



# THE UNITED NATIONS CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

## What is in it for Cambodia?

### General background

The Convention on the Law of the Non-Navigational Uses of International Watercourses (UNWC) is the most authoritative global agreement on international watercourses. Today it counts 36 parties, mainly in Europe and Africa. Vietnam became a party in 2014, thus bringing the UNWC into force.

In 1997, Cambodia, Laos and Vietnam were ‘sponsors’ of the UNWC and voted in favour together also with Thailand. Myanmar was absent and only China (as one of the three) voted against – although much of China’s treaty practice on transboundary waters is consistent with the main provisions of the UNWC. From the votes of 1997, it seems logical that all lower Mekong nations accede to the UNWC.

### Developments on involvement in the Mekong

Current awareness-raising and technical capacity-building on the role and relevance of the UNWC in Cambodia builds upon efforts over several years within both Cambodia and the lower Mekong basin.

Two workshops were conducted in May 2012 by WWF, Green Cross, the University of Dundee and Hatfield Consultants: firstly, in Siem Reap with government officials, academics and experts from the six Mekong basin States; second, in Vietnam with their government’s officials.

Recently, in Phnom Penh in September 2015, IUCN and the NGO Forum on Cambodia conducted a similar workshop on the UNWC for the Cambodian National Mekong Committee, government officials and lawyers, before a one day briefing for members of the 3rd Commission of the National Assembly. These events led to a co-organised WWF, IUCN, Oxfam, Conservation International and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) workshop in Phnom Penh in December 2015 focusing specifically on the UNWC’s relevance to Cambodia and its steps to accession.

Several key studies have also been produced investigating the role, relevance and application of the UNWC within the lower Mekong basin: in 2012 by Hatfield Consultants examining the ‘Relevance of the UNWC in the Greater Mekong Sub-region; and in 2015 by Transboundary Water Law consultancy for IUCN analysing the ‘Legal Compatibility of the 1995 Mekong River Agreement and the UNWC’.

Individually and collectively, participants have been unanimous in stating that awareness of the UNWC must be strengthened to have a possibility of accession by *all* MRC nations. Many officials requested in-depth technical support as well as a cost-benefit analysis for each state in acceding to the UNWC.

For further information, please visit [www.panda.org/UNWC](http://www.panda.org/UNWC) or contact Lesha Witmer [wima@witmer.info](mailto:wima@witmer.info), Marc Goichot [marc.goichot@wwf.panda.org](mailto:marc.goichot@wwf.panda.org) or Dr. Alistair Rieu-Clarke, UNESCO Centre for Water Law, Policy and Science, at [a.rieuclarke@dundee.ac.uk](mailto:a.rieuclarke@dundee.ac.uk);

## Benefits of accession for Cambodia

Based on research and the above activities, specific *benefits* of Cambodia joining the UNWC include:

- Updating the 1995 Mekong Agreement: At the time of its adoption, the Mekong agreement was a forward-looking agreement and an example for others. To date, the existing Mekong Agreement / MRC would benefit from an update and the additional provisions stemming from the UNWC, including -
  - Specific and balanced timeframes, standards and procedures for basin states proposing development of projects with potential transboundary impacts (such as hydropower dams) which mirror the MRC's voluntary Procedures for Notification, Prior Consent and Agreement (PNPCA) yet which are binding under the UNWC.
  - A step-by-step range of dispute resolution mechanisms (such as negotiation, mediation, arbitration) which states can choose to pursue - if the parties reach an impasse, an independent fact-finding body makes impartial recommendations based on all available information - as opposed to the MRC's circular process which refers the matter back to the governments, but which has, in recent cases, resulted in them 'agreeing to disagree'.
  - Basin-wide application, to both the river's mainstream and its tributaries, of all UNWC legal principles including equitable and reasonable utilisation and no significant harm, as well as processes such as dispute resolution (in contrast to the Mekong Agreement which excludes e.g. dams on tributaries from being governed under the PNPCA)
- The UNWC can provide a legal structure for improving the implementation of the Mekong Agreement, without the need for renegotiating and adopting a revised text.
- The 'Global Water Conventions' (see below re UNECE Water Convention) could also provide a common governance framework – one framework with one set of norms and definitions - for transboundary waters in Cambodia, e.g. Saigon and Song Vam Co Dong Rivers. In the longer run this will help with the harmonisation of water, and water –related, treaties.
- Enhancing the trust of international investors in terms of good governance (clear processes, standards and norms).
- Saving time and money in not having to 'reinvent the wheel' and lead to possibilities for joint capacity building, horizontal coordination, and expert/ knowledge exchange (e.g. during the accession process)

Assists in making the connection to other water-related conventions and treaties (like RAMSAR, CBD, Hydropower Assessment Protocol, desertification, 3rd UNCCC (CoP21) (see short overview 'Functions of the UNWC, pages 14/15' Brochure download: [http://assets.panda.org/downloads/unwc\\_2015\\_compressed.pdf](http://assets.panda.org/downloads/unwc_2015_compressed.pdf))

- Cambodia is a party to: UNFCCC, UNCCD, CBD, RAMSAR.
- Cambodia recently joined the High Level Panel on Water & Peace. Joining the convention will make it very clear that Cambodia is serious about that commitment.

## Addressing water-related issues for Cambodia (and lower Mekong)

At the heart of the UNWC is the importance of transboundary water cooperation. Generally speaking, transboundary water cooperation provides significant benefits.

Strengthened transboundary water cooperation amongst Mekong Basin states could address various threats by more equitably and sustainably determining, valuing and, where appropriate, trading off the range of ecosystem services offered by the Mekong as a whole.

Critical challenges for both Cambodia and the other lower Mekong countries include:

- Fish harvests, for instance, already are declining due partly to drought in Cambodia's Tonle Sap lake, which supplies Cambodia's 15 million people with more than a third of their protein.
- The Mekong Delta and its rich aquaculture industry and agricultural lands are also under threat from reduction of sediment delivery from the river basin, sea level rise, and vulnerability to extreme weather.
- Hydroelectric dams, dozens of which are planned along the lower Mekong River and its tributaries. While hydropower is promoted as a CO2 emissions-free 'green' energy, a wealth of research now indicates that it comes with a suite of impacts to other economic sectors, communities and nature.
- By blocking fish migrations, the proposed projects would pose a direct threat to food security by reducing the catch from the world's largest freshwater fishery by as much as one third. Rice production could also be effected by the blockage of nutrient-rich sediments.

In short, the Mekong River-related resources are under increasing stress and this may have significant implications to/on many economic sectors, food security, ecosystem health, loss of biodiversity and increased riparian human population exposure to the hazards of climate change. By acceding to the UNWC, Cambodia can help to significantly strengthen the legal framework for addressing these issues.

### Costs of accession for Cambodia

The limited and common costs of acceding to the UNWC for Cambodia, as for all other states, are:

- Membership costs. At the moment there is no party/ membership contribution for the UNWC; parties can of course influence future arrangements on this.
- The accession-process in the different countries will require 'out-of-pocket' costs for officials leading on this process and knowledge transfer/ capacity building.

#### SUMMARY OF BENEFITS & COSTS OF ACCEDING TO THE UNWC

The UNWC will *not* supersede existing bi-lateral or multilateral treaties, such as the Mekong Agreement. Rather, it will provide a supplementary framework addressing basic substantive and procedural matters. The UNWC leaves the specific details to watercourse states themselves to negotiate and agree upon. Acceding also comes with very limited costs.

## General benefits of accession

The world's 276 transboundary basins cover half the Earth's surface, cross the territories of 148 countries, are home to 40% of the world's population and generate around 60% of global freshwater flow. With only 1/3 of those basins covered by specific mechanisms and around 80% of existing treaties not involving all co-riparians (UNEP 2006), we are a long way from having arrangements in place everywhere for transboundary water cooperation and management; the global cooperation standards and principles inherent in the Global Water Conventions can be instrumental in achieving that.

Its 'sister' UNECE Convention on the Protection and Use of Transboundary watercourses and International Lakes (UNECE Water Convention) to date counts 41 parties and has just opened up for countries outside the UNECE region. (full overview – see annex). The two conventions at global level are consistent with each other and there are benefits in having them both operating at a global level.

Following the successful regional examples of the 2000 Revised SADC Protocol, EU Water Framework Directive and the UNECE Water Convention, the UNWC can address governance deficiencies at various levels, set basic uniform standards across neighbouring regions, supplement achievement of key policy goals and international agreements and bring all relevant stakeholders together.

With the Sustainable Development Goals approved and especially looking at targets 6.4. and 6.5 - now is the time to promote the Global Water Conventions as a necessary framework for the enhancement of sound management of international watercourses.

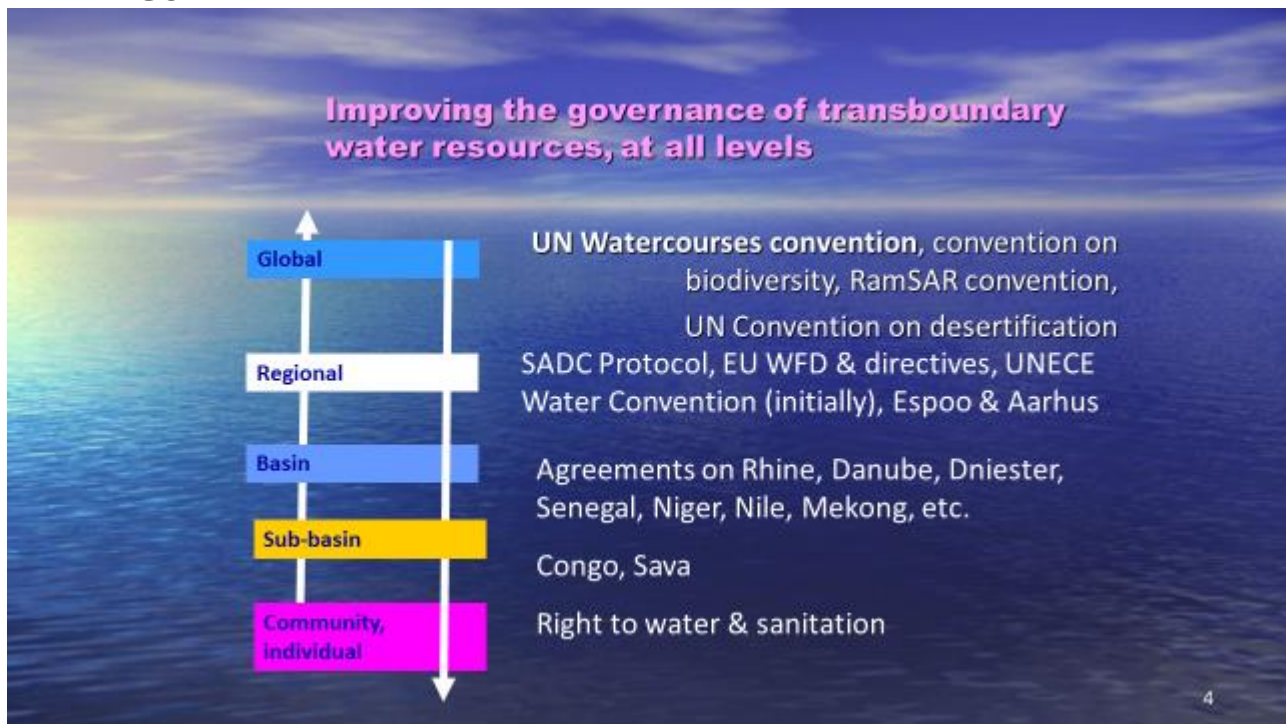
- ▶ “6.5 by 2030 implement integrated water resources management at all levels, **including through transboundary cooperation as appropriate**”

In the broader global context above, general benefits of Cambodia acceding to the UNWC include:

- In Asia most international watercourses are not governed by any treaty providing for equitable water use or environmental protection. Effective institutional arrangements for consultation or cooperation, as well as dispute prevention and settlement mechanisms, are the exception across the continent.
- Some changes in the context of water management cannot be easily mitigated or adapted to and “the likelihood and intensity of dispute rise as the rate of change within a basin exceeds the institutional capacity to absorb that change” (Oregon State University). It is questionable whether the dramatic changes predicted from global warming on water resources, with more widespread droughts and intense floods, melting glaciers, and saltwater intrusion into aquifers, will be addressable solely through interstate efforts at the basin level.
- Countries can strengthen policy and institutional capacity by adopting and implementing the Global Water Conventions in support of sustainable development and improved conditions of access to water and sanitation. Both conventions require states to participate equitably in the use, management, and protection of international watercourses, establishes conflict prevention and resolution procedures, and offers policy and legal guidance for states to engage in transboundary integrated river basin management, with a view to identifying win-win solutions to common problems.

- Strengthening water cooperative arrangements is a widely recognised goal within international water development policies: the SDG targets recently adopted also attest to that.
- Broadening the number of parties to the UNWC will, *inter alia*:
  - Prioritise the need to tackle transboundary water issues as an international development goal / economic development goal and will contribute *inter alia* to the implementation of SDG target 6.5. Governance in the context of transboundary waters is a major impediment to achieving the Sustainable Development Goals as it was for the MDGs.
  - Raise awareness on the Global Water Conventions and help promote transboundary integrated water resources management regionally and globally — a key element in achieving water and development policies and peace and stability.
  - Strengthen international law in the field of water (a total package at all levels) and contribute to its progressive development, which will support consensus-building and dialogue among watercourse states, regardless of whether all states in a basin are parties to the convention or not; provides for an all-encompassing structure (see Figure 1 below).
  - Provide a bridge between donor and recipient countries, as a common platform and catalyst for sharing knowledge and experience on transboundary water cooperation and for enhancing the implementation of other multilateral environmental agreements.

**FIGURE 1**



- The Global Water Conventions will thus enhance the trust of international investors in terms of good governance (clear processes, standards and norms).

- Save time and money in not having to ‘reinvent the wheel’ and lead to possibilities for joined capacity building, horizontal coordination with other ministries, and expert/ knowledge exchange (e.g. during the accession process)
- Assists in making the connection to other water-related conventions and treaties (like RAMSAR, CBD, Hydropower Assessment Protocol, desertification, 3rd UNCCC (CoP21) (see short overview “functions of the UNWC, pages 14/15” Brochure; download [http://assets.panda.org/downloads/unwc\\_2015\\_compressed.pdf](http://assets.panda.org/downloads/unwc_2015_compressed.pdf)). Cambodia is a party to: UNFCCC, UNCCD, CBD, RAMSAR.

**Additional Information:**

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- Transboundary Water Law (TWL) Global Consulting



- IUCN



## **Annex 1**

### **Examples**

Cooperation between states is essential to protect the wider ecosystems. The UNWC offers the necessary legal framework for this collaboration to take place – something the Convention on Biological Diversity (CBD) has called for, but alone cannot provide. In many respects the UNWC supplements the CBD and establishes detailed procedures to implement CBD requirements such as exchange of relevant information, notification on major measures, transboundary pollution. In addition, UNWC can support implementation of the Ramsar Convention on Wetlands by providing key standards, obligation and procedures for preventing disputes and fostering cooperation on the development and conservation of international watercourses and their ecosystems including wetlands.

How the UN Convention can help:

- The Convention recognizes freshwater flows needed to protect ecosystems as being just as important as other forms of water use while allocating water.
- Integrates the management of water quality and quantity
- Requires states to act diligently in the protection and preservation of the ecosystems. 2006 Decision VII/27 of the 8th Conference of the Parties to the Convention on Biodiversity reiterated at 9th Conference of the Parties in 2009 by Decision IX/19 Urges Parties and other Governments to ratify and implement the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses.

**Status of the UNWC and ECEWC Conventions October 2015:**

- 36 states have ratified (January 2015)
- UNWC got into force 17 August 2014
- 15 States have ratified/ acceded to both conventions > 62 States are a Party to one/ both conventions
- All original parties to the ECEWC have now ratified the amendment, also in practice making it possible for countries from outside the UNECE to accede to the WC

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-5-b&chapter=27&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-5-b&chapter=27&lang=en)

**Status of the Conventions (October 2015):**

Country	Signatory Convention 1997	Ratified / Party UN Convention 1997 (into force August, 17 2014)	Party UNECE Convention	Ratified amendment 1992 Convention (into force 6/2/2013)	Signatory Water & Health protocol	Ratification W&H protocol
Albania			x	X	X	x
Armenia					x	
Austria			x	X		
Azerbaijan			x	X		x
Belarus			x	X		x
Belgium			x	x	x	x
Benin		X				
Bosnia and Herzegovina			x	x		x
Bulgaria			x	x	x	
Burkina Faso		x				
Chad		X				
Côte d'Ivoire	x	X				
Croatia			x	x	x	x
Cyprus					x	
Czech Republic			x	x	x	x
Denmark		x	x	X	x	
Estonia			x	x	x	x
Finland	x	x	x	x	x	x
France		x	x	x	x	x
Georgia					x	
Germany	x	x	x	X	x	x
Guinea-Bissau		x				
Greece		x	x	x	x	
Hungary	x	x	x	x	x	x
Iceland					x	
Iraq		x				
Ireland		x				
Italy		X	x	X	x	
Jordan	X	x				
Kazakhstan			x	x		
Latvia			x	x	X	x
Lebanon		X				
Libyan Arab Jamahiriya		x				
Liechtenstein			x	X		
Lithuania			x	X	X	x
Luxembourg	x	X	x	x	X	x
Malta					x	
Moldova			x	x	x	x
Monaco					x	



Montenegro		x	x	x		
Morocco		x				
Namibia	x	x				
Netherlands	x	x	x	x	x	x
Niger		X				
Nigeria		x				
Norway	x	x	x	X	x	x
Paraguay	x					
Poland			x	x	x	
Portugal	x	x	x	x	x	x
Qatar		x				
Romania			x	x	x	x
Russian Federation			x	X	x	x
Serbia			x	x		x
Slovakia			x	x	x	x
Slovenia			x	x	x	
South Africa	x	x				
Spain		x	x	x	x	x
State of Palestine		X				
Sweden		x	x	x	x	
Syrian Arab Republic	x	x				
Switzerland			x	x	x	x
The former Yugoslav Republic of Macedonia			X	X		
Tunisia	x	x				
Turkmenistan			X			
Ukraine			x	X	x	x
United Kingdom of Great Britain and Northern Ireland		X	(signatory)		X	
Uzbekistan		x	x	X		
Venezuela	x					
Vietnam		x				
Yemen	X					
European Community/ Union			x	x		
Total	16	36	41	40	36	26