SUMMARY NOTES OF THE
INTERNATIONAL WATER LAW AND
UN WATERCOURSES CONVENTION
REGIONAL AWARENESS WORKSHOP

Siem Reap, Cambodia
May 10-11, 2012
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1.0 BACKGROUND

The Regional Workshop on the International Water Law and the **UN Convention on the Law of the Non-navigational Uses of International Watercourses** (UNWC)\(^1\) was organized by WWF and the IHP-HELP Center for Water Law, Policy and Science (under Auspices of UNESCO), University of Dundee, in partnership with the Ministry of Water Resources and Meteorology (MOWRAM) of the Royal Government of Cambodia. The regional workshop was organized in Siem Reap, Cambodia, from May 10-11, 2012 to offer an opportunity for regional dialogue and collaborative learning on the Convention and its potential role in supporting cooperative and sustainable water management across the GMS.

The Workshop sought to support realization of the overall objectives of the Mekong Project, namely:

1. To raise awareness of relevant government officials, and regional and national opinion-makers involved in transboundary river basin management and governance;

2. To provide an opportunity to get better understanding of the usefulness and relevance of the UNWC and other international water instruments; and

3. To identify and support interested governments through the ratification process.

2.0 OPENING SESSION:

The Regional Workshop was opened by H.E. Mr. Veng Sakhon, Secretary of State, Ministry of Water Resources and Meteorology (MOWRAM) on behalf of H.E. Lim Kean Hor, Minister, MOWRAM, Chair of Cambodia National Mekong Committee (CNMC), and Tonle Sap Authority (TSA). Other members of the VVIP party were: (i) H.E. Mr. Ou Bunlong, Secretary of State, Ministry of Economy and Finance (MEF), and Representative of Member of MEF in the Cambodia National Mekong Committee; (ii) Mr. Marc Goichot, Manager, WWF GMS; (iii) Ms. Flavia Loures, Senior Program Officer, WWF USA; and, (iv) Dr. Alistair Rieu-Clarke, University of Dundee. The workshop was attended by 41 participants from Government Agencies, Universities, and Non-governmental Organizations from six countries in the Mekong Region – Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam. The Program and list of participants is provided in *Appendix A1* and *Appendix A2*.

H.E. Veng expressed sincere thanks to the Development Partners for their funding, and WWF and the Center for Water Law, Policy and Science, University of Dundee for jointly organizing with MOWRAM, Royal Government of

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\(^1\) The convention was adopted in 1997 by an overwhelming majority at the UN General Assembly and counts today 19 contracting states – 16 short of the number required for entry into force. Once in force, the convention will have global reach and codify minimum standards and procedures governing the integrated, equitable and sustainable management, use and protection of the world's transboundary basins.
Cambodia this workshop and training as part of the Mekong Project and Global UN Watercourses Convention Global Initiative, which WWF launched in 2006 to contribute to the process for entry into force of the Convention.

He underlined that the Mekong Region has a high density of major river basins. In addition to the Mekong, there are other international river basins that Cambodia shares with other neighboring countries. He further stated the current legal architecture and the existing and future challenges in managing the above mentioned international rivers motivates the need for examining closely in what way the 1997 UN Watercourse Convention, 1995 Mekong Agreement, and other related international water and environmental treaty and agreement can serve as a basis for strengthening the existing governance regime. It was important to discuss whether the entry into force the 1997 UN Watercourse Convention would potentially provide a platform by which to address transboundary issues or facilitate the negotiation of specific international river basin treaties and joint institutional arrangements.

He closed his remark by encouraging all participants to actively contribute to the deliberation and exchange of knowledge.

Flavia Roche Loures, Senior Program Officer, WWF USA, expressed her high appreciation to MOWRAM, Royal Government of Cambodia for hosting this regional workshop. She also expressed her sincere thanks to all participants from all six Mekong countries.

### 2.1 SETTING THE STAGE – THE UN WATERCOURSES CONVENTION GLOBAL INITIATIVE

Flavia Loures, WWF, presented a keynote presentation on UNWC Global Initiative led by WWF. The presentation is attached in Appendix A3. The UN Watercourses Convention global Initiative launched since 2006 by WWF. Its main aim is to forge dialogue among key government and non-government organizations and to contribute to the process for entry into force of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UNWC).

Flavia informed the workshop of the key outputs achieved by the Initiative as follows:

- Regional and basin assessments of the value added of the UNWC (regional and basin assessment was conducted in Central America, South America, East Africa, Europe, West Africa, Congo Basin, Aral Sea, China, and South East Asia (Mekong Region)).

- Develop support tools to strengthen knowledge and understanding of the UNWC (UNWC User Guide, on-line interactive training module, UNWC Q&A, and Technical UNWC Helpdesk).

- Foster dialogue on UNWC among key stakeholders, at the national, basin, regional and global levels (Global meetings, e.g., World Water Forum, Stockholm World Water Week, Regional, basin and national awareness raising workshops and in-depth training in Central America,
South East Asia (Mekong Region), East Africa, and West Africa). The dialogue will be further carried out the upcoming UNWC Symposium to be held in Dundee, Scotland from 5-8 June 2012, and Rio+20 in Rio in late June 2012.

Flavia informed the workshop that there is a growing call for action on the ratification of the UNWC. Recently the European Parliament adopted a Resolution (15 March 2012) to call its member states to consider ratifying the Convention if they have not done so yet. The French Government who has ratified the UNWC expressed its commitment to the UNWC at the recent 5th World Water Forum. Other important calls include: 2011 Bangkok Declaration of African Basin Organizations, 2011 Bamako Declaration, and 2007 Western African States Calls for Action on the Ratification of the UNWC, etc.

Figure 1: Participants are introduced to the UNWC

Flavia briefed the workshop that the assessment was conducted in the Mekong Region in 2007, 2011, and 2012 within the framework of the UNWC initiative in the Greater Mekong Region. Its key objectives included:

- To foster dialogue about transboundary water issues across the region among the relevant government officials, and regional and national opinion-makers;
- To contribute to a better understanding of the potential role / relevance of international water law in general and the UNWC in particular; and
- To identify and support interested governments through the ratification process.
Flavia invited all participants to assist in achieving the above objectives as much as possible during the workshop and in the follow-up steps.

Flavia underscored that in general, international law offers a predictable framework, which in general sets out what states may do, must do, or must **not** do. In so doing, international law provides a platform by which states can coexist and cooperate through applying a body of principles, norms, rules and standards, to govern relations between states (primarily) and some intergovernmental organizations. Without uniform international norms and governance mechanisms, the likelihood of the international water disputes and insecurity would drastically increase. The UNWC represents an opportunity to build region-wide commitment to shared norms and cooperation.

Flavia further noted that the 1997 UNWC underwent a series of drafting and negotiating meetings (through officially designated experts drafting the series of draft articles for comments and later on for acceptance of the drafts as the basis for further negotiation by the United National General Assembly (UNGA) to codify existing customary international water law principles and norms (duty to cooperate, duty not to cause significant harm, and duty for equitable and reasonable utilization), and provide progressive development of emerging principles and norms (key aspects of procedural rules, institutional arrangement, and procedures for conflict management).

UNWC was approved by the UN General Assembly on May 21, 1997 at its 51st Session. So far only 25 ratifications have been deposited with the UN General Secretariat. The main reasons include:

- Lack of champion (being an orphan after its adoption);
- Water issues in the international agenda;
- Overtaking by other global conventions and initiatives, such as climate change etc…;
- Little awareness by the policy-makers;
- Misperception about the nature of the convention – “veto power”, “bias toward upstream or downstream?” etc.

The importance of the UNWC is not just another treaty. It is a UN Convention broadly endorsed by the members of the UNGA (106 countries voted for, 3 against and 26 abstentions). Cambodia, Laos and Vietnam were among the 38 countries that sponsored the draft UNWC, and Cambodia, Lao PDR, Thailand, and Viet Nam voted in favor of the UNWC’s adoption. However, due to various reasons, its ratification has been delayed or has not been considered seriously or systematically in these countries.

The ratification by the countries in the Mekong Region and the entry into force of the UNWC should provide a framework to address key issues and facilitate the negotiation of watercourse agreements in the region. It will inspire specific
transboundary agreements (for whole Mekong Basin, and other transboundary river basins within the Mekong Region) and support the implementation of regional watercourse agreements. Once in force, the provisions of the UNWC accepted as customary law will be applicable in the relation with the non-parties as well, and those emerging norms will be further evidence of state practice.

2.2 TRANSBOUNDARY FRESHWATERS AROUND THE WORLD AND MEKONG REGION: CHALLENGES & OPPORTUNITIES

Sokhem Pech presented the transboundary freshwaters in the world and Mekong Region: challenges and opportunities. The presentation is attached in Appendix A4.

The presentation noted that there were over 263 international watercourses and untold number of transboundary aquifers. These 263 international watercourses generate about 60% of global freshwater flow and cover almost half the earth’s land surface. They cross the territories of 145 countries and are home to around 40% of the world’s population.

These watercourses contain key freshwater supplies that are crucial but threatened, due to lack of or limited coordination between states. It poses major threats to the people, ecosystems, and economic activities that rely on the long-term sustainability of those resources. For example the changes in flow patterns and associated water elements, reduced water availability in most critical time or cause significant levels of pollution downstream. It can also prevent weaker states from developing or getting their fair share of the resource or hamper migratory fish.

The major practical, legal, and political issues associated with the fact that the cooperative management frameworks exist for only about 40% of the world’s international watercourses and 80% involve only two countries, even though other states may also be part of the river basin in question. It is often observed that either the state parties have to rely on the good will of non-parties to engage informally in the cooperation process or the parties to partial agreements make decisions among themselves without due regard for the interests and needs of other basin states that are not parties to those agreements. The assessment also showed that the congestion of several watercourse and environmental agreements, with their own different policies and obligations makes effective implementation more difficult, and many agreements have significant gaps or failings.

It was projected that the increase in future water variability due to most climate change scenarios may alter current hydro-political balances, affecting in turn the ability of states to meet their water treaty commitments and may raise serious questions about the adequacy of many existing transboundary arrangements and lead countries to set up new international water agreements.
In the Mekong Region, there are a number key Transboundary Rivers and none of them (except for the Lower Mekong Basin), have any functional international river basin regime. The countries hold different geographic, economic, and political priorities and needs to justify their unilateral actions.

2.3 ROLE & RELEVANCE OF THE INTERNATIONAL LAW AND POLICY

Dr. Alistair Rieu-Clarke presented role and relevance of the International Law and Policy. The presentation is attached in Appendix A5 and Appendix A6. He underlined that international water law finds its foundation within the rules of public international law, and is thus intertwined with those ideals contained in the UN Charter – maintaining international peace and security, enhancing regional cooperation, preventing threats to the peace, and advancing the fundamental freedoms of all (UN Charter).

The law of international watercourses provides a framework for managing the sustainability of transboundary waters that cross national borders and has evolved through a combination of customary law (state practice) and the codification and progressive development efforts undertaken by the UN, non-governmental organisations, private institutions, national and international judicial decisions, and the resolutions and recommendations of international organizations.

Alistair added that water law serves three key functions: (i) it defines and identifies the legal rights and obligations tied to water use (broadly defined) and provides the prescriptive parameters for resource development and management; (ii) it provides tools for ensuring the continuous integrity of the regime – that is, through monitoring and assessment of compliance and implementation, dispute prevention, and settlement; and, (iii) it allows for modifications of the existing regime, in order to be able to adapt to changing needs and circumstances.

Freshwater is a finite resource, and its sustained availability is one of the most critical modern challenges facing people and the environment globally. Of the 1.4 billion cubic kilometers of water found on Earth, only 2.5%, approximately 37 million cubic kilometers, constitutes freshwater, and 90 percent of this is locked up in polar ice caps and groundwater reservoirs which are presently inaccessible. The IPCC Climate Change and Water Report indicates an emergent global water crisis and illustrates how it cuts across political and socio-economic domains, scientific disciplines, and national sovereign boundaries.

The role of the law of international watercourses is to provide certain level of certainty and predictability about “what one may do”, “what one must do”, and “what one must not do”. Drawing from the principle, norms and rules inscribed in the Law of nations – UN Charter, the law of international watercourses provides for substantive and procedural rules, institutional arrangements, and dispute settlement mechanisms.
Ali added that for effective water sharing agreements, it is important to have an in-depth assessment (Legal Analytical Framework) of issues around: (i) scope; (ii) substantive rules; (iii) procedural rules; (iv) institutional mechanisms; (v) and dispute settlement mechanisms. In addition, he noted that, as a codification and progressive development of the law of international watercourses, the UN Watercourses Convention provided the foundations for addressing these aforementioned issues.

Comments:

The participants asked how the compliance can be improved as within the international legal regime; there is a horizontal power relation (equality and sovereignty). It was understood that workable procedural rules and institutional arrangements for assessment, evaluation and verification should help improve compliance and identification of areas for improvement and mutual help.

The participants asked for an analysis of countries that have ratified the convention – how many are upstream and downstream? It was explained that there were a good mix among upstream and downstream countries. Some of them were both downstream and upstream countries. Some countries – France and Spain for example, - abstained from voting, but have ratified the UNWC. It was also considered that the entry into force of the UNWC would make more and more countries consider joining it.

2.3.1 UNWC and International Water Law

2.3.1.1 Comparative analysis of Substantive, Procedural and Institutional norms of 1995 Mekong Agreement and 1997 UNWC

Sokhem Pech and Alistair Rieu-Clarke provided comparative analysis of the 1995 Mekong Agreement and 1997 UNWC for a purpose of showing consistency between the two treaties, and identifying areas where UNWC can support the improvement in the implementation of the 1995 Agreement. The presentation is provided as Appendix A7-A8.

There are some similarity and consistency between the two treaties, however the scope of the 1995 MA is broader (river basin or drainage). But in practice, the 1995 MA provides some inconsistency in scope – river basin approach in some aspects of sustainable development, and then applies “river system’s water” approach when it comes to equitable utilization. So far, there is an interim definition of mainstream and tributaries, and the procedures on notification, prior consultation and agreement provides a more restrictive definition of the tributaries that only cover those that have significant impact on the mainstream flows. The UNWC does not differentiate ‘mainstream’ or tributaries, and dry or wet seasons. Any proposed use that may cause significant harm to other riparian countries is subject to prior notification, and subsequent steps of due diligence to ensure equitable utilization and no significant harm.
The factors for determining equitable and reasonable use in the UNWC may find useful in the developing of such factors in the subsequent MA procedures or rules. Even though, both agreements use slightly different qualification (harmful effects and substantial damage in 1995 MA, and adverse effect and significant harm in UNWC), their articles 7 require that the proposing country take all appropriate measures or make every effort to prevent, minimize and mitigate the harmful impact, and once substantial damage or significant harm happens, the parties must enter into negotiation to find acceptable solution and cease causing damage.

The 1995 MA contains very detailed provisions on the institutional arrangement, the UNWC due to its global nature, contains only provisions encouraging the watercourse countries to establish specific institutional arrangement.

The detailed procedural rules and time-bound and gradual step-by-step dispute resolution mechanism in the UNWC were found to be relevant for further development of 1995 MA in its rules and procedures. UNWC includes an obligation for protection and preservation of ecosystems, control of alien species and prevention, reduction, and control of pollution (Articles 20–21) that are relevant to the Mekong countries especially for Viet Nam and Cambodia (Mekong Delta, coastal zone pollution from land-based activities, and Tonle Sap ecosystems).

Although the 1997 UN Convention was concluded two years after the 1995 Mekong Agreement, the ILC’s draft articles influenced the drafting of the 1995 Mekong Agreement. 1995 Mekong Agreement advances with the institutional frameworks, but fall short of the guiding framework.

Comments:

The participants focused their discussion on the ways and means for defining significant harm or substantial damage, as well as measures and approach for defining equity, appropriateness, and reasonableness. This topic should be included in the follow-up workshop or training.

The issue of reparation for the damage – mitigation, and compensation, as well as determination of state responsibility and liability under the international law was discussed at length. It was agreed that additional case studies on this matter should further be shared.

It was noted that the UNWC does not differentiate inter-basin and intra-basin transfer, use on the mainstream and tributaries or in dry or wet season – where and when activities take place is not so relevant, the ultimate test is whether it has a significant impact.
2.4 UNWC PERSPECTIVES IN MEKONG COUNTRIES

2.4.1 Presentation and Comments from Countries:

**Thailand**

Dr. Amnat Wongbandit, Professor of Law, Faculty of Law, Thammasat University Bangkok, Thailand introduced water law in Thailand. Water in Watercourses in general is public domain and anybody can have free access to water (Civil and Commercial Code). This principle is in favor of those in upstream or having means to exploit the river. He added that although some restrictions on water use are imposed on riparian landowners, it still seems to be in favor of upstream users. For example, upstream users can withdraw water as much as they can to meet their reasonable need.

The water in Irrigation Canals (watercourse designated or built as an irrigation canal) is regulated under the Royal Irrigation Act, 1942. The Royal Irrigation Department (RID) regulates water use in irrigation canals. He added water allocation by RID does not require for water user participation.

The extraction of groundwater is regulated by the Groundwater Act, 1977. A person wishing to extract groundwater must apply for a permit from the Department of Groundwater Resources.

Water Pollution Water pollution is regulated by several pieces of legislation. The framework legislation is the Enhancement and Conservation of the National Environmental Quality Act, 1992. This Act authorizes the National Environment Board to set up stream standards and authorizes the Minister of Natural Resources and Environment to issue effluent standards for wastewater from certain point sources.

Dr. Amnat pointed to a need for a Comprehensive Water Law, since water rights are not clearly enough, and existing laws are not able to handle water use conflicts properly.

Dr. Amnat stated that as far as the UN Watercourses Convention is concerned, in Thailand very little known about the Convention amongst the public and even to most government officials. The government has not raised this issue for the public to discuss whether Thailand should ratify UNWC. It might be a challenge to raise public attention related to UN Watercourses Convention in Thailand without the awareness among the key Civil Society Organizations and Government Agencies.

**Lao PDR**

Mr. Thiphasone Sengsourinha, Department of Treaties and Law, MoFA presented Treaty procedure and UNWC in the Lao PDR. Constitution adopted in 1991 and amended in 2003, Article 12: Foreign policy provides that “Lao PDR pursues a foreign policy of peace, independence, friendship and cooperation, and promotes relations and cooperation with all countries on the basis of the
[following] principles: peaceful coexistence; respect for each other’s independence, sovereignty and territorial integrity; non-interference in each other’s internal affairs; and equality and mutual benefit”. The Constitution also provides for the mandates and procedures for the ratification of or withdrawal from international treaties (Article 53 (11)), whereby the National Assembly decides on the ratification of or [withdraw from] treaties and agreements; (Article 67 (13) the President issues the ratification of or [secession from] treaties and agreements; (Article 70 (8) the Government signs treaties and agreements and guides their implementation.

The Presidential Ordinance on the Conclusion of, Accession to and Implementation of International Treaties of 2009 (Article 5) provides for basic principles of treaties. Before conclusion of, accession to, and implementation of treaties, it should be based on the following principles: (i) ensure the conformity with the Constitution of the Lao PDR; (ii) respect and observe the foreign policy of the Lao PDR.

Procedures for conclusion of treaties (article 20, 21) provide that:

- A lead agency assigned by the Government shall take lead in studies and submit for the Government approval through the MoFA in order to negotiate and sign treaties in the name of the State or in the name of the Government in coordination with relevant agencies and MoJ.

- After signature, the lead agency for the conclusion of international treaties in the names of State or of Government shall submit the document for ratification in coordination with MoFA.

- With fifteen days after having decided on ratification, the National Assembly will submit it to the President for promulgating the ratification.

- Pursuant to the promulgation of ratification by President, MOFA signs an Instrument of Ratification or Accession to treaties → MoFA shall deposit it to the relevant party or to the depositary of that treaty with fifteen days after promulgating ratification.

Annual UN treaty Event during the regular session of the General Assembly in New York: Lao PDR has been actively participating in the annual UN Treaty Event. Year 2012, Lao PDR is in the process of studying the possibilities to ratify some UN conventions. The 1997 UN Watercourses Convention was among them (2010). In the studying of the UNWC, the representatives from different government institutions dealing with water and environment, as well as Ministries of foreign Affairs, Ministry of Justice, National Assembly, Government’s office took part in it.

Mr. Thiphasone Sengsourinha informed the Workshop that a comparative study was conducted regarding the obligations of the Lao PDR under the 195 Mekong Agreement and the Obligations under the UN 1997 Convention and the conclusion was that there many provisions of the Mekong Agreement are similar
to the provisions of the 1997 Convention but at the same time the 1997 Convention contains some provisions which are not found in the Mekong Agreement. The study concluded that for these particular provisions, Lao PDR needs more time to study in order to make sure that if Lao PDR ratifies this convention it should be in the national interest of the country through active participation and implementing of international and regional treaties and agreements.

He added that the entry into force of the UNWC will make it easier for Lao PDR to go ahead with the study of the possibility of becoming a party to this convention. He added further that the regional workshop in Siem Reap on the 1997 UNWC was very important for Lao PDR as there are experts and officials from the region who come together and discuss this convention. From participation to workshop, it will allow them to deepen our understanding of the convention so that they could continue their research and study of the convention, he added.

Mr. Thiphasone Sengsourinha suggested that awareness raising of water law especially this convention is of useful to Lao PDR as the country relies very much on the Mekong River and its tributaries in the national development.

**China**

Prof. Feng Yan, Asian International Rivers Center, presented Water Governance in China presented the challenges and potential for national and international water resources management. Uneven water distribution, both of the annual and inter-annual variations of water resources are big (about 80% water is in the raining season). Unsuitable matching between water and land is another challenge, as in the South; there are more people and rich water, but less arable land. North, there are more people and more arable land, but severe water shortage. Northwest-arid area: few people, rich of water amount per head, fragility ecosystem.

China’s Constitution defines the water right owned by the State. The State Council has the highest state power. The Chinese Water Law provides a water management and supervision and the watershed management in conjunction with the administrative region administration.

The water pollution and EIA are regulated by several laws, namely Environmental Protection Law, Law on Prevention and Control of Water Pollution and Environmental Impact Assessment Law. There is also the Law of Water & Soil Conservation regulating prevention and control of soil erosion, protection and rational use of water and soil resources. The Law of Flood Control combines watershed management with the administrative region government.

The institutional landscape is also complex in China. There are at least 5 levels of water management (from state, national ministerial, provincial, district and county). At the central level, there are at least 11 departments “nine water dragons or ministries.
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<th>Department</th>
<th>Main responsibilities</th>
<th>Major functions</th>
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<tr>
<td>Ministry of Water Resources</td>
<td>Surface and ground water management river basin management, flood control, water and soil conservation</td>
<td>The planning of water development and conservation, flood control, water and soil conservation, designation of water function regionalization, unified water administration</td>
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<tr>
<td>Ministry of Environmental Protection</td>
<td>Prevention and treatment of water pollution</td>
<td>Water environmental protection, water environmental function regionalization zoning, to establish national water environmental quality standards and national pollutant discharge standards</td>
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<tr>
<td>Ministry of Construction</td>
<td>Urban and industrial water use, urban water supply and drainage</td>
<td>Planning, construction and management of water supply projects and drainage and sewage disposal projects</td>
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<tr>
<td>Ministry of Agriculture</td>
<td>Water uses for agriculture (irrigation), fishery aqueous environment protection</td>
<td>Non-point source pollution control, protection of fishery water environment and aquatic environmental conservation</td>
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<tr>
<td>State Forest Bureau</td>
<td>Water resources conservation</td>
<td>Forest protection and management for protecting watershed ecology and water resources</td>
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<tr>
<td>State Electric Power Company</td>
<td>Hydro-power Development</td>
<td>Construction and management of large and mid-scale hydro-power projects</td>
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<tr>
<td>State Reform and Development Commission</td>
<td>Participation in the planning of water resource development and ecosystem building</td>
<td>Planning of water resource development, allocation of production force and ecological environment construction, coordinating the planning and policy of agriculture, forest and water resources, development</td>
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<td>Ministry of Communication</td>
<td>Pollution control related to navigation of ships on rivers</td>
<td>Pollution control and management of inland navigation</td>
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<td>Ministry of Health</td>
<td>Supervision and management of environmental health</td>
<td>Supervision and management of the drinking water standard</td>
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As shown in the map, there are numerous international rivers flowing and out of China - the total annual runoff $7320 \times 10^8 m^3$ which flows out of China, only $172 \times 10^8 m^3$ annual runoff flowing into China. In contrast to Viet Nam, China is less dependent on the flow from other countries.

There are around 18 large and middle scale hydro-power stations (2004) on the international rivers, which include under-construction ones, planned ones and constructed ones.

The Ministry of Foreign Affairs is leading the national international relation and diplomacy, and the Ministry of Water Resources (MWR) is leading international cooperation on the international rivers. Under MWR, some of Watershed Management Agencies (WMAs) in 7 important watersheds are established. The national river basin commissions include:

- **Yangtze River Water Resources Commission**: charged of the international rivers located on the west of Lancang River, which are Lancang River-Mekong, Nu River-Salween River, Dulong River-Irrawaddy River and its tributaries;
• **Pearl River Water Resources Commission**: charged of the international rivers located on the east of Lancang River (not including Lancang River), which include Red River and its tributaries;

• **Yellow River Conservancy Commission** (YRCC): charged of the international rivers located in the northwest region, which are Irtysh-Ob River, Ili / Kunes He, Tarim River and so on;

• **Songliao River Water Resources Commission**: charged of the international rivers and lakes located the north-eastern region, which include Helongjiang-Amur, Tumen River, Yalu River, Sujfun River and Xinkai Lake.

Prof. Feng informed the workshop that China has entered into a number river basin agreement with it neighbouring countries as listed in table below: The majority of them are dealing with hydrological data sharing.

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<th>Agreement</th>
<th>River Basins Involved</th>
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<td>The Memorandum on Providing the Hydrologic Data in Flood Season of Yalung Zangbo River-Brahmaputra Between China and India (2002)</td>
<td>Yalung Zangbo-Brahmaputra</td>
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<td>the memorandum of the environmental rules on Tumen River Economic Development Zone and Northeast Asian (1995, 2005)</td>
<td>Tumen River</td>
<td>Environmental Protection EIA</td>
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</tbody>
</table>
Cambodia

Mr. Long Saravuth, Deputy Director General of Technical Affairs, presented water law and policy in Cambodia. The Law on Water Resources Management of the Kingdom of Cambodia was proclaimed on 29 June 2007. Article 34 of the Law provides for the right of Cambodia to use, develop and manage international basin on its territory within its reasonable and equitable share, consistent with obligations stemming from the international agreements to which Cambodia is a Party.

As a framework law, this water law needs to be filled in with additional sub-degrees (government regulations). Currently 4 sub-degrees have been proposed: (i) Sub-degree on water resource management; (ii) Sub-degree on water quality; (iii) Sub-degree on water licensing; and (iv) Sub-degree on farmer water user community.

Mr. Long Saravuth briefed the regional workshop of the outcomes of the recent national workshop and training on International Water Law and UNWC:

Cambodian participants had a high expectation from the project and entry into force of the UNWC. It included gaining more knowledge and options for supporting peaceful development of international freshwaters; and better understanding/awareness of customary/treaty law and theoretical/practical aspects, and substantive/procedural norms and rules for international cooperation in the transboundary river basins. Mr. Long Saravuth added that the Cambodian participants wanted to understand better the requirements for ratification: process – steps and key considerations, ratification/implementation costs and benefits, and similarities/consistency/complementarities between the UNWC and the 1995 Mekong Agreement.

The presenter stated that the Cambodian participants saw UNWC value added in providing stronger, more solid legal basis for cooperation and benefit sharing and for equitable utilization, and addressing gaps in the 1995 MA and its procedures/guidelines. They pointed to an elaborated and time-bound process for consultations, negotiations and dispute settlement.

The presenters also touched upon the concern over the costs with the UNWC governance bodies: No provision for governance bodies in the UNWC, but parties may decide to create such bodies/define funding requirements upon entry into force, and the requirement for harmonization of the national legal system with the UNWC provisions etc. The ability to apply and interpret the UNWC and language barrier was also among those concerns.

Mr. Long Saravuth introduced the potential follow-up steps for Cambodia, including: (i) development of an action plan; (ii) an assessment of the compatibility/conflict btw the UNWC and national legislation; (iii) translation into Khmer/dissemination of key documents for strengthening the knowledge base (UNWC, guides, etc.); (iv) additional capacity building efforts (regional, national, sub-national) - Consultations/trainings, training of trainers; and
development of an academic program. He also pointed out to the need for seeking technical support from WWF/ASEAN/MRC/GMS/ADB/UN Office of Legal Affairs/UNEP/UNDP during the preparation for ratification/ future implementation.

2.4.2 Regional Specific Briefing Note

Sokhem Pech presented a regional specific briefing note - Regional Understanding, Awareness, and Interest in the UNWC. It is presented as an Appendix A9.

The Mekong is the largest obvious transboundary river in the Region and the major Mekong tributaries are also transboundary. Many other transboundary waterways have been identified - the understanding of these waterways is growing, but not nearly as comprehensive as our understanding of the Mekong.

The assessment also discovered that over 33 international treaties and summits joint declarations were entered into by the Mekong countries. They are related to environment issues such as biodiversity, agriculture and forestry, biotic and non-biotic ecosystems, river/lake basins and catchment, maritime resources, pollution control, climate change and ozone layer protection. It shows that all six Mekong countries are parties/signatories to nearly 1/3 of them. China is also a party to another 12 agreements, where many of the Mekong countries are parties or signatories to. These treaties deal with biodiversity conservation and climate changes, river basin resources development and economic integration, and protection of the World cultural and natural heritage. They contain relevant international law principles, such as sustainable development, equitable and reasonable uses etc.

The assessment also found that common adherence to international environmental treaties and regional organizations have produced some positive and negative implication for the regional international basin governance. The main reasons include:

1. Most of the organizations and treaties relations mainly focus on trade, security and infrastructure development;

2. Most of those agreements are not strictly for the sustainable development of the Mekong Region international rivers per se; and

3. China is not a member of key natural resources regional organizations such as Mekong River Commission (MRC) and its 1995 Mekong Agreement.

The survey results showed that all respondents are quite knowledgeable in the Mekong transboundary water resources. The results from the survey in Viet Nam, most of the interviewees had a moderate knowledge about the 1995 Mekong Agreement and UNWC. However, in other three Lower Mekong Countries, the awareness about the UNWC among the interviewees was much lower.
Many interviewees believed that the 1997 UNWC coming into force would help raise broader awareness among the policy makers and officials and help build capacity for dealing with negotiation and dialogue with other riparian countries. Many of them thought that relevant provisions of the UNWC could be helpful when the Mekong Agreement could fall short in some cases.

Those interviewees who were aware of the Convention saw benefits in raising their country’s international profile in terms of protecting the environment, commitment to law, to international peace, to stable foreign affairs and to sustainable development. Improvements in their country’s profile amongst the international community are thought to be important for attracting foreign investment and aid.

The interviewees recommended the following steps for making the 1997 UN Convention accepted and moving toward ratification:

- A broad dissemination of relevant studies on cost and benefit, and experiences from other part of the world;
- Awareness raising event for more understanding among policy makers and concerned officials,
- In-depth capacity building and training of relevant government officials, and academic program leading to decree in water law;
- More in-depth training, and more case studies and simulation exercises;
- Funding and technical support;
- Demonstration of how the application of Convention can support the 1995 Mekong Agreement, and how it can support multi or bilateral collaboration;
- Support harmonization of national water related Laws, and policies;
- Cost and benefit assessment and consultative meeting; and
- Public consultation at community, University and concerned national institutions.

2.5 ENTRY INTO FORCE AND WIDESPREAD RATIFICATION OF THE UNWC: WHY SHOULD WE CARE?
3.0 GROUP DISCUSSION (COUNTRY)

The participants from each country discussed the following topics (national group discussion):

- Expectation of the outcomes of Project, training and regional workshop;
- Value added/costs/concerns for your country from ratification and implementation; and
- Proposed next steps.

Figure 2: Groups discuss value, costs, concerns, and next steps for the UNWC

After 45 minutes, the participants presented their group discussion results as summarized in Table below.
<table>
<thead>
<tr>
<th>Cambodia</th>
<th>China</th>
<th>Laos/Myanmar</th>
<th>Thailand</th>
<th>Viet Nam</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constraints to transboundary river basin cooperation?</strong></td>
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<tr>
<td>Partial participation of all riparian nations</td>
<td></td>
<td></td>
<td>Difference in needs and demands</td>
<td></td>
</tr>
<tr>
<td>No complete International river basin organizations</td>
<td></td>
<td></td>
<td>Redundant, falling and weak framework</td>
<td></td>
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<tr>
<td>Lack of cost and benefit sharing mechanism and procedures</td>
<td>Inadequate clarity on Right and obligation</td>
<td></td>
<td>Different laws and policy, and priority</td>
<td></td>
</tr>
<tr>
<td>Limited/ unequal capacity (fund, HR)</td>
<td>Lack of Capacity</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Lack of awareness of applicable rules, needs and interests of other riparians</td>
<td>Lack of awareness</td>
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<tr>
<td>Lack of integrated planning</td>
<td></td>
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<tr>
<td>Limited political will and commitment</td>
<td>Financial Constraints</td>
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</tbody>
</table>

| Cost and benefit of the UNWC entry into force | | | | |
| Potential for broaden cooperation with yet non-parties to 1995 MA | More transparent and predictable decision-making | Recognition of the value of the Convention and contribution to international protection of environment. | More transparent in information sharing |
| Raise cost for non-compliance and increase benefit sharing | Time-consuming for negotiation, dialogue, and revision of previously made agreement and plan | Mutual benefits (upstream/downstream) and national Sovereignty and integrity | Enhanced cooperation → more predictable, stable → sustainable development |
| Require great efforts in awareness raising and education of decision-makers and broader audience on equitable and reasonable utilization | Commitment to the rule of law and to its foreign affairs policy goals on international peace, stability and sustainable development | Commitment and support of many member states. |
| Challenge in getting clarification and interpretation. | More carefully use of its own natural resources | Support search for compensation and benefit sharing mechanism |

| Role of UNWC for other transboundary river basins? | | | | |
| Network for sharing experience, benefit, and conflict prevention | UNWC is regarded as main umbrella or reference for other basin management | Promote information sharing |
| Global legal framework to help solve TB issues in MR | UNWC can provide expertise and technical cooperation | Raise awareness of international legality |
### Cambodia | China | Laos/Myanmar | Thailand | Viet Nam
--- | --- | --- | --- | ---
Common value and understanding |  |  |  | Apply relevant principles in national law

#### Supplementing 1995 MA
- Help MA engage other Mekong non-parties
- Emphasis on pollution and ecosystem degradation which are important among the GMS countries
- Helping to ensure compliance with international law
- Relevant factors for equitable use
- Potential for supporting GMS and MA stronger
- Provision of factors for determining equitable and reasonable use
- Helping in dispute resettlement
- Clearer and time specific steps for notification and conflict management.
- Filling the gaps of the MA

#### Next practical steps
- Capacity building and consultation
- Capacity building and awareness raising
- Continued raise awareness
- Raise awareness with relevant decision-makers to consider UWC
- Encouraging Public participation and consultation
- Develop training and academic course and materials
- Advocacy at different international and national fora
- Follow procedures for UWC ratification

### 4.0 CASE STUDIES FROM AROUND THE WORLD

Alistair Rieu-Clarke introduced the 1997 International Court of Justice’s Gabcikovo-Nagymaros Project Case between Hungary and Slovakia. The presentation is provided as Appendix A15.

More than eleven years after the decision of the International Court of Justice, there is no clear sign for an agreement on the implementation of the Judgment. Hungary and Czechoslovakia concluded a Treaty in 1977 on the joint utilization of the hydro-electrical potential of the Danube - construction of a joint barrage system. The main components of that plant included the construction of a dam at Gabcikovo on the Czechoslovak side and one at Nagymaros, on Hungarian territory.

The legal battle commenced in 1989, when Hungary suspended the works at Nagymaros referring to environmental concerns - ecological necessity. Czechoslovakia, realizing Hungary’s reluctance to continue the joint project, started to work on a solution (“Variant C”) that enabled it unilaterally to put the
barrage system into operation, significantly departing from the original plans. Hungary – realizing that Czechoslovakia was working on a unilateral solution – decided to terminate the 1977 Treaty in 1992. Czechoslovakia declared that Hungary’s purported termination was unlawful and, in response, diverted 90% of the water of the Danube from its frontier course into the artificial canal feeding the works built on Czechoslovak territory. On 1 January 1993, Czechoslovakia ceased to exist, and the new Slovak Republic was proclaimed. Slovakia and Hungary agreed to refer their dispute to the International Court of Justice.

The International Court of Justice declared unlawful both the suspension of works at Nagymaros, as well as the purported termination of the 1977 Treaty. According to the judgment, Czechoslovakia had had the right to create the installations of Variant C unilaterally, but it had been acting unlawfully when it started to operate the system, diverting the overwhelming majority of the flow of the Danube from its original bed, thereby depriving Hungary of its right to equitable and reasonable share of the frontier watercourse. The Court proclaimed that the existing structures had to be jointly operated, but no further objects had to be created, and a sufficient amount of water had to be discharged to the original riverbed.

The Court emphasized that a satisfactory solution had to be found for the amount of water to be discharged to the original river and the tributaries, so that it would satisfy the requirement of the equitable share of the frontier river. However, there is no agreement on quantity to satisfy the needs of the environment – around 20% - 65%.

Comments:
5.0 WRAP-UP:

Mr. Marc Goichot presented his impression from the workshop. He observed that all countries’ participants found the UNWC as a good reference and global umbrella. He underlined that the scope of the cooperation and procedural aspects help clarify and address challenges for addressing equitable and reasonable use. He believed that more awareness raising is needed – more consultation with government agencies, and beyond. He highlighted an interest in exploring these issues further (i) a follow-up national meeting in Thailand; (ii) common interest in more regional activities; and, (iii) more efforts at the national and regional levels (MRC, ASEAN, GMS etc.) to keep high momentum in the regional dialogue.

Figure 3: Participants of the Regional Workshop on International Water Law and the UNWC

5.1 CLOSING REMARK

H.E. Ou Bunlong, Secretary of State, Ministry of Economy and Finance and Member of the governance body of the Cambodian National Mekong Committee, delivered a closing remark. He expressed his great pleasure to attend the closing of Regional Awareness Workshop on the International Water Law and the United National UN Convention on the Law of the Non-navigational Uses of International Watercourses (UNWC).

He extended his sincere thanks to all participants from China, Myanmar, Lao PDR, Thailand, Viet Nam, and Cambodia for taking their time to attend this
workshop. He thanked the development partners, and WWF and the Center for Water Law, Policy and Science, University of Dundee, and Hatfield for organizing jointly with the Ministry of Water Resources and Meteorology, Royal Government of Cambodia this workshop.

He indicated that the Global Initiatives as a timely and valuable. It has contributed to improvement of the transboundary water governance through the strengthening international water law, as a necessary condition for sustainable development, international peace, and a healthy environment. This initiative is well aligned with our vision of the Mekong countries. As evidence from the GMS Summit Declaration and MRC Summit Declaration, more increasingly the Mekong political leaders proclaimed their adherence to their international commitments for common prosperity, exercising greater social and environmental accountability, and to sustainable development and equitable social and economic development.

H.E. Bunlong said that the workshop has achieved its set objectives. All of the participants have become more aware of the UN watercourses Convention – its relevance and role, and we have discussed what each individual, country and organizations will take further steps towards building awareness, acceptance and capacity development. As a member of the Royal Government of Cambodia, he was looking forward to follow-up activities, and he added that he would like to be actively involved in such efforts.

He wished all participants a safe trip home, and conveyed to them his best wishes of longevity, wealthy, happiness and prosperity.
Appendix A1

Regional Workshop Program
## WORKSHOP PROGRAM

### DAY 1: May 10

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:00 - 8:30</td>
<td><strong>REGISTRATION</strong></td>
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<tr>
<td>8:00 - 10:00</td>
<td><strong>Plenary 1:</strong></td>
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<tr>
<td></td>
<td><strong>Welcome</strong></td>
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<tr>
<td></td>
<td>• Welcome and Opening by H.E. Veng Sakhon, Secretary of State, Ministry of Water Resources and Meteorology</td>
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<td></td>
<td>• Welcome by Flavia Loures, WWF</td>
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<td></td>
<td><strong>Setting the stage</strong></td>
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<td></td>
<td>• The UN Watercourses Convention Global Initiative – Flavia Rocha Loures</td>
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<tr>
<td>10:00 - 10:30</td>
<td><strong>COFFEE BREAK</strong></td>
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<tr>
<td>10:30 - 12:30</td>
<td><strong>Plenary 2:</strong> International Water Law and the UN Watercourses Convention</td>
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<td></td>
<td>• Transboundary Freshwaters Around the World and Mekong Region:</td>
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<td></td>
<td>Challenges &amp; Opportunities – Sokhem Pech</td>
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<td></td>
<td>• Keynote: Can international law solve transboundary conflicts? – The Role &amp; Relevance of the International Law and Policy – Dr Alistair Rieu-Clarke</td>
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<td></td>
<td>General discussion: International water law and Mekong Region (challenges and perspectives) – Facilitated by Sokhem Pech</td>
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<tr>
<td>12:30 - 13:30</td>
<td><strong>LUNCH</strong></td>
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<td></td>
<td>• Comparative analysis of Substantive norms of 1995 Mekong Agreement and UNWC, Sokhem Pech</td>
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<tr>
<td></td>
<td>• Comparative analysis of Procedural and Institutional norms of 1995 Mekong Agreement and UNWC, Alistair Rieu-Clarke</td>
</tr>
<tr>
<td></td>
<td>Q&amp;A and General Discussion</td>
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<tr>
<td>14:30-15:30</td>
<td><strong>UNWC perspectives in Mekong countries</strong> Facilitated by Marc Goichot, WWF</td>
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<td></td>
<td>• Presentation of country and regional specific briefing notes, by Sokhem Pech;</td>
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<td></td>
<td>• Presentation and comments from countries</td>
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<tr>
<td>15:30 - 16:00</td>
<td><strong>COFFEE BREAK</strong></td>
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<tr>
<td>16:00 - 16:40</td>
<td>General Discussion Continued</td>
</tr>
<tr>
<td>16:40 - 16:45</td>
<td><strong>WRAP-UP OF DAY 1</strong></td>
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</tbody>
</table>

### DAY 2: May 11, 2012

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:30 – 09:30</td>
<td>Entry into force and widespread ratification of the UNWC: Why should we care?</td>
</tr>
<tr>
<td>09:30 – 11:00</td>
<td><strong>Country Group Discussion:</strong></td>
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<td></td>
<td>Topic for discussion may include:</td>
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<tr>
<td></td>
<td>• Key constraints and challenges in effective transboundary basin management</td>
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<tr>
<td></td>
<td>• Cost and benefit of entry into force of the 1997 UNWC</td>
</tr>
<tr>
<td></td>
<td>• UNWC’s role for other transboundary basins in the region;</td>
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<td></td>
<td>• UNWC’s in supplementing the 1995 MA</td>
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<td>• Next practical steps, etc.</td>
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<tr>
<td>12:00 – 13:00</td>
<td>LUNCH</td>
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<tr>
<td>13:00-14:00</td>
<td>Case Studies from around the world: Flavia Loures &amp; Dr. Alistair Rieu-Claire&lt;br&gt;Q&amp;A and discussion</td>
</tr>
</tbody>
</table>
| 14:00 – 15:30 | Wrap-up:  
  - Summary notes – workshop note-takers  
  - Next steps – Flavia Loures and Marc Goichot  
  - Closing |
| 15:30         | WORKSHOP CLOSE |
Appendix A2

List of Attendees
# LIST OF ATTENDEES

## Cambodia

<table>
<thead>
<tr>
<th>No</th>
<th>Full Name</th>
<th>Functions</th>
<th>Affiliation and Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>H.E. Veng Sakhon</td>
<td>Secretary of State, MOWRAM</td>
<td><a href="mailto:sakhonv@online.com.kh">sakhonv@online.com.kh</a></td>
</tr>
<tr>
<td>2</td>
<td>H.E. Ou Bunlong</td>
<td>Secretary of State, MEF</td>
<td><a href="mailto:pubunlong@camnet.com.kh">pubunlong@camnet.com.kh</a></td>
</tr>
<tr>
<td>3</td>
<td>H.E. Watt Bothkosal</td>
<td>Under Secretary General, CNMC</td>
<td><a href="mailto:bothkosal@yahoo.com">bothkosal@yahoo.com</a></td>
</tr>
<tr>
<td>4</td>
<td>H.E. Tuon Siphann</td>
<td>Government Lawyer</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Mr. Som Sunna</td>
<td>MFA&amp;IC</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Mr. Angkeara Bong</td>
<td>WWF Policy Coordinator</td>
<td>WWF Cambodia, <a href="mailto:angkeara.bong@wwfgreatermekong.org">angkeara.bong@wwfgreatermekong.org</a></td>
</tr>
<tr>
<td>7</td>
<td>Mr. Long Saravuth</td>
<td>Deputy Director general, MOWRAM</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Mr. Chea Chhunkeat</td>
<td>National Focal Point, Director, Planning and International Cooperation Department</td>
<td>MOWRAM, <a href="mailto:chhunkeatchea@yahoo.com">chhunkeatchea@yahoo.com</a></td>
</tr>
<tr>
<td>9</td>
<td>Mr. Chea Vannarith</td>
<td>Chief of Administration, MOWRAM</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Ms. Tes Sodavy</td>
<td>Chief of Personnel and Training Office, TSA</td>
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## China

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<tbody>
<tr>
<td>11</td>
<td>Ms. Zhao Zheng</td>
<td>Senior Programme Officer</td>
<td>Yunnan Environmental Project Management Center for Foreign Funding, <a href="mailto:zhengpink@yahoo.com.cn">zhengpink@yahoo.com.cn</a></td>
</tr>
<tr>
<td>12</td>
<td>Yusong Wu</td>
<td>WWF</td>
<td>WWF China, <a href="mailto:yusong@wwfchina.org">yusong@wwfchina.org</a></td>
</tr>
<tr>
<td>13</td>
<td>Prof. Feng Yan (F)</td>
<td>Asian International Rivers Center</td>
<td><a href="mailto:fengyan@ynu.edu.cn">fengyan@ynu.edu.cn</a></td>
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## Lao PDR

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<tbody>
<tr>
<td>14</td>
<td>Mr. Viengthavisone Theppachan</td>
<td>Director General of Department of Foreign Affair</td>
<td>National Assembly, Lao PDR</td>
</tr>
<tr>
<td>15</td>
<td>Mr. Thiphasone Sengsoulrinha</td>
<td>Acting Director; Division of Multilateral Treaties,</td>
<td>Ministry of Foreign Affair</td>
</tr>
<tr>
<td>16</td>
<td>Mr. Phoukhong Sisoulath</td>
<td>Project Manager, International Law Project, Department of treaties and Law,</td>
<td>Ministry of Foreign Affair</td>
</tr>
<tr>
<td>17</td>
<td>Mr. Souphasay Komany</td>
<td>Acting Director, Nam Ngum River Basin Committee Secretariat</td>
<td>Department of Water Resource, MONRE</td>
</tr>
<tr>
<td>18</td>
<td>Mr. Sengaloune Inthavong</td>
<td>Deputy Director Department of Water Resource and Engineering</td>
<td>National University of Laos, <a href="mailto:ckhamkeng@yahoo.com">ckhamkeng@yahoo.com</a></td>
</tr>
<tr>
<td>19</td>
<td>Mr. Seumkham Thoummavongsa</td>
<td>Director Energy Efficiency and Conservation Division</td>
<td>Ministry of Energy and Mine</td>
</tr>
<tr>
<td>20</td>
<td>Mr. Vongphet Soukhavongsa</td>
<td>National Focal Point,</td>
<td>Hatfield Mekong Laos, Vientiane</td>
</tr>
<tr>
<td>21</td>
<td>Mr. Sengaloune Inthavong</td>
<td>Policy Coordinator</td>
<td>WWF Laos</td>
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<tr>
<td>22</td>
<td>Mr. Burachat Buasuwan</td>
<td>Programme Coordinator</td>
<td>TNMC, MONRE</td>
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<td></td>
<td></td>
<td>Department of Water Resources</td>
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<tr>
<td>23</td>
<td>Dr. Sirawadee Ngamwisedchaikul</td>
<td>First Secretary Department of Treaties and Legal Affairs</td>
<td>Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>24</td>
<td>Dr. Amnat Wongbandit</td>
<td>Specialist Expert Royal Irrigation Department</td>
<td>Ministry of Agriculture and Handicrafts</td>
</tr>
<tr>
<td>25</td>
<td>Boonruen Pensaeengthong</td>
<td>Focal Point</td>
<td>WWF Thailand Country Programme</td>
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<tr>
<td>26</td>
<td>Mr. KYAW SWA</td>
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<td>27</td>
<td>Mr. THAUNG LWIN</td>
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<tr>
<td>28</td>
<td>Dr. Khin Ni Ni Thein</td>
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<tr>
<td>29</td>
<td>Mr. Pham Ba Viet</td>
<td>Deputy Director General, Ministry of Foreign Affair</td>
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<td>Ms. Do Thi Bich Ngoc</td>
<td>Official, Department of Water Resources Management, MONRE</td>
<td>WWF USA</td>
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<tr>
<td>31</td>
<td>Ms. Le Thi Huong</td>
<td>Official, VNMC</td>
<td>WWF Vietnam</td>
</tr>
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<td>32</td>
<td>Mr. Luong Duc Tho,</td>
<td>Official, Ministry of Justices</td>
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</tr>
<tr>
<td>33</td>
<td>Dr. Dao Trong Tu</td>
<td>NFP</td>
<td>WWF Vietnam</td>
</tr>
<tr>
<td>34</td>
<td>Prof. Dr. Le Dinh Thanh</td>
<td>Vice Rector, Vietnam University of Water Resources</td>
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<tr>
<td>35</td>
<td>Mrs Nhung Pham Cam</td>
<td>Policy coordinator</td>
<td>WWF Vietnam</td>
</tr>
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<th>No</th>
<th>Full Name</th>
<th>Functions</th>
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</thead>
<tbody>
<tr>
<td>36</td>
<td>Marc Goichoit</td>
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<td>39</td>
<td>Dr. Sokhem Pech</td>
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<tr>
<td>40</td>
<td>Ms. Thach Dom</td>
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<td>Miss. Hang Raksmeay Phalla</td>
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</tr>
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</table>
Appendix A3

Presentation: The UNWC: Setting the Stage
UNWC Global Initiative: Regional Workshop in Cambodia
Siem Reap, 10-11 May 2012

The UN Watercourses Convention Global Initiative

Flavia Rocha Loures
flavia.loures@wwfus.org

UNWC Global Initiative – Selected outputs

Regional and basin assessments of the value added of the UNWC

Develop support tools to strengthen knowledge and understanding of the UNWC

Foster dialogue on UNWC among key stakeholders, at the national, basin, regional and global levels

Regional and Basin Assessments

Support Tools

Online Interactive Module
UNWC Q&A
Technical UNWC Helpdesk

Fostering dialogues

➢ Global meetings, e.g., World Water Forum, Stockholm World Water Week
➢ Regional, basin and national awareness raising workshops and in-depth training
  • Central America
  • SE Asia
  • East Africa
  • West Africa
➢ UNWC Symposium, 5-8 June 2012
➢ Rio+20
Support for the UNWC in other regions

Europe

- European Parliament Resolution, 15th March 2012
- Commitments of the French Government on Occasion of the 6th World Water Forum

Africa

- 6th World Water Forum – Africa Regional Process
- 2011 Bangkok Declaration of African Basin Organizations
- 2011 Bamako Declaration
- 2010 OSU Declaration, IGCC
- 2007 Call for Action on the Ratification of the UN Watercourses Convention by West African States

Recapping the objectives of the UNWC initiative in the Greater Mekong Region

- To foster dialogue about transboundary water issues across the region among the relevant government officials, and regional and national opinion-makers;
- To contribute to a better understanding of the potential role / relevance of international water law in general and the UNWC in particular;
- To identify and support interested governments through the ratification process.

Thank you.
Appendix A4

Presentation:
Transboundary Freshwaters:
Challenges and Opportunities
Transboundary Freshwaters Around the World and Mekong Region: Challenges and Opportunities
by Sokhem Pech

263 international watercourses and untold number of transboundary aquifers

- Geographically about 60% of global freshwater flow and cover almost half the earth’s land surface
- Cross the territories of 145 countries and are home to around 40% of the world’s population.

263 international watercourses:

- Generate about 60% of global freshwater flow and cover almost half the earth’s land surface.
- Cross the territories of 145 countries and are home to around 40% of the world’s population.

Diverse social, cultural, economic and climatic conditions!!!

Similar development pressures

Transcending political boundaries pose particularly challenging management problems.
Transboundary Freshwater Systems: Crucial but Threatened

- These watercourses contain key freshwater supplies;
- Lack of coordination between states poses major threats to the people, ecosystems, and economic activities that rely on the long-term sustainability of those resources.
- E.g. changes in flow patterns and associated water elements, reduced water availability in most critical time or cause significant levels of pollution downstream.
- It can also prevent weaker states from developing or getting their fair share of the resource or hamper migratory fish.

Major practical, legal, and political issues

- Cooperative management frameworks exist for only about 40% of the world’s international watercourses.
- 80% involve only two countries, even though other states may also be part of the river basin in question.
- Have to rely on the good will of non-parties to engage informally in the cooperation process or
- Parties to partial agreements make decisions among themselves without due regard for the interests and needs of other basin states that are not parties to those agreements.
- Parties may not have the same perspectives, interest and capacity to behave uniformly.

Transboundary Freshwater Systems: Crucial but Threatened (3)

- Responsibility to protect transboundary freshwater ecosystems and to work together sustainably and integrated manner; and
- Avoid conflict, respond cooperatively to threats such as climate change, and share fairly the related costs and benefits.
- Yet, transboundary cooperation raises major practical, legal, and political issues.

Major practical, legal, and political issues

- Congestion of several watercourse agreements, with their own different policies and obligations, which makes effective implementation more difficult.
- Many agreements have significant gaps or failings.

The increase in future water variability forecasted by most climate change scenarios is one form of change that may alter current hydro-political balances, affecting in turn the ability of states to meet their water treaty commitments. This may raise serious questions about the adequacy of many existing transboundary arrangements and lead countries to set up new international water agreements (WB, 2010)

Global distribution of treaty and RBO mechanisms

- FAO identified more than 3,600 treaties relating to international water resources dating between AD 805 and 1984, the majority of which deal with some aspect of navigation.
- 145 treaties which govern the world’s international watersheds, and the international law on which they are based, are just developing.
- One problem hampering the development of sophisticated water treaties may have been the difficulty in acquiring information on similar settings.
- How to provide researchers and diplomats a useful tool to assess negotiating trends and workable treaty solutions in the future?

Only 507 conflict-related events versus 1228 cooperative events ➔ violence over water is neither strategically rational, hydrographically effective, nor economically viable
Astronaut photo of the Mekong taken from the International Space Station on January 9, 2011

**Mekong Region**

Except for Mekong Basin, there are no other known agreements or institutions for other transboundary rivers!

**River Basins & Nation States in Mekong**

More than 325 million people live within the GMS region, which has a land area of 2.6 million km² (ADB and SEI, 2002; ADB, 2010a).

**Nation States**

- China
- Myanmar
- Laos
- Thailand
- Cambodia
- Vietnam

**River Basins**

- Lancang mainstream dams (Upper)
- Mekong mainstream dams, 11 being considered

Substantial transboundary implications – esp. Cambodia, Viet Nam

**Hydropower explosion**

82 existing + 179 under study

Mekong Region power grid (Upper) Lancang mainstream dams 15+China (Lower) Mekong mainstream dams, 11 being considered

Substantial transboundary implications – esp. Cambodia, Viet Nam

Irrigation e.g., CAM

New capital e.g., China, Middle East

USD 100 million grants

USD 1 billion loans

Diversions

South to North transfers in China

Salween to Chao Phraya (Myanmar-Thailand)

into NE Thailand (mainstream, Laos-Thailand)

*Thailand:
- EGCO (Nam Theun 2)
- Ratchaburi (Nam Ngum 2+3)
- GMS Power (Nam Ngum 3, Theun Hinboun, Seim Reap, Mekong MRB)
- Nam Tha (Nam Sason, Nam Kham 2)
- Ch. Karnchang (Khorat, Xe Pian-Xe Namnoy, Nam Ngum 2)

*Vietnam:
- EVN (Lower Sesan 2)
- PetroVietnam (Luang Prabang)
- VPF (Saigon, Nam Tej, Xayabouri, Momoni, Sesan 3)

*China:
- EVN (Lower Sesan 2)
- PetroVietnam (Luang Prabang)
- GMS Power (Nam Ngum 3, theun Hinboun, Seim Reap, Mekong MRB)
- Nam Tha (Nam Sason, Nam Kham 2)
- Ch. Karnchang (Khorat, Xe Pian-Xe Namnoy, Nam Ngum 2)

*Malaysia:
- MegaFirst Corporation (Saigon)
- Gamuda (Nam Theun 1)

*Russia:
- Region Oil (Sekong 4+5, Nam Kung 1)

2000 Upper Mekong Navigation Agreement

Jurisdiction covering Mekong Mainstream

Focus: Navigation

China

Myanmar

Lao PDR

Thailand

Cambodia

Viet Nam

1995 Mekong Agreement (MRC)

Jurisdiction covering whole area within hydrological boundary of MRB in its state parties;

Focus: Sustainable water & its related resources development (irrigation, navigation, hydropower; flood control, fisheries, timber floating, and recreation and tourism)
Mekong Regional Geopolitics

• Complex relationship among politics and geography, demography, and economics, especially with respect to the foreign policy. Karl Marx “History is governed by economic realities, by the way in which people produce and use wealth (natural resources) and struggle with each other for the control of the means of production ➔ an inevitable progress.

• If conflict and crisis lead to progress or breakthrough?

• How GMS Kunming Summit’s common prosperity will be operationalized?

• Who make decisions in the Mekong Region? And who control means of production and resources = geopolitics.

Another Example of Complexity at sub-catchment scale ➔ complexity is many fold more if we scale it up.

Some Major Concerns The NT-NKD River Basin

• How to mitigate the cumulative impacts from series of dam construction, mining, plantation & other point sources of land and water degradation inside the basin?

• How to bring into one development framework the uncoordinated physical infrastructure build ups & continuous landscape transformation inside the basin?

• How to strengthen the government regulatory and monitoring measures to implement IWRM under strong inter-agency coordination and collaboration?

• How to regulate problematic resource extraction activities, and on the other hand, enhance development opportunities inside the basin?

• How to unify and synergize various institutions’ development initiatives?

• How to organize, capacitate, and mobilize the local communities for collective action towards creating sustainable livelihood linked to nature conservation works in the Protected Areas?

What Opportunities UNWC and other Regional Institutions will bring? Will we achieve our objective?

Overall objectives of the WWF UNWC Mekong Project are:

• To raise awareness of relevant government officials, and regional and national opinion-makers involved in transboundary river basin management and governance;

• To provide an opportunity to get better understanding of the usefulness and relevance of the UNWC and other international water instruments; and,

• To identify and support interested governments through the ratification process.

Thank you! Appreciate your comments.

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Appendix A5

Presentation: Can International Law Solve Transboundary Conflict
Transboundary Water Challenges

International Architecture for Transboundary Water Governance

The UN Watercourses Convention: evolution and content

Reasons for, and benefits of, entry into force/widespread support

Prospects for entry into force

Beyond entry into force to implementation

International River Basins

Legend
- Africa
- Asia
- Europe
- North America
- South America

"All transboundary water bodies create hydrological, social and economic interdependencies between societies. They are vital for economic development, reducing poverty and contributing to the attainment of the Millennium Development Goals." UN Water

"There is a water crisis, and there is an increasing understanding that it is a crisis of governance rather than one of physical scarcity of water." (UNEP, 2008)

"I urge Governments to recognize the urban water crisis for what it is — a crisis of governance, weak policies and poor management, rather than one of scarcity." UN Secretary General Ban Ki-moon, 2011

"This crisis is one of water governance, essentially caused by the ways in which we mismanage water." UNWWDR, 2006

Can international law solve transboundary conflicts? – The Role & Relevance of the 1997 UN Watercourses Convention

May 2012

Dr Alistair Rieu-Clarke
### International Architecture for Transboundary Governance: A Fragmented System

**Architecture**
- Global
- Regional
- Basin & Sub-basin
- National and sub-national

Existing agreements are not sufficiently effective to prevent significant water resources management due to problems at the national and sub-basin levels. Such inadequate water management situations and weak capacity in countries to implement the agreements as well as shortcomings in the agreements themselves (for example, the lack of enforcement mechanisms, limited - varied - scope and remit and constitutional or other important issues, taken into account) are crucial. The Special Rapporteur, in his report on the study of the law of the non-navigational uses of international watercourses, by Mr. Stephen C. McCaffrey, Special Rapporteur (A/CN.4/451, Corr.1 and Add.1, 12 July 1994; Vol. II, Part One, pp. 179-185).

### UN GA Resolution 2669 (XXV), 8th December 1970

- Population growth, increasing and multiplying needs and demands for water, limited supply, need to preserve and protect of great importance to all nations
- Importance of legal problems relating to the use of international watercourses
- Fragmentation of international law (bilateral treaties and regional regulations)
- Need for International Law Commission to take the study of the law of the non-navigational uses of international watercourses

### Process

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>1970</td>
<td>UN GA Resolution 2669 (XXV)</td>
</tr>
<tr>
<td>1976–1994</td>
<td>15 ILC Special Rapporteur Reports</td>
</tr>
<tr>
<td>1991</td>
<td>ILC Draft Articles submitted to UN GA</td>
</tr>
<tr>
<td>1993</td>
<td>Replies from Government to Draft Articles</td>
</tr>
<tr>
<td>1994</td>
<td>Revised ILC Draft Articles submitted to UN GA</td>
</tr>
<tr>
<td>1996-1997</td>
<td>UN GA Sixth (legal) Committee to negotiate text of the Convention</td>
</tr>
<tr>
<td>1997</td>
<td>UN Watercourses Convention adopted by 38 sponsors, 103 votes in favor, 26 abstentions and 3 against</td>
</tr>
<tr>
<td>2011</td>
<td>24 Parties</td>
</tr>
</tbody>
</table>

### The Need for a Global Framework Instrument

"...the framework agreement approach, adopted by the Commission in drafting the articles provides a good basis for further negotiations. It leaves the specific rules to be applied to individual watercourses to be set in agreements between the States concerned, as has been the current practice."

(Replies of Governments to the Commission’s questionnaire, 1993)

3 key areas where a framework agreement might be of benefit, namely where,
- no governing regime for transboundary waters exists
- not all basin states were party to an existing agreement
- an agreement only partially covered matters addressed by the rules
Key Provisions – Scope

- "Uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters" (Art. 1(1))

- "Watercourse" – “a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus” (Art 2(b))

Key Provisions – Substantive Norms

- Equitable and reasonable utilization
- No significant harm
- Protection and preservation of ecosystems

Key provisions – Procedural

- It is reasonable ... that procedural requirements should be regarded as essential to the equitable sharing of water resources. ... In the absence of hard and precise rules of allocation, there is a relatively greater need for specifying requirements for advance notice, consultation, and decision procedures.


Notification process under 1997 UN Watercourses Convention

- Strong emphasis on process and cooperation
- Equitable participation
- Duty to cooperate
- Regular exchange of data and information
- "Where appropriate, jointly..."
- Protect and preserve the ecosystems of international watercourses
- Respond to needs or opportunities for regulation of the flow of waters of an international watercourse
- Prevent or mitigate conditions ... that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, saltwater intrusion, drought or desertification
- Take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of an emergency
Key Provisions – Joint Institutions

Article 24(1) Management

“Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism”

Key Provisions – Dispute Settlement

- Must settle disputes by peaceful means
- May jointly seek good offices, mediation or conciliation
- Use joint watercourse institutions where established
- Submit dispute to arbitration or ICJ
- Compulsory third party fact finding

Reasons for non-entry into force

- Treaty congestion
- Lack of awareness
- Misunderstandings
- Lack of champions

Prospects for entry into force
More information...

- [wwf.panda.org/what_we_do/how_we_work/policy/conventions/water_conventions/un_water_courses_convention/](http://wwf.panda.org/what_we_do/how_we_work/policy/conventions/water_conventions/un_water_courses_convention/)

- [www.dundee.ac.uk/water/projects/unwclogi_initiative/](http://www.dundee.ac.uk/water/projects/unwclogi_initiative/)
Appendix A6

Presentation: Role and Relevance of International Law and Policy
Role and Relevance of the International Water Law and Policy

Dr Alistair Rieu-Clarke

May 2012

“International law is clearly much more than a simple set of rules. It is a culture in the broadest sense in that it constitutes a method of communicating claims, counter-claims, expectations and anticipations as well as providing a framework for assessing and prioritising such demands.”


Legal Analytical Framework: Testing resilience

<table>
<thead>
<tr>
<th>Key Elements</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Scope</td>
<td>• Legal reach (what waters?)</td>
</tr>
<tr>
<td></td>
<td>• Definitions (watercourse; uses)</td>
</tr>
<tr>
<td></td>
<td>• Parties (States; RIEOs)</td>
</tr>
<tr>
<td>2. Substantive Rules</td>
<td>• Legal duties &amp; entitlements (equitable and reasonable utilisation; due diligence; protection)</td>
</tr>
<tr>
<td></td>
<td>• Rules of substance (general or precise)</td>
</tr>
<tr>
<td>3. Procedural Rules</td>
<td>• Rules of procedure (duty to cooperate as bridge)</td>
</tr>
<tr>
<td></td>
<td>• Notification / exchange of information</td>
</tr>
<tr>
<td>4. Institutional Mechanisms</td>
<td>• Joint bodies (RBDOs)</td>
</tr>
<tr>
<td></td>
<td>• Conference of the Parties (MoP; CoP)</td>
</tr>
<tr>
<td></td>
<td>• Organisations / organs (Ministerial level; other)</td>
</tr>
<tr>
<td>5. Dispute Settlement</td>
<td>• Dispute avoidance (consultation)</td>
</tr>
<tr>
<td></td>
<td>• Dispute settlement (Art. 33 UN WC; other)</td>
</tr>
<tr>
<td></td>
<td>• Compliance verification (reporting; facilitation)</td>
</tr>
</tbody>
</table>

Water for all? Reconciling competing needs

Legal Template for analysis:

“Who” gets “what” “water”, “when” and “why”? 

Rule of Law

Scope

Aquifer? 

Ecosystem? 

Drainage Basin? 

River? 

Tributary? 

Hydropower? 

Agriculture? 

Fisheries? 

Industry?
**Substantive norms – theories of allocation**

- **Absolute territorial integrity**
  - No interference with the natural flow and conditions
- **Absolute territorial sovereignty**
  - Unlimited use regardless of the needs of downstream states
- **Limited territorial sovereignty**
  - States must respect sovereignty of other states, equal rights of use
- **Community of interests**
  - States manage a river as a single unit, and territorial boundaries become less relevant

**Equitable and reasonable use**

**Procedural norms**

It is reasonable ... that procedural requirements should be regarded as essential to the equitable sharing of water resources. .... In the absence of hard and precise rules of allocation, there is a relatively greater need for specifying requirements, for advance notice, consultation, and decision procedures.


**Procedural rules**

- **Duty to cooperate**
- **Prior notification**
- **Exchange of data and information**
- **Consultations**

**Joint Institutions**

1992 UN ECE Water Convention

**Dispute Settlement**

- Must settle disputes by peaceful means
- May jointly seek good offices, mediation or conciliation
- Use joint watercourse institutions where established
- Third party fact finding
- Submit dispute to arbitration or ICI

**Legal Analytical Framework**

1. **Scope**
   - Rhine Convention; Danube; Mekong; Nile (water security)
2. **Substantive Rules**
   - 1992 UNECE Helsinki Convention
3. **Procedural Rules**
   - EU Water Framework Directive
4. **Institutional Mechanisms**
   - Mekong; Columbia; Colorado; Rhine; Danube
5. **Dispute avoidance / compliance**
   - Indus; Mekong; Canada/USA; EU; UNECE practice
Thank you!

www.dundee.ac.uk/water
Appendix A7

Presentation: Comparative Analysis of Substantive Norms of 1995 MA and 1997 UNWC
Comparative analysis of Substantive norms of 1995 Mekong Agreement and UNWC by Sokhem Pech

Nature

• Both are framework agreements ➔ capability for adapting to legal developments and offering legal stability and predictability at universal level vs. LMB/MRB level

Scope

1995 MA

Sustainable development…of the water and related resources of the Mekong River Basin including, but not limited to irrigation, hydro-power, navigation, flood control, fisheries, timber floating, recreation and tourism (art. 1)

Water and related resources of the Mekong River Basin (art. 1)

1997 UNWC

Uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation (art. 1)

Watercourse” means a system of surface waters and ground waters constituting by virtue of their physical relationship

Characteristic

1995 MA

Chapter 1 – Preamble

Chapter 2 – Definitions of Terms

CHAPTER III. OBJECTIVES: Areas of Cooperation, Basin Planning, environmental protection, sovereignty.

Reasonable and equitable utilization;

Principles – Maintenance of Flows on the Mainstream

Prevention and Cessation of Harmful Effects

State Responsibility for Damages

Emergency Situations

Chapter IV – Articles 11-33 – Institutional Framework

1997 UNWC

Part I – Preliminary matters (scope, definitions, relationship to other water agreement)

PART II. GENERAL PRINCIPLES

Equitable and reasonable utilization and participation

Factors relevant to equitable and reasonable utilization

Obligation not to cause significant harm

General obligation to cooperate

Regular exchange of data and information

Relationship between different kinds of users

Part III = Articles 11-19 = Planned Measures (notification)
Although the 1997 UN Convention was concluded two years after the 1995 Mekong Agreement, the ILC’s draft articles influenced the drafting of the 1995 MA (MacCaffrey, 2001). 1995 Mekong Agreement advances with the institutional frameworks, but fall short of the guiding framework.

Three main principles of customary international law on watercourses (2)

<table>
<thead>
<tr>
<th>1995 MA</th>
<th>1997 UNWC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CHAPTER V. ADDRESSING DIFFERENCES AND DISPUTES</strong></td>
<td><strong>CHAPTER VI. FINAL PROVISIONS</strong></td>
</tr>
<tr>
<td>Part IV – Protection, Preservation and Management (ecosystems, pollution, alien species, marine environment...)</td>
<td>Part V – Hazardous Conditions and Emergency Situation</td>
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<tr>
<td>Protocol</td>
<td>Part VI – Miscellaneous – during armed conflicts A range of means, including an innovative mechanism of an impartial fact-finding commission</td>
</tr>
<tr>
<td>Part VII Final Clauses</td>
<td>Annex Arbitration</td>
</tr>
</tbody>
</table>

### Main differences
- UNWC defines ‘watercourse’ to include both surface waters (including tributaries) and groundwater (Article 2(a)).
- 1995 MA refers to the Mekong ‘basin’ and system but cannot define the terms ‘tributary’, dry and wet seasons etc...
- UNWC obliges states to provide the results of EIA, if conducted, for all planned measures which may have a significant adverse effect upon other watercourse states (Article 12).
- UNWC includes factors relevant to equitable and reasonable utilization (Articles 5-6).
- UNWC includes an obligation not to cause significant harm (Article 7).
- UNWC does not differentiate between inter-basin and intra-basin diversions, nor does it differentiate regarding exchange of information and notification of planned measures related to such diversions (Articles 5 and 11-14).
- UNWC includes an obligation for protection and preservation of ecosystems, control of alien species and protection, reduction, and control of pollution (Articles 20-21).
- UNWC explicitly requires parties to negotiate to avoid loss and pay reasonable regard to the rights and legitimate interests of other states (Article 27).
- UNWC requires prevention and mitigation of harmful conditions whether resulting from natural causes or human conduct, such as floods, ice conditions, erosion, silation, drought, water-borne diseases, drought, desertification or salt-water intrusion (Article 27).
- UNWC includes detailed dispute settlement provisions for constructive resolution of emerging environmental challenges including the use of good offices, mediation, fact-finding, conciliation, arbitration and reference to the ICJ (Article 33).

### Question: how to define substantial damage?

### Thank you! Appreciate your comments.

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Appendix A8

Handout: Comparative Analysis of Procedural and Institutional Norms of 1995 MA and 1997 UNWC
A Comparison of the key issues covered in the UN Convention and 1995 MA

|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Preamble      | ▪ Framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations.  
▪ Rules of international law regarding non-navigational uses of international watercourses | Preamble      | Adequate, efficient and functional joint organizational structure to cooperate and promote in a constructive and mutually beneficial manner in the sustainable development, utilization, conservation and management of the MRB water and related resources for navigational and non-navigational purposes |
| Art 1. Scope  | The uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management of the uses of watercourses and their waters.  
Applicable to the uses of international watercourses for navigation insofar as other uses affect navigation or are affected by navigation. | Art. 1 Areas of Cooperation | In all fields of sustainable development, utilization, management and conservation of the water and related resources of the MRB including, but not limited to irrigation, hydropower, navigation, flood control, fisheries, timber floating, recreation and tourism |
<table>
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<th></th>
<th>No provisions specifically relating to navigation</th>
<th>Article 9. Freedom of Navigation</th>
<th>On the basis of equality of right, freedom of navigation shall be accorded throughout the mainstream of the Mekong River without regard to the territorial boundaries, for transportation and communication to promote regional cooperation and to satisfactorily implement projects under this Agreement. The Mekong River shall be kept free from obstructions, measures, conduct and actions that might directly or indirectly impair navigability interfere with this right or permanently make it more difficult.</th>
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<td>Navigational uses are not assured any priority over other uses, but will be incorporated into any mainstream project. Riparians may issue regulations for the portions of the Mekong River within their territories, particularly in sanitary, customs and immigration matters, police and general security.</td>
<td>Article 36. <strong>Entry Into Force and Prior Agreements</strong>&lt;br&gt;Enter into force with no retroactive effect;&lt;br&gt;Replace previous Mekong Agreements (1957 Statute as amended, 1975 Joint Declaration, 1978 Interim Mekong Declaration, and all Rules of Procedures adopted under such agreements.);&lt;br&gt;Shall not replace or take precedence over any other treaties, acts or agreements by and among any of the parties hereto;&lt;br&gt;Where a conflict in terms, areas of jurisdiction of subject matter or operation of any entities shall be submitted to the respective governments to address and resolve.</td>
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| Article 2 **Use of terms**<br>a) “Watercourse”;<br>b) “International watercourse”;<br>c) “Watercourse State”;<br>d) “Regional economic integration organization”.
Chapter II. **Definitions of Terms**<br>Agreement under Article 5.<br>Acceptable minimum monthly natural flow:<br>Acceptable natural reverse flow:<br>Basin Development Plan:<br>Environment:<br>Notification:<br>Prior consultation:<br>Proposed use: | Article 39. **Additional** Any other riparian State, accepting the rights and obligations under this agreement, may become a |
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<td>watercourse agreements</td>
<td>entitled to participate in consultations or negotiation to becoming a party.</td>
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<td>party with the consent of the parties.</td>
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<td>Article 4. Sovereign Equality and Territorial Integrity</td>
<td>To cooperate on the basis of sovereign equality and territorial integrity in the utilization and protection of the water resources of the Mekong River Basin.</td>
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<td>Article 5. Reasonable and Equitable Utilization</td>
<td>To utilize the waters of the Mekong River system in a reasonable and equitable manner in their respective territories, pursuant to all relevant factors and circumstances, the Rules for Water Utilization and Inter-basin Diversions provided for under Article 26 and the provisions of A and B below:</td>
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<tr>
<td>Article 5. Reasonable and Equitable Utilization</td>
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<tr>
<td>Article 5. Reasonable and Equitable Utilization</td>
<td>Article A. On tributaries of the Mekong River, including the Tonle Sap, intra-basin uses and inter-basin diversions (Notification).</td>
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<td>Article 5. Reasonable and Equitable Utilization</td>
<td>Article B. On the mainstream of the Mekong River:</td>
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<tr>
<td>Article 5. Reasonable and Equitable Utilization</td>
<td>1. During the wet season:</td>
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<td>Article 5. Reasonable and Equitable Utilization</td>
<td>a) Intra-basin use (notification).</td>
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<tr>
<td>Article 5. Reasonable and Equitable Utilization</td>
<td>b) Inter-basin diversion (prior consultation).</td>
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<tr>
<td>Article 5. Reasonable and Equitable Utilization</td>
<td>2. During the dry season:</td>
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<td>Article 5. Reasonable and Equitable Utilization</td>
<td>a) Intra-basin use (prior consultation).</td>
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<tr>
<td>Article 5. Reasonable and Equitable Utilization</td>
<td>b) Any inter-basin diversion project (specific agreement).</td>
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<td>Article 6 Factors relevant to equitable and reasonable utilization</td>
<td>1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including: (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character; (b) The social and economic needs; (c) The dependent population; (d) The effects of the use or uses; (e) Existing and potential uses; (f) Conservation, protection, development and economy of use and the costs; (g) The availability of alternatives.</td>
<td>Article 5 refers to all relevant factors and circumstances, the Rules for Water Utilization and Inter-basin Diversions provided for under Article 26. However, as of to date, such factors and circumstances are not available yet.</td>
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<td>Article 26 Rules for Water Utilization and Inter-Basin Diversions</td>
<td>To agree on Rules for Water Utilization and Inter-Basin Diversions pursuant to Articles 5 and 6, including 1) time frame for the wet and dry seasons; 2) location of hydrological stations, and flow level requirements at each station; 3) criteria for determining dry season surplus water on the mainstream; 4) mechanism to monitor intra-basin use; and 5) mechanism to monitor inter-basin diversions from the mainstream.</td>
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<td>Article 6 Maintenance of Flows on the Mainstream</td>
<td>Maintenance of the flows on the mainstream from diversions, storage releases, or other actions of a permanent nature; except in the cases of historically severe droughts and/or floods: To adopt guidelines for the locations and levels of the flows, and monitor and take action necessary for their maintenance as provided in Article 26.</td>
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<td>Article 7</td>
<td>1. Take all appropriate measures to prevent the causing of significant harm to other. 2. Where significant harm is caused, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.</td>
<td>Article 7. Prevention and Cessation of Harmful Effects</td>
<td>To make every effort to avoid, minimize and mitigate harmful effects that might occur to the environment, especially the water quantity and quality, the aquatic (eco-system) conditions, and ecological balance of the river system. Where one or more States is notified with proper and valid evidence that it is causing substantial damage, that State or States shall cease immediately the alleged cause of harm until such cause of harm is determined in accordance with Article 8.</td>
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<tr>
<td>Article 7</td>
<td></td>
<td>Article 8. State Responsibility for Damages</td>
<td>Where harmful effects cause substantial damage, the party(ies) concerned shall determine all relative factors; the cause, extent of damage and responsibility in conformity with state responsibility, and to address and resolve all issues, differences and disputes as provided in Articles 34 and 35, and in conformity with the Charter of the United Nations.</td>
</tr>
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<td>Article 8</td>
<td>1. Cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse. 2. May consider the establishment of joint mechanisms or commissions, as deemed necessary.</td>
<td>Article 2. Projects, Programs and Planning</td>
<td>Promote, support, cooperate and coordinate in the development of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use, with emphasis and preference on joint and/or basin-wide development projects and basin programs.</td>
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<td>Article 9</td>
<td>1. shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological</td>
<td>Article 24. Functions of Joint Committee</td>
<td>The functions of the Joint Committee are: C. To regularly obtain, update and exchange information and data necessary to implement this Agreement.</td>
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<td>information</td>
<td>nature and related to the water quality as well as related forecasts. 2. Shall employ its best efforts to comply with the request for additional information at cost. 3. Shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States.</td>
<td>E. To assign tasks and supervise the activities of the Secretariat ……, including the maintenance of databases and information necessary.</td>
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<td>Article 10 Relationship between different kinds of uses</td>
<td>1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses. 2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs</td>
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<td>Article 11 Information concerning planned measures</td>
<td>Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.</td>
<td>Comments: it is provided for in the Procedures on Notification, Prior Consultation and Agreement.</td>
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<td>Article 12 Notification concerning planned measures with possible adverse effects</td>
<td>Before implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.</td>
<td>Comments: it is provided for in the Procedures on Notification, Prior Consultation and Agreement. The requirement is differentiated based on type, location and season, of uses</td>
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<td>Article 13 Period for</td>
<td>Unless otherwise agreed: (a) shall allow the notified States a period of six</td>
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<td>reply to notification</td>
<td>months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it; (b) This period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.</td>
<td></td>
<td>Agreement.</td>
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<td>Article 14</td>
<td>During the period referred to in article 13, the notifying State: (a) Shall cooperate by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and (b) Shall not implement or permit the implementation of the planned measures without the consent of the notified States.</td>
<td>Not available in 1995 MA and its procedures. It is also not clear whether notifying state can implement or permit the implementation of the planned measures without the consent of the notified States.</td>
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<td>Article 15</td>
<td>The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.</td>
<td>Comments: it is partially provided for in the non-legally binding Procedures on Notification, Prior Consultation and Agreement.</td>
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<td>Article 16</td>
<td>1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.</td>
<td>Not available in 1995 MA and its procedures. It is important to elaborate on it by the MRC countries.</td>
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<td>2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.</td>
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**Article 17**

**Consultations and negotiations concerning planned measures**

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of article 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.
2. The consultations and negotiations shall be conducted on the basis ... in good faith.
3. During the course of the consultations and negotiations, the notifying State shall, if so requested ..... at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

Comments: it is partially provided for in the non-legally binding Procedures on Notification, Prior Consultation and Agreement.

The requirement is differentiated based on type, location and season, of uses.

It is important to have it in 1995 MA.

**Article 18**

**Procedures in the absence of notification**

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.
2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so

It is important to have it in 1995 MA. It rests with the roles and functions of MRC JC and Council, and conflict resolution provisions.
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<td>inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17. 3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.</td>
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<tr>
<td>Article 19</td>
<td><strong>Urgent implementation of planned measures</strong></td>
<td>Article 19</td>
<td><strong>It is important to have it in 1995 MA.</strong></td>
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<tr>
<td>1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17. 2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information. 3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.</td>
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<td>Article 20</td>
<td>Protection</td>
<td>Article 3. Protection</td>
<td>To protect the environment, natural resources, aquatic life and conditions, and ecological</td>
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<td>Provision</td>
<td>Description (1997 UNWC)</td>
<td>Article 21 Prevention, reduction and control of pollution</td>
<td>Article 22 Introduction of alien or new species</td>
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<td>and preservation of ecosystems</td>
<td>ecosystems of international watercourses.</td>
<td>1. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse……… 3. Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse….</td>
<td>Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.</td>
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<td>environment</td>
<td>international rules and standards.</td>
<td>Article 11. Status</td>
<td>The institutional framework for cooperation in the MRB ……shall be called the Mekong River Commission and shall, for the purpose of the exercise of its functions, enjoy the status of an international body……</td>
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<td>Article 24 Management</td>
<td>1…..shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism. 2……...:</td>
<td>Article 12. Structure of Mekong River Commission Article 13. Assumption of Assets, Obligations and Rights Article 14. Budget of the Mekong River Commission</td>
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<td>Article 28. Purpose of Secretariat Article 29. Location of Secretariat Article 30. Functions of the Secretariat</td>
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<td>Article 25 Regulation</td>
<td>1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse. 2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake. 3. For the purposes of this article, “regulation” means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.</td>
<td>Article 26. Rules for Water Utilization and Inter-Basin Diversions</td>
<td>JC shall prepare and propose for approval of the Council, inter alia, Rules for Water Utilization and Inter-Basin Diversions ………, including but not limited to: 1) establishing the time frame for the wet and dry seasons; 2) establishing the location of hydrological stations, and determining and maintaining the flow level requirements at each station; 3) setting out criteria for determining surplus quantities of water during the dry season on the mainstream; 4) improving upon the mechanism to monitor intra-basin use; and 5) setting up a mechanism to monitor inter-basin diversions from the mainstream.</td>
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<td>Article 26 Installations</td>
<td>1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse. 2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations ……………</td>
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<td>Comments: It is important to have this provision as more dams are being built and operated in the MRB.</td>
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<td>Article 27</td>
<td>Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to</td>
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<td>Comments: it is important to elaborate on this provision</td>
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<td>Prevention and mitigation of harmful conditions</td>
<td>prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.</td>
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| Article 28 | 1. For the purposes of this article, “emergency” means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.  
2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.  
3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.  
4. When necessary, watercourse States shall jointly develop contingency plans ........... | Article 10. Emergency Situations | Whenever a Party becomes aware of any special water quantity or quality problems constituting an emergency that requires an immediate response, it shall notify and consult directly with the party(ies) concerned and the Joint Committee without delay in order to take appropriate remedial action.  
Comments: it is important to elaborate on this provision, especially on the definition of emergency. Yali Falls dam incidence in 2000 (Cambodia and Viet Nam) is a case in point. |
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<td>Article 29</td>
<td><strong>International watercourses and installations in time of armed conflict</strong>&lt;br&gt;Article 30 <strong>Indirect procedures</strong>&lt;br&gt;Article 31 <strong>Data and information vital to national defence or security</strong>&lt;br&gt;Article 32 <strong>Non-discrimination</strong></td>
<td>Not included</td>
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<td><strong>Article 33</strong> Setlement of disputes</td>
<td>1. In the event of a dispute between two or more parties concerning the interpretation or application of the present Convention, the parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.</td>
<td><strong>Article 34. Resolution by Mekong River Commission</strong></td>
<td>Whenever any difference or dispute may arise between two or more parties to this Agreement regarding any matters covered by this Agreement and/or actions taken by the implementing organization ........., the Commission shall first make every effort to resolve the issue as provided in Articles 18.C and 24.F.</td>
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<td><strong>Article 35. Resolution by Governments</strong></td>
<td>In the event the Commission is unable to resolve the difference or dispute within a timely manner, the issue shall be referred to the Governments to take cognizance of the matter for resolution by negotiation through diplomatic channels within a timely manner, and may communicate their decision to the Council for further proceedings as may be necessary to carry out such decision.</td>
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<td>Should the Governments find it necessary or beneficial to facilitate the resolution of the matter, they may, by mutual agreement, request the assistance of mediation through an entity or party mutually agreed upon, and thereafter to proceed according to the principles of international law.</td>
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<td>If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.</td>
<td>Comment: Submitting the dispute to arbitration or to the International Court of Justice is not directly provided for in MA.</td>
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<td>3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the parties otherwise agree.</td>
<td>Comment: Time-lines for moving from one means of resolution to next should be considered in MA framework.</td>
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<td>4. A Fact-finding Commission shall be established, composed of one member nominated by each party concerned and in addition a member not having the nationality of any of the parties concerned chosen by the nominated members who shall serve as Chairman.</td>
<td>MRC has recently practiced the panel of experts and limited form of fact finding visit (See BDP 2 and Xayabury dam case).</td>
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<td>5. If the members nominated by the parties are unable to agree on a Chairman within three months ......of the request for the establishment of the Commission, any party concerned may request the</td>
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| Secretary | 10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a party which is not a regional economic integration organization may declare in a written instrument submitted to the depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory ipso facto, and without special agreement in relation to any party accepting the same obligation:  

(a) Submission of the dispute to the International Court of Justice; and/or  

(b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention. | Article 34 | The present Convention shall be open for signature by all States and by regional economic integration organizations from 21 May 1997 until 20 May 2000 at United Nations Headquarters in New York. |

**Article 35**  
Ratification, acceptance, approval or accession by States and by regional economic integration organizations.

**Article 36**  
Entry Into Force and Prior Agreements  
This Agreement shall:  
A. Enter into force among all parties, with no retroactive effect upon activities and projects previously existing, on the date of consent to be bound by signature, ratification or approval by the appointed plenipotentiaries.  
B. Replace the Statute ……...  

MA enters into force on the day of signature without explicitly requiring its incorporating into the national system.
<table>
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<tr>
<th>Provision</th>
<th>Description (1997 UNWC)</th>
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<tr>
<td>approval or accession</td>
<td>..................................................</td>
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<td>Article 36</td>
<td><strong>Entry into force</strong></td>
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<tr>
<td>1.</td>
<td>The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary General of the United Nations.</td>
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<td>Article 37</td>
<td><strong>Amendments, Modification, Supersession and Termination</strong></td>
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<td>Article 40</td>
<td><strong>Suspension and Withdrawal</strong></td>
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<td>Article 41</td>
<td><strong>United Nations and International Community Involvement</strong></td>
</tr>
<tr>
<td>Article 42</td>
<td><strong>Registration of Agreement</strong></td>
</tr>
<tr>
<td>ANNEX ARBITRATION</td>
<td>The arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present annex.</td>
</tr>
</tbody>
</table>
| It can be of relevance to MRC. | Protocol to the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin for the Establishment and
<table>
<thead>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commencement of the Mekong River Commission</td>
</tr>
</tbody>
</table>
Appendix A9

Presentation:
Regional Perspectives of UNWC
Transboundary Treaties and Institutions

1. Transboundary Waterways
2. Transboundary Treaties and Institutions
3. Existing Treaties and Institutions
4. Regional Stakeholder Interviews
5. What the Research is Saying
   a. Water Related Problems
   b. Comparing the 1995 MA and 1997 UNWC

Presentation Outline

- Bilateral agreements
  - Countries have been conducting bilateral cooperation negotiations with its neighboring countries
- 1995 Mekong Agreement
  - Member countries agree to cooperate in all fields of sustainable development and in the utilization, management and conservation of water and related resources in the Mekong River Basin
- Association of Southeast Asian Nations (ASEAN)
  - The focus of this agreement are economic development in the region and for strengthening partnerships, regional stability, and to advance capacity development through training and education
- The International Water Law and UN Watercourses Convention
- Greater Mekong Sub-region (GMS)
  - Poverty reduction, food security, climate change and disaster mitigation, disease reduction, energy sufficiency, and environmental sustainability are considered key to fostering an “integrated, prosperous, and harmonious subregion”

Name of Organizations

<table>
<thead>
<tr>
<th>Name of Organizations</th>
<th>China</th>
<th>Myanmar</th>
<th>Laos</th>
<th>Thailand</th>
<th>Cambodia</th>
<th>Vietnam</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. ASEAN Regional Forum (ARF)</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>26</td>
</tr>
<tr>
<td>2. Greater Mekong Sub-region (GMS)</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>06</td>
</tr>
<tr>
<td>3. UN Economic and Social Commission for Asia and the Pacific (UNESCAP)</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>53</td>
</tr>
<tr>
<td>5. Mekong Commercial</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Mekong - China</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Upper Mekong - China</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Lower Mekong - China</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Mekong River Commission (MRC)</td>
<td>DIP</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>04-2</td>
</tr>
<tr>
<td>11. ASEAN</td>
<td>DIP</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>10-3</td>
</tr>
</tbody>
</table>
Transboundary Treaties and Institutions: Major Limitations

Common adherence to international environmental treaties and regional organizations, but not yet common expectations and the acceptance of those key international water principles and norms. Mainly due to:

1) Most of the organizations and treaties relations mainly focus on trade, security and infrastructure development;
2) Most of those agreements are not strictly for the sustainable development of the Mekong Region international rivers per se;
3) China is not a member of key natural resources regional organizations such as Mekong River Commission (MRC) and its 1995 Mekong Agreement; and
4) There is a lack of common or coordinated positions;

Regional Stakeholder Interviews

- Semi-structured interviews with:
  - Transboundary water governance experts
  - Government representatives from ministries related to water resource management
  - Civil Society dealing with water resource management
- 75 interviews were conducted in:
  - Lao PDR
  - Thailand
  - Cambodia
  - Vietnam
- Information collected included:
  - State of country-specific water law
  - Perspectives of the 1997 UNWC
  - Information lacking for the purposes of understanding and supporting the Convention

Stakeholder Interviews:

- Awareness of International Agreements
- Perspectives of the 1997 UNWC

Identified barriers:
- Lack of genuine interest or of commitment for sharing the benefits of rivers
- Lack of institutional capacity for effective resource management
- Lack of understanding of the impacts from development
- Unclear definitions of roles and responsibilities for water resources management, fatigue and priority in law and treaty making;
- Lack of understanding of the Convention “states are reluctant to enter into an agreement that they do not understand”.
- Lack of rules, procedures, institutional capacity, and human resources for collaboration, information sharing, and decision-making around treaty making or ratification
- Underlying tensions about hydropower development at the potential detriment to others
- Complicated administrative and financial requirements for capacity building surrounding the UNWC
- Imbalanced emphasis on environmental governance, diminishing opportunities for economic improvements (especially related to hydropower development)
Opportunities for ratification:

- Lao PDR: Appears to be no awareness of official position on ratification. A Ministry of Foreign Affairs official indicated his ministry would support the Convention.
- Thailand: Most were personally supportive. Official support was unclear.
- Cambodia: Many top officials support ratification and feel the Government should consider ratification.

What the Survey is Saying:
Water Related Problems

<table>
<thead>
<tr>
<th>Key Concerns</th>
<th>Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe fish kill</td>
<td>Reduction of fish stocks, decrease in fishery productivity, loss of fisheries and fisheries-related revenues.</td>
</tr>
<tr>
<td>Reduction of river flow</td>
<td>Decrease in water availability, increased flooding, and decreased navigation.</td>
</tr>
<tr>
<td>River bank, bed erosion and sedimentation</td>
<td>Erosion and deposition of sediments, increased flooding, and decreased navigation.</td>
</tr>
<tr>
<td>Obstruction to navigation</td>
<td>Physical barriers to navigation by dams, weirs, and bridges, and impaired navigation.</td>
</tr>
<tr>
<td>Water quality deterioration</td>
<td>Pollution of surface and ground water, increased salinity and river water fluctuation.</td>
</tr>
<tr>
<td>Fisheries productivity and ecosystem functioning</td>
<td>Reduction of fishery productivity, loss of fisheries and fisheries-related revenues.</td>
</tr>
<tr>
<td>Deforestation</td>
<td>Loss of forest cover, decreased forest productivity, and increased erosion.</td>
</tr>
<tr>
<td>No harmonization of policy targets and impact assessment</td>
<td>Lack of agreement on assessment methodologies and policy responses, inefficient resource development, and increased risk of destruction of valuable habitats.</td>
</tr>
</tbody>
</table>

What the Research is Saying:
Comparing the 1995 MA and the 1997 UNWC Summary

- The MRC remains the only organization/institution with the states as members acting under a joint agreement and with a long-term ambition.
- The 1995 can be very clear about what needs to be accomplished but lacks definitions, and lacks particulars on how to achieve goals or to what extent.
- 16+ years of experience shows the 1995 MA is still developing and can help manage, but not solve/prevent issues, too open to interpretation, and has yet to secure the environmental, economic and social benefits it promises.
- The 1997 UNWC has clearly defined and enforceable potential for resolving key water-related problems currently being felt throughout the Mekong Region.

Thank you!

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Appendix A10

Presentation:
National Perspectives of UNWC:
Lao PDR
Legal framework.

  - Article 12: Foreign policy:
    - Lao PDR pursues a foreign policy of peace, independence, friendship and cooperation, and promotes relations and cooperation with all countries on the basis of the following principles: peaceful coexistence; respect for each other's independence, sovereignty and territorial integrity; non-interference in each other's internal affairs; and equality and mutual benefit.
  - Article 53 (11): the National Assembly:
    - To decide on the ratification of or (withdraw from) treaties and agreements signed with foreign countries in accordance with the laws;
  - Article 67 (13): the President:
    - To issue the ratification of or (secession from) treaties and agreements signed with foreign countries.
  - Article 70 (8): the Government:
    - To sign treaties and agreements with foreign countries and guide their implementation.

- Presidential Ordinance on the Conclusion of, Accession to and Implementation of International Treaties:
  - adopted in 2009.
  - Article 5: Basic principles of treaties: before conclusion of, accession to, and implementation of treaties, it should be based on the following principles:
    - Ensure the conformity with the Constitution of the Lao PDR.
    - Respect and observe the foreign policy of the Lao PDR.
  - Article 6: scope of application:
    - Applied to the management of international treaties in the name of the State and in the name of the Government to which the Lao PDR is a party.

- Procedures for conclusion of treaties (article 20, 21)
  - A lead agency assigned by the Government shall take lead in studies and submit for the Government approval through the MoFA in order to negotiate and sign treaties in the name of the State or in the name of the Government in coordination with relevant agencies and MoI.
  - After signature, the lead agency for the conclusion of international treaties in the names of State or of Government shall submit the document for ratification in conformity with Laws of the Lao PDR in coordination with MoFA.
  - With fifteen days after having decided on ratification, the National Assembly will submit it to the President for promulgating the ratification.
  - Pursuant to the promulgation of ratification by President, Minister of Foreign Affairs signs an Instrument of Ratification or Accession to treaties, which the MoFA shall deposit to the relevant party or to the depository of that treaty with fifteen days after promulgating ratification.

Type of treaties (article 7):

- Treaties in the name of State:
  1. Treaties on the strengthening of friendship and cooperation; peace, security, boundaries, territory and State Sovereignty.
  2. Treaties on fundamental rights and obligations of citizens, and mutual legal assistance in criminal and civil matters
  3. Treaties on universal international organizations and important regional organizations.

- Treaties in the name of Government:
  - Treaties on concluded or acceded to in the name of the Government.
  - Treaties on those fields which are not prescribed in 1 and 2 above.
  - Treaties on the cooperation in the framework of international and regional organizations which are not prescribed in 3 above.

Contents

- Legal framework.
  - Constitution.
  - Presidential Ordinance.
- Number of bilateral, regional and multilateral treaties Lao PDR is party to.
- Lao PDR and UN Treaty Event.
- Lao PDR and UN Watercourses convention.
Number of bilateral, regional and multilateral treaties
Laos is party

- Bilateral agreements or treaties:
  - Lao PDR has signed with more than 50 countries, it has more than 300 agreements.
- Regional and sub-regional treaties:
  - More than 300 treaties. One of the important regional treaties is the Mekong River Agreement 1995.
- Multilateral treaties (UN convention and conventions under Specialized Agencies of the UN):
  - More than 150 conventions.
- Different fields: human rights, environment, transport and communication, health, trade, agriculture, education and cultural matters, corruption, counter Terrorism and other fields.

Lao PDR and UN Treaty Event

- Every year the UN Secretary General announces about the UN treaty Event and invites UN Members to take part in the event which is organized during the regular session of the General Assembly in New York.
- Lao PDR has been actively participating in the annual UN Treaty Event, every year Lao PDR prepares for the event by organizing workshops, seminars to discuss the possible conventions that Laos may ratify.
- This year, we are in the process of studying the possibilities to ratify some conventions.

Lao PDR and UN Watercourse Convention

- One the studied conventions was the 1997 UN Watercourses Convention in 2010.
- In the studying of this Convention representatives from different government institutions dealing with water and environment, as well as Ministries of foreign Affairs, Ministry of Justice, National Assembly, Government’s office participated.
- Comparative study was made regarding the obligations of the Lao PDR under the 195 Mekong Agreement and the Obligations under the UN 1997 Convention and the conclusion was that there many provisions of the Mekong Agreement are seminal to the provisions of the 1997 Convention but at the same time the 1997 Convention contains some provisions which are not found in the Mekong Agreement.

- For these particular provisions, we need more time to study in order to make sure that if Lao PDR ratifies this convention it should be in the national interest of the country and the national interest of the country is ensured also through active participation and joining and implementing international and regional treaties and agreements.
- Since this convention is not yet in force, it is difficult for Lao PDR to go ahead with the study of the possibility of becoming a party to this convention.
- The workshop in Siem Reap here on the 1997 UN Watercourses Convention is very important for Lao PDR as there are experts and officials from the region who come together and discuss this convention.

- From participation to workshop, it will make us to deepen our understanding of the convention so that we can continue our research and study of the convention.
- Awareness raising of water law especially this convention is of useful to Lao PDR as the country relies very much on the Mekong River and its tributaries in the national development.
- The Lao Government is committed to uphold the internationally recognized norms in the field of international water and environmental law as well as the related international obligations.

Thank you for your attention
Appendix A11

Presentation:
National Perspectives of UNWC:
Thailand
Thai Water Law Consists of Three Parts

- Water rights
- Water pollution
- Organizations responsible for water management, development and conservation

Thai Water Rights

- Surface water
  - Water in watercourses in general
  - Water in irrigation canals
  - Water in reservoirs
  - Surface runoff
- Groundwater

Water in Watercourses in General

- Water is public domain and anybody can have free access to water. (Civil and Commercial Code)
- This principle is in favor of those in upstream or having means to exploit the river.
- Although some restrictions on water use are imposed on riparian landowners, it still seems to be in favor of upstream users. For example, upstream users can withdraw water as much as they can to meet their reasonable need.

Water in Irrigation Canals

- A watercourse could be designated or built as an irrigation canal under the Royal Irrigation Act, 1942.
- Royal Irrigation Department (RID) regulates water use in irrigation canals.
- Water allocation is carried out by RID with no requirement of water user participation.
- The minister enforcing this law has power to impose charge on water use in irrigated areas or canals but the charge is very low.

Water in Reservoirs

- If reservoirs on private land, the water belongs to the landowner.
- If reservoirs on public land or former watercourses, everybody has free access to water.
- However, a special law may designate a particular state organization to regulate the allocation of the water. For example, the Electricity Generating Authority of Thailand and RID are assigned to regulate water from the largest dam in Thailand.
Surface Runoff
• A lower landowner has to take water from higher land naturally flowing to his land.
• A higher landowner is entitled to retain water flowing through his land, in the amount to meet his reasonable need.

Groundwater
• The extraction of groundwater is regulated by the Groundwater Act, 1977.
• A person wishing to extract groundwater must apply for a permit from the Department of Groundwater Resources.
• Water charge is imposed on groundwater users.

Water Pollution (1)
• Water pollution is regulated by several pieces of legislation.
• The framework legislation is the Enhancement and Conservation of the National Environmental Quality Act, 1992.
• This Act authorizes the National Environment Board to set up stream standards and authorizes the Minister of Natural Resources and Environment to issue effluent standards for wastewater from certain point sources.

Water Pollution (2)
• Some laws contain provisions protecting watercourses, lakes and coastal waters from being polluted.
• Others regulate certain activities that could possibly cause water pollution. For example the Factory Act, 1992, sets up effluent standards for wastewater discharged from factories.

Organizations Responsible for Water Management, Development and Conservation
• Water is under the responsibility of several departments.
• To ensure that water projects and work plans prepared by different departments would be in harmony, the National Water Resources Committee (NWRC) is set up as a water apex body to formulate water policy and direct as well as coordinate such projects and plans.
• NWRC however still looks like a paper tiger.
• When a major flood hit Thailand in 2011, a couple more national coordinating bodies were created to deal with the problem.

Need for a Comprehensive Water Law
• Water rights are not clearly enough.
• The existing laws are not able to handle water use conflicts properly.
• NWRC lacks actual authority to coordinate all water projects and plans.
UN Watercourses Convention in Thailand

- UNWC is very little known to the public and even to most government officials.
- The Thai government still does not raise this issue for the public to discuss whether Thailand should ratify UNWC.
- It is a challenge how to call public attention to UN Watercourses Convention in Thailand.
Appendix A12

Presentation:
National Perspectives of UNWC:
Cambodia
Law on Water Resources Management of the Kingdom of Cambodia

- In 2000, Ministry of Water Resources and Meteorology (MOWRAM) prepared the ‘Law on Water Resources Management of the Kingdom of Cambodia’.
- In 2001, MOWRAM organized the Consultation and Stakeholder Workshop.
- In 2002, MOWRAM submitted this law to the Council of Ministers (COMs) and also sent to the National Assembly in 2002. Yet, it is required for more revision.
- In 2005, MOWRAM submitted it to COMs.
- On 22 May 2007, this law was ratified by the National Assembly.

In 2002, MOWRAM submitted this law to the Council of Ministers (COMs) and also sent it to the National Assembly. Yet, it is required for more revision.

On 22 May 2007, this law was ratified by the National Assembly.

On 29 June 2007, this law was ratified by the Senate.

This law contains 11 chapters and 41 articles.

On 29 June 2007, this law was signed by the King.

On 11 June 2008, this law was adopted by the Senate.

Law on Water Resources Management of the Kingdom of Cambodia (2)

- This law contains 11 chapters and 41 articles.
- Article 34 of the law on Water Resources Management states that the Kingdom of Cambodia has the rights to use, develop and manage international basin as territory within its reasonable and equitable share, consistent with obligations stemming from the international agreements to which Cambodia is a party.
- MOWRAM shall take account of the Mekong Water utilization at all parts.
- The Kingdom of Cambodia has the rights to use, develop and manage international basin on its territory within its reasonable and equitable share, consistent with obligations stemming from the international agreements to which Cambodia is a party.
- MOWRAM shall take account of the Mekong Water utilization at all parts.
- The Kingdom of Cambodia has the rights to use, develop and manage international basin as territory within its reasonable and equitable share, consistent with obligations stemming from the international agreements to which Cambodia is a party.
- MOWRAM shall take account of the Mekong Water utilization at all parts.
- The Kingdom of Cambodia has the rights to use, develop and manage international basin on its territory within its reasonable and equitable share, consistent with obligations stemming from the international agreements to which Cambodia is a party.
- MOWRAM shall take account of the Mekong Water utilization at all parts.
- The Kingdom of Cambodia has the rights to use, develop and manage international basin as territory within its reasonable and equitable share, consistent with obligations stemming from the international agreements to which Cambodia is a party.
- MOWRAM shall take account of the Mekong Water utilization at all parts.

Law on Water Resources Management of the Kingdom of Cambodia (3)

- After this law has been adopted and implemented, it was too broad. Therefore, MOWRAM prepared 4 sub-degrees to support on the water resources management in Cambodia.
  1. Sub-degree on water resource management
  2. Sub-degree on water quality
  3. Sub-degree on water licensing
  4. Sub-degree on farmer water user community

National Awareness Workshop and In dept Training on UNWC

7-9 May 2012, Bee Hotel, Siem Reap, Cambodian

1. Expectations:
   • Knowledge and awareness around TWM:
     - Compilation of relevant reports and documents, gặp mặt các bên liên quan.
   • Better understanding of the UNWC:
     - Theoretical/practical aspects;
   • Negotiation skills:
     - Negotiation tools;
   • Better understanding/awareness about IWL & the Mekong Agreement:
     - Development of an academic program with ITC & scholarships for PhDs;
   • Value added/concerns:
     - An assessment of the compatibility/conflict between the UNWC and national legislation;
     - Requirements for ratification: process, steps, key considerations;
     - Similarities/consistency/complementarities between the UNWC & the 1995 MA;
     - Ratification/implementation costs and benefits;
     - Development of an action plan, with the assistance of advisors and consultants, which included:
     - Significance:
       - Development of a platform for training and research.
       - A global platform for training and research.
       - A common platform for training and research.
       - A global platform for training and research.

2. Next steps:
   • Reporting on management and other activities after the training:
     - Development of an action plan for the implementation and continuing activities, which included:
     - An awareness of the compatibility/conflict between the UNWC and national legislation;
     - Ratification/implementation costs and benefits:
     - Development of an action plan, with the assistance of advisors and consultants, which included:
     - Significance:
       - Development of a platform for training and research.
       - A global platform for training and research.
       - A common platform for training and research.
       - A global platform for training and research.

3. Value added:
   • Better understanding of the UNWC:
     - Theoretical/practical aspects;
   • Negotiation skills:
     - Negotiation tools;
   • Better understanding/awareness about IWL & the Mekong Agreement:
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     - Requirements for ratification: process, steps, key considerations;
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       - A global platform for training and research.
       - A common platform for training and research.
       - A global platform for training and research.

4. Next steps:
   • Reporting on management and other activities after the training:
     - Development of an action plan for the implementation and continuing activities, which included:
     - An awareness of the compatibility/conflict between the UNWC and national legislation;
     - Ratification/implementation costs and benefits:
     - Development of an action plan, with the assistance of advisors and consultants, which included:
     - Significance:
       - Development of a platform for training and research.
       - A global platform for training and research.
       - A common platform for training and research.
       - A global platform for training and research.
THANK YOU FOR YOUR ATTENTION
Appendix A13

Presentation:
National Perspectives of UNWC:
Viet Nam
Vietnam has entered and is one of 103 states who voted for one of most important treaties on water «UN Convention of the Law on the Non-navigational Uses of International Watercourses 1997» (UNWC).

**STAKEHOLDER INTERVIEWS**

- 15 Officials from Ministry of Foreign Affair (MOFA)
- 5 from VNMC, Line Ministries, Ministry of Natural Resources (MONRE) and Ministry of Agriculture and Rural Development (MARD)
- 5 from NGOs and other stakeholders

**STAKEHOLDER’S UNDERSTANDINGS**

<table>
<thead>
<tr>
<th>Good</th>
<th>Moderate</th>
<th>None</th>
</tr>
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<tbody>
<tr>
<td>1995 Mekong Agreement</td>
<td>3</td>
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</tr>
<tr>
<td>1997 UNWC</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>Great Mekong Sub-region</td>
<td>1</td>
<td>20</td>
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<td>ASEAN water related projects</td>
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<tr>
<td>Other transboundary water related</td>
<td>13</td>
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</tr>
</tbody>
</table>

**AWARENESS OF STAKEHOLDERS ON UNWC AND RELATED LAWS**

**Involvement in decision-making process related to the 1995 MA & 1997 UNWC**

- Yes: 0
- No: 25
What have been the main events that resulted in transboundary water issues being on the discussion agenda?

- The lack of water in lower basin of transboundary rivers. Natural calamity (flood, erosion, etc.) often occurs in the river basin.
- Some countries in Sub – Mekong region have built many hydroelectric dams which affect to the flowing speed of the river; Natural calamity (flood, erosion, etc.) often occurs in the river basin.
- The water resources are polluted; Many diseases appear in great rivers basins.
- There are too many hydroelectric dams built, leading to the drainage of water resource.

Who main policy-makers on this topic?

- Ministry of Natural Resources and Environment, Ministry of Foreign Affairs, The Government
- The Government, by proposals of Ministry of Natural Resources and Environments and Ministry of Agriculture

Does your organization or country have an official position on ratification of the 97 UN Watercourses Convention?

- Yes: 25
- No: 0

Organization or country support ratification of the Convention?

- Yes: 25
- No: 0
Progress of Ratification

April 2011

DWR and VNMCS propose MONRE for proceeding of ratification of UNWC

Benefits of the Convention’s entry into force

• Creating abiding legal framework for managing and using water of transboundary resources.

• Take more responsible for using the water resources in an equal and appropriate way.

• Found legal basic for use of international water resources to be regulated by international law.

• Increasing the responsibility of relevant countries for using water resources

• Build the legal framework for countries

Key constraints and challenges in effective transboundary basin management at the moment?

• Loose cooperation framework among countries

• Participate in the Convention. The difference in legal abidance of different countries.

• Loose cooperation framework among countries in the region.

.........

FUTURE NEEDS

Topic 1

• Propaganda on benefits of participating in the 1997 Convention

• Public awareness of benefits to join the 1997 UNWC.

• Data, information on relating to management of transboundary watercourses.

FUTURE NEEDS

Topic 2

• Responsibility, right and obligations of each member country in the protection of water resources of transboundary water course.

• Mediation mechanisms to settle/resolute the water conflicts.
Preferred Training format

• Seminar/workshop (how many days?)
  – 2 days
  – 5-10 days
  – 3 days
  – 1 day
  – 1 week

• Self study materials in toolkit
  – 1997 Convention
  – Documentation on the Convention

• Interactive distance learning
  - Through the internet
  - Magazine
Appendix A14

Presentation:
Ratification of UNWC:
Why Should We Care?
Entry into force of the UN Watercourses Convention: Why should we care?

Flavia Rocha Loures

The UN Watercourses Convention:
Goals, objectives and content

“Ensure the utilisation, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilisation thereof for present and future generations;” whilst “taking into account the special situation and needs of developing countries.” (Preamble)

The UN Watercourses Convention: Legal Objective

- Codification of customary law
- Clarification of customary law
- Framework for the development of customary law

Non-ratification & non-entry into force: Legal Effects

The UN Watercourses Convention: Functions

- A common denominator for
  - Inspiring future watercourse agreements (new or revised)
  - Supporting existing agreements

Transboundary Water Resources: A Case for Multi-level Legal Governance

UN Watercourses Convention; ILC Draft Articles
Amazon Treaty
Agreements on the Mekong, Congo
National laws incorporating concerns with transboundary waters
Cooperation in border areas between local communities
The UN Watercourses Convention: Functions

- In the absence of applicable watercourse agreements:
  - A firm common ground governing or guiding interstate relations
  - A mandate for interstate dialogue

The UN Watercourses Convention: Functions

- A mother convention for the development of global treaty law on emerging issues
- A foundation for international water cooperation in support of other multilateral environmental agreements

The UN Watercourses Convention: Effects on non-parties

- A stronger “soft-law” instrument with effects on non-parties
- Consolidation of additional provisions as customary law

Thank you!

http://www.panda.org/what_we_do/how_we_work/policy/conventions/water_conventions/

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Appendix A15

Presentation:
Case Study:
Gabčíkovo-Nagymaros
Background to the case (1)

- Hungary and Czechoslovakia adopted a Treaty on a joint barrage system on 16 September 1977 (Budapest Treaty).
- Cross border barrage system between the towns of Gabčíkovo (Slovak Republic) and Nagymaros (Hungary).
- System designed to eliminate regular flooding, improve navigation and provide hydro-power.
- Part of river diverted into an artificial canal at Dunakiliti (Hungary) to a hydroelectric power plant (720MW) near Gabčíkovo.
- Canal return water into deepened original river bed and at Nagymaros a smaller dam and power plant (158MW) would be constructed.
- Gabčíkovo peak power plant, and Nagymaros limit fluctuations in water level.
- Costs and electricity produced to be shared equally.

Background to the case (2)

1981 Hungary asked to slowdown project due to economic problems
1984 Civil society movement in Hungary protested against the dam – objected to withholding of EIA and concerned over conservation and underground water reserves (supply 1 million with drinking water)
1989 Most of project completed in Slovakia
      Hungary unilaterally suspended works without notice
1991 Construction started on 'variant C'. Reduced reservoir (70%) split at Čunovo dam, and hydropower production (20%). Would be possible to flood Čunovo dam when Dunakiliti dam built
Background to the case (3)

1992 Hungary tried to terminate the treaty, and both parties agreed to submit the dispute to the ICJ.
1993 Tripartite group of experts set up by parties and EC. Parties could not agree on recommendations.
1997 Court handed down a decision.

Three questions submitted to the ICJ

1. Was Hungary entitled to abandon works on the project?
2. Was Slovakia entitled to proceed with Variant C?
3. What were the legal effects of Hungary’s notification and termination of the 1977 Treaty?

Answer 1

- Hungary acted unlawfully when it suspended works on Nagymaros.
- Hungary relied on the ‘state of ecological necessity’ and ‘ecological risk’ to justify this act and the ICJ found that Hungary’s concerns were ‘an essential interest of the State’ but the potential environmental problems did not constitute a ‘grave and imminent peril’ which threatened the State’s interests.
- The Court held that the acts of Hungary were not justified by the exception of necessity relying on Article 25 of the 2001 Draft Articles on International Responsibility of States.

Answer 2

- Slovakia was entitled to proceed with building Variant C but acted unlawfully when it began operating the system and diverting the flow of the Danube.
- The ICJ based it reasoning on the law of state responsibility which requires a countermeasure to be proportional to the unlawful act and the Court found that Hungary was deprived of its right to an equitable and reasonable share of the watercourse.
- The Court also referred to the 1997 UN Watercourses Convention – especially Article 5 in support.

Answer 3

- Hungary was not legally entitled to terminate the 1977 Treaty.
- Both parties were found to have acted unlawfully, and the parties were obligated to enter into negotiations to implement the purpose and obligations of the 1977 treaty given the existing circumstances, which include the operation of Variant C.
- The ICJ also provided the option to bring the dispute back to Court if necessary.

Events since 1997

- More than 13 years after the ICJ decision the parties have been unable to reach a settlement.
- The parties started their negotiations regarding implementation of ICJ Judgment in 1997, several milestones have been achieved including:
  - a 2001 Draft Agreement on implementation of the Judgment, several joint Working Groups on legal matters, economic matters and water management and
  - a Strategic Environmental Assessment of the Bratislava-Budapest section of the Danube,
- but the parties are still unable to agree and proceedings are still pending in the ICJ.
- It is suggested that parties are very close to realising that they may need to ask for third party assistance which could include returning to the ICJ to request an additional judgment as provided for in the Special Agreement.
- However this will be complicated because Slovakia has already requested an additional judgement in 1998 although that procedure was suspended.
Conclusions

• Difficult to identify a winner
• Both States still need to find an equitable solution!
• First environmental case before the ICJ
• Scientific evidence presented by the parties ‘not necessary in order to respond to the questions put to it ... to determine which of those points of view is scientifically better founded’
• ICJ recognised equitable and reasonable utilisation as governing principle

Thank you!

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