



## The Convention on the Legal Status of the Caspian Sea: Losers and Winners

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**Abstract:** *The legal status of the Caspian Sea has led to one of the biggest debates since the dissolution of the Soviet Union. After a long period of time, with numerous joint and bilateral meetings, this international crisis ended in 2018 as a result of the signing of a document called the Convention on the Legal Status of the Caspian Sea (CLSCS). In this article, the winning and losing sides amongst the signatories of the CLSCS were attempted to be determined by taking into account the new de facto situation in the Caspian basin in light of the geopolitical developments since 2018, through an analysis of economic, political, and legal consequences of the convention. This topic was examined through consideration of the motives behind the signatories' political actions, political connections, and the historical context. The articles of CLSCS, the Trans-Caspian International Transport Route (also known as the Middle Corridor) and The Organization of Turkic States were analyzed in order to determine the various consequences of the CLSCS. In the conclusion of the article, the signatory countries of Russia and Iran were placed on the losing side, whereas the signatory countries of Azerbaijan, Kazakhstan and Turkmenistan were stated to be on the winning side of the CLSCS.*

**Keywords:** *Caspian Sea, Legal Status of the Caspian Sea, Azerbaijan, Iran, Kazakhstan, Russia, Turkmenistan.*

### Introduction

Until 1991, the legal status of the Caspian Sea was regulated by bilateral agreements signed between the USSR and Iran in Moscow on February 26, 1921 (For a conceptual analysis of the legal status of the Caspian Sea, see Labardini, 2021, and for the historical background of these debates, Yiqiang, 2019, especially p. 178-189; a unique resource for those doing research in Turkish, see Kahraman & Merdan, 2020). This agreement provided freedom of navigation in all areas of the sea, freedom of fishing except in national fishing zones of ten miles in length, and a ban on navigation in the Caspian Sea for ships flying the flags of states other than the USSR and Iran. The internal water (territorial waters) status of the Caspian Sea, determined by this Soviet-Iranian agreement, was de facto recognized by the entire international community of states and confirmed in international law doctrine.

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Following the dissolution of the Soviet Union, the number of states bordering the Caspian Sea increased from two (USSR, Iran) to five (Russia, Azerbaijan, Iran, Kazakhstan, Turkmenistan). While Russia declared that it would abide by all international agreements of the USSR, as required by its obligations stated in the Alma-Ata Protocol, the other three new states had no such obligations; therefore, there was no consensus on the political positions that Azerbaijan, Kazakhstan and Turkmenistan should adopt regarding the agreements previously concluded between the USSR and Iran. This new political formation, and additionally the existence of offshore hydrocarbon resources in the Caspian and the sea's location on a geopolitically significant transport route, made it a necessity to redefine the legal status of the Caspian Sea (Abilov, Mahmudlu, & Abdullayev, 2020, p. 230). But it was inevitable that the littoral states would attempt to claim the most advantageous position for themselves, therefore, the discussions on the legal status of the Caspian lasted for more than twenty years (1995-2018).

Azerbaijan, Kazakhstan and Turkmenistan concluded a series of agreements with an international consortium about the extraction and processing of their rich energy resources in the early 1990s. The most notable agreement among these was the "The Agreement of The Century" signed in 1994 between the Azerbaijani administration and the consortium led by British Petroleum on oil exploration and extraction in the Caspian Sea. Although this agreement caused significant reactions from Russia and Iran, Azerbaijan managed to overcome these reactions by turning the I. Chechen War into an opportunity. The control of these three new states over the Caspian energy resources urged Russia and Iran into action. In 1995, foreign ministers of the littoral countries, meeting first in Moscow and then in Tehran, agreed to establish a permanent negotiation mechanism in order to determine the legal status of the Caspian Sea. In the context of this agreement, a series of bilateral meetings were held between the littoral countries.

Putin's rise to power in Russia in 2000 gave a stable direction to the discussions on the status of the Caspian Sea. In order to ensure coordination between the littoral countries, a five-party platform was established in a short time and six Caspian Summits were held from 2002 to 2022. While the legal status of the Caspian Sea was the focus of these summits, issues such as security, fisheries, freedom of navigation and the environment also became serious topics of negotiation. The most important of the Caspian summits was the fifth summit held in Aktau, Kazakhstan on August 12, 2018, where the legal status of the Caspian Sea was determined.

Now, in this paper, I will first focus on the individual articles of the CLSCS, then explain the actual situation that has emerged over the course of approximately six years since the signing of this convention, and finally discuss the losers and winners of the CLSCS on the basis of this actual situation.

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**Convention on the Legal Status of the Caspian Sea**

As the result of more than fifty negotiations at various levels over a period of more than twenty years following the dissolution of the USSR on the legal status of the Caspian Sea, the heads of the five littoral states signed the document, “Convention on the Legal Status of the Caspian Sea” (CLSCS) at the 5th Caspian Summit in Aktau.

The CLSCS, consisting of twenty-four articles, begins with an introduction expressing the exclusive sovereign rights of the parties over the Caspian Sea and its resources, alongside emphasizing the proper use of said resources and the protection of the natural environment in accordance with mutual benefit.

According to the first article, which includes definitions, the Caspian Sea is neither a sea nor a lake, but a body of water with a special status according to the principles determined between the parties. Since this new definition has no counterpart in the UN Convention on the Law of the Sea adopted in 1982, the littoral countries are not obligated to comply with the provisions of the said convention regarding the Caspian Sea. The second and third articles are related to sovereignty and security issues. The most striking point here is that there can be no military forces in the Caspian Sea that do not belong to the littoral countries and that the vessels navigating its waters must only fly the flags of these countries. Articles five to nine state that the Caspian Sea consists of internal waters, territorial waters, fishing zones and common waters. The territorial waters also determine state borders in accordance with international law. Articles ten and eleven contain the rules and procedures regarding freedom of navigation and access to other international waters, the movement of military, hunting or reconnaissance vessels, and inclusion in the waters of other countries. Articles twelve and thirteen emphasize sovereignty rights in territorial waters and determine the framework of research activities outside the sovereign borders. The fourteenth and fifteenth articles are related to the regulation of possible pipelines and cables that could be placed on the seabed; requiring such activities to be carried out after the ecological approval of the littoral countries, in order to prevent environmental pollution. The sixteenth and seventeenth articles are related to criminality, and include regulations regarding various kinds of illegal activities. The last six articles include general provisions such as the validity of the convention, its duration, its implementation, and the resolution of any possible disputes through peaceful negotiations.

The CLSCS, which emerged as a result of long efforts, can be grouped under three main headings. The first is undoubtedly the innovation that the convention brought to international law; according to this, the bottom and surface of the Caspian Sea, which is neither a sea nor a lake, are divided in two different ways: the bottom of the sea is divided into territorial waters,

while its surface is accepted as international waters. The second is the geopolitical implication of the CLSCS, which includes the provisions that no foreign state can have armed forces in the Caspian Sea and that only vessels flying the flags of the “Caspian Five” can sail. The third, and last, is the legal provision regarding the fact that in order to lay a pipeline along the Caspian Sea, only the approval of countries through which the pipeline passes must be obtained; in contrast to the requirement of receiving approval from all littoral countries, as was the case before. As a result, the CLSCS, on one hand, renewed the emphasis on the Caspian Sea as a kind of “closed sea”, and on the other hand, clearly demonstrated that the de facto and legal situation of Russian-Iranian domination over the basin, which had existed since the Treaty of Golestan (1813), was no longer valid.

### **After the CLSCS**

In 2018, the year the CLSCS was signed, the Caspian basin was going through a relatively “calm” period. However, years have passed since this convention and the world has witnessed very radical changes that have also deeply affected the Caspian basin. In September 2020, the military operation launched by Azerbaijan against the separatist groups in the Karabakh region was successfully concluded, paving the way for a more stable future in the region; this indicates that Russia’s militaristic and defeatist policy between the two Caucasian countries for 30 years had come to nothing. The Ukraine war, which began in February 2022 and is still ongoing, has deeply affected Russia, which is the strongest party in the Caspian basin, and has led to the weakening of its power in the region. On the other hand, following the very severe military response from Israel to the Hamas attacks in October 2023, the military power of Iran, which supported Hamas, was seriously damaged, meaning that the second-largest military and political power in the Caspian basin has weakened. The events in Syria at the end of 2024 and the overthrowing of the Ba’ath regime symbolize the near-destruction of Russia and Iran’s powers, which were staunch defenders of this regime, in the Middle East. In the shadow of these wars in the South Caucasus, Eastern Europe and the Middle East, the Caspian Sea’s “closed sea” status seems to be the only gain from the CLSCS for Russia and Iran. CLSCS has not only benefited them but has also strengthened the hands of Azerbaijan, Kazakhstan and Turkmenistan, three important energy actors in the region.

These geopolitical changes have also radically changed the economic importance of the Caspian Sea. The Trans-Caspian International Transport Route, or the Middle Corridor, which runs through the middle of the Caspian Sea, used to provide a small portion of the annual European-Chinese trade traffic, which was close to a trillion US dollars, before the Russo-Ukrainian War; however, following the beginning of that war, it became an important route. (For comprehensive

information on the Middle Corridor, see Akçay and Changgang, 2023). This is clearly demonstrated by the intensive efforts of Azerbaijan and Kazakhstan towards building new ports and increasing the capacity of their old ones.

The Middle Corridor, which emerged as an alternative to the Northern Corridor (Trans-Siberian Railway) and includes dozens of international initiatives and formations, is a vital trade connection route for the two extreme points of China and Europe, as well as the Central Asian and South Caucasian countries with strong energy resources, and the production potential between these two points. (Yiqiang, 2019, p. 192). Today, we have the opportunity to better understand and evaluate the relationship between the CLSCS and the Middle Corridor, which is shorter and carries fewer political risks than the Northern Corridor and even the Southern Corridor, which has instability in Yemen.

Another important reason why the Middle Corridor is a reliable route between Europe and China is that all countries on this route have the same historical and cultural roots. After the legal status of the Caspian Sea was finalized, the way was also opened for the process of organizing cultural cooperation between states with the same historical roots between Europe and China. For this reason, a cultural organization known as The Cooperation Council of Turkic Speaking States has transformed into an international organization under the new name of The Organization of Turkic States (OTS); it is no coincidence that this organization emerged in a short period of three years after the signing of the CLSCS. As Koçak also points out, there is a direct relationship between the CLSCS and the OTS:

*In the context of energy, the European need for alternatives to Russia for hydrocarbon transfers from Central Asia and the Caucasus to Europe elevated the significance of the Trans-Caspian Gas Pipeline, connecting Turkmenistan and Azerbaijan to the Trans-Anatolian Natural Gas Pipeline (Koçak, 2023, p. 115-138).*

As can be understood from these points, the CLSCS was not only a text which eliminated legal problems between the Caspian littoral countries, but also, on the one hand, influenced the course of global trade by making the Middle Corridor functional, and on the other hand, it enabled the Turkic states, which have the same historical and cultural roots but different agendas and projections, to gather under one roof around the same political and commercial goals.

### **The CLSCS: Losers and Winners**

As can be seen, there is a serious discrepancy between the expectations at the time the CLSCS was signed and the realities that have emerged in just six years. This situation also makes it possible to determine the losing and winning sides of the CLSCS today. I believe that it is clear, based on everything I mentioned so far in the article, who the losing sides are: Russia and Iran. This situation also destroys the myth that Russia and Iran are two ancient and distant actors in

the political world. It shows that the history of a political institution, no matter how powerful or influential it might have been, does not ensure that all of its strategies are correct; what ensures the correctness of a strategy is related to its rational content which takes into account all possibilities.

After the dissolution of the USSR, instead of adopting a new perspective toward foreign policy in line with the conditions and circumstances of the era, the Russian administration continued on its path with an oppressive understanding based on the military power it inherited from the Soviets. Instead of developing friendly relations with the former Soviet countries, it preferred to put pressure on local governments and policies that hindered their economic development. However, Russia's influence over these countries was limited only to its insistence on the Caspian Sea being a "closed sea." The actual situation that emerged after the Ukraine war led Western countries to invest more in the Middle Corridor, which showed that Russia was not indispensable, contrary to what was thought. The main reason why Russia was on the losing side of the CLSCS lies here.

As previously stated, Azerbaijan, Kazakhstan and Turkmenistan, who turned the political crisis of Russia into an opportunity in the 1990s, made major agreements with Western countries and China in the field of energy. Russia may have been late in preventing these principles from being opened to the world, but it did its best to keep these agreements limited. Indeed, by activating the Caspian Flotilla in the Syrian war, it also showed what any Caspian state could face if it questioned Russian hegemony in the region (Riber, 2023, p. 83). However, after the Ukrainian war, new opportunities arose for Azerbaijan, Kazakhstan and Turkmenistan, and these countries gained the opportunity to act independently from Russia in the region with the power they received from the CLSCS.

Unlike Russia, Iran has never had absolute power in the Caspian basin. Therefore, its expectations from this basin were, on one hand, to prevent countries it perceived as a threat from entering the Caspian Sea militarily, and on the other hand, to have an equal share by having the Caspian Sea accepted as a lake, as opposed to having only a coastline. In the first matter, it has been successful, because Russia has similar concerns and because it is not a vital issue for other littoral countries, but in the second matter, it has been equally unsuccessful. For this reason, the Iranian administration has been subject to serious criticism within the country, despite having officially signed the CLSCS (Yiqiang, 2019, p. 196). Although the country was officially a party to the CLSCS, the discussions in Iran did not end, and statements contrary to the text of the agreement were subsequently voiced (Karataeva, 2020, p. 262).

Iran's plan for the equal distribution of the Caspian resources was the main reason for the delay of the convention signing for more than twenty years. In this sense, the CLSCS is evidence that Iran has abandoned its insistence on the equal distribution of the Caspian resources. This shows that Iran attaches more importance to the geopolitical situation rather than its economic benefits (Danova, 2024, p. 338). In connection with this situation, it is believed that Iran's interests were harmed the most during the signing of the convention. Thus, all efforts of Iran, which has been advocating the division of the Caspian into five equal parts since the beginning of the negotiations, have been in vain.

As for the winners of the CLSCS, it is now possible to see more clearly that these are Azerbaijan, Kazakhstan and Turkmenistan. Azerbaijan was the key country which carried out intense intellectual and legal discussions during the emergence of the CLSCS. Azerbaijan, which had guaranteed its rights over the Caspian Sea in 1995 within its constitution, insisted on the equal sharing of the Caspian bottom along the borderline, which we see in the agreement in its entirety. If this CLSCS had not been signed, Russia could have prevented Kazakh oil and Turkmen gas from reaching the European market via the Middle Corridor by using the uncertain legal status of the Caspian Sea (Rutland, 2021, p. 88). In fact, almost all of Kazakhstan and Turkmenistan's energy resource exports to Western countries had to go through Russia. For this reason, these two countries had to partner with China rather than the European market. China's efforts to reach energy resources in Central Asia are a deep and comprehensive issue that deserves a separate study; however, it should be noted that China has a more advantageous position than its competitors because, unlike global powers such as the US, European Union or Russia, it has not made any political demands in return for the huge investments it has made in Central Asian countries (Lídl, 2023, p. 82). However, the Central Asian countries which have signed major projects with China are aware that they need to diversify their foreign policies. For this reason, they want to turn the new opportunities offered by the CLSCS and the fact that the Ukraine war has significantly eliminated the obstacles to their access to the European market, into an opportunity. Additionally, the long-standing disagreements between Azerbaijan and Turkmenistan, which were sometimes pro-Russia and sometimes pro-Iran, have ended with the CLSCS (for a broad and comprehensive assessment of the relations between Turkmenistan and Azerbaijan regarding the division of the Caspian Sea, see S. Abilov, C. Mahmudlu and N. Abdullayev, 2020). More precisely, Turkmenistan has become convinced that it can enter the European market with the CLSCS and has therefore started to take the same political line as Azerbaijan and Kazakhstan by focusing on the possibilities of the Trans-Caspian pipeline.

## Conclusion

Orazgaliyev and Araral, likened the situation of the Caspian countries to a prisoner's dilemma, “because each country has an incentive not to cooperate and become greedy, hoping that they can get more benefits from exploiting the resources.” (2019, p. 963). Russia and Iran were no longer their former powers, and they were not aware of the intentions of the new littoral states that had found global partners for themselves in the multipolar world, such as China, the United States, and the European Union. On the other hand, the environmental effects of the legal uncertainty in the region and its characteristics which prevented foreign investments could not be ignored. In addition to all this, no one was willing to undertake the cost of the situation that would arise if the tensions seen in bilateral relations from time to time turned into a hot conflict. Therefore, the most rational step for the Caspian countries was to reach an agreement in order to be more profitable, and the CLSCS should be seen as a necessary result of this common intention.

The geopolitical developments that have taken place over the past years since the signing of the CLSCS allow us to re-evaluate the results of this convention. The military and consequently political failures of the two major powers of the Caspian basin, Russia and Iran, have opened up new perspectives for the other three countries of the basin, which are militarily weak but rich in energy resources. Moreover, there are no signs that this new situation in the Caspian region will change radically in the near future. In this sense, the trio of Azerbaijan, Kazakhstan and Turkmenistan, which have the same historical and cultural background, not only weakens the connection between Russia and Iran but also strengthens the connection between Europe and China. In light of all these arguments, we can easily say that the losers of the CLSCS are Russia and Iran, while the winners are Azerbaijan, Kazakhstan and Turkmenistan.

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