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Unpacking the Environmental Requirements of the Caspian Legal Convention: Prospects for the Trans-Caspian Pipeline

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Abstract

This article explains the Convention of the Legal Status of the Caspian Sea, which was signed in August 2018. More specifically, it focuses on the environmental articles of the legal agreement. In doing so, it argues that the existing scholarship overestimates the influence of the environmental requirements (Articles 1, 11, 14, and 15) on the construction perspective of the Trans-Caspian Pipeline. While it has been constantly claimed that Russia and Iran could use ecological requirements to oppose the pipeline in the future, this is not the case at the present. Rather, the Caspian littoral states have been cooperating with environmental protocols and regulations under the Tehran Convention since 2003; therefore, the recent ecological requirements of the legal agreement are not new. This article serves as a response to the relevant debate on ecological issues and infrastructure cooperation across the Caspian Sea.

A Short Overview: The Trans-Caspian Gas Pipeline

The Trans-Caspian Gas Pipeline (TCP) is a proposed 300 km submarine pipeline that would stretch between Turkmenbashi (Turkmenistan) and Baku (Azerbaijan) and may also include a connection between the Tengiz field in Kazakhstan and Turkmenbashi. It is expected that the proposed submarine pipeline would transport natural gas from Turkmenistan and Kazakhstan to the European energy market. Its projected capacity is 30 bcm per year, at an estimated cost of USD 5 billion. The TCP is also considered a natural eastward extension of the Southern Gas Corridor, comprising the South Caucasus Pipeline, the Trans-Anatolian Pipeline, and the Trans-Adriatic Pipeline. While for many years, the TCP has remained a dream for the European Union, preliminary steps are being taken to move forward. For example, on 12 September 2011, the EU adopted a mandate to negotiate a legally binding treaty between the EU, Azerbaijan and Turkmenistan to build the TCP. Additionally, after the Fourth Ministerial Meeting of the SGC Advisory Council, in Baku in February 2018, it was suggested that Turkmenistan was ready to engage with the project actively, and Maros Sefcovic, the European Commission Vice President for Energy Union, confirmed that discussions were continuing with the Turkmen government (Pirani 2018). In the same vein, Parviz Shahbazov, Azerbaijan's Energy Minister, noted that the volume of gas transported along the SGC may be increased with the help of gas from Turkmenistan. However, despite political statements from the EC, Azerbaijan and Turkmenistan, it is argued that the TCP failed to materialize due to the lack of clarity over the legal status of the Caspian Sea. More specifically, one of the long-standing problems to a proposed TCP has been the uncertain legal status of the Caspian

Sea and outstanding demarcation disputes between the Caspian littoral states.

The Convention on the Legal Status and the Geopolitical Explanation

The leaders of the five Caspian littoral states signed the Convention on the Legal Status of the Caspian Sea at the Fifth Caspian Summit in Aktau, Kazakhstan, on August 12, 2018. The third agreement was signed by the five littoral states after 22 years of negotiations and more than 50 meetings of the Ad Hoc Working Group. The other two agreements are the Tehran Convention and the Agreement on Security Cooperation. The Legal Status Convention includes these two documents and their protocols. In this sense, it is a comprehensive agreement that covers diverse interconnected areas, namely, regional security, environmental protection, navigation and fishing rights, and the construction of submarine pipelines. More concretely, if the littoral states would want to construct a submarine pipeline, they would need to meet the requirements of the Tehran Convention (see Article 14). Additionally, no naval forces other than those belonging to the littoral states are allowed in the Caspian Sea (see Article 3). The agreement does not clarify whether it is a sea or lake, however, nor does it include a delimitation of the seabed, which still requires additional negotiations between the littoral states (see Article 8).

From the very first day of the legal agreement, it has been argued that ecological articles of the legal agreement (see Articles 1, 11, 14, and 15) provide Iran and Russia with an important pressure tool to obstruct the potential exploration of oil and natural gas fields in the Caspian Sea (see, e.g., Anceschi 2019; Garibov 2018; Gurbanov 2018; Ismayilov 2019). More concretely, a number of scholars have argued that Russia and Iran have intentionally included environmental articles in

the agreement to be able to veto and/or disrupt the possible natural gas pipeline connection between Azerbaijan and Turkmenistan. According to Garibov (2018, p.193), Russia and Iran have used environmental concerns to halt the construction of the TCP for approximately two decades, and the wording of the convention seems to leave room for debate about the “requirements and standards for the pipeline.” This argument is shared by Anceschi (2019), who argues that the convention provides Russia and Iran with extensive environmental monitoring powers, which they use to influence the construction of any transport infrastructure sidelining Russia or Iran. In the same vein, Ismayilov (2018, p. 9) claims that “Russia and Iran have used environmental requirements in the past and could use them to oppose the TCP in the future”. Ironically, the relevant scholarship proposed a similar line of arguments before the signing of the legal agreement. For example, Nuriyev (2015) argued that Iran and Russia use the existing environmental concerns to block or hinder crude oil shipping and the construction of pipelines between Azerbaijan, Kazakhstan and Turkmenistan. These examples illustrate that the relevant literature does not recognize the difference between the uncertain legal status of the Caspian Sea and the signing of the legal agreement, because Russia and Iran are depicted as the only ones to profit from both situations. However, the relevant scholarship fails to clarify when, why and how Azerbaijan, Kazakhstan and Turkmenistan agreed with the environmental protocols. It also fails to conclude why the three littoral states signed a legal agreement if the ecological articles are a tool for Russia and Iran. Finally, the relevant literature fails to explain the alternatives to preserving the ecology of the Caspian Sea if the ecological articles are merely a tool for Russia and Iran. I guess for the above-mentioned scholars, one alternative possibility is to ignore environmental issues and not to include ecological articles in the legal convention. The reason for this misinterpretation of the ecological articles is that the relevant scholarship is not aware of the Caspian Environmental Program and the Tehran Convention. The following section discusses these neglected points.

Debunking the Environmental Requirements of the Legal Status Convention

According to environmental studies, the fluctuation of water levels, land degradation, depletion of biodiversity and water pollution are important environmental issues in the Caspian Sea (Firoozfar *et al.* 2012). To address the common ecological issues and to facilitate sustainable cooperation, the CEP was established as a regional umbrella programme by the governments of the littoral states in 1998. It was established with support from international agencies

(e.g., the United Nations Environmental Program, the European Union’s TACIS programme, the Global Environment Facility, the United Nations Development Program and the World Bank). The programme has developed common regional and national measures to address ecological issues and to promote environmental agreement among littoral states. In 2003, the CEP was given more gravity as the littoral states signed the first ecological and legally binding agreement: the Tehran Convention.

The Tehran Convention serves as an overarching framework laying down the general requirements and the institutional mechanism for the protection of the marine environment of the Caspian Sea. In addition to the general ecological duties, the Tehran Convention includes four concrete environmental protocols. These are (1) the Protocol on the Conservation of Biological Diversity; (2) the Protocol on the Protection of the Caspian Sea against Pollution from Land-based Sources and Activities; (3) the Protocol concerning Regional Preparedness, Response and Co-operation in Combating Oil Pollution Incidents and (4) the Protocol on Environmental Impact Assessment in a Trans-Boundary Context. By 2006, the Caspian littoral states ratified the Tehran Convention and entered into force on the 12th of August 2006, which was the most significant step. The fast ratification of the Convention confirmed that there was willingness and commitment among the governments of the littoral states to work together and to include environmental concerns in their planning of future development. The four ecological protocols have all been signed by the littoral states. In light of this, it can be argued that the littoral states have been working on the four environmental protocols and other ecological regulations freely and autonomously since the late 1990s. More specifically, it is necessary to consider the history of environmental cooperation in order to understand the complex dynamics of the Caspian Sea. Tables 1 and 2 on p. 18 and p. 19 detail the timeline of environmental cooperation and the legal status negotiation process from 1992 until 2018. The two tables help illustrate that there is a parallel and complex interconnection between the agreement reached on the environmental protocols and the agreement reached on the legal status of the seabed. They also help to show the historical background of the two conventions because the relevant literature ignores the historical background and therefore assumes that the ecological articles appeared only in 2018.

The discussion process of the last protocol, the Environmental Impact Assessment (EIA), shows my argument more clearly. The EIA protocol explicitly regulates the construction of underwater pipelines and the ecological impact they may have on the Caspian Sea (see Annex I of the Protocol). According to the Protocol, the

littoral states need to inform each other when they plan on undertaking any of the activities listed in Annex I, which include the construction of large diameter pipelines and the production of natural resources. When reviewing the documents of the Conference of Parties (COP) under the Tehran Convention, it becomes apparent that Turkmenistan suggested taking out the word “large diameter” and adding the word “exploration” after “production” (see Annex I, list of activities 9 and 16). Iran and Russia supported these suggestions, but Azerbaijan and Kazakhstan were against them because the changes would restrict construction of all pipelines, large and small, as well as exploration activities. When reviewing the documents of preparatory meetings (e.g., COP 5 2014 and COP 6 October 2017), one can see that Azerbaijan and Kazakhstan explicitly opposed the Protocol. Because of this, it took several years to agree upon the EIA’s principles. To solve this disagreement, the Secretariat of the Tehran Convention sent a letter to the Secretariat of the Espoo Convention, asking whether the Protocol contradicted the Espoo Convention or limits its scope (see COP 6 November 2015). The reason for this is that only Azerbaijan and Kazakhstan are part of the Espoo Convention, which sets out the obligations of parties to assess the environmental impact of certain activities at an early stage of planning. Since Azerbaijan and Kazakhstan have followed the Espoo Convention’s environmental requirements, they wanted to ensure that the new EIA does not contradict it and does not work against their interests in the Caspian Sea. Per the letter of 15 October 2015, the Secretariat of the Espoo Convention replied that the Protocol does not limit the bilateral or multilateral activities of the littoral states. However, the letter could not solve the issue, and in the end, Turkmenistan’s suggestions were not accepted. On 20 July 2018, the governments of the littoral states organized an extraordinary meeting in Moscow, which ended with the signing of the EIA. One month after this event, the governments of the Caspian littoral states met in Aktau to sign the Convention on the Legal Status of the Caspian Sea.

In contrast to the geopolitical line of arguments, the disagreement illustrates that ecological protocols have undergone systematic discussion processes, and each round of cooperation might incur resistance since governments are now aware of upcoming obligations and restrictions. Unlike the geopolitical arguments, it is also good to emphasize that it was Turkmenistan, not Iran or Russia, who suggested the changes. In the end, Azerbaijan and Kazakhstan were able to reject the changes of the EIA protocol despite the support of Russia, Iran and Turkmenistan. They preferred to safeguard envisioned projects in adjacent areas to keep their autonomy and room to manoeuvre. Therefore, Iran and Russia are not

the only rule makers in ecological discussions. What this situation also shows is that the language of every document is very important and that each country weighs every word because these documents can influence the littoral states’ ability to extract natural resources.

The Legal Treaty is not a Silver Bullet

The relevant literature overlooks the fact that the legal treaty is not sufficient to ensure that the TCP is built. It is too simple to assume that just because the strategic rationale for the TCP project is strong that gas will flow. This is because there are still a number of obstacles that must be overcome before pipeline construction. First, Turkmenistan’s policy of gas transport requires the buyer to assume all risk at the Turkmen border onward. This includes the construction of pipelines. Those who want Turkmen gas must build the pipeline to Turkmenistan to receive it. Azerbaijan does not have enough money to build this pipeline, and it is currently preoccupied with the cost of the SGC.

Second, there is doubt as to whether the project can secure sufficient financing from European companies to match its political endorsement. Considering the existing low oil and gas prices, many European companies are hesitant about the risks of financing complex pipeline projects. Russia and Iran were opposed to the Baku–Tbilisi–Ceyhan in the early 2000s. However, the BTC became operational in 2006 because the U.S. and its energy companies offered strong political and economic support. In this sense, the TCP needs to secure significant financial and political support from the EU and its energy companies in order to enhance its feasibility.

Third, Azerbaijan wants to first deliver its own natural gas to Europe. In 2019, BP announced that there might be another giant gas field in the Caspian Sea, which is another reason to discourage Azerbaijan from building the TCP pipeline as it has a sufficient supply for Europe (Bloomberg January 10, 2019). Therefore, Baku will accept the TCP pipeline when its natural gas capacity decreases and it needs third party(s) to fulfil the pipeline. As mentioned above, Baku also received a Third-Party Access Exception, which means Azerbaijan can transport its own natural gas without including other gas suppliers.

Conclusion

The Legal Convention of the Caspian Sea and its environmental requirements have hitherto largely been investigated from a geopolitical angle that depicts them as an important tool for Iran and Russia to obstruct the TCP project. This paper has argued that this assessment does not sufficiently capture the whole picture, however. Instead, it has shown that the governments of the Caspian littoral states have been working on the environmental requirements of the Legal Convention and other

ecological regulations since the late 1990s. In contrast to the relevant literature, in 2003, the littoral states signed the first legal agreement, the Tehran Convention, in order to address the shared ecological issues. Therefore, the ecological requirements of the Legal Convention are not the main impediment to the TCP project. Instead,

economic conditions for building the TCP are still far from favourable, which makes the TCP very unlikely. More specifically, the cost of transporting Turkmen gas to Europe via a yet-to-be-constructed pipeline makes that gas less competitive than other options, in particular, additional Russian imports and LNG.

About the Author

Agha Bayramov is a PhD candidate and lecturer in the Department of International Relations at the University of Groningen.

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Table 1: Timeline of the Legal Convention

September/October 1992	The first stage of the negotiation was launched.
May 1995	Ad hoc working Group was established in the Almaty Conference.
July 1998	Russia and Kazakhstan signed the first bilateral agreement regarding the division of the seabed of the relevant sectors of the Caspian Sea.
November 2001	Azerbaijan and Kazakhstan signed a delimitation agreement.
April 2002	The first Caspian Summit of the littoral states leaders held in Ashgabat.
September 2002	The North Caspian region was delimited by the signature of a treaty between Azerbaijan and Russia on delimitation of adjacent areas on the Caspian seabed.
May 2003	Trilateral agreement between Azerbaijan–Kazakhstan–Russia on the Convergence Point of the delimitation lines of the adjacent areas of the Caspian Seabed.
October 2007	The second Caspian Summit of the littoral states leaders held in Tehran.
November 2010	The third Caspian Summit of the littoral state leaders held in Baku. The Agreement on Security Cooperation in the Caspian Sea was signed.
September 2014	The Fourth Caspian Summit of the littoral state leaders held in Astrakhan.
December 2014	The agreement between the Kazakhstan and Turkmenistan on the Delimitation of the seabed of the Caspian Sea was signed.
August 2018	The fifth Caspian Summit of the littoral states leaders held in Aktau. The Convention on the Legal Status of the Caspian Sea was signed.

Source: Author's own compilation

Table 2: Timeline of the CEP and the Tehran Convention

May 1994	The Almaty Declaration on Cooperation of the Environmental Protection.
June 1995	The draft version of the CEP, initiated by the World Bank, UNDP and UNEP, was agreed upon.
May 1998	The official launching of the Caspian Environmental Programme.
November 2003	The Tehran Convention was signed by the littoral states.
August 2006	Tehran Convention entered into force.
May 2007	First Conference of Parties Meeting in Baku, Azerbaijan.
November 2008	Second Conference of Parties Meeting in Tehran, Iran.
August 2011	Third Conference of Parties in Aktau, Kazakhstan. The Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents was signed.
December 2012	Forth Conference of Parties Meeting in Moscow, Russia. The Protocol for the Protection of the Caspian Sea against Pollution from Land-based Sources and Activities was signed.
May 2014	Fifth Meeting of the Conference of Parties in Ashgabat, Turkmenistan. The Protocol for the Conservation of Biological Diversity was signed.
August 2018	Extraordinary Meeting of the Conference of Parties in Moscow, Russia. The Protocol on Environmental Impact Assessment was signed.

Source: Author's own compilation