



รายการอ้างอิง

ภาษาไทย

กฤษณะ ช่างกล่อม. แนวโน้มในการเกิดกฎหมายประเพณีระหว่างประเทศ. วิทยานิพนธ์ปริญญา
มหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2534

โครงการฟื้นฟูนิเวศน์วิทยาในภูมิภาคอินโดจีนและพม่า. ผ่นน้ำโขง ชี มูล ผลกระทบที่สำคัญต่อ
ลุ่มน้ำโขง. สาสน์นิเวศน์เสวนา (4 กุมภาพันธ์ 2538) : 5-8

พัฒนาและส่งเสริมพลังงาน,กรม. แนะนำโครงการ โขง ชี มูล . โขง ชี มูล ฉบับที่ 1(1 มิถุนายน-
กรกฎาคม 2534) : หน้า 4

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2536

____. สรุปโครงการ โขง ชี มูล. กรุงเทพมหานคร : ม.ป.ท. 2536 . (พิมพ์ลึศ)

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ภาคผนวก

CAMBODIA-LAOS-THAILAND-VIETNAM: AGREEMENT ON THE
COOPERATION FOR THE SUSTAINABLE DEVELOPMENT
OF THE MEKONG RIVER BASIN*

[Done at Chiang Rai, Thailand, April 5, 1995]

+Cite as 34 I.L.M. 864 (1995)+

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*[Reproduced from the text provided by the Office of the Legal Adviser, International Labour Office. The agreement entered into force on the date of signature.]

[Further information concerning this agreement may be obtained from: The Treaty Section, United Nations Headquarters, New York, NY, 10017, (tel: (1) (212) 963-5047; fax (1) (212) 963-4879).]

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[Authentic texts: English and French]

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[Done at Chiang Rai, Thailand, on 5 April 1995]

[Signatures]

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:

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, superceded 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.

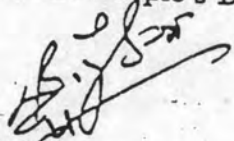
DONE on 5 April 1995 at Chiang Rai, Thailand, in English and French, both texts being equally authentic. In the case of any inconsistency, the text in the English language, in which language the Agreement was drawn up, shall prevail.

For The Kingdom of Cambodia:



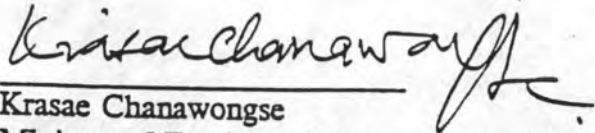
Ing Kieth
Deputy Prime Minister and Minister of Public Works and Transport

For The Lao People's Democratic Republic:



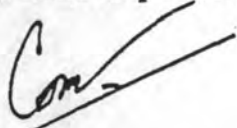
Somsavat Lengsavad
Minister of Foreign Affairs

For The Kingdom of Thailand:



Krasae Chanawongse
Minister of Foreign Affairs

For The Socialist Republic of Viet Nam:



Nguyen Manh Cam
Minister of Foreign Affairs

PROTOCOL

TO THE AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN FOR THE ESTABLISHMENT AND COMMENCEMENT OF THE MEKONG RIVER COMMISSION

The Governments of the Kingdom of Cambodia, Lao People's Democratic Republic, Kingdom of Thailand, and Socialist Republic of Viet Nam, have signed on this day the AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN.

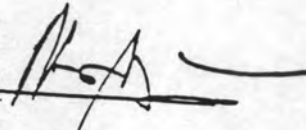
Said AGREEMENT provides for in Chapter IV the establishment of the Mekong River Commission as the institutional framework through which the AGREEMENT will be implemented.

BY THIS PROTOCOL, the signatory parties to the AGREEMENT do hereby declare the establishment and commencement of the MEKONG RIVER COMMISSION, consisting of three permanent bodies, the COUNCIL, JOINT COMMITTEE and SECRETARIAT, effective on this date with the full authority and responsibility set forth under the AGREEMENT.

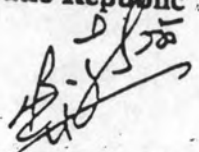
IN WITNESS WHEREOF, the undersigned, duly authorized by their respective governments have signed this Protocol.

DONE on 5 April 1995 at Chiang Rai, Thailand.

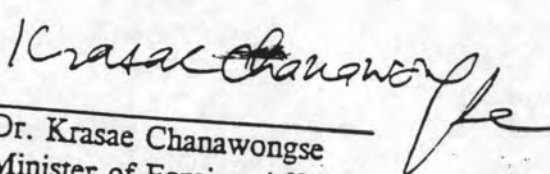
For the Kingdom of Cambodia:


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

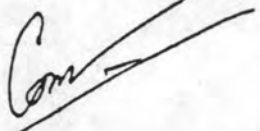
For the Lao People's
Democratic Republic


Somsavat Lengsavad
Minister of Foreign Affairs

For the Kingdom of Thailand:


Dr. Krasae Chanawongse
Minister of Foreign Affairs

For the Socialist Republic of
Viet Nam:


Nguyen Manh Cam
Minister of Foreign Affairs

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III. THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

DRAFT ARTICLES ON THE LAW OF THE NON-NAVIGATIONAL USES OF
INTERNATIONAL WATERCOURSES

ADOPTED ON SECOND READING BY THE INTERNATIONAL LAW COMMISSION
AT ITS FORTY-SIXTH SESSION

PART I. INTRODUCTION

Article 1

Scope of the present articles

1. The present articles apply to uses of international watercourses and of their waters for purposes other than navigation and to measures of conservation and management related to the uses of those watercourses and their waters.
2. The use of international watercourses for navigation is not within the scope of the ~~present~~ articles except in so far as other uses affect navigation or are affected by navigation.

Article 2

Use of terms

For the purposes of the present articles:

- (a) "international watercourse" means a watercourse, parts of which are situated in different States;
- (b) "watercourse" means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;
- (c) "watercourse State" means a State in whose territory part of an international watercourse is situated.

Article 3

Watercourse agreements

1. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present articles to the characteristics and uses of a particular international watercourse or part thereof.
2. 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 with respect to any part thereof or a particular project,

/...

programme or use, provided that the agreement does not adversely affect, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse.

3. Where a watercourse State considers that adjustment or application of the provisions of the present articles 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.

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, and in the negotiation of, such an agreement, to the extent that its use is thereby affected, and to become a party thereto.

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 utilization thereof and benefits therefrom 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 articles.

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 watercourse 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 corresponding 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.

Article 7

Obligation not to cause significant harm

1. Watercourse States shall exercise due diligence to utilize an international watercourse in such a way as not to cause significant harm to other watercourse States.
2. Where, despite the exercise of due diligence, significant harm is caused to another watercourse State, the State whose use causes the harm shall, in the absence of agreement to such use, consult with the State suffering such harm over:
 - (a) the extent to which such use is equitable and reasonable taking into account the factors listed in article 6;
 - (b) the question of ad hoc adjustments to its utilization, designed to eliminate or mitigate any such harm caused and, where appropriate, the question of compensation.

Article 8

General obligation to cooperate

Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity and mutual benefit in order to attain optimal utilization and adequate protection of an international watercourse.

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, 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 the principles and factors set out in 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 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 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 measure poses special difficulty, be extended for a period not exceeding 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 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 shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15

Reply to notification

1. The notified States shall communicate their findings to the notifying State as early as possible.

2. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall communicate this finding to the notifying State within the period applicable pursuant to article 13, together with 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 paragraph 2 of 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 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 the period applicable pursuant to article 13.

Article 17

Consultations and negotiations concerning planned measures

1. If a communication is made under paragraph 2 of article 15, 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 not exceeding six months.

Article 18

Procedures in the absence of notification

1. If a watercourse State has serious reason 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 reasons.
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 not exceeding six months.

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 cases, a formal declaration of the urgency of the measures shall be communicated 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 or jointly, protect and preserve the ecosystems of international watercourses.

Article 21

Prevention, reduction and control of pollution

1. For the purposes 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 or jointly, prevent, reduce and control 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 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 or jointly, 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 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 serious reason to believe that it may suffer significant adverse effects, enter into consultations with regard to:

(a) the safe operation or maintenance of installations, facilities or other works related to an international watercourse; or

(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 or jointly, take all appropriate measures to prevent or mitigate conditions that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, 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 internal 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 articles, 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 articles 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 under its jurisdiction.

Article 33

Settlement of disputes

In the absence of an applicable agreement between the watercourse States concerned, any watercourse dispute concerning a question of fact or the interpretation or application of the present articles shall be settled in accordance with the following provisions:

(a) If such a dispute arises, the States concerned shall expeditiously enter into consultations and negotiations with a view to arriving at equitable solutions of the dispute, making use, as appropriate, of any joint watercourse institutions that may have been established by them.

(b) If the States concerned have not arrived at a settlement of the disputes through consultations and negotiations, at any time after six months from date of the request for consultations and negotiations, they shall at the request of any of them have recourse to impartial fact-finding or, if agreed upon by the States concerned, mediation or conciliation.

- (i) Unless otherwise agreed, a Fact-Finding Commission shall be established, composed of one member nominated by each State concerned and in addition a member not having the nationality of any of the States concerned chosen by the nominated members who shall serve as Chairman.
 - (ii) If the members nominated by States are unable to agree on a Chairman within four months of the request for the establishment of the Commission, any State concerned may request the Secretary-General of the United Nations to appoint the Chairman. If one of the States fails to nominate a member within four months of the initial request pursuant to paragraph (b), any other State concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the States concerned who shall constitute a single member Commission.
 - (iii) The Commission shall determine its own procedure.
 - (iv) The States 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.
 - (v) The Commission shall adopt its report by a majority vote, unless it is a single member Commission, and shall submit that report to the States concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate.
 - (vi) The expenses of the Commission shall be borne equally by the States concerned.
- (c) If, after twelve months from the initial request for fact-finding, mediation or conciliation or, if a fact-finding mediation or conciliation commission has been established, six months after receipt of a report from the Commission, whichever is the later, the States concerned have been unable to settle the dispute, they may by agreement submit the dispute to arbitration or judicial settlement.



ประวัติผู้เขียน

นายสฤตยช หอพิบูลสุข เกิดวันที่ 25 กันยายน พ.ศ. 2512 ที่กรุงเทพมหานคร สำเร็จการศึกษาปริญญาตรีนิติศาสตรบัณฑิต มหาวิทยาลัยธรรมศาสตร์ ในปีการศึกษา 2533 , สำเร็จการศึกษาจากสำนักอบรมกฎหมายแห่งเนติบัณฑิตยสภา ในปี พ.ศ.2534 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต ที่จุฬาลงกรณ์มหาวิทยาลัย เมื่อ พ.ศ. 2535 ปัจจุบันทำงานที่สำนักงานสง่า-ธงชัย ทนายความ