

**ENERGY PROJECTS AND
ENERGY POLICY****LOOKING FOR
A WAY TO RESOLVE THE LEGAL STATUS OF
THE CASPIAN SEA:
INTERNATIONAL LAW PROVIDES
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As early as the 18th-19th centuries, the political disagreements among Great Britain, Russia, and Turkey over the Caspian Sea region brought about significant changes in its diplomatic reality. After World War I and II, the policy of the great powers also changed the diplomatic landscape of this region, which, despite all of the disputes, remained in the center of international attention. Control over the Caspian began to largely be viewed within the framework of the influence of the two main powers in the region: the Soviet Union and Persia.

Later, when geological research determined the potential of the minerals on the seabed, particularly oil and natural gas, the world once more turned its attention to the region, this time for economic considerations. By the second half of the 20th century, globalization and the world market had become part and parcel of current reality, which meant that economic interests too had spread far beyond the framework of the national market. The sea's status was settled between Iran and the Soviet Union: it was divided according to the principle of common usage or condominium

(common property). But no mention was made of ownership, division, or use of the sea's resources, thus the question of the Caspian's legal status has become pertinent.

The situation became even more aggravated at the beginning of the 1990s with the collapse of the Soviet Union and the formation of the new sovereign states in the region. The former Soviet republics, countries that are now independent of Moscow's policy, along with Iran and the Soviet Union's legal successor, Russia, began to declare their rights to the resources of the Caspian Sea, and its legal status became one of the most important and difficult-to-resolve international problems. It has been difficult to find a satisfactory answer for all the parties concerned to a question that affects national interests, the environmental aspects of the Caspian Basin, the interests of oil and gas companies, as well as the very sensitive security problems of the world powers.

At present these issues are in a state of limbo. Not one of the Caspian states is ready to accept a solution based on consensus, which in turn is creating rather unfavorable conditions for doing business and guaranteeing security in the region. The difficulties and disagreements among the governments of the Caspian countries and

between these governments and the oil and gas companies is undermining the political and business environment and making it difficult to ensure successful use of the sea's resources to the benefit of the socioeconomic development of all these countries.

Despite the fact that analysts believe there is little likelihood of an armed conflict in the Caspian region today due to 1) the developed economic cooperation documented de facto by the efforts of the governments of the Caspian countries and 2) the high level of dependence of the world market on oil, the settlement of the legal status of the Caspian is still one of the main aspects in the foreign policy and economy of many of the states.

This article takes a look at how the policy on division of the sea influences diplomatic relations, the economic and social development of the countries, and the region's environment, and also analyzes the reasons why bilateral agreements are still the main documents de facto regulating the Caspian's legal status. The reader will see that it has been impossible to establish its status de jure so far because most of the parties involved feel that the existing documents are still valid and meet their requirements with respect to settlement of the issue.

Main Legal Documents: Caspian Diplomacy of 1813-1940

Now the main principle for defining the legal status of the Caspian Sea is so-called sectoral division. Division into national sectors (with different bilateral conditions) is the most acceptable way to resolve the legal question, since it reflects the common positions of four of the five Caspian states (apart from Iran). How did the Caspian states arrive at this "consensus?"

The Treaty of Gulistan (1813) signed after the end of the First Russian-Persian War (1804-1813) in the territory of present-day Azerbaijan was the first document that regulated the legal relations of the Caspian countries. It established Russia's exclusive right to have a navy in the Caspian.

The second official legal document was the Treaty of Turkmanchai signed after the end of the Second Russian-Persian War (1826-1828) in 1828.

In 1907, Persia was divided between Great Britain and Russia into zones of influence. Its southern part went to Great Britain, and the northern, which included the southern coast of the Caspian sea, went to Russia. The territory between these zones was declared a neutral zone. This agreement between Great Britain and Russia was enforced by the Anglo-Russian Convention on Afghanistan, Per-

sia, and Tibet.¹ This document and the agreements preceding it show the high significance of the Caspian region, particularly for the Russian Empire, which tried to build its diplomacy in such a way that the British Navy would be prevented from appearing in the Caspian. Great Britain, being an extremely strong sea power at that time, did not miss the opportunity to conquer strategically important territories. After all, expansion of political and geographical boundaries was the customary diplomacy of that time (18th-19th centuries).

The situation changed in 1917 when the Bolsheviks came to power in Russia. They did not immediately gain international support, but tried to embody the principle of peaceful coexistence in their policy. The agreements signed in 1921, 1935, and 1940 created a new legal base for regulating legal relations in the Caspian. So, according to the Treaty of Friendship (signed on 26 February, 1921) between Persia and the Russian Soviet Federative Socialist Republic, all the previous documents between the two countries, including the Treaty of Turkmanchai of 1828,² were cancelled (from the day the Treaty of Friendship was signed); the Treaty of Friendship in particular recognized equal navigation rights in the Caspian for Russia and Persia. The 1935 Treaty of Establishment, Commerce, and Navigation reserved the exclusive right for each nation to fish within a zone of ten nautical miles along their respective coasts. The 1940 Treaty of Commerce and Navigation confirmed the provisions of the 1921 and 1935 documents and also reserved navigation as well as fishing rights in the Caspian for Iranian and Soviet vessels and other vessels flying their flags, thus excluding third states from the Caspian Sea (Art 13); and ships bearing the flag of one of these states would be regarded as civilian in the ports of the other side during their entry into port, anchorage in port, and exit from port (Art 12).³ The water space beyond the 10-mile zone along the coasts of the respective Caspian states remained in common usage.

These three documents regulated the legal relations of the countries in the Caspian with respect to fishing, commercial activity, and navigation. But not one of them envisaged any division of the sea's resources or rights to use of the subsoil. Despite this, however, these contracts were fundamental in further discussion of the Caspian's legal status.

In 1935, the Soviet Union unofficially and unilaterally recognized the Gasan-Kuli (Turkmenistan)-Astara (Azerbaijan) dividing line.⁴ Russia's and Iran's right to a certain part of the sea, which included the 10-mile fishing zone, was de facto determined by this line, as well as their rights to the water and subsoil in the corresponding sector. This is how today's story of de facto use of the Caspian Sea began.

In 1949, when oil was found in the Caspian, the Soviet Union began to independently research its fields, without informing Iran, although the 1935 and 1940 treaties only envisaged regulation of navigation and commerce relations and not use of the subsoil and division of the sea's resources. What is more, most of the sea, according to these treaties, remains in common use. Later Iran also agreed to develop the fields in "its" part of the sea. So de facto sectoral division existed since as early as 1949. Over time this situation led to a multitude of disagreements regarding rights to use of the subsoil and division of the sea into national sectors. But the unilateral actions of the Soviet Union and Iran were in no way the only reason for sectoral division of the sea and its further use.

¹ See: U. Suleimenov, E. Karagianis, "Kazakhstan i iuridicheskie raznoglasiia v otnoshenii Kaspiiskogo moria," *Central Asian Journal*, No. 4, 2004, p. 109.

² See: A. Abishev, *Kaspii: neft i politika*, Almaty, 2002, p. 159.

³ See: G.B. Khan, L.S. Suvorov, G.B. Rakhmanova, *Vneshniaia politika Respubliki Kazakhstan*, Kazakhstan State Law Academy, Almaty, 2001, p. 268.

⁴ See: A. Abishev, op. cit., p. 168.

Disintegration of the Soviet Union: National Perspectives of the Caspian States on the Legal Issue

In 1970, it was decided by the U.S.S.R. Ministry of the Oil Industry to divide the Soviet part of the sea, according to the median line principle,⁵ into national sectors among the four Caspian Union republics (Kazakhstan, Russia, Azerbaijan, and Turkmenistan), which were granted the right to develop the fields in their own sectors. This line was also enforced as an administrative-territorial border (the only type of border existing in the U.S.S.R.) and when these republics gained their independence, it was recognized as the state border. For example, de facto division into sectors became the reason for not only Iran and the Soviet Union developing the sea's resources, but also subsequently all the former Soviet republics.

Today the Caspian Sea's legal status includes de facto division into national sectors and the above-mentioned de jure agreements of 1921, 1935, and 1940. This situation has not only resulted from Soviet-Iranian relations, but also (in particular) from one historical event that had an impact both on the policy of the Caspian region and on the entire system of international relations as a whole. Four new states—full-fledged entities of international law claiming parts of the Caspian Sea—appeared on the world arena after the collapse of the Soviet Union in 1991. Based on the complaints about the unregistered (meaning illegal) unilateral actions of the Soviet Union and to a lesser extent of Iran, the newly independent states began to form their own positions regarding the sea's legal status. The Caspian Basin became the focus of intense international attention due not only to the Caspian states' interest in it and its resources, but also the interest of the U.S., Turkey, and the European Union states.

Tehran, which had no objections to the status the Caspian enjoyed during the "Soviet-Iranian sea" period (this term was applied to it in the appendices to the 1935 and 1940 treaties), is now refuting de facto division of the sea, motivating this by the fact that the Gasan-Kuli–Astara boundary introduced by the Soviet Union was never legally enforced in any of the earlier documents.⁶ Theoretically this position is correct from the viewpoint of the legal force of the treaties, which do not envisage this division of the sea, but, on the contrary, mention the common, condominium, regime for it (1921, 1935, and 1940). If we follow the current de facto delimitation of the Caspian, Iran is allotted its smallest part of 14%, while Kazakhstan and Azerbaijan receive 29% and 21%, respectively, Russia acquires 19%, and Turkmenistan 17%.⁷ So Iran is now insisting on dividing the Caspian into equal parts of 20% for each of these five states, and is theoretically willing to accept the condominium regime enforced in the Soviet-Iranian agreements. But keeping in mind the current situation with respect to de facto division, this alternative already seems highly unlikely. After several meetings with the heads of the Caspian states, experts, and representatives of oil and gas companies held in 1992–1998, it is obvious that the sea must be divided. But it is still not clear whether a five-way treaty on its delimitation will be signed and when this will happen.

It should be noted that the Iranian part of the Caspian, regardless of its choice of 14% or 20%, will not play a decisive role in the country's oil policy since its oil supplies in the south, in the Persian

⁵ See: G.B. Khan, L.S. Suvorov, G.B. Rakhmanova, op. cit., p. 275.

⁶ See: A. Abishev, op. cit., p. 168.

⁷ Ibid., p. 201.

Gulf, are much larger than the potential volumes in the Caspian. It must also be kept in mind that the sea's oil supplies have been playing an enormous role in forming the economies of Azerbaijan and Kazakhstan, which insisted on division from the very beginning of the talks on the legal status of the Caspian. More than that, neither state has access to the open seas, which means they have limited oil transportation routes, that is, they need to use the territory of other countries to deliver resources to the world market.

The primary problem regarding the Caspian's status for Iran is security, which is becoming increasingly pertinent under the new geopolitical conditions that have arisen since the collapse of the Soviet Union. Nor can we fail to notice the Islamic Republic of Iran's striving to make a name for itself on the world arena, particularly with respect to the political crisis in this country over its nuclear program, which has not been resolved even in spite of the U.N. Security Council's decisions. The political prestige Tehran needs today on the world arena also prevents it from disregarding its demands regarding the Caspian's legal status. But nor can it miss out on an opportunity to develop the policy in the Caspian related to such common problems of the littoral states as protection of the Caspian's unique flora and fauna, which also does not allow the IRI to mitigate its position on the legal issue.

Kazakhstan and Azerbaijan are demanding establishment of their sovereign rights to develop fields in sectors of the sea allotted to them as early as the Soviet era. From the very beginning, Azerbaijan upheld the principle of complete division of the sea: the water layer, the seabed, and the airspace. The particular grounds for this position were the following factors:

- 1) the Azerbaijani sector of the sea was defined by the Soviet government in 1970;
- 2) the 1921 and 1940 treaties do not apply today since they regulate only commercial and navigation relations, but do not envisage how the sea's resources should be shared among the coastal states, particularly since one of these states is no longer an entity of international law (the Soviet Union);
- 3) the Caspian must be regarded as an "international lake" due to the fact that it does not have natural access to the World Ocean.

Azerbaijan regards the artificial straits (canals), the Volga-Don and Volga-Baltic, which join the Caspian to the Black Sea and ocean, as insufficient grounds for recognizing the Caspian as a sea. In 1995, Azerbaijan even included this status in the country's Constitution (this decision was subsequently also regarded as unilateral and illegal), which said that the water layer, subsoil, and airspace in the Azeri sector of the sea (following the Soviet Union's division in 1970) are declared the republic's property. But Kazakhstan, in turn, considers the concept of a closed sea to be more suitable for the Caspian.

The legal status issue turned into a dispute over the Caspian's definition as a sea or a lake. In the event the Caspian is defined as a sea, the regulations of the 1982 U.N. Convention on the Law of the Sea apply to it, which makes it possible to divide the sea into sectors down the median line (at an equal distance from the states' coasts) or divide it keeping in mind the three main zones of influence: territorial sea—12 nautical miles,⁸ exclusive economic zone—200 nautical miles,⁹ and continental shelf.¹⁰ Division down the median line is envisaged by the Convention if use of the rights enjoyed by one littoral state (zone of influence) due to the insufficient size of the water body are in conflict with similar rights of another littoral state.¹¹ Both of these alternatives largely apply to Azerbaijan and Ka-

⁸ See: *U.N. Convention on the Law of the Sea of 1982*, Art 3, available at [http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf].

⁹ See: *Ibid.*, Art 57.

¹⁰ See: *Ibid.*, Art 76:1.

¹¹ See: *Ibid.*, Art 15.

zakhstan. But application of this Convention for resolving the Caspian's legal status is not advantageous to *Russia*. In particular, the Convention defines the Caspian as a sea, which means that all the straits in it acquire international legal status. For example, the Volga-Don and Volga-Baltic canals will be available to all vessels for passage and will not remain Russia's property, which is extremely disadvantageous for it in terms of security, the environment, as well as economic benefit, which Azerbaijan and Kazakhstan will acquire in this case after gaining access to the Black Sea. So from the very beginning, Russia insisted on the condominium regime, and as the situation gained momentum and resolutely drew nearer to reaching a resolution to the sea's division, the conception of the Caspian's status as a closed lake began to develop. In the event it is adopted, the straits (that is, canals) will remain in Russia's ownership, so delimitation appears possible.

In this context, the international practice of dividing lakes should be taken into consideration, in keeping with which the boundaries on a water body pass down the median line, upon agreement of the sides, or the boundaries on a lake are an extension of the land borders (if this is possible geographically). In world practice there are numerous examples of this kind of division. One of them is Lake Victoria, which is divided between Kenya and Uganda. An exception to this practice is Lake Titicaca on the territory of Bolivia and Peru. Under an agreement by the sides it is in common use. But this scenario will hardly be possible for the Caspian due to the irreconcilable positions of most of the littoral countries (and of Iran in the event of equal division, that is, of 20% each) regarding its division, which is possible if the provisions of the U.N. Convention of 1982 or the international practice of dividing lakes are adopted. In this event, it is only a question of Iran's nuances and position.

Kazakhstan, for example, although it upheld the Caspian's status as a sea, stated repeatedly that the U.N. Convention and international practice of dividing lakes could not be entirely applied to the Caspian. The gist of this position lay in the fact that if it was defined as a lake a multitude of state borders would appear that would have to be crossed, that is, fishing and commercial activity would become complicated. And if it was defined as a sea, the zones belonging to one state in compliance with the provisions of the U.N. Convention would be in conflict with the zones of another state, which although regulated by the Convention would also mean it was not an open sea. This, in turn, would again make navigation and fishing difficult. The environmental situation and its possible deterioration in the event of autonomous use of the individual parts of the sea were also taken into account. In this respect, Kazakhstan proposed a way to resolve the problem: divide the seabed in keeping with the median line principle and leave the water layer in common use. This position prevailed later in a bilateral agreement between Kazakhstan and Russia signed in 1998.

Incidentally, at the initial stages of reviewing the question of the Caspian's legal status (immediately after the collapse of the Soviet Union), this environmental argument was one of the most important in Russia's position, which was bent on preventing Azerbaijan and Kazakhstan from having sovereign rights to sections of the sea. Another of Russia's strong arguments in favor of condominium was the legal force of the 1921 and 1940 documents. But after 1994, Russia's position began to change. This was due to the fact that in 1994, the Azerbaijani government and consortium of international oil and gas companies signed the so-called Contract of the Century. It included such oil giants as British Petroleum, the State Oil Company of Azerbaijan Republic, and Russia's LUKoil Company. What guarantees could the state of Azerbaijan give its foreign partners regarding the legality of the actions in the Caspian Sea?

In 1993, Moscow and Baku signed an agreement on joint development of the Caspian fields in the territory of Azerbaijan. The text of this document talked about the Azeri part of the sea's territory, which also meant its sector; Russian and Azeri companies were reserved the right to this development, including LUKoil on the Russian side, with an agreement on 10% of the future profit. For this reason, Azerbaijan, having no doubts about the legality of its actions, signed the Contract of the Cen-

ture. Moreover, Russia's LUKoil was joined this contract at its first request. So despite the official statement of the Russian Federation Foreign Ministry that Russia would not stand for any unilateral actions in the Caspian (this meant in particular those not agreed upon by all five of the sea's littoral states) addressed in 1994 to the U.N., it could not stop the Contract of the Century from being signed. Russia's official position also said that it reserved itself the right to apply any necessary measures to intercept unilateral actions in the Caspian.¹²

The official position of the Russian Federation Foreign Ministry and State Duma was not related to the de facto situation or to the positions of the individual private Russian oil companies that began independent development of the oil fields legalized by the same government. At that time, the Russian government was unable to fully control the economic situation in its crisis-torn country.

The fact that Azerbaijan began actively upholding its position on the legal status—division of the Caspian into national sectors—can be explained by the above-mentioned agreement and LUKoil's membership in the international oil consortium. This made it possible for Baku to "gain legality" in the legal issue and establish control at both levels of Russian influence: the private (economic) and governmental. The Russian Federation government was unable to continue contradicting its own decisions and, despite the criticism of the action of the country's oil companies, it was forced to accept the agreement. This well-thought-out step made it possible for the Azerbaijani government to reinforce both its own position and the position of its commercial partners regarding the Caspian's legal status.

The positions of the Caspian Basin countries changed as circumstances developed. *Turkmenistan's position* also changed quite frequently. But, as Professor E. Kepbanov, who at one time was deputy foreign minister of Turkmenistan, notes, there were rather significant reasons for these changes. For example, keeping in mind the controversial fields along the proposed median line between Turkmenistan and Azerbaijan, Ashghabad could not remain neutral toward Baku's unilateral actions. In particular, E. Kepbanov believes that after the signed contracts on development of the fields in the Azeri sector, the agreements between Russia and Azerbaijan, and then between Kazakhstan and Russia On Delimitation of the Seabed in the Northern Part of the Caspian Sea Along the Modified Median Line¹³ in order to Establish Sovereign Rights to Subsoil Use of 1998, Turkmenistan was inclined toward dividing the sea into sectors.¹⁴ Prior to this Ashghabad, for security considerations in the region, upheld Tehran's position on the condominium regime. But after 1997 Turkmenistan joined those in favor of dividing the sea. Whereas Iran, Russia, and Turkmenistan used to form a counterbalance to the Kazakhstan-Azerbaijan coalition that insisted on dividing the sea into sectors, now a different picture could be seen: Iran was in the minority. But it must nevertheless be noted that Turkmenistan was still rooting for an equitable choice for the Caspian's status (based on the opinion of all five countries and enforced not in bilateral de facto agreements but in one five-way document), which also concerns Iran, primarily as an influential geopolitical neighbor.

The series of talks on the legal issue held in 1992-1994 and 1995-1998 did not achieve significant changes in defining the status of the Caspian Sea, but some results were reached in the context of the overall mood of the littoral states. For example, at the meeting of these countries' foreign ministers (Tehran, 1995) it was decided that *the legal status of the Caspian Sea must be enforced in one five-way document*, on the basis of which all other necessary legal documents and bilateral agreements in any sphere relating to the Caspian's legal status will be adopted and applied. This decision intercepted all of Russia's attempts to regulate the status by means of separate agreements, in particular

¹² See: V. Guseinov, *Kaspiiskaia nefi: Ekonomika i geopolitika*, Moscow, 2002, p. 169.

¹³ "The modified line is drawn keeping in mind all the geological structures (and controversial fields in compliance with the agreements of the sides), whereby the water layer remains in common use" (V. Guseinov, op. cit., p. 187).

¹⁴ See: E. Kenbanov, "Turkmenistan za ravnopravnoe i vzaimovygodnoe sotrudnichestvo na Kaspii," *Kazakhstan spektr*, No. 2 (36), 2006, p. 29.

keeping in mind Moscow's ambiguous position elaborated in the mid-1990s regarding the environment in the Caspian and division of the sea.

The second important decision was made at a meeting in Almaty in September of the same year *on delimitation of the Caspian Sea*. It was an important step in the geopolitical respect and in the sphere of regional security since by this time the Caspian had already become a target of keen attention on the part of many of the world's nations, which made the Caspian states very concerned about their possible interference.

Russia, which had gradually been taking advantage of all the benefits of division of the sea and by 1997 had already fully realized its potential in developing the Caspian's resources, undertook measures to settle the status of its sector of the sea *de facto*. Moreover, understanding that having once been succored by foreign support Kazakhstan and Azerbaijan would not step down from their conviction that the sea should be divided into national sectors (according to the principle of a lake or according to the principle of dividing the seabed, leaving the water layer in common use, as Kazakhstan suggested), the Russian Federation agreed to this delimitation. In 1998 the above-mentioned agreement was signed *On Delimitation of the Seabed in the Northern Part of the Caspian Sea Along the Modified Median Line in order to Establish Sovereign Rights to Subsoil Use*. One of the advantages for Russia in this document was also the fact that a modified median line made it possible to resolve the question of the controversial fields of Kurmangazy and Khvalynskoe, where Kazakhstan's and Russia's sectors intersected. Here the principle of so-called point jurisdiction was used, that is, a decision was made on the joint development of these fields. Russia signed the same agreement with Azerbaijan, Kazakhstan with Azerbaijan, and Azerbaijan with Turkmenistan, despite the fact that the disputes on division of the Azeri and Chirag fields between Baku and Ashghabad are still going on. Azerbaijan, which insisted on strict division of the entire sector, including the water layer, airspace, and seabed of the Caspian, mitigated its position after the then Russian president Vladimir Putin's visit in 2001 and agreed to divide the seabed, retaining common use of the water layer and gradual separation of the entire sector. In 2002, Azerbaijan and Russia signed an agreement in Moscow on delimitation of the contiguous sections of the Caspian Sea shelf.¹⁵

As a result of long multifaceted rounds of talks on the Caspian's legal status, three main alternatives for resolving the problem were elaborated:

- The Iranian version was either the current *de jure* condominium regime enforced in the Soviet-Iranian agreements or equal division of the sea with each state being allotted 20% based on the fact that during the period of the Soviet-Iranian sea the rights of the littoral states were also equal;
- The version most actively promulgated by Azerbaijan of dividing the sea into national sectors in accordance with the 1970 delimitation and the southern Astara–Gasani–Kuli boundary on the grounds that all the boundaries in the sea were already enforced and had been officially recognized as territorial when the Soviet Union disintegrated;
- Delimitation of the sea down the median line at an equal distance from points on the opposite shores, in keeping with which Russia will acquire a sector of 19%, Kazakhstan of 29%, Azerbaijan of 21%, Turkmenistan of 17%, and Iran of 14%.¹⁶

In this way, based on the specific positions of the Caspian countries and the inability of international law to regulate this issue, the condominium regime looks to be the least pertinent solution. Strict division of the sea into sectors, including all the components (water layer, airspace, and subsoil), also

¹⁵ See: [<http://www.centrasia.ru/newsA.php4?Month=10&Day=3&Year=2002>].

¹⁶ See: A. Abishev, *op. cit.*, p. 201.

seems highly unlikely, particularly due to the need to conduct a single policy regarding the environment of the water body. But division along a modified median line and enforcement of common use of the water layer, particularly keeping in mind the work carried out with respect to this delimitation regime, is entirely acceptable for most of these countries. However ignoring the opinion of such an influential neighbor as Iran will not bode anything positive. In this respect, experts have come up with another scenario. If Iran does not change its opinion the Caspian could de jure remain under the jurisdiction of the Soviet-Iranian treaties of 1921 and 1940, whereas in terms of subsoil use rights, the states will de facto be guided by bilateral agreements. For example, as of today, the question of establishing the sea's legal status, which appears to have reached an impasse de jure, has progressed de facto quite a long way with respect to the development of its hydrocarbon supplies.

Geopolitical Reality and Pipeline Routes

As we have already noted, after the collapse of the Soviet Union, geopolitical reality in the region and the world dramatically changed. The former Soviet republics became sovereign states, but dependence on the integrated industrial structures of the former Soviet Union made it impossible for them to free themselves from economic dependence. This fact, which was not immediately taken seriously by the post-Soviet Caspian states, greatly limited their further development of alternative hydrocarbon resource transportation routes, which they were counting on. In particular, Azerbaijan and Kazakhstan, the main claimants to the hydrocarbon-rich sectors of the sea, oriented their internal market precisely toward the new export routes. Before the urgent need arose to elaborate the Caspian's legal status between five states, no one had any doubts about the sectors allotted to the Soviet republics in 1970. But after they gained their political independence, these republics began to make plans for transporting oil and gas to the world markets circumventing Russian territory, although geopolitical reality made their implementation difficult.

The beginning of the 1990s was marked by an extremely unstable situation in the Caucasus. A civil war in Georgia, the war in Chechnia, the conflict around Nagorno-Karabakh, as well as the region's high economic and other dependence on Russia created unfavorable conditions for exporting oil from the Caspian Region. Immediate independence from Russia, which the post-Soviet countries were counting on, proved unrealistic. Moscow was still able to control most of the economic and geopolitical activity of the CIS states. The CIS countries could not transport and export goods without going through the Russian Federation since the infrastructure of all these states was closely interrelated. In particular, the oil and gas transportation routes developed by the post-Soviet Caspian states were limited to a few alternatives, which additionally did not have the advantage of regional security.

Azerbaijan

The possibilities for transporting the republic's hydrocarbons mainly boiled down to two alternatives: via Georgia and Turkey, as well as via the Russian port of Novorossiisk. In 1993 Baku and Ankara signed an agreement on building the Baku-Ceyhan oil pipeline. But the war in Georgia interfered with immediate implementation of this project, postponing completion of the oil pipeline until 2006. The war in Chechnia, through the territory of which the Novorossiisk-Baku oil pipeline passes,

hindered Azerbaijan's decision to transport oil in this direction. But after signing the Contract of the Century in 1994, the proposals of foreign investors forced Baku to activate its attempts to stabilize the political and economic situation in the region.

For several reasons, Azerbaijan became a buffer zone between Turkey and Russia, which were not in open conflict with each other, but were actively spreading their influence in Azerbaijan (the first economically and the second politically). After 1993, Baku's policy became more strained with Ankara, but less conflict-prone with Moscow, which was due in particular by Turkey's inactive support of Azerbaijan in the Nagorno-Karabakh conflict (Baku expected much more). Due to this same conflict, the transportation routes through Armenia and Iran were closed. In addition, the southerly direction did not bring Azeri oil to the European market.

So unable to transport oil independently of Russia and dependent on foreign investors for further development of its part of the shelf, Azerbaijan was forced to accept both transportation alternatives (via Georgia and Russia). Russia's strategic position for delivering Azeri oil to the European market could not be ignored. Moreover, conducting oil business by circumventing Russian territory could provoke a negative reaction in Moscow. The Georgian port of Supsa proved very promising (in the absence of the planned oil pipeline to Ceyhan), that is, it offered the possibility of bypassing Russian territory.

Kazakhstan

Economic independence from Russia, particularly with respect to oil export, was one of Kazakhstan's foreign policy priorities, as well as of the other post-Soviet Caspian countries. But the republic had even fewer alternatives for transporting crude oil to the market of the European countries due to its geographic location than Azerbaijan. Kazakhstan had two possible transportation routes: along the Atyrau-Samara and Tengiz-Novorossiisk oil pipelines, which pass through Russian territory. The Atyrau-Samara route, which is regarded as part of the Druzhba pipeline network to Europe, as is the Tengiz-Novorossiisk oil pipeline, places the transportation of Kazakhstani oil under the full control of the Russian Federation. It should be noted that each of the post-Soviet Caspian states has been trying to ensure the possibility of transporting its energy resources in at least two directions in order not to suffer complete export bankruptcy in the event one neighbor refuses. So one of the few alternatives for Astana was the Trans-Caspian oil pipeline, which was designated to join the Baku-Tbilisi-Ceyhan route. But Moscow and Tehran did not approve this project, stating that it would be detrimental to the environment and without a five-way treaty on the status of the Caspian not one of the littoral states had the right to implement such a project.

An alternative oil pipeline route for Kazakhstan was in the direction of China. In 1997, Kazakhstan and the PRC signed a corresponding treaty. But the project is rather expensive and long-term. Unable to wait until it is implemented, Kazakhstan is continuing to look for suitable routes for its export potential.

So the main Caspian hydrocarbon-rich countries, Azerbaijan and Kazakhstan, are still looking for additional export routes, while the European countries and a few others are exerting efforts to find alternative sources of oil and gas. But it is becoming increasingly difficult for Kazakhstan, which is implementing a multi-vector foreign policy, to retain the balance of power in its favor. Nor is it easy for Azerbaijan, which also has large energy resources it needs to export and is in such an unstable region as the Caucasus, to build its policy. Its far from simple relations with Armenia and Iran, as well as its borders with Georgia and Chechnia, place the country in a difficult position in the region. All of this complicates the position of Kazakhstan and Azerbaijan as promising energy resource producers in the Caspian.

Turkmenistan

Being mainly a deliverer of natural gas for Russia in the Soviet period, the republic has not placed the emphasis on development of the oil industry. What is more, if we keep in mind its not entirely advantageous geographical location, its sector of the Caspian sea that is not rich in oil, and political instability due to the authoritarian regime of former leader S. Niyazov, it becomes clear why the country's oil industry is poorly developed. The law on investments has been amended many times, which is not promoting a stable investment climate in Turkmenistan.

It should also be noted that keeping in mind the republic's neutrality policy, security is the basis of Ashgabad's motivation in the Caspian's legal issue. Nor should we forget that it borders on Afghanistan, where in 1996 (at the very peak of the dispute on the sea's legal status), the Taliban movement came to power, which made security in the region more precarious.

With respect to the possible export routes of energy resources, the north—Russia (via Kazakhstan)—is the predominant one. The route via Afghanistan is still not considered safe, particularly keeping in mind the limited power of the country's current president, Hamid Karzai.

Consequently, the dependence of this former Soviet republic on developed Soviet industry and current Russian policy is making itself known again.

Russia

As for Russia, its main task (along with retaining the balance of power with respect to the West's influence in Central Asia and the Caucasus) is control over the export of hydrocarbons from the post-Soviet countries to the European markets. So Moscow has concentrated more attention on the CPC (Caspian Pipeline Consortium) oil pipeline which joins two main CIS oil pipelines via the port of Novorossiisk: the Baku-Novorossiisk and the Tengiz-Novorossiisk. Russia also controls the pumping of oil into the Druzhba oil pipeline and into the Baltic oil pipeline system via these two pipelines and the Atyrau-Samara route.

The Russian Federation is striving to diversify its oil pipeline routes and ensure the independence of its oil business on the geopolitical arena. In this context, rivalry with Ankara over oil transportation is the most pertinent issue for Moscow. In particular, Ankara introduced restrictions on the passage through the Bosphorus and Dardanelles, through which tankers carrying Russian oil go to the Mediterranean Sea, justifying this policy with the bad environmental situation related to the periodical oil spillage from Russian ships that meet with accidents near these straits. This policy worked, although this did not stop Moscow from searching for alternative routes. The recently reviewed alternative of the Burgas-Alexandroupolis pipeline is still pertinent for Russia. It will provide the Russian oil transported to Bulgaria by tanker from Novorossiisk through the port of Burgas with access to the Adriatic Sea and to Alexandroupolis (Greece), which will make it possible for Russia to bypass the Turkish straits.

Energy resource export routes from former Soviet republics circumventing Russian territory are not advantageous to Russia. So as early as the beginning of the 1990s, it strove to control the geopolitics of these countries' oil pipelines. It can be said that despite the contradiction between official Russia's tasks and the interests of its oil companies, in the 1990s it was still able to achieve its goal in the Azerbaijan Republic. With the help of the active position of Russia's LUKoil in the Azeri sector of the sea and its participation in several important projects (including in the Contract of the Century), the Russian government gained partial control over Azerbaijan's oil industry, which, it should be admitted, would have been impossible without political support from the Russian government in 1993.

In this way, Russia's pipeline geopolitics look even more complex than they do in most of the other Caspian states, since it must take into account not only the interests of the country itself, but also its own influence and that of other nations on the world arena.

Iran

Iran's geopolitical interests in the Caspian mainly represent regional security and the authority of a world power that was seriously undermined by the U.S.'s economic sanctions, as well as the entire world community's desire to freeze Iran's nuclear program. Most states, apart from Russia, followed this course. Now Tehran needs regional security and authority, and Moscow is still its main partner in achieving these goals.

As noted above, Caspian oil is not a determining factor for Iran in its economic development, or even in its oil policy, since the country's resources in the Persian Gulf are much larger than its Caspian supplies. The only thing that Iran loses in this respect is OPEC's influence, which decreases as the oil business in the Caspian becomes more independent. Dependence of the U.S. and European markets on the OPEC member states is decreasing, while regional security and prestige remain priorities.

These were the two main reasons for Iran's position on the Caspian's status: equal division of the sea into 20% sectors or condominium, which is now already highly unlikely due to the agreements entered among several littoral states. But the mechanism for applying this delimitation is still not clear.

The states that need their oil and gas industry to be independent are insisting on division of the Caspian. While Iran and previously Russia (which has currently almost entirely changed its position) are inclined toward common use of the sea's resources (in the case of the Russian Federation—the water layer and fishing industry).

But the interests of the governments of the Caspian countries are far from the last thing influencing the sea's legal status. The oil and gas companies (as well as the policy of their countries) are important elements in this respect.

Big Business

It is no secret that geopolitics and political economics on the international arena are closely related to oil and energy security today. It is obvious that the U.S., Russia, Japan, the European Union states, and China cannot sit on the fence with respect to the security and policy of the Middle Eastern, Latin American, and Caucasian countries. Today the Caspian is also part of several strategically important regions.

But there are also other important components of the Big Game for world strategic resources. Its main participants are often in no way governments, but oil and gas companies—the giants of world business. Today it is not difficult to imagine the scope of their political and economic influence, while environmental problems and social issues pale in comparison. These companies can even be called new political leaders in the world of political economics and globalization.

In the Caspian region in particular the influence of such oil and gas giants as British Petroleum, Royal Dutch Shell (the Netherlands), Agip Eni (Italy), Chevron Texaco (the U.S.), and LUKoil (Russia) can be seen. Whereby LUKoil is the only private worldwide oil and gas structure in the region from the Caspian countries. Of course, there are government companies working in these countries in

the sphere of hydrocarbon resources, for example, KazMunaiGaz (Kazakhstan) and the State Oil Company of Azerbaijan Republic, but most of the others are foreign.

Moreover, the interests of the latter are represented in the region not only by their quantity but also by their share in the production share agreements of the main projects. For example, here is the share distribution in Kazakhstan's largest projects: Karachaganak (LUKoil—15%, Chevron—20%, the British Petroleum (BP) Group—32.5%, the Eni Group—32.5%); Tengiz (Chevron—50%, Exxon Mobil—25%, KazMunaiGaz—20%, LUKoil—5%).¹⁷ In the Azeri projects: D-222 Yalama (LUKoil—80%, the State Oil Company of Azerbaijan Republic — 20%).¹⁸ These are only a few figures.

But the influence of oil and gas companies is not only limited to the economic sphere. There is also political lobbying. As L. Kleveman, a correspondent who works for CNN, *The Independent*, and other world mass media and sends reports from hotspots—Iran, Afghanistan, and Kuwait—claims that in addition to President Heydar Aliev and his son Ilham, David Woodward (head of the Amoco company) is undoubtedly the most influential person in the Azerbaijan Republic, who manages a budget of approximately 15 billion dollars... Amoco is so influential in this country that it is unlikely that any government decision is made without its unofficial consent. . . . The former speaker of British Petroleum said at some point that if we leave Baku, the country will fall apart at the same time.¹⁹ At one time, the LUKoil company had similar influence over the Russian government in order to continue developing the projects it already had in the Azeri sector of the Caspian.

But the presence of foreign oil companies in the region is also undoubtedly beneficial to the governments of the Caspian countries, particularly to those whose policy is oriented toward the West (Azerbaijan and Kazakhstan). Azerbaijan is acquiring security in exchange for oil projects, which is ensured by the governments of the countries of those companies carrying out oil business in the republic. Kazakhstan in turn is not in such dire need of security as the Caucasian countries: the government is making use of the main advantage of partnership with foreign companies—investments (which, of course, is also important for Azerbaijan), and is trying to create more privileged conditions for the national contingent of the oil company's employees. Thus many of the republic's projects are divided according to PSA into the minimum share of the national company, which is 50%. AO KazMunaiGaz is the third largest company in terms of oil production volume in Kazakhstan.

Influential oil companies are another example of the Caspian's comprehensive problem, part of which is the sea's legal status. Every sphere of influence also affects all the accompanying problems. For example, since the governments of the Caspian countries do not have the necessary political will it is impossible to determine the damage and take corresponding measures regarding the problem of oil spillage in the sea.

The Environment

Another of the Caspian's problems is its environment. The sea's unique flora and fauna is threatened with extinction. The situation is close to an environmental disaster. This is possibly the most tragic consequence of the local oil business. Rapid and effective measures should be taken in this respect to protect the environment and its inhabitants in the Caspian Basin. But not one country of this basin has yet to provide sufficient financial and political support to ensure that the measures undertaken are

¹⁷ See: Official site of the LUKoil Company, available at [<http://www.lukoil.com/materials/doc/DataBook/DBP/2007/FactBook/part3.pdf>, http://www.lukoil.ru/static_6_5id255.html].

¹⁸ See: *Ibidem*.

¹⁹ See: L. Kleveman, *The New Great Game: Blood and Oil in Central Asia*, Atlantic Monthly Press, New York, 2003, p. 65.

effective and the money allotted from the state budgets for them is spent to its maximum benefit. This is leading to the sea being further polluted with wastes from the activity of oil companies in the region. But the main thing in this respect is that not one global decision in the environmental sphere can be executed without settlement of the sea's legal status.

The rapidly shrinking population of the Caspian seal, sturgeon, and rare birds is only part of the environmental disaster in the Caspian. Along with this corruption and poaching are flourishing. One of the most popular illegal acts of "fish businessmen" is the illegal export of sturgeon and black caviar. Taking advantage of the absence of efficient measures to preserve the unique fish and bio diversity of the Caspian and of the precise coordination of the border services, the black market is having a hey day. As a non-renewable resource, the sturgeon population is dwindling before the very eyes. Keeping in mind the average prices in 2001, one ton of oil cost around 140-150 dollars, while 1 ton of black caviar cost 500,000-700,000 dollars.²⁰

As Professor A. Butaev believes, this environmental situation in the Caspian is due to the littoral governments' faulty attitude toward this problem. They are much too carried away with the oil business, although preservation of the bio diversity of the Caspian Sea should be of greater priority. According to specialists, the oil reserves discovered in the region will run out in 40-50 years, while the fish potential could exist for centuries if it were properly maintained.²¹ A. Butaev regards the problem of the Caspian as a single whole and concludes that resolution of its environmental issues cannot be separated from questions of division of the sea's hydrocarbon resources, economic strategies, and political decisions of the littoral states. Moreover, political will is the cornerstone of this issue, which cannot be resolved without defining the legal status of the sea.²²

In this respect, the professor proposes establishing a common use regime in the Caspian (condominium). It is difficult to say if this will help to improve the current strained relations among the main political and economic players in the sea. But few are disputing the fact that preservation of its unique ecosystem should be one of the most important issues. However for the time being this is only a powerful political weapon for some countries in defense of their position regarding the Caspian's legal status.

Prospects

When talking about the prospects for resolving the Caspian's legal status, the recent summit of the Caspian states held on 16 October, 2007, is a good case in point. Despite the fact that no specific breakthroughs directly regarding this issue were made, important agreements were reached in the security sphere. The presidents agreed that the Caspian states would not allow other states to use their territories and military forces to carry out military operations against littoral states. Moreover, not one of the littoral states would use its military forces against any other of its littoral neighbors. This demilitarization of the sea became a good guarantee of security in the Caspian for Iran, for which this meeting was the most propitious in this respect. As for the other states, they did not receive any guarantees of possible mitigation in the near future of Iran's position on the legal issue.

Russia, Kazakhstan, and Azerbaijan firmly upheld their positions on division of the sea. The then Russian president Vladimir Putin even insistently recommended that the participants in the process adopt the principle of dividing the sea down its modified median line.

²⁰ See: V. Guseinov, op. cit., p. 199.

²¹ See: Ibidem.

²² See: A.M. Butaev, "Pravovoi status i problemy edinstva i raznoobraziia ekosistem Kaspiia," in: *Mezhdunarodnaia konferentsiia: Kaspii: pravovye problemy*, Moscow, 26-27 February, 2002.

There is one problem with this—the disagreements between Azerbaijan and Turkmenistan regarding certain fields. For this very reason, and also based on Iran's security considerations, the question of the sea's status remains open.

The question of the Trans-Caspian oil pipeline was also being actively discussed. Kazakhstan President Nursultan Nazarbaev said that the five Caspian states should agree upon its route together,²³ which was obviously done to attract attention to this project and to raise economic interest in it by all the sides. But Russia again argued that this project was illegal for environmental considerations.

On the whole, the forecasts of experts boil down to the fact that the possibility of a major change in the situation is very unlikely. In particular, V. Markov, an advisor in the analytical department of the Eurasian Economic Community, rather skeptically commented on this issue. In his opinion, the changes in the opinions of the countries on the legal status are very justified, although he noted that Iran's proposal (dividing the sea into 20% sectors) does not look completely justified and is hardly feasible at present. Here a parallel can also be drawn with the opinion of former special Russian representative on the Caspian V. Kaliuzhny, who believes that natural allotment of the length of the coastline should be the main argument when determining the length of the national sector in the sea.²⁴

V. Markov also noted that a unanimous, that is, by all five countries, answer to the question of the sea's legal status today does not appear realistic, keeping in mind Iran's stubbornness and the progress achieved on a bilateral basis between most of the other Caspian countries. The current de facto delimitation, in his opinion, will remain the basis of relations in the Caspian. But experts do not exclude that in the event the contradictions between Baku and Ashghabad regarding the fields are resolved pressure on Tehran could rise.

The forecast by U. Markus from the Institute of Management, Economics, and Forecasting (Almaty) is more optimistic. She believes that the de facto situation will nevertheless acquire a legal formulation (de jure) over time,²⁵ explaining this by the fact that the current agreements are nevertheless largely regulating the Caspian's legal status in relations with foreign investors.

Decisions will also greatly depend on the geopolitical situation in the region and the world, particularly keeping in mind the U.S., Turkish, and European (to a lesser extent) influence on it. Nor can we disregard the fact that Iran and Russia, being world and regional powers building their own, and at the same time world, policy, and keeping in mind the opinion of the U.N. Security Council and the world community as a whole, will also stick to their own common geopolitical course with respect to the Caspian region.

And with the current relatively high level of demilitarization in the region, the only strong mechanism of influence both from the West and from the Caspian countries is the economy. This will evidently bring regional policy to a new level based on economic cooperation. For example, Russia might possibly make greater use of economic levers of influence to have an impact on other CIS countries in the Caspian and not proceed from its political goals, as it did in the 1990s. It will evidently continue to control the oil transportation routes from these countries. It is difficult to predict how the situation with respect to environmental issues in the region will change. If the political will of the governments of its countries remains at the previous level, we cannot expect any positive changes.

So, keeping in mind the entire complexity of the issues and the comprehensive nature of the problem as a whole, the signing of a five-way treaty on the sea's legal status currently seems highly

²³ See: A. Kolesnikov, "Raznoglasiiia vybrosili v more," *Kommersant*, No. 190 (3766), 17 October, 2007.

²⁴ See: *Mezhdunarodnaia konferentsiia: Kaspii: pravovye problemy*, Moscow, 26-27 February, 2002.

²⁵ See: S. Blagov, J. Lillis, "Despite Lack of Progress, Caspian Summit Leaves Participants Optimistic," *Business & Economics* [Eurasianet.org], 17 October, 2007.

unlikely. Moreover, keeping in mind the progress in reaching bilateral agreements, de facto documents could continue to regulate the relations in the region. The political situation and dependence of the Caspian states on geopolitics, as well as the state of affairs in the world in general, are so complicated that there is no time for dealing juridically with all the other multitudinous interests expressed by national and foreign companies and environmentalists. The distribution and development of resources on the shelf are regulated by the de facto situation, while fishing and water boundaries are regulated by the de jure agreements of 1921 and 1940.