CONTESTED WATERSCAPES in the Mekong Region

HYDROPOWER, LIVELIHOODS AND GOVERNANCE

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earthscan
publishing for a sustainable future

London • Sterling, VA

First published by Earthscan in the UK and USA in 2009

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ISBN: 978-1-84407-707-6

Typeset by JS Typesetting Ltd, Porthcawl, Mid Glamorgan
Cover design by Susanne Harris

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22883 Quicksilver Drive, Sterling, VA 20166-2012, USA

Earthscan publishes in association with the International Institute for Environment and Development

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Contested waterscapes in the Mekong Region : hydropower, livelihoods, and governance / edited by François Molle, Tira Foran, and Mira Käkönen.
p. cm.
Includes bibliographical references and index.
ISBN 978-1-84407-707-6 (hardback)
1. Water resources development--Mekong River Watershed. 2. Water-supply--Mekong River Watershed. 3. Hydroelectric power plants--Political aspects--Mekong River Watershed. 4. Water rights--Mekong River Watershed. 5. Watershed management--Mekong River Watershed. I. Molle, François. II. Foran, Tira. III. Kakonen, Mira.
TC513.M45C67 2009
333.91'150959--dc22
2008051424

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This book was printed in the UK by Antony Rowe.
The paper used is FSC certified and the inks are vegetable based.

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De-marginalizing the Mekong River Commission

John Dore and Kate Lazarus

Introduction

A new water governance paradigm is needed in the Mekong region to assist societies in making better choices about how to share and manage water for the production of food and energy. On mainstreams and tributaries, disputes exist, resulting from interventions to natural flow regimes and overt or default management decisions. These interventions are justified on the grounds of flood control, more irrigation for food or fibre production, urban or industrial supply, improving ease of navigation, or boosting energy production via hydropower. There are associated disputes about altered sediment and nutrient loads, groundwater use, water reuse and diversions (inter-state, intra-state, inter-basin and intra-basin). New regional water governance is vital because these issues have territorial, ecological and political dimensions that need to be managed via regional protocols, rules or benefit-sharing processes.

Numerous dams and water diversions are on the agendas of mobile private and quasi-public-sector developers, transnational capital providers, and the six governments of the region: Cambodia, China, Laos, Myanmar/Burma, Thailand and Vietnam. A recent count found 82 existing and 179 potential hydropower projects in the wider region (King et al, 2007) (see Chapters 1 and 2), many on Mekong River tributaries.[1] Planned dams and diversions will transform the waterscapes of the region.

Our vision is for a more deliberative water politics in the Mekong region. To be clear, when speaking of deliberation, we mean:

> *Deliberation is debate and discussion aimed at producing reasonable, well-informed opinions in which participants are willing to revise preferences in light of discussion, new information, and claims made by fellow participants. Although consensus need not be the ultimate aim of deliberation, and participants are expected to pursue their interests, an overarching interest in the legitimacy of outcomes (understood as justification to all affected) ideally characterizes deliberation.* (Chambers, 2003, p309)

Thus far, deliberation has been in short supply. This is partly because proponents of deliberation meet resistance from actors who prefer to reinforce contexts that are unfriendly to deliberation and favourable to pursuance of their vested interests. Many actors still believe, or at least rhetorically pretend or are instructed, that domestic criticism of public policy is unpatriotic. There is often an unhelpful conflation where dissent is mistakenly seen as synonymous with disloyalty. Enquiry or criticism of water resources development plans, which impact across state borders, is seen by many as encroachment on hard-won state sovereignty and legitimate national security concerns. Hence, the resistance to transnational deliberative politics should not be underestimated.

The Mekong River Commission (MRC) is mandated to engage in water resources development in the so-called 'Lower' Mekong part of the region – the Mekong River Basin in Cambodia, Laos, Thailand and Vietnam. Different people call on the MRC to be a social and environmental guardian of the basin; a platform for information exchange; a knowledge producer, synthesizer and broker; an investment facilitator; and convenor of multi-stakeholder processes demonstrating high-quality deliberative practice. Can it play all these roles simultaneously?

Since 1995, the MRC (and its predecessors since the 1950s) has been and remains the focus of substantial organization-building efforts. During recent years, the MRC has received much attention from people intent on using, improving, empowering or criticizing it. This chapter reflects on the practice and potential of the MRC at a time when all Mekong region governments need to make informed decisions about whether, or how, to proceed with major projects that will have dramatic, transformative, national and transboundary impacts.

UNDERUTILIZED

The Mekong River Commission has a contested governance mandate – embodied in the 1995 Mekong River Agreement – for the mainstream, tributaries and the lands of the basin within the territories of the Lower Mekong countries (Governments of Cambodia–Laos–Vietnam–Thailand, 1995; Browder, 2000; Öjendal, 2000). It is often referred to as a 'regional' initiative and endeavours to

include China and Myanmar in some of its activities and outreach. This Mekong cooperation was originally catalysed via the United Nations and has a 50-year history (Bui Kim Chi, 1997; ESCAP, 1997).

Article 1 of the agreement commits the four member countries to cooperate in all fields of sustainable development, utilization, management and conservation of the water and water-related resources of the Mekong River Basin in fields such as irrigation, hydropower, navigation, flood control and fisheries.

The implementing organization for the agreement is the MRC, led by a governing Council at ministerial level, which meets once per year, and a Joint Committee (JC) of senior government officials, which meets formally twice per year, but increasingly now meets informally as the need arises (see Figure 14.1). The Council and JC are serviced by the *MRC Secretariat (MRCS)*, which is responsible for implementing Council and JC decisions, advising and providing technical and administrative support. The MRCS is currently located in Vientiane, Laos.

Although not specifically mentioned in the agreement, there are also National Mekong Committees (NMCs) established in each member country, set up differently in each country depending upon national government preferences. The heads of the NMCs represent their countries on the Joint Committee. NMCs are serviced by NMC Secretariats (NMCSs). It is important to note that there is a political dynamic between each of these five parts – that is, there is no homogeneous single 'MRC'. Any joint position needs to be collectively negotiated between the Council and JC members. Moreover, the MRCS must also manage its working relationships with the NMCSs, who are quick to object if they feel left out of MRCS activities, or if they perceive the MRCS to encroach into their national space. In turn, the NMCSs also have to establish their own role and working space within their national polities, with their functional power much less than key water-related ministries and agencies in each country.

The MRC also recognizes 'development partners' that include international lenders and donors – who at this stage still provide most of the finance for the MRC to function – international financial institutions (IFIs) such as the World Bank and the Asian Development Bank (ADB), and other 'internationals' such as the World Wide Fund for Nature (WWF), the International Union for Conservation of Nature (IUCN) and the International Water Management Institute (IWMI). More recently, knowledge networks involving various regional universities, policy research institutes and civil society organizations, such as the coalition implementing the Mekong Programme on Water, Environment and Resilience (M-POWER), are also increasing their engagement with the MRCS. At the national level, the NMCs and NMCSs have historically had less engagement with non-state actors or civil society organizations, particularly if these articulate alternative development narratives.

As in any large family, it is not possible for all the interaction to be smooth. The vaunted 'Mekong spirit' of cooperation often seems optimistically overstated;

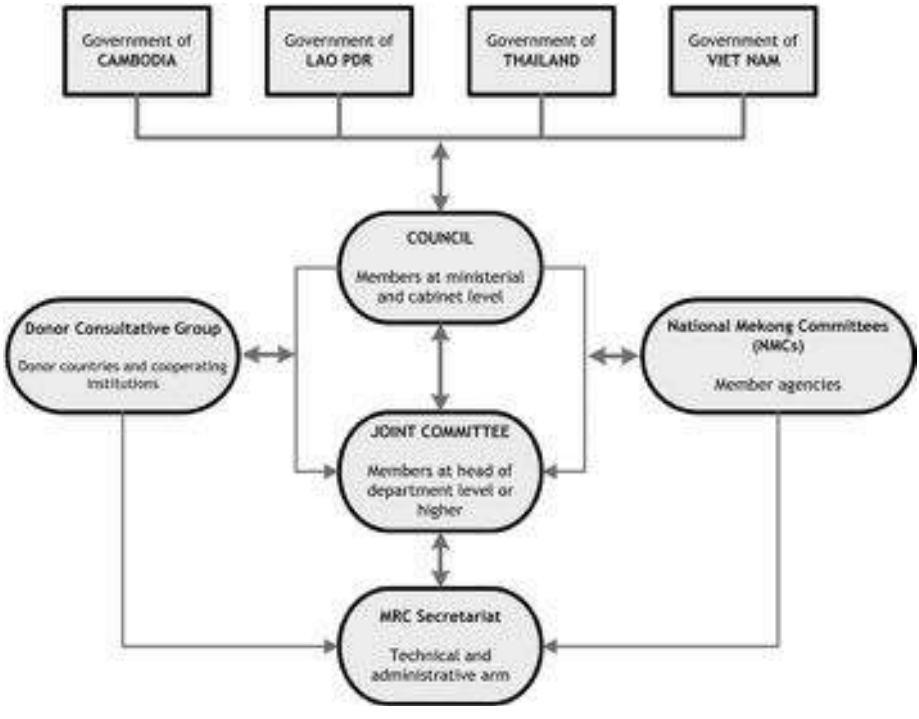

Figure 14.1 *Mekong River Commission structure*

Source: www.mrcmekong.org

but that is not to deny the importance of doing everything possible to encourage a constructive spirit between the countries.

It is apparent that for much of its brief history, the MRC has been underutilized. In reflecting on this, it is important to look at all members of 'the family', rather than just using the blanket term of MRC. Which parts of the MRC have been excluded or marginalized, why and by whom? Why have member governments chosen not to use their own river basin organization to engage in many of the major river basin development issues of this era? At present, individual national interests dominate over regional interests (Hirsch and Mørck-Jensen, 2006). Supporters of the MRC hope that it can become more a part of the solution to problems such as those illustrated in the following examples.

Sesan

On 4 March 2000, the water level in the Sesan River (a transboundary river flowing through Vietnam and Cambodia) rose suddenly, causing deaths and

loss of livelihoods of fishers and farmers in north-eastern Cambodia's Ratanakiri Province. The unexpected surge was caused by a release of water from the Yali Falls Dam in Vietnam. Cambodian non-governmental organizations (NGOs) and local communities brought forward details of the damage and encouraged the national and international public to consider the implications of this transboundary incident. During the incident, the flow of information between Cambodian and Vietnamese officials was minimal, and there was virtually no communication between the provincial governments on either side of the border (Badenoch, 2001, p1). The MRC did not become involved before or in the tense immediate aftermath, despite having a mandate to do so.

Five years on, the topic of development on the Sesan, Sekong and Srepok rivers (often collectively referred to as the 3S) was still considered so sensitive that it was removed from the agenda of an MRC-convened conference on integrated water resources management (IWRM) that was held in tandem with the tenth anniversary of the signing of the 1995 Mekong Agreement. Eventually, the MRC has engaged in the process, principally via the NMCSs of Cambodia and Vietnam. More recently, the two countries are trying to better manage the hydropower operations on the Sesan in order to minimize the downstream impact upon local communities; but this has taken extensive advocacy by affected local communities and their supporters. There is now even an effort, facilitated by the ADB, to establish a new transboundary, sub-basin organization to 'manage development'. For a long time MRCS had been an onlooker, but it is now engaging more with ADB in this new initiative.

Commercial navigation

A commercial navigation agreement was signed by transport officials from China, Laos, Thailand and Myanmar in 2001 for the stretch of the Mekong River between Simao (China's Yunnan) and Luang Prabang (Laos). River trade between Thailand and China has since rapidly increased. Associated with the signing, a feasibility study was completed in late 2000, which supported, in principle, proposed alterations to the river, including rapids and reef removal. By September 2001, an environmental impact assessment (EIA), coordinated by the Government of China, had been prepared and sent to each of the other three governments. Thailand's government approved the EIA in January 2002 and it was subsequently approved in Laos in April 2002 (SEARIN et al, 2002). The MRCS was not used by either Thailand or Laos to inform or actively participate in the initial agreement negotiations. The secretariat became involved afterwards in offering to conduct an independent EIA of the project (an offer not taken up) and in commissioning evaluations that were extremely critical of the substandard EIA (Cocklin and Hain, 2001; Finlayson, 2002; McDowall, 2002). The intervention by the MRC was ineffective and extensive modification, via blasting, of the Mekong mainstream has since taken place in the northern reaches. The MRCS has played no substantive role

in this 'Upper' Mekong navigation; however, at the time of writing, it is becoming more involved, and so this could change.

Thailand Water Grid

In 2003, then Prime Minister Thaksin Shinawatra relaunched the idea of a Thailand water grid, which would triple the area of irrigation in the country and require diversion of water from the Mekong River, and possibly other rivers in Laos and Cambodia, into northeast Thailand. For a time, the whole process was treated as a national secret by the Government of Thailand, with senior water academics fearful of the consequences to their funding and employment of criticizing or sharing any information about the scheme. There was no public deliberation within Thailand, and the MRCS was conspicuously silent, having been excluded from the process. Molle and Floch (2007) have observed that Thaksin's 'war on poverty' was presented as an unquestionable meta-justification used to silence opposition despite the fact that most water experts, commenting off the record, thought the rationale dubious and the scale of the scheme completely unrealistic. At the time of writing, the MRC (all parts) remains publicly silent about the merits or failings of touted water diversions by Thailand from the Mekong River, siphoning under the Mekong River from Laos, or, as some pundits remark, 'siphoning under the 1995 Mekong Agreement'. The grid, as well as every other Thailand water resources development scheme on the shelf, was relaunched in 2008 by the government of Prime Minister Samak Sundaravej (see Chapter 10 for more details). To our knowledge, no substantive information about this has been shared with the MRCS.

Mainstream dams

Construction since the mid 1990s of the Upper Mekong (Lancang) Dam cascade in Yunnan is so far the most significant human intervention ever made in the natural order of the Mekong River ecosystem, with substantial and undoubtedly complex transboundary ecological, social, cultural, economic and political impacts (Dore, 2003, p431). The regional/transborder nature of ecosystems requires regional/transborder political cooperation. China has plans to build up to 15 mainstream dams. Despite the MRC having an annual consultation with Chinese water officials, the MRCS has not noticeably affected China's construction agenda. Real-time flood data is now provided by China, and future consultations could fruitfully examine hydropower operation regimes in order to minimize negative downstream impacts – negotiations to do just that were propelled in 2008 by serious floods along the Mekong River, with the flood level reaching a height not seen since 1966. The impact of the Chinese dams is now included in MRC cumulative impact assessments and scenarios work; but dialogue by the MRC with Chinese officials has, to this point, been very limited. At least until 2008, exchanges have been

more substantial beyond the MRC. Outside the MRC processes there has been increasingly substantive cooperation between Chinese colleagues and southern neighbours discussing many aspects of the Chinese mainstream development. This has included visits to Cambodia by Chinese water scientists, hosted by Cambodian non-state organizations. Increasing the depths of these types of dialogues and exchanges may be of critical importance in demonstrating the constructive possibilities of greater international understanding and perspective-sharing.

China's unwillingness to seriously engage with MRC has been problematic enough; but what is worse is when member country governments also choose not to use the MRC to share their own national water resources development intentions. More recently, there is renewed interest by all of the MRC member countries in building or investing in dams on, or diversions from, the Mekong River mainstream (see Chapter 2). At the time of writing, the only government to formally submit information to the MRCS about mainstream developments has been the Government of Laos, which in June 2008 advised that it is investigating eight dams on the mainstream. Despite the MRC Joint Committee having formally approved the Procedures for Notification, Prior Consultation and Agreement (PNPCA) in November 2003, there has thus far been only very modest compliance by member countries. The MRCS is hopeful that this action by Laos signals a new openness to sharing information about possible projects, and that the other member countries choose to take similar steps.

Tensions

The most recent strategic overview of the MRC that took place in 2006 involved much rewriting and negotiation before being finally endorsed by the JC and accepted by the Council. By this time there was something in the strategy for everyone, and the organization was assigning itself multiple, sometimes conflicting, roles. At the aspirational level of the text, there was little disagreement between stakeholders. It is hard to find anyone who disagrees with the stated goals and 'strategic IWRM' directions which frame the plan, although Molle would remind us to be wary of a 'nirvana concept', such as IWRM, which can 'obscure the political nature of natural resources management', and the fact that some of the goals may be 'frequently, if not always, antagonistic' (hence, the conflicts and the fact that 'trade-offs are necessary and hard to achieve') (Molle, 2008).

The differences that emerged were in the details and the intended emphases. The strategic plan preparatory process highlighted some of the tensions evident within the MRC and its wider constituencies, to which we now turn.

BOX 14.1 GOALS AND STRATEGIC DIRECTIONS OF THE *MEKONG RIVER COMMISSION STRATEGIC PLAN* (2006 TO 2010)

The goals of the *Mekong River Commission Strategic Plan* are stated as follows:

- Promote and support coordinated, sustainable and pro-poor development.
- Enhance effective regional cooperation.
- Strengthen basin-wide environmental monitoring and impact assessment.
- Strengthen the integrated water resources management (IWRM) capacity and knowledge base of the Mekong River Commission (MRC) bodies, the National Mekong Committees (NMCs), line agencies and other stakeholders.

The 'strategic IWRM' directions of the plan are summarized as:

- *Economic development and poverty alleviation:* promote economic growth through the use and development of joint water resources in a manner that significantly alleviates poverty.
- *Integration through basin planning:* implement a participatory multi-sectoral basin planning process that integrates economic, social and environmental concerns across the Lower Mekong Basin (LMB).
- *Social development and equity:* ensure equity in the allocation of water resources and services across different economic and social groups; reduce conflict and promote socially sustainable development.
- *Regional cooperation:* integrate and coordinate water resource development and management between countries to optimize benefits from the joint resource and to minimize the risk of water-related conflicts.
- *Governance:* further and implement open, transparent and accountable institutions and regulatory frameworks that will promote IWRM at all levels.
- *Environmental protection:* protect the environment, natural resources, aquatic life and conditions, and the ecological balance of the Mekong River Basin from harmful effects of development.
- *Climate variability:* prevent, mitigate or minimize people's suffering and economic loss due to climate variability.
- *Information-based management:* ensure that water resource management decisions are based on best available information.

Source: MRC (2006)

Territorial domain: Mainstream only, or including the tributaries, basin wide?

Article 1 of the Mekong Agreement is clear that the territorial domain of the MRC is the entire Mekong River Basin. Acting in the China and Myanmar parts of the basin is difficult as these countries are not members, but multi-country overview

of development in the LMB has also proved to be very difficult. At the time of the strategic planning process, many were disappointed that the MRCS had not been more involved in analysing and contributing to decision-making about development in the tributaries. The political role of the MRC had seemed reduced to mostly research and discussions about mainstream cooperation, with speculative emphasis on the impacts of Chinese mainstream developments, but with tributary development mysteriously scoped out of formal Council and JC discussions. Now mainstream projects are back on the agenda, and the MRC cannot again be silent. The MRCS recognizes this.

The Precautionary Principle: To apply or not?

Article 3 relates to the protection of the environment and ecological balance. It is of concern to many that the MRC has been too often subdued about the risks associated with many development projects – risks often borne involuntarily by those not clearly benefiting (or potentially benefiting) from project X, Y or Z. This silence has extended to the non-mention of the Precautionary Principle.[2] Instead, the mantra from the secretariat has been 'meeting the needs, keeping the balance' and acceptance of an ever-changing baseline. It is important to ask: whose needs, and what risks or trade-offs are considered acceptable in the quest for balance?

Constituency: Governments or wider society?

There was much discussion of the MRC mandate and expectations during the 2006 to 2010 strategic planning process. It was clear that the MRC did need to clarify its constituency and decide how much scope to give the MRCS to engage with a wider constituency than just the parts of the member state governments that have been tasked with MRC representation.

The final plan reflects the dominant attitude of the MRC towards engagement with non-state actors, suggesting that 'improved stakeholder participation can be accomplished by working through the NMCs who are best able to implement improved participation, including civil society and NGOs (MRC, 2006, p43). Many civil society organizations beg to differ as engagement between them and the state-centric NMCs has been at a very basic level, although this is now being stepped up. Many donors and consultants have had far easier access to the MRC than local civil society and Mekong academia.

Many people who have been involved in the MRC over the past decade have recognized that they need to bring other actors and subject matter into the mainstream of their processes and provide a mechanism for the expression and exchange of what may be widely and fundamentally differing views about upstream and tributary development, inter-basin diversions, etc. The 2000 annual report acknowledged that it is 'important that decisions on development include a

"bottom-up" process and are not confined to a "top-down" approach. The voice of the people directly affected, and of other stakeholders such as community groups or NGOs, must be heard.' Moreover, it admitted that it 'has virtually no experience in this vital field' and that it must 'drastically accelerate activities to promote public participation' (MRC, 2001).

Soon afterwards, one of the authors of this chapter wrote that the MRC's lack of achievement thus far in genuine public participation is complex. The youth of the new version of the organization, the sustainability orientation and mindset of some of the agencies which dominate the National Mekong Committees, the politics between the member states, stinging criticisms by NGOs, realization of limited successes to this point, and operating rules that limit engagement with the wider basin community are all relevant. Collectively, this has resulted in the MRC lacking confidence and being constrained in the extent to which it has proactively engaged with the large range of Mekong region actors outside of the MRC family. In relation to hydropower and the Water Utilization Programme (WUP), there has been a hypersensitive wariness of member country intergovernmental politics. There is also some resistance to being 'lectured' at by NGOs and past and present Mekong country experiences of being 'directed by donors' (Dore, 2003, p424).

The drastic acceleration did not eventuate. At least until 2008, progress in this area has been slow. For example, the consultants who undertook an organizational review (discussed below), several years later, noted:

> *The Strategic Plan describes the importance of public involvement, public opinion, the civil society and NGOs in ensuring the success of integrated water resources management of the Mekong River Basin. However, it is the impression of the Review Team that the present attitudes and practices in MRC regard the member governments as the primary, if not the only, stakeholders that should be involved with MRC. A clear commitment and strategy for involving the civil society is lacking.* (Hawkesworth et al, 2007, p16)

Knowledge broker or investment promoter?

The approach to knowledge-sharing or knowledge-broking has varied during the first 13 years of the MRC. During this period the organization has had four chief executive officers (CEOs), punctuated by caretaker leadership.

During the Matoba-era of 1995 to 1998, the MRCS was a closed, state-centric organization, lacking in confidence and capacity, and with its potential constrained by the management style. It gave the impression of being a house for often independently operating donor projects.

Under the subsequent leadership of Joern Kristensen during 2000 to 2003, there was a clear shift towards being a 'knowledge broker', which implies enabling the

constituency to both contribute to and receive knowledge. The new commitment was to being a 'learning organization' and a centre of knowledge and information exchange with a strong commitment to improving the livelihoods of the people of the basin. There continued an understandable privileging of state members – after all, it is an intergovernmental organization; but there was also a new openness to knowledge contributions from a wider set of actors beyond states. Kristensen restructured the operations of the secretariat into programmes and insisted that all those working in the secretariat building were accountable to him. These were all positive changes. Morale within the secretariat noticeably improved.

After a lengthy caretaker period during which the secretariat transferred from Phnom Penh to Vientiane, Olivier Cogels took up the CEO position for 2004 to 2007. The new leader was convinced that he would be the one to build the working relationship with China which had eluded his predecessors. Soon into his tenure he denounced any role of the MRCS being a 'watchdog' and launched a new push for the MRCS to be an investment promoter or facilitator. Both of these moves brought him into conflict with the knowledge-brokering role, as the promoter/facilitator was uninterested in any bad news about possible negative impacts of upstream, downstream or tributary development. Information exchanges, peer reviews and contestation, and characteristics of knowledge-building became more constrained. Morale within the MRCS staff dissolved as much analysis or commentary deemed counter-productive to the new mission – smooth sailing with the China relationship or investment promotion – was restricted. This tension was palpable during the strategic planning process. The authors' own observation of this situation was similarly detected by the organizational Review Team, who noted:

> *MRCS is starting to become known (among civil society organizations, scientific organizations) as an institution that will not release information that may illustrate negative environmental and social consequences of development projects. This is a threat to the credibility of the organization.* (Hawkesworth et al, 2007, p20)[3]

Preparing projects for investment or assisting societies to evaluate proposals?

MRCS engagement in project preparation was assumed during the drafting process for the strategic plan to be part of the new development promotion role. An alternative perspective was that a better role for the MRCS would be for it to support national actors (state and civil society) in order to examine development projects, their likely impacts, and their claimed merits and costs. It is this latter role that the MRCS has attempted to play with the Don Sahong Dam discussed below.

In any event, most perspectives about what the MRC should be doing ended up being included in the strategic plan, which in due course was adopted and quickly overtaken by the transformation in the region, part of which was the new avalanche of potential projects. A mid-term review of the MRC *Strategic Plan 2006–2010* is scheduled for late 2008. To the extent that it is possible, it is hoped this will remove some of the current ambiguities and, perhaps, make the roles of the various parts of the MRC a little clearer.

Case study: Laos hydropower, Don Sahong and the Mekong River Commission (MRC)

No current development project better encapsulates the challenges facing the MRC than the present controversy over the Don Sahong Dam in southern Laos. If built, it would be the first dam on the mainstream in the LMB.

Hydropower

Laos is at the centre of the current hydropower surge in the Mekong region. According to the *Power Development Plan* in Laos (as of May 2008), there are 77 live hydropower projects: 10 are operational, 7 are under construction, 16 are under research and the remaining 44 have memoranda of understanding (MoUs) signed to move forward (see Chapter 2). There is a complex set of reasons driving the current surge. For the MRC, the explosion is a response to market demand: the increasing importance of regional trade and investment flows, rapidly growing energy demands (particularly in China, Thailand and Vietnam) and opportunities of an emerging regional power market have stimulated a new era of hydropower development in the basin, now mainly driven by private-sector actors (MRC, 2008, p37).

Soaring (albeit fluctuating) global energy prices and national commitments to energy security are also important drivers. Others include the ready availability of capital, at least until the advent of the global financial crisis; a new boldness by Mekong governments to move ahead; and very attractive concession terms for developers. Another driver that is now taking effect is the recognition of the changes that large new storage dams in China will have on the flow regime of the Mekong mainstream. When the Xiaowan and the Nuozhadu dams are completed in Yunnan, the dry season river flow will increase significantly and this will also make the LMB mainstream 'run of river' financially more attractive.

Fish

The Don Sahong story (see below) is not all about fish, but they are central; so before proceeding it is worth ensuring that the reader is familiar with the scale of the Mekong fishery (see also Chapters 9 and 12).

Recent MRCS research has estimated the LMB annual consumption of inland fish to be about 2 million tonnes by a population of 56 million people. About 90 per cent of the fish consumed in the LMB is from the wild-capture fishery. In addition, about 0.5 million tonnes of other aquatic animals (OAA) are consumed. Collectively, the inland fish and OAA are estimated to provide 47 to 80 per cent (country range) of the animal protein of the people of the basin (Hortle, 2007). This equates to about 17 per cent of the total global freshwater fishing catch and is worth in the order of US$2 billion. Other work by the MRC Fisheries Programme is showing that the bigger the flood (both in height and duration), the more fish you catch (in tonnes); and related to the previous point, the bigger the flood, the bigger the fish.[4]

These are extraordinary figures, showing massive reliance on a huge fishery. However, this data and information about threats to the fisheries seem to be having little impact upon river development policy-making (see Chapter 12). Bringing in fisheries is proving to be a challenge for local livelihood champions, economists, fisheries scientists and concerned political operators at all levels of decision-making. If it cannot be done at Don Sahong, it will be extraordinarily difficult anywhere else.

Don Sahong

In March 2006, the Government of Laos signed an MoU with a Malaysian engineering company, Mega First Corporation Berhad, to carry out a feasibility study for the run-of-river Don Sahong Hydro Energy Project (DSHEP) in the Khone Falls area, just north and upstream of the border between southern Laos and Cambodia.

In May 2007, a public letter from concerned scientists to governments and agencies responsible for managing and developing the Mekong River drew attention to and summarized 'grave environmental impacts, particularly on fish and fisheries but also on tourism and other significant aspects of economy and livelihood, causing damage that will far exceed the net returns from the project'. In their view:

> *While a degree of mitigation is sometimes feasible for some dams, the fisheries impacts of the Don Sahong Dam simply cannot be mitigated. … There is no prospect that a fish pass could make a significant difference to the blocking effects of this dam.* (Baird et al, 2007)

In June 2007, the concern about DHSEP was again summarized in a WorldFish Centre science briefing paper:

> *Khone Falls is a key site for all Mekong fish resources. At the falls, the Mekong drops some 20m to 30m from the Khorat Plateau to the Mekong Plain. Here the river forms a complex network of narrow braided channels, named hoo in Lao.… Of special significance are the 28 scientific studies that show how it serves as a bottleneck for fish migration in the basin. Hoo Sahong, the site of the proposed dam, is especially important as it plays a unique role in Mekong fish migration.… A dam on the Hoo Sahong would block the only deep channel that allows fish to migrate through the falls year round. This could effectively block dry season fish movements between the Lower Mekong plains and the Mekong basin upstream.… Data on the economic value of the Mekong fisheries, and on the impact of dams on fish migration, suggests that the economic costs from lost fisheries production could outweigh the expected economic benefits of the dam. This analysis suggests that if the proposed dam is to be considered further, a comprehensive scientific assessment would be required to evaluate the costs and benefits in the larger context of Mekong fisheries.* (Baran and Ratner, 2007)

In July 2007, a 'final draft' EIA report for DHSEP was completed and soon after submitted for evaluation by Lao authorities.[5]

The MRCS challenge

In September 2007, the MRCS was formally invited by the Government of Laos to contribute to its review of the EIA. This was a big step for Laos to include the MRCS in its internal processes. The staff within the MRCS supplied their best advice to Laos about the 'completeness, accuracy and adequacy' of the Mega First's consultants report, finding it deficient in many areas. Their report, prepared in November 2007, provides a clear critique of the EIA and offers objective advice to Laos. Included in their response, the MRCS pointed out the following:

- The geographic and economic extent of the impact on fisheries of the DHSEP has been underestimated.
- The proposed mitigation to allow upstream movement of fish cannot be proven to be effective prior to the DHSEP being built; and moreover the outflow from the turbines will attract fish to the blocked Hoo Sahong channel.
- The mortality of fish (all life history stages) that will be entrained through the turbines has been overlooked (MRC Secretariat, 2007, point 69).

The JC has encouraged the MRCS to be responsive to governmental requests for technical advice. In this Don Sahong case, the MRCS has responded to an in-confidence request from the Government of Laos. The MRCS analysis has not been released to the public, nor even shared with all member States. This is quite different to how the MRCS should be expected to act, as a transparent servant to all member countries.

In November 2007, the representatives from the Government of Cambodia pointed out their concerns about a Khone Falls Dam at the annual meetings of the full MRC, held that year in Siem Reap. Just prior to the MRC meetings, 201 citizens' groups and individuals from 30 countries wrote to the MRC demanding that it uphold the 1995 Mekong Agreement and that it protect the river and its people from the resurgent threats posed by the proposed mainstream dams. Also released at this time was a statement by MRC donors calling on the MRC to 'fully utilize its capacities, tools and mandate to assess hydropower development plans, with a view to transboundary environmental, economic and social impacts' (MRC Donors, 2007). The donors followed up with another letter in December, signed by the German ambassador to Cambodia, again asking for information about how the MRC procedures for 'timely notification, prior consultation and agreement' are being applied (Mann, 2007). The MRC Procedures for Notification, Prior Consultation and Agreement (PNPCA) were adopted by the MRC Council in November 2003 (and are discussed below).

In February 2008, Mega First signed a project development agreement with the Government of Laos and announced that its studies show the project to be viable. None of these studies have yet been publicly released.

In March 2008, 51 citizens' groups and individuals from the Mekong region wrote to the MRC asking it to engage more substantively and publicly in decision-making about development of the Mekong River. Premrudee Daoroung, director of the regional NGO Towards Ecological Recovery and Regional Alliance (TERRA), had this to say:

> *The new CEO must clearly state what steps the MRC will take in response to widespread concerns over the proposed mainstream dams. It can start by immediately releasing to the public all analyses relating to the Don Sahong Dam undertaken by the MRC.* (TERRA, 2008)

The new CEO responded in April 2008 that the MRCS would continue to work to develop a multifaceted understanding of the existing river system, prepare objective analysis of future development scenarios, provide advice on individual project proposals when requested by the member countries, and administer the procedures developed and negotiated (mostly during the Water Utilization Programme between 2000 and 2007) (Bird, 2008b).

In a recent interview, reflecting on the hydropower explosion, an analyst and campaigner for International Rivers acknowledged there is a 'catch-22' and that pleasing everyone is just not possible:

> *If the MRC provides advice to government agencies that is perceived as critical of proposed hydropower projects, this advice could be unwelcome, ignored, and then no longer sought, undermining the MRC's relevance in the eyes of the government agencies it considers itself primarily answerable to. Yet, by not providing this objective analysis and releasing it into the public domain, as it should do, the MRC faces a crisis of legitimacy in the eyes of the wider public that it is also intended to serve.* (Nette, 2008, interviewing Carl Middleton)

The analyst says 'as it should do', and we would agree; but under the current norms of MRC behaviour, without the permission of the Government of Laos, the MRCS could not publicly release its Don Sahong analysis and advice without being seen as having betrayed the trust of its member state. The MRCS technical staff would be delighted if their analysis and advice were put in the public domain, but would prefer that it was done by the Government of Laos. Many Lao officials would also be more comfortable if the Don Sahong decision-making process was more transparent and deliberative.

The Don Sahong is not yet built, and there may yet be more twists in the tale; but it is salutary to reflect on just how decisions actually get made about such projects. An actor in the Don Sahong case, who should not be identified because it is not possible to speak openly about matters like this, is concerned:

> *Development decisions in this region are almost entirely political. Technical matters play very little and sometimes no role in them. Water developments enable transfer of a dispersed, generalized wealth with no title – or, more correctly, traditional public title – into a focused economic resource with private title. This is a very attractive proposition for people in positions of power.*

A fisheries scientist searching to be effective suggested:

> *The real nature of politics and governance in the region is, indeed, one of the reasons why fisheries are not on the agenda, and that can be depressing to the citizens we are; however, that should not spare us from a critical analysis of our contribution, as scientists, to the development process.*

Another colleague very familiar with the interdependencies between ecosystems and local livelihoods reflected and recognized the need for more open deliberation:

> *Decision-making processes on dams are not based on rational assessments, and certainly not influenced by sound science regarding fisheries and their values. The irony is that we have had ten years of excellent research that has highlighted the importance of fisheries – and that this evidence (much of which comes from MRCS) is widely accepted. So we have had a great research success – but a failure in terms of influencing policy. I do not think science alone will have much influence – although good research, evidence and arguments are necessary. What is clearly lacking is an open discussion of the options and implications – and a process that draws on case study experience in this region (plenty to draw from) and opens up the debate to include people who are directly impacted.*

The Don Sahong example forces one to ask the question: how is it possible to have constructive, well-informed, deliberative processes before critical decisions are taken about water resources development? Thus far, the MRC has not been able to provide such a service to Mekong region societies. But things can change.

DE-MARGINALIZING

In early 2008, the MRC Joint Committee recommended, and the MRC Council subsequently appointed, new Chief Executive Officer Jeremy Bird, whose regional experience and existing working relationships ensure that he comes to the job with a solid grasp of the water politics of the place. He has previously worked in the Mekong region, including supervising cumulative impact assessment work in the Lao Nam Ngum River Basin (a sub-basin of the Mekong), and researching environmental considerations for sustainable hydropower development. The new CEO has laid out his vision for the period of 2008 to 2011 by proposing four areas of focus (Bird, 2008a) – regional and riparian; relevance; responsibility; risk reduction – which we use as departure points for the possible de-marginalization of the MRC.

Regional and riparian

The highest priority is for the MRC to become more regional, which is to us, in some ways, transnational. By this we mean addressing issues of joint concern to all the countries which share the land and waters of the basin, and to the extent possible, transcending solely national perspectives. Connected to regionalization is MRCS 'riparianization', which refers to the transition of the secretariat to an

organization clearly led and directed by citizens of the MRC member countries. Given the commitment of the MRC to riparianization of all key MRCS positions by 2011, including the CEO position, it is understood by all that Bird will be a single-term CEO with only three years in which to make his contribution. All positions in the Council, JC and NMCs have always been taken by citizens of the member countries. However, the MRCS has been increasingly criticized for having too many 'international' (i.e. from beyond the Mekong region) staff in key positions such as the CEO, chief financial officer, chief of international cooperation, and programme managers.

Triggered by dissatisfaction with the overall performance, an independent review was commissioned in 2006 of the MRCS and the NMCSs. The consultants repeatedly encountered concerns about the staffing of the MRCS. They concluded that the overuse of internationals by the secretariat and the inadequate selection and retention procedures for riparians were preventing the MRCS from getting and keeping the best people from the member countries. Gate-keeping and control by the NMCs/NMCSs was identified as part of the problem. The recommendation was clear:

> *If there is going to be a successful professionalization and riparianization of MRCS, then it will be necessary to attract and secure the best qualified candidates, not just from government but from the civil society as a whole. The process should be managed on a strictly competitive basis and administered by MRCS itself.* (Hawkesworth et al, 2007, p37–38)

The key MRC donors agreed:

> *We strongly support the process towards riparianization. Riparian leadership, management and technical expertise in the MRC is critical to its long-term success and sustainability. To develop as a world class river basin management organization, the MRC employment procedures need to attract, appoint and retain the best and brightest from the Mekong member countries.* (MRC Donors, 2008)

MRC officials also agree with phasing down the role of internationals, but are finding it more problematic to make the riparian selection and retention systems more transparent and merit based. In early 2008, the JC rejected the recommendation, reducing the role of the NMCs. Donors are unlikely to accept anything less. So, it appears that all key positions in the secretariat will be 'riparianized' by 2011; but the processes for modernizing riparian recruitment and retention are still being negotiated.

Relevant and engaged

The MRC must demonstrate that it is relevant by actively engaging in development decisions taken in the basin. The MRC has too often been absent from, or silent about, substantial decisions being taken on water resources development in the basin. As pointed out earlier, the MRCS has had little involvement and usually very limited information about the hydropower development on the Mekong River mainstream in China, and on tributaries in Laos and Vietnam. It was excluded from the decision-making about 'channel improvement for navigation and trade' and the associated mainstream river blasting in the Upper Mekong above Chiang Saen in northern Thailand. In the past, it has also been excluded from speculations about possible Lao–Thai water transfers, and diversions from the Mekong to irrigate more of northeast Thailand. Moreover, in recent years, it does not seem to have been trying to engage in these important issues. In the absence of deliberative action by the MRC, other actors have sought to open up regional water resources development debates via multi-stakeholder dialogues (Dore, 2007; IUCN et al, 2007a, 2007b) and the establishment of transnational knowledge networks. That said, these previous exclusions or inactivity would look minor if the MRC cannot now contribute to decision-making about LMB mainstream dams and diversions, which is now publicly (since 2007) firmly back on the agendas of all four member countries. In the latter half of 2008, the MRC, via the MRCS, scaled up its engagement.

Responsible and accountable

More than ever before, the MRC is being called to account and to act on the mandate articulated in the 1995 Mekong Agreement: under the agreement, the MRC is to conduct 'assessment for the protection of the environment and the maintenance of the ecological balance of the Mekong River Basin' (Article 24) and should 'make every effort to avoid, minimize and mitigate harmful effects that might occur to the environment … from the development and use of the Mekong River Basin water resources' (Article 7) (Rivers Coalition in Cambodia, 2007)

The MRC should clearly define its own responsibilities (i.e. roles, duties and obligations), and also understand those of other Mekong region water actors. In doing so, constituencies and accountabilities are clarified. Key questions include: what are the responsibilities of all stakeholders in a particular matter? Who is accountable to whom and for what? Are these responsibilities contested (Petkova and Veit, 2000; UN, 2006)?

Risk-reducing

The new CEO has expressed his desire for MRC to be risk-reducing, while the member countries are capitalizing on development opportunities. For these authors,

risk assessment and risk management are an important element of water use and related development. In the past, most attention was usually given to investment risk by either public or private investors. There is now often a much stronger focus on the risks of all actors affected by a decision. Distinguishing between different types of risk is a good way to start.

Voluntary risk-taking includes risks taken in the normal course of business – for example, when a private company invests in a hydropower dam, or a public company invests in a water supply systems – or business partnerships between the public and private sectors. Involuntary risk-bearing is quite different. For example, people displaced by a new reservoir, or those whose water entitlement is reduced as the result of a reallocation, are involuntary risk bearers.

Risk analysis should not ignore voluntary risk-taking, but should also focus on involuntary risk-bearing (WCD, 2000, p207; Dore et al, 2004), whether it is fair and effective, and, if not, how can it be made so. Key questions include: for different options, what are the possible risks? Who are the voluntary risk takers? Who are the involuntary risk bearers? How might risk be equitably shared and, especially, how might involuntary risk be reduced?

The new CEO takes the view that:

> *The Secretariat has at least three roles in assessing and advising on opportunities and risks. One relates to the analysis of implications of projects, including the cumulative effects of national projects. This draws on work under a range of our programmes and, as I mentioned earlier, is being brought together by assessing various development scenarios under the Basin Development Plan. Another is to provide advice on specific projects where requested, including through our forthcoming Hydropower Programme. The third relates to administering the formal notification and consultation procedures under the 1995 Agreement, and, where required, providing technical advice under such procedures and facilitating negotiation of agreements.* (Bird, 2008a)

In comparison to his predecessors, these are extremely progressive statements embracing the tools of cumulative impact assessment and scenario-building, providing specific advice on projects and commitment to using the formal notification and consultation procedures.

Examining rewards and respecting rights

There are two other 'Rs' worthy of further attention by MRC. Thus far, there has been very little examination of rewards (winners and losers) and their distribution; and there has been an aversion to tread on the sensitive topic of often overlapping claims and rights.

The MRC could also emphasize the importance of identifying and unpacking rewards. This is not just the realm of economics, but rigorous economic assessment would be a good start. For different options, what are the possible multifaceted rewards or benefits (Sadoff and Grey, 2002, 2005)? Who stands to win? Who stands to lose? How might rewards be shared? Are there 'net' benefits? What is fair? What might be more ecologically, socially and economically sustainable?

The MRC could also display its concerns for the development of rights over and above territoriality and the sovereign rights of states. At various scales, water-sharing rights, or entitlements, may be assumed, negotiated, bestowed, contested, bought, sold, rented, traded, perhaps agreed upon, and sometimes ignored (UN, 2003; Scanlon et al, 2004). Rights analysis needs to be cognizant of a wide range of water-sharing regimes and the likely impacts of different options. An important departure point can be seeking answers to questions such as what is the history of water-sharing/management and use in a particular place or system? What are the entitlement claims of all stakeholders? Are these entitlements contested and, if so, on what grounds? Whose rights are affected by water resources development and allocation? How can these sometimes overlapping entitlement rights/claims be respected while searching for fair and effective workable agreements?

Conclusions

Governments need to make more informed decisions about whether to proceed with water resources development projects, taking into account comprehensive options assessment examining political, social, economic and ecological impacts – and drawing upon scientific evidence, situated local knowledge, and appreciating complexity and uncertainty. There has been an absence of informed discussion in the public space about the pros and cons of dams and diversions in Lower Mekong countries that have re-emerged on the agendas of national governments and transnational capital providers and developers. There is a need for transnational, transboundary public examination via high-quality, well-informed deliberative processes. This requires competent design, convening, facilitation, knowledge inputs and wise use of the media.

New flow regimes will have to be negotiated on Mekong River tributaries and, perhaps, the mainstream. Relatively little attention is being paid to how river flows will be 'managed' post-construction. There are many different possible scenarios. State and non-state actors need to become more familiar with flow negotiation tools and approaches that have the potential to ensure that all relevant issues and perspectives are taken into account in the inevitable negotiations ahead.

The MRC must increase its engagement in these issues. This will require applying existing and new research to discover methods appropriate for the Mekong region. Other essential ingredients are great diplomatic skill and social capital to allow equitable and informed negotiations to proceed. The MRC has

deservedly received criticism for its performance thus far; but there remain many optimistic, latent supporters of the MRC initiative, hoping 'the family' will be enabled to capably respond to the current challenges. This will require the member governments, at the highest level, to 'de-marginalize' the MRC and its implementing parts, allowing them to make their best contributions.

A worthy goal is to make it normal practice in the Mekong region for important national and transboundary water-related options and decisions to be examined in the public sphere from a range of perspectives. Openness and deliberation are still far from being normal practice. The MRC, as mandated, has the opportunity and responsibility to play an important role in creating new, deliberative political space for learning and negotiating.

Acknowledgements

The authors wish to acknowledge the support of colleagues who read earlier drafts of this chapter: Louis Lebel, whose suggestions greatly improved the structure, François Molle and Andrew Noble. We also thank an anonymous reviewer and the Blue Moon Fund.

Notes

1 King and his co-authors acknowledge that their data-compiling projects across the GMS is 'sufficient only for scoping purposes' as the data were 'compiled from a variety of sources and is unverified'. Existing projects are defined as: existing + those with financial closure + those under construction. Potential projects are defined as: committed + proposed + identified to any level of study. It is not implied that all 179 potential projects are necessarily going ahead. The figures used by King et al (2007) for Laos (11 existing, 32 potential) were assembled in 2006, and differ from the 2008 data quoted in the case study later in the chapter, which reported 77 projects at various stages from conceptualization/design through to operation.

2 The Precautionary Principle states that if a public action or policy may cause severe or irreversible harm, it should not be carried out despite the absence of full scientific certainty that harm would ensue. The burden of proof thus falls on those who would advocate taking the action.

3 The Review Team also noted that there was 'some concern among the staff about the consequences for themselves if they are too open with ideas and constructive criticism' (Hawkesworth et al, 2007, p17).

4 Presentation given by Chris Barlow, MRC Fisheries Programme coordinator, Vientiane, 20 June 2008.

5 The EIA was light in some technical areas (e.g. transboundary impacts), but spent considerable space exploring whether or not the development was a mainstream development (it is), pursuing a bizarre line that perhaps as the river is braided at this

point, the development could be seen as on a tributary; and, hence, whether, when and how it was compulsory, or not, for the Government of Laos to notify the MRC.

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