Institut für Europäische Politik

Centre international de formation européenne

# KEY DISPUTES REMAIN UNSETTLED IN THE CASPIAN SEA DESPITE THE SIGNING OF THE CONVENTION ON LEGAL STATUS

Azad Garibov

EUCACIS in Brief

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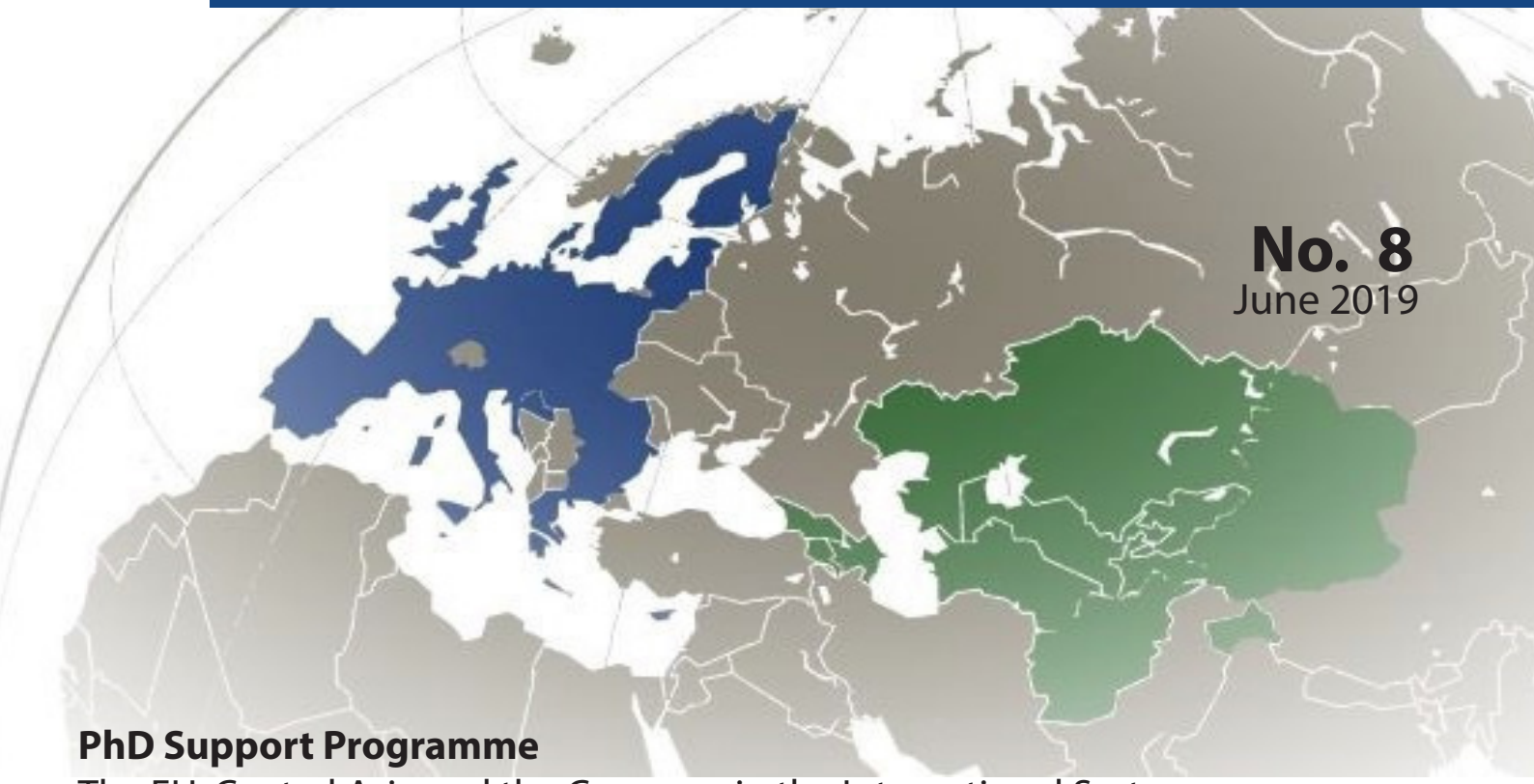

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## About the Author

**Azad Garibov** is a regular contributor to various electronic and printed academic journals and newspapers, including the Eurasia Daily Monitor, The National Interest and the Central Asia-Caucasus Analyst. He co-edited and co-authored the book "The Caspian Sea Chess-Board: Geo-political, Geo-economic and Geo-strategic Analysis", published jointly by the Baku-based Center for Strategic Studies SAM and the Italian Institute for International Political Studies (Milan, 2014). Mr Garibov is 2016-2019 fellow of the PhD Support Programme "The EU, Central Asia and the Caucasus in the International System (EUCACIS)". His areas of interest include political transitions and security issues in the South Caucasus and Central Asia, trans-Eurasian energy and transport corridors as well as Caspian affairs.

## Editorial team

**Publishers:** Prof. Dr Mathias Jopp, Head of International Programmes, IEP
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**Editors:** Dr Susann Heinecke, Programme Manager EUCACIS, CIFE
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Laila Allemand, Project Manager/Research Associate, IEP

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## Introduction

The negotiations to solve the dispute on the legal status of the Caspian Sea have been long and uneasy, and they started with highly divergent, if not mutually exclusive positions of the littoral states. 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 2018 prices.[1] It is no surprise that each of the littoral states wanted to get the largest share of these massive resources as possible, which was to be clarified by the measures and principles applied for delimitating the sea borders. Thus, the legal status of the Caspian Sea was debated for 22 years (in 5 presidential summits, 12 meetings of foreign ministers and 55 meetings of the Special Working Group) to bring the diverging positions together. The "Convention on the Legal Status of the Caspian Sea" (CLSCS) was finally signed on August 12, 2018 in Aktau, Kazakhstan by the presidents of the five littoral states. While the signing of the agreement was met with much optimism in the region and beyond as the long expected solution to the problem, it also left caveats in the way to the final settlement of the major disputes around the sea. Most importantly, two issues that have always been key sources of dispute—namely (1) the delimitation of highly contentious sectorial borders of the seabed in the Southern Caspian and the resultant clarification of the ownership of the disputed fields, and (2) the construction of underwater trans-Caspian pipelines—still await their resolution for achieving the final settlement of the Caspian Sea legal dispute.

## Delimitation of sectorial borders in the Southern Caspian

The CLSCS is based on the principle of division of the seabed and common use of the surface, a position long-advocated by Russia. The document clarifies the rights of the littoral states to the surface waters in detail, including the establishment of territorial water borders not exceeding 15 nautical miles from the coast (Article 7.1). However, it notes that the delimitation of the borders in the seabed is contingent upon the bilateral or multilateral agreements of the respective states (article 8) while providing no straightforward clue for on what principle the division should be based on. Thus, "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.[2]

The bilateral and trilateral agreements signed by Russia, Azerbaijan, and Kazakhstan in 1997, 1998, and 2001, and between Turkmenistan and Kazakhstan in 2014, have effectively ended any dispute with seabed borders in the northern Caspian. In fact, it is difficult to recall any major dispute among Azerbaijan, Russia and Kazakhstan, as well as between Kazakhstan and Turkmenistan, over maritime borders that led to remarkable incidents before those agreements. The major disputes have always been in the southern part of the sea, where Iran challenged the de-facto 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".[3] Most notably, in 2001 Iranian naval vessels threatened BP's ship to abort the surveying mission it carried out on behalf of Azerbaijan in the southern waters of the Caspian Sea.[4] A year later, during the 2002 Ashgabat Presidential Summit of the five Caspian littoral states, the former President of Turkmenistan Saparmurat Niyazov—better known as Turkmenbashi—famously stated that "one can smell blood in the Caspian Sea", referring to the failure to solve the issue of oil fields disputed by Turkmenistan.[5]

Even though much has changed since then in the bilateral relationship among these three countries and Baku currently enjoys highly cooperative relations with both Tehran and

1 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).

2 Garibov, A (2018) 'Russian Government Approves Draft Convention on Legal Status of Caspian Sea', Eurasia Daily Monitor Volume: 15 Issue: 99. Available at: https://jamestown.org/program/russian-government-approves-draft-convention-on-legal-status-of-caspian-sea/ (Accessed: 06 January 2019)

3 Ibid

4 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).*

5 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).*

Ashgabat, the southern Caspian Sea still remains the key area where the delimitation of highly contentious seabed borders is yet to be resolved. Not surprisingly, when Sergey Lavrov, Foreign Minister of Russia summarised the December 2017 meeting of the Caspian five's foreign ministers in Moscow that "all key issues regarding the delimitation of the Caspian Sea had been resolved," Azerbaijan and Iran made public statements disconfirming Lavrov's statement.[6] Moreover, a senior Iranian diplomat highlighted that any suggestion that Iran's share of the Caspian Sea was agreed upon was "a false and unfounded remark, misleading public opinion."[7] In the same line, after the signing of the Convention in Aktau, Iranian President Hassan Rohani said that the delimitation of the Caspian seabed will require additional agreements between the littoral states.[8] Soon after the signing of the Convention, Russian Deputy Minister of Foreign Affairs Grigory Karasin made clear that Moscow would prefer that Azerbaijan, Iran and Turkmenistan resolve disputes on subsoil in a bilateral or trilateral manner, without pulling all the "five" into them.[9] Thus, these negotiations would likely not be conducted within the common Caspian summits, but will be subject to bilateral or trilateral talks among Baku, Tehran and Ashgabat.

## Construction of underwater pipelines

The second key issue that the Convention leaves partly unsettled—despite having an exclusive part dedicated to it—is the construction of pipelines in the sea. The most notable of such projects is surely the Trans-Caspian pipeline (TCP) that has been long courted by the EU. It aims to bring some 30 billion cubic meters of gas from Turkmenistan to Azerbaijan and ultimately to Europe. In fact, Article 14 of the Convention states that "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 of the Convention 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".[10] "Russia and Iran have used environmental concerns to halt the construction of the TCP for some two decades"[11] and the wording of the convention seems to leave room for debate about "requirements and standards."[12] In their opening statements at the Aktau summit, Azerbaijani President Ilham Aliev and Turkmen President Gurbanguly Berdymukhammedov addressed this issue, assuring that their countries were paying close attention to environmental concerns and were consulting with leading experts to guarantee safety.[13]

In fact, a few weeks before the inking the Convention in Aktau, ecology ministers of the Caspian littoral states, "in an extraordinary meeting in Moscow, signed an additional Protocol to the 2003 Framework Convention for the Protection of the Marine Environment of

6 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).*

7 Ibid

8 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).

9 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).

10 Gurbanov, I. (2018) 'Caspian Convention Signing and the Implications for the Trans-Caspian Gas Pipeline', *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).

11 Garibov, A (2018) 'Russian Government Approves Draft Convention on Legal Status of Caspian Sea', Eurasia Daily Monitor Volume: 15 Issue: 99. Available at: https://jamestown.org/program/russian-government-approves-draft-convention-on-legal-status-of-caspian-sea/ (Accessed: 06 January 2019)

12 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).

13 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).

the Caspian Sea".[14] The 2003 agreement, which is mostly known as the Tehran Convention, is referred to in the CLSCS as a baseline for environment protection while carrying out pipeline constructions (Article 14.2).[15] The recent Protocol to it, titled Assessment of Impact on Environment in the Trans-border Context, creates legal grounds for trans-national assessment of impacts of the possible pipelines. On August 18, 2018, Igor Bratchikov, Moscow's chief negotiator on the Convention, 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."[16] Thus, "it appears to be the same loophole that has held up the 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".[17]

## Conclusion

Thus, while clarification of many important points by the Convention deserves much credit, it is still questionable to what extend it can be called a major breakthrough towards the final settlement of the legal status related to the disputes around the Caspian Sea, as many observers identified it to be one. After the division of the northern Caspian Sea by the respective littoral states, the southern Caspian Sea turned to be the major area of inter-state disputes. The key issue to solve those disputes—the final delimitation of seabed borders which will resultantly resolve the problem of disputed fields—is not included in the text of the Convention and has to be settled outside the CLSCS with bilateral (and possibly trilateral) agreements of Azerbaijan, Iran and Turkmenistan. Moreover, while Russia and Iran formally recognised the right to build underwater pipelines bilaterally by any of the two littoral states—a position long opposed by Moscow and Tehran but advocated by Baku and Ashgabat—there are certain loopholes in the text of the Convention that could potentially be used against such projects.

14 In fact, just three weeks before the signing of the 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.

15 SPUTNIK (2018) Азербайджан подписал в Москве протокол по Тегеранской конвенции, 20 July. Available at: hhttps://ru.sputnik.az/economy/20180720/416305369/ramochnaja-konvencija-kaspijskoe-more.html (Accessed: 06 October 2018).

16 Ministry of Foreign Affairs of Russia (2018) Ответ руководителя российской делегации на многосторонних переговорах по правовому статусу Каспийского моря, 17 August. Available at: http://www.mid.ru/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/3320564 (Accessed: 06 October 2018).

17 In fact, just three weeks before the signing of the 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.