

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

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**CONFERENCE OF THE PARTIES  
Sixth Meeting  
... 2018, Baku, Azerbaijan**

**PROTOCOL ON ENVIRONMENTAL IMPACT ASSESSMENT IN A  
TRANSBOUNDARY CONTEXT TO THE FRAMEWORK CONVENTION FOR THE  
PROTECTION OF THE MARINE ENVIRONMENT OF THE CASPIAN SEA  
(TEHRAN CONVENTION)**

(Note by the interim Secretariat)

**Introduction:**

1. Article 6 of the Tehran Convention requests the Contracting Parties to co-operate in the development of Protocols to the Convention prescribing additional measures, procedures and standards for the implementation of the Convention.
2. Article 24, para. 1 of the Tehran Convention stipulates the adoption of Protocols to the Convention by unanimous decision of the Parties at a Meeting of the Conference of the Parties. Protocols shall enter into force after their ratification or approval by all the Contracting Parties in accordance with their constitutional procedures. Protocols shall form an integral part of the Tehran Convention.
3. Article 17, para. 3 of the Tehran Convention requests Contracting Parties to “co-operate in the development of Protocols that determine procedures of environmental impact assessment of the marine environment of the Caspian Sea in a trans-boundary context”.
4. Attached as Annex A to this Note is the text of the Protocol on Environmental Impact Assessment in a Trans-boundary Context, as negotiated among Government nominated Experts. Annex B enlists three out of originally four proposals by Turkmenistan related to Annex I to the Protocol on which agreement is still pending. It concerns Activities 3, 9 and 16.
5. At both the 4<sup>th</sup> and 5<sup>th</sup> Meetings of the Conference of the Parties to the Tehran Convention (COP4 and COP5), on 12 December 2012 in Moscow and on 30 May 2014 in Ashgabat,

Ministers and High-level officials “noted the agreement in principle reached on the text of the Protocol on Environmental Impact Assessment in a Trans-boundary Context” and “decided to finalize the arrangements for adoption and signature of the Protocol as soon as possible ..”.

6. In the inter-session attempts of the Representatives of the Contracting Parties to reach agreement on the proposals of Turkmenistan, the Representatives of IR Iran and Russian Federation consistently expressed to be flexible, whereas the Representatives of Azerbaijan and Kazakhstan continued to have reservations, since the proposals imply a deviation of the related articles of the (Espoo) Convention on Environmental Impact Assessment in a Trans-boundary Context, to which they are Parties.

7. In view of the continuing lack of agreement, the Representatives of the Contracting Parties, at their second Preparatory Committee meeting for COP6, in Baku, 31 May – 3 June 2015, requested the (interim) Secretariat to solicit an advisory opinion of the United Nations Economic Commission for Europe (UNECE) Secretariat of the Espoo Convention.

8. By letter of 15 October 2015, the Secretary to the Espoo Convention submitted the requested advisory opinion of the UNECE Secretariat to the Espoo Convention. In its opinion the Secretariat recalls that the list of Activities in appendix 1 of the Espoo Convention “is not exclusive” and that article 2.9 of the Convention grants the Parties the right to implement, by bilateral or multilateral agreement, more stringent measures. The opinion continues to argue that none of the Turkmen proposals may “be treated as being incompatible with the Espoo Convention”.

9. The advisory opinion of the UNECE Secretariat to the Espoo Convention is contained in Annex C to this Note.

9. At their third Preparatory Committee meeting for COP6, in Baku, 10-11 November 2015, the Representatives of the Contracting Parties concluded that, in view of the impossibility to reach agreement at their level, the Ministers and High-level officials at COP6 would be requested to discuss and reach agreement on the proposals of Turkmenistan.

10. The Contracting Parties may consider to confer to their delegation to COP6 the plenipotentiary powers to sign the Protocol on Environmental Impact Assessment in a Trans-boundary context at COP6, in case consensus on the text is reached.

**Suggested action:**

11. The Conference of the Parties may wish to:

- Reach agreement on and adopt the text of the Protocol on Environmental Impact Assessment in a Trans-boundary context to the Tehran Convention;
- Welcome the signing of the Protocol by ..... and call upon ..... to sign the Protocol at their earliest convenience;

- Call upon the Parties to proceed and expedite ratification of the Protocol; and
- Request the Secretariat to promote implementation of the Protocol and prepare for COP1

## ANNEX A

**PROTOCOL ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY  
CONTEXT TO THE FRAMEWORK CONVENTION FOR THE PROTECTION OF THE  
MARINE ENVIRONMENT OF THE CASPIAN SEA (“TEHRAN CONVENTION”)**

*Preamble*

The Caspian littoral States:

Republic of Azerbaijan

Islamic Republic of Iran

Republic of Kazakhstan

Russian Federation

Turkmenistan

hereinafter referred to as the Contracting Parties,

Being the Parties to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, done at Tehran, Islamic Republic of Iran, on 4 November 2003 hereinafter referred to as the Convention;

Reaffirming their determination to implement the provisions of Articles 7, 17 and 18 of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea;

Determined to enhance regional understanding and cooperation between the Contracting Parties in protecting the marine environment of the Caspian Sea;

Recognizing that the application of environmental impact assessment at an early stage in the decision making process for proposed activities promotes the implementation of the principles of sustainable development;

Noting the importance of access to information and public participation in decision-making in environmental matters;

*HAVE AGREED* as follows:

*Article 1. Use of Terms*

For the purposes of this Protocol,

(a) “Party of Origin” means the Contracting Party(ies) to this Protocol under jurisdiction of which the proposed activity listed in the Annex 1 to this Protocol is planned to be implemented;

(b) “Affected Party” means the Contracting Party(ies) to this Protocol likely to be affected by the transboundary impact of a proposed activity. The marine area within which the Contracting Party(ies) can be considered as Affected Party will be determined in accordance with the provisions of the convention on the legal status of the Caspian Sea after its entry into force for all Contracting Parties.

(c) “Concerned Parties” means the Party of Origin and the Affected Party of environmental impact assessment procedure pursuant to this Protocol;

(d) “Environmental impact assessment” (EIA) means a national procedure for evaluating the likely impact of a proposed activity on the environment;

(e) “Proposed activity” means any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national environmental impact assessment procedure;

(f) “Impact” means any effect caused by implementation of a proposed activity on the marine environment of the Caspian Sea including flora, fauna, soil, atmospheric air, water, climate, landscape, historical monuments and or interaction among those factors; also includes effects on human health and safety, cultural heritage, socio-economic or other conditions resulting from alterations to those factors;

(g) “Transboundary impact” means any impact caused by implementation of proposed activity by the Party of Origin to another Contracting Party.

(h) “The public” means one or more natural or legal persons;

(i) “Competent authority” means the authority(ies) designated by a Contracting Party as responsible for performing tasks covered by this Protocol;

(j) “Point of contact for notification” means the contact point or points of a Contracting Party that each Contracting Party has identified and informed the other Contracting Parties and the Secretariat of, that are responsible for receiving Notification and ensuring the relevant competent authority is notified;

(k) “Project Proponent” means initiator, including public authority, which applies for authorization for a proposed activity according to the national procedure;

(l) “Conference of the Parties” means the body referred to in Article 22 of the Convention;

(m) “Secretariat” means the body referred to in Article 23 of the Convention.

## ***Article 2. Objective***

The objective of this Protocol is to implement effective and transparent EIA procedures in a transboundary context to any proposed activity which is likely to cause significant transboundary impact on the marine environment and land affected by proximity to the sea in order to prevent, reduce and control pollution of the marine environment and land affected by proximity to the sea, promote conservation of its biodiversity, and rational use of its natural resources, and protect human health.

### ***Article 3. Scope of Application***

In accordance with Article 3 of the Convention this Protocol shall be applied to the marine environment of the Caspian Sea taking into account its water level fluctuations and pollution from land-based sources.

### ***Article 4. General Provisions***

1. Each Contracting Party shall adopt necessary legal, administrative or other measures to implement the provisions of this Protocol, including, with respect to proposed activities listed in Annex I, that are likely to cause significant transboundary impact as determined in accordance with the criteria set forth in Annex II to this Protocol, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Annex III to this Protocol.

2. Each Contracting Party shall ensure that the proposed activities listed in Annex I to this Protocol, that are likely to cause a significant transboundary impact are subject to an environmental impact assessment procedure pursuant to this Protocol prior to a decision to authorize or undertake a proposed activity.

3. Each Contracting Party shall inform the Contracting Parties and the Secretariat of its Point of Contact for Notification. Information on the Points of Contact for Notification shall be made available to the Contracting Parties by the Secretariat, electronically or as otherwise appropriate.

4. Concerned Parties shall ensure effective public participation in the EIA procedure of a proposed activity pursuant to this Protocol, commencing at early stage of EIA procedures.

5. Pursuant to this Protocol the Concerned Parties shall ensure an equivalent opportunity to the public of the Party of Origin and the public of the Affected Party to participate in the EIA procedures of a proposed activity, and shall provide the public with assistance and advice thereof.

6. The provisions of this Protocol shall not affect the right of Contracting Parties to implement national laws, regulations or administrative provisions in the interests of national security.

7. The provisions of this Protocol shall not affect the right of Contracting Parties to maintain or introduce additional measures in relation to issues covered by this Protocol.

8. The provisions of this Protocol shall not prejudice any obligations of the Contracting Parties under international law regarding environmental impact assessment in a transboundary context.

### ***Article 5. Notification***

1. For a proposed activity listed in Annex I to this Protocol, the Competent authority of the Party of Origin shall notify as early as possible after being informed of the proposed activity that is likely to cause a significant transboundary impact through the Point of Contact for Notification any

Contracting Party which it considers may be a potentially Affected Party and the Secretariat to inform the other Contracting Parties.

2. The notification shall contain, *inter alia*:

(a) Information on the proposed activity, including any available information at the time of notification on its possible transboundary impacts and the characteristics of possible decisions on the proposed activity;

(b) A reasonable time-frame which should not be less than 30 days from receipt of notification in English and Russian as provided in article 5 paragraph 3 of this Protocol, for the submission of the Affected Party's response to the notification;

(c) Information regarding the envisaged EIA procedure, including an indication of the time schedule for the further steps in the EIA procedure, in particular those steps as referred to in Articles 6, 7 and 8 of this Protocol.

3. The Party of Origin shall provide the notification documents in State language with translation in English or in Russian language. The Secretariat shall provide the translation of notification documents into English or Russian, as appropriate.

4. The Competent Authority of the Party of Origin shall ensure the receipt of notification by the Point of Contact for Notification of the Affected Party and the Secretariat.

5. The Competent Authority of the Affected Party shall respond to the Competent Authority of the Party of Origin, and inform the Secretariat, within the time specified in notification, indicating whether it intends to participate in the EIA procedure of the proposed activity.

6. If the Affected Party indicates that it does not intend to participate in the EIA procedure of the proposed activity, or if it does not respond within the time specified in the notification, the provisions in paragraphs 7 and 8 of this Article, and Articles 6 to 11 of this Protocol, excluding the obligation of the Party of Origin to send the draft EIA documentation to the Secretariat pursuant to Article 7, paragraph 3 (b), of this Protocol, will not apply.

7. If the Affected Party indicates that it intends to participate in the EIA procedure of the proposed activity, the Affected Party shall provide in its response to the notification or promptly after to the Party of Origin:

(a) Relevant information on the public consultation procedure in the Affected Party;

(b) Request, if any, for particular issues to be addressed in the EIA investigations;

(c) A summary of readily available information on the issues raised in sub-paragraph (b).

8. At the request of the Party of Origin, the Affected Party shall provide any reasonably obtainable information relating to the potentially affected environment, if such information is necessary for the preparation of the EIA documentation.

9. When a Contracting Party has reasonable concerns that it would be affected by a significant transboundary impact of a proposed activity and when no notification has taken place in accordance with paragraph 1 of this Article, the Party of Origin shall, at the request of that Contracting Party, provide it with sufficient information to determine whether it would like to participate in the EIA procedure.

### ***Article 6. Communication between Concerned Parties***

1. Competent Authorities of Concerned Parties shall consult and agree upon:

(a) The required format and language(s) of EIA documentation, including any information, to be submitted for the purposes of public consultations and review by Competent Authority of Affected Party;

(b) Detailed arrangements for communication between Concerned Parties including the roles of the Competent Authorities of the Concerned Parties and the Project Proponent;

(c) Time-frame for review by the Affected Party of the EIA documentation which shall not exceed 90 days.

2. Concerned Parties may agree, as appropriate, on means of interaction for undertaking tasks under this Protocol.

### ***Article 7. Preparation and Transmittal of Draft EIA Documentation***

1. EIA investigations shall be carried out pursuant to national law and practice of the Party of Origin and shall address, to the extent possible, any issues raised by the Affected Party, pursuant to Article 5, paragraph 7, of this Protocol.

2. The Party of Origin shall ensure that the Project Proponent prepares a draft of the EIA documentation for the purposes of public consultations and review by the competent authority of the Affected Party. The draft EIA documentation shall be provided in the format and language(s) as agreed by Concerned Parties, pursuant to Article 6, paragraph 1, of this Protocol, and shall contain, as a minimum, the content of the items referred to in Annex III of this Protocol in addition to information requested by Affected Party pursuant to Article 6, paragraph 1, of this Protocol.

3. The Party of Origin shall transmit the draft EIA documentation to the:

(a) Competent Authority of the Affected Party;

(b) Secretariat for making this information available at the request of any Contracting Party.

### ***Article 8. Review of EIA Documentation and Public Consultations***

1. Concerned Parties shall ensure that the public in the areas likely to be affected are informed, as agreed, pursuant to Article 6, paragraph 1, of this Protocol, of:

(a) The proposed activity;

(b) The availability of the draft EIA documentation;

(c) The opportunity and procedure for public consultations by using public notice or other appropriate means.



2. Concerned Parties shall ensure that the draft EIA documentation, including as appropriate hardcopies, is made available and easily accessible to the public, including in places open for the public, in accordance with national legislation.

3. Concerned Parties shall ensure that the public in the areas likely to be affected is provided with the opportunity to comment upon the proposed activity to the Competent Authorities of the Concerned Parties. Comments shall be transmitted to the Competent Authority of the Party of Origin or as agreed pursuant to Article 6, paragraph 1 (b), of this Protocol.

4. The Competent Authority of the Affected Party shall review and comment upon the draft EIA documentation within the time specified by the Party of Origin pursuant to Article 6, paragraph 1 (c), of this Protocol and submit its comments to the Competent Authority of the Party of Origin.

5. The Party of Origin shall ensure that the Project Proponent:

(a) Summarizes and translates, where necessary, the comments received;

(b) Carries out further investigations where required;

(c) Incorporates comments received from the public and the Competent Authorities of the Affected Parties into final EIA documentation and explains how the comments were taken into account.

### ***Article 9. Consultations between Concerned Parties***

1. Prior to making the final decision on the proposed activity, at the request of the Affected Party, the Party of Origin shall enter into consultations with the Affected Party, concerning, *inter alia*, measures to reduce potential transboundary impact.

2. The Concerned Parties shall agree, at the commencement of such consultations, on a reasonable time-frame for the duration of the consultation period, while the period of consultations should not exceed 180 days, unless otherwise decided during the consultation period.

### ***Article 10. Final Decision on Implementation of a Proposed Activity***

1. The Competent Authority of the Party of Origin shall take the comments received pursuant to Article 8 of this Protocol into account when reviewing the final EIA documentation and when making the final decision on the proposed activity.

2. The Competent Authority of the Party of Origin shall provide the Competent Authority of the Affected Party and the Secretariat with the final decision on the proposed activity along with the reasons and considerations on which it was based, including information on how the comments received were taken into account.

3. Concerned Parties shall ensure that information on the final decision on the proposed activity and information on how the comments received were taken into account, is made available to those who submitted comments in accordance with Article 8, paragraph 3, of this Protocol.

### ***Article 11. Post project analysis***

1. The Concerned Parties at the request of one of the Parties shall determine to what extent post project analysis, including its expedience, shall be carried out taking into account the likely significant adverse transboundary impact of the activity for which an environmental impact assessment has been undertaken pursuant to this protocol.

2. Any post project analysis shall be undertaken with a view to achieving objectives as follows:

(a) Monitoring compliance with the conditions as set out in the authorization or approval of the activity and the effectiveness of mitigation measures;

(b) Review of an impact for proper management and in order to cope with uncertainties;

(c) Verification of past predictions in order to transfer experience to future activities of the same type.

3. If, as a result of the post-project analysis, any of the Contracting Parties has reasonable grounds for concluding that there is a significant adverse transboundary impact, or factors have been discovered which may result in such an impact, it shall immediately inform the other Contracting Parties and the Secretariat. In this case, the Concerned Parties shall immediately consult and take necessary measures to eliminate or reduce the impact.

### ***Article 12. Reporting***

Each Contracting Party shall submit a report to the Secretariat on the implementation of the provisions of this Protocol, in format and at intervals as determined at the Conference of the Parties.

### ***Article 13. Institutional Provisions***

1. For the purposes of this Protocol and in accordance with Article 22, paragraph 10, of the Convention, the Conference of the Parties shall, *inter alia*:

(a) Keep under review the implementation of this Protocol;

(b) Keep under review the content of this Protocol;

(c) Consider and adopt annexes to this Protocol;

(d) Consider and adopt any amendments to this Protocol or its annexes;

(e) Consider reports submitted by the Secretariat on matters relating to the implementation of this Protocol;

(f) Establish such subsidiary bodies as may be deemed necessary for the implementation of this Protocol;

(g) Seek, where appropriate, the technical and financial services of relevant international bodies and scientific institutions for the purpose of the objective of this Protocol;

(h) Perform such other functions, as may be required for the implementation of this Protocol.

2. In accordance with Article 23, paragraph 4, of the Convention, the Secretariat shall *inter alia*:

(a) Make information on Points of Contact for Notification of all Contracting Parties available to the Contracting Parties electronically, or as otherwise appropriate;

(b) Receive and make available electronically, or as otherwise appropriate, information received in the implementation of this Protocol, as provided by a Party of Origin, including:

(i) Notification of the proposed activities in accordance with Article 5, paragraph 3, of this Protocol;

(ii) EIA documentation provided by a Party of Origin in accordance with Article 7, paragraph 3, of this Protocol;

(iii) The final decision on a proposed activity along with the reasons and considerations on which it was based, including information on how the comments received were taken into account in accordance with Article 10, paragraph 2, of this Protocol.

(c) Prepare and transmit reports on matters relating to the implementation of this Protocol;

(d) Consider enquiries by and information from the Contracting Parties and consult with them on matters relating to the implementation of this Protocol;

(e) To the extent possible, promote the exchange of information and cooperation between the Contracting Parties and provide assistance to the Contracting Parties in implementing the provisions of this Protocol;

(f) Arrange, upon request by any Contracting Party, for the provision of technical assistance and advice for the effective implementation of this Protocol;

(g) Cooperate, as appropriate, with relevant regional and international organizations and programs;

(h) Perform such other functions as may be determined by the Conference of the Parties.

#### ***Article 14. Funding***

To achieve the objectives of this Protocol, the Contracting Parties, shall as far as possible ensure that financial resources are available for the formulation and implementation of related programmes, projects and measures. To this end, the Contracting Parties shall:

- (a) Commit domestic financial resources envisaged for these purposes;
  - (b) Promote the mobilization of financial resources from bilateral and multilateral funding sources and mechanisms, including grants and loans;
  - (c) Explore innovative methods and incentives for mobilizing and channeling resources, including those of foundations, governmental agencies of other countries, international organizations, non-governmental organizations and private sector entities.
2. The Financial Rules of the Convention shall apply *mutatis mutandis* to this Protocol, unless otherwise decided by the Conference of the Parties.
  3. All activities and their implementation covered by this Protocol shall be financed by funds allocated by the Contracting Parties and other sources consistent with national legislation.

### ***Article 15. Settlement of Disputes***

Any dispute between the Contracting Parties concerning the application or interpretation of the provisions of this Protocol shall be settled in accordance with Article 30 of the Convention.

### ***Article 16. Adoption and Entry into Force of the Protocol***

1. This Protocol shall be adopted by unanimous decision of the Contracting Parties by a Meeting of the Conference of the Parties.
2. This Protocol shall be open for signature only by the Caspian littoral States, in the city of ... from ... to ....
3. This Protocol shall be subject to ratification, acceptance or approval by the Caspian littoral States, and shall be open for accession by any Caspian littoral State, from the date on which the Protocol is closed for signature.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depository of the Convention.
5. This Protocol shall enter into force on the ninetieth day after the date of deposit of the instrument of ratification, acceptance, approval or accession by all Caspian littoral States.

### ***Article 17. Adoption of Amendments and Annexes to the Protocol, and Amendments to the Annexes***

Any Contracting Party may propose amendments and annexes to this Protocol, as well as amendments to its annexes. These amendments and annexes shall be adopted by the Contracting Parties and enter into force in accordance with Articles 24, 25 and 34 of the Convention.

***Article 18. Effect of the Protocol on National Legislation***

The provisions of this Protocol shall not affect the right of Contracting Parties to adopt relevant stricter national measures for the implementation of this Protocol.

***Article 19. Relationship with Other International Treaties***

Nothing in this Protocol shall prejudice the rights and obligations of the Contracting Parties under other international treaties to which they are parties.

***Article 20. Reservation***

No reservations may be made to this Protocol.

***Article 21. Depository***

The Depository of the Protocol is the Depository of the Convention.

***Article 22. Authentic Texts***

The Azerbaijani, English, Farsi, Kazakh, Russian and Turkmeni texts of this Protocol are equally authentic. In case of dispute arising as to the interpretation or application of this Protocol the English text shall be authoritative.

***Article 23. Relationship with the Negotiation of the Legal Status of the Caspian Sea***

Nothing in this Protocol shall be interpreted as to prejudge the outcome of the negotiation on the final legal status of the Caspian Sea.

**IN WITNESS WHEREOF** the undersigned, being duly authorized, have signed this Protocol.

**DONE AT THE CITY OF ..... ON THE ..... DAY OF ..... ON .....**

**PROTOCOL ON ENVIRONMENT IMPACT ASSESSMENT IN A TRANSBOUNDARY  
CONTEXT TO THE FRAMEWORK CONVENTION FOR THE PROTECTION OF THE  
MARINE ENVIRONMENT OF THE CASPIAN SEA**

**ANNEX I**

**List of Activities**

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tons or more of coal or bituminous shale per day.
2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more;
3. Nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors (1/) except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load.
4. Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing or storage of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste.
5. Major installations for the initial smelting of cast iron and steel and for the production of non-ferrous metals.
6. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 tons finished product; for friction material, with an annual production of more than 50 tons finished product; and for other asbestos utilization of more than 200 tons per year.
7. Integrated chemical and petrochemical installations.
8. Construction, reconstruction and/or widening of motorways, express roads (2/) and lines for long distance railway traffic, including the construction of major associated bridges, and of airports (3/) with a basic runway length of 2,100 meters or more;
9. Large diameter pipelines for the transport of oil, gas and oil products, or chemicals.
10. Marine/Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tons.
11. Waste-disposal installations for the incineration, chemical treatment or landfill of waste;
12. Large dams, reservoirs and canals connected to the Caspian Sea.
13. Groundwater abstraction activities or artificial groundwater recharge schemes where the annual volume of water to be abstracted or recharged amounts to 10 million cubic meters or more.
14. Pulp, paper and board manufacturing of 200 air-dried tons or more per day.

15. Major quarries, mining, on-site extraction and processing of metal ores or coal.
16. Offshore hydrocarbon production. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tons/day in the case of petroleum and 500 000 cubic meters/day in the case of gas.
17. Major storage facilities for petroleum, petrochemical and chemical products.
18. Deforestation of large areas.
19. Works for the transfer of water resources between and within river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic meters/year; in all other cases, works for the transfer of water resources between and within river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 per cent of this flow. In both cases transfers of piped drinking water are excluded.
20. Waste-water treatment plants with a capacity exceeding 150 000 population equivalent.
21. Installations of microbiological and biotechnological production, and the release of genetically modified organisms.
22. Land reclamation, including the construction of artificial islands, spits and reefs.

### Notes to Annex I

(1/) For the purposes of this Protocol, nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from such an installation site.

(2/) For the purposes of this Protocol:

- "Motorway" means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:
  - (a) Is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means;
  - (b) Does not cross at level with any road, railway or tramway track, or footpath;
  - (c) Is specially signposted as a motorway.
- "Express road" means a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s).

(3/) For the purposes of this Protocol, "airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (annex 14).

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**ANNEX II****List of Criteria to Assist in Determining Significant Transboundary Impact**

**1.** Concerned Parties may consider whether the activity is likely to have a significant adverse transboundary impact in particular by virtue of one or more of the following criteria:

- (a)** Size: proposed activities which are large for the type of the activity;
- (b)** Location: proposed activities which are located in or close to an area of special environmental sensitivity or importance (such as wetlands designated under the Convention on Wetlands of International Importance especially as Waterfowl Habitat, done on 2 February 1971, national parks, nature reserves, sites of special scientific interest, or sites of archaeological, cultural or historical importance); also, proposed activities in locations where the characteristics of proposed development would be likely to have significant effects on the population;
- (c)** Effects: proposed activities with particularly complex and potentially adverse effects, including those giving rise to serious effects on humans or on valued species or organisms, those which threaten the existing or potential use of an affected area and those causing additional loading which cannot be sustained by the carrying capacity of the environment.



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**ANNEX III****Minimum Content of the Environmental Impact Assessment Documentation**

Information to be included in the draft environmental impact assessment shall, as a minimum, contain, in accordance with Article 6 of this Protocol:

- (a) A description of the proposed activity and its purpose;
- (b) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;
- (c) A description of the environment likely to be significantly affected by the proposed activity and its alternatives;
- (d) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;
- (e) A description of mitigation measures to keep adverse environmental impact to a minimum;
- (f) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;
- (g) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;
- (h) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis;
- (i) A non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

**ANNEX B****Proposals on the draft protocol on environmental impact assessment in a transboundary context from Turkmenistan**

**Annex I.3:** delete 'except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load';

**Annex I.9:** Delete the words 'large diameter';

**Annex I.16:** To include the words 'exploration and' before the word 'production';



NATIONS UNIES  
COMMISSION ÉCONOMIQUE  
POUR L'EUROPE

ОБЪЕДИНЕННЫЕ НАЦИИ  
ЕВРОПЕЙСКАЯ ЭКОНОМИЧЕСКАЯ  
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Ref. ECE/ENV/2015/581

15 October 2015

Dear Mr. Dusik,

Thank you for your letter of 25 September 2015 and the appreciation you expressed for the assistance provided by the UNECE secretariat to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) for the development of a protocol on environmental impact assessment in a transboundary context to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention). I am pleased that the negotiation of the protocol has now reached its final stages, and is pending only an agreement on proposals by one Government on its annex I. Moreover, I was honoured to learn that at the June 2015 preparatory meeting for the upcoming sixth Meeting of the Conference of the Parties to the Tehran Convention (Baku, November 2015), the Parties agreed to request advisory assistance from the Espoo Convention secretariat on the matter.

We are most willing to continue cooperating with the secretariat of the Tehran Convention and to assist the Convention's Parties on this matter to the best of our capacity and within the limits of our mandate. I understand that we are consulted because two Parties to the Tehran Convention that are also Parties to the Espoo Convention have expressed concerns about the potential incompatibility of the provisions of annex I to the draft protocol with the similar provisions under the Espoo Convention, if amended as proposed. In this regard, the UNECE secretariat considers that it is in a position to provide the requested advice by referring to the relevant provisions of the Espoo Convention and also by clarifying them to a certain extent. However, kindly note that the Implementation Committee under the Espoo Convention alone has the mandate to formally interpret the legal obligations of the Espoo Convention or to analyse the compatibility of other legal instruments with it.

Mr. Jan Dusik  
Director, Regional Office for Europe  
United Nations Environment Programme  
International Environment House  
9-15 Chemin des Anémones  
CH-1219 Châtelaine  
Geneva, Switzerland

Please find enclosed the requested advisory opinion prepared by the Espoo Convention secretariat in consultation with a legal expert to the secretariat. The opinion is limited to the issues raised in the request.

I hope that the opinion will be useful in clarifying the relevant provisions of the Espoo Convention, and in this way contribute to moving the negotiations forward. The adoption and the subsequent ratification of the protocol by the Parties to the Tehran Convention would enable the Parties to implement the well-tested and efficient "Espoo procedures" for fostering sustainable development of the Caspian Sea marine environment and supporting closer intergovernmental cooperation among the Caspian littoral States.

I wish the Conference of Parties fruitful deliberations and successful outcomes at its upcoming meeting. I would also welcome receiving information about the decisions of the Parties

I very much look forward to our continued cooperation.

Yours sincerely,



Tea Aulavuo  
Secretary to the Espoo Convention and  
its Protocol on Strategic Environmental Assessment  
United Nations Economic Commission for Europe

Enclosure

**Advisory opinion from the United Nations Economic Commission for Europe (UNECE) secretariat to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)**

Requested by the Parties to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention) through the (interim) secretariat of the Tehran Convention for presentation at the sixth Meeting of the Conference of the Parties to the Tehran Convention (Baku, November 2015).

**I. Background**

1. Parties to the Tehran Convention are in the final stages of negotiation on a protocol on environmental impact assessment in a transboundary context, which is meant to follow the provisions of the Espoo Convention.
2. During the negotiations one of the negotiating Parties proposed to modify, as compared with the respective provisions of the appendix I to the Espoo Convention<sup>1</sup>, the paragraphs 3, 9 and 16 of the annex I of the Protocol containing the list of activities (see TC/COP5/4.Rev.1 for the proposed modifications).
3. Two negotiating Parties, which are also Parties to the Espoo Convention, expressed concerns about whether the proposed modifications would make the provisions of the Protocol incompatible with the relevant provisions of the Espoo Convention and thus put at risk their respective obligations as the Parties to that Convention.
4. The negotiating Parties decided to seek - through the (interim) Tehran Convention secretariat - an objective advisory opinion through the Espoo Convention secretariat.

**II. Scope of the opinion**

5. The current opinion has been prepared by the Espoo Convention secretariat in response to the request from the Parties to the Tehran Convention, in consultation with a legal expert. Its objective is to clarify the relevant provisions of the Espoo Convention.
6. The opinion is limited to the issues raised in the request and it does not purport to provide a comprehensive legal analysis of the compatibility of the draft Protocol with the provisions of the Espoo Convention. Moreover, the opinion should not be considered as reflecting the views of the Implementation Committee under the Espoo Convention and its Protocol on Strategic Environmental Assessment, which is alone mandated to formally interpret the legal obligations of these treaties and to issue other legal opinions.

**III. Respective obligations under the Espoo Convention**

7. The list of activities in the appendix I to the Espoo Convention specifies activities which are subject to the obligations arising from the Convention by referring

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<sup>1</sup> As amended by the second (2003) amendment to the Espoo Convention, (through decision III/7) ([http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/2nd\\_amendment\\_en.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/2nd_amendment_en.pdf))

predominantly to the type or category of activity, combined sometimes with some thresholds and exceptions.

8. While the appendix I provides a mandatory list of activities, this list is not exclusive, as the Convention envisages also the application of its provisions to other activities where the Parties so agree under article 2 paragraph 5 of the Convention.

9. Furthermore, the Convention grants the Parties the right to implement more stringent measures, by clearly stipulating, in article 2 paragraph 9, that it "shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures".

10. The reference to "more stringent measures" covers the possibility to apply the provisions of the Convention to activities that are not listed in appendix I, including activities of other types than the types listed, and activities that are listed but below the thresholds envisaged in the appendix I. Furthermore, it covers also the possibility not to apply the exceptions allowed under the Convention.

#### **IV. Nature of the proposed modifications to the list of activities in annex I of the draft Protocol to the Tehran Convention**

11. The proposed modification to para 3 is to delete the wording allowing for an exception to the general rule. Thus, it will not result in limiting the scope of application of the Protocol but in extending it to certain activities, which the Espoo Convention allows not to be subject to its provisions. Applying this exception cannot be treated as an obligation. Thus, the proposed modification to para. 3 of the annex I to the Protocol may not be treated as being incompatible with the Espoo Convention.

12. The proposed modification to para 9 is to delete the threshold in relation to one of the activities. Adoption of this modification will not result in limiting the scope of application of the Protocol but in extending it. Thus, the proposed modification to para 9 of the annex I to the Protocol may not be treated as being incompatible with the Espoo Convention.

13. The proposed modification to para 16 is to add a new type of activity (exploration) to one of the categories of activities. While one may wonder how the proposed modification will be interpreted in practice in combination with the existing threshold, there is no doubt, however, that the adoption of this modification will not result in limiting the scope of application of the Protocol but in extending the scope of its application. Thus, the proposed modification to para 16 of the annex I to the Protocol may not be treated as being incompatible with the Espoo Convention.

#### **V. Conclusion**

14. In conclusion, none of the proposed three modifications to the annex I to the Protocol on environmental impact assessment in a transboundary context negotiated under the Tehran Convention may be treated as being incompatible with the Espoo Convention. Consequently, adopting the Protocol with these modifications will not result in Parties to the Protocol being in non-compliance with their respective obligations as the Parties to the Espoo Convention.