

Seeking fair trial from the wrong tribunal?

Ethiopia's frantic efforts to seek justice on accessing its Nile Waters

As confirmed by a senior US administration official Egyptian President Abdel-Fattah el-Sisi requested President Donald Trump during the U.N. General Assembly in New York in September 2019, to mediate the dispute over the Grand Ethiopian Renaissance Dam between Egypt, Ethiopia and Sudan. Subsequently US Treasury Secretary Steven Mnuchin sent out official invitation letter on Oct. 21 2019 to the Ministers of Foreign Affairs of the three countries and to David Malpass, president of the World Bank Group for a meeting. This invitation letter was dispatched few days before the Moscow sponsored Russia - African Summit launched on the 23rd October 2019. As intimated above, Egypt has been pursuing two pronged strategies to achieve one and only one goal: draw in third parties to mediate the GERD. Of course, Egypt well knows that Ethiopia has been extremely reluctant, if not hostile to third party intervention for no other reason than Ethiopia's belief that the matter is internal to the three countries, and the disagreements can be worked out through collaborative efforts. Any ways, Egypt thus sought US intervention on the one hand, and failing that, intimated that Russia would be considered as alternative mediator. It thus played of the two powers against each other over the GERD. Egypt's bait seems to have worked out. The US immediately accepted Egypt's request and extended invitations at the right time to making sure that Russia may not take prior initiative.

The Ministers of Foreign Affairs of Ethiopia, Egypt and Sudan, accompanied by their respective Ministers of Water Affairs and Technical experts, met with the US Treasure Secretary and the President of the World Bank on 6th Nov. 2019 in Washington D.C.,. The Joint Statement released at the end of the meeting reads:

"The Foreign Ministers noted their agreement to hold four technical governmental meetings at the level of water ministers. The ministers agreed that the World Bank and the United States would support and attend the meetings as observers. The ministers also agreed to work toward completion of an agreement by January 15, 2020, and would attend two meetings in Washington, D.C. on December 9, 2019 and January 13, 2020, to assess and support progress. If an agreement is not reached by January 15, 2020, the foreign ministers agree that Article 10 of the 2015 Declaration of Principles will be invoked".

Since the Nov. 6, 2019 meeting in Washington, three Government meetings at a level of Water Ministers and one of the two meetings proposed to be held in Washington that was meant to assess and support progress have been conducted. So far no progress has been made despite the report by the Ministers to the contrary. Was the decision to accept third party mediation the right approach? Is there any hope that a breakthrough can be achieved? Are the countries working faithfully toward reaching agreement by the indicated date? **Wazema Radio** inquired senior policy expert familiar with the issue to explain concerns among Ethiopian negotiators. We withhold the identity of the expert due to sensitivity of the matter.

Q. Was Ethiopia's decision to accept the invitation and participate in the Washington meeting correct decision?

Yes it was a right decision to accept the invitation for a number of reasons. First, no matter the manoeuvrings of Egypt in orchestrating the event, Ethiopia cannot reject the US offer out of hand as the US is an important ally and friend of Ethiopia (with multiple strategic common interests) and deserve due respect. Second, by attending the Meeting Ethiopia sent a clear signal to the world that the country only wants to ascertain its right to use the Nile waters, just like Egypt, and has the goodwill to resolve the dispute amicably. Third, by showing willingness to attend the event, Ethiopia got the opportunity to counter Egypt's relentless campaign of misinformation and disinformation about the GERD.

Q. Why were the Meetings limited to four? Why not five, six meetings?

To answer this I have to stray a bit. I have to talk a little about what is known as the NISRG (National Independent Scientific Research Group). The NISRG is a group of Independent Scientists drawn from different Universities and Research Centres of Ethiopia, Egypt and Sudan that was established on May 2018 by the three countries to give chance for technical engagement so as to undertake studies and develop options for filling and operation of the GERD and to present their finding for decision by countries. The NISRG. mandate entailed extensive technical studies, contested numbers on rainfall, flow, drought events, operation of existing dams and water infrastructure in the three countries, etc. As needed this might even include getting data, information and expert input from the international community. ..

It seems this number is the difference between the agreement reached during the nine party meeting in May 2018 (to have 9 National Independent Scientific Research Group meetings) and the number of meetings conducted by the time of preparation of the statement (five meetings already conducted). However, the decision on the number of meetings did not consider the existing situation. The finding of the National Independent Scientific Research Group after conducting five meetings was rejected by Egypt and the process is starting from square zero. Expecting to narrow down the difference between the countries and reaching an agreement in four frequent meetings is a grave mistake and gross misunderstanding of the whole problem.

Q. Is not four meetings in two months with two trips to USA very congested itinerary for all countries? Why these much hurry?

Yes it is very congested. This means on average the countries have to meet every ten days to deliberate on and resolve various issues. There is no sufficient time for the delegates to assess the outcome of the previous meetings, develop alternatives, consult extensively locally and prepare for the next meeting. Such hasty meetings on such matter of strategic significance to the country should not be considered. It exposes the delegates to making grave mistakes because there is hardly any adequate time for them to prepare, review proposals thoroughly, identifying potential pitfalls. Remember Egyptians are crafty negotiators capable of sneaking seemingly harmless traps at every turn. The need for Ethiopia to scrutinize and dissect each and every Egyptian move on the negotiation chessboard cannot be emphasized. This arrangement has played in Egyptian hands.

Q. What does the participation of the World Bank and US mean? What is its significance?

Remember! Initially Ethiopia was totally opposed to third party involvement as a matter of principle. Why? Simply because Ethiopia believes that provided there is good will and good faith effort, the problem can be solved by the three countries themselves, with their own experts. Ethiopia believed the issue is internal to the three countries and have to learn to trust each other, build capacities to negotiate problems and disputes. Inviting third parties at each and every turn degrades confidence and trust and allows the matter to get unnecessarily complicated because third parties too will have their own interests in the outcome of the negotiation. They are not disinterested parties.

Having said the above, I believe Ethiopia cannot expect a fair outcome simply because the US and World Bank are involved. Some people consider third party observer status as harmless and having no implication. But it is important to note that the observers are expected to report to their respective institutions which in turn can be instrumental in attracting undue pressure on Ethiopia. To really understand the implication of the involvement of the indicated third parties on Ethiopia it is important to assess the relative importance of the main contenders i.e. Ethiopia and Egypt to the US and World Bank.

The USA has established a solid relationship with Egypt since President Anwar Sadat shifted the strong relation they had with the USSR to USA. This renewed solidarity between USA and Egypt had facilitated the Israel and Egypt Peace Accord of 1979, known as the Camp David Accord. In parallel with this accord, USA signed a side agreement with Egypt in which it is widely believed that the USA has given Egypt an assurance of its Monopoly over the waters of the Nile. USA also provided Egypt with a massive military aid with which it can protect its "Historical Right" over the waters of the Nile. During the Sharm El Sheik summit between Anwar Sadat and Menachem Begin in Sharm El Sheik, in 1981, President Sadat stated "As the Nile waters issue is one of life and death for my people, I feel I must urge the United States to speed up the delivery of the promised military aid so that Egypt might not be caught napping". The USA also responded positively to the request by providing large cache of modern armaments. In addition to this commitment by USA, the personal relationship between President Trump and President El Sisi and other strategic alliances between the two countries make Egypt closer to USA than to Ethiopia.

The relationship between USA and World Bank is knotted by the Senior Management Staff of the World Bank who are citizens of Egypt that were instrumental in influencing World Bank Loan Policies in favor of Egypt against Ethiopia and other upstream countries. The World Bank used these Egyptian Influenced Loan Policies to shoot down many Ethiopian Water Resources Development Projects. World Bank has a very big loan portfolio in Egypt both within and outside the water sector. Even now, the presence and influence of Egyptian citizens in the World Bank is very high as one of the four or five Vice Presidents is an Egyptian.

For these reasons and other associated matters, the participation of USA and World Bank in matters related to the GERD cannot be considered neutral.

Q. What positive outcome should Ethiopia expect from the Washington Agreement?

The prospect of reaching a fair agreement on the GERD filling and operation is very unlikely. The few number of meetings remaining, the short period of time with in which all meetings are planned to be conducted and time left for preparation in between the meetings do not allow sufficient in-country consultation to reach a workable agreement.

The current position of Ethiopia in this whole process is very precarious. According to the November 6, 2019 Washington joint statement, Ethiopia agreed to conduct four consecutive meetings in two months and conclude an agreement by mid January 2020 and if agreement is not reached to trigger article 10 of the Declaration of Principles (DoP). This situation has put Ethiopia in a very difficult position of either conceding to Egyptian requirements or go for mediation which is again in the best interest of Egypt. Egypt does not have any incentive to reach at a negotiated solution. Egypt is pressurizing Ethiopia to make maximum concessions to reach agreement before January 15, 2020 or face the consequences of article 10 of the DoP. Egypt is also confident that they will come out as winners if article 10 is triggered.

Q. What is the reason for Egypt to be confident on the outcome of article 10 of the DoP?

For the last several years Egypt is pushing hard for the involvement of third parties in one way or another. Specifically Egypt is interested in the involvement of the World Bank or USA or both and has full confidence that the outcome will be in their favour. Ethiopia was well aware of this and was countering this Egyptian move repeatedly. Egypt has already approached the World Bank and USA for their services as mediator without waiting for the four meetings to be conducted. This clearly shows that Egypt will not negotiate in good faith to reach an agreement before Jan. 2020. It will be very difficult for Ethiopian Officials to reject the involvement of the USA and World Bank as mediators as Ethiopia officially welcomed the involvement of the two as observers immediately after the Nov. 6 2019 meeting in Washington.

Q. Is the chance of reaching agreement by Jan 2010 unlikely?

It is to be recalled that on Dec 26, 2019 Egyptian Ministry of Water Resources and Irrigation declared that Egypt **will not change its position what so ever**. This statement is released by Al Ahram, a government news paper. This indicates that for Egypt the last meeting planned in Ethiopia on the 9th – 10th Jan 2020 (This Week) is more of ceremonial nature, to claim that they have exhausted all scheduled four meetings. Egypt wants Ethiopia to accept the release of **Natural Flow of the Blue Nile** during the long term operation, and 40BCM during the filling. Agreeing to release **natural flow during the operation of the GERD is as good as accepting the colonial era agreements and amounts to compromising the sovereign right of Ethiopia over its water resources. For this reason I do not think Ethiopia will or should concede on this.**

Q. What then would be the way out?

The only way out of this crises for Ethiopia is suspending the negotiations. Ethiopia shouldn't have accepted the participation of the US and World Bank as observers in the first place as it negates the agreement of the Head of States of the three countries made in Sochi, Russia on the side of the Russia – African Summit during which they agreed to continue with Technical Discussion. Ethiopia should have suspended the negotiation immediately after the Cairo meeting of Dec. 2019, when Egypt reverted to its prior positions after showing some flexibility in the Addis Ababa meeting of Nov. 2019 as part of their deceptive strategy of enhancing Ethiopia's confidence in the involvement of third parties. Now the last resort is to develop strong case to suspend the Addis Ababa meeting scheduled for 9-10 Jan. 2020. Egypt has already provided sufficient grounds by claiming, right after the Cairo Meetings, that it will never ever concede on any of its negotiation points. This means Egypt has already made up its mind to win at all costs. No concessions, no give and take. My way or the highway is the Egyptian attitude. That is reason enough for Ethiopia to call this foul play of Egypt by its proper name – negotiation in bad-faith and deception. For all these reasons Ethiopia has the right to suspend the negotiations, if not stop it altogether. As the saying goes, Ethiopia cannot be the proverbial bull that has been led to the edge of the cliff (and eventual crash-death) by tempting it with seemingly bountiful grass at the rims of the precipice.

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