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Reciprocal Transboundary Cooperation on the Lancang-Mekong River:
Towards an Inclusive and Ecological Relationship

Key words:
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Policy Pointers

The Lancang Mekong Cooperation (LMC) is a significant new multilateral initiative between China and the countries of mainland Southeast Asia

Transboundary water management is one of five key themes addressed by the LMC. Regarding principles for cooperation, 'reciprocity' between upstream and downstream states has been proposed by some academics and think tanks in China

The LMC should ensure 'inclusive reciprocity' in which riverside communities, civil society groups and a wide range of researchers can deliberate the policy principles and practices

The LMC should ensure 'ecological reciprocity' between human use and the river itself. The recovery and maintenance of river ecological health should be a core LMC objective

The LMC should initiate a transboundary assessment of the impacts of past river development projects and measures necessary to redress harms incurred, drawing upon existing research and commissioning new joint transdisciplinary studies where necessary

Mekong River at Chiang Khong, Northern Thailand (Credit: Carl Middleton)

It is now two and a half years since the first Lancang Mekong Cooperation (LMC) leaders' summit was held in Sanya city in Hainan Province, China.[1] During this period, the LMC has become increasingly institutionalized. The overarching ambition of the LMC is to deepen economic, cultural and political ties between China and mainland Southeast Asia. This policy brief assesses emerging principles for transboundary water cooperation under the LMC, in particular the concept of reciprocity that expands upon the UN Water Courses Convention. It also assesses the role of the LMC *vis-a-vis* the Mekong River Commission in transboundary water governance. The analysis concludes that as the LMC becomes a more consolidated institution, a genuine and equal partnership for the Lancang-Mekong River cooperation is needed that could build upon principles of "inclusive reciprocity" between state and non-state actors, and "ecological reciprocity" that recognizes the need for an ecologically healthy Lancang-Mekong River.

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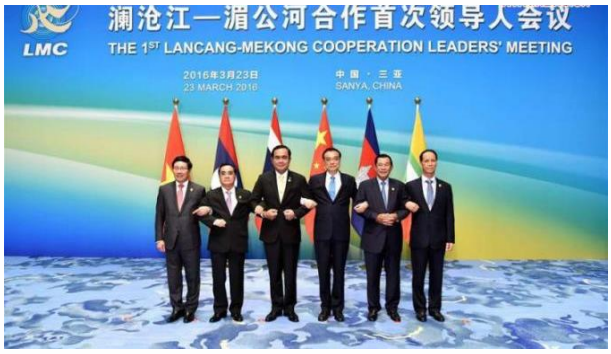


Lancang Mekong Cooperation leaders' summit on 23 March 2016, Sanya, Hainan Province, China (Credit: www.news.cn)

Introduction

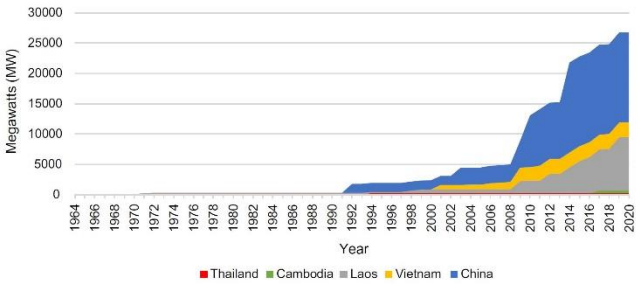
The Lancang Mekong Cooperation's (LMCs) second leaders' summit in Phnom Penh,[2] Cambodia in January 2018 revealed the swift pace and ambition of the initiative, detailed in the Phnom Penh Declaration[3] and a five-year plan[4] endorsed at the summit. The LMC is designed around three cooperation pillars, namely: 1) political and security issues; 2) economic and sustainable development; and 3) social, cultural and people-to-people exchanges. The LMC also identifies five priority directions for cooperation, namely: inter-connectivity, production capacity, cross-border economy, water resources and agriculture, and poverty alleviation. The LMC reflects China's strategy to build a multilateral engagement with mainland Southeast Asia, whilst also establishing for itself a leadership role. Yet, the LMC's state-centric approach to date has afforded little opportunity for public deliberation about the overall policy direction of the LMC to date, even as people-to-people exchange programs and university scholarships hosted by China have been established.

Within the LMC's broad-ranging scope and ambition, transboundary cooperation on the Lancang-Mekong River is a key theme. In addition to water resource management constituting one of the five priority directions, there have been plentiful declarations on the importance of the Lancang-Mekong River; for example, the second summit in 2018 was themed "Our River of Peace and Sustainable Development."[5] Thus, the LMC hints at a new possibility for basin-wide water cooperation on the Lancang-Mekong River, although much remains uncertain. For example, it is an open question how the LMC will build upon the existing inter-governmental Mekong River Commission, established in 1995 by the four lower basin countries. Also, it is not yet apparent what principles for transboundary river cooperation will be adopted, although an emerging theme from China is that of 'reciprocity.' Finally, how the LMC's approach to water cooperation will be inclusive of past and ongoing concerns of river-side communities and civil society is unclear.

Hydropower and Hydrodiplomacy in the Lancang-Mekong basin

Since the early 1990s, the Lancang-Mekong River has been transformed from a free-flowing river to one that is increasingly engineered by large hydropower dams.[6] In the lower Mekong basin, almost sixty medium or large hydropower dams are in operation, with over twenty more under construction, including the Xayaburi Dam and Don Sahong Dam on the Mekong River's mainstream in Laos. Meanwhile upstream China commissioned the Manwan Dam in 1992, the first of six large hydropower dams built unilaterally on the mainstream in Yunnan province. This hydropower construction has taken place in a context of deepening regional economic integration, where electricity is traded across regions, for example from Yunnan province to southeast China, and across borders, from Laos to Thailand and to Vietnam.

As of 2008, the dam storage capacity of the total flow across the whole Lancang-Mekong basin was less than two percent, but this could increase to twenty percent by 2030.[7] China's Lancang River dams now hold the capacity to significantly alter the river's flow. According to China's Ministry of Water



Cumulative hydropower generation capacity in the Lancang-Mekong Basin. Data for lower Mekong basin (Credit: Middleton and Allouche, 2016)

Resources, the reservoir operation reduces flood season flow by around 30 percent and increases dry season flow by around 70 percent.[8]

The associated hydrological, geomorphological and ecological changes are anticipated to produce both positive and negative impacts, depending upon the perspective of the river user. Proposed benefits include[9]: more water available for irrigation, navigation and hydropower production in the dry season; claims that large water storage infrastructure could alleviate extreme drought and floods; and economic benefits from intensified use of the river's resources through large-scale projects. Yet, negative impacts, to name a few, will be on[10]: wild fisheries; local river ecologies; and sediment transportation with implications for river bank erosion and delta formation. While benefit sharing mechanisms are increasingly touted across the region by project developers and governments[11], the overwhelming risks of this transformation will be borne by communities who depend upon the river's resources for their livelihoods, with the poorest particularly vulnerable.

In March 2016, as the region faced a severe drought, China released water from its Lancang dams[12], one week before the first LMC summit. Referring to this act of 'hydrodiplomacy', according to China's Ministry of Foreign Affairs spokesperson: "China's releases of water show the effectiveness of 'water facilities' in helping control floods and address droughts".[13] It was also reported, however, that some communities in Thailand were not informed in advance of the water releases and were caught out by the rapidly rising water with harmful impacts.[14] This experience suggests that future hydrodiplomacy, however well-intentioned, requires greater coordination across the transnational to the local level. It also brushes over the history of the Lancang dam projects and the harm created through their construction and operation on communities in Northern Thailand, Northern Laos and beyond.[15]

Trading boats in Chiang Khong, Northern Thailand
(Credit: Carl Middleton)

Momentum builds on the LMC

Since the Sanya Summit in March 2016, the LMC has become increasingly institutionalized. There have been three annual foreign ministers' meetings[16], and numerous senior government official meetings and trainings.[17] The LMC Secretariat[18] and a Lancang-Mekong Water Resources Cooperation Center were launched in March 2017, and a Lancang-Mekong Environmental Cooperation Center[19] in November 2017, all in Beijing. Meanwhile, a Global Center for Mekong Studies think tank network has also been established, hosted by organizations in each country.[20]

The LMC is considered by China to be a component of the broader Belt and Road Initiative, and has been claimed as an example of "south-south cooperation", while also working towards the UN 2030 Agenda for Sustainable Development. Further deepening economic ties is a core focus. China is already a major trade partner, and major investor, in all of the countries in mainland Southeast Asia ranking as first or second important in most cases.

At the Sanya Summit, 45 'early harvest' projects were initiated funded by China, and a further 132 projects were announced at the Phnom Penh Summit. Whilst a comprehensive list of these projects is not in the public domain, they broadly promote cross-border connections between mainland Southeast Asia and China, including infrastructure such as roads, railways, power grids, telecommunications and river rapids blasting. For example, the Mekong Institute in Thailand details four funded projects on its website: Upgrading Border Facilitation for Trade and Logistics Development; Joint Development of Cross-Border Economic Zones; Lancang-Mekong Business Forums; and Action Research on Rural E-commerce Development in the GMS.[21]

To further the water agenda, the LMC established the Lancang Mekong Water Resources Cooperation Center (LMWRCC) as a focal point on water. The LMWRCC has initiated programs to become a platform for cooperation in technical

exchanges, capacity building, drought and flood management, data and information sharing, and conducting joint research. Three meetings of the Joint Working Group on Water Resources Cooperation have been convened, the first in Beijing in February 2017[22], the second in Chiang Rai in March 2018, and the third in Vientiane in October 2018. Furthermore, on 1-2 November, the LMC hosts the "1st Lancang-Mekong Water Resources Cooperation Forum" in Kunming City.

To date, however, there is little information in the public domain about the work of the LMWRCC. Its activities to date have primarily focused on meetings amongst government officials and experts, with only limited opportunity for civil society and community to share their own knowledge on the Lancang-Mekong River and its governance. A recent collaboration with the Global Water Partnership announced in December 2017 may hint at some willingness to engage with civil society across the region.[23]

What of the Mekong River Commission?

In 1995, the governments of Cambodia, Laos, Thailand and Vietnam jointly established the Mekong River Commission (MRC) through an international treaty commonly known as the 'Mekong Agreement.'[24] The Mekong Agreement in principle established an inter-governmental rules-based regime to strengthen transboundary water governance. In implementation, however, now partly-fulfilled plans for the construction of large dams on the lower Mekong mainstream have challenged the MRC. The MRC's research and public consultations have had only limited influence on member government decision-making, in particular that of Laos. Following the approval of the Xayaburi Dam and Don Sahong Dam in Laos, civil society's perception of the effectiveness of the regional consultation process led to a boycott by the Save the Mekong civil society network of the MRC's most recent consultation on the proposed Pak Lay dam in August 2018.[25]

Although China is a 'dialogue partner' of the MRC, it maintained a largely distanced relationship at least until the advent of the LMC. China considered the MRC to be overly influenced by countries outside the region through its funding and research, and also emphasized the need for its domestic development priorities including the construction of large hydropower dams on the

The Xayaburi Dam under construction in Northern Laos (February 2018) (Credit: Carl Middleton)

Lancang River to provide power to its eastern seaboard cities and industrial zones. Sebastian Biba has discussed how China's coordination was sporadic and often only to avert worsening tensions, for example during a flood in 2008 and a drought in 2010.[26] Meanwhile, in the context of reduced Western donor funding, the MRC itself is now undergoing a process of 'riparianization' intended to build regional ownership.[27]

The momentum building around the LMC holds significant implications for the MRC. The MRC, which was not involved in the initial formulation of the LMC,[28] has simultaneously sought to establish the legitimacy of its own role, while also emphasizing its cooperation with the LMC and China more broadly.

Regarding its own legitimacy, the MRC regularly states it is the only organization mandated by international treaty and undertakes lower basin-wide planning under this mandate. It has held summits in 2010, 2014 and 2018, holds annual ministerial-level meetings, and engages with multiple stakeholders including civil society. The MRC has built an extensive knowledge base, as summarized in several State of the Basin reports and via its website, with key recent studies including a strategic environmental assessment of Mekong mainstream dams[29], and a broader 'council study'[30] that examines the implications of various development pathways across the basin.

On cooperation with China and the LMC, the MRC regularly states that cooperation is increasing.[31] Examples include: wet-season data sharing and occasional dry season sharing; invitations to each other's meetings, staff exchanges, and field visits; collaboration around the MRC Summits; and some joint research, including a post-event assessment of the water releases during the March 2016 drought[32].

Yet, while framed as cooperative, it is also increasingly apparent that there is significant overlap in claimed mandates, even as at present the MRC is a more consolidated, rules-based inter-governmental organization. Assuming China's continued proactive engagement through the LMC, it seems inevitable that in the future a joint organization should emerge although the form that it might take, and the principles and rules that would guide transboundary water cooperation, remains an important open question.

Reciprocity as a principle of Lancang-Mekong cooperation?

The UN Watercourses Convention (UNWC), adopted in 1997, came into force in August 2014 after Vietnam became the 35th country to ratify it.[33] It is a global treaty for governing international watercourses. Key principles include: 'equitable and reasonable utilization,' the obligation 'not to cause significant harm,' to exchange data, and to cooperate. Overall, the UNWC proposes that watercourse states enjoy equal rights to the utilization of an international watercourse, drawing on the principle of 'limited territorial sovereignty.' The principles of the UNWC also constitute the core of the MRC's Mekong Agreement.

At the time of the UNWC's adoption in 1997, 103 states voted in favor, 27 states abstained and 52 states were absent. Three countries (Burundi, China and Turkey), voted against the convention. All are uppermost states on major transboundary rivers, and considered that the UNWC privileged the interests of downstream countries and would not be in their national interest.

In 2016, Dr. Zhong Yong of Tsinghua University, and now Secretary General of the LMWRCC, was lead author of an academic paper titled "Rivers and Reciprocity: Perceptions and Policy on International Watercourses".[34] The paper suggests that the UNWC did not sufficiently consider how downstream development of water resources, such as irrigation and hydropower, could impact upon upstream states if downstream countries subsequently claimed their pre-existing use of water as a basis of limiting the actions of upstream states (i.e. claiming the principle of prior appropriation). The paper's authors argue that the UNWC is often misunderstood by downstream states, who do not recognize that they also have responsibilities towards upstream states. This led the authors to propose the need to clarify the principle of 'reciprocity' as integral to the UNWC's principle of 'equitable and reasonable utilization', where downstream states should acknowledge the rights of upstream states to develop their resources (and vice versa). The authors suggest that this could encourage upstream states such as China to engage with the UNWC.

The concept of reciprocity appears to have gained some policy traction in China. It was asserted, for example, in an opinion piece titled "'China's Water Hegemony in Asia' or 'Shared Rivers, Shared Futures': Which?" by two China scholars first published in July 2016 in Laos' state-owned Vientiane Times newspaper, and later republished on China's Thailand Embassy webpage.[35]

Immediately downstream of the Jinghong Dam, Yunnan Province, China (Credit: Carl Middleton)

Meanwhile, in several universities in China, ongoing international law research is deepening the understanding of reciprocity and its implications for China, including at Xiamen University[36] and Chongqing University.[37] The significance of this work is how it reevaluates the international norms of the UNWC that could engage China through better reflecting its interests.

Towards inclusive and ecological reciprocity

Transboundary water cooperation fundamentally matters to both the governments and the people of the Mekong region. Could reciprocity be an entry-point to serious negotiations on a rules-based regime for the entire basin of the Lancang-Mekong River?

First, for reciprocity to gain policy traction under the LMC, it must be proven relevant to the Mekong Region. To date, there is little evidence that downstream governments have sought to limit China's upstream development, even when pressured by civil society to do so. Meanwhile, there is also little evidence that a consideration of reciprocity has tempered China's upstream behaviour to date, including its dam construction without prior notification or consultation with downstream countries. How to evaluate and redress for past harm caused by dam building will be important for the legitimacy of the concept moving forward.

A boy holds a fish caught from the Mekong River near the Xayaburi Dam before its construction in 2011. (Credit: Carl Middleton)

Second, the LMCs approach to transboundary water governance has emphasized the role of government officials and experts. As the LMC gains momentum, this state-centered approach could become a challenge to broad-based public acceptance. This is especially so given that with the LMC's emphasis on economic growth and associated infrastructure, including large hydropower dams and rapids blasting, the initiative appears as a threat to the ecological sustainability of the river, and to those who depend directly on its resources. It is widely recognized that multi-level institutions from the transnational to the local involving state, civil society, business and community members are needed for effective water governance in practice. In other words, there is a need to move towards "inclusive reciprocity." Until the LMC can accommodate genuine participatory processes itself, however, alternative workshops and forums should be organized that are inclusive of multiple perspectives from civil society and the wider public and that can generate analysis and encourage debate towards the LMC that might shape its policy agenda at least indirectly.

Third, and relatedly, there is much that can be done regarding sharing and creating knowledge. At the level of inter-governmental and expert cooperation, there could be increased public data sharing on the river, starting with, for example, dry season flow data. There could also be in-depth discussion on the state of knowledge, including the resources of the MRC and academic and government institutions across the region. The LMC has already initiated some limited collaborative expert-led studies to date, and this could be expanded, especially to evaluate impacts of existing water infrastructure projects before further ones are proposed. Furthermore, in researching the implications of reciprocity, a wide-range of

research institutions should be involved, funded from diverse sources, to ensure a constructive and rigorous debate. It is also important to acknowledge the situational knowledge of river-side communities and various civil society research initiatives. Only through sharing and deliberating these multiple forms of knowledge can a complete picture of the Lancang-Mekong River and its diverse economic, social and cultural values be attained.

Fourth, the concept of reciprocity should be extended to acknowledge the fundamental reciprocal relationship between society and nature. To date, under the LMC, reciprocity has only referred to the relationship between states, where the river is viewed as an economic resource that at best should be sustained for the instrumental reason of continued provision of economic benefits. There is a growing movement globally to acknowledge the intrinsic value of nature, and the duty to protect it, that also resonates with many people's opinion in Southeast Asia. Thus "ecological reciprocity" should maintain a healthy river ecosystem and a balance between the interests of both humans and non-humans.

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