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STRUCTURE, AGENCY, AND CHALLENGES FOR INCLUSIVE WATER GOVERNANCE AT BASIN SCALE

Comparing the Nile with the Mekong

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Introduction

Understanding of transboundary waters and their unique management characteristics, including the nested institutional set-up across scales as an entry point for collective action, is crucial for inclusive water governance at the basin scale (Suhardiman et al., 2011, 2015). Transboundary water governance is often perceived as a set of institutions (structure), which will be the axis upon which the riparian countries are supposed to rotate. Here, structure is understood as the formal institutions (rules, regulations, frameworks) which are perceived as necessary for shaping and reshaping social behaviour (Bourdieu, 1984, 1990; Giddens, 1976, 1979, 1984; Sewell, 1992) across scales. According to Kirchberg (2007), social theory views human beings as *homo sociologicus* and highlights the central role of society in providing structure for behaviour through rules and regulations. Giddens (1984), on the other hand, argues that change occurs because of reproduction and reinterpretation of structure by agency (see also Long, 2001; Sen, 1999; Kabeer, 1999; Hays, 1994; Sewell, 1992). Viewing human beings as being *homo oeconomicus*, Giddens shows how individuals could pursue their individual interests as opposed to being governed by structures (rules, institutions). In line with this approach, Scott (2001: 49, cited in Marx, 2011) defines institutions as "multifaceted, durable social structures, made up of symbolic elements, social activities and material resources."

The essential nature and importance of human agency have been discussed in social and political science (Scott and Kerkvliet, 1986) as well as in policy studies (Elwert and Bierschenk, 1988). Various scholars have focused on:

1. intentionality, forethought, self reactiveness and self-reflectiveness (Bandura, 2001);
2. identities or sets of meanings people hold for themselves (Burke, 2004); and

3. the role of social structure (Sewell, 1992; Hays, 1994) in shaping agents' decisions.

Also crucial in shaping agents' decisions is the conversion of the primary goods the person holds into an ability to achieve defined goals (Sen, 1999). In transboundary water governance, this highlights the need to position riparian states as players in international theories (Wendt, 2004), and thus moves beyond viewing member states as united actors. Or, as Wendt (2004: 289) states: "To say that states are 'actors' is to attribute to them properties we associate first with human beings – rationality, identities, interests, beliefs."

This chapter looks at structure, agency, and the challenges of inclusive governance at basin level, which is important not only from the point of view of understanding powerful and less powerful actors' strategies and how these shape riparian states' decisions, but also to further current discussions on how collective action across scales can serve as a counter-force to reduce power asymmetry in transboundary water governance. In reference to the concept of hydro-hegemony (Zeitoun and Warner, 2006) and building on Hays' "sociological understanding of agency [which] recognizes it as embracing social choices that occur within structurally defined limits among structurally provided alternatives" (Hays, 1994: 65), it looks at how the institutional architectures and agents' behaviour and strategies are interlinked. Taking the Nile (Nile Basin Initiative) and the Mekong (Mekong River Commission) as our case studies, it shows how such interactions impact on the evolution of water governance structure and processes. Comparing decision-making structures and procedures as regards the planned hydropower dams in both basins, we illustrate how the Mekong River Commission's initiative to commission a Strategic Environmental Assessment for the twelve planned mainstream dams has shifted the decision-making process from the national to the regional sphere, and has also helped to open up alternative decision-making pathways. Linking this initiative with dams development in the Nile Basin and the role of the Nile Basin Initiative brings to light potential ways forward to address current challenges in transboundary water cooperation towards more inclusive and accountable water governance.

Current institutional architecture

Agreements on water sharing in the Nile Basin date back to the early part of the twentieth century, when Egypt and Sudan were under British control. The most significant agreement – the 1959 Nile Waters Agreement (NWA) – between these two states allocated all Nile waters as measured at Aswan as follows: 55.5 bcm to Egypt, 18.5 bcm to Sudan, and 10 bcm assumed lost to evaporation after the creation of the Lake Nasser/Nubia reservoir behind the High Aswan Dam. Ethiopia was not included in this agreement (FAO, 2008; Cascao and Nicol, 2016; Tafesse, 2001).

In February 1999, the Nile Basin Initiative (NBI) established the most comprehensive cooperation mechanism to date for the basin, headed by a Council of

TABLE 15.1 Shared Vision Programme projects and project management unit locations

Project name	*Location*
Nile Transboundary Environmental Action	Sudan
Water Resources Planning and Management	Ethiopia
Confidence Building and Stakeholder Involvement	Uganda (NBI Secretariat)
Nile Basin Regional Power Trade	Tanzania
Efficient Water Use for Agricultural Production	Kenya
Applied Training	Egypt
Socioeconomic Development and Benefit Sharing	Uganda

Source: NBI, 2001

Ministers of Water Affairs of the Nile Basin States (Nile-COM). The NBI's purpose was (and remains) to develop the river in a cooperative manner, share substantial socioeconomic benefits, and promote regional peace and security (NBI, 2001). The NBI started with a participatory process of dialogue among the riparian countries that resulted in agreement on a shared vision – to achieve sustainable socioeconomic development through the equitable utilization of, and benefit from, the common Nile Basin water resources – and a Strategic Action Programme to translate this vision into concrete activities and projects (World Bank, 2005).

Under this umbrella, the NBI embarked on the Shared Vision Programme (SVP), the mission of which was the creation of a coordination mechanism and an enabling environment to realize the shared vision through action on the ground (NBI, 2001; see Table 15.1). In June 2001, an International Cooperation Consortium on the Nile (ICCON) meeting took place in Geneva, Switzerland, to solicit financial support for the NBI from potential donors. In the forum, project proposal documents were presented to generate funding for shared vision projects. The outcome of the meeting was the establishment of the Nile Basin Trust Fund (NBTF) to finance the SVP and a Strategic Action Programme of investment, with support from the World Bank, the Global Environment Facility (GEF), the European Union (EU) Water Initiative, the African Development Bank (AfDB), and bilateral donors. The seven SVP projects were interconnected and established a foundation for regional cooperation (NBI, 2001).

A Cooperative Framework Agreement (CFA) for the Nile was finalized by Nile-COM on 26 June 2007. Adopted in Kinshasa and signed by six Nile Basin states, the CFA established the legal and institutional framework for the creation of a permanent Nile Commission. However, to become a binding international agreement for all Nile countries, and lead to the establishment of a permanent Nile River Basin Commission, the CFA requires ratification by two-thirds of the Nile countries (there are ten full members of the NBI and one observer – Eritrea). The major sticking point remains Article 14b on water security. Upstream countries, such as Ethiopia, which uses about 1 per cent of the Nile's water, are thinking

in terms of equitable utilization, whereas downstream countries, such as Egypt, are viewing the same issue in terms of "no appreciable harm" to existing downstream water usage (Waterbury and Whittington, 1998).

The institutional developments and cooperation efforts in the Mekong Basin started with the establishment of the Committee for the Coordination of Investigations of the Lower Mekong Basin – the Mekong Committee (MC; 1957–1978), comprising Cambodia, Laos, Thailand, and Vietnam. Cambodia withdrew from the MC amid political turmoil in the country, which led to the formation of the Interim Mekong Committee (IMC) in 1978. This continued until 1995, when Cambodia rejoined the other three countries to form the Mekong River Commission.

According to the Mekong River Commission, the riparian states want a "shared vision of an economically prosperous, socially equitable, and environmentally sound Mekong River Basin" (Wolf, 2011). The Commission is mandated with the Mekong River Basin Development and Strategic Development plans to "promote, support, cooperate and coordinate the development of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use of the MRB waters, with emphasis and preference on joint and/or basin-wide development projects and basin programs" (Mekong River Commission, 1995: Article 2).

This does not mean, however, that the Commission's rules will determine the outcomes within the Mekong. The individual states still have their own agency, which is further complicated by interests from development partners who support the Mekong River Commission, resulting in what they call a "scalar disconnect" as you move from national interests to regional interests. Suhardiman et al. (2011) further point out that the political processes and power dynamics involved in state and interstate decision making are often overlooked or oversimplified and the complex decision-making processes in transboundary water governance tend to be reduced to mere technical or managerial issues. The power dynamics and

TABLE 15.2 Key aspects of institutional architecture of the Mekong and Nile River Basin

	Mekong River Basin	*Nile River Basin*
Year of establishment	1995 – Mekong River Commission	1999 – Nile Basin Initiative
	Signed by four of the five countries in the Lower Mekong Basin, with the exception being China	Nile Basin Cooperative Framework signed by Ethiopia, Kenya, Rwanda, Tanzania and Uganda; Burundi signed later
Number of countries	Four	Eleven (including Eritrea, an observer)
Status of ratification	Ratified by four countries	Ratified by three countries

Source: Authors' compilation

contestation must be viewed as pitting different nation states against each other, and indeed contests have emerged even within the individual states, where interests such as hydropower will not necessarily correlate to the interests of Environment and/or Fisheries ministries.

Table 15.2 summarizes the key aspects of the institutional architecture of the Nile and Mekong river basins.

Dam development

The river basin organizations were established with the aim of increasing cooperation in order to reap benefits from water and of water (Sadoff and Grey, 2005). However, in both the Nile and the Mekong, dam development for both hydropower and agricultural use not only drives the basins' development trajectories but also remains contested by various key stakeholders.

In 2011, Ethiopian Prime Minister Meles Zenawi announced plans for the 6,000 MW Grand Ethiopian Renaissance Dam (GERD). Ethiopia couched the project as an example of benefit sharing, as the power generated would be sold to downstream countries as part of existing or new bilateral and regional power pool initiatives, which began prior to NBI. GERD symbolizes a far wider, more substantial strategic shift in power between riparian countries in the Nile (Cascao and Nicol, 2016; Institute of Development Studies, 2013). Egypt has indicated on many occasions that GERD is linked to Egypt's water security, which is an integral part of the country's national security. According to Ethiopia, however, equitable utilization should be about redressing past agreements, including the 1959 NWA. At both upstream and downstream extremes, agency is being deployed to advance the interests of respective countries.

Other hydroelectric dam projects include the Karuma Falls in Uganda, which is financed by China, and two dams with a capacity of 410 MW, to be located at Burundi's border with Rwanda and the Democratic Republic of the Congo (Institute of Development Studies, 2013).

In the Mekong, dam development in both the mainstream and the tributaries continues to be contested by various actors, including civil society groups, international NGOs and environmental ministries. Mekong hydropower is developing rapidly, rooted in growing regional demand for electricity following rapid industrialization, export-led economic growth, and expanding domestic consumer markets, and facilitated by the emerging importance of private-sector financing (Middleton et al., 2009). At present, there were 36 dams in operation in the Lower Mekong Basin, and a further 110 were planned, under licensing, or under construction through private–public partnerships (Mekong River Commission, 2009). Twelve of these planned dams are on the mainstream. According to the Asian Development Bank's regional power trade plan, these mainstream dams will ensure regional energy security, increase export earnings for the poorest Mekong countries, and reduce dependency on price-volatile imported fossil fuels. More specifically, the plan is expected to increase Laos' export revenue from hydropower, enable Cambodia to

develop its power sector, and help Thailand and Vietnam diversify their energy sources to meet their energy demands up to 2025 (Asian Development Bank, 2009).

Hydropower development in general, and on the Mekong mainstream in particular, has been met with resistance from NGOs, environmental groups, and others who are concerned about the potential negative impacts of the dams on both the Mekong River ecosystem and people's livelihoods (Molle et al., 2009). The Mekong is home to one of the largest freshwater fisheries in the world and comprises a rich range of interconnected ecosystems (Baran, 2005; Kummu and Sarkkula, 2008). If built, the twelve mainstream dams are likely to hinder or block (regional) fish migration, compound the current decline in capture fisheries resources, damage the ecosystems, and disrupt the livelihoods of millions of people living along the river (Baran et al., 2006).

In addition to the planned dams in the Lower Mekong Basin, China has completed its fourth large dam in the Upper Mekong Basin, with four more mainstream dams under construction or planned for completion before 2025 (Mekong River Commission, 2010). While China's dam developments have implications for its downstream neighbouring countries, as mentioned earlier, China is not a member of the Mekong River Commission. Unlike in the Nile Basin – where the other riparian countries saw the fall of Mubarak in Egypt as an opportunity to contest historical water imbalances established under colonial treaties and the 1959 deal – in the Mekong China is increasing its power and influence through its own hydropower developments and by financing dam development in the Lower Mekong Basin countries. With the formation of Lancang–Mekong Cooperation Mechanism and its Asia Infrastructure Investment Bank in early 2016, China continues to expand its power both regionally and through bilateral relationship (Suhardiman et al., 2017), and thus indirectly reduces the Mekong River Commission's decision-making power and role in transboundary water governance.

Structure, agency, and the political economy of collective action

The collective action approach is supposed to transform transboundary water governance from a zero-sum scenario (ZSS) to positive-sum outcomes (PSOs), where all stakeholders benefit from cooperation, cascading from the local to the transboundary levels (Mapedza and Tafesse, 2011). In practice, however, existing power asymmetries and individual state interests result in each state actor aiming to gain as many benefits as possible, regardless of how these might negatively impact others.

In both the Nile and the Mekong, non-state actors and development partners play important roles in initiating different forms of collective action, beyond the state actors' formal agreements. For example, the World Bank was instrumental in managing the bilateral funding of the Nile Basin Initiative, although most of the initial funding has now been reduced. Donors involved in the NBI proposed the benefit-sharing mechanism, which was meant to secure benefits beyond the

physical water quantities and share benefits from and because of water (Sadoff and Grey, 2002) and enable the riparian countries to share diverse benefits derived from water rather than physical water per se (Mapedza and Tafesse, 2011). In the Nile River Basin, upstream countries such as Ethiopia argued that the concept of benefit sharing provided strong logic for the construction of projects such as GERD, as this would generate benefits beyond Ethiopia's borders by allowing it to sell electricity to neighbouring countries in the context of the development of a regional power pool. By building dams in the highlands of Ethiopia, where lower mean annual temperatures mean less evaporative loss, water could be saved for the rest of the system. Moreover, the upstream dams, it was argued, would help reduce flooding in downstream countries, such as Sudan (Blackmore and Whittington, 2008; NBI, 2001). Egypt, on the other hand, has appropriated "benefit sharing" to mean that upstream states should use upstream rainfall and rain-fed farming approaches more efficiently, and thereby reduce the pressure on demand for the Nile's streamflow (Klaphake, 2006; Mapedza and Tafesse, 2011; Waterbury, 2002).

Non-state actors and civil society within the Mekong play important roles in contesting the overall logic of hydropower dam building vis-à-vis its negative impacts to people's livelihoods, which has resulted in an ongoing power struggle. While all the riparian countries use their agency to promote their "national interests" – manifested in the central positioning of hydropower development as a means to maximize economic growth and reduce poverty, and the consequent sidelining of Environmental Impact Assessments (EIAs) (Campbell et al., 2015) – other actors within and beyond the government bureaucratic structure contest this framing. This power struggle is most apparent in the overall shaping of the Mekong River Commission's Strategic Environmental Assessment (SEA) for the twelve planned hydropower dams on the Mekong's mainstream (Suhardiman et al., 2015). While the formal institutional structure has played an important role in establishing the assessment's scientific and political merit, the SEA's ability to shift the decision-making process surrounding the planned dams from top-down, formal, statutory, sectoral-ministry-focused decision-making authority to a "soft-space" with fuzzier governance boundaries is rooted in the SEA team's alliances with prominent NGOs and wider civil society groups who have long campaigned for sustainable development in the Mekong. Relying on the existing informal networks involving international donors, international NGOs, civil society groups, academics, and environmental ministries, the SEA has become an institutional means to open up the discussion concerning the dams.

Discussions and conclusion

This chapter has drawn together threads on structure, agency, and inclusive transboundary collective action. As Giddens' (1976) structuration theory explains, structures are institutionalized routines to increase accountability. In the case of both the Nile and Mekong river basins, the individual states reflect on the institutions through interpreting and choice of reaction. For instance, Ethiopia has

evolved arguments on benefit sharing to argue strongly for upstream dams as essential and more efficient for the generation of hydropower than comparable dams at lower altitudes within the basin due to the greater evaporation downstream and lower head. These strong engineering and scientific bases have helped shape the country's narrative on benefits and shape structures (agency). Within the Mekong, the Mekong River Commission's SEA serves as an institutional counter-force to national governments' focus on hydropower development. Highlighting both the benefits and impacts of the proposed hydropower dams in the Lower Mekong Basin, the SEA provides a scientifically based assessment to contest the dominant "national interests" arguments.

In both river basins, one of the key concerns has been stakeholder participation and engagement. How do collective actions at transboundary level incorporate the interests of smallholder farmers and other local stakeholders within the river basins? Transboundary collective actions, which are at a higher scale, run the risk of neglecting the interests of lower-tier structures. By the time concerns reach the transboundary level, the power dynamics have reshaped the content of trans-boundary governance and, in most cases, diluted lower-scale input (Sneddon and Fox, 2007).

In the Nile, different understandings of the term "equitable utilization" within the eastern Nile sub-basin have challenged cooperation efforts. However, in 2015, Ethiopia, Sudan, and Egypt managed to sign a trilateral agreement on GERD in which they formally codified international water law principles (and access to energy generated by the dam). Nevertheless, challenges now relate to filling the dam's reservoir, with issues of water security likely to arise for Egypt depending on which "filling scenarios" are followed. Most serious for Egypt is failing to secure its longstanding physical water allocation under its existing agreement with Sudan. Discussions about what constitute "benefits" and "costs" are no longer the preserve for the riparian countries alone. Non-riparian states, funding agencies, and non-state actors are now adding more complexity to the already complex basin discussions (Sneddon and Fox, 2008), defining new interests in the basin, and complicating existing rules of the game and understandings about effective cooperation.

One of the key lessons learned from the Mekong River Commission is that the presence of regional institutions alone does not guarantee effective cooperation towards sustainable development. Rather, it is the shaping of strategic alliances involving different actors (e.g. government ministries, local authorities, international donors, NGO networks, and civil society groups) across scales that makes a real difference. Furthering our analysis of the Nile, the case of the Mekong River Commission's SEA also shows how the notion of representativeness in trans-boundary water governance can be partially addressed through the shaping of informal networks and the formation of strategic alliances. While this process of network-and-alliance-shaping is driven by benefits and impacts from the proposed hydropower dam projects (Sneddon and Fox, 2008), we argue that such networks and alliances can also be considered as institutional foundations for collective action and as means to contest the dominant focus on hydropower development.

Most importantly, it highlights the need for better understanding of the political economy of large river basins, and how this is shaped by various actors and institutions through rules creation and reproduction across scales, as well as through the shaping of strategic alliances between state and non-state actors. It also highlights the importance of institutional rules and mechanisms for transboundary water governance. Yet, looking at the institutions and rules of transboundary water governance is insufficient if we are to understand the processes behind the appropriation (or misappropriation) of those rules, the rationale behind them, and how they may hinder or yield to collective action across national borders.

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