
**Framework Convention
for the Protection of the Marine
Environment of the Caspian Sea**

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CONFERENCE OF THE PARTIES

First Meeting

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Item 7 of the provisional agenda

Protocols to the Framework Convention for the Protection
of the Marine Environment of the Caspian Sea

Note by the interim Secretariat on the Status of Development of Priority Protocols

Background

1. Having entered into force on 12 August 2006, the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention) is the first legally binding agreement ratified by all five Caspian littoral states. The Tehran Convention serves as an overarching legal instrument laying down the general requirements and the institutional mechanism for sustainable environmental protection management in the Caspian region. Being a framework legal instrument, the Tehran Convention envisages that concrete obligations of the Parties will have to be formulated and implemented through ancillary binding instruments, mainly in the form of protocols (Art. 6).
2. At the first Meeting of the State Signatories (Tehran, July 2004), the Caspian government representatives agreed to initiate the development of the first draft protocols for priority areas of concern, namely: *i*) Protocol on Environmental Impact Assessment in Transboundary Context (EIA), *ii*) Protocol on Pollution from Land-Based Sources [and Activities] (LBS), *iii*) Protocol on Biodiversity Conservation. The Meeting also requested UNEP, under its mandate of the Interim Secretariat to the Tehran Convention, to circulate the text of the already drafted Protocol concerning Regional Cooperation in Cases of Emergency to the Governments of the Caspian countries with the recommendation that the countries prepare the Protocol for signing at the First Meeting of the Conference of the Parties .
3. The second Meeting of the States Signatories, (Kazakhstan, February 2006), recommended that “consideration be given under the Convention process to develop an additional protocol on fisheries and to explore mechanisms on data management and information”.
4. To date, three rounds of negotiations have been organized for the development of the Protocols on EIA, LBS and Biodiversity. Following the request from the Caspian Governments, the Interim Secretariat serviced the further negotiations on the Protocol concerning Regional Cooperation in Cases of Emergency and jointly with the Caspian Environment Programme /Programme Coordination Unit organized two regional expert meetings engaging all five Caspian States in the final stage of protocol negotiations. As for the Fisheries Protocol the interim Secretariat after preliminary assessment submitted the issue for consideration to the Senior Preparatory Meeting for the 1st Meeting of the Conference of

the Parties to the Tehran Convention (7-8 December 2006, Moscow, RF). The meeting decided to include a special sub-item in the provisional agenda of the first Meeting of the Conference of the Parties for further discussions on development of ancillary protocols to the Tehran Convention.

Current Status of Draft Protocols

PROTOCOL ON ENVIRONMENTAL IMPACT ASSESSMENT IN TRANSBOUNDARY CONTEXT

Background

5. There is a large number of projects, including those related to oil extraction, with potential transboundary impact in the Caspian Sea region, and the call for the establishment of harmonized procedures for EIA in a transboundary context has been growing. Lacking such procedures creates problems not only for the protection of ecosystems, but also for project developers, including oil companies, who would like to ensure that all legal requirements, including national and international commitments are complied with.
6. The protocol will establish a set of detailed, clear and transparent procedures for the implementation of transboundary EIA in the Caspian Sea region. The draft protocol has been prepared, taking into account previously agreed "guidelines on EIA in a transboundary context in the Caspian Sea Region" and in consistency with the obligations and procedural framework of the Espoo Convention, while allowing Caspian States to set out further details of transboundary EIA procedure specific to the Caspian Sea region and taking into account specific requirements of States non Parties to the Espoo Convention.

Current status

7. Three rounds of negotiations were organized to discuss the draft Protocol. The negotiations were complemented by a regional review meeting and national training workshops in Azerbaijan, I.R. Iran, and Russia.
8. During the third meeting countries resumed discussions on the draft EIA protocol and reviewed the text from Preamble up to Article 9.1. All countries expressed their interest in finalizing the negotiations considering the Protocol as a priority for the Caspian Sea region.

Outstanding issues

9. Similarly to the draft protocols reviewed hereafter, the "scope of application" of the EIA Protocol requires further negotiation and internal consultations by the Caspian States. Further national consultations have also been requested on the definition of "coastal areas".
10. While the procedure of notification was agreed upon, the provision on the languages to be used for the notification remains in square brackets since the participants did not reach consensus.
11. Definitions of "joint body", "transboundary impact" and "post project analysis" need also further regional consultations.
12. Since the meeting considerably advanced in its discussions on the substantive part of the protocol, it was proposed to continue working on the draft protocol by correspondence, requesting countries to submit their suggestions to the draft Protocol and its Annex I in

writing with the view to finalize them.

PROTOCOL

ON POLLUTION FROM LAND-BASED SOURCES [AND ACTIVITIES]

Background

13. The problem of land-based pollution of the Caspian Sea has been identified as one of the four priority regional environmental concern areas in both the Strategic Action Programme for the Caspian Sea (SAP) and the Transboundary Diagnostic Analysis (TDA). One of the areas identified in the Convention to be dealt with in a separate protocol is marine pollution originating from land-based sources. It is envisaged that the LBS Protocol will apply to emissions of polluting substances originating from land-based point and diffuse sources, including those transported through the atmosphere that may directly or indirectly affect the marine or coastal environment of the Caspian Sea.

Current status

14. Three meetings of Government designated experts were organized to develop and negotiate the Protocol. During the 3rd meeting particular focus was given to Art. 3 “Scope of Application”. The meeting fully revised the initial “geographical approach” and agreed on a combined geographical and functional approach, harmonizing the article with the provisions of the Tehran Convention.

Outstanding issues

15. The principal outstanding issue relates to the question whether the Protocol should apply only to land-based *sources* or should cover also *activities* which affect the ecological conditions of the Caspian Sea. So far no regional consensus has been reached on the issue. Consequently, Annex 1 “Activities and Substances of Concern” to the Protocol was discussed only partially and relevant references to the “activities” in other protocols (Biodiversity and EIA) were left in the square brackets. Negotiations are also still ongoing concerning the option of enlarging the area of application of the Protocol by including lower reaches of inflowing rivers and hydrologic basins of adjacent to the Caspian sea areas. Closely related to the scope of application of the Protocol the definition of “hydrological basin” also remains in square brackets. The discussions on the issue of financial mechanisms were postponed until the Financial Rules of the Tehran Convention will be adopted. At the request from one delegation the debate on the Annexes to the Protocol was also postponed and the Interim Secretariat was asked to review some sections in light of discussions held on the main body of the Protocol.

PROTOCOL ON BIODIVERSITY CONSERVATION**Background**

16. Biodiversity has been identified as one of the priority issues in the Caspian. The Caspian is a very fragile unique ecosystem, which suffers from overexploitation and habitat loss and is also susceptible to invasive species. It is hoped that the Protocol will encourage the five Caspian states to cooperate to improve coastal zone management systems and protect, preserve and restore the Caspian's marine living resources and use them in a rational manner.

Current status

17. Three rounds of regional meetings significantly advanced the Protocol negotiations. At the first meeting, the regional experts discussed the overall scope and main elements of the protocol agreeing that the Protocol should focus on conservation and sustainable use, addressing all species and habitats, including an appropriate reference to fishery management issues which are to be addressed in a separate protocol. The decision was taken that the Protocol should address the need of developing a regional Red Book of threatened and endangered species in the marine environment. Taking into account the important threat posed by invasive species in the Caspian Sea, the regional experts agreed that the Protocol would also address the issue of controlling and managing invasive species. The second and third meeting reviewed all articles of the draft Protocol including Annex 1. Articles relating to institutional arrangements were left aside pending the decision of the overall institutional arrangements to be established for Tehran Convention.

Outstanding issues

18. In the draft Protocol emerging after the third round of negotiations, the following key issues remain outstanding:
 19. with the reference to the ongoing negotiations on the legal status of the Caspian Sea it was agreed to avoid discussion on issues that might prejudice the outcome of those negotiations, including those related to Specially Protected Areas and Sensitive Areas;
 20. pending further national consultations of one delegation the phrase "the marine environment of the Caspian Sea" in Art. 3 – "Scope of Application", was placed in square brackets;
 21. Arts. 7 and 14 relating to genetically modified species and access to genetic resources were placed in square brackets pending further elaboration of Government positions;
 22. further consultations at national level were requested for issues related to "Access to and Transfer of Technology", leaving Art. 15 in square brackets.

**PROTOCOL
CONCERNING REGIONAL PREPAREDNESS, RESPONSE AND
CO-OPERATION IN COMBATING OIL POLLUTION INCIDENTS**

Background

23. In 2001, the Caspian Governments took the decision to initiate a process of developing a regional mechanism of co-operation in cases of major oil spills in the Caspian Sea. The initiative was supported by the Caspian Environment Programme and the IMO which provided assistance to the Caspian Governments in preparing a Caspian Sea Plan Concerning Regional Co-operation in Combating Oil Pollution in Cases of Emergency. The plan was developed on the basis of national oil spill contingency schemes and was agreed upon in 2003. Once agreed upon, the parties to the Plan concluded that the Plan would require a legal basis and identified the Tehran Convention as a suitable “legal host”. The first Meeting of the State Signatories of the Tehran Convention, (Tehran, July 2004) welcomed the work already undertaken towards preparation of the Protocol on Regional Cooperation in Cases of Emergency and agreed to take further steps to prepare for its signing.

Current status

24. In May 2005 the expert meeting (Baku, Azerbaijan) reviewed the majority of substantive articles of the draft Protocol and agreed that the Protocol should apply to oil spills pollution incidents in order to link it better to the Caspian Sea Plan Concerning Regional Co-Operation in Combating Oil Pollution in Cases of Emergency. In September 2005 (Tehran, I.R. of Iran) the Protocol was finalized and agreed upon in principle. The meeting in Tehran decided to change the title of the Protocol to the “Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents” to better reflect its substance and to leave room for development at a later stage of another protocol, if necessary, envisaged under the article 13 of Tehran Convention “Environmental Emergencies”. Furthermore, the regional representatives agreed that Parties to the Protocol assume certain obligations on interim basis pending the outcome of negotiations on the legal status of the Caspian Sea (art 7 of the draft Protocol). The present draft Protocol defines the responsibilities of each contracting party in terms of preparedness and response to oil pollution incidents, and includes provisions for regional coordination and cooperation mainly through the establishment of a Regional Centre. It provides the institutional setting for the implementation of the Caspian Sea Plan Concerning Regional Co-operation in Combating Oil Pollution in Cases of Emergency.

Outstanding issues

25. Upon specific request from one delegation, the final stage of preparing the Protocol for signing has been put on hold pending further national consultations mainly related to reconfirming the mandate to develop such protocol

Synergy and harmonization

26. The concurrent preparation of the four protocols did pose some problems in terms of consistency, synergy and coordination. Throughout the protocol negotiations attention was drawn to the fact that the protocols at places address similar issues that need to be harmonized and brought in line with the provisions of the Tehran Convention in order to avoid future inconsistencies and contradictions. Such provisions refer mainly to the following issues:

(a) institutional arrangement

27. The institutional arrangements for each protocol will need to be settled in light of the final institutional arrangements to be agreed upon for the Tehran Convention itself. Once the institutional structure for the Convention has been put in place, it will guide the negotiators to reach an agreement on the most suitable institutional framework for each protocol allowing it to fit under the overall institutional structure of the Convention. Such overall institutional structure will need to be sufficiently flexible to accommodate the future needs of the protocols and other ancillary legal documents.

(b) definitions including scope of application

28. All four draft protocols include definitions that are common to either the Tehran Convention itself or to other protocols. Such definitions will obviously need to be harmonized in order to respect the synergy and interlinkages between the various legal instruments and to avoid misinterpretations and disputes.

(c) procedural provisions

29. Most of the protocols include procedural clauses, such as amendments of protocols, adoption of annexes, authentic texts, reservations, settlement of disputes, relationship with the Convention etc. The need for harmonization of these articles is obvious and should be guided by the relevant provisions of the Convention.

(d) information and data supply and exchange

30. One of the three key principles in the Tehran Convention is the principle of access to and exchange of information. This principle has been captured in the provisions of the Tehran Convention and its draft protocols which all include broad range of obligations related to data and information management. Those requirements relate to communication as well as collection, dissemination and sharing of information both between the countries and with the public. The need for harmonized procedures for meeting the obligations under the Convention and its draft protocols has been acknowledged by the Caspian Governments who agreed on the need to explore possible mechanism for regional information and data exchange and management. In this context it is important that the obligations in the four draft protocols relevant to information and date exchange and management are reviewed in light of the requirements of the Convention and made mutually consistent.

Harmonization meeting

31. It has been proposed that the above listed issues should be reviewed and resolved in the course of a regional harmonization meeting. Holding of such meeting is dependant on the

status of the protocol negotiations, since the harmonization meeting may achieve its objective only after all major technical issues are solved for each protocol. It is hoped that the harmonization meeting could be held mid/late 2007 allowing to finalize the draft protocols and prepare them for signing and adoption by the second Meeting of the Conference of the Parties.

Conclusions

32. As follows from the above, all four Protocols requested by the Tehran meeting in July 2004 have reached advanced state of preparation. The agreement by the Caspian States to enter into these negotiations, pending entry into force of the Tehran Convention, reflects the commitment of the Caspian States to collaborate and jointly fight environmental pollution and degradation and secure a healthy and productive Caspian Sea for generations to come.
33. Although the negotiations of the Protocols have been rapidly advancing, the negotiation process has reached the stage where more support and alliance of all major stakeholders is needed. Further, the political will needs to be generated to finalize the protocols making them ready for signature.

Suggested action

34. The Conference of the Parties may wish to:
 - a) consider and welcome the progress made to date on the development of ancillary agreements to the Tehran Convention; reaffirm the intention of their Governments to continue the regional negotiations on the three priority area Protocols to the Tehran Convention, *i.e.*, Protocol on Conservation of Biodiversity, Protocol for the Protection of the Caspian Sea against Pollution from Land Based Sources [and Activities] and Protocol on Environmental Impact Assessment in Transboundary Context, allowing for the Protocols to be adopted and signed at the second Meeting of the Conference of the Parties.
 - b) noting the need to establish a regional mechanism for effective cooperation and coordination in case of major oil spills confirm the readiness of their Governments to expedite finalization of the national approval processes of the Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents with a view to its adoption and signature before or at the second Meeting of the Conference of the Parties.
 - c) agree to further develop protocols as envisaged in the provisions of the Tehran Convention.