Library Authorization

In presenting this thesis in partial fulfillment of the requirements for an advanced degree at the University of British Columbia, I agree that the Library shall make it freely available for reference and study. I further agree that permission for extensive copying of this thesis for scholarly purposes may be granted by the head of my department or by his or her representatives. It is understood that copying or publication of this thesis for financial gain shall not be allowed without my written permission.

Samantha Kohn
Name of Author (please print)

09/08/2004
Date (dd/mm/yyyy)

Title of Thesis: The Mekong River's Paper Dragon: A Political Analysis of the Mekong River Commission

Degree: Master of Arts

Year: 2004

Department of Political Science

The University of British Columbia
Vancouver, BC Canada
Abstract

This thesis provides a political analysis of the efficacy of the Mekong River Commission (MRC). The argument provided explains that the MRC has thus far not been effective in achieving its mandated purpose of facilitating the sustainable development of the Mekong River. Utilizing theories advanced by Haas, Keohane and Levy and M.J. Peterson, this thesis explains the expectations of an effective international environmental organization and examines how and why the MRC does not meet these expectations. The argument is organized in three main chapters. Chapter two outlines the historical construction of the Mekong regime and explains that the circumstances surrounding this evolution have contributed to the current state of ineffectiveness of the MRC to achieve its mandate. Chapter three examines the level of compliance effectiveness that the MRC has achieved, and chapter four analyzes the extent to which this compliance effectiveness is translated into result effectiveness. The conclusion here is that this translation has not occurred; the requirements for compliance with MRC regulations are weak enough that this compliance has no positive results on the state of the environment in the Mekong River Basin. While it is important to note that the MRC has been successful in altering diplomatic relations between the member states who have been traditionally in conflict, the fact that environmental policy in member states has not been changed as a result of actions taken by the Commission, combined with the unsuccessful results of the MRC’s attempts to achieve result effectiveness highlights that the Mekong River Commission has thus far been ineffective in facilitating the sustainable development of the Mekong River.
# Table of Contents

Abstract ii  
Table of Contents iii  

**Chapter 1- Introducing the Mekong River Commission**  
1.1 Introduction 1  
1.2 What is Effectiveness? 8  
1.3 The Structure of the Mekong River Commission 12  
1.4 The Political Geography of the River 13  
1.5 Research Methods 20  
1.6 Conclusion 20  

**Chapter 2- The Historical Progression of the Mekong River Commission**  
2.1 Introduction 22  
2.2 American Ideological Interests 24  
2.3 The Onset of Cooperation 28  
2.4 The Interim Mekong Committee (IMC) 1978-1994 31  
2.5 The Transition from IMC-MRC 34  
2.6 The Relevance of History 41  
2.7 Conclusion 43  

**Chapter 3- Compliance Effectiveness**  
3.1 Introduction 45  
3.2 The Different Types of Compliance 47  
3.3 Induced Chinese Compliance 49  
3.4 The Se Săn Example- Vietnamese Non-Compliance? 52  
3.5 Conclusion 57  

**Chapter 4- Result Effectiveness**  
4.1 Introduction 60  
4.2 Defining Result Effectiveness 61  
4.3 MRC Major Programmes 64  
4.3.1 Water Utilization Programme 64  
4.3.2 Basin Development Plan 65  
4.3.3 Environment Programme 67  
4.3.4 MRC Fisheries Programme 68  
4.4 Chinese Development Projects 71  
4.5 Current State of the Mekong Fisheries 76  
4.6 Conclusion 82  

**Chapter 5- Implications for the Future**  
5.1 Implications for the Future 84  

Bibliography 91
Chapter 1
Introducing the Mekong River Commission

Introduction

In an increasingly globalized world with rapidly spreading norms of environmental responsibility, growing numbers of environmental organizations are emerging and becoming significant players in the arena of international relations. These organizations have varying degrees of effectiveness. This effectiveness is in some ways dependant upon the scope of the organization; some environmental institutions, such as the United Nations Environment Programme (UNEP), are based on a global scale, some, such as the Atlantic Tuna Commission, are issue based, and some are based on cooperation regarding a shared resource on a regional scale.

The Mekong River Commission (MRC) is a regional environmental organization that has a history dating back to the 1950s; a time before the widespread acceptance of environmental norms. Upon its inception in 1957, the Mekong regime was set up to enhance regional cooperation regarding the shared use of the Mekong River, and, in its most recent transformation as of 1995, the MRC was formed as the leading facilitator of the sustainable development of the Mekong River. This institution therefore has the potential to play an important role in the rapid development of Southeast Asia.

---

2 The term regime refers to the well-cited Krasner definition, "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations." (Krasner. International Regimes. 2).
3 Sustainable development is "development which meets the needs of the present without compromising the ability of future generations to meet their own needs." (Bruntland, G (ed), "Our Common Future: The World Commission on Environment and Development." (Oxford: Oxford University Press.) 1987, 43.
While the MRC Secretariat has been successful in developing effective research techniques, as with most environmental organizations, the MRC faces problems of effectiveness at the political level. The Secretariat performs important basin-wide studies and valid environmental impact assessments compiling an exhaustive regional data network. While this data is considered to be at the forefront of basin science, it is not analyzed and transformed into the policy recommendations required to facilitate the sustainable development of the Mekong. In addition, articles within the 1995 Mekong Agreement severely limit the enforcement power possessed by the Commission and inhibit the MRC’s ability to restrain state behaviour in a way that contributes to the protection of the river.

The historical legacy of the Mekong regime provides preliminary insight into this situation. Deep-rooted historical tensions between riparian states and the non-inclusion of the upstream states of China and Burma contribute to the current status of the MRC, and the history of the progression of the Mekong regime sheds light on how these circumstances were created. Because the Mekong Committee, the first organization in the Mekong regime, began as an ideological tool of the West and its negotiations were facilitated by the United Nations, the upstream state China, which was not a UN member, was not included in the Committee. In addition, the hegemonic power possessed by Thailand within the negotiations resulted in an incomplete agreement without strong enforcement mechanisms and with key aspects of the agreements left to be decided at a later date.

Although many variables contribute to the current state of effectiveness of the Mekong River Commission, most notable are the deficiencies within the 1995 agreement
itself. This agreement was signed and implemented before it was complete. In 1995, when the agreement was made, important elements were not included such as details regarding the allotted water use of member states and a comprehensive plan for cooperatively developing the river. In essence, the 1995 agreement was an agreement to agree, thus setting the stage for the creation of a paper dragon institution; an institution that claims efficacy on paper, but when it comes down to action and further negotiation, this dragon is unable to breathe fire.

The most useful way to analyze the level of this Commission's efficacy is to examine both the compliance effectiveness and result effectiveness within situations surrounding the MRC. Compliance effectiveness refers to the degree to which the member states comply with the recommendations proposed by the organization, and result effectiveness refers to the results of the existence of the organization: has the environment improved since the organization began its work?

According to the Mekong River Commission's written mandate, the member states of the Commission have complied with the 1995 agreement. Therefore, it can be said that the Commission has achieved a stable level of compliance effectiveness. There are three different types of compliance, and each can be viewed separately in reflection of the MRC. These are spontaneous compliance, regime-enabled compliance and induced compliance. The first two types are difficult to analyze in terms of MRC action because in order for both of these forms of compliance to be evident, the states must internalize the regime prescriptions. This internalization of regime prescriptions is difficult to see when direct recommendations made to the state by the regime are lacking.

4 A riparian state refers to a state that borders a river or through which a river runs.
Because the MRC fails to transform data gathered into concrete policy recommendations, these types of compliance are not evident in this situation. However, the third type of compliance, induced compliance can be seen in regards to China. In many ways, this can be seen as evidence of a successful Commission because of the fairly recent increases in Chinese (and, to a lesser extent, Burmese) cooperation with the MRC. In addition, the example of the detrimental Vietnamese damming projects in the Se San River, a major Mekong tributary, is often seen as to be contrary to the conditions set out in the 1995 Mekong Agreement. However, these actions are being undertaken in compliance with the agreement, but the weakness of the agreement enables this development to continue despite the serious negative human and ecological consequences.

When examining the level of result effectiveness that this compliance effectiveness has facilitated, it becomes evident that the MRC has not been able to significantly improve the state of the environment in the Mekong River Basin. Analysis of each of the Commission's main programmes shows that these programmes have not contributed to an overall improvement in the health of the Mekong environment. In fact, examination of the impacts of Chinese development projects and the current state of the Mekong fisheries show that the existence of the Mekong River Commission has produced little positive results on the environment in the Mekong River Basin. Therefore, despite certain elements within the Commission that have been effective in achieving their stated goals, as a whole the Mekong River Commission has not achieved a level of efficacy congruent with an environmental organization with a mandate to facilitate the sustainable development of an international river basin.
It is important to note that in comparison with other institutions governing international river basins, the Mekong River Commission is working relatively well.\(^5\) It has been successful in facilitating cooperation between states with a long history of political tension and conflict,\(^6\) and the situation is optimistic because the cooperation arrived \textit{in time} to \textit{save} the Mekong River.\(^7\) In many situations, by the time international cooperation begins, the resource is so severely polluted that it can no longer sustain its natural habitat. However, because regional conflicts kept development in the Mekong River Basin at bay for many years, the Mekong River has remained a largely unspoilt resource.\(^8\) This is beginning to change however; in recent years Mekong water levels have been drastically reduced, resulting in a decrease in fish stocks and interference in natural ecological processes such as the river’s natural flooding cycle.

Therefore, this thesis will argue that despite the efficacy evident in the Commission’s ability to facilitate cooperation among the four member states of Thailand, Laos, Cambodia and Vietnam, the failure to achieve a significant level of both compliance effectiveness and result effectiveness, combined with the inability to directly impact the process of environmental policymaking within member states, and despite the fact that the MRC secretariat is technically effective and remains at the forefront of basin


\(^{6}\) Political cooperation regarding a shared resource is an important step towards maintaining stability. Studies have been performed that link shared resources, particularly river water, with violent conflict. (See Thomas Homer Dixon, 1994). Successful cooperation over the sustainable development of these resources prevents the resource from depletion, therefore preventing scarcity and reducing the chance of violent conflict. For more examples of environmental cooperation leading to increased stability, see Conca and Dabelko, 2002.

\(^{7}\) Personal communication, interview, Richard Paisley, Director of the Dr. Andrew R. Thompson Natural Resources Law Program at the UBC Faculty of Law, 2004.

\(^{8}\) With the exception of the Mekong Delta in Vietnam that has been extensively developed. This area is the downstream-most section of the river; therefore development on this section will not impact Vietnam’s riparian neighbors.
science, the Mekong River Commission is not yet a sufficiently effective environmental organization to in fact promote the sustainable management of the Mekong River.

The existence of the Mekong River Commission has facilitated cooperation between four countries with a history of ideological tension, territorial disputes, and even violent conflict. This is an important element of the Commission that some could see as proving the success of the organization as a whole. However, the Commission has failed to impact the process of environmental policymaking within the member states, and, largely because of the weakness of the 1995 agreement, has been unable to significantly improve the state of the environment in the targeted area. Because of this failure, the Mekong River Commission is currently not an organization that has been effective in achieving its mandate of the sustainable development of the Mekong River.

This argument will be organized in various chapters. Chapter 2 will focus on the historical construction of the Mekong regime that was initiated largely as a Western strategy against the rise of Communism in the region. The evolution of this regime highlights that the MRC was created as an organization favouring the interests of the sub-regional hegemon, Thailand. This enabled an organization to be created without adequate enforcement mechanisms, based on an incomplete agreement. This history also illuminates the inception of a regional environmental organization meant to environmentally govern a river basin that does not include China, the upstream state with the fastest and most comprehensive development plans that have significant impact on the river system. The inclusion of China would be necessary, combined with other factors, in the creation of an organization that could achieve result effectiveness in terms of promoting sustainable development.
The analysis will then turn to examination of the levels of both compliance effectiveness and result effectiveness that the MRC has thus far achieved. Both of these forms of effectiveness are necessary in order for an international environmental organization to be deemed effective. Chapter 3 will focus on compliance effectiveness. Compliance with the 1995 agreement has not been a problem for the Commission.\(^9\)

Because of the weakness and incompleteness of the rules and regulations with the Mekong Agreement, compliance with its articles has not interfered with the national interests of the member states. Therefore, even though the states are complying with the Mekong Agreement’s regulations, this compliance fails to protect the state of the environment in the Lower Mekong River Basin as well as the people living in the area. This chapter will focus on a case study of a development project undertaken on the Se San River, a tributary of the Mekong River by the Vietnamese government. This project is severely harmful for both the Mekong River ecosystem and the human populations that it sustains, yet is permitted under the rules of the 1995 agreement.

Chapter 4 will focus on result effectiveness, and looks at answering the question of whether or not the work of the MRC has resulted in the improvement of the state of the environment in the Mekong River Basin. This chapter will argue that, despite the impressive results made by the MRC secretariat, the impact of Chinese development projects as well as the current state of fisheries in the Mekong River Basin shows that the creation of the MRC has not had a positive impact on the state of the environment in the Basin. In addition, examination of the need for and lack of Chinese membership in the MRC will be included.

\(^9\) Personal communication, email, Anonymous MRC employee, June 2004.
Chapter 5 will conclude the thesis with a brief look at the implications of this study for the future of both the Mekong River Commission and the river itself, as well as provide a brief summary of the conclusions made throughout the study.

Because of the lack of enforcement power, lack of Chinese membership in the MRC and political problems that infect the possible success of the MRC, the Commission is unable to be effective in terms of political impacts within member states, meaningful compliance, or environmental results. The MRC has not achieved its potential level of effectiveness as an organization with a mandate to facilitate the sustainable management and development of the Mekong River. Crucial to any political efficacy analysis is a clear explanation of how effectiveness will be viewed, and what qualifications the subject of the study is expected to possess in order to be deemed effective.

What is Effectiveness?

Effectiveness is achieved when the institution in question is successful in achieving its stated goals, as set out in the organization’s mandate. The mandate of the Mekong River Commission is "to promote and co-ordinate sustainable management and development of water and related resources for the countries' mutual benefit and the people's well-being by implementing strategic programmes and activities and providing scientific information and policy advice."10 In order to judge the effectiveness of the Mekong River Commission, one must ask: has the MRC been successful in promoting and co-ordinating the sustainable management and development of water and related resources? Has the MRC implemented strategic programmes and

---

activities that will improve the well-being of the people in the region? Does the MRC provide scientific information and policy advice that aids in the sustainable development of the river?

In the book Institutions for the Earth edited by Haas, Keohane and Levy, the authors seek to determine whether international environmental institutions promote change in national behaviour that is substantial enough to positively impact the quality of the environment in a particular area. They go on to examine the possible sources of effectiveness for institutions that lack enforcement power.\(^\text{11}\) The research done in the various case studies included in this volume lead the editors to the conclusion that effective environmental institutions can be successful if they have the ability to impact the political process in the context of environmental policy making.

In order to sufficiently affect the political process of member states, the MRC would have to fulfill its mandated task of providing policy advice to states based on data collected by the Secretariat. Without these recommendations, little domestic political-environmental change is expected to occur within the member states. However, because the Mekong River Commission has been successful in promoting an increase in cooperation between Thailand, Laos, Cambodia and Vietnam, the political relationships that these states share have been altered and regional diplomacy has been improved.

Therefore, in some ways, political systems of the member states have been altered by the existence of the Mekong River Commission. This level of political change is important. The improvement in diplomatic relations between the lower Mekong Basin

\(^{11}\) In their introductory chapter, the authors state that institutions do not need enforcement powers to succeed (Haas, Keohane and Levy, Institutions for the Earth, 24).
riparians increases regional stability. However, Haas, Keohane and Levy seek change in the domestic political systems of member states. They argue that “the most effective institutions penetrate the states politically to a high degree.” The only political change that could facilitate an improvement in the health of the Mekong is a change in the environmental policies of the member states. This would include altering the political priorities of short-term economic growth to focus more on long-term ecosystem health which will sustain important natural resource based industries for many generations. Because the Mekong River Commission fails to fulfill its mandated purpose to provide policy advice, this change has not been made.

The editors go on to recognize that it is natural to be sceptical regarding the ability of international institutions to solve environmental problems. These institutions are themselves quite weak, with individual states maintaining most of the available control over the situation. However, Haas, Keohane and Levy’s volume is made up of case studies that allow the editors to conclude on an optimistic note, arguing that environmental institutions can be effective at impacting the political reaction to environmental problems and are therefore having a positive impact on environmental situations.

The editors argue that three fundamental conditions must be met in an institution that governs an international environmental issue effectively. These are referred to as the three C’s: concern, contractual environment and capacity. The first of the three C’s, concern, refers to the idea that governmental concern over the specific environmental

---

12 This increase in regional stabilization is important in preventing a resource war, which some have predicted could be possible between Cambodia and Vietnam over Mekong resources. See Thomas Homer-Dixon (1999).
problem must be high enough to prompt states to devote scarce resources to solving the problem. The second C, contractual agreement, refers to the idea that trans-boundary problems cannot be effectively resolved without an hospitable contractual environment. This includes the ability to make credible commitments, to "enact joint rules with relative ease," 14 and to monitor the behaviour of other members at moderate cost. This is necessary to allow a government to abide by the new joint rules without fear of free-riding or cheating. The third C, capacity, states that countries must have the political and administrative capacity to make domestic adjustments that are necessary for the implementation of the norms, principles or rules that are prescribed by the institution.

While the concept of effectiveness progressed by Haas, Keohane and Levy is a useful analytical tool for the problematic and often subjective task of assessing the effectiveness of an environmental organization or institution, this study will look at the effectiveness of the Mekong River Commission, using the methods outlined by Haas, Keohane and Levy within the structure of M.J. Peterson's view of effectiveness as discussed in Oran R. Young's book, Global Governance: Drawing Insights from the Environmental Experience.

Peterson's chapter focuses on how groups of states cooperate in international environmental institutions. 15 Upon examining regime effectiveness, Peterson states that there are several interrelated dimensions that can be grouped together under the two broad headings of compliance effectiveness and result effectiveness. He states that

14Ibid 19
“these two dimensions of regime effectiveness are independent of each other, but satisfying both is necessary for environmental improvements: neither full compliance with low result effectiveness nor low compliance with high result effectiveness will yield the desired outcome.” However, the arguments presented within this study will diverge from this view by looking at compliance effectiveness and result effectiveness as being somewhat interdependent; the analysis will focus on the level of compliance effectiveness achieved, and examine how this level can be translated into result effectiveness, or real positive environmental results. The failure of the Mekong River Commission to transform compliance effectiveness into viable result effectiveness can be explained to some degree by looking at the structure of the Commission itself.

The Structure of the MRC

The structure of the Mekong River Commission is important to note because it illuminates the division between the scientific and political components of the Commission. This division supports an argument developed in this thesis that examines the strength of the Mekong Secretariat, yet looks at how this strength is lost when attempts are made to apply the successes of the Secretariat to the political systems of the member states. The MRC is made up of three bodies that operate in a hierarchy of authority: the Council, the Joint Committee and the Secretariat, in according order. The organization can be viewed at two levels: the technical level of the Secretariat, as well as the political level of the Council and Joint Committee where MRC recommendations and information are theoretically to be imposed. The Council is made up of two representatives from each member state; one at the ministerial level and one at the cabinet

16 Ibid 116
level. The Joint Committee is made up of one representative from each member state at the department level. Both of these bodies are responsible for negotiations between states. The Secretariat, which provides both technical and administrative services to the other two Committee bodies, is responsible for the supervision of the Commission’s CEO, along with help from the Joint Committee. The Secretariat is the technical arm of the MRC, with responsibilities such as data collection and environmental impact assessments. In addition to these bodies, each member state has appointed a National Mekong Committee (NMC) that represents that particular country in MRC negotiations. However, none of this can be properly understood without knowledge of the complicated nature of the political management and geography of this particular international river basin.

The Political Geography of the River

Because the river is shared by six states that differ in size, power, location and level of dependence, it is crucial to examine the geographical situation surrounding the Mekong. The Mekong riparian states are in a situation of interdependence, in which they must cooperate regarding the shared use of a resource in an environment with no historical legacy of peace and cooperation upon which to build. This is a region in which neighbours were at war for many years, and with the emerged peace comes the opportunity for cooperation. Each riparian has a unique relationship with the river. Known as Khong Nam Mae, or the Mother of Rivers in the Laos and Thai languages, as Tonle Tam, or The Big River, to the Cambodians, and Cuu Long Giang to the Vietnamese, the Mekong plays a different yet significant role in the economic
development of each of the 6 riparian states. The Mekong River has its source in the Qinghai Province of China, located near the border with Tibet. The river flows southeast, passing through the Chinese province of Yunnan, forming the border between Burma and Laos and most of the border between Laos and Thailand. It continues to flow through Cambodia and southern Vietnam into a delta and empties into the South China Sea. The length of the River is estimated to be between 4,200 and 4,800 km\textsuperscript{17}.

The Mekong River

The Mekong Basin can be divided into two sections. China and Burma, who are not members of the Mekong River Commission, make up the Upper Mekong Basin. The

\textsuperscript{17} Sources differ regarding the exact length of the river. The Water Page website states that it is 4,200 km, while International Rivers Network cites it at 4,800 km.

Lower Mekong Basin (LMB) is made up of the four MRC member states; Thailand, Laos, Cambodia and Vietnam.

The international geographic features of this river make its management politically complicated. Environmental problems do not recognize national borders. Actions taken by one nation that have negative affects on the natural environment are felt by all who share in the use of the affected resources. Geographic location upstream or downstream has great significance regarding a nation’s access to river water, as well as the quality of water that is available. Upstream states have access to the portion of the river that has not been affected by actions of other states. Because the source of the river is located within the upstream state, and flows out of that state crossing the borders into others, actions taken by the upstream state are felt by each nation that is located downstream. As the most upstream Mekong riparian, China has a great advantage. Burma is often considered to have upstream status, but is located downstream of China. Thailand and Laos are mid-stream Mekong states, meaning that they are faced with the adverse quantitative and qualitative affects of Chinese and Burmese development. However, within the Lower Mekong Basin Thailand is the upstream state. As downstream states, Cambodia and Vietnam are at a serious disadvantage. They face the consequences posed by the development of China, Burma, Thailand and Laos combined.

In addition to each state having a unique water access, each riparian country shares the common, regional goal of economic growth, but each is at its own stage of development, and each has a unique form of dependency on the river. What follows is a brief discussion outlining the basic dependence of each of the lower riparian states on the Mekong River.
Being the most economically advanced of the four lower Mekong states, Thailand was the most eager to go forward with hydropower construction projects, particularly in Laos.\textsuperscript{19} However, because Thailand has more economic and political strength, as well as the fact that the Mekong is not the main river that flows through the country, Mekong-related issues are not at the forefront of Thai politics or development considerations as they are in other MRC member states.\textsuperscript{20} Despite the lower priority that the Mekong plays in Thai politics, this has not stopped the LMB upstream state from beginning substantial development plans along the Mekong and its tributaries.

Thailand is currently planning the construction of at least 2 new dams in combination with the continuation of dams already built, as well as two new water diversion projects. These projects will divert an estimated 12,000 million cubic metres of water from the river each year.\textsuperscript{21} The focus of Thai hydro development projects is largely to service the Northeast region of the country. Thailand has an economically disadvantaged Northeast area that cannot adequately irrigate its land because of lack of water and is therefore unable to embark on effective economic advancement. The Mekong is important in this particular development project because of the proximity of the river to this region. Thai development along the Mekong would improve the situation in this region by increasing the economic resources entering and exiting the area. However, the most important factor in Thailand’s enthusiasm over Mekong development projects is the rapid industrialization that the country has developed. Thai factories and

\textsuperscript{19} Nguyen, \textit{The Mekong River and the Struggle for Indochina}. 108
\textsuperscript{20} Personal communication, interview, Richard Paisley, Director of the Dr. Andrew R. Thompson Natural Resources Law Program at the UBC Faculty of Law, 2004.
cities are heavily consuming electricity, with demands rising by 12-16% per year.\textsuperscript{22} The series of dams that Thailand has built were constructed in attempt to increase the nation’s power generating capabilities.

While Thailand has been relatively prosperous, Laos emerged from the Indochina war one of the world’s poorest countries, dependant almost entirely on foreign assistance. Laos began to open up its economy in 1986, but despite being more market oriented the Communist state was disadvantaged by a lack of arable land in a country where 48% of the national income is generated by agriculture\textsuperscript{23} most of which is sustained by the Mekong River. Because of this, and due to the fact that the Mekong River is the main source of water for landlocked Laos, issues pertaining to the Mekong River and its development are a high priority within Laotian politics and decision making procedures. Following the war, the survivability of Laos depended on its ability to find a new source of income, and it saw the Mekong as an “economic salvation” considering 40% of the rivers feeding into the Mekong begins in Laos.\textsuperscript{24} Laos has the largest hydropower potential of the four lower riparian states, second in the basin only to China, but cannot exploit that potential because of the prominence of agriculture to the economy. Any electricity produced in Laos will be sent across the Mekong and sold to the region’s largest energy-consumer: Thailand. The future development of hydropower projects is further stalled by Thailand’s role as the sole market of this source of power, meaning that Thailand can dictate the rates. However, it remains clear that despite the problems

\textsuperscript{22}Nguyen, The Mekong River and the Struggle for Indochina, 208. This statistic is contested. Bakker estimates that energy demands will increase 7X in the next 25 years, and various sources made other estimates. However, in each source it is evident that Thai energy demand is increasing significantly and rapidly.

\textsuperscript{23}Nguyen, The Mekong River and the Struggle for Indochina, 210.

involved with developing this industry, the Laotian economy is dependant on the Mekong for economic and food security.

Cambodia has faced the longest period of war in the region. In the post-war period, one of the tasks seen as most important for the state was to establish food security. The success of this task depends heavily on the development of a good system of irrigation, which, despite an intensive programme initiated by the Khmer Rouge, currently does not exist. In 1999, less than 7% of Cambodia’s rice fields were irrigated.\(^2\)

In order to accomplish food security, Cambodia needs an adequate water supply, which must come from the Mekong. The majority of Cambodian fisheries rely on the waters of the Tonle Sap, a unique portion of the river that is heavily concentrated in fish resources, as well as the area responsible for the maintenance of much of the agricultural needs. The productivity of the Tonle Sap is entirely dependant on the natural cycle of flooding that occurs annually in the Mekong. These floods push water in to the natural reservoir bringing a large amount of fish into the country for the people to harvest. The flow of this portion of the river reverses when the flooding ends, and the water and remaining fish are sent on their natural course downstream. The Cambodian people have been dependant on this cycle for many years. Upstream damming diverts water away from this area, altering the natural flooding cycle, disrupting fish stocks and limiting the water levels needed to support water-intensive rice agriculture.

The Mekong delta is located mostly in Vietnam and provides support for over half of the country’s rice production. Rice is an important export product for the state and it

---

makes up 40% of total Vietnamese agricultural output. Vietnam is the riparian located most downstream, and is therefore subject to the highest degree of contamination as a result of development projects upstream. As a result, the state faces the lowest quality and quantity of Mekong River water. Vietnam depends on the Mekong for fisheries, flood and salinity control and hydropower production. However, despite these facts, it has been noted that, somewhat like Thailand, the economic and political power possessed by Vietnam in relation to that of Laos and Cambodia have meant that the Mekong River does not play a very substantial role in Vietnamese politics. This country is currently in a political state of flux, focusing largely on the steady transition away from the command economy of the past and towards a more market-oriented economy. Issues dealing with this transition are largely driving the political process in Vietnam, leaving other situations such as cooperation with international organizations regarding shared resources on the back-burner.

Each state is in some ways dependant on the Mekong River for economic development and for the stability of many non-traditional forms of security such as food and economic security. This applies to China and Burma as well, who rely heavily on the Mekong for national development projects. It is in the best interest of each of these nations to look past the short term prosperity associated with rapid development and work together to manage the river and ensure its survival so that it can be utilized for decades into the future. Joint consultation on development is the only way to maintain and solidify regional stability.

Research Methods

The Mekong River Commission is, as previous analysis shows, an intensely political organization. Because of the political sensitivities of information regarding the Commission, its member states, and its activities, gathering information about the Commission is a difficult task. While the Commission publishes annual reports, none of these reveal the type of information needed to perform a study of the nature of this thesis. Therefore, alternative research methods were required. The information used in the progression of this argument was compiled from a variety of sources. A survey of the current published literature regarding the Mekong regime and its politics was thoroughly reviewed. In addition, experts from the fields of Geography, Political Science and International Water Law located in Cambodia, Australia, Canada and the United States were interviewed both personally and electronically, as was one source working within the Mekong River Commission.28

Conclusion

Important elements of the argument made in this study originate in the very onset of political Mekong-centred cooperation. The political backdrop of the formation of the Mekong Committee, as well as actions taken within political negotiations that took place within the evolution of the Mekong Committee into the Interim Mekong Committee and finally the Mekong River Commission, provide important information regarding the initiation of the organizations that have attempted to govern Mekong development project

27 Personal communication, interview, Richard Paisley, Director of the Dr. Andrew R. Thompson Natural Resources Law Program at the UBC Faculty of Law, 2004.
28 Due to the political sensitivities of the information discussed, the source within the MRC requested anonymity, but agreed that under this condition, the information could be used in this study.
from the 1950s until today. What follows in the next chapter is a thorough discussion and analysis of the political-historical background of the evolution of the Mekong regime, and how this history has contributed to the level of effectiveness currently possessed by the Mekong River Commission.
Chapter 2
The Historical Progression of the Mekong River Commission

Introduction

The creation of the Mekong River Commission was a long and turbulent process. What is now the MRC began as the Mekong Committee, held the title of the Interim Mekong Committee, and finally became the Commission as it is today. Each aspect of this process, from the first donors to the conflicts surrounding the current agreement, helped to set the stage for the current inability of the MRC to achieve its mandate. Since inception the MRC has never been an organization sufficiently effective to facilitate the sustainable management and development of the Mekong. Political problems such as interstate conflict during the time period of the Mekong Committee and the priority of protecting state sovereignty evident during negotiations of the 1995 agreement have interfered with the Commission’s ability to create, disseminate and enforce information and decisions. This chapter will examine the political motivations that encouraged the creation of the Mekong Committee, and follow the intensely political backdrop of the transition from Mekong Committee into the MRC as it currently exists.

Due to the political power interests involved in each aspect of this discussion, this chapter will argue that the historical progression of the Mekong River Commission set the stage for the currently ineffective state of this institution in its quest for sustainable development of the river. This is seen through analysis of the Mekong Committee’s inception as a tool of the United States against the spread of communism combined with the current regulations of the MRC being created to conform to the interests and sovereignty of Thailand over those of the other three member states. These
factors resulted in an organization that lacks enforcement mechanisms, does not translate technical data into policy recommendations, and is governed by a constitution that is weak and incomplete. The 1995 agreement was completed and signed in its current state because of the power of sub regional hegemon, Thailand. The lack of transparency existent within the institution from the beginning has been transferred to the present.²⁹

As Haas, Keohane and Levy argue, an environmental institution cannot be effective if it does not affect the political systems in the member states. Political relations between member states prior to the 1995 agreement will be discussed, and it will be made evident that because of the negotiating and signing of this agreement, the diplomatic relations of the MRC members were altered. While relations between states remain somewhat tense, the MRC has lasted throughout varying levels of political hostility³⁰ and negotiations have continued. Because of this emerged situation it can be argued that the very creation of the Mekong River Commission has been successful in altering the political systems in the member states in facilitating a forum for cooperation. However, this type of impact, while important, is not sufficient to deem the Commission effective in facilitating sustainable development and management of the river, as cooperation in and of itself does not result in positive environmental impacts.

²⁹ It has been brought to the author’s attention that Western notions of transparency within organizations should not be applied to expectations of the Mekong River Commission, as this is an institution made up of developing states. Therefore, it can be seen as Eurocentric to apply these Western ideals to an Asian institution. However, this organization was created largely thanks to the aid of Western states as well as the United Nations, and is currently made up largely of European and North American scientists and engineers. Therefore, the author sees it appropriate to discuss the concept of organizational transparency in reference to the MRC.

³⁰ For example, the borders between Thailand and Cambodia were closed briefly in 2003 after the Thai embassy in Phnom Penh was attacked by Cambodians protesting claims made by a Thai actor regarding ownership of Angkor Wat. MRC negotiations continued, despite the location of the MRC Secretariat in Phnom Penh, and despite Thailand’s prominence within the Commission.
American Ideological Interests

Following WWII, the foreign policy of the United States towards Southeast Asia was one of non-interference. The U.S. did not have significant political or economic interest in the region and therefore did not participate in its development. The founding of the People's Republic of China in 1949 and the onset of the Korean War in 1950 permanently changed the American view of their interests in Asia.

These events illustrated to the United States that "Chinese communism was a factor of regional and global importance," and that Soviet influence was spreading outside of Eastern Europe. Almost immediately the U.S. developed the objective to "contain, reduce and eliminate" the power of the Soviet Union in Asia. As a response, American aid began to flow into Southeast Asia, and was concentrated on aiding economic development in Thailand and Indochina. The Americans were trying to push for regional integration to mitigate the possibility of these states falling to communist forces. The United States saw the only way to protect the independence and stability of the Southeast Asian states, as well as their independence from the political and economic resources of the communist bloc, was by creating a system of economic development. The Americans fostered a programme aimed to help healthy economic development in the region and attempt to prove that economic growth could be reached without resorting to "communist methods."

31 Nguyen, The Mekong River and the Struggle for Indochina. 69.
32 Ibid 69
33 Ibid 84
The United States believed that in order to strengthen the economies of the Southeast Asian states any development project must be accompanied by an increase of interstate cooperation.  

The "Mekong Project," to which it was referred by the Americans, began with little scientific knowledge of the river. This changed with the joint American/United Nations projects that were initiated in the 1950s. In 1955 the US signed a project agreement with each lower riparian state, and sent a team of American scientists into the region shortly after to carry out preliminary studies of the area. A report was published as a result of this mission, which described the existing data on the river and suggested orientation and development for the future. Most importantly, the report underlined the necessity for cooperation among the four lower riparian states. This was combined with actions that took place in the mid 1950s, when the United Nations Economic Commission for Asia and the Far East (UNECAFE) along with the United States Bureau of Reclamation sent reconnaissance teams into the river basin to explore water resource development options. This was the beginning of the United Nation's role in Mekong Basin development.

In 1956 the American National Security Council released a document that formulated key elements of the US policy in the region. The document states that "in order to promote increased cooperation in the areas and to deny the general susceptibility of the Mekong River Basin to communist influence or domination, assist as feasible in

34 Ibid 89
35 Sources differ regarding the cooperative nature of these studies. While Nguyen writes that the studies were based on cooperative efforts of the US and UN, Abigail Makim writes that the American investigations were "executed independently of ECAFE." (Makim, "The Politics of Regional Cooperation on the Mekong, 1957-1975." 70.)
36 Ibid 87
the development of the Mekong River Basin as a nucleus for regional cooperation and mutual aid.\textsuperscript{38} The question was raised whether countries at war with conflicting interests would consent to work together in a development project. The Eisenhower administration suggested that it was possible, as long as "the coordinating is done by some agent above reproach and beyond prejudice."\textsuperscript{39} This agent was to be the United Nations. Nguyen Thi Dieu argues that "by instituting the UN as the main organizer in charge of such an international regional project, the US, while maintaining a certain control, could avoid affronting the susceptibility of these nations and the concomitant accusation of excessive involvement in their domestic affairs."\textsuperscript{40}

The introduction of American involvement in the region exacerbated the political tensions that already existed between the four lower riparian states. There was a significant conflict between American, Chinese and Soviet interests in the region which created an increase in the formalization of alliances between Thailand and the Indochinese states divided by the communist and capitalist ideologies. A complex of alliances was built among the communist and capitalist blocs. South Vietnam sought US support, while Ho Chi Minh's communist government in North Vietnam unsurprisingly sought support from the China and the USSR. \textsuperscript{41} Thailand allied itself with the United States and South Vietnam. Laos was in the midst of a prolonged but low-intensity civil war that maintained Vietnamese supported communist forces on one side, and Thai and

\begin{flushright}
39 Ibid 505
38 Nguyen, The Mekong River and the Struggle for Indochina. 79.
39 Ibid 79
\end{flushright}
American supported forces on the other. King Shihanouk’s government in Cambodia attempted to remain neutral during what was deemed the second Indochina war: the military conflict between the North Vietnamese acting under Soviet support, and the American, Thai and South Vietnamese.\textsuperscript{42} In 1970 the Cambodia Lon Nol government tilted its alliances towards the United States. This inclusion in the capitalist bloc would be short-lived; the Khmer Rouge forces that invaded Cambodia would shift the countries alliances, and seek self-sufficiency.

This history is important to the future state of the efficacy of the Mekong River Commission. This is due to the divergence of political systems within member states. The MRC consists of both capitalist and communist members, and states that have undergone many stages of political transition throughout their inclusion in the Mekong development regime. Developing countries are characteristically wary of rules that are viewed as having been designed primarily by developed, Western states.\textsuperscript{43} The background of the Mekong regime as having been initiated first by the United States contributes to the favouritism that the 1995 agreement pays to Thai interests somewhat because Thailand was the most stable member of the capitalist ideological alliance in the region. UN involvement in the region was circumscribed from the beginning by Cambodian refusal to be part of any agreement involving the United States.\textsuperscript{44} The American strategy to forfeit direct creation of the regime and to delegate responsibility to the United Nations helped to mitigate what could have been a serious compliance dilemma.

The Onset of Cooperation

Much of the research into the formation of intergovernmental environmental regimes begin with analysis of the United Nations Environment Programme (UNEP), and does not examine regional international environmental organizations. Regional environmental organizations are of utmost importance to the study of environmental norms and regimes because recognition of the international nature of environmental problems began with discourse regarding issues that affected neighbouring states. It was regional, not global, environmental problems that generated the early forms of international environmental cooperation. However, while regional organizations are often considered secondary to global organizations, in the case of the MRC this is a valid oversight. The birth of Mekong related international organization came with the involvement of the United Nations into the East Asian regional issue of Mekong development. This represented the first example of long-term United Nations involvement in the development of an international river basin.45

The Mekong Committee was founded in 1957, with funding coming primarily from European, American and Japanese governments. This occurred during the post World War II period when the political and economic systems of the world were being restructured. When created, the Committee’s formal name was the Committee for the Coordination of the Comprehensive Development of the Lower Mekong Basin, and it was created with a goal of basin wide development. Upon inception, the Committee was seen largely as a dam building organization. At that time, many political problems

44 Personal communication, email, Abigail Makim, Professor and noted expert on Mekong politics, 2004.
existed in regards to relations between the four potential member states. Longstanding territory disputes existed between Thailand and Cambodia, Thailand and Laos, and Cambodia and Vietnam. The majority of these territory disputes were focused on areas adjacent to the Mekong. In addition, hegemonic contention existed between Thailand and Vietnam. This was a region in which nothing was stable.

Within this era of instability and under the guidance of UNECAFE, Cambodia, Laos, South Vietnam and Thailand sought a regime to facilitate coordination of the exploitation of the resources of the Mekong River. The regime served as “an avenue down which financial and technical assistance for development could be delivered.”

Because the regime was created under UN sponsorship before China was a U.N. member, the Mekong Committee was created without China as a member state. This omission would prove to have significant impact on the future of MRC efficacy. In terms of the other upstream state, domestic ethnic demands for autonomy as well as the political demands of the Cold War made the newly independent state of Burma opt to choose a neutral foreign policy. Therefore, Burma made it clear that it was not interested in participation. It was in this context that the 1957 agreement was finalized.

In the agreement to form the Committee, the states agreed that “the functions of the Committee are to promote, coordinate, supervise, and control the planning and

---

47 Ibid 11
49 Jacobs, “Mekong Committee History and Lessons for River Basin Development.” 139.
investigation of water resources development projects in the lower Mekong basin."\textsuperscript{50}

Shortly after the formation of the Mekong Committee, the decision was made to create a Mekong Secretariat to facilitate the technical and administrative work of the Committee.\textsuperscript{51} The arrangement included the coordination of data that referred to river resources and to analyze possible methods of sub regional development cooperation. Included was encouragement of development for hydroelectric power, irrigation, flood control, drainage, navigation improvement, watershed management and the sharing of the water supply.\textsuperscript{52} The mandate of the Mekong Committee was limited to planning water resource development. However, it was widely desired that someday the Committee would expand that mandate to include the construction and operation of water projects.\textsuperscript{53}

It was difficult to facilitate cooperation of sub regional resource development in an area of intense, unresolved conflicts associated with cold-war tensions, uncertainty in Indochina, and disputed borders adjacent to the Mekong. Therefore, the establishment of institutional cooperation required a regime that strongly supported sovereignty norms. This was reflected in the final agreements of the Mekong Committee, whose arrangements did not impinge in any way on pre-existing agreements relating to the Mekong. But at the same time, a unanimity rule, Article 5 of the 1957 general agreement, required all Committee decisions to be unanimous. Within this key article of the Mekong Committee’s agreement, each member state had veto power over any

\textsuperscript{50} Mekong Committee, Committee for Co-ordination of Investigations of the Lower Mekong Basin: Statute 1957, Article 4.
development project to which they did not agree. While the explicit goals of shared river development were stated in the Committee agreement, less explicit goals for sub regional peace and stability both within the Mekong Committee and outside it were also crucial to the agreement. "The benefits of regional collective action and collaboration were fundamental assumptions of the Committee’s objectives for basin-wide development. In this way, the Committee’s mandate established an arena for Mekong development."\(^{55}\)

**The Interim Mekong Committee (IMC) 1978-1994**

The third Indochina war saw the necessary dissemblance of the Mekong Committee. In mid-1975 the geopolitical balance in the region shifted “quickly and unexpectedly.”\(^{56}\) North Vietnam was successful in a military offensive over South Vietnam, thus unifying the country under a communist government. In Cambodia, Pol Pot’s Khmer Rouge forces gained control, and in Laos, the Vietnamese-supported communists took control of the government during 1975 and 1976. This left Thailand as the sole member of the pro-Western, capitalist camp.\(^{57}\) “The dream of integrated development of the Mekong River was shattered, and the Mekong Committee collapsed.”\(^{58}\)

In 1978, diplomatic relations were re-established between Thailand and the communist Indochinese states. This occurred despite Thailand’s continued ideological opposition to the communist governments of its riparian neighbours. With help from the

\(^{54}\) Ibid 506  
\(^{55}\) Ibid 506  
\(^{57}\) Ibid 509  
\(^{58}\) Ibid 509
United Nations' Economic and Social Commission for Asia and the Pacific (UNESCAP) (which succeeded ECAFE), the 1978 Interim Mekong Committee agreement was signed by representatives of Laos, Thailand and Vietnam. The Pol Pot regime refused Cambodian participation, as they were pursuing a policy of "self-reliance" which included decisions not to be involved in any international organizations. The Committee used the term *interim* because the new Committee was formed with the hope of the eventual re-inclusion of Cambodia.

Provisions were made for the re-admittance of Cambodia within the 1978 IMC declaration. The agreement stated that the Interim Committee would be succeeded by the Committee for the Coordination of Investigations of the Lower Mekong Basin (a.k.a. the Mekong Committee) once all members of the latter Committee had agreed to participate in that organization. This statement was largely interpreted as stating that once Cambodia was ready to re-establish cooperative development of the Mekong, the regime would resume its negotiations under the agreements of the Mekong Committee. This element of the agreement was written ambiguously, which became a problem when Cambodia requested readmission to the Mekong Committee in the early 1990s.

Plans for the cascade of reservoirs that had been planned under the original Mekong Committee were put on hold under the IMC, and the Thai government began to speak out against institutional control over its development plans. This was the beginning of a long lasting confrontation within Committee negotiations that brought the Mekong regime close to collapse on more than one occasion.

Meetings among IMC members were often unproductive, as ideological problems interfered with the ability of member states to negotiate. This was an indication of things

---

59 Ibid 510
to come. In late 1978 the Vietnamese military invaded Cambodia in an attempt to oust the Khmer Rouge regime. This was in response to Cambodian attacks on Vietnamese villages along the Cambodian-Vietnamese border, combined with the Vietnamese sentiment towards the Khmer Rouge policies that were supportive of genocide.\textsuperscript{60} A pro-Vietnamese government was installed in Phnom Penh, and Vietnamese troops remained in Cambodia in an attempt to contain Cambodian insurgencies "whose various factions were supported by China, Thailand and the United States."\textsuperscript{61} This situation, along with the Cambodian civil war, lasted until 1990, and contributed to chilled relations between Cambodia and Vietnam. In addition, Thai-Laos relations were intensified by border skirmishes that continued throughout the 1980s. All of these situations contributed to the inability of the IMC to function effectively.

These political problems prevented the IMC from being effective in its attempt to foster cooperation in the promotion of water resource projects in the lower Mekong basin.\textsuperscript{62} However, despite the various problems faced by the IMC, the Mekong regime continued largely thanks to UNDP sponsorship. The United States ceased all aid towards the IMC following the 1975 conclusion of the Vietnam War and the main donors of the IMC became the European donors, especially the Nordic countries. The IMC began to survive on approximately $5 to $8 million per year, compared to the $20 million per year average previously enjoyed by the Mekong Committee.\textsuperscript{63}

\textsuperscript{60} Ibid 510  
\textsuperscript{61} Ibid 510  
\textsuperscript{62} The IMC mandate only called for the "promotion" of water resource projects, which was a major restriction on the mandate of the original Mekong Committee which was mandated to "promote, coordinate, supervise and control the planning and investigation of water resource projects." This meant that the main role of the IMC was to gain aid from donor countries.  
\textsuperscript{63} Ibid 510
The Transition from IMC to MRC

The diminishing of the Cold War in Southeast Asia encouraged the third stage of the Mekong institutional evolution. The geopolitical transformation that was taking place reopened prospects for increased cooperation in the Mekong region. The Cambodian civil war came to an end with the signing of the 1991 Paris Peace Accords, and Cambodia prepared to re-enter the Mekong regime. Negotiations were once again facilitated by the United Nations and took place as a series of negotiations that led to a political agreement in which the four lower Mekong riparian countries agreed to the establishment of the MRC.

This agreement was not made smoothly, as much contention was raised by Thailand over the reintroduction of veto power of states over proposed development projects. As previously discussed, the Declaration of the IMC stated that the new agreements were only in place until Cambodia’s re-emergence into the organization, at which time the previous rules of the Mekong Committee would stand again. Thailand did not agree with this prior agreement and the problems that this caused brought the institutional cooperation of the Mekong River to the closest it has been to disintegration.

With the signing of the Paris Peace Accords in October of 1991, Cambodia requested re-admission into and the reactivation of, the Mekong Committee. The issue of Cambodian re-admission raised many issues that had been of long-standing concern. There was a lack of consensus on whether to proceed under the old framework of cooperation. Many circumstances had chanced since the signing of the original Mekong Committee agreement. Firstly, the governments of the lower Mekong Basin were no
longer as closely allied as they once had been. Many political situations that have been previously discussed had occurred, and, despite the fact that a new era of cooperation was emerging in the world, these political circumstances were difficult to transcend.\textsuperscript{65}

Second, the potential environmental and social impacts of large-scale dams were recently being questioned. The construction of these dams was in large part the impetus of the former Mekong Committee.\textsuperscript{66} Third, China had begun a process of building a large scale hydropower development programme in the upper Mekong River Basin, which could potentially have significant impact on the water flow in the downstream states. Because of that, there was a perceived need to bring China into the Committee.\textsuperscript{67} The final issue which is also the issue that is most widely cited as the most significant deterrent of cooperation during this stage of Mekong cooperation is the requirement of the 1975 declaration that the Committee must unanimously agree on all mainstream, major tributary, and inter-basin diversion projects. This element of the agreement, Article 5, was the subject of much contention.

Following the 1991 Paris Peace Accord and Cambodia’s request for re-admission to the Mekong Committee an informal meeting of the former Mekong Committee member states was held and concluded with the agreement to draft a joint declaration regarding the need to amend the Committee’s basic documents. On November 2 1991 the Thai MC Representative refused to accept signage of the agreement from the Cambodian representative. The lack of official appointment of the Cambodian

\textsuperscript{65} Radosevich and Olson, “Existing and Emerging Basin Arrangements in Asia: Mekong River Commission Case Study.” 8.
\textsuperscript{66} Ibid 8
\textsuperscript{67} Ibid 8
representative to the position of Mekong Committee representative was cited as the reason. This appointment was to be made by the Supreme National Council of Cambodia chairperson. The Cambodians disputed Bangkok’s refusal to recognize their appointee, arguing that the cause of the failure of the meeting was more accurately because Thailand imposed conditions for the re-entry of Cambodia that were not acceptable to the other member states. This was the first indication to the public of the pending dispute over the draft legislation that had been agreed to just days before. The requirements of this legislation were regarding amendments posed to the Committee’s rules and regulations.

Thailand demanded that the 1957 and 1975 agreements be “scrapped” before they would consent to Cambodia rejoining the Committee, and before the full Mekong regime was reactivated. They sought renegotiation of all of the principles, norms, rules and decision making procedures of the Committee. “In order to better position itself within the context of the regime, Thailand was pursuing a form of revolutionary change for the Mekong regime. These actions would result in either a new regime or the disappearance of the regime altogether.”

Vietnam was vocally opposed to the Thai position. The Vietnamese wanted full membership for Cambodia and a return to the regime’s prior documents. This is reflective of the divergence of Vietnamese and Thai interests as upstream and downstream riparian states. The Vietnamese argued that the Thai position was in violation of the Paris Agreements of 1991 that stated that the Cambodian Supreme National Council represented Cambodia in all international fora. The Vietnamese also argued that the 1978 IMC agreement states that when Cambodia rejoined the Committee,

the four riparian neighbours would return immediately to the 1957 and 1975 agreements. This point is a matter of interpretation. While many scholars interpret the agreement as the Vietnamese do, it is also often interpreted as being vague in this respect and not actually coming forward and stating what rules were to be followed upon re-activation of a four member institution.

A second area of contention soon emerged when Thailand began to insist that while the states were negotiating a new agreement, they would be governed by the 1978 IMC procedural rules, while Vietnam wanted to return to the 1957 agreement.

The reactivation of the original documents brought about Thai concerns over potential limitations imposed by its co-riparian member states regarding water use, as well as the fact that under this agreement, potential projects could be vetoed and pre-existing projects could be stopped and completion prevented. Because of these requirements, questions of sovereignty and interdependence were raised that were linked with domestic pressures to develop resources. This pressure was especially strong in Thailand, where electricity demand had been increasing at an exponential rate.

However, Thai development, including the Khong Chi Mun damming scheme that was in the early stages of development when the Paris Agreements brought these issues into negotiation, had negative potential for the environment in Vietnam. 25% of the Mekong River flows into the Vietnamese Mekong river delta that empties into the South China Sea. This area is known as the rice bowl of Vietnam. The Mekong River Delta is at the heart of Vietnamese economic development and it sustains the rice industry, which is the state’s leading agricultural product. Substantial flow is required by Vietnam for

---

69 Ibid 10
70 Ibid 11
flushing to help combat salt water intrusion from the sea as well as acidic soils.\textsuperscript{71} This flow is threatened by upstream damming because dam projects divert the water flow and often reduce water levels downstream.

Eventually Vietnam dropped the demand for full reformation of the Mekong Committee, as long an individual state’s projects did not affect the mainstream of the river. Vietnam argued that mainstream diversion projects should be subject to prior consultation by the Committee, and any proposed use could only be undertaken by agreement from all members. Thai response to this was that these were matters of national interest, and argued that prior approval obligations were causing problems in securing funding for development projects.\textsuperscript{72} In short, Thailand wanted flexibility, and Vietnam wanted more binding clauses.

According to George-W. Downs, the Thai preferences would have the ability to lead to a more productive regime in the long-term. In an article entitled “Constructing Effective Environmental Regimes,” Downs argues that weak rules lead to more effective regimes and more cooperation in the long run. He goes on to say that “once states are members, constructivist processes can transform their preferences towards embracing more ambitious binding commitments.”\textsuperscript{73} However, while this argument may be acceptable in regards to the possibility of the members bringing the upper riparian states of China and Burma into the organization, it does not apply in regards to the negotiations between the four lower riparians.\textsuperscript{74} These states were already members of this institution,

\textsuperscript{71} Ibid 11  
\textsuperscript{72} Ibid 13  
\textsuperscript{73} Downs, “Constructing Effective Environmental Regimes.” 29.  
\textsuperscript{74} However, this did not prove successful in terms of bring China and Burma into the organization. During the same time period of this conflict, Thailand initiated informal meetings between representatives of all 6 riparian states, as an attempt to form a new organization that included China. If Thailand was successful in this attempt then the Mekong Committee as it once existed, along with its original agreements, would be
and had participated in cooperative water management for decades, throughout political, economic and social turmoil. To alter the regime to weaken the rules at this point would not serve to increase the effectiveness of the organization. Rather, this chapter argues that the opposite occurred. These weakened rules set the stage for an agreement to which compliance was too easy. Because of the weakness of the agreement that followed, compliance with its regulations produces very little result effectiveness.

The situation was worsening, and the UNDP stepped in to promote a fast resolution. It was unprecedented for the UNDP to overtly support a process of bargaining and negotiation. An arrangement was made with two simultaneous tracks of negotiation within the Mekong regime. Existing work would continue under the 1978 rules, and the four states would begin new negotiations on the restructuring of the regime. In addition, Cambodia would regain full membership into the organization. Both sides considered this arrangement somewhat of a victory. Thailand won a revision of the regime and the resumption of existing projects, while Vietnam won Cambodian membership.

An Indochinese coalition had formed in joint opposition to the Thai position. Thailand's preferences were viewed as seeking of unilateral diversion of Mekong waters. Finally the mandate of the drafting working group expired, and Vietnam shifted in favour of Thai preferences, as Thailand had committed to leave the Committee should the negotiations prove unsatisfactory. Vietnam agreed to the Thai position regarding

---

76 Ibid 12
77 Ibid 12
78 Ibid 12
Article 5 concerning the definition of mainstream and adopted a “more flexible stand” regarding the diversion clause.\textsuperscript{79}

The Thai-Vietnamese dispute was resolved “suddenly and mysteriously”\textsuperscript{80} in June, 1994. Evidence available suggests that Thailand had managed to fracture the Indochinese coalition by securing Cambodian and Laotian agreement to the Thai position. This was made possible through the strengthening of Thai-Cambodia relations.\textsuperscript{81} Vietnam’s imminent membership into ASEAN was also a factor. As Vietnam was “stripped of support in the dispute and facing a need for accommodation in a new South East Asian order, Vietnam shifted its position in order to reflect Thai preferences.”\textsuperscript{82}

The four riparian member states finally agreed on new agreement principles for water sharing. This was the 1995 Agreement on the Cooperation of the Sustainable Development of the Mekong River Basin. These were reached on accord of the long disputed Article 5, entitled “Reasonable and Equitable Utilization.” The new arrangements were built on the concept of “super fairness and “win-win” theory according to George Radosevich, the UNDP legal consultant and the architect of the Agreement.\textsuperscript{83}

In the new Article 5, in the case of mainstream projects (which were the minority of projects planned), the unanimity rule would hold, subject to seasonal variation. This allowed any member state unsatisfied with project proposals the ability to veto a

\textsuperscript{79} Ibid 12  
\textsuperscript{80} Ibid 12  
\textsuperscript{81} Ibid 12  
\textsuperscript{82} Ibid 12  
\textsuperscript{83} For exact text of this and other Articles, see The Agreement on the Cooperation of the Sustainable Development of the Mekong River Basin (1995), Available online: www.mrcmekong.org
mainstream project. In the case of tributary projects, prior consultation and maintenance of a minimum water flow was required during the dry season, and wet season projects required notification only. However, the effectiveness of this segment of the agreement in hindered by the fact that, at the time of writing, no agreement has been made as to a minimum water flow. In addition, all projects that had already begun construction or were currently in the planning process were outside of the new Article 5. With this agreement, the institutional framework was established to implement the Basin Development Plan for which the Mekong River Commission was established. The Interim Mekong Committee had now officially evolved into the Mekong River Commission. This new arrangement made the concept of sustainable development formal within the context of Mekong politics for the first time.

The Relevance of History

The new Mekong agreement was strongly reflective of Thai preferences for the political structure in the lower Basin. The original agreement required prior notification for all projects throughout the river basin regardless of seasonal variation. In addition, it contained a comprehensive veto power. This new agreement was disadvantageous to the downstream Indochinese states. It limited the obligations among the co-riparians and circumscribed power within the regime, returning that power to sovereign states.\(^{84}\)

Upon negotiation of the rules and procedures for the creation of the MRC, Thailand, as the sub regional hegemon and only member of the capitalist Cold-War ideologically based alliances of the past, fulfilled the realist assumption regarding the

creation of international organizations. Realists believe that the creation of international organizations is based on the hard interests of the hegemon. On the surface, this would not apply to the MRC because China, an emerging global hegemon and certainly an established hegemon in East Asia, was not involved in the creation of this intergovernmental organization. However, the realist assumption remains true in regards to Thailand's position on the evolution of the IMC into what is now the MRC.

One of Keohane, Hass and Levy's three C's is the contractual environment. These authors argue that trans-boundary environmental problems cannot be effectively resolved without a hospitable contractual environment, meaning that "states must be able to make credible commitment, to enact joint rules with reasonable ease, and to monitor each other's behaviour at moderate cost so strategies of reciprocity can be followed."85 One means for institutions to create an improved contractual environment is to reduce the costs of negotiating by sharing information about possible areas of agreement as well as creating an arena for bargaining over state interests. The Thai-Vietnamese dispute negatively affected the contractual environment in the lower Mekong basin because the newly agreed upon Article 5 weakened the rules and requirements of the Mekong regime. Because of a new, less-binding Article 5, the member states were less able to monitor the behaviour of other states and to have a say in their neighbours' actions. In addition, the fact that the new agreement significantly favoured the interests of one state, Thailand, over the interests of the other three member states weakened the contractual environment further because these states saw that the costs of negotiating were high, and that the hegemonic power of Thailand would dwarf any bargaining power possessed by the smaller and less powerful member states.
Conclusion

These ideological interests and political events all played an important role in the pathway that the Mekong regime took in its transition from an abstract idea of the government of the United States to the Mekong River Commission. Along this path many political hurdles were jumped, and the very creation of a Mekong regime within a region with no historical legacies of cooperation upon which to build, as well as between a group of states that possessed different political ideologies, levels of power and Mekong-related interests, is a success story. However, the role of the Mekong River Commission as an institution that was created based on western ideology as well as containing a constitution that strongly represents the interests of the capitalist, regional hegemonic state of Thailand, set the stage for the future of MRC ineffectiveness as an institution to promote sustainable development of the Mekong River.

In addition, these circumstances led to the creation of an agreement without teeth. That is, while the 1995 agreement may look on paper as if its implementation would produce substantially positive impacts on the state of the environment in the Lower Mekong Basin, the next chapter will show that the opposite is true. As Chapters 3 and 4 will conclude, the weak mechanisms of the 1995 agreement have created a situation in which, even when optimal compliance to the regulations of the agreement is reached, this compliance produces little result effectiveness. Both compliance effectiveness and result effectiveness are necessary components of an effective international environmental organization. However, when compliance is made too easy by an organizational

---

constitution with weak rules and regulations, compliance effectiveness often cannot be translated into real environmental results.
Chapter 3
Compliance Effectiveness

Introduction
Compliance effectiveness is evident within an international organization when the regime prescriptions are obeyed by the relevant actors. In order to increase compliance effectiveness, an intergovernmental organization must work to foster the individual and collective ability to monitor environmental conditions, assess outcomes, and modify the regime when necessary to improve results.  

However, achieving a level of compliance effectiveness in which the member states behave according to the rules as outlined in the organizational agreement, and achieving a level of compliance effectiveness in which the organization works to “increase compliance effectiveness by promoting desired behaviour from the various types of actors whose conduct is addressed by or relevant to the regime,” are quite different.

While compliance with the 1995 Mekong Agreement has not been a problem for the Mekong River Commission, this is so largely because of the weak rules and regulations of the agreement itself. Obeying these regulations has little effect on the interests and beliefs of the member states, and causes even lower levels of infringement upon the scope of development activities constructed by member states. It can be stated that because member states are obeying regime prescriptions as outlined in the agreement, the Commission has achieved compliance effectiveness. However, based on the case study of developments in the Se San River that will be analyzed in the upcoming chapter, the MRC has not been effective in promoting the type of behaviour that is desired by an organization with an objective to facilitate the sustainable development of

---

87 Ibid 116
an international river basin, and has therefore not achieved an optimal level of compliance effectiveness.

As previously mentioned, in order for an international organization to be deemed effective it must maintain substantial degrees of both result effectiveness and compliance effectiveness, two measurements that are interdependent of one another. When assessing the efficacy of the Mekong River Commission, and analyzing the problems inhibiting the Commission from reaching a premium level of effectiveness, it is important to look at both result and compliance effectiveness in order to produce a clear picture of where the Commission's effectiveness problems lie and how they can be addressed.

At this point in the progression of the MRC, compliance effectiveness has been reached to a somewhat substantial degree. The cause of this is different from most examples of institutions that achieve compliance effectiveness. In terms of the MRC, there are isolated examples of situations in which member states pursue development projects which can be construed as against the rules as stated in the 1995 agreement. However, this chapter begins by explaining that the MRC currently has achieved some degree of compliance effectiveness largely because of political deficiencies existent within the 1995 agreement, and not due to any particular actions or inactions of the Commission itself. Because the rules outlined in the 1995 agreement are both weak and remain largely undefined, compliance with these rules is extremely easy for member states as the rules rarely infringe at all in their development plans.

The Different Types of Compliance

According to Peterson, the various forms of compliance can be set up on a spectrum with spontaneous compliance at one extreme, regime-enabled compliance in the middle, and induced compliance at the other extreme. Spontaneous compliance occurs when an actor obeys regime prescriptions on its own accord, and would do so even if the regime did not exist. Regime-enabled compliance occurs when an actor that was previously passive rearranges its behaviour to be more in line with regime prescriptions because the existence of the regime removes one or more of the barriers to action. Induced compliance occurs when an actor resists obeying regime prescriptions until such point where its perception of the situation is altered by shaming, the promising of rewards, or threatened deprivations. 89

Problems occur when attempting to apply these different types of compliance to the actions of the various Mekong riparian states. Spontaneous and regime-enabled compliance both require actors to internalize regime prescriptions. This is similar to the idea discussed by Haas, Keohane and Levy that explains that an environmental organization is not effective unless it impacts the internal mechanisms of the political systems within the member states. However, a major flaw within the political application of the information gathered by the Mekong River Commission Secretariat is that the MRC does not analyze this information and apply it to policy advice. 90 Looking at the response member states have to the policy recommendations provided by an international organization, which, according to the MRC mandate, is one aim of the Commission in achieving its goal of effectiveness, is the most direct way of analysing compliance

effectiveness. However, the lack of policy advice made by the Commission makes it more difficult for this study to examine whether or not Thailand, Laos, Cambodia and Vietnam are complying with the prescriptions made by the Commission than analysing the efficacy of many other organizations.

In addition to its lack of policy recommendations, the MRC does not publish its aims in regards to the desired state of the Mekong River Basin. On the contrary, the Commission publishes only the state of the basin as it exists upon publishing of the annual State of the Basin report. Because of this, one cannot examine how states react or comply with behaviour expected by the Commission, as the desired behaviour and desired results of that behaviour are not made clear.

In regards to induced compliance, in order to induce compliance “defining compliant and noncompliant behaviour clearly enough that they can be distinguished” 91 is a necessary action that must be taken by the Commission. While it is interesting to consider how mechanisms mentioned that are used to induce compliance could affect the status of Chinese and Burmese participation into the MRC, the Commission, as it currently stands, lacks the teeth required to use techniques such as “shaming, promising or providing rewards, or threatening or inflicting deprivation.” 92 “Because the actor's initial beliefs and perceptions of material interest incline it toward inaction or violation, to bring it into compliance others need to send the clear message that the advantages of inaction or violation will be cancelled.” The upstream Mekong riparians China and Burma naturally focus on the restrictions that MRC membership would place on their domestic development projects, rather than the possible benefits that increased MRC

91 Peterson, “International Organizations and the Implementation of Environmental Regimes.” 118.
92 Ibid 117
cooperation could provide. These benefits that include evaluations performed by the
MRC on Chinese projects could be seen as providing rewards for compliance if China
became a member of the Commission. Although the weakness of the rules imposed by
the MRC upon its member states would make it easier for China and Burma to recognize
the positive elements of increasing their cooperation with the Commission, these rules
would also make it difficult to induce Chinese or Burmese compliance if this cooperation
were to be increased.

**Induced Chinese Compliance**

It can be argued that the Mekong River Commission has in some ways induced
Chinese and Burmese compliance with the actions of the Commission. While Joern
Kristensen, former CEO of the Commission, states that “China, like other giant countries
in the world, is reluctant to engage in multilateral cooperation,” this statement is really
only correct in reference to the PRC’s reluctance to become a full member of the
Commission. Chinese cooperation with the MRC, as well as other international
organizations, has increased substantially. In the post-Mao period China’s inclusion into
international organizations has greatly increased, moving “from virtual isolation from
international organizations to membership numbers approaching 80% of comparison
states.” So although China’s participation in international organizations has been low,
it has started to increase significantly. The PRC is not only a member of these
organizations, but also adheres to the majority of international norms put forth.

One important aspect that enables the strength of the MRC Secretariat to continue
is the cooperation of each member state in providing data regarding the domestic state of
the river to the Commission allowing the Secretariat to formulate reports and studies enabling flood predictions, State of the Basin reports, and potentially helping to create policy recommendations that could be helpful in shaping member state environmental policy in such a way as to help facilitate the sustainable development of the Mekong River which is, as states, the purpose of the creation of the Commission. It has been stated that:

Every effective, well-functioning and innovative river basin organization world-wide has a strong data base of natural resource information and good systems to handle, manipulate and analyze this data. They also have a solid modelling capacity that can be used to provide analysis of particular areas-specific problems as well as a basin-wide predictive capability to gauge the impact of new policies of development and resource rehabilitation proposals.94

Because this type of database is important to the effectiveness of an organization such as the MRC, the member states of the Commission exhibit some degree of compliance effectiveness by providing the Commission with information gathered domestically. The Mekong River Commission has a long history of collecting significant hydrological data on environmental conditions in the mainstream, and each member state has its own national data network.95

In 2001, China agreed to share data on water levels with the Mekong River Commission to provide early warning systems for floods. This has been seen as a critical moment in terms of upstream cooperation. In addition, both upstream states China and Burma participate with the Commission through observer status by attending annual meetings. It has been widely predicted that this is the point in which upstream

95 However, problems within the MRC and between member states make it rare that this data is fully exchanged between member states, because of the challenge present to reassess the data as well as sharing protocol requirements needed to let the MRC provide credible scientific advice needed for proper decision making. (Ibid)
cooperation with the MRC will end. However, in 2003 it was made public that concerns expressed by the Commission actually had an impact on a development project being constructed in the People’s Republic of China.

On June 13, 2003 Think Centre Asia, an “all action think-tank” published an article stating that China has agreed to scale back the blasting of rapids that had been under development as a part of the Chinese navigation project. This decision was reached after concerns of MRC member states were expressed regarding the adverse effects that this project would have on the river’s ecosystem. Joern Kristensen, former chief executive officer of the Mekong River Commission, announced that “a Chinese delegation informed Burma and members of the MRC, comprising Thailand, Laos, Cambodia and Vietnam, in a meeting that it would carry out only phase one of the project.” Originally, the Upper Mekong Navigation Improvement Project consisted of three phases. The first phase will enable ships of up to 100-150 tons to pass. If the second and third phases were completed as originally planned the second phase would open the river for ships up to 300 tons and the third for ships up to 500 tons. The deeper and more comprehensive the dredging of the river bottom goes, the more significant the environmental impacts on the Mekong will be. Dredging the river bottom upsets natural silt distribution patterns, contributing further to the disruption of fish stocks. According to the report, the decision was based on an evaluation of an EIA done by the Monash Environment Institute of Australia in December, 2001, and concerns pursued by the MRC.

97 Ibid
China continues to cooperate with the MRC regarding its navigation projects. A report published by Wu Zirun, Head of the delegation of China in the regional consultation workshop on the MRC navigation programme that took place in September, 2003, outlines the many cooperative aspects existent within the Chinese vision of Lancang-Mekong navigational development. These cooperative efforts include shared research on the navigability improvement and maintenance of the navigation channel, research on the protection of environment and natural resources, the further enhancement of communication and cooperation among others. However, it is important to note that while the Chinese navigation project is continued with some cooperation with the Mekong River Commission, other Chinese development projects are not. Despite vocal concerns expressed by the member states and the Commission regarding damming projects constructed by China, these projects continue with little regard for MRC concerns.

The Se San Example- Vietnamese Non-compliance?

The lack of teeth contained by the 1995 Mekong agreement makes it difficult to cite examples of Mekong regime compliance or non-compliance. However, one widely publicized situation did occur regarding a Vietnamese development project on the Se San River, one of the largest tributaries of the Mekong. This project has been criticized as being outside of the wide parameters of the agreement. However, it will be argued that while the projects being developed along the Se San River have been and will continue to

---

be detrimental to the health of the Cambodian people and the Mekong River ecosystems, the 1995 agreement does not have the teeth required to stop these projects.

This situation can be seen as one in which the rules and regulations outlined in the 1995 agreements have been followed resulting in some degree of formal compliance effectiveness. But it should also be noted that the development projects undertaken by the government of Vietnam in this case study are against the best interests of the people in the Lower Mekong Basin, and not in-line with objectives to facilitate the sustainable development of the River. The desired behaviour of actors within the regime is not occurring. Therefore, while compliance effectiveness has been reached in terms of the formal obligations set out in the 1995 agreement, the Commission fails to work to increase compliance effectiveness in order to promote the desired behaviour of actors within an organization with an objective of sustainable development.

The Se San River- a major Mekong tributary

---

The Yali falls dam was the first of several planned hydroelectric dams to be constructed in the Se San river basin in Vietnam located 80 kilometres upstream of the Cambodia-Vietnam border. Construction of the US$1 billion, 720 MW dam commenced in 1993, and was completed in December 2001. This dam is the largest ever built in the lower Mekong basin. The governments of Russia and the Ukraine were the main financers of the project, along with the government of Vietnam. Technical support was provided by other countries such as Switzerland, Sweden and Japan, and the predecessor of the MRC, the Interim Mekong Committee, helped plan and coordinate the project. Yet, Cambodia was not notified about the dam until 1997, four years after construction work had begun. Essentially, the only legally binding element of the MRC’s 1995 agreement is Article 5, or the agreement for prior notification that states that: “on tributaries of the Mekong River, including Tonle Sap, intra-basin uses and inter-basin diversions shall be subject to the notification of the Joint Committee.” However, since the project began prior to the creation of the 1995 agreement, and because one stipulation linked to the 1995 agreement was that it would apply only to future development projects and not be applicable to current or past projects, the Yali Falls dam was beyond the reach of the Commission.

Problems with the Yali Falls dam were evident almost immediately. The diversion of the river flow needed to fill the dam’s reservoir, and subsequent irregular releases of large amounts of water from its reservoir downriver, have seriously altered the water quality and quantity of the Se San River downstream. Unusual and dramatic fluctuations in river levels along the Se San River have caused major downstream

100 Article 5, Mekong River Commission, “Agreement on the Cooperation and Sustainable Development of the Mekong River (1995).”
environmental and socio-economic impacts in Cambodia. These impacts have been especially serious for the many indigenous peoples living along the Se San River in Ratanakiri Province of Cambodia. Large, unexpected quantities of water released during 1999 testing at the dam swept away homes, crops and people in Cambodia, and is blamed for the deaths of up to 39 Cambodians. The Cambodian government, working through the Mekong River Commission, has requested that Vietnam take action to mitigate the devastation caused by Yali Falls. The choice of Cambodia to attempt addressing this matter through use of the MRC shows that member states do show some confidence in the legitimacy of the organization. However, this may be weakened by the lack of results that the MRC has been able to achieve in this matter. To this point, the only action taken by Vietnam was a promise made by Prime Minister Phan Van Khai to help reduce impacts of the dam. No details have been released regarding how these impacts will be mitigated, and no compensation has been offered to victims.

American Oxfam human rights lawyer Michael Lerner states that “Vietnam built and has operated the Yali Falls dam in ways that violate international law. The Mekong River Commission and the Mekong Agreement were meant to guard against these abuses, but they have failed to protect the Cambodians.” Lerner goes on to state that “the (1995) agreement was supposed to empower the Mekong River Commission to create rules regulating the development of the river and its tributaries for hydropower and flood control, with the rights of all riparian states to be free of the harmful effects arising from

---

102 “Dam that claims lives is illegal.” Press Conference, Mi Casa Hotel, Cambodia. November 27, 2002.
103 Ibid
such development.”¹⁰⁴ In these statements, Lerner supports the idea that many of the problems associated with the current state of development lie within the agreement itself.

Unfortunately, despite the devastating results that this Vietnamese development project has had on the downstream state of Cambodia, the way that the rules are structured in the 1995 agreement create a situation in which the MRC has little course of action. Michael Lerner cites the construction of Yali Falls as an action taken by the Vietnamese government that has “breached specific commitments it made as a member in the MRC.”¹⁰⁵ However, while Lerner alleges that this is an example of member states failing to comply with the constitution of the Mekong River Commission, the fact remains that this project would be subject to Article 5 of the 1995 agreement had construction begun after the agreement was finalized. But because the project was initiated prior to the Mekong Agreement, it is not subject to the prior notification clause in Article 5.

In addition, the historical background of the negotiations leading up to the 1995 agreement provided in Chapter 2 illuminate another issue. Due to the conflict between the Thai and Vietnamese perspectives regarding which agreement to follow, and because the final agreement favoured the interests of Thailand, the member states were prompted to act under the IMC agreement rather than the agreement of the Mekong Committee during negotiations. Had the states been forced to act in line with regulations outlined in the 1957 Mekong Committee agreement, the Yali Falls project would have been subject to the more stringent original version of Article 5. This version would have

¹⁰⁴ Ibid
permitted any other member state\textsuperscript{106} to exercise its veto power over this project, and the Vietnamese government would have been forced to choose between non-compliance with the regime prescriptions or cancellation of the project. Ironically, Vietnam, as discussed, was the country most persistent in its desire to return to the more stringent regulations.

The weak rules of the MRC will also fail to protect Vietnam’s downstream neighbours from the remainder of the series of 6 dams that are planned to be built along the Se San River. Included is Se San 3, currently under construction and planned to be completed by the end of 2004. Se San 3 is located only 30 km from the Cambodian border and its expected to produce continued devastation to the Cambodian people. Again, because of the structure of the 1995 agreement, Vietnam is permitted to continue with these projects. Because the Se San River is a tributary of the Mekong and these dams do not represent development on the mainstream, Vietnam is obligated only to provide the MRC with prior notification of its development plans.

**Conclusion**

The current structure of the Mekong River Commission and the 1995 agreement has resulted in a situation in which compliance with the procedures outlined in that agreement has not been a problem. Thus far, MRC member states have largely complied with the rules that are stated in the constitution of the organization. Because of this, it can be said that the Mekong River Commission has reached a good degree of compliance effectiveness.

\textsuperscript{106}Because Cambodia was not a member state during this period, it would not have had the opportunity to exercise veto power.
However, despite the conclusion that compliance effectiveness is being reached by the MRC, the fact remains that the weakness of the 1995 Mekong Agreement has made it very easy for member states to comply with the organizations rules. This is because the rules outlined in the agreement do not infringe on the ability of member states to embark on most development projects, even when it is certain that the affects of these projects will be detrimental to the situation in downstream states.

Therefore, it is argued that while the Commission has reached a formal level of compliance effectiveness in that the member states obey the rules and regulations outlined in the 1995 agreement, it has not been successful overall because it fails to promote the desired behaviour of participants involved in an organization aimed at facilitating sustainable development of a river. This desired behaviour would include stopping development projects that are clearly detrimental to the health of both the people living in the area as well as the ecosystem as a whole.

As discussed by Peterson, the achievement of neither result effectiveness nor compliance effectiveness alone can be seen as creating an overall effective organization. An environmental regime must contain compliant actors who behave according to the regime prescriptions, in addition to the actions of that regime having beneficial results on the state of the environment in the targeted area. It is important to consider both when analysing the overall effectiveness of an international environmental organization such as the Mekong River Commission. Therefore, the logical next step in this efficacy analysis is to consider how the level of compliance effectiveness achieved by the MRC has been translated into result effectiveness. Has the fact that the MRC member states have
largely complied with the stated requirements of Commission membership resulted in positive impacts on the state of the environment in the Mekong River Basin?
Chapter 4
Result Effectiveness

Introduction
Compliance effectiveness is an important component to overall institutional efficacy. However, an environmental institution cannot be deemed effective unless the level of compliance that it achieves translates into real result effectiveness. Although it is important that actors within the organization comply with regime prescriptions, if this compliance has no positive environmental impacts then true efficacy has not been reached. While the Mekong River Commission was not created in order to 'fix' a specific environmental problem, it was created in its most recent evolutionary status to facilitate the sustainable development of the Mekong River. Because of this goal, result effectiveness would be seen as actions taken by, and behaviour encouraged by the MRC that have positive impact on the natural environment. On the contrary, despite the valid and potentially useful information obtained via Mekong secretariat research, the Commission has been unable to make substantially positive environmental impacts on the Mekong River itself, and has thus far been unable to mitigate the effects of the negative impacts resulting from actions taken within both member states and non-member upper riparian countries.

Through application of M.J. Peterson's theory on the result effectiveness existent within effective international environmental organizations and analysis of the current state of the Mekong River, this chapter will argue that despite the apparent success in the area of compliance effectiveness, the weakness inherent in the 1995 agreement means that this compliance does not translate into positive environmental impacts. Because of
This, significant result effectiveness has not been reached by the Mekong River Commission.

This chapter will briefly mention and discuss each of the MRC's eight sector programmes around which their activities revolve, but will focus primarily on the fisheries programme and whether it has had an impact on the state of the Mekong fisheries. The choice of a focus on the fisheries programme largely reflects the lack of transparency that exists within the MRC. The state of the fisheries industries in the Mekong River is an issue about which there is information published by various sources including national governments and interest groups. Very little information about the results of other programmes initiated by the MRC is available to the general public.

**Defining Result Effectiveness**

Result effectiveness exists within an international organization when the behavior encouraged by that organization results in an improvement in the environmental conditions of the target area. This occurs not only after organizational actors comply with regime prescriptions, but when this compliance has positive impacts on the state of the environment in the area. Attaining result effectiveness is a difficult task for any international organization, and, unfortunately, has not been achieved by the Mekong River Commission, in some ways due to the non-inclusion of China into the Mekong regime and in some ways due to the fact that the 1995 agreement was signed without being fully completed. The agreement remains, to the date of writing, largely unimplemented.
Environmental improvement requires a well-designed set of regime prescriptions, and "the merits of their design can be determined only if regime participants are able to (1) monitor environmental conditions and compare the actual condition of the environment to the condition sought by the regime; (2) identify and cope with unintended environmental damage; (3) assess whether even full implementation of the regime is producing the desired environmental improvement."107

In regards to the MRC, the abilities prescribed above are non-existent. The Commission annually makes the results of environmental monitoring public by publishing an annual State of the Basin report which outlines the current state of the environment in the Mekong River Basin. However, there is no comparison to the condition sought by the regime. The Commission does not publish the state of the basin that they seek; rather it only makes public the current environmental situation and attempts to provide reasons for the environmental problems. The MRC tends to use natural situations to explain downturns in levels of environmental health, such as floods or droughts, which certainly explain some proportion of the problems but unlikely are the sole cause, rather than entertaining the probability proposed by independent scientists that argue that the environmental problems in the basin are contributed to by riparian development projects.

The second prescription outlined above refers to identifying and coping with unintended environmental damage. This will be discussed later in the chapter in regards to the current state of the Mekong fisheries. And the third prescription outlined by Peterson, that which assesses whether full implementation of the regime will result in producing the desired environmental improvement is yet to be seen. The current work of

---

the Mekong River Commission is largely focused upon creating subsidiary agreements that will work to help implement the 1995 Mekong agreement. These subsidiary agreements, being negotiated by people other than those who negotiated the 1995 agreement include agreements for scientific notification and data exchange, agreements for prior notification, and the largest agreement currently being negotiated concerns looking at the flow of the river and determining the minimum flow that will be prescribed to the articles within the Mekong Agreement. As mentioned in the previous chapter, development projects undertaken in the dry season can only be pursued if they take into account the minimum flow according to the 1995 agreement, however, this has thus far been unenforceable as the minimum water flow has not yet been agreed on.

The Mekong River Commission claims that these subsidiary agreements will be the teeth of the 1995 agreement, which could finally add some enforcement capabilities to the Commission. A major problem that currently exists within the process of negotiating these agreements is the payment process. The representatives of the National Mekong Committees that are negotiating on behalf of each member state are paid not according to the level of results achieved by the meetings, but rather on the basis of how many meetings they attend. Because of this method of payment, the NMC representatives have a strong incentive to prolong the negotiating process which will extend the time it take for the possibility of these subsidiary agreements being complete which will hopefully increase the results effectiveness of the Commission.

\(^{108}\) Personal communication, interview, Richard Paisley, Director of the Dr. Andrew R. Thompson Natural Resources Law Program at the UBC Faculty of Law, 2004.

\(^{109}\) Ibid
MRC Major Programmes

Water Utilisation Programme

One of the main criticisms of the 1995 Mekong Agreement was its failure to make clear the specific rules that would define the permitted water usage of the member states. Critics felt that this should be a key element of any international agreement surrounding shared river resources. The 1995 agreement was very vague in the context of water usage, making statements alluding to the fact that these matters would be determined at a later date. Nearly a decade has passed since the Mekong Agreement was signed, and detailed rules for member state’s water utilization have still not been made. According to the MRC, the Water Utilization Programme aims to establish effective mechanisms to improve water resources management for the economic and social development of the Mekong Basin in an environmentally sustainable manner, based on the principle of "reasonable and equitable water utilisation" while ensuring protection of the environment, aquatic life and ecological balance of the Basin.\textsuperscript{110}

The three main objectives of this programme are as follows:

- Creating a basin model and knowledge base for use in future decision-making
- Developing rules for water utilization between the four Lower Mekong countries
- Management and institutional strengthening

Despite the fact that this programme has been in existence since the inception of the Mekong River Commission, it was only recently that the four member states finally reached an agreement on November 30, 2003 in regards to their respective water usage. This agreement, seen within the MRC as a major step to solve the dilemma of water use, unfortunately does little but set the stage for further agreements that are hoped to be made

by the end of 2004.\textsuperscript{111} This 2003 agreement is another agreement to agree. Under the most current agreement, member states intend to monitor their own use of Mekong water.\textsuperscript{112} This is the extent of the 2003 water use agreement. In the mean time and up until now, the volume and uses of Mekong water by the member states has not been regulated by MRC prescriptions, thus making it impossible for this programme to impact the state of the environment in the Mekong basin. The future of the Water Utilization Programme is hard to predict. It is yet to be seen if the Commission will have consolidated a set of rules outlining the volume of water allowed to be used by member states by the target date of the end of 2004, or if the trend towards making more and more agreements to agree will continue and water levels will remain ungoverned.

**Basin Development Plan**

This plan is seen by the Mekong River Commission as a key to the implementation of the 1995 agreement. The two aims of this programme, launched in Bangkok in February 2002, are to create a planning process that would be both nationally and regionally applicable and will allow the member states to jointly plan the development of the Mekong Basin, and to produce the first regionally-owned Basin Development Plan by October 2004. The BDP has established national sub-committees to support the planning process of joined development, and work closely with the “BDP team” and the MRC Secretariat.

In terms of the overall impact of the BDP on the environment in the Mekong region, the only information published by the Mekong River Commission states that:

To date, the programme has made considerable progress in initiating sub-area studies. Orientation meetings have been held with provincial authorities and sub-area working groups have been nominated. Concurrently, a number of guidelines and working papers on important aspects of the overall BDP process have been drafted and regional sector overviews prepared.\textsuperscript{113}

As with most of the programmes within the Mekong River Commission, the BDP aims at achieving results, but never actually transcends those aims and acts accordingly. The MRC admits in the quotation above that the strength of this programme is in the technical arena, yet when it comes time to bring data gathered into an arena in which decisions are to be made and results to be felt, the plan falls short. While “important aspects of the overall BDP process have been drafted and regional sector overviews prepared,”\textsuperscript{114} no information is available regarding what actions have been taken in accordance with these so-called accomplishments. One representative contacted that works within the MRC sees the BDP as what should be the “cornerstone of the MRC,”\textsuperscript{115} proposing the idea that one reason why the public has yet to see any real results from the MRC is that the BDP process has “not yet reached fruition.”\textsuperscript{116} Accordingly, the BDP is meant to release lists of potential trans-boundary development projects or mutual benefits to the member states. However, as previously mentioned, these negotiations are stalled by the inefficient pay scheme that provides incentives for the NMC negotiators to prolong this process as long as possible.

\textsuperscript{113} Ibid
\textsuperscript{114} Ibid
\textsuperscript{115} Personal communication, email, Anonymous, MRC employee, 2004.
\textsuperscript{116} Ibid
**Environment Programme**

This programme was created to ensure adequate protection of the environment and the ecological balance of the basin. In an attempt to meet this goal, the programme undertakes monitoring and assessment of the environment and provides technical and information support to aid the workings of the other core programmes.

Although one of the main components of the MRC environment programme is stated to be environmental monitoring and assessment, the Commission does not make information regarding the results of this monitoring available to those wishing to study the region. While the monitoring and assessment is performed by the Mekong Secretariat and is not often questioned when finally published in the annual State of the Basin report, the information is not made immediately available to those that require current information to make immediate decisions that depend on the status of the environment in the Mekong Region. This omission makes it extremely difficult for organizations and member states to make decisions or take action based on the status of the environment. In addition, the annual State of the Basin reports that are published and made available to the public via the Mekong River Commission website, do not contain facts and figures that are unbiased.

Other major sector programmes include the Agriculture, Irrigation and Forestry Programme, the Flood Management and Mitigation Programme, the Navigation Programme and the Integrated Capacity Building Programme.117
MRC Fisheries Programme

In November 2002, the MRC fisheries programme changed its development objective to one that is meant to "coordinate sustainable development, utilization, management and conservation of the fisheries of the Mekong Basin." This aim was created along with agencies within the four member countries and is based on the MRC agreement mission "to promote and coordinate sustainable management and development of water related resources for the four countries’ mutual benefit and the people’s well-being by implementing strategic programmes and activities and providing scientific information and policy advice."

However, despite the important reliance that each member state has in regards to their Mekong related fisheries industries, combined with the substantial resources that the Commission has invested into the fisheries programme, the Mekong fisheries industries continue to deteriorate. This is in some part due to the fact that the fisheries programme lacks the institutional capacity to constrain development projects undertaken by member states, in addition to the lack of focus that it pays to the interrelations of development projects and their effects on fisheries. While the fisheries programme pays much attention to the sustainable development of the fishing industry itself, it does not adequately stress the impact that development projects that are not directly related to fishing have on the current and future state of the fishing industry.

117 This study will not go into detail discussing these specific programs because of a lack of information available regarding their actions. A brief description of the goals of these programmes is available online: www.mrcmekong.org.
The MRC fisheries programme focuses on 4 areas. The first is on fisheries ecology and impact assessment. The MRC secretariat has collected viable information on the habitat and life cycle requirements of Mekong fish species, especially regarding their migration patterns. This has been achieved through the use of new methods such as Local Ecological Knowledge surveys and studies of larval drift. This is an example of the strength of the secretariat in obtaining current and up-to-date data that could potentially have substantially positive impact on the state of the environment.

Unfortunately, as with other elements of the Mekong River Commission, political flaws within the organization make it difficult for this information to be properly used in a way that can produce these positive results.

In addition to technical information, sustainable development requires a fisheries programme focused on environmental impact assessments (EIAs). The EIA process is ineffective at present “because fisheries agency staff lack the proper channels and contacts for effective engagement in the process and because agencies in the other sectors whose activities impact the fishery (e.g. hydroelectricity, flood control, irrigation etc.) lack awareness of fisheries issues and do not engage effectively with fisheries professionals.”

This programme exists based on three levels. The first is the attempt to enhance livelihoods. The livelihoods approach taken by the fisheries programme attempts to look at the context and relationships and at policies and institutions facilitated by this programme with the aim of poverty alleviation. The result effectiveness, or lack thereof, can be seen quite clearly in the context of this approach in the downturn in the

---

health of Mekong fisheries and the impact that this has on the people of the region who rely largely on fisheries as their method of earning a living.

The second approach of the fisheries programme is fisheries management. This takes place at many levels and in many forms. All MRC member states see how important promoting participatory management techniques developed by the fisheries programme can be. However, the fact that the upstream Mekong riparian, China, is not included in fishery programme discussions and shows little concern for the downstream impact of its development, this programme has little chance of future success without Chinese participation. National and regional government levels are the key decision making areas in fisheries management.

The third approach taken by the MRC fisheries programme is communication. The aim of this segment is to inform all stakeholders of the importance of fisheries to the livelihoods of the people of the Mekong River Basin. The communication processes include the production of technical and general publications, films, interactive CDs, storage of databases within the MRC etc. However, if the problems that currently exist within the MRC are not solved, communication processes created through this programme will not have the positive impacts that are the potential of this programme. A current problem existent within the MRC that plays a large role in its current state of ineffectiveness is the problems of the dissemination of information. As mentioned, the Mekong Secretariat is a strong element of the Commission, and is largely effective in its role of gathering scientific information. This information would be the basis upon which these communication processes are created. However, because the information obtained by the Secretariat is often not properly disseminated among the member states the
potential effectiveness of this data is often lost. This is an example of how the strength of the technical skills of the Mekong Secretariat is often lost once they reach the political level of the Commission.

This fisheries programme is intended to produce results regarding an increase in the health of the Mekong fisheries. However, because the MRC has been unable to influence the damming projects of other states, the state of fisheries has declined, and result effectiveness has not been met. While it is true that damming projects undertaken in Laos, Vietnam and Thailand have impact on the state of the Mekong’s fisheries, nowhere is hydroelectric damming development as comprehensive as in China.

**Chinese Development Projects**

As the upstream Mekong state with the benefit of containing the source of the river within its national boundaries, China has a supreme advantage in regards to quality and quantity of Mekong water. When the Mekong Committee was created with heavy United Nations involvement, China was not invited to join as it was not a U.N. member at the time. This set the stage for a future of Chinese non-involvement in the Mekong River Commission.

It has been shown that China is increasing its level of cooperation with international organizations including the MRC. However, the fact remains that Chinese hydro development on the Mekong River and its tributaries continue at full force despite concerns expressed by the Commission and its member states. The effectiveness of this institution is threatened by the fact that China, the upstream Mekong riparian, has not accepted membership into the MRC and is thus not bound by the weak regulations of the
institutions. These regulations would not inhibit China to continue its damming projects on Mekong tributaries, but would require the PRC to notify the Commission which would help the downstream riparian countries to prepare for the upcoming results of the dams.

China has a powerful position in this situation; as the upstream riparian, the PRC has no other state hindering the quality and quantity of river water available, and without membership in any Mekong related international organizations, China is free to carry on development along this river to the fullest extent possible. Chinese development on the Mekong River is focused largely on hydroelectric power generation through the construction of multiple large-scale dams. These dams have many effects, both positive and negative, which are felt by each riparian located downstream. In addition to some positive results, these dams divert water away from the river, at times causing reduced water levels. These reduced water levels reduce the amount of water that is available downstream for agricultural production, as well as negatively affecting fish stocks.

While it certainly can be argued that Chinese membership in the MRC would not impact the situation in the Mekong River, this study feels that Chinese membership would produce important results. The weak status of the Commissions enforcement mechanisms combined with the concept of an organization that does not provide policy advice based on the plethora of technical data collected by its Secretariat eludes to the idea that Chinese membership in the Commission would produce no significant benefits. China currently shows no interest in MRC membership, and little interest in consulting downstream neighbours about its development plans.121 Because the MRC is the most

globally visible and effective Mekong regulative body, in order to portray an image of regional stability it would be beneficial for China to join the Commission.

It can be argued that the element of the 1995 negotiations of the Mekong Agreement that resulted in the re-writing of Article 5 has made the Commission a more powerful organization. The opposite is also popularly argued. However, despite the immediate perspective that this policy weakens the institution as a whole, the adoption of this mechanism, while not favourable to downstream states in the short term, could possibly generate long term benefits. Failure to include upper riparian states, especially China, places serious limitations on the institutional efficacy of the MRC, and the policy of “prior consultation” greatly increases the likelihood of the future membership of China and Burma.

This view is proposed by George W. Downs, who discusses the idea that weak rules lead to more effective regimes and more long-term cooperation. Downs argues that weak rules entice states to join organizations based on the realist perspective that a state will only join an international organization if it meets the primary interests of that state, and that international organizations hold no real political power. Downs goes on to state that once countries become members, “constructivist processes can transform their preferences toward embracing more ambitious commitments.”

This tactic has not been successful in regards to China and the Mekong River Commission. Despite the weak enforcement rules existent within the MRC, China and upstream neighbour Burma have not joined the Commission, and while steps made by these states such as embracing observer status with the MRC, they are not bound by the Mekong agreement to any

---

development restrictions faced by the lower Mekong states, however weak, that aim to mitigate the environmental consequences of rapid economic development.

Arguments such as those made in the January 2004 issue of The Economist, state that Chinese membership in the MRC would bring many restrictions and few benefits. Contrary to this view, domestic benefits of Chinese membership in the Commission are significant. If China became a member, they would be able to utilize MRC resources to conduct environmental impact assessments of proposed projects. China has had ongoing technical cooperation with the Mekong River Commission since April 2002 for sharing of information about river levels during the flood season from June to October each year. The MRC has thus far assisted the Chinese government with the installation of hydrological monitoring equipment at two locations on the Upper Mekong, at Yunjinghong and Manan. These actions are a taste of what China would receive with increased cooperative action regarding Mekong development. Greater assistance from the MRC can be expected to come with Chinese membership into the Commission.

This assistance can help the PRC to know the associated costs of their development projects, and would enable the country to receive contributions from downstream states for projects that would have positive impacts for its neighbours. Yet the prior consultation policy of the MRC means that if the downstream states do not agree with the proposed project, China is not bound by decisions made by the Commission and has the option to continue its development unilaterally. The possibility of convincing upstream nations to consider membership would be virtually non-existent if downstream riparians had veto power over upstream development projects.

China has ambitious development plans for the Mekong River, and economic liberalization and the resulting financial success of the PRC has resulted in ample capital and expertise available to follow through on these plans.\textsuperscript{124} State policy is to increase the hydroelectric proportion of China's energy grid from 19\%-40\% by 2015.\textsuperscript{125} The PRC is currently involved in the construction of a 7 dam cascade on the Lancang Basin.\textsuperscript{126} The dam building began at Manwan in 1984, and the first dam was completed in 1993. Its purpose was to provide hydropower for the rapidly growing industrial developments in and around Kunming, the capital of Yunnan province. The construction of the second dam at Daochaoshan began in 1996, and the third, Xiaowan will be a large reservoir with an active storage capacity of 990 million cubic metres. The Lancang basin represents 16\% of the Mekong's total discharge, but contributes 100\% of the water flow at the border between Yunnan, China and Laos.\textsuperscript{127} While China predicts a 40\% increase in dry season discharge at the Yunnan-Laos border as well as a 171\% increase when the second mega-dam is complete, the MRC members are sceptical. Dam construction often does not produce the economic benefits that are expected, and the environmental effects are severe.

The direct costs of Chinese dam development are difficult to estimate. The total wet season discharge from Lancang basin into the Mekong could decline by up to

\textsuperscript{125} McCormick, "Water Margins: Competing Paradigms in China." 12.
\textsuperscript{127} Ibid 12
25%,\textsuperscript{128} which will have significant adverse effects on bank erosion as well as affects on fish migration and wet season agriculture on all downstream states. Many studies of Lower Mekong fisheries have highlighted the threats that Chinese damming projects on the Mekong River has and will continue to have on fish populations, to fish habitat and to the livelihood of fisher folk in the lower part of the river, most notably in Southern Laos.\textsuperscript{129}

Beijing argues that the Manwam and Daochaoshan dams will have negligible affects of the amount of water flowing, and once the massive Xiaowan dam is complete China will be able to increase the amount of water in the dry season.\textsuperscript{130} However, a study completed by the World Commission on Dams in November 2000 found that most large dam projects have not resulted in long-term economic benefits when high construction costs, population resettlement and adverse environmental effects are taken into account.\textsuperscript{131} The results of such projects are impossible to predict. The prediction of positive effects are made based on the assumption that all will go exactly as planned, and the disastrous negative predictions made by anti-dam groups are made on the assumption that nothing will go as planned. In reality, the truth usually lies somewhere in the middle.

\textbf{Current State of the Mekong Fisheries}

The Mekong River supports what is possibly the largest inland fishery in the world, with a catch of approximately 1.75 million tons annually. This represents 1.9\% of

\textsuperscript{128} Goh, “The Hydro-Politics of the Mekong River Basin: Regional Co-operation and Environmental Security.”


the world's fish capture. The average annual value of the Mekong fisheries is US$1,400 million, and involves the livelihoods of 40-50 million people. The river is home to about 1,245 species of fish, second only to the Amazon River in terms of the biodiversity of its inland waterways. However, it has recently been noted that the water levels of the Mekong River are at their lowest in 10 years. These low water levels disrupt the health of fisheries ecosystems by interfering with natural migration patterns and flood cycles. The Mekong River is in crisis.

Fish stocks are an extremely important element of both food and economic security to the nations of Southeast Asia. Fishing is a major industry for these countries, and a significant percentage of GDP in each state comes from their fisheries industry. Of the 60 million people who live in the Mekong Basin, most depend on fish for half or more of their total animal protein intake, making sustaining the fishing industry crucial to regional food security. Economic security is also a major factor. Sale of fish and fish products is an important income supplement for many families in all riparian states. For example, over one million Cambodians and 70% of rural Laotian households depend largely on fishing for economic security. Fisheries production in the river as a whole has suffered a two-thirds drop over the past two decades due to dams and other

133 This figure has also been written as estimated by the MRC to be approximately 1 millions tones per year in Browder and Ortolano, “The Evolution of an International Water Resources Management Regime in the Mekong River Basin.” 503
factors. Since the construction of the Manwam dam in China, fisher-people in both Cambodia and Vietnam have complained of decreased fish stocks. The fish species of the Mekong depend on the river’s natural flooding system for survival. During monsoon season the plains and tributaries around the Mekong flood, and fish habitat increases by as much as 10 times. "The bigger the flood, the greater the feast on offer, and so the fatter and more numerous the fish." However, more dams mean smaller floods, and the MRC calculates that flood levels have fallen by almost 11% since 1965.

Press statements released by the Mekong River Commission state that the current predicament is due to an unusually long drought period combined with a wet season that produced less rain than expected. These factors would undoubtedly contribute to reduced water levels in the river. However, these natural factors cannot be the sole cause of the drastic decrease in water levels. Development projects being undertaken in the riparian states are impacting the water levels in the river and therefore affecting the state of the river’s fisheries. The MRC has reported that the fish catches between November 2003 and March 2004 are only half of regular levels. Many scientists, including those within the MRC, blame new Chinese hydro dams for record low levels and "collapse in fish catches." However, some do not place the blame here; citing the fact that only 1/5 of Mekong annual flow comes from China as the main reason. But this must be reconsidered upon knowledge of the fact that the dry season proportion is much higher, being cited at between 50 and 70%.

---

140 "The Sweet Serpent of South-East Asia." *The Economist,* 3.
141 Ibid 3
142 Pearce, Fred, "Where have all the fish gone?" *The Independent,* April 21, 2004. London. 1.
These dams are providing hydroelectric power for China’s economic development, but not without costs for lower Mekong riparian states- as turbines in dams go on and off because of hourly changes in demand, their reservoirs empty and fill and the downstream sections of the river see fluctuations in water levels that can be up to 1 metre per day.¹⁴³ This phenomenon clearly impacts all Mekong-dependant activities downstream.

While the Mekong River is heavily fished, it is not believed to be overfished. “The current levels of fishing are sustainable provided that the annual flood pulse is maintained.”¹⁴⁴ The wet season floodwaters are an important reason that the Mekong is such a productive river system. These waters support a “rich riverside habitat and an extensive network of wetlands. Water flooding into nutrient rich areas, combines with high levels of solar energy, help fuel a high powered ecosystem.”¹⁴⁵ This is made difficult by low water levels and results of dams will make it even more difficult in the future. As the size and quantity of dams on the Mekong increase, so too will the amount of water diverted from the natural flow of the river, causing increased impact on the natural ecosystems that the Mekong sustains.

Since the inception of the Mekong River Commission, the water levels and state of the fisheries industry has not improved, rather, it is apparent that the state of fisheries in the Mekong River is suffering. This is not intended to blame the MRC for the current state of the river’s fisheries. However, as an international environmental organization with a strong emphasis on protecting fisheries, improvements of this industry would be a

¹⁴³ Ibid 1
¹⁴⁴ Ibid 1
strong indicator of result effectiveness, and reduction in the health of this industry is a strong indicator of the opposite.

In terms of result effectiveness, an environmental organization can potentially increase its level of effectiveness even when the state of the natural environment has suffered since the onset of the Commission’s work. This can occur based on the method in which the Commission deals with the environmental problem at hand. The second prescription outlined by M.J. Peterson refers to identifying and coping with unintended environmental damage. Therefore, the question is posed: how will the Mekong River Commission cope with the unintended environmental damage that has affected the state of the very important fisheries industry?

As previously mentioned, the mandate of the Mekong River Commission as stated in the 1995 Mekong agreement is “to promote and co-ordinate sustainable management and development of water and related resources for the countries' mutual benefit and the people's well-being by implementing strategic programmes and activities and providing scientific information and policy advice.” Adhering to the responsibilities laid out in this mandate is a seemingly plausible way of successfully coping with unintended environmental damage, and, according to Peterson, of achieving some semblance of result effectiveness. By taking technical information gathered by the Mekong Secretariat and through analysis of this information determining the desired state of the Mekong fisheries, and finally applying this analysis into specific policy recommendations made to the member states, the MRC could improve its effectiveness.

However, despite the prominent and direct statement that a key aim of the MRC is to “provide scientific information and policy advice,” as defined in its mandate which
was written nearly a decade ago, the MRC has not yet taken the information gathered by its Secretariat and transformed application of this information into advice that could help member states revamp their environmental policies’ that could potentially mitigate the downturn in the health of the Mekong fisheries. While it can be argued that the lack of enforcement mechanism existent within the Mekong River Commission as well as within most international environmental organizations and agreements is a positive aspect, the fact remains that without making policy recommendations, there is little hope of improving the state of the environment, nor does much hope exist of mitigating the negative situations that are occurring within the area. While each state recognizes that a healthy Mekong ecosystem is within every national interest, apart from that each member states’ national interest in regards to the River differ.

While the Mekong River is an extremely important resource in both Laos and Cambodia, it lacks the same significance in Thailand and Vietnam. Because Thailand and Vietnam are more powerful both economically and politically, the lack of these major concern of these states regarding the River is a hindrance to the effectiveness of the MRC. Haas, Keohane and Levy argue that in order for an international environmental organization to be effective it must impact the domestic political systems of the member states. They also argue, through the use of the three C’s that are discussed prominently in their volume, that a fundamental condition for an effective environmental institution is concern, or the idea that governmental concern over the specific environmental problem must be high enough to prompt a state to devote scarce resources to solving the problem. This is the first of Haas, Keohane and Levy’s three C’s. The limited level of concern existent within Thailand and Vietnam, combined with the lack of policy

---

recommendations made by the Commission, make it difficult to see any real political impacts of the existence of the Mekong River Commission within member states which inhibits the possibility of MRC effectiveness.

**Conclusion**

The measurement of result effectiveness is an important step in looking at the efficacy of any organization. In regards to the Mekong River Commission, the analysis of result effectiveness paints a grim picture of the current state of the organization. However, it seems that the future may be brighter, as the Commission is currently negotiating a number of subsidiary agreements which are meant to provide some teeth to the 1995 agreement. But it is difficult to be optimistic about the results of these agreements, after seeing the results, or lack thereof, of the 1995 agreement.

It is unfortunate not to be optimistic in this study, as the concept of cooperation over shared resources is something that most people hope for. However, the 1995 agreement lacks an enforcement mechanism, it was agreed upon without indication of significant final details such as minimum water flow and a rule defining water use, and does not provide the policy advice required to most effectively use the important information gathered by the MRC secretariat. Because of these issues, it is evident that, despite the valid information gathered by the Secretariat, political problems within the Commission prevent its work from reaching a significant level of result effectiveness, which can be seen in the current state of the Mekong fisheries. However, it is important to note that international environmental organizations are known to change substantially.
over time. Therefore, the current actions of the MRC must be considered alongside its current state of effectiveness when looking to the future state of the organization.
Chapter 5
Implications for the Future

The formation of the Mekong River Commission is an impressive feat in and of itself. It was completed in an era of instability, bringing together a group of states with a long and turbulent history. The fact that the Mekong River Commission was created in such a complicated political climate is one of the strongest indicators of effectiveness of the Commission. Despite political problems that have continued to interrupt the negotiations and work of the Mekong regime, the regime has persisted since its inception in the 1950s. This organization of states has been successful in facilitating cooperation between member countries and has therefore altered the diplomatic relations between Thailand, Laos, Cambodia and Vietnam, and, to a lesser extent, China.

However, the examination of the history of the Mekong regime provided in Chapter 2 illuminates much more than the impressive feat of its establishment. The current representative of the Mekong regime, the Mekong River Commission, has thus far been ineffective in achieving its mandate to facilitate sustainable management and development of the Mekong River Basin. This is largely because of weaknesses evident in the 1995 Mekong Agreement.

Power politics being played out in negotiation of the 1995 agreement resulted in the abolishment of the Mekong Committee’s veto power within the original Article 5. This created a weakened agreement with few enforceable or effective rules. Because this agreement was finalized while lacking some key elements that would enable the Commission to facilitate sustainable development, the MRC has thus far been operating as a paper dragon. Examination of the history leading to the creation of the MRC provides insight into the reasons why the 1995 agreement was completed as a
constitution to an organization lacking the rules necessary to enable the institution to achieve its stated goals.

Because the first stage of the evolution of the Mekong River Commission, the Mekong Committee, was created as an ideological tool of the United States and United Nations to combat the spread of communism in Southeast Asia, the Committee was formed without Chinese membership. This oversight provided a basis for a history of organizational cooperation that lacked cooperation from the most powerful and upstream riparian state. While Chinese cooperation has recently improved, Chinese membership into the Commission is nowhere near fruition.

In an examination of the level of compliance effectiveness achieved by the MRC, Chapter 3 illuminates the fact that states can take development action on the Mekong River that is in direct contradiction to the well-being of both human and ecosystem health and still be acting within the confines of the MRC constitution. The 1995 Mekong Agreement allows states to act against what would be done to facilitate sustainable management and development. Because this agreement enabled the Mekong River Commission to exist as a paper dragon, compliance to the regime prescriptions were very easily made by the regime participants, yet did not impact the river or its management. While it was discussed that the MRC has been successful in increasing Chinese cooperation with the Commission, citing the example of Chinese alteration of their navigation development projects in partial response to MRC pleas, the fact remains that this is an isolated example. In every other development project examined within the confines of this research, actions that are inline with the desires of the MRC have been

---

147 This refers to actions that would be expected to be desired by an international environmental organization. These desires have not been articulated by the Commission.
ignored by the developing states. Therefore, although member states have thus far complied with the rules and regulations of the 1995 agreement, the results of this compliance effectiveness has not achieved much in terms of overall results of the river.

Chapter 4 has taken this one step further and examined the impact that this compliance effectiveness has had on the health of the Mekong River. Through analysis of the various MRC sector programmes, the continuation of comprehensive Chinese development projects as well as the current deteriorating state of the Mekong fisheries, this study has concluded that despite the fact that member states may be complying with the rules of the MRC, this compliance and the overall existence of the Commission has not been successful in achieving result effectiveness. This lack of result effectiveness translates into the unfortunate argument that the existence of the Mekong River Commission has not been successful in improving the state of the environment in the Mekong River Basin.

Chayes and Chayes argue that “significant changes in social or economic systems mandated by regulatory treaties take time to accomplish. Thus, a cross-section at any particular moment in time may give a misleading picture of the state of compliance.”148 This argument can also be applied to the results achieved by the organization. Adapting to rules outlined in treaties does take time, and therefore the fact that this study examines the status of the Mekong River Commission as it exists in the summer of 2004 may not be entirely fair to the Commission. In looking to the future, it must be highlighted that the present actions taken by the Commission are planned to substantially alter the strength of the incomplete sections of the agreement.

As has been thoroughly discussed, the current work of the MRC is largely focused on the negotiation of subsidiary agreements that will help provide some teeth that could increase the level of efficacy existent within the Commission's work. Quite recently the Global Environmental Facility, a sister organization to the World Bank, has provided the Mekong River Commission with funding of US$11-14 million to help implement the 1995 agreement.\textsuperscript{149} With this funding, the Commission is embarking on studies to come up with a minimum water flow that will be applied to the currently incomplete Article 5 of the 1995 agreement, as well as attempting to solidify other weaknesses in the agreement that have contributed to the current status of the Commission.

While previously mentioned problems are evident within the structure of these negotiations, the fact remains that the Mekong River Commission has acknowledged that problems exist within its constitution, and is taking action to remedy them. It can therefore be said that the MRC has the potential for a brighter future. If the current negotiations are successful and result in the strengthening of the 1995 agreement, the Commission would be able to substantially increase the significance of the compliance effectiveness that it has achieved, therefore increasing its level of result effectiveness. It can be foreseen that the Mekong River Commission may, in the future, be more successful in facilitating the sustainable management and development of the Mekong River.

However, a major problem holding the MRC back from achieving efficacy is the lack of policy recommendations made by the Commission to member states. As part of their mandated purpose, the Mekong River Commission is meant to use information that

\textsuperscript{149} Personal communication, interview, Richard Paisley, Director of the Dr. Andrew R. Thompson Natural Resources Law Program at the UBC Faculty of Law, 2004.
it has gathered to recommend appropriate environmental policy adjustments to member states. Policy recommendations made by the Mekong River Commission are required to substantially influence the domestic environmental policy of member states. A major weakness of the Mekong River Commission is that it does not analyze data collected by the Secretariat's data to make policy recommendations to Thailand, Laos, Cambodia and Vietnam based on what behaviour needs to be altered to reach the desired state of the river.

This study has used theories from Haas, Keohane and Levy to discuss the ways that international environmental organizations are expected to impact the domestic political systems of regime actors. As discussed by the three editors of the volume Institutions for the Earth, in order for an international environmental organization to be considered effective, it must be successful in altering the domestic political systems of the member states. While diplomatic relations between member states have indeed been altered in the case of the Mekong River Commission, the lack of policy recommendations made by the Commission means that the environmental policies of the member states have remained unchanged and sustainable development of the Mekong River has not been integrated into these policies. While the strengthening of the 1995 agreement is a crucial step towards increasing the MRC's level of efficacy, this efficacy cannot be achieved without an alteration in MRC strategy that actually uses the data collected by the Secretariat to create policy recommendations that can impact the environmental policy of member states.

In addition, the only legally binding element of the 1995 agreement is Article 5, which, as has been examined, provides very few actual restrictions on state behaviour.
Under this article veto power is only available to member states regarding mainstream projects, and on other projects only prior notification is necessary. In addition, this article is only applicable to projects that began planning after the Mekong Agreement was finalized, allowing projects to continue that are clearly damaging to the human and ecological systems supported by the river.

M.J. Peterson’s theory regarding the necessity of both compliance and result effectiveness was used in the analysis of MRC efficacy. It was determined that, while the Commission was somewhat successful in achieving compliance effectiveness, this was largely due to the weakness of the 1995 agreement. Compliance with MRC rules and regulations included actions such as the construction of the Vietnamese Yali Falls Dams, which has been proven to be significantly detrimental to both human and ecosystem health. These actions are being taken completely within the requirements of the Mekong Agreement, showing its weakness and failure in promoting any form of sustainable development.

The Mekong River Commission, in its most recent evolutionary state, has a mandate designated “to promote and co-ordinate sustainable management and development of water and related resources for the countries’ mutual benefit and the people’s well-being by implementing strategic programmes and activities and providing scientific information and policy advice.” However, due to a history that allowed ideological and hegemonic power capacities interfere with the negotiation process, the MRC exists under a constitution with few restrictive rules and no enforcement mechanisms. This agreement does not restrict development activities that are inherently

detrimental to the state of the Mekong River Basin environment therefore not promoting actions “for the countries’ mutual benefit and the peoples’ well-being”\textsuperscript{151} as the mandate clearly states. In addition, the weakness of this agreement allows the illusion of successful compliance effectiveness despite the fact that this compliance effectiveness cannot be translated into real positive environmental or political results. Because of these factors, this thesis argues that Mekong River Commission has thus far not been effective in fulfilling its mandate to facilitate the sustainable management and development of the Mekong River.

The future of the MRC is yet to be seen. While actions currently being undertaken in attempts to strengthen the 1995 agreement are positive steps in improving the level of effectiveness of the Commission, the history of MRC negotiations that result in agreements to further agree cast doubt upon the possible efficacy of the changes being made within the MRC. This study concludes that while helpful and necessary, these changes seem unlikely to increase the level of institutional efficacy enough to make this organization one that can truly facilitate the sustainable development of the Mekong River Basin.

\textsuperscript{151} Ibid
Bibliography


Pearce, Fred, “Where have all the fish gone?” The Independent. April 21, 2004 London, U.K.

Personal Communication, email, Abigail Makim, Professor and noted expert on Mekong Politics, May-June, 2004.
Personal Communication, interview, Richard Paisley, Director of the Dr. Andrew R. Thomp¬son Natural Resources Law Program at the UBC Faculty of Law and consultant for the Mekong River Commission, June 9, 2004.


