

## **Comment on the 1995 Mekong Agreement**

### **Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, *Chiang Rai, Thailand, 5 April 1995***

#### **Principles**

The major principles of the 1995 Mekong Agreement are: peaceful resolution of disputes; freedom of navigation; reasonable and equitable utilization of Mekong waters; state responsibility for injurious activities; and environmental integrity of the Mekong River including maintenance of its natural flows.

#### **Dispute Resolution**

This is dealt with in Chapter V of the 1995 Agreement, Articles 34 and 35 . Those articles provide that the Commission will attempt to resolve any difference or dispute and, if the Commission is unsuccessful, the issue is to be referred to the Governments for resolution by negotiation.

#### **The Agreement**

The 1995 Mekong Agreement was not the beginning of cooperation between the four Lower Mekong Basin countries, as cooperation dates back to 1957.

China and Myanmar, the two Upper Basin countries, are not parties to the Agreement.

The following reasons were given for the non-participation of China and Myanmar in the Agreement:

- The two countries do not see much benefit from the cooperation from their point of view; and
- The contribution from the two countries is not considered significant from the point of view of the Lower Mekong Countries.

Attempts have been made to bring the two Upper Basin countries into the Agreement through annual dialogue meetings.

Lower Basin countries exchange data and information as well as visits with Upper Basin countries.

Article 39 of the Agreement provides that other riparian states (i.e., either or both of the Upper Basin states) may become parties to the Agreement only with the consent of the four existing parties (i.e., the Lower Basin states). Further, that Article also requires new parties to accept the rights and obligations under the Agreement, which may be unlikely at least in the case of China, unless the Agreement is amended. These may be stumbling blocks to the admission of the two Upper Basin countries.

The philosophy of the Agreement is "to improve the livelihood of 60 million people living within the Lower Mekong River Basin."

The 1995 Agreement is a "framework" or "umbrella" agreement. It is thus not very comprehensive or detailed; it leaves the finer details to rules, protocols, or annexes. It is characterized by the following features:

- Broad principles (e.g., Articles 5 and 7);
- Flexible framework agreement;
- A continuous process of dialogue and negotiating.

The "framework" nature of the Agreement is made clear, *inter alia*, by Article 38, which provides in part that:

". . . Parties may enter into bi- or multi-lateral special agreements or arrangements for implementation and management of any programs and projects to be undertaken within the framework of this Agreement, which agreements shall not be in conflict with this Agreement and shall not confer any rights or obligations upon the parties not signatories thereto, except as otherwise conferred under this Agreement."

The Agreement was prepared by a Working Group comprising representatives of the four Lower Mekong riparians. The effort was funded by UNDP and took about two and one-half years (1993-1995) to finalize.

It was noted that the initial draft of the Agreement was prepared by an international lawyer who was considered to be neutral which had advantages and disadvantages.

Technical/multi disciplinary personnel from the four countries were involved in the process.

The legal arrangements that preceded the 1995 Agreement required the consent/concurrence of all riparian countries for any projects (national) that involved the Mekong River. The 1995 Agreement does not require consent/consensus/agreement of the riparians for national projects.

The Agreement requires notification and consultations in good faith according to enacted rules. Currently there are no rules setting out the format, content, time, etc., for notification and consultation.

The Agreement does not deal specifically with the distribution of water to the member States. However, the basic principles to be applied in developing rules for water distribution are set forth in Article 5 of the Agreement.

- Development of these rules (under Article 26 of the Agreement) is a top priority.
- This approach of not initially attempting to determine specific allocations but rather reaching agreement on principles to be used and leaving shares to be worked out by technical committees was a mechanism which enabled initial adoption of the agreement.

While the interest of each country is different and there are diverse upstream and downstream issues, the Lower Mekong countries have found common ground on which to cooperate in addressing issues from a basin point of view. Thus the Agreement provides for cooperation "in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin", including but not limited to:

- irrigation
- hydro-power
- navigation
- flood control
- fisheries
- timber floating
- recreation
- tourism

Major concerns or interests of the riparian countries are: for Cambodia, fishing along the Great Lake, which relies on inflows from the Mekong; for Vietnam, saltwater intrusion, which can only be avoided by continuous discharges; for Thailand, water for agriculture, domestic and industrial use; and for the Lao PDR, power development.

There have been suggestions that a review of the Agreement be conducted so as to address weak provisions that were agreed upon as a compromise.

There is no requirement that the Agreement be incorporated into national laws.

### **Conclusions**

Any river-basin agreement is largely a reflection of the political situation within the basin.

The idea of national committees is appropriate but needs to be incorporated in the main framework agreement. Clearer provisions on their composition, and structure, functions may be necessary.

There is need for constant and focused dialogue among riparian countries.

The "framework agreement" concept provides flexibility and the space for countries to agree in principle, leaving details to be addressed later.

A framework agreement is possible even if some riparian countries do not sign the agreement. Cooperation between contracting parties and non-contracting parties through constructive dialogue is possible and essential.

A framework agreement should incorporate the fundamental principles agreed upon by the contracting parties. Once the riparians have identified and agreed upon the fundamental principles, a framework agreement should be negotiated immediately, within the shortest possible time.

Prior to concluding a framework agreement, each country should identify and discuss with other riparians its major environmental, economic and social concerns in respect of the river concerned. Such concerns may include catchment preservation, industrial and domestic water uses, agriculture (irrigation), tourism, fisheries, etc.

Donor support may require innovative staffing arrangements once a framework is established and a secretariat constituted.

Political goodwill, diplomatic compromises, technical support, donor support, mutual interests, basin-wise view, etc., are all essential pre-requisites to a successful framework agreement.

Wide divergences between riparian states need not be an obstacle to agreement. For example, Thailand and Cambodia are quite different if one uses the sole criterion of levels of development.

The reluctance of a country to sign an agreement need not obstruct that which is worth achieving, as the case of China amply demonstrates.

Speed, positive spirit, willingness to compromise, dialogue, openness and a basin-wide approach are the keys to developing a framework agreement.

A secretariat (for technical services) and a Council of Ministers (for political support and policy) are essential ingredients of a framework.

It is necessary to give preference to local (intra-basin) human resources in the staffing of a river basin organization secretariat.

There is some question to what extent the cooperation between the parties to the Agreement is dependent upon donor contributions, and whether it would survive a diminution of that support.

---

**[info@thewaterpage.com](mailto:info@thewaterpage.com)**

Water Web Management Ltd  
1 Dome Hill, Caterham  
Surrey CR3 6EE, UK

© 2000/1 Water Policy International Ltd

Materials may be used with consent and  
acknowledgement.