

The Salween River as a transboundary commons: Fragmented collective action, hybrid governance and power

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Abstract: *Viewing the Salween River as a transboundary commons, this paper illustrates how diverse state and non-state actors and institutions in hybrid and multi-scaled networks have influenced water governance in general, and large dam decision-making processes in particular. Putting power relations at the centre of this analysis and drawing on the conceptual lenses of hybrid governance and critical institutionalism, we show the complexity of the fragmented processes through which decisions have been arrived at, and their implications. In the context of highly asymmetrical power relations throughout the basin, and the absence of an intergovernmental agreement to date, we argue that hybrid networks of state and non-state actors could be strategically engaged to connect parallel and fragmented decision-making landscapes with a goal of inclusively institutionalising the transboundary commons and maintaining connected local commons throughout the basin, foregrounding a concern for ecological and social justice.*

Keywords: *China, large hydropower dams, limited statehood, Myanmar, Thailand, water governance*

Introduction

This paper examines how fragmented configurations of hybrid governance have emerged in the Salween River basin, and how these are (re) shaping local and transboundary water governance. With headwaters in the Tibetan plateau, the Salween River¹ mainstream flows down through China's Yunnan Province to Shan, Karenni, Karen and Mon States in Myanmar, also in part bordering Thailand, and empties into the Andaman Sea. There are at least 16 major ethnic groups and over 10 million people living within the basin, and access to river-related resources are important for many of them for a range of rural livelihoods (Johnston *et al.*, 2017). Viewing the Salween River as a transboundary commons, we put power relations at the centre of our analysis (Suhardiman *et al.*, 2017a; Miller *et al.*, 2019). This is salient given that in contrast to the adjacent Mekong River, where intergovernmental transboundary cooperation is guided, albeit imperfectly, by the Mekong River

Commission (e.g. Kittikhoun and Staubli, 2018), in the case of the Salween River there is not a tri-lateral agreement between the three states. Furthermore, throughout the basin there are significant power asymmetries between actors, especially in Myanmar given that political authority is contested over at times overlapping territorial spaces (Götz and Middleton, 2020; Suhardiman *et al.*, 2020).

Overall, we argue that analysing institutional and actor network fragmentation across the basin with a focus on power relations – beyond property relations – is fundamental to understanding the sustenance and/or enclosure of the river as a transboundary commons. Based on this insight, and drawing on the analytical lenses of hybrid governance (Miller *et al.*, 2019) and critical institutionalism (Cleaver and de Koning, 2015), we suggest that hybrid networks can be strategically engaged – selectively linking state and non-state actors, especially community-based organisations and civil society – to connect parallel decision-making landscapes across scales, both spatially

and temporally, with the goal of inclusively institutionalising the transboundary commons foregrounding social and ecological justice. In this paper we view the transboundary environmental commons beyond the conventional notion that focuses on 'shared resources and environmental impacts that transcend national borders' and that underpins the logic of the institutionalization of transboundary environmental governance between states that may also involve other actors in collective action responses (Hirsch, 2020: 1). Aligned with Hirsch's (2020: 2) critique and the need 'to go beyond the country oriented scalar reference of conventional approaches to transboundary environmental governance ...,' we emphasise the importance of unpacking the nested institutional arrangements, both formal and informal, the state and non-state actors involved and the power relations between them, to then move beyond a regional/inter-country analytical lens and urge the need for a transboundary environmental commons rooted in grassroots realities of people living along the river and the local commons.

Various water- and electricity-related master plans have been prepared by the respective governments of the three countries (China, Myanmar, Thailand). While hydropower plans feature prominently, as well as inter-basin water transfer plans promoted by the Government of Thailand, they are nowadays increasingly in tension with environmental protection agendas. In China, since the early 1990s, a 13 dam cascade has been proposed for the mainstream (12 of these are in Yunnan province and one in Tibet area). These plans were first suspended by Premier Wen Jiabao in 2004 in part due to mounting pressure from public opposition and maintained following the high-level government policy on 'ecological civilisation' (Magee, 2006; Zhang and Li, 2018; Yu *et al.*, 2019). Tens of dams, however, have been built on the tributaries (Ptak, 2014). In Myanmar, at least five large hydropower dams² are at various stages of preparation on the Salween River mainstream, although both Thailand and Myanmar's government policy remains ambiguous – and fickle – on the status of the projects (Magee and Kelley, 2009; Middleton *et al.*, 2019). However, on two tributaries in Myanmar four large hydropower projects have already been completed, and nine more tributary projects are either at an

advanced stage of planning or under construction. Regionally, the Salween basin has been incorporated into various economic integration imaginaries, including the Asian Development Bank's Greater Mekong Subregion programme in the 1990s, the ASEAN Economic Community from the 2000s, and the Belt and Road Initiative since 2015. Within these plans, hydropower dams are positioned as strategic means to promote regional economic integration through power generation for industrialisation and revenue generation from electricity export (Bakker, 1999; Middleton, 2017). There are, however, also plans for river conservation, ranging from the incorporation of the Salween (Nu) River in China as part of the Three Parallel Rivers into the listing of UNESCO World Heritage sites in July 2003, to the civil society-community led Salween Peace Park initiative in Karen State, Myanmar (Karen National Union [KNU] and Karen Environmental and Social Action Network [KESAN], 2016).

This paper builds from a comparative study on the Salween River from 2016 to 2018 that the authors contributed to, looking at diverse actors' and institutions' strategies to shape and influence hydropower decision-making processes across scale in China, Myanmar and Thailand, while relying on their hybrid partnerships and networks. We focused on two elements: (i) how state actors set the pretext and shape the hydropower decision-making landscape; and (ii) how a wider range of actors, sometimes also within the state, shape the overall governance dynamics. To understand how various key actors at the national level perceived the hydropower decision-making landscapes in relation to the proposed Salween dam projects, we conducted a series of in-depth semi-structured interviews from late 2015 to early 2017 with government officials (some retired) (Myanmar = 6; Thailand = 3), representatives from civil society groups (Myanmar = 4; Thailand = 6), researchers (Myanmar = 1; Thailand = 1) and two members of parliament and one representatives from an international organisation in Myanmar. We complemented these interviews with a policy review and institutional analysis at the national level. We also participated in a series of regional conferences and other meetings that offered formal presentations as well as informal conversation that inform this paper's analysis. Building also on collaboration with researchers in China

(Yu *et al.*, 2019), in this paper we further our overall analysis on Salween transboundary water governance applying hybrid governance and critical institutionalism as an analytical lens.

The paper is structured as follows. In the next section, we introduce our conceptual approach, in particular emphasising hybrid governance and critical institutionalism. We then outline how in the Nu (upper Salween) basin in China plans for large hydropower emerged, were suspended and how national parks have since been proposed. We then turn to Myanmar, where we apply the analytical lens of hybrid governance to the 'limited statehood' context of the Salween basin, which we exemplify through an analysis of the proposed Hat Gyi Dam. In the final section of the paper we offer conclusions and ways forward.

New landscape of the commons: Hybrid governance, critical institutionalism and fragmented collective action

Commons scholars have discussed the dynamic relations between people, natural resources, society and political authority, how these relations result in the emergence of collective action and how the latter shape natural resource governance across scales (e.g. Agrawal, 2001; Anderson and Ostrom, 2008). Recent literature has also looked at the issue of scale in commons studies (e.g. Araral, 2014; Hirsch, 2020), bringing to light how local communities' ability to sustain collective action can be significantly reduced when they (co-)govern resources that are embedded within multi-scaled ecosystems and thus are very difficult to manage at the village level alone (Costanza *et al.*, 1998). Linking commons studies with transboundary water governance, this paper urges the need to incorporate the local commons into our understanding of transboundary environmental commons, especially in relation to how locality-based livelihoods are impacted by large-scale infrastructure projects with transboundary impacts. As stated by Hirsch (2020: 2): '[Transboundary] institutional arrangements treat countries as if they are actors securing the interests of their own populations and resources. But the commons exist at multiple scales. The local commons are those most immediately affected by [events such as large dam collapses]..., yet

existing transboundary governance arrangements tend to be blind to such impacts' (see also Middleton and Ito, 2020).

Incorporating the notion of equal rights and social justice as integral to the institutional shaping of natural resource governance, Cleaver and de Koning (2015) critique the rational choice assumptions of mainstream institutional thinking (Ostrom, 1990, 2000) and come up with their concept of critical institutionalism and institutional bricolage. Unlike mainstream institutional thinking which assumes that institutions can be crafted based on a number of identifiable causal relationships between contextual factors, institutional attributes and projected decision-making outcomes, critical institutionalism emphasises instead how institutions can be less purposeful, partial and ad-hoc, and that institutional change occurs 'at the messy middle' (Peters *et al.*, 2012). As stated by Cleaver (2012: 11): '[Critical institutionalism] recognises diversity in social phenomena, the potentially creative effects of individual agency and highlights the enduring influence of social structures in shaping individual behavior and in the patterning of outcomes'. Critical institutionalists show how institutions are often multi-purpose, intermittent in operation and dynamic, if not constantly changing and evolving. While institutions can technically serve as 'the channels through which individual and collective action is shaped [and] social capital built' (2012: 11), the latter is not necessarily embedded in any institutional prism or segment of society. As stated by Cleaver (2012: 11): 'institutions managing natural resources are only rarely explicitly designed for such purposes ... their multi-functionalism renders them ambiguous, dynamic and only partially amenable to deliberate crafting'.

Building on this idea of institutions as dynamic, ever changing and evolving, and placing it within the context of transboundary environmental commons, we draw on the concept of hybrid governance developed by Miller *et al.* (2019). We link critical institutionalism with hybrid governance by highlighting the latter's contribution in unpacking 'the spatial organisation of transboundary commons and why this matters for transforming property relations and emerging patterns of environmental governance' (Miller *et al.*, 2019: 299). Here, we look at how various actors and institutions (re)shape the creation and maintenance of transboundary commons not only in

relation to their interests, strategies and access to resources, but also how these are linked and/or disconnected from each other, both spatially, temporally and across borders and scales. Miller *et al.* (2019) also highlights how transboundary environmental commons 'defy clear spatial resolution' in terms of geographical, administrative and institutional borders. Miller *et al.* (2019: 298) have furthered the concept of hybrid governance that underpins various actors' and institutions' roles and abilities to create, shape and ensure the maintenance of transboundary commons, while emphasising on the importance of power relations in (re)shaping the latter. In this paper, we draw on Miller *et al.* (2019) to show how the concept of hybrid governance is key to: (i) understanding the power dynamics that contribute and/or hinder processes of institutional emergence; and (ii) embracing the notion of power as heterogeneous, which is in constant flux and negotiation (Gaventa, 2006). Moreover, as commodification of common pool resources (Castree, 2003) across scales has contributed to the weakening of common property rights and collective action in natural resource governance and changed the overall process of rule-making regarding access to water, land and the environment at large (Paerregaard and Andersen, 2019), the concept of hybrid governance also allows us to better understand how actors and institutions (re)shape these processes of change.

Hydropolitics literature has addressed the issue of power relations between states sharing a river basin, and how this has shaped inter-state cooperation or contestation over transboundary rivers (Mirumachi, 2015). Within this literature, the concept of hydro-hegemony has been particularly influential, where forms of power deployed include physical control of water resources, and shaping regimes, norms, treaties and rules that privilege the hydro-hegemon (Zeitoun and Warner, 2006). Meanwhile, critical hydropolitics literature draws more attention to power relations between state actors including national and sub-national government elites such as politicians and water bureaucrats, and non-state actors including civil society, communities, academia and private sector actors of various types (construction, financiers, consultants etc.) among others, and to the multi-scalar and transnational politics of these interactions (Bakker, 1999; Sneddon and

Fox, 2006; Hensengerth, 2015). As emphasised by Mirumachi (2015), it seeks to disaggregate the state beyond a 'state as container' perspective, and offers 'a more nuanced understanding of power relations by examining various forms of state- and market-driven water management' (Rogers and Crow-Miller, 2017: 2).

Building on Miller *et al.*'s (2019) work on hybrid governance and informed by a critical hydropolitics perspective we understand water governance decision-making and the institutionalisation of transboundary commons as terrains of contestation and arenas of power struggle (also Suhardiman *et al.*, 2017a). Viewing various actors and institutions as entangled webs of hybrid networks and alliances (re)shaping eco-socio-political spaces (Linton and Budds, 2014), it shows how water governance decision-making is influenced by the existing and changing 'power geometries', in which institutional and political space exist, are created, sustained and/or reproduced as a 'porous network of social relations' that are in constant flow (Massey, 1994: 21). Furthermore, the power one possesses emerges not from the actual space inhabited; rather, it emerges from the way that actors conceive of and use their place within that space, which impacts the way others conceive of and use that same place (Katus *et al.*, 2016). As stated by Bourdieu (1989: 19): 'the representations of agents vary with their position (and with the interest associated with it) and with their habitus, as a system of schemes of perception and appreciation of practices, cognitive and evaluative structures which are acquired through the lasting experience of a social position'. Here, government agencies, provincial authorities, dam developers, civil society organisations and local communities are not to be seen as fixed groups with clear institutional boundaries, but as references of the different actors within these groups, bearing in mind that actors from different groups could also share common views and positions.

Following Cleaver and de Koning's (2015: 8) synthesis of critical institutionalism that takes 'a middle ground' within structural accounts of agency, we view agency as shaped by power dynamics that include 'the power implicit in the societal allocation of resources (through governance arrangements), the power adhering to particular social and political roles, functions and

regulations and the power to challenge boundaries, or to resist and subvert institutional arrangements'. With reference to Giddens (1984), Cleaver and de Koning's (2015: 10) also link agency and power to 'the capacity to deploy material (allocative) and non-material (authoritative) resources', drawing on Lukes's (2005) three dimensions of power to: shape the outcomes of public rule-making processes; to set agendas and thus influence what can be discussed and who is considered legitimate; and to invoke values and ideas that legitimise processes and outcomes.

From hydropower to conservation on the Nu (upper Salween) River

There has been well-documented controversy over plans for the Nu River in China, where proposals for up to 13 large dams emerged in the late 1990s (Magee, 2006; Yu *et al.*, 2019). Hydropower construction has played an influential role in China's socio-economic and political development and, in the viewpoint of the government, has been one of the country's main development engines to promote economic growth and reduce poverty (Huang and Yan, 2009; Li *et al.*, 2015). The importance attributed to large dams by the government is most evident from its consistent inclusion in the country's national economic and social development plans set up every 5 years to provide comprehensive goals, strategies, policies and outline major infrastructure projects (Liu and Zhou, 2010). In this section, we briefly review this contestation to analyse how shifting power relations domestically in China between state agencies, corporatised state-owned enterprises (SOEs), civil society and international organisations help us understand first the attempt to build large hydropower dams on the Nu River that would have led to commons enclosure, and why it did not happen at least on the mainstream, and later the ascendance of plans for a national park in the watershed.

The Nu River has 46 000 MW of potential hydropower resources, of which 36 410 MW of it is on the mainstream (Feng *et al.*, 2010). Plans for mainstream hydropower were solidified under the Western Region Development Strategy (2000–2020), and the West East Power Transfer within it (Magee, 2006). Overall, these

government-led plans proposed that large hydropower dams should be constructed in the Southwest of China that would send their hydroelectricity to China's southeastern seaboard. The central positioning of the West East Power Transfer in China's economic development strategy was closely linked to how power shortage had become a limiting factor to China's mega cities (Guangzhou, Shanghai and Chengdu) and its industrial zones, both of which serve as one of the country's main engines to continue its economic growth (Shiu and Lam, 2004; Ptak, 2014). To tackle the problem of power shortage, the central government supported this approach through capital and policy provision. The plan also envisioned poverty reduction in Southwest China drawing on the revenues generated from this electricity trade (Lai, 2002; Magee, 2006; Li *et al.*, 2015). The Yunnan Provincial government was also supportive overall of the projects, as it also supported local heavy industry (Zhang and Li, 2018). While China's government leaders often presented this strategy as win-win, the plan overlooked environmental and social inequity issues pertaining to large infrastructure development of rivers in the southwest (Fan and Sun, 2008; Cheng *et al.*, 2012; Hensengerth, 2014).

There has been intense competition between interest groups over the fate of the Nu River, including between a range of government decision-making bodies at the prefecture, provincial and national level, SOEs, academic institutes and civil society (Zhang and Li, 2018). Some government agencies, such as the influential National Energy Bureau have been consistently in favour of the projects, while others, such as the State Environment Protection Administration (SEPA) (now the Ministry of Environmental Protection) raised critical questions towards the projects. China's electricity sector reform in 2002 incentivised newly corporatised SOEs to rush to claim the rights to develop dams on China's major rivers (see Dore *et al.*, 2007). For the Nu River, the Yunnan provincial government signed an agreement with Huadian Group – one of the 'big five' corporatised electricity SOEs – in January 2003 to develop the projects, strongly endorsed by the Nu Jiang prefecture government (Yu *et al.*, 2019). In July the same year, the Huadian Group set up Yunnan Huadian Nu River Hydropower Company.³ Thus, the

conditions were set for the commodification of the Nu River via hydropower construction, and the enclosure of the local and transboundary commons.

Yet, at this time in China there was a strengthening of environmental governance, which had implications for the Nu River and shifted some influence towards actors with a concern for environmental protection. First, a new Environmental Impact Assessment (EIA) Law was passed in September 2003. This resulted in the SEPA gaining more authority to investigate the EIA of the Nu River hydropower plan, and SEPA raised questions towards the cascade's impacts according to its new mandate. As outlined by Yu *et al.* (2019), SEPA organised two expert forums on the EIAs in 2003, at which concerns were raised towards the EIAs and that was also reported in the media. Second, the US-based NGO 'The Nature Conservancy' (TNC) had been working with the Yunnan Provincial Government since the late 1990s on the 'Yunnan Great Rivers Project' that involved national park system planning and included the Nu River basin. Third, the UNESCO World Heritage Committee (WHC) listed the 'Three Parallel Rivers' as a World Heritage site in July 2003. In April 2006 officials from IUCN and UNESCO conducted a study on the potential impacts of the dam cascade, leading to a subsequent exchange between the WHC General Assembly and China in 2007 over the status of the dams and their implications for the World Heritage Site status. This emphasised responsibilities towards environmental protection of the Nu River for China's government if the World Heritage Site status was to be maintained.

Civil society and environmental NGOs in both Yunnan Province and Beijing have also played an important role in promoting a proposal for the protection of the Nu River, acting as one of the forces pushing for greater access to information on dam planning and public participation (Yang and Calhoun, 2007; Matsuzawa, 2011; Zhang and Li, 2018; El-Silimy, 2019). They have linked with prominent experts (Xufeng, 2009) and undertaken their own field-based research to evaluate the environmental and social risks from the hydropower dam projects seeking to inform government policy makers (Lin, 2007; Lu, 2007; Han, 2013), thus bringing to light their role as policy entrepreneurs (Yeophanthong, 2017).

They also formed NGO alliances such as the China Rivers Network, worked through various networks, and initiated several petition letters to raise public awareness and support (Mol, 2006; Mol and Carter, 2006; Yang and Calhoun, 2007; Yu *et al.*, 2019). Key elements that empowered civil society's campaign included: (i) the ability to mobilise support from the wider population through strong connection with the media and international organisations; (ii) their often constructive relationship with SEPA; and (iii) their ability to convey key messages of their campaign to high-level government officials, including those with connection to the powerful political party through the so-called 'internal reference' reports that serve as an important channel to bring local problems to the attention of high-level officials to seek support and redress (Lu, 2007). Thus, within the evolving context in China, where political space for civil society temporarily expanded in the late 1990s, and subsequently contracted since the early 2010s, civil society organisations and environmental NGOs have been engaging in fragmented collective action through hybrid networks and partnerships. This civil society alliance work has sought to connect the disjuncture in hydropower decision-making towards more inclusive water governance.

A combination of the above factors, together with the Nu River's relatively difficult access compared to other rivers in Yunnan Province such the Lancang (upper Mekong) River, led to Premier Wen Jiabao suspending the Nu River hydropower projects in February 2004, although the projects were not cancelled and continued to be both promoted and challenged over the following decade (Hennig *et al.*, 2016; Yu *et al.*, 2019). However, the project's suspension allowed for the maintenance of a largely free-flowing Nu River as a transboundary commons, although hydropower dams on the tributaries have resulted in ecological harm and hydrological changes (Kibler and Tullos, 2013). Meanwhile, the growing influence of the high-level government policy on 'ecological civilisation' since 2012, together with an electricity surplus in China since 2015 (Magee and Hennig, 2017) has left space for the possibility of a Nu River Grand Canyon National Park. The plan was included in the 13th Five-Year Plan (2016–2020) and although it makes brief reference to coordinating

with hydropower construction, the emphasis is on ecological protection. However, the Nu River itself is not included within the boundaries of the National Park, which are demarcated along the mountainsides that enclose it, raising concerns from civil society that the large hydropower dams could still proceed in the future (Yu *et al.*, 2019). At the time of writing, the recent economic slowdown and power surplus in China has forced many hydropower companies to operate at only half of their capacity, resulting in major profit loss. In principle, this has further facilitated civil society and environmental NGOs' vision for environmental protection and sustaining the Nu River as a free-flowing river. Nonetheless, the Chinese government plans to construct transmission lines to neighbouring countries to sell surplus electricity to optimise profits from existing dams, and to extend the domestic transmission network.

This brief history of the evolving and contested plans for the Nu River brings to light a certain degree of collective action, even as it is rather fragmented in the sense that there was limited interaction with networks in downstream countries. This collective action in China also consolidates the emergence of a new transboundary commons in the upper watershed, holding implications for the downstream. Yet, this upper river commons, while transnational in a sense, is not institutionalised between the countries of the basin.

Hybrid governance and conflict in Myanmar

In this section, with a focus on the Hat Gyi Dam in Karen State, we contextualise Salween hydropower projects in Myanmar to the power relations that have emerged through the history of conflict in the Salween basin.⁴ We build upon Magee and Kelley (2009) and Middleton *et al.*'s (2019) analysis of the recent hydropolitics of the Salween basin in Myanmar and Thailand to draw out the implications of hybrid governance in the context of Myanmar's 'limited statehood' (Risse, 2013, cited in South, 2017) or competing sovereignty (Jolliffe, 2015; Suhardiman *et al.*, 2020). Many actors influence contemporary water governance in Myanmar, including the Union government and the National Water Resources Committee; the *Tatmadaw* (the Myanmar Armed Forces); Ethnic

Armed Organisations (EAOs); domestic and foreign companies and financiers; local, national and international civil society groups; and community-based organisations and social movements. However, much decision-making on large water infrastructure is opaque, many of the actions that influence it are not within formal processes, and violent conflict is a key determinant (Suhardiman *et al.*, 2017b). Regarding the Hat Gyi Dam, despite several efforts to further the project, only limited preparatory activity has been undertaken to date, though the consequences of the pursuit of the project have been wide-ranging.

For the case of Myanmar, the lens of hybrid governance offers a particularly insightful viewpoint on water governance, given that there are contesting sources of political authority between the Union Government and various EAOs in the Salween basin, such that the Union Government does not hold complete sovereignty over it (Walton, 2018). South (2017: 52) distinguishes territories where EAOs operate in Myanmar into '... relatively small and mostly quite remote areas controlled exclusively by EAOs, and more extensive areas of "mixed administration", where authority is exercised variously by one or more EAOs and the government, and/or various Myanmar Army-backed militias ...'. According to Middleton *et al.* (2019: 39), synthesising recent literature: 'There are no less than 10 non-state EAOs, 18 Border Guard Forces (BGFs) and 28 militias active in the Salween Basin area ...'. The areas exclusively controlled by EAOs, together with areas of mixed administration where EAOs (uneasily) co-exist with the Union government agencies, are regions of 'limited statehood' (Risse, 2013, cited in South, 2017) that South (2017) terms as areas of 'hybrid governance'.

It is beyond the scope of this paper to discuss in detail the Salween basin's modern history and how it has been shaped by armed conflict (see, e.g. Callahan, 2007; Smith, 1999, Smith, 2007; TNI, 2017 among others), but the context is important to introduce. This recent history spans from the British colonial period during which much of the basin was considered 'Frontier Area' through to Burma's independence in 1948 that then witnessed a brief parliamentary period until 1962, after which followed successive military regimes including the Burma Socialist Programme Party and the

State Law and Order Restoration Council/State Peace and Development Council, until the election of semi-civilian governments in 2010 and 2015 of the Union Solidarity and Development Party (USDP) and the National League for Democracy, respectively. In the Salween Basin, the *Tatmadaw's* military campaigns intensified towards the Communist Party of Burma and EAOs from the 1970s onwards, which by the early 1980s were displacing tens of thousands of ethnic people as internally displaced people as well as across the border to Thailand. Even as a growing number of EAOs have signed the National Ceasefire Agreement (NCA) since 2015 and engaged in peace negotiations, the present level of violence is at its most intense since the 1980s and the status of the peace negotiations are precarious (Jolliffe, 2018: 359–370). Within the Salween basin, the Karen National Union (KNU) and the Restoration Council of Shan State (RCSS), as well as six smaller EAOs, signed the NCA in October 2015 (Middleton *et al.*, 2019). However, the territories of the KNU and RCSS have regularly witnessed *Tatmadaw* operations, which together with shortcomings of the peace negotiations, have increasingly tested the ceasefires in place.

Initial plans for large dams in Myanmar on the Salween River date to the 1970s, but gained momentum since 1988 when Myanmar's military junta government sought to develop closer relations with China and Thailand (Magee and Kelley, 2009). Thailand was intended to be a key power importer for the hydropower projects on the lower portion of the cascade, as well as an investor. The upper projects of the cascade in Shan State (Nongpha, Kunlong and possibly Ywathit) are reportedly intended to export electricity to China. There was also interest from Thailand's government on how dams on the Salween River mainstream might be a source of water to transfer to the neighbouring Chao Phraya basin to address water shortages. A modified version of this plan that would divert water from two Salween tributaries within Thailand is currently being actively promoted by Thailand's Royal Irrigation Department (Deetes, 2020). These plans catalysed a temporary institutionalisation in 1989 when a cross-border intergovernmental joint working group between Thailand and Myanmar was established to prepare feasibility studies.

While these plans faltered during the 1997 Asian Financial Crisis, they were picked up again under the government of Prime Minister Thaksin Shinawatra (2001–2006). Since then, power imports from Myanmar have been scheduled into various iterations of Thailand's Power Development Plan, but are yet to be fulfilled. Meanwhile, in Myanmar although a definitive energy master plan is yet to be published since the country's transition to a semi-civilian government in 2012, various draft plans supported by international donors in collaboration with the Union Government, namely the Asian Development Bank, the Japan international cooperation agency and the World Bank, propose hydropower as a key source for electricity generation (Middleton *et al.*, 2019). These projections include exploiting the country's hydropower potential estimated to be 100 000 MW of capacity, of which 40% is located in the Salween basin. The current status of the Salween projects, however, is uncertain with mixed messages issued from the Thai and Myanmar governments on whether the projects are being actively considered or suspended, at least until violent conflict has ended near the project sites (Middleton *et al.*, 2019). Most recently, it has been reported that China has offered to fund the construction of Thailand's water transfer project in exchange for receiving permission to build three of the Salween mainstream dams on the Myanmar–Thailand border (Lindsay, 2020).

Decision-making surrounding the Hat Gyi Dam is complex. The proposed project site is located on the border of Hpa-an and Mutraw districts, Karen State, 47 km downstream of the Thai Border beyond the confluence with the Moei River. The territory surrounding the dam site has a long history of armed conflict which continues into the present. Reflecting a complex landscape of hybrid governance, the project site itself is controlled by a Border Guard Force battalion allied with the *Tatmadaw*, while the reservoir would extend up into Mutraw district that is controlled by the KNU's Karen National Liberation Army fifth Brigade. Since 2015, when the KNU signed the NCA, according to civil society monitors, there has been a growing presence of *Tatmadaw* troops in Karen state, and tens of instances of armed conflict including in northern Karen State's Mutraw District forcing thousands of villagers to flee their homes (KPSN, 2018; Nyein, 2018). In

September 2016, it was reported that fighting between an allied force of BGF and *Tatmadaw* troops, and the Democratic Karen Buddhist Army – a small splinter faction of the Democratic Karen Benevolent Army formed in January 2016 – had broken out East of the Hat Gyi Dam site, displacing almost 6000 thousand civilians (Rujivanarom, 2016). By the end of the fighting, the BGF troops had consolidated territorial control over the most direct access road from the Thailand border to the Hat Gyi Dam site (KRW, 2016). KNU leadership, various civil society groups and academics have all suggested that the fighting links to territorial control of the Hat Gyi Dam site (Karen News 2016; KRW, 2016; Suhardiman *et al.*, 2017b).

Despite the conflict in the area, the project developers have sought to initiate the project now for at least 15 years. Even as early survey work was temporarily halted in 2004 following the death of two surveyors from a landmine and grenade fire (Zerrouk, 2013), in June 2006, a memorandum of understanding was signed over ownership and investment in the project between the SOE Electricity Generating Authority of Thailand (EGAT) (45%), China's Sinohydro Corporation (40%) and Myanmar's Ministry of Electric Power No. 1 (15%). In this agreement, EGAT (subsequently 'EGAT International') would lead construction, while Sinohydro Corporation (PowerChina) would be the major funder (Erawan, 2014). 75% of the dam's electricity production is planned to be exported to Thailand (Erawan, 2014). Over time, the project has increased in size from 300 MW initially to 1360 MW project at present (Salween Watch Coalition, 2016).

As project preparations proceeded, civil society groups in Thailand and globally critiqued the EIA⁵ and the project, which they claimed underestimated the environmental and social costs and did not sufficiently acknowledge resistance to the project by local Karen communities (Magee and Kelley, 2009). In February 2007, Thai civil society and community representatives also submitted a complaint to the National Human Rights Commission of Thailand (NHRCT), which conducted an investigation that recommended that the Thai government suspend the Hat Gyi Dam. In late 2007 as a revised EIA was being prepared, an attack on the project site killed an EGAT staff member (Zerrouk, 2013).

After the attacks, EGAT announced it was suspending preparatory work at the project site, turning its focus instead to power import projects from Laos. Despite this statement, EGAT maintained its interest in the project. For example, in December 2008 it was reported that EGAT had completed project feasibility and EIA reports (TERRA, 2014).

Responding to the NHRCT report in May 2009, Thailand's Prime Minister Abhisit Vejjajiva (2008–2011) established a Special Commission on Human Rights to investigate the project. In June 2009, a subcommittee was formed with government officials, academics and representatives from the TNHRC and civil society, reflecting a new hybrid governance arena. Based on the subcommittee recommendations, in January 2010 the Prime Minister approved a third-party organisation: to make information public and transparent; to hold public consultations; and instructed EGAT to conduct more studies and assessments in Thailand. Yet, momentum was still maintained by the project developers on furthering the project. For example, in April 2010, months before the transition to the semi-civilian government of the USDP in Myanmar, a Memorandum of Agreement was signed under the military government between the project partners in Naypidaw (Kean, 2010), while in Thailand in 2011 the subsequent government of Prime Minister Yingluck Shinawatra (2011–2014) did not carry forward the third-party organisation's work. Thai communities and civil society, however, continued to challenge the project for its environmental impacts and the number of people affected (Salween Watch Coalition, 2016), as well as deficits in the project documents given that the project's study team were unable to access areas of the river affected by conflict (The Community Network for Resource Management in the Salween River Basin, 2015). Recently, within political arenas, there have been mixed messages on the Hat Gyi Dam. On the one hand, in 2016 the Permanent Secretary of Myanmar's Ministry of Electric Power, and Thailand's Permanent Secretary for Energy both suggested the projects might proceed, while in 2017 Thailand's Ministry of Energy stated it would not consider the Hat Gyi Dam until conflict had ceased in the area (Middleton *et al.*, 2019).

Overall, in Thailand and Myanmar domestically and through transnational civil society

networks between Thailand and Myanmar and beyond, communities and civil society groups have continued to challenge – and stall – the plans for the Hat Gyi Dam and the broader Salween dam cascade (Simpson, 2013; Bright, 2019). A range of strategies in defence of the local and transboundary commons have been deployed that include undertaking research, organising gatherings that celebrate the river, as well as acts of peaceful resistance such as petitions and protests (Lamb *et al.*, 2019). Civil society and communities have also challenged the Hat Gyi Dam by building alternatives that support the protection and furthering of local (and indirectly transnational) commons (Lamb, 2014b). In Myanmar, for example, the NGO KESAN has been working in Karen State with nearby downstream communities on the Kaw Ku Island and Daw Lar Lake that connects to the Salween River mainstream to support the institutionalisation of community-led local resource governance (Bright, 2019). Meanwhile, upstream of the proposed dam in the KNU controlled territory communities and civil society have worked towards a vision for a Salween Peace Park that incorporates community-based conservation work, decentralised energy projects and customary systems of land management, which was officially launched in December 2018 (KNU and KESAN, 2016; Götz, 2019). In Thailand, Hengsuwan (2019) outlines the multiple ways in which communities alongside the Salween River have promoted local forms of development and collaborated with local state agencies including to secure land rights, citizenship rights, access to basic services and the provision of local infrastructure, even as the Hat Gyi Dam project developers have often sought to frame them as anti-development for their opposition to the dam projects.

The case of Hat Gyi Dam demonstrates the complex hybrid governance processes and the multiple arenas within which water governance occurs, involving various combinations of state decision-making, civil society and social movements and business negotiation processes. With no formal intergovernmental river basin organisation in place, it is these multiple fragmented collective actions that constitute the transboundary hybrid governance processes that also shape the degree to which the river is enclosed or maintained as commons. As

highlighted by Gaventa (2006), multi-scaled processes of public policy decision-making – which he differentiates from the perspective of democratised public participation into ‘closed’, ‘invited’ and ‘claimed/created’ spaces – are fundamentally structured by power-relations of varying degrees of asymmetry. In this case, while some processes have been highly opaque and closed, such as the agreements signed for the Hat Gyi Dam project, others have sought to balance interests and power asymmetries in more inclusive and transparent processes of hybrid governance, for example Thailand’s sub-committee that emerged from the Special Commission on Human Rights in 2009. Crucially, some non-state led alternatives, such as the community-based resource governance at Kaw Ku Island (Suhardiman *et al.*, 2017b) and Daw Lar Lake are fundamentally different approaches towards water governance and maintenance of the local commons and reveal the current diversity of hybrid governance arrangements in place in multiple places across the basin.

Conclusions

Scholars have increasingly brought to light disjunctures in hydropower decision-making as well as regarding transboundary water governance in general, including on access to information, public participation and accountability (e.g. Molle *et al.*, 2009; Suhardiman and Giordano, 2015). This recent scholarship has placed emphasis on linking hydropower decision-making landscapes across scales (e.g. from transboundary to local) and addressing issues of distributional and procedural justice, but has often centred on to the (re) shaping of state’s formal governing structures and planning. In this paper we have sought to show how fragmented hybrid governance arrangements connect parallel decision-making landscapes in various locations of the Salween basin, shaped by asymmetrical power relations and intertwined with political realities, to influence hydropower plan outcomes with implications for local and transboundary commons. This is especially apparent in the case of Myanmar, where key formal state-led decisions on the planned Salween dams are largely opaque, and even the assumptions of a Westphalian

state do not fully hold, namely that the national government is the not the sole source of political authority. Rather, in the case of the Salween dams in Myanmar, many other processes are significant, ranging from the impact of violent armed conflict and the ongoing peace negotiations under the NCA, to the initiatives of civil society and social movements that both challenge hydropower projects and propose alternatives. Also significant are the hybrid governance processes within Thailand, which influence plans for transborder investment and power trade. Again, while some decision-making processes are relatively unaccountable such as those of EGAT, some arenas of hybrid governance have offered a conduit for civil society and community actors to influence the plans for dams, for example the investigation hosted by the NHRCT and the subsequent committees convened. Meanwhile, in the case of China, the paper shows that hybrid governance processes – within which civil society has bridged local communities' development needs to concerns with government's policy decisions – have at least influenced national and provincial planning to shift plans for a mainstream hydropower cascade to a growing momentum for a national park in the upper basin watershed, even as power asymmetries are significant and in favour of the state and SOEs.

Even as large dam-oriented development visions remain on the public policy agenda, especially in the lower basin, ecological protection has also gained more emphasis and the Salween River's mainstream remains free-flowing. In this sense, the river can be understood as a largely uninstitutionalised transboundary commons that has been shaped by fragmented collective action within hybrid governance mechanisms in multiple places of the basin. The perspective of critical institutionalism has been important throughout to show how a diversity of processes are in play and how non-state agency can recraft and influence state institutionalised processes, which are dynamic and less than fully defined. With a concern for maintaining the transboundary commons in a socially just and ecologically sustainable way, we suggest that an intergovernmental river basin organisation might be necessary, but not enough given the current state-biased power asymmetries that may result in a state-centric managerial approach and might

privilege the interest of private-sector or military actors (Ferguson, 1994; Bachtold, 2015). Rather we propose that innovative hybrid governance arrangements should be emphasised that from the beginning acknowledge the legitimate role for non-state actors, especially community-based organisations and civil society, enabling them to strategically engage within multi-scaled hybrid networks from the local to the transnational level in a reciprocal relationship with state agencies, and that ensures principles of procedural justice including access to information, public participation, and decision-making accountability.

Notes

- ¹ Internationally referred to as the Salween River, the is known by many names, including the Nu Jiang in China, the Thanlwin River in Myanmar, and the Salawin River in Thailand (Lamb, 2019)
- ² Upper Thanlwin (Kunlong), Nawnghpa (Nongpha), and Ta Sang (Mong Ton) in Shan State; Hatgyi in Karen State; and Ywathit in Karenni State (Middleton *et al.*, 2019)
- ³ Huadian Group held 51% of the shares, and Yunnan Energy Investment Group, China Resources Power, and Yunnan Power Investment held respectively 20, 19, and 10%.
- ⁴ Recent detailed analysis of the wider Salween cascade include: Magee and Kelley, 2009; Lamb, 2014a; Salween Watch Coalition, 2016; and Middleton *et al.*, 2019
- ⁵ In late 2006, the Environment Research Institute of Chulalongkorn University was commissioned to prepare the project's EIA.

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