

The Framework Convention for the Protection of the Marine Environment of the Caspian Sea: Omitting the Public Makes for a Weaker Document

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Introduction

In November 2003, the five Caspian states, in an unprecedented action, signed the Framework Convention for the Protection of the Marine Environment of the Caspian Sea. This document, eight years in the making, reflects efforts by the governments of Azerbaijan, The Islamic Republic of Iran, Kazakhstan, Russia and Turkmenistan to reach agreement on a regional effort to protect the fragile environment of the Caspian Sea.

Facilitated by the Caspian Environment Programme (CEP) and the United Nations Environment Program (UNEP), representatives of the governments of each of the Caspian states created the Framework Convention to serve as a common document to guide them in their environmental protection efforts of the Caspian Sea. Official government representatives from each state participated in the Convention negotiations and the resulting document was signed in Tehran on November 3, 2003. According to the official text, the Convention will enter into force ninety days after “the deposit of the instrument of ratification, acceptance, approval or accession by all the Caspian littoral states.” (IX, Article 33)

While official representatives of each Caspian state participated in the preparation of the Framework Convention, civil society organizations were not invited to participate in the negotiations of the Convention. In response to a survey distributed to environmentalists by Crude Accountability in December 2003, environmental activists in the Caspian region reviewed the Framework Convention and concluded that the document is inadequate in a number of ways. Although most NGO representatives acknowledge that the existence of the Convention is a step forward, virtually every activist who responded to Crude Accountability’s questionnaire about the Convention concluded that the document lacked substance in critical areas and could be improved by enhanced public participation in the future.

Absence of Public Participation

First and foremost, the Convention was created without any public involvement. As far as we know, no NGOs from the littoral states were invited to participate in the Convention's negotiations—even though NGO participation, at least as observers, is now a common element of many international negotiations.

The Convention places no obligation on the Contracting Parties to involve the public in the implementation of the Convention, the development of future protocols or other aspects of the Convention, despite the fact that three of the five countries are signatories to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (commonly known as and further referred to as the Aarhus Convention). In sharp contrast to similar conventions in other parts of the world (for example, the Bucharest Convention, Baltic Sea States' Declaration on Environment and Sustainable Development and others), the Convention fails to draw on existing language regarding the involvement of the public in environmental decision-making. In the Baltic Sea States' Declaration, the signatories, "pledge to promote further civil society participation in environmental activities," (point 5), and "emphasize...application of a participatory approach with particular attention to action and coordination especially at the local level." (point 29, d.) Not only does the Baltic Sea States' Declaration mention NGOs and civil society organizations, but also includes fisheries and universities.

In contrast, the only mention of the public in the Caspian Framework Convention is limited to the development of a "centralized database and information management system to function as a repository of all relevant data, serve as the basis for decision-making and as a general source of information and education for specialists, administrators and the general public." (Section V, Article 19.5) In addition, Contracting Parties to the Convention shall "endeavor to ensure public access to environmental conditions of the Caspian Sea, measures taken or planned to be taken to prevent, control and reduce pollution of the Caspian Sea in accordance with their national legislation and taking into account provisions of existing international agreements concerning public access to environmental information." (Section V, Article 21.2)

As signatories to the Aarhus convention, Azerbaijan, Kazakhstan and Turkmenistan are obliged to include public participation in the *development* of key environmental decision-making documents, not merely to provide access to information. While the Aarhus Convention is not prescriptive in its definition of what constitutes public participation, Article 7 of the Convention states, "Each party shall make appropriate practical and/or other provisions for the public to

participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public....To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.”

The Framework Convention contains no provision for NGOs or other members of the public to participate in the preparation of protocols, to participate in any of the protection measures described in the document, or provide input into any concepts present in the Convention. Furthermore, environmental NGO representatives from Azerbaijan, Kazakhstan and Russia confirmed that the Ministries of Environment and Natural Resources in all three countries failed to include NGOs in the Convention preparation. According to questionnaire respondents, NGOs from Iran and Turkmenistan were also excluded from Convention discussion. No NGOs were invited to provide commentary on the Convention itself, although at least a half a dozen organizations expressed interest in receiving information about the Convention during the preparation phase.

Context for the Convention

In sharp contrast to other conventions (UNCLOS, Bucharest, Baltic Sea States’ Declaration), the Caspian Framework Convention fails to refer to relevant existing legislation. The Convention refers only to “applicable international and regional legal instruments” in Article 10.3 on Pollution Caused by Dumping. Other conventions refer to the impact of existing legislation on possible protection mechanisms. Regardless of whether this is an oversight or an indication of the absence of Caspian signatories to key international environmental and maritime legislation, this omission is troubling. How will the Convention be implemented with regard for existing international environmental law?

Analysis of the Framework Convention’s General Provisions

In comparison with similar international Conventions and Agreements, the Caspian Framework Convention is extremely vague. Definitions are overly general, geographic boundaries are not clearly defined, timelines are almost entirely absent from the Convention, and specific threats to the environment of the Sea go unnamed. Oil is never mentioned; “rare and endangered species” are not defined, nor are “vulnerable ecosystems.” (Article 14.1f) “Adequate emergency preparedness measures, adequate equipment, and qualified personnel” to respond to environmental emergencies (Article 13) are not defined. Caspian Seals, sturgeon and other endemic species are not mentioned in the Convention; there is no mention of existing protected zones, including Nature Reserves (zapovedniki), which are threatened by development. The lack of clarity in the Convention suggests that significant future work will be needed to operationalize and

implement the Convention. These steps should only be taken with broader participation and engagement from civil society representatives.

Commentary from Regional Environmental NGOs

In December 2003, Crude Accountability distributed a questionnaire about the Framework Convention to environmental NGOs from those countries that participated in the negotiations of the Convention. Using our information service Caspinfo, we sent the questionnaire out to our mailing list in both English and Russian. In response, we received about a dozen responses from groups in Azerbaijan, Kazakhstan and Russia. All respondents were representatives of NGOs, and overwhelmingly, the responses were focused on access to information issues.

In addition, Crude Accountability's questionnaire asked what would be necessary in order to make the Convention effective. Respondents stated that language in the document was insufficiently specific to be effective. This will need to be rectified in the development of protocols if it is to be a useful document. For example, the Convention makes no references to the environmental specificities of the Caspian; there is no mention of the delicate nature of the North Caspian and the extra care needed to protect it. Similarly, there is no mention of the existing nature reserves in the Caspian, including the Astrakhan Biosphere Reserve, and the necessary steps to ensure its continued protection.

There is no mention of oil spill response plans, no discussion of what constitutes an independent monitoring expert, or any other key information that would give the document substance.

One NGO respondent observed that the Convention needs to include an "insurance fund" with guarantees to the public in the event of an accident or an oil spill. Not only should such a fund exist, but it should also be transparent with an open system of accountability and reporting. In general, specific proposals for combating threats to the Sea are absent from the document, indicating a lack of concrete protection measures in the event of an oil spill or another critical environmental problem threatening the marine environment.

Conclusions and Recommendations for Community Action:

Environmental activists in the region agree that if the Framework Convention is to have any true legitimacy, the ratification process must involve a substantial public education component to explain the relevance of such a document for environmental protection of the Caspian. NGOs and citizens must then be mobilized to influence and secure the ratification of the Convention in each country. In addition, protocol development—where the real substance of the

Convention will inevitably lie—must include NGO representatives and other members of the environmental community and the public at large. The absence of public participation in the Convention preparation to date has resulted in a weak and relatively meaningless document. Partly for this reason, the Convention's member states should create a permanent Secretariat that promotes the goals of the Convention over time and interacts with civil society interested in the Caspian. The Conferences of the Parties, including any negotiations of protocols, should be open to civil society observers and participation. If such an open process and institutional structure can be developed, Crude Accountability—together with regional NGOs—can look forward to working cooperatively with member States to develop the Framework Convention into an effective regime that serves the public and furthers environmental protection in the Caspian region.

In order to rectify the existing shortcomings and ensure that the Framework Convention gains significance and meaning, Crude Accountability makes the following recommendations for community action:

1. A widespread public information campaign about the Framework Convention. The public information campaign needs to be conducted within and outside the environmental community, involving activists, students and ordinary citizens who take an interest in the political activities of their nation. Those of you participating in this workshop have the opportunity to be involved in a widespread campaign to help citizens understand the potential value of the Convention (and, conversely, its potential to be meaningless) if the public demands inclusion in the ratification process. Helping environmentalists see beyond their borders, while simultaneously working on the local level, to educate people about the existing provisions of the Convention will be extremely important. For, while the ratification process itself is obviously a job for governments, indicating public interest in ratification, informing Parliamentarians and other government officials of public concern about the Convention may result in more rapid ratification.
2. Understanding of and educational campaign about the Convention ratification process in each Caspian country. What are the procedures for Convention ratification in each Caspian state? What are the existing mechanisms for public participation in each of the five states? Has the government (Parliament, committees, etc.) initiated a ratification process? If so, what is it and how can NGOs and interested citizens become involved? NGOs should organize planning meetings prior to public hearings or Parliamentary discussions of the ratification process so that citizens are aware, involved and able to demonstrate interest in—and observe—the process. In those countries where the Aarhus Convention has been signed, combining this educational process with greater understanding of the rights and protections included in Aarhus will be critical. And, in fact, education

and advocacy programs about the Aarhus Convention provide a model for working on the Framework Convention.

3. Based on the specifics in each country, ratification task force groups should be developed to coordinate the strategies. Our hope is that each of you participating in this workshop will be motivated to return home and, together with everyone here, coordinate relevant activities in your communities. The collective expertise of this crowd can tackle the difficult issues around ratification and educational outreach programs. Legal expertise, organizing experience, and connection to each other and international NGOs and experts will provide for a strong support network.
4. Once the treaty is ratified, specific protocols should be developed for concrete environmental protections. We consider this a long-term goal of this project and one that we can discuss in greater detail once the ratification process is better understood. I propose that, although some mention of necessary protocols is inevitable during the next two days, we focus on clearly delineating the elements of our education and ratification campaigns. Beyond identifying the specific protocols that may be already under development and including an NGO strategy for dealing with those instances in our workplan, our plan is that we will all be able to gather again and discuss specific protocol demands in more detail at a later date.