

In Depth Case Study of the Caspian Sea¹

*This case study on the Caspian Sea is one of a series that has been prepared as part of the Global Environment Facility (GEF) Good Practices and Portfolio Learning in GEF Transboundary Freshwater and Marine Legal and Institutional Frameworks Project International Waters Governance project. The objective of these case studies is to provide insight into how these agreements were negotiated and how well they are working. Each case study has been peer reviewed by one or more experts with direct knowledge of the agreement being analyzed.*²

1. Introduction

The *Framework Convention for the Protection of the Caspian Sea Environment* (The Tehran Convention) was signed in Tehran on 4th November, 2003.³ It lays out the foundations for cooperation between the littoral states of Iran, southern Russia, western Kazakhstan, Turkmenistan, and eastern Azerbaijan to conserve and protect the marine resources of the Caspian Sea. The Tehran Convention was specifically designed to address the deteriorating marine environment of the Caspian Sea due to pollution arising from various human activities.⁴ Under the Tehran Convention the parties are to, individually or jointly, take all appropriate measures to address pollution and restore the marine environment, and are to use resources of the Caspian Sea in such a way as not to cause harm to the marine environment.⁵ Additionally, the parties are to achieve this through cooperation with each other and competent international organisations.

The Tehran Convention achieves its objectives by explicitly codifying a number of customary international legal principles including: the precautionary principle, the polluter pays principle, the principle of cooperation and access to information. The framework agreement is therefore

¹ This Case Study was prepared by researchers at the Good Practices and Portfolio Learning in GEF Transboundary Freshwater and Marine Legal and Institutional Frameworks Project at the University of British Columbia Institute of Asian Research in Vancouver, Canada. We particularly thank Glen Hearn, Maaria Curlier, and Theresa Etmanski for their work. This study is current as of 01 March 2011.

² For a detailed description of the provisions of the Tehran Convention, please see White & Case, *International Waters: Review of Legal and Institutional Frameworks*, UNDP-GEF International Waters Project, (Apr. 5, 2011), available at <http://iwlearn.net/publications/misc/governing-marine-protected-areas-getting-the-balance-right-main-report-lower-resolution-2mb> at 110.

³ *Framework Convention for the Protection of the Marine Environment of the Caspian Sea*, CASPIAN ENVIRONMENT PROGRAM (January 15, 2011), available at www.caspianenvironment.org/newsite/Convention-FrameworkConventionText.htm ["The Tehran Convention"]; *Register of International Treaties and Other Agreements in the Field of the Environment* (UNEP/Env.Law/2005/3) (Dec. 30, 2005), available at http://www.unep.org/law/Publications_multimedia/index.asp.

⁴ See The Tehran Convention, *Id.* Preamble.

⁵ See *Id.* Art 4.

an umbrella legal instrument laying down general provisions and an institutional mechanism. To implement the necessary actions to address substantive issues, four initial protocols have been identified as priorities:

- i. The Protocol on the Protection of the Caspian Sea against Pollution from Land-Based Sources and Activities
- ii. The Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents
- iii. The Protocol on Environmental Impact Assessment in a Trans-boundary Context
- iv. The Protocol on Conservation of Biological Diversity.⁶

The protocol relating to combating oil pollution has been the most advanced and was approved in principle in 2006. It was adopted at the 3rd Conference of the Parties (COP3), is anticipated to be approved (ratified) at the national levels in 2011.

Of particular note is that cooperative activities are being advanced in the absence of clear jurisdictional boundaries for both the water and the sub-soil. Traditionally, The Soviet Union and Iran were the only two powers; however, since 1990 the region has had the addition of Azerbaijan, Turkmenistan and Kazakhstan and Russia. While there have been recent attempts to demark jurisdictional boundaries (April 2011), resource use and responsibility for pollution (including liability) remain unresolved. Significant advances have; however, been made on issues such as pollution control and environmental impact assessment.⁷

⁶ Draft Protocol for the Protection of the Caspian Sea against Pollution from Land Based Sources and Activities, TC/COP3/6 ; Protocol on Regional Preparedness, Draft Response and Co-operation in Combating Oil Pollution Incidents, TC/COP3/3; Protocol on the Conservation of Biological Diversity, TC/COP3/5; Protocol on Environmental Impact Assessment in a Transboundary Context, TC/COP3/4, available at www.tehranconvention.org (last visited Mar. 15, 2011).

⁷ Farschi, Parvin (2011) Personal Communication February 25, 2011.

2. Background

2.1 Geographic context



Map produced by UNEP/GRID-Arendal, August 2008

Figure 1. Location Map of the Caspian Sea

The Caspian Sea is the largest (by surface area) enclosed body of water on Earth,⁸ having an even larger area than that of the American Great Lakes or that of Lake Tanganyika in East Africa. It contains some 44% of all inland waters globally.⁹ The closed basin is bounded by northern Iran, southern Russia, western Kazakhstan and Turkmenistan, and eastern Azerbaijan (Figure 1).¹⁰ The sea is approximately 5.5 million years old and its surface is currently 28 meters below sea level. Its length is approximately 1,030 km long, with a width that ranges from 435 km to 196 km.¹¹ The coastline of the Caspian Sea is approximately 7,000 km in length with a surface area of 375,400 km² (not including Garabogazköl Aylagy¹²).¹³ The volume of the Caspian Sea is about 78,700 km³.¹⁴

The Caspian Sea is divided into three distinct physical regions (Figure 2)¹⁵, which are referred to as the Northern, Middle, and Southern Caspian. The Northern section extends to the Mangyshlak threshold, which runs through Chechen Island (Russia) and Cape Tiub-Karagan (Kazakhstan), it is very shallow and it accounts for less than one percent of the total water volume with an average depth of only 5–6 metres, (annually this area becomes frozen).

The Caspian Sea is divided into three distinct

⁸ It is classified as an Oceanic Lake as it is geologically considered a ‘sea’ due to its content of saline waters.

⁹ *Conceptual Paper for the Caspian Sea Environmental project submitted to GEF 2001, available at www.iwlearn.net/iw-projects/Fsp_112799467213* (last visited Mar. 2, 2011).

¹⁰ D. Fenton & J. Griffin, *Terminal Evaluation of the “Towards a Convention and Action Plan for the Protection of the Caspian Sea Environment” project*, UNEP (October, 2007).

¹¹ *Background, Caspian Environment Programme*, available at <http://www.caspianenvironment.org/newsite/Caspian-Background.htm>

¹² An extensive lagoon with contact to the Caspian Sea proper.

¹³ *Trans-boundary diagnostic Analysis of the Caspian Sea* (Volume 2), THE CASPIAN ENVIRONMENTAL PROGRAMME, Baku, Azerbaijan (September 2002).

¹⁴ The combined Great Lakes are approximately 22,000km³

¹⁵ *Supra* note 13.

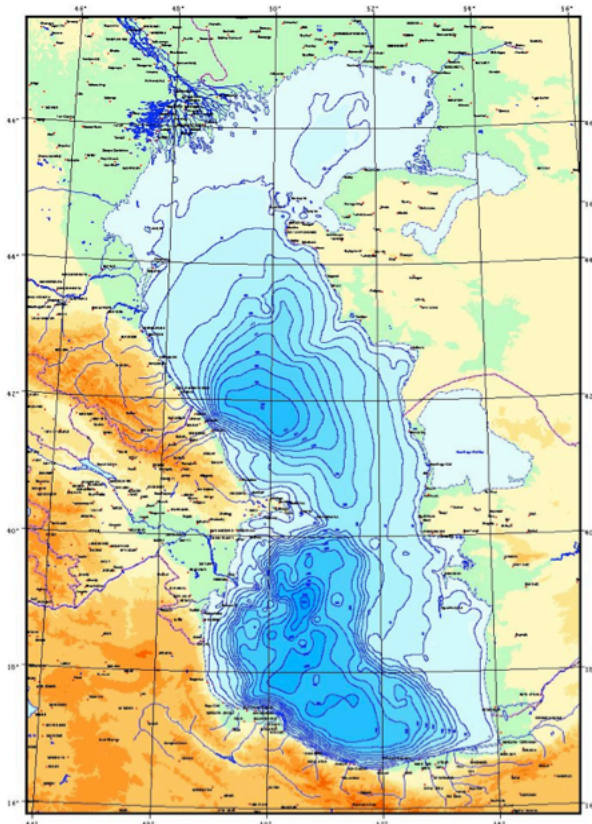


Figure 2. Bathymetry of the Caspian Sea

The Middle area extends south as far as the Apsheron threshold, a sill of tectonic origin that runs through Zhiloi Island (Azerbaijan) and Cape Kuuli (Turkmenistan) average depth for this zone is 190 metres and a volume of about 33% of the total.¹⁶

The Southern portion contains the coasts of Azerbaijan, Iran and Turkmenistan. Garabogazk bay is the saline eastern inlet of the Caspian, which is part of Turkmenistan and at times has been a lake in its own right due to the isthmus which cuts it off from the Caspian. The Southern area of the Caspian is as deep as 1000m and holds approximately 66% of the total volume of water.

More than 130 rivers and streams contribute to the inward flow of the Caspian, principally from the Volga, Ural, Kura rivers. The Volga river accounts for some 80% of the inflow of the

Caspian Sea and drains 22% of Europe by area.¹⁷ While the Volga has often been viewed as one of the most polluted rivers, passing through many large centres, it is less polluted than would be expected according to the Transboundary Diagnostic Analysis of the Caspian Sea, which was developed through a collaborative effort between the five littoral states in 2002.¹⁸ The major introduction of pollution entering the sea arrives from activities in the coastal zone, including oil and gas exploration.

The population has dramatically increased in the region over recent decades adding to increased pollution and pressure on sea resources. Today there are approximately 13 million people in the littoral areas of the Caspian, mainly on the Azerbaijan and Iranian coast.¹⁹

¹⁶ See The Tehran Convention, *supra* note 2.

¹⁷ *Supra* note 13.

¹⁸ *Id.*

¹⁹ See Philippe Rekacewicz, *UNEP/GRID-Arendal, Population by administrative region, Caspian Sea region*, available at <http://maps.grida.no/go/graphic/population-by-administrative-region-caspian-sea-region> (last visited Apr. 27, 2012).

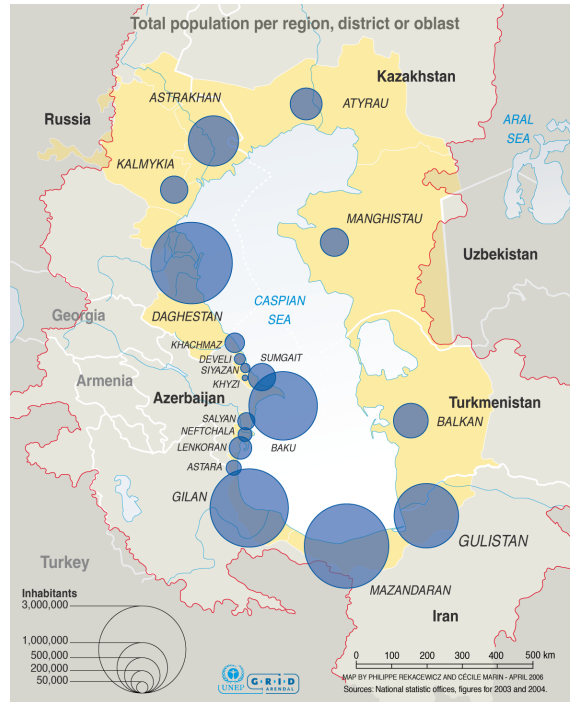
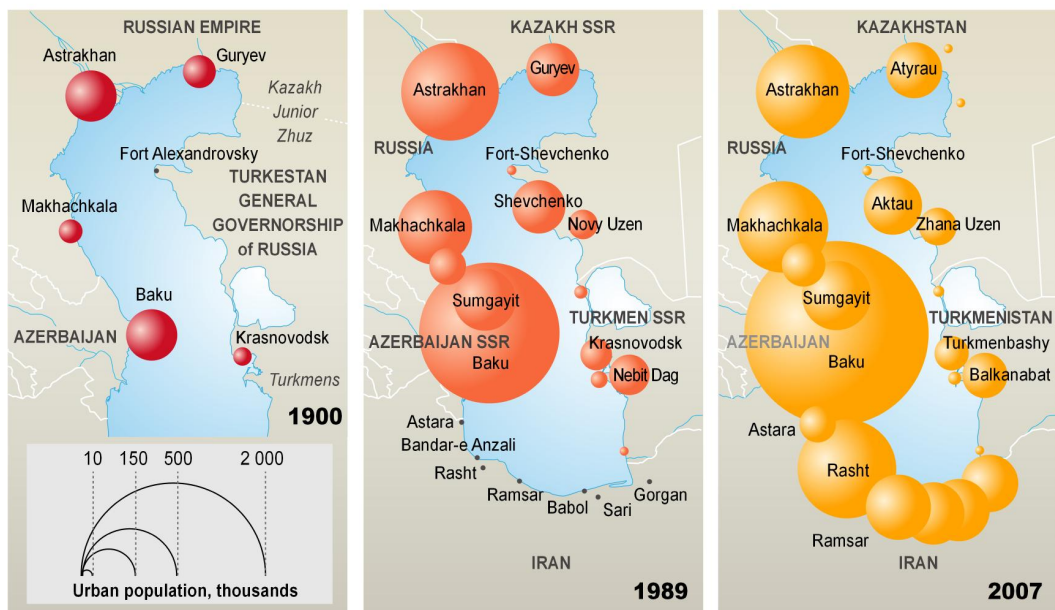


Figure 3. Population centers of the Caspian Sea.²⁰

Urbanisation on the Caspian shores



Data for Persia (Iran) for 1900 and 1990 is missing
Sources: USSR Population Census 1989; Wikipedia; National population statistics

Map produced by UNEP/GRID-Arendal, August 2008

Figure 4. Demographic development²¹

²⁰ Id.

²¹ UNEP/GRID-Arendal, *Urbanisation on the Caspian Shores*, available at <http://envsec.grid.unep.ch/centasia/maps/eastcasp/02.jpg> (last visited Apr. 27, 2012).

2.2 Environmental context

The principle reason for developing the Caspian Sea Environmental Programme was to address the continual degradation of the marine environment that was evident since the 1980s.

Pollution of the sea from land-based and marine sources

There is considerable evidence to suggest that pollutants to the Sea are greatly impacted by the inflow of rivers, discharge from cities and industrial activities in the near shore area.²² Mining, particularly chromium mining, has discharge into the Ural River, and in southern Kazakhstan.²³

Pollution of the sea caused by oil and gas extraction activities on the seabed, and the threat of pollution that may be caused by accidental spills is also a particular concern as there has been a rapid growth in oil development since 1991, particularly in Azerbaijan and Kazakhstan. Alongside existing and proposed pipe lines and fossil fuel infrastructure there exists significant hydrocarbon deposits: in recent years huge investments have been made to tap into the estimated US\$12 trillion deposits.²⁴

Cooperation on marine pollution monitoring began in 1994 with the establishment of the Coordinating Committee on Hydrometeorology and Monitoring of Caspian Sea Pollution (CASPCOM). It was created with the assistance of the WMO and includes the hydrometeorological units of the various countries, as well as representatives of commercial interests and international organisations. One of the main functions is to set up a system of data and information exchange, and to relate the actual and forecasted state of pollution.²⁵ However, the CASPCOM also monitors the effects of annual sea level fluctuations.²⁶

Degradation of the sea caused by the sea level alteration.

After the Volga River was regulated in the 1950s, an average seasonal decrease of the sea level at most coastal ports amounted to 15-20 cm; however, regulation and increased water diversion have continued, and climate change has exacerbated the situation. In 2010 the decrease exceeded the mean value of the last 50 years by 1.5 times (being close to 30 cm, but as much as 40 cm in some areas).²⁷

²² *Supra* note 13.

²³ *Id.*

²⁴ K. Mehdiyoun, *Ownership of Oil and Gas Resources in the Caspian Sea*, 94(1) THE AMERICAN JOURNAL OF INTERNATIONAL LAW 179–189 (2000).

²⁵ I. ZONN, A. KOSTIANOV, M. GLANTZ & A. KOSAREV, *CASPIAN SEA ENCYCLOPEDIA* (1st ed. Springer-Verlaag, 2010).

²⁶ CASPCOM, *Informational bulletin No1* (2010) available at caspcom.com/files/CASPCOM_bulletin_2.pdf (last visited March 21, 2011).

²⁷ *Id.*

From late 1930 to 1978, the level of the Caspian decreased by almost 3 m. Such a significant change had a negative impact on its flora and fauna. Shallow waters of the North Caspian, deltas of Caspian rivers, and coastal wetlands suffered the most. Shallow bays such as Kaidak and Mertviy Kultuk dried and the river delta areas reduced significantly. New islands formed and existing islands formed peninsulas or merged with the land.²⁸

Depletion of the fish stocks, primarily, sturgeon

Fishing has different levels of importance for the different littoral states. While fishing comprises only a small portion of the national economies of Azerbaijan and Turkmenistan, it is regionally very significant for the Russian Federation, Iran and Kazakhstan.²⁹ While herring and kilka also have commercial fisheries, the main fishery is sturgeon for the supply of caviar. There are six species in the Caspian Sea, of which Beluga (*Huso huso*) is the most sought after.

The depletion of sturgeon fish is believed to have been initiated in the 1960s when dams were built on the Volga River hindering migration to their spawning grounds.³⁰ Alterations in fishing regulations in the late 1970s and early 1980s under the Soviet Union were also thought to compromise sturgeon populations.³¹ However, since the fall of the Soviet Union in 1991, the biggest single threat is illegal poaching of sturgeon.³²

The situation around sturgeon is of great concern. By 1997 all the sturgeon species were listed under CITES.³³ Official sturgeon landings have plummeted from 8.5 thousand tonnes in 1985 to 1.3 thousand in 2005, the majority of the decline having been experienced since the collapse of the Soviet Union.³⁴ In 1992 the Commission on Aquatic Bioresources of the Caspian Sea was established by the fisheries organisations of Azerbaijan, Kazakhstan, Turkmenistan and Russia to help understand fisheries issues and develop recommendations for their management. Iran joined the Commission in 2002.³⁵ While the Commission is seen as an inter-governmental organisation, its decisions are implemented on a voluntary basis. The Commission helps to

²⁸ *Supra* note 13.

²⁹ *Id.*

³⁰ R. Khodorevskaya, G. Ruban & D Pavlov (2009) *Behaviour, Migrations, Distribution, and Stocks of Sturgeons on the Volga-Caspian Basin*, WORLD STURGEON SOCIETY SPECIAL PUBLICATION NO 3; See also *supra* note 11.

³¹ In the Soviet Union a ban on fishing with nets at sea was established in the 70s to protect juvenile sturgeon. The fishery was transferred to the mouths of the rivers using hooks, which resulted in an initial substantial increase in annual catch that peaked in 1977 at 28,900 tonnes before declining rapidly to 12,000 tonnes in 1992: *supra* note 13.

³² See STURGEON POACHERS DEFY CASPIAN SEA PATROLS, available at www.illegal-fishing.info/item_single.php?item=news&item_id=3039&approach_id=13 (last visited Mar. 10, 2011).

³³ Conservation of Sturgeons, Resolution Conf. 10.12 (Rev.) (Harare, 1997, as amended at Gigiri, 2000), CITES (2000), available at <http://www.cites.org/eng/res/all/10/E10-12R11.pdf> (last visited Apr. 27, 2012).

³⁴ M. Pourkazemi, *Caspian Sea sturgeon conservation and fisheries: Past Present and Future*, 22 JOURNAL OF APPLIED ICTHYOLOGY 12-16 (2007).

³⁵ *Supra* note 25.

formulate policy, examine fishing regulations, assess stocks, and help set quotas. In 2003 the Commission on Aquatic Bioresources of the Caspian Sea developed a protocol, based on recommendations made by CITES and the 1995 FAO Fishing Code of Conduct, to elaborate principles and criteria of management of the stocks of Caspian Sea fisheries. Also arising from agreements in 2003, joint surveys have been conducted for sturgeon, using scientific vessels from the Russian Federation and Iran, with scientific representatives from all five littoral states on board.³⁶

Despite the efforts of states to manage the resource officially, it has been acknowledged by most governments that illegal poaching is a continual problem.³⁷ In the continued absence of region wide agreement on fishing, the Global Environment Facility (GEF) commenced the funding of a regional project: *Restoring Depleted Fisheries and Consolidation of a Permanent Regional Governance Framework* in 2008.³⁸

Despite Russia having placed a ban on commercial fishing of sturgeon in 2005, the populations remain precipitously low.³⁹ In February 2011 a regional meeting of ministers was held in Astana to discuss a proposed moratorium on sturgeon fishing in the sea.⁴⁰ However, a final decision could not be reached, and the regional moratorium on sturgeon remains a discussion.

Degradation of biodiversity and introduction of invasive species into the Caspian Sea.

Concern over loss of biodiversity in the Caspian Sea (at species, genetic, and habitat levels) is widespread internationally and regionally. Species biodiversity of the Caspian is low compared to other more open seas, across nearly all phyla. The clear threats to some of the economically important fish species (including sturgeon) heighten concern over general loss of biodiversity. Besides sturgeon, the Caspian Seal is also officially classified as threatened. There is a high level of endemic species in the Caspian Sea that are particularly sensitive to threats from industrial pollution, overfishing, invasion of exotic species, and other human activities.⁴¹

The unique biodiversity include a large degree of endemism making its flora and fauna unique. The history of Caspian flora and fauna is one of introduction and endemism. The two major sources of introduced

³⁶ See *Regional Programme on Study of the Distribution, Abundance, Stock Assessment, Food Supply, and TAC Determination of Caspian Sea Sturgeon in 2007-2009* in CITES conference resolution 12.7 (Rev. CoP14).

³⁷ FSUE 31ST CASPIAN SEA AQUATIC BIORESOURCE COMMITTEE MEETING (2010), available at www.kaspnirh.ru/en/news/2010/06/23/97/ (last visited Apr. 5, 2011).

³⁸ See Current Projects of the GEF, available at iwlearn.net/iw-projects/iwproject.2008-07-07.5606706364 (last visited Mar. 12, 2011).

³⁹ *Supra* note 37.

⁴⁰ CAEN (2011) *Caspian States to Discuss sturgeon fishing moratorium*, CENTRAL ASIA ECONOMY NEWSWIRE (February 7, 2011) available at www.centralasianewswire.com/Business/ (last visited Mar. 12, 2011).

⁴¹ *Supra* note 13.

biodiversity for the Caspian were from prior links with the Mediterranean Sea through the Black Sea, and through the Arctic linkage in past geological time. Endemism has worked on these two sources of biodiversity, expanding further the diversity of the system. Bottom-dwelling gobies perhaps represent the most endemic of Caspian fauna. Extensive flocks of flamingos, for example, populate the northern and southern waters of the Caspian Sea at different times. At least 15 globally threatened species use the region (geese, ducks, pelican, crane, eagles, etc.) as well as IUCN-listed sturgeon species. Many flora and fauna species contained in red books of the five littoral countries are found in the Sea and coastal zone. From a bird migration perspective, the wetlands in the region lie astride the East African flyway, the Mediterranean flyway, and the Central Asian-Indian flyway, involving millions of birds each year (estimates are up to 10 million birds feed and rest here each year in spring and autumn). As an example, the Volga Delta, due to its uniqueness, has some 800,000 ha designated as a Ramsar site.⁴²

	Azerbaijan	Iran	Kazakhstan	Russia	Turkmenistan
Flora	50	NA	12	40	8
Insects	NA	NA	20	NA	NA
Amphibian	2	17	0	0	NA
Reptiles	3	NA	2	8	NA
Birds	41	30	31	45	24
Mammals	14	8	5	18	2
Fish	6	3	5	5	4

Table 4. The number of rare and vanishing species from the Caspian Sea and its coastal zones, as listed in national Red Books.⁴³

⁴² Concept paper for Caspian Sea Environmental Programme submitted to GEF 2001 available at www.iwlearn.net/iw-projects/Fsp_112799467213 (last visited Mar. 2, 2011).

⁴³ The Table is prepared on the basis of materials from the National reports on the state of biodiversity (See www.Caspianenvironment.org). NA means that there is no available information.

2.3 Political context⁴⁴

Through much of the 1800s the Caspian Sea region was dominated by Tsarist interests. Following a series of wars between Russia and the Qajar Empire (Persia), the treaty of Turkmenchay was signed in 1828. Under the treaty, Russia gained much of what is now Azerbaijan. Notably, under article 8, Persia lost rights to navigation in the Caspian Sea, including along her coasts. The 1828 Treaty was abrogated by the Russo-Persian Treaty of Friendship, which was signed on February 26, 1921.⁴⁵

In effect, while being a “Treaty of Friendship,”⁴⁶ in practical terms the 1921 Treaty provided for the continued domination of the Caspian Sea by Russia. While the 1921 treaty allowed Persian vessels to ply the Caspian Sea,⁴⁷ it emphasised their northern neighbours’ dominance - permitting Russia to “... have the right to advance her troops into the Persian interior for the purposes of carrying out the military operations necessary for its [Russia’s] defence.”⁴⁸ Furthermore, the 1921 Treaty encouraged security of the region following British and other interests in the region. Article 5 prohibits 3rd parties who may be hostile to one of the contracting parties from engaging (even commercially) in the region. The treaty goes beyond military security to emphasise the importance of Russian food and fisheries interests in the Caspian Sea, and indicated that a future negotiation engagement with regard to the southern fisheries was needed.⁴⁹

Russian interests continued to prevail and by the end of the 19th century Russian dominance extended to occupy key Persian cities like Tabriz. At some point Russian interests, through the Lianozov Brothers, built a fish plant on the Persian coast and were granted enormous concessions along the Persian portion of the Sea.⁵⁰ In 1927 a Fisheries Treaty was developed

⁴⁴ For a summary of the political history and how it relates to current socio-political dynamics and resource exploitation see *supra* note 22; Julie Folger, *Proposal to End the Stalemate in the Caspian Sea Negotiations*, 18(2) OHIO STATE JOURNAL ON DISPUTE RESOLUTION 529-542 (2003); R. Mamedov, *International Legal Status of the Caspian Sea: Issues of Theory and Practice*, TURKISH YEARBOOK XXXII 217-259 (2001).

⁴⁵ Perse et Union des République Socialiste Fédérative des Soviet de Russie Traité D’Amitié, Feb. 26, 1921, 69 LNTS 383.

⁴⁶ *Id.* The treaty relinquished all of the “The Russian Federal Government, having officially renounced all economic interests obtained by military preponderance, further declares that, apart from the concessions which form the section of art 8 and 10, the other concessions obtained by force by the Tsarists government, and its subjects, shall also be regarded as null and void’. The economic interests in Art 8 are loans that were made to the Persian government by the Tsarist government of Russia and were also relinquished by the Russian Federal Government; and Article 10 abandons the “colonial policy of building roads, rail, landing stages, warehouses, amongst others on Persian territory.

⁴⁷ *Id.* Under Article 11, Parties should “...enjoy equal rights of free navigation on that Sea, under their own flags ...”

⁴⁸ *Id.* Art. 6.

⁴⁹ *Id.* Art. 14.

⁵⁰ Note reference is made to the Lianozov Brothers in Article 2 of the 1927 Fishing Treaty, however, the original agreement has not been obtained.

and the previous concessions granted to the Lianozov Brothers became a joint venture area between Russia and Persia, administered and managed through a bi-national corporation.⁵¹

In 1935 some fisheries concessions were ceded to Iran. Under the Treaty of Establishment, Commerce and Navigation each party permitted vessels flying its own flag to fish coastal waters up to a limit of 10 nautical miles from the coast.⁵² The 10 nautical mile fishing zone was reaffirmed under a second Treaty of Commerce and Negotiation in 1940, where the limits beyond the 10 nautical miles were permitted to be fished exclusively by both Iranian and Russian nationals.⁵³

Up until the 1990s, the Caspian Sea was considered by Russia and Iran as a “common sea.” In 1954, while the two countries concluded a treaty delimiting land boundaries, no mention was given to delimiting any sea boundaries.⁵⁴ It is only more recently, with the collapse of the Soviet Union and the rise in importance of oil and gas in the region that the issue of delimitation of the marine and seabed resources has become politically (and economically) important. This is not to suggest that oil and gas exploration was approached in a joint fashion. Until the Soviet Union focussed its attention on its Siberian reserves in the 1960s, the reserves off the coast of Azerbaijan were its most productive, and there is no evidence that it ever consulted Iran on its operations in the Caspian.⁵⁵

Oil and gas development have driven the regional politics since the early 1990s. The proven reserves of the region account for some 2.7% of global oil reserves and as much as 7% of global gas reserves.⁵⁶ Consequently, the stakes are high and the development has driven the economies of Azerbaijan (which holds the largest reserves), Kazakhstan and Turkmenistan. Azerbaijan supports equidistant division of the marine and seabed resources, and began to foster relationships with western oil interests in the early 1990s. As an ally of the US, Azerbaijan has been careful in its relationship with both Russia and Iran in the development of its oil interests, and had brought in the Russian oil company Lukoil into an oil consortium as early as 1994.⁵⁷

⁵¹ See *Perse et Union des Républiques Soviétistes Socialistes Accord Relatif à L’exploitation des Pêcheries sur la Côte Méridionale de la Mer Caspienne, Avec Protocole*, art 2, Oct. 1, 1927, 2621 LNTS 350; LNTSer 44; 112 LNTS 297, English translation available at <http://www.worldlii.org/int/other/LNTSer/1931/44.pdf> (last visited Apr. 27, 2012).

⁵² Treaty of Establishment, Commerce and Navigation, between Persia and the Russian Socialist Federal Soviet Republics, art. 14, 15, Aug. 25, 1935, 176 LNTS 301.

⁵³ Treaty of Commerce and Navigation, between Persia and the Russian Socialist Federal Soviet Republics, Mar. 25, 1940, 179 LNTS 301; See *supra* note 24.

⁵⁴ Agreement Concerning the Settlement of Frontier and Financial Questions between Russian Socialist Federal Soviet Republics and Iran, Dec. 2, 1954, 451 UNTS 250.

⁵⁵ *Supra* note 24.

⁵⁶ *Id.*

⁵⁷ *Id.*

Discussions continue⁵⁸ regarding the status of the Caspian Sea, primarily as a result of the wealth of hydrocarbons and fisheries in the area, but delimitations will ultimately have ramifications in other sectors such as pollution control (responsibility and action), environmental protection, safety of shipping and navigation.

⁵⁸ Meetings were held in February 2011 to continue the debate over sovereignty of the Caspian Sea. Russia has opposed an UNCLOS approach to the region favouring a 20nm territorial limit with the remaining sea being a joint development zone.

3. Negotiation of the Convention

3.1 Development of the Convention

The negotiation process for the *Framework Convention for the Protection of the Caspian Sea Environment* provides a number of examples of cooperation in the face of unprecedented hurdles. Not only was the agreement forged during the years following the creation of three new nations (in 1991) but it had to include the weight of a colonial power relinquishing control to an Iranian state eager to gain its share of resources. Thrown into this mix was the importance of the seabed resources (fossil fuels) valued approximately at US\$12 trillion and a rapidly diminishing, though valuable,⁵⁹ fish stock. This was further compounded by the overarching insecurity of having no delimited maritime boundaries, an absence of clear obligations and rights, and no coordinated management of resources (shared or otherwise).

The negotiation process provides an excellent example of contemporary methodological practices in play. It should be noted that only one protocol emanating from almost 20 years of negotiations has been signed, and thus the bulk of 'effort' done to date has been on collecting information, promoting confidence building, and developing consensus on 'what' should be done in the future.

3.2 Negotiation process

The negotiation of the ultimate Tehran Convention has its beginnings in the early 1990s; however, it is important to include mention of earlier efforts to develop cooperation.

In the wake of the collapse of the Soviet Union in 1991, Azerbaijan, Kazakhstan and Turkmenistan declared their non-recognition of the legal force of the Soviet-Iranian contractual treaties between 1921 and 1950s. This position was not thought to be in keeping with the Almaata Declaration of December 1991 when the new States agreed to recognise contractual obligations made under the Soviet Union.⁶⁰ Iran took the opportunity to initiate a dialogue amongst the littoral states regarding cooperation of the Caspian Sea to promote its national priorities in the post Soviet Union power vacuum.

Within the framework of the Economic Cooperation Organisation conference in February 1992 in Tehran, Iran promoted the concept of a regional organisation of the Caspian Sea in order to promote cooperation in the exploitation of the region's reaches.⁶¹ The thought was possibly to

⁵⁹ 1 kg of caviar in London is estimated at US\$10,000.

⁶⁰ Mamedov, *supra* note 44.

⁶¹ See Edmund Herzig, *Iran and Former Soviet South* (London: RIIA, 1995) 30-33, in Mamedov, *supra* note 44.

have the secretariat located within its territory.⁶² While this initiative was not well received, a more practical approach emerged following a special conference to establish an international mechanism for the settlement of problems in the Caspian Sea, which was also held in Tehran in October of the same year. A draft agreement on the Organisation of the Caspian States Cooperation (OCSC) was introduced as a means of collecting data and information of the Caspian Sea and its resources.⁶³ As there were significant energy resources in the region, it was also hoped to identify possible development opportunities.

By the end of the conference, the states agreed to create committees to explore the legal status of the Caspian Sea, environmental protection, development, use and protection of biological resources, navigation, scientific and information exchanges, and studies on sea level alteration.⁶⁴ As the committee on biological resources appeared to be most politically feasible it was thus established. This was possibly due to the emphasis on biological diversity emanating from the Rio Declaration in July of 1992, and possibly because it was the least contentious of the committees.

In August 1993 scientific experts, as opposed to diplomats, attended a meeting in Resht, Iran, to discuss the protection of the biological resources of the Caspian Sea. It was at this conference that interests of sovereignty became a stumbling block. Azerbaijan pushed the view that the biological resources were national, as opposed to regional, whereas Russia and Iran were interested in a condominium approach.⁶⁵ Meetings continued, and two months later a meeting was held in Astrakhan, Russia, to explore a compromise in dividing the mineral resources of the Caspian Sea. This was followed by a meeting in December 1993 to discuss the establishment of the International Organisation on the Caspian Sea. However, 1993 closed with no significant advances.⁶⁶

In October 1994 another meeting occurred to discuss boundary delimitation and review draft agreements developed by Azerbaijan and Kazakhstan. The Azerbaijani draft focussed on sovereignty - the Caspian Sea as an inland lake - while the Kazakhstani draft viewed it as a 'closed sea' and proposed boundary delimitations and obligations developed from UN Convention of the Law of the Sea (UNCLOS).⁶⁷ Russia proposed a draft agreement on *Regional Cooperation of the Caspian States* which basically echoed the approach it had developed with Iran under the Soviet Union: that the Caspian Sea should be open equally to all for navigation

⁶² Alain Giroux, *Le Kazakhstan entre Russie et Caspienne* (1997); *La Caspienne, Une nouvelle frontiere, CEMOTI; Cahiers d'etudes sur la mediterranie orientale et le Monde turco-iranienne*, No. 23 available at cemoti.revues.org/118 (last visited Mar. 23, 2011).

⁶³ Mamedov, *supra* note 44.

⁶⁴ *Supra* note 61.

⁶⁵ Mamedov, *supra* note 44.

⁶⁶ *Id.*

⁶⁷ *Id.*

and development. This was obviously viewed with scepticism by the newer states who were less technically developed.⁶⁸ At the same time, Russia's oil company Lukoil was signing an agreement to have a 10% interest in the oil and gas development of the Azerbaijan sector of the Caspian Sea.⁶⁹

Attention focussed again on the preservation and use of biological resources and a meeting was held to discuss fisheries and biodiversity in January of 1995. A draft agreement was presented and was basically approved, apart from the issues of status and exclusive jurisdictional zones.⁷⁰ Further meetings occurred throughout the remainder of the year to look at the legal status of the Caspian Sea, as well as address problems of oil and gas development and biodiversity. Throughout the following years as more development occurred in the Caspian Sea, particularly in the Azerbaijani area, the countries of the region began to develop oil and gas areas in the absence of any agreement.⁷¹ Russia, Iran and Turkmenistan, for instance established a tripartite company to exploit hydro-carbon resources.⁷²

By 1995 the GEF began evaluations to look at assisting cooperation through their international waters portfolio. An initial mission by GEF to the Caspian region in 1995 culminated in the co-funding (EU/TACIS's) of a number of preparatory phases of a regional project on the Caspian: The Caspian Environment Programme. The preparation project was completed in 1998, when the GEF council approved the project proper. This was the "Addressing Transboundary Environmental Issues in the Caspian Environment Programme (CEP)." Under this first stage of funding the Caspian Environment Programme (CEP) secretariat was established, and the Transboundary Diagnostic Analysis of the Caspian Sea and the Strategic Action Programme, as well as the National Caspian Action Plan were written. The program closed in 2002 and has cost \$18.3 million, of which the GEF provided some \$8.34 million in funds.

Throughout this time, meetings between the countries continued to discuss the legal status of the Caspian, which had become the focus of the dialogue process initiated by the Iranians. However, little concrete progress was made as the development of hydrocarbons prompted countries to adopt a 'use it or lose it approach.'⁷³

With continued funding from the GEF and UNEP, the countries adopted the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention) on 4 November 2003. The following year the GEF approved the 'Towards a Convention and Action Programme for the Protection of the Caspian Sea Environment (Phase

⁶⁸ *Id.*

⁶⁹ *Supra* note 24.

⁷⁰ *Supra* note 7.

⁷¹ *Supra* note 24.

⁷² *Id.*

⁷³ Mamedov, *supra* note 45.

II)'. The project was initiated in 2004 and finished in 2007, the GEF having contributed some US\$6.4 million in funding. The project was developed to advance the work initiated in the first phase and support the ratification of the framework agreement. The Tehran Convention was ratified on the 12 August 2006 and became the first legal commitment among all five Caspian countries.

In 2008, "The Caspian Sea: Restoring Depleted Fisheries and Consolidation of a Permanent Regional Environmental Governance Framework" was initiated and run through the CEP. This project builds upon the previous work of the CEP and supports the littoral states' efforts to halt the decline in bio-resources and to restore depleted fisheries in the Caspian Sea. This is to be carried out through the implementation of agreed actions defined in the Caspian Strategic Action Programme (SAP), as well National Action Plans. It is implemented through the UNDP.

The GEF supports the current project and the continuing Convention process. It is partnered by the UNDP, UNEP and the World Bank and implemented by the UNDP with execution by the UNOPS. Its objectives are to:

- Commence implementation of the SAP (Strategic Action Plan) in the priority areas of Biodiversity, Invasive Species and Persistent Toxic Substances.
- Continue with specific capacity building measures to ensure a regionally owned CEP coordination mechanism capable of full implementation of the SAP and regional coordination of the NCAPs and consolidate/update the TDA, SAP and NCAPs following a series of information gap-filling measures.
- Strengthen the environmental, legal and policy frameworks operating at the regional and the national levels, and where necessary improve implementation and compliance of those frameworks.

4. The Tehran Convention

4.1 Overview

The *Framework Convention for the Protection of the Caspian Sea Environment* was signed on 4 November 2003 and came into force on 12 August 2006. It seeks to promote integrated and sustainable management of the biological resources of the Caspian Sea - protection from all forms of degradation and pollution, as well as the restoration of the ecosystem. It encompasses the entirety of the lacustrine waters and the influences from land based sources.

The Tehran Convention is an umbrella agreement obligating the contracting parties to cooperate on a multi-lateral and bi-lateral basis to develop and implement protocols to the convention (Article 6). Protocols are to be developed for: the prevention, reduction and control of pollution, including coastal pollution, pollution arising from sea bed activities, dumping and from vessels (Article 7-10); controlling invasive species (article 12); environmental emergencies (article 13); the protection of living marine resources (article 14); scientific research to alleviate the effects of sea level fluctuations (article 16); the introduction of environmental impact assessments (Article 17).

Four protocols have been advanced:

- i. The Protocol on the Protection of the Caspian Sea against Pollution from Land-Based Sources and Activities
- ii. The Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents
- iii. The Protocol on Environmental Impact Assessment in a Trans-boundary Context
- iv. The Protocol on Conservation of Biological Diversity.

To date only one protocol has been adopted - The Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents was formally signed and adopted at COP3.⁷⁴ The wording for the biodiversity, the emergency response and the EIZ protocols was for the most part concluded in 2008 and it was hoped that they would be signed at COP 3.⁷⁵ Time ran out to discuss the Environmental Impact Protocol at COP3, so it will be finalized so as to be ready for signature before COP4.⁷⁶

⁷⁴ Report of the Third Meeting of the Conference of the Parties to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, TC/COP3/14, 20 September 2011, available at <http://www.tehranconvention.org/spip.php?article48> (last visited April 30, 2012).

⁷⁵ Farschi, Parvin (2011) Personal Communication February 25, 2011.

⁷⁶ *Supra* note 74.

Governing Structure

Under the Convention, a “conference of parties” (COP) has been established, meeting annually and on special request, with a revolving chairmanship (Article 22). The revolving chairmanship is interesting in that it was to be conducted on a rotational basis following an alphabetical form. Unfortunately, the COP has not met annually. They met in 2007 in Azerbaijan, and 2008, in Iran, following the ratification of the convention, and their third meeting is scheduled for August 2011, in Kazakhstan. Delays in meetings were partially a result of lack of funding and lack of advancement in some of the protocols.⁷⁷

A ‘permanent’ Secretariat has been created to execute the Tehran Convention, however, a suitable home base has not yet been determined. Currently an ‘interim secretariat’ is administered out of the UN offices in Geneva. The secretariat is responsible for arranging meetings for the parties and subsidiary bodies, reports, acts as liaison for enquiry, maintains data, helps enforce international and national laws as it pertains to the Caspian sea, provides technical assistance, and carries out functions and programs (Article 23).

Each contracting party has designated a National Authority to co-ordinate the implementation of the convention, principally liaise with the secretariat and to report on the implementation of convention provisions at the national level (Article 26).

The convention does not limit individual states from acting alone nor in tandem with other parties outside of convention parameters, providing they adopt more stringent measures than provided for in the convention (Article 26).

While the Convention Secretariat acts as a clearing house for information, the CaspEco Programme Coordination and Management Unit (PCMU) (which administers the Caspian Environmental Programme (CEP) in Astana (Kazakhstan)) helps to maintain on the ground contact with the national focal points, provides technical assistance, and acts as an information clearing house. There is close cooperation between the Convention Secretariat and the PCMU.

The PCMU is helping to coordinate the development of National Caspian Sea Action Plans as part of the Strategic Action Programme, and as is also the implementation means of the Tehran Convention and its protocols.

Flexibility

Any party may propose amendments to the convention at any time although ratification of them does require unanimity (Article 34). However, singular acts by any member of the Tehran Convention are permitted (Article 26.2). The wording for these singular initiatives

⁷⁷ *Supra*, note 75.

acknowledges that parties might choose to act more stringently than the convention requires, and presumably that flexibility is equally applicable when they do not wish to act more stringently.

In terms of assessing flexibility, changes to the Tehran Convention are basically related to the protocols. These can be changed through unanimous decisions at the COP. The reality may be that altering the agreements may not be necessarily easy as it will require agreement at national government level.

Data and information Exchange

Under the Tehran Convention, data and information exchange is to be done through co-operation, and the development of a centralised data base (Article 19) which is maintained by the Secretariat (Article 23). States are to contribute to the database on an ongoing basis to provide information for decision-making (Article 21). The designated National agencies are to compile the necessary reports, which are to be disseminated and available to all other parties through the data center of the secretariat. In practice, this is achieved through the PCMU administering the CEP.

Of note is the reference in Article 21 to ensure public access to information pertaining to the environmental conditions of the Caspian Sea.

The protocols reinforce the exchange of information referred to in Article 21 of the Tehran Convention, and highlight the specific types of information to be transferred. For example under the Biodiversity Protocol information on protected areas and threatened species are to be exchanged, while under the Oil Pollution Response Protocol the information exchanged relates to national authorities and plans for combating oil spills and major oil pollution incidents.

The Environmental Impact Assessment Protocol is necessarily different from the others, as it is entirely related to evaluation and the exchange of information.⁷⁸ Article 5 of the protocol refers to notification to other littoral states of any proposed activities which have been identified, such as crude oil refineries of more than 500 tons per day, nuclear power facilities, enrichment of nuclear fuels, asbestos manufacturing, chemical plants.⁷⁹ If the proposed activity is likely to have a “significant transboundary impact,” the proponent is to notify the potentially affected parties, as well as the Secretariat with any available information. The affected party is to respond within 30 days of receipt of notification indicating if it intends to participate in the EIA evaluation or not.

⁷⁸ Draft Protocol on Environmental Impact Assessment in a Transboundary Context, TC/COP3/4, available at www.tehranconvention.org (last visited Mar. 15, 2011).

⁷⁹ Annex I of the Draft Protocol on Environmental Impact Assessment in a Transboundary Context, TC/COP3/4, available at www.tehranconvention.org (last visited Mar. 15, 2011).

The affected parties are then to determine the mechanism and logistics for undertaking the EIA (Article 6-EIA). The EIA are to be conducted pursuant to national laws and practice of the proponent (Article 7-EIA). This is significant as it assumes that countries have a viable EIA procedure.

Of note also is that prior to making a final decision on any proposed activity, at the request of the affected party, the party of origin (or proponent) will enter into consultation (for a reasonable time period) with the affected party with a view to reduce the impact (Article 9 – EIA). The final decision lies with the party of origin, though it is required to support its decision and show how the interests of the affected party were taken into consideration (Article 10 - EIA).

Dispute Resolution

The Tehran Convention addresses dispute resolution in a cursory manner. Article 30 states:

*In case of disputes between Contracting Parties concerning the application or interpretation of the provisions of the present Convention, the Contracting Parties will settle them by consultations, negotiations or by any other peaceful means of their own.*⁸⁰

The dispute resolution for the protocols refers back to the original text.⁸¹

Bearing in mind the history of the region and the potential lack of trust between parties, the dispute resolution mechanism is seemingly inadequate. Other bodies of water, such as Lake Tanganyika, have dispute resolution mechanisms which are thought to be more functional as they outline a process and timeline for resolution. The above mechanism can be viewed as means of drawing out disputes and possibly incurring large costs.

That said, the above mechanism may have been chosen for precisely the reason that it does not indicate a clear process or timeline. States may not have wanted to be locked into a dispute resolution clause when they would prefer to use other diplomatic means, particularly when there is a relatively high level of uncertainty over sovereignty and potential for disputes.

⁸⁰ The Tehran Convention, *supra* note 3.

⁸¹ Draft Protocol for the Protection of the Caspian Sea against Pollution from Land Based Sources and Activities, TC/COP3/6 ; Protocol on Regional Preparedness, Draft Response and Co-operation in Combating Oil Pollution Incidents, TC/COP3/3; Protocol on the Conservation of Biological Diversity, TC/COP3/5; Protocol on Environmental Impact Assessment in a Transboundary Context, TC/COP3/4 available at www.tehranconvention.org (last visited Mar. 15, 2011).

Others, however, would argue that is precisely when you most need to have a clear and effective dispute resolution clause.⁸²

Sustainable Financing

Sustainable financing has been less advanced than the development of substantive protocols. The Tehran Convention itself is silent on how the Secretariat and activities should be funded. Since 2007 the Secretariat and its activities have been funded through UNEP.⁸³ Convention funding for the 2011-1012 year is estimated to be US\$682,000, not including the costs of the Tehran Convention Secretariat. To date the Secretariat has been served by four part time positions in Geneva, and seven full time staff of the PCMU, which has been financed by the CEP. The cost of the activities of the Secretariat is estimated to be US\$310,000 per annum.⁸⁴ Both Azerbaijan and Iran have offered to host a permanent Secretariat.⁸⁵ Until a location for the permanent Secretariat can be determined, the Tehran Convention will be severed in the form on an interim Secretariat hosted by UNEP's Regional Office for Europe in Geneva.⁸⁶

Some companies from the energy sector have indicated that they are willing to help finance the implementation of certain protocols and provide financing for permanent infrastructure.⁸⁷ For example, British Petroleum has been approached for the establishment of the Caspian Information Centre and Agip KCO for the preparation of the Bio-diversity Atlas.⁸⁸

The protocols themselves indicate that funding for the activities should come from:

- a. Domestic financial resources
- b. Financial resources from bi-lateral and multi-lateral funding sources
- c. Innovative methods including foundations, government agencies from other countries, NGOs and private sector entities.⁸⁹

⁸² McCaffrey, S. (2002). *Water Disputes Defined: Characteristics and trends for Resolving Them*. The Resolution of International Water Disputes. Sixth International Law Seminar The Hague, Kluwer Law International. See also Draper, S. E., ed. 2006. *Sharing water in times of scarcity: Guidelines and procedures in the development of effective agreements to share water across political boundaries*, ASCE, Reston, Va.

⁸³ Administration and Financial Management of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, TC/COP3/7 accessed from www.tehranconvention.org on March 15, 2011.

⁸⁴ TC Progress Report to COP 3, SECRETARIAT OF THE TEHRAN CONVENTION (2011), available at www.tehranconvention.org/spip.php?article48 (last visited May 12, 2011).

⁸⁵ Administration and Financial Management of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, TC/COP3/7, available at www.tehranconvention.org (last visited Mar. 15, 2011).

⁸⁶ *Id.*

⁸⁷ *Supra* note 75.

⁸⁸ *Supra* note 82.

⁸⁹ *Supra* note 6.

Despite the possibility of a potentially wealthy private sector to assist with supporting activities, there is little concrete commitment to fund the program of work that has been developed. Clearly, some of the activities, such as biodiversity monitoring, as called for under that protocol, could fall under the scope of the national agencies responsible for the environment. However, it is often the case that the ministries responsible for maintaining the environment are less well funded than those responsible for development.

5. Implementation and Monitoring

The framework convention calls for specific protocols to be developed. While only one protocol has been adopted, meetings have occurred to advance the other protocols. At the March 2011 Geneva meeting, the Protocol for Conservation of Biological Diversity and the Protection of the Caspian Sea against Pollution from Land Based Sources and Activities were both approved and were subsequently sent out for internal approval by the Governments of the region. Outstanding amendments to the Response and Cooperation in Combating Oil Pollution Incidents Protocol have been conducted post meeting and were presented at COP3 in August, 2011.⁹⁰ It was decided at COP3 that "... editorial changes in the text of the Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents to the Tehran Convention will be checked and taken care of by the interim Secretariat after the adoption and signing of the Protocol, before publishing the text."⁹¹ There was not enough time at COP3 to discuss amendments to the Protocol on Environmental Impact Assessment and the Protocol on Regional Preparedness.⁹² It is hoped that the Environmental Impact Assessment Protocol will be finalized before COP4.

Being a framework convention, the substantive implementation activities are outlined in protocols to the convention. The various protocols have developed their singular areas for monitoring. For example the Biodiversity Protocol contains provisions for monitoring of protected areas and biodiversity. As no protocol has yet been ratified and fully implemented, no reasonable assessment can yet be made of how implementation of substantive issues are proceeding.

5.1 Third party intervention

It is clear from the discussion on sustainable financing that the role of the GEF and UNEP has been critical in the development of the initial Tehran Convention, as well as advancing the

⁹⁰ *Supra* note 82.

⁹¹ *Supra* note 74.

⁹² *Id.*

subsequent protocols. The funding for the initial data gathering and the transboundary diagnostic analysis provided the foundation for advancing the Convention.

The UN agencies provided a facilitator to engage the various littoral states at a senior diplomatic level which was essential for confidence building. The situation of the littoral states, both in terms of the lack of maritime boundaries and the differing views on resource extraction and ownership, did not permit an easy process of cooperation. The role of the neutral facilitator was essential to promote dialogue and maintain political momentum for the Convention.

The UNEP and other UN agencies which participated in the CEP also brought a degree of technical rigour and science which ensured that the information and analysis conducted was highly recognised. This was important not only for digestion by the political sphere but also by the commercial agents operating in the region. The acceptance of the information from a respected scientific group will also be important as the TC Secretariat looks towards the private sector to help fund certain actions under the Plan of Work.

6. Assessment

The effectiveness of the substantive issues cannot be assessed as no implementation of the protocols has occurred. That said, in terms of promoting cooperation and confidence building the process of treaty protocol development has excelled.

7. Concluding Remarks

The Framework Convention for the Protection of the Marine Environment of the Caspian Sea is a landmark in cooperation in the region. The mere fact that the five littoral states could come together and identify clear areas for cooperation and advance those areas despite a lack of clarity in sovereignty over the area in question is laudable. Understanding that sovereignty issues can hamper certain aspects of the protocols, such as responding to oil spills, it is interesting and encouraging that the parties could advance discussions in these areas to the degree that they have.

Part of the reason is that sovereignty is cleverly avoided, even when discussing responses to oil spills. The Oil Pollution Response Protocol is very functional in that it places the burden of response on the state units (ships, oil rigs) from which the pollution occurs – as opposed to where it occurs. If it is in a port, it is fairly clear that it is linked to a state territory. If the pollution occurs from a ship or an off shore unit then it is the state under which the ship or unit are associated with.⁹³ It thus skirts the issue of whether or not that off shore unit is in a state's maritime jurisdiction. Other contracting parties may become involved either by request or by their own actions (Article 10 – Oil Pollution Response).

As seen in the case of the Caspian Sea, there are often overlapping interests which need to be addressed before real progress can be made. With respect to fisheries, there was a transitional fisheries group with ministerial agencies that was initiated to respond to the recommendations of CITES. There was very limited interaction between this body and PCMU even though fisheries and biodiversity issues were being addressed under the CEP. It took time to develop trust between the groups, and now the PCMU is invited to the fisheries meetings.⁹⁴ While the fisheries groups are becoming more connected, other areas of cooperation have also advanced outside the realm of the CEP. To what extent the GEF lead CEP initiative has assisted other international forums to develop is clearly debatable. However, the recent meetings sponsored by the Kazakh Association of Oil-Gas and Energy Sector Organisations and the Energy Exchange Company have discussed creating a regional online monitoring system of companies exploiting resources in order to ensure better protection of the environment.⁹⁵ Such suggestions clearly emanate from the discussion surrounding the Oil Pollution Response Protocol. Companies were

⁹³ Draft Response and Co-operation in Combating Oil Pollution Incidents, TC/COP3/3; Protocol on the Conservation of Biological Diversity, TC/COP3/5; available at www.tehranconvention.org (last visited Mar. 15, 2011).

⁹⁴ *Supra* note 75.

⁹⁵ See *Astana hosts first Caspian Sea conference on eco safety*, KHAZAKSTAN NEWSWIRE, (Monday June 20, 2011) available at www.centralasianewswire.com/Kazakhstan/Astana-hosts-first-Caspian-Sea-conference-on-eco-safety (last visited June 20, 2011).

also encouraged to invest in the breeding of sturgeon to help maintain their numbers, which is related to the bio-resource activities undertaken through the CEP.⁹⁶

Differing national legislation will always complicate things, and differing political agendas will always be present and must be accounted for when developing areas of cooperation. The three new nations had no new legislation, which in some ways hindered the process as much of the substantive actions related to national practice. For example, IEA assessments and oil response are to be conducted based on the national legislation of the littoral states where the actions occur. However, this presupposes that there are national laws in place and effective national agencies to carry them out.

The political arena under which the Tehran Convention was developed was extremely contentious. All parties had their own political agenda regarding how the resources of the Caspian should be carved up. Initially, both Iran and Russia viewed it as joint condominium approach while others preferred to have delimited boundaries. These remain outstanding issues and will likely hinder progress even on protecting the environment (as there are those arguing that responsibility for protection will be determined by sovereignty). The process therefore is long. It has been almost 20 years since Iran initiated a dialogue process for cooperation in the region. Since that time power has shifted in the region. Azerbaijan and Turkmenistan now have greater oil revenues and are finding they are increasingly powerful players in regional discussions. Azerbaijan has a new pipeline to the Black Sea and is no longer dependent on Russia to sell its oil to Europe. As a member of NATO, Azerbaijan has agreed to have a permanent US base in the area. This likely will not be well received by Iran. Nevertheless, where there are mutual gains to be made, cooperation can advance even in contentious situations. In 1992 Moscow and Tehran supported opposing sides in the civil war in Tajikistan yet nourished mutual interests in other areas such as trade and the Bushehr nuclear power contract.⁹⁷

Clearly, much depends upon political will. Since 2000, Russian cooperation with Iran appears to have been relatively more stable.⁹⁸ However, since 2005, under Ahmendinejad, relations between the two regional powers have been less amicable, particularly in the sphere of Iran's nuclear program.⁹⁹

In the absence of a global convention to regulate the control of pollution from oil development, the creation of regional mechanisms is essential to address issues. Russia for instance is party

⁹⁶ *Id.*

⁹⁷ J. PARKER, PERSIAN DREAMS; MOSCOW AND TEHRAN SINCE THE FALL OF THE SHAH (Potomac Books, 2009).

⁹⁸ Mamedov, *supra* note 41.

⁹⁹ *Supra* note 84.

to only a few conventions which address oil pollution,¹⁰⁰ and the newer states need time to review the plethora of international laws relating to marine pollution. Consequently, the approach of the Tehran Convention is tailor made to the region and has a greater potential for implementation.

Key points in the development and implementation of the Tehran Convention:

- The Caspian Sea is such a politically difficult body of water that the only way to form a mechanism to address any of the primary issues was to ensure inclusivity of all the littoral states. This meant that the very difficult and contentious issues of boundary delimitation, sharing of resources and responsibility for cleanup of pollution, amongst others, had to be shelved until there was greater trust and advancement of cooperation. Discussion therefore focussed on areas where cooperation and mutual gains could be found such as pollution control and biodiversity protection. This paved the way for other additional discussions on transboundary economics and boundary delimitation, which were not under the Tehran Convention.
- The UN environmental program already had personnel well respected in the region and because of these champions, trust was able to be developed quickly.
- The UN was seen as a neutral party which was also important in promoting dialogue and cooperation. The role of the third party in terms of ensuring a level playing field, particularly in the exchange of data and technologies was very important.
- It is better to find agreement and build on it than to ensure a perfect treaty is developed. Building trust was critical. In following negotiation theory, one should build on the areas of agreement, such as process, before tackling more contentious areas. The Caspian Sea programme did just that and developed a broad agreement to be built on in the future when there is greater trust and parties can agree on more substantive elements.
- The mechanism for dialogue should be a consensus building platform. For example, a better environment is better for everyone. Consequently, if the fundamental goal is an agreed better environment then this opens the way to discuss more contentious issues such as who pays for controlling pollution from oil exploration.
- Momentum in activity is very important for maintaining political momentum. The continual support of the GEF and UN agencies has been instrumental for the success of the Tehran Convention. In the one year when GEF funding was not forthcoming (2007-2008) the momentum for the process waned and as a result (staff changes,

¹⁰⁰ Mikhail Kashubsky, *Marine Pollution from the Offshore Oil and Gas Industry: Review of Major Conventions and Russian Law (Part II)* 1 (152) MARSTUDIES 1-16 (2007).

discontinuation of activities) a period of catching up was needed which was longer than the hiatus in funding.

8. Key Lessons Learned

The Tehran Convention for protecting the Caspian Sea has advanced protection of the marine environment of the region by fostering cooperation in an area where marine resources and oil and gas exploitation are economic drivers. Moreover, this has been done in an enclosed sea where the jurisdictional boundaries remain un-delineated and where exploitation of the hydrocarbon resources of the region has accelerated over the last 15 years driving economic growth and placing increasing pressure on the environment. Fisheries resources have also been exploited heavily, particularly illegal fishing of sturgeon for the trade in caviar. The major lessons learned from this experience are:

1. The lack of jurisdictional boundaries and clear resource ownership does not need to impede progress on issues of mutual gain. However, careful thought is needed as to how to avoid contentious issues while making concrete advances in other areas such as pollution control. Focus on the areas where agreement can be achieved. Attempting to resolve boundary delimitations or develop resource sharing models cannot be attempted until trust is built and cooperation has been achieved in other areas. Discussion of the environment and information exchange, on biodiversity for instance, paves the way for cooperation in other areas – even if these other areas are not necessarily spearheaded by the GEF or UNEP.
2. The assistance of an impartial third party is critical for confidence building and developing a level playing field both in terms of information and knowledge, as well as assisting the creation of a balanced agreement. Importantly, the individuals in the third party who are championing the cause should be well respected in the region.
3. Because of the lack of clarity regarding jurisdictions, inclusivity of all parties concerned is necessary to achieve buy-in and build trust. This is important even if the advances are less substantive than some might call for.
4. Do not look for the perfect agreement the first time around. Making a broad framework agreement based on intentions and highlighting important principles of cooperation is often very helpful as a stepping stone towards developing cooperation on more substantive issues.
5. Continued support and championing is needed to ensure cooperation as political momentum is very important. Once a process is underway financial, technical and political support should be continuous to ensure success. GEF and UNEP have been major contributors to the process since 1995, however, there was an hiatus in 2008-

2009. This set the program back so that when assistance was resumed it took time (an estimated year) to get back to the point before the hiatus.

6. Every new initiative or group will need time to help develop a track record and build respect within the region. For example part of the Caspian Sea Environmental Programme (CEP) addresses fisheries issues; however, there exists a Transitional Fisheries Association specifically focussing on sturgeon which did not have much interaction with the CEP until more recently (2010) when the CEP has been included in their meetings.