Abstract  Mekong River Committee (MRC) was formed in 1995 following the signing of the Agreement on the Co-operation for the Sustainable Development of the Mekong River Basin (MRC agreement) by the countries sharing the lower Mekong River basin: Cambodia, Lao PDR, Thailand, and Viet Nam. The 1995 Mekong Agreement, which established the MRC as an international incarnation body through which international cooperation is to be achieved, structured MRC with three permanent bodies—the Council, the Joint Committee, and the Secretariat. Factors that could affect the decision of MRC include (1) Member states and its National Mekong Committee; (2) Donors and development partners; (3) Civil society groups; (4) Upstream countries. Possible measures to improve the functioning of MRC would be, not limit to, the followers: (1) To clarify the power of MRC; (2) To revise MRC agreement; (3) To engage all countries in the Mekong River Basin, Sustainable development in Mekong region needs to be defined based on developmental stage of the basin states independently. Only allocate the right and obligation under the principle of reciprocity might make the MRC involving all basin states and becoming a real Integrated Water Resources Management (IWRM) organization in the future.

Key words  Mekong River Commission, Water governance, Problem, Outlet

1 Structure and functions of MRC

Mekong River Committee (MRC) was formed in 1995 following the signing of the Agreement on the Co-operation for the Sustainable Development of the Mekong River Basin (MRC agreement) by the countries sharing the lower Mekong River basin: Cambodia, Lao PDR, Thailand, and Viet Nam. The 1995 Mekong Agreement, which established the MRC as an international incarnation body through which international cooperation is to be achieved (Article 11), structured MRC with three permanent bodies—the Council, the Joint Committee, and the Secretariat (Article 18, 24, 30)

1.1 MRC Council

The Council is composed of one member from each MRC member country of the Minister and the Cabinet levels (Article 15). The Council convenes annually and produces policy guidelines, represents national initiatives, resolves conflicts, and makes policy decisions (Article 18). The Council’s decisions are made by unanimous consensus.

Every year, environment and water ministers of four countries meet to discuss emerging issues related to the Lower Mekong Basin. As Council Members of the Mekong River Commission, the ministers convene to review and come to mutual conclusions for the management and development of water and related resources within the framework of the 1995 Mekong Agreement.

Till now, under the MRC agreement, the council has approved and adopted 5 procedures, namely the Procedures for Data and Information Exchange and Sharing (PDIES); Procedures for Water Use Monitoring (PWUM); Procedures for Notification, Prior Consultation and Agreement (PNPCA); Procedures for Maintenance of Flows on the Mainstream (PMFM) and the Procedures of Water Quality (PWQ). Though this activity, the MRC identifies key activities and mechanisms that support the sustainable equitable use, utilization and protection of the Mekong’s water and water related resources for Member Countries.

1.2 MRC Joint Committee

The MRC Joint Committee, which comprises senior officials at no less than the Head of Department level of the four countries, and supported by national line agencies including the Ministry of Foreign Affairs, takes these decisions and policies forward by putting them into actions.
MRC joint committee formulates basin development plan and joint development programs to the Council for approval (Article 24). Currently, besides the most important program—Basin Development Plan (BDP), there exits 10 more programs undertook by MRC and its member states. Namely, Agriculture and Irrigation Program; Climate Change and Adaptation Initiative; Environment Program; Fisheries Program; Flood Management&Mitigation Program; Information & Knowledge Management Program; Initiative on Sustainable Hydropower; Integrated Capacity Building Program; Mekong Integrated Water Resources Management Project and Navigation Program.

Generally, the so-called decision-making bodies of the MRC, the Council and Joint Committee have so far remained largely out of the public realm. Although some international NGOs and institutions have been granted observer status, Council and Joint Committee meetings are generally held behind closed doors.

1.3 MRC Secretariat (MRCS)

The MRC is an intergovernmental organization, whose strategic direction; policies and decisions are decided by the Joint Committee and Council, comprised of member governments, while the Secretariat plays an advisory role.

The MRC Secretariat (MRCS) fulfills three main functions related to the management of the lower Mekong basin (Article 30): (1) Carry out the decisions and tasks assigned by the Council and Joint Committee; (2) Provide technical services and financial administration and advice as requested by the Council and Joint Committee; (3) Assist the Joint Committee in the implementation and management of projects and programs as requested.

The Secretariat also facilitates the participation of non-governmental organizations, donors, and those with local concerns in the policy process of the Council and in the implementation process at the national level. Currently, there are about 150 staff members based in two Secretariat offices—one in Phnom Penh, Cambodia, and the other in Vientiane, Lao PDR. The MRC Secretariat is managed by a Chief Executive Officer appointed by the Council from a short-list of qualified candidates selected by the Committee. Usually the CEO is an expert in water related scientist from developed countries.

2 Joint Factors that could affect the decision of MRC

2.1 MRC governance structure

The MRC is composed of three permanent bodies in international law context and enjoys the status of an international body, including entering agreements and obligations with the donor or the international community. In reality, the MRC has developed a system involved several partners or agencies.

NMCs: In each member state, there is a National Mekong Committee (NMC) responsible for carrying out functions of national policy and programs agreed to at the MRC transnational level. NMCs thus oversee implementation of programs at the local level.

Donors and Development Partners: MRC is largely a donor-funded organization. Some 90 percent of MRC’s funding comes from international donors[1]. Now, The MRC works with many different partners under jointly funded projects, under formal Memoranda of Understanding or in a research capacity through technical and financial collaborations with some developed countries. Those partners include Australia, Finland, Japan, New Zealand, The United States, Belgium, France, Luxembourg, Sweden, Denmark, Germany, The Netherlands and Switzerland.

Since 2001, some organizations agreed upon by member countries and invited to participate in MRC Governance meetings. Those partner organizations include the Asian Development Bank (ADB), Association of Southeast Asian Nations (ASEAN), European Union (EU), International Union for Conservation of Nature (IUCN), United Nations Development Program (UNDP), United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), World Bank (WB) and World Wide Fund for Nature (WWF).

Dialogue partners: In 1996 The MRC held its first Dialogue Meeting with its two upstream countries, China and Myanmar.

Although Mekong Agreement signed by four states gives the MRC an outline of responsibilities, it really leaves a large space for member states to interpret their roles in cooperation with MRC.
Additionally, the developed Mekong governance mechanism has contributed to differing interpretations and expectations of the MRC’s role and authority, all these factors would affect the decision of MRC directly or indirectly.

2.2 Member states and its NMCs

According to the MRC agreement, The MRC should be driven by the national interests of its member governments. These national interests tend to focus on the economic benefits which can be extracted from the river. And it is primarily this that drives member states’ views about the MRC’s function and purpose (for example, the view that the commission should play an investment facilitation role).

But the programs been settled till now would hardly be development oriental since it was negotiated multilaterally and mostly affected by donors outside the region. So when the programs of MRC deviate from the strategy of the member states, the unilateral behavior could not be inevitable. This national activity would weaken the power of MRC. The typical case is, for most tributary planning and construction, or in hydropower in Lao PDR’s, Thailand or Vietnam, had been kept off the MRC’s agenda. And this situation changed little in recent times. Thailand had publicity expressed their interest in making bilateral deals to meet growing water and energy needs.\(^\text{[3]}\) Nguyen Hong Toan, Secretary-General of VNMC and JC Member of Vietnam, said in the Donor Consultative Group Meeting in Chiang Rai on December 2005, “The 1995 Agreement mentions that there has to be developed. We must have dams to regulate the river. The BDP is a development project and not a regulation project.”\(^\text{[3]}\) All these illustrated that MRC member states have been lately showing more impatience at the MRC Secretariat’s weak record in helping the countries identify opportunities for development and helping facilitate investment.\(^\text{[4]}\)

On the other hand, due to the interests of donors and benefit of multilateral agencies in the region which have been established some firm relationship with MRC, at institutional level, the member states would unwilling to infringe the authority of MRC directly and continue their routine work with the organization through the National Mekong Committees (NMCs). But in reality, some NMCs hardly could make a final decision toward water governance. For example, Thailand found it easy to weaken its MRC links, commitments, and presence by appointing an NMC marginalized from real decision-making and water resources development planning and investment within the country. The department remains weakly connected to other ministries and lack influence over more powerful agencies like the Royal Irrigation Department and the Electricity Generating Authority of Thailand. These disconnects are both cause and consequence of the scale and level politics at play.\(^\text{[5]}\).

2.3 Donors and development partners

However, most donors and development partners who have poured significant amounts of money into the MRC since 1995, have always wished the MRC decision-making processes should consider the interest of the broader public and the river system, and not just the narrow interests of individual states. “Donors are concerned about the direction towards increased emphasis on MRC becoming an organization that drives investments. In our view the MRC should maintain and strengthen its unique role as a knowledge-based river basin organization (RBO) to support decisions on developments in the basin”.\(^\text{[6]}\)

Since donors and development partners would have their own expectations about what the money is going to be used for and about what kind of organization they’re supporting, the expectation of donors would be shaping the MRC’s role in a certain extent.

2.4 Civil society groups

After 2005, with the increasing establishment of NGOs or its branches or new civil society groups in lower Mekong countries, together with the development of the hydropower station on the tributary of Mekong river, the MRC has been skirted some of the most critical issues, including on ensuring transparency and public participation, and protecting regional food security.\(^\text{[6]}\) A lot of civil society groups in the region called on the MRC—and the MRC Secretariat in particular—to concerns or resolve grievances arising from developments with transboundary impacts.

“It is now time that the MRC’s role is reviewed to ensure it is acting in the manner befitting an objective, scientific river basin management organization that it was set up to be.”\(^\text{[6]}\) Being the
operational arm of the MRC, the MRC Secretariat has been the main interface between the public and MRC governing bodies. And now it has been the main target of actions of civil society organizations. In November 2007, a letter signed by 201 civil society organizations and individuals from the Mekong and other countries criticized MRC for failing to uphold the 1995 Mekong Agreement, calling it an “extraordinary abdication of responsibility”. [6]

Upon this scenario, a commitment might have been made by MRC to consider formalizing a stakeholder (NGO and civil society) consultative process as part of its annual meetings.

2.5 Upstream countries

As the upstream countries and dialogue partners, China contributes 16% of the flow of the Mekong River and Myanmar contributes 2%. The interaction between the MRC and the two countries would have some indirect consequence of the role of MRC in the Mekong Region. The Representatives of PRC and Myanmar attend MRC Council as well as Joint Committee Meetings as observers. Till 2012, 17 meetings have been held so far.

Given Myanmar’s few contribute flow and limited basin area of the Mekong river flow and its inclination of joining the MRC in the future, its behavior with MRC could be ignored or just rend pressure on china of being unwilling to institutionalized cooperation.

Then the China’s behavior would greatly affect the decision and strategy of MRC. On 1 April 2002, China signed an agreement on the provision of hydrological information on the Lancang (the Mekong as it flows through Yunnan Province) River. Under this agreement, China would provide water level data in the flood season from two stations located on the Upper Mekong in China. This agreement reflected that China’s good faith toward this organization and its willingness of cooperation. But China has already finished construction of 4 large-scale hydroelectric dams on the Lancang River unilaterally. For China, conversion of the river’s significant flows into energy for human consumption and industrial processes has become the dominant geopolitical and developmental goal in the region.[7] China has always expressed their willing in the future to share experience and lessons to MRC and its member states in the dialogue meeting.

China’s unilateral development of hydropower station has really some indirect consequence on MRC’s strategy. At the 3rd Regional Consultation on the Basin Development Plan, July 2010, it was further emphasized that the Mekong has reached a crossroads on decisions about hydropower in the lower Mekong basin (LMB). According to MRC’s Strategic Plan 2011-2015, it says hydropower developments on the Lancang-Mekong provides many opportunities, addressing these will require further cooperation with China and Myanmar.[8]

3 Possible measures to improve the functioning of MRC

After 17 years of operations, the MRC has become an organization which is not only well-recognized in the sustainable management of the Mekong River Basin, but also better known worldwide. On the other hand, the development of education, health and income of the four member states was relatively slow in the past 20 years. Far from satisfaction might be said from the member states, donors and development partners as well as civil society groups’ aspect.

![Figure 1](relations among MRC, Member states and Donors)

The large gap between the donors and member states would contribute to this situation. Most
donors’ countries HDI were at the high lever but the four member states were just in the middle or the down position in the world list. The main purpose of the four countries is in development, but the aim of most of the donors might be protective. The totally different development stage results the idea of relations between development and environmental protection.

Possible measures to improve the function of the MRC would be:

3.1 To clarify the power of MRC

Since the establishment of the MRC, the key elements of the RBO’s role would be contributing to poverty reduction. The MRC should play a more important role in leading the Low Mekong state to achieve this purpose. Some scholars said that since MRC is an intergovernmental organization that has no regulatory authority,\(^3\) so it is an organization whose role is that of “advisor” and not “decision-maker” when it comes to developments in the basin, including mainstream dams.\(^1\)

However, the most important function of MRC is decision making. It is an intergovernmental organization, as most of other international organization in the world. In Article 18 of MRC agreement states, the functions of the Council are: A. To make policies and decisions—for the sustainable development—of the Mekong River Basin waters and related resources—B. To decide any other policy making matters and makes decisions necessary to successfully implement this Agreement—he reason why there is a wrong cognize that MRC is an independent producer of knowledge and science is that with the increasing financial and technical support from developed countries, the exist program being undertaking are always knowledge based program.

The MRC is not just MRC Secretariat (MRCS). MRC often asserts that it is an intergovernmental organization, not a supranational one and, as such, its role is primarily to serve its member states\(^1\) But generally, almost all intergovernmental organizations is not a supranational one. MRC’s main role is to serve for their states did not mean that the body could not make any joint decision which represents the coordinate will of its nations. Because the current job undertook by MRC was most formulated by MRCS (the CEO and its 150 stuffs), and the function of Council and the Joint Committee has just approved the decision of the MRCS, the MRC has the crisis of being reduced to MRCS. If the procedure remains unchanged, The MRC will be a normal academic body in the near future.

Furthermore, MRC is not directly accountable to the public. Not like the other bodies or NGO in the region, the MRC is the only international subject in the lower Mekong basin. Its most important feature is “intergovernmental” and “water political”. The MRC’s main target is providing a platform for the four governments to negotiate and make political decisions. If the decision must be made in the public domain and all party stakeholders including public consensus has been achieved on the best way forward\(^6\), there would be no substantial development policy being made. The MRC would hardly become an effective and engaged river basin organization.

Finally, the MRC should not be a civil society. Presently, there are too many NGOs or academic bodies who can independently use its knowledge to advocate for the sustainable and equitable management of the Lower Mekong Basin. From a legal perspective, the MRC belongs to the subject of public international law.

3.2 To revise MRC agreement

In the 1995 Mekong Agreement, to ensure the member states to utilize the waters in a reasonable and equitable manner, Article 5 classifies the type of water use and list the obligations of basin state to observe. Prior consultation is required for (1) inter-basin diversions from the mainstream during the wet season; and (2) intra-basin uses on the mainstream during the dry season. At the extreme, any inter-basin diversion project during the dry season (i.e., those that would result in water being withdrawn from the mainstream and diverted to another basin) requires a specific agreement among the four countries. This provision is understandable in terms of the riparian states’ desire, particularly the downstream states of Cambodia and Viet Nam\(^7\). But it is an injustice to the comparative upstream country: Laos and Thailand. For the inter-basin diversion during the wet season or intra-basin uses during the dry season of the two countries, the prior consultation might deem failure. Because the downstream states would always quote this use type could cause “substantial damage” (article 8). While in reversed circumstance, the upstream states could not use this article to prevent the downstream Indochinese states’ utilization.
Additionally, China has embarked upon major dam-building programs in the upper reaches of the Mekong. Significant impacts in terms of changes in flow patterns will have a bearing on the water allocation formulae. If the historical flows are significantly altered, the 1995 Agreement may become obsolete, and this would undermine future cooperative river basin management.

To implement the principle of utilizing the waters in a reasonable and equitable manner, the provision should be revised. A key principle should be applied that could balance the right and obligation. This new principle is “reciprocity of rights and obligations of basin states”. The rights of basin state could be defined as water rights. In many countries water is regarded as state property, while groups or individuals may enjoy varying degrees of use rights. Clear water rights can contribute to reduce conflicts. In part, this explains the increasing pressure to formalize water rights[9]. But in terms of international water resources, the water rights of International River should not beyond its ownership feature. Since water in International River is flowing day and night through boundaries, the ownership should not be seen as static real right. The basis of the property is the multi-year average whole discharge of water inside the boundary of a country. Additionally, in the life of the river and an integrated world context, we should respect the life of the river first. So the water rights here could only be the discharge which has been drawn the environmental water requirement (EWR) beforehand.

To fix a comparative water right in the agreement can balance the rights and obligations between upstream and downstream states. Under this confirmation, the member states can adjust their behavior and make compensation following its own accord. Though this procedure, the effects of the whole international cooperation would be greatly enhanced.

Specific to Mekong basin, the water rights allocation could be tabled like this.

<table>
<thead>
<tr>
<th>River</th>
<th>Season</th>
<th>Use type</th>
<th>Notification</th>
<th>Prior consultation</th>
<th>Specific agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main stream</td>
<td></td>
<td>Dry season</td>
<td>Inter-basin diversion</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Intra-basin use</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wet season</td>
<td>Inter-basin diversion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Intra-basin use</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tributaries</td>
<td></td>
<td>Wet and dry season</td>
<td>Inter-basin diversion and Intra-basin use</td>
<td></td>
<td></td>
</tr>
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</tbody>
</table>

Table 1 Summary of Article 5 of the MRC agreement

<table>
<thead>
<tr>
<th>River</th>
<th>Season</th>
<th>Use type</th>
<th>Notification</th>
<th>Prior consultation</th>
<th>Specific agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>Myanmar Lao PDR Thailand Cambodia Vietnam Total</td>
<td>165,000</td>
<td>24,000</td>
<td>202,000</td>
<td>204,000</td>
</tr>
<tr>
<td>Catchment as % of MRB</td>
<td>21</td>
<td>3</td>
<td>25</td>
<td>23</td>
<td>20</td>
</tr>
<tr>
<td>Discharge as % of MRB</td>
<td>16</td>
<td>2</td>
<td>35</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>Contribution of Discharge (km³)</td>
<td>73.12</td>
<td>9.14</td>
<td>159.95</td>
<td>82.26</td>
<td>82.26</td>
</tr>
<tr>
<td>EWR² as % of MRB Discharge</td>
<td>28</td>
<td>28</td>
<td>28</td>
<td>28</td>
<td>28</td>
</tr>
<tr>
<td>Water rights as % MRB Discharge</td>
<td>11.52</td>
<td>1.44</td>
<td>25.2</td>
<td>12.96</td>
<td>12.96</td>
</tr>
<tr>
<td>Water rights (km³)</td>
<td>52.65</td>
<td>6.58</td>
<td>115.16</td>
<td>59.23</td>
<td>59.23</td>
</tr>
</tbody>
</table>


The above Table lists the total water rights of each basin state as yearly discharge (km³), that means each country has the rights to use the water amount in each year and should not be prevented by other basin states. The content of the Prior consultant is just to certify the monthly water rights according to the monthly EWR as exchanged data show by all basin states to avoid the significant harm.

To clarify it in management level, we could establish a voting institute inside the RBO. A proportion voting rights mechanism should be built according to their water right. That is, in some
important issue, each basin state should have a different vote right; the final decision should be based on “Absolute Majority Rule”. In the international river water right voting context, the decision could only be approved by at least 2/3 of the total amount of water rights.

3.3 To engage all countries in the Mekong River Basin

There are six states in the Mekong river basin. The upstream countries especially China didn’t access to the MRC. Chinese leadership considers the MRC is an inhibiting mechanism which composed of Thailand, Laos, Cambodia and Vietnam. For the last thirty year’s, China has a tremendous development of the national economy, education, and health care. The income of china in PPP terms has had fourfold since 1995, but the numbers of MRC countries hardly doubled. China contributes this most to the reform policy and the independent develop approach. Many Chinese anomalous interviewees said that the MRC lacked of governmental color heavily and its policy was deviate off the development stage of the local area. The MRC should help more with their member’s economic development.

Additionally, the mandate of the Mekong River Commission is Integrated Water Resources Management (IWRM). This combines economic development with environmental sustainable water management involving multiple stakeholders, from the central government to local governments, businesses, local communities and NGOs[10]. But the basic target to involve all the basin countries to negotiate has not attained. Given that all Mekong riparian countries have only emerged from hot and cold wars in less than two decades ago, and that (with the possible exception of Thailand) all are authoritarian countries with opaque, top-down decision-making processes, the IWRM agenda would not successfully enjoy popular support in the long time. Furthermore, democratizing water governance in developing international basin might often be seen by those in power as a threatening term and process[11]. In sum, to allocate the right and obligation under the principle of reciprocity might make the MRC involve all basin states and real IWRM RBO in the future[12].

References