

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



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THE PROTOCOL FOR THE PROTECTION OF THE CASPIAN SEA AGAINST POLLUTION FROM LAND-BASED SOURCES AND ACTIVITIES, PROTOCOL ON THE CONSERVATION OF BIOLOGICAL DIVERSITY, AND THE PROTOCOL ON ENVIRONMENTAL IMPACT ASSESMENT IN A TRANSBOUNDARY CONTEXT

Note by the interim Secretariat

Introduction

Article 6 of the Tehran Convention prescribes that the Contracting Parties “shall co-operate on a multilateral and bilateral basis in the development of protocols to this Convention prescribing additional measures, procedures and standards for the implementation of this Convention”.

The Convention specifies that protocols are required for: the prevention, reduction and control of pollution from land-based sources (article 7.2), seabed activities (Art. 8), vessels (Art. 9), and dumping (Art. 10.1 and 2); the protection, preservation and restoration of marine biological resources (Art. 14.2); alleviation of implications of sea level fluctuations (Art. 16); and the determination of procedures of environmental impact assessment in a transboundary context (Art. 17.3).

The Convention furthermore prescribes that the Contracting Parties shall cooperate in addressing environmental emergencies (Art. 13), monitoring (Art. 19), conducting research (Art. 20), exchange and ensuring public access to information on the environmental conditions of the Caspian Sea (Art. 21).

This note identifies the priority areas of implementation of the:

1. Protocol for the Protection of the Caspian Sea against Pollution from Land-based Sources and Activities (Moscow Protocol)
2. Protocol on the Conservation of Biological Diversity (Ashgabat Protocol)
3. Protocol on Environmental Impact Assessment in a Transboundary Context (EIA Protocol)

Timeline of the Protocols and Status of Ratification

The Protocol on Environmental Impact Assessment in a Transboundary Context (EIA Protocol); Protocol on the Conservation of Biological Diversity (Biodiversity Protocol); and Protocol for the Protection of the Caspian Sea against Pollution from Land-based Sources and Activities (LBS Protocol) were developed through rounds of negotiation, training workshops and meetings of the State Signatories to the Convention (July 2004 and February 2006) in preparation of the first Meeting of the Conference of the Parties (COP1).

Furthermore, through expert meetings in May and September 2005, based on the Caspian Sea Plan Concerning Regional Co-operation in Combating Oil Pollution in Cases of Emergency, developed with the

assistance of IMO and agreed upon in 2003, a Protocol Concerning Regional Preparedness, Response and Co-operation in Combating Oil Pollution Incidents (Oil Spill Protocol) was developed.

The Presidents of the Caspian States, in the Final Declaration adopted at their second Summit Meeting, 16 November 2007, Tehran, IR Iran, highlighted the need to expedite the development and approval of the ancillary protocols to the Tehran Convention.

COP2, Tehran, IR Iran, 10-12 November 2008, supported the finalization for subsequent adoption and signing at COP3 of the four Protocols, and "noted the need to continue joint efforts to prepare an intergovernmental agreement on the conservation and rational use of aquatic bioresources of the Caspian Sea".

In preparation of COP3 (Aktau, Rep of Kazakhstan, 10-12 August 2011) three rounds of negotiation took place on the Biodiversity Protocol and two on the LBS Protocol. A few issues remained outstanding. COP3 underlined the importance of their completion. In two meetings the Contracting Parties reached agreement in principle on the EIA Protocol; COP3 decided that the arrangements for adoption and signing should be finalized soonest. COP3 adopted the Oil Spill (Aktau) Protocol.

At PrepCom 1 of COP4 in Geneva, 11-13 July 2012, the texts of the Biodiversity, LBS and EIA Protocols were agreed upon, with two proposals of Turkmenistan on the last two Protocols pending.

On 12 December 2012, in Moscow, Russian Federation, COP4 adopted the (Moscow) LBS Protocol. IR Iran and Turkmenistan signed and ratified the Protocol; Azerbaijan acceded to it. Kazakhstan and Russian Federation signed the Protocol. Kazakhstan ratified it in 2021, while the ratification of the Russian Federation is pending.

COP4 urged for the finalization of the arrangements for adoption and signature of the Biodiversity and EIA Protocols "as soon as possible before COP5". COP4 also welcomed the preparation process of the Caspian Sea Plan concerning Regional Co-operation in Combating Oil Pollution in Cases of Emergency (Aktau Protocol Implementation Plan) - initiated at the IMO organized workshop in Baku, 18-20 June 2012.

On 30 May 2014, in Ashgabat, Turkmenistan, COP5 adopted the (Ashgabat) Biodiversity Protocol. The Ashgabat Protocol was signed by I.R. Iran, Russian Federation and Turkmenistan on the same date. Turkmenistan ratified the Ashgabat Protocol on 23 May 2015, while I.R. Iran and Kazakhstan ratified it on 17 and 23 October 2021 respectively. The entry into force of the Ashgabat Protocol is subject to its accession and ratification by Azerbaijan as well as ratification by the Russian Federation.

At PrepCom4 for COP6 (Geneva, November 2016) the Parties agreed that the implementation of the Aktau Protocol should be fully integrated in the Tehran Convention process and arrangements and that same year the protocol entered into force on 25 July 2016 after having been signed and ratified by all Parties.

On 20 July 2018 in Moscow, at the Extraordinary Meeting of the COP, the Contracting Parties adopted and signed the EIA Protocol. The Protocol has been ratified by Azerbaijan, Russian Federation, Turkmenistan and Kazakhstan, pending ratification from I.R. Iran.

At their fifth Caspian Summit, 12 August 2018, the leaders of the five Caspian countries instructed to finalize the internal procedures for the entry into force of the protocols to the Tehran Convention.

Importance and Objectives of the Protocols

The Moscow Protocol, the Ashgabat Protocol and the EIA Protocol present specific additional measures, procedures and standards for the implementation of the Tehran Convention and offer a comprehensive

overview of issues pertaining to and measures that can be taken regarding pollution from land-based sources and activities (in the case of the Moscow Protocol), ways of ensuring the conservation of biological diversity in the Caspian ecosystems (in the case of the Ashgabat Protocol) and all the tools and modalities available to the Contracting Parties to ensure effective environmental impact assessment is carried out in the region (in the case of the EIA Protocol).

A brief overview of the objectives of the protocols is presented.

1. Protocol for the Protection of the Caspian Sea against Pollution from Land-based Sources and Activities (Moscow Protocol)

The main objective of this protocol is to ensure that the Caspian Sea is protected from pollution from land-based sources and activities. It recognizes “the unique ecological and hydrological nature of the Caspian Sea as the largest inland body of water on earth” and it aims to protect and conserve the marine environment and coastal areas and ensure the sustainable use of natural resources of the Caspian Sea taking into account all the dangers and potential environmental problems that may arise as a result of pollution. The key terms are *prevention, control and reduction*. It defines relevant terminology and differentiates pollution from point sources and diffuse sources as well as pollution from other activities, the former entailing the adoption and implementation of national action plans. It also addresses the potential transboundary impacts of pollution and sets forth that every Contracting Party should introduce and apply procedures of environmental impact assessment in case it is carrying out actions which may potentially result in pollution. It also establishes guidelines for information and data collection, as well as monitoring and assessment. It also aims to engage the public and encourage the Parties to exchange information. Cooperation (especially scientific and technological) and assistance between Contracting Parties is also covered in the protocol, as well as the necessary reporting procedures to ensure the proper implementation of the protocol.

2. Protocol for the conservation of biological diversity to the Framework Convention on the protection of the marine environment of the Caspian Sea (Ashgabat Protocol)

The main objective of this protocol is the protection, preservation and restoration of the “health and integrity of the biological diversity and the ecosystem of the Caspian Sea”. This also includes the safeguarding of threatened species and vulnerable ecosystems, preventing decline, degradation and damage to species, and conserving relevant areas in that context (most notably through the introduction of the List of Protected Areas of the Caspian Sea (PACS)). This covers active engagement of Contracting Parties both on a national and regional level, as well as adequate monitoring, the adoption of national (or regional) strategies, action plans and programmes and the identification and compilation of inventories of biological diversity and habitats that every Contracting Party is expected to undertake.

The inventories of threatened species of flora and fauna should therefore be integral to the process of the development of the Caspian Red Book, which is to be adopted by the COP. The protocol first covers species (including alien species and genetically modified species), and then covers the protection and conservation of protected areas. This includes the management of protected areas (in terms of activities which may result in harm of said areas), as well as the procedural matters relating to the establishment of PACS. It also covers relevant legal instruments to the protocol as well as the question of access to genetic resources, access to and transfer of technology, scientific cooperation and assistance, the engagement of the public in issues relating to the conservation of biological diversity of the Caspian Sea and the responsibility of Contracting Parties to report on all actions undertaken in achieving the objectives of this protocol.

3. Protocol on environmental impact assessment in a transboundary context to the Framework Convention on the protection of the marine environment of the Caspian Sea (EIA Protocol)

The main objective of this protocol is to “implement effective and transparent environmental impact assessment procedures in a transboundary context”. This applies to any activity that may have negative (transboundary) impact “on the marine environment and land affected by proximity” to the Caspian Sea. The key is the prevention, reduction and control of pollution, as well as a rational use of available resources and the protection of biodiversity. Concerned Parties are to designate a Point of Contact for Notification, ensure effective public participation in the environmental impact assessment process.

The protocol makes a distinction between Affected Parties and Parties of Origin, the former meaning those likely to be affected by the transboundary effect of an activity, and the latter carrying out that activity. Parties of Origin therefore have a responsibility to communicate with Affected Parties or Party accordingly in order to ensure that relevant information is being relayed in a timely manner in order to facilitate an environmental impact assessment. The protocol lays out the notification procedure from beginning to end, also accounting for the possibility of an Affected Party not willing to participate in the environmental impact assessment or if it does not reply within the necessary time frame.

The protocol further covers communication between Concerned Parties, leaving a relatively large amount of freedom to Concerned Parties to regulate modes of communication as they see fit. The environmental impact assessments should crucially be in line with national legislation of the relevant Party of Origin. The protocol covers consultations both between Concerned Parties and with the public. After the adequate procedures have been undertaken, the protocol states that the Competent Authority of the Party of Origin has the responsibility to duly inform Concerned Parties and the Secretariat of its decision. Post-project analyses can be undertaken if deemed necessary by any of the Contracting Parties.

Defining Priorities Moving Forward

Pending ratification of the Moscow, Ashgabat and EIA Protocols, actions needed to be taken on the logistical side are also considered. In this regard a clear need for extra budgeting and resources, Convention-based in particular is identified. An increase in funding in order to secure the best possible implementation outcomes of the protocols in the coming years should be of priority, particularly in light of the historic COP6 due to take place in October 2022.

The proposed Programme of Work (TC/COP6/8) assembled on the basis of the implementation of the decisions taken at the 5th Meeting of the Conference of the Parties to the Tehran Convention (COP5), Ashgabat, 30 May 2014 (COP5), the extra-ordinary Meeting of the Conference of the Parties (ECOP), Moscow, 19-20 July 2018, and the consultations and recommendations of the Preparatory Committee meetings for COP6 contains under:

1. Activity 1.3 Administrative activities to ensure contributions to the budget of the Tehran Convention the expected output of cash and in-kind contributions by Contracting Parties implemented by Caspian Governments from their national budgets in accordance with decisions COP1 (p.8), COP2 (p.4), COP3 (p.14), COP4 (p.17), COP5 (p.16) within the timeframe of Jan. 2023- Dec. 2024
2. Activity 4.1 Activities related to Tehran Convention Protocols (ratification, entry into force and implementation of adopted protocols) the expected output of the ratification of the Moscow Protocol, Ashgabat Protocol and EIA Protocol and agendas/programmes for their implementation in operation implemented by the Caspian Governments with support of the TCIS and international partners with predicted financing of 100,000 of Convention sources and

contributions of international partners in accordance with decisions COP4 (p.7), COP5 (p.5), ECOP (p.1) within the timeframe of Jan. 2023- Dec. 2024;

Priority Areas of Implementation

Given the soon entry into force of these protocols, priority areas for implementation of the protocols have been defined.

I. Priority Areas of Implementation of the Protocol for the Protection of the Caspian Sea against Pollution from Land-based Sources and Activities (Moscow Protocol)

Pending the entry into force of the Moscow Protocol the following priorities for its implementation have been identified:

- Designation of competent national authorities (Art. 5.1)
- System and arrangements for LBS related monitoring and assessment (Art. 13)
- Review and adaptation of national ICZM related enabling legislation
- Development of Caspian guidelines on an integrated approach to the development of coastal areas
- Effective integration of the circular economy approach into the management of land-based sources of pollution (ICZM)
- Regional training workshops and exchange of information on ins and outs of an integrated approach to coastal area development (Art. 10)
- Inventories of land-based sources of pollution (point sources; diffuse sources; pollution from other activities) along Annex 1 categories, and establishment of list(s) of hotspots (Art. 7)
- Training and information exchange workshops on how to address land-based sources of pollution
- Development and agreement on common emission limit values as well as on common guidelines and standards relating to the issues identified in Art. 6 (Arts. 5, 6)
- Training workshops followed by development of pollution source control plans, costing and time tables (Arts. 2, 5, Annex V)
- Analysis, case law demonstration and development of guidelines for EIA related to potential environmental impacts, including transboundary impacts of land-based activities (Arts. 11, 12)
- Development and agreement on reporting and compliance procedures (Arts. 17, 18)
- Drafting of regional and/or national Programme of Action (NPA) based on pollution source control including measures and timetables for their implementation and complementary regional workshops for information exchange;
- Development of a collection of the Best Available Techniques and Best Environmental Practice to ensure access to and transfer of environmentally sound technology, including cleaner production, taking into account the social, economic and technological conditions and criteria set forth in Annex V.

II. Priority Areas of Implementation of the Protocol on the Conservation of Biological Diversity (Ashgabat Protocol)

At a regional workshop in Baku, Azerbaijan, 24 – 29 April 2017, organized jointly with the Convention on Biological Diversity and the Commission on the Protection of the Black Sea, a list of ecologically or biologically significant marine areas in the Caspian Sea was put together.

Pending the entry into force of the Ashgabat Protocol the following priorities for its implementation have been identified:

- System and arrangements for biodiversity monitoring and assessment (Arts. 5(f), 6(g))
- Development of a regional Reference List of Marine and Coastal Habitat Types of the Caspian Sea (Art. 5(d, g))
- Caspian Sea regional and national assessments of vulnerability to and impacts of climate change on marine and coastal biodiversity and natural resources (Arts. 5(a,c,d,e,f,j), 6(g,j))
- Review and adaptation of enabling national legislation (Art. 4)
- Capacity building and training, including exchange of information on review and harmonization of national legislation
- Regional workshop on mainstreaming biodiversity into sectoral strategies and action plans (Art. 5(h))
- Capacity building and training on compiling and managing national inventories of threatened species of flora and fauna (Art. 6)
- National and regional inventories of threatened or endangered species of flora and fauna; review of their conservation status and conservation regulations
- Regional workshops to exchange information, compare national inventories and make/agree on a selection of species for a Caspian Red Book (Art. 6)
- Regional inventory and proposal for handling (potential) alien (invasive) and genetically modified species, including meeting to reach agreement on what has been proposed (Arts. 7, 8)
- CMS organized workshop on migratory species (Art. 6(f))
- Procedures for the designation and management of shared protected areas
- Protected Areas of the Caspian Sea (PACS) designation and inventories (Arts. 9, 11)
- Capacity building, training and information exchange with the aim to harmonize and facilitate the management of protected areas
- Regional information strategy development, including institutional outreach, public awareness and sensitizing as well as target stakeholders for diverse key topics (Art. 17)
- Regional workshops to exchange information related to the development and use of selective fishing gear and practices that minimize waste in the catch of target species and that minimize by-catch of non-target species and the endangered species
- Workshops to exchange information and identify common goals and procedures related to access to genetic resources (Art. 14)

- Development of a common agenda for Caspian biodiversity related technology transfer, science and research, as well as education tools (Arts. 15, 16, 18)
- Demonstration projects in the field of biodiversity science, research and education
- Establishment of an expert advisory group on biodiversity
- Inter-regional exchanges with other regional mechanisms

III. Priority Areas of Implementation of the Protocol on Environmental Impact Assessment in a Transboundary Context (EIA Protocol)

Pending the entry into force of the EIA Protocol the following priorities for its implementation have been identified:

- Review and adaptation of national legislation (Art. 4)
- Review and adaptation of public consultation procedures (Arts. 4, 8)
- Capacity building and training including exchange of information on the review and harmonization of national legislation and public consultation procedures
- Establishment of Points of Contact and development by them of standard notification/communication forms and procedures (Arts. 5, 6)
- Procedures for consultation, transparent decision making and post project analysis (Arts. 8, 9, 10, 11)
- Procedures for dispute settlement (Art. 15)
- Capacity building and training aimed at unifying the approach towards notification, consultation, decision making and post project analysis
- Inventory of Annex 1 activities
- Workshops with test cases/demonstration projects

Suggested Action

Pending the entry into force of the Moscow Protocol, the Ashgabat Protocol, and the EIA Protocol, a non-exhaustive list of suggested actions is put forward for the convenience and consideration of the Contracting Parties to the Tehran Convention. These suggested actions derive from the priority areas of implementation of the Protocols and from the text of the Protocols itself.

The Conference may wish to:

- Encourage the ratification process in the relevant countries of the Moscow Protocol, the Ashgabat Protocol, and the EIA Protocol to ensure their entry into force and effective implementation;
- Welcome the present report and the priority areas of implementation of the Moscow Protocol, the Ashgabat Protocol, and the EIA Protocols and request the Secretariat to seek extrabudgetary support for the implementation of the Protocols and to promote the ratification and implementation process of the Moscow Protocol, the Ashgabat Protocol and the EIA Protocol;