

**– Meeting Summary –**

**Mekong River Commission Secretariat  
Brainstorming Meeting on Addressing Differences and Disputes  
Vientiane, Lao PDR – February 6, 2007  
Don Chan Palace Hotel**

**I. Summary**

The Mekong River Commission Secretariat (MRCS) organized a brainstorming meeting on February 6, 2007, for programme staff to contribute to an MRC approach for addressing transboundary differences and disputes. Led by the International Cooperation and Communication Section (ICCS), the meeting objectives were to: (1) identify the upcoming needs relating to conflict management, (2) define MRCS's role in addressing differences and disputes; and (3) brainstorm possible implementation strategies and approaches for addressing differences and disputes. Environmental Cooperation-Asia (ECO-Asia), a regional program of the United States Agency for International Development (USAID), worked with MRCS to facilitate the program.

Forty-two participants from the MRCS attended the meeting, including representatives from the following programmes: Basin Development Plan (BDP); Flood Management and Mitigation (FMMP); Navigation (NAP); Water Utilization (WUP); Agriculture, Irrigation and Forestry (AIFP)- Watershed Management; Environment Division (EP); International Cooperation and Communication Section (ICCS); Technical Support Division (TSD); Operations Division; and the Office of the CEO, including the CEO. Resource persons from the Flood Management and Mitigation Programme, Oregon State University, and ECO-Asia also attended the meeting to share ideas and information with MRCS staff and to support discussion.

Meeting activities included technical presentations by MRC programmes highlighting current and potential transboundary conflicts, and current MRC activities to address conflict. Through small group discussions, participants identified the potential role of the MRCS in conflict management and prevention. In particular, participants decided that MRCS should:

- Focus on conflict prevention and not conflict resolution, since there is no mandate in the 1995 Mekong Agreement for the MRCS to resolve disputes;
- Create linkages among existing conflict management and prevention components in each programme;
- Identify a role for MRCS in supporting National Mekong Committees (NMCs) and other entities requesting MRCS support;
- Develop conflict management-related terminology across the entire organization to establish a common understanding;
- Coordinate and identify potential conflict “hotspots” that will provide a foundation for cooperation and raise awareness for use in future programme planning; and
- Establish a formal coordination function within MRCS – e.g., one resource person to coordinate and support conflict management-related activities across all MRC programmes.

Through a joint programme of cooperation, ECO-Asia and MRC will work together to address these findings. ECO-Asia and MRC share the common objective of enhancing effective regional development

cooperation in the Mekong River Basin by developing conflict management capacity and mechanisms such as co-management, public involvement and institution building. To support achievement of Goal 2 of the MRC Strategic Plan for 2006-2010, ECO-Asia and MRCS are collaborating on a multi-year support program for the MRCS and Member Countries to work together to develop and adopt improved conflict management policies, plans, and mechanisms.

In cooperating with MRC, ECO-Asia will work across the full range of MRC programmes that are actively engaged or planning activities in conflict management, including the Environment Programme and Flood Management and Mitigation Programme. In particular, in partnership with the MRCS and NMCs, ECO-Asia will organize a series of activities designed to build capacity of the MRCS, NMCs and relevant line agencies in public consultation, conflict prevention, and conflict management.

Based on the outcomes of the brainstorming meeting, MRCS and ECO-Asia will work together to: (1) develop common terminology related to conflict management and prevention; (2) develop a hotspots map that identifies existing or potential transboundary issues; (3) develop an inventory of transboundary case studies and best practices; (4) assess the historical events and trends in the Basin; (5) develop tools and capacities on awareness-raising and skills development; and (6) help transition skills development to the country level.

## **2. Transboundary Cooperation in the Mekong River Basin**

### Background

As the Mekong sub-region develops, riparian countries have been constructing dams, dikes and irrigation, and navigation waterways that can either impact or benefit river livelihoods. A challenge for Mekong River countries is the adoption and implementation of policies and practices that enable participatory and collaborative engagement for planning and development that support sustainable development that both protects vital ecosystems and promotes economic and social prosperity, while ensuring prevention, management and mitigation of conflict.

### MRC-USAID Collaboration on Promoting Regional Cooperation

The MRC Strategic Plan for 2006-2010 includes a goal for the MRC to enhance effective regional cooperation. One objective under this goal is, “[t]o identify potential transboundary issues for negotiation, mediation and conflict prevention; and develop mediation and conflict management capacity.” To support achievement of Goal 2 of the MRC Strategic Plan, ECO-Asia and MRCS are collaborating on a multi-year support program for the Member Countries to work together to develop and adopt improved conflict management policies, plans, and mechanisms. ECO-Asia support will include targeted technical assistance and training, small grants and counterpart exchange to share best practices.

As a first step in this joint program, ECO-Asia and the MRCS organized the Conflict Management Program Inception Workshop in June 2006, in Udon Thani, Thailand for participants from Member Countries to share experience and information on strategies for regional cooperation. To prepare for the inception workshop, USAID and MRCS conducted a planning meeting in June 2006, in Vientiane, Lao PDR to share information and ideas, and identify strategies for collaboration in supporting implementation of Goal 2 of the MRC Strategic Plan. At that meeting, MRCS identified the following proposed activities: (1) conducting a historical analysis and mapping of conflict and cooperation; (2) developing common conflict management terminology for use by MRCS and NMCs; (3) developing a conflict management strategy for MRC; (4) developing ideas for improved institutional arrangements and capacity at MRCS to support conflict management; and (5) building capacity within MRC programmes.

At the Inception Workshop in June 2006, NMC and MRCS representatives identified potential areas for cooperation in supporting implementation of Goal 2. As detailed in the Table 1 below, focus areas included: situational analysis, institutional strengthening, and capacity building.

**Table 1: MRC-USAID Conflict Management Program Focus Areas Identified by NMCs**

<b>MRC-USAID CONFLICT MANAGEMENT PROGRAM</b>	
<b>Focus Areas</b>	<b>Potential Activities</b>
Situational Analysis	<ul style="list-style-type: none"> <li>▪ Develop inventory of existing or potential transboundary issues in the basin</li> <li>▪ Prepare needs assessments (both institutional and capacity)</li> <li>▪ Assess historical events and trends of transboundary issues in the basin</li> </ul>
Institutional Strengthening	<ul style="list-style-type: none"> <li>▪ Develop MRC Conflict Management Strategy (joint work program for implementing Goal 2 and/or operational approach linked to MRC public participation strategy)</li> <li>▪ Support development of institutional analysis of MRC and Member Country relationships – identify roles and responsibilities, key challenges, etc.</li> <li>▪ Strengthen existing or develop new mechanisms for implementing 1995 Mekong Agreement</li> </ul>
Capacity Building	<ul style="list-style-type: none"> <li>▪ Develop common terminology and materials in local languages</li> <li>▪ Assign national focal points</li> <li>▪ Provide regional tools and training (awareness raising and skills development – joint fact finding, mediation, etc.)</li> <li>▪ Help transition skills development to country level</li> <li>▪ Support development of river basin committees</li> </ul>

### **3. MRCS Brainstorming Meeting on Addressing Differences and Disputes**

As part of the joint program on conflict management, MRCS and ECO-Asia organized a brainstorming meeting on February 6, 2007, for the MRCS to discuss its mandate and role in addressing existing and potential transboundary differences and disputes. The objectives of the meeting were for MRCS programme staff to: (1) identify the upcoming needs relating to conflict management, (2) define MRCS’s role in addressing differences and disputes; and (3) brainstorm possible implementation strategies.

Participants included representatives from the following programmes: BDP; FMMP; NAP; WUP; AIFP- Watershed Management; EP; ICCS; TSD; Operations Division; and the Office of the CEO, including the CEO. Resource persons from the FMMP, Oregon State University, and ECO-Asia also joined the meeting.

#### Current and Potential Issues, Differences and Disputes within the Mekong River Basin

As part of this session, representatives from the ICCS and the EP presented major trends in the basin, with projections stretching to 2100. Factors included foreign direct investment increases, related income disparities and possible conflicts. As market forces increasingly impact decision-making, it was recommended that MRC should consider how basin development planning could be a tool for preventing conflict.

Another major trend is population growth, causing further demands on food, irrigation, and energy, which will increase pressure and competition for water resources. In this case, to prevent conflicts, MRC may have to look at sectors outside water resources sector. Climate change was also presented as a major factor that could lead to transboundary conflict; adapting to impacts on agriculture, water resources and health will require significant new efforts in planning and regional cooperation. Additionally, it was

noted that there may be a challenge related to implementing the principles of Integrated Water Resources Management (IWRM) and current MRC procedures/principles.

To provide a sense of existing and potential transboundary differences and disputes occurring in the basin, MRC programmes staff gave presentations to on specific issues identified in their programme areas. Table 2 provides a summary of these issues.

**Table 2: Current/Potential Transboundary Issues Identified by MRC Programmes**

MRC Programme	Current/potential Issues
Environment	<ul style="list-style-type: none"> <li>▪ Pollution (point source pollution is emerging; industry, spills and mining; bio-accumulating toxic elements and POP are potentially future concerns).</li> <li>▪ Use of natural resources (over exploitation and unsustainable use have direct impact on rural livelihoods, affecting the poor more; rural populations still depend heavily on natural environment).</li> <li>▪ Changes in environment (flow changes on the tributaries and land cover).</li> </ul>
Flood Management and Mitigation	<ul style="list-style-type: none"> <li>▪ Flooding – main causes of transboundary floods are structural measures and land use changes.</li> <li>▪ Challenge is management of transboundary floods – countries have devoted time/effort to national flood emergency management, not transboundary river and floodplain management.</li> </ul>
Agriculture, Irrigation and Forestry Programme- Watershed Management Project	<ul style="list-style-type: none"> <li>▪ Multi-stakeholder management – objective is to maintain watershed functions. Balancing of ecological, social and economic factors.</li> <li>▪ Potential disputes between national river basin organisations and watershed committee, or watershed committee and catchment (institution), provincial level, district level, commune level, or between sectors.</li> </ul>
Navigation	<ul style="list-style-type: none"> <li>▪ Restrictions on freedom of navigation (regulatory limitations of free navigation).</li> <li>▪ Different systems of aid to navigation.</li> <li>▪ Risks for cross-border pollution from shipping (environmental and commercial damage).</li> </ul>

MRC Programmes and Goals on Addressing Transboundary Differences and Disputes

The 1995 Mekong Agreement provides a full range of options for promoting and facilitating cooperation and coordination, and addressing contentious issues, differences and disputes through Articles 7, 8, 10, 18C, 24F, 34, and 35. There is no mandate in the 1995 Agreement for MRCS or the CEO to mediate or otherwise be directly involved in addressing and resolving differences and disputes, *unless and until* the Joint Committee (JC) may so direct; however, activities and capabilities of MRCS to provide timely data and information, and analyses, and perhaps even forecast potential problems to avoid differences or disputes are available.

Articles 34 and 35 expressly provide for the resolution of inter-State disputes. Article 34 provides that the Commission “shall make every effort to resolve the issue” in accordance with the MRC Council’s dispute resolution function under Article 18C and JC’s dispute resolution role under Article 24F. Rule 18 of the Rules of Procedure of Council and Rule 23 of the Rules of Procedure of the JC provide further detail on the respective dispute resolution functions of each MRC body. Article 35, which applies where the Commission is unable to resolve the dispute in a timely manner, suggests that the Governments may, “by mutual agreement, request the assistance of mediation through an entity or party mutually agreed upon, and thereafter to proceed according to the principles of international law.”

The MRC Strategic Plan for 2006-2010 includes a goal for the MRC to enhance effective regional cooperation (see box below). One objective under this goal is, “[t]o identify potential transboundary issues for negotiation, mediation and conflict prevention; and develop mediation and conflict management capacity.”

**Mekong River Commission (MRC)  
MRC Strategic Plan 2006 - 2010**

**Goal 2: To enhance effective regional cooperation.**

*This goal will entail the development of dispute resolution and compromise mechanisms such as co-management, public involvement and institution building. In an organizational perspective the MRC will establish links with existing and emerging sub-basin organizations.*

**The Outcome of this goal will be increased use of the MRC by its Member Countries as the key mechanism for joint planning, cooperation, and resolution of transboundary water-related issues. A basin-wide dialogue will result in an increased number of activities with the upper riparians.**

**Objectives**

- 2.1 To increase MRC’s function as a transparent and effective cooperation mechanism among Member States and develop and demonstrate enhanced linkages, compatibility and complementarities of partnerships with other regional organizations and initiatives such as GMS, the World Bank’s MWRAP, ACMECS, ASEAN, etc., including sub-basin organizations;
- 2.2 To complete, adopt and make applicable mechanisms, procedures and guidelines as required under the 1995 Mekong Agreement;
- 2.3 To identify potential transboundary issues for negotiation, mediation and conflict prevention; and develop mediation and conflict management capacity;
- 2.4 To promote and improve dialogue and collaboration with China and Myanmar.

**MRC Programme Activities Addressing Transboundary Issues**

At present, MRC programmes are implementing a wide range of activities and initiatives related to conflict prevention and conflict management. To provide an overall picture of ongoing activities, at the brainstorming meeting, MRC program representatives and resource persons gave presentations on their programmes. As a summary of presentations, Table 3 presents MRC activities that address issues, differences and disputes within specific programme areas.

**Table 3: MRC Programme Activities Addressing Transboundary Issues**

MRC Programme	Activities to Address Issues, Differences and Disputes
Environment	<ul style="list-style-type: none"> <li>▪ Recently asked by the JC to address hot spots.</li> <li>▪ Management of transboundary wetlands.</li> <li>▪ Evaluation of the EIA on the Upper Mekong navigation improvement.</li> <li>▪ Water quality monitoring on the Sesan River.</li> <li>▪ Impact diagnostic study on 3S.</li> <li>▪ EP has been involved in:               <ul style="list-style-type: none"> <li>○ Guidelines for transboundary EIA</li> <li>○ Transboundary Environmental Risk Assessment</li> <li>○ Responding to request to address potential conflict issues that are environmental but not necessarily transboundary (NT2, T-H, T-S, etc.)</li> </ul> </li> </ul>
Flood Management and Mitigation	<p>Drafted discussion papers on MRC mandate re: conflict prevention and dispute resolution; developed an approach and ToR for the implementation of Component 3 (C3); conducted one round of national and regional consultations on the implementation of C3; presently in the process of modifying C3 document, as requested by the Member States during the regional consultation meeting; and compiling an inventory of possible transboundary issues in each of the member states to be implemented through the NMCs. C3 will:</p> <ul style="list-style-type: none"> <li>▪ Provide tools, cooperation and dialogue on structural proposals C2 with potential transboundary effects;</li> <li>▪ Provide tools, cooperation and dialogue on investment proposals ADB (FMMP) and World Bank (MRWAS) with potential transboundary effects;</li> <li>▪ Provide tools, cooperation and dialogue on selected BDP investment/structural proposals with potential transboundary effects.</li> </ul>
Agriculture, Irrigation and Forestry Programme - Watershed Management	<ul style="list-style-type: none"> <li>▪ Comprehensive programme to provide necessary watershed management information, knowledge and skills involving decision-makers, middle managers, local leaders, planners and extensionists, and training of trainers.</li> </ul>
Navigation	<ul style="list-style-type: none"> <li>▪ Facilitator between Cambodia and Vietnam on cross-border navigation agreement and protocols: set up road-map for negotiations; prepared an action plan for implementation of the finalised agreement and protocols; provision of legal study (identifying opportunity and challenges); technical assistance in drafting new provisions of the protocol; and technical assistance in developing harmonization of rules and regulations.</li> <li>▪ Need for harmonization of NavAids.</li> <li>▪ Traffic safety and environmental sustainability: prevention of pollution is priority (focusing on rule and regulation, standards, procedures); contingency planning; training; and intervention procedures.</li> </ul>
Basin Development Planning	<ul style="list-style-type: none"> <li>▪ Mainstreamed issues of differences from the onset of the planning process (3-parallel processes to address differences).</li> <li>▪ Dialogue and negotiation based on mutual understanding and mutual benefits; data and information; and planning tools and knowledge base.</li> </ul>
Water Utilization	<ul style="list-style-type: none"> <li>▪ Procedures for Data and Information Exchange and Sharing (PDIES) (2001).</li> <li>▪ Technical Guidelines for Information System and Custodianship (2003).</li> <li>▪ Procedures for Notification, Prior Consultation and Agreement (2004) (PNPCA) and Technical Guidelines to Implement PNPCA (2005).</li> <li>▪ Procedures for Water Use Monitoring (PWUM) (2004).</li> <li>▪ Procedures for Maintenance of Flow on the Mainstream (PMFM) (2006) and Technical Guidelines to Implement PMFM (2005).</li> <li>▪ Procedures for Water Quality (PWA) (2006 waiting to sign).</li> <li>▪ Intent of these procedures and supporting guidelines: to provide systematic and uniform process for information of the 1995 Agreement for the mutually accepted and riparian equally fair objectives/principles of cooperation for Sustainable Development.</li> </ul>

## Potential Role of MRCS in Conflict Management and Prevention

ECO-Asia facilitated small group discussions to identify the potential role and strategies for the MRCS in conflict management and prevention (see Table 4 below).

**Table 4: Role of MRCS in Addressing Differences and Disputes**

<b>Small Group Discussion: Role of MRCS in Addressing Differences and Disputes</b>	
Is there a role for the Secretariat to develop a conflict resolution mechanism?	<ul style="list-style-type: none"> <li>▪ Focus on ongoing activities with a view to conflict prevention</li> <li>▪ Develop capacity to address conflict at different levels: political level and operational/technical level</li> <li>▪ Develop procedure/platform to solve not only conflict but also interest</li> <li>▪ Provide information/advice in terms of impact assessment of transboundary projects</li> <li>▪ Yes, upon JC request</li> </ul>
Is there a role for the MRCS to support the conflict management approach as described in the 1995 Agreement?	<ul style="list-style-type: none"> <li>▪ No stand-alone role; support to JC and Council</li> <li>▪ Strategic plan is clear- MRC should identify transboundary issues and develop mediation and conflict management capacity. Need "insurance policy." Already things being addressed in programmes, whether they are called conflict management or not</li> <li>▪ Make a linkage among existing projects in each programme</li> </ul>
Who can identify an issue/conflict and raise it with the Secretariat or MRC?	<ul style="list-style-type: none"> <li>▪ Anyone can identify- do you raise it with an anticipation of action or just letting someone know? If former, cannot go directly to MRCS or JC, have to go to NMCs and they go to JC who may ask MRCS to act</li> <li>▪ JC, however, NMCs and government agencies are requesting. Current mechanisms- if government organization requests EP to look into a problem, we would like to ask them to go through the NMCs to make a formal request. NGOs and civil society: if they want action, need to go through the channel of the NMC, however, could bring to MRCS and could be considered- good way for a mandate to put forward certain things. If can be solved at local level, then solved there. Role to be able to provide channel for NMCs approved/agreed to by main partners</li> <li>▪ BDP has mechanism to bring in issues- it identifies opportunities on basis of planning. Civil society- how can they bring in an issue? A national NGO goes through NMC and then to the JC and then MRCS instructed</li> <li>▪ Acknowledge that external requests to address issues may come from external bodies, e.g., concerned line agency, NGO. If serious issue, MRCS should address to JC; MRCS should give potential options to JC on how to manage issue, or write back to party informing them to write to JC, follow up by informing JC the issue has been raised and asking if further action is required</li> <li>▪ Anyone can raise, but upon JC endorsement, any request could be considered</li> </ul>
What should be the implementation strategy of the Secretariat (technical and process coordination, identification of hotspots, lexicon of terminology, capacity building)?	<ul style="list-style-type: none"> <li>▪ Define role of MRCS before strategy. Should be some facility to offer advice and uniform terminology and capacity building. FMMP has already thought of lexicon, could be used as template for other programmes- adopt and work together</li> <li>▪ Need coordination. Centralize some general capacity -- terminology across whole organization. Also subject specific areas for different programmes. Coordination/identification of hotspots- should be proactive to be able to put forward that this is something that is potentially important. How should we address it? Some level of proactiveness, not just reactivity</li> <li>▪ Consult w/countries and determine if there is support for further action</li> <li>▪ Coordination function within MRCS- one resource person to coordinate</li> </ul>

Based on the small group discussions, participants decided that MRCS should address the following issues to clarify and develop its role in conflict management and prevention:

- Focus on conflict prevention and not conflict resolution, since there is no mandate in the 1995 Mekong Agreement for the MRCS to resolve disputes;
- Create linkages among existing conflict management and prevention components in each programme;
- Identify a role for MRCS in supporting NMCs and other entities requesting MRCS support;
- Develop conflict management-related terminology across the entire organization to establish a common understanding;
- Coordinate and identify potential conflict “hotspots” that will provide a foundation for cooperation and raise awareness for use in future programme planning; and
- Establish a formal coordination function within MRCS – e.g., one resource person to coordinate and support conflict management-related activities across all MRC programmes.

## **5. Next Steps**

ECO-Asia and MRCS will work across the full range of MRC programmes that are actively engaged in conflict management, including EP and FMMP. In particular, in partnership with the MRCS and NMCs, ECO-Asia will organize a series of activities designed to build capacity of the MRCS, NMCs and relevant line agencies in public consultation, conflict prevention, and conflict management. Through this cooperative program of technical assistance and training, MRCS and ECO-Asia will also facilitate counterpart exchange and cooperation between riparian Mekong countries to promote sharing of best practices in conflict management in the development of specific tools and strategies for addressing conflict.

Specifically, and based on the small group discussions outcomes listed above, MRCS and ECO-Asia will work together to: (1) develop terminology related to conflict management and prevention; (2) develop a hotspots map that identifies existing or potential transboundary issues; (3) develop an inventory of transboundary case studies and best practices; (4) assess the historical events/trends in the Mekong River Basin; (5) develop tools and capacities on awareness-raising and skills development; and (6) help transition skills development to the country level.