

Chapter 6

Environmental and Social Guidelines on China's Foreign Investments and the Myitsone Dam Controversy

In 2011, a mega project in Myanmar called the Myitsone hydropower development was suspended. This chapter attempts to explain the link between the suspension and China's 'Guidelines for Environmental Protection in Foreign Investment and Cooperation', through the lens of the first two stages of Anthony Downs' Issue Attention Cycle – in particular, the 'alarmed discovery and euphoric enthusiasm' phase.

This chapter underscores the need for international communities to help create communication lines between foreign investors and local communities as early as the pre-project phase of any large-scale hydropower development project.

6.1 Introduction

On 28 February 2013, China's Ministry of Commerce and Ministry of Environmental Protection released its 'Guidelines for Environmental Protection in Foreign Investment and Cooperation', a document that defines how Chinese investors should safeguard the host countries' local environmental and social interests. Many nations have long been calling for such a move, recognising the serious adverse impact of China's foreign direct investment and fearing that any existing damage will likely worsen in the near future.

The guideline is composed of 22 articles that refer to compliance with local laws and regulations of the host country; the need to safeguard local culture and society; the importance of creating environmental and disaster management plans as well as mitigating adverse impacts; caring for the local community; disposal of industrial wastewater; international environmental standards, etc.⁸ According to International Rivers, the United States-based international nongovernmental organisation, the guideline contains two important aspects: 'dialogue with the local community' and 'mitigation of environmental impacts' (International Rivers 2013b).⁹

Dialogues with the local community are covered in five articles:

- 1) The enterprise must respect the local religion, culture, and custom to facilitate harmonious development with the local economy, environment, and society (Article 3);
- 2) In line with local laws and regulations, the enterprise must establish and maintain a

⁸ For the full guideline in English, see the Appendix. For the original Chinese version, see <http://www.mofcom.gov.cn/article/b/bf/201302/20130200039930.shtml>.

communication channel with local communities as part of the project's environmental and social responsibility, and must also consider the opinions and suggestions (pertaining to projects) of the community's residents through public hearings and consultations (Article 20);

- 3) The enterprise must prepare and publish a project plan that complies the local laws and regulations, and disclose information regarding the environment affected by the project (Article 18);
- 4) The enterprise must develop and utilise a secured communication channel with stakeholders to deal with urgent incidents and accidents (Article 14);
- 5) The enterprise must implement a sustainable development strategy to balance corporate benefits and environmental conservation (Article 4).

These next four articles relate to the mitigation of environmental impact caused by the project:

- 1) The enterprise must identify the manner of storage, transfer, reduction, recycling, and disposal of hazardous waste in the project management plan, and ensure that the level of pollution generated by the project complies with the local environmental standards through a pollution prevention plan (Articles 10, 13, and 16);
- 2) In line with local laws and industrial practices, the enterprise must prepare and implement mitigation and restoration plans in case the project's activities/systems create adverse impacts on local ecosystems (Article 15).
- 3) The enterprise must monitor and evaluate the project's impact before implementation, collect and record relevant local information, and monitor and record disposal of waste (Article 11).
- 4) The enterprise must prepare and implement a mitigation plan with regard to project-related impacts on historical and cultural monuments and tourist attractions (Article 9).

The guideline, however, could be criticised because (i) it does not mention the rights of local communities and individuals; (ii) it does not prohibit locating a project within a protected/conserved area (such as those containing world heritage structures, or environmentally valuable areas such as national parks); and (iii) it cannot possibly lead to project cancellation even if impact mitigation is impossible, although it emphasises this point as a requirement. While these criticisms are reasonable, the publication of this guideline could be seen as a positive first step towards ensuring that China enterprises with foreign direct investments are taking measures to safeguard project-affected local communities and their environment.

The section below provides the analytical framework used in the discussion of the guideline vis-à-vis the Issue Attention Cycle. The third section presents a case study, – the suspension of the Myitsone Dam project in Myanmar – and analyses it in relation to this framework. The fourth section expands on this analysis by tackling the endogenous and exogenous factors that affected this case. The fifth and last section provides recommendations.

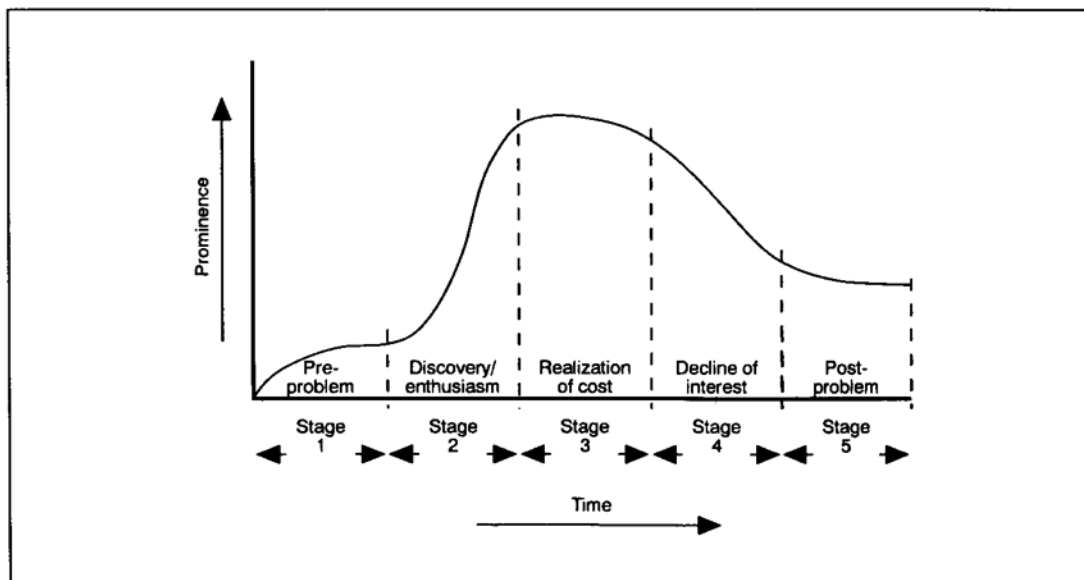
6.2 Analytical Methodology

6.2.1 Issue Attention Cycle Framework

The relationship between issue-attention and decision-making can be defined via a popular concept known as Downs' Issue Attention Cycle. In this concept, Downs argued that public concerns on environmental problems is often cyclical, which forces critical decision-making at a certain point. He noted that a problem 'leaps into prominence, remains there for a short time, and then, though still largely unresolved, gradually fades from the centre of public attention' (Downs, 1972). In its original form, the environmental problems in the 1960s were analysed. Also, It has since been found to be applicable in understanding the relationship between policy decisions and public interests in certain issues (Cohen, 1963; Iyengar and Kinder, 1987; Walker, 1977).

According to Downs, each stage is summarised as follows (Figure 6-1):

Figure 6-1. Public Interest in the Issue Attention Cycle



Source: Staggenborg, 2015.

Stage 1. **The pre-problem:** In this stage, undesirable social conditions have not yet caught the public's attention. Meanwhile, experts and interest groups have already cautioned about the undue impact.

Stage 2. **Alarmed discovery and euphoric enthusiasm:** A series of events (or other reasons) catches the public's awareness. The public is now alarmed about the negative side of an issue. This alarmed discovery is invariably followed by euphoric enthusiasm over society's ability to solve the problem effectively in a short time.

Stage 3. **Realising the cost of significant progress:** In the third stage, the public gradually realises the high cost of ‘solving the problem’. Eventually, not only a considerable amount of money but also significant sacrifices from a certain interest group are required to solve the problem.

Stage 4. **Gradual decline of intense public interest:** The realisation of the cost in the previous stage leads to a gradual decline in the public’s interest. As more people realise how difficult and costly it would be to resolve the issue themselves, public desire to keep attention focused on the issue consequently wanes.

Stage 5. **Post-problem stage:** In the final stage, the issue that was at the centre of public concern is now replaced by some other concern. The initial issue then moves into a prolonged limbo; it receives lesser attention than it did in the beginning (Stage 1) or experiences short-lived recurrences of interest.

6.2.2 Application of the Framework

While the framework mentions the cyclical character of public attention on a certain issue, it also assumes that important decisions are reached when there is an increasing public interest in the issue, particularly in Stage 2. Following this assumption, the publication of the guideline in 2013 may be perceived as related to Stage 2 in the cycle.

At first blush, many might assume that the release of the guideline has been driven by relevant public interests in China itself. Yet, this study does not take this view for the following reasons: First, the Chinese government is less accountable towards its own people compared to a democratic government. Second, it is unlikely that the Chinese public’s interest in the environmental and social safeguards in foreign direct investment has risen significantly. Instead, this chapter sheds light on the public interest around projects *outside* China, and addresses its connection to the publication of the guideline in China.

This look at the connection is via a comparative study of Chinese-led dam projects in Myanmar, Lao PDR, and Cambodia (Kirchherr et al., 2017). While this study mentions the Myitsone dam controversy as a game changer, it does not delve into the details of the case. Rather, the study analyses public interest in the controversy through in-depth personal interviews and analysis of primary data. First, the study focuses on the role of the Global Environmental Institute (GEI), the party that drafted the guideline.

Then, it narrows down the focus of the interviews on the recent halt of the Myitsone hydropower project in Myanmar. The next section thus describes how this process moves from Stage 1 to Stage 2 of the Downs’ framework.

6.3 Cancellation of the Myitsone Dam project: from Stage 1 to Stage 2

6.3.1 Pre-problem Stage

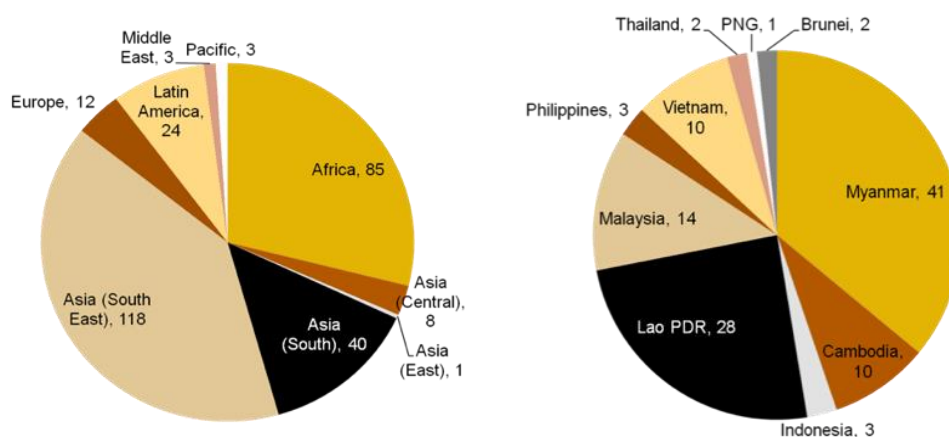
China has invested heavily in hydropower dams all over the world (Figure 6-2)). In terms of the number of projects, Southeast Asia is China's biggest market, followed by Africa and South Asia. In Southeast Asia, some of China's biggest markets are Myanmar, Lao PDR, and Cambodia, together with Viet Nam and Malaysia.

Myanmar, Lao PDR, and Cambodia recently attracted considerable foreign direct investment from China (Figure 6-3). While Cambodia recorded an increase in Chinese-invested dams since 2010, the number in Lao PDR has surged since 2011. On the other hand, Myanmar, which was gradually democratised under the former President U Thein Sein, has been seeing serious public outcry over hydropower projects since 2011.

The International community has long criticised China's investments in dams outside of its country for its lack of environmental and social safeguards.¹⁰ While this problem was not recognised by the Chinese public, nongovernmental organisations have been slowly highlighting its observations since the mid-2000s. In 2008, GEI eventually drafted the guideline in collaboration with the Ministry of Environmental Protection.¹¹

The Ministry of Commerce's hesitance delayed the government's approval on the publication of the guideline. Although environmental issues had already been raised during that period, the Ministry of Commerce did not relent. As the draft was not opened to the public, it never stirred any public discussion.

Figure 6-2. Number of Chinese Hydropower Development



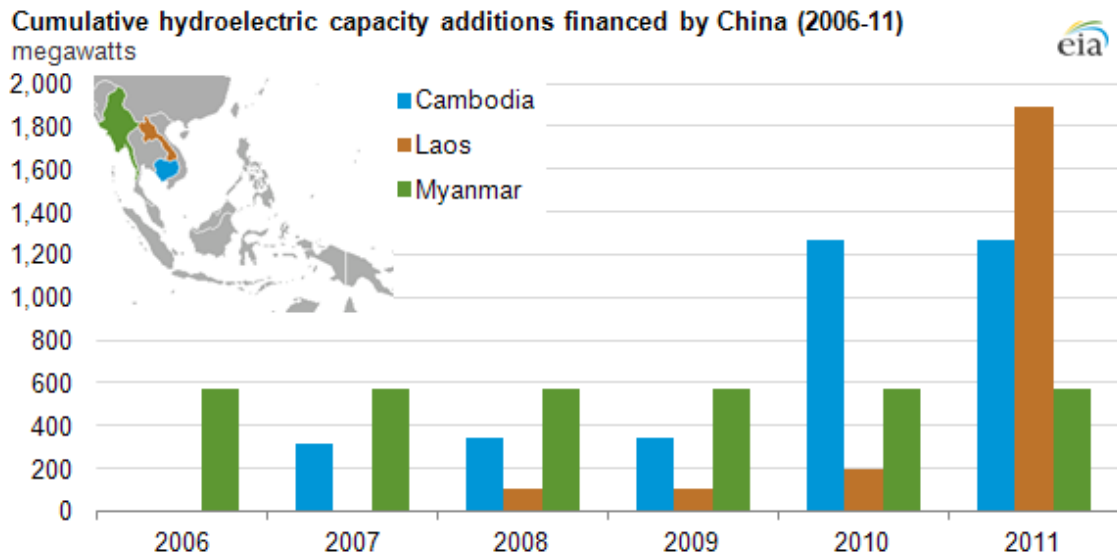
Source: International Rivers (2012).

¹⁰ For example, see 'China: New Dam Builder for the World', *Wall Street Journal* (28 December 2007) and 'Bui Dam Workers Up Against Chinese Employers', *Modern Ghana* (26 May 2008).

<https://www.modernghana.com/news/167059/1/bui-dam-workers-up-against-chinese-employers.html>

¹¹ Ji Lin, Global Environmental Institute, Interviewed by the author, 3 February 2018.

Figure 6-3. Chinese Hydropower Development in Cambodia, Lao PDR, and Myanmar



Source: Association of Southeast Asian Nations (2013).

6.3.2 Myitsone Development: Deepening Ties Between China and Myanmar

The temporary suspension of the Myitsone Dam took place in 2011, two years before the guideline's release in 2013.

The Myitsone Dam is located in Kachin State in northern Myanmar, and is home to one of the country's minorities, the Kachin people (Figure 6-4). The project consortium consisted of the China Power Investment Corporation (CPI), Ministry of Power No. 1 of Myanmar, and Myanmar's Asia World Company. Its total investment was US\$3.6 billion. Had the project been completed in 2017 as planned – with its total capacity of 6000 MW – the Myitsone hydropower project would have been one of the largest in Myanmar and even Southeast Asia. Yet, former President U Thein Sein suddenly announced a halt to the dam's development during his tenure in 2011. The decision was made because although Myanmar had improved its ties with China, it was confronted with severe sanctions from Western countries in the 2000s.¹²

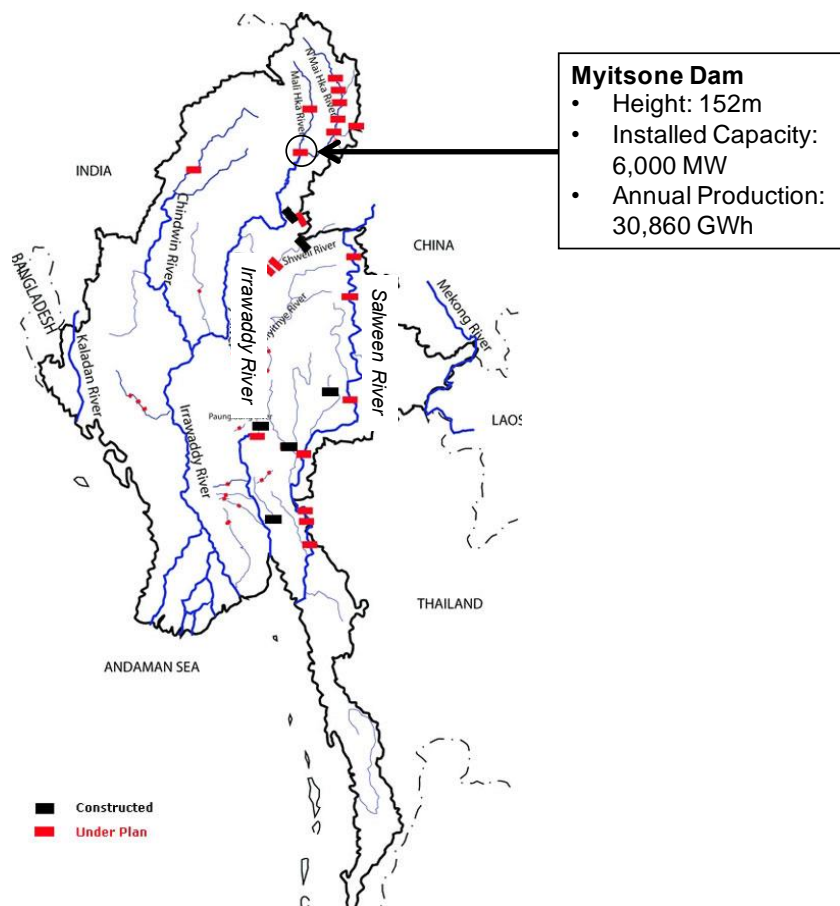
Some key events that occurred prior to President U Thein Sein's decision are chronicled below. In June 2000, General Maung Aye, vice-chairman of the State Peace and Development Council, announced China and Myanmar's joint statement on a cooperative framework. In July 2000, Vice-President Hu Jintao visited Myanmar and discussed a cooperative agreement on science and technology between the two countries. One year later, China and Myanmar signed a cooperative agreement on geology and mining. In December 2001, President Jiang Zemin visited Myanmar and signed the agreement on the promotion of trade and investment. In March 2004,

¹² Regarding this deepening relationship, see Shee (2005) and Shao and Fan (2005), for example.

Wu Yi, vice-premier of the State Council, visited Myanmar and signed the MoU on the promotion of investment and trade according to the Economic and Commercial Counsellor's Office of the Embassy of the People's Republic of China in the Republic of the Union of Myanmar.

After Prime Minister Khin Nyunt was replaced by Soe Win in October 2004 (an event brought about by pressure from the Bush/US administration), the cooperation between China and Myanmar even grew stronger. In April 2005, Chinese President Hu Jintao met with Myanmar's President Than Shwe in Jakarta to agree to new bilateral relationships (People's Daily Online, 2005). In February 2006, Chinese Premier Wen Jiabao met with the group led by Myanmar Prime Minister Soe Win and agreed on the early initiation of some prioritised projects. Under this agreement, Myanmar expressed its expectation for heightened cooperation and higher investment from Chinese corporations in the energy sector (Sohu News, 2006). In December of the same year, high-ranking officers from the Ministry of Power No. 1 of Myanmar visited Kunming to request additional energy investments from Chinese corporations.

Figure 6-4. Location of the Myitsone Hydropower Development Project



Source: Burma Rivers Network.

Accordingly, in December 2006, the CPI eventually agreed on an MoU with the Ministry of Power No. 1 of Myanmar for new development projects in the Irrawaddy Basin. These projects included the 6,000 MW dam at Myitsone and the 3,400 MW dam at Chibwe.

In 2007, the Changjiang Design Institute of China sent designers to dam sites to conduct geological drilling, reservoir inspection, and hydrological measurements. In 2009, Myanmar Ambassador Thein Lwin and CPI President Lu Qizhou signed a build-operate-transfer MoU for hydropower projects such as the one in Myitsone (Burma Rivers Network, 2009). In December 2009, CPI started planning of the hydropower project in the upper Irrawaddy (Ayeyarwady) Basin. In June 2010, the Ministry of Power No. 1 of Myanmar and CPI signed the construction agreement in the presence of both Chinese Premier Wen Jiabao and Myanmar President U Thein Sein (Xinhua Net, 2010).

6.3.3 Cancellation of Myitsone Project: Alarming Discovery and Euphoric Enthusiasm (Stage 2)

After early 2011, the relationship between Myanmar and China reversed completely. Two political events were responsible for this shift. First, the Obama Administration reversed the Bush Administration's diplomatic policy on Myanmar for three reasons (Liu, 2010): (i) The US diplomacy changed its focus from hard power to soft power after the economic crisis in 2009; (ii) The United States began to view ASEAN countries as a platform for its Asian diplomacy; and (iii) China has always exerted a strong influence in the ASEAN region. As a consequence, the Obama administration took a friendlier stance towards ASEAN countries, including Myanmar (Xie and Liang, 2011).

Second, from the viewpoint of the Thein Sein administration, the changing diplomatic attitude of the United States was favourable as it could give Myanmar the opportunity to request that the sanctions imposed on the country be lifted. This was necessary to achieve tangible economic development after democratisation under Thein Sein's leadership. In this regard, Thein Sein eventually released one of the world's most important political figures, Aung San Suu Kyi in March 2011. Swiftly, in August of that year, Suu Kyi started 'Save the Irrawaddy' campaign with an open letter to the public, mentioning four points (Burma Partnership, 2011). (i) Irrawaddy (Ayeyarwady) is the most important river in the country; (ii) Dam development is problematic since it threatens the river; (iii) Problems resulting from the Myitsone dam development include security, livelihood, nationality, and diplomatic aspects; and (iv) People are called upon to participate in 'Save the Irrawaddy' campaign. In this way, the NLD – the party led by Aung San Suu Kyi – strategically positioned the controversial Myitsone project as an issue for the 2012 elections. The Thein Sein administration could not ignore this growing campaign, which was also backed by the international community, and eventually announced a halt to the project in September 2011.

While the campaign never specifically blamed China for the project, it created considerable anti-Chinese sentiment in Myanmar. For example, local groups listed the following as reasons to stop

the Myitsone hydropower project.¹³ (i) Construction of the dam caused social issues because of the forced relocations of more than 60 villages and 10,000 residents; (ii) The electricity produced would be primarily exported to China, with the remaining being distributed between Myanmar's military and corporations. Therefore, the project will not benefit local communities; (iii) Energy export from Myitsone would provide an annual benefit of US\$500 million to the military government but a higher US\$3.6 billion to China; (iv) No relevant social and environmental impact assessments have been prepared; (v) Stakeholder meetings with concerned local communities have not been held; (vi) The project has no monitoring system in-charge; (vii) The dam site holds enormous cultural significance to the Kachin people; (viii) The dam will change the river's flow, damaging fisheries downstream; (ix) As the location is a conflict-prone zone, the dam is likely to suffer damage from potential conflicts; (x) Dam construction will lead to forced labour and human rights violations by the Burmese military; (xi) The dam is located in an earthquake-prone area; (xii) Drainage containing methyl alcohol could pollute the waters used by communities living downstream; and (xiii) the Chinese company absolves itself of full responsibility in sustaining the livelihood of the affected local community. Thus, China was an implicitly accused party in the Myitsone project.¹⁴

This growing anti-Chinese sentiment posed a serious barrier to China's expansion policy in the ASEAN region. Thus, it had to prove its willingness to be flexible with the locals' demands. One of China's responses in 2013 was to publish the guideline, the document that had previously been stalled by its Ministry of Commerce.¹⁵

6.4 Other Endogenous and Exogenous Factors

Aside from the factors listed above, there could be other considerations that led to the tipping point. One set of considerations is the endogenous factors in the Chinese policy. The year 2013 was not just the year the guideline was published. It also marked the year of transition from the China's 11th Five-Year Plan (2006–2010) to the 12th Five-Year Plan (2011–2015). This policy change could have affected the attitude of the Ministry of Commerce to favour the guideline's release.

Critics also noted that external pressures other than those pertaining to the Myitsone hydropower project could have brought about this change. There were other projects considered controversial at the time, which could also have influenced the Chinese government's stance.

¹³ See Burma Rivers Network website < <http://www.burmariversnetwork.org> >.

¹⁴ Arguably, the United States might have played a role in this process. See 'US Embassy Cables: How Rangoon Office Helped Opponents of Myitsone Dam', *The Guardian* (30 September 2011) < <http://www.theguardian.com/world/2011/sep/30/us-embassy-cables-myitsone-dam-document> > and 'WikiLeaks cables: Americans funded groups that stalled Burma dam project', *The Guardian* (30 September 2011) < <http://www.theguardian.com/world/2011/sep/30/us-embassy-cables-burma-myitsone-dam> >.

¹⁵ Ji Lin, Global Environmental Institute, interviewed by the author, 3 February 2018.

6.4.1 Environmental Concerns in the 12th Five-Year Plan

The 12th Five-Year Plan (2011–2015) consists of 16 comprehensive chapters. It imposes more stringent environmental targets compared to the previous plan. First, the energy consumption rate was targeted to reach 16%, which is more ambitious than the previous target of 20%. Second, the target for non-fossil fuel use was set at 11.4%, (compared with 7.5% in 2011). Third, CO₂ emission intensities were to be reduced by 17% compared to the 2010 level. Fourth, the annual reduction rates of SO₂ and NO_x were targeted at 8% and 10%, respectively, compared to 2010 levels. Moreover, China has arguably been trying to move beyond coal (Horii, 2011).

However, this environmentally friendly stance only applies to the country's domestic investment policy and not to its external investment plan. For domestic investments, energy-efficient and environmentally friendly technologies enjoy the Chinese government's support in the form of assistance with Research and Development and an advanced industry. In contrast, environmental and social safeguards were never considered for external investments. Instead, to highlight internal and external investments together as one of the four pillars in its Five-Year Plan, the Chinese government has made a strong push for external investment without paying heed to environmental and social safeguards.

6.4.2 Environmental Controversies in 2008–2013

The period 2008–2013 was marked by environmental controversies in countries other than Myanmar. For instance, consider the Kamchay Dam in Cambodia, which has a design capacity of 200 MW. A build-operate-transfer contract was agreed upon between Sinohydro and the Ministry of Mines and Resources of Cambodia in 2008. Although nongovernmental organisations highlighted environmental and social concerns associated with the dam and complained about insufficient information disclosure, the developer proceeded with the construction so that the dam could commence operation in December 2011.

Another case is that of the Lower Sesan 2 Dam in Cambodia, which has a total capacity of 400 MW. In 2012, Hydrolancang International signed the contract to construct the dam. The dam was started in February 2014 but became controversial because it did not satisfy the international environmental impact assessment standards. However, the company was able to complete the structure in September 2017.

While both cases were marred by environmental and social problems and stirred local controversies, they never attracted enough public attention to compel developers to suspend the projects.

In 2014, International Rivers reported that Myanmar has the distinction of being the country with the highest number of suspended dam projects (International Rivers, 2013a). Besides the Myitsone Dam, Myanmar had suspended five other dam projects; namely, Chibwe (2,800 MW), Khaunlanphu (2,700 MW), and Lakin (1,400 MW) Dams in the N'Mai River Basin; and the Dagwin (800 MW) and Weigyi (4,540 MW) Dams in the Salween Watershed. These projects were funded and originally set to be constructed by Chinese companies. Yet, as seen in the previous section,

the 'Save the Irrawaddy' campaign was led by the NLD party before the 2012 election, but only the Myitsone controversy led to the rise of anti-Chinese sentiments. Eventually, the Chinese government could not ignore this turn of events.

6.5 Conclusion: Summary and Implications

This chapter attempted to explain the link between the release of the 'Guidelines for Environmental Protection in Foreign Investment and Cooperation' and the first two stages of Downs' Issue Attention Cycle surrounding the stalled Myitsone hydropower project in Myanmar. As Downs noted, the guideline was published in 2013, immediately after the attention on the Myitsone hydropower as well as anti-Chinese sentiment in Myanmar peaked. Thus, the Issue Attention Cycle model – which was originally applicable to democratic institutions – might also be applicable to the decision-making process in China, a country characterised by a socialist market economy.¹⁶

The environmental nongovernmental organisation GEI has played an indirect role in connecting the issue and the public interest in Myanmar and the eventual decision of the Chinese government.

It can be argued that regardless of GEI's actions, the Chinese government would have had responded to the growing anti-Chinese sentiment in Myanmar due to the Myitsone controversy. Nevertheless, one needs to acknowledge that without GEI's preparation of the draft in 2008, the guideline might not have been published in its current form in 2013. Global Environmental Institute, therefore, helped expedite the Chinese government's response to the Myitsone issue.

Thus, the following are policy implications regarding China's environmental safeguard policies on its external investments: First, as early as the 'pre-problem' stage, specific policy design and recommendations must include ways to tackle latent problems at the outset. At this stage, such policy advocacy may not have an effective outcome, considering the low accountability of Chinese policy-making. Yet, as shown by the experience pertaining to GEI's draft, such advocacy will see results in the long run. To address environmental and social issues, collaboration with the Ministry of Environmental Protection can be a strategy worth taking.

Second, in the 'alarmed discovery and euphoric enthusiasm' stage, the Chinese government must ensure that the policy-based strategy developed during the 'pre-problem' stage effectively responds to the public's concerns. So far, the Chinese government and companies have not effectively dealt with the anti-Chinese sentiment. It is often said that they lack competence in public diplomacy, which unfortunately lowers their image (Kittner and Yamaguchi, 2017; Yamaguchi et al., 2018). In this context, the Chinese government also needs an effective policy to deal with anti-Chinese sentiments in the countries it invests in.

¹⁶ Kingdon's 'Agenda Setting Model' could be similarly applied to the Chinese policy-making process. For example, see Liu and Yamaguchi (2017).

Finally, to take this study one step further, it is crucial to monitor the effective implementation of a policy during the later stages – that is, when the public’s attention starts to fade. As shown in other cases, the policy implementation process can be problematic if it does not have the public’s attention.¹⁷ It is quite difficult, however, to ensure the effective implementation of the Chinese policy on external investments, as China does not have any accountability over policies implemented outside its borders. Thus, future research should look at how effective policies are being implemented with regard the ‘Guidelines for Environmental Protection in Foreign Investment and Cooperation.’

¹⁷ For example, see Hall (2002).