



**STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN
THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS**

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Regional Environmental Law: Mekong Case Study on Dams

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The Mekong River: China, Myanmar, Laos, Cambodia, Thailand, Vietnam



Introduction to the Mekong Region

- 4193 kms of river, through six countries from Tibet headwaters through Yunnan Province, China, then Myanmar, Laos, Thailand, Cambodia, Vietnam and out through the Mekong delta
- >70 million people live in the Mekong River basin
- 8 out of 10 people depend on the basin for sustenance: fish and agriculture
- Region has great internal and external conflict, which has affected legal and policy development
- Population growth high in each of the lower Mekong countries (Will double in Cambodia and Laos in the next 20 years)
- In Lower Mekong growth from 55 million to 90 million by 2025
- Many threats to biodiversity, and no adequate regional and national framework for its protection

Mekong River Agreement 1995

- Mekong River Commission under the *Agreement on the Cooperation for Sustainable Development of the Mekong River*
- *Parties:* Laos, Cambodia, Vietnam and Thailand (not China or Myanmar)

Legal frameworks in the Mekong Basin

International; The Mekong River Agreement

National: no parties have specific laws to implement the Mekong River Agreement

The Mekong Agreement

- **The 1995 *Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin* can be analyzed and evaluated from the perspective of international law in general and international water law in particular**
- **The international law principle of equitable utilization of watercourses is an important aspect.**

Mekong River Agreement 1995

Mekong River Committee established in the 1950s

After long period of inactivity, Committee was revived and established the Mekong River Commission under the *Agreement on the Cooperation for Sustainable Development of the Mekong River in 1995*

- *Parties:* Laos, Cambodia, Vietnam and Thailand (not China or Myanmar)

The Mekong Agreement

- Directed to protection of environment, natural resources, aquatic life, and ecological balance of the Mekong River Basin from pollution and other harmful effects resulting from development plans and uses of water and related resources
- Includes international law principle of “reasonable and equitable utilisation”, provides for prevention and cessation of harmful effects, state responsibility for damage to riparian states and remedial action, and includes the concept of sustainable development
- However, not a comprehensive agreement, and implementation is presently not strong

Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin

OBJECTIVES AND PRINCIPLES OF COOPERATION

Article 1. Areas of Cooperation

The parties agree:

To cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin including, but not limited to irrigation, hydro-power, navigation, flood control, fisheries, timber floating, recreation and tourism, in a manner *to optimize the multiple-use and mutual benefits of all riparians and to minimize the harmful effects that might result from natural occurrences and man-made activities.*

Article 2. Projects, Programs and Planning

To promote, support, cooperate and coordinate in the development of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use of Mekong River Basin waters...

Article 3. Protection of the Environment and Ecological Balance

- To protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin.

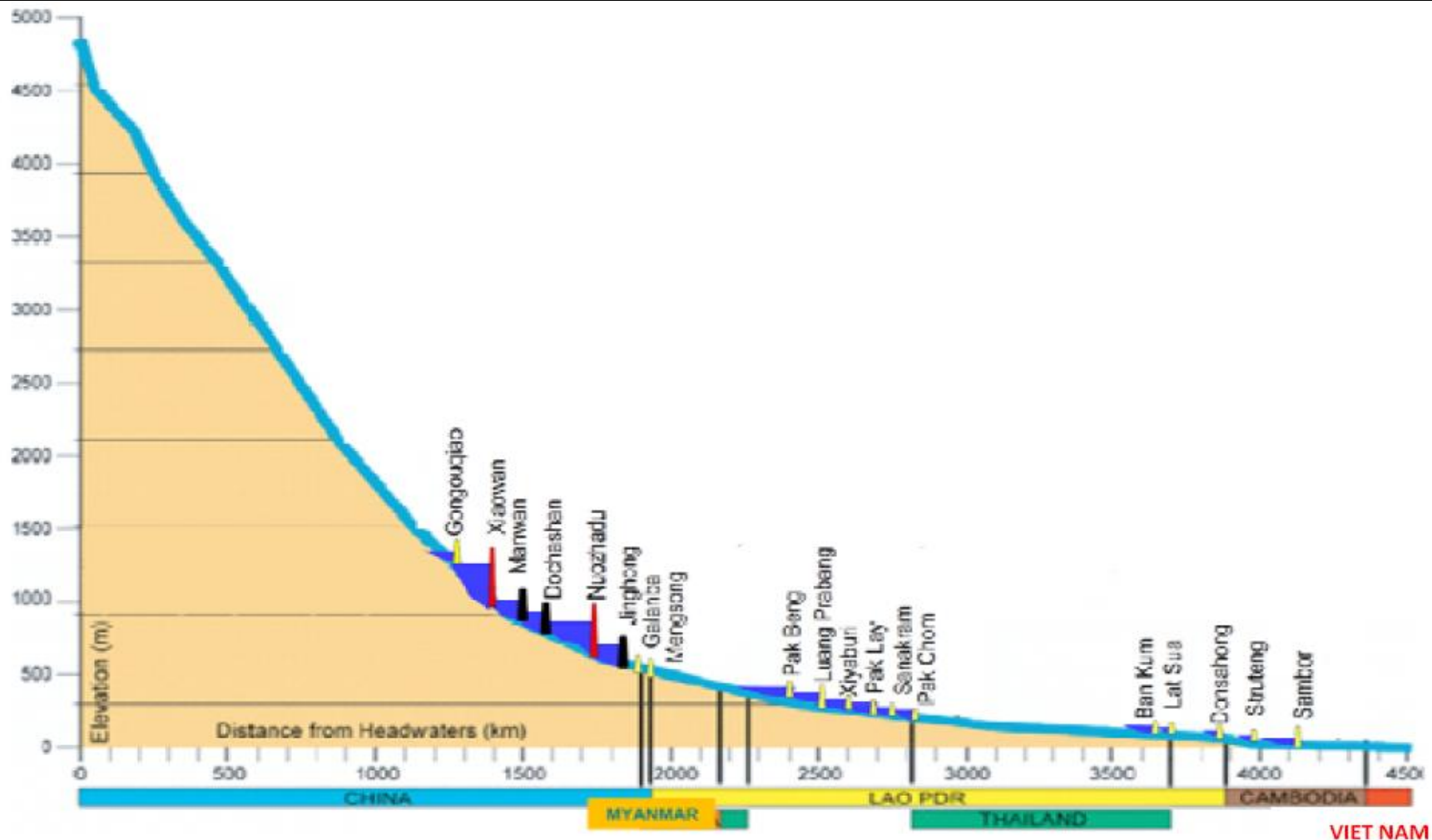
Article 4. Sovereign Equality and Territorial Integrity

- To cooperate on the basis of sovereign equality and territorial integrity in the utilization and protection of the water resources of the Mekong River Basin.

Article 5. Reasonable and Equitable Utilization

- **To utilize the waters of the Mekong River system in a reasonable and equitable manner in their respective territories, pursuant to all relevant factors and circumstances, the Rules for Water Utilization and Inter-basin Diversion provided for under Article 26 and the provisions of A and B below:**
- **A. 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.**

Cascade of dams on the Mekong River



The Mekong River: China, Myanmar, Laos, Cambodia, Thailand, Vietnam



Summary of conflicting issues in the Mekong River Basin

- 1. China controls upstream flows, but is not a member of the Mekong Agreement**
- 2. Myanmar want to develop its hydro resources on the tributaries**
- 3. The Laotians want capital and expertise to develop hydropower for export to Thailand and Vietnam; building 2 dams on mainstream**
- 4. The Cambodians need capital and infrastructure and to secure sustainable fishery resources in the Tonle Sap (Great Lake), thus more water required**
- 5. The Thais want more water, and more electricity, so more dams**
- 6. The Vietnamese do not want any upstream development to exacerbate salt water intrusion in the Mekong delta during the dry season, but they also want more hydropower development,**

“ASEAN + One (China) ”

The ‘Mekong River’ or ‘Lancangjiang’ ?





Heavily polluted Mekong River Delta, Southern Vietnam.

Photo: M. Gifford/De Wys Inc.



China Hydropower Dams in Mekong River

News Paper



Common Rural Condition of Mekong Delta

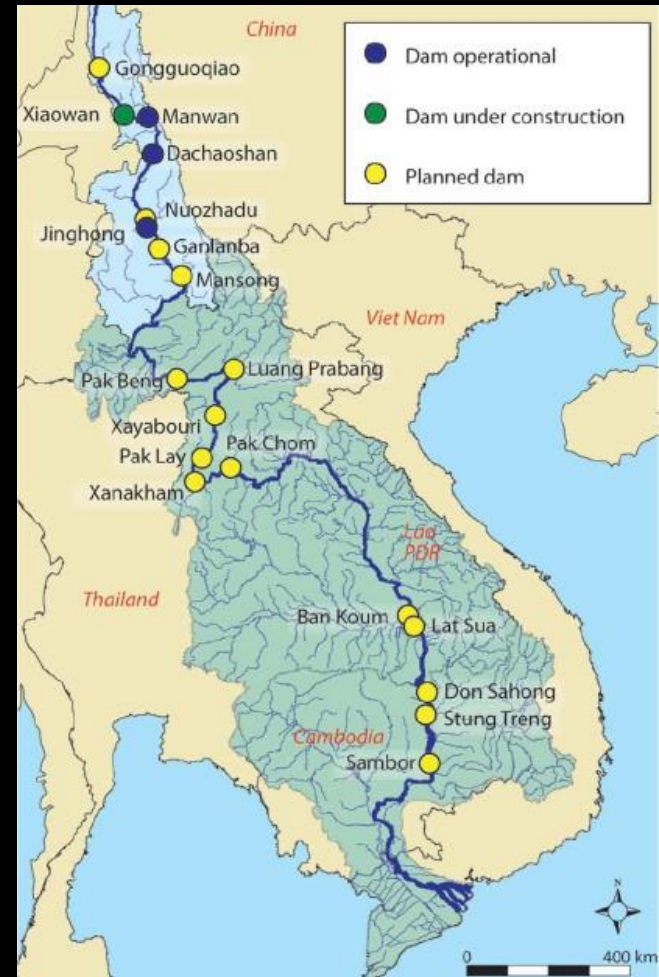
Small version of Mekong GIANT Cat Fish



It may end up on your Plate

Introduction to Mekong hydro development

- Significant projected increases in electricity demand, combined with new private sector sources of capital within the region, are driving a rapid expansion of hydropower development in the MRB.
- Hydropower development of the Upper Mekong mainstream in Yunnan Province, China (known as Lancang River in China)
- Recent revival of plans for hydropower projects on the Lower Mekong mainstream
- Controversial Xayaburi dam has begun construction





Threatened Lifeline

Some 60 million people rely on fish caught in the Mekong River and on rice grown in its fertile delta. But the river is changing. China has built seven major dams in the past two decades; it has 21 more under construction or planned. This so-called Mekong cascade is now headed downstream, with 11 new dams expected along the main stem in Laos and Cambodia. Those plans are pitting the region's need for electricity against its need for food and against the livelihoods of fishermen and farmers, who depend on the river's free-flowing waters.

- Mekong River dams**
- Existing
 - Under construction
 - Planned



From its headwaters on the Tibetan Plateau, the Mekong River flows more than 2,600 miles through six countries before emptying into the South China Sea at its delta in Vietnam.

China has more than 23,000 large dams, more than any other country—and two-fifths of the world's total. It's also a leading builder and financier of dams abroad, including along the lower Mekong.

The tallest dam of the cascade, China's Xiaowan dam began operating in 2010.

Nuashaba dam began producing hydroelectric power in 2012.

The Mekong flows through Myanmar for just 150 miles.

Laos is building the Xayaburi dam despite objections from Cambodia and Vietnam, which fear its impact on food security and the Mekong's ecology.

The communist government in Laos hopes that energy from its proposed dams will make Laos "the battery of Southeast Asia."

Construction will soon begin on the Don Sahong dam, blocking the only route that's passable year-round by fish migrating between Cambodia and Laos.

The Lower Sesan 2 dam, on a tributary near the river's confluence with the Mekong, will also block a key fish migration route.

The Sambor dam could generate up to 2,600 megawatts as currently planned, but it would displace some 18,000 people.

RWANA MORRIS, NEM STAFF; SOURCES: WORLD FISH CENTER; INTERNATIONAL RIVERS; MEKONG RIVER COMMISSION; KHUANG INSTITUTE OF BOTANY; CHINESE ACADEMY OF SCIENCES. NOTE: CHINA'S DATA DAM PLANNED NOT SHOWN ON MAP. SCALE VARIES IN THIS PERSPECTIVE. LENGTH OF MEKONG RIVER BASIN IS APPROXIMATELY 4,900 MILES (8,000 KILOMETERS); ITS AREA IS APPROXIMATELY 507,000 SQUARE MILES (1,318,000 SQUARE KILOMETERS).



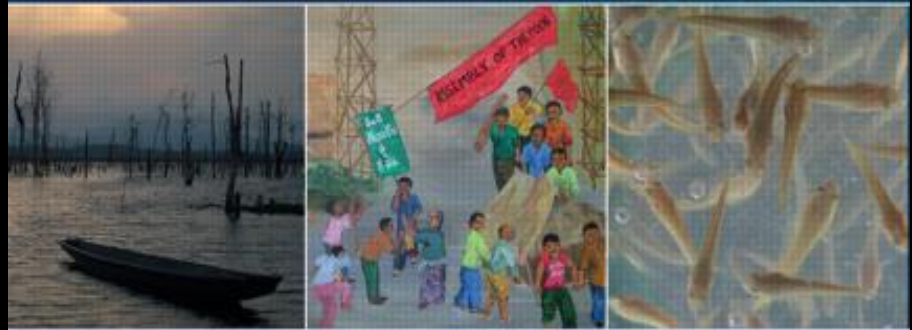
Conclusions

- **Formal legal frameworks** in the lower Mekong at regional and national level **are ineffective** in addressing human rights issues arising from displacement
- Litigation in the Mekong not likely to be used in the short term
- The ASEAN Human Rights Commission needs to be strengthened to allow for human rights abuses to be dealt with directly, whether arising out of hydropower development or otherwise

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The Mekong

A Socio-Legal Approach
to River Basin Development



Earthscan Studies in
Water Resource Management

earthscan
from Routledge

New book:

**THE MEKONG: A
SOCIO-LEGAL
APPROACH TO
RIVER BASIN
DEVELOPMENT
(not yet published)**