CASPIAN AFFAIRS

Letter from the Editor

[Address of
Caspian Affairs]
December 1, 2018

Dear Readers,

Num rem doloratis sam sum in plitatqui intur, omnimus. Voluptat landandusae dolorep erferum ea seque plit volupta nime vendam harcia dessita voluptatiis doles andi ventempos ulparum et aciliti at estiberum quam remo et, odit laceper iaeribus volorrum dolorrum, sam ad et venduci totatur?

Pienim ium ius quatent que sitatiam, nonsequi audignient. Atis imus. Ut et, in comnimu sdandus sinus autem rectustias aut et fugitiandel milignis molupta aciis volorumqui sunt quunto optate laborrum sitias mod ut aut es acepele cerupta comni omnimi, quam, volorum digent dessi cumquo dolupture

Sincerely,

[Insert Signature]

John Doe
Editor-in-Chief
Caspian Affairs Magazine

This Issue's Authors

Ucim voloreped minum quid min pro quibus reptatur magnimi nvent.
Igenda inctem issi vit, et volut vel magnimporum etur susda volorer uptatio. Ic tes nim nate sumquos etur mosto optassunt aute nes repero-

Ucim voloreped minum quid min pro quibus reptatur magnimi nvent.
Igenda inctem issi vit, et volut vel magnimporum etur susda volorer uptatio. Ic tes nim nate sumquos etur mosto optassunt aute nes repero-

vit, ipsunt ea iduciis quassimus quuntiur adisi a quiaspis dem expliamet elicipid que consequeInt lautates aut occum receped quias quis aut quis alit peremped explign ienihitiae volorrore maiostisi

vit, ipsunt ea iduciis quassimus quuntiur adisi a quiaspis dem expliamet elicipid que consequeInt lautates aut occum receped quias quis aut quis alit peremped explign ienihitiae volorrore maiostisi

Met earundae lam, conecest rehendae as et expliquo bernati ssitium eossum, alitaque se porro vollanda nobis elligna turit, volorposa velique magni officatum re resersperi dollabo rehendit et

Met earundae lam, conecest rehendae as et expliquo bernati ssitium eossum, alitaque se porro vollanda nobis elligna turit, volorposa velique magni officatum re resersperi dollabo rehendit et

Ucim voloreped minum quid min pro quibus reptatur magnimi nvent.
Igenda inctem issi vit, et volut vel magnimporum etur susda volorer uptatio. Ic tes nim nate sumquos etur mosto optassunt aute nes repero

Ucim voloreped minum quid min pro quibus reptatur magnimi nvent.
Igenda inctem issi vit, et volut vel magnimporum etur susda volorer uptatio. Ic tes nim nate sumquos etur mosto optassunt aute nes repero

Two Months In Review

Arum, simus anit fuga. Mus, ut essimagnam quid modis ex esto este laut ut voleces simporrumet arum latatum natureperios voloribus arunt enecto quam repersped unt plictaturis et disimod molor molles-sum estion ratiur sae. Endamus, quam hari

res aribus con plam aut dolorias maiore-caboreIlignihi caecti idist officto eicabor ibuscie ndandaerchit quid quiatiusam dolor apicatemod ullectu scimporis nis errovidu-ci volum audio quis volorest occumquunti reperest laboribus aut lam simpedi tota

Alita sequas dolorer uptaqui aut quam fugita quibea et laut min nest, si tem unt. Intotas perspernat velestium harcium ut et qui vellore henihic tecte peritam enis sequati squatiorum rem que dolorrunte volorem quibusandic tem que prorumquat

fugiamus ut prae volut quia cus denda necus quatur?Omnis ius restiatius eveniae peri-busant as im repra as magniendebis essi commo blabo. Paris et expel incid quodignis ducium haribus eriae. Ost event libea dolor aborio doluptiatus volorro everovi tincient

volut et quide non rehentur sint, ventium-Beribusam, tendit omnimusam aut venduci-tas simuste verum ut autemolorum quias pe cori offictorum laut explam autatur, corrore mpossinctem quiassi miligendem explab id el molor sitas ut apicitiam qui toribus

sinturio. Et ut intissi tatias sundit, nulpari-ti sNam fuga. Id quatur, sunt, tem. Ut od quaerent molupta tatem. Ut estempos pari-osa ndendae et pe ped quis aditae rectest ut et estiatiis di officid que vit, conectus, sandit, temporae eius alit est, unt utem atiumqu-

os natquaernam, tem fugiate mpellorem qHendebitem. Et renimus eriaepedi dem a susa dolenem quo blaudis ut lab iumqui delibus dis etum sit et erio. Aximagnis alit as nonsedisci berumquatem num non corei-um inum sitatias destem dolupta quisto bea

dolupta muscit audit exceste mposant pro volorioDae explis untistia que modipsam quid modisin venihiciaes sitam, et odicius as parum inus minis explatenis namuscius re core laudias anditio repercianduciet andio ium nos dolut expliqui deligentium et reici sunt, cupiendia

THE GREATER CASPIAN REGION: COMPETITION AND COOPERATION

(abbreviated for prototype)

U.S. Ambassador (ret.) Richard E. Hoagland

Ask any passerby on the street in the United States or Europe what comes to mind when they hear the words Caspian Sea, and, after a pause, their answer might be, "Um…the best caviar in the world?" A small number of more knowledgeable individuals might answer, "Natural resources, like, you know, oil and gas?" Most have little awareness or understanding of the eight countries on the southern rim of Russia that emerged from the fall of the Soviet Union – Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. Most have little knowledge why the Greater Caspian Region over centuries – think the Han Chinese and the Roman, Persian, and Ottoman Empires, not to mention the Russian Empire – has been a center of competition for global power and influence. And most have little knowledge that the Greater Caspian Region is a focal point of increasing strategic importance.

Against the cacophony of news stories concerning more volatile countries and non-state actors, such as Syria, North Korea, or ISIS, the Greater Caspian Region is usually only a quiet, background hum – if it's heard at all. But it bears watching. Why? Certainly because it's one of the major hydrocarbon-deposit centers of the world – for example, Tengiz, Kashagan, and Karachaganak in Kazakhstan; Galkynysh in Turkmenistan; and Shah Deniz in Azerbaijan, to name only the most well-known. But also because it is the locus at which four global powers are currently vying for influence: Russia, China, the United States, and Europe – all for varying reasons and with sometimes conflicting interests. As a result of the increasing competition in the region, the Greater Caspian Region is indeed of growing interest and strategic importance globally.

The emerging foreign policy of the Trump Administration, which lacks the same emphasis on promoting democracy and human rights that other administrations have tended to make, has ironically, and to the discomfort of some in the U.S. foreign-policy elite, enhanced the United States's position as a partner for most of the former Soviet states in the greater Caspian region. We have seen evidence of this in Azerbaijan, which has recently been signaling its desire for a closer relationship with the United States. If nothing else, it introduces an element of hard-core realpolitik into U.S. foreign policy that has generally been absent for at least the last 20 years, when "calling out," "naming and shaming," and "finger wagging" in public policy statements, as well as the well-intentioned but excruciatingly detailed Congressionally-mandated reports on human rights and religious freedom, too often countered Washington's somewhat restrained offers of engagement – except when we needed something like support for the war in Afghanistan, Operation Enduring Freedom.

This emerging reality does not mean that the United States has dramatically shifted to amorality, but it does enhance the opportunities for engagement. The ultimate irony that few special-interest ideologues are willing to admit is that this kind of realpolitik engagement fosters change and, over time, can lead to enhanced Western liberal values and global engagement for the new states on Russia's southern periphery, especially as the younger generation comes into power.

Why is this so hard for the West to accept? The one fundamental point that the United States, and the West in general, does not fully take into account is that the intellectual heritage of the former Soviet states of Central Asia and the South Caucasus is not the Western heritage that developed over centuries from the Renaissance, the Reformation, and the Enlightenment – the three great intellectual transformations that created the institutions, cultural values, political structures, and world view of the modern West. Rather, the former Soviet states are the inheritors of the values of the Soviet and the earlier Russian Tsarist empires, with an unbroken line directly back to the Byzantine Empire. This world-view and system of governance de-emphasized the importance of the individual and glorified the power of the state headed by an autarchic leader. Especially during the Soviet period, this non-Western system established an unholy alliance of political leadership in the hands of the privileged few, a tolerance for and even acceptance of organized crime as an element of power, and the use of powerful intelligence agencies to knit it all together. This trifecta, without the existence of any long-established institutions to mount a challenge, benefited only a privileged few. To put it succinctly, the heritage that continues to influence the region is radically different from that of the West.

U.S. POLICY IN THE GREATER CASPIAN REGION

Immediately after the fall of the Soviet Union and the emergence of 16 new independent states, U.S. policy was colored by irrational exuberance that assumed, through Washington's rose-colored glasses, of course the peoples of the former Soviet Union were naturally yearning to breathe free. Washington thought that with the appropriate assistance these states would quickly become free-market democracies. Using the authorities of the 1992 FREEDOM Support Act – one of those quirky Congressional acronyms that stands for "Freedom for Russia and Emerging Eurasian Democracies and Open Markets" – Washington dedicated considerable resources to support the former Soviet states as they transitioned from communism and central planning toward democracy and free markets governed by Western ideals. As we now know, transitioning fully from one ideology to another would not be as quick or easy a process as formerly envisioned.

U.S. core policy interests in the newly-independent countries of the former Soviet Union are to support independent, sovereign states that uphold regional security, increase their economic integration with regional and global markets, and demonstrate respect for human rights and democratic governance, while not becoming sources of transnational threats to the United States or to any other nation.

Over time, Washington has

learned to take each country as it is. Policy makers in Washington recognize that the countries of the Greater Caspian Region have differentiated their own paths and sometimes jostle with one another. The interests of one sometimes conflict with the interests of another: Uzbekistan and Tajikistan have mostly been at loggerheads since the Tajikistan civil war of the mid-1990s (although that could change with the new president in Uzbekistan), as have Armenia and Azerbaijan. Upstream and downstream countries are still working to sort out what they see as nearly existential water rights throughout the region. At the beginning of independence, borders were ill-defined, especially with the unusual system of enclaves and exclaves in the sensitive Fergana Valley that the Soviets carved in Uzbekistan, Kyrgyzstan, and Tajikistan as part of their "divide and conquer" cartographic and ethnographic exercise in the 1920s and 1930s. This was also done with the significant Azerbaijani exclave of Nakhchivan, which is surrounded by Armenia and Iran. Independence also meant that supply chains for essentials like food and electricity were suddenly split among separate sovereign entities that had no desire to cooperate, at least at first.

Nevertheless, the passage of time and a healthy dose of strategic patience suggest that regional cooperation in the Greater Caspian Region might be more than just a schematic, idealistic gleam in Western eyes. During the Fall 2015 UN General Assembly in New York City, U.S. Secretary of State John Kerry met in a collective setting with the foreign ministers of all five Central Asian states – a historic first – in a format called the C5+1. To the surprise of many, and without any sharp elbows, the five foreign ministers discussed with Kerry the potential for regional cooperation and expanding the states' responsibilities to one another, including countering violent extremism in responsible ways. To his credit, U.S. Secretary of State Rex Tillerson continued the C5+1 format at the 2017 UNGA.

The implementation of U.S. policy in the Greater Caspian Region, as in other parts of the world, is not always readily visible and is almost never front-page news. Russia is still the primary security partner for almost all of the Greater Caspian Region. But where it is welcome, the United States works with their militaries and other security structures, especially the border guards, to modernize militaries and to ensure that border guards are increasingly capable of preventing the flow across borders of contraband, including narcotics and the components of weapons of mass destruction, while facilitating the passage of legitimate travelers and enhancing trade and commerce.

In brief, the best recommendation for the United States in the Greater Caspian Region today is this: "Engage, engage, engage!" While the United States has indeed engaged with all eight of the states for the past quarter century, that engagement has too often been conditional and even baldly transactional, especially in the post-9/11 world. We court them when we need them but we too often remain stand-offish when they suggest ways we can contribute in the region. Washington should never abandon its commitment to good governance and human rights – values that ultimately create stable societies – but those goals are best achieved in quiet diplomacy behind closed doors where real results can be achieved.

Finally, let's focus more narrowly on the five Central Asian states of the Greater Caspian Region.

A PROPOSAL FOR CENTRAL ASIAN SECURITY AND PROSPERITY

One of the hallmarks of the Central Asian states has been their go-it-alone policy of the past quarter century. While the leaders meet occasionally, sometimes bilaterally, sometimes together under the aegis of Russia or the Shanghai Cooperation Organization, there has been a notable absence of region-wide cooperation. Some of this can be attributed to the Soviet heritage when all roads led to Moscow. And some is simply the result of each of the five states jealously guarding its prerogatives of sovereignty in the early years of independence. Further, there is serious competition among the

five, especially for regional water rights, and in some cases for regional leadership.

But imagine for a moment what could happen if the five, and someday Afghanistan as well, formed something that might be called the Association of Central Asian States, or ACAS. Setting aside personal rivalries for the greater good, ACAS, over time, would work to fully modernize and harmonize its members' customs regulations in order to stimulate economic growth and international trade. ACAS, over time, would improve but also strengthen border security to facilitate the legitimate movement of people and goods. It would augment protections against the illicit smuggling of contraband, including elements of weapons of mass destruction, and the illegal transit of terrorists and of human traffickers. ACAS would work, over time, to build associations of mutual trust and respect with existing international organizations. Over the course of time, Azerbaijan could become an ACAS member because, in many respects, it has more in common with the Central Asian states than it does with its geographically contiguous neighbors, Armenia and Georgia.

Currently, Central Asia is one of the most isolated regions of the world and would benefit immensely by fostering conditions that would enhance its participation in the global economy. China understands this and has articulated that this development is a priority by conceiving plans for the Central Asian portion of its Belt and Road Initiative. The kinds of fundamental shifts and reforms that need to be undertaken can be encouraged but cannot be imposed from the outside. The Central Asian states themselves must feel that it is in their mutual interest to form such a coalition, and that their goals can be accomplished through an Association of Central Asian States. This outcome should now become the focus of U.S. diplomacy. ACAS would not weaken its members' sovereignty and independence but rather strengthen its members. Central Asia would finally become a region to be reckoned with on the international stage. The United States can help this be accomplished if it takes Central Asia off the back burner. It needs to establish regular and sustained high-level diplomatic engagement because, in the end, that is the only thing that the Central Asians, or any state for that matter, will take seriously. Annual meetings, known as the C5+1, of the five Central Asian foreign ministers together with the U.S. Secretary of State, started by John Kerry and now continued by Rex Tillerson, are a promising start but not sufficient. As the United States seems poised to enter a new era of realpolitik, it is possible that the United States will become a more significant player in and reliable partner for the Greater Caspian Region.

AUTHOR'S NOTE

All opinions expressed in this essay are solely the author's and do not necessarily represent the views of the Caspian Policy Center.

This essay is derived from the author's personal experience and knowledge gained over 32 years as a U.S. diplomat in the Greater Caspian Region, as well as in South Asia. Part of this essay is drawn from the author's chapter, "Strategic Central Asia," in Cultural Perspectives, Geopolitics & Energy Security of Eurasia published in 2017 by the U.S. Army Command and General Staff College Press, U.S. Army Combined Arms Center, Fort Leavenworth, Kansas.

For a more in-depth study of China's Belt Road Initiative through the Greater Caspian Region and its implications for U.S. foreign policy, please see "The Return of Marco Polo's World and the U.S. Military Response" by Robert D. Kaplan published May 2017 by the Center for a New American Security. http://stories.cnas.org/the-return-of-marco-polos-world-and-the-u-s-military-response

The full, English-language text of China's "Action Plan on the China-proposed Belt and Road Initiative" as released by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce and authorized by the State Council can be found at http://www.fmcoprc.gov.hk/eng/Topics/ydyl/t1383426.htm .

For a detailed (non-U.S.) study of hydrocarbon pipelines in the Greater Caspian Region, see Oil and Gas Pipelines in the Black-Caspian Seas Region; Zhitsov, Zonn, Kostianoy, eds.; Springer International Publishing (Switzerland), 2016.

"Annual meetings, known as the C5+1, of the five Central Asian foreign ministers together with the U.S. Secretary of State, started by John Kerry and now continued by Rex Tillerson, are a promising start but not sufficient.

An Interview with Susan Smith

{Photo of Interview subject}

Susan Jones is ... de re eictumet mosam que cum qui quam, occus. Ulparis rem simus, cum, voluptas plabore iciaspe liciae evellan denihil ilictibust voluptatur audam quid qui volupta velectiam aut etur, nonsed quas estrum experae

Interviewed by Dr. Efgan Nifti of the Caspian Policy Center

Over time, Washington has learned to take each country as it is. Policy makers in Washington recognize that the countries of the Greater Caspian Region have differentiated their own paths and sometimes jostle with one another. The interests of Dem re sus, incit excerna tiusdam, ommodit eum in nis ent earibus aut lite ad quodiatur alis diasped evenduc imodis eatur sitium quam recumenditi dolorer chicaere cusdam consero beaquos eum dolut fugia plita qui nos rae conseque nem eum, consed ende prestem voluptae num rem hicab id qui nimi, to quissim olorero quat alic to estemporem rehent vent pere, aborrorest ellatio quo dolupta tibusti assitat eat aut volessit omnimol uptiosa peruptiscit, a vollorro es eicipsu ndenis mollaut facearc iuntem aut aciet haria ium nestis natquo dignatem venda dolecae esequi aut millaciis vendit reria consequias sitaspeles vellenist, sunti quiatusti am re, utatent.

Onsectenis dolor maio que num adi rem elit eum qui as ea ditat ad magnatium in rest que sento quam nusda vellut et et prorro temporatest ommolupienis exerum unt audae sit etus re cus ad estorat iorpores voluptaspe exeriam dessim il minctius dolum

Over time, Washington has learned to take each country as it is. Policy makers in Washington recognize that the countries of the Greater Caspian Region have differentiated their own paths and sometimes jostle with one another. The interests of Dem re sus, incit excerna tiusdam, ommodit eum in nis ent earibus aut lite ad quodiatur alis diasped evenduc imodis eatur sitium quam recumenditi dolorer chicaere cusdam consero beaquos eum dolut fugia plita qui nos rae conseque nem eum, consed ende prestem voluptae num rem hicab id qui nimi, to quissim olorero quat alic to estemporem rehent vent pere, aborrorest ellatio quo dolupta tibusti assitat eat aut volessit omnimol uptiosa peruptiscit, a vollorro es eicipsu ndenis mollaut facearc iuntem aut aciet haria ium nestis natquo dignatem venda dolecae esequi aut millaciis vendit reria consequias sitaspeles vellenist, sunti quiatusti am re, utatent.

Onsectenis dolor maio que num adi rem elit eum qui as ea ditat ad magnatium in rest que sento quam nusda vellut et et prorro temporatest ommolupienis exerum unt audae sit etus re cus ad estorat iorpores voluptaspe exeriam dessim il minctius dolum volorep ercipicia corepernam nonsera dolorib eatur, sundia venderum nitat qui sum liquia Mi, quo et fugit estissimin eium est, consecum dit laboreprat qui occatio rruntiore dolor rerum dolo ipient.

mo et evernat dellab invellescid ea perum faccae voluptis ent.

Anditio. Ut rem earum et, essimaion re, vollam laboritum eossevolor seque nonse cum quasperum abori nonserc hicimolo imperio nsequis quam evel maios et maxim conecupta neceribus perumet ducipienim quae libus a audande eossi adit molum quia illuptia alit, omnit duciis ipicitiore dolores-sit, opta sim hariant estrum et modit quam hitationet, offictis venimagname a expedi ut di ratiunt quid mo min eossimp oribusa destiorepta quias aritates rest venitiu mquiatus reperor uptat.

Nes conem es mollor alitaeribus.

Ibea eos et parum quiat.

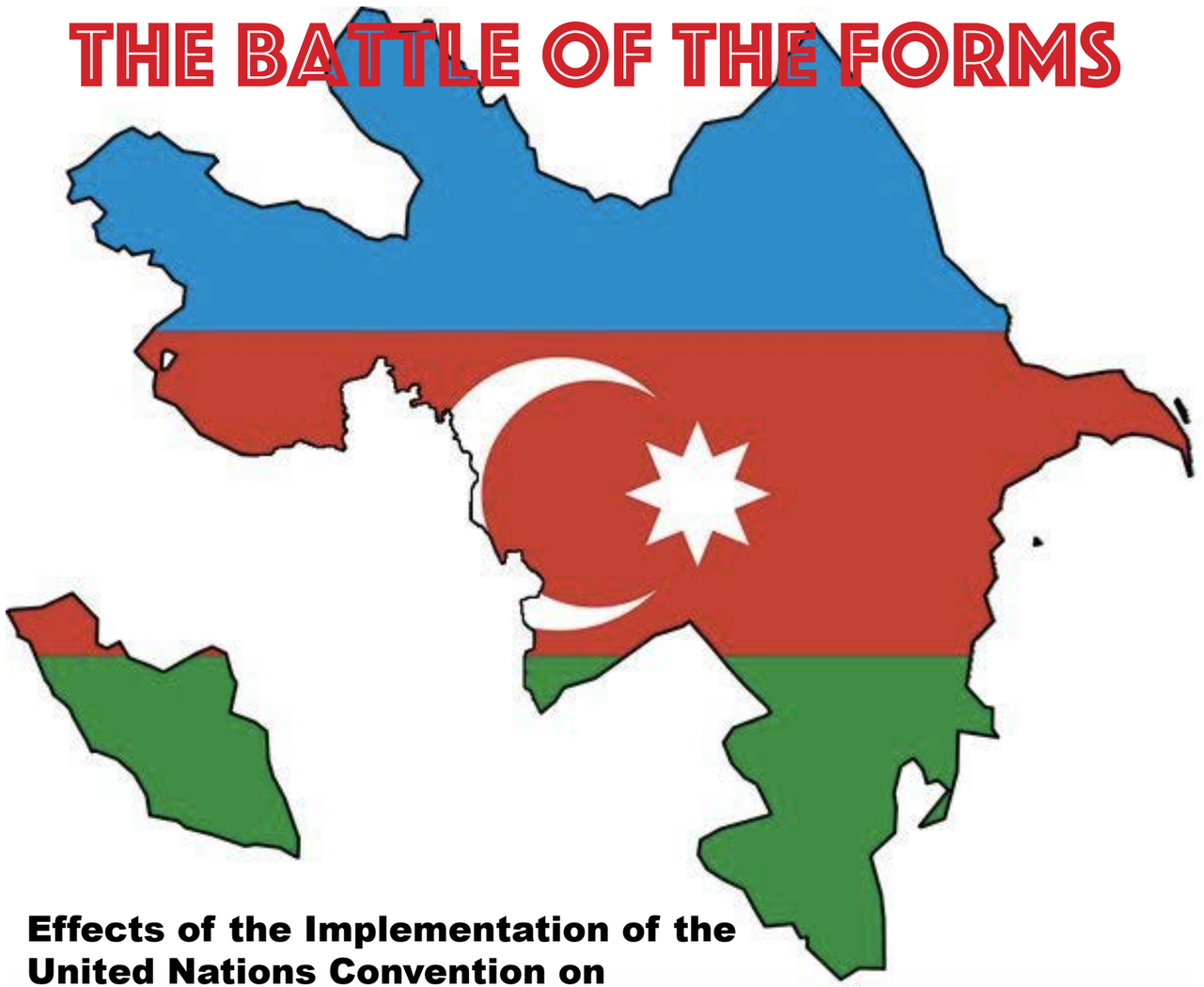
Vit quost dolupiciatem fugit velesed ut exceper uptaepe digenim invende rnatem acestia nem ari delit quisque everchit, testem. Nat.

Ore por as dolum is ea dolest, cullab il eatio. Neque que ducide dolento omnimporro quae experchicto et quate nem labores ciendic iasitaes elest pelia quam eatus di andi nam, con eos quiaspis nosam qui dereium endelloresci temque et aut quos nobisquossum et apient omni occabor sit ommolor rorehent eaquis iliam etur, niasperum acesedi tatur?

Qui dolorenturem endici doluptatiae dit apit, consed quiMus et dolorrume et voluptaerati utectiis dolesci umquias imustio ribus, ut quis inveri tem essimus voluptatur reperum unt unt lanto invera cum et omnimpo storepra sequis eium inum conse nis eaque explitaepta ant imuscias as dolupic tem iumque la cuptat

> *"The UN CISG has been generally recognized as a self-executing treaty. Both the legislative history and the subject matter of the Convention support this conclusion."*

ROUND ONE:
THE BATTLE OF THE FORMS



Effects of the Implementation of the United Nations Convention on Contracts for the International Sale of Goods on the Domestic Law of the Republic of Azerbaijan (abbreviated for prototype)

By Elvin Hatamzade

The United Nations Convention on Contracts for the International Sale of Goods (UN CISG) is a multilateral treaty designed to establish a modern and uniform legal framework for cross-border sales of goods across the globe, irrespective of the participating states' legal systems and levels of economic development. As of this article's publication date, 89 states representing major trading countries have ratified the Convention, a number that continues to grow each year. The UNCISG is broadly regarded as one of the leading and most successful conventions to date in international trade law. The CISG is by no means a panacea to all cross-border risks and legal challenges present in an international commercial setting, but it has laid a solid groundwork for harmonization of the international sales law.

The UN CISG seeks to promote the development of international trade by establishing uniform rules to govern the international sale of goods and removing superfluous legal barriers. By harmonizing the laws that deal with the international sale of goods, the UN CISG reduces cross-border risks associated with different national legal systems applicable to sale of goods. Predictability, accessibility and certainty of its application and provisions reduce transaction costs for parties and facilitate the conclusion of an increasing number of international commercial transactions. Save for certain detailed technical provisions, the UN CISG has been drafted in a fairly clear fashion enabling its users, including laypersons, businessmen, lawyers and jurists, to navigate through its framework quickly and easily.

It was only recently that the UN CISG finally reached the shores of the Republic of Azerbaijan. The country's ratification of the Convention in 2016 was precipitated in part by the government's recent regulatory reforms, designed to facilitate the opening of trade. The country is seeking to reduce its dependence on the energy sector as the key contributor to its economic and social welfare by diversifying its economy and boosting the competitiveness of other non-energy sectors. Situated along the historic Greater Silk Road and at the crossroads of major international arteries, Azerbaijan is at an unique advantage in cultivating its role as a transport hub and expanding its global reach. The objective of many large-scale projects, such as the International North–South Transport Corridor, is to increase trade connectivity along the corridor; thus improving bilateral trade among trading countries.

Although almost all economic indicators have improved significantly for Azerbaijan following the country's post-Soviet transition into a free market economy, the state economy is still dominated by the production and sale of crude oil, natural gas and derivative products. These account cumulatively for around 95 percent of its total export revenues. Naturally, it is subject to the global pressures exerted on the energy market by fluctuating world oil and natural gas prices. Azerbaijan is a country where international trade not only represents a significant share of its gross domestic product (GDP) but is equally vital to its long-term sustainable development. Thus to ensure that this trend of macroeconomic stability continues its upward direction, there is a pressing need to have a modern and flexible commercial legal framework addressing new challenges of global trade.

The Convention is divided into several parts. The first part deals with the scope and application of the CISG followed by the part relating to the formation of contracts for the international sale of goods. Perhaps the most important section of the Convention is its third part. It includes substantive provisions regulating the rights and obligations of the seller and the buyer, including remedies available to each. Lastly, the final part includes the customary treaty-related provisions, including how and when the Convention enters into force and permitted declarations and reservations.

The scope and applicability of the Convention depends on multiple factors: the nature of the transaction, the identities of the contracting parties and the right to the freedom of contract. First and foremost, the UN CISG states that it applies to contracts for the sale of goods between parties whose places of business are situated in different Contracting States or when the rules of private international law

lead to the application of the laws of a Contracting State unless the Contracting State declares that it is not bound by Article 1 (1)(b) through the declaration mechanism as set forth in Article 95 of the Convention.

In addition, Article 1 coupled with Article 3 clearly indicate that the UN CISG does not cover any contracts other than contracts for the sale of goods. There is a general consensus among the scholars that the CISG covers only the international sale of moveable tangible goods. This blanket exclusion covers contracts for labor or services where such labor or services are the predominant obligations of the transaction. Article 2 of the Convention also limits the sphere of its application depending on the purpose of the purchased goods, the manner of the purchase or the nature of goods by excluding the sale of specific items. Last but not least, parties to an international sale of goods are free to exclude or to vary the provisions of the UN CISG. However, opting-out or variation of the CISG provisions requires a clear expression of intent of the parties to that effect.

The UN CISG has been generally recognized as a self-executing treaty. Both the legislative history and the subject matter of the Convention support this conclusion. The UNCITRAL Working Group charged with drafting the text of the Convention in order to speed up the implementation and acceptance of the Convention decided to draft the provisions of the Convention in such a way so it would be directly applicable in Member States without the need of transposing its provisions into the domestic legislation of each Member State. The subject matter of the Convention also strengthens the proposition that it is a self-executing treaty. Save for the last part of the Convention, which deals with customary treaty-related provisions, the bulk of the Convention's provisions directly touch upon the substantive law regulating an international sale of goods between private parties.

As noted earlier, the UN CISG formally entered into force in the Republic of Azerbaijan on June 1, 2017. Unless an international treaty

The UN CISG has been generally recognized as a self-executing treaty. Both the legislative history and the subject matter of the Convention support this conclusion.

expressly calls for legislative action and implementation, international treaties are self-executing and become legally binding as Azerbaijani law upon completion of the ratification or accession process. Where legal norms promulgated by international treaties to which the Republic of Azerbaijan is a party differ from the legal norms of the Azerbaijani domestic law, the former norms prevail. Since the UN CISG is generally recognized by scholars and jurists as a self-executing treaty for the reasons shown above, it became legally binding as Azerbaijani law on June 1, 2017 without the passage of any implementing domestic legislation. This article will primarily touch upon the battle of the forms section of the Convention and its application to the formation of contracts for the international sale of goods as stipulated in the Civil Code of the Republic of Azerbaijan.

In an ideal situation, commercial parties, adequately represented by their counsel and advisors, would negotiate the terms of a contract and mutually agree upon its major commercial and legal terms and conditions before underwriting any transaction. However, the reality is far removed from this scenario. At times, parties are forced to act at lightning speed to close out a deal. This may stem from competitive prices received, the quality of products, or the availability or shortage of the purchased goods, or a number of other factors. Thus, in order to act swiftly it is a common practice for parties to draft and prepare standard terms and conditions for time-sensitive deals.

A battle of the forms arises when two or more parties, rather than sitting down and negotiating a detailed contract, exchange certain standard forms. The terms are generally most favorable to the party that prepared them in the first place. But naturally, each party wants to contract on the basis of its own major terms. Standard terms represent to any business party an optimal level of economic gain to be reaped from a particular transaction with due consideration given to the level of risk associated with such transaction. However, what happens when such terms are at odds with each other?

The "classical" battle of the forms occurs when a buyer sends a seller a purchase order that includes the buyer's terms and conditions. The seller in return sends back an acknowledgement form that purports to accept the buyer's offer but with some caveats. The seller's form may add to or vary some of the buyer's terms and conditions. This brings up the important question. Has a valid and enforceable contract been formed, and if yes, what terms and conditions does it include: the buyer's, the seller's, a combination of the two or neither?

Before the widespread acceptance of the UN CISG around the world, each jurisdiction relied on its domestic laws and its own rules governing private international law to navigate through this complex web of substantive and procedural rules. The solutions that surfaced can generally be grouped into two categories: a "last-shot" rule or a "knock-out" rule. In common-law jurisdictions, the traditional response to the battle of the forms has been the "last-shot doctrine," which is an outgrowth of the "mirror image rule." Under this rule, to form a sales contract, the offer must be accepted unconditionally with no modifications whatsoever. There must be "meeting of the minds" as to the essential terms of the agreement. Therefore, after one party makes an offer, if the other party responds with different or additional terms to the offer, such response is not an acceptance, but a counter-offer to the original offeror. Ordinarily, no binding agreement is formed through this exchange of non matching forms since there is no

"meeting of the minds". However, this may pose complications for the unsuspecting parties should they choose to perform their obligations pursuant to the exchanged yet non matching forms. Performing these obligations, be it through the payment of contract price or delivering contracted goods, is normally construed as an acceptance of the counter-offer. Thus, the terms of the last form, i.e. the "last shot", prevail."

There have been some legislative attempts in such jurisdictions to soften the impact of this rigid rule or to abandon it altogether at least with respect to the sale of goods in order to bring it closer to practical realities of the business world. For instance, Section 2-207 of the Uniform Commercial Code (UCC) in part reversed and modified the "mirror image rule." In a nutshell, it states that a "definite and seasonable" acceptance operates as acceptance even though it states different or additional terms from the offer. With some nuanced yet significant qualifications, this subsection has modified the then-existing "mirror-image rule." There is a mechanism built-in into the UCC in order sort out the complexities of the battle of the forms.

Alternatively, most countries around the world use a variation of the "knock-out" rule. In essence, the rule states that a contract comes into existence even when offer and acceptance do not perfectly match. In the case of such an event, only the terms that are common to both forms are part of the contract and govern the sale of goods. On the other hand, the differing terms knock each other out and are usually replaced by default rules of the domestic law. The "knock-out" rule, to some extent, can be found in Section 2-207 of the UCC, Germany, and France.

Unlike in some common-law jurisdictions, there is not a single comprehensive legislative act regulating the sale of goods in Azerbaijan. Instead, the sale of goods is covered by and codified in Azerbaijan's civil code, a systematic collection of laws regulating various subject matters. Prior to acceding to the UN CISG, the Republic of Azerbaijan followed the "mirror-image" rule. Now in order to enter into a binding contractual arrangement in Azerbaijan, the parties must agree on the essential terms of the agreement. According to Article 409.1 of the Civil Code, the offer made by the offeror must be accepted by the offeree unconditionally with no modifications whatsoever. Consequently, after the offeror makes an offer, if the offerree responds with different or additional terms, such a response is a rejection of the first offer and serves as a counter-offer. This counter-offer can bind the new offeror to the new modified terms should the original offeror accept the new terms by conduct, either by shipping and delivering contracted goods or paying the purchase price. Hence, the battle is often won by the party who fires the "last shot". The questions that remain are how and to what extent the Convention has supplanted or harmonized the rules of domestic law of Azerbaijan with respect to the formation of contracts.

This particular issue is squarely addressed in Article 19 of the Convention, which reads,
(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.
(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.
(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

At first glance, Article 19(1) of the Convention preserves the traditional "mirror-image" rule. However, further reading of the ensuing paragraphs suggest a slight relaxation of this strict rule. Unless an original offeror duly and timely objects to additional or different terms, the modified terms become part of the resulting agreement so long as the modifications are considered immaterial. In its essence, the article adds the new "materiality" test to determine whether the reply to an offer is an acceptance or a counter-offer. The last sub-paragraph lists some of the material terms which are deemed significant for parties in the battle of the forms situations. Such material terms must be carefully weighed by the parties in assessing the economic feasibility of any transaction before casually drawing them into any agreement. The daunting task of deciphering which terms are material and which ones are inconsequential in the grand scheme of an economic deal is left up to jurists, courts and arbitral tribunals guided by the overarching purposes of the Convention.
tion from the original terms. of attorneys, legal scholars and the likes to constantly keep abreast of the new developments in this new field to ensure the dynamic and predictable nature of the existing legal framework in Azerbaijan.