WATER DIPLOMACY IN THE MEKONG

Introduction

The Mekong River is the 12th longest river in the world with total length of 4,800 km. From the Tibetan plateau, the river flows through China, Myanmar, Laos, Thailand and Cambodia to the Mekong Delta in Vietnam into the South China Sea (Figure 1). The transboundary basin covers a total area of 795,000 km^2, making it the world's 21st largest river basin (FAO 2011). The river basin can be divided into two parts: the Upper Basin in China (where the river is called Lancang) and the Lower Mekong Basin from Yunnan province of China downstream to southern Vietnam (FAO 2011).

Transboundary water relations are inherently political. They are fundamentally shaped by the socio-political interests of river basin-sharing states and the geopolitical overlay of out-of-basin interests (Barua, Vij and Rahman 2018; Warner et al. 2017). Cooperation in the Mekong River Basin is no exception. The region has increasingly become a geostrategic hotspot, marked by competing agendas and claims between Mekong countries, seemingly underpinned by global powers including China and the United States competing for influence (Kittikhoun and Staubli 2018).

Tensions among Mekong countries over water resources management, water uses and river development have intensified. The main source of tension is hydropower development on the Mekong River and its tributaries. However, some water-related issues have been mitigated and partly resolved by the Mekong River Commission (MRC) under its water diplomacy framework (MRC 2016).

In this article, we introduce the MRC water diplomacy framework and provide an overview of its governance structure, present three case studies of hydropower dam projects illustrating implementation of the MRC water diplomacy framework, and discuss the challenges affecting the MRC's ability to implement water diplomacy effectively. The insights gained from studying these aspects allow for a better understanding of the situations of water diplomacy in the Mekong Basin and what steps need to be taken to strengthen the cooperation of member countries in optimising the benefits of the Mekong.

Figure 1: Map of the Mekong Basin showing political boundaries

Source: Mekong River Commission 2018

The MRC water diplomacy framework

The MRC water diplomacy framework has its roots in technical cooperation in water-related sectors including the collection, management and sharing of data and the monitoring and forecasting of water flows (Kittikhoun and Staubli 2018). The information is compiled into the state of basin reports, studies and assessments, and technical guidelines that provide the basis for understanding and discussing problems from a scientific perspective. Based on this sound technical understanding, three distinct but interrelated mechanisms facilitate and support negotiated solutions to water disagreements,

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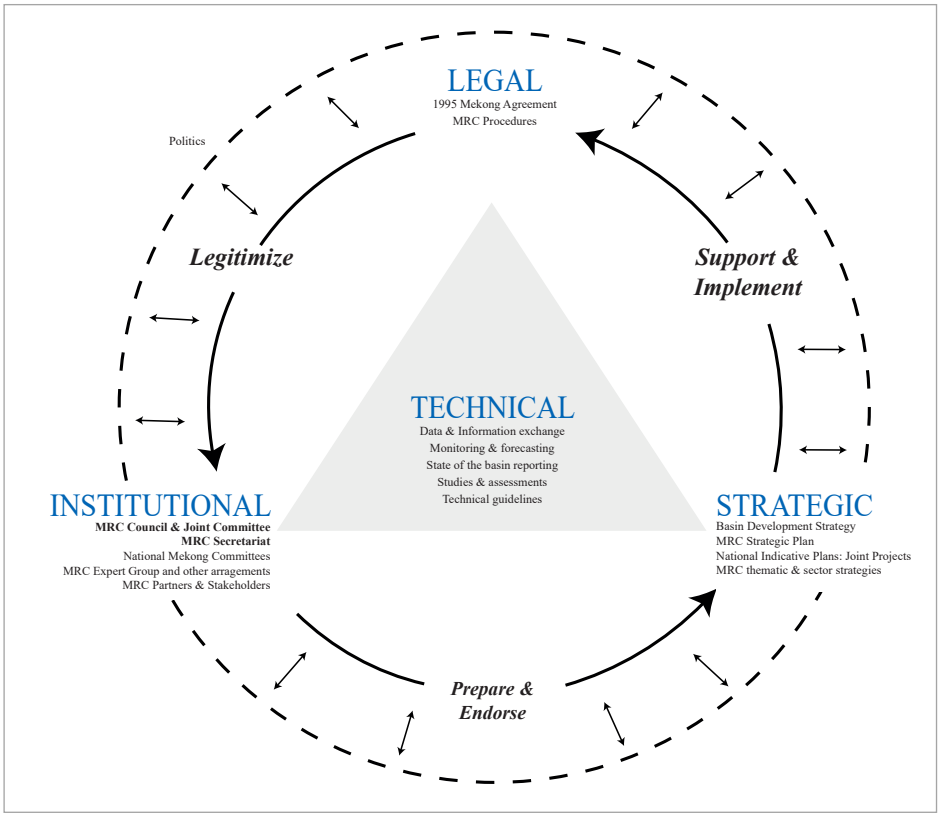
Figure 2: The MRC Water Diplomacy Framework



Source: Adapted from Kittikhoun and Staubli 2018

tensions and disputes: legal, institutional and strategic (Figure 2) (Kittikhoun and Staubli 2018).

Legal mechanisms

The 1995 Mekong Agreement, signed by the governments of Cambodia, Laos, Thailand and Vietnam, created the MRC. This Agreement, "along with the five MRC procedures to monitor and deal with maintenance of flows, water quality, water use monitoring, data and information sharing, and consultation on infrastructure projects, lay solid legal foundations in terms of international obligations in sharing and utilizing a transboundary river" (Kittikhoun and Staubli 2018, 246). Under the Mekong Agreement, the four member countries are required to consult on all legal matters relating to the use of the Mekong River.

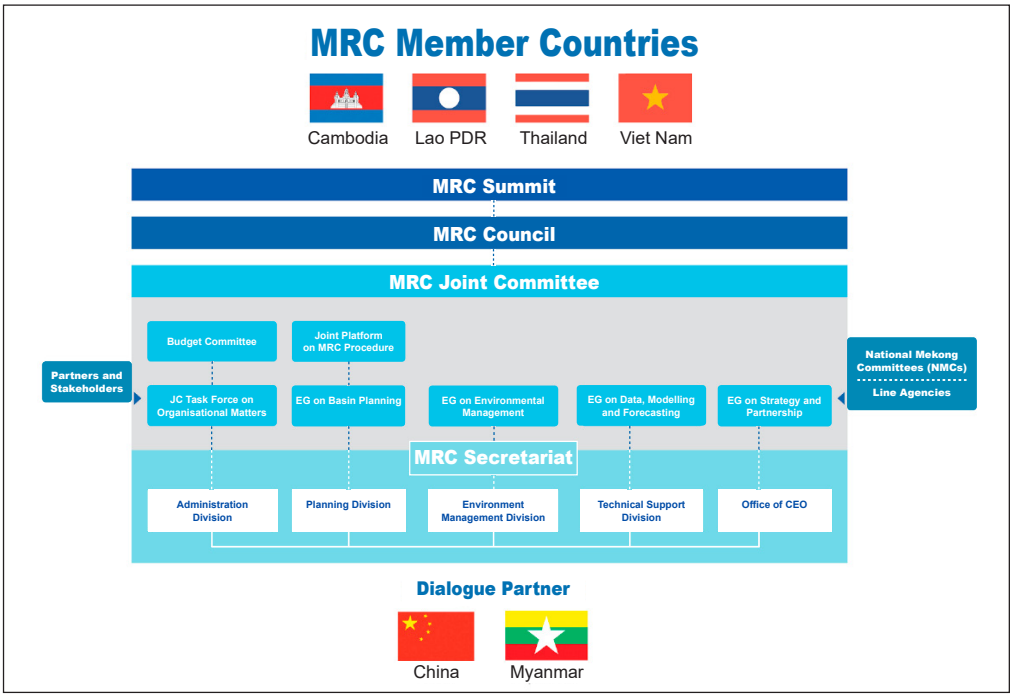
Institutional mechanisms

The MRC is led by the MRC Council and the MRC Joint Committee. The MRC council oversees and coordinates Mekong issues at the regional level. The National Mekong Committees and their secretariats are in charge of the national level (Kittikhoun and Staubli 2018). The MRC also consists of MRC expert groups, MRC partners and other regional stakeholders, all working towards the sustainable development, use, management and conservation of water and related resources in the Mekong River Basin. The expert groups are responsible for basin planning, environmental management, data modelling and flow forecasting (Kittikhoun and Staubli 2018). The regional stakeholders bring the voices of non-state actors including NGOs, CSOs and private sector agencies to the table. The MRC is responsible for preparing and endorsing strategies and plans for the basin (Kittikhoun and Staubli 2018).

Strategic mechanisms

The strategic components include the Basin Development Strategy, MRC Strategic Plan, National Indicative Plans of member countries (joint projects), and theme and sector-oriented strategies. These strategies and plans "provide directions and guidance to address basin-wide needs, challenges, and opportunities that one country cannot do alone" (Kittikhoun and Staubli 2018, 248). This strategic aspect completes the water diplomacy framework and supports the implementation of the 1995 Mekong Agreement.

Figure 3: MRC governance structure



Source: Adapted from Kittikhoun and Staubli 2018
Note: EG stands for expert group

MRC governance structure

The MRC member countries include Cambodia, Lao PDR, Thailand, and Vietnam. The four-yearly MRC Summit is the MRC's highest-level political event. It brings together the heads of governments of the four member countries and political leaders from dialogue partners (the countries involved in the MRC's annual dialogue meetings) such as China and Myanmar and development partners to review Mekong cooperation and provide strategic direction.

The MRC consists of three bodies. The highest authority is the MRC Council which consists of the water and environment ministers of the member countries. They meet once a year to discuss issues related to Mekong affairs. Next is the MRC Joint Committee comprising heads of department in charge of Mekong affairs. The Joint Committee meets twice or more a year as needed. It oversees the cooperation of National Mekong Committees together with MRC partners and stakeholders involved in task forces working on organisational matters, basin planning, environmental management, data modelling and forecasting, and strategic planning and partnerships.

The third body is the MRC Secretariat (MRCS), which comprises the Office of the Chief Executive Officer and four divisions – Administration, Planning, Environmental Management and Technical Support. The MRCS works with the Joint Committee and serves as a technical knowledge hub and water diplomacy platform facilitator. It also works closely with dialogue partners including China and Myanmar and other important stakeholders.

Case studies

The 1995 Mekong Agreement requires that member countries undergo a prior consultation process under Procedures for Notification, Prior Consultation and Agreement (PNPCA) to jointly review any development project proposed for or using water from the Mekong mainstream. The aim is to reach consensus on whether or not proposed projects should go ahead, and if so, under what conditions. We briefly look at three hydropower dam projects to illustrate how the MRC water diplomacy framework has been incorporated.

Xayaburi hydropower project

The proposal to build Xayaburi hydropower dam on the Mekong mainstream was submitted by the government of Laos to the MRCS for prior consultation in September 2010. It attracted much attention from MRC member

countries, development partners, CSOs, NGOs, and international organisations due to its potential local and transboundary impacts on the environment especially on fish and fishery resources, sediment transport and supply, and the people who depend on the river's natural resources for their livelihood (Kittikhoun and Staubli 2018). Cambodia, Thailand and Vietnam asked for more time to conduct transboundary environmental impact assessments and consultation, but Laos did not extend the consultation period (Kittikhoun and Staubli 2018). The Lao government did, however, show willingness to conduct further studies to address the issues raised by the MRCS Technical Review and concerns from regional stakeholders.

In 2011, the MRC Council agreed to implement a study on the sustainable management and development of the Mekong River Basin, including impacts of mainstream hydropower projects. The aims were to reflect on and learn from the Xayaburi PNPCA process and to better understand the impacts on the basin under various future development scenarios.

The Xayaburi hydropower project has performed well in technical areas but not so well in institutional and strategic aspects. Although it underwent impact assessment, there was no comprehensive strategic plan from a holistic institutional body to address arising issues during project implementation.

Don Sahong hydropower project

The prior consultation process for the Don Sahong hydropower project, the second dam to be built on the Mekong mainstream, started in July 2014. Similar to the Xayaburi project, this project drew criticism and debate over potential environmental impacts especially the consequences for the Irrawaddy dolphin population, an iconic species of the Mekong River and now critically vulnerable (Kittikhoun and Staubli 2018). NGOs and CSOs also raised concerns regarding fisheries and associated livelihoods. Once again, Cambodia, Thailand and Vietnam were sceptical and required additional time for transboundary environmental impact assessments before they would agree to the implementation of the project. Cambodia urged Laos "to make every effort to avoid, minimize and mitigate harmful effects that might occur to the environment" (Cambodia National Mekong Committee 2015 cited in Kittikhoun and Staubli 2018, 664). Thailand and Vietnam made similar requests.

Gaining agreement to proceed with this project took longer than for the Xayaburi dam because the MRCS, under the guidance of the Joint Committee, extended the prior consultation period to assess additional supporting documents submitted by Laos. Cambodia eventually agreed to accept Laos' proposal because its national environmental impact assessment concluded that the project "would not likely cause significant transboundary impact to Cambodia" (Kittikhoun and Staubli 2018, 664). Cambodia and Laos worked together through the MRC's standardised joint environmental monitoring program for the Don Sahong project.

Inspired by this project, MRCS convened a dialogue workshop on lessons learned from the first two PNPCAs. The event brought together practitioners from member countries and international legal experts to formulate recommendations that would be useful for future project assessments and negotiations. The outputs were integrated into subsequent PNPCAs. This project performed well in terms of stakeholder engagement, but the strategic aspect could have been improved.

Pak Beng hydropower project

The plan to build Pak Beng dam was submitted to the MRC for prior consultation in November 2016. Stakeholders were most concerned about fish movement, sediment management, and coordination and control arrangements for cascade reservoirs (Kittikhoun and Staubli 2018). At local level, most concerns were voiced by communities living along the Mekong River in Thailand. Cambodia, Thailand and Vietnam asked for more in-depth studies on transboundary and cumulative impacts and a monitoring and follow up system (Kittikhoun and Staubli 2018).

This project benefited from the improved PNPCA in the following ways. Informal interactions and meetings and open regional forums meant stakeholders were better informed and more engaged throughout the process. Clearly defined steps for the preparation phase, prior and post-consultation processes allowed for greater

transparency and better management. A clearly articulated action plan resulted in constructive and effective negotiation among member countries and their agreed statement in June 2017 (Kittikhoun and Staubli 2018).

Overall, the MRC's third prior consultation process was a significant improvement on the first two. The clearly defined organisational structure and action plan led to improved management, and collaborative stakeholder engagement helped address problems and reach a common understanding (Kittikhoun and Staubli 2018). The strategic aspect could be improved. Construction of the Pak Beng hydropower dam on the Mekong mainstream in northern Laos will start in 2022 and is expected to be completed by 2029 (NS Energy n.d.).

The MRC's water diplomacy challenges

Transboundary water resources connect nations, therefore their sustainable use and management entails the challenges and opportunities of collective action. But such action is beset and compromised by the different logic and interests of different groups. Broadly speaking, water is understood as an industrial or economic good (in the marketplace), as a political good and human right (in bureaucracy), and as a cultural good (livelihood asset) (Donahue 1997 cited in Vij, Warner and Barua 2020). Given that different types of actors have different appreciations of water and its value, it stands to reason that diverse interests and competing demands on shared waters will cause clashes over water use and management (Vij, Warner and Barua 2020). The main challenges facing the MRC's water diplomacy stem from diverging interests between riparian nations, gaps in mutual understanding, and complex regional geopolitics.

Different interests between riparian nations

"Due to the different position of countries along transboundary rivers, interests and benefits are allocated differently for upstream and downstream riparians. Also, environmental and social impacts of infrastructure projects are allocated differently across the basin" (GIZ 2014, 36)**.** Many large and small dams are being constructed along the Mekong River, led by China, Thailand and Vietnam. Eleven large dams are either being built or planned on the Lower Mekong, nine in Laos and two in Cambodia (Oum and Roath 2020).

The main challenge thwarting sustainable hydropower development in the region lies in the ability to resolve conflicts "between sectoral water use strategies, between local livelihoods and national development objectives, and between the riparian states with regard to their development objectives" (GIZ 2014, 49). The Xayaburi dam is the first to have undergone prior consultation under the 1995 Mekong Agreement. Rather than collaborating with neighbouring countries, however, Laos began building the dam even as Cambodia and Vietnam were voicing concerns about its potential transboundary impacts. Thailand's decision was delayed by a conflict of interest between its Ministry of Energy, which was supportive of the project, and its Ministry of Natural Resources and Environment, which had reservations (Middleton and Pritchard 2016). Eventually, Thailand "quietly financed the project and agreed to purchase its electricity" (Herbertson 2013, 3). This shows a lack of strategic cooperation and a point at which the MRC Council could have probably intervened to help identify mutual interests and prevent future conflicts.

Gaps in mutual understanding

Interactions concerning transboundary waters are inherently political and therefore largely shaped by the broader socio-political contexts of river-sharing countries (Mirumachi 2015 cited in Barua et al. 2018). Regional institutional frameworks for cooperation such as the MRC, the Greater Mekong Subregion, and the Lancang-Mekong Cooperation have been developed for the sustainable management of the transboundary river. Even so, there is no stipulation that all member countries reach an agreement before a dam can be planned, approved or even constructed. Article 4 of the 1995 Mekong Agreement states that each country retains "sovereign equality and territorial integrity" in their decisions. This signifies that there are no legally binding obligations to regulate dam developers and avert the danger of catastrophic dam failures.

This grave situation has led to several cross-border conflicts between public-private dam developers and the people and governments downstream most likely to be harmed (Oum and Reath 2020). Take the case of Xayaburi dam in Laos. According to the Guidelines on the Implementation of the Procedures for Notification, Prior Consultation and Agreement

(MRC 2005), member countries have the right to extend the duration of the prior consultation (six months by default). However, when requested, Laos did not extend the consultation period (Kittikhoun and Staubli 2018). By starting work on the Xayaburi dam before other member countries were in a position to make an informed decision, Laos undermined the primary purpose of the prior consultation and breached the 1995 Mekong Agreement (Herbertson 2013). This requires a legal examination by the MRC Council and perhaps a careful review of the terms and conditions in the 1995 Mekong Agreement.

Geopolitics between external powers

The geopolitics over the Mekong River Basin are no different than those ensuing from competition between superpowers for influence over natural resources around the world (Kittikhoun and Staubli 2018). Hydropower development is a key driver of such global strategic trends in the Mekong region. China, for instance, is asserting its dominance in the region to develop certain areas along the Mekong River into exclusive economic zones. And it is not unreasonable for other superpowers to be wary of China's aspirations for the Mekong River, promoted under the slogan "Shared River, Shared Future" (Oum and Reath 2020).

China's hegemonic intentions and growing influence in the Mekong region coupled with US policy deficiency has left a political vacuum. The US attempted to return to the region as articulated in the Obama administration's Strategic Pivot to Asia, under which the US initiated the Lower Mekong Initiative with four Mekong countries excluding Myanmar and China (Oum and Reath 2020). China's relations with weaker downstream states show power asymmetries as China has a strong influence on bilateral and multilateral dialogues in Southeast Asia and leads the Lancang-Mekong Cooperation and the Belt and Road Initiative (Middleton and Devlaeminck 2020).

China also exerts substantial influence over countries such as Vietnam regarding international maritime disputes in the South China Sea (Global Conflict Tracker 2020). Japan, as a middle power, might also consider the dominance of China in the region a threat. It has, for example, encouraged regionalism by urging the five GMS countries to establish a multilateral security dialogue to oppose China's claims in the South China Sea (Oum and Reath 2020). The MRC Council could promote better multilateral strategic cooperation and engage China more fully in dialogues to make it aware of the contentiousness surrounding its dominance in the region.

Conclusion

The water diplomacy framework has three main components: legal, institutional and strategic. Each component serves to support and complement each other to achieve the overarching goal of better water diplomacy. The MRC Council is responsible for approving the MRC Strategic Plan and making decisions on all policy-related matters concerning the Mekong. Subcommittees include the MRC Joint Committee and the MRC Secretariat.

For member countries to implement a hydropower project on the Mekong River, they must submit a proposal to the prior consultation process which incorporates all three components of the water diplomacy framework. The Xayaburi, Don Sahong and Pak Beng projects all went through the prior consultation process, although Laos started building the Xayaburi dam before the consultation had been completed. All received different criticisms and setbacks in terms of their impacts on the environment but ultimately came to life after rigorous assessments. The main lesson learned from all three projects is that it is not enough to pay attention to technical aspects only when implementing a big project in the Mekong. Organisational, institutional and strategic aspects together with comprehensive stakeholder engagement are just as important.

Challenges besetting the MRC in the implementation of its water diplomacy framework include conflicts of interest between riparian nations, gaps in mutual understanding, and the complicated geopolitical and strategic dynamics in the region.

Based on the above issues and challenges, the following recommendations merit consideration by MRC member countries:

- Incorporate all three aspects – legal, institutional, strategic – of the water diplomacy framework into dam construction and other water development projects.
- Enhance public participation in the early phase of project planning in order to stimulate new ideas, minimise setbacks and prevent conflicts.

- Encourage more technical discussions and deeper dialogue between riparian nations to find mutual interests and benefits, and shared purpose and goals.
- Foster better understanding of terms and conditions in the 1995 Mekong Agreement for project implementation in the Mekong region.
- Promote a clear move towards a fair rules-based regime for the six countries sharing the Mekong-Lancang River.

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