

	Essential Readings in Environmental Law IUCN Academy of Environmental Law (www.iucnael.org)
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NILE NEGOTIATIONS

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OVERVIEW OF KEY SCHOLARSHIPS

Hydro-Politics of the Nile Basin

1. Berild, O.E., *Hydropolitics on the Nile: Negotiating the Owens Falls Dam*, (Bergen: University of Bergen Press, 2001).
2. Godana, B.A, *Africa's Shared Water Resources: Legal and Institutional Aspects of the Nile, Niger and Senegal River Systems* (London: Frances Pinter, 1985)
3. Collins, R., "History, Hydropolitics and the Nile: Myth or reality" in Howell, P., and A. J. Allan (eds), *The Nile: Sharing scarce resources: A historical and technical review of water management and of economic and legal issues*, (Cambridge: Cambridge University Press, 1994)
4. Waterbury, J., *The Nile basin national determinants of collective action* (New Haven: Yale University Press, 2002)

Nile Negotiations

5. Ibrahim, A. M., "The Nile Basin Cooperative Framework Agreement: The Beginning of the End of Egyptian Hydro-Political Hegemony" (2011) *Missouri Environmental Law and Policy Review* 18:2
6. Mekonnen, D. Z., "The Nile Basin Cooperative Framework Agreement Negotiations and the Adoption of a 'Water Security' Paradigm: Flight into Obscurity or a Logical Cul-de-sac?" (2010) 21:2 *Euro. J. Int'l L.* 421
7. Dagne, N., *et al.*, "Towards a Cooperative Use of the Nile: A legal Perspective", (1999) 12:2 *Review of International Affairs*, 236.
8. Kasimbazi, E. B., "Developing a Cooperative Framework Agreement for a Transboundary River: Lessons from a Comparative Analysis of the Mekong and Nile", (2011) 8:8 *USA Law- China Law Review*
9. Knobelsdorf, V., "The Nile Waters Agreements: Imposition and impacts of a transboundary legal system", (2006) 44:22 *Columbia Journal of Transnational Law* 622-648

10. Okidi, O. C., "History of the Nile Basin and Lake Victoria basins through treaties" in Howell, P., and Allan, J. A., (eds), *The Nile: Sharing scarce resources: A historical and technical review of water management and of economic and legal issues*, (Cambridge: Cambridge University Press, 1994)
11. Shady A.M. *et al.*, "The Nile 2002: The Vision Towards Cooperation in the Nile Basin" (1994) 19:2 Water International Journal 77.

Background to the Nile Negotiations

The negotiations for development of the Nile agreements have been riddled with various complexities. The negotiations are traceable from the colonial period when Britain, the colonial power that controlled most of the Nile basin countries, set out to secure the waters of the Nile for the benefit of Egypt. It also realized the needs of the Sudan whose northern regions were as arid as most of Egypt. Britain sought to achieve this by entering into agreements with other European colonial powers on behalf of Egypt. The most recent negotiations of the Nile Basin countries for the *Agreement On the Nile River Basin Cooperative Framework* started in 1997 by the UNDP. The main goal of these negotiations was to achieve a multilateral legal framework as the foundation of a permanent river basin organization called the Nile Basin Commission. In 2010, the agreement was finalized. To date only six countries out of ten have signed it. The countries that have signed are: Burundi, Ethiopia, Kenya, Rwanda, Tanzania and Uganda. Egypt, the Democratic Republic of Congo, and Sudan have not signed, and Eritrea remains an observer. Article 42 of the Agreement requires deposit of the ratification instrument with the African Union by a sixth country for the agreement to enter into force. So far, only Ethiopia has ratified the Agreement and therefore it is not yet in force. There is some literature on the Nile that was published before and after the signing of the Nile Agreement. The following selected readings focus on the hydro-politics of the Nile Basin and how it relates to the negotiation of the Nile agreement. The readings also focus on the negotiation aspects of the Nile agreement.

Hydro-politics of the Nile Basin

1. E. Berild in *Hydropolitics on the Nile: Negotiating the Owens Falls Dam* examines Uganda's contribution and influence in the negotiations leading to the agreement on the Owen Falls dam from Uganda's perspective. He argues that Uganda's role is overlooked in the literature dealing with Nile water management.
2. In *Africa's Shared Water Resources: Legal and Institutional Aspects of the Nile, Niger and Senegal River Systems*, A. Godana provides the physical, hydrological and economic aspects of water resource management of the Nile River. He explains that the hydro politics of the Nile Basin are based on the fact that the upper basin states of Ethiopia, Kenya, Uganda, Tanzania, Democratic Republic of Congo, Rwanda, and Burundi are agricultural countries with abundant rainfall and therefore do not use much of the waters of the Nile. In the lower basin the states of Sudan and Egypt are also

agricultural countries, but in contrast with the upper basin states, agriculture is largely irrigation-based and, therefore, use more waters of the Nile.

3. **R. Collins** in his chapter, entitled *History, Hydropolitics and the Nile: Myth or Reality*, argues that the dependence upon the waters of the Nile by Egypt and the Sudan has been fundamental in determining the hydropolitics of the Nile.
4. **J. Waterbury** in his book entitled, *The Nile basin national determinants of collective action*, focuses on the issues that face all international river basins by examining, in detail, the Nile Basin and the ten countries that lay claim to its waters. He applies collective action theory and international relations theory to the challenges of the ten Nile nations. He argues that there are confronting issues ranging from food security and famine prevention to political stability in the Nile Basin countries. Thus, these countries have yet to arrive at a comprehensive understanding of how to manage the Nile's resources. He proposes a series of steps leading to the formulation of environmentally sound policies and regulations by individual states, the establishment of accords among groups of states and the critical participation of third-party sources of funding like the World Bank. He concludes that if there is to be a solution to the dilemmas of the Nile Basin countries, it must be based upon contractual understandings, brokered by third-party funders, and based on the national interests of each state.

The Nile Negotiations

5. In the *Nile Basin Cooperative Framework Agreement: the Beginning of the End of Egyptian Hydro-Political Hegemony*, **M. Ibrahim** argues that in the negotiation of the Nile Agreement the upper riparian states have introduced the *Nile Basin Cooperative Framework Agreement* (CFA) not for its legal value but its political and counter-hegemonic value. The CFA is best explained as a first step to counter and undo the hegemonic actions of Egypt that have been instigated since the beginning of the nineteenth century.
6. **Z. Mekonnen** argues in his article *The Nile Basin Cooperative Framework Agreement Negotiations and the Adoption of a 'Water Security' Paradigm: Flight into Obscurity or a Logical Cul-de-sac* that the enduring legacy of the colonial past has been fundamental for the lower riparian States (Egypt and Sudan) in asserting their position in the negotiation of the *Nile Agreement*.
7. **N. Dagne et al.**, in their article *Towards a Cooperative Use of the Nile: A legal Perspective* proposed the need to focus on sub-basin level in order to lay a firm foundation for future basin wide cooperation in the Nile Basin.

8. **B. Kasimbazi** in his article *Developing a Cooperative Framework Agreement for a Transboundary River: Lessons from a Comparative Analysis of the Mekong and Nile* analyses the process of developing a cooperative transboundary water agreement by using comparative experiences from the Mekong and the Nile river Basins. The comparative analysis is important because both river basins share some common aspects in the development of the cooperative agreement. The article presents a number of lessons to learn from the Mekong process of developing a water sharing Agreement, given the long history of negotiating the agreement, the involvement of international organizations, some of the riparian countries refusing to sign the Agreement and the fact that the Mekong Agreement has been operational for over 15 years.
9. In his article *The Nile waters agreements: Imposition and impacts of a transboundary legal system*, **V. Knobelsdorf** notes that the colonial era Nile agreements affected the negotiation of the 2010 Cooperative Framework Agreement of the Nile because the upper Nile countries argued that they were not bound by them while the lower Nile basin countries argued that they were binding.
10. **C. Okidi** in his paper *History of the Nile Basin and Lake Victoria basins through treaties* reviews the agreements on the Nile and Lake Victoria waters. He concludes that in developing the legal regime of the Nile, the question is not renegotiation of the legal regime but one 'clean-slate' negotiation because there was no negotiated agreement that bound the majority of the states within the Nile basin.
11. **M. Shady et al.**, in their paper titled, *The Nile 2002: The Vision Towards Cooperation in the Nile Basin* analyse how the Nile 2002 Conferences emphasized the need for development of a cooperative framework in the Nile Basin. The paper identifies a comprehensive set of cooperation modalities, principles and areas of potential support for external agencies. It also examines the complimentary roles of international support agencies and nongovernmental organizations in the development of cooperative agreement in the Nile Basin.

APPENDIX I: List of the agreements on the Nile Basin

1. The Anglo Italian protocol of 15th April 1891
2. The agreement between Britain and Italy over the use of the River Gash of 1901
3. The treaty between Britain and Ethiopia of 15th May 1902
4. The agreement between Britain and the government of the independent state of the Congo of 9th of May 1906
5. The Tripartite (Britain-France-Italy) Treaty of December 13, 1906
6. The Exchange of Notes between Britain and Italy concerning Lake Tana of 1925
7. The Nile Waters Agreement (between Egypt and Sudan) of 1959
8. The agreement between Egypt and Anglo Egyptian Sudan of 7th May 1992.

9. *The Agreement between Ethiopia and Sudan Agreement of 1991*
10. *The Framework for General Cooperation between Egypt and Ethiopia of 1993*
11. *The Agreement on the Nile River Basin Cooperative Framework 2010*

Appendix II: Recommended further readings

1. Collins, R.O, *Waters of the Nile: Hydropolitics and Jonglei Canal*, (Oxford, Claredon, 1990)
2. Collins, R.O., *The Nile* (Yale University Press, 2002)
3. Collins, R.O., “Negotiations and exploitation of the Nile waters at the end of the millennium”, (2006) 31:1 *Water International* 116-126.
4. Kasimbazi, E. B., *Challenges of Negotiating an Agreement on a Transboundary River: Lessons for the Nile Basin*; (2003), the Uganda Law Focus, Law Development Centre, Kampala
5. Kasimbazi, E.B., *The impact of colonial agreements on the regulation of the waters of the River Nile*, (2010) *Water International* Vol. 35 Issue 6, November 2010, Taylor and Francis, UK.
6. Mekonnen, K. *The Defects and Effects of Past Treaties and Agreements on the Nile River Waters: Whose Faults Were they?* Available at <http://www.ethiopians.com/abay/engin.html>
7. Okidi, O.C, *Legal and Policy Regime of Lake Victoria and Nile Basin*’ (1980) *Indian J.Int’L*. 395.

Appendix III: Useful websites

1. <http://www.transboundarywaters.orst.edu/>
2. <http://www.thewaterpage.com/nile.htm>
3. <http://www.nilebasin.org/>