

Governing International Rivers
Tun Myint
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The concept of agreed global river governance

The author has worked on this topic for many years and in 2001¹ and later in 2003² he had published his findings for the Mekong River Commission (MRC) and the International Commission for Protection of the Rhine (ICPR) in which he had analysed and explained how the issues, interests, and participation of local communities and non-state actors, such as industries and non-governmental organisations, were incorporated or not incorporated into transnational environmental governance in the MRC and ICPR regimes. He argued now, more than ever, for international river governance, notwithstanding that fact that states are the central players in the governance of global environmental resources. It is a fact that non-state actors, especially Non-governmental Organisations (NGOs) have made striking advances in their efforts to make good environmental regimes function effectively once they are in place. However, let us make no mistake that for economic reasons, there is much conflict to be resolved before and unilateral global governance polices on rivers is agreed upon. There is huge dilemma due to politics, economics and inequality of arms.

Governance in general

Governance is part of management or leadership processes. In the context of corporations, it falls into the category policies that ensure that the corporation's regulatory compliance is satisfactory and the organisation's behaviour is influenced by formal and informal institutions that originate outside the organisation and function as mechanisms for regulation, socialisation and interpretation (see Peters, 1999; Scott 2001).³ The consequences of failings in an organisation's governance can be huge, and an example of such failings can be seen in the newspaper industry, giving rise to a public inquiry in the United Kingdom, the Leveson Inquiry. *News Corporation*⁴ is one of the world's largest media conglomerates and it was created and controlled by Rupert Murdoch. The \$50 billion company owns

¹ Myint first presented a paper on this subject at the 2001 Berlin Conference on Human Dimensions of Global Change: Global Environmental Change and Nation States, Berlin, December 6-9, 2001.

² Myint, T., 'Democracy in global environmental governance: issues, interests, and actors in the Mekong and the Rhine', *Social Science Research Network*, 2003.

³ Barker, C. and Nielson, V.L. (2011) *Explaining compliance*, Gloucester: Edward Elgar, at pg 17.

⁴ News Corporation is a New York company and is a diversified global media company. The Company operates in six segments: Cable Network Programming; Filmed Entertainment; Television; Direct Broadcast Satellite Television; Publishing, and Other. Cable Network Programming produces and licenses news, business news, sports, general entertainment and movie programming for distribution through cable television systems and direct broadcast satellite operators. Filmed Entertainment engages in the production and acquisition of live-action and animated motion pictures for distribution and licensing in all formats in all entertainment media worldwide. Television is engaged in the operation of broadcast television stations and the broadcasting of network programming. It engages in the direct broadcast satellite business through its subsidiary, *SKY Italia*. It is engaged in the publishing business, primarily through its subsidiaries. In April 2011, the Company acquired Shine Limited (Shine).

Fox News, the *Wall Street Journal*, the *New York Post* and the *20th Century Fox* film studio, among other media assets. The company also owns influential British newspapers, among them, the *Times of London* and the *Sun*.⁵ Instead of implementing such policies as they should have incorporated at *News International*, the company's executives based in New York painted the British newspapers' illegalities as unfortunate but isolated series of events at the British tabloids, and stressed that the British tabloid newspapers represented just a minute portion part of New Corporation's overall business, thus prolonging for many months the corporation's share price⁶ and solid financial performance, which was in any event driven by the strength of its United States television assets. However, as events unfolded, the Chief Executive of *News Corporation*, Mr Rupert Murdoch, was shown to have exhibited wilful blindness toward wrongdoing at his organisation. *News Corporation* had made huge failings of corporate governance.

Relevant Conventions and Treaties with unresolved issues

There is the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses ('UN Watercourses Convention') which has not been ratified by many states.

There is the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes ('UNECE') and the 2003 amendment to this convention, not yet accepted by many 10 of the 33 EU states. The situation is that the UNECE Water Convention to promote joint management and conservation of shared freshwater ecosystems in Europe and neighbouring regions, was amended in 2003 in principle, for this convention to be opened up to non-UNECE member states. However the amendment must be approved by all 33 member states that were parties to the convention at the time and until then, the UNECE's decision-making body cannot begin to consider requests to join by countries outside the UNECE region.

Other conventions that impact on the planet's fresh water are the Ramsar Convention; the UN Watercourses Convention; and World Commission on Dams, notwithstanding the overall concerns of climate change and conventions on fishing, shipping and biodiversity.

⁵ In November 2011, *News Corporation*'s questionable practices were revealed; the company acknowledged that the British newspaper *News of the World* had hired a private investigator to conduct surveillance of two lawyers representing hacking victims. The scandal soon spread to another of *News Corporation*'s assets, the *Sun* newspaper and also the *Times of London*, investigated by British police for e-mail 'hacking'.

⁶ The BBC reported that the share price had fallen by 4.3% in New York and by 7.6% in Sydney, Australia on 18 July 2011. However it recovered and on 31 October 2012, *News Corporation*'s share price was at 23.23 USD, almost as high as the share price of 25.50 USD one year ago. Nevertheless the United States Department of Justice are investigating allegations of the corporation's bribery of UK police officers, since it is illegal for any US company to pay bribes to overseas officials, under the US Foreign Corrupt Practices Act 1979 (and also under the UK Bribery Act 2010, in force since 1 August 2011, but not retrospective).

Convention on Wetlands

Heartfelt good news about the Ramsar Convention, known as the Convention on Wetlands,⁷ signed in Ramsar in Iran in 1971. At present, there are 162 Contracting Parties to the Convention, with 2,040 wetland sites, totaling 193 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance.

Watercourse agreements

Watercourse agreements are in force for some international river basins, but many of these simply define borders or regulate joint water resources development. Many watercourse agreements do not involve all states within a basin. Some agreements provide neither for integrated river basin management, nor for adequate ecosystem protection or pollution control. Many agreements also lack appropriate enforcement mechanisms and monitoring provisions. In 60% of the world's international watercourses, no cooperative management frameworks exist and in such cases unilateral action by one state can significantly impact human health and livelihoods across the border.

This is why, as the author of this book argues, there is a need for effective multinational governance mechanisms which would support the sustainable management of places like the Amazon, Mekong, Indus, Congo basin and other places, thereby protecting river ecosystems and communities dependent upon them. It is the author's opinion that multinational governance mechanisms would also encourage nations to work together to conserve their shared water resources.

Statistics on river basins on this planet

There are 276 transboundary river basins around the globe, covering nearly half of the earth's land surface and crossing the territories of 145 countries. Such basins are home to 40% of the world's population and generate around 60% of global freshwater flow.

China's small dams

Dams generally serve the primary purpose of retaining water, while some dams are used to divert water. Most importantly, hydropower and pumped-storage hydroelectricity are often used in conjunction with dams to generate electricity. It is noted that China has a huge quantity of small scale hydro generation dams. China, in recent years, has become an expert to other countries on creating small dams, of which China itself has over 500 such dams.

⁷ The Convention on Wetlands is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. Such a convention hardly carries conflict within it, decisions on a country's wetlands being its own business, not to be overpowered by outside forces.

World Commission on Dams

There is in place a World Commission on Dams ('WCD'). The WCD framework covers key areas for improved planning of dams, including the need to fully assess all available options for meeting water and energy needs. Its guidelines addresses outstanding social issues from existing dams before building new ones, thus gaining public acceptance for key decisions, and stresses the importance of protecting healthy rivers. The WCD recommendations form the basis for many decision-making processes for dams around the world and constitute international *soft law*. This is covered in chapter 7, '*Influence of non-state actors...*' at pages 153 to 198.

The two faces of the World Bank

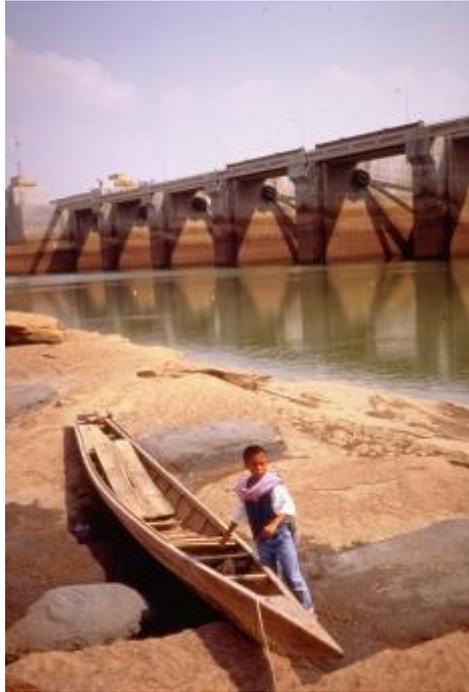
The World Bank is the greatest single source of funds for large dam construction, having provided more than US\$100 billion for construction of more than 500 large dams in 92 countries. Since 1948, the World Bank has financed large dam projects which have forcibly displaced on the order of 10 million people from their homes and lands. The 1994 report of the World Bank, entitled, 'Resettlement and Development' admitted that the vast majority of women, men and children evicted by World Bank funded projects had never regained their former incomes nor received any direct benefits from the dams for which they were forced to sacrifice their homes and lands.

Vested financial interest of the World Bank and other banks

The *World Bank* and the *World Conservation Union* initiated the formation of the WCD '*in response to growing opposition to large dam projects*'.⁸ These two organisations are indeed non-state actors, but as the article on 26 July 2012 in the *Economist*, titled 'Lies, dams and statistics' reveal, as did many other past publications about the wicked interceptions of whole villages way of life when dams were built worldwide with the very organisation , the World Bank:

'A dense cloud of diplomatic doublespeak hangs over the turbid waters of the Mekong. An amazing week of conflicting statements, stark contradictions and confusion has made everything about the site of a controversial dam project at Xayaburi, in northern Laos, as clear as mud.'

⁸ See the WDC website at <http://www.internationalrivers.org/campaigns/the-world-commission-on-dams>. This statement is nothing but in conflict to the numerous projects largely funded by the World Bank, of building dams where they were unnecessary or in non-agreement of the local people.



Pak Mun Dam

Laos, Cambodia, Vietnam and Thailand

The *Economist* informed us that the Mekong courses through the heart of inland South-East Asia, and is home to the world's largest freshwater fisheries, about 800 different native species. The rich biodiversity of the Mekong is second only to the Amazon River. The Mekong River sustains 65 million people through fishing, aquaculture and irrigation. Since September 2010 Mekong River Commission (MRC) -comprising the states of Laos,⁹ Cambodia,¹⁰ Vietnam¹¹ and Thailand- has debated whether the Xayaburi dam project should be approved or blocked, especially since Cambodia and Vietnam have submitted strong formal objections to this dam.

Construction continued despite agreement to a 10 year environmental study to 2020

In December 2011 the four member-states of the MRC had agreed on the need for further study of the dam's prospective effects on the environment and yet somehow the dam project had continued unabated, so that the MRC could now declare in this stunning statement:

⁹ Laos has a population of just 6.5 million. Laos is an undeveloped, largely agrarian economy with a history of war and Communist rule.

¹⁰ Cambodia is one of the poorest countries in the world and relies heavily on foreign aid. There is pervasive corruption in Cambodia. It is a country also burdened with millions of wartime unexploded munitions which continue to kill and maim civilians.

¹¹ The US is Vietnam's main trading partner. Vietnam has a population of some 68 million people. Vietnam is the second biggest supplier of clothes to the US. In the cities, the consumer market is strong for electronic and luxury goods but the disparity in wealth between urban and rural Vietnam is wide. Vietnam joined the World Trade Organization ('WTO') in January 2007. Vietnam is presently in a dispute over territory and sovereignty over ocean areas and the Paracels and the Spratlys - two island chains claimed in whole or in part by a number of countries. In 1947 China issued a map detailing its claims on the two island groups as falling within its territory, whilst Vietnam claims that both island chains are entirely within its territory and alleges that it has actively ruled over both the Paracels and the Spratlys since the 17th Century.

'The project is in an advanced preparation stage with...exploratory excavation in and around the river completed'.

It is obvious that the MRC was paying lip-service to the idea of further investigation of the dam's effect on the environment if it were built, since the World Bank had in the meantime ploughed money into the continuation of the building of the dam, as verified by another non-state actor, *International Rivers*.¹²



Mekong and Irrawaddy rivers where rare Irrawaddy dolphins live

An independent study and report of the wisdom of building the dam was published in 2010 and the scientists who wrote the report had recommended a further study of the potential effects of such a dam, which study was to last ten years to the year 2020. However, despite these warnings from scientists, and the formal disapproval from Vietnam and Cambodia,¹³ a construction company had almost finished building the first dam across the lower reaches of one of the world's great rivers. The reason for the dam is financial- electricity generated will be sold, to the benefit of the government and the World Bank who lent money for the dam, which money will have to be repaid. On a much greater scale and with the same criminal cunning of those contractors who knock down buildings at night before local authorities have decided whether to grant permission to building contractors, the World Bank has given funds for this unauthorised project to commence in Laos, which Laos government is keen on the building of the dam to obtain electricity they can sell to the government of Thailand. So much for the World Bank's influence as a non-state actor. It is not known whether the Laos government has already securitised the asset that is the future dam in order to raise even more money.¹⁴ It has been reported that the Laos, government appears to be going ahead with the \$3.8 billion Xayaburi dam on the Mekong River

¹² See *International Rivers*' website at <http://www.internationalrivers.org/resources/laos-work-on-the-mekong-river-draws-criticism-bbc-7577>. See also Jonah Fisher, 'Laos' work on the Mekong river draws criticism', *BBC World News*, 4 July 2012.

¹³ Cambodia and Vietnam governments disapprove of the dam which will drastically diminish fish stocks in their countries and threaten the livelihoods of millions of people downstream who depend on the river. Cambodia has one of the world's rarest mammals - the Mekong Irrawaddy dolphin. These dolphins will become extinct if the dam is built. There are less than 70 of these dolphins left in the world.

¹⁴ Securitisation means creation of an investment instrument by combining financial assets and then marketing different tiers of the repackaged instruments to the investors.

despite opposition by environmental groups, some international donors, and neighbouring countries, Vietnam and Cambodia.¹⁵

Awaiting catastrophic event

There is nothing that any state or the world, for that matter, can do about this situation, unless in future some massive catastrophe occurs, when the people affected could bring an international criminal case against certain parties as well as a mass tort claim for damages. Note that in chapter 6 of *Governing International Rivers*, Tun Myint includes the issue of ‘measurement of compensation’. The author relates how the versions of compensation packages as devised by the World Bank and the Economic Commission for Asia and Far East (EGAT) both simply contain economic items such as the prices of people’s land, house, loss of income from fishing and the cost of physical resettlement, with no account taken *‘for the destruction of family structure, community structure, and social, cultural and religious livelihoods that villages had drawn from in their connections with the Mun River ecosystems and each other for centuries...’*¹⁶

Conclusion: a balanced view

The gratitude of the world’s environmentalists goes to Tun Myint for raising awareness over the years on this important issue of governing international rivers. Rivers sustain a rich variety of life –rivers provide people with water, food, medicines, building materials, land-replenishing silts, and more. They mitigate floods and droughts, support forests, recharge groundwater supplies, sustain fisheries, and provide byways for travel. Media, scientists, economists and natives do not merely issue emotional words to save a few fishermen’s livelihood but are acutely aware of the repercussions of rushing ahead with a great dam that will provide revenue through the sale of electricity ; job creation in the construction of the dam; a boom in commercial activity due to the proposed new abundance of electrical energy; including manufacturing, engineering, and electronics; a chance for better education for the children in Southeast Asia; the chance to enter the commercial race by the making of Cambodia, Laos, Vietnam and Thailand from under-developed countries into developing countries; and progress in Southeast Asia in general. However, an examination of the evidence from other countries in similar situations reveals the need for great caution.

A lesson from history: globalised laws hastily developed can mean ‘one size does not fit all’ Some countries will continue to keep ‘the biggest slice of the cake’ through protectionist measures, despite treaties and global conventions. History illustrates protectionist trading countries and history’s example of the English craft and trade guilds formed well before the fourteenth century and certainly

¹⁵ Editor, ‘Two rivers: the chance to export electricity divides Southeast Asia’, *National Geographic*, 25 October 2011.

¹⁶ See chapter 6, ‘Issues, interests and actors in the governance of the Rhine’, at pages 127 to 152.

before the English Statute of Monopolies of 1623, which statute exempted the guilds although the guilds were in fact operated as monopolies.¹⁷

The use of *ground-water dams to store water in regions with arid or tropical climates* is a method that has received considerable attention in the 1980s. By storing water behind subsurface dams in natural aquifers or in the sand accumulated in sand storage dams, the disadvantages of conventional surface storage, such as high evaporation rates, pollution, siltation, and health hazards, may be avoided. Then some systematic studies were made by 1986 to develop proper siting, design, and construction methods. Existing dam structures from all over the world were studied to find those worth continuation. Design and construction alternatives were decided on including dam situations in India and Ethiopia. The authors of this 1986 paper concluded that the construction of ground-water dams may be a feasible solution to water-supply problems in many parts of the world *if preceded by proper planning and site surveys*.¹⁸

In the case of *dams built for hydro-electric power*, a 2001 paper which examined the push of development agencies and multilateral development banks in developing countries to achieve economic, political and social sustainability without considering long-term environmental costs, concluded that the benefits *are outweighed* by the environmental costs of (i) salt intrusion; (ii) delta erosion; (iii) drying up of downstream lakes; and (iv) channel deepening; as well as (v) the effects of displacement of people, because such dam projects *could reduce* the balance of trade deficits in developing countries.¹⁹

However, caution must be taken today due to the cost of finance to build such hydroelectric dams. There is the cost of finance; the danger of securitisation becoming a pitfall; and the real and often uncalculated costs of maintenance. In a typical securitization transaction, the company originating or sponsoring the transaction sells rights to payment from income-producing financial assets, such as pollution credits as in this case, to a special purpose entity which in turn transfers such rights to a second such entity which issues securities to capital market investors (organised markets and exchanges) and uses those proceeds to pay the originator. The investors in the securities are repaid from collections of the financial assets. They therefore buy the securities based on their assessments of the values of the financial assets. Some people regard securitization as reflecting the uncompensated risks onto third parties, taking advantage of these third parties.²⁰

A real counterbalance to unimpeded progress through the 'dam rush' is the fact that such abundance of electricity brings in its wake a flurry of commercial and manufacturing activity to such developing

¹⁷ A wonderful historical expose of free trade and exemptions, cartels and monopolies is to be found in the following book: Palumbi, L. (2009) *Gene cartels*, Cheltenham, UK: Edward Elgar.

¹⁸ Goran Hanson and Ake Nilsson, 'Ground-water dams for rural- water supplies in developing countries', *Ground Water*, Volume 24, Issue 4, pp 497-506, July 1986.

¹⁹ Reid, W.V.C., 'Sustainable development: lesson for success', *Environment*, Volume 31, Issue 4, May 1989. See also, Ascher, W., (1999) *Why governments waste natural resources*, Maryland: John Hopkins University Press. Ascher argued that progress is impeded by not taking advantage of natural resources such as rivers to obtain electricity.

²⁰ See E.J. Janger, 'Muddy rules for securitization', *Journal of Corporate and Financial Law*, 301-306, 2002. See also Steven L. Schwartz, 'Securitisation post-Enron', *Duke University School of Law*, May 2003.

countries and with that activity is attached much pollution, as can be witnessed today in China and India. Early studies in the 1980's of the transboundary or regional impact of air pollution has given way to the realization that the threat is now global in scale. Evidence emerged linking the release of chlorofluorocarbons, halons and other chlorine based substances with the gradual destruction of the planet Earth's ozone layer. This layer located in the stratosphere but still well within the earth's atmosphere, is important because it filters sunlight and protects the earth from ultraviolet radiation. Loss of this atmosphere shield would have serious implications for human health, agriculture and fisheries productivity over a long period, and could leave future generations a legacy of irreversible harm²¹ despite the twenty six elements of the United Nations ('UN') environmental programme, established in 1972 at the Stockholm Environmental Matters Conference on Human Environment, and despite the UN Agencies such as the International Marine Organisation, International Labour Organisation, International Oceanographic Commission, International Atomic Energy Agency and the International Monetary Fund, whose objective is to prevent, reduce and control environmental harm through monitoring of countries' activities so that there is sovereignty over natural resources and non-pollution and protection from hazardous waste of international water courses.

How could we ever forget our history of the potato famine in Ireland, which, though not caused as a result of a built dam, was caused by the arrival of the blight in October 1845; the reaction of people to the massive harvest failures occasioned by this and further attacks by this potato fungus, which thrived, partly due to ill-conceived stingy government measures that made matters worse; the smugness of the relief strategists in the face of the most dire evidence of the failure of their policies, leading to the horrors that swept Ireland during 1847, a year remembered as 'Black Forty Seven'?'²²

Nor can we forget China's undertaking of a catastrophic experiment of the Chairman Mao (Mao Zedong) and his policy termed 'Great Leap Forward'²³ from 1958 to 1961 which aimed to transform China's agricultural sector through collectivism, but which brought about instead famine and human misery on an immense scale.

Nevertheless, this most detailed and comprehensive study, *Governance of International Rivers*, is most important.

²¹ See Sally Ramage, 'Carbon credit markets: unfair western financial opportunity', *The Criminal Lawyer*, Issue No 197, June/July 2010.

²² Kelly, J. (2012) *The graves are walking*, London: Faber and Faber.

²³ An economic and social campaign of the Communist Party of China, which aimed to use China's vast population to rapidly transform the country from an agrarian economy into a communist society through the process of rapid industrialisation and collectivisation. The campaign was based on the *Theory of productive forces*. Chairman Mao intensified this campaign after being informed of the impending disaster from grain shortages. See also, Gyanesh Kudaisya, 'Beyond the Himalayan Pearl Harbour', *History Today*, Vol 62, Issue 11, November 2012.