

ENERGY AND RESOURCE POLICY

**THE INTERNATIONAL LEGAL STATUS OF
THE CASPIAN SEA:
GEOPOLITICAL CONSIDERATIONS OF
THE CASPIAN STATES AND
HYDROCARBON RESOURCES**

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ABSTRACT

The dissolution of the U.S.S.R. and the achieved independence of the former Soviet republics (Azerbaijan, Kazakhstan, and Turkmenistan) have led to a change in the geopolitical situation in the Caspian region. Five entities of the international law appeared on the shores of the Caspian.¹ Almost immediately, there emerged a problem of defining the status of the Caspian Sea.

¹ R.F. Mamedov, *Mezhdunarodno-pravovoi status Kaspiiskogo moria: vchera, segodnia, zavtra*, Azerneshr, Baku, 2006, pp. 36-39.

Russo-Persian and Soviet-Iranian agreements, in spite of the centuries-old history, did not determine the international legal status of the Caspian Sea and, therefore, did not regulate questions of subsoil resources' utilization. The need for regulating the development of mining in the Caspian region was absent during the period of the U.S.S.R. since all of the Caspian Soviet republics were subjects to its unified code of laws. Furthermore, in contrast to the 19th century, when the output of the Caspian region's oil fields had an impact on the world oil market,

in the 20th century, the center of oil production began to shift to other regions of the Soviet Union. Accordingly, the interest in the Caspian region and its hydrocarbon resources was sharply reduced.

The question of the international legal status of the Caspian Sea arose immediately after the dissolution of the Soviet Union and was caused by discrepancies in the national interests of the states of the Caspian region, as well as the lack of legal measures that would be adhered to by all the countries of the region and which could serve as the basis for determining the international legal status of the Caspian Sea. The New Independent states (NIS) of the Caspian region were not parties to the previous treaties, which did not meet their political and economic aspirations.

The discovery of large oil and natural gas deposits in the Caspian Sea had posed not only a question of the definition of its international status, but also the question of how to divide the Caspian natural resources. The earlier Russo-Persian (and subsequently Soviet-Iranian) treaties were con-

cerned only with issues of regulating navigation and fishing and did not affect the questions of exploration, extraction, and transportation of crude oil and natural gas by installing pipelines on the bottom of the Caspian Sea, etc. Not having any historical commitments, the new Caspian countries—Azerbaijan, Kazakhstan, and Turkmenistan—began to pursue a unilateral policy, in which their national interests prevailed.²

Despite the divergent positions, the Caspian countries managed to achieve bilateral and tripartite agreements on the legal status of the part of the Caspian Sea. This gave precedence for creating legal means for further development of oil and gas fields on the Caspian Sea shelf. Within the five-sided format of negotiations, the countries of the region are continuing negotiations, planning to sign the Convention on the international legal status of the Caspian Sea in 2017.

² P.V. Savaskov, "Pravovoi rezhim Kaspiiskogo moria," in: *Iuzhnyi flang SNG. Tsentralnaia Azia-Kaspii-Kavkaz: vozmozhnosti i vyzovy dlia Rossii*, ed. by M.M. Narinskiy, A.V. Malgin, MGIMO, Logos, Moscow, 2003, pp. 147-162.

KEYWORDS: Caspian Sea, Caspian region, international legal status, hydrocarbon resources, Caspian states.

Introduction

For more than 340 years since the signing of the first treaty between Russia and Persia, bilateral treaties governed the legal climate of the Caspian Sea region. At first, the Russian Empire established certain obligations with Persia, secondly, the Soviet Union with Persia, and from 1935 onwards, the U.S.S.R. with Iran.³

Russia established itself on the shores of the Caspian Sea in the early 18th century, after the successful military Persian (Caspian) campaign of Peter the Great, in an effort to pave the way across the sea to Central Asia and India. The result of the campaign became *the St. Petersburg Treaty of 1723 (the Persian Treaty)*, according to which Russia promised military aid to the Shah of Persia.⁴ To Russia went the coastal territories of Persia with the cities of Baku, Derbent, and the provinces of

³ Yu.E. Fedorov, *Pravovoi status Kaspiiskogo moria*, Moscow, 1996, p. 36.

⁴ A.B. Shirokorad, *Kaspii—russkoe ozero. Velikii Volzhskii put. Bolshaia neft i bolshaia politika*, AST, Moscow, 2007, p. 77.

Gilan, Mazandaran, and Astrabad. Persia lost the rights to navigation on the Caspian Sea, while Russia began to build its fleet there, in the city of Astrakhan. Persia did not ratify the Treaty.

In the year of 1732, the Russian Empress, Anna Ioannovna, signed *the Treaty of Rasht on Demarcation and Transfer of Some Territories to Ensure Freedom of Commerce and Navigation on the Caspian Sea and the Rivers Arax and Kura*. According to the Treaty, Russia withdrew its troops and returned to Persia the territories on the southern coast of the Caspian Sea, acquired during the Russo-Persian campaign of 1722-1723 (provinces of Astrabad, Gilan, and Mazandaran). In return, Russia received the right to free trade and transit in Persia. In 1735, Russia and Persia concluded *the Ganja Treaty of "Eternal Union."* To Persia went Baku and Derbent. In 1813, *the Gulistan Peace Treaty* was signed, putting an end to the Russo-Persian war of 1804-1813. Under the terms of the Treaty, Persia reiterated its abandonment of authority over Georgia, Daghestan and North Azerbaijani khanates. Russia received the exclusive right to keep a military fleet in the Caspian Sea (Art 5). Russian and Persian merchants were permitted to trade freely in the territory of both countries. On the Caspian Sea, the freedom of the Merchant Navy was proclaimed.

In 1828, *the Turkmenchay Treaty* ended the Russo-Persian war of 1826-1828. The Treaty extended the territorial border of Russia, strengthened its military-strategic and economic position in the Caspian Sea, secured the admittance of Northern Azerbaijan and Eastern Armenia to Russia. Of great importance for Russia was the eighth article of the Treaty, which established navigation rules for sailing Russian and Persian vessels on the Caspian Sea. Russia again acquired the exclusive right to rule—to maintain a Navy on the Caspian Sea, by committing itself to protect the Persian coast from attacks by the Turkmens. The exclusive right of Russia to sail military vessels on the Caspian Sea made it Russia's internal body of water and led to commercial-political consequences, allowing merchant shipping to be regulated among other things.

In Turkmenchay, a Trade Agreement was also signed, consisting of nine articles. It gave Russian merchants the rights to trade freely and permitted acquisition of real estate throughout Persia. The Agreement became the foundation on which relations between Russia and Persia, up to the formation of the U.S.S.R., were built.

After the October Revolution of 1917 and the formation of the Soviet Union at the end of 1922, a period of re-examination of the previous treaties began. On 26 February, 1921, *a Treaty between the Russian Socialist Federative Republic and Persia* was signed, which established the principles of equality as the basis for bilateral relations between the two states (concerning the rules of navigation and fishing rights).

In 1927, the U.S.S.R. and Persia concluded *the Treaty of Guarantee and Neutrality*, confirming the Soviet-Persian treaty of 1921. In 1931, the Convention on Settlement, Commerce and Navigation between the Soviet Union and Persia was signed. The document, together with the rules relating to legal issues affecting citizens in the territory of the contracting states, as well as the issues of trade relations, contained provisions regarding shipping and fisheries on the Caspian Sea and reaffirmed the provisions of the Treaty of 1921. The Treaty codified the special status of the Caspian Sea-commercial ships: they were granted the national port-of-entry regime when registering in ports, during stay and when exiting.

Unilaterally, the Soviet Union, on the basis of the order of the NKVD of 9 January, 1935, On the Implementation of the Legal Regime of the Caspian Sea, adopted for the border the perimeter limits "connecting exit points of the fringe villages" Ghassan-Kuli (Turkmenia) and Astara (Azerbaijan), the so-called Ghassan-Kuli line. It should be noted that for many years neither the Soviet Union nor Iran ever brought up the subject of setting boundaries in the Caspian Sea and the delineation of its territorial waters. Then, on 27 August, 1935, *a Treaty on the Establishment of Commerce and Navigation between the U.S.S.R. and Iran* was signed, which was the first ever to create a 10-mile coastal zone. It was again emphasized that the Caspian Sea may only be used by the vessels of the

U.S.S.R. and Iran exclusively. However, the Treaty lacked clear provisions on the delimitation of the Caspian Sea, which created difficulties in guarding the borders.

The Treaty of Commerce and Navigation between the Union of Soviet Socialist Republics and Iran was signed in 1940. It practically replaced the Treaty of 27 August, 1935. Under its provisions, all aspects of the use of the sea and its resources were the exclusive right of the coastal states, i.e. the similar provisions of the Convention on Settlement, Commerce and Navigation were confirmed. As a result, just the two treaties (of 1921 and 1940) determined the Caspian Sea's legal regime until the disintegration of the Soviet Union.⁵

Political Orientation of the Caspian States

After the collapse of the Soviet Union, the number of Caspian coastal states in the Caspian region increased. The sovereign states of Azerbaijan, Kazakhstan and Turkmenistan were formed in the Caspian Sea region, implementing their own, independent policies.

Russia lost its right to the exclusive use, together with Iran, of the Caspian Sea, its "status-quo" of the earlier (U.S.S.R.-Iran) times, even though in legal terms, Russia relied on the principle of continuity of Russian statehood. According to this principle, the Russian Empire, Russian Republic, R.S.F.S.R., the Soviet Union and the Russian Federation—are one and the same entity involved in inter-state relations, one and the same entity of the international law, which continues to exercise the rights and discharge obligations arising from its international treaties. Russia's position was also determined by the fact that Azerbaijan, Kazakhstan, and Turkmenistan, as member states of the CIS, confirmed its legal succession with respect to the status of the Caspian Sea in the Alma-Ata Declaration of 21 December, 1991, whereby "the Commonwealth Member states ensure the observance of international obligations resulting from treaties and commitments incurred by the U.S.S.R."⁶

At the very beginning of the "legal marathon," in 1991, Russia raised the question of preservation of the biological resources of the Caspian Sea, primarily its unique sturgeon species, and the signing of an Agreement on the management of the biological resources of the region, based on the existing statutory laws regarding the legal regime of the Caspian Sea and envisaging unrestricted fishing in its waters. The Russian position, based on the rules of international law, was contrary to the interests of the new coastal countries and the West's oil capital, which saw in it the desire to retain a formerly enjoyed influence while preventing other countries from participating in the development of the area's natural resources. Russia's position did not find support with the Caspian countries, for which the exploration of oil resources became a vital matter of their economic development. Thus, the approach of Azerbaijan to the solution of the problem of defining the international legal status of the Caspian Sea was largely predetermined by the development of the oil and natural gas industry in this republic. From the 1960s on, more than half of the oil of the republic was extracted from marine deposits with the main oil reserves contained in the seabed. Accordingly, Azerbaijan was interested in obtaining the maximally reliable legal guarantees for the development of its marine energy resources.⁷

⁵ R. Mamedov, "International Legal Status of the Caspian Sea in its Historical Development," *Turkish Yearbook*, Vol. XXX, 2000, p. 128.

⁶ Quoted from: I.S. Zonn, *Kaspii: illuzii i realnost*, Moscow, 1999, p. 467.

⁷ S.S. Zhiltsov, I.S. Zonn, A.M. Ushkov, *Geopolitika Kaspiiskogo regiona*, Mezhdunarodnye otnosheniya, Moscow, 2003, pp. 84-87.

In 1992, Azerbaijan began to prepare its own version of the draft of the Convention on the Legal Status of the Caspian Sea. It noted that the Caspian Sea is an international borderline lake, which must be divided, in accordance with the customary mapping of international lakes, into five parts (sectors), and each coastal state has the right of sovereignty over the relevant sector of the Caspian Sea. With that, Azerbaijan assumed that it was not bound by any international obligations regarding its existing status.

This position reflected the geopolitical processes unfolding in the Caspian region from the beginning of the 1990s. The advent of foreign oil companies and favorable forecasts for oil and gas deposits increased interest on the part of major oil and gas companies, and Western countries had a strong impact on the position of Azerbaijan in its approaches concerning the definition of the international legal status of the Caspian Sea.

In the beginning of 1992, at the Conference of the Caspian States, Iran initiated the preparation of a Treaty on Cooperation in the Caspian Sea and the establishment of an organization capable of tackling all issues of development of the Caspian Sea and its resources. In Russia, this proposal was met with caution because it was perceived as Iran's intention to pressure Russia on the issue of the Caspian Sea.

Iran originally stood for the condominium principle, i.e. the joint use of the sea and its resources by all five of the Caspian states. Such an approach by Tehran stemmed from the premise that if the sectional division of the sea was applied, Iran's share would have accounted for the smallest part of the hydrocarbon reserves of the Caspian Sea. However, the principle of the condominium was unacceptable to the other Caspian states and had no chance of ratification. Therefore, in addition to this "perfect" version, Iran developed a fallback plan: to agree to section off the Caspian Sea—20% of the water area and seabed each. However, the conundrum remained in that it was difficult to determine exactly how to divide the Caspian Sea into "equal shares."

The Iranian leadership maintained, albeit with reservations, the principle of joint ownership of the natural resources of the Caspian Sea. In contrast to the Russian position, which did not allow any exceptions in this matter, the Iranian approach was more flexible.

The negotiations on the delimitation of the Caspian Sea began in 1992 and were aimed at the convergence of national biases of the Caspian countries. All this time, Russia did not abandon attempts to find a compromise on the Caspian's status. In 1992, the Russian Foreign Ministry announced Caspian to be a "landlocked sea" with a 10-mile wide zone of territorial waters for the coastal states. The objective was but one—to create an adequate international legal framework for the activities on the Caspian Sea, and that was one of the main factors ensuring energy security in the region. It was assumed that the future Convention on the Legal Status of the Caspian Sea will also preserve the Soviet-Iranian treaties.

Of all the Caspian countries, the position of Turkmenistan turned out to be the most flexible. Turkmenistan initially considered the Caspian Sea to be an interior body of water-lake, to which neither the categories of marine law nor the separation into national sectors applied. Such a position was consistent with the provisions of the undated Soviet-Iranian treaties on the status of the Caspian Sea of 1921 and 1940.

In 1993, Turkmenistan was the first of all the Caspian countries, which, having adopted the Law on the State Border, established, in accordance with the provisions of the Law of the Sea, its territorial sea area with a width of 12 nautical miles and the exclusive economic zone, thereby extending its coastal jurisdiction over a vast territory of the Caspian Sea. Two years later, Turkmenistan agreed with the position of the Russian Federation that "neither the seabed nor the surface of the Caspian Sea can be divided." This position was reaffirmed in the Turkmenistan-Iranian Communiqué, where it was stated that the "exploitation of the resources of the Caspian Sea is not possible before determining its legal regime" and "foreign states are not allowed to interfere in the problems of the Caspian region."

In 1993, Kazakhstan maintained the position that the option “Borderline Lake” and “Open Sea” for the Caspian Sea is unacceptable, placing it in the category of the “Landlocked Sea.” Kazakhstan proposed the use of Arts 122 and 123 of the U.N. Convention on the Law of the Sea of 1982, while retaining the closed sea status for third countries and by abandoning the condominium principle.

In 1994, Kazakhstan introduced the coastal states to its draft of the Convention on the Legal Status of the Caspian Sea, in which it was regarded as a Closed Inland Sea. In this case, according to the United Nations Convention on the Law of the Sea of 1982, a state border is to be set to the breadth of the territorial sea, as well as the limits of the exclusive economic zone for each state. In the same year, the President of Kazakhstan issued a Decree on International Consortium for the assessment of oil and gas reserve capacity of the Kazakhstan sector of the Caspian Sea. In addition, Kazakhstan proposed an initiative on the sectioning of the Caspian seabed, leaving the body of water for the common use.

In 1993 and 1994, Russia and Iran rejected the possibility of nationalizing the deposits in the central part of the sea and insisted on joint production and sales of crude oil. In 1994, at the meeting of the Deputy Ministers of Foreign Affairs in Moscow, the Russian side actively promoted the idea of local cooperation in the Caspian region. However, the situation of resolving the question of the international legal status of the Caspian Sea was greatly influenced by data on the presence of significant reserves of hydrocarbon resources. Azerbaijan, stirred by information on the fantastic deposits, insisted on full change in the legal status of the Caspian Sea.

Generally, in the first half of the 1990s, Russia’s and Iran’s approaches to defining the international legal status of the Caspian Sea were similar, with Iran taking a more ambivalent position. After gaining 10% participation share in the project for the development of the Azerbaijani oil fields of Shah Deniz, Iran recognized de facto the division of the Caspian Sea by national territorial waters. Only the exclusion of the Iranian side from the project under the pressure from the United States prevented further changes in the approaches of Iran regarding the international legal status of the Caspian Sea.⁸

The Role of Hydrocarbon Resources

The beginning of a new phase in the determination of the legal status of the Caspian Sea can be considered 20 September, 1994, when Azerbaijan signed the contract with major foreign oil companies for the development of oil fields on the shelf of the Caspian Sea (the so-called “contract of the century”). If, prior to the signing, the question of the status of the Caspian Sea had remained purely theoretical, after the signing of the contracts with the oil companies and press releases on deposits of hydrocarbons it acquired the geopolitical significance.

After signing the contract, the Russian Foreign Ministry sent to the U.N. General Assembly a special document on the legal status of the Caspian Sea, which read: “...unilateral action in respect of the Caspian Sea is unlawful and will not be recognized by the Russian Federation, which reserves the right to take such measures as it deems necessary and whenever it deems appropriate, to restore the legal order and overcome the consequences of unilateral actions.”⁹ However, the stance of the Russian Ministry of Foreign Affairs on the recognition of the resources of the Caspian Sea as objects for collective utilization (condominium principle), as well as appeals for joint development of the

⁸ S.V. Vinogradov, “Toward Regional Cooperation in the Caspian: A Legal Perspective,” in: *Scientific, Environmental, and Political Issues in the Circum-Caspian Region*, Kluwer Academic Publishers, 1997, pp. 53-68.

⁹ See the document *The Position of the Russian Federation on the Legal Regime of the Caspian Sea* sent to the U.N. on 6 October, 1994.

resources of the Caspian Sea, remained largely ignored. The desire for independence, upholding the sovereignty, reliance on their own mineral resources and hope for rapid enrichment served as guidance for the states of the Caspian region.

In the period of 1994-1995, the representatives of the Caspian countries gathered for a final resolution of the issue. In accordance with the protocol of the first meeting of the heads of the legal departments of the Ministries of Foreign Affairs of the Caspian states concerning the legal status of the Caspian Sea, which passed in Tehran in June 1995, the determination of the legal status of the Caspian Sea included questions of navigation, development and utilization of biological resources, questions of environment, the use of mineral resources, determination of the limits of sovereign rights and jurisdictions. At this meeting, representatives of the Caspian states agreed to establish a permanent negotiating machinery to proceed with work on status determination.

At the same time, Azerbaijan, with the support of international oil companies, carried out exploratory work of deposits in its territorial waters of the Caspian. Moreover, in the new edition of its Constitution, adopted in 1995, Azerbaijan declared that the integral parts of the territory of Azerbaijan are its internal waters, its section of the Caspian Sea (lake), and the airspace above it (Art 12).

The information about the hydrocarbon resources served as the main incentive for the accelerated acceptance of the above-mentioned article into its Constitution. Even before securing in the Constitution "its own part of the Caspian Sea," the Azerbaijani side stated that those who are trying to impede cooperation of the republic with the western oil companies are the ones raising the question of jurisdiction in the Caspian Sea. In accordance with this line, Azerbaijan noted that the Caspian Sea is a border lake and should be administered accordingly, i.e. be divided into five sectors, in each of which one of the countries would be an undisputed sovereign.

After the adoption of the Constitution, Azerbaijan continued the course, aimed at legitimizing its unilateral activities of exploration and development of oil fields in the Caspian Sea. In March 1996, the Azerbaijani side stated: "The essence of our position on the status of the Caspian Sea is that the Caspian Sea (lake) falls under the definition of an international border lake as a water pool, lacking a natural connection with the World Ocean and landlocked by the territory of two or more states. Therefore, the basis for the approach to the definition of the status of the Caspian Sea may be based on the generally accepted precepts of international law, customary international law and the local international contract practices governing the status of lakes."¹⁰

The policy of the Republic of Kazakhstan evolved under the influence of the geopolitical changes that occurred in the region in the first half of the 1990s and was strongly biased by the projected plans for oil extraction. Kazakhstan advocated independent utilization of hydrocarbon resources, although its claim to "its own" sector was not as demonstrative as that of Azerbaijan, for example. This position was reinforced when joint ventures with western companies exploring the Kazakhstan shelf produced encouraging results. At the same time, Kazakhstan noted that the common interests of all member states of the Caspian region and the preservation of its ecosystem should be taken into account. In the mid-1990s, Kazakhstan based its position on the assertion that the Caspian Sea must be divided into relevant zones (territorial zones) under the sovereignty of the coastal states and coastal states should have the sovereign right to explore, develop, conserve and use biological and mineral natural resources of the water, the seabed and the subsoil of the Caspian Sea.¹¹

The processes of determining the legal status of the Caspian Sea and exploring and developing its natural resources by member countries continued to proceed in different directions. In cases of contested areas with deposits of oil and gas that created conditions for the emergence of conflicting

¹⁰ Yu.E. Fedorov, op. cit.

¹¹ *Speech of the Deputy Foreign Minister of the Republic of Kazakhstan V. Gazzatov at the International Seminar "The Caspian Oil and International Security,"* Moscow, 5-6 March, 1996, p. 11.

situations, the Caspian countries continued to negotiate. Furthermore, the precipitate actions of Azerbaijan to consolidate its claims in the Constitution exacerbated the situation in the legal field, to a certain extent redefining the options for maneuver in negotiations.

Iran repeatedly announced that it continued to consider the Caspian Sea the “Largest Lake in the world”, which was “the common heritage” of all of the five coastal states. In this connection, Iran believed it necessary to continue concerted actions among all of the Caspian countries. Iran insisted that for the solution to the problem of using biological resources and protecting the lake’s environment the sovereign legislation of each of the five countries must be recognized and respected by all of the other states. The Iranian authorities believed that the development of the resources of the sea should be carried out on a parity basis, regardless of the size of the national sectors of the Caspian Sea. Moreover, the boundaries of these sectors need to be reviewed in connection with the dissolution of the U.S.S.R. and emergence of new Caspian countries.

In 1996, the inflexible position of Tehran did not prevent Russia, Turkmenistan, and Iran to sign a tripartite memorandum of the intention to establish Russo-Turkmenistan-Iranian Oil Company “in order to explore and develop oil and gas deposits in the coastal zones of the three states.”¹² In turn, a concordant position of Kazakhstan and Azerbaijan were agreed upon in September 1996, in a special statement by the presidents of the two countries on the principles for the determination of the status of the Caspian Sea, cooperation in its waters and on the continental shelf.

In the second half of the 1990s, Turkmenistan was to adhere to the same position as those of Kazakhstan and Azerbaijan: it chose the sectional division of the Caspian Sea. Turkmenistan believed that in connection with the practical steps associated with the development of the hydrocarbon resources of the sea, the concept of the condominium lost its merit.¹³ The change in Turkmenistan’s policy toward the sectioning of the Caspian Sea was due to the fact that the effective development of hydrocarbon resources was in many ways tied to its delivery to world markets, while the equitable common use of water body was perceived to possibly adversely affect the laying of pipelines, consequently slowing the development of the resource deposits and negatively influencing investment climate in the area.

The New Russian Proposals

In view of the convergence of policies of the new coastal states on the question of the division of the Caspian, in 1996, Russia put forward a compromise proposal on new principles for the determination of the legal status of the Caspian Sea. Russia was willing to accept the jurisdiction of each Caspian state not only in coastal zones with a width of up to 45 miles but also regarding those fields outside the zones, where the oil production had already been underway or should commence shortly. It was announced that Russia consented to the expansion of the Caspian countries’ zones of coastal fishing from 10 to 20 miles. Support was expressed for the proposal of establishing a regional organization on cooperation in the Caspian Sea, as well as the willingness was stated to recognize, as the ultimate goal of the Caspian states, the full demilitarization of the Caspian Sea region. However, the initiatives were not supported by the Caspian countries, which necessitated once again to look for a compromising option.

The increasing influence of Western oil companies and the beginning of the active development of oil and gas reserves in the Caspian coastal countries forced Russia to intensify its activities. In June

¹² S.S. Zhiltsov, I.S. Zonn, A.M. Ushkov, op. cit.

¹³ *Neft i gaz i Kaspia*, No. 2-3, 1999, p. 93.

1996, the Russian Foreign Ministry established the Working Group on the Caspian Sea, which was charged with the preparation of proposals concerning the Russian Federation's position on the legal status and regime of the Caspian Sea, the exploitation of its biological and mineral resources, as well as the transportation of Caspian oil.

In October 1996, the five Caspian states conducted negotiations at the level of Deputy Ministers of Foreign Affairs. The result was the establishment of a negotiating machinery—the Ad Hoc Working Group (AHWG) at the level of Deputy Ministers of Foreign Affairs of the Caspian coastal states working on the regular basis for the elaboration of the Convention on the Legal Status of the Caspian Sea. It is from this moment on that the rapprochement of policies of the Caspian states began.

In May 1997, Almaty held the first meeting of the AWG. Its results were more than modest. Because of the lack of progress in the five-sided format, it was suggested to transfer the discussion of this issue to the auspices of bilateral meetings.

In 1997, the presidents of Kazakhstan and the Russian Federation in the Joint Statement on Cooperation of the Caspian States on the Use of the Caspian Sea reaffirmed the principle of consensus. The parties expressed the conviction that the joint exploitation of natural resources of the Caspian Sea is in their mutual interests and reaffirmed the right of each other to work on the development of mineral and biological resources of the Caspian Sea within the scope of the respective experience and capabilities of the parties.

Another compromise by Russia was the proposal on the delimitation of the seabed between the neighboring and opposite-lying Caspian states along the modified median line in order to exercise sovereign rights to subsoil, while keeping the greater part of the water body and its surface available for common use. The seabed should have been delineated not based on territory (territorial jurisdiction), but according to prospective structures and deposits (resource jurisdiction), i.e. the Caspian's seabed was not to be determined by states' borders. This version of the proposal was of interest for Kazakhstan. The position of Russia was reflected in the Joint Statement of the Presidents of the RF and Kazakhstan, which was made in January 1998. It stated: "Reaching consensus is to be founded on the conditions of just and equitable division of the Caspian seabed with retention of the general use of water surface, including the guarantee of freedom of navigation, compliance with the authorized standards of fishing and environmental protection." Thus, Russia agreed that the seabed of the Caspian Sea was to be divided among the Caspian states. In July 1998, *an Agreement between the Russian Federation and the Republic of Kazakhstan on Seabed Division of the Northern Caspian for Exercise of Sovereign Rights to Mineral Resource Utilization* was signed. Art 1 of the Agreement states that "the Northern Caspian seabed and its subsoil resources, leaving the water surface in common use, including free navigation, agreed fishing quotas and environmental protection, are divided among the Parties along the median line, modified on the principle of justice and upon agreement of the Parties."¹⁴ The median line used for the delimitation of the water spaces between the states with opposite-lying and neighboring shores, is a line, each point of which is equidistant from the nearest points on the shores of these states. The modified median line includes all the areas, which are not equally spaced from the coasts of the parties and are determined by taking into account the islands and geological structures, as well as other special circumstances and diverse geological expenditures incurred.

Art 2 of the Agreement noted that "the Parties exercise their sovereign rights in relation to exploration, development, and management of the seabed and interior resources of the Northern Caspian within their seabed sections to a delineation line."¹⁵

The approaches of Russia and Kazakhstan reflected the significant geopolitical changes that had occurred in the Caspian region. It had become clear that the rigid commitment to previous positions

¹⁴ Quoted from: *The Caspian Sea Environment*, Springer-Verlag, Berlin, Heidelberg, 2005, pp. 250-251.

¹⁵ *Ibid.*, p. 251.

and orientation only on the U.S.S.R.-Iran treaties without the search for new forms of cooperation could lead to the isolation of Russia and limit its participation in many regional processes. In order to bring the negotiating process out of the deadlock, it was necessary to offer compromising options. At the same time, an uncompromising Russian requirement remained regarding the preservation of the water body for the common use by the Caspian states. Russia stressed that the sea bottom is not to be a delimited territory but mapped according to the presence of prospective structures and deposits, i.e. state borders do not apply under water.¹⁶

Russo-Kazakh agreements influenced the position of Turkmenistan, which, from 1998, came to favor the sectional division of the Caspian Sea. In the middle of 1999, Turkmenistan confirmed its position with respect to the determination of the status of the Caspian Sea, insisting that the development of its national sector, which was an integral part and auspicious economic base for the state, was becoming an ever more important and acute issue daily. The complete and comprehensive integration of the Turkmenistan's sector of the Caspian Sea into the system of a national economy should become the eventual result of resolving this problem. The same task became the responsibility of the activities of the National Service for the Development of the Turkmen sector of the Caspian Sea, mandated by the President of Turkmenistan. The decree for its establishment was signed in August 1999. It was entrusted with tasks such as a detailed, integrated study, research and advancement of the country's strategic region; development and implementation of state programs for development and management of natural resources of the Turkmenistan's sector of the Caspian Sea; formation of regulatory and legal framework for enhancing the Caspian coast; and development of its natural resources. Thus, Turkmenistan confirmed its position on sectioning the Caspian Sea into sectors.

Russia's Increased Attention toward the Caspian

The change of political leadership in Russia in 2000, when the Prime Minister, Vladimir Putin, won the presidential election, led to a more vigorous Russian policy in the Caspian region. At a meeting of the Security Council of the Russian Federation (SCRF), held in April 2000, decisions were made that defined the main directions of the Russian policy in the Caspian. A simplified version for the development of contested oilfields in the Caspian Sea was proposed, applying the principle of joint exploitation of resources or "50/50." According to the Russian proposals, "the State, claiming a disputed oil field, but not yet utilizing it, compensates half the costs incurred by a neighbor, who has already invested in it."¹⁷

In the middle of 2000, Russia attempted once more to resolve the problem of the legal status of the Caspian Sea. Together with Kazakhstan and Azerbaijan, Russia proceeded to work on the delimitation of the Caspian Sea.

Russia's approaches in trying to resolve the international legal status of the Caspian Sea had a positive effect on the disposition of the Caspian states. In 2000, Turkmenistan's Government began to move away from its rigid stance of dividing the seabed, water column and sea surface of the Caspian Sea into national sectors. Turkmenistan acceded to the viewpoint of the countries that proposed to divide the Caspian Sea by the median line principle. The change in the position of Turkmenistan's policy was determined by the geopolitical situation in the region. It became obvious that a rigid adherence to the previous approach did not meet the interests of Turkmenistan and was a barrier to attracting foreign investments for oil and natural gas deposits' utilization.

¹⁶ *Vestnik Kaspiia*, No. 3, 2000, pp. 11-14.

¹⁷ A. Dubnov, "Kaliuzhny vviiazalsia v igru s irantsami," *Vremia novostei*, 3 August, 2000, available at [https://www.neweurasia.info/archive/2000/econom/08_03_mn3.htm].

Azerbaijan's position also began to change after the signing of the Agreement between the Russian Federation and the Republic of Kazakhstan on Seabed Division of the Northern Caspian for Exercise of Sovereign Rights to Mineral Resource Utilization. As a result, in January 2001, in Baku, a *Joint Statement by the Russian Federation and the Azerbaijan Republic on the Principles of Cooperation in the Caspian Sea* was signed. The statement suggested that the first stage was to involve delineating the Caspian seabed between adjacent and opposite-lying states into sectors/zones, based on the principle of the median line, delineated with the account of the equidistant points and modified by an agreement of the parties. The universally recognized principles of international law and the practices established in the Caspian were also to be taken into account. The essence of the agreement can be described by the following formula: "Seabed—divided, water body—common." "The Parties agreed that each coastal state in the sector/zone, formed as a result of such delimitation, would exercise exclusive rights in relation to mineral resources and other lawful economic activities on the seabed."¹⁸ Compared to the Russia-Kazakhstan Declaration, this new formulation used the term "sector/zone" and the added parameter of "other lawful economic activities on the seabed."¹⁹

In November 2001, in Moscow, *the Agreement* was signed between the Republic of Kazakhstan and Azerbaijan Republic on the Delimitation of the Caspian Seabed between the Republic of Kazakhstan and the Azerbaijan Republic. It stipulated: "The Caspian seabed and the subsoil thereof are to be divided between the Parties along the median line, which is delineated on the basis of equal distance from the original base points on the coastline and the islands." Thus, at the end of 2001, three out of five coastal states (Russia, Kazakhstan, Azerbaijan) took the unified position on the delimitation of the Caspian Sea, according to the formula "Seabed—divided, water body—common."

Toward the Multiparty Agreement

The fact that the Caspian countries sought to find a solution to the issue of the legal status of the Caspian Sea was evidenced by the increased number and frequency of meetings of the Ad Hoc Working Group at the level of the Deputy Foreign Ministers of the Caspian States for the Elaboration of the Convention on the Legal Status of the Caspian Sea. These meetings paved the way for conducting *the First Summit of Caspian Sea States*, which was held on 23-24 April, 2002, in Ashghabad. Because of Iran's position, which did not intend to compromise on the mechanism of reservoir delineation and insisted on dividing the Caspian Sea into five equal sectors, the outcome of the Summit did not produce definitive results. The main outcome of the Summit was the oral statement by the President of Russia, Vladimir Putin, that the five leaders of the Caspian coastal states were prepared to continue meeting in the future.

While the countries sought the decision on a multilateral basis, some of the Caspian states sought to reach agreement on a bilateral level. In May 2002, in Moscow, the Russian Federation and the Republic of Kazakhstan signed a *Protocol to the Bilateral Agreement of July 6, 1998, between the Russian Federation and the Republic of Kazakhstan on Seabed Division of the Northern Caspian for Exercise of Sovereign Rights to Mineral Resource Utilization*. According to the protocol, the structure of the Kurmangazy (Kulalinskaia) came under the jurisdiction of the Republic of Kazakhstan, and the Central and Khvalynskoe oil fields— under the jurisdiction of the Russian Federation. The protocol set the geographical coordinates of the Russia-Kazakhstan maritime boundary in the northern part of

¹⁸ *The Caspian Sea Environment*, p. 253.

¹⁹ *Ibidem*.

the Caspian Sea. It was emphasized that the hydrocarbon resources located at the junction of these zones would be developed jointly, on the principle of “50/50.” As a result, Kazakhstan resolved for itself the issue of the international legal status of the Caspian Sea, which allowed it to proceed with further processing of hydrocarbon resources.

Consequently, the “principle of resource division” was implemented. The aforementioned agreement was followed by the signing of *the Agreement between the Russian Federation and the Azerbaijan Republic on the Delimitation of the Adjacent Seabed Sectors of the Caspian Sea* in September 2002, which actually completed the sectioning of the Caspian Sea in its northern part.

By the end of 2002, Russia, Kazakhstan and Azerbaijan had reached a consensus on the Caspian Sea division on the principle of delineating borders only on the bottom and leaving the water surface of the sea for common use. This convergence was achieved because of a compromise approach of the three countries. Azerbaijan stopped insisting on the partitioning of the Caspian Sea into sectors, though not abandoning the idea, and Russia softened its approach by agreeing to establish borders for resource deposit areas. The Russian Foreign Ministry stressed that “bilateral cooperation is a critical element of interaction between coastal countries not only on land but also the sea. It needs appropriate legal instrumentation. New legal tools are developed for those activities in the Caspian Sea, which the Soviet-Iranian treaties did not embrace.”²⁰

On 14 May, 2003, in Almaty, *a Tripartite Agreement between the Russian Federation, the Azerbaijan Republic, and the Republic of Kazakhstan on a Junction Point of Lines Dividing the Neighboring Parts of the Caspian Seabed* was signed. Henceforth, the extraction of mineral resources of the seabed in the Northern Caspian was based on the international legal framework. The agreement divided 64% of the Caspian Sea (Kazakhstan—27%, Russia—19%, Azerbaijan—18%).

In spite of the tripartite agreement between Russia, Azerbaijan, and Kazakhstan, the Caspian states continued multilateral negotiations aimed at elaborating the content of the Convention on the Legal Status of the Caspian Sea. The meetings allowed bringing closer the positions of the Caspian states on the wording of the final document. At the 20th anniversary meeting of the Ad Hoc Working Group, the Russian Foreign Minister, Sergey Lavrov, noted that most of the articles and terms of the Convention had already been provisionally agreed, and named the remaining issues that required trade-offs. They were “the division of the Caspian Sea and its southern seabed, the scope of military activities, the conditions of transit, and the installation of the trans-Caspian pipelines.” With regard to the Caspian Sea, Russia proposed to establish a national zone for each Caspian nation 15 miles wide. Outside of this zone, all the waters of the sea would have been relegated for common use by all of the states (in the Soviet-Iranian treaties the fishing zone did not exceed 10 nautical miles). The Russian side also proposed to include in the Convention a formula for maintaining a stable balance of the parties’ weapons and the implementation of military construction within reasonable sufficiency.”²¹

In 2007, the *Review of the Foreign Policy of the Russian Federation* noted that Russia’s approach to the issue of delimitation of the Caspian Sea is contingent on the understanding that the task of protecting the environment and conservation of biological resources can be effectively dealt with if most of the sea remains in common use by the Caspian states.

In October 2007, in Tehran, *the Second Summit of the Heads of the Caspian States* was held. It laid the foundations for the continuation of the negotiating process for defining the Caspian Sea international legal status and gave impetus to determining the legal regime and the width of the national maritime zones, as well as solving military activities issues and the problems of transiting to the World Ocean. The ratified Summit’s Declaration emphasized, “the negotiating process on the

²⁰ *Vestnik Kaspiia*, No. 2, 2002, pp. 5-8.

²¹ I.S. Zonn, S.S. Zhiltsov, *Novy Kaspii. Geografya, ekonomika, politika*, Vostok-Zapad, Moscow, 2008, 544 pp.

legal status of the Caspian Sea is conducted in the spirit of mutual respect, reciprocal understanding and equality, universally recognized principles of international law, and in an atmosphere of civilized discussion.” The parties also noted the need to actively continue these negotiations.

In November 2010, *the Third Summit of the Heads of the Caspian States* was held, which confirmed its intention to complete the work on the Convention. During the summit, *the Agreement on Cooperation in Security Sphere in the Caspian Sea* was signed, which was of paramount importance for the Russian Federation, since it contained the fundamental precept, according to which the security of the Caspian Sea is a matter of concern for the coastal countries only.

On 29 September, 2014, in Astrakhan, *the Fourth Summit of the Heads of the Caspian States* took place, which, to a large extent, can be considered a breakthrough. According to the President of Russia, Vladimir Putin, one of the main results was the significant progress in the preparation of a Convention on the Legal Status of the Caspian Sea. This gave reason to believe that the countries would come to the signing of the Convention in the nearest future. In addition, the Russian President stated that the talks had resulted in a clear formulation of terminology on the delimitation of water areas, seabed, mineral resources, the regime of navigation and fishing. The significant provision was the one that designated most of the Caspian Sea for the common use by the parties.²²

Although the Convention on the Legal Status of the Caspian Sea was not signed, a political statement was made at the Summit, establishing the basic principles of the Convention. In the document, the parties noted the likelihood of reaching a consensus on the legal status of the Caspian Sea in the following two years. During this time, the differences on the very core issue related to sectioning of the Caspian’s sea shelf, containing deposits of oil and gas, had to be resolved since no progress on the issue had been reached.

In the course of the Summit, the Presidents of the Caspian states spoke in favor of the expansion of regional cooperation, the possibility of creation of the free trade area. In addition, the signed memorandum contained the consensus on the delimitation of the waters. Each state obtained the right to exclusive harvesting of bio-resources to a distance of up to 25 nautical miles from its shores. The remainder of the water was designated for common use.

The sides reaffirmed the principle of “no presence” in the Caspian Sea of armed forces of other than the coastal states. In addition, it was agreed to intensify cooperation based on the Framework Agreement on Security in the Caspian Sea and to strengthen the interaction between the respective border guard services.²³

The Presidents of the Caspian countries agreed to finalize the Convention on the International Legal Status of the Caspian Sea within the next two years. The primary causes for the differences in approaches to the sectioning of the sea shelf continued to be the presence of crude oil and natural gas deposits that it contained.²⁴

In 2015, the countries continued to follow the foreign policies developed previously, adjusting them to respond to emerging issues in national economies. The Russian policy was based on the well-known, established approaches. In May 2015, Astrakhan held a visiting session of the Foreign Ministry of the Russian Federation on the Caspian issues. During the meeting, the Deputy Foreign Minister, Grigory Karasin, reiterated that the Convention on the Legal Status of the Caspian Sea could be adopted only after reaching a consensus among all of the five states having access to the Caspian Sea. At the same time, Russia’s policy in the Caspian Sea aimed at further implementation of projects involving the development of oil fields. The company Lukoil planned to invest a significant amount

²² S.A. Mikheev, A.E. Chebotarev, G.S. Kovalev, “Problemy regiona nakanune IV Kaspiiskogo sammita,” *Problemy postsovetского prostranstva*, No. 2, 2014, pp. 31-69.

²³ K. Latukhina, “More mira,” *Rossiiskaia gazeta*, 30 September, 2014, p. 2.

²⁴ S.S. Zhiltsov, *Politika Rossii v Kaspiiskom regione*, Aspekt Press, Moscow, 240 pp.

of capital in the Filanovskiy oil field and build new platforms. From 2015 on, the Russian company intended to focus mainly on extracting oil, which is more profitable compared to gas.

Concurrently, Russia sought to resolve contentious issues relating to the development of hydrocarbon fields located in the central part of the Caspian Sea. In October 2015, during the Russian President's visit to Kazakhstan, a Protocol, amending the Protocol of the Agreement between the Russian Federation and the Republic of Kazakhstan on Seabed Division of the Northern Caspian (6 July, 1998), was signed. The signed document defined the conditions for the joint development of the Central oil and gas complex. According to Vladimir Putin, "we (Russia and Kazakhstan.—S.Z.) have big plans for the joint oil production in the Caspian Sea."²⁵ The protocol allowed the Russian government to issue a license for the exploration and production of oil and gas of the Central field on the Caspian Sea shelf, which was opened in May 2008.²⁶

Conclusion

For a quarter of a century, the Caspian countries have been trying to solve the problem of the international legal status of the Caspian Sea. By the mid-2016, there were 46 meetings conducted of the Ad Hoc Working Group on the elaboration of the Convention on the Legal Status of the Sea, and the heads of the Caspian states held four summits on the subject. Despite such efforts, the countries of the region have not yet been able to develop common approaches to these political and legal problems. However, the negotiating process has been bringing the positions of the states of the Caspian region closer together.

At the end of the 1990s, Russia proposed a compromise to the step-by-step solution of the problem of the international legal status of the Caspian Sea. This made it possible to untangle the negotiating process, in which the countries of the region dead-ended, and it deterred the Caspian countries from one-sided actions, i.e. extracting the hydrocarbon resources in "their own" sectors, and from the construction of export pipelines on the bottom of the sea. As a consequence, the trilateral and bilateral agreements reached by Russia, Azerbaijan, and Kazakhstan, and later by Kazakhstan and Turkmenistan, have created a solid foundation for the normalization of relations, which had a positive impact on the situation in the region.

The main challenge for the Caspian countries remains to define the international legal status of the Caspian Sea in the five-sided format. To achieve this goal, four summits of the heads of the Caspian coastal states were conducted, as well as meetings of the Ad Hoc Working Group were held.

The signing of the Convention on the International Legal Status of the Caspian Sea will create a legal framework for further cooperation between the countries of the region and eliminate the causes of the differences related to the development and export of hydrocarbon resources to foreign markets.

²⁵ I. Lis, "Effekt integratsii," *Delovoi Kazakhstan*, 23 October, 2015, p. 2.

²⁶ M. Sergeev, "Putin i Nazarbaev soglasovali uslovia geologorazvedki na Kaspui," *Nezavisimaia gazeta*, 16 October, 2015, p. 4.