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ภาคผนวก

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ก. United Nations Convention on the law of the Non-navigational
uses of international watercourse 1997



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย



*International Law
Commission*

**Convention on the Law of the Non-navigational Uses of International
Watercourses, 1997 ***

The Parties to the present Convention,

Conscious of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,

Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering that successful codification and progressive development of rules of international law regarding non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Taking into account the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,

Expressing the conviction that a 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,

Affirming the importance of international cooperation and good-neighbourliness in this field,

Aware of the special situation and needs of developing countries, Recalling the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,

Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,

Mindful of the valuable contribution of international organizations, both governmental and non-governmental, to the codification and progressive development of international law in this field,

Appreciative of the work carried out by the International Law Commission on the law of the non-navigational uses of international watercourses,

Bearing in mind United Nations General Assembly resolution 49/52 of 9 December 1994,

Have agreed as follows:

PART I INTRODUCTION

Article 1 Scope of the present Convention

1. The present Convention applies to 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.
2. The 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.

Article 2 Use of terms

For the purposes of the present Convention:

- (a) "Watercourse" means a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;
- (b) "International watercourse" means a watercourse, parts of which are situated in different States;
- (c) "Watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated;
- (d) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

Article 3 Watercourse agreements

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.
2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

3. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.
4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.
5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.
6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

Article 4 **Parties to watercourse agreements**

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.
2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

PART II **GENERAL PRINCIPLES**

Article 5 **Equitable and reasonable utilization and participation**

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.
2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

Article 6 **Factors relevant to equitable and reasonable utilization**

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 of the watercourse States concerned;
 - (c) The population dependent on the watercourse in each watercourse State;
 - (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
 - (e) Existing and potential uses of the watercourse;
 - (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
 - (g) The availability of alternatives, of comparable value, to a particular planned or existing use.
2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.
3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article 7
Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.
2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

Article 8
General obligation to cooperate

1. Watercourse States shall 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. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

Article 9
Regular exchange of data and information

1. Pursuant to article 8, watercourse States 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 nature and related to the water quality as well as related forecasts.
2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.
3. Watercourse States 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 to which it is communicated.

Article 10
Relationship between different kinds of uses

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.

PART III
PLANNED MEASURES

Article 11
Information concerning planned measures

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.

Article 12
Notification concerning planned measures with possible adverse effects

Before a watercourse State 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.

Article 13
Period for reply to notification

Unless otherwise agreed:

(a) A watercourse State providing a notification under article 12 shall allow the notified States a period of six 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.

Article 14
Obligations of the notifying State during the period for reply

During the period referred to in article 13, the notifying State:

(a) Shall cooperate with the notified States 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.

Article 15
Reply to notification

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.

Article 16
Absence of reply to notification

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.

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.

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 articles 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 that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.
3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State 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.

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 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.

Article 19
Urgent implementation of planned measures

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.

PART IV
PROTECTION, PRESERVATION AND MANAGEMENT

Article 20
Protection and preservation of ecosystems

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

Article 21
Prevention, reduction and control of pollution

1. For the purpose of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.
2. 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. Watercourse States shall take steps to harmonize their policies in this connection.
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, such as:
 - (a) Setting joint water quality objectives and criteria;
 - (b) Establishing techniques and practices to address pollution from point and non-point sources;
 - (c) Establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

Article 22
Introduction of alien or new species

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.

Article 23
Protection and preservation of the marine environment

Watercourse States shall, individually and, where appropriate, in cooperation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

Article 24
Management

1. 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.
2. For the purposes of this article, "management" refers, in particular, to:
 - (a) Planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

(b) Otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

Article 25 Regulation

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.

Article 26 Installations

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 with regard to:
 - (a) The safe operation and maintenance of installations, facilities or other works related to an international watercourse; and
 - (b) The protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

PART V HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

Article 27 Prevention and mitigation of harmful conditions

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to 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.

Article 28 Emergency situations

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 for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

PART VI MISCELLANEOUS PROVISIONS

Article 29 International watercourses and installations in time of armed conflict

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

Article 30 Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

Article 31 Data and information vital to national defence or security

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

Article 32 Non-discrimination

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

Article 33 Settlement of disputes

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.
2. 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.
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.
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.
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 Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the Parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other Party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.
6. The Commission shall determine its own procedure.
7. The Parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.
8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the Parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the Parties concerned shall consider in good faith.
9. The expenses of the Commission shall be borne equally by the Parties concerned.
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.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b).

PART VII FINAL CLAUSES

Article 34 Signature

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

1. The present Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.
2. Any regional economic integration organization which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

Article 36 Entry into force

1. 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.
2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States.

Article 37

Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX

ARBITRATION

Article 1

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present annex.

Article 2

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article 33 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

Article 3

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute or of any riparian State of the watercourse concerned, nor have his or her usual place of residence in the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.
2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.
3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 4

1. If the Chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of

Justice, who shall make the designation within a further two-month period.

Article 5

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 7

The arbitral tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

Article 8

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

1. The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.
2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.
3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.
4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ข. Helsinki Rules on the use of the water of the international rivers
1966



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

The Helsinki Rules on the Uses of the Waters of International Rivers

Adopted by the International Law Association at the fifty-second conference, held at Helsinki in August 1966. Report of the Committee on the Uses of the Waters of International Rivers
(London, International Law Association, 1967)

CHAPTER 1. GENERAL

Article I

The general rules of international law as set forth in these chapters are applicable to the use of the waters of an international drainage basin except as may be provided otherwise by convention, agreement or binding custom among the basin States.

Article II

An international drainage basin is a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus.

Article III

A "basin State" is a State the territory of which includes a portion of an international drainage basin.

CHAPTER 2. EQUITABLE UTILIZATION OF THE WATERS OF AN INTERNATIONAL DRAINAGE BASIN

Article IV

Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

Article V

I. What is a reasonable and equitable share within the meaning of article IV to be determined in the light of all the relevant factors in each particular case.

II. Relevant factors which are to be considered include, but are not limited to:

1. The geography of the basin, including in particular the extent of the drainage area in the territory of each basin State;

2. The hydrology of the basin, including in particular the contribution of water by each basin State;
3. The climate affecting the basin;
4. The past utilization of the waters of the basin, including in particular existing utilization;
5. The economic and social needs of each basin State;
6. The population dependent on the waters of the basin in each basin State;
7. The comparative costs of alternative means of satisfying the economic and social needs of each basin State;
8. The availability of other resources;
9. The avoidance of unnecessary waste in the utilization of waters of the basin;
10. The practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses; and
11. The degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State.

III. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is reasonable and equitable share, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article VI

A use or category of uses is not entitled to any inherent preference over any other use or category of uses.

Article VII

A basin State may not be denied the present reasonable use of the waters of an international drainage basin to reserve for a co-basin State a future use of such waters.

Article VIII

1. An existing reasonable use may continue in operation unless the factors justifying its continuance are outweighed by other factors leading to the conclusion that it be modified or terminated so as to accommodate a competing incompatible use.

2.(a) A use that is in fact operational is deemed to have been an existing use from the time of the initiation of construction directly related to the use or, where such construction is not required, the undertaking of comparable acts of actual implementation.

(b) Such a use continues to be an existing use until such time as it is discontinued with the intention that it be abandoned.

3. A use will not be deemed an existing use if at the time of becoming operational it is incompatible with an already existing reasonable use.

CHAPTER 3. POLLUTION

Article IX

As used in this chapter, the term "water pollution" refers to any detrimental change resulting from human conduct in the natural composition, content, or quality of the waters of an international drainage basin.

Article X

1. Consistent with the principle of equitable utilization of the waters of an international drainage basin, a State:

(a) Must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State;

(b) Should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin State.

2. The rule stated in paragraph 1 of this article applies to water pollution originating:

(a) Within a territory of the State, or

(b) Outside the territory of the State, if it is caused by the State's conduct.

Article XI

1. In the case of a violation of the rule stated in paragraph 1 (a) of article X of this chapter, the State responsible shall be required to cease the wrongful conduct and compensate the injured co-basin State for the injury that has been caused to it.

2. In a case falling under the rule stated in paragraph 1 (b) of article X, if a State fails to take reasonable measures, it shall be required promptly to enter into negotiations with the injured State with a view towards reaching a settlement equitable under the circumstances.

CHAPTER 4 . NAVIGATION (Articles XII-XX)

CHAPTER 5. TIMBER FLOATING (ArticlesXXI-XXV)

CHAPTER 6. PROCEDURES FOR THE PREVENTION AND SETTLEMENT OF DISPUTES

Article XXVI

This chapter relates to procedures for the prevention and settlement of international disputes as to the legal rights or other interests of basin States and of other States in the waters of an international drainage basin.

Article XXVII

Consistently with the Charter of the United Nations, States are under an obligation to settle international disputes as to their legal rights or other interests by peaceful means in such a manner that international peace and security and justice are not endangered.

It is recommended that States resort progressively to the means of prevention and settlement of disputes stipulated in articles XXIX to XXXIV of this chapter.

Article XXVIII

1. States are under a primary obligation to resort to means of prevention and settlement of disputes stipulated in the applicable treaties binding upon them.
2. States are limited to the means of prevention and settlement of disputes stipulated in treaties binding upon them only to the extent provided by the applicable treaties.

Article XXIX

1. With a view to preventing disputes from arising between basin States as to their legal rights or other interest, it is recommended that each basin State furnish relevant and reasonably available information to the other basin States concerning the waters of a drainage basin within its territory and its use of, and activities with respect to, such waters.

2. A State, regardless of its location in a drainage basin, should in particular furnish to any other basin State, the interests of which may be substantially affected, notice of any proposed construction or installation which would alter the regime of the basin in a way

which might give rise to a dispute as defined in article XXVI. The notice should include such essential facts as will permit the recipient to make an assessment of the probable effect of the proposed alteration.

3. A State providing the notice referred to in paragraph 2 of this article should afford the recipient a reasonable period of time to make an assessment of the probable effect of the proposed construction or installation and to submit its views thereon to the State furnishing the notice.

4. If a State has failed to give the notice referred to in paragraph 2 of this article, the alteration by the State in the regime of the drainage basin shall not be given the weight normally accorded to temporal priority in use in the event of a determination of what is a reasonable and equitable share of the waters of the basin.

Article XXX

In case of a dispute between States as to their legal rights or other interests, as defined in article XXVI, they should seek a solution by negotiation..

Article XXXI

1. If a question or dispute arises which relates to the present or future utilization of the waters of an international drainage basin, it is recommended that the basin States refer the question or dispute to a joint agency and that they request the agency to survey the international drainage basin and to formulate plans or recommendations for the fullest and most efficient use thereof in the interests of all such States.

2. It is recommended that the joint agency be instructed to submit reports on all matters within its competence to the appropriate authorities of the member States concerned.

3. It is recommended that the member States of the joint agency in appropriate cases invite non-basin States which by treaty enjoy a right in the use of the waters of an international drainage basin to associate themselves with the work of the joint agency or that they be permitted to appear before the agency.

Article XXXII

If a question or a dispute is one which is considered by the States concerned to be incapable of resolution in the manner set forth in article XXXI, it is recommended that they seek the good offices, or jointly request the mediation of a third State, of a qualified international organization or of a qualified person.

Article XXXIII

1. If the States concerned have not been able to resolve their dispute through negotiation or have been unable to agree on the measures described in articles XXXI and XXXII, it is

recommended that they form a commission of inquiry or an ad hoc conciliation commission, which shall endeavor to find a solution, likely to be accepted by the States concerned, of any dispute as to their legal rights.

2. It is recommended that the conciliation commission be constituted in the manner set forth in the annex.

Article XXXIV

It is recommended that the States concerned agree to submit their legal disputes to an ad hoc arbitral tribunal, to a permanent arbitral tribunal or to the International Court of Justice if:

- (a) A commission has not been formed as provided in article XXXIII, or
- (b) The commission has not been able to find a solution to be recommended, or
- (c) A solution recommended has not been accepted by the States concerned, and
- (d) An agreement has not been otherwise arrived at.

Article XXXV

It is recommended that in the event of arbitration the States concerned have recourse to the Model Rules on Arbitral Procedure prepared by the International Law Commission of the United Nations at its tenth session b/in 1958.


Article XXXVI

Recourse to arbitration implies the undertaking by the States concerned to consider the award to be given as final and to submit in good faith to its execution.

Article XXXVII

The means of settlement referred to in the preceding articles of this chapter are without prejudice to the utilization of means of settlement recommended to, or required of, members of regional arrangements or agencies and of other international organizations.

จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก ค. Agreement on the Cooperation for the sustainable development
of the Mekong River Basin 1995

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

**AGREEMENT ON THE COOPERATION FOR THE
SUSTAINABLE DEVELOPMENT OF THE MEKONG
RIVER BASIN**

The Governments of The Kingdom of Cambodia, The Lao People's Democratic Republic, The Kingdom of Thailand, and The Socialist Republic of Viet Nam, being equally desirous of continuing to cooperate in a constructive and mutually beneficial manner for sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources, have resolved to conclude this Agreement setting forth the framework for cooperation acceptable to all parties hereto to accomplish these ends, and for that purpose have appointed as their respective plenipotentiaries:

The Kingdom of Cambodia:

H.E. Mr. Ing Kieth
Deputy Prime Minister and Minister of Public Works
and Transport

The Lao People's Democratic Republic:

H.E. Mr. Somsavat Lengsavad
Minister of Foreign Affairs

The Kingdom of Thailand:

H.E. Dr. Krasae Chanawongse
Minister of Foreign Affairs

The Socialist Republic of Viet Nam:

H.E. Mr. Nguyen Manh Cam
Minister of Foreign Affairs

Who, having communicated to each other their respective full powers and having found them in good and due form, have agreed to the following:

CHAPTER I. PREAMBLE

RECALLING the establishment of the Committee for the Coordination of Investigations of the Lower Mekong Basin on 17 September 1957 by the Governments of these countries by Statute endorsed by the United Nations,

NOTING the unique spirit of cooperation and mutual assistance that inspired the work of the Committee for

the Coordination of Investigations of the Lower Mekong Basin and the many accomplishments that have been achieved through its efforts,

ACKNOWLEDGING the great political, economic and social changes that have taken place in these countries of the region during this period of time which necessitate these efforts to re-assess, re-define and establish the future framework for cooperation,

RECOGNIZING that the Mekong River Basin and the related natural resources and environment are natural assets of immense value to all the riparian countries for the economic and social well-being and living standards of their peoples,

REAFFIRMING the determination to continue to cooperate and promote in a constructive and mutually beneficial manner in the sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources for navigational and non-navigational purposes, for social and economic development and the well-being of all riparian States, consistent with the needs to protect, preserve, enhance and manage the environmental and aquatic conditions and maintenance of the ecological balance exceptional to this river basin,

AFFIRMING to promote or assist in the promotion of interdependent sub-regional growth and cooperation among the community of Mekong nations, taking into account the regional benefits that could be derived and/or detriments that could be avoided or mitigated from activities within the Mekong River Basin undertaken by this framework of cooperation,

REALIZING the necessity to provide an adequate, efficient and functional joint organizational structure to implement this Agreement and the projects, programs and activities taken thereunder in cooperation and coordination with each member and the international community, and to address and resolve issues and problems that may arise from the use and development of the Mekong River Basin water and related resources in an amicable, timely and good neighbourly manner,

PROCLAIMING further the following specific objectives, principles, institutional framework and

ancillary provisions in conformity with the objectives and principles of the Charter of the United Nations and international law:

CHAPTER II. DEFINITIONS OF TERMS

For the purposes of this Agreement, it shall be understood that the following meanings to the underlined terms shall apply except where otherwise inconsistent with the context:

Agreement under Article 5: A decision of the Joint Committee resulting from prior consultation and evaluation on any proposed use for inter-basin diversions during the wet season from the mainstream as well as for intra-basin use or inter-basin diversions of these waters during the dry season. The objective of this agreement is to achieve an optimum use and prevention of waste of the waters through a dynamic and practical consensus in conformity with the Rules for Water Utilization and Inter-Basin Diversions set forth in Article 26.

Acceptable minimum monthly natural flow: The acceptable minimum monthly natural flow during each month of the dry season.

Acceptable natural reverse flow: The wet season flow level in the Mekong River at Kratie that allows the reverse flow of the Tonle Sap to an agreed upon optimum level of the Great Lake.

Basin Development Plan: The general planning tool and process that the Joint Committee would use as a blueprint to identify, categorize and prioritize the projects and programs to seek assistance for and to implement the plan at the basin level.

Environment: The conditions of water and land resources, air, flora, and fauna that exists in a particular region.

Notification: Timely providing information by a riparian to the Joint Committee on its proposed use of water according to the format, content and procedures set forth in the Rules for Water Utilization and Inter-Basin Diversions under Article 26.

Prior consultation: Timely notification plus additional data and information to the Joint Committee as provided in the Rules for Water Utilization and Inter-Basin Diversion under Article 26, that would allow the other member riparians to discuss and evaluate the impact of the proposed use upon their uses of water and any other affects, which is the basis for arriving at an agreement. Prior consultation is neither a right to veto the use nor unilateral right to use water by any riparian without taking into account other riparians' rights.

Proposed use: Any proposal for a definite use of the waters of the Mekong River system by any riparian, excluding domestic and minor uses of water not having a significant impact on mainstream flows.

CHAPTER III. OBJECTIVES AND PRINCIPLES OF COOPERATION

The parties agree:

Article 1. Areas of Cooperation

To cooperate in all fields of sustainable development, utilization, management and conservation 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, in a manner to optimize the multiple-use and mutual benefits of all riparians and to minimize the harmful effects that might result from natural occurrences and man-made activities.

Article 2. Projects, Programs and Planning

To 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 of Mekong River Basin waters, with emphasis and preference on joint and/or basin-wide development projects and basin programs through the formulation of a basin development plan, that would be used to identify, categorize and prioritize the projects and programs to seek assistance for and to implement at the basin level.

Article 3. Protection of the Environment and Ecological Balance

To protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin.

Article 4. Sovereign Equality and Territorial Integrity

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.

Article 5. Reasonable and Equitable Utilization

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 Diversion provided for under Article 26 and the provisions of A and B below:

- A. On tributaries of the Mekong River, including Tonle Sap, intra-basin uses and inter-basin diversions shall be subject to notification to the Joint Committee.
- B. On the mainstream of the Mekong River:
 1. During the wet season:
 - a) Intra-basin use shall be subject to notification to the Joint Committee.
 - b) Inter-basin diversion shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.
 2. During the dry season:
 - a) Intra-basin use shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.
 - b) Any inter-basin diversion project shall be agreed upon by the Joint Committee through a specific agreement for each project prior to any proposed diversion. However, should there be a surplus quantity of water available in excess of

the proposed uses of all parties in any dry season, verified and unanimously confirmed as such by the Joint Committee, an inter-basin diversion of the surplus could be made subject to prior consultation.

Article 6. Maintenance of Flows on the Mainstream

To cooperate in the 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:

- A. Of not less than the acceptable minimum monthly natural flow during each month of the dry season;
- B. To enable the acceptable natural reverse flow of the Tonle Sap to take place during the wet season; and,
- C. To prevent average daily peak flows greater than what naturally occur on the average during the flood season.

The Joint Committee shall adopt guidelines for the locations and levels of the flows, and monitor and take action necessary for their maintenance as provided in Article 26.

Article 7. Prevention and Cessation of Harmful Effects

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, from the development and use of the Mekong River Basin water resources or discharge of wastes and return flows. Where one or more States is notified with proper and valid evidence that it is causing substantial damage to one or more riparians from the use of and/or discharge to water of the Mekong River, that State or States shall cease immediately the alleged cause of harm until such cause of harm is determined in accordance with Article 8.

Article 8. State Responsibility for Damages

Where harmful effects cause substantial damage to one or more riparians from the use of and/or discharge to waters of the Mekong River by any riparian State, the party(ies) concerned shall determine all relative factors, the cause, extent of damage and responsibility for damages caused by that State in conformity with the principles of international law relating to state responsibility, and to address and resolve all issues, differences and disputes in an amicable and timely manner by peaceful means as provided in Articles 34 and 35 of this Agreement, and in conformity with the Charter of the United Nations.

Article 9. Freedom of Navigation

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. 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.

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.

CHAPTER IV. INSTITUTIONAL FRAMEWORK

A. MEKONG RIVER COMMISSION

Article 11. Status

The institutional framework for cooperation in the Mekong River Basin under this Agreement 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, including entering into agreements and obligations with the donor or international community.

Article 12. Structure of Mekong River Commission

The Commission shall consist of three permanent bodies:

- **Council**
- **Joint Committee**, and
- **Secretariat**

Article 13. Assumption of Assets, Obligations and Rights

The Commission shall assume all the assets, rights and obligations of the Committee for the Coordination of Investigations of the Lower Mekong Basin (Mekong Committee/Interim Mekong Committee) and Mekong Secretariat.

Article 14. Budget of the Mekong River Commission

The budget of the Commission shall be drawn up by the Joint Committee and approved by the Council and shall consist of contributions from member countries on an equal basis unless otherwise decided by the Council, from the international community (donor countries), and from other sources.

B. COUNCIL

Article 15. Composition of Council

The Council shall be composed of one member from each participating riparian State at the Ministerial and Cabinet level, (no less than Vice-Minister level) who would be empowered to make policy decisions on behalf of his/her government.

Article 16. Chairmanship of Council

The Chairmanship of the Council shall be for a term of one year and rotate according to the alphabetical listing of the participating countries.

Article 17. Sessions of Council

The Council shall convene at least one regular session every year and may convene special sessions

whenever it considers it necessary or upon the request of a member State. It may invite observers to its sessions as it deems appropriate.

Article 18. Functions of Council

The functions of the Council are:

- A. To make policies and decisions and provide other necessary guidance concerning the promotion, support, cooperation and coordination in joint activities and projects in a constructive and mutually beneficial manner for the sustainable development, utilization, conservation and management of the Mekong River Basin waters and related resources, and protection of the environment and aquatic conditions in the Basin as provided for under this Agreement;
- B. To decide any other policy-making matters and make decisions necessary to successfully implement this Agreement, including but not limited to approval of the Rules of Procedures of the Joint Committee under Article 25, Rules of Water Utilization and Inter-Basin Diversions proposed by the Joint Committee under Article 26, and the basin development plan and major component projects/programs; to establish guidelines for financial and technical assistance of development projects and programs; and if considered necessary, to invite the donors to coordinate their support through a Donor Consultative Group; and,
- C. To entertain, address and resolve issues, differences and disputes referred to it by any Council member, the Joint Committee, or any member State on matters arising under this Agreement.

Article 19. Rules of Procedures

The Council shall adopt its own Rules of Procedures, and may seek technical advisory services as it deems necessary.

Article 20. Decisions of Council

Decisions of the Council shall be by unanimous vote except as otherwise provided for in its Rules of Procedures.

C. JOINT COMMITTEE

Article 21. Composition of Joint Committee

The Joint Committee shall be composed of one member from each participating riparian State at no less than Head of Department level.

Article 22. Chairmanship of Joint Committee

The Chairmanship of the Joint Committee will rotate according to the reverse alphabetical listing of the member countries and the Chairperson shall serve a term of one year.

Article 23. Sessions of Joint Committee

The Joint Committee shall convene at least two regular sessions every year and may convene special sessions whenever it considers it necessary or upon the request of a member State. It may invite observers to its sessions as it deems appropriate.

Article 24. Functions of Joint Committee

The functions of the Joint Committee are:

- A. To implement the policies and decisions of the Council and such other tasks as may be assigned by the Council.
- B. To formulate a basin development plan, which would be periodically reviewed and revised as necessary; to submit to the Council for approval the basin development plan and joint development projects/programs to be implemented in connection with it; and to confer with donors, directly or through their consultative group, to obtain the financial and technical support necessary for project/program implementation.
- C. To regularly obtain, update and exchange information and data necessary to implement this Agreement.
- D. To conduct appropriate studies and assessments for the protection of the

environment and maintenance of the ecological balance of the Mekong River Basin.

- E. To assign tasks and supervise the activities of the Secretariat as is required to implement this Agreement and the policies, decisions, projects and programs adopted thereunder, including the maintenance of databases and information necessary for the Council and Joint Committee to perform their functions, and approval of the annual work program prepared by the Secretariat.
- F. To address and make every effort to resolve issues and differences that may arise between regular sessions of the Council, referred to it by any Joint Committee member or member state on matters arising under this Agreement, and when necessary to refer the matter to the Council.
- G. To review and approve studies and training for the personnel of the riparian member countries involved in Mekong River Basin activities as appropriate and necessary to strengthen the capability to implement this Agreement.
- H. To make recommendations to the Council for approval on the organizational structure, modifications and restructuring of the Secretariat.

Article 25. Rules of Procedures

The Joint Committee shall propose its own Rules of Procedures to be approved by the Council. It may form ad hoc and/or permanent sub-committees or working groups as considered necessary, and may seek technical advisory services except as may be provided for in the Council's Rules of Procedures or decisions.

Article 26. Rules for Water Utilization and Inter-Basin Diversions

The Joint Committee shall prepare and propose for approval of the Council, inter alia, Rules for Water Utilization and Inter-Basin Diversions pursuant to Articles 5 and 6, 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.

Article 27. Decisions of the Joint Committee

Decisions of the Joint Committee shall be by unanimous vote except as otherwise provided for in its Rules of Procedures.

D. SECRETARIAT

Article 28. Purpose of Secretariat

The Secretariat shall render technical and administrative services to the Council and Joint Committee, and be under the supervision of the Joint Committee.

Article 29. Location of Secretariat

The location and structure of the permanent office of the Secretariat shall be decided by the Council, and if necessary, a headquarters agreement shall be negotiated and entered into with the host government.

Article 30. Functions of the Secretariat

The functions and duties of the Secretariat will be to:

- A. Carry out the decisions and tasks assigned by the Council and Joint Committee under the direction of and directly responsible to the Joint Committee;
- B. Provide technical services and financial administration and advise as requested by the Council and Joint Committee;
- C. Formulate the annual work program, and prepare all other plans, project and program documents, studies and assessments as may be required;

- D. Assist the Joint Committee in the implementation and management of projects and programs as requested;
- E. Maintain databases of information as directed;
- F. Make preparations for sessions of the Council and Joint Committee; and,
- G. Carry out all other assignments as may be requested.

Article 31. Chief Executive Officer

The Secretariat shall be under the direction of a Chief Executive Officer (CEO), who shall be appointed by the Council from a short-list of qualified candidates selected by the Joint Committee. The Terms of Reference of the CEO shall be prepared by the Joint Committee and approved by the Council.

Article 32. Assistant Chief Executive Officer

There will be one Assistant to the CEO, nominated by the CEO and approved by the Chairman of the Joint Committee. Such Assistant will be of the same nationality as the Chairman of the Joint Committee and shall serve for a co-terminus one-year term.

Article 33. Riparian Staff

Riparian technical staff of the Secretariat are to be recruited on a basis of technical competence, and the number of posts shall be assigned on an equal basis among the members. Riparian technical staff shall be assigned to the Secretariat for no more than two three-year terms, except as otherwise decided by the Joint Committee.

CHAPTER V. ADDRESSING DIFFERENCES AND DISPUTES

Article 34. Resolution by Mekong River Commission

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 through its various bodies, particularly as to the interpretations of the Agreement and the legal rights of the parties, the Commission shall first make every

effort to resolve the issue as provided in Articles 18.C and 24.F.

Article 35. Resolution by Governments

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. 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.

CHAPTER VI. FINAL PROVISIONS

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 signature by the appointed plenipotentiaries.
- B. Replace the Statute of the Committee for Coordination of Investigations of the Lower Mekong Basin of 1957 as amended, the Joint Declaration of Principles for Utilization of the Waters of the Lower Mekong Basin of 1975, the Declaration Concerning the Interim Committee for Coordination of Investigations of the Lower Mekong Basin of 1978, and all Rules of Procedures adopted under such agreements. This Agreement shall not replace or take precedence over any other treaties, acts or agreements entered into by and among any of the parties hereto, except that where a conflict in terms, areas of jurisdiction of subject matter or operation of any entities created under existing agreements occurs with any provisions of this Agreement, the issues shall be submitted to the respective governments to address and resolve.

**Article 37. Amendments, Modification,
Supersession and Termination**

This Agreement may be amended, modified, superseded or terminated by the mutual agreement of all parties hereto at the time of such action.

Article 38. Scope of Agreement

This Agreement shall consist of the Preamble and all provisions thereafter and amendments thereto, the Annexes, and all other agreements entered into by the Parties under this Agreement. Parties may enter into bi- or multi-lateral special agreements or arrangements for implementation and management of any programs and projects to be undertaken within the framework of this Agreement, which agreements shall not be in conflict with this Agreement and shall not confer any rights or obligations upon the parties not signatories thereto, except as otherwise conferred under this Agreement.

Article 39. Additional Parties to Agreement

Any other riparian State, accepting the rights and obligations under this Agreement, may become a party with the consent of the parties.

Article 40. Suspension and Withdrawal

Any party to this Agreement may withdraw or suspend their participation under present Agreement by giving written notice to the Chairman of the Council of the Mekong River Commission, who shall acknowledge receipt thereof and immediately communicate it to the Council representatives of all remaining parties. Such notice of withdrawal or suspension shall take effect one year after the date of acknowledgment or receipt unless such notice is withdrawn beforehand or the parties mutually agree otherwise. Unless mutually agreed upon to the contrary by all remaining parties to this Agreement, such notice shall not be prejudicial to nor relieve the noticing party of any commitments entered into concerning programs, projects, studies or other recognized rights and interests of any riparians, or under international law.

**Article 41. United Nations and International
Community Involvement**

The member countries to this Agreement acknowledge the important contribution in the assistance and guidance of the United Nations, donors and the international community and wish to continue the relationship under this Agreement.

Article 42. Registration of Agreement

This Agreement shall be registered and deposited, in English and French, with the Secretary General of the United Nations.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective governments have signed this Agreement.

DONE on 5 April 1995 at Chiang Rai, Thailand, in English and French, both texts being equally authentic. In the case of any inconsistency, the text in the English language, in which language the Agreement was drawn up, shall prevail.

For The Kingdom of Cambodia:

(Signed)

Ing Kieth
Deputy Prime Minister and
Minister of Public Works and Transport

For The Lao People's Democratic Republic:

(Signed)

Somsavat Lengsavad
Minister of Foreign Affairs

For The Kingdom of Thailand:

(Signed)

Krasae Chanawongse
Minister of Foreign Affairs

For The Socialist Republic of Viet Nam:

(Signed)

Nguyen Manh Cam
Minister of Foreign Affairs



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ง. Procedures for Data and Information Exchange and Sharing



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

PREAMBLE

Recognizing the existing cooperation in data and information collection, exchange, sharing and management through the Mekong cooperation frameworks from 1957 to date;

Affirming the imperative for operationalizing an effective, reliable and accessible data and information system for the Mekong River Commission (MRC) and its member countries to implement the AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN, signed in Chiang Rai, Thailand on 5th April 1995, hereinafter referred to as the "Mekong Agreement";

Pursuant to the Council Resolution on the Water Utilization Programme of 18th October 1999, and the Decision of the 13th Meeting of the Joint Committee of 8th March 2001,

WE hereby approve the following procedures for data and information exchange and sharing:

1. Definition of Key Terms

For the purpose of the present Procedures, the following terms shall mean, unless otherwise stated:

Data: representations of facts, in a formalized manner, suitable for communication, interpretation or processing.

Data and information exchange: reciprocal transfer of data and information among the member countries.

Data and information sharing: provision of full access to data and information maintained in the MRC-IS to the member countries through MRCS.

Information: data interpreted, processed and refined, and then displayed by the competent authorities having ownership or possession thereof, which is required for exchange and sharing for the purpose of the implementation of the Mekong Agreement.

Standards: guidelines for data handling that are recognized as best practice in their relevant scientific or technical disciplines, with the objective to minimize the transaction costs of using data.

2. Objectives

The objectives of the undertakings under the present Procedures are to:

- ?? Operationalize the data and information exchange among the four MRC member countries;
- ?? Make available, upon request, basic data and information for public access as determined by the NMCs concerned; and
- ?? Promote understanding and cooperation among the MRC member countries in a constructive and mutually beneficial manner to ensure the sustainable development of the Mekong River Basin.

3. Principles

In conformity with the provisions of the Mekong Agreement, the data and information exchange and sharing among the MRC member countries should be governed by the following principles:

- ?? Subject to the laws and regulations in their respective countries, in particular concerning the national defense or security, and commercial-in-confidence and copy right protection, exchange, on a regular basis, data and information that are necessary to implement the Mekong Agreement;
 - ?? Data and information exchange and sharing, including the prioritization of information needs should be based on an efficient, equitable, reciprocal and cost effective manner.
- ?? The data and information contained in the MRC-Information System that is maintained by MRCS (hereinafter referred to as "the MRC-IS"), should be relevant, timely and accurate, and exist in established usable formats for MRC and its member countries through an appropriate network and communication system.
- ?? Any additional and unavailable data and information that is required from time to time to facilitate MRC activities, programs and projects will be agreed by the MRC Joint Committee, including procedures

and cost sharing arrangements for collecting the minimum necessary data at the lowest feasible cost in a timely and equitable manner.

4. Data and Information Exchange and Sharing

Each NMC and MRCS shall cooperate with one another in the following:

- a. Supporting and promoting the implementation of the present Procedures;
- b. Providing data and information to the MRCS, as appropriate and where applicable subject to the following requirements:

?? Major Groups/types of data and information required for implementation of the MRC program/activities and Mekong Agreement, inter alia:

- Water Resources;
- Topography;
- Natural resources;
- Agriculture;
- Navigation and Transport;
- Flood management and mitigation;
- Infrastructure;
- Urbanization/Industrialization;
- Environment/Ecology;
- Administrative boundaries;
- Socio-economy; and
- Tourism.

?? Standards to be determined by MRCS and approved by the Joint Committee, including but not limit to the format, standardization, classification, and acceptable level of data quality;

?? Delivery schedules; and

?? Modalities for exchange and sharing.

- c. Endeavouring to provide, on a case-by-case basis, historical data required for the implementation of the Mekong Agreement.

Cost for collecting additional data and information other than those required for the implementation of the MRC projects, programs, and not available shall be borne by any requesting party.

Channel of communication shall be made through MRCS.

5. Implementation Arrangements

The MRC Joint Committee shall oversee the effective implementation of the present Procedures as required by the Mekong Agreement.

5.1 Custodianship of MRC-IS

The MRC Secretariat shall be responsible, as custodian, for the following:

- A/ Obtaining and updating of required data and information;
- B/ Managing of this on behalf of the Mekong River Commission (MRC);
- C/ Ensuring proper access to, and maintenance and quality of the data and information that meet the required standards;
- D/ Providing a recognized contact point for the distribution, transfer and sharing of the data and information;
- E/ Estimating and collecting cost incurred according to Section 4; and
- F/ Preparing the MRC guidelines on custodianship and management to be adopted by the MRC Joint Committee.

The obligations and responsibilities of users, on the use of the data and information shall be elaborated in the MRC guidelines on custodianship and management of the MRC-IS.

5.2 Reporting

Report will be made annually by the MRCS to the MRC Joint Committee and Council respectively as to the overall effectiveness of the present Procedures, the status of the MRC-IS and the suitability of the technical guidelines and standards for ensuring the protection and integrity of the data, information and systems and its accessibility and quality, as well as the remedial and rectifying measures taken, and recommendations for further guidance and direction, including modification and amendments of the Procedures and related guidelines, if any.

6. Entry into Force

The present Procedures shall take effect among the member countries on the date of the signature by the MRC Council Members.

Adopted by the Council on 01 November 2001 at its Eighth Meeting in Bangkok, Thailand.

MRC Council Member for the Kingdom of Cambodia

MRC Council Member for the Lao People's Democratic Republic

MRC Council Member for the Kingdom of Thailand

MRC Council Member for the Socialist Republic of Viet Nam



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก จ. Preliminary Procedures for Notification, Prior Consultation
and Agreement



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย



Mekong River Commission

For Sustainable Development

Preliminary Procedures For Notification, Prior Consultation and Agreement

ศูนย์วิจัยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

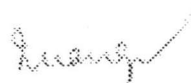
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Mekong River Commission
Preliminary Procedures for
Notification, Prior Consultation and Agreement

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Mekong River Commission
Preliminary Procedures for
Notification, Prior Consultation and Agreement

PREAMBLE

Reaffirming the political will to continue to cooperate and promote in a constructive and mutually beneficial manner in the utilization and development of the Mekong River Basin water and related resources as recognized in the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, signed at Chiang Rai, Thailand on 5 April 1995, hereinafter referred to as “the Mekong Agreement”;

Pursuant to the Council’s Resolution on the Water Utilization Program of 18th October 1999, and the decision of the 14th Meeting of the Joint Committee of 12th and 13th July 2001 on the Establishment of the Technical Drafting Group II for Preliminary Procedures for Notification, Prior Consultation and Agreement, hereinafter referred to as “the present Procedures”;

Recognizing the preliminary nature of the present Procedures and the adaptive approach to the development of water utilization rules;

Reconfirming the commitment to work together to address other pending matters/issues while finalizing the present Procedures in inter-linkages with other rules and procedures and/or implementing other Mekong River Commission (MRC) programmes as decided by the MRC Council;

We hereby approve the following Preliminary Procedures for Notification, Prior Consultation and Agreement.

1. Definition of key terms

Wet and Dry Seasons: The dates of the start and end of the wet and dry seasons vary throughout the basin due to the regional variations. According to the preliminary analyses of the relatively long time series of hydro-meteorological data, the wet season may start during mid-May to mid-June and end from mid-November to mid-December. The Joint Committee will decide on the actual dates of the start and the end of the wet and dry seasons, based on analyses by MRC Secretariat together with the National Mekong Committees (NMCs) of long term mainstream flow data.



Annex 1



Mainstream of the Mekong River: The river flowing through six countries, namely China, Myanmar, Lao PDR, Thailand, Cambodia and Viet Nam to the sea via My Thuan and My Tho in Viet Nam.

Mekong Tributary: A natural stream that flows into or receives water from the mainstream of the Mekong River all year round. The Joint Committee will decide on the final definition.

Water Utilization: For the purpose of the present Procedures, it means any proposed consumptive use of waters of the Mekong River system by any member State.

Relevant and Key Definitions from the Mekong Agreement

Agreement under Article 5: A decision of the Joint Committee resulting from prior consultation and evaluation on any proposed use for inter-basin diversions during the wet season from the mainstream as well as for intra-basin use or inter-basin diversions of these waters during the dry season. The objective of this agreement is to achieve an optimum use and prevention of waste of the waters through a dynamic and practical consensus in conformity with the Rules for Water Utilization and Inter-Basin Diversions set forth in Article 26.

Notification: Timely providing information by a riparian to the Joint Committee on its proposed use of water according to the format, content and procedures set forth in the Rules for Water Utilization and Inter-Basin Diversions under Article 26.

Prior consultation: Timely notification plus additional data and information to the Joint Committee as provided in the Rules for Water Utilization and Inter-Basin Diversion under Article 26, that would allow the other member riparians to discuss and evaluate the impact of the proposed use upon their uses of water and any other affects, which is the basis for arriving at an agreement. Prior consultation is neither a right to veto the use nor unilateral right to use water by any riparian without taking into account other riparians' rights.

Proposed use: Any proposal for a definite use of the waters of the Mekong River system by any riparian, excluding domestic and minor uses of water not having a significant impact on mainstream flows.

2. Objectives

The objectives of the present Procedures are:

Annex 2

- a. To provide steps for the MRC member States to implement Article 5 of the Mekong Agreement in a practical and appropriate approach and in support of Rules for Water Utilization in accordance with Article 26 of the Mekong Agreement.
- b. To promote better understanding and cooperation among the MRC member countries in a constructive and mutually beneficial manner to ensure the sustainable development, management and conservation of the water and related resources of the Mekong River Basin;

3. Principles

The Procedures shall be governed by the following guiding principles:

- a. Sovereign equality and territorial integrity;
- b. Equitable and reasonable utilization;
- c. Respect for rights and legitimate interests;
- d. Good faith;
- e. Transparency;

4. Notification

4.1 Scope of Notification

4.1.1

In accordance with Article 5 of the 1995 Mekong Agreement, notification on any proposed use stipulated in 4.1.2 shall be timely submitted to the Joint Committee consistent with the format and content, schedules and principles prescribed in the Procedures, as appeared in Annex I.

4.1.2.

Notification requirement and procedures shall be applied to the following proposed uses:

- a. intra-basin use and inter-basin diversion on the tributaries, including Tonle Sap; and
- b. intra-basin use during the wet season on the mainstream;

4.2 Contents and Form/Format of Notification

4.2.1 Content



Annex 3



The Notification shall include feasibility study report, implementation plan, schedule and all available data.

4.2.2. Form/Format

To facilitate the notification formulation, the form/format for notification is provided as Annex I of the Procedures.

4.3 Institutional Mechanism for Notification

Mechanism for handling Notification under the Procedures shall involve NMCs and MRC's bodies with their respective roles/functions, responsibilities which are as follows:

4.3.1 The National Mekong Committee (NMC)

The roles/functions/responsibilities of each NMC under the Procedures are:

- a. To inform the relevant line agencies of the scope, content and form for Notification of a proposed use as stipulated in 4.1 of the Procedures.
- b. To review and check Notification received from line agencies concerned to ensure that data and information for Notification are complete and consistent with the content and form/format;
- c. To assemble, record and transmit the Notification(s) with appropriate documents to the MRC Secretariat for its submission to the Joint Committee and transmission to the other NMCs.

4.3.2 The MRC Secretariat

The roles/functions/responsibilities of the MRC Secretariat under the Procedures for Notification are:

- a. To receive, check for completeness, record and make files on the Notifications according to the form/format as appeared in Annex I;
- b. To submit the Notification to the JC and copy to each other NMCs;
- c. To enter the relevant data and information into the MRC Secretariat Data and Information System; and

Annex 4

- d. To place any comments on a Notification in the file, and submit to the JC.

4.3.3 The Joint Committee

The roles/functions/responsibilities of the JC under the Procedures for Notification are to acknowledge any Notification submitted to it and take note of the comment, if any, submitted through the MRC Secretariat;

4.4 Process for Notification

Notification shall be transmitted by the relevant NMC to the JC through the MRC Secretariat in conformity with their respective roles/functions/responsibilities as stipulated in 4.3 of the Procedures.

4.5 Timing for Notification

Notification of proposed use shall be transmitted to the JC in a timely manner prior to implementation.

4.6 Absence of Notification

In case that the Notification has not been provided, the JC will request the relevant NMC to fulfill its duties/responsibilities as provided in 4.3.1 of the Procedures.

5. Prior Consultation

5.1 Scope of Prior Consultation

Taking into account the Article 5 of the 1995 Mekong Agreement and aiming at arriving at an agreement, the following proposed uses shall be subject to Prior Consultation:

- a. Inter-basin diversion from mainstream during wet season;
- b. Intra-basin use on the mainstream during the dry season; and
- c. Inter-basin diversion of the surplus quantity of water during the dry season.

5.2 Contents and Forms/Formats of Prior Consultation

5.2.1 Contents

Annex 5

In addition to the data and information required for Notification, the notifying State shall timely provide the Joint Committee with available and additional technical data and information on its proposed use of waters for an evaluation of impacts by the other riparian States, as appeared in Annex II (A).

5.2.2 Forms/Formats

The form/format and information checklist to be used by a notifying country is set out in Annex II (A).

5.2.3 Form/Format for Reply by Notified Country(ies)

The form/format to be used by the notified country(ies) to reply to the proposed use is set out in Annex II (B).

5.3 Institutional Mechanism for Prior Consultation

The Institutional Mechanism for handling the Prior Consultation process under the Procedures shall involve the NMCs and the MRC's bodies with their respective roles/functions/responsibilities which are as follows:

5.3.1 The National Mekong Committee (NMC)

The roles/functions/responsibilities of each NMC under the Procedures are:

- a. To inform the relevant line agencies of the scope, content and form/format required for prior consultation of a proposed use covered by under the Procedures;
- b. To receive, review and check documentation for any prior consultation submitted to it to ensure that it is complete and consistent with the content and form/format;
- c. To assemble and transmit the proposal with appropriate documents to the MRCS for their submission to the Joint Committee and transmission to the other NMCs.
- d. To record and transmit copies to respective line agencies or party(ies) making the proposal for a definite use of water through the Prior Consultation process of any comments or response received from the MRC Secretariat.

5.3.2 The MRC Secretariat

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Annex 6

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The roles/functions/responsibilities of the MRCS under the Procedures for prior consultation are:

- a. To receive, check for completeness, record and make a file of the documents for prior consultations according to the form/format in Annex II (A) and replies from notified countries according to the form/format in Annex II (B);
- b. To submit the documents for prior consultation for the proposed use to the JC and copy to each other NMCs;
- c. To review, analyze and provide technical advice to the JC as may be requested by it.
- d. To supply available additional data and information and facilitate the meetings as requested by member State(s) concerned.
- e. To provide available technical support for any evaluation. If required, the JC may set up fact-finding team supported by the Secretariat to visit the project site.
- f. To enter the relevant data and information into the MRC Data and Information System.

5.3.3 The Joint Committee

The roles/functions/responsibilities of the JC under the Procedures for prior consultation are:

- a. To acknowledge and review documents of any prior consultations submitted to it through the MRCS;
- b. To review any comment submitted to it by any member State;
- c. To carry out consultation on the proposed use among parties concerned with the support of the MRC Secretariat. The JC, under Rule 4 of its Rules of Procedures, set up a Working Group to assist in the Prior Consultation process aiming to arriving at an agreement on the proposed use.
- d. To make every effort to address any matters that may arise during the process of prior consultation.

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- e. To verify and unanimously confirm availability of surplus quantity of water on the mainstream in accordance with criteria approved by the Council under Article 26 of the Mekong Agreement should there be a proposed use for inter-basin diversion in the dry season.

5.3.4 The Council

The function of the Council under the Procedures is in accordance with the stipulation of the 1995 Mekong Agreement.

5.4 Process for Prior Consultation

5.4.1 Submission of documents for prior consultation

Documents for Prior Consultation on any proposed use specified in 5.2.1 and Annex II (A) shall be submitted by the NMC of the notifying State(s) to the JC through the MRCS in a timely manner. The MRCS shall transmit copies of the documents to other member State(s) for their evaluation and reply.

5.4.2 Evaluation and Reply to proposed use

Upon receiving the documents from the notifying State(s) submitted to the JC through the MRC Secretariat, the other member(s) should evaluate the proposed use and reply to the JC through the MRC Secretariat according to the form/format in Annex II (B).

If necessary, through the JC, the notified State(s) may request additional information, a consultation or presentation, and/or a field visit to the project site in order to evaluate the possible impacts of the proposed use and any other affects on their rights and to facilitate the aim of reaching an agreement by the JC.

During the evaluation process period, the notifying State(s) shall provide, if requested, available data and information and facilitate an appropriate evaluation. If necessary, the JC may direct the MRC Secretariat or appoint a working group or technical advisory team to assist in the evaluation of the proposed use and possible impacts on existing uses and rights of other riparian State(s).

5.4.3. Decision by JC

The JC shall aim to arriving at an agreement on the proposed use and issue a decision that contains the agreed upon conditions. That

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decision shall become part of the record of the proposed use and of the record of the use of the waters when commenced.

The notifying State(s) shall not implement the proposed use without providing the opportunity of the other member States to discuss and evaluate the proposed use. The JC shall take note of replies and place in the record for the proposed use of any concerns or reservations made by the notified State(s).

5.5 Timing for Prior Consultation

5.5.1 The timeframe for Prior Consultation shall be six months from the date of receiving documents on PC.

5.5.2 If necessary, an extended period shall be permitted by the decision of the JC.

5.6 Absence of Prior Consultation

In case that the required documents for Prior Consultation has not been provided, the JC will request the relevant NMC to fulfill its duties/responsibilities as provided in 5.2.1 of the Procedures.

6. Specific Agreement

Any inter-basin diversion project during the dry season from the mainstream shall be agreed upon by the JC through a specific agreement for each project prior to any proposed diversion. Such a specific agreement, signed/approved by all members of the JC, sets out agreed terms and conditions such as timing, quantity of diversion, etc. The format and content of the specific agreement shall be established by the Joint Committee on a case-by-case basis.

7. Final Provisions

- a. The Annexes shall form an integral part of the Procedures.
- b. Reporting to the Joint Committee
The MRC Secretariat will report annually to the Joint Committee on relevant matters regarding the implementation of the Procedures, including necessary recommendations.
- c. At the time of submission of the present Procedures to the Council for approval, the pending issues, as listed in Annex III, will remain open and be considered in preparation of the final Procedures.

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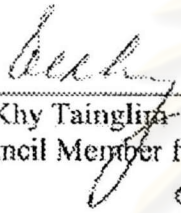
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- d. Amendments to the Procedures
Any amendment or revision to the present Procedures shall be approved by the Council.
- e. Entry into Force
The present Procedures shall take effect among the member States on the date of the approval of the MRC Council and remain in force until they are superseded by the final Procedures due in late 2003.

Approved by the Council on the twelfth of November of the year two thousand and two at its Ninth Meeting in Ho Chi Minh City, Viet Nam.

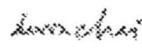

 H.E. Mr. Khy Tainglina
 MRC Council Member for the Kingdom of Cambodia


 H.E. Mr. Somphong Mongkhonvilay
 MRC Council Member for the Lao People's Democratic Republic


 H.E. Mr. Prapat Panyachatraksa
 MRC Council Member for the Kingdom of Thailand


 H.E. Mr. Le Huy Ngo
 MRC Council Member for the Socialist Republic of Viet Nam



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Annex I

Form/Format of Notification

**Mekong River Commission
Preliminary Procedures for
Notification, Prior Consultation and Agreement**

1. Notifying Country: _____
2. Date of submission: _____
3. Notifying Ministry/Agency (name, address, telephone, fax, e-mail): _____

4. Contact Person/Address (name, address, telephone/fax/e-mail): _____

5. Name of the project: _____
6. Location of the project: _____

7. Nature of the proposed project:
 - a- On tributary:
 - Intra-basin uses
 - Inter-basin diversion
 - b)- On the mainstream:
 - Intra-basin use during wet season
8. Purpose of the proposed project: _____

9. Expected date of the implementation:
 - a)- Date for starting the construction _____
 - b)- Date for finishing the construction _____
 - c)- Date for the operation _____
10. Duration of and Timing for water use: _____

11. Description of the project: (i.e.: scope, scale, map, type, quantity, capacity and characteristic, etc.) _____

12. Attached documents: _____

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Annex II (A)**Form/Format for Prior Consultation**

**Mekong River Commission
Preliminary Procedures for
Notification, Prior Consultation and Agreement**

1. **Proposing country(ies):** -----

2. **Date of submission:** -----
3. **Proposing Ministry(ies)/Agency(ies)** (Name, mail/e-mail address, telephone, Fax): -----

4. **Contact Person/Facilitator** (Name, mail/e-mail address, telephone, fax): -----

5. **Name of the project:** -----

6. **Location of the project:** -----

7. **Nature of the proposed use :**
 - Inter-Basin Diversion from the mainstream during wet season
 - Intra-Basin Use on the mainstream during dry season
 - Inter-Basin Diversion of the surplus water from the mainstream during dry season
8. **Purpose of the Proposed Use:** -----

9. **Expected date for the Implementation:**
 - a)- Date for starting the construction -----
 - b)- Date for finishing the construction -----
 - c)- Date for the operation -----
10. **Duration and Timing for the utilization of the proposed use of water:** -----

11. **Description of the project (scope, scale, site, type, quantity, capacity, and characteristic, etc.):** -----

12. **Observation or comment:** -----

13. **Attached available data and information and/or documents, e.g. summary of FS, IEE...** -----

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Annex II (B)**Form/Format for Reply to Prior Consultation****Mekong River Commission
Preliminary Procedures for
Notification, Prior Consultation and Agreement**

1. **Replying country:** -----

2. **Date of Reply:** -----
3. **Replying Ministry(ies)/Agency(ies)** (Name, mail/e-mail address, telephone, Fax): -----

4. **Contact Person/Facilitator** (Name, mail/e-mail address, telephone, fax): -----

5. **Name of the propose use/project:** -----

6. **Location of the Proposed use:** -----

7. **Nature of proposed use :**
 - Inter-Basin Diversion from the mainstream during wet season
 - Intra-Basin Use on the mainstream during dry season
 - Inter-Basin Diversion of the surplus water from the mainstream during dry season
- 8 **Date of receipt of the documents :** -----

- 9 **Reply to proposed use:** -----

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

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Pending Issues

Mekong River Commission Preliminary Procedures for Notification, Prior Consultation and Agreement

1. Definitions:

- a. Actual date of start and end of wet and dry seasons.
- b. Final definition of “Mekong tributary”
- c. Final definition of “water utilization”
- d. Other definitions from the previous draft of the Documents provided for the 8th TDGII meeting.

2. Issues related to scope of Article 5:

- a. Section 2a: “.... To implement Article 5 [and other relevant provisions] of the Mekong Agreement...”
- b. Section 4.1.2: “c. [any proposed use or activity having significant impact to the riparian country].”
- c. Procedures related to Articles 7 and 10 deleted from the present Procedures

3. Issues related to role of the National Mekong Committees:

- a. Section 5.3.1: “d. [To facilitate any consultations, presentations, evaluations and site visit as requested by the JC for the proposed use.]”

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Wachai

ประวัติผู้เขียนวิทยานิพนธ์

นายจตุภูมิ ภูมิบุญชู เกิดวันที่ 8 ธันวาคม พ.ศ. 2521 ที่จังหวัดอุดรธานี สำเร็จการศึกษาปริญญาตรีนิติศาสตรบัณฑิต จากจุฬาลงกรณ์มหาวิทยาลัย ในปีการศึกษา 2541 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต เมื่อ พ.ศ. 2542



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย