality can exist only if a country is economically, technologically and militarily independent.

a right was again reaffirmed by the 1966 international covenant on economic, social and cultural rights, a hegemonic downstream state can in effect prevent upper riparians from utilizing their resources. Ethiopia and the other riparians of the Nile have been typical examples of this. Ethiopia did not have the economic, military clout nor the political will to force Egypt to come to the negotiating table and to accept the apportionment of the Blue Nile waters on equitable basis. Because of Ethiopia's extreme weakness, Egypt was even led to say it had monopoly right over Ethiopia's water resources. We also can take an opposite example where a hegemonic upper riparian state (Turkey) has refused to share on equitable and reasonable basis the waters of Euphrates and Tigris with Syria and Iraq (downstream states).

It follows from the foregoing that once the principle of equitable allocation is accepted, it is very difficult to say that the two principles can be conflicting. To illustrate further, let us see principle 4 paragraph 1 of the PTA. It reads: "the three countries shall take appropriate measures to prevent the causing of significant harm in utilizing the Blue/Main Nile". The question now is: is it only an inequitable utilization which can cause significant harm or can an equitable utilization also cause significant harm? If one were to say that an equitable utilization can also cause a significant harm, wouldn't it be inconsistent with principle 3 paragraph 1 which is the cornerstone[16] of the PTA?

Indeed, to say that equitable utilization could give rise to significant harm is not only oxymoronic, but it would gut the very principle of equitable and reasonable utilization. In other words, if the conclusion of Minga Negash et al were right, (i.e. if Article 5 of the 1993 Agreement had favoured Egypt), one would be led to say that Article 7 of the 1997 UN Watercourses convention on the prevention of significant harm favours lower riparian countries calling thereby into question the sovereignty of upper riparians. Given that only three countries (Turkey, China and Burundi) voted against the UN watercourses convention, one would wonder why other upper riparian countries either voted

[16] Principle 3 Paragraph 1 provides: "the three countries shall utilize their shared resources in their respective territories in an equitable and reasonable manner".

the treaty or simply abstained. Logically, they should have voted against a treaty which would run counter to their sovereignty. In the same manner, one can wonder why Egypt and the Sudan refused to sign the 2010 Entebbe Agreement whose part III (Articles 4 and 5) deals respectively with equitable and reasonable utilization and prevention of significant harm. Given that principles 3 and 4 of the PTA are respectively copies of part III Articles 4 and 5 of the Entebbe Agreement, would Minga Negash et al say that the Entebbe Agreement was drafted by Egypt to promote its national interest? Of course, they would not make that absurd statement, since Egypt rejected the Entebbe Agreement reportedly prepared by Ethiopia. And yet, Minga Negash et al insinuate that the PTA has been prepared by Egypt. They are unable to realize that Egypt cannot have rejected the Entebbe Agreement and at the same time be the "initiator" and the "originator" of the PTA.

The interesting thing to note is that despite Egypt's and Sudan's refusal to sign the Entebbe Agreement, the principles of equitable and reasonable utilization and the prevention of significant harm have now become the quintessential principles governing the utilization of the Blue Nile River. The inevitable completion of the construction of the GERD has doubtless compelled Egypt to change tack and to conclude the PTA before it is too late for it. If Egypt had persisted in its objection to the GERD, Ethiopia would anyway continue building the GERD by ignoring Egypt's bluster. But the completion of the construction of the GERD without any Egyptian input would not be the best way to safeguard its interests. The GERD deserves its name as a game changer. It has forced Egypt to abandon the very reasons which has led it to refuse to sign the Entebbe Agreement.

Ethiopia's attitude between 1993 and 2015 is for me redolent of *Koretsa* (literally it means cutting), a military tactic which EPRDFites adopted to defeat the Derg regime and to nearly annihilate the Eritrean Sha'ebia army in 2000. The more I reflect upon Ethiopia's approach towards the Nile during the last 23 years, the more I am convinced that the Ethiopian government has applied the *koretsa* tactic in its diplomatic show-down with Egypt. And the result has been a victory which every patriotic Ethiopian should savour. By victory, I

don't mean that downstream states have lost. My argument is that Ethiopia has fought for its equitable share of the Blue Nile waters and it has succeeded. But Ethiopia also is aware that its sovereignty over the Blue Nile is limited by its obligation not to cause significant harm.

The two principles are not however as easy to understand as they may seem on the surface. This difficulty explains why for example Minga Negash et al believe that the inclusion of the principle of significant harm prevention is a proof that the EPRDF government has been unwilling to "rectify" the "mistake" it made in 1993. So what does the principle of significant harm prevention mean? We have already raised this issue. We have said that he who claims to have sustained harm must show that he has a right to be protected against harm. Ignorance of this fundamental fact has led Minga Negash et al to argue that the principle of prevention of significant harm is related to the age-old economic theory of externality (I think they mean by that negative externality, for there are also positive economic externalities) and to the principle of "polluter pays". To be sure, the principle of prevention of significant harm has nothing to do either with the economic theory of (negative) externality or with the polluter pays principle. The polluter pays principle is a capitalist principle in which rich people are allowed to pollute the environment as long as they pay for the pollution. It is not based on the recognition of the right to pollute. If one had the right to pollute, one would not be obliged to pay for having exercised his or her right recognized by law. The reason is that he who stands on his own right does not harm anyone. This does not mean that no one can be affected adversely by the fact that I stand on my own right. For example, if I ask that a thief returns my property which he has been holding in violation of my right, the thief may be adversely affected by returning my property because he will cease to get the advantages he has derived from the illegal possession of my property. But as far as the law is concerned, the thief has not sustained any harm, and I have not caused him any harm. Quite the contrary, he has caused me harm by depriving me of my property.

When it comes to the PTA, just as the thief cannot say he has sustained harm because I have demanded that he return my property, Egypt cannot either say

it has sustained a significant harm as a result of Ethiopia's equitable utilization of the Blue Nile waters in accordance with principle 3 of the PTA. Because Ethiopia harms no one by standing on its own right, i.e. the right to utilize in an equitable and reasonable manner the Blue Nile waters within its territory. As Egypt has been utilizing the Blue Nile waters in monopoly for many decades (Ethiopia's objections notwithstanding), it is inevitable that its share will decrease because it is obliged to stop utilizing Ethiopia's share. But the decrease of the volume of water that Egypt gets from Ethiopia does not mean legally speaking that Ethiopia has caused harm to Egypt or that Egypt has sustained any legal harm let alone a significant harm. In the 1929 "treaty" Sudan's share was 4 billion cubic metres. But on the morrow of its declaration of independence, Sudan rejected the 1929 "treaty". As a result, both Egypt and Sudan were on the verge of war. Following the overthrow of Sudan's first civilian government by a military junta favourably disposed to Egypt, both countries decided to solve the issue by negotiation. In the 1959 treaty, Sudan was allocated 18 billion cubic metres of water. Did that mean that Egypt sustain significant harm because its share of water had decreased by 14 billion cubic metres? Not at all. Why? Because Great Britain did not have in the first place a right to prevent Sudan from getting what it considered its equitable share of the Blue Nile waters within territory.

We have said above that *mutatis mutandis* contract and tort laws regarding harm can apply to harm in international law concerning use of an international watercourse. There is however one important difference. That is, in the case of trans-boundary water utilization, not only does the notion of harm imply the violation of a legal right, but that the legal harm must be significant. Any legal harm is not enough to ask the cessation of the act or to ask compensation. This is due to the fact that the river in question is a shared resource. For example, if a Blue Nile riparian state says it has sustained a significant harm, one assumes that it has a right against significant harm. Laymen may believe that Egypt has given little recognition of the GERD so that Ethiopia can export electricity, but it may prevent it from utilizing the Blue Nile waters by invoking the principle of prevention of significant harm. They may not realize that Ethiopia has put up a strong diplomatic fight to

force downstream states to accept that the three countries have a right to equitable and reasonable utilization of the Blue Nile. This means that for Ethiopia the utilization of the Blue Nile waters in monopoly by Egypt and Sudan has been illegal. Ethiopian leaders have always said that the two downstream states don't have the right to utilize the Blue Nile waters to the exclusion of Ethiopia. Putting it differently, Egypt and Sudan have violated, since 1959, Ethiopia's right to utilize its water resources[17] and as Ethiopia has always refused to recognize the right of both downstream states to use the waters of the Blue Nile in monopoly, one can argue that both downstream states have inflicted a significant harm on Ethiopia for more than fifty years. The PTA shows that by accepting the principle of equitable and reasonable utilization the three countries have now recognized their respective right to utilize the water in their respective territories in an equitable manner.

It follows from our brief discussion so far that the principle of prevention of significant harm is premised on the acceptance that each riparian state has a right to equitable utilization. If Ethiopia were to act in such a manner as to violate that right (i.e. to prevent Sudan or Egypt from exercising their right to equitable utilization of the Blue Nile waters within their respective territories), then it would be said to have violated the principle of prevention of significant harm. In other words, the threshold of significant harm is the prevention of the coriparian state from utilizing the Blue Nile waters within its territory in an equitable and reasonable manner[18]. The question is: what does preventing a coriparian state from utilizing the water within its territory in an equitable manner mean? For example, if Sudan were to use 20% of Egypt's share of water to irrigate its own agriculture, could it be said to have caused a significant harm to Egypt? Can Sudan be said to be utilizing the Blue Nile waters within its territory in an equitable manner?

The foregoing shows how difficult it is to define the principle of equitable and reasonable utilization. What do equity and reasonableness mean? Does an

[17] In reality, it was not Egypt which violated Ethiopia's right; it was Ethiopia's leaders who did not have the political will to work hard to enable the country to utilize its water resources to promote national development.
[18] In other words, principle 4 (significant harm prevention) enables downstream state(s) to make sure that upstream state(s) don't violate their right to equitable utilization embodied in principle 3.

equitable utilization necessarily mean a reasonable one? Can one envisage a situation in which an equitable utilization may not be a reasonable one and vice-versa? If one were to say that an equitable utilization is necessarily a reasonable one, wouldn't the term "reasonable" be redundant[19]? If it is possible that an equitable utilization may not be a reasonable one, what would happen in case there is contradiction between the two?

It is wrong to dismiss such questions as academic niceties. For example, if the number of tourists visiting Egypt were to rise from today's ten million to thirty million, it is obvious that it will need more water. But can Egypt's demand for more water be equitable? If so, would it be reasonable? Is it reasonable for Egypt to demand more water as a means of earning foreign exchange? The same can be said of Egypt's water intensive cotton industry[20]. Egypt also cultivates and exports high value added fruits and vegetables. Those commodities however demand a lot of water. In fact one can argue that by cultivating and exporting high value added fruits and vegetables in the desert, Egypt has been exporting the Blue Nile waters. But can there be equitable and reasonable water allocation if Egypt continues to export water intensive high value added fruits and vegetables? Would that be reasonable? Should the Nile waters be used as a means of gaining foreign exchange especially in a country which says it is suffering from water stress? Shouldn't they be used only for food production, drinking and for sanitary purposes?

The foregoing is the best illustration that Egypt has made the most wasteful use of the Nile waters. This practice has to be stopped since it is contrary to principle 9 of the PTA, which principle insists on optimal utilization. It is a sheer hypocrisy when Egyptian leaders say that the Nile is a question of life and death for them. We know that Israel, Egypt's neighbor, lives with very little water resources. One shouldn't either forget that the Lake Nasser is the cause for the loss of several tens of billions of cubic metres of water due to

[19] One may argue that equity refers to water allocation while the term reasonableness deals with the manner a riparian state makes use of the shared water resource.

[20] Principle 1 of the PTA says the three states will cooperate in understanding upstream and downstream water needs in its various aspects. Does this include using water as a means gaining foreign reserves?

evaporation. Egypt's practice of irrigating its agriculture during day is also a cause for the loss of huge amount of water due to evaporation.

So, given that Egypt is notoriously known for its very wasteful use of the Nile, what does the Egyptian water need mean? Isn't it a need to continue to waste the Nile waters? Principle 3 paragraphs B,C,D,E should be interpreted by taking into account Egypt's very wasteful use of the Blue Nile waters. The only way to induce Egypt to use the Nile waters in an economical way is to insist that its needs be evaluated relatively to Ethiopian needs and not in absolute terms as has been the case until now. When Egypt says the utilization of the Blue Nile waters by Ethiopia "endangers" its "water security", it evaluates its water needs in absolute terms as if Ethiopia has the obligation to sacrifice its own development needs so that Egypt can continue to use the Nile waters in a very wasteful way.

The foregoing will surely be raised during the negotiation for water allocation in accordance with principle 3 of the PTA. This principle enumerates the factors that should be taken into consideration in the determination of equitable and reasonable allocation. The list is not exhaustive. The problem however lies in the difficulty to tell to which factor priority should be given. For example, paragraph B deals with "the social and economic needs of the Basin States concerned". It can be argued that this factor favours Egypt and Sudan. Egypt is a relatively industrialized and a completely urbanized country, whereas Ethiopia is a traditional and rural economy. Besides, Egypt and Sudan have developed infrastructures of irrigation whereas Ethiopia's use of irrigation has just begun. One may say that this is counterbalanced by paragraph E: "existing and potential uses of the water resources". According to this paragraph, existing use is not the only one to be taken into consideration. Future use is also to be taken into consideration. There is no doubt that Ethiopia's future use will be bigger than that of Egypt. Because increasing industrialization, urbanization and agricultural modernization will mean tremendous increase in Ethiopia's water needs. Paragraph E seems to be logical and a good thing for Ethiopia. For this means that Egypt's existing use does not have priority over Ethiopia's future use.

The possible risk to which Ethiopian leaders should be very attentive is that in the first round of negotiation for water allocation, downstream states may get the lion's share simply because, as things stand, Ethiopia does not have the necessary infrastructure to use the Blue Nile waters for irrigation or for industrial purposes. Neither does Ethiopia seem to have the necessary institutional capacity nor the financial means to collect data about its economic and social needs in support of leveraging its negotiating position during the negotiation for equitable allocation. In short, it seems that Ethiopia, at its present stage of agricultural, industrial and urban development may not use the waters of the Nile although it is very prone to drought as can be evidenced by the problems facing the country following the failure of rain during last Summer. As a result, it is most likely that the Blue Nile River will continue to flow as usual despite the construction of the GERD.

However, Ethiopia's need of water for agricultural, industrial and urban development will increase tremendously in the not distant future. At that time, Ethiopia will ask for another negotiation for equitable water reallocation. The risk, then, is that despite principle 3 paragraph E, it is not impossible that downstream states may say Ethiopia's demand for more water or for another water allocation causes them "significant damage". This has already happened to Sudan after the signature of the 1959 treaty. To obviate that risk, Ethiopia must insist on obtaining a clear commitment from downstream states that there will be another reallocation to satisfy Ethiopia's growing demand. Personally, I would prefer that the negotiation for water allocation be put off until such time that Ethiopia has the necessary institutional capacity and financial means to collect data on its social and economic needs[21].

Let us now see paragraph H concerning "the contribution of each Basin State to the waters of the Nile River system". This factor favours Ethiopia since its contribution to the Blue Nile waters is almost 100 per cent whereas those of Sudan and Egypt are almost nil. The question now is: to which factor, between

[21] I hope that by the time the GERD is completely filled, Ethiopia will have developed the necessary institutional capacity to collect data about socio-economic water needs.

paragraph B and H, should priority be given? The PTA is silent on this very crucial issue for water allocation. Although, to my knowledge, neither Ethiopia nor Egypt has signed it, they may refer to the 1997 UN watercourses convention: Article 10(1) of the Convention says: "in the absence of an agreement or custom to the contrary, no use of the international watercourse enjoys inherent priority over other uses". The three states may refer to this article in accordance with principle 1 paragraph 1 of the PTA. If we go by article 10(1) of the UN convention, there is no priority between the different paragraphs of principle 3 of the PTA. In the case of conflict between them, Article 10 (2) of the UN convention provides: "in the event of a conflict between uses of international watercourse, it shall be resolved with reference to Article 5 to 7 with special regard being given to the requirements of vital human needs". This shows that all kinds of water uses should be deprioritized in favour satisfying vital human needs.

The fact that principle 3 has privileged the needs-based approach over the historic right version of equitable utilization is a clear demonstration of the rise of Ethiopia. Egypt has been compelled to abandon its historic rights discourse and to accept water allocation on the basis of equity. Equity can mean equal apportionment of water, but it is not always necessarily so. In fact, according to principle 3 of the PTA, equitable apportionment means the allocation of water by taking into account the needs and the contribution of coriparians. This means that there will be negotiations between the three countries from time to time. If so, the question that must be raised again and again is: what does "need" mean when it comes to Egypt? It is important to bear in mind that Egypt is the most richly endowed country with ground waters in the Arab world. One may retort that Egypt's ground waters are non-renewable. I don't dispute this. However, one cannot deny that Egypt is also surrounded by the Mediterranean and Red Seas. It can invest on building plants to desalinate the waters of the Mediterranean and Red Seas. Ethiopia does not have such a possibility until our leaders come to their senses and decide to liberate Ethiopia's coastal region of Assab from Eritrean occupation.

As a country whose agriculture is rainfed, Ethiopia is very vulnerable to the vagaries of nature. Consequently, it is very prone to drought[22]. So should Egypt be dependent always on the Nile River for its water needs while it has other alternatives? Couldn't it satisfy its needs by using sea water thanks to desalination techniques? What would happen if Ethiopia were to be in need of utilizing all the waters of the Blue Nile because its population is affected by a severe drought as the current one? Would Ethiopia be said to have acted in violation of the principle of significant harm prevention? The foregoing is intended to remind our leaders that the conventional wisdom that there is no life in Egypt without the Nile does not stand up to close scrutiny. Egypt has the Red Sea and the Mediterranean Sea. All it needs is to invest on desalination techniques in the manner of Saudi Arabia, Israel, etc. One may say desalination techniques are very expensive. That has however nothing to do with the issue of water needs. If Egypt wants to invest, it has other alternatives. In reality, Egypt will not have a problem since its scientists from the University of Alexanderia have recently developed a cheap and new desalination technique

CONCLUDING REMARKS

The PTA is an epoch making agreement for cooperation and collaboration. It must however be underlined that inducing Egypt to accept the advice of Melles Zenawi that it should behave in a civilized manner towards the rest of the Nile coriparians was not easy. Ethiopian leaders had to display determination, tenacity, diplomatic finesse and tact and even a readiness for an eventual military confrontation. Not only that: Ethiopian leaders had to land the country on high economic growth path and rally their people behind them. In this regard, the EPRDF government has once again lived up to its reputation of one of the most competent governments in the world today. The future negotiations on water allocation and reallocation will be functions of the balance of power in the Blue Nile Basin. That is why Ethiopians must work hard to embark the country on successful agricultural modernization and industrialization. That is the only way for the nation to regain its lost glory.

[22] Ethiopia must insist on its proneness to drought during the negotiation for equitable water allocation.

From this point of view, and despite the incalculable damages inflicted on Ethiopia's national interest by the criminal Algiers Agreement, the Ethiopian people are very lucky to be led by a very competent government at this transitional period from natural to industrial economy. Unlike its vocal political adversaries who have been in the pay roll of Egypt, it is now crystal clear that the objective of the EPRDF has not been to rule the country for the sake of ruling it, but to transform it economically and technologically so that it can rise successfully to the challenges of the fast changing 21st century world. Despite its glaring anti-patriotism (i.e. its anti-Ethiopia policy towards Eritrea in general and the Eritrean Sha'ebia regime in particular) the EPRDF, indeed, seems to be the only political organization capable of succeesfully avenging Ethiopia's twentieth century failures and humiliations. The question is: could Ethiopia embark on successful agricultural, industrial and technological revolutions if, by misfotune, EPRDF leaders were to persist in their anti-patriotic refusal to denounce and scrap the criminal Algiers Agreement and to liberate Ethiopia's Assab region and other Ethiopian territories (in Tigray) which have been annexed by Eritrean Sha'ebia regime since the second half of 1991 with the help of the Ethiopian government itself?