MEKONG PROJECT 4 ON WATER GOVERNANCE
Challenge Program for Water and Food Mekong

CHALLENGES IN DEVELOPING A BASIN-WIDE MANAGEMENT APPROACH IN THE LOWER MEKONG

Edsel E. Sajor, Le Thi Thu Huong, and Nguyen Phuoc Ngoc Ha
Asian Institute of Technology

December 2013
# TABLE OF CONTENTS

1 INTRODUCTION 1

2 INTERESTS OF VARIOUS GOVERNMENTS VIS-À-VIS MEKONG RIVER DEVELOPMENT 2
   2.1. Thailand 2
   2.2. Lao PDR 3
   2.3. Cambodia 3
   2.4. Vietnam 3

3 MAJOR PLAYERS ENGAGED IN BASIN-WIDE RIVER MANAGEMENT INITIATIVES IN THE MEKONG 4
   3.1. The Mekong River Commission 4
   3.2. International Development Banks 15
      3.2.1 Initiatives of the Asian Development Bank 15
      3.2.2 Initiatives of the World Bank 18
   3.3. Association of Southeast Asian Nations (ASEAN) 21
   3.4. Regional Civil Society Organizations 22

4 INTERNATIONAL NORMATIVE FRAMEWORK ON RIVER BASIN DEVELOPMENT AND RESPONSES IN THE MEKONG 26
   4.1. Integrated Water Resources Management and water governance 26
   4.2. Sustainable hydropower development 27
   4.3. Transparency and inclusive decision-making 27
   4.4. International water course law 28

5 BILATERAL NEGOTIATIONS IN TRANS-BOUNDARY WATER ISSUES 28
   5.1. Case of the Sesan Basin 28
   5.2. Thai water grid 32

6 RELATIONS BETWEEN LOCAL COMMUNITIES, NGOs AND GOVERNMENT AND REGIONAL MULTILATERAL AGENCIES 33

7 CONCLUSIONS 36

REFERENCES 39
1. INTRODUCTION

In recent decades, there has been an aggressive development of water storage infrastructure in the Mekong river system. A monitoring of dam building in the region in May 2013 found out that there are no less than 130 commissioned, under-construction or planned dams in the Mekong river system (CGIA, 2013). Many of these infrastructures, especially the bigger ones are for hydropower generation, being developed to meet the rising domestic energy needs of the countries in the Mekong region, or as energy exports to neighboring countries.

The rapid pace of development of water storage infrastructure of course comes with its own social and environmental costs in project sites and wider areas and population. It is clear that hydropower development in the Mekong mainstream causes serious impacts on the environment, fishery, and agriculture in the river basin that affect the livelihood and food security of people (Pearse-Smith, 2012). Tens of millions of people in the Mekong Basin rely on traditional uses of the river waters to provide them with their primary source of nutrition and income. Due to the construction of dams in the last decades, a lot of people were displaced from the inundated areas to inland from the riverbanks. Many were moved out to faraway places in less productive lands, if at all they got compensation. Basic disruptions in local livelihood activities in agriculture and fisheries are often trans-boundary in nature, encompassing upstream areas in the country where the dam project site is located and lower downstream localities, which often go beyond the country’s territorial jurisdiction into the neighboring country.

The riparian countries, especially those found downstream of the Mekong River Basin, are experiencing several environmental problems due to the continued dam construction. There are increased occurrences of abnormal floods in the Mekong region in several countries, and clear signs of erosion, siltation, and changes in the river water currents. According to experts, the most grave consequence of the recent intensification of hydropower development in the Lower Mekong is its impact on water resources—on river flow regimes, sediments flow, inland saline intrusion, and more remotely, on the Upper Mekong Region—often trans-boundary in nature. (Delphi interview with 12 experts on 24 April 2013)\(^1\)

Both the mounting social and environmental costs that are often trans-boundary in nature create a focal problem situation, and a rising public expectation for a basin-level and sub-basin level response from public-sector decision-makers at various levels, most especially those at the central government level. Major and key decisions and policies on governance in livelihoods, water valuation, and dam cascades that particularly address their trans-boundary dimensions, among others, are now urgent issues in the region.

However, there are a number of factors that hinder the development of basin-wide water governance in the lower Mekong region though there are also some positives and progressive initiatives working toward the advancement of particular aspects or dimensions of river basin management approach. This paper describes, characterizes, and analyzes these various aspects and how they are being played out in the process of water governance in the lower Mekong.

In preparing this paper, the authors relied on recently published books, journal articles, reports, and documented proceedings. In addition, in November 2012, the authors conducted a purposive survey of 30 respondents who included government decision-makers, private dam developers, NGOs/CSOs representatives, water and hydropower experts, researchers, water-user groups and cooperative members. Two rounds of Delphic polling participated in by 12 Mekong river basin

---

\(^1\) Regional Synthesis Workshop for the Mekong Project 4 on Water Governance on 24-25 April 2013 at Bangkok, Thailand.
experts were conducted in April 2013. The basic findings of this paper were presented, discussed, validated, and refined in the Regional Synthesis Workshop for the Mekong Project 4 on Water Governance in Bangkok, Thailand, on April 24–25, 2013, which was attended by 63 participants.

This paper will discuss these subjects in the following sequence: (A) interests of various national governments vis-à-vis the Mekong river development; (B) major players engaged in basin-wide river management initiatives in the Mekong; (C) the international normative framework on river basin development and response in the Mekong; (D) the bilateralism in resolving trans-boundary issues in water; and, (E) the relationship between state and communities and civil society organizations, and its implications on basin-wide problem solving. The conclusion will discuss the important lessons learned and key tasks in developing river basin approach and orientation in water governance.

2. INTERESTS OF VARIOUS GOVERNMENTS VIS-À-VIS MEKONG RIVER DEVELOPMENT

All countries in the upper and lower Mekong have a strong political tradition of independence and non-interference in formulating their respective national interest agenda. River basin approach in water management in the lower Mekong river has been ignored, resisted or blurred by the particularistic agendas of national governments in the region, and their insistence on absolute sovereignty on all issues, including water-related ones, that are seemingly located or emanating exclusively within their own national territory. This nation-state fragmentation and absolute assertion of territorial sovereignty have become an important contextual constraint against the promotion of a basin-wide approach in planning, decision making, and governance of water infrastructure development as a whole, particularly in the case of problem domains that are trans-boundary by nature.

It has only been very recently that countries in the region have joined ASEAN, a regional bloc that is a framework for free trading and investments as of now. While ASEAN comprises ten nations in the Southeast Asia mainland, and its peninsular and archipelagic countries, a major segment of this alliance consists of five countries in the Mekong river region. But even the ethos of ASEAN general framework of regional cooperation is that of non-inference. (The ASEAN initiative relevant to the Mekong region will be discussed in a later section). The following are the different positions and interests of the five Mekong region ASEAN countries:

2.1 THAILAND

Osborne (2004:8) has suggested that Thailand is concerned that regulations could restrict its freedom of action, particularly in the context of future water diversion projects. The strength of the Thai economy also gives it a confidence that, together with its position as the upstream country within the cooperation, makes it more reluctant to give in to the demands of the other members. Thailand seems, for example, not to be keen on a detailed flow management scheme as sought by the downstream riparian countries, partially because it claims that this has no meaning without Chinese participation. Because the majority of Thai areas in the Mekong basin are found within the somewhat peripheral and underdeveloped north-eastern Isan region, the Mekong cooperation receives little attention from the government in Bangkok. (Backer, 2007)
2.2 LAO PDR

Laos has 97 percent of its territory within the Mekong River Basin and an abundance of unexploited water resources in the Mekong river tributaries that drain its territory. There are, nonetheless, indications that the Laotian Government prefers to have the liberty to develop the Mekong tributaries according to its own preferences without having to adhere to regime recommendations coming from external bodies. Its limited human and bureaucratic resources, which are amongst the lowest in the region, also hold back Laotian efforts within the regime. Some interviewees suggest that certain Mekong-wide external policy recommendations, perhaps especially those regarding public participation, are unacceptable to the Laotian government. It does not want to adopt these policies, as public participation in its eyes requires more time and resources without any accompanying benefits. (Backer, 2007)

2.3 CAMBODIA

A total of 86 percent of Cambodia’s territory falls in the Mekong River Basin, and the Cambodian people depend on the resources, particularly fish, the wetlands have to offer. The development of the Mekong River Basin is perceived to have a more direct and serious impact on the well-being of the country than what is likely for the others, which might make Cambodia eager to see a stricter regime than the other members. However, incidents in the past such as those of the Yali Falls dam have led to disillusionment in Cambodia with the existing multilateral basin cooperation entity. There are also some indications that the government in Phnom Penh is more preoccupied with issues such as casinos on the Thai border and logging than with the management of water resources, and that it has not been concerned with securing Cambodia’s natural assets (Backer, 2007).

2.4 VIETNAM

Approximately 20 percent of the Vietnamese territory lies within the Mekong River basin, where the delta in the south is the largest and arguably the most important area. The significance of the delta for Vietnam’s well-being makes it eager to see a strict flow regime for the Mekong river, but its upstream position on certain trans-boundary tributaries, such as the Yali River, and its human capacity and economic strength, which is relatively more robust as compared to other countries in the region, also implies that it is not as concerned about the regime as the smaller riparians might be. It has also been claimed that Vietnam has an arrogant attitude toward difficult issues raised in the existing multilateral cooperation entity, such as, the MRC, particularly when it comes to the Cambodian interests. Moreover, the Vietnamese government is perceived by some as nationalistic and unwilling to share information (Backer, 2007).

The role of various national governments is central in the development of water storage infrastructure, especially the hydropower development projects. The national governments are the authority that private developers and investor firms or state-owned developer enterprises have to deal with. These governments are not only the strategic planners for the development of these water infrastructures in their respective countries; they also determine the terms and conditions for private and state-owned developers and investors building the dams. They are also the authority accountable for managing the social and environmental consequences of these physical developments on the health of the Mekong River and tributaries in their own territories in the long run.

However, due to varying levels of a country’s development, and geographical position vis-à-vis the Mekong river system, its interpretation of its national interest and priorities for developing
the Mekong river system differ. Disparate and conflicting positions of the Mekong River Basin country governments to a basin-wide approach to problem-solving and cooperation, and the need for a supra-government governance arrangement for the whole basin, are fuelled by a strong notion of individual sovereignty over all resources, including water, in their territories. This minimalistic approach of these countries to substantial inter-country cooperation needed for basin-wide governance can be better illustrated in the following discussion on the various stakeholders operating in the Mekong region to initiate basin-wide cooperation, and the way the Mekong basin nations react to their schemes.

3. MAJOR PLAYERS ENGAGED IN BASIN-WIDE RIVER MANAGEMENT INITIATIVES IN THE MEKONG

While the Mekong river basin countries are guided by national interest and development agenda in their stance toward water infrastructure development on parts of the Mekong in their territory, which tend to subordinate trans-boundary environmental and social issues, there are entities in the region whose starting point and institutional perspective go beyond a single country or nation’s particularistic views. They promote an inter-country or a basinwide perspective or consideration in their research, planning, coordination and funding activities in varying degrees. Following are the groups most notable in this respect: (1) the Mekong River Commission; (2) major multilateral development banks, such as, the World Bank and Asian Development Bank; (3) the ASEAN community; and (4) the regional civil society organizations.

3.1 THE MEKONG RIVER COMMISSION

The 1995 Mekong Agreement provides the legal mandate for the Mekong River Commission among member countries, viz. Cambodia, Laos, Thailand and Vietnam. Myanmar, in which the Mekong river system occupies 4 percent of the territory, and China, which occupies the Upper Mekong Region, are not members of the MRC, but enjoy the status of observers. The Mekong Agreement defines the scope of the work and cooperation related to coordinated and joint planning for balanced and socially just development in the Mekong River Basin, while protecting the environment and maintaining the ecological balance. The agreement also sets out a framework for achieving the strategic objectives of IWRM, recognizing that development decisions by sector agencies in the sovereign riparian countries of the Mekong River Basin may have trans-boundary consequences, and that the MRC, as an intergovernmental river basin organization, is reliant on the endorsement of its approaches by its Member Countries. (MRC, 2011)

Article 1 of the Agreement calls for “cooperation in all fields of development, utilization, management and conservation of water and related resources to optimize the multiple use and mutual benefits and minimize the harmful effects”, while Article 2 charges the MRC with the responsibility of formulating a Basin Development Plan for “the development of the full potential of the Mekong River Basin waters” which is grounded in the protection of the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin (Article 3). Article 4 recognizes that any Basin Development Plan should be based on respect for sovereign equality and territorial integrity, while Article 7 ensures the right of each country to develop projects, provided that they cause no harm to others. Ultimately, the objective of cooperation among Member Countries is to promote an optimal and well-balanced development of the Basin, while ensuring the equitable sharing of benefits among all users of basin water and related resources, and preventing any harmful effects from hindering the continued functioning
of the Mekong River systems, and so ensuring the continuation of the multigenerational benefits that the Mekong River Basin brings to people (Article 1). (MRC, 2011)

**MRC’s Strategic Roles**

More recent MRC’s official documents state several strategic roles (MRC 2011), which include the following:

a) Contributing to poverty reduction

The MRC states that by providing policy and strategic advice, it is in a position to influence the overall objectives of basin management toward pro-poor outcomes. Although MRC does not in general deliver on-the-ground poverty alleviation services, it can play a direct role in areas such as fisheries-based livelihoods and the prevention of flood losses. The MRC strategy in this regard can be summed up as following:

- Coordinating the establishment of a basin-wide and cross-sector development planning and management framework to support national planning and management to promote the equitable sharing of Mekong development benefits amongst different users, and especially amongst the most disadvantaged groups in the basin;
- Facilitating data sharing and exchange among the riparian countries, and providing forecasting and warning systems to reduce the loss of lives and assets from natural disasters;
- Leading strategic or sub-regional assessments of potential environmental and social impacts from planned development activities and developing the modeling capacity to evaluate alternative development scenarios;
- Developing several tools in support of regional pro-poor development, such as environmental monitoring of aquatic ecosystems on which the livelihoods of the rural poor depend; and,
- Encouraging river navigation and trade by utilizing the transport potential of the Mekong River system.

b) Basin planning and management

The MRC plays a supportive role in addressing the strategic planning and management issues facing the basin by:

- Promoting sustainable development of water and related resources in the Mekong River Basin;
- Ensuring mutual benefits to all riparian countries;
- Minimizing the harmful effects from natural occurrences and human activities;
- Balancing the environmental protection and conservation mandate of the MRC with development and utilization;
- Integrating sub-basins and watersheds as a basic element of IWRM, with respect to their cumulative contributions to the health of the larger basins; and,
- Addressing emerging climate change challenges.

c) Harmonizing benefits and ensuring equity

With major hydropower dams proposed on the mainstream Mekong and other investments being planned to utilize Mekong water resources, there is a legitimate concern that the natural ecological conditions and the Basin flow regimes will change significantly. There is also uncertainty about whether riparian communities will share the benefits of development
equitably and whether the environment will benefit from planned developments. These concerns are linked to the measures to overcome the causes of persistent regional poverty. The MRC’s long-term vision suggests that its role will include promoting harmonization of benefit-sharing among the Member Countries and their people, and monitoring the basin’s environmental health by undertaking environmental and social impact assessments, and where necessary strategic impact assessments.

High priority is placed on addressing the crucial issue of equity, and on the following three aspects in the context of the basin:

- Equitable development, which is mutually beneficial to the LMB countries and their people;
- Equity in water utilization between upstream and downstream countries and communities; and
- Equity issues relating to the multiple uses of the river, such as hydropower generation, fisheries (wild capture, aquaculture), navigation, water diversion, and dams/reservoirs for irrigated agriculture, human health (water-borne diseases), and biodiversity and tourism.

d) Promoting responsible and sustainable hydropower development

The escalating interest in hydropower development in the LMB emphasizes the importance of the focus on sustainability in the work of the MRC. The MRC approach is to help Member Countries understand the long-term implications of the proposed dam construction, and balance the benefits, impacts and risks. The SEA on mainstream dam proposals concluded in 2010 demonstrated the central role that MRC can play in this discussion by facilitating dialogue among the major stakeholders, including Governments, civil society and the private sector, and introducing a more holistic approach to the assessment of risks and opportunities. This role will continue and intensify in the coming years and also involve application of sustainability assessment tools recently developed by MRC and its partners. With regard to the built and planned upstream dams, MRC has a unique position of cooperation with upstream riparian countries, and is able to carry out collaborative studies on the operation of hydropower impartially and effectively.

e) Enhancing regional cooperation

Beyond hydropower development, further technical and institutional cooperation with China and Myanmar is possible and achievable within the next five years. The sharing of year-round upstream hydro-meteorological data for use in drought management, climate change planning and for informing local communities of any expected changes in water levels resulting from upstream hydropower operations have been identified as issues for future cooperation. There are also opportunities for staff exchanges, technical cooperation, and training in flood risk reduction and management.

Strong synergies exist between MRC and other regional organizations, such as, the Association of Southeast Asian Nations (ASEAN) and the Greater Mekong Sub-region (GMS) program.

The debate on the strategic role(s) for MRC in the region, and how it should play any such roles, is far from settled. But Olivier Cogels, Chief Executive Officer (CEO), stated that MRC “is a knowledge-based international river basin organization. It is an intergovernmental institution helping its member states to co-develop and co-manage the water and related resources of the Mekong River basin.” (IUCN, TEI, IWMI, & M-POWER, 2006).
**MRC’s Structure**

Within the MRC, there are National Mekong Committees (NMCs) established in each member country, set up differently in each country depending upon the preferences of the national governments. The heads of the NMCs represent their countries on the Joint Committee, and the 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 that the MRCS (Mekong River Commission Secretariat) is encroaching on 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 that of key water-related ministries and agencies in each country (Dore & Lazarus, 2009).

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. They include 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 Program on Water, Environment and Resilience (M-POWER), are also increasing their engagement with the MRCS (Dore & Lazarus, 2009).

Figure 1: MRC as knowledge-based International River Organization.

![MRC as knowledge-based International River Organization](source: IUCN, TEI, IWMI, & M-POWER (2006))

There is a disconnect between the technical arm of the MRCS and the political entity constituted through the Ministerial Council and Joint Committee. The Secretariat is a largely donor-funded and donor-driven agency whose primary role is the use of data and scientific assessments to underpin water sharing and basin planning under three core programs: the Basin Development Plan, the Water Utilization Program and the Environment Program. (Hirsch & Jensen et al., 2006)

**MRC’s Core Functions**

The 1995 Mekong Agreement characterizes the MRC mandate and provides the necessary structure for its work programs and activities. Based on this mandate, a framework of the following four core function categories, including the major category of river basin management functions, was approved at the 29th meeting of the MRC Joint Committee in March 2009 (MRC, 2011):
• Secretariat Administrative and Management Functions
• River Basin Management Functions
  o Data acquisition, exchange, and monitoring
  o Analysis, modeling, and assessment
  o Planning support
  o Forecasting, warning, and emergency response
  o Implementing MRC procedures
  o Promoting dialogue and communication
  o Reporting and dissemination
• Capacity Building and Tools Development Functions
• Consulting and Advisory Services

This Strategic Plan period will be a transition period toward full implementation of its core functions and a new modality of implementation.

**MRC's responsibilities and obligations in mainstream dams**
(MRC, 2011, and AMRC, 2008)

The 1995 Mekong Agreement, signed by the four lower Mekong governments, establishes the MRC as the institution through which international cooperation is to be achieved (Article 11), and outlines its governance arrangements through the MRC Council, Joint Committee and Secretariat (Articles 18, 24, 30). The Agreement outlines a number of principles and commitments for cooperation in the sustainable development and management of the LMB. Those of particular relevance to the mainstream dams are outlined below.

• **Recognition of multiple uses**: The Agreement clearly recognizes that there are different uses and users of water and related resources in the LMB, and that sustainable development requires coordination across a range of sectors in order “to optimize the multiple-use and mutual benefits of all riparians and to minimize the harmful effects...” (Article 1). Implicit in this article is that planned interventions in one sector (e.g. hydropower) must be compatible with others (e.g. fisheries).

• **Basin Development Plan**: Article 2 states that the MRC should focus on joint and/or basin-wide projects and programs and that this should be done by drawing up a Basin Development Plan (BDP). The BDP is the framework under which the MRC can be informed of, and assess, proposed developments, in particular those considered to have significant basin-wide implications. Since the proposed mainstream dams were not included in the development scenario analysis of BDP phase 1, assessments of their potential impacts are currently being ‘fast-tracked’ under BDP phase 2. If the BDP is to remain meaningful, dams should not go ahead without reference to the Plan.

The aim of the BDP scenario process is to evaluate the countries’ water resources development policies and plans against agreed economic, environmental, and social objectives and criteria. The results, together with other basin-wide assessments, would provide a basis for discussion and negotiation of mutually beneficial levels of water resources development and their associated levels of trans-boundary environmental and social impacts. This would then lead to a shared understanding of what could be considered as development opportunities, as described in the IWRM-based Basin Development Strategy (Kubiszewski, Costanza, Paquet, & Halimi, 2013).

• **Ecological responsibility**: Articles 3 and 7 underline the MRC’s responsibility “to protect the environment, natural resources, aquatic life and conditions and ecological balance of
the Mekong River Basin,” including “making every effort to avoid, minimize and mitigate harmful effects that might occur” from the development and use of the river. This includes recognition of the need to maintain certain flow regimes on the Mekong mainstream, which is important for fisheries’ productivity and other environmental considerations (Articles 6 and 26).

- **Water utilization:** Agreement for the use of water from the Mekong mainstream rests on the principle of “reasonable and equitable” utilization (Article 5). Precise rules as to what is “equitable” and “reasonable” are not outlined. While there are provisions in the Agreement stipulating that Rules will be formulated (Article 26, 5B), these presently take the weaker form of informal “procedures”. A number of procedures have been agreed upon by the four member governments. However, these procedures are not rules enforceable under the agreement on which parties could rely if and when a dispute arises over mainstream dams. The MRC does not wield authority over countries when it comes to the management of major projects in the LMB, such as the proposed mainstream dams.

The MRC’s mandate to initiate the matter between the two members at council level is addressed under Article 34, 18C, 24F, and 35 of the 1995 Agreement. Under Article 34, the process is driven by the MRC. If no resolution is achievable, the next step in the process, Article 35, mandates that the governments in dispute enter into a government-to-government negotiation process (Hirsch & Wyatt, 2004).

The Mekong Agreement gives the MRC an outline of responsibilities, but descriptions of its functions and authority are vague. This leads to different perspectives on MRC’s governance role. While the MRC is a ‘governed’, rather than a ‘governing’ organization, this is not always understood by civil society groups in the region who have called on the MRC, and the secretariat in particular, to intervene in their own right to address concerns or resolve grievances arising from developments with trans-boundary impacts.

With questions raised by donors and civil society groups about the role of MRC with respect to mainstream dams, the MRC has made some recent efforts to clarify its role and initiated or ‘fast-tracked’ a range of activities focused specifically on mainstream dams. The stated roles of MRC in relation to mainstream dams have been further clarified to include the following: basin-wide assessments of mainstream dams; advice upon request on individual projects; administering of procedures for notification, prior consultation and agreement (PNPCA); and facilitating dialogue.

**MRC’s Various Initiatives and Performance**

The MRC has undertaken an analysis of the effects of the upstream dam developments in China with respect to the reduction in wet season flows; and increases in dry season flows in the lower mainstream as an input to the Basin Development Plan (BDP). Additional analysis is being assembled in the MRC Strategic Environment Assessment (SEA) of mainstream dams and the BDP on related changes in flow regime, sediment flows and water quality due to dams in China (MRC, 2009). The MRC’s Strategic Environment Assessment (SEA) will also enhance the baseline information for government review of project-specific Environment Impact Assessments (EIAs) prepared by developers, and inform how the MRC can best enhance its support to Member Countries when they begin the PNPCA process for any of these projects (MRC, 2009). The SEA raised the MRC’s profile in terms of information production and debate facilitation (Grumbine, Dore, & Xu, 2012).
MRC also has taken a major study initiative related to local livelihoods, particularly in the fisheries sector. A central component of the MRC Fisheries Program was an attempt to assess and valuate the productivity of the capture fishery, and from this to identify the likely impacts as a result of water resource development, including hydropower. This approach had been influenced by an MRC-commissioned report in the mid-1990s, which argued for data and information on the potential impacts upon fisheries related primarily to “mainstream dam developments”, but also related to irrigation, flood protection, agriculture development, navigation and other changes. Additional core elements of the MRC’s Fisheries Program have been similarly shaped to focus on managing reservoir fisheries (that would be created as a result of hydropower development) and on promoting aquaculture (with alter emphasis on indigenous species) as a strategy to cope up with the degradation of capture fisheries. The initial MRC interest in capture fisheries was thus very much framed in terms of understanding the potential impacts of water resource development. Originally, it was less driven by an interest in the fisheries for their own value and potential for economic development. However, it has grown to be the main source of information on the importance of capture fisheries in the region, and an innovative influence in areas such as participatory management and indigenous knowledge. (Friend, Arthur, & Keskinen, 2009). The fisheries program has recently improved its methods for estimating the total catch in the River Basin and the estimates of the catch have risen from 500,000 tons per year to approximately two million tons per year in the period from 1995 to 2001 (Lauridsen, 2004).

Nonetheless, MRC is often criticized by non-governmental organizations and civil society for not being responsive to human livelihood concerns, nor to demands for a more transparent and participatory decision-making process (Dore & Lazarus, 2009) (Grumbine, Dore, & Xu, 2012). Much of this criticism is due to negotiated elements of the 1995 Mekong Agreement and subsequent Procedures and Guidelines for action. Member states have, until now, been able to discount the work of the MRC when it served their interests to do so.

**Water Conflict Prevention and Management**

MRC has also initiated a project with ECO-Asia Joint Program on water conflict prevention and management training. (MacQuarrie, Viriyasakultorn, & Wolf, 2008). Joint MRC and ECO-Asia workshops on conflict prevention and management are aimed at strengthening the human and institutional capacity, including facilitating the identification of potential trans-boundary issues across the wide range of MRC program activities, including the environment, flood management and mitigation, agriculture, irrigation, forestry, and watershed management, navigation, fisheries, basin development planning, and water utilization. In addition to helping develop capacity at the MRC in the prevention and resolution of trans-boundary issues, training activities also promote cooperation between the MRC Secretariat and NMCs in each of the four member countries and line agencies.

Mapping hotspots: Representatives from the MRC Secretariat, NMCs and line agencies meet and identify potential trans-boundary issues in an effort to raise awareness and provide a foundation for capacity building and tools development. This activity has the potential to be an important step in building institutional capacity within the MRCS, the national committees, and line agencies, besides engaging local stakeholders and NGOs in the capacity building process (MacQuarrie, Viriyasakultorn, & Wolf, 2008).
Promotion of Equitable Water Use

Another initiative of the MRC in advancing trans-boundary cooperation is the Water Utilization Program (WUP), which aims to operationalize the concept of “To utilize the waters of the Mekong River system in a reasonable and equitable manner in their respective territories” through, amongst other activities, the negotiation of rules on water use and allocation. In this trans-boundary context, equity is largely interpreted in negotiations in terms of protecting existing uses rather than the percentage contribution to flows by each riparian. Yet, perceptions still persist that water should be allocated according to riparian flow contributions. For instance, Laos contributes 35 percent of the flow but uses just 4 percent; some are of the view that Laos is entitled to exploit the full 35 percent for national development. The shift in emphasis within the WUP from sharing water equitably to sharing the benefits of water equitably is a positive move. For example, options are now being considered to exchange the benefits of food production from irrigation to food scarce regions. This has also led to a situation where trade-offs are being made more explicit and reciprocity is a guiding principle (Hirsch, Carrard, Miller, & Wyatt, 2006).

The Water Utilization Program is designed to provide the data necessary to establish rules for water utilization and sharing, which would give much more detailed guidelines than the 1995 Agreement on the rights, responsibilities and procedures underlying the development of water projects within the basin with trans-boundary impacts. Sophisticated hydrological modeling, other decision support tools, and the experience of other trans-boundary basins underpin the WUP (Hirsch, Carrard, Miller, & Wyatt, 2006).

Mekong Integrated Water Resources Management Project (M-IWRMP)

The trans-boundary component is managed under the umbrella of the regional component also appropriately inter-linked with the national component in the M-IWRMP framework ensuring the three-tiered approach to IWRM on all MRC levels. The WB budget for this component is channeled through the MRCS and granted to the LMB countries for the formulation as well as implementation of selected trans-boundary projects (MRC, 2010). It comprises a key outcome component that provides pro-poor trans-boundary initiatives jointly designed and implemented, applying IWRM principles and demonstrating mechanisms for joint planning and implementation of projects identified as part of the MRC-led basin development planning process. This involves the following components:

- Trans-boundary IWRM dialogue is facilitated through regional support during the inception phase of the respective projects.
- Cambodia-Lao PDR: The Mekong mainstream fisheries management at Stung Treng/Kratiyo Champasak is in place and sustainable livelihoods are being created for poor communities.
- Cambodia-Vietnam: Water Resources Management in the Se San and Srepok sub-basins. A joint early warning system regarding flood/drought events is developed. A management and planning tool, including a knowledge base that is closely linked to the MRC Toolbox, and the key management issues of the sub-basins are in place. Joint capacity on river basin management is enabled.
- Cambodia-Vietnam: Water Resources Management in the Mekong Delta. Dialogue and collaboration toward harmonized water resources investment in the Mekong Delta, considering possible trans-boundary impacts is fully established. In addition, a project proposal on a possible joint water resources development in the Delta has been identified and prepared. A mechanism to share/exchange hydro-meteorological data as well as a Mekong Delta management and planning tool, including a knowledge base
closely linked to the MRC Toolbox, have been developed. Joint capacity on river basin management is enabled.

**Challenges and Problems of MRC**

After over a decade of its conception, the Mekong River Commission (MRC) is facing problems and challenges in playing the role of an international river basin organization. An important reason is that historically, the countries of the region have exercised strong sovereignty over water resources and management. Different countries in the Mekong Region have different stances on the basin-wide management regime and cooperation being initiated and represented by MRC.

Since Thailand is a fairly advanced country with an established legal system and bureaucracy, and a developed economy, it does not need the development resources that the MRC can provide. Thailand also has a more pronounced position on issues like EIA regulations, is less interested in adapting current procedures to those suggested by the MRC and doesn’t need the capacity of the organization as much as some of the other members. Thailand would rather see the MRC as a facilitator than as a body imposing regulations upon its members, possibly for sovereignty reasons.

Vietnam is also not so concerned with a strong MRC mainly due to her relative economic strength and human capacity compared to other smaller riparian states. It has even been claimed that the government has an arrogant attitude toward difficult issues raised within MRC, particularly toward Cambodian interest. The Vietnamese government is perceived as strongly nationalistic and unwilling to share information (Backer, 2007).

On the other hand, the Laotian government may agree to the rhetoric of MRC policies, but it is less interested in taking any concrete action in some sectors. For instance, it refuses to conduct studies on the effects of logging on the water flow. However, given its historical lack of regulation and limited capacity, it is fairly accommodating to MRC policy recommendations because they save it from doing the job. (Backer, 2007)

Cambodia, because it is generally at the receiving end of dam development impacts on upstream countries, and also because of its relative weak position in terms of economy and human resources might be the most eager to see a strict regime in basin-wide management and a stronger MRC. However, incidents in the past, such as, the Yali Falls dam incident have left Cambodia disappointed with what the MRC can achieve for it (Backer, 2007).

MRC also faces challenges in putting in place an effective basin-wide water governance in the context of the fast pace of water infrastructure development in the basin, particularly in developments related to hydropower generation and various types of water uses (MRC, 2010). One of the biggest challenges the MRC will face in the near future is how to strike a balance between hydropower development and the preservation of conditions necessary for maintaining fish production, if indeed such a balance is possible. The plans for hydropower development in the basin are highly contentious. Several recently constructed dams in the basin have caused some serious social and environmental problems, and have been strongly opposed by local citizenry and international environmental groups. (McKinney, D. C., 2011)

Two sets of challenges merit a discussion here: (a) the Mekong Agreement and trans-boundary water governance; and (b) management of dam development:
a) The Mekong Agreement and trans-boundary water governance

The Mekong Agreement 1995 concerns the sustainable development, utilization, management, and conservation of water and related resources of the Mekong River Basin. The MRC is identified in the Agreement as the institution through which international cooperation is to be achieved (Article 11) (Hirsch & Jensen et al., 2006).

However, the Agreement is incomplete since China and Myanmar didn’t sign on the document, and these countries participate in meetings only as observers. It is clear that China’s participation is particularly important because it is not only engaging in many large-scale hydropower projects on the Mekong, which have important downstream trans-boundary implications, but also because of its dominant role in trade and development in the region. Therefore, the failure of the Agreement in attracting the participation of China and Myanmar is perhaps the biggest setback that stops MRC’s initiatives from becoming truly regional in scope (Belay et al., 2010).

Another unsatisfactory aspect is that there are no adequate mechanisms for resolving disputes. The MRC itself has little capacity within the Agreement to intervene if and when disputes arise. From the history of the MRC and its antecedents, it is clear that there has been some confusion about its role and the level of its authority. The Mekong Agreement gives the MRC an outline of its responsibilities, but the description of its functions and authority is rather vague. From a legal point of view, it is not the most effective organizational mechanism for trans-boundary water governance in the Mekong. The lack of a clear legal basis has flow-on effects in terms of the authority of the Basin Development Plan, the Water Utilization Plan and the Environment Program. Specifically, there is no appropriate legal framework for trans-boundary environmental impact assessment; there are no guarantees to ensure public participation; and there are no adequate mechanisms for dispute resolution (Hirsch, Jensen, Boer, Carrard, FitzGerald & Lyster, 2006).

In addition, under the Mekong Agreement, there are virtually no restrictions on what a country can do within its own territory. The assumption is that states have the right to control the river within their own national boundaries. The Mekong states must notify or consult before the construction of a water resource development project begins, although the Agreement only requires notification (the less strict of the two standards) for tributary development. Specifically, “on tributaries of the Mekong River, including Tonle Sap, intra-basin uses and inter-basin diversions shall be subject to notification to the Joint Committee [of the Mekong River Commission]” (Article 5). This means that Lao PDR and Vietnam can build as many dams as they deem necessary and economically feasible on tributaries within their borders, and that Thailand can divert water from its tributaries as it sees fit. The primary concern of the Agreement is with development on the mainstream that does not interfere with other states’ water development plans as codified in the principle of equitable utilization, particularly with regard to maintaining a minimum flow in the channel during the dry season.

Yet, the water of the mainstream cannot be separated from that of its tributaries. The tributaries feed the mainstream, and the mainstream is connected to the tributaries by nutrients, sediment, energy, fish and other aquatic species. The tributaries contribute much of the flow that feeds the annual floods. Failure to recognize the importance of the flood peak, of land-water interactions, and of tributary-mainstream interconnectedness reflects the dominance of a watercourse mentality. Cooperation around the river is truly carried out as though the river were a “single-thread channel[s] from headwaters to the sea”. The text of the Agreement in effect allows the water in the river channel to be severed from its basin, implying that states can more easily justify their right to control, manipulate, and disrupt the river’s flow, despite the fact that human
and ecological security are being undermined. States are under no obligation to consider how their actions might affect downstream communities; nor are there mechanisms for mitigating harm that might come about as a result of the upstream activities. They can be responsible members of the basin community simply by notifying the Joint Committee of their intentions. (Fox & Sneddon, 2007)

Nevertheless, there are prospects for improvement in trans-boundary water governance in the LMB, as recently a lot of effort has been put into allowing the MRC to play a more prominent role in decision making. Three actions have been particularly noteworthy. First, in April 2010, the inaugural MRC Summit was convened, which brought together the Prime Ministers of Cambodia, Laos, Thailand, and Vietnam with high-level representatives from China and Myanmar. This Summit succeeded in giving the MRC greater legitimacy. Second, the SEA raised the MRC’s profile in terms of information production and debate facilitation. Subsequently, the organization gained the necessary political tracion to complete this work, a signal achievement in a region where data are rarely released for public scrutiny. Finally, the MRC facilitated discussions between LM countries about Laos’ proposed Xayaburi Dam. External pressure for disclosure was very high, and by the end of the designated period, there was sufficient information for the MRC to release a high-quality advisory report. The SEA for all mainstream dams and the implementation of the PNPCA for the Xayaburi proposal in Laos are important steps. The next step will be to build on these processes to ensure that high-quality impact assessments are implemented for such projects in the future. To that end, the MRC has drafted a trans-boundary environmental impact assessment framework that 10be the backbone of regional cooperation in the LMB. However, this new framework is yet to be approved. In December 2011, ministers from LMB countries agreed that further studies would be undertaken to clarify the potential trans-boundary impacts of the Xayaburi Dam and other LMB projects. (Grumbine et al., 2012)

b) Management of dam development

The MRC is facing a crisis of legitimacy. It has failed to facilitate an open discussion to ensure a more equitable and sustainable use of the Mekong river. Despite the significant trans-boundary implications of the dams, the MRC has to date remained silent. (TERRA, 2007b).

There is little indication that the MRC has made any effort to advise member governments against building dams on the mainstream. The MRC has also largely failed to inform the public of the immense risk of such developments, at times censoring and withholding information. (TERRA, 2007a). Despite the efforts of external critics, who have continuously raised issues such as the need for participatory development decision making at all stages of large-scale water infrastructure projects in the region, the “master metaphors” of development discourse in the Mekong—hydropower development, industrialization, meeting the needs of a rapidly growing population—have remained largely the same as in previous institutional eras (Sneddon & Fox, 2007).

The fundamental problem of MRC is that it considers itself accountable only to its member states and not to the people of the Mekong basin. The MRC’s lack of accountability to the public provides a convenient excuse for an institution that remains unable or unwilling to respond to the concerns of dam-impacted communities and civil society, and which has failed to facilitate resolutions to conflicts arising from trans-boundary impacts of developments in the basin (Watershed, 2007).
3.2 INTERNATIONAL DEVELOPMENT BANKS

The World Bank and the Asian Development Bank (ADB) have long played a role in pushing forward hydropower development (Lebel, Bastakoti, & Daniel, 2010). The banks justify their engagement in the Mekong hydropower industry on the basis of fulfilling their self-assigned mandate to reduce poverty. As energy is seen as a prerequisite for economic growth, the banks view the Mekong region’s water resources as a vast opportunity for investment in hydropower, and their support for the sector as critical to alleviating poverty (Middleton, Garcia, & Foran, 2009).

The World Bank and ADB have provided grants, guarantees, and loans for specific projects. Another role is generating and engineering government approval of key studies that support proposed dam projects (Greacen & Palettu, 2007). Aid from multilaterals often comes at the behest of developing country leaders who share the bank’s visions of development, or who see dams as national symbols of modernity and independence.

The World Bank and ADB, in the face of declining demand for their conditionality-tied project financing loans, have attempted to recast themselves as purveyors of international best practices for the region and as ‘honest brokers’ of regional cooperation initiatives (Middleton, Garcia, & Foran, 2009). Leaders of international finance institutions (IFI) claim that their involvement in big dam projects ensures a greater degree of transparency, accountability, and attention to mitigating or reducing social and environmental impacts than would have otherwise occurred, and point to unprecedented public meetings and a large amount of publicly available documents that characterize the World Bank involvement in Nam Theun 2 (Greacen & Palettu, 2007).

3.2.1 Initiatives of the Asian Development Bank

International forums held by the ADB starting in 1994 helped prepare rules for international joint ventures in Mekong hydropower projects. The ADB funded studies of hydropower resources in the region (Greacen & Palettu, 2007). In recent years, ADB has been more engaged than the World Bank in the Mekong Region. With a cumulative lending of about US$ 11.68 billion as of 2005, ADB has invested about US$ 800 million in the Mekong Region, double the funding provided by the World Bank to the East Asia and Pacific region for the same year. Under the ADB Water Financing Program, 2006–2010, investments in water are earmarked at about US$ 2 billion per year. Since the beginning of the formal Greater Mekong Sub-region (GMS) co-operation in 1992, as of 2005 ADB had provided US$ 1.8 billion loans and US$ 67 million technical assistance grants to support its GMS Program. (IUCN, TEI, IWMI, & M-POWER, 2006).

Following are the major initiatives of ADB related to basin-level cooperation in the Mekong:

The ADB subscribes to the principle of IWRM in their Water for All policy. This policy advocates water management at the river basin level. The establishment of local river basin organizations in the Mekong has been largely supported by the ADB both financially and technically. ADB’s past projects, with their heavy emphasis on infrastructure development, have been heavily criticized by academics, NGOs and local communities for causing ecological harm (damaging the environment and ecosystem), displacement of people (loss of livelihood and displacement of communities) and for disregarding people’s participation. Consequently, ADB’s recent claim that it would subscribe to a ‘more holistic’ and ‘politically correct’ water resource and environmental agenda has caused skeptics to say that it is paying lip service to the concept, using IWRM as a political tool to serve its own ‘business-as-usual’ approach (AMRC, 2007).
The “Water for All” policy (adopted 2001) recognizes the Asia and Pacific region’s need to formulate and implement integrated, cross-sectoral approaches to water management. The policy seeks to promote water as a socially vital economic good that needs increasingly careful management to sustain inclusive and equitable economic growth and reduce poverty, and advocates a participatory approach in meeting the challenges of water conservation and protection. It further makes a clear distinction between water as a service that must be delivered efficiently and as a resource that must be managed sustainably (ADB, 2013).

The policy has the following principle elements: (ADB, 2013)

- Promote a national focus on water sector reform
- Foster the integrated management of water resources
- Improve and expand the delivery of water services
- Foster the conservation of water and increase system efficiencies
- Promote regional cooperation and increase the mutually beneficial use of shared water resources within and between countries
- Facilitate the exchange of water sector information and experience
- Improve governance and capacity building

In 2005, ADB had adopted a revised version of its then existing Water Policy. It concerned an original provision requiring “all large water resources projects especially those involving dams and storage – given the record of environmental and social hazards associated with such projects – that all such projects will need to be justified in the public interest, and all government and non-government stakeholders in the country must agree on the justification”. ADB had sought views on this matter from various stakeholders to what has now become a newly endorsed amendment making the above provision less stringent (Sunchindah, 2005).

ADB also supports environment-related policies, ensuring that the projects that it funds comply with the following requirements: (a) Conduct mandatory environmental impact assessments (EIAs); (b) Assess impacts (direct, indirect, cumulative and induced) and propose alternatives; (c) Disclose relevant information to all stakeholders and ensure transparency in decision-making; and (d) Meet environmental standards and have a valid public participation process for all its dam and road construction projects (IUCN, TEI, IWMI, & M-POWER, 2006). However, implementation of this has lagged, as full and meaningful consultation with stakeholders and changing project design to include EIA findings have cost and time consequences. There were also no mandatory operational requirements attached to the Environment Policy. Key terms such as “significant environmental effects” or concepts such as “water rights” and “differential pricing” remained vague. Participants also observed that there were inconsistencies in the quality of EIAs, and that the categorization of projects requiring or not requiring EIAs was problematic (IUCN, TEI, IWMI, & M-POWER, 2006).

The Greater Mekong Subregion (GMS) economic cooperation initiative facilitated by ADB focuses on the coordinated development of infrastructure. The GMS program was endorsed at the 2002 summit meeting of the political leaders from each of the Mekong region countries in Phnom Penh and again at the second summit held in Kunming in 2005. The forward work plan includes flagship projects, intended as multi-disciplinary, large-scale interventions with high visibility and significant economic impact on the GMS economies. There are projects relating to: north-south, east-west and southern economic corridors (road plus associated infrastructure); completion of a regional telecommunications “backbone”; regional power grid completion plus power trading arrangements; private sector participation and competitiveness boosting; cross-border trade and investment support; implementing a region-wide Strategic Environment Framework; and supporting country efforts to control floods and “manage” water resources; and tourism (Dore,
The GMS emphasizes a holistic approach to development that combines measures inherently opposed to more rapid legal and illegal exploitation of the basin’s natural resources with programs supporting environmental protection and sustainable development. Unfortunately, the environmental programs receive only a small fraction of the total GMS budget, and most countries lack the institutional infrastructure, capacity, and political will to enforce their own environmental regulations, let alone participate effectively in regional cooperation (Cronin, 2011).

Ironically, what ADB refers to in its Greater Mekong Sub-region program as a ‘peace dividend’, an opportunity to bring large water resource development projects (particularly dams), which had been shelved, back onto the development agenda, has in turn fostered a new set of tensions associated with the impacts of these very developments on some of the region’s poorest people (Hirsch, 2004).

The GMS has already made significant progress toward transforming the sub-region, but its principles of cooperative, environmentally sustainable, and equitable development are being honored mainly in the breach. Major deficiencies include a structural framework that is inadequate to reconcile conflicting national interest perceptions, particularly concerning dam construction by China on the Mekong’s upper reaches; insufficient political will and governmental capacity; and disparity of economic power among the GMS countries (Cronin, 2011).

On paper, the GMS project is based on the principles of cooperative, sustainable, and equitable development. In practice, the structure of the GMS does not include an effective mechanism for multinational coordination or decision-making. Most enabling agreements on transportation, navigation, and other matters are in fact bilateral ones involving China and its weaker neighbors (Cronin, 2011).

Most importantly, as a result of Chinese objections, the GMS framework does not include the waters of the Mekong Basin. China clearly did not want any constraints placed on its plans to exploit the hydropower potential of the upper Mekong in Yunnan Province. In terms of its national power and international water law, China is free to do almost anything it wants as the upstream riparian. Bringing the Mekong’s water under the cooperative, sustainable, and equitable principles of the GMS would unacceptably compromise Beijing’s freedom of action. Thus, China carries on its dam-building and river-deepening operations entirely outside the framework of the GMS without regard for the environment or the interests of its downstream neighbors. China has completed three of at least eight planned dams, which already have interfered with the natural flow of the Mekong (Cronin, 2011).

Although the GMS program, by virtue of having all the riparian countries of the Mekong River as its members, is ideally suited to address some of the critical trans-boundary natural resources and environmental issues facing the sub-region in general and the Mekong River Basin in particular, the fact is that very little has taken place in this direction despite a Working Group on Environment being set up within the program framework and the publication earlier in 2004 of the GMS Atlas of Environment and the establishment of a Biodiversity Conservation Corridor initiative in 2005. Most of the project activities that have been implemented so far are rather location-specific and those that have more sub-region or basin-wide coverage somehow did not result in any significant impact on the policy-setting or key decision-making levels. One plausible explanation is that, being a multilateral development bank, ADB has deliberately taken an apolitical and neutral approach focusing mainly on economic and infrastructure development, which dovetails very well with its comparative advantage of being a lending institution. In the eyes of the GMS countries, ADB can also be viewed as only an external catalyst, coordinating and
mobilizing the necessary technical and financial resources required for implementing the GMS program, rather than as an indigenous concerned party (Sunchindah, 2005).

The Project "Strategic Environmental Framework (SEF) for the Greater Mekong Subregion: Integrating Development and Environment in the Transport and Water Resource Sectors" to help the bank to make funding decisions about infrastructure projects in the GMS. It combines analytical, participatory and policy-oriented processes into a strategic platform for guiding investment decisions in the transport, water resources development and environmental sectors in the GMS. Its ultimate goal is to ensure these investments are environmentally and socially sustainable, and that environmental and social aspects, as well as cumulative impacts, are considered at an earlier stage in the planning process than currently takes place. The main focus of the participatory process is on (a) identifying environmental and social issues, particularly related to trans-boundary and cumulative impacts on the transportation (primarily roads), water resources development (mainly hydropower generation and transmission), and environmental sectors; (b) formulating recommendations and prioritizing key actions to address these issues; and (c) highlighting knowledge gaps that need to be filled and the supporting investments. This process involved consulting a broad range of stakeholders, including government officials, NGOs, representatives of international and regional organizations (e.g. MRC, UNEP RRC.AP, ADB), local communities (especially in the preparation of case studies), and a broad cross-section of international and local experts (qualified observers) (ADB & SEI, 2002).

It was observed that there was an overlap in some roles as well as expectations between ADB and MRC in terms of coordinating water resource projects in the Mekong. This is not surprising because the mandate of MRC is restricted to co-operation in the Mekong river basin, while the territorial scope of ADB in the region is the GMS growth area (IUCN, TEI, IWMI, & M-POWER, 2006).

3.2.2 Initiatives of the World Bank

In 1993 the Board of the World Bank endorsed a Water Resources Management Policy Paper (WRMPP). In that paper, and in WB’s GMS regional assistance strategy, water resources management comprises the institutional framework (legal, regulatory and organizational roles), management instruments (regulatory and financial), and the development, maintenance and operation of infrastructure (including water storage structures and conveyance, wastewater treatment, and watershed protection) (World Bank, 2004). The strategy has guided the World Bank involvement in the water sector.

The WB’s GMS regional assistance strategy focuses on two main areas (World Bank, 2007):

- Enhancing collaboration on Mekong water resource management: It is proposed that the Bank should restrict its regional involvement to support the sound and sustainable development of the Mekong River
- Development of power trade: It has been and is expected to remain a critical area of Bank support.

The World Bank claims a “significant but disjointed” involvement in water resource development in the Mekong Region. It has provided lending and technical assistance to the countries in the region individually, but has limited involvement in the region as a whole. As a Global Environmental Facility (GEF) agent, the World Bank has supervised the implementation of much of the MRC Water Utilization Programme (WUP), which has received more than US$11 million from GEF since 1999 (IUCN, TEI, IWMI, & M-POWER, 2006).
Much of the criticism lodged against the World Bank governance processes relates to participation by stakeholders. Some non-governmental organizations (NGOs) observed that the World Bank mainly considers the interests of its clients (i.e., governments and private companies), and “lacks the sincerity to engage with civil society”. They criticized the fact that its stakeholder platforms were “more form than substance”, used to legitimize a project rather than seriously consider its impacts on affected communities. There was a perception that consultation at the inception of a World Bank project was minimal. Communities potentially affected by a project were seldom involved in the planning or approval. Participants from civil society felt the World Bank should allocate more resources to integrate in its operations “a regular feedback mechanism that will promote dialogue between and among all stakeholders, at different levels and on a regular basis” (IUCN, TEI, IWMI, & M-POWER, 2006).

Some controversial WB projects have been on tributaries of the Mekong, notably the Pak Mun hydropower dam approved in the early 1990s, which was reviewed by the World Commission on Dams and brought forth the issue of fisheries’ impact on local livelihoods. The Nam Theun 2 project in Lao PDR is the result of a 10-year effort to design and manage a large-scale hydropower project on a tributary of the Mekong in a way that would ensure proper environmental and social protection, besides uplifting local rural communities, and enhancing revenue management by the Lao PDR authorities. However, this project was not developed in close coordination with the MRC, leaving the WB and the ADB in a somewhat compromised position as regards perceptions of their commitment to the regional interests and processes of inter-governmental decision-making. It is also noted that neither Lao PDR nor Thailand sought a meaningful role for MRC in the development of this project (ADB & WB, 2006)

In September 2007, the World Bank hosted the Thai–Lao Sustainable Hydropower Forum in Bangkok, which invited senior representatives from the governments of Laos and Thailand, existing project operators, project developers, financiers and civil society to discuss working toward a triple bottom line approach (economic, environmental and social) for the Laos hydropower sector. The forum indicated a move by the World Bank to address the fact that hydropower projects subsequent to Nam Theun 2 were failing to replicate its standards. The forum issued a joint communiqué co-signed by Thailand’s Minister for energy and Laos Minister for energy and mines, which indicated a commitment to work toward ‘enhancing the quality of investment to make the hydropower sector both environmentally and socially responsible and sustainable in Laos’ (Middleton, Garcia, & Foran, 2009)

One of the major projects of the Bank, jointly with the ADB is the Mekong Water Resources Assistance Strategy (MWRAS), which is the result of a joint effort by these two to articulate a coherent strategy to assist the Mekong countries in sustainable management and development of their shared water resources.

The MWRAS has developed a framework of strategic principles and priority activities that are of direct relevance to “regional” cooperation and development, and focus on a program for each of the riparians, as well as on a regional agenda. This framework for action and dialogue would be implemented through the Mekong Water Resources Partnership Program (MWRPP).

The objectives of the MWRPP are to (ADB & WB, 2006):
(i) enable the riparian countries (initially focusing on the four LMB countries) to reach balanced judgments on the trade-off choices that are inevitable in a system where inter-dependencies cannot be avoided, through a well developed knowledge-driven decision-support system, nurturing a culture of cooperation among all stakeholders in the basin;
(ii) move forward with sustainable development of the Mekong water resources, demonstrating that it is possible to prepare for investment, while avoiding or minimizing negative impacts on the interests of other riparian countries, or on important environmental and social values; (iii) ensure each country receives part of the benefits of cooperation across the region, and hence increases its trust in cooperation; and (iv) create a dynamic framework of cooperation and continuing broad-based dialogue, that also opens up other opportunities for further sustainable development.

The MWRAS also envisages the future relationship between the Banks and MRC as following (ADB & WB, 2006):

- First is deepening support to the development of the knowledge-based decision-making system through extension of the work on database improvements, refinements of modeling capabilities and further elaboration of policies and guidelines for collaborative decision-making among the countries. This includes potential involvement in the BDP2 program, or, taking leadership in the proposed Division of Planning at MRCS.
- Second is working in partnership with MRC, LMB countries and other development partners for the development of high-priority, joint or parallel investment programs at sub-regional scales.
- Third is extending Bank support to the MRC Joint Committee and Ministerial Council on trust building and management of competitive interests, in addition to the capacity building support provided to the MRCS and the NMCs.

The MWRAS Program drew wide criticism from civil society groups (Middleton, Garcia, & Foran, 2009) as is evident from the following:

- The MWRAS claimed that economic and other pressures on each of the Mekong countries mean that large-scale water infrastructure projects are inevitable. The MWRAS did not ask whether these infrastructure projects are the most effective way to reduce poverty in the region or whether they are sustainable.
- The MWRAS misleadingly extrapolated the results of a hydrological model to suggest that the Mekong River could accommodate further extensive infrastructure development. The model’s results were narrowly hydrological and failed to account for ecological or socio-economic impacts, particularly the subtleties of the flood pulse ecosystem.
- The MWRAS calls for closer collaboration between the banks, the MRC and the four member states to develop new infrastructure projects. It encourages reorienting the MRC’s role from that of a basin management organization to that of a basin development organization. Given that numerous actors, including the banks, are already heavily promoting infrastructure-oriented development in the basin, civil society groups and some of the MRC’s donors argue that the MRC should work to emphasize the join management and conservation of the river basin, embracing local participation and diverse perspectives.
- The MWRAS promotes the construction of controversial water infrastructure projects, including dams, irrigation schemes, and water transfer projects analysis, in three sub-regions of the Mekong basin where trans-boundary impacts are bound to occur. It claims that competition between water users is unavoidable and trade-offs will have to be made between economic, social and environmental uses of the Mekong River (Middleton & Lee, 2007).
- Contrary to the banks’ claims that MWRAS is based “heavily on stakeholder consultations”, the preparation of MWRAS, to date, has been a banks-led process developed almost exclusively in consultation with the Mekong governments, who the banks consider to be the main stakeholders. Of the 14 official MWRAS consultations and strategizing workshops held throughout 2004 and 2005, there was only one civil society workshop, held in Vientiane, Laos, in December 2004 (Middleton & Lee, 2007).
ASEAN set up an ASEAN Mekong Basin Development Cooperation (AMBDC) scheme in June 1996 comprising all member states of ASEAN as well as China. The purpose of this forum is to mainly foster economically sound and sustainable development of the Mekong Basin through the establishment of economic partnerships and linkages between the riparian and non-riparian members of the forum. AMBDC has convened five ministerial-level and various senior official-level meetings, which focused primarily on the Singapore-Kunming Railway Link and other economic and infrastructure-related projects. China has been a dialogue partner of ASEAN since 1996, and it is interesting to note that the ASEAN-China relations have grown by leaps and bounds in recent years, and the Mekong River Basin features quite prominently as a priority area in the various frameworks of cooperation between the two sides, be it political/security, economic or otherwise.

In fact, in the latest Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity (2005-2010), there are specific references to strengthening cooperation under various Mekong River Basin frameworks, such as, AMBDC and the GMS. The plan also includes environmental protection measures for the river waters and other natural resources shared by all the riparian countries in the basin. In the Basic Framework of the AMBDC adopted in 1996, one of the stated principles that govern this cooperation is that “it complements cooperation initiatives currently undertaken by the Mekong River Commission, donor countries and other multilateral agencies”. It has therefore been an accepted practice to invite the representatives of ADB and MRC to AMBDC meetings, thus enhancing closer coordination and collaboration among the key concerned players (Sunchindah, 2005).

ASEAN-China’s current close and cordial relations offer a window of opportunity for constructive engagement to tackle the more sensitive issues pertaining to the Mekong Basin such as the upstream-downstream water sharing issues, including a comprehensive basin-wide assessment of the benefits and costs of dam construction, operation, and navigation channel modifications (Sunchindah, 2005).

Another noteworthy development in terms of putting water management issues more centrally on the agenda of relevant bodies within ASEAN and its dialogue partners is the establishment of the ASEAN Working Group on Water Resources Management (AWGWRM) in July 2002, with the assistance of the Southeast Asia Technical Advisory Committee (SEATAC) of the Global Water Partnership (GWP). As the AWGWRM falls under the overall purview of the ASEAN Ministers of Environment, it is also significant to note that at the latter’s first meeting with their counterparts from China, Japan and the Republic of Korea held in Vientiane, Lao PDR, in November 2002, they agreed to intensify cooperation in areas of common concern, including freshwater resources. Later on, in December 2003, the Ministers adopted the ASEAN Long Term Strategic Plan for Water Resources Management to meet the needs in terms of health, food security, economy and environment.

With assistance from the Australian Government, ASEAN has now adopted an Action Plan to operationalize its Strategic Plan on Water Resources. The Strategic Plan is rather comprehensive in its coverage, and is underpinned by Integrated Water Resources Management (IWRM) principles of having multi-stakeholder participation and cross-sectoral integration. It includes attention to matters such as efficient and effective management of water, promotion of equitable sharing among water users, environmental protection, mitigation of water-related hazards and maintenance of ecological balance, improving water governance, empowerment of water sector stakeholders, enhancement of decentralized, participatory and multi-stakeholder
decision-making processes, mainstreaming of gender concerns and recognition of water as a natural asset with social, cultural, environmental and economic functions and values.

Some of these elements also found an echo at the Chiangmai Ministerial Declaration on Managing Water Resources in Southeast Asia issued on 21 November 2003 by the ministers responsible for water resources in all the ten Southeast Asian countries. The Ministers reiterated and further elaborated on these various principles when they met again on 3 September 2005, and issued the Bali Ministerial Declaration on Water Resources Management in Southeast Asia in which a regional water resources management action plan was also adopted for implementation. One of the key issues stated in the declaration is to “promote peaceful cooperation between users and synergies among different uses of water at all levels in the case of boundary and trans-boundary water resources among concerned states through sustainable river basin management, including groundwater aquifers, as part of IWRM, on the legal basis, or other appropriate approaches”. In line with these Ministerial decisions, the AWGWRM could very well serve as the champion for addressing some of the upstream-downstream riparian issues based on the above-mentioned considerations. This would add relevance and significance to the role of AWGWRM and AMBDC besides embedding IWRM practices more firmly in the mainstream of ASEAN-China cooperation, beginning perhaps with a Track 2 process if necessary, like in the South China Sea case.

Middleton, Garcia, & Foran (2009) have identified new actors that are now developing, building, and funding hydropower projects in each of the Mekong countries. The absence of environmental and social safeguard policies among them, combined with the weak implementation of the host countries’ national laws, is a threat to the ecological health of the Mekong basin. Middleton et al (2009) argue that these new actors and the region’s governments should adopt international frameworks of best practices that would significantly reduce the risk of developing poorly conceived projects (Lebel, Bastakoti, & Daniel, 2010).

3.4 REGIONAL CIVIL SOCIETY ORGANIZATIONS

Global Water Partnership (GWP)

GWP Southeast Asia’s strategy aims to foster the IWRM approach by influencing international and regional organizations, central, provincial/state and local governments, and all water resources stakeholders, such as, academic and professional institutions, NGOs and the media. This influence is exercised by facilitating neutral platforms for regional and country dialogues on topics such as application of IWRM at the river basin level, policy and institutional reform, and financing. GWP Southeast Asia is also building a better IWRM database and monitoring system. The database includes a mechanism for sharing knowledge and information on water resources management through local websites. This shares case studies illustrating good and bad practices throughout the region.

GWP has also conducted several regional “dialogues”, such as the Chiang Mai First Southeast Asia Water Forum 2003 and Bali second SEA Water Forum 205, building on earlier national dialogues (Dore, Multi-stakeholder platforms (MSPS): Unfulfilled potential, 2007).

The Se San Protection Network (Hirsch & Wyatt, 2004)
The Network is an initiative of downstream Cambodian villagers in the Se San River Basin seriously affected by the operation of the Vietnam’s Yali Falls dam.

It was on March 4, 2000 that the water level of the Sesan River (a trans-boundary river flowing through Vietnam and Cambodia) rose suddenly, causing numerous deaths and loss of livelihood
among fishers and farmers in north-eastern Cambodia’s Ratanakiri Province. The unexpected surge was caused by the release of water from the Yali Falls Dam in Vietnam. 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. The MRC did not become involved before or in the tense aftermath, despite having the mandate to do so. Five years on, the topic of development on the Sesan, Sekong and Srepok rivers was still considered so sensitive that it was removed from the agenda of an MRC-convened conference on integrated water resources management 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 (Dore & Lazarus, 2009).

**MRC’s role in the case** (Lauridsen, 2004): When the 1995 agreement came into force, the MRC became responsible for minimizing the harmful effects of natural occurrences and manmade activities. When the Yali Falls conflict emerged, a special MRC task force with broad representation and a mandate to negotiate was put together in order to mediate in the evolving conflict. In April 2000, the MRC facilitated meetings between the Cambodian and Vietnamese governments in Vietnam. The Cambodian delegates consisted of the Director of the Cambodian National Mekong Committee, the Governor of Ratanakiri, the Director of the Hydroelectricity Department, representatives of the Ministry of Environment and other officials. From Vietnam, there were representatives from the Vietnamese National Mekong Committee, Deputy Director of Power Generation Department, Electricity of Vietnam, and others. Together they visited the Yali Falls dam and discussed the mechanism for information exchange besides analyzing the root cause of the tragedy. In the end, the task force mediated the development of a plan for avoiding future accidents and the two parties agreed to the following principles:

- There would be no release of water without a prior warning;
- under normal circumstances, notice should be given 15 days in advance of the release of water;
- in emergencies and extreme flood situations, warnings should be immediately dispatched directly to the relevant agencies; and
- Environmental mitigation studies, if needed, will be discussed further at a later occasion with the participation of the MRC.

Subsequently the MRC also installed water control stations along the Se San River in order to monitor the water levels downstream from the Yali Falls dam. Apparently, negotiations were held in good spirit and both parties commented that ‘the matter had been resolved’ and that ‘this was the end to it’.

The Network is gradually succeeding in working cooperatively with formal state actors, such as, the Cambodian National Mekong Committee Secretariat, and the Cambodia Standing Committee for Coordination on Dams and Canals along the Cambodia-Laos, Vietnam, and Thailand borders. External support to the network is being provided by NGOs, such as, Both Ends, Oxfam, and the Australian Mekong Resource Center. Civil society groups have created and are sustaining their efforts to lead a constructive multi-stakeholder platform. More recently, the initiative has expanded to include dam-affected villagers on the Srepok and Sekong, and there is now a “3s” working group, newsletter and events (Dore, 2007).

**Mekong Learning Initiative (MLI):**
This initiative is coordinated by Australian Mekong Resource Center and funded by Oxfam America (Mekong Research Group, 2012). The overall aim of MLI is to use a linking and learning approach to facilitate reflection, sharing, and new activities in support of a Mekong ‘body of knowledge and practice’ on the social science of natural resource management (NRM). Whilst the
focus is on the social science of NRM, this is not to the exclusion of the natural science of NRM, and indeed supporting better linkages between them is important. This is developed both within key educational institutions and through their involvement with community-based activity. The longer-term underlying aim is to support the emergence of livelihood-oriented approaches to natural resources and environmental management in line with social and ecological realities and civil society concerns. The program is shaped by approaches to teaching and learning about development that take sustainability, equity, and rights as core values.

Policy support has been a longstanding goal of MLI, but with quite a limited effect. Most effective has been the incidental involvement of local government officials in community-based learning projects, study tours and so on. There is a need to put the policy support objective into a more realistic time-frame, seeing it as a longer-term outcome through student learning, emergent civil society networks and influences based on a new generation of tertiary-trained graduates, and building on incidental opportunities through study visits and other activities such as local government officers’ enrolment in postgraduate courses and involvement in research. At the same time, better linkage between learning institutions and regional agencies, such as, the MRC, ADB, NMCs, TERRA, OA, WWF, IUCN, SEARIN has the potential to create an interface between policy and locally-based learning on social aspects of natural resource management. Australia has been one of the more important sources of technical expertise and funding at the MRC.

**Oxfam Mekong Initiative:**
The Oxfam Mekong Initiative (OMI) is a joint effort of the eight Oxfams working in the six riparian states of the Mekong River. Together with its partners, Oxfam is working to promote the interests of the poor throughout the Mekong region during a time of extensive and rapid development, which is complex in nature and often includes difficult trans-boundary issues.

In recognition of the right of all people to be able to farm, fish, trade, have an informed voice, and contribute to decision-making at the levels that they choose, the OMI has focused on the four thematic issues: trade, poverty reduction, infrastructure, and capacity building. The Oxfams in the Oxfam Mekong Initiative are affiliates of a worldwide confederation of 12 Oxfams. As the Mekong sub-region is developing rapidly, it is increasingly vital that the millions of people who depend on the Mekong’s rich natural resources for their livelihoods maintain access to and management of these resources. Oxfam is working with counterparts to enable politically and economically excluded communities to have a say in the development decisions that affect their livelihoods.

OMI hosted the forums concentrated on trade, poverty reduction strategies, infrastructure and capacity building (Dore, 2007).

**World Wildlife Fund (WWF):**
The WWF Living Mekong Initiative (LMI) is an Integrated River Basin Management (IRBM) initiative aimed at marrying successful biodiversity conservation with sustainable development. The LMI follows a two-tiered approach, with WWF country offices addressing country-specific priority freshwater issues (with support from the LMI) and the LMI itself working mainly on two basin-level priority issues (WWF):

i. **Dam and energy:** The LMI is participating in the global WWF "Dams Initiative" toward the implementation of World Commission on Dams’ recommendations for local dam projects. At present, the LMI is focusing on two dam projects - Nam Theun 2 (Laos) and Ta Trach (Vietnam).
ii. Sustainable Management of the Floodplains: The LMI and its partners, particularly the MRC, are working to highlight the important role of the Mekong floods, most notably in fisheries but also in numerous other activities. The ultimate aim of this work is to provide a concrete and quantitative economic argument for the value/benefits of the floods that would facilitate accurate and balanced decision-making in relation to proposed development projects. The work undertaken up to now by the LMI has predominantly been initial/broad valuation assessments in Cambodia and Laos, and has been designed to ask more questions in order to instigate others to explore more specific valuation options. However, the LMI is aiming to continue its direct involvement in the area through a policy initiative to investigate the impacts of road and levee construction on the floods with a view to developing guidelines to minimize the effects, and establishing local dialogue to further investigate the benefits of the floods.

The Living Mekong Initiative (LMI) is now actively working in China to ensure greater involvement of stakeholders, and support linkages between China and the MRC to attain socially, economically and environmentally sound solutions for the entire basin.

*World Resources Institute:* Annual meeting of the Regional Environmental Forum 2002+ focused on environmental governance (Dore, 2007).

*International Union for Conservation of Nature (IUCN):* Mekong Water Dialogues: The Mekong Water Dialogues (MWD) is coordinated and facilitated by the IUCN and supported by the Ministry for Foreign Affairs of Finland. It was initiated to work with countries of the Mekong Region, namely Cambodia, Lao PDR, Thailand and Vietnam, to improve water governance by facilitating transparent and inclusive decision-making to improve livelihood security, human and ecosystem health (IUCN, 2013).

Mekong region water governance network 2003+ focuses on cross-border research partnership and dialogue about water and food, water and energy, water and nature via Mekong Program on Water, Environment and Resilience (M-POWER).

*International Rivers:* International Rivers is monitoring the regional programs promoted by international development agencies (i.e., WB and ADB). It exposes the flawed assumptions of these plans, and calls for solutions that ensure equitable and sustainable development that does not destroy the resources upon which the region’s riparian communities depend (International Rivers).

International Rivers has advocated against projects such as Nam Theun 2 Dam in Laos (Dore, 2007)

*Rivers Watch East and Southeast Asia* (RWESA) Rivers Watch East and Southeast Asia (RWESA) is a network of NGOs and peoples’ organizations from East and Southeast Asia - supported by their allies internationally - that was formed in July 2000. The network aims to stop destructive river development projects in East and SE Asia, and to restore rivers to the communities who depend on them. The network currently consists of around 35 organizations from East and Southeast Asia.

The network focuses on linking communities and advocacy efforts related to dams and river development (Dore, 2007).
4. INTERNATIONAL NORMATIVE FRAMEWORK ON RIVER BASIN DEVELOPMENT AND RESPONSES IN THE MEKONG

Like other major international river systems in the world, the Mekong river has increasingly become a geographical focus for promoting and initiating international normative frames for sustainable river basin development. Legal and policy frameworks are increasingly recognized and advocated as fundamental to effective water governance around the world, particularly in the light of the concept and associated principles of sustainable development. (Hirsch, Jensen, Boer, Carrard, FitzGerald & Lyster, 2006)

Increased awareness of the importance of sustainable water use and effective water governance has prompted the establishment of many global institutions, such as, the World Water Council (WWC), the Global Water Partnership (GWP), the World Commission on Dams (WCD), the International Water Management Institute (IWMI) and the Mekong River Commission (MRC). These institutions, together with other global players, such as, the World Bank (WB) and the Asian Development Bank (ADB), are actively engaged in devising and promoting policies fundamental to sustainable management and development of water. (IUCN 2012)

The following are some of the most important international norms being promoted in the Mekong by various institutional players outside of the government, mostly through multi-stakeholder or inter-group cooperation.

4.1 INTEGRATED WATER RESOURCES MANAGEMENT AND WATER GOVERNANCE

In the water sector, the concept of sustainable development is put into effect through the principles of Integrated Water Resources Management (IWRM) and has been widely adopted as the international community has moved toward a common understanding of the need to protect water resources and to manage them in a way that reflects the reality of the connection between water and the surrounding ecosystems. The Global Water Partnership (GWP), one of the most influential international bodies in the field, identifies IWRM as the guiding principle behind water governance, defining it as “a process which promotes the coordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems”. The MRC adopts this definition in its subscription to the need to implement IWRM, stating: “This approach allows for a holistic view of the needs and interests of the countries sharing the river system. With this approach, the MRC believes a well-balanced, equitable and sustainable development process can be facilitated — for the mutual benefit of all Mekong riparian countries” (Hirsch & Jensen et al. 2006)

For instance, with financial support from AusAID, during 2008–2009, MRC implemented the preparation phase and formulated Mekong IWRM Project (M-IWRMP) which addresses IWRM challenges in the LMB through a three-tier approach, combining interlinked basin, national and cross-border initiatives in synergy with the MRC-led basin development planning process. The three components of the Project are: regional, national and trans-boundary. Located at the apex of the Project, the regional component will engage and work closely with stakeholders (line agencies and NMCs, civil society groups, NGOs, the private sector, etc), in each of the four LMB countries. The trans-boundary component and its respective projects are directly managed under the umbrella of the regional component. The institutional arrangements for the national component in each LMB country will follow the national policy and organization of that country and the WB, as well as other Development Partners who may join the Project (MRC, 2010).
4.2 SUSTAINABLE HYDROPOWER DEVELOPMENT

As part of its Initiative on Sustainable Hydropower (ISH) to provide a trans-boundary and international best practice approach to designing mainstream Mekong hydropower schemes and sharing these with MRC Member Countries, the MRC developed a *Preliminary Design Guidance for Proposed Mainstream Dams in the Lower Mekong Basin* in 2009 (MRC, 2009). This document provides preliminary design guidance in the form of performance targets, design and operating principles for mitigation measures, as well as compliance monitoring and adaptive management. Two broader aims are: (i) To ensure that developers have timely guidance in order to adopt a consistent approach to the design of individual dams, as well as the proposed mitigation and management measures. This is important, particularly where developments have significant trans-boundary impacts for people or the environment downstream. (ii) To ensure that the approach of offering performance targets allows developers the flexibility to identify and propose the best solutions.

In addition, in order to provide a regional planning support for sustainable hydropower, the MRC has also developed a trans-boundary hydropower sustainability assessment tool at the project and sub-basin levels through a partnership with the WWF and the Asian Development Bank. The tool helps in identifying, in as little as a week, the most sustainable sites, designs, and operational rules for hydropower development in the Lower Mekong River Basin. (MRC- WWF- ADB, 2010). (Retrieved from [http://www.mrcmekong.org/about-the-mrc/programmes/initiative-on-sustainable-hydropower/](http://www.mrcmekong.org/about-the-mrc/programmes/initiative-on-sustainable-hydropower/)).

The overall goal of the MRC’s ISH for 2011–2015 is to support cooperation among Member Countries on sustainable forms of hydropower. The Initiative aims to offer Member Countries with national development policies, consistent with the implementation of the 1995 Mekong Agreement. Key outcomes of the ISH include awareness raising on sustainable hydropower and supporting multi-stakeholder dialogue; knowledge management and capacity building; embedding sustainable hydropower considerations in regional planning and regulatory systems; and developing a hydropower sustainability assessment and good practice adoption. (UNESCAP, 2011)

4.3 TRANSPARENCY AND INCLUSIVE DECISION-MAKING

Another example is the Mekong Region Water Dialogues, which is an ambitious IUCN program designed to improve water governance in the Mekong Region by facilitating transparent and inclusive decision-making among business, government and civil society. It aims to: (i) Improve decision-making processes around water-related investments in the Mekong Region; (ii) Provide an opportunity for business, government and civil society actors in the Mekong Region to participate in dialogues – to inform, and be informed; and (iii) Enable different perspectives on Mekong region water-related development to be considered in decision-making.

Also, the BRIDGE (Building River Dialogue and Governance) Project, launched in 2011 aims to build water governance capacities through learning, demonstration, leadership, and consensus-building. In the Mekong region, this includes the following rivers: Sekong (Vietnam-Lao PDR), Sre Pok (Vietnam-Cambodia), Sesan river (Vietnam, Floating Village in Tonlé Sap, Cambodia), which are important tributaries of the Mekong, and contribute 20 percent of the total flow of the mainstream Mekong. The process has started by focusing on setting up national commissions to manage each basin, which will eventually be scaled up to a basin-wide commission. (IUCN, 2012)
4.4 INTERNATIONAL WATER COURSE LAW

The primary source document setting out some of the latest thinking on international water law is the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses. This instrument was drafted by the International Law Commission over many years and is intended as a framework convention, setting out a wide range of principles and definitions. It put forward the following key principles: the notion of reasonable and equitable use of shared waters; the obligation not to cause significant harm to other nations when utilizing shared water resources; the duty to inform and consult with downstream neighbors regarding planned uses; and the need to share water data and related information. The Mekong Agreement (Article 5) contains provisions that stipulate an obligation to consult with or notify riparian neighbors prior to the construction of specific projects. In the case of the Mekong, the procedures essentially allow states to do whatever they choose on tributaries within their territorial boundaries, thus reaffirming sovereign power. (Fox & Sneddon, 2007)

5. BILATERAL NEGOTIATIONS IN TRANS-BOUNDARY WATER ISSUES

Direct government-to-government talks and negotiations have been resorted to on certain occasions as a mechanism to address issues of conflict in water infrastructure development or operations of existing dams in the Mekong. Leaderships of national governments in the Mekong region have a clear preference for bilateral approach to problem solving or conflict resolution on issues of trans-boundary nature over multilateral binding negotiations or agreements. MRC’s mandate also privileges government-to-government talks and negotiations in cases where its mechanisms fail to help in the resolution of disagreements between countries over water use and development in the Mekong. MRC mandate, as mentioned earlier, is to facilitate as an intermediary, talks and negotiations between governments.

However, governments of countries in the Mekong can directly and immediately conduct bilateral talks over certain trans-boundary water issues, without soliciting the facilitating or intermediary role of MRC. Thus, bilateral approach to governance on trans-boundary issues on water is highly influenced by the historical characteristics and nature of international relations between two given countries and their traditional practice in diplomatic talks and negotiations. They are therefore influenced not only by power (im) balance between the two countries on specific water issue fields, but also by the overall balance of power between the two relevant countries in terms of wider economic, military, and socio-cultural ties.

Following are two cases in which bilateral approach was used for resolving trans-boundary water issues in the Mekong:

5.1 CASE OF THE SESAN BASIN

The Yali Falls Dam, construction on which started in 1993, is the first dam on the Sesan River Basin. From 1996 to 2001, it was reported that unanticipated surges and fluctuations in the river caused casualties and washed away properties of people living downstream. The break of the cofferdam in 1996 was said to be responsible for massive flooding in downstream Cambodia (NGO Forum on Cambodia, 2005). The flash floods in February 2000 resulted in several deaths and loss of livelihoods of fishers and farmers in Ratanakiri, northeastern Cambodia. A series of studies carried out later (Fisheries Office & NTFP, 2000; Baird, et al., 2002) indicated that the operation of Yali Falls Dam upstream led to uneven flooding events, increased dry-season flows,
caused unpredictable fluctuation in river flows and height, degraded the water environment, and had adverse impacts on environment health and fisheries.

While the studies and documents were publicly released, Vietnam still did not agree with the results, arguing that there wasn’t enough evidence to link all damage downstream in Cambodia to the operation of the Yali Falls Dam upstream (Wyatt & Baird, 2007). The unfolding of events after the trans-boundary impacts of Yali Falls Dam were reported to the governments of Cambodia and Vietnam demonstrates the determination by the Vietnamese to control developments on their own terms, conceding only to initiatives that have little bearing on their upstream national interests (Wyatt & Baird, 2007).

The Sesan negotiations reached the highest political levels on both sides of the border. At the third meeting of the Joint Committee in November 2003, the Vietnamese Prime Minister released a directive consisting of five ‘solutions’ for Electricity of Vietnam (EVN) to implement in response to the concerns of the Cambodian government. While the directive did indicate high-level political recognition of the Cambodia’s serious concern over the Sesan developments, the ‘solutions’ skirted around the main concerns of the Sesan communities, as expressed in the letter of concern between CNMC and VNMC regarding the return of natural flows in order to secure community livelihoods. The directive represented a unilateral move on the part of the Vietnamese to implement a flow regime without negotiating or consulting with the Cambodians. In essence, the first four solutions served to formalize in writing the earlier commitments made by EVN to provide advance warnings of water releases under normal and emergency flood conditions. The second ‘solution’ provided a commitment and parameters to control the rate of discharge so that “people along the Sesan River can recognize changes in water level and take precautions accordingly”. The fifth solution, which provided that “The environmental mitigation studies, if needed, will be discussed later with the participation of the Mekong River Commission”, revealed that there was still some ambivalence as to the need for further studies of impacts and mitigation on the part of the Vietnamese, reflecting an attempt to advance the Vietnamese interests while disregarding the Cambodian concerns (Wyatt & Baird, 2007).

A trans-boundary impact assessment was eventually carried out, although it is not known if this includes a mitigation study as suggested by the Vietnamese Prime Minister. The MRC was marginally involved, although the Vietnamese have retained control of the assessment by selecting and appointing consultants who, according to Cambodian government negotiators, had a conflict of interest because of their involvement in Vietnam’s National Hydropower Plan, which Vietnam ignored. Eventually, in 2005, Vietnam proceeded with its preferred international consultants. Although the study is reportedly complete, it is yet to be released publicly seven years after it was first discussed in the Joint Committee. Because the Vietnamese paid for a part of the study, they had advance opportunity to comment on it, and suggest possible changes that might benefit them. Vietnam continues to retain control of the report and its release, signaling its intention to remain in charge of the process (Wyatt & Baird, 2007).

Unequal Negotiating Capacity
The negotiations within the Joint Committee of the MRC have demonstrated a reduced willingness on the part of the Cambodian members to negotiate or act on behalf of the Sesan communities. They lack the technical and financial capacity to carry out their own scientific analysis of the trans-boundary impacts on the Sesan, and possess little political will to confront the Vietnamese about the negative impacts of dams on the Sesan River. This has put the Cambodian members in a weak position during negotiations. For example, the Vietnamese have been able to avoid discussions on the continuing impacts of Yali’s operations, and in particular the impacts of diurnal fluctuations in the river height, by citing the lack of scientific evidence from
any Cambodian government agency. Members of the Cambodian Sesan Committee have often claimed that they are unable to raise community concerns because they lack adequate scientific evidence to present their case to the Vietnamese. Yet hourly river level data provided by the MRCS (without accompanying analysis) constitutes irrefutable scientific evidence of significant changes in river hydrology, showing diurnal fluctuations of river levels that can vary by as much as one meter in a 24-hour period. The Vietnamese have ignored this issue and instead focused on the benefits of increased annual dry season flow (Wyatt & Baird, 2007).

The Cambodian Government has been unable to effectively negotiate successfully for the mitigation of the negative effects, prevention of further dam construction and compensation for the affected communities. This may be in part due to the closeness of the current Cambodian regime to Vietnam, and hence the reluctance of the government to offend its stronger neighbor. In addition, Cambodian negotiators are ill-equipped with the technical knowledge and skills required to argue their case, while Vietnamese negotiators bring piles of technical studies and documents to the meetings. The unequal political and economic power of the neighboring nations makes effective intergovernmental negotiation difficult, as does their unequal technical capacity. The Cambodian Government, with a less established political system and weaker economy, is not in a position to negotiate with Vietnam on an equal footing, and to make demands for affected communities. (Hirsch & Jensen et al., 2006).

**MRC's role**

The MRCS response has been to claim to be hamstrung by its own mandate. From 2 to 3 September 2002, Secretariat members, together with the Regional Director of Oxfam America East Asia Regional Office, attended the Australian component of the Dialogue on River Basin Development and Civil Society in the Mekong Basin. The Sesan Secretariat directly questioned the Chief Executive Officer (CEO) of the MRCS about the role of the MRC in resolving the impacts of Yali. While pointing out that the genesis of the Yali problem preceded the formation of the MRC in 1995, he demurred that the matter was out of his hands and that the Sesan Protection Network (SPN) should take their concerns directly to the Cambodian Government. He also pointed out that the MRC’s 1995 Agreement had established a dispute resolution process involving the respective member governments, and asserted that the MRC was beholden to follow this process. These views were similarly repeated by the MRCS at the second stage of the dialogue held in Ubon Ratchathani, Thailand, from November 8 to 12, 2002 (Hirsch & Wyatt, 2004).

To date, the MRCS’s intervention has been to facilitate the establishment of the Cambodia-Vietnam Joint Committee for the Management of the Sesan River at the MRC’s 7th Council Meeting in October 2000. The MRC’s mandate to initiate a matter between two members at the council level is addressed under Articles 34, 18C and 24F. Under Article 34, the process is driven by the MRC. If no resolution is achievable, the next step in the process, Article 35, mandates that the governments in dispute enter into a government-to-government negotiating process. A third-party mediator is provided if the government parties agree to such a step. However, Cambodia has not taken advantage of this option. According to the MRCS, the Sesan issue is being resolved under Article 35 through the meetings of the Cambodia-Vietnam Joint Committee for the Management of the Sesan River. The MRCS views the establishment of this committee as a significant test case for the MRC’s dispute resolution mechanisms. The Sesan case is the first to invoke Articles 34, 18C, and 24F. This Joint Committee has sat three times. In 2004, the Joint Committee was disbanded and re-framed as the ‘Standing Committee on the Management of Dams and Canals along the Cambodian Vietnam Border’, but to date this new committee has not convened to discuss developments on the Sesan, despite this being within its mandate (Wyatt & Baird, 2007).
The MRC’s mandate in trans-boundary governance is also hampered by its 1995 Agreement, which has no explicit requirement for trans-boundary EIAs for tributary projects, such as, the Sesan dams. Furthermore, according to a November 2002 MRC communiqué entitled ‘Preliminary procedures for notification, prior consultation and agreement’, while upstream countries are now required to notify downstream countries of tributary developments that have potential downstream impacts, they are not required to hold consultations (Wyatt & Baird, 2007).

The MRCS participates in the Joint Committee meetings by providing facilitators, language interpreters, and neutral technical advice/data. MRCS also provided detailed recommendations on the TORs for the hydrodynamic modeling of the Se San Basin and an EIA of the Se San River from the Vietnamese border to Voen Sai District in Ratanakiri Province, Cambodia in early 2002 (Hirsch & Wyatt, 2004).

The **SPN’s active response**

The Sesan Protection Network (SPN) was established by Non-Timber Forests Products Project (NTFP), and a key Ratanakiri-based NGO, Global Association for People and Environment (GAPE), to support affected communities beyond the already completed studies due to concerns about the apparent inaction at official levels, and reports of continuing impacts being experienced in Ratanakiri and Stung Treng Provinces. Despite what they perceive as an ambiguous and ineffective response from the MRC, Cambodian National Mekong Committee (CNMC) and Vietnam National Mekong Committee (VNMC) to the Se San problem, the SPN has assessed that engagement and negotiation through these key agencies and other donor-related agencies would be central to their strategy (Hirsch & Wyatt, 2004).

The first National Se San Workshop held on 27 November 2002, invited key Cambodian government representatives from relevant national agencies such as the CNMC and the Ministry of Water Resources and Meteorology, but they declined to attend, citing other commitments. Conspicuously absent also were the MRCS, who declined an invitation to participate lest it be seen as partisan since Vietnam had not been invited. Reflecting their own impotence in solving the problem, the (Ratanakiri and Stung Treng) Provincial Governors have appealed to the national government to work with the Vietnamese Government to find a resolution, and for the MRCS to assist the two governments (Hirsch & Wyatt, 2004).

The Se San communities have attempted to deal with the existing dam and influence the future direction of development on the Se San River by seeking to build a coalition of governmental and non-governmental interests within Cambodia, who would be in a position to engage Vietnam in dialogue or bring pressure to bear through the MRC and other agencies. To date, these attempts have been truncated at the provincial government level. Within the wider context of unequal power relations between Cambodia and Vietnam, there is reluctance on the part of the Cambodian government to make an issue out of Yali Falls and other developments on the Se San River. In turn, the MRC has no government complainant to whom a response is mandated (Hirsch & Wyatt, 2004).

The Sesan case shows promising approaches employed by grassroots groups and communities that involve up-scaling local action in order to involve river basin communities in sustainable and equitable management of their rivers. To date, there has been little that could realistically be termed as negotiation between the communities and SPN, on the one hand, and Electricity of Vietnam on the other. Governance arrangements entered into by the intermediaries in whom the communities placed some hope at the outset, notably CNMC and MRCS, have not proven responsive to community concerns (Hirsch & Wyatt, 2004).
Clearly, river management and conflict management in the Mekong River Basin needs to be more responsive to the river users themselves. If this is to happen, the MRC, the donor agencies that fund it, the consultants who staff its projects and the non-governmental voices whose advocacy may have some influence over its future directions, need to broaden their understanding of the Commission’s riparian constituency. They need to acknowledge the power plays inherent in trans-boundary committees that are constituted at a governmental level, moving away from stakeholder configurations that are structured mainly by government-to-government relations. In terms of governance, this suggests a fundamental rethink of the relationship between the river basin commission and the riparian actors to whom it is accountable (Hirsch & Wyatt, 2004).

SPN worked to mobilize a multi-layered advocacy coalition to support the work of the community network. This coalition has included allies within civil society, local government authorities and the media, who have been actively engaging in advocacy to raise awareness while targeting influential stakeholders at various levels (Trandem, 2008).

The relationship between civil society actors, notably riparian communities such as those along the Se San, and their national governments (especially National Mekong Committees) will help determine the level of buy-in to a different sort of river basin organization that is more responsive to a multi-layered stakeholder constituency (Hirsch & Wyatt, 2004).

Significantly, the SPN and the provincial governments, as key stakeholders in the Se San dispute, have not been invited to participate in these meetings. Crucially, there is no political representation in the Cambodia-Vietnam Joint Committee. Cambodian negotiators represent the Department of Water Resources, the CNMC, and the Ministry of Environment, while Vietnamese negotiators represent the Ministry of Industry, EVN, VNMC, and the Yali Falls Dam management, all of whom are technocrats.

In this case, MRC member countries have indicated that they prefer to act unilaterally or bilaterally rather than through the MRC. This is particularly true where the rivers in questions are tributary watercourses. Decision-making regarding tributaries watercourses is conducted according to the principle of national sovereignty (the Harmon Doctrine). Although referred to in the Mekong Agreement, tributaries are only subject to rules of notification for dry season diversions. In effect, they are not managed as part of the wider Mekong Basin by MRC member states (Hirsch & Jensen et al., 2006).

The successes in making the experience of affected communities known when compared with the incapacity of the MRC to take action indicate that in the Mekong, formal channels are not always the most appropriate or effective means by which to effect change. Civil society can assist in coordinating and resourcing local actors, enabling local actors to collectively seek to be heard at the official level (Hirsch & Jensen et al., 2006).

5.2 THAI WATER GRID

This scheme includes significant trans-boundary components. The project pre-feasibility document identified 18 potential sites from which water could be transferred, including the Stung Nam River in Cambodia and the Xe Bang Fai, Xe Bang Hiang and Nam Ngum rivers in Laos. The document provides a list of priorities and favors that require only bilateral discussions. Although other options, such as diversion of water from the Mekong River itself, would make more sense both economically and from an engineering perspective, this option is considered too complicated as it would require that Thailand negotiate with all the Lower Mekong Basin countries (Hirsch & Jensen et al., 2006).
Thailand has indicated its preference for unilateral or bilateral river management over multilateral negotiations. The project pre-feasibility document states: “The feasibility of the diversions from neighboring countries gives more weight to considerations relating to agreements with the relevant countries than other considerations such as the investment costs. This is because a number of the rivers that are the sources of water for these diversions are international rivers” [that is the Salween (and its tributary the Muoi) and Mekong River]. In 2004, the planned transfers from Laos were given preliminary approval when a memorandum of understanding was signed between the Thai and Lao governments authorizing the diversion of Lao waters into neighboring Thailand. This part of the water grid scheme has been dubbed the “Thai-Lao Water Friendship”. The plan is a kind of water trade, whereby Thailand purchases water from Laos and pipes it under the Mekong mainstream into reservoirs in Northeast Thailand (Hirsch & Jensen et al., 2006).

The trans-boundary component of the project brings the Laos national interests into debate with economic benefits from the sale of supposedly excess water seen as a positive for the national economy. However, to date there has been very little public discussion or awareness of this proposal in Laos. Sale of tributary waters is bound to have impacts in terms of lost opportunities for irrigation and other water uses within the country. In Thailand, there are sharply conflicting interests in such infrastructure-driven water resource development. They are regularly challenged locally and on the national stage. In Laos, a clear distinction between local and national interests in water has not been articulated in the same way (Hirsch & Jensen et al., 2006).

The MRC has displayed an unwillingness to be proactive with regard to national development plans, which affect the basin. Although elements of the water grid were included in the BDP as priority projects, the MRC has not taken an active interest in the scheme as a whole (or on the level of political negotiation) and there is a sense that they will only do so if a request from a member government is forthcoming (Hirsch & Jensen et al., 2006).

6. RELATIONS BETWEEN LOCAL COMMUNITIES, NGOs AND GOVERNMENT AND REGIONAL MULTILATERAL AGENCIES

An integral characteristic of integrated river basin management is its being participatory in planning and decision making. It lays emphasis on consultations and meaningful participation of various stakeholders in planning and decisions that have to be taken in connection with the river basin development. Dialogue and participation by stakeholder groups in river basin management presumes not only relationships among top-level stakeholder group representatives, but also and perhaps more importantly among local communities, CBOs and grassroots level NGO intermediaries, on the one hand, and government agencies and regional multilateral agencies on the other hand, on issues such as livelihood impacts. While the lower Mekong river basin is witnessing initiatives on river basin-oriented concerns, and integrated river management is being advocated as a normative framework by multilateral agencies and to a certain extent, discursively supported by various governments in the region, public participation, especially of local communities in decision making and planning of these initiatives is lacking. It is as if both multilateral and bilateral conduct of business on issues relevant to integrated river basin management are left to stakeholder groups that are at the national or regional level of leadership of government and multilateral agencies. Local communities and their representatives generally do not have any meaningful participation, and have to make an effort to be heard vis-à-vis these high-level stakeholder groups.
An oft-repeated critique of the MRC is the lack of public participation in development projects. The MRC has not come a long way in creating public constituency and formalizing public participation in river basin management and planning. In many parts of the Mekong River Basin, dissemination of information is very scarce – in particular in remote and poorly developed areas of Cambodia, Laos and Vietnam. At the same time, little attention has been paid to strengthening the civil society at the regional level in the basin. However, recently, in the hydropower program, MRC’s hydropower development strategy advocates active stakeholder representation at all levels of planning and decision making, extending beyond the consultation stage. MRC, as a regional entity, aims to play a very important part as the central point for information collection and as the link between key stakeholders. MRC also aims to provide technical support and advice on the public participation process, underpinning the strategic planning level if required. (MRC, 2005)

MRC is often criticized by non-governmental organizations and civil society for not being responsive to human livelihood concerns, nor to demands for a more transparent and participatory decision-making process. Nevertheless, there are prospects for improvement in trans-boundary water governance in the LM, as much recent effort has been put into allowing the MRC to play a more prominent role in decision-making that may include enhancing public participation.

For instance, the MRC facilitated discussions between LM countries about Laos’ proposed Xayaburi Dam. External pressure for disclosure was very high, and by the end of the designated period, sufficient information had been shared for the MRC to release a high-quality advisory report (Grumbine, Dore, & Xu, 2012). The SEA for all mainstream dams and the first implementation of the PNPCA for Laos’ Xayaburi proposal are important steps. The next step will be to build on these processes, to better ensure that high-quality impact assessments are implemented for such projects in the future. To that end, the MRC has drafted a trans-boundary environmental impact assessment framework that may become the backbone of regional cooperation in the LM. However, this new framework is yet to be approved. Despite its absence, in December 2011, ministers from LM countries agreed that further studies would be undertaken to clarify the potential trans-boundary impacts of the Xayaburi Dam and other LM projects (Grumbine, Dore & Xu, 2012).

An MRC Xayaburi working group has been convened under the auspices of the Procedure for Notification, Prior Consultation and Agreement (PNPCA), which is designed to ensure that MRC countries engage in informed “prior consultation” about any proposed water use that may have major impacts on water quality or flow regimes along the Mekong (Grumbine, Dore, & Xu, 2012).

Prior to the start of the Xayaburi consultation process, MRC’s public participation on possible mainstream developments was included as part of the Basin Development Plan and the Strategic Environmental Assessment processes. The MRC’s prior consultation process supports the Joint Committee through technical review, analysis, and also during their public participation processes. Other Member Countries planned to hold public participation meetings within their countries at local and national levels with MRC support during January and February 2011. A number of consultations among affected groups have already been held in Lao PDR organized by the developer and government. Other groups will also organize meetings on this issue and the MRC would like to receive information on the discussions held. The perspectives and views of the people gathered during public participation will be reflected in the MRC Secretariat briefings to the Joint Committee Working Group meeting and Joint Committee. The focus of local public participation will be to garner the concerns of potentially affected groups that have not yet had
the opportunity to be involved or do not have easy access to communication channels such as the internet or the media (MRC, 2011).

However, the assessments of independent scientists and professionals demonstrate that the Environmental Impact Assessment (EIA) for the Xayaburi Dam, which should have formed the basis of an informed appraisal of the project, was flawed and incomplete. What’s more, it was not made available to the public prior to the public consultation process, thus compromising the process (Higgs, 2011).

As the project failed to adequately consult the people living near the dam site and the limited consultations that did occur were meaningless as key project information was not provided to participants, the dam has failed to meet the minimum standards for consultation with directly-affected communities. Furthermore, consultation within the region has also failed to meet the minimal standards as the project’s EIA report was released to the public only in mid-March 2011, weeks after public consultations on the dam were held in Thailand, Cambodia and Vietnam (BankTrack, 2013).

The fundamental problem of MRC is that it considers itself accountable only to its member states and not to the people of the Mekong basin. The MRC’s lack of accountability to the public provides a convenient excuse for an institution that remains unable or unwilling to respond to concerns from dam-impacted communities and civil society, and which has failed to facilitate resolutions to conflicts arising from trans-boundary impacts of developments in the basin. (Watershed, 2007)

Much of the criticism lodged against the World Bank governance processes relates to participation by stakeholders. Some non-governmental organizations (NGOs) observed that the World Bank mainly considered the interests of its clients (i.e., governments and private companies), and “lacks the sincerity to engage with civil society”. They criticized the fact that its stakeholder platforms were “more form than substance”, and were used to legitimize a project rather than seriously consider its impacts on affected communities. There was a perception that consultation at the inception of a World Bank project was minimal. Communities potentially affected by a project were seldom involved in the planning or approval. Participants from civil society felt the World Bank should allocate more resources to integrate in its operations “a regular feedback mechanism that will promote dialogue between and among all stakeholders, at different levels and on a regular basis” (IUCN, TEI, IWMI, & M-POWER, 2006).

In a bilateral approach to trans-boundary problems, such as the Yali Falls dam operations that negatively affected local communities in Cambodia, there have been no mechanisms whereby local concerns could be heard by higher authorities of adjacent countries. During the incident in February 2000, the Sesan Working Group was established with the involvement of international and local NGOs to investigate and report the impacts of the flooding. This group, which later morphed into the Sesan Protection Network (SPN), worked collaboratively with the provincial fisheries’ offices and completed two impact studies in Ratanakiri and Stung Treng Provinces, which documented the downstream impacts of the Yali Falls Dam in the two provinces. The study called upon the Cambodian government to begin addressing the issue and negotiate with Vietnam (Trandem, 2008). In November 2002 the SPN held the first National Sesan Workshop. In this workshop, the affected people living downstream of the Sesan River had their concerns heard by the local government, initiating further negotiations with the neighboring state. However, while the Vietnam officers were not invited to this workshop, the absence of national-level Cambodian government representatives as well as those of the MRC limited the opportunity for the communities to amplify their concerns. The SPN sought to engage the Cambodian
national government and the Cambodian National Mekong Committee for a comprehensive local, national and international coalition, which would be competent and influential to get Vietnam back to the negotiation table, and to request the MRC to assist in adopting a resolution. However, since the Government of Cambodia was also planning to develop hydropower on the Sesan River, it was lukewarm to SPN’s plans.

7. CONCLUSIONS

According to experts, the most serious problem arising from the recent intensification of hydropower development in the Lower Mekong is its impact on water resources (for example, on river flow regimes, sediments flow, and inland saline intrusion, and more remotely, in the Upper Mekong Region) often trans-boundary in nature. This situation creates the need and public expectation for basin-level and sub-basin level responses by public sector decision-makers, but their interests and remit are nested in separate nation-state government entities. (Private business or quasi-private sector hydropower developers also directly transact exclusively via individual government’s respective agencies.)

Major and key decisions and policies on governance in livelihoods, water valuation and dam cascades are made by individual national governments of the lower Mekong basin countries, each with a strong tradition of independence and non-interference in formulating respective national interest agenda.

This tradition becomes a constraint in adopting a basin-level or sub-basin level approach to issues of livelihoods, water valuation and dam cascades inherent in the current hydropower projects. While progress is being made on several fronts—poverty reduction, power provision, food security, cross-border trade, biodiversity protection and climate-change adaptation in the Mekong region—we live in an era of rising uncertainty and declining resilience, and therefore each Mekong country must understand that sovereign security increasingly depends on cooperative environmental decision-making. For this, there is a need for new definitions of what constitutes “reasonable and equitable” utilization, within a context of informed regional diplomacy (Grumbine, Dore, & Xu, 2012).

These definitions should also be anchored in the recognition that negotiations and agreements between and among governments can perpetuate misrepresentation of the riverine ecosystems and allow sovereignty-driven decisions that are likely to hasten ecologically harmful development activities instead of ensuring the integrity of a basin’s ecosystem (Kim & Glaumann, 2012). Further, management of trans-boundary river basin will also require the recognition and creation of new political spaces, which imply some level of de-territorialization, and indeed possibilities for new empowerment (Agnew & Corbridge, 1995). It must premise on the fact that state security is not synonymous with human and ecological security.

There is a need for a strong regional coordinating institution, mandated to coordinate and provide guidance to countries’ joint efforts or interlinked concerns in river use, based on awareness and acceptance of these fundamental principles.

The present-day MRC and the Mekong Agreement 1995 has virtually no restrictive powers or authority on what each member government can do about river waters use within its own territory. This situation is very much unlike trans-boundary river systems and basins in the European countries that have been governed by a European Union legislation such as the Water Framework Directive, which aims to reach ‘good water’ status by 2015, using the natural
geographical and hydrological unit for the management organizations instead of the former administrative and political borders (Raadgever, 2005). Lower Mekong river countries are not organized into supra-country regional polity such as the European Union, with a regional legislature and governance framework that in certain issue domains stands above national sovereignty domains. Thus, integrated basin management principles and other ecologically-oriented framework of action and planning have always been subordinated and constrained by initiatives of national governments using their own administrative and political borders as the point of reference in action and agenda-setting on river waters use and development.

But still an MRC-type of organization is regarded by experts in the region as one of the two most important (co-equal in importance to bilateral or government-to-government direct negotiation) modalities or mechanisms for negotiations and consensus building between and among stakeholder governments in the region (Delphi interview with 12 experts on 24 April 2013)

To date, the three areas of regional cooperation in which MRC has proved to be the most effective are the following:

- Creating basin-wide development planning and management framework to support national hydropower development plans
- Providing guidance and advice to governments for hydropower plan, construction, and operation to ensure sustainable basin development
- Facilitating dialogues among riparian countries and different competing interests related to the development of hydropower dams

Bilateral negotiations between countries with or without third-party facilitation regarding particular trans-boundary issues related to hydropower development have taken place many times. In the Delphi interview with 12 experts on 24 April 2013, the experts ranked bilateral talks as equal in importance to MRC as a modality for negotiations, consensus and agreement building between and among stakeholder governments on trans-boundary water problems. Bilateral talks are the most direct between the affected parties, and the most authority-laden, and thus a most coercive channel for immediate and potentially effective action.

But in the Mekong, bilateral approaches to solving trans-boundary issues are not, as in the case cited in this paper, always conducted within a framework or guidance of an international river commission as for instance, the International Commission for the Protection of the Elbe in relation to interactions between Germany and Czech Republic on the management issues of the Elbe river basin (Raadgever, 2005). In the Mekong bilateralism, the closest to the latter would be a recognition of MRC’s leadership in talks between neighboring countries on solving problems related to trans-boundary water issues. But MRC’s intervention and leadership in bilateral talks between Vietnam and Cambodia, for example, has been evaded, thus marginalizing the usefulness of the former.

Moreover, the situation of bilateralism in river basin management in the Mekong is different from other areas of successful bilateral management of trans-boundary river basin management issues as no two countries have any overarching common framework of reference in basin management problem solving and actions. This situation is very much unlike, for example, the interactions between Germany and Czech Republic on the problems of pollution and other ecological issues in the shared Elbe river basin that are guided and resolved under the framework

\(^2\) Regional Synthesis Workshop for the Mekong Project 4 on Water Governance on 24-25 April 2013 at Bangkok, Thailand)
of the EU Water Framework Directive—the latter extracts legal obligation for cooperation between the two sides (Raadgever, 2005).

Thus, bilateralism in water governance in the lower Mekong countries is fraught with limitations that make sound river basin management difficult. It is laden with problems of domination and inequality in negotiations, given the disparity in power and technical capacity among the country governments in the lower Mekong region.

Further, bilateral negotiations have functioned more to protect and bargain over particular dam-related issues associated with each country’s national development agenda, but have sidetracked core social and environmental justice issues in the domains of livelihood, water valuation, and dam cascades occurring in trans-boundary locations.

In the lower Mekong region, CSOs, particularly academic community, NGOs and CBOs, have succeeded in becoming an active front for basin-wide dialogues, knowledge sharing, and advocacy, especially in the context of the trans-boundary impacts of hydropower development. This front has created understanding and cooperation on basin-wide or sub-basin wide issues between and among a wide range of non-government intermediary organizations and community-based groups and actors.

However, unless all this consensus, shared knowledge and advocacy is effectively made to influence the response of country government stakeholders and their respective private developers and contract partners, which are the locus of power, the efforts of CSOs may not make much difference in actually reorienting and transforming current national projects, and plans toward a more optimal social, livelihood, and ecological interests in river system management on a basin-wide scale.

Based on surveys, at present the two areas where CSOs can play a significant role in improving and advancing effective basin-wide management of the Lower Mekong are:

*Providing capacity-building assistance to local communities* in order for the latter to strengthen their voice, and meaningfully engage with relevant governments and their partner developers and institutions on basin-wide issues arising from dam projects and operation

*Information dissemination* to the broad public about basin-wide issues and impacts of dam development

It is important that the role of CSOs in boosting participation and communication through enhanced information collection, incorporation of local or ground realities, awareness raising, and mobilization for local action, be legally recognized as is the case in the Danube River Protection Convention signed by all the participating countries (ICPDR, 2006). Recognition of these CSOs and the vital role they play will certainly strengthen their position as important contributors to and partners in integrated river basin management. Currently, in the Mekong countries and region, CSOs have to assert their legitimacy as a major stakeholder in decision-making and planning on river development. This must change.
REFERENCES


