



AALBORG UNIVERSITY
DENMARK

Lower Mekong Dams

Hegemonic Globalization and the Struggle to Resist

Candidate: Nicolas Meslaoui

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Supervisor: Johannes Dragsbæk Schmidt

MA in Development and International Relations

Department of Culture and Global Studies,

Aalborg University

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Abbreviations

ADB	Asian Development Bank
ACT	Administrative Court of Thailand
AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of South East Asian Nations
CSO	Civil Society Organization
EGAT	Electricity Generating Authority of Thailand
EU	European Union
FDI	Foreign Direct Investment
GMS	Greater Mekong Subregion
IFI	International Financial Institution
IMF	International Monetary Fund
IPE	International Political Economy
IWRM	Integrated Water Resources Management
LMB	Lower Mekong Basin
LMC	Lower Mekong Country
MDB	Multilateral Development Bank
MOWRAM	Ministry of Water Resources and Meteorology
MNC	Multinational Corporation
MRC	Mekong River Commission
NWRC	National Water Resources Committee
NMC	National Mekong Committee
PNPCA	Procedures for Notification, Prior Consultation and Agreement
RBO	River Basin Organization

WARECOD	Center for Water Resources Conservation and Development
WRCC	Water Resource Coordination Committee
WB	World Bank
WTO	World Trade Organization

Abstract

The governments of the Lower Mekong region have planned the construction of twelve hydropower dams on the Mekong river. This study aims to identify the factors behind the little success experienced by the anti-dams activists in the region. To do so, this paper will examine the role played by hegemonic actors in the dam industry and how their interests affect the scope of action of civil society organizations and local communities.

This research criticizes and considers dangerous the construction of hydroelectric dams in the Mekong. It is suggested that alternative and more sustainable solutions to produce electricity can be used and replace the existing projects in the region. In this sense, it is argued that there is a disharmony in the relationship between the state-society-market complex and the environment, which has resulted in the use of water as a commodity.

This study takes the form of an empirical research based on a critical approach to the theme of globalization. Such approach will help analyzing the hidden and visible structures of domination and power present in the context of the region. Accordingly, the theoretical framework is based on the work of critical authors in the field of International Political Economy and Political Ecology. The framework uses an actor-oriented approach that explores the role of governments, multinational companies and international financial institutions in the progress of neoliberal globalization. Similarly, the globalization of civil society and its use of the law as a counter-hegemonic strategy are theorized.

In line with the theoretical framework, this paper examines the interests of the Mekong governments and their impact on the effectiveness of the Mekong River Commission. Besides, this research studies the involvement of the Asian Development Bank in the dam industry and their strategies to advance their neoliberal agenda. Thereafter, the role played by private investors is put in scrutiny with an emphasis on their lack of accountability at the national and international level.

The paper's findings suggest that national interests have resulted in weak national and regional legal and institutional frameworks surrounding the issues of water management and sustainable development. Moreover, it is argued that the legal immunity enjoyed by private investors and IFIs is greatly affecting the work of the anti-dams movement. It is concluded that the priority and legal protection given to private actors have led to a situation where opponents to dams are facing major barriers to efficiently advocate and hold accountable the perpetrators of human rights violations and environmental degradation.

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1 Introduction

The Mekong region finds itself at the crossroads of contradictory globalized dynamics. Indeed, the prospects of hydroelectric developments in the region have seen the emergence of globalizing forces from above and below defending the different interests at stake; economic profit and increasing energy demands on the one hand, and socio-environmental protection on the other. While these interests are by nature not incompatible, the path of achieving economic development by constructing hydroelectric dams on the Mekong river represents a major threat to those fighting from below to secure the livelihoods and protect the environment of the region.

Globalization as a process gets mixed reviews: “[t]here are those who extol its virtues, arguing that the imminent ‘borderless world’ is a pinnacle of progress. These ‘globalizers’ have been keen to promote corporate capitalism and the advantages of liberalization and the operation of the market.” (Hewison, 2000:279). Others posit that globalization has not fulfilled its promise and that it mostly benefits a small scale of the world’s population, namely corporate executives, world leaders, investors, etc. (Brecher et.al., 2000:ix).

While the above mentioned is debatable, the existing economic, social and environmental indicators show a global asymmetry in the distribution of economic and social assets as well as an accelerating global environmental degradation. Brecher et.al., (2000) use the concept of ‘globalization from above’ to explain this situation of inequality where only a minority of the society is benefiting from globalization.

Although the waters of the Mekong have always been regarded as a “*considerable developmental space*” with immense opportunities for economic growth, the lower Mekong mainstream is currently undammed (Ibid.). However, at the present time twelve mainstream dams are proposed for the Lower Mekong Basin (LMB) which will cause serious impacts on the region’s climate equilibrium, fisheries, housing and livelihoods of more than 60 million people (Oxfam Australia, 2014a). Negative impacts are already observed as a consequence of the construction of dams on the Upper Mekong in China.

Water governance in the Mekong region is a crucial but delicate and complex topic (Öjendal et.al., 2012:2). It involves national and foreign governments, development banks and International Financial Institutions (IFIs), intergovernmental organizations, multinational

companies (MNCs) and private banks. Besides, the Mekong river has one of the most important histories of water management's institutionalization, with regional dialogue starting in the 1950s and the establishment of the Mekong Committee in 1957 (Hirsch and Jensen, 2006:17-21). In this sense, the economic, political and cultural diversity of the Lower Mekong countries (Thailand, Lao PDR, Cambodia and Vietnam) gives space to a complex framework for cooperation (Öjendal et.al., 2012:2).

The expected devastating effects of dams have resulted in strong reactions on behalf of local, national and international civil society organizations (CSOs), social movements and local communities. Many of these organizations and groups have created networks in order to increase their influence and target different stakeholders involved in the hydroelectric industry. Their activities reflect the increasing role played by national and transnational non-state actors who interact with each other and other actors (Keck and Sikkink, 1999:1). But resisting the construction of dams in the Mekong is a challenge and the current construction plans shed light on the existing difficulties to counter the hegemonic forces behind these projects.

The transboundary nature of the Mekong River results in the need of coordinated regional and international actions. However, the space given to civil society in the Lower Mekong countries (LMCs) is as contradictory as their political and economic situations. Lao PDR and Vietnam provide little space for action while Thailand and Cambodia are home to a more vibrant civil society sector (Hirsch and Jensen, 2006:15-16).

The strategies implemented by anti-dams activists managed to raise awareness and expose scientific evidence about the risks of the Mekong dams (Trandem, 2014). However, only little legal actions have been taken by the local communities and the activists to demand the protection of their rights. Law has played an increasing role in counter hegemonic movements at the global level and can be used as a powerful tool to challenge globalization from above (Santos and Rodriguez-Garavito, 2005:12-18). The little legal actions taken by the opponents to dams shed light on the challenges that both national and international legal frameworks of the region represent for the anti-dams activists.

It is in this context that this paper will attempt to examine the political, economic and social dynamics at play in the context of the Mekong region. By doing so, this study will try to provide an understanding of the causes behind the little success experienced by the anti-dams

activists. It will be argued that the hegemonic forces behind the Mekong dam industry have a significant impact on the scope of actions of the anti-dams movement.

1.1 The Lower Mekong Basin

The Mekong river flows from the Tibetan plateau in China down to the delta in Vietnam (see figure 1). In its journey to reach the South China Sea, the Mekong meanders through China, Burma, Thailand, Lao PDR, Cambodia and Vietnam. It runs around 5000 kilometers before reaching southern Vietnam which makes it the twelfth longest river in the world (Hirsch and Jensen, 2006:13).

The Mekong river and its tributaries¹ are essential for the stability of the hydro-ecological system of the region which sustains a unique biodiversity and provides food as well as livelihood for more than 60 million people (Mekong Flows, 2014). Being the world's biggest and most productive inland fisheries, it represents a major asset for food security in the region as well as provides local populations with agricultural opportunities such as rice and garden cultivations (International Rivers 2013a in Meslaoui, 2014). Indeed, it is one of the most diverse ecosystems *“containing over 560 endemic fish species and over 300 globally threatened vertebrate species.”*(Mekong Flows, 2014).

The upper Mekong basin flows through China (where it is named the Lancang) and Burma. The Chinese Mekong waters are mostly used for trade (transport of manufacturing and farm goods) and hydroelectric purposes (dams). The river connects China's fast growing economy with three southern neighbors (Myanmar, Lao PDR and Thailand). China has managed to efficiently use the Mekong for economic purposes by blasting river rapids and building dams on the mainstream to accommodate bigger boats and produce electricity (Water and Nature Initiative, 2014). Although the Chinese downstream neighbors have not been consulted about the construction and the planning of these dams,² changes are experienced by local communities in terms of water levels and fisheries in the LMB (International Rivers, 2014a).

¹ Tributaries are essential for the health of the basin and for the flows on the mainstream. The Mekong is connected to more than hundred tributaries (Hirsch and Jensen, 2006:15).

² Seven dams have been built and more than twenty are currently under construction or being planned (International Rivers, 2014b).

The LMB travels through Thailand, Lao PDR, Cambodia and Vietnam. These four South East Asian countries are politically, economically and socially diverse. Hence, their interests in the development of the Mekong vary accordingly.

Thailand experiences rapid industrialization and economic growth. While the country has gone through political turmoil, the economic objectives of the country have remained focused on privatization and attraction of foreign direct investments. The Thai government is established according to democratic principles (Hirsch and Jensen, 2006:15) but the country has experienced tumultuous politics³ since the abandon of absolute monarchy in 1932 (Fuller, 2014). Thailand is often considered as a home to a vibrant and dynamic civil society sector. However, it would be too simplistic to describe Thailand's civil society as a unified vibrant sector. The 1997 financial crisis increased the conflicts between the state and social movements which resulted in an increasing sentiment of nationalism to defend the country from foreign control (Bello, 2010). In the meantime, the country's civil society has taken different orientations. On the one hand, segments of civil society, allied with elites, bureaucrats and middle classes, support the most conservative national political institutions which are often associated with authoritarian politics (Kitirianglarp and Hewison, 2009:452-459). On the other hand, more progressive forces are formed by "alienated lower classes" (Bello, 2005).

Thailand has a major interest in the hydroelectric development of the Mekong due to the economic interest of its investors as well as the energy demand of the country (Dao, 2014).

Vietnam is a fast growing economy and a one-party socialist state. The government is committed to focus its efforts on economic modernization, competitiveness and export-oriented industries. The country's accession to the World Trade Organization (WTO) in 2007 indicates the government's pledge to follow the economic path of the other *tigers* of the region (CIA World Factbook, 2014). Vietnamese civil society is less active than its Thai neighbor due to the little space given by the state (Hirsch and Jensen, 2006:15). Few Vietnamese companies will invest in the hydroelectric development of the Mekong (Dao, 2014). Furthermore, Vietnam expects to import electricity from Lao PDR, Cambodia and

³ On May 22nd 2014, the military seized control of the country. The coup d'état was the twelfth military take-over since 1932 (Fuller, 2014).

China due to its expected increase in energy demand (Lee and Scurrah, 2009:11). The Mekong delta in southern Vietnam is densely populated and the water is used for fisheries and irrigation “(...) with the area [Mekong delta] responsible for generating more than half of Vietnam’s annual rice production.” (Hirsch and Jensen, 2006:14).

Lao PDR is a landlocked country with a one-party socialist political structure. In contrast with Vietnam and Thailand, the Laotian economy relies on the export of its natural resources. While the country has experienced sustained economic growth for the last twenty years (except during the 1997-1998 financial crisis), the country remains with an underdeveloped infrastructure and high poverty rates (Index Mundi, 2013a). The Laotian civil society sector is quite weak in comparison with Thailand and Cambodia (Dao, 2014). The space given to CSOs and human rights activists is not only limited but also dangerous.⁴ The Mekong waters are used for small-scale and intensive agricultural production. However, the country has a major interest in the hydroelectric potential of the river as it intends to become the “battery of South East Asia” (International Rivers, 2014a).

Cambodia has attracted tourists and investors during the last years and saw his GDP climbing. Its economy is based on garments, agriculture, tourism and construction. Prospects of possible mining fields have attracted foreign investors and could support the current economic growth (Index Mundi, 2013b). However, the country is facing structural challenges due to corruption and its lack of bureaucratic capacity. While Cambodia is considered as an emerging democracy, it is confronting hurdles often associated with a post-conflict society. Freedom of expression is at risk in the country where CSOs and political opponents

⁴ Threats to human rights defenders and activists have increased the fear of civil society to take action and oppose the government. Sombath Somphone, a prominent Laotian civil society leader, disappeared in December 2012. There are strong evidences (video footage) that his enforced disappearance is the result of government complicity. His disappearance has sent a strong message to the country’s human rights defenders which have since then dramatically reduced their activities (Trandem, 2014 and Forum-Asia, 2013). His leadership and activism on economic and land issues represented threats to the government: “*Shortly before his disappearance, Sombath played a key role in organising the Asia-Europe People’s Forum (AEPF), a civil society forum that preceded the official Asia-Europe Summit Meeting. At the forum, discussions on land and water issues, and poorly regulated FDI’s which threatened people’s livelihoods were discussed openly for the first time in Laos.*” (Forum-Asia, 2013a).

experience severe crackdown. The situation is considered as alarming and dangerous for civil society actors as the space for opinion and expression is increasingly restricted by both legal and violent means. Indeed, the authorities have shaped a legal environment where the voicing of certain opinions has become a crime (Cambodian Center for Human Rights, 2010:1).

Fisheries are crucial to the Cambodian economy and for the livelihoods of riparian communities. An important part of the country's ecology is defined by the Mekong's impacts on water levels (Hirsch and Jensen, 2006:14-15). In this regard, the Cambodian government is working closely with Chinese companies to carry out feasibility studies before building dams on the mainstream of the Mekong (International Rivers, 2014c).

1.2 Lower Mekong Mainstream Dams

Twelve hydropower dams⁵ are currently being planned for the lower Mekong. These dams are proposed to be built on its mainstream and would be located in Thailand, Lao PDR and Cambodia. Since 2006, the governments of these three countries have granted approval to Chinese, Russian, Malaysian, Vietnamese and Thai companies to investigate these projects and initiate their construction (International Rivers, 2014a).

Plans for constructing dams in the Mekong have been proposed since the 1950s. At the time, the United States wanted to increase their influence by bringing prosperity and pursuing a development-based strategy in order to counter communism. Since then, the Mekong has always attracted the interest of several domestic and international actors. The end of the Cold War revived the interest in the economic potential of the river due to increasing energy demand (Hirsch, 2010:313).

⁵ The construction of hydroelectric dams creates a lot of debate as to their positive impact on the society and the alternatives existing. Many argue that dams are needed due to the growing population levels and the rising levels of economic activities which result in greater energy demand. The advocates of hydroelectric dams insist on the fact that these megaprojects are more advantageous than nuclear, fossil, geothermal and natural gas power plants because they are renewable and can be used for peak operation. Moreover, the initial investment costs of dams are not superior to those of thermal and nuclear plants and their environmental impact are much less dangerous (Altinbilek, 2002:13). In contrast to the aforementioned arguments, opponents to the construction of hydroelectric dams affirm that efficient and alternative sources of energy exist. These include wind power, solar power, fuel cells and microturbines (Brink et.al., 2004:67-77).

The upper basin of the Mekong has already experienced the construction of seven mainstream dams which are having dramatic impacts on the local populations as well as on the southern communities in Thailand, Lao PDR, Cambodia and Vietnam. Besides the existing seven hydropower dams, over twenty are either being planned or constructed. The lower Mekong communities have experienced declining fish stocks as well as volatile water levels as a result of the Upper dams operations (International Rivers, 2014b). These issues are directly putting at risk the livelihoods of the population as well as endangering the region's ecological stability (Save the Mekong, 2009).

The building and operation of dams on the mainstream of the Lower Mekong would have several socioeconomic and environmental effects which would be devastating and put at risk the local populations as well as the stability of the ecosystem. The construction of dams would result in the displacement of

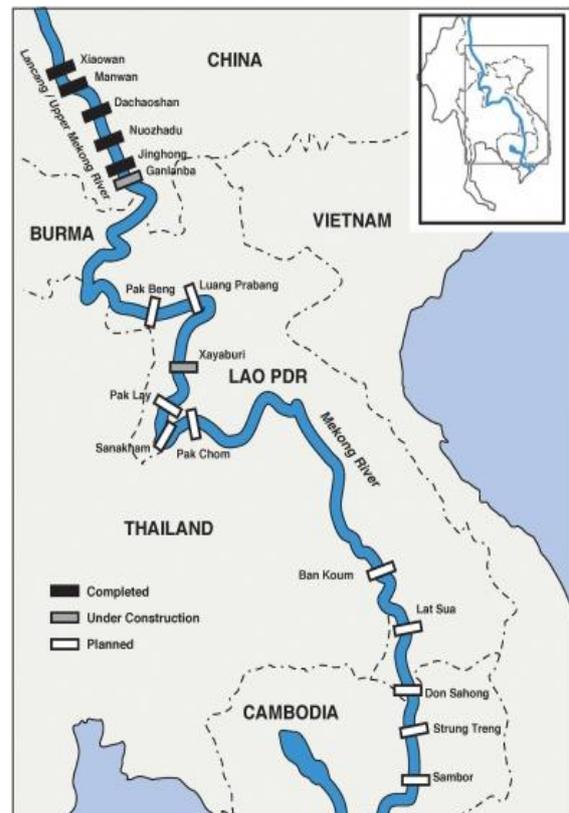


Figure 1: Mekong Dams Advancements.
Source: International Rivers, 2013a

populations which often “depend on the land or on the access to natural resources for their living” (Oxfam Australia, 2014b). Moreover, changes in the river would impact the communities which either live by the river or depend on its water. These changes affect the river flow, the quality of water, the amount of sedimentation and the migratory patterns of fish. Such alterations put at risk the sources of livelihood of the populations. Similarly, environmental impacts would also be significant. Pollution would become a major issue as a result of the construction and operation of the dams. But the current changes of fish migration patterns, as a consequence of the upper dams, shed light on the immense risk that the dams would mean for the biodiversity of the river and of the region (Ibid.).

1.3 The Mekong River Commission

Since the 1950s the Mekong river and its economic potentials have attracted investors and government alike. Meanwhile the question of the management of the river gained an increasing importance and opened a regional dialogue on transboundary water cooperation. In

1957, the Mekong Committee was created with assistance from the United Nations and the United States. The *de facto* interest of the US was to counter communism in the region by bringing economic prosperity (Hirsch, 2010:313).

The Mekong Committee included the four lower Mekong countries of South Vietnam, Lao PDR, Thailand and Cambodia as members. Until the 1990s the hydroelectric dreams of the region did not materialize⁶ due to the global and regional political instability. When the Cold War came to an end, intra-regional trade and cooperation increased and demand for energy supply became a central issue for the region. In 1995, the four governments signed the Mekong Agreement and established the Mekong River Commission (MRC) as the body in which cooperation would be achieved (MRC, 1995:article 11). By signing this agreement the governments committed to cooperate for the management and the sustainable development of the lower basin (Lee and Scurrah, 2009:17-18). The principles of particular interest to mainstream dams are briefly described below:

- Recognition of multiples uses: this principle relates to the first Article of the agreement and acknowledges that the resources of the basin are used differently and therefore require cooperation and coordination in order to ensure a sustainable development of the river. When applied to the question of dams, Article 1 illustrates the importance of the compatibility between different sectors such as hydropower and fisheries (Ibid.).
- Basin Development Plan (BDP): in accordance with Article 2, the MRC should produce a BDP to inform and assess proposed developments on the basin. The objective is to approach these projects with an *integrated water resources management-based strategy* (Ibid.).
- Ecological responsibility: Articles 3,6,7 and 26 emphasize the need to protect the environment and the natural resources of the basin as well as recognize the importance of preserving the Mekong flows to secure the production of fisheries (Ibid.).

⁶ The only mainstream dam constructed in that period was the Nam Ngum Dam in Lao PDR (1971)

- Water utilization: the principle of “reasonable and equitable” use of the Mekong mainstream waters is highlighted in Article 5 (Ibid.).

In addition to the principles mentioned above a series of procedures have been formulated and agreed by the four countries. Among these, the Procedures for Notification, Prior Consultation and Agreement (PNPCA) are of particular interest to this paper. The PNPCA procedures can be considered one of the main governance tools of the MRC. They outline a consultative process between member states in order to reach an agreement for developments on the basin (Ibid.). Both China and Burma hold an observer status with the organization which allows them to participate in the different dialogue meetings (Backer, 2007:43).

The Chinese authorities have decided to assume the full cost of the construction of dams on their part of the river (Lancang River – Upper Mekong). This point sheds light on some of the reasons why China has decided to not become part of the MRC. As noted by Cocklin and Hain (2001), by choosing self-finance, China has successfully prevented the outside world from observing the dams’ construction and operation (Cocklin and Hain, 2001 in Posey, 2005:7). Additionally, there are several other aspects to take into consideration when looking at the Chinese non-membership in the MRC. Firstly, China possesses many other international rivers and is therefore unwilling to give concessions to the lower Mekong riparians as it could lead many others to make similar demands (Backer, 2007:43). Secondly, the Chinese authorities affirm that they prefer to negotiate on a bilateral basis (Lipes, 2014). Regarding this point, China finds the 1995 Mekong Agreement too strict. Thirdly, Article 39 of the 1995 agreement states that other riparian countries may join the MRC with the condition of “*accepting the rights and obligations of the agreement*” (Agreement 1995:Article 39). This would be unacceptable for China as the agreement does not focus enough on the upper basin (Backer, 2007:43). Fourthly, it has been argued that the membership of China is not desired by all members and donor agencies. Lastly, the Mekong River is not a priority for the Chinese policy makers. Its remote locations far away from Beijing and the existence of several other international rivers in China have reduced the possibilities for the Mekong issues to reach the top of the political agenda (Backer, 2007:44).

While China is not part of the MRC, its massive hydroelectric developments in the Upper Mekong as well as its increasing investments in the LMB developments raise interesting questions. As a matter of fact, the MRC has insisted on the importance of continuing dialogue with China. In this regard, civil society has been questioning the interests that are being

represented in the dialogues between the MRC and China. Similarly, CSOs have pressured and challenged the MRC to fulfill its mission and ensure the sustainable development of the river. Until now, the dialogue with China has been limited to a small exchange of data on water levels in order to monitor the river flows.

According to civil society representatives, the interaction between China and the MRC should include additional aspects which relate to China's involvement in the Lower Mekong region. Firstly, China has the capacity to regulate the water flows in the upper Mekong which have immense impact on the LMB. Secondly, the country is sponsoring several hydroelectric projects in the lower part of the river. Lastly, China has become a potential importer of electricity as a result of its hydroelectric investments in the LMB (Lee and Scurrah, 2009:41-42).

Little attention is paid to Burma/Myanmar in the institutional framework and literature covering the Mekong river dam issue. This can be explained by the fact that the country has only four percent of its territory within the Mekong basin. Therefore, the country's involvement⁷ in the Mekong River management has been limited in comparison with the other riparian states (Backer, 2007:44).

1.4 Research questions

It is in this context that this paper attempts to examine the different dynamics at play in the struggle to stop the construction of dams in the Lower Mekong Basin. This paper is inspired by one main research question and one sub-question:

Which factors could explain the little success of the anti-dams activists to stop the construction of dams in the Lower Mekong?

Very few legal actions have been taken by the opponents to dams. Is this the result of a deficient legal environment or a sign of civil society weakness?

In answering the questions, this study takes a look at the different actors involved in the hydroelectric developments of the region and their strategies to guarantee that the projects move forward. These include the governments of the regions, IFIs, and MNCs, among others.

⁷ Burmese/Myanmar representatives also have a consultative status and attend the annual dialogue meetings with the MRC (Backer, 2007:44).

Moreover, an analysis of the strategies implemented by the different anti-dams groups and counter-movements will be drawn. To do so, a special emphasis will be put on the legal framework surrounding the issue of dams and the challenges that this could represent for the anti-movements.

1.5 Structure of Thesis

The paper has five chapters. The first chapter introduced the topic of the research, relevance and the research questions. Also presented in the introductory chapter was relevant background information over the Lower Mekong river, the regional hydroelectric development plans and the Mekong River Commission.

The second chapter will present the methodological considerations of the study. The chapter describes the research strategy as well as clarifies the paper's ontology and epistemology. Then, the aim of the paper, the type of data used and its collection process are presented. The chapter ends with an illustrative overview of the paper.

The third chapter describes the theoretical framework. The theories of International Political Economy and Political Ecology are presented as the general framework of the paper. The chapter is then divided in two main sub-sections, namely *globalization from above* and *globalization from below*. These two sub-sections will each use an actor-oriented approach to theorize the role played by governments, international financial institutions, multinational companies⁸ and transnational civil society actors in the processes of globalization

The fourth chapter presents the analysis of the paper. The discussion starts by examining the legal and institutional framework surrounding the issue of dams in the Mekong. Thereafter, the paper looks at the role played by hegemonic actors in the hydroelectric developments of the Mekong river. The economic and geopolitical interests of these actors are then put in

⁸ The concept of *multinational company* (MNC) is used in this paper to refer both to multinational and transnational companies. Although both types of companies operate at the international level, multinational companies (MNCs) work for their domestic market and prioritize the economic development of their home countries. Conversely, transnational corporations (TNCs) work for the global market and have less, if no, consideration for their countries' economy (Strange, 2000:61). The dam industry in the Mekong involves both MNCs (state-owned enterprises, national banks, private banks and pension funds) and TNCs (private banks, consultancy groups, private engineering and construction companies).

scrutiny in order to identify the ways in which their strategies represent a challenge to the counter-hegemonic movements. Moreover, the actions taken by anti-dams advocates are analyzed with a special focus on legal aspects.

Finally, the last chapter will conclude the study by putting the spotlight on the challenges to counter the hegemonic forces behind the dam industry in the Mekong.

2 Methodological Considerations

The following chapter aims at clarifying the paper's ontological and epistemological perspectives, research strategy, aim and purpose, data collection process and level of generalization.

2.1 Ontology, Epistemology and Research Strategy

This paper is critical to the plans of constructing dams in the Lower Mekong river. The hydroelectric projects are currently being planned or constructed and are therefore part of the reality of the region. However, the perspectives regarding their potential impacts are very different. On the one hand, there are those who glorify the outcomes of such projects which will boost economic development and saturate the energy demand of the region. On the other hand, some groups and individuals consider that these projects will be negative and dangerous from a social and environmental perspective. This research criticizes and considers dangerous the construction of hydroelectric dams in the Mekong. It is believed that alternative and more sustainable solutions to produce electricity can be used and replace the existing projects in the region.

The critical ontology of this research goes in line with the paper's epistemological approach. It is acknowledged that there is a disharmony in the relationship between the state-society-market complex and the environment. This understanding of the reality applies both to a worldwide perspective and to the specific case of the lower Mekong. The knowledge produced on the issue of dams reflects the different and opposite interests at play. In this regard, it is important to consider the fact that knowledge is never entirely objective and purely factual. As affirmed by Robert Cox, "*theory is always for someone and for some purpose*" (Cox, 1981). This is especially true in the case of research dealing with conflictual situations which often put forward completely different interpretations. In such setting, one is often confronted with two totally divergent types of discourses with almost no mutual intersection whatsoever.

In line with the above mentioned elements, this critical social research will attempt to identify and analyze the hidden and visible structures of domination and power present in the debacle context of the lower Mekong. These structures are considered as oppressive and marginalizing for some groups and individuals whose interests are not well-served in the existing planned dams. By digging beneath the surface of the existing knowledge on the

central issue of this research, this paper will study the different social and environmental processes involved, and will look beyond the rhetoric used by hegemonic actors to defend the hydroelectric developments of the region. Moreover, the strategies implemented by those oppressed and the ones supporting them will also be examined in order to understand whether dominant structures can be changed.

This study will take the form of an empirical research in which data and empirical observations are collected in order to answer the main research question. The empirical research is based on a critical approach to the theme of globalization and its dynamics. Such approach is characterized by the use of critical theories, such as political ecology and critical IPE, in order to draw a critical analysis of the existing globalizing dynamics and actors behind the hydroelectric developments of the Mekong. Moreover, the strategies used by the actors advocating against the construction of dams will also be critically examined from a legal and institutional perspective.

The overall research strategy is interdisciplinary due to the complexity of the issue. In this sense, the interdisciplinary approach of this paper is characterized by the analysis and the harmonization of links between the disciplines of International Relations and International Political Economy, Global Ecology and Sociology in relation to the unit of study. The multitude of actors involved in the hydroelectric developments of the basin and the opposition to these, as well as the complex transboundary political, economic, social and environmental dynamics occurring in the region prove the need of using an interdisciplinary approach.

2.2 Aim and Purpose

The Mekong case provides evidence that neoliberal globalization may have terrible effects on the regional economic, social and environmental stability. It is therefore crucial to have a clear understanding of how these dynamics operate and affect the opponents to dams. The aim of this paper is to examine the factors that could explain the difficulties faced by the anti-dams activists to achieve their objective. The focus will be on economic and political dynamics which brought about the challenges faced by the opposition to dams.

The Mekong issue is a well-documented case that has been investigated and followed by numerous organizations, academics, governmental agencies, and scientific experts. This paper does not aim at further developing the existing literature on the impacts of dams or

examining the structure of the dam industry. Rather, it intends to suggest a different angle of analysis of the Mekong case. Such approach would look at the dynamics of globalization and the challenges and opportunities that these represent for the Mekong struggle. More precisely, an actor-oriented approach to International Political Economy and Political Ecology will provide this paper with precise tools to analyze the interests and strategies involved in the Lower Mekong region.

2.3 Data Collection

In order to answer the research questions, this study will primarily be a qualitative study that aims to analyze the variables and dynamics related to globalization and civil society networks in the context of the Lower Mekong basin.

The qualitative research conducted for this paper has primarily been throughout the use of academic theoretical literature. This has partly been in the form of sources of academic journal articles, books, reports by significant organizations, statements by noteworthy actors, web-pages and official documents. As a majority of the academic articles and books are retrieved from academic libraries they are regarded as of a qualitative quality. Indeed the process of peer reviewing offers a mechanism providing qualitative control (Bryman, 2006:100).

Moreover, semi-structured interviews⁹ were conducted with Civil Society Organizations' representatives and academics active on the issue of mainstream dams in LMB. The data retrieved from the interviews are used throughout the entire paper and more particularly in chapters three and four (*Theoretical Framework and Analysis*).

2.4 Level of Generalization

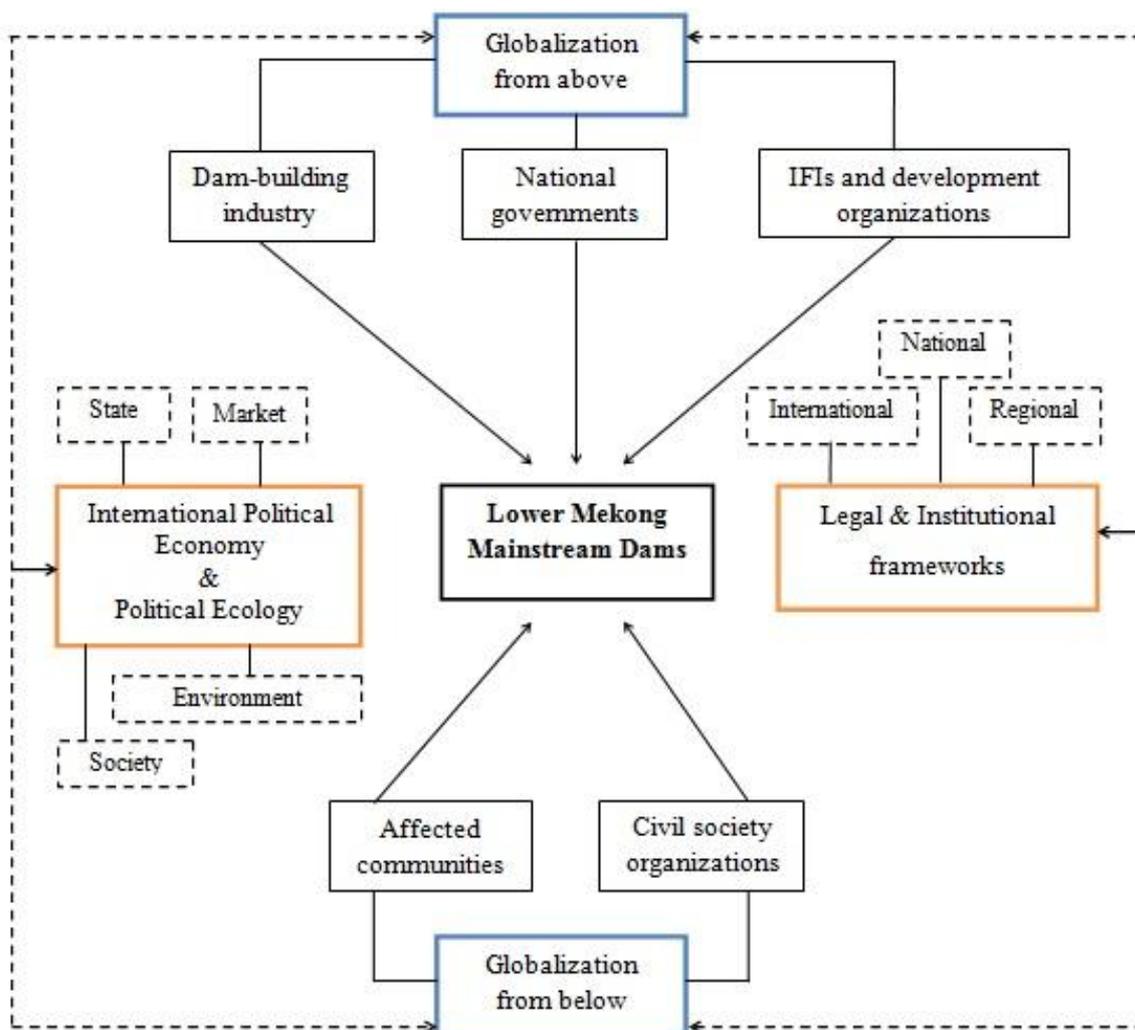
The results of this research are unlikely to be representative of all the transboundary rivers experiencing hydroelectric developments. It may be possible to find regions that share several features with the Lower Mekong area. However, it is rather improbable that these

⁹ Interviews were conducted with the following individuals: - Ms. Nga Dao, Director of The Center for Water Resources Conservation and Development – Vietnam. Interview conducted on Skype on the 18th of February 2014. - Ms. Ame Trandem, South East Asia Coordinator at International Rivers – Thailand. Interview conducted on Skype on the 27th of March 2014.

regions share the exact same political, economic and social backdrop. The history experienced by the region during the Cold War; the major economic and political differences between the four countries; the different spaces available for civil society and the fact that the Lower Mekong basin has until now flown free of mainstream dams makes of this region a unique case.

However, the answers to the main research question of this paper imply aspects that can be useful in a perspective of analytical generalization. As argued by Bryman (2004), *“it is the quality of the theoretical inferences that are made out of qualitative data that is crucial to the assessment of generalization”* (Bryman, 2004:392). Hence, the theoretical framework of this paper can be relevant for examining the links between the forces of hegemonic globalization and counter-movements.

2.5 Project Outline



3 Theoretical framework

The following chapter will introduce the theoretical framework of this paper. Firstly, *globalization* will be described as it is understood in this project. Secondly, a brief introduction to the fields of International Political Economy (IPE) and Political Ecology will be provided followed by a more detailed presentation of actors and strategies involved in what is described as globalization from above and globalization from below.

3.1 Globalization, International Political Economy and Political Ecology

3.1.1 Globalization

The concept of globalization is hard to define. It can be done in several ways by looking at the scale, scope, intensity and impact of globalization. However, its conceptualization evolves with time as a result of the new developments in the practice and research on the topic as well as the evolution of history with new events occurring and having significant impacts on the understanding of globalization (Scholte, 2005a:1). The exclamation of a Thai peasant at the beginning of the millennium illustrates well the general difficulty to grasp what globalization is: *“We don’t know what globalization is, but we have to act.”* (Sopo, 2002 in Scholte, 2005a:1).

There are many definitions and conceptualizations of ‘globalization’ and the amount of literature produced on the topic has not decreased for the last two decades (Scholte, 2005a). However, the purpose of this research is not to enter in a theoretical debate on the nature of what ‘globalization’ means. Rather it intends to look at structures and impacts emanating as a consequence of globalization. In this context, when this project brings up the concept of globalization it refers to what is often defined as ‘neoliberal globalization’.

Neoliberal globalization is a *“(…) reigning policy orthodoxy [which] holds that globalization works best when it is approached with wholesale marketization through privatization, liberalization and deregulation.”* (Scholte, 2005b:1). The hegemony of the neoliberal doctrine has led many into difficulties to differentiate globalization from world-scale market liberalization. In the same line, several social movements have considered themselves as ‘anti-globalization’ groups while they are actually fighting neoliberalism (Ibid.). This paper takes into consideration these conceptual issues and sticks to the definition of neoliberal globalization when referring to globalization from above.

Within the framework of this project neoliberal globalization is understood as the strategies and dynamics put in place by the different actors involved in the hydroelectric developments of the LMB. These include the Asian Development Bank (ADB), governments of the region, MNCs, private banks, and investors, among others.

3.1.2 IPE and Political Ecology

IPE has its roots in the field of International Relations (Murphy and Tooze, 1991) but it emerged after the 1970s as a different academic discipline (Cohen, 2008). The context of the period was characterized by impressive changes in the world's economic, political and social order which paved the way for the emergence of IPE (Ibid.). The crisis in the Bretton Woods System, due to the collapse of the exchange rate and gold systems, as well as the 1973 oil financial crisis, showed that economics and politics could not be separated (Murphy and Tooze, 1991). These economic issues had strong political and social repercussions which were considered as very important for the academic world. Political scientists gained interest in the field and took the lead in a subject that used to be dominated by economists. A process of connecting international relations, politics and economics began (Ravenhill, 2008).

IPE emerged as a field of inquiry and a place to ask questions such as “*who gets what, when and how?*” (Ravenhill, 2008). Central to the field of IPE are questions related to wealth distribution and power. There are different traditions within the field of IPE with divergent perspectives on the world and the nature of the relations between the society, the state and the global market. Gilpin proposes a ‘trichotomous’ categorization where liberalism, nationalism and Marxism are considered as the three pillars of the discipline (Gilpin, 2001). Gilpin’s approach has been heavily criticized for being considered as too simplistic and reductionist. One of the main critiques of his classification concerns the non-inclusion of some perspectives as well as the combination of several approaches under one of the three pillars (Ravenhill, 2008). Distinctions can also be observed in the ontology, epistemology and methodology of the different IPE scholars (Ibid.).

The present paper will not rehearse the academic debate surrounding the field of IPE. Neither does it attempt to provide a description of all the categorizations and traditions within the discipline. Rather, it aims at drawing on the work of a more critical IPE scholar in order to examine some of the major contradictions of the neoliberal globalization. A critical approach to IPE and globalization will allow this research to link the field of IPE with the discipline of political ecology which directly relates to the main topic of this study.

Phillip Anthony O’Hara is the director of the *Global Political Economy Research Unit*¹⁰ as well as the former president of the *Association for Evolutionary Economics*¹¹. He has been active in the field of IPE for more than 40 years studying the impacts of the capitalist mode of production, neoliberalism and neoliberal globalization. While O’Hara has published and written dozens of books, chapters, papers, articles, etc. there is one book chapter of particular interest within the context of this research. In “*The Contradictory Dynamics of Globalization*”,¹² O’Hara aims to demystify the contradictions created by the leading institutions advancing neoliberal globalization.

As mentioned in the introduction of this paper, the positive and negative impacts of globalization are debatable. However, affirming that globalization is a purely positive experience for everyone is quite unrealistic (O’Hara, 2006:2). Neoliberal economists often ignore or set aside the destructive elements of this globalization. Indeed, there exist negative impacts which are the logical outcome of what neoliberals do consider as positive trends (O’Hara, 2006:4). O’Hara argues that there are eight major contradictions inherent to neoliberal globalization and he bases his reflection on Karl Polanyi’s (1944) hypothesis of ‘disembedded economy’.¹³

Polanyi’s concept of disembedded economy posits that “*a society dominated by relations of buying and selling commodities in “free markets” is unable to suitably reproduce itself through long historical time.*” (O’Hara, 2006:4). Polanyi’s hypothesis is very interesting in the context of this paper as it examines how a society controlled by commodity markets tends

¹⁰ The *Global Political Economy Research Unit* is an independent research unit/network based in Perth, Australia.

¹¹ The *Association for Evolutionary Economics* is a professional organization of economists with interest in the development of Institutional economic theory (AFEE, 2014).

¹² *The Contradictory Dynamics of Globalization* is the first chapter of the book “Globalization and the Third World: A Study of Negative Consequences” edited by Ghosh, B. N. and Guven, H. M.

¹³ Polanyi analyzed the transformation between pre-modern and modern societies. He argues that the market economy is unique as the economic system became independent of social and political institutions. The concept of disembedded economy describes the phenomenon where social relations are embedded in the economy. This has resulted in the ‘marketization’ of ‘fictitious commodities’ such as human beings and nature which are not supposed to be commodities. As a result, labor and land have been organized in markets (Cangiani, 2011:179 and Plaschke, 2013).

to become inefficient when it comes to the protection of the environment as well as other social and public goods. As argued by O'Hara, the notion of disembedded economy is essential to an understanding of the contradictions of neoliberal globalization (O'Hara, 2006:5).

Due to the central issue of this paper only one of the contradictions analyzed by O'Hara will be used. It concerns a major contradiction of neoliberal globalization between profit and the environment. Market deregulation has led to a situation where profit has become the sole objective of neoliberal institutions. Consequently, under neoliberal domination environmental protection is minimized as capital is less controlled. So much so that profits and accumulation occur at the expense of the environment (O'Hara, 2006).

O'Hara's understanding of the relationship between profit and the environment sheds light on the interconnectedness of the economic and environmental levels of analysis. In this regard, *political ecology* provides a more precise study of the power relationships in the context of resources management and the environment (Blaikie, 1999:133). Political ecology suggests a multidisciplinary approach emphasizing the importance of interacting and enriching different disciplines. It combines human ecology, which studies the multiplicity of relationships between human societies and their environment, together with the field of political economy which studies the relationships of power between actors and their societies (Peet and Watts, 2004). Similarly to IPE scholars, political ecologists acknowledge the importance of taking holistic approaches to understand specific contexts. According to political ecology practitioners, the interactions between social, economic and political domains are considered as crucial to understand the dynamics behind the use and management of natural resources (Robbins, 2004).

The political ecology of water and dams gives place to a situation full of conflicts where advocates and opponents clash in a highly politicized and globalized environment (Nüsser, 2003:22). It would be too simplistic to depict this complex situation by providing a dichotomous explanation of *modernized hydro politics versus environmental fundamentalism*. The profound dissimilarities between various interest groups demonstrate the need of using an actor-oriented approach of political ecology. Such approach is characterized by the recognition that environmental-related issues cannot be comprehended in isolation from the economic and political context in which they occur (Ibid.).

The present paper will scrutinize the different strategies used by the different actors (both advocates and opponents) involved in the hydroelectric developments of the Lower Mekong region. On the one hand, this paper will study the increasing role played by IFIs, development banks, MNCs and governments in promoting neoliberal globalization. These actors will be presented under the section ‘globalization from above’. On the other hand, the rising transnational nature of civil society groups will be examined under the section ‘globalization from below’.

The overall theoretical framework of this paper situates itself between the disciplines of IPE and Political Ecology. As argued by Berry (2008), IPE is mainly founded on the study of globalization (2008:3). The hydroelectric interests of the different actors involved in the development of the Mekong illustrate the different dynamics and consequences of neoliberal globalization. The political, economic and social domains are all involved resulting in the interaction of a multitude of actors defending different interests. Consumption and energy demand, economic profit, national sovereignty, financial and economic hegemony, livelihoods and social protection, global resistance, and environmental protection are all major interests at play in the context of the Mekong. Hirsch (2001) summarizes well this complex environment where different globalizing forces are interacting: “*Globalization is manifested in the Mekong Region both through processes and discourses that reflect the ideology of a borderless world allowing easy passage of capital and commodities, and through resistance to such processes in an increasingly transnationalised civil society movement.*” (Hirsch, 2001:237).

3.1.3 Globalization from above

3.1.3.1 International Financial Institutions

“*Globalization is enabled through the facility of neo-liberal policies*” (Guttal, 2010:71). In the developing world neoliberal policies are often suggested and/or imposed by IFIs and development banks. A major feature of these practices concern their undemocratic nature. This can be observed in the vast leverage owned by IFIs such as the International Monetary Fund (IMF) and the World Bank (WB) which are exempted from any democratic control. Globally, there is a lack of elementary accountability mechanisms (Harvey, 2007:42). Neoliberals advocate for a free-market which “*(...) will, it is believed, set free the creative potential and the entrepreneurial spirit (...) and thereby lead to more individual liberty and well-being, and a more efficient allocation of resources.*” (Thorsen and Lie, 2007:14-15).

However, the concepts of free-market and free-trade are misleading and lead to a misconception of what neoliberals goals are. Globalization is a profoundly political phenomenon. It is influenced and shaped by interactions between IFIs, MNCs, governments, development banks, etc. The economy does not exist by itself. It relies on the actions and choices of different actors, either individual or collective, such as the ones cited above (Guttal, 2010:71). In many cases, these actors are politicized. Consequently, it can be argued that no markets are ‘free’ “*as all markets have some state regulations on who can participate in which markets and on what terms*” (Chang, 2001:6).

The importance of IFIs and development banks in the global economy proves the need of a precise study of their activities and strategies in the development and implementation of projects such as the construction of dams in the Mekong region. So why do IFIs and Multilateral Development Banks (MDBs) matter? Firstly, these institutions are highly politicized. While MDBs are directly owned by governments, the IMF and the WB are non-governmental but in permanent contact with Ministries of Finance who are the direct contact point in the different countries. Moreover, IFIs’ operations are often supervised by parliamentarians and other national legislative bodies. Secondly, these institutions’ stated missions are often related to poverty reduction. This rhetoric might shed light on hidden agendas behind the institutions’ real objectives. Lastly, the public nature of the funds of these institutions added to their hegemonic position in the financial global market indicates that public taxpayers may all have a claim on the one hand, and that the protection of the institutions’ financial interest might involve strong impositions and pressures on the borrowers’ side (Garcia, 2009:7-14).

Since the 1970s, both the WB and the IMF have inflicted conditions to the countries receiving loans or any kind of financial help. These conditions often referred to as *conditionalities* or *structural adjustments* imply the imposition of policies that include privatization, market liberalization and deregulation (Jones and Hardstaff, 2005:28). The WB and the IMF design strategies for countries ‘in need’ of reforms which have the ‘objective’ of reducing poverty. The discourse on poverty¹⁴ became a major feature of the institutions’

¹⁴ This can be clearly observed in the shift of the WB from Structural Adjustment Programs to Poverty Reduction Strategies as well as the IMF’s shift from Enhanced Structural Adjustment Facilities to Poverty Reduction and Growth Facilities. Both institutions made this change in 1999 (Bayliss, 2002:604).

agenda due to the criticism they faced during the 1990s. However, the prescriptions and conditionalities imposed remain similar with no major changes between the Washington and the post-Washington Consensus.¹⁵ Trade liberalization and privatization remain high on the agenda. While the old consensus was advocating for a minimal state, the new one acknowledge the imperfections of the market and the need of some state intervention. However, these interventions are shaped and controlled by the IMF and the WB which keep on pursuing their neoliberal agenda (Fine, 2001:15).

The scope of IFIs' interventions has expanded and does not strictly relate to economic matters. Conditionality is now also linked to the political arena with the imposition of rules related to governance and democracy (Fine, 2001:10). However, the core of the negotiations between IFIs and the borrowers are not made public. The exclusion of civil society as well as the little bargaining power of the parliamentarians raise questions of legitimacy. Indeed, external aid must be accompanied by the passing of legislations in the parliaments. However, most of the negotiations are organized between the IFIs, the Financial Ministries and the Central Banks only. Parliamentarians are excluded but requested to pass the legislation to avoid seeing the funding being withdrawn (Jones and Hardstaff, 2005:30).

Reactions and protests have taken place in many different countries with the objective of changing the policies implemented by the IFIs. However, these are not held accountable and do not respond to any national legislations (Ibid.). The problem of accountability becomes more complex when the policies imposed by the IFIs are accompanied by waves of privatization. Important industries and sectors become privatized and controlled by powerful MNCs which do also enjoy some sort of immunity. The next section on *Privatization and MNCs* will provide more detailed information on the legal environment in which these actors operate.

¹⁵ The Washington Consensus came out in the 1980s as a set of economic policies targeting free market and minimal state intervention. These policies were accompanied by a reduction of state spending in social sectors such as education and health. The WB and the IMF were the two main institutions in charge of implementing these policies and ensuring that the developing world would follow the neoliberal path dictated by Washington (Fine, 2001:3).

The involvement of the WB and the ADB in the hydroelectric developments of the LMB will be further discussed in Chapter 4. Both institutions have been present in the region for many decades and have shown their deep interest in its energy sector development.

3.1.3.2 Privatization and Multinational Companies

For centuries people and their businesses have interacted with other countries for economic purposes. But with the emergence of the capitalist mode of production these international exchanges have accelerated and taken different forms (Preda, 2008:1). Although corporations have always operated at the international level, they started to restructure by the early 1980s *“in order to operate in a global economy”* (Brecher et.al., 2000:2). This period saw the appearance of new corporate forms characterized by the emergence of new supplier chains, global outsourcing, alliances, work structures and labor commodification, global assembly lines, etc. These changes have modified trade patterns and impacted several related aspects such as the finance sector, technology transfer, the role of the state and the rise of global institutions among others (Ibid.).

Neoliberal globalization has impacted the market-state-society complex which experienced a transnationalization characterized by an increasing role played by actors such as MNCs. These changes have led to a different understanding of the role of states which have lost a great part of their territorial, political and economic legitimacy (Scholte, 1997). World trade, foreign direct investments (FDI) and technology transfers have immensely developed as a result of globalization. MNCs stood at the core of all these developments (Kleinert, 2001:1). A closer look at the responsibility of MNCs in the increasing of world trade, FDI and technology transfers helps understanding the hegemonic role played by corporations in today's global economy.

FDIs are cross-border investments from one entity to an economy with the interest of obtaining a “lasting interest”¹⁶ in an enterprise in another country (OECD, 2013). MNCs are major actors in the increase of FDI. During the 1950s, 1960s and 1970s exports grew much more than FDI. But this trend changed in the 1980s. In 2011, the top hundred MNCs were

¹⁶ The concept of « lasting interest » can be best understood as a *“long-term relationship between the direct investor and the enterprise and a significant degree of influence by the direct investor on the management of the enterprise.”*(OECD, 2013)

responsible for FDI of a value of \$374 billion (UNCTAD, 2013:24). Global economic integration is highly dependent on FDI flows which are mostly related to MNCs activities. While the financial sector has now taken an important part of the global economy, FDI remains an important element of the economy. In this respect, corporations have gained a hegemonic position in both sectors (Kleinert, 2001:2-5).

Large corporations have become dominant actors in the international transfer of knowledge and technology.¹⁷ It is interesting to observe that the increasing rate of FDI flows, experienced between the 1980s-2000, rose at the same time than knowledge and technology transfer indicators. Kleinert (2001:11) argues that this element sheds light on the important role played by MNCs in the global transfer of technology and knowledge. New technologies spread at an increasing speed, particularly among developed economies. MNCs have taken the lead and became the most important medium of international knowledge transfer.

International trade in goods and services has always been a major part of global economic integration. While FDI have challenged the supremacy of international trade, it remains an important sector where MNCs have also become obvious actors. International trade remains also mostly concentrated on developed countries. Delocalization has given the impression that non-developed economies might be challenging the hegemonic position of Western MNCs. But the extensive networks of MNCs and their subsidiaries as well as affiliates has allowed these to remain the dominant player in international trade (Kleinert, 2001:19-24).

The relationship between IFIs and MNCs is extremely relevant to the context of this paper. Indeed, privatization is among the core policies of IFIs which have constantly given power to corporations worldwide (Bayliss, 2002:604). The waves of privatization orchestrated by different institutions such as the ADB, the WB and the IMF raise questions of legal order. When corporations conduct illegal, inhuman and/or environmentally damaging activities, they rarely are held to account. This problem becomes even more complex when the business activities involve multiple jurisdictions. Corporate abuses, whether domestic or cross-border, involve local and national jurisdictions, regional legal frameworks (if any) and international

¹⁷ The transfer of international knowledge and technologies can be measured by the payments for royalties and licensing fees (Kleinert, 2001:9).

actors such as the United Nations and other human rights bodies (International Corporate Accountability Roundtable ICAR, 2014:1).

MNCs operate in a climate of immunity characterized by the absence of legally binding instruments at the international level and the inefficiency of national state authorities to inspect or prosecute their companies (Ibid.). Bayliss (2002:603) argues that privatization has a negative effect on poverty. This is mainly due to the fact that the prime interest of corporations is to increase their profit. The easiest way to do so is often through paying as less attention as possible to social and environmental aspects such as pollution, livelihoods, worker's rights, fair incomes, etc. While profit maximization occurs at the expense of the previously mentioned aspect, the little attention given by donors such as the World Bank has further developed the supremacy that corporations possess (Ibid.).

The dominant role of MNCs in the globalization process and in the world economy requires a precise study of their strategies, decisions and alliances. Therefore, the present paper will put in scrutiny the ways in which MNCs have been given power to develop and build dams in the LMB, as well as their relationship with IFIs and the different governments involved.

3.1.3.3 Governments

Neoliberal advocates argue that the role of the state should be minimal. State's responsibility is to ensure that the (free) markets are well functioning and secure. Interferences must be marginal as states do not possess enough information to predict market variations (Harvey, 2005:2). Markets should operate freely in an environment where competition allows them to be self-regulated (Larner, 2000:5-6). As mentioned previously, the notion of free market itself is misleading. Chang (2001) argues that free markets do not exist and that there is always some type of state intervention. Therefore, it is important to understand what 'intervention' means. In this regard, some state regulations (such as labor standards and environmental regulations) might be considered as intervention in some countries while they became totally accepted in others. Markets relationships are defined by rights and obligations which are politically determined. The extent to which these rights and obligations are accepted by the actors of the market will make these appear as 'free' or not (Chang, 2001:5-6).

The dominant power of non-state actors and the spread of neoliberal globalization in most parts of the world have led many to question the fate of national governments. States are

understood as being constrained and constantly losing power. They are supposedly inefficient in responding to economic management issues and experience increasing threats to their governance such as the fall of national barriers to trade, capital mobility and financial flows. The impacts of governmental policies (e.g. fiscal and social policies) are thus seen as limited due to the economic openness resulting from globalization (Weiss, 2003:8). From this perspective governments are simple tools to adjust economies to the dynamics of free-markets.

The rise of power of private actors and international organizations might indicate a declining state apparatus. Whereas the role of the state has changed in the last decades, globalization does not mean the end of the nation-state. The progress of globalization depends on the national policy makers' decisions (Wolf, 2001:179) and it is therefore important to look at the ways in which governments are involved in the global economy and their relationships with other dominant actors such as MNCs and international organizations.

Several points seem to indicate a still active role performed by governments in the global economy (Wolf, 2001:185; Weiss, 2003:15-19). Firstly, the growing economic interdependence brings along more risks for different actors at the national levels. Active elites in the global economy feel more vulnerable due to the multitude of factors influencing their economic activities and therefore will ask for domestic compensation. States often react by taking compensatory and inclusionary measures facilitating the labour and industry sectors (Weiss, 2003:15). Contrarily to the hypothesis of a powerless state, governments do have the capacity to adapt their macroeconomic policies, public spending and taxation schemes (Wolf, 2001:185). MNCs look after market-friendly policies which will allow them to reduce their costs. Governments attempt to foster an environment that will please MNCs and therefore attract higher rates of FDI (Jensen, 2006:2).

Secondly, the competitive nature of the global market enhances the need for corporations to access innovation structures, skilled labour and other infrastructural resources. All these elements are highly dependent on national policies and infrastructures. Accordingly, governments will often increase their spending and taxes in order to guarantee a healthy environment for corporations. In their home countries, MNCs are often willing to sustain high tax levels (Weiss, 2003:17).

Lastly, competitive pressures represent a threat to the stability of key economic sectors such as agriculture, finance, etc. Governmental responses to such threats often take the form of new policy and regulatory regimes. Due to the interdependence nature of globalization, governments need to develop or reinforce policy networks which often mean more intergovernmental cooperation through the WTO, G8, EU, etc. Governments also respond to these threats by expanding their links with the private business sector (Weiss, 2003:18).

In conclusion, globalization and interdependency have indeed changed the scope of action of governments. But the rules remain established by governments (Chang, 2001; Weiss, 2003:19), whether through domestic actions or within international organizations. The intense competition of the global market has reinforced the ties between governments and the industrial sector in order to coordinate collective responses to global problems. Moreover, international organizations governed by states are often behind the development and monitoring of rules regulating world trade and other aspects related to the global economy (Weiss, 2003:15-19). Chapter four will examine the decisions made by the governments of the LMB and their impact on the hydroelectric developments of the region.

3.1.4 Globalization from below

3.1.4.1 Civil Society

Similarly to the concept of ‘globalization’, civil society has no universally established definition. It is understood differently across time, places and theoretical approaches (Richter et.al., 2006:10-11). It is generally accepted that civil society refers to “*voluntary participation by average citizens and thus does not include behavior imposed or even coerced by the state.*” (Hauss, 2003). Civil society is characterized by the fact that it is neither part of the state apparatus nor actor of the market. These two elements have led to a conceptualization of civil society as a third sector (Batliwala and Brown, 2006:2-4). However, this categorization must be understood carefully as it does not mean that this ‘third sector’ does not interact with the state and the market. Indeed, in practice civil society groups have strong ties with the market sector such as corporate funding and independent business lobbies. In the same line, the boundaries of non-governmental activity are unclear. Are political party organizations parts of civil society? When do individuals funded by the state become non-governmental? (Scholte, 1999:2-3).

The concept not only includes individuals but also the institutions they participate in. These are often called Civil Society Organizations (CSOs). These CSOs include a wide of array of organizations such as non-governmental organizations (NGOs), labor unions, community-based organizations, religious groups, professional associations and many more (Ibid.).

As will be further explained, civil society has become increasingly global in the last decades. The concept of civil society has been shaped by these changes which are the result of globalizing dynamics. It is therefore important to understand how the meaning of civil society has shifted in the last two decades. The aim of transnational civil society is to find solutions to global problems that are not “(...) *accessible to solution by nation-states (...)*” (Richter et.al., 2006:11-12). This shift from domestic to global has had several consequences on both the understanding and practice of the civil society sector.¹⁸

¹⁸ In this regard, it is interesting to examine the *pros* and *cons* of the globalization of the civil society sector. The third sector has often been described as a powerful force for democracy and against the domination of the state and markets. Yet civil society groups can also have negative effects on the society and become potential dangers. On the one hand, they are powerful agents to promote social equity and defend democracy. Firstly, they offer alternatives to the public-private sector supply mechanisms as they provide alternative ways of material and economic support such as micro-credits, fair-trade, humanitarian aid, etc. Secondly, they create global awareness and improve public understanding of several issues related to globalization as well as give voice to the powerless and excluded groups such as indigenous people, rural poor, women, etc. Thirdly, civil society can question the orthodox views of the state and open the space for debate and critique. Fourthly, they can be crucial in increasing accountability and transparency of world politics. Lastly, global civil society has the capacity of enhancing social cohesion by contributing to the society in several ways and then possibly reduce space for conflicts and increase social integration. On the other hand, negative outcomes can be observed as a result of the transnationalization of the civil society. Firstly, there simply exist ill intentioned groups which have seen their space of action increase with globalization. Secondly, well-intentioned CSOs may implement weakly conceived plans. This can lead to negative consequences when these misinform the public or lack scientific argument. Some organizations miscalculate the need of the populations and consequently do sometimes worsen a situation. Thirdly, advocates of democratization sometimes use undemocratic practice internally. They sometimes lack transparency in terms of funding as well as become highly bureaucratic in their leadership structure reproducing elites schemes. This in turn implies issues of accountability and conflicts of interests. Lastly, a major negative consequence concerns the inadequate representation within the civil society sector. Access to civil society can reproduce structural and global inequalities related to class, gender, race, religion, etc. Citizens from the North are by far more represented in global civil society than the South. Western 'values' and traditions have influenced more the sector than other cultures. These issues do raise questions on the nature and objectives of

The concepts of civil society and CSOs will be used to refer to the actors involved in the actions to stop the construction of dams in the LMB or to change the nature of these megaprojects. These include local movements and populations; national NGOs such as the Centre for Water Resources Conservation and Development; international NGOs such as International Rivers and Oxfam Australia; transnational advocacy networks such as the Save the Mekong coalition and individual academics and research centre such as the Australian Mekong Research Centre of the University of Sydney.

3.1.4.2 Transnational civil society

For almost two decades, world politics has involved many non-state actors who increasingly operate in the form of networks. These actors come from different backgrounds and take action both formally and informally. They include local social movements, domestic and international NGOs, unions, scientists, the media, etc. They work internationally and advocate for policy changes and institutional reforms. Moreover, apart from the major impact that they have on world politics, these networks have also managed to change the principles of international interactions by gaining leverage over governments and powerful organizations (Keck and Sikkink, 1999:89).

Globalization has increased the capacity of networks by improving communication technologies and democratizing the costs of transport. Moreover, the propagation of international organizations and conferences has created more space for activists to interact and develop common strategies. The main role of networks is the production, exchange and tactical use of information. This information is crucial to enhance resources to distant actors and can also facilitate actions (Routledge, 2003:335). By mobilizing information in a strategic way, networks may manage to create new issues and put pressure on governments and other institutions. Networks are characterized by a diversity of constituents and a common cause of advocating for people or ideas (Keck and Sikkink, 1999:91).

Local and national groups often seek ways to complement their works with other groups active on the same issues. When national actors fail to influence their government, they ask their international allies to put pressure from outside. The lack of responsiveness of

certain segment of the civil society sector. In short, global civil society has the capacity to become a force for democracy if it is carefully used to serve this purpose (Scholte, 1999:1-34).

governments can be changed when domestic demands amplify and become internationalized. In this context, networks are formed around particular issues and campaigns. The globalization of struggles is common with human rights, environmental and indigenous rights campaigns (Keck and Sikkink, 1999:93).

The globalized nature of these networks implies that the actors come from economically, socially, politically and culturally diverse regions. But these links are significant for both ‘northern’ and ‘southern’ groups. On the one hand, poorer countries are given access to useful material and non-material resources as well as visibility. On the other hand, the northern groups gain credibility as they are seen as partners and not simple givers. However, power relations may become conflictual (Ibid.). Although the different groups often join their efforts for a common cause, the ways of reaching their goals might result in major disagreements. As a matter of fact, several southern groups have called for the removal of certain institutions such as the IMF, the WB and the WTO. In contrast, northern groups often advocate for a reform of the institutions (Guerrero, 2013). Furthermore, issues of trust are often involved resulting in a questioning of the motives behind ‘northern’ interventions. Contrarily, advocacy networks from non-developing countries are often optimistic about the prospects of international networking (Keck and Sikkink, 1999:94).

Transnational networks have managed to considerably expand the agenda of world politics by insisting on issues such as human rights and the environment. Their actions have resulted in the modifications of policies, the reforming of international norms and global awareness of the issues discussed. However, it might be illusive to consider them as an already successful third way of organizing international relations.

3.1.4.3 Subaltern Cosmopolitan Legality

In their book “*Law and Globalization from Below*”, Santos and Rodriguez-Garavito (2005) conceptualize and use *subaltern cosmopolitan legality* as an approach to critically engage with sociolegal research on globalization. It consists of a bottom-up approach that aims at documenting experiences of counter-hegemonic globalization which in some cases have the power to subvert hegemonic institutions and ideologies. This perspective brings a shift of focus to the study and practices of legality related to globalization which has mostly been Western-centric. The authors of the book consider this change of perspective as one that moves from North to South, with the South representing not a geographical position but all

types of subordination linked to neoliberal globalization (Santos and Rodriguez-Garavito, 2005:12-18).

Subaltern cosmopolitanism advocates for a conception of the legal arena appropriate for reconnecting law and politics as well as envisioning legal institutions from below. Therefore, this approach stands in contrast to the existing ones studying law and globalization. Firstly, it implies investigating and combining legal and illegal (as well as non-legal) tactics used by transnational and local movements. Secondly, subaltern cosmopolitan legality tries to expand the legal focus beyond individual rights. The focus is then put on the importance of political mobilization in the context of rights-based strategies. Individual rights are not abandoned and are considered as crucial in the context of repressive neoliberalism. Nonetheless, the creation of new conceptions of rights which incorporate like-minded notions of rights are seen as fundamental to create alternative forms of legal knowledge. Due to the profound power asymmetries between hegemonic and counter-hegemonic actors, collective actions become essential to bring about legal changes. Therefore, law and rights need to be politicized before they are legalized (Ibid.)

Thirdly, social movements and transnational networks use legal and political tools at all levels. Indeed, they exploit all the possibilities offered to them in different instances such as local, national, regional and international legal frameworks as well as non-legal instances such as the public (Ibid.).

Similarly to the absence of a legally binding instrument for corporate accountability, the establishment of an international system of human rights remains a difficult endeavor. One of the main hurdles to the establishment of such mechanism concerns the Western- and state-centric biases. Although the existing legal framework is important for the protection of human rights, subaltern cosmopolitanism challenges some of its essential and procedural characteristics. Therefore, counter-movements have contested the traditional view of the state as the only actor in processes of creation and enforcement of international human rights mechanisms (Ibid.).

Subaltern cosmopolitan legality adds a legal perspective to the existing literature on counter-hegemonic movements. This approach will be useful and serve as a tool to analyze the extent to which the different actors involved in the LMB have used legal strategies to achieve their goal of stopping the construction of mainstream dams. Moreover, by putting in scrutiny the

legal actions taken, if any, this paper will also explore the legal environment in which the populations of the lower Mekong live and the legal alternatives available to them. The multiple jurisdictions involved in the Lower Mekong region prove the need of a sociolegal approach to issues such as dams which create interactions between a multitude of societal and governmental actors as well as put at risk several human and environmental rights.

3.2 Conceptual Framework

Studying globalization with more precision is essential in order to identify how its negative dynamics function as well as the ways in which its downsides can be challenged. The Mekong case provides evidence that neoliberal globalization may have devastating effects on the regional economic, social and environmental stability. In this respect, the theoretical framework of this paper has provided important elements to study the relationship between the political, economic, social and environmental levels of analysis in the context of the Mekong.

The field of IPE is essential to analyze the dynamics of globalization. Questions of wealth distribution and power are crucial to understand how specific groups of societies can particularly benefit from the capitalist mode of production while others are excluded. Polanyi's hypothesis of disembedded economy helps critically questioning modern capitalism and its market economy. In this respect, Polanyi's premises describe how labor and land have become used as commodities and therefore organized in markets. The core issue of this paper relates to the 'marketization' of water and its use as a mean to generate economic profit and fuel the energy needs of the region. As such, this paper questions the use of water as a commodity and the prioritization of profit over social development.

O'Hara's analysis of the destructive elements of neoliberal globalization shed light on the danger that market deregulation represents for the environment. The pursuit of profits in the LMB has led to a de-prioritization of the socio-environmental stability of the region. The lack of capital control has led to a situation where the hydroelectric developments of the Mekong can occur at the expense of the environment.

Political ecology adds an ecological perspective to the field of IPE. The actor-oriented approach preferred by political ecologists structured the paper accordingly in order to examine the highly politicized and globalized environment of the lower Mekong region. The LMB and its economic potentials have attracted a variety of investors and stakeholders.

Combining the fields of IPE and political ecology is helpful to identify the interests and strategies of these actors. Indeed, by examining the political and economic levels of analysis and their relationship to the environment, it becomes possible to look beyond the political economic dynamics of the region.

Powerful actors such as the ADB and the WB influence the national and regional hydroelectric debate and developments. Their stated objective is to fight poverty by promoting economic growth. Critical approaches to IPE help studying the hidden agendas and motives behind such rhetoric. Section 4.2 will put in scrutiny the involvement of IFIs and corporations in the dam industry and their strategies to secure their interests. Globalization has impacted the role of the state in the world economy. Yet, the market economy is strongly influenced by governments' decisions which have reinforced their ties with the private sector and IFIs. In this respect, the interests of the LMCs will be analyzed with a special emphasis on their relationships with the ADB and the private sector.

The LMCs' interests will be further examined to identify the links between the promotion of dams, the impact and space given for civil society actions and the MRC's mission to ensure the sustainable development of the river. The influence of the elites on the political culture of the region will be scrutinized in order to assess the extent to which national interests influence the developmental debate and political power in the Mekong.

As mentioned previously, the aim of this paper is to examine the factors that could explain the difficulties faced by the anti-dams advocates to achieve their objective. The globalization of civil society and the increasing impact of transnational networks of advocacy have created new opportunities for anti-globalization movements. The Mekong struggle has engaged a diversity of constituents which formed networks to maximize their impact at the local, national, regional and international level. Local communities and CSOs have united their efforts to advocate for a Mekong free of dams. Studying their strategies is crucial to understand why the construction of dams has not come to an end. In this respect, the section on transnational civil society has described how external groups that exercise pressure at different levels can support national and regional struggles.

Subaltern cosmopolitan legality suggests that law can be used as a powerful tool to counter hegemonic globalization. Looking at the legal and institutional framework surrounding the issue of dams is vital to identify the existing opportunities for civil society. There are

indications that the national and international legislations on water, human rights and corporate accountability cannot be considered as significant chances for civil society actions. It will be attempted to identify the reasons behind this flawed legal environment as well as its impact on the opponent's activities.

The reality of neoliberal globalization is not as pure as its free-market rhetoric. The simple story about the logic of market superiority, privatization and individualization hides a reality where neoliberals use and need governmental power and public authority to pursue their goals (Tickell and Peck, 2003:167). Therefore, the structure and dynamics of markets need to be precisely analyzed. The Mekong dam industry is orchestrated by such dynamics where all stakeholders play an active role in the destruction of the livelihoods and ecosystems of the region. Hence the importance of studying the strategies of counter-movements and their significance in today's world.

4 Analysis: unstoppable dams?

The following chapter aims at finding answers to the research questions of this paper:

Which factors could explain the little success of the anti-dams activists to stop the construction of dams in the Lower Mekong?

Very few legal actions have been taken by the opponents to dams. Is this the result of a deficient legal environment or a sign of civil society weakness?

To do so, the different elements presented in the previous chapter together with the different data and information collected during the writing process will be analyzed. In line with the structure of chapter 3, the analysis will be divided in two main sections which examine the actors and dynamics emanating from what was described as *globalization from above* and *globalization from below*. The section on hegemonic globalization will start with a brief presentation of the main legal and institutional frameworks surrounding the topic of dams and water management at the national and international level. Thereafter, the analysis will look at the involvement of the Lower Mekong Countries (LMCs), the Mekong River Commission (MRC), the Asian Development Bank (ADB) and Multinational Companies (MNCs) in the dam industry. The section on civil society will examine the role played by activists and local communities in the struggle against dams and the impact of law on their actions.

The complex geopolitical, ecological and economic context of the Mekong region results in the impossibility to provide separate analytical sections in order to answer the research question. While the different types of actors, strategies and interests will be analyzed separately, the findings will continuously be combined in order to provide a coherent analytical whole.

4.1 Hegemonic globalization in the Lower Mekong countries

Despite the strong opposition to the construction of dams, the ongoing planning and building illustrate how efficiently the stakeholders involved in the dam industry have managed to secure their interests. These interests are multiple and often intertwined. The industry brings benefits to several actors both nationally and internationally. It is therefore crucial to examine the different interests at stake and the way they are being protected by the different stakeholders involved.

As described previously, the construction of mega-dams in the Mekong is a global and multi-stakeholder business. It involves national and foreign governments, international organizations, MNCs, commercial banks, Western pension funds, international consultancy firms, IFIs such as the WB and the ADB, as well as other private investors (Jensen and Lange, 2013:39). Their interests include economic profit, energy supply, regional financial hegemony and geopolitical strategies. Many of these actors share similar interests and are consequently protecting them cooperatively. This paper will carefully study the existing interactions between the different actors and the strategies put in place.

4.1.1 Legal framework and water management in the Lower Mekong Basin

This section does not intend to provide a precise study of the different national legal frameworks surrounding the topic of water and natural resources management. Rather it aims at identifying the importance attached by the different lower Mekong countries to the issue of water management and protection. The choice of not providing an accurate description of the national legal frameworks lies in the fact that “(...) *legislation in environmental protection and natural resources management ‘in general’ is not well developed in the countries of the lower Mekong.*” (Hirsch and Jensen, 2006:34).

The Thai legal framework on water is quite fragmented. The legislations on groundwater management, irrigation and water quality are separated and therefore not considered as an interconnected whole. The institutions in charge of water regulations are numerous and are often experiencing weak staff experience, conflicts of interests and little interaction with civil society. These include the Royal Irrigation Department, the National Water Resources Committee (NWRC) and the Department of Water Resources (Hirsch and Jensen, 2006:36). As a result of the inefficiency of these institutions to coordinate their work and give enough space for relevant public participation, several conflicts happened. These conflicts mostly concern large-scale water projects such as hydroelectric dams (Ibid.). While conflicts are not an issue *per se*, the inexistence of mechanisms to manage them further complicates the situation.

In Vietnam the *Law on Water Resources* (N°8, 20 May 1998) is the only existing water legislation in the country. The law is weak as there are no existing mechanisms to ensure its enforcement. Moreover, the capacity of the different executive agencies is too weak and too little guidance on sustainable management is given through the legislation. Similarly to the case of Thailand, water management implied the creation of numerous bureaucratic

institutions such as the NWRC, River Basin Organizations (RBOs), the General Office of River Basins Management Planning and the Office of River Basin Planning Management Board. The different executive agencies have been mandated to manage water resources. However, little space is being given to CSOs in this process. Due to possible negative consequences of dams' construction in the last part of the Mekong in Southern Vietnam, the Vietnam Mekong committee has played an active role in advising the government to increase its cooperation with the other MRC countries (Ibid: 37-39).

The *Water Resources Law* (1996) was created by Lao PDR to establish basic principles surrounding the issue of water management. The government has further developed its water policy framework by drafting the *Policy on Water and Water Resources*. However, this framework is not legally binding and the executive agencies lack both capacity and willingness to operate effectively. The Water Resource Coordination Committee (WRCC) is responsible for water management at the agency level but civil society is almost not represented. A positive feature concerns the fact that the WRCC includes the Lao National Mekong Committee, which represents the country in the MRC (Ibid: 39-40).

The *Law on Water Resources Management* entered into force in Cambodia in 2007. Its purpose is to ensure a sustainable management of water to ensure socio-economic development in the country. The legislation specifies that water management should follow the IWRM principles. The Ministry of Water Resources and Meteorology (MOWRAM) is responsible of the implementation of this law. As the lead agency in the field, the MOWRAM is mandated to coordinate the work of the different ministries in the country. The MRC and the Mekong Agreement are not mentioned in the law (Ecolex, 2007). Besides, the Cambodia Mekong Committee is the national institution in charge of advising and assisting the Royal Government of Cambodia.

This brief overview has shown the weakness of the national legal and institutional frameworks. Indeed, the existence of legislations does not imply the efficient implementation of such frameworks. The strong ties of these agencies with their governments as well as their lack of capacity raise questions of significance. The next section will demonstrate that the LMCs have strong interests in the hydroelectric developments of the region. The agencies' lack of '*teeth*' seems to be less a result of the government's disinterest than a strategy to pursue their objectives. In such context, the use of law as a tool to challenge hegemonic globalization is compromised. Subaltern cosmopolitanism suggests that the strength of civil

society is its transnational capacity and its ability to take legal measures at all levels. In this respect, it could be argued that the LMC's legal structure provide little opportunities for populations and CSOs to take legal actions at the national level.

At the international level, legal and policy frameworks play an increasing role to ensure a sustainable management of natural resources. In this respect, the IWRM principles define¹⁹ the theme of contemporary water resources management. These have been widely adopted²⁰ by the international community due to an increasing awareness of the importance of protecting water resources and an understanding that water management needs to encompass the surrounding ecosystems as well (Assaf, 2010:92).

They were first referred to as the Dublin water principles in 1992 and thereafter adopted by the United Nations Conference on Environment and Development in Rio de Janeiro in 1992 (Ibid.). Currently, the IWRM principles are the main guidelines to ensure an efficient management of water resources. They are based on three pillars, which aim at ensuring an integral and cross-sectoral policy approach. The first pillar relates to the importance of the existence of an enabling environment where suitable policies and legislations facilitate a sustainable management of water resources. The second pillar recommends the creation of an institutional framework in order to implement the different policies and legislations. The third pillar suggests setting up management instruments to help institutions do their job (Global Water Partnership, 2010).

The IWRM theoretical framework has been criticized for its lack of methodologies. Indeed, many argue that the successful implementation of the IWRM not only depends on its framework but mostly on the extent to which policies and legislations are in fact implemented

¹⁹ Public international law is the broader area where water resources management is framed. In 1997, the *Convention on the Law of the Non-navigational Uses of International Watercourses* was drafted by the International Law Commission. Its principles are similar to those of the IWRM which are more contemporary and widely used (Hirsch and Jensen, 2006:26).

²⁰ International bodies active in the field of sustainable development have recognized the principles of IWRM as the main guidelines behind water governance. This is reflected in the agreements and declarations of bodies and gatherings such as the Global Water Partnership and the 2002 Johannesburg Plan of Implementation (World Summit on Sustainable Development) (Hirsch and Jensen, 2006:25).

(Gooch et.al., 2010:157). The issue of implementation will be further discussed in section 4.1.3 when the meaning of MRC's adoption of the IWRM principles will be examined.

4.1.2 National governments interests

The LMCs have different interests in the hydroelectric developments of the river. This section will examine these interests and the governments' strategies to secure them.

Lao PDR intends to become the *battery of South East Asia*. In this respect, at least nine of the twelve planned dams will be built on its territory (Oxfam Australia, 2014c). The hydropower potential of the country is enormous.²¹ The government claimed that it intends to turn the country into a middle-income nation by 2020 (Ministry of Planning and Investment, 2011 in Jensen and Lange, 2013:54). Indeed, the national political economy of water is concentrated around this desire for growth. The Laotian economy depends heavily on foreign assistance which mostly occurs through loans and development aid. In a move to protect their national sovereignty, the Laotian authorities have affirmed their commitment to increase their foreign support from sources that offer unconditional assistance (Ibid.).

The Laotian hydroelectric interests in the Mekong have resulted in the impossibility for civil society to raise their voice against the dams. According to sources from *International Rivers*, the hydropower topic is too sensitive in Lao PDR. People are not able to raise their concerns and there are therefore no national civil society groups advocating against these projects, and it is too risky for Laotian CSOs to work on the issue (Trandem, 2014). While the space for civil society is generally weak in the country, the sensitive issue of dams further complicates the task for the national groups.

At this point, it is important to differentiate national interests from people's interests. The former often relates to governmental strategies and interests. The latter may go in line with the political decisions or be opposed. In the Laotian case, the construction of dams will affect agriculture and fisheries which are vital to the population. Yet, dams are considered by the government as vital for the country as they will boost the economy and bring more prosperity to the people. CSOs are almost non-existent and criticism towards the government is rare if

²¹ The capacity of the country's part of the Mekong river amounts around 18.000 MW (Jensen and Lange, 2013:53).

not fictional. While most of the population depends on Mekong-related resources, their voice is not being heard in the national policy context (Jensen and Lange, 2013:54). Following sources of this study from *WARECOD* in Vietnam, the Laotian's non-existent space for civil society and the government's strong support for the dams represent the main hurdle to stop the construction of dams on the LMB (Dao, 2014).

Out of the twelve planned dams, the Xayaburi dam is at the most advanced stage. The construction, which started in 2010, is located in Northern Lao and is expected to produce 1,285 MW (International Rivers, 2014d). The Xayaburi dam is a great illustration of the different dynamics at play in the Mekong river. *CH Karnchang Public Company Limited*, one of Thailand's biggest construction companies, is currently building it. Additionally, the project is financed by six Thai banks including the state-owned Krung Thai Bank and ninety-five percent of the energy produced by the dam will be exported to Thailand.²² The Laotian national energy utility, *Electricité de Laos*, is also involved in the project together with other Laotian and Thai private companies. This mega-infrastructure will bring immense economic profits to both public and private actors from inside and outside the country (Jensen and Lange, 2013:57 and International Rivers, 2014d).

Laotian economic expectations and Thailand's energy security concerns have led the two countries' private and public sector to invest and operate together the Xayaburi dam. Similar strategies are expected to occur with the other dams planned in the Laotian territory due to the strong involvement of Thai companies in the neighboring country's hydroelectric expansion (Öjendal et.al, 2012:198). The case of the Xayaburi dam is fundamental to this study for several reasons. Firstly, it is currently the only dam at an advanced construction stage in the LMB. Secondly, being the first dam in construction, it was a test point for the MRC and it failed as it did not ensure the respect of the Mekong Agreement (Trandem, 2014). Thirdly, the Laotian attitude of non-transparency and non-respect of MRC agreements may shed light on similar strategies to be used in the future. Lastly, the Xayaburi dam represents the most accurate case of analysis for this project as it led to strong reaction of

²² The Electricity Generating Authority of Thailand (EGAT) has agreed to purchase 95% of the electricity produced by the Xayaburi dam. An official ceremony was held by the Thai and Lao governments in 2012 to officialize the construction of the dam which started previously in 2010 (International Rivers, 2014c).

local, national and international CSOs and communities as well as diplomatic issues between Cambodian and Vietnamese governments against the Laotian authorities. Therefore, this dam not only represented a test point for the MRC but also remains a test for the opponents to the damming of the LMB. As argued by my sources, there is one more year to react before the impacts of the infrastructure are being felt (Trandem, 2014).

The case of Lao PDR illustrates the important role played by private actors in the global transfer of knowledge and technology (Kleinert, 2001:11). The involvement of several foreign consultancy and engineering companies prove the incapacity of the country to develop its energy sector independently. Moreover, the competitive nature of the global market has strengthened the ties between governments and private sector (Weiss, 2003:15-19). This explains the massive involvement of national, international and global private and public actors as well as financial elites in the country's energy development.

The almost inexistent space for civil society in the country and the current building and planning of nine dams on their territory demonstrate the commitment of the Laotian authorities to exploit its hydropower potentials. Profit maximization will occur at the expense of the national and regional social and environmental situations. As argued by Dao (2014), unless the Laotian government reconsiders the benefits compared to the costs, it will be really hard to stop the construction of dams on the LMB.

The stakeholders involved in the Xayaburi's development demonstrate the active role played by governments in the world economy. As argued by Chang (2001), there is always some type of state intervention. In the case of Lao PDR, it is evident that the authorities are the main decision-makers behind the country's development. The involvement of several regional and international corporations indicates the strong ties between the government and the private sector. Conversely to neoliberal's contention, the great involvement of private actors does not indicate a declining state apparatus. The Laotian authorities have managed to protect their sovereignty and enable a safe environment for corporations and banks to invest in the dam-industry, in which legislations and civil society would not represent a threat to their activities.

The political economy of water in Cambodia is much more complex than in the Laotian case. It is a post-war country experiencing political violence, low space for civil society and high levels of corruption (Keskinen et al. 2008: 100). However, the country enjoys high levels of

economic growth and a diversification of its economy (Guimbert, 2010). It is in this context that development aid has decreased to leave space for foreign investments with China becoming the largest investor in the country since 2004 (Hensengerth, 2009:6-8). FDI have become a major aspect of the Cambodian economy. It could be contended that the primary role played by corporations in the hydroelectric developments of the country is linked to the country's economic liberalization. Thus, the greater involvement of China and the central importance of FDI demonstrate the supremacy of the private sector (Kleinert, 2001:2-5).

The hydroelectric developments of the LMB are both advantageous and dangerous for Cambodia's economic, social and environmental stability. The country is trapped between its energy supply issues and the risks that dams would represent for its fisheries, food production, employment protection and food security.²³ The Tonle Sap Lake, located in north-western Cambodia, is extremely important to the country as it provides 50% of the annual fish catch and its expansion during the wet season serves as an irrigation mechanism for the surrounding lands.²⁴ It is the largest freshwater lake in Asia and it depends entirely on the Mekong flood pulse. Indeed, Tonle Sap Lake's health is crucial to the country as agriculture employs 60% of the population and represents 30% of the gross domestic product (Jensen and Lange, 2013:62).

The energy reliance of the country on diesel and other imported sources of energy has led the government to look into the hydropower potentials of the Cambodian part of the Mekong. Two mainstream dams have been planned with massive investments from Chinese and Vietnamese companies and banks²⁵ (Save the Mekong, 2009). However, the effects of these dams on food security would be immense (Orr et.al, 2012:928). The paradox between energy security and food security has led national and international CSOs to strongly oppose the hydropower projects of the country. The main argument is that the largest part of the populations would bear the costs of these megaprojects while the political and economic

²³ Food security in Cambodia is highly dependent on fisheries. More than 80% of the protein intakes of the population originate from aquatic sources (Hortle, 2007).

²⁴ *"This annual flood mechanism has created the most productive freshwater fishery in the world."* (Posey, 2007:9).

²⁵ Chinese banks are the main financiers of these projects but the agreements between the Cambodian government and the banks are kept secret (Jensen and Lange, 2013:63).

elites enjoy the benefits. In other words, the population expects little immediate benefits from the economic growth (Keskinen et al., 2008: 100).

The fear of impacts on downstream fisheries has brought Cambodian CSOs and water authorities²⁶ at the forefront of the opposition to the Xayaburi dam. Prime Minister Hun Sen had also strongly reacted to the non-respect of the Laotian authorities to comply with the Mekong Agreement and ensure a consensus among the four MRC members (Chen, 2013). It could be argued that the Cambodian opposition to the Laotian initiative lost its legitimacy once the government started planning and granting concessions for the construction of two dams on their territory. But as contended by Cronin and Hamlin (2012), the Cambodian authorities can now proceed with their plans “(...) based on the argument that the fisheries will decline no matter how Cambodian hydropower develops”.

While the irreversible effects of dams in Cambodia would be unavoidable, the government has decided to move on with its plans. It indicates a prioritization on the government’s behalf to protect its energy and economic interests at the expense of social and environmental protection. At first sight, these investments might seem contradictory. Indeed, affecting the agricultural and fishing industry would potentially put at risk the entire economy. But as explained by Jensen and Lange (2013:65), “(...) regional powers and investors have stepped in to define the future of Cambodia in collaboration with its government and elite”. China’s involvement in the Cambodian economy goes beyond hydropower investments. Economic diversification²⁷ has been one of foreign investors’ priorities, with China *leading the dance*. From this perspective, it could be argued that putting at risk fisheries is a less risky move than it would have been two decades ago. Moreover, the official launching of the Xayaburi dam in 2012 demonstrated the eventual approbation of the Cambodian authorities. Indeed, during the

²⁶ A letter was sent in March 2012 from the Cambodian Minister for Water to the Laotian authorities asking the country “(...) not to proceed with the Xayaburi dam until appropriate impact studies had been undertaken and the MRC notification procedures completed” (interview with Cambodia National Mekong Committee in Jensen and Lange, 2013:65).

²⁷ During the 1990s the economy was mostly dependent on fisheries and forestry. But now construction, garment industry and tourism are the main industries of the country (Guimbert, 2010).

2012 celebration, the Laotian authorities affirmed that a consensus²⁸ was reached between the four MRC members.

The ADB is strongly involved in the Cambodian economy's key sectors such as finance, agriculture and energy (ADB, 2014). The role of IFIs in economic liberalization has led Cambodia to pursue a neoliberal agenda. The loans and technical assistance provided by the ADB are accompanied by packages that include key sector reforms. It could be posited that the strong political ties between the ADB and the region's governments represent a challenge for the Cambodian authorities and civil society to oppose the Xayaburi dam. In this sense, the importance of China as an investor in the region and in the country leaves Cambodian authorities with little other choice than developing its hydroelectric capacities and avoids confronting Lao PDR and China.

The interests of Thailand in the hydropower development of the Mekong are being secured by its private sector as well as its political and economic elites.²⁹ The depletion of the Gulf of Thailand's resources (mostly fossil-fuel) has led the government to prioritize a policy of energy supply diversification. To do so, massive investments from Thai public and private investors have been directed towards the Laotian hydropower industry. For decades, the Thai civil society has been able to resist the construction of dams in the country. Indeed, the current investments in Lao PDR have led CSOs as well as north and northeastern communities to strongly criticize and oppose the central government (Foran and Manorom, 2009:55-62).

Thai investments in the Mekong energy sector exemplify Wolf's explanation of globalization's progress (2001:179). Besides the Thai government's investments in the dam-industry through its public-owned banks and electricity authority, numerous Thai private investors are involved in the industry; which will benefit the country's energy demand as well as economic growth. As argued by Wolf (2001), the progress of globalization depends on the national policy makers' decision. In this respect, Thailand has managed to cooperate with the

²⁸ The affirmation of such consensus is polemic due to the fact that both Cambodia and Vietnam have continued criticizing the project and the Laotian's non-respect of the MRC framework.

²⁹ Thai stakeholders in Lao PDR include construction companies, public and private banks as well as public owned electricity authorities (Jensen and Lange, 2013:50).

Laotian authorities to ensure a safe environment for its investments as well as promote its economic development.

As suggested by my sources, the silence and non-reaction from the Thai government can be explained by the fact that the country will not experience severe trade-offs from the mainstream dams. On the contrary, most of the benefits will go the country's companies as well as to the population whose energy demand keeps growing (Dao, 2014). North and northeastern communities have strongly voiced their opposition due to their dependence on the Mekong water resources for fisheries and agriculture. Moreover, the effects of the upstream dams located in China are already being felt in this region of the country. While the upper dams are already a major threat for the lower Mekong communities, the twelve planned dams will increase the damages in the region, including Thailand³⁰ (Jensen and Lange, 2013:50-52).

It is interesting to observe that the strongest opposition to dams originates from the country that will suffer the least. Indeed, while all countries will experience changing water flows and negative impacts on their fisheries and agriculture, Thailand is less exposed than Vietnam, Lao PDR and Cambodia. The opposition to dams in the country does not only concern the national context but targets the entire region. Several of the strongest international organizations advocating for a Mekong free of dams are based in Thailand. The current political crisis³¹ in the country may have affected the capacity of the opposition to dams in the country. However, the communities keep on taking actions including the submission of a case to an administrative court, which will be further discussed.

³⁰ While no dams will be entirely located in Thailand, at least two will be constructed on the Thai-Lao border (Save the Mekong, 2009).

³¹ Protests started in Thailand *"when her [Prime Minister Yingluck Shinawatra] government tried to push through an amnesty bill that would have forgiven all those charged in connection with the tragic street 2010 street protests, both on the anti-Thaksin and pro-Thaksin side. The opposition contended, however, that the bill was mainly a ploy to allow Thaksin to return to the country without having to serve out his jail term. This was confirmed when in an early morning parliamentary maneuver, the ruling coalition rammed through a provision that would extend the amnesty to ten years before 2010."*(Bello, 2014). The recent coup d'état (22nd of May 2014) and military take-over might further complicate the task of the civil society in its opposition to the country's hydroelectric investments.

The interests of Thailand in the hydropower developments of the region shed light on the complex regional context. Thailand and its powerful investors can easily protect their interests in a region where economic gains have been prioritized against socio-environmental protection. Thailand's interests are unlikely to change for the time being. While the country can safely invest in the regional dam industry, CSOs and local communities continue their opposition. The space given to civil society in the country and on the issue may indicate the country's commitment to avoid any types of blaming.

Among the four lower Mekong countries, Vietnam is the most exposed to the negative trade-offs of mainstream dams. The country is home to the Mekong delta where the river ends its journey before reaching the South China Sea. The delta is crucial for the economy of the country in which *“nearly a quarter (twenty million) of the Vietnamese population derives its livelihood from the delta's natural resources. Irrigated agriculture, capture fisheries and aquaculture in the delta generate more than 50% of the country's rice, fruit and marine food products, some of which are exported to other riparian countries and global markets.”* (Ministry of Natural Resources and Environment 2012 in Jensen and Lange, 2013:51).

Vietnamese interests in the Mekong go beyond the hydroelectric developments planned by the other riparian countries. The country's economic and social interests in the river justify its desire to strengthen the MRC to ensure that the country's voice can be heard. The fears of the Vietnamese authorities are also related to the complicated diplomatic relationships with its Laotian neighbor and China. Dao (2014) argues that due to the political nature of the hydropower industry, it is very hard for the Vietnamese authorities to go against the Laotian will to develop its part of the river. Kraisak Choonhavan, a former Thai senator, argues that the Vietnamese strategy to oppose the dams is to rely on science³² in order to minimize confrontations with Laotian authorities. He further posits that diplomatic tensions with Lao PDR *“(...) would push Laos even further into an avaricious Chinese patron-client relationship (...)”* (Choonhavan, 2014).

But the difficulties of the country to stop or at least reduce the number of dams constructed can also be analyzed from another perspective where the country is seen as ambiguous.

³² Vietnam is pushing for independent scientific studies of the dams to prove their dangerous impact (Choonhavan, 2014).

Firstly, Vietnam has overdeveloped hydropower on its Mekong tributaries and it could therefore be argued that this ambiguity delegitimizes the country's desire to prevent other countries to develop their hydropower sector. Secondly, several Vietnamese state-owned enterprises are investing in the Laotian and Cambodian hydroelectric developments. Lastly, the growing energy demand of the country has motivated the government to purchase electricity from Lao PDR and Cambodia (Middleton et.al, 2009:28-33).

Trandem (2014) from *International Rivers* argues that civil society has created good relationships with the government. Due to the public knowledge of the risks that dams would generate on the delta, civil society in the country has raised its voice and supported the government in its attempt to slow down the developments in the LMB. However, media coverage has been limited in times of diplomatic tensions with Lao PDR. It demonstrates the somehow paradoxical and contradictory situation in which Vietnam finds itself since protecting its economic interests requires safeguarding the delta. Similarly, providing energy to its growing population and industries results in the need of importing electricity from Cambodia and Lao PDR, which will increasingly originate from dams located on the Mekong mainstream. Conversely, investing in the hydroelectric industry in its neighboring countries brings economic profit to the country as well.

Vietnam has certainly some interests in the hydropower developments of the region. However, due to its geographical position and its current economic reliance on agriculture and fisheries, the country would face immense risks from a fully dammed LMB. Furthermore, the dam taboo in Lao PDR has resulted in difficulties for Vietnamese civil society to enlarge their campaigns (Trandem, 2014). The MRC structure will be further analyzed to identify the different alternatives that the country possesses to reduce the harming of its vital Mekong delta.

This first part of the analysis has shown the strong interests that the four countries have on the waters of the Mekong and its hydropower capacities. While Vietnam will certainly experience more negative trade-offs than the other riparian countries it is undeniable that any change on the water flows will negatively impact all four countries' fisheries and agricultural sectors. Similarly to the disparities in negative effects, the benefits of a well-developed hydropower industry will promote the interests of Lao PDR and Thailand in a better way than those of Cambodia and Vietnam.

The strong involvement of both public and private actors in the hydropower industry demonstrates the complex environment in which opponents to dams must operate. Indeed, the multiplicity of stakeholders investing in the dams result in a sort of ‘decentralization’ of blaming. Such decentralization is characterized by a de-responsabilization of governments although these are the ones approving such projects as well as partly financing them. In such context, CSOs and local communities must act at different levels. This is obvious in the case of Vietnam where the government is simultaneously “opposing” dams in the MRC framework while investing and planning to purchase electricity originating from these infrastructures.

From a neoliberal economic perspective, the attitudes of Lao PDR and Thailand would rather seem logic. Indeed, the immense economic profits that would be generated would boost Lao’s economic growth as well as provide it with new investment opportunities. Likewise, Thailand would benefit from both energy supply and economic returns from its companies and banks’ investments. In such logic, it is obvious that socio-environmental impacts are not included. Yet, the cases of Cambodia and Vietnam do show some inconsistencies from both an economic and socio-environmental perspective. The irreversible impacts that dams would have on the Tonle Sap Lake and the Mekong delta would seriously put at risk major economic sectors of the two countries. Regardless of the disastrous impacts that this would represent from socio-environmental and human rights perspectives, moving forward with the damming of the LMB would certainly imply long-term recovery measures and economic diversification.

The aforementioned elements demonstrate that national interests often go against people’s interests. While this is certainly not a new feature, it is interesting to observe the somehow ambiguous attitudes of Cambodia and Vietnam. Their weak opposition to the Xayaburi dam as well as investments in the hydropower industry of the region might indicate pressures faced by the governments. Such pressures would certainly come from dominant actors in the political and economic arenas of both countries. To examine these pressures, this paper will further investigate the role played by the ADB and MNCs in influencing national policy-making.

The next section on the MRC will further analyze the ways in which the different countries manage to protect their interests and prioritize their sovereignty.

4.1.3 Regional framework, the MRC and national interests

Similarly to other regional integration bodies,³³ the Association of South East Asian Nations³⁴ (ASEAN) created a human rights institution, namely the ASEAN Intergovernmental Commission on Human Rights (AICHR). The AICHR was launched in 2009 in the form of a ‘consultative inter-governmental body’ consisting of government appointed members (Munro, 2011).

The ASEAN is often recognized for its distinctive manner of operating and taking decisions, often referred to as the ASEAN Way. It consists of a set of principles upon which the different member states act accordingly. These are the principles of non-intervention, consensus and consultation (Acharya, 2009). The ASEAN Way has impacted the way in which the ASEAN and other regional bodies have seen their power limited due to the little, if any, space for enforcing mechanisms. This has resulted in strong criticism from civil society as well as other international actors such as foreign governments and regional organizations.

The creation of the AICHR in 2009 did not bring new opportunities for the anti-dams activists. The ASEAN Way has strongly influenced the structure and functioning of the human rights body. The institutional design as well as the mandates and activities of the body are permanently influenced by the different pressure from member states to maintain their sovereignty and protect their interests. The absence of enforcement mechanisms, its lack of independence and the consultative nature of the organization represent major challenges to its efficiency. The Mekong case illustrates how the principles of the ASEAN Way can be used as tools to protect the national and corporate interests. The lack of action from the AICHR and its silence on the damming of the Mekong demonstrates the complexity of the situation but most importantly the lack of willingness and capacity of the AICHR to protect the local communities (Forum-Asia, 2013b:33).

³³ Among these, the most recognized are the European Court on Human Rights (European Union), the Inter-American Court of Human Rights (Organization of American States) and the African Court on Human and People’s Rights (African Union).

³⁴ The ASEAN was established in 1967 by the governments of Indonesia, Malaysia, the Philippines, Singapore and Thailand and is now composed of ten members states including Lao PDR, Vietnam, Cambodia, Burma/Myanmar and Brunei (ASEAN, 2013a).

As described in the introductory chapter, the Mekong River Commission (MRC) is the body through which international cooperation is to be achieved (Mekong Agreement, 1995:article 11). There are indications that the MRC's modus operandi has strong similarities with the ASEAN Way. Indeed, the language used to formulate the Mekong Agreement and the other declarations made by the organization shed light on some intention to avoid intervention and conflict.

The 1995 Mekong Agreement "*prescribes the establishment of common rules for water utilization and for notification and consultation on development projects with transboundary impacts, especially on the mainstream.*" (Jensen and Lange, 2013:44). These rules took form as the 'Procedures for Notification, Prior Consultation and Agreement' (PNCPA) which were agreed by the four MRC member countries in 2003. The PNCPA guide the negotiations of large-scale development projects in the Mekong basin. These procedures represent one of the core tools of the MRC (Ibid: 45).

Examining the region's institutional and legal framework is fundamental to this research. Indeed, by looking at the structure and actions of the MRC it becomes evident that the LMCs interests strongly influence and control the developmental debate in the Mekong.

The previous section has helped understanding that many of the different interests of the four LMCs are in conflict with one another. While they all share the same river, it is evident that they do not enjoy equal access to the potential benefits of the river (Posey, 2007:12). As a result of the existing space for conflicts, the MRC has been created as the body in which cooperation should be achieved (MRC, 1995:article 11).

Due to the transboundary nature of the river, it seems logic that cooperation should operate at the regional level. For this reason, the four governments signed the Mekong Agreement in 1995 and committed to cooperate for the management and the sustainable development of the lower basin (Lee and Scurrah, 2009:17-18). Yet, there are indications that the MRC has failed to solve conflicts between the different members as well as ensure the sustainable development of the river. To understand the reasons behind the MRC's inability, the following section will look at the structure and functioning of the Commission. Moreover, the different strategies used by the four LMCs will be put in scrutiny in order to understand how these have managed to secure their interests by reinforcing, weakening or ignoring the MRC framework.

As explained in the introductory chapter, the importance attached to water governance and cooperation in the Mekong initiated in the 1950s. But the revival of plans to dam the Mekong has brought the MRC at the forefront of the regional and international scene. When examining the MRC, it is therefore important to differentiate the interests and role played by the member countries and the MRC secretariat.

The entire structure of the three MRC bodies mostly³⁵ comprises representatives of the MRC countries. Within the organization, China and Myanmar have a status of dialogue partners (Lee and Scurrah, 2009:17 and Posey, 2007:13-14). This structure shed light on the desire of its members to avoid giving any type of supranational coercive power to the Commission. By appointing all the staff of the MRC, the member countries are ensuring the control of the body. As an intergovernmental body, the MRC possesses limited power and is mostly responsible for producing “(...) *knowledge base and river science that is necessary to support planning and decisions that are in the Basin’s best interests.*”³⁶ (Hirsch and Jensen, 2006:20). In parallel with the structure of the MRC, each country has a National Mekong Committee (NMC) which is responsible for coordinating the work of the MRC within each country. Although the NMCs are not part of the formal structure of the Commission, they play an important role (Ibid.).

The weak role played by the MRC in governance and conflict-solving can be understood as a lack of interests on behalf of the member states. While the official structure of the MRC describes its Council as a body composed of high ministerial and cabinet representatives, the meetings never include powerful policy agencies representatives. Neither are major issues being discussed during MRC meetings. Conversely, the ADB and ASEAN have become the main space for dialogue and cooperation at the national and regional level (Hirsch and Jensen, 2006:51-53). It could be argued that the government’s imperatives for economic growth and energy supply has led the MRC to remain a soft organization in which little focus

³⁵ The CEO and other experts staff are not appointed and/or selected by the four LMCs (Hirsch and Jensen, 2006:83).

³⁶ The research and monitoring activities of the MRC are divided in three core programs: the Basin Development Plan (the main framework aiming at influencing development decision-making), the Water Utilisation Program (designing scientific models to facilitate the cooperation water-sharing rules) and the Environment Program (producing studies on the implications of development activities on the river ecology and other aspects such as agriculture and fisheries) (Hirsch and Jensen, 2006:20-21).

is given by member countries. Globalization has resulted in greater interdependence. Weiss (2003:18) argues that this interconnectedness has led to increased intergovernmental cooperation. In this sense, it could be posited that the preferred ADB framework by the Mekong countries is motivated by a will to prioritize economic development and secure private investments.

Both the signed Mekong Agreement (1995) and the MRC's commitment to comply with IWRM principles are of little importance for the sustainability of the river due to the limited power of the Commission. The MRC has constantly argued that its role is to serve member states' needs (Cooper, 2012:65). While it is clear that the MRC is serving the national interests of its members, the mandate of the Commission remains unclear. Indeed, how would the Mekong Agreement provisions be efficiently implemented without a minimum of enforcement mechanisms?

Although some of the Mekong Agreement provisions are formulated in a mandatory language (e.g. the use of 'shall' in Article 26 on the rules of Water Utilization), the overall agreement is characterized by the absence of legally-binding rules (Hirsch and Jensen, 2006:30). As argued by Hirsch (2006), the Mekong Agreement is currently left with informal procedures. Moreover, the MRC's commitment to adopt the IWRM principles is contradicted by the fact that both China and Myanmar/Burma are not part of the body. Indeed, the IWRM framework is based on the use of a holistic approach to achieve sustainable management of rivers which will remain impossible until all riparian countries are involved in such process.

It can be observed that the MRC does not have the capacity to efficiently coordinate regional development and become an important actor in water governance. The role of the MRC has therefore remained in the area of knowledge generation and provision. Yet, this responsibility is important as it brings the possibility "*(...) that MRC knowledge does inform and impact debate and decision making, and reaching out to decision makers such as various line agencies that are traditionally removed from the MRC's work.*" (Cooper, 2012:67).

The weakness of the MRC raises the question of which interests prevail? Indeed, why would these governments attach so little importance to the only Mekong cooperation framework? Hirsch and Jensen (2006:52) argue that neither the interests of the public nor the interests of the governments prevail in the MRC. Elements of answers to these questions can be found by

examining the Southeast Asian elite's political culture³⁷ and its impact on the functioning of the MRC.

As explained in chapter three, there are indications that the MRC is strongly influenced by the regional elites' political culture, often referred to as the "ASEAN Way". All LMCs are part of the ASEAN, which is characterized by a tendency to avoid conflict as well as the use of the principles of non-intervention, consensus and consultation. All ASEAN countries have always focused on the importance of protecting their national sovereignty. The MRC is also strongly influenced by this political culture. This can be observed in the use of the concept of "Mekong Spirit" employed by the LMCs to justify their inclination for sovereignty and soft engagement over enforcement.

Analyzing the dispute over the Xayaburi dam provides some insightful elements to this paper in relation to the political spirit and strategies used by the Laotian and Thai authorities to secure their interests and avoid any conflict at the same time.

Once Lao PDR and Thailand decided to move on with the construction in November 2012, both Cambodia and Vietnam affirmed that the decision was not made with their support (International Rivers, 2013a). Yet, the construction has continued with massive investments from Thailand and China. Cambodia and Vietnam called for a delay in construction, as they feared for the negative impacts. Theoretically, the MRC 1995 Agreement provides regulations for avoiding this type of conflict. Countries are required to seek agreement and undergo a process of prior consultation in line with the PNCPA.

The governments of Cambodia and Vietnam requested Lao PDR and Thailand to study the dams' impact before starting the construction. Such study never happened; and the only environmental impact assessment produced only examined the consequences on ten kilometers downstream the construction site. As argued by Trandem (2014) the Xayaburi

³⁷ It is important to make a distinction between the political culture of the regional elites and the populations' one. The political culture of the region and its organizations (e.g. ASEAN and MRC) reflects the interests of the regional elites and not the populations' will. Indeed, the lack of political commitment to create efficient human rights and accountability mechanisms is a result of the regional elites' efforts to secure their economic interest. It is also important to note that the weakness of the region's institutions mostly benefit the elites (Schmidt, 2014).

dam was the first test for the MRC and its Mekong Agreement, and it failed. The negotiations were made outside of the MRC and there are indications that the same will occur with the next dams (International Rivers, 2013b). The Laotian authorities violated the agreement in several ways. Firstly, they should have sought an agreement before beginning with the construction. But the construction started in 2010 although Lao PDR affirms that these were only preliminary stages before the official start in 2012. Initiating the construction before reaching a consensus goes against International Law and the Mekong Agreement. Secondly, the other governments had the right to evaluate the project's impacts but this opportunity was not given to the other riparian countries (Ibid.).

There are clear indications that both the Mekong Agreement and the MRC framework have been ignored during the preparatory stages of the first dam. The exclusion of the MRC in such crucial process raises concern as to the future of the Mekong river. The ASEAN Way's influence on the Xayaburi dam can be observed in the lack of existing alternatives for Cambodia and Vietnam to delay the construction. The bilateral negotiations undertaken by Lao PDR demonstrate the country's commitment to avoid conflict as well as to protect its sovereignty by excluding the MRC from the dialogue. Furthermore, the non-respect of the Mekong Agreement and the powerless position of the MRC to take any type of action show the complex nature of the regional elites' political culture in which countries have managed to protect their sovereignty, secure their interests and minimize the space for conflicts.

As contended by the experts from International Rivers (2013a), the Mekong Agreement is being replaced by a "*general political commitment to 'cooperate'*". While it could be argued that it is too early to identify the future of the MRC, it is clear that the body has demonstrated its lack of legitimacy. During the Xayaburi tensions, the MRC's obligations of neutrality led the Secretariat to only produce a technical review and recommend Lao PDR to delay the construction. The Secretariat's recommendations were ignored and the Laotian authorities already claimed that the future Don Sahong dam³⁸ should not undergo any type of prior consultation (Ibid.).

³⁸ The construction of the Don Sahong dam in Lao PDR is planned to start in 2014 and will be mainly developed by a Malaysian company. The electricity generated would be mostly exported to Thailand and Cambodia (International Rivers, 2014d).

The case of the Xayaburi dam helps understanding the ways in which countries can secure their interests by actually showing no interests in an intergovernmental institution. It could have been expected that the major interests of both Lao PDR and Thailand would have resulted in strong pressures on their behalf to control the entire structure inside the MRC. But it is the opposite attitude that these countries have chosen. The political culture has served as a tool to justify the little power given to the MRC and the weak influence that it can have on the developments of the river. Cambodian and Vietnamese weak opposition to the Xayaburi dam and their contradictory positions³⁹ shed light on the complex tensions between fears for negative trade-offs on the one hand, and economic interests on the other.

A weak MRC institutional framework has facilitated by the Laotian attitude towards the MRC and its downstream neighbors. The agreements and procedures are not strong enough and leave space for interpretation. Lao PDR interpreted the Mekong Agreement in its own way and has even argued that it has respected the agreement (Trandem, 2014). Moreover, Vietnam is in a powerless situation where its political relationship with Lao PDR makes it impossible for the country to influence its neighbor to either delay or cancel the construction (Dao, 2014). This situation has motivated Vietnam to advocate for a stronger MRC. However, this analysis has shown that this is far from being reached.

The multitude of interests at play and the strategies used by the different LMCs to defend these have complicated the task of civil society. One of their main concerns is that the MRC lacks teeth to enforce. Both civil society actors and MRC donors⁴⁰ have raised their concerns over the weakness of the MRC (Cooper, 2012:65). In this regard, national and international CSOs have posited that donors should exercise stronger pressures on the MRC and demand more responsibility. Ninety percent of the MRC budget comes from donors which are part of

³⁹ While the two countries keep on raising concerns over the Xayaburi dam, the Laotian authorities affirm that an agreement was reached.

⁴⁰ The MRC donor countries are Australia, Belgium, Denmark, Finland, France, Germany, Japan, Luxembourg, The Netherlands, New Zealand, Sweden, Switzerland and the United States of America. This consultative status allows the donors and partners to participate in MRC governance meetings which include both MRC Council and Joint Committee meetings (MRC, 2014).

a consultative group together with other partner organizations.⁴¹ The MRC's loss of legitimacy has affected the donor's expectations and vision of the role of the intergovernmental body. The donor community has expressed its concerns "*(...) over MRC's effectiveness in proactively addressing threats to fisheries and food security posed by developments in the basin.*" (Lee and Scurrah, 2009:9).

As argued by Cooper (2012), the MRC operates at the crossroads of a multitude of actors with different interests and perspectives on the role of the body. From the donors' point of view, the MRC should primarily be concerned with the environment and livelihoods and play a major role in supporting and facilitating informed decision making. In contrast, LMCs consider the MRC framework and the Mekong Agreement as a development accord. CSOs take a stronger position and advocate for a Mekong free of dams and call for a stronger MRC, which should influence member states to delay the construction of dams until independent scientific evidences and impact assessments have been conducted (Cooper, 2012:65-67). As explained previously, the intergovernmental nature of the MRC prevents it from acting over and above its members. It is therefore important to look at the space given to the public and civil society to influence the MRC.

The MRC insists on its commitment to public participation and to engage more stakeholders which represent "*(...) both people who have direct interest in the Mekong's water resources as well as people who possess a rich supply of knowledge and opinions to guide planning processes*" (MRC 2006 : 42 in Cooper, 2012:72). By increasing and improving its relationship with stakeholders, "*the MRC can contribute to the collective pursuit of IWRM, and also increase its relevance to the region's development debates.*" (Ibid.). There are indications that the MRC truly aims at improving its relationship with the public and engage more stakeholders in the debate and discussions. However, there are also indications that the governmental interests and the mandate of the MRC represent hurdles to an efficient participation of civil society and other non-governmental stakeholders.

⁴¹ Partner organizations are defined by the MRC as long-term regional partners and include the ADB, ASEAN, EU, International Union for Conservation of Nature, United Nations Development Program, United Nations Economic and Social Commission for Asia and the Pacific, WB, Worldwide Fund for Nature (Ibid.)

The increased public participation in the MRC processes can be explained by various factors. Firstly, the 2007 organizational review identified public participation as a weak area. Secondly, donors have put pressure on the MRC secretariat to engage more with CSOs and other actors. To do so, public participation was included as a requirement in several funding agreements. Thirdly, National Mekong Committees have also expressed their will to open more space for interaction with civil society representatives and have organized several meetings and conferences in this regard. Lastly, opening space for dialogue demonstrates the MRC's will to commit to the IWRM principles as well as enhances the public legitimacy of the Commission (Cooper, 2012:72-74).

Still, the MRC faces challenges to efficiently engage civil society and influence regional development. One of the main issue concerns transparency and access to information. To counteract this criticism, the MRC has argued that its mandate does not authorize to release documents produced by the LMCs. Moreover, the current mandate of the body stipulates that *"(...) the MRC is not accountable to the public but to its Member States."* (Cooper, 2012:74). The limited space available for civil society in the region further complicates the role of this important sector to influence this regional transboundary water framework. Although Thai and Cambodian CSOs have managed to make their voices heard in the opposition to the Xayaburi dam, the regional disequilibrium in civil society spaces strongly affect the impact and legitimacy of these organizations.

This section on the MRC has helped understanding two main elements crucial to this paper. On the one hand, the major economic and energy interests of LMCs have resulted in a weak and fragile regional cooperation framework. Lao PDR and Thailand's hegemonic position in the hydropower developments of the region has been secured by strategies of delegitimation of the MRC and ignorance of the opposing voices. Vietnamese fear for negative trade-offs as well as complex regional political relationships and economic interests in the Mekong have reinforced regional economic elites' interests.

On the other hand, even though the MRC Secretariat intends to engage more actors in the debate, its weak structure and little influence on the region give little hope to the opponents to dams. The strong influence of national interests and the little attention given by member states to this regional framework gives little opportunities for both civil society and the MRC to influence the hydroelectric developments of the LMB. As presented, CSOs advocacy

efforts and strategies to influence both national and regional decision-making are undermined by a weak MRC structure and strong governmental interests.

As contended by Jensen and Lange (2013:66), the future role of the MRC raises concerns as the LMCs have different levels of commitment to regional cooperation and both donors and civil society have not been able to significantly influence the MRC.

4.1.4 The Asian Development Bank and neoliberal advocacy

The Asian Development Bank is a major actor in the development of the Mekong region (Nuera, 2005:3). It is therefore crucial for this study to examine the Bank's strategies and their effects on the hydropower developments of the region as well as the challenges that they represent for the opponents to dams.

The Bank's mandate is to support its members in "*reducing poverty and improving their living conditions through loans, technical assistance, policy dialogues, grants, guarantees and equity investments*" (Ibid.). The ADB initiated the Greater Mekong Subregion Program (GMS) in 1992 envisioning the conversion of the six Mekong countries into a single borderless economy, a process defined by the Bank as regional economic integration (Ransley et.al., 2008:17). This master plan seeks to promote economic and social development by reinforcing economic connections. More precisely, the GMS Program aims at creating development opportunities, promote trade and investment, solve cross-border issues, and "*meet common resource and policy needs*" (Nuera, 2005:7).

The stated objective of the Bank is to alleviate poverty by supporting economic growth. However, there are indications that the objective of the GMS is first and foremost to generate macroeconomic growth. In the context of this paper, the GMS Program is important for two main reasons. Firstly, it is the framework through which the ADB has decided to promote regional economic cooperation in the Mekong area. Secondly, the GMS Program has a strong focus on developing the energy sector of the region. The Bank's vision for the region is well summarized in the title of one of its publications on the GMS: "A Wealth of Opportunity: Development Challenges in the Mekong Region". Some parts of the publication help understanding why the analysis of the GMS is so important to the issue of dams:

"The economic potential of the river and that of the land and peoples its passage defines is huge, although until now it has been largely undeveloped.... Water from the Mekong river supports agriculture,

and its fish yields are a source of both protein and income. It can also be used to generate electricity and as transport corridors.” (ADB, 2000 in Guttal, 2002)

As argued by Guttal (2002), an expert from Focus on the Global South, the GMS is a pure regional economic invention. It is not a trading bloc as can be seen from its geographical particularity. While regional integration usually has some geographical basis, the interests in the Mekong region have led the ADB to create a new economic region where a single Southern Chinese province⁴² forms a new economic bloc together with five South East Asian countries. The Bank’s interests are furthermore reflected in its massive investments in the region since the GMS’ inception in 1992.⁴³

Despite the Bank’s rhetoric on poverty reduction and sustainable development, it can be observed that the GMS Program is mainly⁴⁴ focused on building infrastructure. The internal energy sector reform processes of the GMS Program and the Bank’s choices of investments in the energy development of the region shed light on its neoliberal and market-driven agenda in which the role of states is minimized and markets become the new rulers. The ADB itself described the region as *“undergoing a “double transition,” from subsistence agriculture to more diversified economies, and from centrally planned to market-based economies.”* (ADB in Guttal, 2002).

The ADB considers and calls itself the ‘catalyst’ of the GMS Program. But its role goes beyond the stated function of facilitator. Firstly, it is a financier as it gives loans and finances technical support activities. It also acts as a bridge between the governments and private actors to channel investments. Secondly, the ADB coordinates the GMS. It implies managing the documentation available on the website and other platforms as well as arranging meetings and dialogues between different public and private stakeholders. Lastly, the ADB is a

⁴² It is interesting to note that the ADB has not included the Tibetan Autonomous Region in the GMS although this region is home to the headwaters of the Mekong River (Magee, 2012:180).

⁴³ The ADB invested \$3.4 billion in the form of loans. Moreover, the Bank attracted and facilitated the investment of other donors which amounts \$3.5 billion (loans as well). \$76 million were provided from the ADB in the form of grants (Ransley et.al., 2008:18).

⁴⁴ Between 1994 and 2005, loans in the transport and energy sector constituted 97% of all the loans issued by the GMS Program (Ibid.)

technical advisor and acts as the ‘brain’ of the program. Its advisory and technical support is used to produce feasibility studies and advice the member countries as well as the investors (Ransley et.al., 2008:20).

The ADB’s entire control of all GMS related activities shed light on the Bank’s deep interests in the region. Although the Bank argues that the participating governments take the lead in elaborating the development agenda, it can be observed that a disproportionate emphasis is put on the private sector. Privatization is among the core policies of IFIs which have constantly given power to corporations worldwide (Bayliss, 2002:604). The ADB has imposed and influenced economic reforms that led to more economic liberalization and private ownership in the national economies.

As argued by Garcia (2009:7-14), IFIs are highly politicized institutions. The political features of IFIs can be found in their public funding and strong ties with key ministries. The ADB’s strategies and interferences in the countries internal economic policies⁴⁵ are similar to the approaches taken by the World Bank. Both banks use neoliberal strategies to achieve their stated goal of poverty reduction. As argued by Guttal (2002) both IFIs’ regimes do not prefer the development of local and domestic private sectors. The private beneficiaries are usually external to the countries. This is clear in the case of the Mekong sub-region with the exception of Chinese and Thai companies⁴⁶ which are major investors in the hydroelectric sector. The WB has major interests in the energy sector and the GMS Program. Its support to the ADB GMS occurs through financial aid and participation in the Program’s implementation and negotiation stages (Guttal, 2002).

In the last years, the WB has attempted to minimize its public scrutiny⁴⁷ on investments in the hydroelectric sector worldwide. Although it has decreased its direct investments in the dam industry, its influence on national policy reforms and its strong ties with the ADB and the

⁴⁵ Interventions include drafting laws on public access to natural resources (Nuera, 2005:79).

⁴⁶ It is interesting to see that the World Bank’s overall energy investments in Mekong countries are mostly targeting China (63%) and Thailand (18%) which are the two more developed economies of the GMS. Vietnam follows with 16%, then Cambodia (1%), Myanmar/Burma (1%) and Lao PDR (1%) (Garcia, 2009:26).

⁴⁷ Due to strong transnational pressure from local, national and international civil society actors, the World Bank reduced its funding in the Narmada Valley (1990s) and withdrew its support to the Luhri dam (2014) (Rajagopal, 2005:196 and South Asian Network on Dams, Rivers and People, 2014).

private sector has led the Bank to become a major advocate for the hydroelectric developments of the Mekong region. The WB is the largest lender in the region but “*twinning with the International Monetary Fund (IMF), it is also the most powerful international institution in terms of policy influence and brokering.*” (Guttal, 2002).

The strong ties between the ADB and the WB and their strong regional involvement represent significant challenges for the opponents to dams in the LMB. These challenges can be divided in two categories. On the one hand, it is important to examine how the involvement and investment strategies of both banks make it difficult to hold them accountable. On the other hand, the GMS Program and the banks’ emphasis on the private sector have strong implications on the opponents’ alternatives to stop dams in the LMB.

As described previously, the WB’s media exposure and its certain but discrete involvement in the GMS has put the ADB at the forefront of the regional hydroelectric development. Yet, the WB’s influence in the region has not decreased and it could be argued that the numerous loans provided to the Mekong countries have facilitated the WB’s influence in the national economic and energy reforms. Conditionalities and structural adjustments continuously influence national development and often lead to massive waves of privatization, deregulation and market liberalization (Jones and Hardstaff, 2005). By providing financial support to Mekong countries, the WB finds itself in a comfortable position to influence the hydroelectric developments and energy reforms of the LMCs. Similarly to the WB, the ADB uses conditionalities when providing loans in order to promote macroeconomic and legal policy changes (Nuera, 2005:76). It could be posited that the WB’s influential strategy allows the institution to remain out of public scrutiny while defending its neoliberal interests. In such context, ADB’s regional hegemonic role is reinforced by its strategic and economic multilateral ally.

From this perspective, it could be argued that the Mekong national development strategies are defined by regional and multilateral neoliberal agendas. While the previous analysis section has demonstrated the prevalence of strong national interests, there are indications that they are strongly influenced by the ADB and the WB. It could be contended that this element further complicates the task of opponents to dams. If national interests are influenced and defined by other hegemonic actors, then stopping the construction of dams implies acting at a multi-stakeholder level.

This paper has shown the complexity of the hydroelectric industry and the numerous actors involved in it. In the case of the LMB, it can be claimed that both Banks' neoliberal interests go in line with the private sector focus on profit maximization. This argument ties with the statement that the LMCs national interests might be either influenced, defined or imposed by external (domestic and international) hegemonic actors such as IFIs, MNCs, private investors, etc. It is beyond the scope of this research to precisely study the relationships between the LMCs and the ADB/WB. Regardless of the nature of the ties between LMCs and these IFIs, their hydroelectric strategies are impacted by the institutions' agenda. But as pointed out by Guttal (2002), "*protecting national interest is particularly difficult for smaller countries when they face bilateral donors, the ADB and the World Bank, on whom these countries depend for future access to financing and international linkages*".

The hegemonic role played by the ADB and the WB in the Mekong region makes them a target for the opponents to dams. However, holding such institutions accountable is not an easy task. As contended by Ransley et.al. (2008:41), multilateral development banks are not accountable⁴⁸ to the citizens of any country. IFIs and development banks are not compelled to adhere to international human rights law or any other type of international standards concerning social and environmental protection. The ADB's stated role of facilitator creates challenges for accountability. Indeed, the Bank established its own policies on the environment, involuntary resettlement and indigenous peoples. Moreover, the ADB possesses its own accountability mechanism where groups and individuals can file complaints (Ransley et.al., 2008:55).

To put it in a nutshell, the ADB is conscious that public scrutiny can represent a threat to its activities and might have therefore created a series of policies and mechanisms to demonstrate its transparency and commitment to socio-environmental protection. Although the ADB is involved in all the levels of hydroelectric developments, their 'unique'⁴⁹ role is to facilitate

⁴⁸ As argued by Garcia (2009:7-14) IFIs are mostly financed by public funds which implies that public taxpayers may all have a claim on its use.

⁴⁹ This facilitating role is well described by Guttal (2002) and demonstrates the ADB's strong involvement in the Mekong regional development : "*The mechanics of the GMS model work in this way: first the ADB assumes responsibility for surveying, identifying and assessing the best opportunities for trade and investment in the Mekong region. Next, it brings together governments, donors and private investors to prioritise the identified*

the investments and interests of governments. However, it reduces the opponents' choices to stop dams in the LMB, and the remaining alternative is to exercise pressure on the Bank with the hope that such action could lead to some changes.

Ransley et.al. (2008:41) from Oxfam Australia suggest that putting pressure on donor governments can help influencing the ADB. This strategy raises again the question of national interests versus people's interests. If governmental economic and energy interests go in line with ADB's neoliberal agenda and MNCs' interests, how could opponents expect governments to exercise pressure on the Bank? Perhaps the case of Vietnam might slightly differ due to its fear for negative impacts on the delta. However, its strong dependence on ADB and WB funds demonstrate the little leverage power of the country. Additionally, both banks have imposed conditions on the Vietnamese government which resulted in the privatization of its power sector (Garcia, 2009:29-39).

ADB's neoliberal agenda and strong emphasis on the private sector make it easier for the Bank to avoid scrutiny. As explained by Jones and Hardstaff (2005:28) in their report on the undemocratic attitude of the WB and the IMF, *"the tragedy for people in the poorest countries is that those who ultimately decide their country's economic policies—the target of their protests, are not elected by them, are not accountable to them, and thus have a kind of immunity from public dissatisfaction."*

Conversely, the ownership of private actors in the dam industry complicates the task of opponents in a context where MNCs and other private stakeholders operate in complete immunity. This aspect will be discussed in the next section where the impact of public-private partnership on civil society actions will be examined.

opportunities for project-programme formulation. Then it commissions further feasibility studies and project preparation reports (usually with the involvement of private companies who are either interested in undertaking actual implementation themselves, or linked with implementing counterparts). The next step is to raise finances for the projects-programmes and develop agreements between host governments, investors, financiers and implementers. And finally comes actual implementation of the projects, which too require the ADB's involvement in supervision, monitoring, disbursement of funds, resolution of disputes, etc." (Guttal, 2002 in Focus on the Global South website).

4.1.5 Private immunity

Neoliberal globalization has developed a major contradiction between profit and the environment. Under neoliberal domination environmental protection is minimized as capital is less controlled (O'Hara, 2006). Such issue becomes more complex when private stakeholders are particularly involved in economic activities and often operate extraterritorially. In the context of the LMB, the question arising is *who* and *how* to hold accountable the perpetrators of human rights violations and environmental degradation?

The ADB and the WB have strongly advised the Mekong countries to 'take advantage' of the expertise and "*the intensification of networking by Trans National Corporations (TNCs) as part of global supply, production and distribution chains.*" (Guttal, 2002). Such strategy is not new or particular to the Mekong context. It refers to the globalization of production where MNCs benefit from cheap and problem-free environments for their operations. Advantages for MNCs in the LMB are numerous. Firstly, cheap labor costs are ensured by governments' pledge to keep wages to a minimum and to get rid of labor laws. Secondly, MNCs enjoy special tariffs on water and electricity which dramatically decrease their operational costs. Lastly, governments offer investors protection against a range of risks. These include several economic aspects such as foreign exchange convertibility or demand risks. But the most crucial elements for the purpose of this study are to be found in the risks associated with operation. In the case of the LMB, investors are not obliged to change their labor conditions or respect any kind of environmental or health standards (Ibid.).

In short, the role of the Mekong countries is to 'create an enabling environment' to attract private investors. The ADB and the WB use different strategies to attract the private sector and increase their own profit at the same time. Under the GMS Program, for instance, the ADB cooperates⁵⁰ with the WB to provide companies with risk guarantees.⁵¹ By promoting private investments, the ADB maximizes its economic profits and avoids direct investment in hydropower projects. The ADB's involvement in all stages of dams' construction (from preparatory to operative processes) is managed without any type of project's ownership.

⁵⁰ As an example, the ADB and the Multilateral Investment Guarantee Association (MIGA) of the WB Group signed a Memorandum of Understanding which obliges MIGA to provide "*private investors with protection against sovereign risk, that is, against the rights of governments to reconsider investment decisions*" (Guttal, 2002).

⁵¹ Providing risk guarantees means that losses would be covered in case of project failure (Ransley et.al., 2008:64).

While the Bank successfully attracts donors and investors as well as provides loans to governments, it mostly secures its interests by engaging MNCs and other private stakeholders (Ransley et.al., 2008:63-65).

Given their weak infrastructure and capacities (capital, technical and institutional), the Lower Mekong governments do also have strong interests in promoting the engagement of private actors. All in all, the neoliberal strategy of the ADB and the WB added to the governments' interests in engaging private investors has led to an adequate climate for companies to invest in the hydropower developments of the LMB. Companies from Lao PDR, Thailand, Vietnam, China, Malaysia and several European countries are involved in the industry through construction operations, supply of technologies, preparatory stages and feasibility studies, creation of transmission structures, etc. (Save the Mekong, 2009 and International Rivers, 2014e).

Bayliss (2002:603) argues that privatization has a negative effect on poverty. This is mainly due to the fact that the prime interest of corporations is to increase their profit. The easiest way to do so is often through paying as less attention as possible to social and environmental aspects such as pollution, livelihoods, worker's rights, fair incomes, etc. The LMCs in cooperation with the ADB have enabled a 'safe' environment for private investors to operate and maximize their profits.

As argued by Ransley et.al. (2008:64), the great involvement of private investors also brings challenges for accountability and transparency. These aspects represent major complications for the opponents to dams. The weak national judiciary bodies combined to the governmental unwillingness to stop dams left CSOs and other civil society actors with little alternatives to take action. Skinner et.al. (2013:14) state that the access to judicial remedies for human rights violations by MNCs is full of hurdles. This is clear in the case of the LMB where national legislations do not represent opportunities for local communities to defend their rights.

In Lao PDR where the issue of mainstream dams is extremely sensitive, local communities lack mechanisms to overtake legal actions on the issue. Moreover, the absence of independent judiciary body would turn such action irrelevant (Trandem, 2014). The current political situation in Cambodia demonstrates the existing risks for both local communities and civil society actors to oppose the government's plans (Ibid.). Although Vietnam will not construct any dam on its territory, both communities and authorities fear for the consequences on the

delta. Dialogue between CSOs and the government has been constructive and a lot of emphasis has been put on cooperative actions such as information sharing. According to the sources of this research, the Vietnamese culture would not lead national CSOs and local communities to go to court against their government (Dao, 2014). As a matter of fact, such legal actions would not make much sense as the government is already advocating against the Xayaburi dam. The case of Thailand highlights a situation where CSOs are extremely active at the regional level and with limited reaction on the government's behalf.

While it is obvious that the space for opposition in the LMCs varies in terms of range and impact, the involvement of private investors represents another important target for the opponents to dams. The case of the Xayaburi dam provides some insightful elements to identify the strategies implemented by transnational civil society actors. The Finnish engineering company Pöyry Group was hired by the Laotian government to provide a report evaluating the Xayaburi dam's compliance with the MRC standards. The report recommended the Laotian government to move forward with the construction, arguing that the project was in compliance with the MRC standards (International Rivers, 2012a). Nevertheless, as stated by CSOs as well as demonstrated previously in this paper, the Xayaburi dam has not respected the MRC principles. Yet, the hydropower infrastructure has moved forward.

National and international CSOs from LMCs and Finland united their efforts and put pressure on both the company and the Finnish government. After the submission of a complaint to the Finnish authorities by fifteen CSOs including two Finnish organizations, the government decided to investigate the role of Pöyry in the Xayaburi dam. The main accusation of civil society was that the company violated⁵² the OECD Guidelines for Multinational Enterprises and that it provided an erroneous positive review to allow the project to move forward. Finland is the largest donor to the MRC and was therefore highly concerned with this case. Despite the global actions taken to demonstrate the company's negative involvement in the controversial Xayaburi dam, the project has not only moved forward but Pöyry was granted a new contract to supervise the dam's construction (Fawthrop, 2013).

⁵² In June 2013, the Finnish authorities determined that Pöyry did not violate the OECD Guidelines. The decision was strongly criticized by civil society groups worldwide (International Rivers, 2013c).

The measures taken against private investors have mostly occurred through the submission of complaints to their home governments or through communications with national contact points for the OECD Guidelines. Such guidelines are adopted by governments and these in turn are required to ensure the implementation and respect of such procedures. Yet, the OECD Framework is not a legally binding resource; therefore, it has no direct authority on the conduct of MNCs. The OECD soft framework generally reflects the weakness of the international and national legal frameworks on corporate accountability. As argued by Ferenschild (2002:13), the corporations' logic of profit versus socio-environmental protection demonstrates the limitations of the OECD Guidelines.

The priority given to private actors in the Mekong by the LMCs and IFIs has led to a situation in which opponents to dams are facing major barriers to efficiently advocate and hold accountable the perpetrators of human rights violations and environmental degradation. The weak international legal and institutional framework allows MNCs to act as outlaws. In such context the scope of action for CSOs is dramatically reduced. This aspect will be examined in the next section where the strategies implemented by civil society will be assessed.

4.2 An Inefficient Civil Society?

The ongoing planning and construction of dams on the LMB could be also interpreted as a result of the inefficiency of civil society to oppose dams. Their actions have targeted Lower Mekong governments, MNCs, foreign governments, local authorities, regional institutions, etc. Furthermore, civil society actors managed to involve local communities, national and international CSOs, researchers and scientific experts, local governmental authorities, etc. Yet, there are indications that the unending hydroelectric plans for the Mekong are less a result of the inefficiency of civil society than a proof of the effectiveness of the strategies implemented by governments, MNCs and IFIs.

Ame Trandem from *International Rivers* contends that one of the major challenges for civil society concerns the lack of transparency of the LMCs. To ensure an efficient advocacy against dams, the public must be informed of the plans and decisions made. The problem is that most of these decisions are made behind closed doors. Trandem (2014) further argues that relevant information concerning dams is often released too late to allow CSOs to influence governments and other stakeholders. On this matter, the Laotian authorities had signed an agreement over the Xayaburi dam before the constitutional process was done. Similarly, the government announced some plans for the Mekong developments and then changed without

prior notice. As a result, the Xayaburi dam became the first dam to be built although initial plans differed (Trandem, 2014).

The non-transparent attitude of some of the LMCs (mostly Lao PDR and Thailand) could be interpreted as a strategy used to protect their interests. As explained previously, the supremacy of national interests resulted in a weak regional institutional framework and a lack of cooperation between the four riparian countries. Moreover, the little voice given to civil society in Lao PDR and Cambodia combined with Thailand's commitment to ignore the issue and Vietnam's incapacity to influence its neighbors leaves the anti-dams advocates with little room for action. In a different manner, the WB and the ADB have managed to secure their economic and strategic interests by putting private investors in the forefront of the dam industry.

Despite this, opponents to dams have been successful in raising public awareness as well as generating scientific evidence of the socio-environmental impacts of mainstream dams. Furthermore, their actions have encouraged Cambodia and Vietnam to sustain their opposition to the Xayaburi dam. The Laotian authorities addressed the Xayaburi case for the first time in 2012 not to address the concerns of the opponents but to justify its plans. As argued by Trandem (2014), this can be considered as a first successful step. Additionally, actions have targeted and pressured the ADB to ensure that transmission lines connected to large hydropower dams are considered associated facilities.⁵³ The ADB GMS Program is also being challenged to consider improved energy planning measures with more sustainable energy technologies rather than dams (Trandem, 2014).

The aim of this research has not been to document the specific actions undertaken by the opponents. Rather, the intention was to identify the factors behind the difficulty to stop the construction of dams on the LMB. Opponents to dams have created networks and have managed to engage multiple actors ranging from local communities to national, regional and international organizations, academics and citizens. The transnational nature of the opposition has allowed CSOs to pressure European governments and companies. As argued by Dao

⁵³ Many of the transmission lines are being funded by the ADB and must therefore respect the Bank's safeguard policies. Until now, these structures have not been considered as part of the dams' infrastructure and therefore do not need to comply with the environmental and ethical guidelines of the ADB (Trandem, 2014).

(2014), the case of the Mekong dams is really active and has united hundreds of organizations worldwide which have submitted joint reports, complaints and open letters to heads of states. Still, their power to influence the developmental debate remains weak and endangered by the current construction of the Xayaburi dam which opens the floor for the rest of the projects.

The globalized nature of the dam industry has resulted in the multiplicity of actions that transnational civil society actors must take. In this respect, law provides space for resistance (Rajagopal, 2005:183). Representing a terrain of contestation between civil society actors, states and private actors, law becomes an important aspect to examine in order to identify the ways in which it has been used by the anti-dams activists. Globalization has also multiplied the scales under which law operates. In the case of the LMB, law could ideally be used as a tool of actions at the local, national, regional and international level. structure

4.2.1 Lack of legal actions or lack of effective legislations?

The approach of *subaltern cosmopolitan legality* provides some incentives to understand the ways in which law may have the power to subvert hegemonic institutions. Such perspective challenges the traditional view of the state as the only actor in processes of enforcement of international human rights mechanisms. By envisioning the legal sphere from below, subaltern cosmopolitanism adds a legal perspective to the issue of counter-hegemonic advocacy (Santos and Rodriguez-Garavito, 2005:12-18). It is therefore crucial to analyze the extent to which local communities and CSOs have used legal strategies to stop dams' construction on the LMB.

The previous sections have demonstrated the strong influence of national interests in the hydroelectric developments of the Mekong and their impact on the strategies implemented by anti-dams advocates. Consequently, it is important to look at the relationship between law and state sovereignty. More precisely, how does the logic of law differ from that of social movements and CSOs? There are indications that national interests and state sovereignty greatly influence the legal arena and as a result diminish the legal alternatives for civil society and local communities.

A first aspect to examine is the distinction between domestic and international spheres. The outcomes of civil society's engagements with the law "*depend on the extent to which they can frame their demands and engage in struggles that avoid a direct confrontation with state sovereignty (...)*" (Nandy 1992 in Rajagopal, 2005:187). In this sense, the logic of law is

entirely based on the separation between these levels and around the doctrine of sovereignty. On the contrary, civil society actors are all the time more organized in transnational networks and engage at multiple levels simultaneously (Ibid.).

As argued earlier, state sovereignty is dominant in determining the results of social struggles. It is evident that the anti-dam movement's objective confronts directly with state interests in the LMB. In such perspective, stopping their plans would not only harm their interests but also threaten their vital national sovereignty by letting both internal and external stakeholders influence their decisions. As a result, the regional elites' political culture and the enormous interests of both regional and international stakeholders have left civil society and local communities with little legal alternatives to take action.

In August 2012, eighty villagers representing the eight Mekong River Provinces of Thailand submitted a lawsuit in the Administrative Court of Thailand (ACT). The case was challenging the government's decision to endorse the agreement between the Thai energy authority and the Xayaburi dam's operator. The central aspect of the file concerned the non-respect of the MRC Prior Notification principle as well as the threat that the dam would represent on the communities. In early 2013, the ACT denied jurisdiction on the case. Their decision was based on three main elements:

“(1) the plaintiffs are not considered injured persons as conditions and compliances set by the Cabinet before concluding the power purchase agreement are considered part of the internal administrative process; (2) the power purchase agreement is binding for contractual parties, such as EGAT and the Xayaburi Power Company, therefore third parties like the plaintiffs are not considered injured persons; (3) although the defendants did not comply with PNCPA, such process is not considered an administrative act and therefore the court is not able to hear the case.” (Earthrights International, 2013)

The Court's decision shed light on the legal breaches to ensure the protection of human rights. Although Thailand is member of the MRC, its legal structure does not provide its authorities to exercise jurisdiction on violation of the MRC principles. Moreover, the language used in the decision reflects a major failure of both national and international law standards whereas human rights violations can only be legally defended once the violation has occurred. While

scientific evidences have demonstrated the negative impacts that the Xayaburi dam would have on local communities, It remains impossible for the communities to take preventive legal measures.

The authority of the ACT is limited in such case and their denial of the lawsuit demonstrates the prevalence of national interests in the legal sphere as well. On this issue, Rajagopal (2005:189) argues that the source of law's legitimacy also differs from that of social movements. Law depends on sovereignty which is reflected in the countries' constitutions and institutions. Therefore, civil society is often in tension with these sources of legitimacy and frequently contests these institutional and judicial bases. Such basic 'democratic' elements are often challenged by civil society which posits that they are morally and politically inadequate as well as created and controlled by the judiciary and the legal elites (Ibid.).

The opponents to dams are then faced with major challenges to act at the national legal level. The case of Thailand has demonstrated how the judiciary structure of the country has resulted in the incapacity of the state to prevent and protect its citizens from human rights violations. According to the sources of this research, in Lao PDR, due to the sensitivity of the issue there would be no possibilities for the communities to take legal actions (Trandem, 2014). Dao (2014) argues that the Vietnamese culture would not go to court and that civil society is more focused on dialogue than resistance. The fact that the Vietnamese and Cambodian governments both expressed their concerns about the Xayaburi dam would make it irrelevant for local communities and groups to legally engage against their authorities. Dao (2014) affirms that there is a need for an international court due to the transboundary nature of the Mekong. The previous sections have described the weak international sphere in human rights protection and justice. As argued by Trandem (2014), foreign governments are the ones mandated to take legal action in the International Court of Justice, and not civil society.

Given the context in which the AICHR has been greatly shaped by the *Asean Way*, the regional framework provides no alternatives for the anti-dams advocates to take action. The lack of transparency of the body as well as its weak mandates, characterized by the absence of enforcement mechanisms (Renshaw, 2010) has led to a situation where governments have been able to prioritize their economic interests without any reaction from the human rights commission. Besides, the absence of an international legally binding instrument for corporate accountability (ICAR, 2014:1) further reduces the legal alternatives for civil society to stop the construction of dams.

To conclude, the legal immunity enjoyed by private investors and IFIs combined to the *interest-shaped* national legal institutions have resulted in the impossibility for CSOs and local communities to take legal actions. From such perspective, it could be argued that the legal challenge for the opposition to dams is more the result of the weak national and international existing legal frameworks rather than the outcome of the inefficiency of civil society and local communities to implement legal strategies.

5 Conclusion

Countering hegemonic forces in the Mekong seems to be a journey full of hurdles for local communities and civil society actors. This study aimed to identify the factors behind the little success of the anti-dams activists to stop the construction of dams. The Mekong case reveals the complex structures of neoliberal globalization and the involvement of numerous stakeholders promoting economic liberalization, privatization and decentralization, among others. The national and regional developmental debate appears to be controlled by the interests of the national and regional political and economic elites whose strategies are being defined and supported by financial institutions and private actors.

Regardless of the scientifically proven hazard of dams, national governments have moved forward with their hydroelectric agenda. This study has shown that civil society efforts to tackle these plans have been undermined by a strong determination of LMCs to further exploit the economic potential of the river and meet the growing energy demand of the region. National interests have then resulted in weak national and regional legal and institutional frameworks surrounding the issues of water management and sustainable development.

The governmental control of water agencies and the fragmentation of the legal frameworks have prevented the civil society from influencing the national developmental debates. Conversely, governments and elites have managed to secure their interests by enabling safe environments for investors. This paper has shown that the little attention given by governmental agencies to the MRC framework reflects the countries' intention to avoid conflict and preference for a more economic-driven framework such as the ADB and its GMS program.

The findings of this research corroborate that the major economic and energy interests of LMCs have resulted in a weak and fragile regional cooperation framework. The MRC's mission of ensuring the sustainable development of the Mekong is challenged by the regional political culture of the elites and its role of serving its member states' needs. Besides, the *Mekong Spirit* has shaped the MRC and left the organization with no power to protect the river. Vietnamese and Cambodian fears for negative trade-offs and opposition to the Xayaburi dam is contradicted by their own hydropower agenda which appears to be influenced by China and the ADB.

It has been argued that the ADB and WB's stated mission of poverty reduction hides a neoliberal agenda that strongly influences the Mekong developmental course. The IFIs' involvement in the region is accompanied by waves of privatization, energy sector reforms and attraction of FDI. The ADB has become the framework in which cooperation and decision-making takes place leaving behind the MRC and civil society voices. This paper has revealed that the IFIs' stated roles of 'catalyst' and 'facilitator' create challenges for accountability in an environment where governments and IFIs promote a greater involvement of the private sector.

It has been suggested that the priority and protection given to private actors in the Mekong dam industry have led to a situation where opponents to dams are facing major barriers to efficiently advocate and hold accountable the perpetrators of human rights violations and environmental degradation. The weak international legal framework characterized by the absence of an international legally binding instrument for corporate accountability further complicates the task of the anti-dams activists.

The anti-dams movement has created transnational advocacy networks and used global strategies to raise awareness and demonstrate the threats that dams represent for the region's socio-environmental stability as well as the existence of more sustainable alternatives. Still, they have not managed to influence the national and regional developmental debate and their goal is endangered by the current construction of the Xayaburi dam which opens the floor for the rest of the eleven planned dams.

It has been argued that the legal immunity enjoyed by private investors and IFIs combined with the interest-shaped national legal institutions and elites' influence have greatly affected the work of CSOs. It has therefore become complex for CSOs and local communities to influence the hydroelectric developments of the LMB by either participating in the debate or taking legal measures. In this sense, this study has shown that the little legal actions taken are the result of weak legal frameworks at the national, regional and international level.

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