

# Shaping the Future of Mekong Regional Architecture: Reinforcing Transboundary Water Governance Through Reciprocity

*Policy brief*

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## Key Findings

- There is deepening cooperation between the Mekong River Commission (MRC) and Lancang Mekong Cooperation (LMC). The joint activities to date can be understood as examples of *specific reciprocity*, namely specific exchanges of more-or-less equal value with clearly defined obligations, and have helped build trust.
- To further collaboration, regional governments will need to gradually move from *specific reciprocity* to *diffuse reciprocity*. Here, cooperation is not between specific actors alone (i.e. the MRC and LMC), but reflects a broader cooperation between wider groups of actors and beyond river-based considerations.
- To date, the MRC has directed more attention to the benefits to the river, including wild capture fisheries and other ecosystem services, whilst the LMC has emphasized more regional economic planning and projects. By working together, the river might be better protected, whilst simultaneously yielding sustainable generation of economic benefits.
- Some potential directions for furthering collaboration include: a joint, systematic baseline assessment of the current ecological and socio-economic status of the Lancang-Mekong River and key drivers of change; a joint study on the existing legal rules, customary principles, and pledges maintained by each organization to identify points of commonality and difference; and a collaborative analysis to define reciprocity as a concept, and how it can be operationalized through relevant rules and regulations working towards a rules-based approach.
- The concept of reciprocity encompasses not just inter-state cooperation but also the interests and activities of non-state stakeholders, such as riverside communities. The MRC and LMC could consider co-organizing multi-stakeholder dialogues to generate a more complete picture of the Lancang-Mekong River and its diverse economic, social and cultural values.

## Introduction

Rivers throughout the Mekong Region – historically until present day – are intimately tied to the region’s ecosystems, societies, economies, and cultures. These relationships, however, are transforming due to rapid economic and societal change driven by, among many things, demographic changes, human development, food and energy demands, economic growth, trade and investment, and climate change. Transboundary management is complicated in the region given the diverse range of stakeholders and perspectives, but also the number of regional

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architectures of which there are twelve which differ in vision, objectives, scope and institutional arrangements. Of note, however, with regards to transboundary water governance are the Mekong River Commission (MRC) and the newly established Lancang-Mekong Cooperation (LMC) Mechanism. In 1995 the Lower Mekong countries came together to sign the 1995 Mekong River Agreement (MRA), establishing the MRC. As a formal river commission established by treaty, the MRC works to facilitate the fulfilment of the MRA ensuring cooperation in the “sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin [...]”<sup>3</sup> China, a dialogue partner with the MRC, recently established the LMC, a primarily project focussed cooperation platform covering a variety of issue areas one of which is water. Both of these institutions have committed themselves to working together, exemplified by a series of joint activities including joint assessments, symposiums and workshops, data sharing and dialogue meetings.

These types of joint activities could be referred to as instances of *specific reciprocity*, namely specific exchanges of more-or-less equal value with clearly laid out obligations conducted in hopes of future reciprocal cooperation. In other words, in instances of specific reciprocity exchange is conducted with the expectation that the other will return the favour in the future. Given that the relationship between the LMC and MRC is in its infancy, these specific instances of exchange are important as they help to build trust between them. Growing their partnership, however, will require continued specific exchanges and joint activities but also a more long-term, broader vision. In other words, regional governments will need to gradually move from specific to *diffuse reciprocity*, a form of reciprocal cooperation with a definition of equivalence that is less exact and involving a sequence of events that may never truly balance out. This ensures an ongoing, sequence of exchange that maintains cooperation not because of continued rewards or the promise of future cooperation between specific actors, but for wider groups of actors as a whole.

### **Deepening Cooperation between these Architectures**

As cooperation deepens between the MRC, LMC and their member states it will be beneficial to establish agreed upon norms and procedures through reciprocal legal arrangements. MRC states are bound by the MRA and all states are bound by various customary rules, primarily principles of equitable and reasonable utilization and the due diligence obligation not to cause significant harm, both of which are embodied in the UN Watercourses Convention (UNWC). As reflected in the voting record on the 1997 draft UNWC, the Convention was largely supported by downstream states and not supported by upstream states. China’s vote against the UNWC, however, has received much critical attention as it clearly indicated it perceived these rules to be imbalanced. However, China has signalled it in essence accepts these rules. Although China’s vote against and explanation received significant attention, China affirmed that it “reserves the right to address the question of the non-navigational uses of international watercourses with its neighbours *in a fair and reasonable manner and in accordance with relevant international practice* [...]”<sup>4</sup> This has been reflected in China’s adoption of various bilateral agreements which reflect these rules. That being said, there have been calls for a reciprocal understanding in the application of these international legal norms as they relate to both upstream and downstream riparians. This notion has gained some policy traction in China and has been elaborated upon by recent scholarly work.

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<sup>3</sup> Mekong River Agreement, Article 1.

<sup>4</sup> 99th Plenary Meeting, Fifty-First Session, United Nations General Assembly (A/51/PV.99), (1997).

## Ways Forward

Cooperation between these regional architectures is growing. Both have stated their strong interest in working more closely with each other and in the context of the other regional architectures active in the region. As the MRC and LMC continue to expand their cooperation it is recommended they do so by:

1. *Capitalizing on the strengths, weakness and complementarities of each of these architectures.* While the MRC has largely been siloed from regional economic planning, the LMC has this as its primary focus. In other words, the MRC has largely focused on benefits to the river while the LMC has aimed to derive benefits from the river. In order to ensure continued benefits from the river these two institutions must work together in order to protect the river from which these benefits are derived. In order to do so it is recommended that the MRC and LMC conduct a joint, systematic baseline assessment of the current ecological and socio-economic status of the Lancang-Mekong River and key drivers of change. This study would a) provide a foundation for the work of both the LMC and MRC, b) build upon the extensive knowledge resources available within them, and c) encourage its exchange, review and deliberation.
2. *Find synergies in the differences between these architectures, primarily the legal and non-legal nature of each architecture.* While the MRC is founded on a legal regime the LMC is not, but instead sets out to be a platform for the promotion of greater regional cooperation and development. The LMC, however, has developed in such a manner that has the potential to be mutually supportive to these legal frameworks, including similar goals and pledges to conduct similar activities. In moving forward, the LMC and MRC should consider initiating a joint study on the existing legal rules, customary principles, and pledges maintained by each organization to identify points of commonality and difference.
3. *Promote a greater understanding of how rules-based approaches can help the region to find mutually agreeable, mutually beneficial solutions based upon reciprocity.* Although legal rules are not included in LMC documents at present, this does not mean that law is not relevant to the LMC as it will need to navigate the legal rules of international law and each member state. In increasing cooperation, reciprocity thus becomes pivotal to ensure a common understanding of these rules and how they can ensure mutual benefits for all, both upstream and downstream. It is therefore recommended the MRC and LMC collaboratively define reciprocity as a concept, and use it to systematically analyze and deliberate the reciprocal application of relevant rules and regulations in order to determine how best to apply them in the context of the Mekong Region and regional water cooperation. One starting point, for example, could be on reviewing the current practices for hydrological data sharing and explore opportunities to deepen this exchange through extending the period of exchange (currently June 1st to October 31st) and frequency of measurements per day.

4. *Explore how mutually agreeable, mutually beneficial solutions can work for all within the basin.* The concept of reciprocity within transboundary water governance encompasses not just inter-state cooperation but also extends to incorporate the interests and activities of non-state stakeholders, including riparian fishing and farming communities whose livelihoods depend most intimately upon the river’s ecosystems. The MRC has sought to engage with a relatively wide range of stakeholders, whilst the LMC has thus far focused on state-state cooperation and state-business dialogues. The MRC and LMC could consider co-organizing multi-stakeholder dialogues at the regional, national, and local levels to unpack the concept of reciprocity. Through such dialogues a more complete picture of the Lancang-Mekong River and its diverse economic, social and cultural value could be attained.
  
5. *Explore and build relationships with other regional architectures to progressively strengthen transboundary water governance.* All regional architectures that engage in deepening economic connectivity hold potential implications for water resource use and therefore water governance, as well as for the establishment and maintenance of diffuse reciprocal relationships. Similar to the LMC, some regional architectures such as ACMECS, detail a range of specific interventions within the water sector. In the case of ACMECS, whilst it is broadly aligned with the LMC, it also includes certain measures that progressively strengthen water governance, including the participation of local communities, protection and restoration of water-related ecosystems, and the implementation of at all levels including transboundary cooperation. It also commits itself to “[s]trengthen the cooperation with the Mekong River Commission...”.<sup>5</sup> Thus, as they engage with transboundary water governance, it is recommended that additional regional architectures seek to engage with the MRC to further the “benefits to the river” whilst seeking to collaborate with other regional frameworks, such as the LMC, to progressively strengthen water governance practices built upon reciprocal practices and sustainably derive benefits from the river.

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<sup>5</sup> Ministry of Foreign Affairs, Kingdom of Thailand (2018). ACMECS Master Plan (2019-2023) [PDF], pp. 1. Retrieved June 12, 2019, from <http://www.mfa.go.th/main/contents/files/information-20180618-142227-835103.pdf>.