

Legal Status of the Caspian Sea is Finally Defined: What is Next?

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Negotiations to resolve the dispute over the legal status of the Caspian Sea have been long and uneasy, and began with highly divergent, if not mutually exclusive, positions of the littoral states. This article briefly reviews the negotiation process over the division of the Caspian Sea and the positions of each littoral state in it, identifies the key milestones passed in this process, and attempts to uncover why and how it was possible to come to a common agreement and sign the Convention on Legal Status of the Caspian Sea. It also presents the big picture of what the new status will actually turn out to be. Finally, the article identifies two key issues—namely, (1) delimitation of highly contentious sectorial borders of the seabed in the South Caspian and resultant clarification of the ownership of the disputed fields, and (2) construction of underwater trans-Caspian pipelines—as the major problems that still await resolution in order to achieve a final settlement of the Caspian Sea legal dispute.

Key words: Caspian Sea, legal status, disputes, division of the seabed, trans-Caspian pipeline



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Introduction

The dispute over the legal status of the Caspian Sea has long hindered opportunities for regional cooperation, particularly with regard to the establishment of trans-Caspian energy corridors from Central Asia to Europe. It has also left many oil and natural gas fields underdeveloped in the southern part of the sea, as well as having encouraged the rapid militarization of the Caspian in recent years.¹ In fact, such resources, as well geopolitical and security considerations, were the key reasons why the signing of Convention took so long. The Caspian seabed holds some 48 billion barrels of oil and 292 trillion cubic feet of natural gas in proven offshore reserves. This was valued at \$4 trillion for oil and over \$2 trillion for gas based on the prices when the leaders of the Caspian Five finally inked the convention in 2018.² It is no surprise that each of the littoral states wanted to get as large a share of these massive resources as possible. Who gets how much of them needed to be defined based on what formulas and measures are applied to divide the sea and what rights the littoral states have to explore those resources.

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Before the collapse of the USSR in 1991, the legal status of the Caspian Sea was based on a series of treaties between Iran and Russia/Soviet Union signed in 1813, 1828, 1921, 1935, 1940, and 1956, the latest of which divided the Caspian according to a straight line drawn from Astara on the south-west coast of the sea to Hasankuli on the south-east coast. The Soviet Union had full sovereignty over the surface and seabed north of that line (about 87 percent of the sea), and Iran had the same rights in the south (about 13 percent of the sea).³ The emergence of the four new independent littoral states following the disintegration of the Soviet Union made these treaties obsolete and the legal status of Caspian immediately became a disputed issue. The littoral states failed to agree on the final legal status of the sea for the next 22 years, despite conducting four presidential summits, 12 meetings of foreign ministers,

1 Garibov, A. (2016) 'Militarization of the Caspian Sea: A Zero-Sum Game?', The Jamestown Foundation, Eurasia Daily Monitor Volume: 13 Issue: 134. Available at: <https://jamestown.org/program/militarization-of-the-caspian-sea-a-zero-sum-game/>. (Accessed: 10 September 2018).

2 Cohen, A. (2018) 'Exxon And Chevron Hope To Cash In After New Caspian Summit', Forbes, 9 August. Available at: <https://www.forbes.com/sites/arielcohen/2018/08/09/exxon-and-chevron-hope-to-cash-in-after-new-caspian-summit/#4d4eef923119>. (Accessed: 8 October 2018).

3 Abilov, S. (2013) 'Legal Status of the Caspian', Hazar Raporu, Summer. Available at: <https://www.researchgate.net/publication/320183299>. (Accessed: 06 October 2018).

and 55 meetings of the Special Working Group (co-chaired by five Deputy Foreign Ministers from the littoral states) on the division of the Caspian Sea.

Various options for division of the Caspian Sea were advanced by each of the littoral states, each best serving their respective national interests. The stalemate was finally broken in 2017 and the Convention on the Legal Status of the Caspian Sea (CLSCS) was finally signed at the 5th Presidential Summit of the Caspian Five on August 12, 2018, in Aktau, Kazakhstan.⁴ This article briefly reviews the negotiation process over the division of the Caspian Sea and the position of each littoral state in it, identifies key milestones passed in this process, and attempts to uncover why and how it was possible to come to a common agreement. It also presents the big picture of what the new status actually is via deciphering the text of the Convention. Finally, it sheds light on further perspectives and tries to identify the key problems that are still waiting to be addressed to achieve a final resolution of the Caspian Sea dispute.

The long way to the Convention

The chronology of the negotiations on the resolution of the dispute over the Caspian Sea's legal status and the positions of the littoral states has been widely discussed elsewhere by many authors, and thus the article will not extensively focus on this issue. However, with the purpose of providing the appropriate contextualizing for the recent agreement, the negotiation process and positions of the sides will be reviewed, with identification of key milestones as well as the major issues that have produced a certain level of convergence from initially highly divergent positions.

As Mianabady summarizes, in total, five different approaches had previously been discussed during the 22 years of negotiations to resolve the legal status of the Caspian:⁵

1. Division based on the UN Convention on the Law of the Sea (UNCLOS)

4 BBC (2018) Caspian Sea: Five countries sign deal to end dispute, 12 August, available at: <https://www.bbc.com/news/world-45162282> (Accessed: 06 October 2018)

5 Sheikmohammady, M., Mostert, E. and Giesen, N. (2014) 'Application of the Ordered Weighted Averaging (OWA) method to the Caspian Sea conflict', *Stochastic Environmental Research and Risk Assessment*, Volume 28, Issue 6, pp 1359–1372. Available at: <https://link.springer.com/article/10.1007/s00477-014-0861-z>. (Accessed: 06 October 2018).

2. Condominium status applying to both the surface and the seabed (Condominium)
3. Division based on Soviet maps (Soviet maps)
4. Equal division: 20 % of the sea surface, and the seabed area, to each littoral state (Equal division)
5. Division of the seabed based on UNCLOS, with condominium status of the surface (UNCLOS+Condominium).

An assessment of the Caspian littoral states' "economic, political, and military interests as declared on their public statements" provided the following ordinal preferences of the states in terms of the five legal status alternatives (1—most desirable to 5—least desirable).⁶

Ordinal preferences of the littoral states for division of the Caspian

| Littoral states of the Caspian Sea | UNCLOS | Condominium | Soviet maps | Equal division | UNCLOS+Condominium |
|------------------------------------|--------|-------------|-------------|----------------|--------------------|
| Azerbaijan | 2 | 5 | 1 | 4 | 3 |
| Iran | 3 | 1 | 5 | 2 | 4 |
| Kazakhstan | 2 | 4 | 1 | 5 | 3 |
| Russia | 4 | 1 | 3 | 5 | 2 |
| Turkmenistan | 3 | 5 | 2 | 1 | 4 |

As the table shows, division of the sea based on the Soviet maps was the most desirable option for Azerbaijan and Kazakhstan, and more or less acceptable for Turkmenistan (with certain exceptions discussed later), while condominium was the least desirable approach for Azerbaijan and Turkmenistan, and also almost unacceptable for Kazakhstan. Kazakhstan, which has the longest coastline and accordingly claims it should receive the largest share of the Caspian Sea, is most strongly opposed to the equal division formula. In contrast, for Russia and Iran, which, along with their economic interests, also arguably have much

6 Hipel, K., et al. (2010) 'Modeling the Caspian Sea negotiations.' *Gr Decis Negot* 19:149–168. doi: 10.1007/s10726-008-9121-2.

stronger geopolitical ambitions in the sea, were most positive about condominium status applying to both the surface and seabed, which could have provided them with serious influence over everything going in the Caspian Sea. Moreover, most of the energy riches of the sea are concentrated in the sectors of the three smaller Caspian powers, and condominium would mean Moscow and Tehran receiving a certain share from those resources. At the same time Russia, the biggest naval power in the Sea, was totally against any division of the sea surface, which could seriously curtail the power projection capabilities of its Caspian flotilla. Iran, in turn, was most negative about the division of the Sea based on Soviet maps, which, according to Tehran, put Iran in a very disadvantageous position, allocating the country, at best, less than 15 percent of the sea bed and surface.

However, it is important to note that, while the table above shows the ordinal preferences of each of the littoral states, it does not necessarily overlap with their officially stated positions, particularly during the later periods of negotiations. The littoral states gradually modified and moderated their maximalist positions during negotiations, both to make them more acceptable for others, and also to reflect changing economic/geopolitical/security considerations. Azerbaijan has long argued that the Caspian Sea is actually an international border lake and should be divided into national sectors based on the median line (equidistance) principle.⁷ In fact, back in 1970, the Soviet Union's Ministry of Oil and Gas had divided the Caspian seabed into Kazakh, Azerbaijani, Russian, and Turkmen sectors based on equidistance; and Azerbaijan suggested that this division, according to the legal principle of *uti possidetis juris*, could be accepted as a departure point for delimitation negotiations.⁸ Baku also argued that the littoral states should be able to freely develop energy extraction and transportation projects in their respective sectors even before the all-inclusive Convention on legal status is signed. Such a perspective has been supported by Turkmenistan, a possible partner of Azerbaijan in building the Trans-Caspian gas pipeline, but rejected by Russia and Iran, which wanted to block the

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7 Azerbaijan.az (2010) Emergence of the Notion of Legal Status of the Caspian Sea (In Azerbaijani: Xəzərin Hüquqi Statusu Anlayışının Meydana Gəlməsi) Available at: http://www.azerbaijan.az/portal/WorldCommunity/CaspianStatus/caspianStatus_02_a.html. (Accessed: 06 October 2018).

8 *Ibid.*

project by declaring its construction illegal prior to the signing of the Convention.⁹

Kazakhstan's official position in the later stages of negotiations was to apply certain provisions of the 1982 United Nations Convention on the Law of the Sea to the Caspian, notably regarding the width of the proposed national sectors,¹⁰ whereas Russia's position since 1998 can best be described as "common waters, divided bottom."¹¹ Due to the closeness of the positions of Azerbaijan, Russia, and Kazakhstan—most importantly, on accepting the median line principle—these three states were able to agree on the delimitation of the northern part of the Caspian seabed.¹² In 1998, Russia and Kazakhstan signed a bilateral agreement in this regard, and Azerbaijan and Kazakhstan inked a similar agreement in 2001. The final trilateral arrangement, concluded in 2003, divided the Caspian seabed according to the modified median line and left the surface open to navigation by all littoral states.¹³

The division of the Caspian seabed on a median line basis means that having a longer coastline entitles a littoral state to a larger area of the sea. This position was rejected by both Iran and Turkmenistan.¹⁴ As the country with the shortest coastline, Iran strongly opposed the median line principle, claiming the Caspian is a lake, and demanded that it be equally divided among the littoral states (which would increase its current share of the sea from the current de facto 13% to 20%).¹⁵ Ashgabat, while in general being positive about division based on Soviet maps, was opposed

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9 Mações, B. (2016) 'Crossing the Caspian: Letter From Turkmenbashi', Foreign Affairs, 19 October, Available at: <https://www.foreignaffairs.com/articles/central-asia/2016-10-19/crossing-caspian>. (Accessed: 06 October 2018).

10 Ministry of Foreign Affairs of Kazakhstan, Legal Status of the Caspian Sea. Available at: <http://mfa.gov.kz/index.php/en/foreign-policy/current-issues-of-kazakhstan-s-foreign-policy/legal-status-of-caspian-sea>. (Accessed: 06 October 2018).

11 Coffey, L. (2015) 'A Secure and Stable Caspian Sea Is in America's Interest', The Heritage Foundation, 4 December. Available at: <https://www.heritage.org/europe/report/secure-and-stable-caspian-sea-americas-interest>. (Accessed: 06 October 2018).

12 Garibov, A. (2017) 'Are the Littoral States Close to Signing an Agreement on the Legal Status of the Caspian Sea?', The Jamestown Foundation, Eurasia Daily Monitor, Volume: 14 Issue: 61, 8 May. Available at: <https://jamestown.org/program/littoral-states-close-signing-agreement-legal-status-caspian-se>. (Accessed: 06 October 2018).

13 *Ibid.*

14 Garibov, "Are the Littoral States Close to Signing an Agreement...", *op.cit.*

15 Diba, B. A. (2015) 'Caspian Sea: is Iran changing its position on the Caspian legal regime?', Payvand News, 13 March. Available at: <http://www.payvand.com/news/15/mar/1077.html>. (Accessed: 06 October 2018).

to reference to the 1970 division as it left the Kapaz oil field, discovered by Azerbaijan but disputed by Turkmenistan, under Baku's jurisdiction. Iran has also tried to dispute the ownership of some oil fields belonging to Azerbaijan, which led to some near-clashes in the past.¹⁶

However, over the course of the last few years, there has been a gradual change in the Iranian and Turkmen positions, mostly linked to the desire to develop their own oil and gas projects, as well as export routes in the Caspian Sea. Iran, facing international isolation during the height of US sanctions in early 2010s, was also very keen to develop relations with regional countries. Following Hasan Rouhani's election as president of Iran in 2013, there have been steady improvements in relations with other Caspian countries, particularly with Azerbaijan, with whom Tehran previously had the most uneasy relationship in terms of delimitation of maritime borders.

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Moreover, as the relationship with the US remains tense, securing its Caspian flank has turned into a very important security concern for Iran. Not surprisingly, Iran became, along with Russia, a key proponent of the prohibition of the deployment of non-Caspian states' naval vessels on the sea. (Rouhani particularly highlighted this, stating "[t]he Caspian Sea only belongs to the Caspian states" after signing the Convention in Aktau.¹⁷)

In its turn, Turkmenistan, which became almost solely dependent on the Chinese market for gas exports (the loss of other markets, such as Iran and Russia, resulted in a severe drop in overall gas exports, which in 2017 totaled 39 billion cubic meters (bcm), a much lower volume compared to the 56 bcm export peak in 2008¹⁸), has also come to recognize the key importance of the Trans-Caspian pipeline, as well as the importance of solving the dispute over Caspian legal status to make the realization of this project possible. In December 2014, Kazakhstan and Turkmenistan signed an agreement on the delimitation of the bottom of the Caspian Sea similar to the previous agreement

16 Kucera, J. (2016) 'Is the Caspian Sea Dispute Finally About to be Resolved?', EurasieNet, 20 July. Available at: <https://eurasianet.org/caspian-sea-dispute-finally-about-be-resolved>. (Accessed: 06 October 2018).

17 RFERL (2018) Five States Sign Convention On Caspian Legal Status, 12 August. Available at: <https://www.rferl.org/a/russia-iran-azerbaijan-kazakhstan-turkmenistan-caspian-sea-summit/29428300.html>. (Accessed: 06 October 2018).

18 CEIC Data (2018) Turkmenistan Natural Gas: Exports: 2005-2017. Available at: <https://www.ceicdata.com/en/indicator/turkmenistan/natural-gas-exports>. (Accessed: 06 October 2018).

Agreements between Azerbaijan and Iran on cooperation in exploration of offshore Caspian hydrocarbon resources, as well as similar recent agreements between Iran and Turkmenistan, boosted the prospects that existing discrepancies among the littoral states could in fact be overcome.

between Russia, Azerbaijan, and Kazakhstan.¹⁹ Agreements between Azerbaijan and Iran on cooperation in exploration of offshore Caspian hydrocarbon resources,²⁰ as well as similar recent agreements between Iran and Turkmenistan,²¹ boosted the prospects that existing discrepancies among the littoral states could in fact be overcome.

As positions became closer, the meetings of the littoral states and the bilateral consultations among them intensified for drafting the Convention. In 2016 alone, five meetings of the Special Working Group were held, one in each of the five capitals. As a result, in July, 2016, in Astana, the five countries' foreign ministers declared a commitment to finalize the draft Convention by the next Caspian Presidential Summit, which was set to be held in Kazakhstan sometime in 2017,²² but later postponed to 2018. Three additional meetings were held in 2017, and five meetings in 2018, to resolve the remaining issues before the summit in Kazakhstan.

According to an April 2018 statement by Igor Bratchikov, Moscow's chief negotiator on the legal status of the Caspian Sea, the Convention was almost ready, and "the absolute majority of provisions have been agreed upon."²³ A decree approving the Draft Convention on the legal status of the Caspian Sea, signed on June 21, 2018, by Dmitry Medvedev, Prime Minister of Russia—the most powerful actor in the Caspian basin – removed almost all doubt that the CLSCS was set to be inked soon.²⁴ Finally, the presidents of Azerbaijan, Russia, Kazakhstan, Turkmenistan, and Iran signed the Convention on Legal Status of the Caspian on

19 Ministry of Foreign Affairs of Kazakhstan, Legal Status of the Caspian Sea. Available at: <http://mfa.gov.kz/index.php/en/foreign-policy/current-issues-of-kazakhstan-s-foreign-policy/legal-status-of-caspian-sea>. (Accessed: 06 October 2018).

20 Rahimov, R. (2018) 'Azerbaijan, Iran Reach Breakthrough on Disputed Fields in the Caspian Sea', The Jamestown Foundation, Eurasia Daily Monitor, Volume: 15 Issue: 52, 5 August. Available at: <https://jamestown.org/program/azerbaijan-iran-reach-breakthrough-on-disputed-fields-in-the-caspian-sea/>. (Accessed: 06 October 2018).

21 IRNA (2018) Ashgabat, Baku visits, Tehran's developing ties with northern neighbors, 4 April. Available at: <http://www.irna.ir/en/News/82877180>. (Accessed: 06 October 2018).

22 TASS (2016) Konventsiyu o pravovom statuse Kaspiya rassmotryat glavy MID na zasedanii v Astane, 13 July. Available at: <https://tass.ru/mezhdunarodnaya-panorama/3449561>. (Accessed: 06 October 2018).

23 INews.az (2018) Konventsiya o pravovom statuse Kaspiya prakticheski gotova k podpisaniyu - MID RF, 14 April. Available at: <http://www.1news.az/news/konvenciya-o-pravovom-statuse-kaspiya-prakticheski-gotova-k-podpisaniyu---mid-rf>. (Accessed: 06 October 2018).

24 Ofitsial'nyy internet-portal pravovoy informatsii (22 June) Decree on Approval of the Draft Convention on the Legal Status of the Caspian Sea. Available at: <http://publication.pravo.gov.ru/Document/View/0001201806>. (Accessed: 06 October 2018).

August 12, 2018, in Aktau, Kazakhstan²⁵, as they promised two years previously.

Key Takeaways from the CLSCS

The Draft Convention defines and regulates the rights and obligations of the parties with respect to the use of the Caspian Sea, including its waters, bottom, subsoil, natural resources, and airspace over the sea.²⁶ According to the Convention, the Caspian Sea is divided into internal waters, territorial waters, fishing zone, and common area (Article 5). The document states that the littoral states have the right to establish territorial waters not exceeding 15 nautical miles from the coast (Article 7.1) and the outer borders of the territorial waters are considered as state borders. State sovereignty of the littoral states extends to the seabed below and airspace above this area. When delimitation of such borders is difficult due to the shape of the coastline, it should be done via bilateral agreement between the respective littoral states based on the principles of international law (7.3). A further ten nautical miles are defined as exclusive fishing zones (9.1). The fishing quotas should be defined with additional agreement of all five states (9.3), with the possibility of transferring unused quota to other Caspian states through bilateral agreements (9.4).

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The final delimitation of the seabed borders is also contingent upon the bilateral or multilateral agreements of the respective states, where borders cross each other (Article 8). The remaining surface of the sea is kept for common use. Thus, while the principle of the delimitation of the seabed to the five sectors and common use of the surface waters is confirmed, the key and most problematic question—the principles, measures or exact contours of the seabed delimitation—still remains unclear in the text of the Convention.

Still, one of the most important points found in recent reporting is

25 BBC (2018) Caspian Sea: Five countries sign deal to end dispute, 12 August, available at: <https://www.bbc.com/news/world-45162282> (Accessed: 06 October 2018)

26 The version of the CLSCS used for this article is that was very briefly available at the Official Law Portal of the Russian Government. It was published together with Medvedev's approval decree, but was soon taken out of the website - Официальный интернет-портал правовой информации (22 June) Decree on Approval of the Draft Convention on the Legal Status of the Caspian Sea. Available at: <http://publication.pravo.gov.ru/Document/View/0001201806>. (Accessed: 06 October 2018).

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the clarification of the right of the littoral states to lay underwater pipelines. According to Article 14 of the Convention, the parties may lay underwater cables and pipelines along the bottom of the Caspian Sea, subject only to the agreement of those states through whose sectors the pipelines or cables will pass. Until the Convention, Russia and Iran had both argued against various underwater pipeline projects in the Caspian Sea—most notably against the proposed Trans-Caspian pipeline to deliver natural gas from Turkmenistan to European customers—on the grounds that any such project had to obtain consent from all the littoral states until the sea’s legal status was clarified.²⁷

The second important takeaway is related to naval forces in the Caspian. Article 3.6 of the document establishes that the Caspian Sea is closed to the armed forces of all countries except those of the five littoral states. This point effectively legalizes an important principle first put forth in the final communiqué of the Caspian Five’s Astrakhan (Russia) summit in 2014.²⁸ The parties to the document also declare that under no circumstances will they allow their sectors in the Caspian to be used militarily against any other littoral state (Article 3.7).

The Convention agrees that military vessels of one of the parties that pass through the territorial waters of any of the others have the right to enter ports and stay within the territorial waters when “there is a corresponding permit or it is necessary due to *force majeure* or disaster or to assist persons, ships and aircraft in distress” (Article 11.4). Any other military maneuvers carried out within or in the close proximity of the borders of the territorial waters of another littoral state will be considered an act “violating the peace in the sea” that threatens the security of that respective littoral state (Article 11.6).

The Convention also states that the parties have the right to establish special “security zones” in any area of their respective sectors around constructed artificial islands, bases, or other objects (not exceeding 500 meters from any outer point of those objects) (Article 8.2). All the littoral states have to be duly informed about

27 Interfax, (2018) Pravitel'stvo RF odobrilо proyekt konventsii o pravovom statuse Kaspiya, 22 June. Available at: <https://www.interfax.ru/russia/618102>. (Accessed: 06 October 2018).

28 Daly, J. (2014) ‘Russia Convinces ‘Caspian Five’ to Bar Foreign Militaries From the Caspian’, The Jamestown Foundation, Eurasia Daily Monitor, Volume: 11 Issue: 83, 5 May. Available at: <https://jamestown.org/program/russia-convinces-caspian-five-to-bar-foreign-militaries-from-the-caspian/>. (Accessed: 06 October 2018).

the construction of such objects and the borders of their security zones, and they should not undermine the sovereign rights of the other parties over the common surface of the sea (Article 8.4).

The convention will become effective the moment that the last littoral state declares that it has officially joined the convention though parliamentary ratification of the bill (for Iran, plus the Guardian Council's approval after ratification²⁹) and receipt of the fifth and final confirmation by Kazakhstan, which in the Convention is identified as the depository of the document (Article 22). The Convention on the Legal Status of the Caspian Sea has also been registered as a United Nations document. The parties agreed to set up a "special mechanism of regular five-party consultations under the auspices of the Foreign Ministries" to implement the provisions of the convention.³⁰

How much of a breakthrough is the Convention?

While signing of the agreement was met with much fanfare in the region and beyond as the long-expected solution to the problem, it still left caveats in the way of a final settlement of the major disputes in the sea. Most importantly, two issues that have always been notable points of dispute — (1) delimitation of borders across the seabed and resultant clarification of the ownership of the disputed fields, and (2) construction of underwater trans-Caspian pipelines — still await their final solutions.

Azerbaijan, Iran, and Turkmenistan will need to resolve the issue of delimitation of the seabed in the southern Caspian while the CLSCS provides no straightforward framework for this. The aforementioned 1997, 1998, 2001, and 2014 bilateral and trilateral agreements signed by Russia, Azerbaijan, Kazakhstan, and Turkmenistan had effectively ended any dispute over maritime borders in the northern Caspian. In fact, it is difficult to recall any previous major dispute over maritime borders among Azerbaijan, Russia, and Kazakhstan, or between Kazakhstan and Turkmenistan, that led to notable incidents. The major disputes have always been in the southern part of the sea, where Iran challenged de facto

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29 Davar, F. (2018) 'The Caspian Convention, the Master's Compromise', IranWire.com, 13 August. Available at: <https://iranwire.com/en/features/5466>. (Accessed: 06 October 2018).

30 RFERL, 'Five States Sign Convention On Caspian Legal Status', *op.cit.*

borders with Azerbaijan and Turkmenistan, and Turkmenistan tried to dispute the ownership of some oil and gas fields developed by Azerbaijan. In the past, these three neighbors had threatened military force to “persuade” each other to stop the exploration of disputed offshore oil and gas fields. Most notably, in 2001, Iranian naval vessels threatened a BP ship, causing it to abort the surveying mission it was carrying out on behalf of Azerbaijan in the southern waters of the Caspian.³¹ During the following year’s 2002 Ashgabat Presidential Summit of the Caspian Five, the late president of Turkmenistan, Saparmurat Niyazov, famously stated: “one can smell blood in the Caspian Sea,” referring to the failure to solve the issue of oil fields disputed by Turkmenistan.³²

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area where the delimitation of highly contentious seabed borders is yet to be resolved. Not surprisingly, when Russian foreign minister Sergei Lavrov stated, following the December 2017 meeting of the Caspian Five’s foreign ministers in Moscow, that “all the key issues regarding the delimitation of the Caspian Sea had been resolved,” the Azerbaijani and Iranian Foreign ministers publicly disconfirmed this statement.³³ Moreover, Iranian diplomats asserted that any suggestion that Iran’s share of the Caspian Sea has been finalized was “a false and unfounded remark, misleading public opinion.”³⁴ In the same vein, following the signing of the Convention in Aktau, Iranian President Hassan Rohani stated that the delimitation of Caspian seabed will require additional agreements between littoral states.³⁵ Soon after the signing of the Convention, the Russian Deputy Minister of Foreign Affairs, Grigory Karasin, made it clear that Moscow would prefer that Azerbaijan, Iran, and Turkmenistan resolve

31 Warren, M. (2001) ‘Iran threatens BP vessels in Caspian Sea’, The Telegraph, 25 July. Available at: <https://www.telegraph.co.uk/news/worldnews/middleeast/iran/1335235/Iran-threatens-BP-vessels-in-Caspian-Sea.html>. (Accessed: 06 October 2018).

32 Peuch, J. (2002) ‘Caspian: Ashgabat Summit Ends Without Agreement’, RFERL, 24 April. Available at: <https://www.rferl.org/a/1099503.html>. (Accessed: 06 October 2018).

33 Blank, S. (2018) ‘Is there an Agreement on Caspian Sea Delimitation?’, CACI Analyst, 25 January. Available at: <https://www.cacianalyst.org/publications/analytical-articles/item/13494-is-there-an-agreement-on-caspian-sea-delimitation?.html>. (Accessed: 06 October 2018).

34 *Ibid.*

35 RFERL, ‘Five States Sign Convention On Caspian Legal Status’, op.cit.

disputes on the subsoil in a bilateral or trilateral manner, without pulling all the “Five” into them.³⁶ Thus, these new negotiations would likely not to be conducted within the common Caspian summits, but will be subject to bilateral, or possible trilateral, talks among Baku, Tehran, and Ashgabat.

The second key issue that remains to be fully clarified, despite having an exclusive section of the Convention dedicated to it, is the prospect for construction of pipelines in the sea. The most notable of such projects is surely the Trans-Caspian pipeline that has long been courted by the EU, which aims to bring some 30 billion cubic meters of gas from Turkmenistan to Azerbaijan and ultimately to Europe. In fact, as Article 14 of the Convention states, “the parties can lay underwater pipelines along the Caspian floor” (Section 2) “according to consent by the parties through whose sector the cable or pipeline should be built” (Section 3); however, the same section also stipulates that such activities hinge on “the condition of the accordance of their projects with ecological requirements and standards.”

This means that “each of the five Caspian littoral states will be able to weigh in on questions of the environmental impact of trans-boundary pipeline projects, which could become a new instrument some regional players might use to try to delay the construction of the TCP.”³⁷ Russia and Iran have used environmental concerns to halt construction of the TCP for some two decades and the wording of the convention seems to leave room for debate about “requirements and standards.”³⁸ In their opening statements at the summit, Azerbaijani President Ilham Aliyev and Turkmen President Gurbanguly Berdymukhammedov addressed this issue, assuring participants that their countries were paying close attention to environmental concerns and were consulting with leading experts to guarantee safety.³⁹

In fact, just three weeks before the signing of the

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36 Shaban, I. (2018) ‘Under new Convention, Caspian not to be sea or lake’, Caspian Barrel, 10 August. Available at: <http://caspianbarrel.org/en/2018/08/under-new-convention-caspian-not-to-be-sea-or-lake/>. (Accessed: 06 October 2018).

37 Gurbanov, I. (2018) ‘Caspian Convention Signing and the Implications for the Trans-Caspian Gas Pipeline’, The Jamestown Foundation, Eurasia Daily Monitor, Volume: 15 Issue: 127, 12 September. Available at: <https://jamestown.org/program/caspian-convention-signing-and-the-implications-for-the-trans-caspian-gas-pipeline/>. (Accessed: 06 October 2018).

38 RFERL (2018) Caspian Summit Fails To Resolve Issues Between Iran And Nearest Neighbors, 15 August. Available at: <https://www.rferl.org/a/qishloq-ovozi-caspian-summit-fails-to-resolve-issues-iran-turkmenistan-azerbaijan/29436013.html>. (Accessed: 06 October 2018).

39 RFERL, “Caspian Summit Fails To Resolve Issues...”, *op.cit.*

Convention in Aktau, the ministers of ecology of the Caspian states, in an extraordinary meeting in Moscow, signed an additional Protocol to the 2003 Framework Convention for the Protection of the Marine Environment of the Caspian Sea. The 2003 agreement, commonly known as the Tehran Convention, is referenced in the CLSCS as a baseline for environment protection while carrying out pipeline construction (Article 14.2).⁴⁰ The recent Protocol to it, titled Assessment of Impact on Environment in the Trans-border Context (though the CLSCS only refers to the Tehran Convention without direct reference to that particular protocol), creates legal grounds for trans-national assessment of impacts of the possible pipelines. On August 18, 2018, Igor Bratchikov, referring to that protocol, noted that: "... when and if real plans for the construction of Trans-Caspian pipelines appear, any of the Caspian countries, if it deems it necessary, can join in the procedure for assessing the possible consequences of such projects for the Caspian environment, even at their design stage."⁴¹ This appears to be the same loophole that has held up construction of the TCP for all these years, though it is unclear whether this would represent an effective veto that other littoral states could employ to halt projects.⁴²

Conclusion

Negotiations to solve the dispute over the legal status of the Caspian Sea have been long and uneasy, and started with highly divergent, if not mutually exclusive, positions of the littoral states. In the initial stages of the talks, most importantly throughout the 1990s and early 2000s, disputes over the legal status of the Caspian Sea became almost the most important obstacle to the development of relations among Azerbaijan, Iran, and Turkmenistan. At the same time, by the early 2000s, Azerbaijan, Russia, and Kazakhstan managed to agree on the division of the northern part of the sea. With the passage of time, other economic, geopolitical, and security considerations have, on the

40 SPUTNIK (2018) Azerbaydzhan podpisal v Moskve protokol po Tegeranskoy konventsii, 20 July. Available at: <https://ru.sputnik.az/economy/20180720/416305369/ramochnaja-konvencija-kaspijskoe-more.html>. (Accessed: 06 October 2018).

41 Ministry of Foreign Affairs of Russia (2018) Otvet rukovoditelya rossiyskoy delegatsii na mnogostoronnikh peregovorakh po pravovomu statusu Kaspiyskogo morya, 17 August, Available at: http://www.mid.ru/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/3320564. (Accessed: 06 October 2018).

42 Pannier, B. (2018) 'A Landmark Caspian Agreement – And What It Resolves', RFERL, 9 August. Available at: <https://www.rferl.org/a/qishloq-ovozi-landmark-caspian-agreement--and-what-it-resolves/29424824.html>. (Accessed: 06 October 2018).

whole, brought the southern Caspian countries relatively closer, and, from the mid-2010s, the pace of negotiations accelerated. In 2014, a new bilateral agreement on the division of the sea was signed, delimiting the northern border of the Turkmen and Kazakh sectors of the Caspian Sea.

Consequently, in August, 2018, the Convention on Legal Status of the Caspian was signed in Aktau, Kazakhstan. It confirmed the idea that the surface of the Caspian will be in common use, but its seabed will be divided for exploration of offshore energy resources. While the document identified general principle that the seabed will be divided among the littoral states, it failed to address the delimitation of sectorial borders other than territorial waters and left this to be subject to future bilateral agreements. The Convention approved the initially agreed upon principle that non-Caspian states would be prohibited from having military vessels on the sea, and the littoral states would never allow their sectors to be used by others for military purposes against any Caspian state. It also formally recognized the littoral states' rights to build trans-Caspian pipelines.

While the Convention's clarification of many important points deserves great credit, the extent to which it can be called a major breakthrough toward the final settlement of the legal status of related disputes in the Caspian Sea is still questionable. Following the division of the northern Caspian by the respective littoral states, the southern Caspian turned out to be the major area of inter-state disputes. The key issue in solving those disputes—final delimitation of seabed borders, which will resultantly resolve the problem of disputed fields—is not included into the text of the Convention and must be settled outside the CLSCS through bilateral (and possibly trilateral) agreements among Azerbaijan, Iran, and Turkmenistan. Moreover, while Russia and Iran formally recognized the right to build underwater pipelines by bilateral agreements between two states—the position long opposed by them but advocated by Azerbaijan and Turkmenistan—there are certain loopholes in the text of the Convention that could potentially be used against such projects.

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