



# The Straight Baselines under the Convention on the Legal Status of the Caspian Sea: Iran's Approach

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**Abstract:** In 2018, the Presidents of Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan signed the Convention on the Legal Status of the Caspian Sea (the Aktau Convention). Despite this, some specific issues related to the straight baseline, remain unresolved. The result is that Iran has yet to ratify the Convention subject to negotiations concerning a separate agreement in the future. Since 2018, the signatories to the Aktau Convention have not reached an agreement in the course of negotiations on a separate agreement. The main question raised in the article is why Iran has not ratified the Aktau Convention yet. The paper shows that the authorization of the convention under Para. 4 Art. 1, the specific shape of Iran's coastline, and the lack of agreement in the negotiations related to the special agreement prevented Iran from ratifying the Convention. The paper finally concludes that the border delimitation considered by Iran differs from the border delimitation agreed on by the four other states, namely Russia, Kazakhstan, Azerbaijan and Turkmenistan, and it is only when the straight baseline is established with respect to Iran's will and model that Iran will complete the ratification process.

**Keywords:** straight baselines; normal baseline; Aktau convention; Caspian Sea; Iran; Russia

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## I. Introduction

With the collapse of the Soviet Union and the emergence of five independent states in the region of the Caspian Sea, which claimed full sovereignty or limited sovereignty rights in relevant sectors of the Caspian Sea, the question of delimitation of the Caspian Sea has become urgent. The lack of well-established national maritime zones often leads to poor resource and environmental management (Janusz-Pawletta, 2022, pp. 74–82),<sup>1</sup> as well as to discord, conflicts, or even border disputes in interstate relations (Orazgaliyev and Araral, 2019). Undoubtedly, the interstate relations in this region required a strict order in the form of a convention. Hence, the Convention on the Legal Status of the Caspian Sea or the Aktau Convention was signed on 12 August 2018 by the five Caspian littoral states: namely Russia, Iran, Kazakhstan, Turkmenistan and Azerbaijan.<sup>2</sup> The purpose of this convention is to develop cooperation among the coastal states of the Caspian Sea. As stated in the preamble to the convention: “this Convention will facilitate the development and strengthening of cooperation among the Parties,

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<sup>1</sup> See also Caspian Environmental Information Center. Caspian Sea 2018 State of Environment Report. Available at: <https://ceic-portal.net/fa/node/3173> [Accessed 08.06.2023].

<sup>2</sup> Aktau Convention, 12 August 2018. Available at: <http://www.en.kremlin.ru/supplement/5328> [Accessed 31.01.2023].

and promote the use of the Caspian Sea for peaceful purposes and rational management of its resources, as well as exploration, protection and conservation of its environment.”<sup>3</sup>

There are two points that can be clearly seen. The first point is that many issues have been resolved after years of negotiations and agreements, for example, Art. 5 has precisely divided the water areas into four parts.<sup>4</sup> The second point is that some issues are only covered from a more general point of view and only encouraged the parties to negotiate further to reach an agreement in future. Therefore, this approach means that some issues remain unresolved. According to the present paper, the most important issue in this regard, which has only been raised in a general way and the agreement on its details is subject to future negotiations, is the issue of the straight baseline. According to Para. 4 Art. 1 of the Convention, the accord regarding the details of the straight baseline is subject to a separate agreement. Therefore, if the states want to establish a straight baseline along their coast, they can conclude a separate agreement specifying the details.<sup>5</sup> In fact, the four states (Russia, Kazakhstan, Azerbaijan and Turkmenistan) seem to be satisfied with delimiting the boundaries of the Caspian Sea and determining the straight baseline in accordance with the text of the Aktau Convention. Still, Iran, citing Para. 4, is willing to continue negotiations as to the details of the straight baseline and the conclusion of a separate agreement.<sup>6</sup> However, since 2018, the parties of the Aktau Convention have not been able to conclude a separate agreement and the negotiations are still ongoing.<sup>7</sup>

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<sup>3</sup> Preamble to the Aktau Convention. Available at: <http://www.en.kremlin.ru/supplement/5328> [Accessed 31.01.2023].

<sup>4</sup> The water area of the Caspian Sea shall be divided into internal waters, territorial waters, fishery zones and the common maritime space. Art. 5 of the Aktau Convention. Available at: <http://www.en.kremlin.ru/supplement/5328> [Accessed 31.01.2023].

<sup>5</sup> The last part of Para. 4 Art. 1 of the Aktau Convention.

<sup>6</sup> According to Para. 4 Art. 1 of the Aktau Convention.

<sup>7</sup> According to the Statements of the Legal General Director of the Ministry of Foreign Affairs of Iran at the first session at 11:00 am. on Friday, 27 January 2023 under the title of the International Legal Status of the Caspian Sea, made at the first Central Asian International Law Forum, held at Kutafin Moscow State Law, 26–27 January, 2023.

Hence, there are two hypotheses presented in the paper. First, Russia, Kazakhstan, Turkmenistan, and Azerbaijan are satisfied with delimiting the boundaries of the Caspian Sea according to the current text of the Aktau Convention, and they are trying to convince Iran to conclude a separate agreement. Second, Iran has not ratified the Aktau Convention since 2018. This means that Iran has not agreed with other countries and proposes its own model. In addition, Iran is trying to convince the four other states to agree on its own model.

The main question under discussion in the paper is why Iran has not ratified the Aktau Convention yet. In order to answer it, the descriptive and analytical methods are applied. Alongside these methods, not only does the author analyze the related provision of the Aktau Convention but also examines the Iran's position and approach for assessing the question. The paper proceeds in four steps. The first part ponders on the content of the baseline under the United Nations Convention on the Law of the Sea (UNCLOS). The second part focuses on the definition and types of the baseline under the Aktau Convention. The next part covers and explains the Iranian standpoint on the matter in question, the shape of Iran's coastline and finally Iran's proposal. The last part concludes.

## **II. The Baseline under the 1982 Convention on the Law of the Sea**

The UNCLOS parcels the sea into a variety of maritime zones that a coastal state may claim. Each zone grants certain rights to the coastal states and imposes certain obligations on the foreign states and vessels (Kastrisios and Tsoulos, 2018). The scope of territory for sea states provides for sovereignty, sovereign rights, and jurisdiction in maritime zones as its fundamental concepts. When the UNCLOS defines a territory, these fundamental concepts are used. The UNCLOS considers a variety of duties and rights within the maritime areas (Cotula and Berger, 2021). Hence, there are three parts of the maritime zones based on the duties and rights:

1. Internal waters, territorial seas and the continental shelf subject to sovereignty and sovereign rights of states.

— Internal waters, which cover all the water on the landward side of the baseline. Internal waters are considered part of the state's territory.<sup>8</sup> The coastal state exercises full sovereignty in internal waters, a sovereignty that is applied over the seabed, water column, and air space (Cotula and Berger, 2021).

— Territorial sea, as measured from the baseline seaward, the breadth of which may not exceed 12 NM.<sup>9</sup> The sovereignty of a coastal state over its territorial sea is almost as extensive as its sovereignty over its land territory (Galea, 2009). The coastal state's sovereignty is extended beyond its land territory and internal waters in the territorial sea, but within this zone, the freedom of innocent passage for foreign vessels is retained.<sup>10</sup>

— The continental shelf. In contrast to the other maritime zones, this is not on the surface but on the floor of the sea. It begins from the baseline to a distance of 200 NM. In this zone, the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving, and managing natural resources, both living and nonliving.<sup>11</sup>

2. The Contiguous Zone and Exclusive Economic Zone, subject to jurisdiction.

— A contiguous zone may not extend beyond 24 NM from the baseline, and in this zone, the coastal state has its jurisdiction, but no sovereign rights, to regulate, prevent, and punish infringements of its customs, fiscal, immigration, or sanitary laws committed within its territory or territorial sea (Kastrisios and Tsoulos, 2018, p. 2).<sup>12</sup>

— An Exclusive Economic Zone, which is adjacent to the territorial sea and may not extend beyond 200 NM from the baseline.<sup>13</sup> In the EEZ, the coastal state has the jurisdiction to establish artificial islands or installations and to conduct scientific research.<sup>14</sup>

3. High seas, subject to no sovereignty or sovereign rights and jurisdiction of states.

<sup>8</sup> UN Convention on the Law of the Sea, Art. 8.

<sup>9</sup> UN Convention on the Law of the Sea, Art. 1.

<sup>10</sup> UN Convention on the Law of the Sea, Art. 3, 17.

<sup>11</sup> UN Convention on the Law of the Sea, Art. 76, 77.

<sup>12</sup> UN Convention on the Law of the Sea, Art. 33.

<sup>13</sup> UN convention on law of the sea, Art. 57.

<sup>14</sup> UN Convention on the Law of the Sea, Art. 55.

— The high seas are all parts of the sea that is not in any of the above maritime zones.<sup>15</sup> Within the high seas, all freedoms are retained for every state and the vessels flying their flag. Here, “the Area” comprises the seabed, ocean floor, and subsoil below the high seas, with the exception of that which is claimed as a state’s extended continental shelf. The Area, with its resources, is the common heritage of humankind and must be used for the benefit of all states (Kastrisios and Tsoulos, 2018).

Therefore, the current law on the seas is based on the maritime zones of coastal states, whose breadth is determined under the Convention on the Law of the Sea and has become a customary rule today (Tanaka, 2012). It is clear that to measure the breadth of these areas, the reference points are needed to measure the distance to them. In fact, this is the main function of the baseline. The baseline is the line from which the breadth and, consequently, the outer limits of the maritime areas of the coastal States are measured. The two main types of baselines are normal and straight baselines, which are considered in the Convention on the Law of the Sea. Following this Convention, the Aktau Convention also covers the normal and straight baseline, still with some differences.

### **II.1. Normal Baseline**

According to the customary rule reflected in Art. 5 of the UNCLOS, the principle is that the Baseline of maritime zones is “the low-water line along the coast marked on large-scale charts recognized by the coastal state;” And this type of baseline is called normal baseline.<sup>16</sup> The low-water is also a line on the sea charts that shows the place where the land meets the water surface at low tide. Hence, the normal baseline is the same as the coastline of the coastal state at low-water.

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<sup>15</sup> UN Convention on the Law of the Sea, Art. 86.

<sup>16</sup> “Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” *See*, UN Convention on the Law of the Sea, Art. 5.

The appearance of the phrase “on large-scale charts recognized by the coastal state” in Art. 5 of the UNCLOS indicates that determining the type of the low-water line is at the disposal of the coastal state, because maritime charts are always based on a tidal base level, which is called “map-based level” and is the reference for water depth measurement. Therefore, based on the recognized maritime charts, it is possible to recognize the type of low-water line or the normal baseline of each state.

## II.2. Straight Baseline

In contrast to the normal baseline, there is a straight baseline. According to the Convention on the Law of the Sea, the normal baseline is a rule, the straight baseline is an exception to this rule, and if there are natural configurations, the direct baseline can be used. In accordance with Para. 1 Art. 7 of the UNCLOS:

*“In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.”<sup>17</sup>*

According to the mentioned article, the use of straight baseline is limited to two criteria: (1) the coastline is deeply indented and cut; (2) there is a margin of islands along the coast and in its close vicinity. These criteria regarding the baseline first appeared in the decision of December 1951 in the case of British and Norwegian fisheries.<sup>18</sup> In fact, in this decision, the judges confirmed the legal validity of the Norwegian straight baselines, which had been declared in 1935. The Court’s findings in this decision were based on Art. 4 of the 1958 Geneva Convention

<sup>17</sup> UN Convention on the Law of the Sea, Art. 7(1).

<sup>18</sup> United Kingdom v. Norway [1951] ICJ 3, also known as the Fisheries Case, was the culmination of a dispute, originating in 1933, over how large an area of water surrounding Norway was Norwegian waters (that Norway thus had exclusive fishing rights to) and how much was “high seas” (that the UK could thus fish). See, the judgement of Fisheries (United Kingdom v. Norway). Available at: <https://www.icj-cij.org/case/5> [Accessed 04.04.2023].

regarding the Territorial Sea and the Contiguous Zone (Treves, 1958), and finally, with a slight change, it was included in Art. 7 of the 1982 Convention on the Law of the Sea.

### III. The Baseline under the Aktau Convention

The Aktau Convention was intended to put an end to a very long and difficult negotiation process to determine the legal regime for this closed water body (Caspian Sea). The Convention was supposed to fill the gaps in the management of this water area existed in the framework of the previous Soviet-Iranian agreements of 1921 and 1940, which were in force but not timely. One more thing was to give all the Caspian states common and equal rights and powers to use and exploit the spaces and resources of this maritime region (Gudev, 2022, p. 168). Still, one of the main issues, namely the baseline, is challenging. Despite the special geographic position of the baseline under the new legal regime of the Caspian Sea, there are few provisions in the text of the Aktau Convention concerning this matter. In fact, only Art. 1 of the Convention defines some terms such as baseline, normal baseline, and straight baseline.<sup>19</sup> The Aktau Convention established the new legal regime of the Caspian Sea based on distance-oriented maritime zones for the coastal states of the Caspian Sea. Para. 5 Art. 1 stipulates that internal waters mean the “*waters on the landward side of the baseline.*” Therefore, the maritime territory of the state parties to the convention in the Caspian Sea will be determined by the baseline delimitation discussed by these states.<sup>20</sup> Moreover, Para. 2 Art. 1 of the Convention defines the baseline as “*the line consisting of normal and straight baselines.*”<sup>21</sup> In fact, the Aktau Convention, similar to the UNCLOS, prescribes the use of normal and straight baselines. However, unlike the UNCLOS, the Aktau Convention stipulates that straight baselines are not an exception, but are the

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<sup>19</sup> See generally, Art. 1 of the Aktau Convention on terms. Available at: <http://www.kremlin.ru/supplement/5328> [Accessed 31.01.2023].

<sup>20</sup> Para. 5 Art. 1 of the Aktau Convention.

<sup>21</sup> Para. 2 Art. 1 of the Aktau Convention.



same as normal baselines.<sup>22</sup> In fact, the drafters of the Para. 2 seem to believe that all coastal states will use the straight baseline to measure their maritime areas. The next part of the paper describes the types of baselines within the Aktau convention.

### III.1. Normal baseline

Para. 3 Art. 1 of the Aktau Convention states that the normal baseline is “*the line of the multi-year mean level of the Caspian Sea measured at minus 28.0 meters mark of the 1977 Baltic Sea Level Datum from the zero-point of the Kronstadt sea-gauge, running through the continental or insular part of the territory of a Caspian littoral State as marked on large-scale charts officially recognized by that State.*”

Two criteria are important in this definition:

#### A. Water level

In the normal baseline definition given in the Aktau Convention, the low-water line, as stipulated in Art. 5 of the UNCLOS,<sup>23</sup> is not a criterion, because the Caspian Sea has a small low-water range. Therefore, the Aktau Convention has defined the normal baseline based on a specific level, namely minus 28.0 meters mark of the 1977 Baltic Sea Level.

First, the importance of determining the water level in the definition of the normal baseline is its effect on the displacement of the coastline. If the water level is considered to be lower, the coastline and consequently the normal baseline will also advance further towards the sea. In addition, the amount of displacement also depends on the slope of the coast. If the slope of the coast is high, the low water level does not have a noticeable effect on the coastline; but if the slope of the

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<sup>22</sup> For more information on the straight baseline under the Convention on the Law of the Sea (UNCLOS) 1982, *See*, Art. 7 of UNCLOS.

<sup>23</sup> Art. 5 of the UNCLOS: “Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.”

coast is mild, the reduction of the water level will lead to a noticeable advance of the coastline.

However, assuming that the coastal states of the Caspian Sea often use straight baselines to set up their maritime zones, the displacement of the normal baseline due to determining the water level will not be very important in this regard. It seems that the importance of this issue appears in the delimitation of maritime zones as well as the seabed because the delimitation will be based on the natural coasts of the coastal states. Besides, in this regard, due to the great depth of the sea and the great slope of the coast in the southern part of the Caspian Sea, especially along the coast of Iran, it seems that the change in the water level does not have a decisive effect on Iran.

### **B. Maritime charts**

Another point that is stipulated in Para. 3 Art. 1 of the Aktau Convention, as well as Art. 5 of the UNCLOS, is that the normal baseline must be marked on large-scale charts officially recognized by the coastal state. According to the first criterion, i.e., water level, it is clear that the recognized charts must match the water level. Therefore, the states do not have freedom of action under the Aktau Convention, unlike the UNCLOS.

## **III.2. Straight Baseline**

According to Para. 4 Art. 1 of the Aktau Convention, straight baselines are defined as *“straight lines joining relevant/appropriate points on the coastline and forming the baseline in locations where the coastline is indented or where there is a fringe of islands along the coast in its immediate vicinity.”*

Two criteria are included in the definition:

### **A. Relevant/appropriate points**

As stated, according to the Aktau Convention, the straight baselines connect the relevant/appropriate points on the coastline. According to Para. 1 Art. 7 of the UNCLOS, straight baselines only connect appropriate

points.<sup>24</sup> The wording of “*appropriate points*” in Para. 1 Art. 7 of the UNCLOS is one of the main ambiguities in this article. Therefore, since there is no criterion for identifying the appropriate points in Art. 7, the identification of these points is left to the coastal state; hence, the coastal states have reached a consensus that the appropriate points or, more precisely, the base points should be located on land and cannot be determined on water.

Despite the approach of the UNCLOS, it is interesting that the term relevant/appropriate points are used within the Aktau Convention, and this issue has created ambiguity. In fact, the exact criteria for appropriateness and relevance are not clear. The only thing that is clear is that “the relevant/appropriate points” phrase was included in order to sum up the demands of the states since Iran has paid attention to the relevant points and other countries of the Caspian Sea have considered appropriate points. However, it seems that most of the states use the criteria of appropriate points nowadays.

## B. Geographical Criteria

The Aktau Convention, like the UNCLOS, considers the existence of one of two geographical criteria requirements to establish the straight baseline. According to the Aktau Convention, the establishment of straight baseline is possible in locations where the coastline is indented or where there is a fringe of islands along the coast in its immediate vicinity.

If we compare Art. 1 of the Aktau Convention and Para. 1 Art. 7 of the UNCLOS, it becomes clear that according to the Aktau Convention, the Caspian littoral states have more freedom of action in using the straight baselines. This is possible because the UNCLOS uses the “localities where the coastline is deeply indented and cut into” words, but the Aktau Convention considers the existence of “indented coastline” sufficient for establishing the straight baseline.

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<sup>24</sup> Para. 1 Art. 7 of UNCLOS: “In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.” For more interpretation of Art. 7 see, Churchill R., Lowe V., and Sande A., (2022). *The Law of the Sea*. Manchester University Press, 10 May 2022.

## IV. Iran's Approach to the Matter

The main innovation of the Aktau Convention regarding the baseline is not in the relevant provisions, but in the separate agreement among all the states to establish the straight baseline.

### IV.1. Separate Agreement

According to the Aktau Convention, "*The methodology for establishing straight baselines shall be determined in a separate agreement among all the Parties.*"<sup>25</sup> It means that the rules related to the straight baseline in the new legal regime of the Caspian Sea have become subject to a separate agreement to be concluded after the signing of the Aktau Convention. It seems that the drafters of the Aktau Convention have foreseen the conclusion of a separate agreement in this regard, knowing about the ambiguities of Art. 7 of the UNCLOS. In fact, if the Aktau Convention, like the UNCLOS, got by with the broad and vague provisions in this regard, it would practically mean the absolute freedom of the coastal states in determining the straight baseline. It is clear that this way it will create possibilities for subsequent disputes regarding the straight baselines. Therefore, the parties may arrange the straight baseline by concluding a separate agreement.

### IV.2. Iran's Standpoint

In this part let me consider the standpoint of Iran because I believe it must be included in a separate agreement. Among the coastal states of the Caspian Sea, Iran is in a special position in terms of coastal geography in determining the straight baseline:

**First**, the shape of the Iran's coastline is completely concave. This shape of the coastline leads to: (1) the straight baseline of Iran is becoming more concave; (2) this line deviates more from the general direction of the coast. **Second**, Iran's coastline is very smooth and does not have coastal cuts, so that there are not many advanced land points in the sea so that they can be connected to each other as the base points

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<sup>25</sup> The second part of Para. 4 Art. 1 of the Aktau Convention.

of the straight baselines. **Third**, Iran lacks effective islands that can be used to determine straight baseline. This is while the two neighboring countries of Iran, Turkmenistan and Azerbaijan, have convex coasts with advanced points and numerous islands that provide them with sufficient base points to establish straight baseline.<sup>26</sup>

The specific shape of Iran's coastline resulted in a particular wording of the last part of Para. 4 of the Art. 1 of the Aktau Convention that during the last negotiations on the Aktau Convention was drafted as follows:

*“If the configuration of the coast puts a coastal State at a clear disadvantage in determining its internal waters, that will be taken into account in developing the above methodology in order to reach consent among all the Parties.”*

This provision is actually a clear example of the geographical position of Iran's coastline. Thus, it is essential to pay attention to this fact while negotiating a separate agreement as well as the ratification of the Aktau Convention by Iran. Since 2018, the Caspian littoral states have failed to reach an agreement during the negotiations on straight baseline and Iran has not ratified the Aktau Convention. Besides, it will prevent its entry into force according to Art. 22 of the Convention.<sup>27</sup>

### VI.3. Iran's Proposal

According to the current text of the Aktau Convention, the borders considered by the four countries other than Iran (i.e., Russia, Azerbaijan, Turkmenistan and Kazakhstan) are not accepted by Iran due to the shape of the coast of Iran in the Caspian Sea. The shape of Iran's coastline causes the limitation of the Caspian Sea in the coastal

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<sup>26</sup> For more information on coast of Iran see, Iran — Caspian Sea Coast. In: Bird, E.C.F. (ed.), (2010). *Encyclopedia of the World's Coastal Landforms*. Springer, Dordrecht. Available at: <https://doi.org/10.1007/978-1-4020-8639-7149> [Accessed 31.01.2023].

<sup>27</sup> Art. 22 of the Aktau Convention: “This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Republic of Kazakhstan acting as the Depositary of the Convention. This Convention shall enter into force on the date of the receipt by the Depositary of the fifth instrument of ratification.”

part related to Iran, and greatly restricts Iran's rights in exploiting the Caspian Sea. The delimitation of the Caspian Sea as it is considered by Russia, Azerbaijan, Turkmenistan and Kazakhstan is as follows:



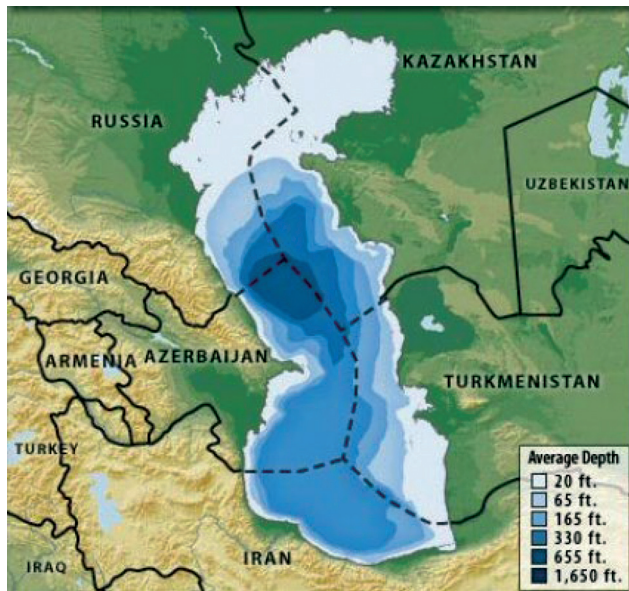
*Map 1. The current delimitation according to the text of the Aktau Convention<sup>28</sup>*

Still, as stated previously, Iran does not agree with the current delimitation. In addition, Para. 4 Art. 1 of the Aktau Convention establishes this delimitation exactly in accordance with the shape of the Iran's coastline. As in line with the signing of the Aktau Convention, the Minister of Foreign affairs of Iran clarified and emphasized within the interpretative declaration in correspondence with the ministers of foreign affairs of the four other countries that:

<sup>28</sup> For more information see, <https://www.eurasian-research.org/publication/current-developments-in-a-dispute-over-the-legal-status-of-the-caspian-sea/> [Accessed 30.01.2023].

*“the third part of Para. 4 Art. 1 of the Convention on the Legal Regime of the Caspian Sea refers exactly to the situation of the coast of Iran in the Caspian Sea and its purpose is to draw attention to the special situation of Iran.”<sup>29</sup>*

Therefore, as the Aktau Convention provides for a separate agreement to specify the straight baseline, as well as emphasizes the need to pay attention to the special situation and configuration of states' coasts (Para. 4 Art. 1). In future, Iran expects the conclusion of a separate agreement as to determination of the straight baseline. This is to be achieved provided the states consider the specific shape of the Iran's coastline. This delimitation is as follows:



*Map 2. The Delimitation according to Iran's Standpoint<sup>30</sup>*

<sup>29</sup> Interpretive Declaration of Iran regarding the Convention on the Legal status of the Caspian Sea, Presidential media, August 2018. Available at: <https://www.president.ir/fa/105628> [Accessed 31.01.2023].

<sup>30</sup> What Does the New Caspian Sea Agreement Mean for the Energy Market? 17 August 2018. Available at: <https://worldview.stratfor.com/article/what-does-new-caspian-sea-agreement-mean-energy-market> [Accessed 31.01.2023].



It is certain that if Iran cannot establish the straight baseline in accordance to its standpoint and the states do not accept these delimitations through the negotiations on a separate agreement, Iran will not ratify the Aktau Convention.

## V. Conclusion

As Tullio Treves, the judge of the International Court of Law of the Sea, has stated, the Convention on the Law of the Sea is actually the Constitution of the seas. In accordance with the *United Nations Convention on the Law of the Sea (1982)*, the maritime zones include internal water, territorial sea, contiguous zones, exclusive economic zones (EEZs), the continental shelf, high sea, and seabed; in each of these areas, rights and duties have been considered for governments. The basic point is that in order to determine the maritime ones, the baseline must be defined. In other words, the governments must specify their baseline and based on that baseline, the breadth of the maritime zones is measured. This issue in particular is also applicable in connection with the Aktau Convention and the legal regime of the Caspian Sea. Therefore, the states around the Caspian Sea must accurately determine their baselines.

The Aktau convention includes two types of baselines: straight baselines and normal baselines. The parties to the Convention do not have a challenge regarding the normal baseline, and in fact, none of the states has chosen the normal baseline. It means that the governments are focused on the straight baseline, and all the five states, i.e., Iran, Russia, Azerbaijan, Turkmenistan and Kazakhstan, choose the straight baseline as the baseline. The main point is that the Caspian littoral states have faced difficulties in determining the straight baseline. In fact, the straight baseline provides more benefits and advantages for states. Since 2018, other states of the Caspian Sea, except for Iran, have chosen a straight baseline for themselves, but due to its geographical conditions, Iran has not been able to determine the appropriate baseline. In fact, Para. 4 Art. 1 of the Aktau Convention allows states to agree on a straight baseline based on geographical conditions. According to Para. 4, “*If the configuration of the coast puts a coastal State at a clear*



*disadvantage in determining its internal waters, that will be taken into account in developing the above methodology in order to reach consent among all the Parties.*” This provision is actually a clear example of the geographical position of Iran’s coast because the geographical position of Iran’s coastline clearly puts Iran in a disadvantageous position. Therefore, Iran asks other states to consider the shape of Iran’s coastline. However, it is clear that other governments have not considered the shape of Iran’s coastline and Iran has not been able to determine a straight baseline for itself.

Furthermore, I must state that it is true that some issues have been resolved by the Aktau Convention (such as maritime zones in Art. 5 and marine scientific research in Art. 13), but without a precise determination of the baseline, nothing has actually been resolved since the baseline is the basis for deserving other rights in maritime areas. For example, fisheries, the right to exploit oil and gas, the right to invest in renewable energy and so on will be determined when the states know where the exact territory of their maritime zone is. Hence, they should know in advance where their precise baseline is and based on that determine the water area according to Art. 5 of the Convention. Therefore, I believe that the most important issue in the Aktau Convention is the straight baseline. In order for Iran to ratify the Convention, it is necessary that the states reach an agreement in negotiations with Iran based on the Iranian model (map 2) and Para. 4 Art. 1 of the Convention in future negotiations on a separate agreement. It is only in this case that Iran will ratify the Aktau Convention.

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