Regional Mediation in African Transboundary Rivers Conflicts: Assessing the African Union’s Role in the Renaissance Dam Negotiations

Rawia Tawfik
Faculty of Economics and Political Science, Cairo University, 1 Gamaa Street, Giza, Egypt 12613
rawia.tawfik@cu.edu.eg

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Abstract

In April 2021, Egypt and Sudan announced the failure of the African Union (AU)-led negotiations over the filling and operation of the Grand Ethiopian Renaissance Dam (GERD). Why did the AU fail to achieve progress on the contested issues in spite of the parties’ rhetorical commitment to settle these issues, the mediation capacity that the AU developed over the last decade, and its comparative advantage as a regional organization close to the dispute? This article addresses this question. It integrates regional conflict resolution literature and water diplomacy approaches to identify the conditions of successful mediation in transboundary water conflicts, a task which contributes to ongoing AU efforts to learn from past mediation experiences.
Keywords


In June 2020, the three Eastern Nile countries (Egypt, Ethiopia, and Sudan) started new rounds of negotiation mediated by the AU to resolve outstanding issues over the filling and operation of the Grand Ethiopian Renaissance Dam (GERD). The new rounds started four months after the conclusion of the US-led mediation that failed to reach a mutually acceptable agreement. According to early communiques issued by the AU, the three parties to the GERD dispute ‘expressed their confidence’ in the AU process, affirmed their commitment to reaching ‘a mutually beneficial’ agreement that addresses contested matters, and highlighted the importance of such an agreement for future cooperation and development in their countries (AU 2020b, 2020a). In his report to the Bureau of the Assembly of Heads of State and Government, the Chairperson of the AU Commission, Moussa Faki Mahamat, noted that 90% of the negotiating issues between the parties had already been resolved (AU 2020a). Reflecting the ‘African Solutions to African Problems’ mantra, the AU had achieved some progress in helping the parties reach ‘a sustainable and permanent solution’ to their decade-long dispute over the mega hydropower project (AU 2020b). All these indicators created a sense of optimism that the regional organization would lead the process toward concluding an agreement on the GERD (Yeheys & Chen 2020), and could even help all the Nile riparian states reach a basin-wide agreement on the utilization of the Nile water more broadly (ISS 2020).

This optimism also echoed a growing trend to rely on regional organizations in conflict prevention and resolution. Following the failure of resolving several regional conflicts by the United Nations and global powers after the end of the Cold War, and the spread of conflicts that are regional and national in nature, regional organizations have moved to assume a greater security role. It has been argued that in spite of their limitations, these organizations possess several comparative advantages. Given their proximity to the dispute, they are better positioned to understand the root causes of conflicts, can tailor settlements that take into consideration local realities and conditions, and may be better able to influence conflict protagonists. Additionally, their involvement

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to prevent or manage the conflict at hand is often less sensitive compared to global powers’ interventions. Regional actors are also more affected by the devastation of the conflict and prone to its spill-over effects than far-away international actors that may have little interest to intervene (Diehl 2003; Lepgold 2003; Moller 2005). It was thus unsurprising that the Charter of the United Nations encouraged member states and local actors engaged in conflicts to seek their resolution through regional organisations before referring them to the UN Security Council.

Among different paths available for regional conflict prevention and resolution, mediation has particularly proved to be efficient. According to the AU, mediation is defined as ‘a process of dialogue and negotiation in which a third party assists two or more disputant parties, with their consent, to prevent, manage or resolve conflict without resorting to force’ (AU & Accord 2014: 8). A study that surveyed conflicts on the African continent from 1960 to 2012 concluded that African mediators were more likely to succeed in reaching sustainable agreements to resolve African conflicts than non-African mediators. Particularly effective were mediation efforts where African mediators took the lead while coordinating their interventions with non-African actors (Duursma 2017).

On the organizational level, the AU has sought in the last decade to develop and institutionalize its mediation efforts which depended in the past on the role of eminent persons and ad hoc committees. To achieve this aim, it adopted the Plan of Action to Build the AU’s Mediation Capacity in 2009 and developed a mediation support handbook five years later to help African mediators understand the ‘mechanisms, tasks and tools available to resolve conflicts by utilizing problem-solving approaches’ (AU & Accord 2014: 8). In 2016, the AU established its Mediation Support Unit (MSU) to provide technical support to special envoys, representatives, and other AU-affiliated mediators (AU 2016). Since 2019, the MSU embarked on a mission to document lessons learned from the AU’s previous mediation efforts and the experience of other organizations (Bustamante & de Carvalho 2020).

Against this background, the announcement in April 2021 of the failure of the AU-led mediation to reach an agreement on the filling and operation of the GERD raises the question of why the regional organization fell short in making significant progress, in spite of its commitment to settle the outstanding issues, the mediation capacity it developed in the last decade, and its comparative advantage as a regional organization closer to the dispute. This article addresses this question. It integrates regional conflict prevention and resolution literature and water diplomacy approaches to identify the conditions for successful mediation of regional conflicts in general, and transboundary water conflicts in particular. The identification of these conditions contributes to the
ongoing efforts of the AU to learn from past experiences. Although natural resource conflicts have their complexities, and each conflict has its own distinct characteristics, this exercise can guide other cases of mediation in conflicts over shared water resources in Africa in general, and the Horn of Africa in particular. In terms of data sources, this study depends, in addition to secondary sources, on an extensive review of the official statements issued by the AU and the three concerned governments, and the interviews of government officials with various media outlets.

This article is divided into four sections. The first section presents a brief background on the dispute between Egypt, Ethiopia, and Sudan over the GERD and reviews the literature on this dispute. The second section introduces the analytical framework identifying two sets of conditions for the success of mediation in transboundary water conflicts; conditions related to the nature of the conflict and others that are linked to the mediator. Based on this classification, the third section focuses on variables related to the nature of the GERD dispute, while the fourth section examines the factors related to the AU. The conclusion highlights our central findings and provides policy recommendations.

The GERD Dispute: Background and Knowledge Gaps

Tensions between Egypt, Ethiopia, and Sudan over the GERD have attracted the attention of several academic and policy circles over the last decade. Constructed on the Blue Nile, a major tributary contributing around 59% of the Nile River flow, the GERD is the largest upstream hydropower project on the river. With a generating capacity of 5,150 MW and a reservoir impounding 74 bcm, the project raised Egyptian and Sudanese concerns of causing ‘significant harm’ to both countries if its filling and operation were not jointly coordinated. Following its construction in April 2011, the three countries engaged in talks to assess the potential impacts of the mega project on downstream countries. The talks faced numerous deadlocks, occasionally leading to a war of words and threats of using military force by Egypt to protect its water security, and by Ethiopia to defend its national project. Accordingly, although the tensions around the GERD have not developed into an open military confrontation, they have reached the pre-conflict stage, and are thus characterized as a ‘dispute’ in this article.

A milestone in this dispute was the conclusion of the Declaration of Principles (DoP) on the GERD in March 2015 after more than one year of suspension of negotiations. According to the Declaration, the three countries agreed to jointly commission studies to assess the potential socio-economic
and environmental impacts of the project and use the results of these studies to agree on the filling and operation of the dam. They further decided to establish a joint mechanism to coordinate the annual operation of the dam, together with downstream reservoirs. The declaration acknowledged the project’s potential in promoting regional integration, giving Egypt and Sudan a priority in purchasing the power produced by the GERD. More generally, it highlighted the international legal principles of causing no ‘significant harm’ and encouraging ‘equitable and reasonable utilization’ of the Nile water (Agreement on DoP 2015).

Yet, the basic contentious issues over the utilization of the Nile waters continued to hinder the conclusion of an agreement over the filling and operation of the GERD. One of these issues relates to the lack of an agreement on the utilization of the river which encompasses all the riparian states; namely: Burundi, the Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania, and Uganda. A Cooperative Framework Agreement (CFA) signed by most upper riparian states in 2010, but not yet ratified by the required number of states to enter into force, was rejected by downstream Egypt and Sudan on the basis that it does not acknowledge their current water uses and rights. The 1959 agreement between Egypt and Sudan for the utilization of the Nile waters quantified the water uses of the two countries as 55.5 billion cubic metres (bcm) for Egypt and 18.5 bcm for Sudan, but remains a bilateral treaty that is not binding to other riparian states. The historical agreements signed at the end of the 19th century and the beginning of the 20th century between colonial powers on behalf of the riparian states and between these powers and Ethiopia, as the only uncolonized country in the basin, are considered by Addis Ababa as ‘unjust colonial-based treaties’ that ‘allocate no water share to upper riparian countries’ (MFA of Ethiopia 2020).

More generally, these historical agreements are seen by upstream countries, including Ethiopia, as a reflection of an old regional colonial order that favored downstream countries and centralized the control over the Nile to ensure the sustained flow of water for irrigated agriculture in Egypt and Sudan. But this order also offers to downstream countries, especially Egypt, privileged access to the Nile waters, the utilization of which predates the colonial era and extends to the ancient Egyptian civilization centered around the narrow valley (Tvedt 2010: 3-8). This history of Nile-centered civilizations and externally influenced legal and hydropolitical arrangements, combined with Egypt’s continued dependence on the Nile and increasing water demands in other riparian states, have raised conflicting claims over legal water rights, driven different interpretations of international water law principles, and fed hydro-nationalistic sentiments nurtured by grand hydraulic projects.
In the context of negotiations over the GERD, the lack of a comprehensive agreement on the utilization of the Nile waters has particularly led to disagreements over the definition of ‘significant harm’ and ‘equitable and reasonable utilization.’ Ethiopia insisted that the dam would cause no significant harm since it will be used for hydropower production only, which is a non-consumptive use. But it did not conduct detailed studies on the environmental and socio-economic impacts of the dam on downstream countries. Although it agreed with Egypt and Sudan on establishing a joint mechanism to coordinate on the GERD operation, Ethiopia continued to defend its ‘sovereign right to operate its own dam’ (MFA of Ethiopia 2020). Egypt declared its respect for the principle of ‘equitable and reasonable utilization’ but equally emphasized that this utilization should cause no significant harm to ‘existing water uses’ (MFA of Egypt 2020), which are not acknowledged by Ethiopia. Sudan acknowledged that it stands to benefit from the GERD, in terms of flood control, water regulation, and reducing sedimentation which would lead to increasing hydropower generation from its dams. However, it also highlighted that ‘if not properly designed, constructed, filled and operated’ in consultation and coordination with Egypt and Sudan, the GERD could cause ‘substantial risks to Sudan,’ including threatening the lives of millions of Sudanese directly downstream of the GERD and affecting the operational safety of Sudanese dams (MFA of Sudan 2020).

The mediation of the United States and the World Bank that started in November 2019 tried to transcend these divergent views by agreeing to a filling and operation strategy that maximizes Ethiopia’s electricity production, while minimizing the negative impacts on downstream countries. Yet, the Washington rounds failed to bridge the gap between the three parties on central legal and technical issues. Prior to the Washington rounds, an agreement was reached by a National Independent Scientific Research Group (NISRG) formed by experts from the three countries on a stage-based filling that depends on hydrological conditions. Yet, disagreements persisted on operating the dam in cases of prolonged drought (with water flow below 37bcm for four consecutive years) and prolonged periods of dry years (with water flow below 40bcm for the same period) as Ethiopia refused to provide a guaranteed release in these years as requested by Egypt. Sudan proposed a compromise by suggesting the release of additional water stored in the GERD in these periods, while leaving the discussion of its amount to the technical coordinating committee to be formed to facilitate the implementation of the agreement (Agreement on Guidelines and Rules for the Filling and Operation of the GERD 2020; Documents prepared by Ethiopia 2020; MFA of Sudan 2020).

As far as the legal nature of the agreement is concerned, Addis Ababa preferred to sign a guidelines document that can be adjusted by Ethiopia, as the
dam’s owner, without prior consultation with Egypt and Sudan. The two downstream countries insisted on concluding a binding agreement that sets the rules for filling and operating the dam and authorizes a joint coordination mechanism to oversee their implementation. Sudan was particularly concerned about the safety of its Roseires dam, located just over 100km downstream of the GERD. Roseires’ storage capacity is only 10% that of the GERD, and could thus be significantly affected by its operation (Agreement on Guidelines and Rules for the Filling and Operation of the GERD 2020; Documents prepared by Ethiopia 2020; MFA of Sudan 2020).

A third point of contention was the relation between the GERD filling and operation agreement, on the one hand, and future dams on the Blue Nile and the utilization of the Nile water more broadly, on the other. Egypt stressed the need for future dam projects to respect the GERD agreement and the broader principles of international law concerning prior notification and consultation, whereas Ethiopia insisted that the GERD agreement would not affect future developments on the Blue Nile. Sudan suggested a compromise article that states that the agreement ‘shall not prejudice the rights of the three countries in existing and future developments upstream and downstream of the GERD in accordance with the principles of international law.’ As far as the broader utilization of the Nile water is concerned, following Washington rounds, Addis Ababa presented a draft agreement that suggested including an article that commits Egypt and Sudan to sign ‘a comprehensive basin-wide water sharing agreement’ within 10 years in accordance with the CFA principles, a suggestion that Egypt and Sudan categorically refused (Agreement on Guidelines and Rules for the Filling and Operation of the GERD 2020; Documents prepared by Ethiopia 2020; MFA of Sudan, June 2, 2020).

A final outstanding issue was the dispute resolution mechanism. While Egypt and Sudan proposed arbitration as the means for resolving disputes that are not resolved by the national technical and ministerial committees, Ethiopia refused any role for external actors. After failing to agree on these contentious issues in Washington and in anticipation of a unilateral filling of the GERD, Egypt called upon the UN Security Council to urge all parties to resume negotiations and refrain from taking unilateral measures (MFA of Egypt 2020). The UNSC responded to the call by holding a session on June 29, 2020 in which member states called upon the three countries to resume negotiations to resolve outstanding issues, and expressed their support to the AU-led process.

Given the implications of these developments on stability in the already turbulent Horn of Africa, the GERD and its hydropolitical implications have been subject to extensive analysis (Cascao & Nicol 2018; Gebreluel 2014; Tawfik 2016). However, only a few studies have analyzed the process of negotiation
and examined the reasons for its failure. Gebresenbet and Wondemagegnehu (2021) argued that the basic causes of failure in reaching an agreement relate to the collusion between Egypt’s deep-rooted state identity connected to the Nile, and Ethiopia’s new identity constructed around the GERD. These ‘ontological securities’ and ‘emotional attachments’ to the Nile/GERD obstructed compromises. Reaching common ground would need, according to these two scholars, the building of trust through open discussion of insecurities and exploration of potential benefits of cooperation. Despite the importance of building trust, this assessment ignores the fact that the decade-long negotiations have included the proposal and discussion of confidence-building measures, including the establishment of broader mechanisms of cooperation and reach out to other parties through presidential and public diplomacy visits. While these attempts were not expected to completely resolve deep-rooted contentious issues, their failure to facilitate compromises begs an explanation beyond the residual answer of missed trust.

Other scholars lay the blame for the failure of negotiations squarely on one party, an analysis that fails to assess the responsibility of other parties and the role and limitations of different mediators. An example is Abtew’s claim that ‘the cause for dragging the negotiations is the implicit position of Egypt that no upstream country has the right for a share of the rivers that flow through their territories’ (Abtew 2021: 245). Yihdego (2020) agrees with this assessment arguing that Egypt ‘internationalized’ the dispute by requesting the US mediation and tabling the issue at the UN Security Council ‘to force Ethiopia not to fill the GERD and start electricity production.’ Along the same line, Wolde and Habte (2020) encourage the parties to the dispute, especially Egypt, to acknowledge the new realities and developmental needs of other riparian states.

Less attention has been given to the mediation of the AU in the negotiations. The two studies that explored the role of the continental organization were largely prescriptive recommending a greater role for the AU in the negotiations, rather than critically assessing its actual role. Mohammed (2021) argued that the concept of ‘African Solutions to African Problems’ is a ‘viable option to address the GERD dispute.’ Kasimbazi and Bamwine (2021) suggested that the African Union Peace and Security Architecture (APSA) can provide an institutional framework for implementing a comprehensive solution to the GERD dispute, but did not evaluate the capacity and limitations of the AU.

Against this background, this study is the first attempt to systematically assess the AU mediation and explore the extent to which the continental organization was well positioned in terms of capacity, neutrality and impartiality to resolve the outstanding issues, and to which the nature of these issues enabled the regional organization to pursue a successful mediation.
Assessing Mediation in Transboundary Water Disputes: Analytical Approach

Transboundary natural resources have often caused international conflicts, and occasionally provided bases for transnational cooperation. As the report of the AU’s Panel of the Wise on mediation and resolution of natural resource conflicts suggests, disputes over who ‘owns, controls, benefits from’ shared natural resources are frequent and can become a threat to peace and security, especially if they overlap with other social or political conflicts. In cases where no collective mechanisms are in place to resolve these disputes, the intervention of third parties is often needed to avoid escalation (AU 2019).

As far as international water disputes are concerned, scholars of water diplomacy have investigated the cases of successful mediation to identify the conditions under which third parties can help the riparian states overcome deadlocks and solve outstanding issues. Although each conflict has its own distinctiveness, which requires the mediator to take the context into consideration as will be illustrated below, there are general lessons that have been identified to improve the efficiency of mediation. Some of these lessons apply to mediation in conflicts more broadly, while others are more relevant to water disputes, hence the need to draw insights from both water diplomacy approaches and the regional conflict prevention and resolution literature.

While these two strands of literature identify long lists of conditions for successful mediation, there are a few variables on which most scholars in the two fields agree. Some of these variables are related to the nature of the dispute and the proposed agreement to resolve it, while others are concerned with the qualities of the mediator. Although the two categories are closely related, this section separates them for analytical purposes.

**Dispute-related Variables**

There is an agreement among mediation strategists and water diplomacy scholars that context matters in mediating conflicts, including conflicts over shared water resources (AU & ACCORD 2014; Chodhury 2017; UNEP 2015). While there are several relevant factors that define this context, four variables are particularly facilitative to the mediator’s role in reaching agreements.

**The Inevitability of Multilateralism and High Political and Economic Costs of Non-agreement**

It has been argued that the hydrology and geography of transboundary rivers, the increasing demand for water by riparian states, and the resultant high cost of non-cooperation would naturally push these states to cooperate (Sadoff &
Yet, as Susskind and Babbitt suggested, countries often avoid escalation and move towards multilateral agreements, with the assistance of mediators, only if they realize that they would not achieve their objectives through unilateral actions, and if the political and economic cost of non-agreement is high (Susskind & Babbitt 1992: 31-33). An oft-cited example of a successful mediation in transboundary rivers is the World Bank’s mediation between India and Pakistan over the Indus River which was concluded by signing the Indus Waters Treaty in 1960. Although the Bank took the initiative to offer its good offices, the willingness of the concerned riparian states to engage in negotiation facilitated by the Bank contributed to its success. The fact that the two countries would receive funding for infrastructure projects on the river from the Bank only after signing an agreement factored in their calculations of the benefits and costs of negotiations (Salman 2013). More generally, the parties’ assessment of the cost of non-agreement on international rivers is affected by different variables, including the country’s geographical position in the basin (upstream vs. downstream), as well as other sources of state’s power (economic, military and ideational strength). The effectiveness of mediation is limited if ‘major power imbalances exist’ between the parties to the dispute (UNEP 2015: 14).

Commitment of the Parties to Mediation and to Finding Optimal Spaces
At the beginning of the negotiation processes, parties to a dispute often adopt optimal positions that maximize their gains. With the help of the mediator(s), these parties need to move from optimal positions to what Shafiqul Islam calls ‘optimal spaces,’ which are feasible solutions based on the constraints of the context. Islam uses the US-facilitated agreement between Israel and Jordan in 1994 which was not confined to water exchange arrangements on the Jordan River, but included coordination to find additional water, as an example of the ability of riparian states to find ‘feasible solutions’ (Islam 2017). An initial sign of commitment to the negotiation process is when countries refrain from taking unilateral actions during the process that could undermine the course of negotiations. Consequently, reaching compromises would be affected by the number of issues and negotiators. The smaller the number of issues and parties in negotiations, the easier it is to define common ground (Salman 2013). On the practical level, compromises are sometimes reached through joint fact-finding, multi-party problem solving and joint collection of credible data (AU & Accord 2014; Jarvis & Wolf 2010; UNEP 2015). The informal series of meetings between Israeli and Jordanian water, energy and environmental experts to identify areas of cooperation prior to signing the agreement in 1994 is a case
in point (Chodhury 2017). In water negotiations, collaborative adaptive management increasingly made possible through technological advancements can help increase available water resources (Islam 2017).

Recognition of the Value of Interdependence and Framing Mutual Benefits
The benefits of concluding an acceptable agreement on the disputed natural resource, including transboundary water, are not confined to the resource itself. Parties to the dispute are often encouraged to ‘enlarge the pie’ by exploring the range of gains that can be accrued through cooperation in other sectors after resolving the dispute at hand (Chodhury 2017; Islam 2017; UNEP 2015). These gains can provide additional incentives to outweigh the interest in prolonging the conflict. In spite of domestic criticism and expected challenges of implementation, the recent agreement between Israel and Jordan brokered by the United Arab Emirates to provide solar power produced in Jordan to Israel in return for providing desalinated water to Jordan can be seen as an attempt to expand the range of benefits accruing from water cooperation (Mahmoud 2021).

The Right Timing of the Intervention and the Ripeness of the Conflict
Like mediation in other types of conflict, mediation in disputes over shared water resources needs to come at the right time (AU 2014; Okoth 2021). While some scholars argue for early intervention, others suggest that mediation would better come at later stages when the dispute is ripe (that is, when parties realize that their interests can only be achieved by negotiation and that issues have been clearly identified to be resolved) (AU & Accord 2014; UNEP 2015). Mediators should also be given enough time to resolve the contested issues (Okoth 2021) and avoid seeking a ‘rushed incomplete outcome’ (AU & Accord 2014). To mention one example, it took the World Bank nine years to conclude its shuttle diplomacy on the Indus River (Salman 2003).

Mediator-related Variables
Mediators can play different roles that range from facilitating the meeting of the parties without involvement in the substantive issues to proposing compromises that help the parties reach common ground. Mediators can also build the capacity of negotiators to reduce power asymmetries and mobilize the political and technical support of other parties in the negotiation process (UNEP 2015). In performing these roles, effective mediators often possess a number of qualities.
Neutrality and Impartiality
An effective mediator needs to be neutral (that is, avoid imposing his/her perception on the conflict and its resolution on the disputed parties) and impartial (that is, keep the same distance from each party and treat them equally). These qualities are crucial for ensuring that the parties own the process and its outcome (AU & ACCORD 2014; Gounden 2017; Salman 2013). The adjustment of World Bank proposals during the long Indus River negotiations based on the two parties’ responses was key to the successful conclusion of the agreement (Salman 2013).

Competence and Experience
Mediators need to possess a range of competencies to facilitate negotiations between parties to a dispute. These include a good understanding of the nature of the conflict, its root causes, the interests and positions of different parties, the regional and international dynamics that affect the mediation positively or negatively, and the results of previous mediations (AU & ACCORD 2014; Gounden 2017; UNEP 2015). Ideally, the mediator would help the parties address the root causes of the conflict (AU & ACCORD 2014). However, in complex transboundary water conflicts, mediators may need to separate resource ownership, which is often defined by historical shares and linked to state identities, and its use and management. This would help the parties agree on the latter, while accept, at least in the short term, disagreement over the former (UNEP 2015). Competencies of the mediator also include experience and successful mediation in similar disputes. In cases where mediation is led by a regional organization, the organization should build on its experience and the best practices of other organizations to gradually establish an ‘institutional memory and learning’ (Nathan 2007: 16-17). These competencies enable the mediator to clearly define a feasible scope and objectives of the mediation, while being flexible and innovative to select the mediation strategies relevant to the case (AU 2012; Nathan 2007; Okoth 2021; UNEP 2015). It can also enable him/her to convince the parties to reach a consensual reframing of the problem that seeks the optimal spaces referred to earlier, and move from rights- and positions-based approaches to interest-based approaches to negotiations (AU & ACCORD 2014; Grzybowski et al. 2010; UNEP 2015). The success of the World Bank’s mediation between India and Pakistan cited earlier was partly attributed to the Bank’s ‘political authority, technical expertise, fiscal capacity,’ and long involvement that familiarized the mediator with the contentious issues (Chodhury 2017).

Ability to Obtain Concessions
Several mediation experts and practitioners agree that mediation should be non-threatening to the parties (AU & ACCORD 2014; Okoth 2021). Some would
further argue that direct pressure from mediators to produce an agreement through setting unrealistic deadlines and threatening to suspend their support could produce negative results (Nathan 2007). Yet, as Salman noted, mediators should possess the leverage that enables them to obtain concessions from all parties, and can occasionally threaten to withdraw their mediation and announce the reasons (and party) responsible for obstructing the agreement. This tactic was used by the World Bank in the negotiations over the Indus River (Salman 2003; AU 2012). As Svensson (2007) put it, mediators need to engage with both their muscles and minds to enhance the prospects of their success.

Coordinating with External Actors
Regional efforts do not have to eliminate international conflict prevention and management endeavors. The involvement of extra-regional actors in cooperation with regional actors with whom they share the same objective of preventing or resolving the conflict should also be explored (Lepgold 2003: 10-11). Regional and international organizations can mobilize the political and financial support of other actors to reach a mutually acceptable agreement. To provide additional incentives to India and Pakistan for signing the Indus Water Treaty, the World Bank mobilized donors’ financial support for implementation of the agreement and its related link canals and storage facilities (Salman 2003; Chodhury 2017). Another example is the success of the East African Community’s Lake Victoria Basin Commission (LVBC) to coordinate with developmental organizations, including the United States Agency for International Development (USAID) and its Sustainable Water Partnership (SWP) program, to tackle the increasing challenges in the Mara River Basin and promote cooperation between Kenya and Tanzania to achieve this aim (LVBC 2016; SWP n.d). However, the multiplicity of organizations and forums available for mediation in a single conflict without coordination between them may encourage some parties to pursue what Pinfari calls ‘forum shopping’ through picking and choosing among these forums within which to negotiate ‘to buy time and avoid the resolution of the conflict.’ Rather than providing additional leverage, regional organizations can turn into ‘spoilers by sponsoring mediation initiatives explicitly (or potentially) competitive to existing ones’ (Pinfari 2013: 89).

Resolving the GERD Dispute: Why Was the AU Mediation Doomed to Fail?

As noted earlier, the AU intervention in the GERD dispute came a few months after the failure of the US/World Bank-sponsored mediation. It officially start-
ed by holding the first extraordinary meeting of the AU Bureau of the Assembly of Heads of State and Government on the GERD on June 26, 2020. In terms of timing, the late intervention of the AU should have made its mission easier. After several rounds of direct talks between the three parties since 2011 and numerous mediated meetings in late 2019 and early 2020, the parties had clearly identified the major issues of contention illustrated earlier in this article. However, the AU’s mediation kicked off prior to general elections which were supposed to take place in Ethiopia in August 2020 and were delayed to June 2021 because of the COVID pandemic. The mediation also continued amid a political crisis in Ethiopia following the eruption of the civil war between the Ethiopian government and the Tigray People’s Liberation Front (TPLF) in November 2020. As illustrated below, this timing partly affected the benefits and costs of non-agreement. Equally important, the AU’s intervention came amid border tensions between Ethiopia and Sudan that escalated into military skirmishes in the al-Fashaqa area, and Ethiopian accusations to Sudan of supporting the TPLF. These bilateral tensions certainly added another layer of complexity to the already intricate negotiation environment.

Also noteworthy, the AU-led negotiations started a few days before an anticipated first filling of the GERD. The Communique of the first AU Bureau meeting welcomed the commitment of the three parties to ‘refrain from making any statements or taking any action that may jeopardize or complicate the AU-led process’ (AU 2020a). However, by the time the AU Bureau held its second extraordinary meeting on the GERD on July 21, 2020, Ethiopia had already started filling the dam, a step that was officially denounced by Egypt and Sudan. Based on the conducive factors for successful negotiations illustrated in the previous section which stressed the importance of avoiding unilateral measures during the negotiations, the first unilateral filling influenced the negotiation environment and the expectations of Egypt and Sudan about its potential success (MIWR of Sudan 2020b; State Information Service of Egypt 2022). Ethiopia criticized Egypt’s referral of the dispute to the UNSC a few days after the start of the AU-led negotiations, considering this a step that undermined the mediation of the continental organization (MFA of Ethiopia 2020).

In spite of these unilateral measures, the three parties announced their commitment to continuing negotiations to resolve outstanding issues under the auspices of the AU. Yet, this rhetorical commitment was not accompanied by progress towards finding optimal spaces and mutual compromises to address these issues, especially broader issues that were not linked to GERD filling and operation. The insistence of Ethiopia on including an article related to a future agreement on water shares indicated its attempt to make use of the new realities created by the construction of the GERD to achieve optimal solu-
tions and maximum benefits, rather than seek optimal spaces. A negotiation of water shares might contribute to addressing the root causes of the tensions in the Nile River. However, since the Nile riparians failed to reach an acceptable agreement after more than 10 years of negotiations, linking the agreement on the GERD filling and operation to a basin-wide treaty made the former a distant step. As suggested by natural resource conflicts literature reviewed in the previous section, a separation of resource ownership/contested legal rights and its use/management is sometimes an effective entry point for conflict prevention and resolution. Equally problematic was the insistence of Egypt that any future projects on the Blue Nile ‘may be undertaken without prejudice’ to the GERD agreement, an article which could be interpreted in a way that prevents Ethiopia from constructing storage projects upstream of the GERD. Reaching an agreement on the more urgent issue of filling and operating the GERD could have shown the commitment of the parties to offer compromises and built the trust needed to reach a consensus on a broader Nile treaty or future projects.

The failure to reach an agreement on the GERD filling and operation through the AU-led process can also be understood in light of the cost of non-agreement for different parties. In line with the sources of power identified in the previous section, Ethiopia relied on its position as an upstream country and its ability to mobilize financial sources to construct and operate the dam to create facts on the ground. As noted earlier, the AU mediation started at a critical historical moment in Ethiopia when the rise of Abiy Ahmed as a new prime minister with a different vision of nation- and state-building led to armed confrontation with the old regime. Against this background, the cost of signing an agreement that could politically be used by the Ethiopian opposition to accuse the government of selling off Ethiopian rights in the Nile waters was very high, while the cost of non-agreement was relatively low.

It is, however, noteworthy that the Ethiopian negotiating position did not change after the re-election of Abiy Ahmed and the end of the war in the Tigray region. Equally important, the transformations in state power and relations among domestic political forces in Ethiopia over the last decade have not significantly affected the negotiating position of the Ethiopian government. The unilateral construction of the dam in April 2011 came at a time when the state’s infrastructural power, defined as the ability to use its control over territories to reshape state-society relations, was expanding (Verhoeven 2021), but its ability to represent different nationalities through the ethnic federal model was seriously questioned. The sudden death of Meles Zenawi affected relations among the ethno-political components of the ruling Ethiopian People’s Revolutionary Democratic Front (EPRDF), and was followed by subsequent waves
of protests, change in the party and state leadership, and a two-years long civil war. However, Ethiopia’s narrative and positions over the GERD, and the Nile waters more broadly, have remained largely unchanged. This may be attributed to the fact that the costs of non-agreement have remained lower than the political benefits of sticking to optimal positions, especially the attractive benefit of claiming to alter the historical arrangements illustrated in the first section of this article.

For its part, Egypt’s cost of non-agreement is much higher than Ethiopia’s given its dependence on the Nile to meet most of its water needs. Yet, the cost of signing an agreement based on the terms suggested by Ethiopia would have been much higher, especially politically. As Egypt contended in its letter to the UNSC in June 2020, signing guidelines of GERD filling and operation that can be changed by Ethiopia without prior consultation with downstream countries would have meant allowing the upstream country to ‘establish and exercise unfettered control’ over the Nile waters (MFA of Egypt 2020). On the technical side, the Egyptian government has implemented several measures to reduce the costs of non-agreement on GERD filling and operation. It continues to depend on its management of water releases from Lake Nasser, the reservoir of the Aswan High Dam with a storage capacity of 162bcm (almost three times Egypt’s annual share of the Nile waters), to reduce any negative impacts of the unilateral filling of the GERD on Egypt’s water uses. Additionally, it has carried out several projects to improve water use efficiency and enhance preparedness for water shocks. These projects include lining canals to reduce seepage losses, launching mega wastewater treatment plants, providing incentives to farmers to use modern water-saving irrigation machinery, and reducing the areas cultivated with water-intensive crops. Based on these policies, the former Minister of Water Resources and Irrigation, Mohamed Abdel Aty, delivered a clear message to Egyptians after the failure of the AU-led negotiations that ‘no water crisis will happen in Egypt’ because the government is well-prepared for dealing with the impacts of the project (Abdel Aty 2021).

In contrast to Ethiopia, Egypt’s approach towards the GERD has witnessed some changes in the last decade. Instability following the January 25th uprising and the overthrow of Hosni Mubarak’s regime affected Egypt’s ability to react to the construction of the GERD leading to a lack of coherent policy response and contradictory positions by successive transitional governments (Tawfik 2016). The election of the new president, Abdel Fattah El-Sisi, and the attempt to gradually restore state power domestically and externally was accompanied with a new reconciliatory approach that acknowledged the importance of the grand hydraulic project to Ethiopia and the region, while attempting to reduce its potential negative impacts on Egypt’s water security. The signing of the DoP
on the GERD was a testament to this approach. The improvement of the state’s power domestically and internationally allowed it to mobilize American support for the Washington draft on filling and operating the GERD, undertake the water projects cited above to reduce the cost of non-agreement, and, accordingly, stick to its position during the AU rounds of negotiation.

Nevertheless, the technical and political cost of non-agreement on the GERD filling and operation for Egypt will increase dramatically during and after periods of prolonged drought. As independent experts suggested, Lake Nasser storage will almost be depleted following an inevitable multi-year severe drought, and its filling will depend on the refilling of the GERD reservoir. If Ethiopia prioritized filling its reservoir, this ‘could have severe impacts’ on Egypt, potentially creating a ‘water panic.’ Even if the three countries agreed on a first filling strategy, it would be urgent, according to these experts, to begin planning for a coordinated management of the plausible prolonged drought (Wheeler et al. 2020). This potential impact explains Egypt’s insistence on guaranteed release in prolonged drought periods.

Sudan, as illustrated earlier, stands to benefit from the GERD in case agreement was reached on its filling and operation. However, the cost of non-agreement for Sudan could be higher than for Egypt given the proximity of the GERD to Sudanese dams, especially the Roseires dam, and the limited storage capacity of these dams. Sudan experienced part of this cost during the first unilateral filling in July 2020 when several water stations in Khartoum stopped operating because of the sudden drop in water inflows from the Blue Nile (Hamad 2020). This cost explains the relative change in Sudan’s position towards the GERD from the open endorsement from the political leadership and some top technical experts and water bureaucrats under Omar Al-Bashir’s regime (Tawfik 2015: 24) to a more cautious approach that highlights the potential negative impacts of the project on Sudan in case no agreement on the dam’s filling and operation was reached.

Also notably, Al-Bashir’s regime endorsement of the GERD can partly be seen in light of his own ambitious dam program on the Nile, which was meant to promote the military-Islamist state-building project, in spite of its contradictions and limited success (Verhoeven 2015). Political instability and dwindling state power following the overthrow of this regime in 2019 has not prevented the transitional government from engaging in negotiations and offering compromises to bridge the gap between the Egyptian and Ethiopian positions. However, military takeover in October 2021 and the suspension of Sudan from the AU have further weakened the state’s domestic and regional standing. At the same time, this takeover, further complicated by the armed conflict between the Sudanese Armed Forces (SAF) and the Rapid Support
Forces (RSF) since April 2023, has increased uncertainty over Sudan’s future position towards the GERD. The head of the SAF and the transitional Sovereign Council, General Abdel Fattah Al-Burhan, has been closer to Egypt than the head of the Paramilitary RSF, General Mohamed Hamdan Dagalo (better known as Hemedti). Equally important, Abiy Ahmed has been involved in the mediation between the civilian forces and the Sudanese military in 2019 and expressed his support for the Framework Agreement signed between some of these forces and the two military leaders in December 2022 during his visit to Khartoum a few weeks later. Given that Sudan’s position on the GERD has often been shaped by both political and technical considerations (Tawfik 2015: 24), the result of the ongoing conflict between the SAF and the RSF in terms of which military side wins and the relative power of the military vis-à-vis different civilian forces would influence the future Sudanese negotiating position.

In short then, the cost of non-agreement for Ethiopia is low and that of Egypt is higher, but technically bearable in the short-term and in the medium and long-term in most hydrological conditions, a fact which did not push the two parties towards major compromises in the AU-led negotiations. Sudan’s cost of non-agreement could be higher than Egypt’s, but has not been able to convince Egypt and Ethiopia of its proposed compromises on future projects and on additional water released in periods of prolonged drought and dry years as illustrated earlier. The higher costs of non-agreement in case of prolonged drought and dry years in the future means that the parties, especially Ethiopia and Egypt, decided to delay the confrontation rather than resolve the disagreements with immediate, but politically costly, compromises.

This cost of non-agreement for the three countries may explain why the means of joint problem-solving and data collection that have worked in other cases of international water disputes, including the Indus and Jordan Rivers cited before, and have been implemented in earlier GERD negotiations fall short of reaching an agreement on the dam’s filling and operation. These means include the formation of the NISRG which, as discussed earlier, made notable progress in agreeing on a timetable for filling the GERD, but failed to reach consensus on operation and refilling in prolonged periods of drought and dry years. It also included the attempt of some parties to benefit from more successful models of cooperation in African transboundary river basins. An example is the visit of Sudan’s former Minister of Foreign Affairs, Mariam Al-Mahdy, to Senegal and Niger in late May and early June 2021 which partly aimed at understanding the reasons and modalities of cooperation in the Senegal and Niger River basins (Office of the PM of Sudan 2021). Another example is Egypt’s proposal prior to the AU-led negotiations to establish a trilateral fund for investment in joint projects (State Information Service of Egypt 2022), a
proposal aimed at expanding the range of benefits of cooperation but was not strongly endorsed by the other two riparian states, especially Ethiopia.

Data collection and exchange has remained one of the contentious issues during the negotiations. The data collected and provided unilaterally by Ethiopia was subject to criticism by downstream countries. After the second filling, Sudan officially denounced the Ethiopian provision of ‘inaccurate and incomplete information’ to Sudan (MIWR of Sudan 2021d). Its former Minister of Irrigation and Water Resources, Yasser Abbas, announced that while Ethiopia officially informed Egypt and Sudan prior to the second filling that it would store 13.5bcm as per the agreed filling table suggested by the NISRG, it stored only 4bcm (Sudan News Agency 2021c). Sudan also contested the late provision of some information, including, for instance, the release of additional water from the GERD in April 2021, which did not give the Sudanese officials enough time to take the necessary cautionary measures (MIWR of Sudan 2021b). At the same time, Ethiopia rejected hosting dam operators from Egypt and Sudan in the GERD site considering this a breach of its sovereign right to operate its dams (Hamad 2020).

To sum up, the start of the AU-led negotiations after the failure of the tri-lateral talks and American mediation, and the escalation of tensions prior to an anticipated first filling, was expected to increase the parties’ interests in offering compromises and finding common grounds. However, the cost of non-agreement, especially for Ethiopia and for Egypt on the short run, have limited their flexibility, increased the negotiating issues beyond the dam’s filling and operation, and limited the effectiveness of additional joint mechanisms to resolve the persisting disagreements.

AU’s Mediation Capacities and the GERD Dispute: Was the Continental Organization Fit for the Purpose?

In light of the complexities of the GERD dispute illustrated in the last section, the AU’s mission was far from simple. To build on the agreements that have been reached in previous rounds and ensure the achievement of progress in resolving contested issues, the AU, after consultation with the three countries, identified a clear and specific objective for the negotiations. This objective was to finalize a ‘binding agreement on the filling and operation of the GERD.’ According to the communique of the second AU Bureau meeting, priority will be given to expeditiously conclude an agreement on GERD filling and operation, while the three countries can later deliberate an agreement for broader cooperation in the Blue Nile (AU 2020b). This objective took into consideration the
Egyptian and Sudanese concerns on the potential impact of the mega dam project on the livelihoods of their populations, and, accordingly, the necessity of reaching a binding agreement rather than a set of guidelines that can be changed by Ethiopia without prior consultation with downstream countries. It further stressed that the agreement should cover both the filling and operation of the dam given that Egypt and Sudan refused an earlier Ethiopian proposal to sign an agreement that deals with filling only (MIN of Sudan 2020a). Additionally, it differentiated between short-term deliverables related to the GERD, which should be attained to avoid further tensions between the riparian states, and medium- to long-term aims of comprehensive cooperation in the sub-basin, which can be negotiated at later stages after the GERD agreement is signed.

Evidently also, the AU managed to mobilize experts in international water law and conflict resolution to assist the three parties to reach compromises on disputed matters. The level of engagement of these experts and the assessment of their expertise were, however, contested. The AU’s communiques documented their role in offering proposals to solve outstanding issues in July 2020, and in proposing a draft agreement in January 2021 (AU 2020a, 2020b). Yet, the same communiques referred to these experts as observers rather than mediators. Sudan proposed changing the Terms of Reference (ToR) to expand the role of the AU experts to enable them to propose compromised articulation of the contested articles. It considered AU’s experts’ background in international water law and conflict resolution as appropriate since most of the pending issues were legal. Sudan’s former Minister of Water Resources Yasser Abbas further praised the AU’s draft agreement in January 2021 as a progressive step, and suggested that the experts hold bilateral meetings with each country’s delegation to receive its remarks and prepare a second draft. Although the minister expressed his reservation on some articles, including those on the dispute resolution mechanism, he generally considered the draft as a good start for a mutually acceptable agreement (Abbas 2021).

Yet, Egypt and Ethiopia expressed different reservations on Sudan’s suggestions. Ethiopia expressed its willingness to use the AU’s draft agreement ‘as a single work document’ for the negotiations. But it agreed with Egypt that it is the three countries that should draft the articles on the outstanding issues (MFA of Ethiopia 2021a). Egypt rejected the AU-proposed document noting that the AU team ‘did not have the technical and engineering expertise related to management of dams and water resources’ (MFA of Egypt 2021a). These divergent positions indicated the different assessment of the AU expertise by the negotiating parties and their disagreement on the level of AU engagement, and may even raise questions about the commitment of the parties to the AU process. Ironically, Ethiopia insisted on having the AU as the sole mediator and
resisted any foreign involvement after the failure of the US mediation. Yet, it favored a limited role for the AU experts. For its part, Egypt stressed the political and security character of the dispute, hence resorting to the UNSC to commit the parties to its resolution. At the same time, it contested the expertise of the AU on technical grounds. These positions have not only undermined the AU’s mediation, but also led to the withdrawal of Sudan from the negotiations more than once to protest the continuation of the AU-led negotiations in the same unfruitful way.

Hence, a lesson learned from this case is the importance of reaching agreement between the AU and the concerned parties on the specific role and level of engagement of the AU prior to any negotiation process, and ensuring that this role would enable the continental organization to make progress in the dispute at hand. In other words, rather than enthusiastically accepting to mediate in intricate water conflicts, and natural resource conflicts more broadly, to promote the principle of ‘African Solutions to African Problems,’ the AU should assess beforehand the causes and nature of these conflicts, the reasons for failure of previous mediations, and the terms of reference that can improve the chances for success, including the level of engagement required to ensure this success. Since conflicts over transboundary natural resources are multifaceted, the continental organization would also need to build its capacity in technical, environmental, economic, legal, and political aspects related to these conflicts.

Another mediator-related issue that influenced the effectiveness of the AU’s mediation process was its level of coordination with other regional and international actors. Given the impact of the GERD dispute on regional security, various international actors have been interested in concluding the AU process successfully. Observers from the EU, US, and UN attended the AU-sponsored rounds. In its second communique on the GERD, the AU referred to the willingness of the international community to provide financial and technical support to the parties to facilitate an acceptable agreement (AU 2020b). However, following the lack of significant progress on outstanding issues, Sudan suggested in February 2021 the formation of a quartet that includes the US, EU, and UN, in addition to the AU, to support the continental organization in reaching an agreement on the filling and operation of the GERD (MIWR of Sudan 2021a). Egypt supported the proposal and made resuming the negotiations conditional on the mediation of the quartet. It argued that the suggested role of the quartet does not eliminate the role of the AU which would continue to lead the mediation (MFA of Egypt 2021b).

The Sudanese request for adding other mediators to support the AU’s role indicated that although Sudan, as indicated earlier, trusted the expertise of the AU, it deemed its influence too weak to obtain concessions from the negotiat-
ing parties, especially from Ethiopia, an assessment supported by Egypt. The former Sudanese Minister of Water Resources, Yasser Abbas, noted that after months of AU-led negotiations, it became clear that the negotiation process needs other ‘influential states’ to bridge the gaps between the positions of the three countries (MiWR of Sudan, 2021b). In his meeting with the EU Special Representative for the Horn of Africa, Annette Weber, the Sudanese Minister emphasized that the process needs ‘guarantors that possess political influence and impact,’ including the EU (MiWR 2021c). Likewise, Sudan considered its request on July 21, 2021 for holding a second session of the UNSC to discuss the GERD crisis, which was supported by Egypt, as a necessary step to ‘create a momentum and attract the world’s attention’ to this crucial crisis (Sudan News Agency 2021b). Egypt considered the request as ‘an important push for the efforts exerted to successfully conclude the AU-led negotiations’ (MFA of Egypt 2021c). It further called upon the Council to issue a resolution to commit Ethiopia to engage in negotiations to reach a binding agreement within a specific time period. The Council issued a presidential statement that called for the resumption of the AU-led negotiations to reach such an agreement ‘within a reasonable time frame’ (UNSC 2021).

In response to these steps, Ethiopia rejected both the Sudanese proposal of a quartet mediation and the UNSC intervention in the GERD dispute which it considered as a politicization and internationalization of a technical issue, an intervention that could, according to Addis Ababa, undermine the AU-led process. While accepting at the last round in Kinshasa that the US and EU as observers should ‘share information and make proposals when jointly requested by the countries,’ Ethiopia categorically refused their participation as mediators on equal footing with the AU (MFA of Ethiopia 2021b). It justified its rejection of the mediation of other parties by arguing that the lack of an agreement has nothing to do with the mediator and more to do with the willingness of the parties, especially Egypt, to offer compromises (MFA of Ethiopia 2021c). While this position indicated Ethiopia’s insistence on having the AU as the only mediator in the negotiations, it also signaled its acknowledgment of the limitations of the continental organization in bridging the gap between different parties, thus agreeing with Sudan and Egypt’s assessment of the influence of the AU.

However, it is noteworthy that other influential actors that intervened in the negotiations before and after the AU-led rounds had their own limitations. The freezing of part of the American aid to Ethiopia by US President Donald Trump because of Addis Ababa’s position on the GERD negotiations was in vain, and was even used by the Ethiopian government to support its claim that the American administration was putting pressure on Addis Ababa to sign an unfair agreement in Washington. In light of these limitations, it is impor-
tant for continental organizations to have a prior assessment of the strengths and weaknesses of various extra-regional actors involved in the negotiations, their potential roles, and the ways in which they can join forces to improve the chances of success in negotiations.

These differences over the scope, influence and adequacy of the AU’s mediating role relate to a broader discussion of the power of the continental organization in relation to Ethiopia as a host country and a regional heavyweight. Although neither Egypt nor Sudan openly questioned the impartiality of the AU, there is a growing skepticism about the ability of the AU to play an effective and even-handed role in conflicts involving the Ethiopian government. This was the case in the AU’s mediation of the war in the Tigray region, for example, which raised criticisms from several African intellectuals who noted the AU’s position in allowing Ethiopia ‘to dictate the terms’ of mediators’ engagement in the conflict (The Africa Report 2021). Despite the different nature of this conflict, the criticisms of the AU’s stance raise broader questions about the limitations of the continental body and the need for assessing its ability to perform its peacemaking role vis-à-vis its host country.

Against the complex realities of the conflict and the limitations of the AU’s intervention, the parties announced in April 2021 the failure to agree on resuming negotiations, in spite of the efforts exerted by the Democratic Republic of Congo as the new Chair of the AU Assembly. Egypt and Sudan continued to reject the Ethiopian proposal for appointing focal persons for the exchange of data without reaching a comprehensive agreement on the GERD filling and operation (MWRI of Egypt 2021). Sudan went even further accusing Ethiopia of buying time to implement the second filling unilaterally (Sudan News Agency 2021a). In other words, according to other parties, Ethiopia’s insistence on having the AU as the sole mediator was a ‘forum shopping’ to waste time while continuing to act unilaterally.

To sum up, although the AU had identified a specific and realistic objective for its mediation, and tried to mobilize the relevant expertise for the mission, the three parties, especially Egypt and Ethiopia, did not grant it the adequate mandate to perform its role. Moreover, the negotiating parties did not believe in the organization’s ability to obtain concessions and Ethiopia did not allow other external actors to get involved in the process beyond observing the negotiations. Given these positions, the AU’s role was constrained and its ability to reframe the issues of contention and build on the assistance of other international parties was curtailed. At the same time, although the continental organization tried to offer its available expertise to bridge the gap between the different parties, it did not seem to have adequately assessed the conditions and level of engagement necessary to avoid a failed mediation.
Conclusions

This study sought to understand why the AU failed to achieve progress in resolving the GERD dispute in spite of the rhetorical commitment of the three Eastern Nile countries to the AU-led negotiations, the AU’s efforts to enhance its mediation capacity in the last decade, and its comparative advantages compared to international mediators. Based on our analysis, it can be argued that conflict-related variables were more influential than mediator-related variables in shaping the outcome of the AU negotiations. While expressing their commitment to the AU process, the three Eastern Nile countries did not believe in the organization’s ability to obtain concessions from the negotiating parties. Additionally, Egypt and Ethiopia favored a limited role for the AU experts in resolving the outstanding issues. At the same time, the cost of non-agreement for the two countries, especially in the short term, may not have provided a sufficient incentive to offer significant compromises on the outstanding issues.

Accordingly, contrary to prescriptive studies that recommended a central role for the AU in the GERD dispute, and the Nile question more broadly, there was no evidence that the AU would have been able to achieve what other mediators failed to accomplish. Nor is there any indication that the AU process, if resumed soon, can succeed unless there are significant changes in the contextual variables related to the dispute. Given the continued suspension of Sudan from the AU, the ongoing conflict in Sudan between the SAF and the RSF, and the unchanged Ethiopian and Egyptian negotiating position, resuming the AU-led negotiations would not be within reach.

However, this gloomy experience does not rule out the role of the continental organization in resolving water conflicts. To avoid the risk of another failed mediation in complex transboundary water conflicts which are expected to increase with climate change and variability (Krampe et al. 2020), the AU would need to assess a number of factors before taking the decision to mediate. Initially, the AU would need to examine the positions of the different parties and the reasons for failure of past mediations to evaluate the chances of its success. In other words, contextual variables should be conducive to a successful mediation for the AU to take the decision to intervene. Equally important, the AU would have to clearly define the level of engagement required to conclude a successful mediation prior to intervention and avoid mediation in cases where the concerned parties are not willing to accept this level. Deciding when to terminate its mediation and announce the reasons for failure can also provide a source of pressure on the negotiating parties. In other words, as the AU’s Peace and Security Council’s Standard Operating Procedures for mediation support indicates, a strategic plan designed prior to the mediation that assesses the
viability of settlement and includes the exit option is a necessary component of a successful mediation (AU 2012), a component that does not seem to have existed in the GERD negotiations.

Additionally, the AU needs to examine its edge compared to other organizations and actors and the division of labor between the continental organization and these actors in case of joint involvement. Where there are regional economic communities with experience and regional policy frameworks in transboundary water conflicts (for example, the Intergovernmental Authority on Development-IGAD and the Southern African Development Community-SADC), priority should be given to mediation by these organizations based on their frameworks and experience, and on their proximity to the conflict. When extra-regional actors and organizations are envisaged to provide additional leverage, and when their role is accepted by the parties to the dispute, the specific role of these actors would need to be clearly defined prior to negotiations. This would not only facilitate better coordination between the different actors, but would also prevent parties to the dispute from ‘shopping’ forums to buy time.

Finally, to promote its effective involvement in water disputes, the continental organization would need to mobilize expertise in different facets of these conflicts. In doing so, it can draw on existing structures, including the African Ministers’ Council on Water (AMCOW) and its African Water Facility which provides technical assistance to national and regional water policies and projects, while broadening its reach to experts with the legal and socio-economic proficiency necessary to provide advice in complex transboundary water conflicts.

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