

REGIONAL POLICY

KAZAKHSTAN DIPLOMACY IN DEFINING THE LEGAL STATUS OF THE CASPIAN SEA: 1991-2017

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ABSTRACT

This article considers the issue of the legal status of the Caspian Sea, its historical background, the key documents that currently regulate various aspects of this status, and the specifics of Kazakhstan's policy on this issue in a broad international context. The need to determine the legal status of the Caspian Sea arose after the breakup of the U.S.S.R., when the emergence of new entities of international law—Azerbaijan, Kazakhstan, and Turkmenistan—made it necessary to divide the waters and seabed of the Caspian between five countries. The efforts to determine the status of the Caspian are seriously hindered, in particular, by the unresolved issue of whether it should be classified as a lake or a sea: the delimitation of lakes and seas between littoral countries is governed by different rules of international law. Kazakhstan owns a large part of the Caspian seabed and Caspian oil and gas reserves, which is why it is highly interested in defining the status of the Caspian Sea. Owing to its multilateral cooperation diplomacy, Kazakhstan has earned the reputation of the main initiator of many undertakings in this area. The fifth Caspian Summit to be held in Kazakhstan will provide new opportunities for Kazakhstan diplomacy to take an active part in resolving the existing problems and enhancing the country's prestige in the international arena.

The purpose of this study is to analyze the strategic diplomacy of Kazakhstan in matters of defining the status of the Caspian Sea in the period from 1991 to 2017.

The countries of the Caspian region demonstrate different approaches to the problem of the legal status of the Caspian, determined by both historical and political contexts. That is why it is important to identify the general and specific in regional political processes and the opportunities to resolve this issue and overcome the existing contradictions. The study is factually based on primary sources. In addition, the authors have analyzed a large body of regional and extra-regional research literature and data collected from the publications and websites of official institutions. The research method used is that of general qualitative analysis.

The study is divided into the following sections: the main characteristics of Kazakhstan's position on the status of the Caspian Sea; Kazakhstan's agreements with Russia and Azerbaijan on the delimitation of the Caspian Sea in the period from 1998 to 2003; the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention) of November 2003; an analysis of the first four Caspian summits; and Kazakhstan's "diplomatic maneuvers" strategy in the period from 1998 to 2017.

KEYWORDS: *legal status of the Caspian, Kazakhstan's initiatives, delimitation of maritime boundaries, convention, agreement.*

Introduction

The article identifies the stages of the negotiations on the legal status of the Caspian and shows how the position of each particular country has changed over time, taking into account its historical conditions. It also considers the possibility, in light of the experience of recent years, of creating an organization to ensure the security of the Caspian littoral states and analyzes the prerequisites for this.

1. The 2003 Tehran Convention plays an important role in protecting the natural environment of the Caspian Sea, particularly in preventing the extinction of sturgeon and environmental damage from drilling in the Caspian basin.
2. An important precedent was set by Kazakhstan's legal initiative in resolving the issue of the legal status of the northern part of the Caspian Sea (Kazakhstan, Russia, and Azerbaijan) through bilateral and trilateral agreements. That was how Kazakhstan defined its own borders (boundary lines with the Russian Federation, Azerbaijan, and Turkmenistan). The southern littoral states can also resolve the boundary delimitation problem by launching a similar initiative to conclude bilateral or trilateral agreements.
3. The Statement adopted by the fourth summit of Caspian littoral states (Caspian Summit) in Astrakhan on 29 September, 2014 deprived third countries of the right to a military presence in the Caspian Sea in order to enhance security in the region. In recent years, however, the use of means of warfare by the Russian Caspian Flotilla in the Syrian conflict has threatened the security of the Caspian Sea. Russia's use of Caspian waters to conduct military operations without the consent of the other littoral states has added urgency to regional security issues. The postponement of the forthcoming fifth summit in Kazakhstan is reportedly due precisely to the Syrian conflict. While postponing the summit, the guarantor states of the Astana peace process for Syria held a ministerial meeting in Astana on 16 March, 2018, which proves that regional security is higher on the agenda of the littoral states than the status of the Caspian.

In the opinion of the authors, the fifth Caspian Summit will provide an opportunity for the Caspian littoral states to eliminate many security problems by creating an organization for security. The presence of extra-regional forces was ruled out in the context of the Statement made at the fourth Caspian Summit in Astrakhan, but it is also necessary to take specific precautionary measures against the activities of non-state actors, including ISIL and other radical groups.

4. The decision to hold the next summit in Kazakhstan as the state that has launched the largest number of initiatives on the status of the Caspian Sea paves the way to a final consensus among the littoral states.

Kazakhstan's Position on the Status of the Caspian Sea

Back in early 1994, the Cabinet of Ministers of the Republic of Kazakhstan drafted an Agreement on Development of Natural Resources in the Caspian Sea, which provided for the division of the submarine part of the sea into sectors in which each state would have an exclusive sovereign right to exploit natural resources. That draft was based on the concept of enclosed sea, as defined in the 1982 Convention on the Law of the Sea, and applies (with some adjustments) the key principles and provisions of that Convention to the Caspian. According to the Convention, the state boundary is established along the limits of the territorial sea, with an exclusive economic zone for each state extending beyond and adjacent to the territorial sea. But such a regime, for all its obvious merits, could lead to the loss of the Caspian as a unique natural phenomenon.¹ That is why Kazakhstan's proposal

¹ See: Yu. Chuikov, "Vozvrashchaia k problemam Kaspiia," *Astrakhanskii vestnik ekologicheskogo obrazovania*, No. 1 (17), 2011, pp. 43-87.

was to adapt the general principles and provisions of the U.N. Convention to the specific conditions of the Caspian, renewing their legal content and terminology so as to take into account the specific features of the Caspian Sea, the individual and common interests of all its littoral states, the task of preserving its ecosystem, and the need to develop cooperation in ensuring peace and stability in the region.²

In November 1996, the foreign ministers of the Caspian littoral states met in Ashgabat, where they adopted a declaration on maintaining the existing regime of the Caspian Sea until its status was finally determined. That meeting was the starting point for the negotiation process on the status of the Caspian Sea. In the continuous debates on this issue, the parties proposed different approaches to the legal status of the Caspian Sea.³

Initially, Russia and Iran took the same position. At the meeting in Ashgabat in November 1996, the foreign ministers of the Islamic Republic of Iran, the Russian Federation, and Turkmenistan signed a Memorandum of Understanding between Iran, Russia, and Turkmenistan in developing the mineral resources of the Caspian Sea.⁴

The stand taken by Kazakhstan was that certain provisions of the 1982 U.N. Convention on the Law of the Sea should be extended to the Caspian Sea taking into account its specific nature as a single ecosystem. Its proposal was to divide the seabed and its resources based on the median line principle, while establishing the limits of the territorial waters and fishing zones by agreement between the littoral states. The remaining part of the sea and its surface were to be open only to merchant and fishing vessels of the littoral states based on the principle of freedom of navigation and on agreed fishing quotas. The landlocked Caspian states were to enjoy freedom of transit through the territories of Russia and Iran by all means of transport for access to the World Ocean.⁵

Kazakhstan's position on the division of the Caspian was based on the sectoral principle, but it was only the seabed with its subsoil that was to be delimited, while issues related to fishing, navigation, and the environment were to be "resolved jointly," without harming the interests of any Caspian state. As for Russia, it was initially in favor of maintaining the regime established by Soviet-Iranian treaties; i.e., it adhered to the condominium principle. At that time, Moscow proposed the establishment of a 45-nautical mile coastal zone in which each of the Caspian states would have an exclusive right to exploit the hydrocarbon resources of the seabed and subsoil. But Russia's position has changed over time under the impact of a number of circumstances, moving closer to that of Kazakhstan and Azerbaijan. The various positions were articulated at a conference in Moscow in 1994, where Azerbaijan, Kazakhstan, and Russia presented their draft conventions on the legal status of the Caspian sea. Azerbaijan's proposal was to treat the Caspian as a border lake with division into sectors, and Kazakhstan proposed treating the Caspian as an "enclosed sea," as regulated by the 1982 U.N. Convention on the Law of the Sea, namely, articles 122 and 123 on enclosed or semi-enclosed seas. At a meeting of deputy foreign ministers of the five Caspian states in Ashgabat in October 1996, the parties decided to set up a Special Working Group (SWR) for developing a Convention on the Legal Status of the Caspian Sea. That was when the littoral states began to coordinate their positions. Later that year, Kazakhstan and Azerbaijan took a common stand in protecting their interests in the Caspian. They recognized each other's right and the right of each of the littoral states to explore and exploit the mineral resources of the Caspian. In 1997, the presidents of Kazakhstan and Russia issued

² See: I. Vovk, P. Ivanov, "Respublika Kazakhstan: poisk reshenia problemy pravovogo statusa Kaspiiskogo moria v poslednee desiatiletie XX veka," *Vestnik OGU*, No. 5, 2013, pp. 30-35.

³ See: Ya. Özdemir, *Kazakistan, Azerbaycan, Türkmenistan ve Özbekistanın Enerji Potansiyelleri ve Politikaları*, Atılım Üniversitesi, Ankara, 2007, p. 16 (Ya. Özdemir, *Kazakhstan, Azerbaijan, Turkmenistan, and Uzbekistan: Energy Policy and Potentials*, Atılım University, Ankara, 2007, p. 16).

⁴ See: *Ibid.*, p. 83.

⁵ See: N. Nazarbayev, *Kazakhstanskii put*, Arko Press, Astana, 2006, p. 123.

a Joint Statement on Cooperation, in which they declared their intention to be guided by the principle of consensus in the joint development of the natural resources of the Caspian basin.⁶

In view of that, according to statements on the status of the Caspian made by Kassym-Zhomart Tokayev, the then foreign minister of Kazakhstan, Turkmenistan was able to support the approach of Kazakhstan, Russia, and Azerbaijan. Tokayev wrote: “Kazakhstan, Russia, and Azerbaijan support the sectoral division of the Caspian seabed. Turkmenistan’s position ‘varies.’ I hope it will support our position.”⁷ Bulat Sarsenbayev, Deputy Director of the International Legal Department of the Foreign Ministry of the Republic of Kazakhstan, noted in this context: Kazakhstan is in favor of dividing the Caspian seabed and subsoil into national sectors along a median line and establishing coastal and fishing zones of a certain width. Under maritime law, the coastal zones will be sovereign state territory similar to territorial seas. Kazakhstan supports a phased approach to defining the legal status of the Caspian. That is why it thinks it necessary to start by resolving the issues related to the division of the Caspian shelf and to the marine environment. Kazakhstan and Russia were the first to reach an understanding and agreement on developing the seabed resources of the Caspian, which is further evidence of their mutual desire to develop strategic partnership in every area.⁸

Kazakhstan’s interests are largely determined by potential oil and gas resources in the northern part of the Caspian Sea. An improvement of the situation in this area is a priority of Kazakhstan’s energy policy. Following reports about the existence of vast oil and gas resources in the Northern Caspian, Kazakhstan intensified its diplomatic efforts to resolve the issue of joint use of deep-sea resources and recognition of its rights to the resources of the Northern Caspian in international law. Moreover, Kazakhstan has continued to transport oil through existing pipelines, including the Atyrau-Samara line. In addition, it is developing a transportation system to ship oil to Baku by barge. It has also built an oil pipeline to China.⁹

Kazakhstan’s Agreements with Russia and Azerbaijan on the Delimitation of the Caspian Sea in the Period from 1998 to 2003

~~—“The first result of our talks (with President Yeltsin.—Ed.) was a Joint Statement by the Presidents of Russia and Kazakhstan on Cooperation in the Use of the Caspian Sea, which we signed in Almaty on 27 April, 1996. In that Statement, the parties recognized each other’s right to carry out activities with a view to exploiting the mineral and biological resources of the Caspian. Later on, I signed similar documents establishing the main elements of the legal status of the Caspian and the principles of activities at sea with the presidents of Iran and Azerbaijan. On 6 July, 1998, an Agreement on the Delimitation of the Seabed of the Northern Part of the Caspian Sea for the Purpose of Extending Sovereign Rights to Subsoil Use was signed by me and Boris Yeltsin in Moscow. Its~~

⁶ See: B. Sultanov, *Kaspiiskii region: aktualnye problemy razvitiia (ekspertnyi vzgliad)*, KISI under the President of the Republic of Kazakhstan, 2012, Almaty, pp. 29-31.

⁷ K. Tokayev, *Pod stiagom nezavisimosti: ocherki o vneshnei politike Kazakhstana*, Bilim, Almaty, 1997, p. 43.

⁸ See: B. Sarsenbayev, “Kazakhstan’s Position Regarding the Legal Status of the Caspian and Outlook for Economic Development of the Region,” *Kazakhstan Business Magazine*, No. 2, 2002, pp. 2-5.

⁹ See: S. Zhiznin, “Ekonomika i geopolitika kaspiiskoi energeticheskoi diplomatii,” *Obshchestvo-Politika-Ekonomika*, No. 4, 2012, pp. 50-56.

fundamental novelty was that the parties agreed to divide the seabed of the Northern Caspian between Kazakhstan and Russia based on a modified median line, finally abandoning the idea of a condominium. As a result, a Protocol to that Agreement establishing the coordinates of the modified median line was signed in Moscow on 13 May, 2002, this time with President Putin. Meanwhile, Baku was gradually changing its position and moving towards the Kazakhstan version, as clearly demonstrated by the Agreement between Kazakhstan and Azerbaijan on the Delimitation of the Caspian Seabed, signed by me and President Heydar Aliyev of Azerbaijan on 29 November, 2001, and the Protocol to that Agreement, signed on 27 February, 2003.”¹⁰

According to the Protocol of 13 May, 2002, the disputed oil fields Kurmangazy, Khvalynskoye, and Tsentralnoye, located on the median line between Kazakhstan and Russia, should, as a rule, be explored jointly by the two countries on a fifty-fifty basis. In September 2002, Azerbaijan signed a similar delimitation agreement with Russia.¹¹

“The signing in Almaty on 14 May, 2003 of a trilateral Agreement between the Republic of Kazakhstan, the Azerbaijan Republic, and the Russian Federation on the Junction Point of the Lines Delimiting Adjacent Areas of the Caspian Seabed completed the process of delimitation of the seabed of the northern part of the Caspian Sea. During a visit to Almaty by President Saparmurat Niyazov of Turkmenistan on 27 February, 1997, I managed to convince him to sign a Joint Statement saying that until the Caspian states reached an agreement on the status of the Caspian Sea, they would abide by the delimitation of administrative-territorial boundaries based on the median line. Thus, on the main point at issue, Ashgabat also sided with Kazakhstan and Azerbaijan.”¹² (The Agreement between Kazakhstan and Turkmenistan on the delimitation of the Caspian Sea between the two countries was signed later, on 2 December, 2014, and came into force on 31 July, 2015.¹³) The main content of the arrangement between the three littoral states (Kazakhstan, Azerbaijan, and Russia) was the signing of the above-mentioned 2003 Almaty Agreement between these three states on the junction point of the lines delimiting the seabed and subsoil of the Caspian based on earlier bilateral agreements. It was signed with a “clear definition of the coordinates of the junction (42° 33.6' North 49° 53.3' East). According to the arrangement the shares of the Caspian were divided roughly as follows: Russia—19%, Kazakhstan—29%, Azerbaijan—18-19%. It has to be pointed out that this very restricted delimitation of the seabed of the Caspian that took place between only three of the littoral states is far from the adequate international legal status for the Caspian. These delimitation lines are hardly state borders, due to the fact that waters and their navigation as well as many other issues were left unresolved. Not to mention the fact that only northern part of the Caspian was involved.”¹⁴

The draft Convention on the Legal Status of the Caspian Sea has not yet been adopted, but all Caspian states have already “nationalized”—in varying degrees, on a unilateral or bilateral basis—their sectors. Today, the Caspian has an “Azerbaijan sector,” “territorial waters” of Kazakhstan and Turkmenistan, and “national seabed sectors” of Russia and Kazakhstan. For the time being, Iran alone is not on this list. At present, the parties involved in the talks on the legal status have focused on the Russian formula “divided seabed, common waters.”¹⁵ At this stage, Kazakhstan alone of all the Caspian states has defined its boundaries (with Russia, Azerbaijan, and Turkmenistan).

¹⁰ N. Nazarbayev, op. cit., p. 124.

¹¹ See: Sh. Abilov, “Legal Status of the Caspian,” *Hazar Raporu*, No. 4, Summer 2013, pp. 123-143.

¹² N. Nazarbayev, op. cit., p. 125.

¹³ See: “Pravovoi status Kaspiiskogo moria,” available at [<http://mfa.gov.kz/ru/content-view/pravovoj-status-kaspijskogo-morya>].

¹⁴ C. Frappi, A. Garibov, *The Caspian Sea Chessboard: Geo-political, Geo-strategic and Geo-economic Analysis*, Egea Press, Milano, 2014, p. 37.

¹⁵ G. Abdurakhmanov, G. Monakhova, A. Aldabayev, G. Akhmedova, “Granitsy na Kaspiiskom more v sootvetstvii s basseinovym printsipom,” *Yug Rossii: ekologiya, razvitiye*, No. 4, 2008, pp. 130-133.

The 2003 Framework Convention for the Protection of the Marine Environment of the Caspian Sea

The Convention for the Protection of the Marine Environment of the Caspian Sea, also known as the Tehran Convention, was signed by representatives of the Caspian littoral states in November 2003 and entered into force on 12 August, 2006. It was the first legally binding document signed by all five littoral countries. Its main purpose is to ensure the environmental safety of the Caspian and to protect its natural resources from pollution in the process of hydrocarbon production.¹⁶

“The first legal step towards mutual protection of the Caspian environment was the adoption in 1994 of the Almaty Declaration on Cooperation [in the field] of the Environmental Protection of the Caspian Sea Region. Since the break-up of the Soviet Union there have been a lot of divergent concepts of solving the current legal challenges to the Caspian Sea including environmental protection. Until today mutual negotiations among the coastal states have proved to be successful only regarding the issue of the protection of the Caspian environment.

“At the end of the conference in Tehran in November 2003 the Caspian littoral states signed a Final Act, of which the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention) constitutes Annex 2.

“The Tehran Convention entered into force on 12 August, 2006 after being accepted by all Caspian littoral states. Until now three additional protocols: Aktau Protocol (2011), LBSA (Land-based Sources and Activities.—*Ed.*) Protocol (2012), and Biodiversity Protocol (2014) have been adopted, but have not entered into force yet. Aktau Protocol has been ratified by Azerbaijan, Iran, Russian Federation and Turkmenistan. LBSA Protocol has been ratified by Azerbaijan and Iran. As the name suggests, the “Framework Convention for the Protection of the Marine Environment of the Caspian Sea” is aimed at environmental protection of the Caspian Sea. The Tehran Convention (Art 4) includes states’ general obligations related to taking individually or jointly all appropriate measures to prevent pollution of the Caspian Sea and to protect the environment of the Caspian Sea.”¹⁷

The commissions on shipping, fishing, and the protection of marine life, water, and airspace have also achieved successes, and the signing of the 2003 Tehran Convention, aimed at protecting life in the Caspian Sea, by all five littoral states is a case in point.¹⁸

One should note the contribution of the Islamic Republic of Iran, which made a considerable effort in undertaking commitments and hosted the Conference of Plenipotentiaries for Adoption and Signature of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, assuming the full responsibility for its organization. Iran also acted as the depositary of the Convention.¹⁹

¹⁶ See: Y. Ongarova, *The Role of Caspian Energy Resources in Kazakh Foreign Policy (PhD thesis)*, Sakarya University, Sakarya, Department of International Relations, 2015, p. 28.

¹⁷ B. Janusz-Pawletta, *The Legal Status of the Caspian Sea: Current Challenges and Prospects for Future Development*, Springer-Verlag Press, Berlin, 2015, p. 44.

¹⁸ See: M. Gökçe, “The Caspian Sea Politics of Iran from the Pre-Cold War Era,” *The Pursuit of History*, Journal of International History and Social Researches, No. 6, 2011, pp. 153-176.

¹⁹ See: A. Butayev, A. Gadzhiev, “Sovremennoie sostoianie i vozmozhnoie napravlenie razvitiia ekosistemy Kaspiiskogo moria,” *Vestnik DNTs RAN*, No. 4, 1999, pp. 85-95.

As a result of the third meeting of the Conference of the Parties in Aktau on 10-12 August, 2011, in accordance with the requirements of the Tehran Convention, the parties signed a Protocol on regional cooperation in the event of oil pollution of the Caspian Sea.²⁰

The Caspian Sea is a landlocked body of water with large-scale and constantly increasing offshore drilling, exploration and production of oil and gas, as well as steadily growing transportation of oil by pipeline and vessel. All of this poses a serious threat to the ecosystem of the Caspian. In view of this, the Caspian states drafted, with the assistance of international environmental organizations, a number of agreements on environmental protection of the Caspian: on the conservation and use of its biological resources; on the protection of its natural environment; on the establishment of a commission for the conservation and use of its aquatic biological resources; and on cooperation between the Caspian states in hydrometeorology and environmental monitoring; they also drafted a Framework Convention to protect the environment of the Caspian Sea and the population of the coastal zone.²¹

An Analysis of Caspian Summits

2002 Summit, Ashgabat

The first Caspian Summit on 23-24 April, 2002 was meant to resolve the problems that existed in the Caspian region and bring the parties to an agreement on the Convention on the Legal Status of the Caspian Sea.²² But the summit was a failure, once again highlighting the significant differences in the positions and approaches of the countries concerned, although all of them agreed that the problem of the Caspian's legal status had to be solved step by step, taking into account the interests of all five Caspian countries.

The main obstacle was Iran's insistence that the sea should be divided into five equal parts. But the other littoral states categorically refused to accept this, arguing that the waters and seabed should be divided into national sectors based on the length of the coastline. The scandal that broke out between Saparmurat Niyazov and Heydar Aliyev, the then presidents of Turkmenistan and Azerbaijan, did not contribute to the success of the summit either. It was caused by the dispute over the status of three oil fields in the center of the Caspian. But although the five heads of state failed to reach an understanding on the whole range of issues, they outlined the key areas of work on existing problems and decided to hold the second Caspian Summit in Tehran in 2003.

But instead of a summit in 2003, Tehran hosted the above-mentioned Conference of Plenipotentiaries at which the five countries signed the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, while the second summit took place only in 2007.

During that time, Russia and Kazakhstan developed protocols to their Agreement on the Delimitation of the Seabed of the Northern Part of the Caspian Sea; Russia and Azerbaijan signed an Agreement on the Delimitation of Adjacent Areas of the Caspian Seabed (23 September, 2002); and Russia, Azerbaijan, and Kazakhstan signed a trilateral Agreement on the Junction Point of the Lines Delimiting Adjacent Areas of the Caspian Seabed (14 May, 2003). These documents provided the legal framework for the development and exploitation of mineral resources in the northern part of the Caspian seabed.

²⁰ See: "Prikaspiiskie gosudarstva razrabotaiut natsionalnye plany deistvii po zashchite Kaspiiskogo moria," available at [<http://www.aktau-business.com/2012/12/14/zashita.html>].

²¹ See: B. Sarsenbayev, op. cit.

²² See: S. Chernitsyna, "Problemy Kaspiiskogo regiona: regionalnye i globalnye aspekty," *Obozrevatel-Observers*, No. 12, 2014, p. 97.

2007 Summit, Tehran

The agreements signed after the Ashgabat Summit enabled the Caspian states to outline an agenda for the second Caspian Summit, which took place in Tehran on 16 October, 2007.

In his speech at the opening of the summit, President Nazarbayev of Kazakhstan said that Kazakhstan adhered to the principle of dividing the sea into internal waters, territorial waters (at least 12 nautical miles), fishing zones (25-30 nautical miles), and common waters. According to the Kazakh leader, this variant is the most suitable one, because it takes into account the interests of all five littoral states. The outer limit of territorial waters should be regarded as the state boundary, and within this boundary the littoral state should have full sovereignty. Within the limits of the fishing zones, all fishing rights should belong to the respective states. On the high seas, the littoral states should enjoy freedom of fishing within their quota.

The second Caspian Summit addressed the following issues:

- definition of the status and boundaries of internal waters and 12-nautical mile territorial waters in the Caspian;
- definition of the maximum breadth of territorial waters for each littoral state for the purpose of ensuring the exclusive authority and defining the state boundaries of the littoral states;
- legal regulation of interaction between the Caspian states in the use, protection, and restoration of the biological resources of the Caspian Sea;
- conclusion of a Convention on the Legal Status of the Caspian Sea, including provisions defining the rights of the landlocked Caspian states to free use of all means of transport for access to other seas and oceans.

The summit ended with the signing of a declaration setting forth the approaches to the development of the Convention on the Legal Status of the Caspian Sea shared by all parties.²³ In addition, the Caspian states agreed that non-littoral states had no right to use the Caspian basin for military purposes and that the littoral states could not use military force against their neighbors in the Caspian basin.

That Caspian Summit accelerated the process of consultations between the littoral states. Another result was the signing of the Final Declaration, which said that only the littoral states had sovereign rights over the Caspian Sea and its resources.

The parties also agreed to hold regular meetings of the heads of Caspian states and, in the periods between them, meetings of foreign ministers and authorized experts to address the whole range of issues related to the Caspian Sea.

~~It is quite obvious that the Caspian vector of economic policy remains attractive to the Islamic Republic of Iran.~~ As projected by the Iranian authorities, trade between the Caspian countries should total \$15-20 billion a year by 2025. These forecasts are evidence of Iran's intentions to take all necessary measures to maintain and strengthen its influence in the Caspian region.²⁴

2010 Summit, Baku

The third Caspian Summit met in Baku in November 2010. At that summit, the parties signed an Agreement on Security Cooperation in the Caspian Sea, whose purpose was to fight terrorism,

²³ See: A.B. Medikhanova, "Politika Respubliki Kazakhstan v Kaspiiskom regione: osnovnye napravleniia," *Mezhdunarodnye issledovaniia. Obshchestvo. Politika. Ekonomika*, No. 4 (13), 2012, p. 24 [<http://www.opinions.kz/wp-content/uploads/2016/01/2012-4-13-%D0%9C%D0%98.pdf>].

²⁴ See: L. Parkhomchik, "Sovremennaia politika Irana v Kaspiiskom regione," *Problemy postsovetskogo prostranstva*, No. 1, 2014, pp. 37-49.

poaching, smuggling, and organized crime. On that occasion, the heads of state did not discuss the principles for dividing the waters, seabed, and subsoil of the Caspian, but reformulated some approaches to the resolution of specific issues so as to expedite the signing of the Convention on the Legal Status of the Caspian Sea.²⁵ Speaking at the summit, President Nazarbayev of Kazakhstan said it was necessary to draw attention to the protection and restoration of biological resources in the Caspian. Given the catastrophic decline in sturgeon stocks and the critical situation in this field, Kazakhstan proposed a temporary five-sided moratorium on sturgeon fishing for at least five years. The head of state said that the solution of this problem required a scientific and legal approach, which would intensify the efforts to protect the regional environment and the fight against poaching.²⁶

The summit resulted in the signing of the Agreement on Security Cooperation in the Caspian Sea between the five states. The parties signed a number of important documents, including joint declarations on the status of the Caspian Sea; made special provision for a five-year ban on sturgeon fishing; and agreed to discuss the sovereign rights of the littoral states in the waters of the Caspian and to prepare for signing, within a period of three months, a document on 24-25 nautical mile marine zones.

It was decided that the fourth summit would be hosted by Russia. The parties also agreed to hold annual summits (although, as we will see below, this arrangement was implemented only later), with meetings of foreign ministers and authorized experts between them.

The Baku Summit demonstrated the willingness of the leaders of the five Caspian countries to engage in joint activities in the Caspian Sea, to coordinate and plan regional cooperation. In addition, the parties agreed to intensify their efforts to conclude a Convention on the Legal Status of the Caspian Sea and to hold meetings of the Special Working Group five times a year. That proposal was discussed at every meeting of the Commission on Aquatic Bioresources of the Caspian Sea and was supported by the presidents of the Caspian states throughout the whole of 2011.²⁷

2014 Summit, Astrakhan

The leaders of the Caspian states met for their fourth summit on 29 September 2014. As expected, the signing of the Convention on the Legal Status of the Caspian Sea was not on its agenda. Several days earlier, Yuri Ushakov, Aide to the President of the Russian Federation, mentioned that the Convention would be ready for signing by the next summit in 2015. But President Nursultan Nazarbayev of Kazakhstan and Russian President Vladimir Putin noted the considerable progress made in preparing that document as one of the main outcomes of the summit. The positive atmosphere enabled the leaders of the five countries to adopt a political Statement in which they proclaimed the following:

- mutual recognition of the national sovereignty of each party over its coastal marine space not exceeding 15 nautical miles;
- mutual recognition of the exclusive rights of each party to exploit aquatic biological resources in a 10 nautical mile zone beyond its coastal marine space.

Thus, one of the achievements of the Astrakhan Summit was the definition of exclusive economic zones. The sovereignty of a littoral state extends to a 15-mile belt of sea, and in the 10-mile

²⁵ See: S. Chernitsyna, *op. cit.*, p. 98.

²⁶ See: A.B. Medikhanova, *op. cit.*, p. 26.

²⁷ See: S. Musa, "Pravovoi status Kaspia," *Egemen Kazakhstan*, 23 November 2017 [<https://egemen.kz/article/161619-qart-kaspiydinh-quyqytyq-martebesi-qashan-ayqyndalady>].

zone adjacent to it the state has the exclusive right to exploit marine resources. The remaining sea surface is left for common use by the littoral states, while the seabed and subsoil have yet to be divided. Naturally, this opens the way to further disputes.²⁸

At the summit, President Nazarbayev made a proposal to declare the Caspian region a free trade area until the signing of the draft Convention and to set up a regional center for cross-border cooperation.²⁹

The political Statement adopted at the fourth Caspian Summit set out a number of important agreements reached by the five presidents: on the non-presence in the Caspian Sea of military forces not belonging to the Caspian states; on each country's national sovereignty over a 15-nautical mile coastal marine space and its exclusive right to exploit aquatic bioresources in a further 10-mile zone adjacent to the coastal marine space; on freedom of navigation beyond the waters under national sovereignty, etc.³⁰

The ban on the military presence of non-littoral states in the Caspian Sea runs counter to the previous approach taken by Kazakhstan and Azerbaijan to the deployment of a NATO military base in the coastal area.

For the first time in the 24 years after the breakup of the Soviet Union, the Caspian countries came close to signing the Convention on the Legal Status of the Caspian Sea. That was an important event in international affairs, because the oil and gas reserves of the Caspian have raised the issue of its status to the level of a global political problem.³¹

2018 Summit, Kazakhstan

The agenda of the next summit could include the issue of joint efforts by the Caspian states to ensure security, in other words, the establishment of a joint navy. In particular, with the growing importance of the Caspian factor for Iran's power industry, its sea- and land-based oil and gas infrastructure facilities will require greater protection. The use of this argument to build up their own naval forces in the Caspian is also characteristic of other littoral states. It should be noted that the Russian and Iranian attitudes to regional security are largely similar. At different times, both states suggested drafting a separate political document for pooling the efforts of the Caspian Five in the fight against terrorism, drug trafficking, and other threats to stability.³² The idea of developing a stability pact for the Caspian region was expressed by the foreign minister of the Republic of Kazakhstan at the 19th meeting of the Special Working Group on the Development of the Convention on the Legal Status of the Caspian Sea on 22 November, 2005. Iran in turn suggested concluding an agreement on confidence-building measures and stability. But the Agreement on Security Cooperation in the Caspian Sea, signed at the third Caspian Summit in Baku in 2010, did not stop the process of its militarization, with all countries of the region without exception taking an active part in this process. The potential threat of a rise in military tensions on the shores of the Caspian in the event of an escalation

²⁸ See: "Obsuzhdenie pravovogo statusa Kaspiiskogo moria mezhdru Rossiei i Kazakhstanov," 1 September, 2016, available at [<http://ia-centr.ru/publications/23903/>].

²⁹ See: I. Sevostyanova, "Konventsia o pravovom statuse Kaspia budet podpisana v 2017 godu," 13 July, 2016, available at [<https://www.youtube.com/watch?v=Uzp4YJH-Kho>].

³⁰ See: A. Nursha, "Kaspiiskoie more v zerkale siriiskogo krizisa," *Kazakhstan v globalnykh protsessakh*, No. 4, 2015, pp. 14-24.

³¹ See: O. Martynyuk, "Kaspiiski proryv," 15 October, 2014, available at [<http://www.m-astana.kz/article/view?id=1791>].

³² See: "Otsenka situatsii v regione Kaspiiskogo moria v sentiabre 2011 goda," 25 October, 2011, available at [<http://www.casfactor.com/rus/editor/18.html>].

of the U.S.-Iran conflict compels Tehran to closely monitor the combat readiness status of the navies of other Caspian states.

Russia's involvement in the armed conflict in Syria, primarily the Russian missile strikes against targets in Syria launched from the Caspian Sea, has set a serious undesirable precedent and has put Kazakhstan in a difficult situation. Russia and to some extent Iran have been making considerable efforts to keep the region closed to the military activities of the rest of the world. Moreover, while taking part in armed conflicts in the Middle East, they have been trying to nudge the region towards military integration. At the fifth presidential summit of Caspian states, which was scheduled for 2017 but was postponed to 2018, Kazakhstan will have to take this situation into account in its diplomacy.³³

The next Caspian Summit is to be held in Kazakhstan in the second half of 2018. As Kazakhstan's Foreign Minister Kairat Abdrakhmanov said in this context at the beginning of the year, the countries of the Caspian region are in the process of negotiating the Convention on the Legal Status of the Caspian. "Today, we are waiting for all parties to complete their national procedures, whereupon we will set the date for the summit. These procedures are likely to take quite a long time, several months, which is why the summit will probably take place in the second half of this year," he said.³⁴

On 5 December, 2017, the foreign ministers of the Caspian states met in Moscow. At a press briefing after the meeting, Russian Foreign Minister Sergey Lavrov said that the draft Convention on the Legal Status of the Caspian Sea was ready for signing and was expected to be signed during the Caspian Summit in Kazakhstan in 2018.³⁵

The successful completion of the foreign ministers' meeting on 5 December may have marked the beginning of a new era. The Convention should provide the basis for future relations between the five littoral states concerning the Caspian Sea and ensure the development of the whole Caspian region. For example, its signing will open the way for foreign investment in the region. In Kazakhstan, the effect from the Convention will primarily be felt in the ports of Aktau, Bautino, and Kuryk.

President Nazarbayev, owing to his experience and political activity, tries to organize every international event in the republic with maximum efficiency and productivity. That is why it is safe to say that Kazakhstan diplomats will try very hard to achieve significant results. At the same time, serious difficulties still remain. The main obstacle is the position of Iran. Tehran continues to insist that, in the event of sectoral division of the seabed, the five littoral states should get equal shares (20% each). It is difficult to say how this can be achieved, given the Azerbaijan deposits already under development. There is also the remaining dispute between Azerbaijan and Turkmenistan over the Kapaz/Serdar border oil field. In addition, the parties have different views on trans-Caspian infrastructure projects. Russia and Iran insist that any cross-border pipeline projects in the Caspian should take into account the opinions of all parties, because its environment is very vulnerable and man-made disasters will affect all littoral states. As for Turkmenistan, it has consistently maintained its position on the possibility of building a trans-Caspian pipeline without the agreement of its neighbors.³⁶

Kazakhstan has been trying to resolve problems with other littoral states by diplomatic means, without conflict, supporting approaches based on mutual cooperation with these states.

³³ See: A. Nursha, op. cit., p. 18.

³⁴ See: *Kazakhstanskaia pravda*, 15 February, 2018.

³⁵ See: "Pravovoi status Kaspia na fone spornykh momentov," 14 April, 2018, available at [<https://rus.azattyq.org/a/kaspiy-more-pravovoy-status-alkey-margulan/28907620.html>].

³⁶ See: "Kaspiiskoe more v tsentre vseobshchego vnimaniya," 10 May, 2017, available at [<https://camonitor.kz/20936-kaspiyskoe-more-v-centre-vseobshchego-vnimaniya.html>].

The Strategy Behind Kazakhstan's Diplomatic Initiatives in the Period from 1998 to 2017

Since independence, rich oil and gas deposits have been discovered in the territory of Kazakhstan. The country is believed to have the largest reserves in the Caspian basin. Through the use of hydrocarbon resources, Kazakhstan seeks to act as regional leader in Central Asia.³⁷ The solution of the problem of the Caspian Sea's legal status is among Kazakhstan's strategic goals.³⁸ "In the difficult situation of 1992-1993, the Caspian countries expected that the abundant resources of the Caspian would help them improve their economic and sociopolitical position to a considerable extent. But without a clear definition of the legal status of the Caspian Sea and the national sectors of adjacent countries, they could not start exploration and drilling works or attract foreign investors with full and maximum participation. That is why right after the breakup of the U.S.S.R. and Kazakhstan's independence, our foreign policy department initiated talks between the Caspian states on the legal status of the Caspian Sea. That was one of the most important problems I closely monitored. We defined our main task: Kazakhstan should have a legal right, recognized by all Caspian states and the world community, to develop the national resources of the Kazakh sector of the Caspian."³⁹ "Kazakhstan has the Caspian Sea region's largest recoverable crude oil reserves and its production accounts for approximately two-thirds of the region's overall output. It is important to point out that Kazakhstan claims the largest share of the Caspian Sea, which includes most of the Basin's biggest known oil fields: Tengiz, Karachaganak, Kurmangazy, and Kashagan. These fields have been developed by international oil companies. Since independence in 1992, Kazakhstan has aggressively pursued foreign investment. For the last several years, the national oil company Kazmunaigaz (formerly Kazakh-oil) has signed several schemes with foreign investors to develop the country's oil and gas deposits,"⁴⁰ Bahgat writes. In this process, the country seeks to reconcile its interests with those of the other littoral states, with the targets set by each of the parties. The new status should establish the optimal regime for the rational use of the resources of the Caspian's unique ecosystem, as well as for the extraction and refining of its oil. Nazarbayev reminded in this context that "Kazakhstan is a land-locked country. Ranking as the ninth-largest country in the world in terms of area, we have no access to the World Ocean. Kazakhstan's economic development depends not only on our reserves of oil and gas, but also on the creation of favorable conditions for their transportation. That is why we are interested in harmonizing international relations in the region and establishing close cooperation with our Caspian partners. Our main partner is, of course, Russia. Kazakhstan's oil exports pass almost entirely through the Russian pipeline system."⁴¹

Nazarbayev's statements show that the issue of the status of the Caspian Sea is among the top priorities of Kazakhstan diplomacy. Ever since independence, Kazakhstan has actively supported Caspian initiatives. The fifth Caspian Summit is to be held in Kazakhstan, where the parties are expected to sign the final Convention. With this aim in view, Kazakhstan has been looking for ways to reach agreement on various problems. Bulat Sarsenbayev noted in this context: "All the Caspian states are striving for peaceful co-existence," in accordance with international and political declarations. They "understand that the Caspian is their common property, seeing their task as harmonizing each other's rights to the sea, taking account of national interests, justice and rational compromise.

³⁷ See: Ya. Özdemir, op. cit., p. 19.

³⁸ See: K. Tokayev, *Pod stiygom nezavisimosti: ocherki o vneshnei politike Kazakhstana*, Bilim, Almaty, 1997, p. 33.

³⁹ N. Nazarbayev, op. cit., p. 121.

⁴⁰ G. Bahgat, "Prospects for Energy Cooperation in the Caspian Sea," 8 February, 2017, available at [<http://www.sciencedirect.com/science/article/pii/S0967067X07000165>].

⁴¹ "Kak nam podelit Kaspii," 3 October, 2002, available at [<http://izvestia.ru/news/267931>].

The Caspian states do not plan to solve the status problem by warlike methods. The Caspian is a landlocked body of water.⁴²

At present, Kazakhstan crude oil moves along several corridors: Tengiz-Novorossiysk and Atyrau-Samara routes to Russia; Atasu-Alashankou pipeline to China in the east; and Azerbaijan pipelines in the west.⁴³ It is also planned to use the north-south transport corridor with a railway route running from Kazakhstan through Turkmenistan and then on to Golestan Province in Iran, where it will be linked to the national network connected with ports in the Persian Gulf. At a 2014 summit in Kazakhstan, President Nazarbayev declared his intention to support the project of a railway from Russia running around the Caspian Sea to Kazakhstan and then on through Turkmenistan and Iran to the ports of the Persian Gulf.⁴⁴ In order that Kazakhstan may use its abundant resources in the Caspian Sea freely and fully, it is necessary to resolve the problem of its legal status. In this context, the multi-vector diplomacy that is traditional to independent Kazakhstan is a crucial and inevitable foreign policy strategy.

Conclusions

Despite the meetings held and the conventions signed over the years, the problem of the legal status of the Caspian Sea has yet to be resolved. Only the boundaries of Kazakhstan have been defined. Other littoral states pursue their own interests, which are difficult to reconcile. Kazakhstan, like the other littoral states, has taken its own approach. By the end of 2001, three of the five Caspian states had agreed to accept the “divided seabed, common waters” formula in delimiting the Caspian Sea. Accordingly, one can say that the legal status issue is half resolved. But a consensus among all Caspian states has yet to be reached.

Once the legal status issue is resolved, the Caspian Sea will be given a new definition in accordance with the norms of international law. The definition of the legal status of the Caspian is important for conducting safety reviews, maintaining the biodiversity of the sea, developing the seabed, and building transport and logistics infrastructure. The Convention is scheduled to be signed at the fifth Caspian Summit in Kazakhstan in 2018. If this happens, it will be an important achievement for Astana. It is also planned to discuss security measures in the Caspian Sea in connection with the Syrian conflict. Finally, the leader of Kazakhstan is expected to continue, in negotiations with his colleagues, his multi-vector policy as the country’s invariable foreign policy strategy designed to ensure the development of balanced relations with neighboring states and to avoid political conflicts.

⁴² B. Sarsenbayev, op. cit., p. 3.

⁴³ See: V. Kotilko, “Stsenarii sozdania Organizatsii kaspiskogo ekonomicheskogo sotrudnichestva,” *Strategia razvitiia ekonomiki*, No. 11, 2011, pp. 19-33.

⁴⁴ See: R. Usmanov, “Gosudarstvennoe i munitsipalnoe upravlenie,” *Uchonye Zapiski SKAGS*, No. 3, 2015, pp. 58-64.