

Northumbria Research Link

Citation: Hensengerth, Oliver (2020) Scalar water politics and competing development visions in China's transboundary Himalayan river basins: what role for international water law? *Journal of Water Law*, 26 (5/6). pp. 231-238. ISSN 1478-5277

Published by: Lawtext Publishing

URL: <https://www.lawtext.com/publication/the-journal-of...>
<<https://www.lawtext.com/publication/the-journal-of-water-law/contents/volume-26/issue-5>>

This version was downloaded from Northumbria Research Link:
<http://nrl.northumbria.ac.uk/id/eprint/44387/>

Northumbria University has developed Northumbria Research Link (NRL) to enable users to access the University's research output. Copyright © and moral rights for items on NRL are retained by the individual author(s) and/or other copyright owners. Single copies of full items can be reproduced, displayed or performed, and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided the authors, title and full bibliographic details are given, as well as a hyperlink and/or URL to the original metadata page. The content must not be changed in any way. Full items must not be sold commercially in any format or medium without formal permission of the copyright holder. The full policy is available online: <http://nrl.northumbria.ac.uk/policies.html>

This document may differ from the final, published version of the research and has been made available online in accordance with publisher policies. To read and/or cite from the published version of the research, please visit the publisher's website (a subscription may be required.)

Comment	Response
<p>We need you also to have a close look at the style requirements of the Journal, especially regarding footnoting styles - have a close look at https://www.lawtext.com/publication/the-journal-of-water-law and also more particularly https://www.lawtext.com/page/Submissions</p>	<p>All references have been converted to footnotes</p>
<ol style="list-style-type: none"> 1. U Beck, E Grande <i>Cosmopolitan Europe</i> (Polity Press Cambridge 2004) 28, 30. 2. Beck, Grande (n 2) 19. 3. Ibid 19-21. 4. L Francot, U de Vries 'Justice unbound: responsibility in the second modernity' in U de Vries, L Francot <i>Law's Environment: Critical Legal Perspectives</i> (The Eleven International Publishing The Hague 2011) 201-220 at 206-208. 5. L Dai 'A new perspective on water governance in China: Captain of the River' <i>Water International</i> (2015) 40:1, 87-99. 	
<p>1) the title too long, might I suggest: Scalar Water Politics and Competing Development visions in China's Transboundary Himalayan River Basins: What Role for International Water Law?</p>	<p>Title changed following this suggestion</p>
<p>2) The abstract is also quite long and it might be best to cut it down by a third - there is a lot of information that isn't necessary for an abstract.</p>	<p>The abstract is now reduced by about a third</p>
<p>3) Page 3, para. 1 - The author should also insert discussion of the UNECE convention a bit earlier as it also includes the two substantive rules</p>	<p>I added the UNECE Convention to this paragraph</p>
<p>4) "Imaginarities" - what does this mean, exactly? Narratives? Characteristics? Its not clear what this means, and I worry that this will not resonate with a JWL audience.</p>	<p>I replaced "geographical imaginaries" with "development narratives"</p>
<p>5) Page 7, para 4. The Author refers to the LMCM as the Lower Mekong Cooperation Mechanism. Does this mean the Lancang-Mekong Cooperation Mechanism? It's a quote, but the author should fact check it and alter it accordingly.</p>	<p>Error corrected</p>
<p>6) page 8 - Regarding the LMC - the author states that "by promoting the LMC, Beijing is able to invest in water infrastructure on the Mekong without engaging with international water law principles." Is this true? Are those projects not being conducted in legal jurisdictions that are obligated to uphold the water law obligations. I just am not sure it is this simple - there is certainly some interaction between the water law principles and the LMC funded projects, even if it is not the LMC or China itself engaging with them directly. The same would be true of any Chinese hydropower development on the Lower Mekong, as it would all need to be done within the legal framework of the Mekong River Agreement.</p>	<p>I agree with the comment. I have deleted the respective paragraph and amended the tone of the article in respect of these comments. The discussion part already mentioned that the MRC has observer status at the LMC.</p>
<p>7) Page 11 - Regarding the LMC - the author states that "for now we must observe that Beijing has promoted the Lancang-Mekong Cooperation while at the same time refusing closer collaboration with the Mekong River Commission." The author should make note of the recent MOU signed between the LMC and MRC, as well as recent joint studies and events hosted by these two institutions as, at the very least, a sign of a growing relationship.</p>	<p>I have deleted the sentence and amended the end of the discussion adding the MoU and current joint studies into the 2019 droughts.</p>

8) Finally, the author might considering referring to the Chinese government and China's actions as "China", not as "Beijing". Just a personal preference, and up to the discretion of the author and editorial team.

I left "Beijing" in place, as this was optional

Scalar Water Politics and Competing Development visions in China's Transboundary Himalayan River Basins: What Role for International Water Law?

Oliver Hensengerth, Northumbria University, Newcastle, UK

Oliver.Hensengerth@northumbria.ac.uk

Abstract

Himalayan basins are under increasing strain from political and social conflicts, economic and population growth, and climate change. China's position as upstream riparian has come under intense scrutiny inside and outside the region as its technological, economic and diplomatic power has given Beijing the ability for unilateral development of its river stretches. The article follows arguments by the international water law literature that China's position in transboundary water cooperation is dynamic and evolving and increasingly falling into line with international water law principles of equitably and reasonable utilisation and no harm. By drawing on the international relations literature and using the Mekong basin as a case study, I argue, however, that this position is subject to domestic and foreign policy agendas, which determine China's approach to its neighbours and border regions.

The article explores this complex problem by bringing into conversation literature from international water law and international relations. By doing so it situates river basin institutions at the intersection of overlapping sectoral and scalar processes. Applying this framework to the current developments of Mekong basin institutionalisation, the article demonstrates how these issues can lead to politicised institutions that leave little room for the application of international water law principles. The paper argues that a regional approach to water cooperation, including the development of a joint regional development narrative and geographical imaginary, may prove a successful driver of regional water cooperation.

Keywords: China's upstream dilemma; Himalayan river basins; Mekong; nexus; international water law; governance across scales; regional approaches to development

Introduction

Himalayan basins are under increasing strain from political and social conflicts, economic and population growth, and climate change.¹ Amongst current conflict hotspots are the ongoing conflict between India and Pakistan over Kashmir, which has put into question the sustainability of the

¹ R Wirsing, D Stoll, C Jaspardo *International Conflict over Water Resources in Himalayan Asia* (Palgrave Macmillan Houndsmills Basingstoke 2013). M Rahaman 'Integrated Ganges basin management: conflict and hope for regional development' *Water Policy* (2009) 11, 168-190. A Akanda 'South Asia's water conundrum: hydroclimatic and geopolitical asymmetry, and brewing conflicts in the Eastern Himalayas' *International Journal of River Basin Management* (2012) 10:4, 307-315. B Sharma, U Amarasinghe, X Cai, D de Condappa, T Shah, A Mukherji, L Bharati, G Ambili, A Qureshi, D Pant, S Xenarios, R Singh, V Smakhtin 'The Indus and the Ganges: river basins under extreme pressure' *Water International* (2010) 35:5, 493-521.

institutional arrangements of the Indus Water Treaty.² China as upper riparian has also come under intense criticism for its upstream dams: on the Mekong, Chinese dams were held responsible for the crippling droughts of 2010.³ Meanwhile on the Brahmaputra, China is locked in a conflict with India over Beijing's upstream dam-building programme.⁴ At the same time, popular discontent is rising, too. Indigenous communities and civil society organisations in Myanmar and Cambodia have taken to peaceful but persistent protests against hydropower dams, which have led to – temporary – suspension of the Myitsone dam and the Cheang Arey dam.⁵ Both dams had been planned by Chinese developers. Indeed, in the downstream areas of the Mekong and the Salween, Chinese developers have been involved in large-scale dam-building programmes, which is a manifestation of China's economic interest in the region as an investment destination for Chinese companies.⁶

Such conflicts question the role of principles enshrined in international water law – no harm, and equitable and reasonable utilisation – to guide cooperative development of a transboundary water resource. In order to understand a state's position in transboundary water governance and the role of international legal principles, the article engages the international relations literature, which argues that domestic politics is crucial to understand outcomes at the international level.⁷ Furthermore, in domestic politics different sectoral interests can impose themselves on river use strategies. For example, governments can view rivers as sources of energy, food, transport or tourism, thus determining national development agendas with potentially negative impacts on downstream water volume and water quality, a problem complex known as the water-energy-food nexus.

This complex mix of multi-scale and multi-sectoral politics can leave international legal principles in a problematic position where a state's development vision conflicts with the development visions created by basin institutions. This can lead to a bypassing of existing institutions or the creation of new ones that better seem to fulfil national interests. Indeed, where a state occupies a hegemonic upstream position, it may actively counter existing institutions, ignore them, or engage in the construction of new institutions by persuading others to join.⁸ Furthermore, interests are not static

² O Jamir 'Understanding India-Pakistan water politics since the signing of the Indus Water Treaty' *Water Policy* (2016) 18:5, 1070-1087.

³ P Clark 'Troubled waters: The Mekong river crisis' *Financial Times* 18 July 2014 <https://www.ft.com/content/1add7210-0d3d-11e4-bcb2-00144feabdc0> (accessed 4 December 2019).

⁴ D Chaudhury 'India keeping close watch on Chinese dams on Brahmaputra' *Economic Times* 4 July 2019 <https://economictimes.indiatimes.com/news/politics-and-nation/india-keeping-close-watch-on-chinese-dams-on-brahmaputra/articleshow/70079261.cms> (accessed 4 December 2019).

⁵ P Yeophanton 'China's dam diplomacy in the Mekong Region: Three game changers' in D Blake, L Robins *Water Governance Dynamics in the Mekong Region* (Strategic Information and Research Development Centre Petaling Jaya, Selangor, Malaysia 2016), 123-146. D Chan 'Asymmetric bargaining between Myanmar and China in the Myitsone dam controversy: Social opposition akin to David's stone against Goliath' *The Pacific Review* (2017) 30:5, 674-691.

⁶ E Goh *Developing the Mekong: Regionalism and Regional Security in China-Southeast Asian Relations*. Adelphi Paper 387 (Routledge Abingdon 2007). Y Santasombat ed *Impact of China's rise on the Mekong region* (Palgrave Macmillan Houndsmills, Basingstoke 2015).

⁷ For example, R Putnam 'Diplomacy and domestic politics: The logic of two-level games' *International Organization* (1988) 42(3): 427-460. J Goldstein, R Keohane *Ideas and Foreign Policy: Beliefs, Institutions and Political Change* (Cornell University Press Ithaca 1993). H Milner 'Rationalizing politics: The emerging synthesis of international, American, and comparative politics' *International Organization* (1998) 52:4, 759-786.

⁸ M Zeitoun, J Warner 'Hydro-hegemony: a framework for analysis of trans-boundary water conflicts' *Water Policy* (2006) 8:5, 435-460.

and can change over time as economies grow or regional political settings change. This can render institutions obsolete or in need of an update.

The article situates river basin institutions at the intersection of overlapping multi-sectoral and multi-scalar processes within which states attempt to manage water extraction. Applying this framework to the current developments of institution-building in the Mekong basin, the article demonstrates how this can lead to multiple, overlapping and politicised institutions that leave little room for the application of principles of international water law. To evidence this point, the article follows arguments by the international water law literature that China's position in transboundary water cooperation is dynamic and evolving and increasingly falling into line with international water principles. By drawing on international relations literature and using the Mekong basin as a case study, I argue, however, that this position is also subject to domestic development and foreign policy agendas, which determine China's approach to its transboundary rivers.

The article proceeds as follows: first, it outlines key international water principles and links these to scalar and sectoral approaches to water governance. In a next step, the article shows how such approaches can form national development visions for river basins, which may or may not be shared by other riparian states. This will in turn influence the emergence and the effectiveness of basin institutions to manage water use. The article then explores these issues with relevance to China's position as an upstream state in the Himalayan river basins, using the Mekong River basin as a case study. The article ends with reflections on China's wider role in the governance of the Himalayan river basins and implications for the creation of multilateral basin institutions.

International water law and the politics of scales and sectors

The principles of no harm and of equitable and reasonable utilisation have become established principles of international water law, enshrined as they are in the 1966 Helsinki Principles, the 1997 United Nations Convention on the Non-navigational Uses of International Watercourses (hereafter: Watercourse Convention), and the United Nations Economic Commission for Europe (UNECE) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (hereafter: Water Convention). Both principles are rooted in the theory of limited sovereignty, which argues that 'every state is free to use shared rivers flowing through its territory as long as such utilization does not prejudice the rights and interests of the co-riparians.'⁹ It has been well established that the implementation of these principles is subject to government preferences in water resources exploitation.¹⁰ Indeed, government priorities and bureaucratic competition between energy, environment, food and other administrations determine national water use policies. This has impacts

⁹ M Rahaman 'Principles of transboundary water resources management and Ganges treaties: An analysis' *Water Resources Development* (2009) 25:1, 159-173 at 160. R Paisley 'Adversaries into partnerships: International water law and the equitable sharing of downstream benefits' *Melbourne Journal of International Law* (2002) 3(2), 280-300 at 281-282. For a debate on the interaction between both principles see S McCaffrey 'The contribution of the UN Convention on the Non-navigational Uses of International Watercourses' *Journal of Global Environmental Issues* (2001) 1:3-4, 250-263.

¹⁰ For an analysis of the Mekong basin see for example J Dore, L Lebel 'Deliberation and scale in Mekong region water governance' *Environmental Management* (2010) 46, 60-80. For the Hindukush Himalayan ecosystem see G Rasul 'Food, water, and energy security in South Asia: A nexus perspective from the Hindu Kush Himalayan region' *Environmental Science and Policy* (2014) 39, 35-48.

on water quantity and quality in other riparian states, producing a spill-over effect from the domestic to the international level.¹¹

In order to understand these complexities, the concept of the water-food-energy nexus (hereafter: nexus) is instructive. Nexus is 'based on the view that segmented sectoral planning and decision making is likely to lead to unsustainable development pathways and inefficiencies in the development of resources and their allocation between uses and users.'¹² UNECE has identified a nexus approach to transboundary water management as leading to more equitable water sharing, given that it requires policy-makers to think both about inter-sectoral coordination and planning across scales – including beyond the basin scale.¹³ The nexus concept gained political traction when the UNECE Water Convention adopted the nexus concept into its work programme and began to explore its role in transboundary water management in a number of pilot assessments.¹⁴ Benson et al argue that nexus – in a departure from the earlier concept of Integrated Water Resources Management (IWRM)¹⁵ – is new 'particularly in terms of holistically integrating different policy sectors, encouraging business involvement, promoting economically rational decision making and privileging water securitisation in the pursuit of sustainable development.'¹⁶

Furthermore, McGrane et al point out that 'nexus attempts to differentiate itself by considering the WEF [water-energy-food] sectors concomitantly, soliciting cross-sectoral cooperation rather than assessing the impacts of changes through one particular lens.'¹⁷ They also argue that nexus calls for attention to a plurality of scales involved in water management, including temporal, spatial, institutional and jurisdictional.¹⁸ Moving beyond the basin scale brings into focus the role of national interests in water exploitation. That domestic processes can influence outcomes at the international level – and vice versa – has long been recognised by the international relations literature across its realist, liberal and constructivist branches.¹⁹ Putnam famously pointed to the ambiguous character of international politics, arguing in his two-level game theory that state representatives negotiating at

¹¹ H Leck, D Conway, M Bradshaw, J Rees 'Tracing the water–energy–food nexus: Description, theory and practice' *Geography Compass* (2005) 9, 445-460, cited in S McGrane, M Acuto, F Artioli 'Scaling the nexus: Towards integrated frameworks for analysing water, energy and food' *Geographical Journal* (2019) 185:4, 419-431 at 420. O Hensengerth, I Dombrowsky, W Scheumann *Benefit-Sharing in Dam Projects on Shared Rivers*. Discussion Paper 6/2012 (German Development Institute / Deutsches Institut für Entwicklungspolitik Bonn 2012).

¹² Nexus *The Nexus Approach vs IWRM: Gaining Conceptual Clarity*. Nexus: The Water, Energy and Food Security Resource Platform (Nexus 2014) <https://www.water-energy-food.org/news/nexus-concept-the-nexus-approach-vs-iwrn-gaining-conceptual-clarity/> (accessed 17 April 2020).

¹³ UNECE *A Nexus Approach to Transboundary Cooperation: The Experience of the Water Convention* (United Nations 2018) 3-4.

¹⁴ Ibid 16.

¹⁵ While nexus is of more recent origin, nexus and IWRM are similar in their aim to integrate different sectors, but they are also different in several ways (for a recent attempt at providing an overview of the literature see G Simpson, G Jewitt 'The development of the water-energy-food nexus as a framework for achieving resource security: A review' *Frontiers in Environmental Science* (2019), <https://doi.org/10.3389/fenvs.2019.00008>).

¹⁶ D Benson, A Gain, J Rouillard, 'Water governance in a comparative perspective: From IWRM to a 'nexus' approach?' *Water Alternatives* (2015) 8:1, 756-773 at 761.

¹⁷ McGrane, Acuto, Artioli (n 11) 421.

¹⁸ Ibid 419.

¹⁹ K Waltz *Man, the State, and War: A Theoretical Analysis*. Columbia University Press New York 1959. P Gourevitch 'The second image reversed: The international sources of domestic politics' *International Organization* (1978) 32:4, 881-912. R Axelrod *The Evolution of Cooperation* (Basic New York 1984). A Johnston *Social States China in International Institutions, 1980-2000* (Princeton University Press Princeton 2007). A Acharya *Whose Ideas Matter? Agency and Power in Asian Regionalism* (Cornell University Press Cornell 2009).

the international level are also bound by domestic contexts and are therefore operating simultaneously at two different scales. The home context, meanwhile, is often beset by sectoral and multi-stakeholder conflicts.²⁰

Likewise, the international relations literature dealing specifically with transboundary water cooperation has shown how domestic politics can influence outcomes at the international level by 'highlighting the multi-level nature of water politics.'²¹ Indeed, the state of domestic water development as well as the way in which a state situates itself towards its neighbours – by either driving a hostile or cooperative foreign policy – are important indicators for the nature of transboundary water cooperation. As Zeitoun and Warner argued, '[p]olitical processes outside the water sector configure basin-wide hydro-political relations.'²² States therefore operate within a complex network of actors in domestic and international policy arenas. This means that legal principles for transboundary water courses exist in a dynamic environment of domestic, international and sectoral policy processes. The complexity of scales and sectors provides challenges for policy makers to reach agreements over transboundary water use, even as the UN Watercourse Convention and the UNECE Water Convention both have adopted the principles of no harm and equitable and reasonable utilisation as reference point for states in river basins worldwide. The next section explores these complexities in more detail.

Transboundary rivers and national development narratives

Water is strongly related to national development narratives. Allouche explored the connection between water infrastructure and nation-building in Egypt. He argued that water nationalism – the styling of large dams as powerful political symbols of national resurgence – can explain conflicts over transboundary water resources.²³ Menga argued that the development of domestic hydraulic resources can overlap with the formation of a national identity, and this can in turn have repercussions for transboundary water cooperation and conflict.²⁴ India's former prime minister Nehru famously called dams the 'temples of modern India', indicating the powerful symbolism that dams – for large scale irrigation projects, hydropower or other purposes – can be assigned in nation-building narratives.²⁵ A state's hydraulic mission may, therefore, conflict with requirements for transboundary water cooperation.²⁶

²⁰ Putnam (n 7).

²¹ J Warner, N Zawahri 'Hegemony and asymmetry: multiple-chessboard games on transboundary rivers' *International Environmental Agreements: Politics, Law, Economics* (2012) 12:3, 215-229 at 216.

²² Zeitoun, Warner (n 8) 435.

²³ J Allouche *Water Nationalism: An Explanation of the Past and Present Conflicts in Central Asia, the Middle East and the Indian Subcontinent?* PhD thesis, University of Geneva 2015.

²⁴ F Menga 'Domestic and international dimensions of transboundary water politics' *Water Alternatives* (2016) 9:3, 704-723 at 705.

²⁵ A Biswas, C Tortajada 'Development and large dams: A global perspective' *Water Resources Development* (2001) 17:1, 9-21 at 10-11. M Akhter 'Infrastructure nation: State space, hegemony, and hydraulic regionalism in Pakistan' *Antipode* (2015) 47:4, 849-870. F Menga 'Building a nation through a dam: the case of Rogun in Tajikistan' *Nationalities Papers* (2015) 43:3, 479-494.

²⁶ R Hanna, J Allouche 'Water nationalism in Egypt: State-building, nation-making and Nile hydro-politics' in F Menga, E Swyngedouw *Water, Technology and the Nation-State* (Routledge London 2018), 81-95. A Conker 'Understanding Turkish water nationalism and its role in the historical hydraulic development of Turkey' *Nationalities Papers* (2018) 46:5, 877-891.

Swyngedouw argued that river basins are historically produced waterscapes that represent political, social, and natural relationships at certain points in time. These waterscapes are contested: their meaning changes depending on how, where, and by whom water is used.²⁷ River basins are therefore a reflection of dominant power relationships.²⁸ Indeed, some of the early basin organisations have emerged in the context of wider regional political projects. The oldest commissions – for the Rhine and for the Danube – were formed in the wake of major political and territorial reorganisation processes after the Napoleonic Wars and the Crimean War.²⁹ More recently, the 1957 Mekong Committee – the predecessor of the 1995 Mekong River Commission – was created to achieve economic development of the Lower Mekong basin in the context of post-World War II and post-independence war devastation and against the backdrop of the Cold War.³⁰ In the Senegal River basin, riparian states took an early view of the Senegal as being an international river and applied a joint planning and management approach that created the Organisation pour la mise en valeur du fleuve Sénégal (OMVS).³¹ Other basins have only seen recent emergence of basin-wide institutional frameworks, such as the Zambezi in the form of Zambezi Watercourse Commission (ZAMCOM) for which the agreement was concluded in 2004, but which remains unable to ‘solve complicated transboundary collective action dilemmas or to be able to ensure national political commitment.’³²

As a consequence, river basins can be seen as expressions of specific waterscapes where institutional frameworks have evolved at certain points in time, supported by interested actors and taking different shapes and functions.³³ This also means that institutions may require adaptation as national interests, regional political arrangements, or international laws change and evolve and inter-state relationships are transformed. As Leb demonstrates, international treaties are ‘outcomes of and reflections of the political realities at the time of their conclusion [but they have often been] subject to modification to better reflect changes in underlying circumstance.’³⁴ Treaty-based institutions or joint mechanisms must therefore have the capacity to be adaptive and should allow to incrementally broaden the scope of cooperation as new issues arise and state interests change.³⁵

²⁷ E Swyngedouw ‘The political economy and political ecology of the hydro-social cycle’ *Journal of Contemporary Water Research and Education* (2009) 142:1, 56-60. E Swyngedouw “‘Not a drop of water...’: State, modernity, and the production of nature in Spain, 1898-2010’ *Environment and History* (2014) 20:1, 67-92.

²⁸ F Molle, T Foran, P Floch ‘Changing waterscapes in the Mekong region: Historical background and context’ in F Molle, T Foran, M Käkönen *Contested Waterscapes in the Mekong Region: Hydropower, Livelihoods and Governance* (Earthscan London 2009), 1-13.

²⁹ J Chamberlain *The Regime of the International Rivers, Danube and Rhine*. PhD thesis, Columbia University 1923.

³⁰ E Black *The Mekong River: A Challenge in Peaceful Development for Southeast Asia* (National Strategy Information Center New York 1969).

³¹ T Parnall, A Utton ‘The Senegal Valley Authority: A unique experiment in international river basin planning’ *Indiana Law Journal* (1976) 51:2, 235-256.

³² F Söderbaum ‘Rethinking the politics of transboundary water management: The case of the Zambezi river basin’ *International Journal of Water Governance* (2015) 3:3, 1-12 at 8. A Schulz ‘Creating a Legal Framework for Good Transboundary Water Governance in the Zambezi and Incomati River Basins’ *Georgetown International Environmental Law Review* (2007) 19:2, 117-184.

³³ For an analysis of different organisational types see S Schmeier *Governing International Watercourses: River Basin Organizations and the Sustainable Governance of Internationally Shared Rivers and Lakes* (Routledge London 2013).

³⁴ C Leb ‘One step at a time: International law and the duty to cooperate in the management of shared water resources’ *Water International* (2014) 40:1, 21-32 at 24.

³⁵ *Ibid.*

This, however, also means that transboundary rivers should be seen as part of broader political landscapes and dynamics in which international legal principles need to be embedded. The following sections explore these issues further with a focus on China's upstream position in the Himalayan river basins, followed by a more restricted focus on the Mekong basin.

The role of China in transboundary water cooperation: between national development and foreign policy making

China's role as upstream riparian in the Himalayan river basins has been under intense scrutiny from inside and outside the region. China's upstream position – in conjunction with its technological, financial and political power – suggests that it occupies a hegemonic position which allows it to develop national river stretches unilaterally without recourse to downstream concerns.³⁶ Powerful states located upstream have often been referred to as hydro-hegemonic, implying that they can refuse cooperation or enforce a mode of cooperation that is beneficial for them.³⁷ Others have suggested that downstream states can develop counter-hegemonic strategies that allows them to pursue their own development agendas and defy the hegemon.³⁸

Wouters and Devlaeminck argued that China faces an 'upstream dilemma': the rivers are of strategic importance to meet a number of domestic needs in a range of sectors including economic development and environmental protection, while considering the needs of downstream riparians according to international water law.³⁹ Downstream riparians also require the same water to meet their domestic needs. This produces domestic and transboundary nexus tradeoffs. The Himalayan basins are central to China's energy policy. The 13th Renewable Energy Development Five Year Plan (2016-2020) aims to increase the share of non-fossil energy in total primary energy consumption to 15% by 2020 and to 20% by 2030. It further aims to increase installed renewable power capacity to 680 GW by 2020, with 340 GW coming from hydropower. The Renewable Energy Development Five Year Plan explicitly mentions a focus on the Southwestern river basins for hydropower development including in Southeastern Tibet for the West-to-East Energy Transfer Project.

Surprisingly, the plan makes no mention of the Nu/Salween River dam cascade, even though it still appeared in a 2013 energy blueprint following ten years of domestic controversy that led the government to suspend the original plans for the Nu cascade in 2004 only to bring it back in an altered design in 2013.⁴⁰ Indeed, reports suggest that Beijing has now decided to shelve the plans to dam the

³⁶ A Liebman 'Trickle-down hegemony? China's "peaceful rise" and dam building on the Mekong' *Contemporary Southeast Asia* (2005) 27:2, 281-304.

³⁷ Zeitoun, Warner (n 8).

³⁸ A Cascão 'Ethiopia: Challenges to Egyptian hegemony in the Nile basin' *Water Policy* (2008) 10:S2, 13-28. A Nicol, A Cascão 'Against the flow: New power dynamics and upstream mobilisation in the Nile Basin' *Review of African Political Economy* (2011) 38:128, 317-325.

³⁹ P Wouters, D Devlaeminck *China's Upstream Dilemma: A Catalyst for Transboundary Cooperation?* Water International Policy Brief Number 10 (2018) <https://www.iwra.org/wp-content/uploads/2018/08/PB-N10-august-2018-web.pdf> (accessed 5 December 2019).

⁴⁰ J Yardley 'China's premier orders halt to a dam project threatening a lost Eden' *New York Times* 9 April 2004 <https://www.nytimes.com/2004/04/09/world/china-s-premier-orders-halt-to-a-dam-project-threatening-a-lost-eden.html> (accessed 5 December 2019). A Mertha, *China's Water Warriors: Citizen Action and Policy Change* (Cornell University Press Ithaca 2008). J Li 'Ban lifted on controversial Nu river dam projects' *South China Morning Post* 25 January 2013 <https://www.scmp.com/news/china/article/1135463/ban-lifted-controversial-nu-river-dam-projects> (accessed 20 July 2019).

Nu River, although it is unclear if this is a permanent decision.⁴¹ This follows widespread public hostility towards the Nu River dams, but also policies to turn the Nu River valley into an eco-tourism site.⁴² This means that China's rivers are subject to intense domestic competition between environmental protection, tourism promotion, and energy development.

The fact that China has not signed the UN Watercourse Convention may suggest that Beijing firmly adheres to territorial sovereignty and rejects notions of limited sovereignty in relation to transboundary water courses in order to freely exercise its right to domestic development. However, Fry and Chong argued that the official rejection by China of the UN Watercourse Convention does not mean that China also rejects the underlying principles. According to the authors, China's 2002 Water Law adopted many of the principles, and these influence China's cooperation in its transboundary river basins.⁴³ This indicates that China's position is both dynamic and evolving. Similarly, Wouters and Chen argued that China's approach to cooperation on its transboundary river basins is consistent with a limited sovereignty approach.⁴⁴ Identifying a 'soft approach' to transboundary water cooperation, they argue that China's approach to hydro-diplomacy is based on 'seeking mutual consent and recognising national diversity in its alliances, which influences directly the nature of its transboundary water cooperation.'⁴⁵

This mutual consent over the development of water resources is important as Beijing also views the downstream regions as important for the economy of landlocked Western China. This is particularly the case for the Mekong basin, where China has promoted a number of regional development initiatives – in addition to already existing forms of cooperation that China has eschewed. This has led to a multitude of overlapping and conflicting development initiatives, as the next sections will show.

The Mekong River basin: institutional frameworks and conflicting development narratives

The Mekong basin is subject to multiple development narratives expressed through a number of key institutions, in which China is a selective participant. The oldest institution is the Mekong River Commission. Originally created as the Mekong Committee in 1957, it was reshaped in 1995 under the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (hereafter: Mekong Agreement). Under the Mekong Agreement, the Commission has pursued a regional approach to basin planning through its Basin Development Plan. The Mekong Agreement installed IWRM as central principle to basin planning and has also begun to refer in its documentation to the nexus concept.⁴⁶ Enshrined in the Mekong Agreement, and therefore legally binding, are the

⁴¹ T Phillips 'Joy as China shelves plans to dam "angry river"' *The Guardian* 2 December 2016 <https://www.theguardian.com/world/2016/dec/02/joy-as-china-shelves-plans-to-dam-angry-river> (accessed 17 April 2020).

⁴² Ibid.

⁴³ J Fry, A Chong 'International water law and China's management of its international rivers' 39 *B.C. Int'l & Comp. L. Rev.* 227 (2016), <https://lawdigitalcommons.bc.edu/iclr/vol39/iss2/2>. For a similar argument see H Chen, A Rieu-Clarke, P Wouters 'Exploring China's transboundary water treaty practice through the prism of the UN Watercourses Convention' *Water International* (2013) 38:2, 217-230 at 255.

⁴⁴ P Wouters, H Chen 'China's 'soft-path' to transboundary water cooperation examined in the light of two UN Global Water Conventions: Exploring the "Chinese way"' 22 *Water Law* (2013), 229-247 at 234.

⁴⁵ Ibid. 241.

⁴⁶ Mekong River Commission *Integrated Water Resources Management-based Basin Development Strategy 2016-2020 for the Lower Mekong Basin* (Mekong River Commission 2016) 42. For a detailed analysis of the nexus in the Mekong basin including its scalar and sectoral issues see A Smajgl, J Ward *The Water-Food-Energy Nexus*

principles of reasonable and equitable utilization (Mekong Agreement, Article 5) and no harm (Mekong Agreement, Article 7). It therefore incorporates key principles of the UN Watercourse Convention.

China is not a member of the Mekong River Commission and only has observer status. While Beijing has been sharing flow data with the Mekong River Commission during the flood season since 2002, it has repeatedly refused to share dry season flow information as data pertaining to transboundary rivers is classed as confidential.⁴⁷ The only exception made was during the severe 2010 drought, which was widely blamed on China's upstream dams, although no hard evidence existed.⁴⁸ Instead, Beijing has enthusiastically embraced another multilateral cooperation, which follows a soft, non-legally binding approach and has a broad regional scope: the Greater Mekong Subregion, founded in 1992 on the initiative of the Asian Development Bank. The Asian Development Bank has promoted the Greater Mekong Subregion as a 'natural economic region' bound by the Mekong River.⁴⁹ It has, therefore, engaged in strong region-promotion activities to overcome the ideological Cold War split that made the region one of the Cold War's main theatres of war.⁵⁰ This suits the aims of the Chinese government as it aims to strengthen the Western Chinese economy through an array of investment programmes.

Developing the Mekong basin economy is a key strategy of Beijing in an effort to benefit the landlocked Western economy of Yunnan and Guangxi. Consequently, the Chinese government has been active in building investment and trading relationships, and developing supportive infrastructure such as roads, ports, airports, energy plants, and making the Mekong River more navigable.⁵¹ In addition, the Mekong basin has become an important part of China's One Belt One Road project.⁵² This economic interest makes Beijing an active participant in the economic development of the region. For example, in 2014 prime minister Li Keqiang announced a sum of USD1billion for 'connectivity projects', including rail links and dredging of the Mekong, with the aim to drive integration in the Greater Mekong Subregion and construction of the Silk Road Economic Belt and the 21st Century

in the Mekong Region: Assessing Development Strategies Considering Cross-Sectoral and Transboundary Impacts (Springer New York 2013).

⁴⁷ T Cosslet, P Cosslet *Water Resources and Food Security in the Vietnam Mekong Delta* (Springer Heidelberg 2014) 158. Q Gao *A Procedural Framework for Transboundary Water Management in the Mekong River Basin: Shared Mekong for a Common Future* (Brill Nijhoff Leiden 2014) 93. Mekong River Commission 'MRC and China renew pact on water data provision and other cooperation initiatives' 19 July 2019 <http://www.mrcmekong.org/news-and-events/news/mrc-and-china-renew-pact-on-water-data-provision-and-other-cooperation-initiatives/> (accessed 5 December 2019).

⁴⁸ T Fuller 'Countries blame China, not nature, for water shortage' *The New York Times* 1 April 2010 <https://www.nytimes.com/2010/04/02/world/asia/02drought.html> (accessed 5 December 2019). Gao (n 47) 93.

⁴⁹ Asian Development Bank *Greater Mekong Subregion Economic Cooperation Program* (Asian Development Bank Manila 2012) 3.

⁵⁰ O Hensengerth, Oliver *Regionalism in China-Vietnam Relations: Institution-Building in the Greater Mekong Subregion* (Routledge London 2010).

⁵¹ M Keskinen, K Mehtonen, O Varis, Olli 'Transboundary cooperation vs. internal ambitions: The role of China and Cambodia in the Mekong region' in N Pachova, M Nakayama, L Jansky *International Water Security: Domestic Threats and Opportunities* (United Nations University Press Tokyo 2008), 79-109.

⁵² X Su 'Rescaling the Chinese state and regionalization in the Great Mekong Subregion' *Review of International Political Economy* (2012) 19:3, 501-527. D Arase 'China's two silk roads initiative: What it means for Southeast Asia' *Southeast Asian Affairs* (2015), 25-45. J Blanchard, C Flint 'The geopolitics of China's maritime silk road initiative' *Geopolitics* (2017) 22:2, 223-245.

Maritime Silk Road.⁵³ Chen and Stone argue that these and other Chinese-driven connectivity projects lead to ‘a new spatial configuration’ of the region in a twin process of Chinese-led globalisation and regionalisation.⁵⁴

Furthermore, China has led an active process of institution-building by leading the establishment of the Lancang-Mekong Cooperation, which makes Beijing also independent of funding channelled through the Asian Development Bank. The Sanya Declaration, adopted at the first summit of the Lancang-Mekong Cooperation in 2016, calls on member states ‘to support the operations of the AIIB [Asian Infrastructure Investment Bank] and take advantage of AIIB loans.’⁵⁵ Indeed, the Sanya Declaration ‘encourages synergy between China’s Belt and Road initiative and LMCM [Lancang-Mekong Cooperation Mechanism] activities and projects.’⁵⁶

China has been explicit in styling the Lancang-Mekong Cooperation as an altogether different form of cooperation – a ‘new path of sub-regional development featuring equality, sincerity, mutual assistance and kinship.’⁵⁷ This could be seen as a swipe at the donor-driven Mekong River Commission that enforces principles of environmental sustainability via top-down donor conditionalities. What we can see, therefore, is the emergence of new Chinese-led institutions that are connected to China’s wider efforts at institution-building and influence expansion through the One Belt One Road project and the Asian Infrastructure Investment Bank. This new set of closely interconnected regional and financing mechanisms leads Suehiro to observe the creation of ‘China-led international institutions/organizations and, by extension, a “China-friendly” international environment’ that is conducive to its rise.⁵⁸

Discussion: scalar politics, national interests, and transboundary water cooperation. What role for international water law?

River basins are situated at the intersection of overlapping sectoral and scalar processes within which states attempt to manage water extraction. A complex set of political, social and economic dynamics play out both nationally and regionally and determine the evolution of institutional arrangements. International water law attempts to attenuate these conflicts by setting out principles for water utilisation: equitable and reasonable utilisation, and no harm. The nexus concept is instrumental here as it acknowledges both sectoral and scalar issues and a perspective beyond the basin. It has also

⁵³ Y Zhao, J Qin, Jize ‘China commits \$1bn to Greater Mekong Subregion’ *China Daily* 20 December 2014 http://www.chinadaily.com.cn/world/2014livisitkst/2014-12/20/content_19133622.htm (accessed 20 July 2019). *Xinhua* ‘China to offer funds, production capacity aid to neighbors’ 20 December 2014 http://www.chinadaily.com.cn/world/2014livisitkst/2014-12/20/content_19133423.htm (accessed 20 July 2019).

⁵⁴ X Chen, C Stone, Curtis ‘China and Southeast Asia: Unbalanced development in the Greater Mekong Subregion’ *European Financial Review* (2013), 7-11 at 7.

⁵⁵ D Nguyen *The Lancang-Mekong Cooperation Mechanism (LMCM) and Its Implications for the Mekong Sub-region*. Centre for Strategic and International Studies Working Paper Vol. 18, WP 1 (Centre for Strategic and International Studies Honolulu 2018) 13 https://www.pacforum.org/sites/default/files/issuesinsights_vol18wp1_lancang-mekong-cooperation-mechanism-lmcm.pdf (accessed 20 July 2019).

⁵⁶ Ibid.

⁵⁷ *Xinhua* ‘How Lancang-Mekong Cooperation is changing the region’ 3 July 2018, http://www.xinhuanet.com/english/2018-07/03/c_137299225.htm (accessed 20 July 2019).

⁵⁸ A Suehiro ‘China’s offensive in Southeast Asia: regional architecture and the process of Sinicization’ *Journal of Contemporary East Asia Studies* (2017) 6:2, 107-131 at 108.

entered debates in international water law and gained political traction when UNECE added it to the work programme of the Water Convention and started a series of pilot programmes. However, nexus has found it difficult to gain ground in the complexity of national interests, sectoral conflicts, and scalar issues.

In the Himalayan basins, China as the upper riparian finds itself in a difficult relationship with water law principles. Defying calls for closer cooperation with the Mekong River Commission, Beijing prefers to keep a free hand in the development of the water resources. At the same time, China has styled itself as a good neighbour and has made available large-scale investment sums in the Mekong region through new initiatives such as the Lancang-Mekong Cooperation, but also by including the Mekong in its Belt and Road strategy. These projects are financially supported by Chinese government funds and by the Asian Infrastructure Investment Bank. Beijing styles this as win-win cooperation and a new style of cooperation that is set apart from the hierarchical relationship between Northern donors and the global South.

China is therefore an important region-promoting state, based on its interests in creating a conducive economic and political environment, while bypassing institutions that it views as inimical to its interests. This is detrimental for the IWRM-based Mekong River Commission, which incorporates international water law principles but which is donor-funded and whose Mekong Agreement is legally binding. China's development vision for the Mekong basin is thus one of economic development in an interconnected region, driven by new sources of finance and without being restricted by external principles and actors. As a consequence, the Mekong basin is subject to multiple, overlapping and conflicting development visions.

This has implications for water cooperation. As Wouters and Chen pointed out, China's 'soft approach' to transboundary water cooperation remains a 'hard' problem for downstream states as they are unable to engage upstream states within clearly defined and legally binding frameworks.⁵⁹ This impasse is difficult to resolve. At the same time, upstream states can create new institutions by promoting development visions that downstream states may buy into.⁶⁰ This can include the creation of new financial incentives.

Beijing did not participate in the evolution of the legal regime that underpins the Mekong River Commission. It could therefore be argued that from the start China had limited interest in engaging with the Commission when it evolved in its present shape in the early 1990s, as at that time Beijing was starting to implement the upstream dam cascade – construction for the first of China's upstream dams, the Manwan dam, began in 1986 and completed in 1995. In contrast, in the Lancang-Mekong Cooperation Beijing is able to drive the agenda. Yet, the argument made by several authors – as discussed above – that China does follow principles of the UN Watercourse Convention points to the fact that Beijing does view international principles as useful for water governance. The issue in the Mekong basin, however, is that a legal regime was forged in the shape of the Mekong River Commission without China's participation and one that is not necessarily in line with Beijing's interests. Promotion of new institutions is therefore a logical step.

⁵⁹ Wouters, Chen (n 44) 242.

⁶⁰ Zeitoun, Warner (n 8).

In this context, several authors have pointed out that the principles of no harm and equitable and reasonable utilisation may disadvantage late upstream developers, in parts depending on whether the principle of no harm or the principle of equitable and reasonable utilisation takes precedence (Wegerich and Olsson 2010: 709-712). As Wegerich and Olsson argue, the 1966 Helsinki Rules and the 1997 Watercourse Convention subordinated the principle of no harm to the principle of equitable and reasonable utilisation, thus allowing late developers to exploit their water resources while giving due regard to the impact on downstream states, with the obligation to minimise and mitigate such impact. In the interpretation of the authors, the 2004 Berlin Rules, however, subordinated the principle of equitable and reasonable utilisation to the principle of no harm, thus preserving the status quo of basin development as new water infrastructure upstream necessarily causes harm to downstream states.⁶¹ McIntyre adds further to this by arguing that upstream riparians prefer the principle of equitable and reasonable utilisation, while downstream riparians prefer to reference no harm.⁶²

In the context of upstream-downstream issues, debates over late versus early developers, and the ways that international water law principles insert themselves into these debates, the concept of community of interest – or common management approach – is helpful in order to understand recent developments in Mekong basin cooperation. The concept of community of interest is said to be an approach in international water law practice whereby it goes beyond notions of absolute or limited sovereignty and normative principles of international water law. According to McIntyre (2010: 67), under the approach

the drainage basin is regarded as an integrated whole and is managed as an economic unit, with the waters either vested in the community or divided among co-basin states by agreement, accompanied by the establishment of international machinery to formulate and implement common policies for the management and development of the basin.⁶³

Under this approach, basin institutions can vary widely, depending on the specific interests and management approaches taken by riparian states to jointly manage their water resources (ibid). Community of interest assumes that riparian states all have a number of interests in developing the water system, which makes them politically, culturally, socially and/or economically interdependent.⁶⁴ A number of authors have attempted to use the concept to propose a way forward with regard to China. Rocha Loures identifies incipient and partial Chinese policies towards a community of interest in some of the treaties that Beijing has concluded with its riparian neighbours to the north (Kazakhstan, Mongolia and Russia), although she ultimately argues that Beijing's preference for bilateral engagement over transboundary rivers prevents the full adoption of such an approach.⁶⁵

⁶¹ K Wegerich, O Olsson 'Late developers and the inequity of "equitable utilization" and the harm of "do no harm"' *Water International* (2010) 35:6, 707-717 at 709-712.

⁶² O McIntyre 'Benefit-sharing and upstream/downstream cooperation for ecological protection of transboundary waters: opportunities for China as an upstream state' *Water International* (2015) 40:1, 48-70.

⁶³ O McIntyre 'International water law: Concepts, evolution and development' in A Earle, A Jägerskog, J Öjendal *Transboundary Water Management: Principles and Practice* (Earthscan London 2010), 59-71 at 67.

⁶⁴ F Rocha Loures 'The dragon as part of transboundary basin 'villages': Community of interests and international law in China' *Journal of Water Law* (2016) 24:5-6, 220-238 at 223-224.

⁶⁵ Ibid.

In a departure from the concept of community of interest, Moynihan and Magsig argue that international water law increasingly sees the development of regional approaches to transboundary water governance⁶⁶, whereby 'regional approach' is defined as:

a limited grouping of three or more States that have some geographical association and have formally come together in order to collectively pursue activities of common concern. Regional arrangements can be constituted through detailed legal agreements or through political agreements that are of an international nature, designed to commit the signatories to specific courses of action.⁶⁷

Moynihan and Magsig propose that water security can act as such as common concern. Drawing on previous work that analyses the ways in which the notion of water security can act as a 'change agent' for the future development of international water law, they argue that a number of concepts have been proposed to this effect, including 'common area', 'common heritage', 'community of interest' and 'regional common concern.' While the first two are too limited to a certain geographical area and the third could be seen as intruding too much into national sovereignty, the authors propose to use the notion of water security to identify a regional common concern through which basin states realise that the challenges they face go beyond the national scale as well as the basin scale and require peaceful and joint development of watercourses.⁶⁸ This links neatly to the nexus concept, which forces states to think beyond the national interest as well as beyond the basin scale to address questions of resource security.

In the Mekong basin, the Lancang-Mekong Cooperation, just as before it the Greater Mekong Subregion, could be said to address such regional common concerns. In both cases, however, the river itself merely provides the starting point for jointly developing a broad programme of regional development. As such, the Mekong is the geographical reference point that pulls states together in a development exercise that utilises the waters of the Mekong as powerful symbol, but that goes beyond the river by developing a wider agenda of development around cross-border economic cooperation. As we saw above, the Mekong basin is an area of specific economic and political interest to Beijing. As Ho (2014: 1) pointed out in her comparative analysis of China's policies in the Brahmaputra and Mekong basins, 'China manages its transboundary rivers as a subset of its broader relations with other riparian states.'⁶⁹ She argues that despite China's preference for bilateralism,

China is willing to pursue multilateralism when it is in its interests to do so and when there is a higher level of trust and engagement between China and the countries involved. In this light, its policies towards multilateralism with respect to international river

⁶⁶ R Moynihan, B Magsig 'The rising role of regional approaches in international water law: Lessons from the UNECE water regime and Himalayan Asia for strengthening transboundary water cooperation' *Review of European Community and International Environmental Law* (2014) 23:1, 43-58.

⁶⁷ R Burchill 'Regional approaches to international humanitarian law' *Victoria University of Wellington Law Review* (2010) 41:2, 205-233 at 209 cited in

⁶⁸ R Moynihan, B Magsig 'The rising role of regional approaches in international water law: Lessons from the UNECE water regime and Himalayan Asia for strengthening transboundary water cooperation' *Review of European Community and International Environmental Law* (2014) 23:1, 43-58 at 53.

⁶⁹ S Ho 'River politics: China's policies in the Mekong and the Brahmaputra in comparative perspective' *Journal of Contemporary China* (2014) 23:85, 1-20 at 1

systems vary, and depend on the overall nature of its relations with other riparian states.⁷⁰

Indeed, Söderbaum pointed out that ‘politics, power and national sovereignty’ continue to be relevant in debates on transboundary river cooperation.⁷¹ He argues that river basin organisations, specialised as they are on river governance, are unable to solve transboundary collective action dilemmas. This is because ‘water management is usually highly politicized and national incentive structures rarely converge.’⁷² Instead, he argues regional multipurpose organisations can be more conducive to multilateral cooperation as they often have a ‘distinct political content and clout that is closely intertwined with broader economic or security interests, which also enable the exploitation of cross-sectoral linkages.’⁷³ This is relevant for the Mekong, where the specialised Mekong River Commission is sidelined in favour of broader, multipurpose organisations. In this context, it is at least encouraging to observe a number of developments that could hint towards a closer relationship between the Mekong River Commission and the Lancang-Mekong Cooperation: the Mekong River Commission has been granted observer status at the Lancang-Mekong Cooperation; and in December 2019, both institutions signed a memorandum of understanding (MoU) which sets out areas of cooperation including basin-wide monitoring, data sharing, and joint research. Based on the MoU, both institutions decided to carry out joint research throughout 2020 into the causes and impacts of the 2019 Mekong drought⁷⁴, for which a new study blames Chinese upstream dams.⁷⁵

New institutions such as the Lancang-Mekong Cooperation should also adopt nexus discourses and move towards a regional approach to water cooperation. This may be aided by a number of non-state actors: As the international relations literature has pointed out in its emphasis on the role of domestic politics, non-governmental organisations, policy entrepreneurs or epistemic communities all have an important role to play in steering water policies to a sustainable future.⁷⁶

Conclusion

Every river basin is different, characterised by specific political, economic, social and historical conditions. This may prevent the creation of cooperative ventures, or it may spur it. In the latter case, the institutional variations differ widely, again depending on the specific basin conditions. Such

⁷⁰ Ibid 4.

⁷¹ Söderbaum (n 32) 1.

⁷² Ibid. 8.

⁷³ Ibid.

⁷⁴ *Mekong River Commission* ‘MRC Secretariat, LMC Water Center ink first MOU for better upper-lower Mekong management’ 18 December 2019 <https://www.mrcmekong.org/news-and-events/news/mrc-secretariat-lmc-water-center-ink-first-mou-for-better-upper-lower-mekong-management/> (accessed 14 April 2020).

⁷⁵ A Basist, C Williams *Monitoring the Quantity of Water Flowing through the Mekong Basin through Natural (Unimpeded) Conditions* (Sustainable Infrastructure Partnership Bangkok 2020).

⁷⁶ A Meijerink, D Huitema ‘Policy entrepreneurs and change strategies: Lessons from sixteen case studies of water transitions around the globe’ *Ecology and Society* (2010) 15:2, 21 <http://www.ecologyandsociety.org/vol15/iss2/art21/>. D Suhardiman, M Giordano ‘Process-focused analysis in transboundary water governance research’ *International Environmental Agreements: Politics, Law, Economics* (2012) 12:3, 299-308. S Brouwer *Policy Entrepreneurs in Water Governance: Strategies for Change* (Springer Heidelberg 2015). J Bukowski ‘A “new water culture” on the Iberian Peninsula? Evaluating epistemic community impact on water resources management policy’ *Environment and Planning C: Politics and Space* (2017) 35:2, 239-264.

differences even occur in the case of China: While Beijing has bilateral treaties with Kazakhstan, Mongolia and Russia, no such arrangements exist along its southern border beyond some forms of data sharing with India on the Brahmaputra and with the Mekong River Commission on the Mekong. Upstream riparians may seek to dominate institution-building. Indeed, China's promotion of new institutions shows that Beijing has an important leadership function in developing the institutional shape of river basins as a way to advance its strategic interests.

Regional approaches to water cooperation may be promising. As the literature on China's international water law practice has pointed out, China's policies towards transboundary water cooperation are dynamic and evolving, but they are often also soft as well bilateral. Inducing the upstream hegemon into multilateral cooperation is difficult. The example of the Mekong basin shows that unless significant benefits accrue to China, there may be little interest for Beijing to engage where it does not have to.⁷⁷ Thus, the identification of joint interests and benefits that help to reconcile upstream and downstream concerns are important.⁷⁸ At the same time, attending to Chinese sensitivities around incremental and soft forms of cooperation is equally important. However, rather than expecting Beijing to join existing arrangements that had been formed without Chinese participation and in earlier geo-political contexts, inducing China into cooperation may require the construction of new forms of cooperation that are attuned to Beijing's interests and in which Beijing has a stake from the start. Furthermore, thinking beyond the river is helpful to create broader multilateral forms of cooperation, even though these may not take the form of legally binding treaties.

Beyond normative international law principles, therefore, the development of regional approaches in international water law can be useful particularly when it comes to late developing states, but also where states have competing rather than complementary water use strategies. This experience also applies to Southern Africa where the Zambezi Watercourse Commission has very little political clout, in contrast to the broader Southern African Development Community, and where there are efforts – albeit of limited effectiveness – to link the activities of both organisations more closely.⁷⁹ The identification of regional common concerns could be key here to move the discourse beyond definitions of what is equitable and reasonable or what constitutes significant harm. Indeed, water security, but also other notions of non-traditional security have taken root in the discourses in riparian states of many of the world's river basins: climate change, energy security and food security have all been recognised as challenges, many of which are directly or indirectly related to water. This includes hydropower, fisheries and agriculture, which are all intertwined, and therefore require multilateral cooperation.

The development of regional development narratives might be key here. Development narratives around the river as an imagined source of regional institution-building can prove a powerful driver of multilateral cooperation. The combination of development narratives, regional approaches to cooperation, and the identification of security challenges may prove a way forward in river basins in the world where cooperation is hampered by national egotisms over water allocation, such as in the Zambezi basin or the Nile basin. Regional development narratives that develop a set of joint

⁷⁷ For a similar argument with relevance to India-China cooperation on the Brahmaputra see Y Feng, W Wang, J Liu Jiang 'Dilemmas in and pathways to transboundary water cooperation between China and India on the Yaluzangbu-Brahmaputra river' *Water* (2019) 11:10, 2096, <https://doi.org/10.3390/w11102096>.

⁷⁸ McIntyre (n 62).

⁷⁹ Söderbaum (n 32).

development goals and a mechanism for sharing the potential benefits may prove beneficial to move beyond technical legal discourses of equitable and reasonable utilisation and no harm to arrive at meaningful, jointly beneficial and multilateral cooperation.