The Mekong Agreement Negotiation: Realism, Requirement and the Mekong Regime

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The Mekong Agreement Negotiation: Realism, Requirement and the Mekong Regime

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LL.M. 2010-11

The George Washington University Law School

International Negotiations

Spring 2011

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1. Facts about Mekong River

The Mekong River is also known as ‘Mother of Water’ and ‘The Nine Dragons River’. It is the 7th longest river in Asia and the 12th longest in the world. The Great Mekong River is divided into two parts: Upper Basin in Tibet and China (where it is known as Lancang Jiang), and the Lower Mekong Basin from Yunnan downstream of China to the South China Sea. The source of flow for the river comes from rainfall, and is based upon monsoon winds. Mekong witnesses the lowest flow in the month of April, which drastically increases with the advent of monsoon in months of May and June.

The basin is 2nd, only to Amazon, in rich area of biodiversity. The river nurtures and supports large area of forest and wetland, required for building materials, food and medicine (includes fishery) and provides habitat for thousands of species of plants and animals. The area has mineral deposit of tin, iron ore, natural gas, copper, gem stones, potash and gold. The estimated

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5 Climate and hydrology, id.
7 Id.
8 Id.
commercial value from the region is US$ 2 billion per year. The river supports one of the world’s largest inland fisheries. Just in Laos the industry was estimated at 16,500 metric ton in 1973 and availed employment opportunities for 75,000 people.

Table 1 - Mekong River Fact Sheet.

<table>
<thead>
<tr>
<th>Length</th>
<th>4,200 km (2,610 mi)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Countries</td>
<td>China, Myanmar, Thailand, Laos, Cambodia and Vietnam</td>
</tr>
<tr>
<td>Basin Population</td>
<td>60 Million (as per 2000/1 survey)</td>
</tr>
<tr>
<td>Country population total</td>
<td>242 Million (as per 2000/1 survey)</td>
</tr>
<tr>
<td>Per capital GDP</td>
<td>Varies from US$ 2,565 (Thailand) to US$ 265 (Cambodia)</td>
</tr>
<tr>
<td>Uses</td>
<td>Irrigation, fisheries, power generation, transportation, industrial and domestic supply</td>
</tr>
<tr>
<td>Primary Legal Agreement</td>
<td>Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, Chiang Rai, Thailand, 5 April 1995 - (Thailand, Laos, Cambodia and Vietnam)</td>
</tr>
<tr>
<td>Institutional arrangement</td>
<td>Mekong River Commission (Thailand, Laos, Cambodia and Vietnam)</td>
</tr>
</tbody>
</table>

2. Hydrology of Mekong River.

Mekong River has a drainage area of 795,000 km², and yearly surplus of 475,000 million m³ (MCM). The river runs through a sequence of tapered and abrupt gorges, though by the time it reaches Cambodia, it is 3 to 4 km wide, passing through fertile flood plains. The river’s release is subject to seasonal fluctuations, a ratio as high as 50:1 has been observed in-between

9 Id.
11 Id.
peak and base-flow. As an example in Cambodia the river may witness flood discharge of 60,000 m$^3$/s, while low flow values of 1 000–1 500 m$^3$/s can also be seen.

The uncertainty of the water discharge is also based up on the rainfall received in the basin. In north-east Thailand the average rainfall is only 1 000–1 200 mm, while due to orographic influences and the monsoon, it may result in up to 4 000 mm/year point of rainfall. The river basin is also prone to soil erosion, 28 percent of Mekong Basin in Yunnan was declared “erosion prone” back in year 1998.

Table 2 - Basic data on country share of Mekong Basin territory and water flows.

<table>
<thead>
<tr>
<th></th>
<th>China</th>
<th>Myanmar</th>
<th>Lao PDR</th>
<th>Thailand</th>
<th>Cambodia</th>
<th>Vietnam</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area in Basin (Km$^2$)</td>
<td>165,000</td>
<td>24,000</td>
<td>202,000</td>
<td>184,000</td>
<td>155,000</td>
<td>65,000</td>
<td>795,000</td>
</tr>
<tr>
<td>Catchment as % of MRB</td>
<td>21</td>
<td>3</td>
<td>25</td>
<td>23</td>
<td>20</td>
<td>8</td>
<td>100</td>
</tr>
<tr>
<td>Flow as % of MRB</td>
<td>16</td>
<td>2</td>
<td>35</td>
<td>18</td>
<td>18</td>
<td>11</td>
<td>100</td>
</tr>
</tbody>
</table>


The basin is inhabited by about 100 different ethnic groups, who are mostly rural farmers/fishers. The average inhabitants are poor, lacking simple amenities of life like sanitation, education and health but what makes life bearable for them are the resources provided

14 Economic, Supra, at note 10.
15 Id.
16 Id.
17 Id.
18 Mekong, Supra at note 4, at 5.
19 Id.
by the river.\textsuperscript{21} The riparian countries of the Lower Mekong basin have complex racial, linguistic and religious differences.\textsuperscript{22} The population in the area has tripled in last half century; due to high birth rate and low life expectancy, majority of the population is young.\textsuperscript{23}

The four countries have undergone major political and military interaction: having witnessed continues variances of hostility, internal power aggression, cultural penetration from India and economic penetration from France.\textsuperscript{24} During 1941-1945 Thailand allied with Japan and together overrun the other 3 countries.\textsuperscript{25} Relation between the four countries was conditioned up on history of conflict and mistrust, and growing awareness of opportunities from modern technologies and organizational development of the basin.\textsuperscript{26}

4. Factors behind Negotiation & Development.

There were three factors acting as the basis of cooperation and coordination amongst the riparian states, compelling them to reach an agreement: water resource, foreign relation and international assistance.\textsuperscript{27} This led to the development of Mekong Regime, a multilateral negotiation over the underlying issues.

A) Vietnam: It has requirements for agriculture and combating sea water intrusion, and is concerned about abstraction of water by upstream riparian state.\textsuperscript{28} Though rice production in the Delta is the highest in the basin. It is inhibited by the problems of salinity intrusion (1.7 – 2.1

\begin{thebibliography}{9}
\bibitem{21} Id.
\bibitem{23} Id., at 20.
\bibitem{24} Id.
\bibitem{25} Id.
\bibitem{26} Id., at 21.
\bibitem{27} An Analysis of the Negotiations for the 1995 Mekong Agreement, Greg Browder, At 241. http://www.ingentaconnect.com/content/mnp/iner/2000/00000005/00000002/00279024#aff_1
\end{thebibliography}
million hectares affected), the propagation of acidic water from acid sulphate soils (one million hectares affected), and waterlogged soil due to excess rainfall and poor drainage (1-1.2 million hectares affected; data from Mekong Secretariat, 1988).  

B) Thailand: Has two regions in Mekong Basin (Northeast and Far North); northeast region does not have favorable topography for development of reservoir.  

Thailand’s Northeast region is the poorest in the country and there is significant need for development. Thailand was also considering diversion of water from Mekong basin in far north to Chao Phraya basin (area where Bangkok is situated).  

C) Cambodia: Still suffers from the effects of the Vietnam War and the subsequent reign of Pol Pot and the Khmer Rouge. It lack of political, socio-economic, and physical infrastructure in Cambodia which will inhibit the country's development. It desperately needs some agricultural development to improve the lives of its citizens. Cambodia also has a vital interest for future irrigation needs.  

D) Laos: Being one of the poorest countries in Asia has need for development of hydropower and navigation. The Laotians want capital and expertise to develop hydropower for export to Thailand and Vietnam.  

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30 An Analysis, Supra at note 27, at 242.  
31 Mekong Committee, Supra at note 29.  
32 An Analysis, Supra at note 27, at 241.  
33 Mekong Committee, Supra at note 29.  
34 Id.  
35 Id.  
36 Id.  
37 An Analysis, Supra at note 27, at 242.  
38 Id.  
Table 3 – Some of the main functions, impact and threats related to the Mekong River in four riparian countries.\(^{39}\)

<table>
<thead>
<tr>
<th>Country</th>
<th>Main use/functions</th>
<th>Major feared impacts caused by the country</th>
<th>Major threat to the country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thailand</td>
<td>Water diversion for irrigation and other uses</td>
<td>Environmental degradation, flow change</td>
<td>Lack of water for irrigation</td>
</tr>
<tr>
<td>Laos</td>
<td>Hydropower, navigation, aquatic resource</td>
<td>Leveling out of the floods, trapping of sediments and nutrients</td>
<td>Impacts on agriculture and fishing, river bank erosion</td>
</tr>
<tr>
<td>Cambodia</td>
<td>Aquatic resource, irrigation, possibly hydropower</td>
<td>Potential negative impact owing to unsustainable fisheries management</td>
<td>Change in flood plains, particularly in Tonle Sap flood pulse – impact on agriculture and fishing</td>
</tr>
<tr>
<td>Vietnam</td>
<td>Irrigation (delta) hydropower (central highland)</td>
<td>Increasing environmental degradation and water quality problem in the delta owing to intensive agriculture and dense population</td>
<td>Decreased dry season water flow; increasing salt water intrusion and negative impacts on irrigation</td>
</tr>
</tbody>
</table>

Foreign Relation

All the riparian states wanted to avoid or resolve conflicts, and facilitate cooperation in management and development of water resource.\footnote{An Analysis, Supra at note 27, at 242.} There was a need for cooperation in sectors like trade, migration, investment, fisheries, transpiration and disputed boundaries.\footnote{Id.} Therefore it was imperative upon the riparians to have cordial relation amongst themselves and with other countries.

The Association of Southeast Asian Nations ‘ASEAN’ being one of the most important regional groups, Thailand is one of the founding members of ASEAN; Vietnam got entry on 28 July 1995, Lao PDR on 23 July 1997 and Cambodia on 30 April 1999.\footnote{Overview, Establishment, The Association of Southeast Asian Nations, http://www.aseansec.org/64.htm.} The Mekong regime has witnessed major help and cooperation from ASEAN in recent past, for example, ASEAN-Mekong Basin Development Cooperation (AMBDC), which was only possible because international relation of the riparians.

**International Assistance**

Cambodia and Laos being one of the poorest and most underdeveloped countries of the world relied heavily up on international assistance for development. Though Thailand and Vietnam were less dependent upon international assistance but it could not have been undesired.

The major source of finance the regime witnessed was to flow from bilateral aid agencies and concessionary loan from development banks.\footnote{An Analysis, Supra at note 27, at 243.} During 1957 to 1975, the budget of the Mekong Committee was US$ 20 million per year, which was largely sponsored by United States.\footnote{Id.} Post 1975 upon collapse of Mekong Committee and coming into existence of Interim Mekong
Committee “IMC”, the major source of funding was from European governments and United Nations Development Programme “UNDP” (approximate annual budget of US$5-10 million).\textsuperscript{45}

[T]he potential for developing some of the basin’s water resource for mutual benefit had been long recognized.\textsuperscript{46} Both the riparians of the Lower Mekong and international community saw the potential of a well managed river.\textsuperscript{47}

Factors mentioned hereinabove led to the development of Mekong regime. The development efforts of the basin came in fragmented yet continuous efforts by the riparian states and international community, over a period 38 years and more.

5. Historical background of Negotiation & Development Efforts.

The Mekong regime existed since 1957 in one form or the other, and has experienced three different epochs.\textsuperscript{48} Three different studies in between 1952 to 1957 led to the development program for lower Mekong basin.\textsuperscript{49}[T]he 1957 Economic Commission for Asian and the Far East ‘ECAFE’ study was met with enthusiasm by the lower Mekong riparians.\textsuperscript{50} The commission studied, modified and finally endorsed a statue, which legally established the committee for Coordination of investigation of Lower Mekong (Mekong Committee), made up of representative of the four riparians, with input and support from the United Nations; was signed

\begin{flushright}
\textsuperscript{45} Id.
\textsuperscript{46} The first report on the potential for integration development in lower Mekong basin, the UN Economic Commission on Asia and Far East (ECAFE), Bureau of Flood Control.
\textsuperscript{47} Case Study Transboundary Dispute Resolution: the Mekong Committee, Aaron T. Wolf and Joshua T. Newton, At 7.
\textsuperscript{48} An Analysis, Supra at note 27, at 241.
\textsuperscript{49} Early Planning for development of the Mekong, Mekong, Supra note22, at 21.
\textsuperscript{50} Case Study, Supra note at 47, at 4.
\end{flushright}
on September 17, 1957. The committee was established with a strong support by the US government.

Each representative could present their countries’ view. The purpose of the committee was to promote, coordinate, supervise, and control the planning and investigation of water resource development in Lower Mekong Basin. It was a requirement for all the member countries to decide any issue unanimously.

There were several efforts made by the riparian states to adjust the changing needs. The original Statue was amended in 1962, 1967 and 1972, the rule of procedure was approved in 1963, and in 1975 the four member countries signed the “Joint Declaration of Principles for Water Utilization of the Lower Mekong Basin”. The Joint Declaration adopted the principles elaborated in the Helsinki Rules, that is, those of equitable utilization and the duty not to cause appreciable harm. In addition, it has introduced principles specific to the development and management of the Mekong Basin. Article II states that “development and control of water resources of the basin are directed towards their optimum utilization for the benefit of all peoples of the basin states.”

Other specific principles and criteria for the development of the Mekong River Basin include: “Development should be implemented under the guidelines of the Indicative Basin Plan which should be prepared and approved jointly by the Committee” (Preamble) and “Individual projects

51 Id.
52 Id. Mekong, Supra at note 4.
53 Id.
54 Case Study, Supra note at 48, at 4.
on the mainstream shall be planned and implemented in a manner conducive to the system development of the basin water resources” (Article V). ⁵⁶

The committee was operating under the shadow of Vietnam War. The communist achieved victory in Vietnam, Laos, and Cambodia, whereas Thailand remained a pro-western capitalist state; the Mekong Regime collapsed. ⁵⁷ The only factor for the collapse was the “Communism Domino” in the river basin.

The second era of Mekong regime is known as “Interim Mekong Committee” of 1978. After the end of war Vietnam, Thailand and Laos wanted to continue Mekong Regime but Cambodia under the rule of Khmer Rouge, did not want to participate. ⁵⁸ Thus the Interim Mekong Committee (IMC) was formed in 1978 following the cessation by Cambodia in 1975. ⁵⁹

The functions of the IMC, as stipulated in the Declaration of 1978, are to promote the development of water resources of the Lower Mekong Basin. Toward these ends, it may:

- Prepare and approve plans for carrying out coordinated researches, studies, and investigation,
- Make requests on behalf of the participating governments for financial and technical assistance, and receive and administer such assistance,
- Employ on behalf of participating governments personnel to assist the IMC in the performance its functions,

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⁵⁶ Majority of the excerpts have been taken from: Water Conflict and Cooperation/Mekong River Basin, Id.
⁵⁷ An Analysis, Supra note at 27, at 241.
⁵⁸ Id.
⁵⁹ Id.
- Draw up and recommend to participating governments criteria for use of the water of the Lower Mekong Basin for the purpose of water resources development.  

The IMC’s purpose was to coordinate the work of the riparian countries in order to maximize the social and economic benefits by following a course of sustainable and environmentally sound development of the Mekong’s water resources. European Countries, Australia and Japan supported the IMC, in place of USA (which use to be the largest donor before “communism domino”, which had been about 12% of total aid to the Committee). The 1978 Declaration anticipated that when Cambodia requested readmission to the committee, the IMC would be dissolved and the former Mekong Committee would be reactivated. [T]he formation of IMC was seen to be an important achievement in itself; after all, it brought socialist Vietnam and Thailand to the same table, offering one the very few opportunities for diplomatic negotiations between the countries during these turbulent years. The region’s tense political situation transformed IMC into a diplomatic battleground for more than a decade; as a result its relevance seemed to be fading.  

The end of cold war era paved way for the third epoch of the Mekong regime. In 1992, Cambodia requested readmission into Mekong regime. In December, 1992 representative of the four riparian countries met in Malaysia to attend a meeting made possible by the United Nations Development Programme (UNDP) to discuss the future of Mekong regime. By this time there

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60 Water Conflict and Cooperation/Mekong River Basin, Supra note at 55.  
61 Id.  
62 Japanese Support to the Interim Mekong Committee during Post-Conflict Recovery of Member State, Mikiyasu Nakayama, Department of International Studies, Graduate School of Frontier Sciences. (02/04/2011), at 4.  
65 Id.  
66 An Analysis, Supra at note 27, at 241.  
67 Existing and Emerging, Supra at note 63, at 8.
was huge difference in economic development of the riparian countries, which resulted in a long
process of negotiation between 1991 and 1995.68

6. Progression of Mekong Spirit

The spirit of cooperation amongst the riparian countries, despite ups and downs in their
relations is recognized as “Mekong Spirit”. That was based upon mutual understanding of each
other’s problems, limitations and potential for development. The coordination amongst the
nations continued since 1957 for joint development for mutual benefit, and it was a necessity.
Based upon understand of the problems and need for development, the riparians negotiated in
times of utter animosity and foundational difference in the national outlook. Because of Mekong
Spirits we saw capitalist structure and communist government getting on one platform, and that
was the need for development. It was only based on the Mekong Spirit that the riparians got
down and negotiated the terms for historic agreement of 1995.

7. Mekong Agreement for Cooperation for the Sustainable Development of the

As noted above the Cambodia’s request for readmission, presented to IMC in 1991, initiated the
negotiation for the final phase of Mekong Regime; as present today. The negotiation efforts
started in 1992 at Kuala Lumpur, Malaysia.69 Thailand was advocating China’s entry into new
Mekong Organization and the other riparian countries were in opposition to the proposal.70 China
during 1990s had started with gargantuan hydropower projects upon Mekong River, which

68 Water Conflict and Cooperation/Mekong River Basin, Supra note at 55.
69 Existing and Emerging, Supra at note 63, at 8.
70 China and Myanmar took part in a planning meeting of Mekong cooperation organized by Thailand in March 1992. The meeting was
caused concern and disagreement amongst lower Mekong basin countries about the focus and 
structure of Mekong cooperation. Another problem for negotiation was the disagreement 
amongst the countries over the model framework. Though the parties were ready to cooperate, 
they disagreed over whether they should carry on under the old Mekong Committee framework 
or negotiate a totally new structure. The countries were faced with three different options: i) to 
amend the existing documents of 1957 statute & 1975 Declaration, ii) to negotiate a completely 
new framework, or iii) to suspend cooperation and adhere to customary international water law.

Thailand’s development and other riparian countries’ lacking behind, gave Thailand more 
barraging power in negotiation. [T]he growth of Thailand, relative to its neighbor had made even 
the modest sovereignty limitation imposed by the regime seem undesirable in Bangkok. On 4th 
November 1991, at Bangkok meeting between IMC and Supreme National Council for 
Cambodia, there was a last minute disagreement on applicability of basic Mekong Committee 
legal document. On 13th February 1992, Thailand cancelled Plenary Meeting scheduled for 17th 
-20th February 1992 which intensified the disagreement.

Thailand against the other riparians led by Vietnam were having disagreement amongst 
themselves over Cambodia’s readmission, with Thailand desiring to negotiate an entirely new 
framework, which would allow its projects like Kong-Chi-Moon to proceed without Vietnamese

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71 International Water Security, Supra not at 39, at 89.
72 Id.
73 Id.
74 Existing and Emerging, Supra at note 63, at 9.
76 Mekong Agreement Lacks Requirements for National Rules, Sokhem Pech, IUCN Water Programme, Appendix 2.
cmsdata.iucn.org/downloads/mekong_2.pdf
77 Id.
veto.77 The deadlock was solved in 1992 by signing of a Memorandum of Understanding that made Cambodia an official party to Mekong cooperation and started negotiation for new cooperation framework.78

Thailand was of the opinion that secretariat (Mekong Committee secretariat) had lost its neutrality and did not want its involvement in the Mekong Agreement negotiation.79 Thailand barred the secretariat from attending the March 1992 meeting and unilaterally dismissed the Executive Agent, though the other riparians felt that Thailand did not have the right to do so.80 The Mekong regime was again about to collapse.

Due to dramatic confrontation of 1992, several seemingly overlapping organizations were created, including the Asian Development Bank’s Greater Mekong Sub-region (ADB-GMS, 1992), Japan’s Forum of Comprehensive Development of Indochina (FCDI, 1993), the Quadripite Economic Cooperation (QEC, 1993), the Association of South East Asian Nations and Japan’s Ministry of International Trade and Industry’s Working Group on Economic Cooperation in Indochina and Burma (AEM-MITI, 1994), and Myanmar and Singapore’s ASEAN-Mekong Basin Development Cooperation (ASEAN-ME, 1996).81

UNDP was alarmed due to the situation, as it had contributes $50 million over the years, which was the largest development program of longest duration that it had ever supported.82 This prompted a series of meeting for negotiation organized by UNDP as it was terrified that the

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77 The disputes regarding Cambodia’s readmission were based upon the terms of the 1957 statute and more importantly 1975 “joint Declaration”. Article 10 of the Joint Declaration, which required unanimous consent for all mainstream development and inter-basin diversion proved to be the main sticking point of Cambodia’s readmission, with Thailand prepared to walk away from the regime altogether. The conflict erupted in April 1992 when Thailand forced the executive agent of the committee, Chuck Lankester, to resign and leave the country. (The 1957 Mekong committee Secretariat). Mekong river encyclopedia, Id.
78 International water security, supra note at 39, at 89.
79 An Analysis, supra at note 27, at 247.80 Id.81 Mekong river encyclopedia topics, supra note at 74.
82 An Analysis, supra note at 27, at 248.
regime might disappear.\textsuperscript{83} To pacify the situation, it organized an informal reconciliation meeting in Hong Kong.\textsuperscript{84}

UNDP further offered to provide logistics, finances and mediation support, thus eliminating the need for Secretariat’s involvement and the delegation agreed to forge an agreement that would also meet the need of China and Myanmar, satisfying Thailand’s view.\textsuperscript{85} Following series of high-level negotiation amongst the riparians a “Joint Communiqué” was issued at Kuala Lumpur, establishing commitment to negotiate in good faith and Mekong Working Group (MWG).\textsuperscript{86}

There were four factors assisting the MWG in understanding the application of international water law to apply it to their case.\textsuperscript{87} First, through the long continuation of Mekong Committee and its data gathering and planning activities, the negotiators had an excellent common understanding of the physical and socio-economic attribute of the basin. Second some members of MWG had trainings on international legal issues, funded by Asian Development Bank and European Union from 1990-92. Third the senior advisor for the MWG was an expert on international water law and he assisted the MWG on customary international water law and existing international water agreements. Finally some key members of MWG were active members of International Law Commission.\textsuperscript{88}

In early 1992, the acceptable course of action for the riparian countries came to a standstill. UNDP offered to assist and mediate in achieving solutions by providing consultation, in Hong

\textsuperscript{83} Mekong river encyclopedia topics, Supra note at 74.
\textsuperscript{84} An Analysis, Supra at note 27, at 248.
\textsuperscript{85} Id.
\textsuperscript{86} Existing and Emerging, supra note at 63, at 9.
\textsuperscript{87} Id., at 10.
\textsuperscript{88} Majority of the excerpts in the paragraph have been taken from, Existing and Emerging. Id.
Kong on 6th October 1992. The Success of that meeting led to the meeting at Kuala Lumpur in mid-December. In-between October to December, 1992, the four parties drafted key issues/points, which later went on to form the framework of Mekong cooperation, officially approved in Hanoi on 5th February 1993 at Mekong Working Group-I. The commitment amongst the parties reaffirmed to continue to cooperate in a constructive and mutually beneficial manner for the sustainable utilization of resources from Mekong River, and in recognizing changes that took place since the 1st mechanism was adopted, agree to continue the dialogue to create an acceptable framework for future cooperation.

Six elements for the future framework of coordination were:

- Asset of principles for sustainable utilization of water resources of the Mekong river system;
- An institutional structure and mechanism for coordination;
- A definition of the functions and responsibilities of the structure and mechanism;
- Future memberships of the structure; and
- Management of the structure.

The Guideline drafter in Kuala Lumpur, acknowledged that the “great political, economic and social change” that have taken place in the sub-region, the countries are “part of the most economically dynamic region of the world, “but are also faced with major challenges of natural resources management and environmental protection”. Further acknowledging that “the Mekong river system is a natural asset of immense value to all the riparian countries,” to address the inevitable pressure from economic growth in many water related sector of the basin, “the

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89 Existing and Emerging, Supra at note 63, at 8
90 Id.
91 Id.
92 Id.
93 Id.
coordinated management of the use of the river system’s resources will become ever more essential”. Also recognizing that certain elements of cooperation already exists, that may need redefining.94

During the 1st Technical Draft Meeting held at Bangkok, during 17th-20th August the Mekong Working Group refined the draft agreement, but failed to agree upon equitable use envisaged in article 5 (Reasonable and Equitable utilization) of the 1957 statute.95 The disagreement continued during the MWG-IV, held during 7th-8th October 1993, at Phnom Penh and it turned into a rift during TDM-II at Vientiane during 6th-7th January 1994, which led to the postponement of the meeting.96 During April 1994 Thai Prime Minister visited Hanoi and expressed the willingness to negotiate.97 After considerable discussion, the four countries agreed to the option presented by Vietnam as the basis to come to a mutual agreement of the text of Article 5, which was to provide the maximum flexibility and distinction between riparians, while recognizing the cycle effect of wet and dry seasons and the distinction between tributaries and mainstream interest of the riparians in the Mekong River waters.98

A series of event during a period of 21 month led to negotiation and completion of initial the draft of Agreement on 27 November 1994:

Table 4 – Date and Events of Negotiation in-between the Riparian Countries.99

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992: 6th October</td>
<td>Honk Kong: UNDP sponsored a consultation to discuss the impasse and offer to assist as a neutral party.</td>
</tr>
</tbody>
</table>

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94 Id.
95 Id. Mekong Agreement Lacks, Supra note at 75.
96 Id.
97 Id.
98 Agreement on the cooperation for the sustainable development of the Mekong River basin - Commentary & history 1995, Dr. George E. Radosevich, MWG Senior Advisor/UNDP. at 10 & 11.
99 Id., at 11.
<table>
<thead>
<tr>
<th>Year</th>
<th>Date</th>
<th>Location</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992: December</td>
<td>16-17</td>
<td>Kuala Lumpur</td>
<td>Meeting of four riparians &amp; UNDP in resulting on drafting a Joint Communiqué on a future framework of Mekong Cooperation for sustainable development of Mekong River by forming a Mekong Working Group (MWG), donors meeting of 1993 Mekong Secretariat work plan.</td>
</tr>
<tr>
<td>1993: 4-5 February</td>
<td></td>
<td>Hanoi/MWG-I</td>
<td>Signed Joint Communiqué by Vice-Minister of each country, Adoption of Guideline for Working Group on the Future Framework of Mekong Cooperation, set target of end 1993 to complete MWG tasks, and approved the selection of Senior Advisor funded by UNDP.</td>
</tr>
<tr>
<td>1993: 4-5 April</td>
<td></td>
<td>Bangkok/MWG-II</td>
<td>Agreed to prepare national position papers on “principles” to govern future cooperation and begin examination of institutional framework.</td>
</tr>
<tr>
<td>1993: 28-29 June</td>
<td></td>
<td>Vientiane/MWG-III</td>
<td>Agreed on “Outline” of draft Agreement, approving many provisions, and agreed to transform “outline” to draft at a Technical Drafting Meeting (TDM).</td>
</tr>
<tr>
<td>1993: 17-20 August</td>
<td></td>
<td>Bangkok/TDM-I</td>
<td>Refined draft agreement, approved many unresolved provisions and improved understanding on remaining key articles.</td>
</tr>
<tr>
<td>1993: 7-8 October</td>
<td></td>
<td>Phnom Penh/MWG-IV</td>
<td>Agreed to several remaining provisions, enhanced understanding of position and agreed of finalization efforts.</td>
</tr>
<tr>
<td>1994: 6-7 Jan</td>
<td></td>
<td>Vientiane/TDM-II</td>
<td>Examined option to reasonable and equitable utilization of mainstream and tributary water, and trans-mountain diversions.</td>
</tr>
<tr>
<td>1994: November</td>
<td>27-29</td>
<td>Hanoi/ MWG-V</td>
<td>The four countries, through their MWG, mutually agreed on the text of draft agreement and “initialed” the Draft Agreement signifying the completion of MWG mandate. They then agreed to for the Mekong task Force (MTF) to examine transitional for making preparation for the official signing on the new agreement and start-up needs for the new Mekong River Commission.</td>
</tr>
</tbody>
</table>
The success of the prolonged negotiation led to signing of the Mekong Agreement, on 5th April 1995, which led to the establishment of Mekong River Commission (MRC).100

The 1995 Agreement mandated a new organizational structure consisting of three permanent bodies: the council, the joint committee, and the MRC Secretariat.101 Both the council and the joint committee consist of one high-ranking government official from each member country and the MRC Secretariat executes technical and administrative role as is headed by a chief executive officer.102

Since 1995 MRC has endeavored to ensure “reasonable and equitable use” of the Mekong River System, through a participatory process with National Mekong Committee in each riparian country for water utilization.103 The following are the programs already underway (Mekong River Commission): Basin Development Plan; Water Utilization Program; Environment Program; Flood Management Program; Capacity-Building Program; Agriculture, Irrigation and Forestry Program; Fisheries Program; Navigation Program; and Water Resources and Hydrology.104

8. Conclusion.

According to Schwarzenberger, it’s the duty of a lawyer who is acting as an advisor in assisting riparian nations to negotiate and arrive at a mutually acceptable agreement for, development utilization and management of an international river, “to point out the inherent advantages and

102 Id., at 361.
103 Id.
104 Case Study Transboundary, Supra not at 47, at 7.
disadvantages of any particular blueprint and the conditions on which its attainment depends. The choice however, is for the government… It involves political decisions which are outside lawyer’s province.\textsuperscript{105} The key principles of international water law is to identify what has emerged from “rules” as binding norms of international behavior based upon reasonably provable facts, of which the “principle” are merely constructions.\textsuperscript{106}

Regional cooperation that lacks workable legal and institutional mechanism to support, is difficult to move beyond the level of general meetings to real cooperation based on shared visions, concrete plans of action, and joint program for sustainability and equity.\textsuperscript{107} The greater is the international involvement in conflict resolution, the greater the political and financial incentives prevail to cooperate.\textsuperscript{108} Though building effective organizations and policies requires more than just sufficient technical and financial support, but also real political commitment from the government of the member countries.\textsuperscript{109}

Both the riparians of the Lower Mekong and the international community saw the potential of a well-managed river well before "water stress" led to a crisis. By establishing and utilizing the necessary management infrastructure before respective senses of urgency had the chance to hamper political decision-making, the Mekong Committee had already developed a routine of cooperation which proceeded despite later political tensions.\textsuperscript{110} Adaptive management through joint planning and development of rules for water utilization helps member countries agree on

\textsuperscript{105} A Manual of International Law, Georg Schwarzenberger, at 25, quoted from Agreement on the cooperation for, Supra note at 95, at 37.
\textsuperscript{106} Id.
\textsuperscript{107} Mekong Agreement Lacks, Supra note at 75, Lesson learnt column 7.
\textsuperscript{108} Case Study Transboundary, Supra note at 47, at 7
\textsuperscript{109} Mekong Agreement Lacks, Supra note at 75, Lesson learnt column 7.
\textsuperscript{110} Case Study Transboundary, Supra note at 47, at 7.
more detailed rules and mechanism for concretizing and operationalizing its relevant provisions and adapt the cooperation framework as new needs arise.\textsuperscript{111}

The Mekong Agreement is a “framework agreement” which lays out the basic principle, procedure and organizational structure for the regime, but does not address specific water management issues. \textsuperscript{112}The development and management plans are vested with Mekong River Commission, thus the framework agreement allows the parties time to develop more specific plans or rules as more information becomes available and confidence grows. \textsuperscript{113} Solving water-related issues involves both technical and social aspects of development and understanding coupled with patience.\textsuperscript{114}

The Mekong Agreement heralded the beginning of a new era of cooperation in the Mekong river basin, and as reviewed above, customary international water law and prolonged efforts of negotiation played an instrumental role in shaping the framework of cooperation.\textsuperscript{115}

\begin{footnotes}
\item[111] Mekong Agreement Lacks, \textit{Supra} note at 75, Lesson learnt column 7.
\item[112] An Analysis of the Negotiations, \textit{Supra} note at 27, at 259.
\item[113] ibid.
\item[114] Case Study Transboundary, \textit{Supra} note at 47, at 7.
\item[115] Existing and Emerging, \textit{Supra} note at 65, at 24.
\end{footnotes}