

Rivers of peace and rivers of conflict

A look at international law governing riparian states and what Asian countries can learn from Europe in managing their international watercourses

Tommy Koh
and Daniel Kang

For The Straits Times

There are two kinds of rivers in the world: national and international.

An international river is one that flows through the territory of more than one country. Instead of “international river”, the United Nations uses the term “international watercourse”, which is broader and includes all interconnected waters, including rivers, tributaries, lakes, glaciers and underground aquifers.

There are 310 international rivers, as listed under the Register of International River Basins. A state through which an international river flows is called a riparian state.

An international river can be a river of peace if all the riparian states agree to cooperate in managing the river, to keep it clean, navigable and sustainable. An international river can be a river of conflict if the riparian states act unilaterally and do not cooperate in managing the river.

Lessons from Europe

The successful manner in which Europe manages its international rivers contains some lessons for Asia.

THE DANUBE RIVER

The river Danube is the second-longest river in Europe. It has 10 riparian states, namely Germany, Austria, Slovakia, Hungary, Romania, Croatia, Serbia, Bulgaria, Moldova and Ukraine.

All of them are parties to the 1994 Danube River Protection Convention. The convention’s objectives are:

- sustainable water management;
- conservation of surface and ground water;
- pollution reduction; and
- prevention and control of floods and accidents.

Although the convention contains a dispute settlement mechanism, it has never been used. Differences between the riparian states have always been settled by consensus.

THE RHINE RIVER

The Rhine is an important river in Europe. Its riparian states are: Switzerland, Austria, Germany, France and the Netherlands. The five riparian states, as well as Luxembourg and the European Union, are parties to the 2000 Convention on the Protection of the Rhine.

The convention has eight objectives. These include maintaining and improving the quality of the Rhine’s waters through the prevention, reduction, or elimination of pollution caused by industry, agriculture and shipping – essential, as another objective is the production of safe drinking water from the Rhine. Yet another objective is to take ecological requirements into account when developing projects,



A view of the Mekong River bordering Thailand and Laos, as seen from the Thai side in Nong Khai. The Mekong has come in for greater international attention in recent times because of concerns over dam building by China and Laos that poses a threat to the food security of the lower riparian states, say the writers. PHOTO: REUTERS

such as hydroelectric power.

Decisions by the parties are taken by consensus. Disputes between the parties are to be referred to arbitration.

What lessons can we learn from the Danube and the Rhine?

First, all the riparian states are parties to a legally binding agreement. Second, the riparian states accept that they share a community of interests. Third, they accept the duty to cooperate. Fourth, they have refrained from taking unilateral action. Fifth, they agree to take decisions by consensus. Sixth, they agree to be bound by the dispute settlement mechanism prescribed by the respective conventions.

Asia’s international rivers

Asia has many international rivers. These include the Indus, which is shared by India, China and Pakistan; the Ganges, which is shared by India and Bangladesh; the Brahmaputra, which is shared by China, India and Bangladesh; the Salween, which is shared by China, Thailand and Myanmar; and the Mekong, which is shared by China, Myanmar, Laos, Thailand, Cambodia and Vietnam.

The Indus and the Ganges

In 1960, when relations between India and Pakistan were very fragile, the two countries still managed to conclude the 1960 Indus Waters Treaty. The agreement is in force and is effective in settling disputes between them. A recent complaint by Pakistan against India under the Treaty was settled by arbitration in 2013.

In 1996, India and Bangladesh concluded the Agreement On Sharing Of The Ganges Waters at Farakka. This agreement does not create a community of interests in the shared management of the

Ganges. It has left Bangladesh with numerous concerns and unresolved issues.

The international law of international rivers

There are two kinds of international law: treaty law and customary law. A treaty is binding only on its parties.

An example would be the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses which, among other things, commits its members in utilising a river’s resources within its territory to “take all appropriate measures to prevent the causing of significant harm to other watercourse states”.

The convention has come into force and has 37 parties, including Vietnam. As China and Laos are not parties to this convention, they are not bound by it.

Unlike treaty law, customary international law is binding on all states. The International Court of Justice ruled in the 1997 *Gabcikovo-Nagymaros* case that the riparian states of an international river share a community of interests. This means that the riparian states are bound by the principle of equitable and reasonable use of the river.

In other words, an upper riparian state’s use of the river, in its territory, must be “equitable” and “reasonable”. It would not be equitable or reasonable for an upper riparian state to ignore the legitimate interests of other riparian states.

The Mekong River

The Mekong River is not only one of the world’s longest rivers, but it has also been referred to as the world’s most productive river as it cuts its way through China, Myanmar, Laos, Thailand,

Cambodia and Vietnam – over 60 million people depend on the river for their living.

In Cambodia, the Tonle Sap and the Mekong flood plains cover the entire country. The river provides people with fish, agriculture and navigation.

The Vietnam Delta, which is the country’s rice bowl, produces 60 per cent of Vietnam’s rice and fish.

The Mekong has come in for greater international attention in recent times because of concerns over developments that pose a threat to the food security of the lower riparian states.

China has built 11 dams on the river. Laos, which hopes to generate revenue from hydropower, has built more than 50 dams over the past 15 years, with more under construction in rivers and streams around the country. Together, the dams have had a devastating impact on the lower riparian states.

A study by the Mekong River Commission shows that fish stocks could fall by as much as 40 per cent. It also states that there could be a 97 per cent reduction of sediments flowing downstream. This could lower soil fertility and affect agricultural productivity.

Are the six riparian states of the Mekong parties to a legally binding agreement? The answer is no.

Four of them, namely Cambodia, Laos, Thailand and Vietnam, are parties to the 1995 Mekong Agreement.

Article 1 of the Agreement commits its members to “cooperate in all fields of sustainable development, utilisation, management and conservation of the water and related resources of the Mekong River Basin... in a manner to optimise the multiple-use and mutual benefits of all riparians and to minimise the harmful effects that might result from natural occurrences and

man-made activities”.

The first imperative is to persuade China and Myanmar to join this Agreement. The lesson from Europe is that all the riparian states should be parties to a legally binding agreement.

We should point out that under the Mekong Agreement, no country can veto another country’s dam projects. There is an obligation to consult, but a riparian state like Laos has insisted that it has a right to use its water resources. Laos wants to build 100 dams by 2030, to become the “battery” of South-east Asia.

The second imperative is to persuade China and Laos, the upper riparian states, that they do not have absolute sovereignty over the river in their territories.

Their sovereignty is balanced by the community of interests they share with the lower riparian states. Their exercise of sovereignty is limited by the obligation to ensure that their actions do not cause significant harm to other states.

This applies to the building of dams by China and Laos. The law does not prevent them from building dams. However, before they build a new dam, they have a legal obligation to undertake an environmental impact assessment and to notify the lower riparian states of their plans. The law also requires them to ensure that the new dam does not cause significant harm to the lower riparian states.

Existing institutions

Apart from the 1995 Mekong Agreement and its well-regarded secretariat, the Mekong River Commission, there are many other institutions relating to the Mekong. In 1992, the Asian Development Bank brought together all six riparian states in the Greater Mekong Subregion

Economic Cooperation Programme. The agenda of the programme is to promote connectivity, competitiveness and community.

In 1996, Asean established the Asean Mekong Basin Development Cooperation to engage China. The programme’s main achievement so far is a plan to build a railway connecting Kunming and Singapore.

In 2015, China launched the Lancang-Mekong Cooperation, which includes all six riparian states. This is the platform that China uses to engage the five Asean riparian states. Many meetings are held annually and at all levels. However, the issue of dam building by China and Laos is not on the forum’s agenda.

A river of peace and cooperation

Our ambition is to make the Mekong River a river of peace and cooperation. Towards this end, we respectfully urge China and Myanmar to consider joining the 1995 Mekong Agreement.

Our second plea to China and Laos, the two upper riparian states, is to accept the rule of customary international law governing international rivers, which is, that they share a community of interests with the lower riparian states.

We want to conclude by appealing to all Asian riparian states: Let us show the world that we can manage our international rivers as well as the Europeans.

stopinion@sph.com.sg

• Professor Tommy Koh is chairman of the Governing Board of the Centre for International Law (CIL) at the National University of Singapore. Daniel Kang is a research assistant with the CIL’s International Dispute Resolution team.