

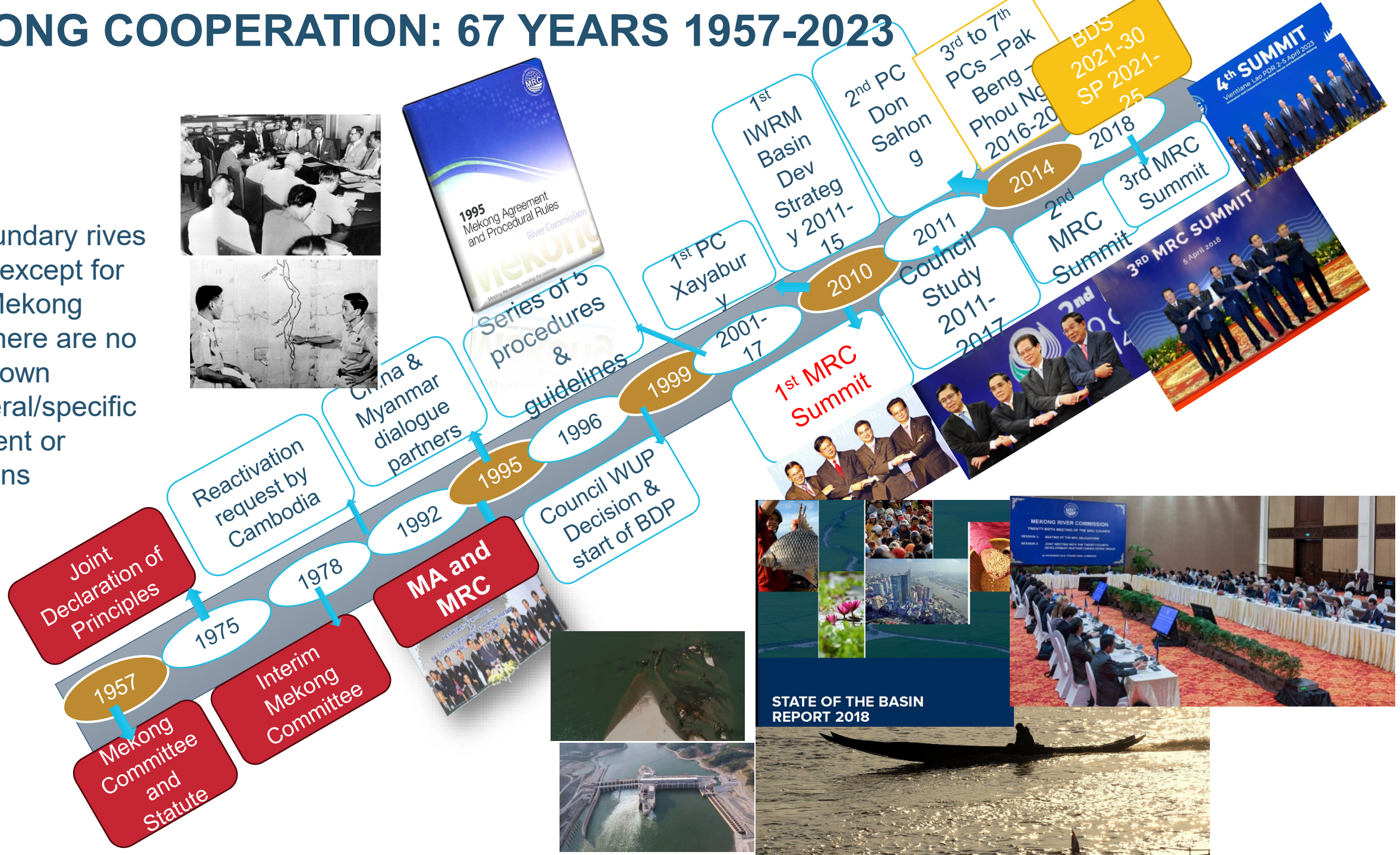
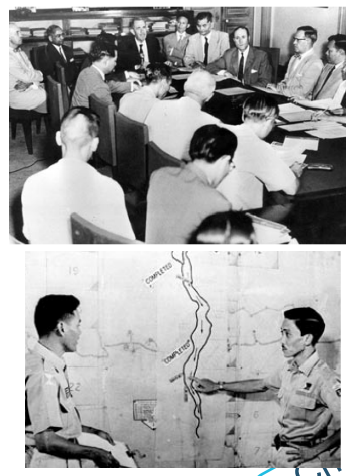
# Mekong Agreement now and then: how the 1995 Agreement was developed, what its provisions have covered well since then, and where the gaps exist / clarifications needed which global Conventions can fill

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# MEKONG COOPERATION: 67 YEARS 1957-2023

Several transboundary rivers in SEA, except for Lower Mekong Basin, there are no other known multilateral/specific agreement or institutions



Series of 5 procedures & guidelines

China & Myanmar dialogue partners

Reactivation request by Cambodia

Joint Declaration of Principles

Mekong Committee and Statute

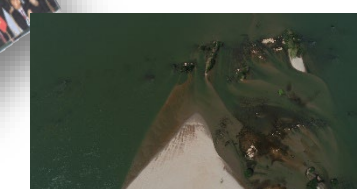
Interim Mekong Committee

MA and MRC

Council WUP Decision & start of BDP

1999

Council WUP Decision & start of BDP



STATE OF THE BASIN REPORT 2018



1st MRC Summit



2011 Council Study 2011-2017



2014 2nd MRC Summit



3rd MRC Summit

2010 2010 Council Study 2011-2017

2015 2nd PC Don Sahong

2018 3rd MRC Summit

2021-30 BDS SP 2021-25



4th Summit



# 1995 Mekong Agreement

- Mekong Agreement was signed on April 5, 1995 after over 21 months of complicated negotiation.
- A framework agreement that contains 42 articles, grouped into six chapters.
- LMB countries also signed a one-page Protocol to establish the Mekong River Commission (MRC): Council, Joint Committee and Secretariat. Then added in 2010, MRC Summit.
- China and Myanmar are dialogue partners to the MRC.
- Article 39: China and Myanmar may become parties to the 1995 MA

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

# Key Characteristics

- It does not deal specifically with the distribution of water.
- As a "framework" agreement: finer details to be agreed in subsequent rules, protocols, or procedures.
- 1995 MA tries to balance between “no right to veto” and “no unilateral right to develop without due consideration of other rights”.
- It provides:
  - **broad principles** (Articles 1 and 10) –
    - i) joint development, environmental protection & ecological balance; sovereign equality & territorial integrity, reasonable and equitable utilization of Mekong waters; no substantial harm and state responsibility for substantial damages, freedom of navigation; and environmental integrity of the Mekong River including maintenance of its natural flows.
  - a “**flexible**” **framework and continuous process of dialogue and negotiation** (Articles 11-33 and 34-35) Procedures for Notification, Prior Consultation and Agreement (PNPCA) + Management of Differences.

# Procedures for balancing ERU And NHP

- › Several other partnerships and programs have emerged recently. But 1995 MA and MRC remains the only organization/institution with the states as members acting under a joint agreement and with a long-term ambition.
- › 1995 MA are clear about what needs to be accomplished but lacks common understanding and lacks particulars on how to achieve goals or to what extent.
- › 18+ years of experience shows the 1995 MA is vague, too open to interpretation, and has yet to secure the environmental, economic and social benefits it promises.
- › The then MRCS CEO saw the PNPCA process as a test for (MRC) member countries' commitment to sustainable development.

LEGAL PRINCIPLES	1997 Watercourse s Convention	1992 Water Convention	Mekong Agreement 1995 <i>(and related non-binding Protocols and Guidelines)</i>
Scope	Surface and Connected groundwater	Surface and all groundwater	<b>Only surface waters (no groundwater) only mainstream (no tributaries)</b>
Equitable & Reasonable Utilisation	Arts.5, 6	Art.2(2) (c)	<b>YES but no detailed factors listed for guidance</b>
Prevention of transboundary harm	Art.7	Art. 2(1)	<b>YES but no reference to ERU or non-discrimination</b>
Cooperation	Art.8	Art. 2(6)	<b>YES but less procedural on data-sharing and prevention of harm</b>
Environment/Ecosystems	Arts. 20-23	Art. 2 (d)	YES
Notification/Consult/negotiate	Art.11-19	Art.10	<b>YES but non-binding PNPCA &amp; Non-binding TbEIA Guidelines</b>
Exchange information & data	Art. 8	Arts 6, 9(2)(c), 9(2)(h), 9(2)(i), Art. 13)	<b>YES but limited obligations only basic functions of secretariat &amp; JC.</b>

# What Opportunities 1992 Water Convention & UNWC can bring?

- **1992 Water Convention provides more detailed requirements to support interpretation/implementation and a dynamic capable organization to support (not replace) cooperation within the framework of the 1995 MA.**
- Procedural norms and dispute settlement and more specific definition under both the Water Convention and UNWC, and best international practices shared under Water Convention institutional framework
- Previous academic research and national/regional workshops with partners and governments demonstrates clear recommendations on how the 1997 UNWC, 1992 Water Conventions and other international laws can be effectively assessed for relevance and applicability to the Mekong Region and how to be embedded into the National Systems
  - See next slide!

But we need to:

- ***raise awareness of relevant government officials, and regional and national opinion-makers*** involved in transboundary river basin management and governance;
- ***provide an opportunity to build capacity to get better understanding*** of the usefulness and relevance of their application; and,
- ***identify and support interested governments through the ratification process.***





# Myanmar holds dialogue on UN Watercourses Convention cooperation opportunities

**A window of opportunity for the Mekong Basin: The UN Watercourses Convention as a basis for cooperation**

*A legal analysis of how the UN Watercourses Convention complements the Mekong Agreement*



# BRP

## The Governance Regime of the Mekong River Basin

*Can the Global Water Conventions Strengthen the 1995 Mekong Agreement?*

International Water Law

### The Phnom Penh Post

HOME NATIONAL BUSINESS LIFESTYLE SPECIAL REPORT TRAVEL SPORT OPINION INTERNATIONAL

## UN convention could help solve Mekong pact's weaknesses

Marc Goichot | Publication date 14 January 2016 | 07:26 ICT



IUCN Transboundary water governance in the Mekong

Watch later Share

many new better elements are contained in the UN Convention.

5:04 / 5:43



# Conclusions

Acceding to both UN global water Conventions (1992 Water Convention & 1997 UNWC) is recommended for Mekong Basin countries on the grounds that **by filling scope, legal substantive and procedural gaps, notably on clear obligations for PNPCA, transboundary EIA, data exchange and dispute resolution:**

- *Reinforce* the Mekong Agreement and its provisions, not replace it
- *Align* and clarify the Mekong Agreement with Customary international law
- *Strengthen* the MRC mandate to govern across the basin including tributaries and groundwater
- *Underpin* cooperation within and via the MRC with clear obligations and expectations for countries

# Thank you!

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In collaboration with WATER CONVENTION, UNECE, UNESCO, Food and Agriculture Organization of the United Nations, BAPPENAS

SOG INDICATOR 6.5.2 PROTECTED/HEALTHY WATER ECOSYSTEMS

The 1<sup>st</sup> Southeast Asia Water Security - IWRM Regional Conference

Bali - Indonesia  
10 - 11 October, 2023

**Hydropower Expansion**  
82 existing + 179 under study  
Mekong Region power grid  
(Upper) Lancang mainstream dams 15+China  
(Lower) Mekong mainstream dams, 11 (02 operational)  
Substantial transboundary implications

**Diversions**  
South to North transfers in China  
Salween to Chao Phraya (Myanmar-Thailand)  
into NE Thailand (mainstream, Laos-Thailand)  
Large scale Irrigation  
Uncontrolled sand and gravel mining and severe soil erosion.

Mekong is no longer free-flowing, except for the stretch in Mekong Delta - Reason? Weak/gaps in governance: uncoordinated/poorly informed development, "Debt trap", poor transparency and low quality, social and environmental safeguards. Equity and sustainability outcomes are challenged.

STIMSON

Theme  
Accelerating the adoption of innovation to accelerate progress towards water security