



# Comparative study of the international legal system of biodiversity conservation and the Iranian legal system of biodiversity conservation

M. Homauoni<sup>1</sup> · M. Pournouri<sup>2</sup> · S. A. Poorhashemi<sup>3,4</sup> · D. Karimi<sup>3</sup>

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## Abstract

Nowadays, the environmental changes are witnessed at their highest rate. The most significant changes are gene deterioration, reduction of species and loss of biodiversity in communities. Biodiversity constitutes the essential basis for life on the Earth, providing various functions and values. It also includes all species, ecosystems and ecological processes, and therefore has its own economic value. During the last 30 years, globalization of the environment has made many institutes and legal instruments focus on conservation of biodiversity. Due to the imminent crisis in biodiversity conservation, there is an urgent need to improve the legal framework for this matter at three national, regional and international levels. Notably, many countries have conducted some comparative studies to amend their existing laws with the new ones at the international level. Considering the international studies and their correspondence to internal laws, development of an integrated and compatible approach to the biodiversity protection seems to be essential. This review aims at studying the Iranian laws and regulations governing the biodiversity conservation along with examination of the most prominent conventions on biodiversity in the world.

**Keywords** Biodiversity · International environmental laws · Convention on Biodiversity · Comparative study · Iranian domestic law

## Introduction

Back to the genesis and reviewing the multi-billion-year history, we certainly find that living creatures have always saved their lives while complying with the environment. A diversified ecosystem consisting of the environmental elements such as water, air and soil has been also formed during these years. Human being lives through exploiting the profits

arising from the biodiversity. Therefore, biodiversity operates as a factor for the existence of the mankind. In addition, biodiversity, as a property specific to each region, preserves the cultural diversity which is unique in each region (Basic Act on Biodiversity, Act No. 58 of June, 2008). Indeed, the biodiversity is diversity of life forms on the Earth and the reflection of mutual interaction of each factor with another on the physical environment. Though the protection of particular endangered species is a new matter, the idea of necessity to protect the biodiversity came true in Rio 1992 when the Convention on Biodiversity was signed (Yousefi 2012). Although several legal documents have been provided for the biodiversity, its status in the globe as well as in Iran deteriorates with a speed higher than the past. The international and national laws have countered the problems resulting from the damage to the biodiversity caused by similar courses of action (Abdollahi 2010). Due to the fact that the solution to the challenges of biodiversity has been formed in a way that the international laws and regulations should be organized and implemented under the domestic regulations through passage of executive by laws and executive mechanisms at national level, it is necessary for the laws and resolutions in a country to be analysed for their compatibility with the

Editorial responsibility: M. Abbaspour.

✉ M. Pournouri  
Pournourimansour@gmail.com

- <sup>1</sup> Department of Environmental Law, Faculty of Natural Resources and Environment, Science and Research Branch, Islamic Azad University, Tehran, Iran
- <sup>2</sup> Faculty of Law, Central Tehran Branch, Islamic Azad University, Tehran, Iran
- <sup>3</sup> Department of Environmental Law, Faculty of Environment and Energy, Science and Research Branch, Islamic Azad University, Tehran, Iran
- <sup>4</sup> Center for the Study of International Law and Globalization, University of Quebec in Montreal (UQAM), 1112 Saint Laurent, Montreal, QC H3H 2P2, Canada



international laws. In this study, data analysis and descriptive approach using library resources have been applied. The concerned topic was studied within the framework of international and domestic regulations.

### First section: study of the international legal system of biodiversity

Historically, the outset point is the establishment of legal restrictions to protect forests and some fauna and floras. Tree cutting in forests and hunting of fishes in some seasons were permitted only with prior approval. Then, some norms were created and developed to protect wild animals and plant habitats. Ultimately, the protection of species and their habitats was merged into a broader concept calling states and actors for protecting the genetic heritage of the Earth planet.

A comprehensive and modern approach goes beyond the dimensions of protection in its conventional sense. Developments in identification, regulation and management of the cycles leaving deteriorating impact on the biodiversity refer to the change of segment-based management approach to a comprehensive and integrated one in the field of biodiversity conservation (Moradi 2014).

In the last two decades, international environmental law has been increasingly affected by the sustainable development concept. Currently, this new concept has oriented the international attention towards the international law. This issue has found its way into the matter of the biodiversity protection. Principles and concepts of the sustainable development have caused some changes to laws and instruments at the national level. Making the national laws compatible with these principles is one of the main tasks which has been done up to now.

The following conventions are of huge importance for the conservation of biodiversity.

1. Convention on Wetlands of International Importance, especially as Waterfowl Habitat (1971);
2. Convention on International Trade of Endangered Species of Wild Fauna and Flora (1973);
3. Migratory Birds Convention (1979);
4. Convention Concerning the Protection of the World's Cultural and Natural Heritage (1972);
5. Convention on Biodiversity (1992).

In addition to these conventions, a series of soft rules follow the path towards the development of mechanisms

to be used to protect the biodiversity. These soft rules include the Nature Charter, Rio Declaration on Development and Environment and 29 Agenda along with the Forest Principles Declaration (1992) mentioned as a binding law (Boer, Chapter 20, P. 532).

It should be noted that the structures and arrangements for the biodiversity protection have not concentrated on a specific centre or intergovernmental organization. In fact, treaty arrangements are managed by organizations in various fields of biodiversity including the species and habitats. These institutional treaty arrangements and related rules, as a whole, constitute the international system of biodiversity and its conservation. It is noteworthy that all the five main conventions enjoy these mechanisms (Kamali 2011).

### Convention on Wetlands of International Importance, especially as waterfront habitat (known as Ramsar), 1971

The Ramsar Convention, as the only treaty designed in Iran, is the oldest intergovernmental convention emphasizing the protection and suitable use of the nature, and the only international convention in the field of wetland protection as well (Farantouri 2009).

The mission of this convention is to protect and facilitate wise use of the wetlands through national actions and international cooperation to achieve a sustainable development around the world (Sadouh, Bulletin No. 1). Also, this convention has two binding documents known as the Paris Protocol and the Regina Amendment to the convention.

### Convention on International Trade of Endangered Species (CITES) of Wild Fauna and Flora, 1973

This convention plays an essential role in preserving the biodiversity with two goals of international protection of endangered species through restricting their trade and assuming the sustainable trade and economic benefits of the exporting countries. The main distinguishing feature of the CITES is that it is considered as the most comprehensive convention in the field of protection of valuable species, and limitation (regulation) of their use and trade at the global level (Ghazi 2011a).

In CITES, there are three appendices categorizing the animal and plant species based on the degree of risk of international trade and control and mitigating these possible risks (dangers) (Ghazi 2011b).



## Convention on the Protection of World Cultural and Natural Heritage, 1972

According to this convention, members of UNESCO may designate their cultural, natural and historical properties to be registered as Global Heritage. The protection of these properties following their registration is borne by all parties to the convention. This convention maintains a valuable list of registered properties. Therefore, the ultimate contribution of the World Heritage Convention is no longer attributable to the listed properties, but to the long-term protection of the globe's reservoirs (Dabiri and Azadbakht 2010).

## Migratory Birds Convention, 1979

The phenomenon of migration by wild species has given this branch of the global biodiversity a distinguishable status among the international rules to protect the environment and a particular legal position as well.

Migratory birds may not be governed by the exclusive sovereignty of the origin, designation or transit states due to their regular and continuous movements. Rather, they belong to the international community as a result of their unique and specific characteristics. The specific nature of these birds requires an effective cooperation among the states as a fundamental rule to protect them; therefore, the states are obliged to institutionalize their mandatory cooperation by concluding particular agreements or establishing internationally appropriate organs (Beigzadeh and Kamali 2012).

## Convention on Biodiversity, 1992 (CBD)

The CBD has a broader generality as compared to those conventions already made in the field of biodiversity. This convention is an inclusive treaty, covering the protection of particular species or their habitats in land or water. The most important achievement of the CBD is that the independence of the biodiversity is established in the international environmental law where the international protection includes all small, big, domestic and wild living creatures without any exception (Moradi 2013). This convention distinguishes three categories:

1. Intra-species biodiversity
2. Inter-species biodiversity
3. Ecosystem biodiversity

## Bio-safety protocol

The purpose of this protocol is to ensure the implementation of the convention in the field of safe transfer, handling and use of “modified organisms” created as a result of the emerging new biotechnologies that may have adverse effects on the conservation, natural biodiversity balance and the health of human beings (Moradi 2013). Therefore, the protocol requires that the states assess the risk arising from the possible impact of activities related to these organisms using scientific sound methodology and obtained data (Cartagena Protocol on Bio-safety to the Convention on Biological Diversity, Article 1).

## Second section: study of domestic legal system of biodiversity conservation

International environmental law may be effective where it is enforced by each state. Preferably, this matter has been recognized in the approach of the CBD including a broad range of regulations promoting subsequent national laws, under a movement coordinated with other states. In general, these logical regulations and states are required to take particular actions or a framework being compatible with other environmental conventions (Cartagena Protocol on Bio-safety to the Convention on Biological Diversity, Article 15).

There are some provisions in law including the laws of Iran, which can be read as they pay implied attention to the environmental protection. The fact, however, is that the appearance and development of the national law concerning the environment is highly influenced by the international developments in the appearance and development of the international environmental law, because governments make environmental safeguards subject to their development policies (Boer, Chapter 20, P. 540).

In fact, the background of the Iranian environmental law is a collection of rules either directly or indirectly related to the biodiversity. Articles 179 and 182 of the Civil Code on hunting issue were approved in May 1928. These articles constituted the early legal basis for the environmental protection. Similar to the first international agreement on the conservation of species, the first provisions concerning the hunting regulations are seen in Article 179 referring to the ownership over the hunted animal. This article has taken a passive approach, less focusing on the conservation of the species. The cabinet of ministers passed some regulations to protect fishes, prohibiting the fishing by poisonous materials as using such material could endanger the lives of other species by destroying the ecosystem. Therefore, these regulations

prevent the loss of biodiversity while prohibiting the fishing by polluting the environment.

### Fishing and Hunting Act

Under the Iranian system of law, the Fishing and Hunting Act and the Islamic Penal Code are regarded as a part of the legal basis for the protection of fauna species, with a broad scope of application. The Fishing and Hunting Act is a turning point in the field of animal species protection. This act provides some prohibitions and restrictions for hunting and fishing, criminalizing some violations of their provisions (Abdollahi M., Iran Newspaper).

Articles 10–13 of this act operate as the basis for preventing violations in fishing and hunting as well as illegal appropriation and trespass to four regions. The punishments—either prison or penalty—have been categorized in accordance with the categorization of the regions and type of violations (Homayouni 2009). In line with the biodiversity conservation in the country, Iran has ratified CITES according to Article 7 of this act. As a result of this ratification, the provisions of the convention should be implemented in Iran (Dabiri and Homayouni 2010).

### Act for protection and utilization of forests and ranges

The act for protection and utilization of forests and ranges focuses on the conservation of biodiversity in the forest, emphasizing the role of DOE (Department Of Environment). Drafted in seven chapters, the act applies some restrictions and even prohibitions to protect forest and ranges and provides a sort of criminal sanctions for some violations to ensure the observance of the provisions therein. The crimes against plant cover include: violations and trespass to the natural resources, destruction of natural resources, arson in the forest and tree cutting. These have been covered in some specific regulations and the Islamic Punishment Code. It should be noted that the government, in an attempt to react against the increasing number of possession of and damages to the natural resources and to preserve this public wealth, announced the law concerning Nationalization of Forests in 1963. According to this law, all real and natural persons are banned to violate and possess these natural resources (Dabiri and Homayouni 2010). To preserve and conserve the biodiversity, the act on protection and preservation of state natural resources and forests considers some species of trees in forest as forest reserves, prohibiting cutting of such trees (Abdollahi 2009). Taking the mentioned rules and regulations of the Iranian legal system into account, we can enumerate prescribed sentences concerning the crimes against plant cover as: exile, imprisonment, pecuniary penalty,

injunction and, in rare cases, execution. According to the laws, all actions against the plant cover have been criminalized. However, the commission of such crimes by legal entities, leaving huge damage to the nature, has been ignored. The criminal law of Iran is silent in this regard. Another point is that the pecuniary penalty is so light. As each tree has its own contribution to the biodiversity, the imposition of such pecuniary penalties does not guarantee the conservation of biodiversity (Legal and Parliament Affairs Office).

### Act for improving and protecting the environment

According to Article 1 of this act, DOE is affiliated to the Presidential Office and has its own legal entity and financial independence. This department operates under the supervision of the Higher Council for Environmental Protection. Although this department has been allotted a high ranking level as the Deputy of the President, it lacks an appropriate legal status to perform a strong and integrated management on the environment in Iran. The requirement of improvement and restitution of the environment to the previous situation is one of the modern principles governing the management of the environment. In other words, the most important issue is to preserve the environment before the destruction as an environmental policy. Having this in mind, the enforcement of such sentences as a penalty against the damaging persons has no value to the stability of the environment. As a result of such requirement, Article 1 of this act has provided the duties for the organization and improvement. However, neither other laws and regulations nor the organizational structures have provisions to proceed the reconstruction of the environment. This principle has been ignored by the Iranian laws (Sajedi 2009).

### The law concerning protection and utilization of Iran's aquatic resources

To protect the biodiversity in aquatic environments, the law concerning protection and utilization was passed in Iran in 1995. Determining the principles and regulations on fishing and forms of utilization, breeding, fishing permission and control of vessels' entry to and leave from ports as well as prohibiting the transaction of illegal fishing tools, this law has played a significant role in meeting the balance of maritime biodiversities.

### Bio-safety code

To provide legal bases for breeding and setting free the genetically modified living species and to empower the country to implement international obligations concerning the bio-safety measures, Iran was annexed to the Cartagena



Bio-safety Protocol. Seemingly, there was a kind of haste in ratifying this code, causing implications in legally interpreting the provisions of the code. In such a way, what is absolute for international conventions is not acceptable when the localization of the provisions is made; or at least, this attempt requires some pre-readiness to make the conventions compatible with the internal particularities. On the other hand, it should not be ignored that the contribution of bio-safety code to the health of mankind and the mechanisms to ensure such important point should be followed in parallel with conservative works on biodiversity. Based on this, the code is expected to be provided for the responsibilities of legal entities against setting free the genetically modified species, the mode of supervision over the bio-safety and the sanctions against the violations, to deal with the non-disclosure and effects of intervention under emergencies. The limits of its scope should be set within a transparent and coherent structure.

One of the most important defects in the mentioned code is its lack of legal framework for the assessment of damages caused by violations and crimes in the field of commerce of genetically modified species.

### The law for I.R. Iran cultural, social and economic development plan

Articles 187–193 explain the governmental approaches to the conservation of biodiversity. These approaches include the protection, conservation and sustainable utilization of the environment, natural resources and biodiversity (Beigzadeh and Kamali 2012), compilation and execution of environmental integrated management, operational plans for protection and sustainable utilization of sensitive and fragile biodiversities.

### Islamic Penal Code

Since there are various laws concerning the environmental issues in general sense, and we may have abolishing or abolished, general or specific as well as absolute or conditional laws, the legislator has allocated articles of the Islamic Penal Code as 675, 679, 680, 688 and 689 to this important issue (Samavati Pirooz 2010).

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

Signing and entry into force of the Tehran Convention were the results of necessity to resolve the critical and environmental issues of the Caspian Sea in spite of many social,

political, economic and security challenges. It can be regarded as a big success for the coastal states. However, the concern related to the implementation of this convention and subsequent agreement on the marine environment which is being drafted still remains. In drafting and implementing the conventions, various political implications affecting the environmental cooperation in three phases of cooperation framework, codifications and assessment of the environmental plans include: political instability out of transit period of time and internal political struggles in some newly independent countries, geostrategic and geopolitics aspects of the Caspian Sea, the political atmosphere over the region, the regional competition particularly in energy and possible restrictions arising from environmental agreements and gas and oil extractions, and disagreement among the Caspian States on the legal regime.

### Kuwait Regional Convention for Cooperation in the Protection of the Marine Environment from Pollution, 1978

This convention is a legal document based on which the Persian Gulf and Oman Sea coastal states got obliged to undergo all measures for protection of their common marine environment. This convention consists of 30 articles and aims to ensure the obligations undertaken by the parties to protect the Persian Gulf and Oman Sea marine environment always being at the risk of the pollution resulting from transportation. This conversion is based on mutual obligations whose provisions are comprehensive and cover all resources of pollution. It also highlights the compensation as a general principle (Koulae 2009).

Under the Iranian law, almost all international law techniques have been applied to conserve the biodiversity. Prohibitions or regulations concerning the hunting of specific species, designation of particular seasons or other timing restrictions for hunting, regulation of hunting, fixation of hunting quota, ecosystem management, limitations or regulations on trade of the species, etc., are general characteristics of environmental and international levels. One of the features of environmental law is the great number of norms. It should be noted that the high number and diversity of environmental regulations necessarily do not mean the presence of an effective environmental protection, especially in developing countries. The reasons are as follows: Firstly, the effective application of laws occurs along with coherent executive and supervisory mechanisms. Secondly, the environmental laws are not supported by required sanctions in many countries. In Iran, this defect is one of the most fundamental impediments against the protection of environment. Of course, the codification of laws such as Fishing and Hunting Code, the law for protection and utilization of forest, fishing code, and other environment-related regulations

are regarded as a turning point in conserving the fauna and flora species. Nowadays, the Iranian development laws pay more attention than past to the environment.

## Conclusion

The development trend of codification of environmental conventions and instruments reveals that the developing countries have obtained an acceptable understanding on the consequence of the loss of biodiversity, even though the mankind does not pay attention to the extinction of species because he is not aware of the biodiversity values. The main part of challenges stems from the weak enforcement of international environmental law, being more serious in the third world. In any event, the appearance of international law on biodiversity has not a long history. The increasing concerns over the damages to the environment have paved the path for the conclusion of more and more up-to-date environmental instruments and higher level of global understanding about cooperation and survival of the Earth. Convention on Biodiversity, as the mother of all conventions, is related to the conservation of biodiversity as the most valuable achievements of the international community to conserve the biodiversity. This convention was able to meet the balance between the benefits of the people, governments and the general benefits of the international community while taking into account all aspects concerned. Studying conventions related to the biodiversity and the performance of Iran under the regional programs, though the number of these programs is limited, we found that such agreements refer to the cooperation and they are significantly distinguishable from the most traditional norms. At the same time, these agreements are regarded as the minimum tools for the encouragement of the states to develop the environmental issues in some cases. The majority of internal laws and procedures have applied such techniques for pollution control, authorization requirement, control and supervision over the waste dumping, control over exportation and importation of endangered species, hazardous material protection and criminal sanctions. These techniques are required to be strengthened through the promotion of executive principles, legislations and comparative look at laws to comply with new developments. Although non-development is the biggest challenge to apply the protective measures under a holistic approach as we had the same challenge in the past, Iran has played an influential role in this field through its contribution to the formation of the Ramsar Convention and the agreement of the obligations

under the Convention on Biodiversity. This contribution has been positively asserted by the authorities of the environmental issues. The cooperation made by Iran was the main factor leading to the emergence of the Ramsar Convention. The role of Iran in the formation of some regional treaties on universal issues may not be denied. However, the problem is that long-term plans are not as active as the role of governmental agencies in preparing various plans to boost the international obligations. The DOE has drafted several plans, often facing some problems in the execution phase. We have many laws to conserve the biodiversity, but they are not supported by sanctions. The government must be engaged to remove these problems. The government established the Natural Fund for Environment, while it was not clear whether this fund could operate actively or not. The national law on the bio-safety does not cover all aspects such as modified foods; it is not clear what duties have been assigned to each organ. The problem of the Migratory Birds Convention, like other international conventions, is to have weak adaptation with internal laws. The requirement in the Ramsar Convention which has been undertaken by Iran is not reflected in the laws. In addition, the government has no interest in following the obligations related to the convention concerning the protection of the cultural and natural heritage. Some related conventions have been drafted and even implemented, but the government has been less active in the related field. Due to the evidences such as no access to the environmental reports, lack of authoritative documents, lack of cohesion among the activities to prove the claims made by the DOE and the low score given to the government for environmental indices up to now, we have not seen a serious action by the governmental authorities to get steps forward. Like many other countries, Iran has established various organizations and authorities directly or indirectly related to the biodiversity and its conversation. Such organs are generally governmental and non-governmental or private ones suffering from several problems including loss of resources and lack of sufficient personnel. These organs have a vertical hierarchy from national levels to the provincial and local levels, or have a horizontal hierarchy from city levels with political and financial departments. In addition, the major contribution is made by the local population, especially the rural men, who are highly dependent on their environment to meet their needs. As a result, it is necessary to provide a clear vision having flexibility to meet the requirements and focus on the maximum use of the time if we are intended to have the participation by beneficiary and interested groups. It is mentionable that Iran lacks a national



database and approved standards to assess the biodiversity measures. Therefore, experts, decision-makers and the public have not enough access to data concerning the biodiversity. Unfortunately, the Iranian environmental laws are not of enough compatibility with the last developments, and this is regarded as a great challenge to the environment. One of the most important elements threatening the biodiversity of each region is tourism in open areas without any control. In Iran, there are no legally vigorous remedies to treat the damages from the nature tourism, or if any, it does not work properly. Unfortunately, developing countries pay more attention to the commercial aspects because people have no desirable awareness of the values of their environment. They do not implement considerable measures to prevent the negative consequences of the nature tourism. In conclusion, it should be noted that many problems may be solved by the present laws and regulations provided that the environmental culture is promoted at the national level, and authorities and public become more aware of the biodiversity values. It is required that the managerial sections of the environmental protection agencies are assigned to experts, the organizations follow their environmental obligations more seriously, and more comprehensive plans are prepared to be followed by the national authorities of conventions. For the latter, this attempt should at least result in comprehensive preparation of an environmental report to be sent to the secretariat of the conventions on a regular basis. What is more frequently felt is the need for updating of laws in line with the day-to-day developments. The governmental authorities should be aware that Iran is following a transit period towards industrialization. In case of paying no attention to the strategic environmental impact of policies, decisions and master plans during this transient period, the country will experience various environmental problems in near future. In some cases, it is irreparable to compensate the damages; thus, the legislation of a comprehensive law on the biodiversity compared with a legal basis for accessing the common generic resources by states and its utilization seems to be a necessity. Not being serious in legislating proper laws in Iran cannot be accepted, while many countries have enacted their laws and even reviewed them since many years ago.

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## Compliance with ethical standards

**Conflict of interest** The author, on behalf of all co-authors, declares that the presented work has no conflicts of interests that are directly or indirectly related to it.

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