

# The governance of increasing Mekong regionalism

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INTRODUCTION .....	1
GOVERNANCE .....	2
REGIONALISM .....	3
REGIONAL GOVERNANCE.....	5
ENVIRONMENTAL GOVERNANCE OF THE MEKONG REGION.....	10
<i>Greater Mekong Subregion economic cooperation</i> .....	11
<i>Lower Mekong water use negotiations</i> .....	15
<i>Mekong River 'channel improvement'</i> .....	18
<i>Upper Mekong hydroelectric dams in China</i> .....	20
SYNTHESIS OF REGIONAL ENVIRONMENTAL GOVERNANCE CHALLENGES .....	25
CONCLUDING REMARKS.....	26
Box 1 Towards Ecological Recovery and Regional Alliance.....	9
Box 2 Analysing governance .....	10
Box 3 GMS summit declaration 2002 .....	12
Box 4 Strategic Environmental Framework for ADB.....	14
Box 5 The Mekong River .....	16
Box 6 Declaration by local communities in Thailand 2002.....	18
Box 7 Regional Environment Forum statement 2002.....	24
Table 1 Mekong regional governance forums .....	7
Table 2 Upper Mekong (Lancang) Dam Cascade.....	21

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<sup>1</sup> This paper is a slightly revised version of what has been published in Mingsarn Kaosa-ard and Dore J (eds.) (2003) *Social Challenges for the Mekong Region*. White Lotus, Bangkok.

## Introduction

Recent years have seen an upsurge in regional interaction between the governments and civil societies of the Mekong Region. In the era of contemporary globalisation – post-Asian crisis – there are powerful inter-related forces driving freer trade, infrastructure installation and new uses for the Mekong River. These projects are regional<sup>2</sup> in nature. As I shall discuss, there is also an active, critical resistance to each of these linked projects. As such, the regional governance of these projects is crucial.

In this paper<sup>3</sup> my aim is to describe the changing nature of regional governance, the enhancement of which is a major social challenge for the Mekong Region. The paper focuses on how states and critical civil society interact under the deceptively narrow-sounding banner of environmental governance, taking four case studies as examples:

1. Wide-ranging economic cooperation by governments of the six Mekong Region countries – Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam.
2. Negotiations over Mekong River water use by the four governments of the Lower Mekong countries – Cambodia, Lao PDR, Thailand and Vietnam.
3. Mekong River ‘channel improvement’ by the governments of the four most upstream countries – China, Myanmar, Lao PDR and Thailand.
4. Unilateral decision making by China’s government to proceed with extensive dam-building on the Upper Mekong River in Yunnan Province

A synthesis of challenges emerge from this empirical analysis, central to which is Mekong Region *realpolitik*; the associated restrictions on civil society’s ‘political activity’ enforced by various states; and the corresponding, generally exclusive, nature of national and regional decision making.

The paper presents four arguments.

First, to fully understand the relatively recent changes requires new conceptual frameworks for governance and regionalism which recognise that social geography is changing, and that state-centric modes of analysis no longer suffice, if they ever did.

Second, the regional governance landscape is being substantially reshaped by the efforts of many different actors, including an emerging critical civil society. Despite this emergence, in the Mekong Region states still dominate, but some states more than others.

Third, regional governance in the Mekong – if ‘environment and development’ governance is any indication – in many ways is lagging, unable to approach governance ideals, and inadequate to equitably or sensibly govern far-reaching regional change. Greater political support from Mekong country state leaders is required for practical enhancement of environmental governance. Misplaced and ultimately problematic interpretations of ‘authority to rule’ and sovereignty are hindering what many see as a required transformation.

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<sup>2</sup> In this paper I use regional in an encompassing way meaning region-wide and/or transboundary and/or transborder and/or crossborder and/or of particular significance to various parts of the region (but not necessarily all of the region).

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Fourth, enhanced regional governance is possible and essential for there to be more equitable and ecologically sustainable development in this extraordinary and diverse part of the world. This is critical, as to reiterate, the overall standard of regional governance currently falls short of what could reasonably be expected by the peoples of the region.

### Governance

What do I mean by governance? Governance “*has become something of a catch-all to describe the ways in which the activities of a multitude of actors, including governments, non-government organisations (NGOs) and international organisations, increasingly overlap. It describes a complex tapestry of competing authority claims*” (Mehta et al. 1999:18). Beneath this catch-all view there are various other concepts, focusing on administrative management, corporate activity or the processes of government.

In this paper I use the term to mean the structures and processes chosen or imposed on society to debate and create policy directions and manage its affairs. This includes the wide realm of multi-layered negotiation and decision making processes, involving interplay between many individuals and institutions.<sup>4</sup>

People usually attempt to distinguish between local, national, regional and global politics and governance. However, this does not match the reality of the aforementioned ‘tapestry’. Domains of authority are not always clear-cut; rather they regularly overlap and are contested. This is certainly true of regional governance in the Mekong Region where many issues seem to be somewhere in the “*messy middle*” (Mehta et al. 1999:18).

There is increasing growth in or about the Mekong Region of what Scholte (2000) has called supraterritorial relationships between people. A dimension of this transformative globalisation is an empowering form of new connectedness between critical civil society groups – located both within and outside the region – wishing to have more say in Mekong decision making. A changing social geography, evident in a more critical, relatively more deterritorialised, civil society contributes to this ‘messiness’ and in doing so challenges current state notions of ‘appropriate’ political space, sovereignty and citizenship.

The emerging theory of nodal governance (Shearing and Wood 2002) helps to explain the regional situation in the Mekong Region. Rather than institutions and frameworks, which imply a certain amount of order, this theory speaks of nodes within a loose (or tight) governance web where “*no set of nodes is given conceptual priority*” (2002). These can be formal and relatively easily discernible, for example: states, critical civil society, militaries, and the corporate or business sector.<sup>5</sup> There are also other, less formal, groups influencing various governance processes, such as unrepresented civil society and organised crime:

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<sup>4</sup> By institutions I mean “*persistent, reasonably predictable, arrangements, laws, processes, customs or organisations structuring aspects of the political, social, cultural, or economic transactions and relationships in a society; although by definition persistent, institutions constantly evolve*” (Dovers 2001).

<sup>5</sup> Whilst nodes are able to be differentiated at the conceptual level, it is acknowledged that in practice individuals and groups often have multiple affiliations (eg. business and military, state functionary and member of civil society etc.).

The relationship between nodes range from active cooperation, through indifference, to strenuous opposition. These relationships change and shift over time, space and across arenas of governance. Nodes that cooperate at one point in time and space in relation to one governance concern might be indifferent to or actively resist each other's agendas at another (Courville and Shearing forthcoming).

Whilst fully acknowledging the presence and importance in the Mekong Region of the wide range of different 'nodes', the environmental governance examples discussed later in the paper focus on state and critical civil society. Even though states in the Mekong Region are dominant, the concept of nodal governance reflects the increased empowerment of non-state groups and the possibilities for governance created by the increased globalisation and regionalism of critical civil society.

## Regionalism

Whilst there have been previous waves of regionalism<sup>6</sup> – in the Mekong Region and elsewhere – the subject has again become prominent since the 1990s. There is now a plethora of regionalisms around the world with multiple-motivations and forms. Examples include: government regionalism embodied in the European Union; trading bloc regionalism embodied in Mercosur<sup>7</sup> and its equivalents; and civil society regionalism apparent in various 'new social movements' such as the Third World Network. Much effort is being put into characterising and understanding the many facets of contemporary regionalism (Gamble and Payne 1996, Hettne and Soderbaum 1998, Boas et al. 1999, Breslin and Higgott 2000, Hveem 2000, Mittelman 2000, Soderbaum 2002) which is an important element of the changing world order.

Some regionalism is 'old' style. Such activities are usually state-centric and grounded in state interventions in trade-related economic activity (see Table 1). However, other regionalisms appear to be qualitatively different and 'new'. These include some being led by disparate civil society organisations forcing changes to the previously state-ordained regional governance script.

The point has been made elsewhere that, as both 'old' and 'new' regional forms may be present in any particular part of the world, it makes "*the identification of new patterns (co-existing with older forms) more relevant than identifying a new era*" (Hettne 1999:8). In the Mekong Region this is particularly salient. Actors in old and new regionalisms are learning how to co-exist, compete or combat with each other. Regional forums and processes have been growing in the Mekong Region for a number of reasons. These include: maintaining or obtaining peace; a desire for economic growth and East Asian elites' political solidarity; infrastructure installation; wealth seeking; a desire to take an ecosystem approach to development and governance; and civil society responding to the new importance of the regional scale, and/or seeking political space.

I will now briefly describe each of these.

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<sup>6</sup> Increasing region-ness can be considered conceptually (following Schulz et al. 2001) as an upsurge in both regionalism *and* regionalisation. Schulz and his colleagues think of regionalism as being the "*urge to merge*" (2001:6) or operate at a regional scale, whether by state or non-state actors. This drives corresponding empirical processes of regionalisation. There is some conceptual difference between the three terms – region-ness, regionalism and regionalisation – but to avoid confusion, in this paper I will conflate them and use regionalism to refer to the overall phenomenon.

<sup>7</sup> The Spanish acronym Mercosur is derived from the Mercado Comun del Sur – the Southern Common Market, formed in 1991, including Argentina, Brazil, Paraguay and Uruguay. Since that time Bolivia and Chile have joined. A recent estimate of the combined Gross National Product was US\$750 billion, making it the fourth largest economic bloc in the world.

*Peace*

Some regionalisms are focused on peace between states and reaping whatever benefits can be gained. Maintaining the peace is presumably high on the agenda of the militarily oriented Regional Security Forum of the Association of South East Asian Nations (ASEAN), which involves many Mekong Region analysts and state representatives. To a large extent ‘peace benefits’ are constructed, at least by government and business leaders, as opportunities for increased ‘economic development’ which has become embodied in freer trade agendas.

*Economic growth*

The ASEAN and China-ASEAN free trade areas are notable Mekong Region examples indicative of, and fostering, increasing economic regional activity. They openly embrace economic globalisation and its perceived opportunities. Elsewhere, various economic regional formations have been more resistant, portrayed critically as more ‘closed’ or ‘protectionist’, reducing the perceived risks to national economies from an unfettered economic integration between states and business actors with different ‘agency’ or power. The increased impetus of ASEAN, evidenced in particular by the ASEAN+3 and ASEAN-China dialogues, was initially cast in such a negative light by primarily American critics. The critics missed the point that anxieties about US domination and ‘globalisation’, the latter catapulted to prominence by the East Asian crisis, has reinvigorated Dr Mahathir’s previously floated idea of an East Asian Economic Caucus. Increased willingness by European leaders to respect the decisions of Asian leaders to come together without US etc. membership has also ensured that these new forums, including Dr Thaksin’s Asian Cooperation Dialogue, are being given an opportunity to prove their worth. For the most part these new forums<sup>8</sup> are being pushed by East Asian elites riding and exploring new waves of political solidarity.

*Infrastructure installation*

Freer trade requires increased infrastructure to facilitate the transfer of people, goods and services, provide energy and communication tools etc. Installing this infrastructure has been the regional focus of the Greater Mekong Subregion (GMS) economic cooperation initiative, chaperoned by the Asian Development Bank (ADB). Of course, it must be remembered that the Manila-based ADB is only one actor amongst many in the ‘aid’ and ‘development’ game.<sup>9</sup>

*Wealth seeking*

Wealth seeking opportunism is another force for regionalism in the Mekong Region. Increasingly regional business interests – legal and illegal, obvious or obscured – are also apparent. These include the ‘post-peace’ activities of resource extractors operating as part of, or in partnership with governments, business elites and militaries. An obvious example is logging bans in China and Thailand which have created enormous financial wealth for a few and destructive spillover effects for many in the neighbouring Mekong countries of Cambodia, Lao PDR and Myanmar (Hirsch 1995).

<sup>8</sup> The development of ASEAN-China dialogue, whether in or outside of ASEAN+3, is perhaps the most important recent development. Although Dr Mahathir wants it institutionalised, many of the ASEAN members prefer to maintain it as a dialogue in which they can use their newfound solidarity to offset the power of China.

<sup>9</sup> There are substantial investment flows between countries in the region, such as between China and southern neighbours to enhance transport links. Regional infrastructure is also being funded by funds originating from outside the region.

*Ecosystem approach*

An ecosystem reasoning drives other regionalisms. For example, the river basin unit is often seen as ‘obvious’ by advocates of integrated land and water management. Wildlife managers may favour transboundary protected areas systems etc. In theory the Mekong River Commission (MRC) is born out of an ecosystem perspective focused on the Mekong River Basin; however, international politics pre- and post-various wars have been the greater driver.

*Strengthening civil society*

Finally, there is an abundance of civil society activities at the regional scale. Some of these are opposing the ‘development’ directions evident in various country and regional development plans. Other critical civil society regionalisms offer more direct challenge to existing state-dominated political systems, and in so doing of course find themselves in very sensitive relationships with state actors. Others are grounded in re-emerging crossborder ethnic solidarity of particular ‘nationalities’. Different again are coalitions around particular issues, such as Mekong Region mountain peoples’ networks advocating new approaches to public policy affecting upland livelihoods. Due to suppression of ‘domestic’ critical civil society in most Mekong Region countries, many find more space for expression at the regional scale than at national or subnational levels.

## Regional governance

At the risk of oversimplifying, in the following paragraphs I make some observations about the evolving situation regarding regional governance, using the terminology of Tracks 1-4. Several of the governance forums mentioned are discussed in more detail later in the paper. A brief overview of what this typology means for the Mekong Region is presented in Table 1.

*Track 1*

Track 1 refers to the state-centric regionalisms, as, in the Mekong Region, ASEAN<sup>10</sup>, the GMS economic cooperation initiative and the MRC. For the most part, these are guided by rationalist theories of international relations – realism and institutionalism.

The realism philosophy underpinning these ‘old’ regionalisms holds that states are the key political actors, states are uni-viewed, states are rational and focus on balances of power and security (Katzenstein et al. 1998:658). State authority is considered paramount and governance is largely restricted to interest-based bargaining between states. The influence of institutionalism is seen in the emphasis given to norms and rules, embodied in formal institutions or ‘regimes’ (Haggard and Simmons 1987). Governance becomes structured and to an extent depoliticised (ignoring for now the politics inherent in rules construction).

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<sup>10</sup> The most important changes in the 1990s for ASEAN in relation to the Mekong Region were, of course, its acceptance of Vietnam (1995), Lao PDR (1997), Myanmar (1997) and finally Cambodia (1998) as full members. The new post-Cold War geopolitics had led all to seek membership in the regional organisation.

Not surprisingly, given their theoretical underpinnings, discussions between states in the Mekong Region at the regional scale have thus far shown themselves to be unwilling or unable to deal adequately with many of the social challenges treated in this book. States have regularly shown themselves to be hypersensitive about difficult issues, retreating behind veneers of sovereignty and falling back on an elitist consensus of non-interference. This has often stifled necessary debate and action on regional social issues.

Track 1 inter-government Mekong regionalism is being largely driven by increased Asian solidarity, particularly in the aftermath of the East Asian crisis; continued faith in economic growth via various East Asian development models; and conviction that a regional approach and presumed economies of scale are more likely to attract foreign investment. Most of the state-led examples of regionalism show ongoing commitment to outward-oriented neoliberalism.

It is acknowledged that some Track 1 processes now have more involvement by civil society and other non-state groups. However, this inclusiveness is certainly a 'new' feature. Whilst too early to be sure of their merits, examples from 2002 onwards might include the ADB's implementation of its GMS Strategic Environment Framework (SEF) and the MRC's basin development planning process. Each of these is supposed to ensure or proactively take a more participatory approach.

#### *Track 2*

Track 2 regionalism refers to state-civil society interactive forums. It is evident in the emergence of complementary/parallel forums which generally aim to enhance the effectiveness of state processes. There is an increasing number of 'semi-official' Track 2 forums involving the Mekong Region in which states interact with business actors and 'social and environmental' civil society organisations. Examples include: the GMS Business Forum coordinated by Economic and Social Commission for Asia and the Pacific (ESCAP); and recent efforts by ADB, ESCAP and United Nations Environment Programme (UNEP) to coordinate regional inputs to the World Summit on Sustainable Development.

**Table 1 Mekong regional governance forums**

	<i>Track 1 'old'</i>	<i>Track 2 'new'</i>	<i>Track 3 'new'</i>	<i>Track 4 'new'</i>
<i>Players</i>	State-centric, inter-government forums	State-civil society interactive forums aiming to enhance the effectiveness of states	Civil society leading, less impeded by and less subordinate to states	Civil society supporting local communities, low expectations of states
<i>In eyes of states....</i>	Official	Semi-official	Unofficial	Unofficial
<i>Dominant logic</i>	For the most part implicitly accepting of rationalist theories of international relations	Emphasising the value of new ideas and learning	Activist, optimistic about the power of multi-stakeholder dialogues and other discursive forums.	Activist, localist, sceptical of dialogues; concerns about domination, co-optation
<i>Examples</i>	<p>Formal inter-government processes of Association of Southeast Asian Nations (ASEAN), ASEAN+3 (South Korea, China and Japan), ASEAN-China, Economic &amp; Social Commission for Asia and the Pacific (ESCAP), Mekong River Commission (MRC) and Asian Development Bank (ADB) which attempt to control negotiations over:</p> <ul style="list-style-type: none"> <li>▪ Free trade areas</li> <li>▪ Water use including for dams, hydropower, transport and irrigation</li> <li>▪ Greater Mekong Subregion (GMS) economic cooperation (Boxes 3 &amp; 4)</li> <li>▪ Crossborder environment assessment (EA) protocols</li> <li>▪ Crossborder movement of people, goods &amp; services</li> <li>▪ Commercial navigation agreement</li> </ul>	<p>Institutions and processes with semi-formal links to governments such as:</p> <ul style="list-style-type: none"> <li>▪ ASEAN Human Rights Working Groups</li> <li>▪ ESCAP-coordinated GMS Business Forum</li> <li>▪ Asia-Europe Meeting (ASEM) Social Forum</li> <li>▪ Fledgling ADB NGO Network (ADB-led)</li> <li>▪ ESCAP/ADB/UN Environment Programme coordination of civil society inputs to World Summit on Sustainable Development 2002</li> <li>▪ Southeast Asia Regional Dialogue on Water Governance, Bangkok, November 2002</li> <li>▪ Asia Pacific Taskforce on Forest Law Enforcement &amp; Governance (involving 5 of the Mekong countries), Jakarta, February 2003</li> </ul>	<p>Activism associated with the different issues on the agenda of: Focus on the Global South, Asian Migrant Centre, Asia Pacific Forum for Women Law &amp; Development, ADB NGO Forum, Global Witness, and activities of various international NGOs and philanthropists.</p> <p>Specific dialogue examples include:</p> <ul style="list-style-type: none"> <li>▪ World Commission on Dams</li> <li>▪ Regional university and policy research institute coalitions hosting policy debates eg. Resource Policy Support Initiative (REPSI), Regional Environment Forum (Box 7)</li> <li>▪ Mooted Mekong forestry governance forum</li> </ul>	<p>Much of the substantive work of regional, or regionally-linked local organisations and initiatives such as:</p> <ul style="list-style-type: none"> <li>▪ Towards Ecological Recovery and Regional Alliance (TERRA) (Box 1)</li> <li>▪ Dialogue on River Basin Development and Civil Society in the Mekong (coalition of Oxfam Mekong Initiative, TERRA, PER and Australian Mekong Resource Centre) (Box 6)</li> </ul>

At least in theory, Track 2 gives greater emphasis to the value of new ideas and learning. This implies a belief in constructivism, deliberative/discursive processes where actors are given an equal opportunity to participate in effective debate to learn about matters of common interest.<sup>11</sup> Not all Track 2 forums approach the ideal. Often Track 2 debates have focused on regional issues to better inform state policy makers about a wide range of issues such as military security, promotion of business links etc. For the most part the state has remained a privileged actor.

### *Track 3*

Loss of faith in Tracks 1 and 2 has led to the emergence of Tracks 3 and 4, neither of which privilege state involvement and both may proceed without it. Track 3 is characterised by civil society leading, less impeded by and less subordinate to states. Track 3 governance forums include multi-stakeholder dialogues and epistemic communities, (which should be) firmly rooted in constructivism. Multistakeholder dialogues include the World Commission on Dams (WCD) and the Dialogue on Water Food and Environment (DWFE); each have included the Mekong Region (or parts thereof) in their associated activities. They are intended to be inclusive, information-rich and flexible processes which actively promote presentation and analysis of different views. Dialogues have been defined as “*a contrived situation in which a set of more less interdependent stakeholders in some resource are identified, and invited to meet and interact in a forum for conflict resolution, negotiation, social learning and collective decision making towards concerted action*” (Roling and Woodhill 2001:iii).

Epistemic communities refer to “*network(s) of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area*” (Haas 1992:3). There are epistemic communities functioning in the Mekong Region providing policy researchers and advocacy groups some ‘thinking space’ to share and expand the regional knowledge base, and refine opinions. Examples of relevance to ‘environment and development’ have been the Resource Policy Support Initiative (REPSI) (Box 7) and various other issue-based network initiatives.

### *Track 4*

Track 4 refers here to the emerging regionalism of localists, increasingly prominent in Mekong Region ‘environment and development’ governance. Whether by choice or not, Track 3 and 4 processes are currently marginal to the dominant state political decision making in the Mekong Region.

In general, localists assert the significance of the rural community as an opposition to discourses propounding economic growth, urbanisation and industrialism (Hewison 2001:22). Localists have a greater emphasis on self sufficiency and lower expectations of government intent or capacity, given historical performance of urban-based technocratic, political or military elites.

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<sup>11</sup> In an ideal deliberative process, participants are open to changing their opinions through persuasion, rather than by bargaining, coercion, manipulation, manufactured consent or deception. Such processes are also characterised by respect, sharing of information and allowing all actors to be freely able to participate and capably communicate their views (Dryzek 2000:1).

Localists often believe that states and dominant elites are neither sufficiently legitimate, competent or inclined to adequately represent local community interests. Grassroots resistance is an option, much discussed by people such as James Scott who writes of ‘arts of resistance’, ‘infra-politics’, ‘seeing like a state’ and ‘hidden transcripts’ (Scott 1976, 1985, 1990, 1998).

Localists only support activity at the regional scale in the following instances: solidarity lobbying to support other local groups who may have restricted national space; or to deal with genuine transboundary or region-wide issues where solidarity or a ‘whole of region’ perspective could help; or to take advantage of regional platforms, or to counter what are seen as illegitimate and inappropriate regional agendas.

### **Box 1 Towards Ecological Recovery and Regional Alliance**

Towards Ecological Recovery and Regional Alliance (TERRA) describes itself as “the sister organisation of Project for Ecological Recovery (PER), registered together as the Foundation for Ecological Recovery. PER established in 1986, works to support the local communities in Thailand in protecting rivers, forests, land and livelihoods. In 1991, TERRA was established to focus on issues concerning the natural environment and local communities throughout the Mekong Region.” The Bangkok-based group “works to support the network of NGOs and people’s organisations in Burma, Cambodia, Laos, Thailand and Vietnam, encouraging exchange and alliance-building, and drawing on the experience of development and environment issues in Thailand” (TERRA 2001).

TERRA’s environmental agenda is inseparable from its views on social justice, rights, development, sustainability and the role of civil society in the debate about these issues. It has critically analysed the discourses surrounding many subjects including civil society, public participation and sustainable development. It explicitly criticises neo-liberal dominance and associated conceptions of what is good or bad economic development. It is publicly critical of any development paradigm which accepts winners, losers and compromises as an inevitable outcome of economic pursuits. TERRA literature consistently promotes approaches to environment and development decision making which are grounded in a respect for indigenous rights and knowledge.

The organisation is also very actively engaged in political awareness training and developing activists and strategic activism throughout the region. Reservations about wasting effort or of being co-opted limit the extent to which it actively seeks a direct dialogue with others, such as regional inter-government organisations, the private sector, or multilateral banks. Regional NGOs such as TERRA have worked hard to create a political space in which to operate, at times providing/finding a regional opportunity for activism which does not exist within most of the Mekong countries. The formation of the regional NGOs has undeniably led to more inclusive deliberative<sup>12</sup> regional debates. For environmental governance this has been aided by the inherent regional nature of many issues, coupled with international support.

Localist leaders in the Mekong Region, such as Towards Ecological Recovery and Regional Alliance (TERRA) (Box 1), and elsewhere, are concerned that some external actors (eg. co-opted NGOs) unwisely and unjustly support trade-offs which ignore the rights of local people already being trampled by authoritarian elites pursuing a conventional ‘development’ paradigm. Nevertheless, to have their agendas heard, localists have also had to scale up from grounded local action to regional and global arenas.

<sup>12</sup> Dryzek, an advocate of critical debate, praises NGOs for contributing to more ‘unruly and discursive’ policy making processes, challenging various development paradigms and agendas.

Fears of co-option are real and each non-government organisation (NGO) has the right to choose how it can most strategically engage. NGOs foregoing independence in order to cooperate with other actors may be making a bad trade-off by “*depleting oppositional civil society*” (Dryzek 2000:137). The trade-off can be particularly poor if the concession is made to a regional inter-government organisation which may be relatively weak anyway, and basically under the control of member states. World-wide many strong NGOs choose to remain “*passively exclusive*” (Dryzek 2000:138) which helps to retain more robust democratic debate in various political arenas.

### Environmental governance of the Mekong Region

To examine an aspect of regional governance in more detail, I wish to narrow the scope to environmental governance. This refers to the management of a wide realm of matters such as water use, flooding, pollution, land use, forest use, timber trade, non-timber forest products trade, fisheries, biodiversity conservation, ecosystem health, infrastructure development, impact assessment, access to natural resources and access to information. Of course, in the Mekong Region as elsewhere, the governance of these issues is politically charged.

#### Box 2 Analysing governance

So how are we to analyse any governance process – regional, environmental or other?<sup>13</sup> The following questions can be a basis for valuable social learning exercises which have the potential to alter the nature of much current decision-making:

**Governance:** What are the past and present characteristics of governance processes and/or dialogues which impact on the Mekong Region? What are the possibilities for the future?

More specifically,

**Power:** What power relationships and interests contextualise the governance process/forum?

**Rights and Responsibilities:** Are ethical and rights/responsibilities dimensions central to the debate and/or decision making? eg. How are the rights of individuals and communities considered and prioritised vis a vis state/government and business interests?

**Ethics:** What moral principles (if any) are embedded in the governance process?

**Values:** What are the core and dominant *values* and *visions* of different stakeholders? This often becomes clear in discussions about ‘sustainability perspectives’<sup>14</sup>

**Knowledge:** How is knowledge currently generated and considered (or not) in Mekong Region governance processes, such as development dialogues?

**Holism:** Are social, cultural, economic, ecological, transboundary issues considered?

**Participation:** Does the governance process/forum demonstrate a high level of diverse stakeholder representation and involvement via genuine participatory process that are safe, non-threatening, culturally appropriate, non-coercive, predictable and maintained over time?

**Transparency:** Is the governance process/forum open to scrutiny?

<sup>13</sup> This Box on analysing governance is a revised version of that which appears in the book chapter version of this paper.

<sup>14</sup> There is a vast array of perspectives on sustainability, underpinned by different values. Suffice to say here that opinions differ markedly on issues such as: the extent of threats to ecosystems and the invocation of the ‘precautionary principle’; substitutability of natural capital; the primacy given to economic growth (and its measurement) versus the conservation of biological diversity and ecological integrity; faith in ecological modernisation to yield cleaner industries; relationships between human wealth, human well-being and ecosystem impacts; intrinsic rights of nature; the importance of aesthetics; and, the importance and validity of entrenched cultural practices (see Woodhill 1999). It is beyond the scope of this paper to explore each of these points.

In the following pages I peer through the empirical window of several major Mekong Region environmental governance *processes*, providing background and some reflections.

The first process is the GMS economic cooperation initiative. The next three processes relate directly to ‘water resources development’: Mekong river water use negotiations, Mekong river ‘channel improvement’ project; and the regional governance surrounding the Upper Mekong hydroelectric dams in China. All four are related. The discussions focus on the role of state actors and critical civil society. State actors have thus far dominated the governance surrounding each of these actual or proposed interventions. However, the role of critical civil society regionalism is significant and increasing.

### **Greater Mekong Subregion economic cooperation**

#### *Background*

The GMS economic cooperation initiative, embodied in the ADB GMS programme, started in 1992. It brought together the six countries to focus on the coordinated development of infrastructure. Many ‘master plans’ have been completed which are either unrealistic dreams or visionary guides – or somewhere in between, depending upon your point of view. The 10<sup>th</sup> GMS Ministerial Conference, held in Yangon in November 2001, endorsed a new strategy, since adjusted and released in 2002. The state-state negotiated agreements embedded in the strategy are supposed to guide GMS cooperation as the GMS programme enters its second decade. The newly endorsed goal statement is as follows:

GMS countries envision a Mekong subregion that is more integrated, prosperous and equitable....The GMS programme will contribute to realising the potential of the subregion through (i) an enabling policy environment and effective infrastructure linkages that will facilitate crossborder trade, investment, tourism and other forms of economic cooperation; and (ii) developing human resources and skills competencies.....To ensure that this development process is equitable and sustainable, environment and social interests will be fully respected in the formulation and implementation of the GMS programme (ADB 2001a).

The GMS programme was thoroughly endorsed at the November 2002 summit meeting of the political leaders from each of the Mekong Region countries (ADB 2002c) (Box 3). The forward workplan outlines ‘flagship projects’ requiring more than \$900 million in investment financing and almost \$30 million in technical assistance,<sup>15</sup> which are intended by ADB to be “*multi-disciplinary, large-scale interventions with high visibility and significant economic impact on the GMS economies*” (ADB 2001b:15). There are 11 projects relating to: north-south, east-west and southern economic corridors (roads plus associated infrastructure); completion of a regional telecommunications ‘back bone’; regional power grid completion plus power trading arrangements; private sector ‘participation and competitiveness’ boosting; cross border trade and investments support; implementing a region-wide Strategic Environmental Framework (SEF) (discussed later, also see Box 4); and supporting country efforts to control floods and ‘manage’ water resources; and tourism.

<sup>15</sup> As at 30 June 2002, the ADB had assisted GMS loan projects for roads (especially in Yunnan, but also from Phnom Penh to Ho Chi Minh etc.), hydropower (Theun Hinboun in Lao PDR) and the Siem Reap airport in Cambodia. The total cost of the projects classified as being either ‘national projects with subregional dimensions’ or ‘purely subregional projects’ is listed as almost US\$2 billion. Of this amount, 10 ADB loans tallied US\$772 million. In addition, in the 10 years to 2002 ADB has coordinated 56 Technical Assistance projects costing \$58 million, mostly paid for by US\$32 million from the ADB’s Japan Special Fund. Supporters of the GMS programme expect it to now shift from the initial planning to a substantial implementation phase, under the slogan ‘Building on Success’ (ADB 2002a).

**Box 3 GMS summit declaration 2002**

The first summit of the Heads of State of the six countries of the Mekong Region occurred in Phnom Penh, Cambodia on 3 November 2002. Following are excerpts from the Joint Statement issued by the leaders (Heads of Mekong Region governments 2002):

...we will integrate GMS development programs in our respective national agenda.

...we will complete the infrastructure investments needed to strengthen productivity and competitiveness in the GMS.

...we will complete the transport corridors critical to linking the subregion and promoting trade and investment.

...we will coordinate our strategies to ensure that transport corridors evolve into economic corridors, enabling agricultural diversification, industrialisation and the creation of employment opportunities.

...we will expedite the full implementation of the Framework Agreement for the Facilitation of Crossborder Movement of Goods and People.

...we will facilitate pilot-testing of single-stop customs inspection with a view to implementing this procedure at our shared borders.

...we will accelerate energy development through mutually beneficial initiatives, including implementation of the Intergovernmental Agreement on Regional Power Trade in the GMS.

...we will develop basic telecommunications infrastructure linking the subregion, in accordance with respective national circumstances, together with the formulation of policy and regulatory frameworks conducive to information and communications technology.

...we view the private sector as the engine of growth for the GMS. We will continue to create a favourable trade and investment climate to foster private sector initiative and participation, especially for small and medium enterprises.

...we will pursue initiatives to further enhance trade and investment. An action plan on trade and investment facilitation should be formulated including information sharing and capacity building. This will also support the ASEAN-China Free Trade Area and the process of trade liberalisation and economic integration of ASEAN.

...we will strive to meet the millennium goal of halving the incidence of poverty by 2015. We will take joint action to address other areas in developing human potential, including the protection from trafficking of women and children, and combating the spread of HIV/AIDS and illegal drug production and trade.

...we must and will better protect our environment.

...we will take responsibility and leadership for the sustainable management of our national and shared resources.

...we strongly endorse the Ten Year Strategic Framework for the GMS programme, and the Eleven Flagship programmes, the key means through which closer economic cooperation and prosperity will be achieved.

*Environmental governance of the ADB-GMS processes*

The ADB has had to review its approach to 'environment' – ecological and social dimensions – in response to a sharpened social and environmental ethic, criticisms of past Bank approaches, the demands of shareholders and research advocating alternatives. A number of the technical assistance (TA) projects in the Mekong Region have had a specific social and environment focus. Social TAs have related to cooperation in employment promotion and training; prevention and control of HIV/AIDS; health and education needs of ethnic minorities; malaria control; and drug trafficking. Environment TAs include that which led to the development of the Strategic Environment Framework (SEF) (Box 4) which has an initial focus on the transport and water resources sectors (SEI et al. 2002).

Expectations are now increasing amongst GMS Ministers that environmental problems – particularly those of a transboundary nature – can be at least partly resolved via the regional TAs, in combination with national efforts and other regional initiatives by actors such as MRC. The GMS summit declaration (Box 3) included commitment by state leaders to “*better protect the environment*” and “*take responsibility and leadership for the sustainable management of our national and shared resources*” (Heads of Mekong Region governments 2002) and a pledge to implement international agreements, including those from the Johannesburg 2002 World Summit on Sustainable Development. That sounds fine, but how does the ADB specifically intend to play its part? What tools and processes does it have to support its stated intentions?

The ADB adopted a new Environment Policy in November 2002. Several features of this are potentially quite significant for the GMS programme and general operations by the Bank in each Mekong Region country. Critical and detailed evaluation of environmental issues is now required before country strategy and associated programmes are finalised (ADB 2002b:6). The screening process in the Bank previously categorised loan projects into three groups, each requiring a different level of environmental review: category A (potentially serious environmental impacts) which require environmental impact assessment (EIA); category B (potentially significant environmental impacts) which require an Initial Environmental Examination (IEE) analysis but not an EIA; and category C (unlikely to have significant environmental impacts) which do not require any type of environment assessment (EA).<sup>16</sup> The recent creation of category FI also ensures EA of projects which indirectly involve the Bank, such as those that the Bank may be planning, but which are being implemented using non-Bank finance.

The GMS programme must now adhere to the new policy and be guided by its own Strategic Environment Framework (SEF). The first phase of the SEF was optimistically expected to resolve methodological and political dilemmas concerning “*cumulative environmental and social effects of hydropower projects and the implications of economic corridors*”. More realistically, it was asked to “*outline practical steps for addressing key transborder environmental issues*” (ADB 2000b:7), which are considered by the Bank (ADB 2000a:22) to be deforestation; downstream hydropower development impact; biodiversity losses and trade in wildlife; encroachment on protected areas due to transport projects; and pollution of waterways.

Advocacy (discussed below) has sensitised at least some Bank governors and staff to the concerns of critics. There has been progress made towards more holistic thinking and improving internal systems. The GMS initiative has acknowledged the deficiency of transboundary impact assessment arrangements. And, there is increased transparency relative to earlier years.

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<sup>16</sup> There are many forms of assessment which are often collectively called EA. These include Environmental Impact Assessment (EIA), Social Impact Assessment (SIA), Cumulative Effects Assessment (CEA), Multi-Criteria Analysis (MCA) and Strategic Environment Assessment (SEA).

**Box 4 Strategic Environmental Framework for ADB**

The ADB-specific guidelines accepted by Mekong Region governments as part of their endorsement of the first SEF for the transport and water resources sector projects of the GMS economic cooperation initiative and the directly linked Bank GMS programme, are as follows:

1. ADB-supported projects will consider the Pareto+ principle; not only will no one be made worse off by dam/hydropower and roads programmes and projects but design and implementation will ensure that all potentially disadvantaged peoples are made absolutely better off.
2. All GMS dam/hydropower and roads programmes and projects supported by the ADB should have a valid public involvement process involving active information exchange and learning between stakeholders, from the beginning of the planning process.
3. Informed decision making should lead to improved decision making, so the ADB should make a major investment in improving the baseline data and information available to all levels of GMS decision makers.
4. Information disclosure and transparency of decision making will be fundamental characteristics of ADB activity.
5. The ADB should only consider financing hydropower development projects if compatible with an endorsed river basin management plan.
6. The ADB should only consider financing road projects when proposals contain an acceptable justification and adequate plan for enhancing access to social services by people in the impact area.
7. Dam/hydropower and road projects in the Mekong Region, if they are to be supported by the ADB, should contain a strategy for ensuring that local affected peoples share substantially in project benefits, with particular attention paid specifically to the poor, ethnic minorities and women (SEI et al. 2002).

The acceptance by the ADB of this framework indicates a significant step forward in ADB commitment to environmental governance, and provides a leverage point for groups monitoring ADB activity. The ADB should now expect to be held accountable to the framework.

ADB is one of a range of influential regional actors<sup>17</sup> lending in the order of US\$5 billion per annum.<sup>18</sup> These monies are keenly borrowed by developing country members<sup>19</sup> as they represent relatively cheap finance; hence the ADB's general leverage opportunities, especially via credit conditions, are very significant. Many question the general validity of this level of influence of international financial institutions and donors (Stokke 1995, Crawford 1997). The dangers of over-influence and coercion are much discussed by lender critics, but also by lenders themselves (World Bank 1998). Notwithstanding these comments, credit conditions are an entrenched part of global financing and there are well-argued views that environmental governance can be enhanced by nuanced pressure from lenders (Hyden 1999).

<sup>17</sup> Discussion of the Asian Development Bank and Mekong River Commission is not meant to imply they are particularly powerful regional actors. Other actors such as the World Bank, International Monetary Fund and Japan Bank of International Cooperation are all the subject of useful scrutiny.

<sup>18</sup> This figure is for all countries in the Bank's sphere of operations. A total lending in 1999 of US\$4,979 million included US\$88 million for Cambodia, US\$195 million for Vietnam, <US\$50 million for Lao PDR, and US\$363 million for Thailand. China is the major client for the ADB.

<sup>19</sup> The monies are also 'keenly loaned' as internal ADB processes do keep pressure on staff to keep loan funds moving out in synchrony with the way they arrive at the Bank – as of course, the Bank itself borrows the funds from the global money market.

*Critical civil society*

The approach of the ADB and its shareholders has been the subject of increased scrutiny by Mekong Region civil society actors (see Cornford and Simon 2001). Research prepared for and presented at conferences in Chiang Mai 2000, Sydney 2000, Tokyo 2000, Shanghai 2002 and Phnom Penh 2002 has analysed and challenged the performance of the ADB. Civil society organisations have criticised what they have seen as non-participatory Bank processes which have led to non-transparent, inequitable decision making. Particular projects have been targeted for advocacy, for example, the Samut Prakarn waste water treatment plant in Thailand. The environment policy and the acceptance of the SEF are positive improvements, for which civil society can claim much catalytic credit. Nevertheless, trust between many elements of critical civil society and the Bank remains low.

**Lower Mekong water use negotiations***Background*

The MRC facilitates water use negotiations between the four governments of the Lower Mekong River: Cambodia, Lao PDR, Thailand and Vietnam (Box 5). Disputes exist, and others are looming, over extractions, diversions, pollution, changes in flow regime and consequent impacts on hydrology, ecology, economies and societies. The Water Utilisation Programme (WUP) being undertaken between 1999–2005 by the MRC is intended to provide a framework for dealing with these issues. The MRC member governments agreed on data sharing protocols in 2001. Note that this has taken more than 40 years to achieve. Since then MRC has also succeeded in arranging for basic river data to be regularly provided by, and shared with, China.<sup>20</sup>

The WUP process is being forced along by the principal suppliers of the US\$16.3 million operating funds,<sup>21</sup> the Global Environment Facility, and their insistent agents the World Bank. The first major outcome demanded by the World Bank oversight team was for the MRC member countries to agree on data and information exchange and sharing ‘rules’.

The specific challenge for the WUP is to put the principles of Articles 5 and 6 into practice. Article 26 requires MRC to prepare water utilisation rules to enforce Articles 5 and 6. However, as has been pointed out by senior MRC personnel, these articles are “*interlinked with the totality of the 1995 Agreement, especially Article 2 ‘Projects programmes and Planning’, Article 3 ‘Protection of the Environment and Ecological Balance’, and Article 7 ‘Prevention and Cessation of Harmful Effects’*” (Pech Sokhem 2002).

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<sup>20</sup> China is now providing information during high flow periods as a contribution to ‘flood control’. However, dry season flow information – which is of critical importance to downstream countries – remains unavailable and outside the terms of the present agreement. It is the changes to dry season flow, and consequent ecological and livelihood impacts, caused by Yunnan dam building which are of most concern to dam sceptics.

<sup>21</sup> Of the total budget, almost US\$11 million is from the Global Environment Facility, US\$2.8 million from co-donors (Japan, Finland and France), US\$1.24 million from national Mekong Committees and US\$1.25 million from the Mekong River Commission secretariat.

It is the challenge of the WUP team to facilitate negotiations which move beyond ‘interest based bargaining’. It has never been expected that this would be easy as it is recognised that “...*international water management is a long-term, dynamic and often contentious process. The objective of the WUP and the process of river basin management will be evolutionary and may take a long time to mature*” (WB 2000). No doubt the MRC is pleased that the World Bank clearly understands the WUP challenge.

#### **Box 5 The Mekong River**

The Mekong River runs for about 4,800 kilometres, and is the 8<sup>th</sup> largest (in terms of amount of water) and 12<sup>th</sup> longest river in the world. It begins in mountains on the northeastern rim of the Tibetan Plateau at approximately 5,500 metres above sea level. It flows for 2,161 km through the Chinese territory of Qinghai, Tibet and Yunnan. It travels for another 2,719 km through Myanmar, Lao PDR, Thailand, Cambodia and Vietnam, ending at the South China Sea. The river basin has an area of 795,000 km<sup>2</sup>, representing a very small percentage of China’s territory, 4% of Myanmar, 97% of Lao PDR, 36% of Thailand, 86% of Cambodia and 20% of Vietnam. The Upper Mekong countries contribute (on average) 18% of the total flow: 16% from China and 2% from Myanmar. The remaining 82% comes from the Lower Mekong countries: Lao PDR 35%, Thailand 11%, Cambodia 18% and Vietnam 11%. There is significant contrast between the ‘wet’ and the ‘dry’ season. Highest flows are usually from September-November, lowest flows are usually February-April. The flood ‘season’ may account for 85-90% of the total flow, of which the peak month (on average September) may account for 20-30%. There are about 70 million people living in the basin.

The 1995 Mekong River Agreement – parties to which are the governments of Thailand, Vietnam, Lao PDR and Cambodia – created a Track 1 governance forum by committing signatories to cooperate in all fields of sustainable development, utilisation, management and conservation of the water and water-related resources of the Mekong River Basin, including but not limited to irrigation, hydropower, navigation, flood control, fisheries, timber floating, recreation and tourism. Article 5 commits members to reasonable and equitable utilisation of the waters of the Mekong River system. Article 6 commits members to maintenance of flows on the mainstream.

#### *Environmental governance of the WUP processes*

A recent change in direction by MRC from executing projects to more holistic river basin management is significant. This refocus is enabling MRC to build some credibility with the wider basin community, many of whom have seen the organisation in the past as uncritically wedded to the large dam development paradigms embodied in what became known as ‘the Mekong Project’ (Huddle 1972, Jacobs 1998, Mitchell 1998, Ojendal 2000). The new commitment is to being a “*learning organisation and a centre of knowledge and information exchange...(with a) strong commitment to improving the livelihoods of the people in the Mekong region*” (MRC 2001b).

The MRC recognises 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 Annual Report 2000 acknowledges 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 admits that it “*has virtually no experience in this vital field*” and that it must “*drastically accelerate activities to promote public participation*” (MRC 2001a:23).

MRC's lack of achievement thus far in genuine public participation is complex. The youth of the new version of the organisation, 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, realisation of limited successes to this point and operating rules which 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 WUP, there has been a hyper-sensitive wariness of member country inter-governmental politics. There is also some resistance to being 'lectured' at by NGOs and past and present Mekong country experiences of being 'directed by donors'.

To be legitimate in the eyes of civil society the WUP needed to bring other actors and subject matter into the process at an early stage and consider fundamentally differing views of upstream and tributary development and other sensitive issues such as the rationale and justification for inter-basin diversions. Other MRC programmes will, and should, be more heavily scrutinised. For example, the basin development planning process, launched in 2002, can be conceptualised in at least two ways: a plan to identify possible 'development' projects for each member country (with minimal public debate), negotiated as priorities, packaged and presented to potential financiers – investors or donors; or a planning process to explore the basin development options by the basin community, allowing debate which acknowledges different points of view. Many state actors want it to be the former, a simple uneventful process which enables all countries to have a 'collect' from external donors, whilst leaving their own national development planning independent of regional scrutiny.

The new management regime and organisational structure at MRC provide an opportunity for enhanced transborder/regional governance – in at least the Mekong River Basin part of the larger Mekong Region. Despite its imperfections, the MRC framework remains an excellent opportunity for peaceful learning and cooperation between all six Mekong riparian countries. However, to a large extent the MRC itself remains marginalised from the national decision making processes of its members.

#### *Critical civil society*

Civil society is not waiting for MRC to decide what it wants to do about participation in the WUP or any of its other programmes. Between September and November 2002 MRC was the specific focus of a Track 4 initiative, the *Dialogue on River Basin Development and Civil Society in the Mekong*, organised by a coalition of NGOs and universities (Box 6). Increased scrutiny of MRC by critical civil society is forcing it to refine and articulate its stance on many issues, including whether or not it is in the business of conflict resolution, or whether it is focused on providing 'impartial' advice to policy makers in national governments, whilst taking fewer policy positions of its own.

## Mekong River 'channel improvement'

### *Background*

In 2001 an Agreement on Commercial Navigation on the Lancang-Mekong River between Simao (Yunnan) and Luang Prabang (Lao PDR) was signed by transport officials from China, Lao PDR, Thailand and Myanmar. River trade between Thailand and China is already reported to have increased, with about 2000 vessels calling at the Chiang Saen port in 2001, double the number from the previous year (Woranuj Maneerungsee and Saritdet Marukatat 2002).

China is funding river dredging to allow the passage of larger vessels. There are also associated plans to remove islets by blasting with explosives. The aim is to facilitate easier river transport for trade and, later, tourism.

The plans have evolved over several years of discussions in various forums in China, and also the GMS economic cooperation initiative. Phase 1 of the project plans to remove 11 major rapids and shoals, plus 10 reefs along a 331 km stretch of the river. Navigation markers and winches will ensure that the river is navigable for vessels of 100-150 dwt (dead weight tonnage) for about 95% of the year. Phase 2 plans to remove a further 51 rapids and shoals to allow 300 dwt vessels to traverse the river 95% of the year. Phase 3 plans to deepen the channel to allow 500 dwt vessels to traverse 95% of the year (SEARIN et al. 2002).

### **Box 6 Declaration by local communities in Thailand 2002**

Representatives of 'local communities of the river basins in Thailand' gathered near the Mun River in Thailand's Ubon Ratchathani province between 9-12 November 2002 for the 'Dialogue on River Basin Development and Civil Society in the Mekong Region'. Following the meeting, a declaration was publicly released which claims that the practical implementation, thus far, of inter-government cooperation via the Mekong River Agreement limits 'civil society' involvement in decision making, to "*the groups that provide monetary assistance to support the expansion of economic growth in the Mekong River Basin*".

The declaration asserts that the Mekong River agreement has "*excluded local communities from making decisions about the Mekong River Basin and development*". The declaration questions "*the very nature of this 'development' that has emerged from this 'cooperation' as well as the 'development assistance' that is being provided by 'civil society'*". It further asserts that "*local communities are being sacrificed in the name of 'development'....(which) is destroying the lives, livelihoods, cultures and natural ecosystems of the local communities of the Mekong Region*"; marginalising, dispossessing and disempowering local people.

The declaration concludes with a call for advocacy which ensures that "*community rights over natural resources becomes the guiding principle for development in the Mekong Region*" (Local people 2002).

This is an extremely significant intervention in the natural system of the Mekong River which will obviously have an impact on river ecology and local communities. Local organisations along the river are being supported by the Southeast Asian Rivers Network (SEARIN) in a struggle to stop what they see as unnecessary and short-sighted ecological destruction (SEARIN et al. 2002).

*Environmental governance of the channel improvement project*

Any discussion of environment governance can be relatively brief. In short, there has been very little. It is remarkable how such scant attention can be paid by governments to potentially very significant negative impacts. All emphasis is on the positive benefits expected to be gained – doubtless there will be some beneficiaries – with minimal investigation of potential problems. In situations where political momentum is behind a project, participatory EA processes become problematic navigation obstacles themselves.

Associated with the signing in 2001 of the inter-government agreement on commercial navigation, a feasibility study was completed in late 2000 which supported, in principle, the proposed alterations to the river, including rapids and reef removal. By September 2001 an EIA, coordinated by the Chinese, had been prepared and sent to each of the other three government signatories to the Agreement. Thailand's government approved the EIA in January 2002, and Lao PDR in April 2002 (SEARIN et al. 2002). Their own river basin management organisation, the MRC, was not used by either Thailand or Lao PDR to inform or actively participate in the initial agreement negotiations. It has become involved 'after the event' in offering to conduct an independent EIA of the project (an offer not taken up) and in commissioning evaluations which have been extremely critical of the existing EIA (Cocklin and Hain 2001, Finlayson 2002, McDowall 2002). Each of the evaluations noted the inadequacy of the information base upon which decisions of 'no impact' or 'acceptable impact' had been made; one succinctly concluded that the EIA was "*substantively inadequate and in many places fundamentally flawed*" (Cocklin and Hain 2001:2), another that consideration of the river's biological values was "*seriously deficient*" (Finlayson 2002:9).<sup>22</sup> And yet, this EIA was initially deemed adequate by all governments to approve the project. In fact, the 'impediments' inside China's borders have already been removed. In 2002 work started along the part of the river bordered by Myanmar and Lao PDR.

The environmental governance of this process compares poorly against the comparative principles summarised earlier. The 'channel improvement' project – if the EIA is the benchmark indicator – has given scant consideration to the ecological risks of the project, and the likely impact on the livelihoods of river-using communities. Governance to this point has been characterised by an absence of any holistic approach to analysis. Formal participation by local communities, or others likely to have an alternative view, has been deemed unnecessary. The eventual public availability of the EIA has provided a base of information for initial analysis. But once again, project opponents find themselves in reactionary mode having been largely excluded from presenting their arguments at earlier stages of the decision making process.

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<sup>22</sup> After many months of being largely unknown, excerpts from the reports were distilled for media distribution and advocacy by Towards Ecological Recovery and Regional Alliance (TERRA 2002).

*Critical civil society*

The environmental governance channel improvement debate has undoubtedly been opened up by the activities of the NGO SEARIN, which includes high-profile Thai academics on its board of management, and employs keen activist researchers to pursue and piece together information that is otherwise slow to find its way into the media. SEARIN supports concerned Thai people's organisations who provide much of the river-specific local knowledge essential for an advocacy campaign. In turn they are supported by regional NGOs such as TERRA, and international NGOs such as Oxfam and the International Rivers Network. Other activists are passing SEARIN information on the progress of the project and concerns from people in Myanmar, Lao PDR and Yunnan. A debate which has previously been restricted to pro-project inter-government and ADB discussions has now spilled out into the larger civic domain.

Local people are having to scale up their advocacy to the regional scale in order to challenge increasing regionalism driven primarily by trade liberalisation between China and Thailand. Local Thai NGOs and villagers made a submission to the Thai Environmental Senate Committee in May 2002 calling for a halt to the project, at least until an 'opposing case' can be heard. This lobbying may yet prove to be decisive. All governments of the region were petitioned in July 2002 by a coalition of "76 organisations along with 16 individual academics from 25 countries" (SEARIN et al. 2002:22). At the time of writing, the entry of civil society, supported by the work commissioned by MRC, is changing the political momentum of what would otherwise be a *fait accompli*. The wisdom of the project is being reconsidered by elements of government in both Thailand and Lao PDR.

**Upper Mekong hydroelectric dams in China***Background*

Dam construction for hydroelectricity production is a super-sensitive issue in the Mekong Region. A long list of projects has become the subject of national, and in some cases regional and international, controversies. Examples include Vietnam's Se San, Sre Pok and Son La dams; Lao PDR's Theun Hinboun and Nam Theun 2 dams; Thailand's Pak Mun dam; and Myanmar's water resources development projects on the Salween River. The driving paradigms and extremely political governance processes of each are the subject of intensive debate. The construction, operation and associated impacts of dams in China's Yunnan Province are also, rightly, the subject of intense interest.

The dams are being built by the Chinese government in the upper reaches of the Mekong River – known in China as the Lancang (Table 2). Mostly referred to as the Upper Mekong (Lancang) dam cascade, this super-project has been conceived to take advantage of an 800 metre drop over a 750 kilometre river section by building eight dams (Plinston and He Daming 2000, McCormack 2001, Moreau and Ernsberger 2001).

The cascade offers an alternative source of energy to coal, via its unquestioned hydroelectric power generating potential, calculated as being up to 25,500 megawatts.<sup>23</sup> The electricity produced will be able to enter the Mekong Region electricity grid which governments of the region have formally agreed to establish via their signing, at the 2002 GMS leaders' summit, of an inter-government agreement on regional power trade.

It also has the potential to offer limited flood control, more assured dry-season flows, increased navigation options, reduced saline intrusion and create extra irrigation opportunities for downstream countries like Thailand. Moreover, it has been argued that it could facilitate a *“reprieve for the forests, fields and villages that would otherwise be submerged under dams in the (other) Mekong riparian countries”* (McCormack 2001:17).

**Table 2 Upper Mekong (Lancang) Dam Cascade**

<i>Dam name</i>	<i>Elev'n</i>	<i>Active storage</i>	<i>Power capacity</i>	<i>Annual power output</i>	<i>Height of dam wall</i>	<i>Status</i>
	metres asl	million m <sup>3</sup>	megawatts	10 <sup>8</sup> kwh	metres	
Gongguoqiao	1,319	510	710	41	130	Design
Xiaowan	1,240	151	4,200	189	292	2002-12
Manwan	994	11	1,500	78	126	1986-96
Dachaoshan	899	9	1,350	67	110	1996-03
Nuozhadu	812	223	5,500	238	254	Prefeasibility
Jinghong	602	12	1,500	81	118	Feasibility
Ganlanba	533	?	150	8	?	Design
Mengsong	519	?	600	34	?	Design

Source: (Plinston and He Daming 2000, McCormack 2001)

On the other hand, there is huge concern in the regional and international community about the impacts of the dams on riverine ecosystems and local livelihoods (Roberts 2001, IRN 2002). There are major worries about the impacts of altering the natural flow regime of the river in a way which will increase the downstream dry-season flows and decrease the normal flow downstream of nutritious sediments. Negative impacts may also include increased downstream erosion, serious disturbance to fisheries ecology<sup>24</sup> and devastation of annual river bank gardening enterprises. These concerns do not appear to have been addressed. Those who stand to lose out include millions of people downstream – mostly beyond the Chinese border – reliant on fishing and river bank farming.

<sup>23</sup> The hydroenergy potential of the Mekong River in Yunnan is estimated at 25,500 megawatts, with an exploitable hydropower capacity of 23,480 megawatts. This data is taken from a report on the website of the International Commission on Large Dams. The report concentrates on the Dachaoshan dam, but in general terms speaks of the Yunnan stretch of the Mekong River as being a *“rich, rare hydropower mine for its prominent natural advantages in abundant and well-distributed runoff, large drops and less flooding losses of the reservoirs”* (ICOLD 2001).

<sup>24</sup> Fisheries production in the Mekong is fundamental to local livelihoods. Current estimates are that almost 2 million tonnes are harvested each year from the Mekong fishery – 1.75 million tonnes from the ‘capture fisheries’ valued at US\$ 1.45 billion, plus another 250,000 tonnes from aquaculture (MRC 2002).

Manwan dam has comprehensively solved Yunnan's short term electricity crisis. However, the overall economic benefits to China may have been substantially over-estimated by information presumably used as a basis for decision-making. The useful life of the dams may be much less than has been (presumably) expected and factored into economic calculations. Whilst estimated construction and operating costs per unit of power produced may be attractive, sedimentation inflows into the first-completed Manwan dam are much higher than anticipated (Plinston and He Daming 2000). There are now concerns that it may only be able to function as a power-producer for less than 20 years (Roberts 2001:150). Construction of the further upstream Xiaowan now seems 'necessary' to avoid Manwan having an almost absurdly brief useful life.

The Upper Mekong (Lancang) dam construction has presumably been driven by immediate pressures of domestic energy shortages; long term estimates of domestic and regional needs; and an ongoing commitment to a water resources development paradigm which sees large dams as integral (McCormack 2001). Elsewhere in the world this approach is being seriously challenged, most publicly in the outputs of the World Commission on Dams (WCD 2000). However, this paradigm is obviously still thriving in 21<sup>st</sup> century China where about 280 large dams were under construction in the late 1990s (WCD 2000:10), against a national backdrop of about 80,000 large and medium dams, most of which have been built since the success of the Mao-led revolutionaries in 1949 (Kattoulas 2001). Energy production has been prioritised.

#### *Environmental governance of Yunnan dam construction*

So how then does this example measure up against the previously mentioned governance ideals? In relation to sustainability, it seems that regional ecological and social sustainability is being traded off for national economic development. There are clear threats of serious or irreversible damage; the precautionary principle has certainly not been invoked. Environmental degradation has long been associated with China's economic development (He Baochuan 1991, Smil 1993, Marks 1996). The cascade will probably continue the trend, but in this case, most of the negative impacts fall to other people in other countries. Amongst other deficiencies, many possible transboundary impacts have been 'externalised' from consideration.

The ecology of the system will alter, with biodiversity losses inevitable. The value of the resources to many users, for example fish, sediment and variability in seasonal flows, has either been ignored or outweighed. Regional holism has been redefined and scoped down to national energy needs. The decision making process, prior to committing to at least the first three dams in the cascade, has excluded any meaningful participation by downstream, presumably affected parties. The project has lacked transparency. Publicly available data to inform debate remain relatively scarce. What information there is has emerged in a piecemeal fashion from various sources – academic foraging, ADB-funded studies and quietly undertaken local research.

Thus, the cascade, so far, is a textbook case of bad environmental governance. It has epitomised non-transparency, non-provision of information and non-involvement of the public in learning about and influencing decision making. It also exemplifies disinterest in international or regional principles of cooperation, agreements, or rules. It represents a complete failure of international civil society and downstream nations to engage with China in any meaningful way prior to plans becoming fixed in internal domestic political agendas. At this point the governance process regarding the Upper Mekong dams appears to breach each of the aforementioned environmental governance principles. If we agree those features are desirable, then we must conclude that this is a clear case of institutional failure.

The Upper Mekong (Lancang) dam cascade is a classic project, 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. The regional/transborder nature of ecosystems requires regional/transborder political cooperation. China's non-membership of the MRC has precluded discussion in that forum. Other tools, such as transboundary Environment Assessment (EA) protocols, and *UN Convention on the Law of the Non-Navigational Uses of International Watercourses* have also been ineffective in either fostering or forcing more extensive 'cooperation' or 'dialogue'. Article 8 of the 1997 UN Convention lays down a general obligation for riparian states to cooperate "*in order to attain optimal utilisation and adequate protection of an international watercourse*" (cited and discussed by McCaffrey 2001).

A few final remarks seem appropriate. The economic growth imperatives of the Chinese *Develop the West* and *Gateway to Southeast Asia* policies obviously require energy and understandably, the engineers and policy decision makers are drawn to the mathematical possibilities presented by the Lancang. However, the lack of dialogue with neighbours typifies the unequal relationship between China and the downstream states. If negative transboundary impacts have been considered, they have been dismissed, without discussion, as undesirable but necessary consequences of essential, national economic development. If there are positive impacts for downstream nations, they are being undersold. But of course, this is speculation as there remains a relative paucity of information on the Chinese position. Clearly, there is acceptance by several states that the cascade will be built. Downstream countries also have their own dam-building agendas and/or energy demand projections. For example, Thailand has already signed a Memorandum of Understanding to purchase up to 3,000 megawatts from the Jinghong component of the Yunnan cascade<sup>25</sup> from about 2015, indicating *de facto* acceptance, if not support for the project. Support for the project has also been voiced by a part of the Thai bureaucracy which shares the dominant Chinese dam-building paradigm.<sup>26</sup>

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<sup>25</sup> Memorandum of Understanding on Purchasing Electric Power from the People's Republic of China for the Kingdom of Thailand between Thailand's Prime Minister's Office and PRC's Economic and Trade Commission, signed 12 November 1998 (cited by Xiao Peng n.d).

<sup>26</sup> The Director-General of Thailand's Department of Energy Promotion and Development, Pradesh Subatr saw the cascade as a boon to Thailand providing extra justification for completion of the extensive Khong-Chi-Mun irrigation and Mekong river water diversion project in Isaan (Kanittha Inchukul 1997).

The failure of Lower Mekong countries to engage with China on this issue is indicative of the *geo-realpolitik*. China is independent and is seeking to retain that independence partly via water resources development and new energy production from hydropower. The concerns of downstream nations do not appear to have registered on Beijing's political Richter scale. But this is no surprise given the reticence of any of the downstream government elites to make any serious representations to their more powerful upstream neighbour, and in several cases, increasingly important patron.

*Critical civil society*

In relation to the Upper Mekong dams cascade, state actors of many different types have been unable to ensure anything approaching a thorough discussion of the project alternatives and likely impacts. It was linkages between Chinese and international academics, particularly from the mid 1990s (Chapman and He Daming 1996), which first brought project information into the wider public arena, although the rosiness of the possible scenarios they presented were greeted with wry suspicion by some (Hinton 2000). An International Rivers Symposium in Kunming in 1999 also aided outsiders to gain some insights into the Chinese perspective (He Daming et al. 2001). This is not to say that there haven't been many people and organisations who tried either before or since. The Economic and Social Commission for Asia and the Pacific (ESCAP) has attempted to facilitate more informed debate about this particular project. In its post-1999 phase, the MRC has also called for more public debate (Kristensen 2001). An ADB project on the sustainable development of the Yunnan part of the Lancang-Mekong Basin was also provocative and intensified the debate (Landcare Research New Zealand 2000).

**Box 7 Regional Environment Forum statement 2002**

On 14-15 November 2002, a group of 35 independent researchers and civil society advocates from Cambodia, Vietnam, Laos, Thailand, Myanmar and China met in Phnom Penh at the First Annual Regional Environmental Forum.<sup>27</sup> The purpose of the Forum, organised by the Cambodian Institute for Cooperation and Peace, the Thailand Environment Institute and the World Resources Institute, was to discuss environmental governance challenges in the Mekong Region. Specific recommendations from participants in the REF were directed to governments, multilateral institutions, private corporations, and civil society groups with the objective of strengthening environmental governance in the Mekong Region. The recommendations related to:

- enhancing regional environmental governance;
- increasing public access to environmental information;
- improving environmental impact assessment; and
- enhancing enforcement of environmental regulations.

It was acknowledged by the REF participants that *“action on these recommendations will require significant political will, strengthened capacity, as well as financial resources, and increased collaboration across national and sectoral boundaries”* (REF participants 2002).

<sup>27</sup> The REF was a follow up to the Resource Policy Support Initiative (REPSI) environmental governance work coordinated by World Resources Institute (see Badenoch 2001)

The Oxfam organisation, amongst others, has since supported the work of independent Chinese researchers to analyse the details of the project. More recently, hard-hitting advocacy groups such as the International Rivers Network have also become involved. The efforts by the more critical civil society groups are extremely valuable, but the providers of the information have to be quite careful, for fears of being charged with acting against the ‘national interest’. In these circumstances, a news-seeking at least semi-independent international media has become vital. There is now a steady stream of reports on the Mekong River development (for example, see: Moreau and Ernsberger 2001, Kazmin and McGregor 2002), essential in maintaining pressure for more explanation and examination of a controversial project with far-reaching impacts.

### **Synthesis of regional environmental governance challenges**

It was uncontroversially suggested earlier that ideal environmental governance processes would demonstrate a serious commitment to sustainability, holism, participation, transparency and equity. More contestable is the assertion that regional environmental governance in the Mekong Region is, in general, inching towards, but still far from regularly applying these principles in practice. Despite the changes wrought by globalisation and regionalism, the examples point to a range of governance challenges for the Mekong Region related to the principles and other associated issues.

#### *Dominance of national interest*

Some degree of regional environmental governance is vital because many issues have region-wide and/or transborder dimensions which are best managed via regional protocols and rules. However, at present national interests are considered far more important than regional interests. For example, national representatives in processes like the Mekong River water use negotiations are guided by their perception or instructions concerning national interests. The much vaunted Mekong ‘spirit of cooperation’ often seems optimistically over-stated. Unless some flexibility and a regional ecosystem perspective can be fostered, such exchanges are really vested interest negotiations rather than regional cooperation.

#### *Reticence by states to ‘cede’ any sovereignty*

The region’s countries have relatively young political regimes. Taking even a ‘short’ 50 year view back through Mekong history is a reminder of the struggles to obtain and retain sovereignty. Given this recent history it is understandable that states are reluctant to do anything which could be seen as ceding any sovereignty to the regional level. Existing regional ‘cooperation’ between states usually enshrines sovereign rights and non-interference; ASEAN is an obvious case. The GMS-ADB economic cooperation initiative, particularly whilst focusing on planning, has also not posed great threats to sovereignty. However, more substantial implementation of the infrastructure plans would be quite different and require agreements to be finalised which safeguard investments.

*Absence of holistic approaches*

In ‘environment and development’ governance processes there must be thorough assessment of expected impacts of proposals and alternative options. At present this does not happen. Ministers participating at the annual GMS-ADB economic cooperation meeting in 2000 agreed to the need for transboundary EA procedures. The MRC has since been working on these. However, the process is extremely slow and at the time of writing in late 2002, formal transboundary EA in the Mekong Region was still practically non-existent. Much higher quality EA is needed which takes account of monetary and non-monetary costs, benefits and risks of the options – and specifically who is likely to win or lose.

*Restricted access to information*

There remains a significant gap between the rhetoric and reality of Mekong Region cooperation when it comes to data sharing and general access to information. This subject is at the core of Principle 10 of Agenda 21 to which Mekong Region countries are signatories. In other parts of the world environmental accountability is being embodied in regional agreements. Two European protocols are being examined by both Mekong Region governments and civil society groups as potentially useful models for adaptation. The first of these is the Convention on Environmental Impact Assessment in a Transboundary Context, commonly known as the Espoo Convention (UNECE 1991, Tesli and Husby 1999). The general Espoo objective is to prevent or reduce adverse transboundary impacts of proposed activities. The second is the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, commonly known as the Aarhus Convention (Petkova and Veit 2000) on environmental accountability.

*Creating space for civil society to participate in decision making*

Universal rhetoric in governance discourse, often embodied in the operating rules of states (via their constitutions) and other organisations (by their respective governance charters) is to encourage ‘participation’. But of course this means different things to different people. A serious commitment to participation seeks and achieves diverse stakeholder representation and involvement via genuine participatory processes that are safe, non-threatening, non-coercive, predictable and maintained over time. This principle is particularly problematic for Mekong country governments, and their regional organisations, who have fundamentally different conceptions of what constitutes genuine public participation.

### **Concluding remarks**

Enhancing governance is a key social challenge for the Mekong Region. Many of the other social challenges discussed in this book would be greatly assisted by improved governance processes.

There is increasing regionalism in the Mekong Region, but it would be a mistake to construe all of this as ‘cooperative’ and ‘good’. Much of the state-led cooperative regionalism is focused on economic growth, freeing up trade and installing infrastructure to facilitate increased interaction and economic activity. The ADB GMS economic cooperation and surrounding processes are the most obvious embodiment of this claimed ‘unity’. However, the other examples are a reminder of the limits of inter-government regional cooperation. It is within this context that Track 3 and 4 regional governance becomes so important.

Within an often oppressive context, finding mechanisms in each country to allow civil society to genuinely participate in decision making remains a significant challenge. Whilst slow change is evident, states still prefer top-down approaches which are often formal and intimidating to all but the most self assured. Nevertheless, as a tribute to persistence, and aided by some aspects of globalisation, there has been an emergence of a critical civil society in the Mekong Region. It is playing an important role in challenging and contesting governments of the region to improve and more robustly scrutinise each others' performance and approaches. Much of this is being done under the cloak of environmental governance but it should be seen as a direct challenge to the development paradigms and decision making processes of the ruling elites in each state.

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