

# LEGAL STATUS OF THE CASPIAN SEA: HISTORY AND PRESENT

ARDAK KAPYSHEV

Abai Myrzakhmetov University, Kokshetau, Kazakhstan

## ABSTRACT

At the present stage one of the unsolved problems in interstate relations of Caspian bordering countries is defining international-legal status of the Caspian Sea. It is noted in the article that this problem is not a new one at all. The history of "division" of the Caspian Sea begins in the ancient age, namely in VIII century. It is underlined that the basic stumbling block is the position of Iran on the right to use the Caspian Sea, and also occurrence of extra regional players, such as the USA, China, etc. First of all, it is connected with rich oil fields and other minerals, and also with convenient geopolitical and geostrategic position. The only way to worry out the international-legal delimitation of the Caspian Sea problem is a negotiating process. By now, despite of certain disagreements on legal status of the Caspian Sea, five Caspian bordering countries managed to achieve certain progress, admitting the possibility of applying the principle of sectorial sectioning on the Caspian Sea. Clear proof of it is the agreements on division of ground on the northern part of Caspian Sea signed between Kazakhstan, Russia and Azerbaijan. It is important that Kazakhstan, Russia, Azerbaijan and Turkmenistan clearly stated their positions and agreed to make a compromise in their official statements. More than likely, in the near future Iran will soften its position, considering its present situation and strained relations with the USA. It has been alleged that the constructive dialog already started; everything depends on the mobility, concurrency and rationality of actions of all Caspian bordering countries.

## JEL CLASSIFICATION & KEYWORDS

■ K32 ■ Status of the Caspian Sea ■ Division of ground of the Caspian Sea ■ Caspian bordering countries

## INTRODUCTION

Over the last years there were a lot of articles about the oil of Caspian Sea region in the world press. The value and role of the Caspian Sea region oil has sharply increased in world politics and international relations. It compelled attention of almost all the advanced countries of the world.

In geopolitical understanding Caspian Sea region includes vast territory at the joint of Europe and Asia, which is often called by joint name Eurasia. It consists of five Caspian bordering countries – Azerbaijan, Russia, Kazakhstan, Turkmenistan and Iran. Besides, "near-Caspian regions" are the countries of sub regions of north Caucasus, Transcaucasia and vast area of Central Asia.

The Caspian Sea region draws attention of all the world political and industrial elite at the present stage, first of all, because of revealed and anticipated resources of raw hydrocarbons - oil, gas-condensate and natural gas. There were a lot of international projects on development of oil and gas deposits and its transportation. And it is in turn can lead to wide international cooperation or to contention and confrontation between the states.

In this regard, in recent times there was a problem of differentiation of Caspian Sea. The Caspian Sea is the biggest among "closed" seas. 4% of world resources of oil or about 40 billion barrels concentrated in its bowels [1]. That's why it is obvious that the Caspian Sea zone and

near-Caspian territories draw attention with its rich hydrocarbon reserves. Besides, this region is also interesting by its features of geopolitical and geostrategic character which give leading subjects of world politics many possibilities for realization of its economic, political and strategic interests. The importance of the Caspian region is in that, it is situated between Europe and Asia, at the crossroads of perspective intercontinental transport directions "east-west" and "north-south", on the joint of spheres of influence of three world religions - Christianity, Islam and the Buddhism.

## Caspian sea legal status

If you look through the history of this region, it is worthwhile noting that the Caspian coast was occupied from time immemorial. In the ancient time The Massageteans, Sarmatians, Huns, Bulgarians, Pincenates, Cumans, Khazars, Golden Hordeans inhabited this place [2]. But these people have not left any material assets after themselves, and didn't create their own Caspian civilization and it in a great measure predetermined its further destiny. The Caspian Sea has got its first name in XVI century [3]. This region drew attention of different countries from ancient times. As it is known, in 760 - 761 years southern Caspian Sea was conquered by Abbasids, and practically till 1722 the region was under the influence of Persia. In the beginning of the XVIII century Peter I as a result of the Persian campaign of 1722-1723 regained the Caspian Sea from Persians. On January 1st, 1732 Persia and Russia have concluded the Reshtsky contract on cooperation concerning the Caspian Sea, defined a freedom of commerce and navigation on the Caspian Sea [4].

In the beginning of the XIX century Russia, Great Britain, France and Germany tried to confirm its domination on the Caspian Sea. Iran was had to reckon with the presence of Russia and western powers at this region. In 1801 Iran has concluded the contract with Great Britain according to which the latter promised them military help in case of a confrontation. This document has in essence pushed Iran to strain the relations and subsequent war with Russia.

The status of the Caspian Sea started to develop during this period when the Caspian Sea became the reason of opposition between Russia and Persia, and also between Russia and Great Britain for possession of the near-Caspian territory, and the Caspian Sea as well.

After the first Russian-Iranian war (1804-1812), Iran lost territories of present Dagestan, Chechen Republic, Georgia, Armenia and Azerbaijan.

In 1828 the second Russian-Iranian war ended with the conclusion of the Treaty of Turkmenchay. According to this treaty, Iran lost the rest of Azerbaijan, including the Nakhichevan khanate. The treaty provided refusal of Iran of the privileges to hold fleet on the Caspian Sea and individually to be engaged in fishery in its waters.

On February, 28<sup>th</sup>, 1921 Iran and Soviet Russia have entered into the agreement, according to it Iran got back certain rights on using the Caspian Sea and the possibility of establishing commercial relations with the Soviet republics of the Central Asia and Transcaucasia.

The second document mentioned at discussion of the problem of dividing of the Caspian waters, the Soviet-Iranian treaty of 1940. According to this document, «vessels of both countries can freely move and come into all ports of two countries». The treaty of 1940 developed the principles proclaimed in the treaty of 1921 and in all subsequent agreements and underlined that only the ships belonging to two coastal countries, have the right to float across Caspian Sea [5].

After the collapse of the USSR instead of two former countries (the USSR and Iran) there appeared five countries which have territorial problems with each other. Azerbaijan, Kazakhstan and Turkmenistan made demands about revision of the status of the Caspian Sea. In this regard there was a necessity for definition of legal status of the Caspian Sea and differentiation of spheres of jurisdiction for such areas, as navigation, fishery, use of sea-bottom, its bowels and preservation of the environment [6;348].

To solve these problems first of all it is necessary to define the international legal status of the Caspian Sea. At the moment there are three points of view on this problem. The first one says that the Caspian Sea is a sea, hence, it can be divided by a principle of a median line which divides fifty-fifty areas of the opposite states. The second point of view consists in that the Caspian Sea is a «boundary lake» of the adjacent states, and it is divided on sections where the sovereignty of the coastal states extends. According to the third point of view the Caspian Sea is an international water pool belonging simultaneously to all near-Caspian countries which can maintain resources of the Caspian Sea in common [7]. At the moment each of the countries has adherence to this or that point of view.

The Republic of Azerbaijan considered that the process of delimitation of the Caspian Sea must be made on the basis of norms and principles of international law and by principle of median lines. At the same time, heads of Azerbaijan made efforts to that the Caspian Sea was considered as international lake without an exit to World Ocean, and its resources as water, bowels and air space, should be divided between the Caspian bordering countries depending on extent of their coastal lines. Kazakhstan defends the compromise position based on extending to the Caspian Sea separate positions of the Convention of the United Nations on a marine law of 1982, using them taking into account features of the Caspian Sea as uniform ecological system. The bottom and bottom resources should be delimited between all Caspian states which to possess exclusive rights to investigation and working out of mineral resources, a lining of pipelines and cables in the economic zone. Considering that the maximum width of the Caspian Sea does not exceed 200 nautical miles, external borders of exclusive economic zones will pass on a median line, equidistant from coast of the opposite states. Lateral borders are established from the point of the termination of overland border on a straight line, perpendicular to the above-named median line. The oil companies of the Caspian states can participate in mining in an exclusive economic zone of other state under general conditions. This position should not mention already existing consortia. As to living resources of the sea, using waters of Caspian Sea with the view of navigation, fishery, ecological cooperation etc. Kazakhstan is ready on the widest compromises up to a condominium, i.e. joint possession. Thus means that each Caspian state will possess the maritime belt, the coordinated width the fishing zones which are under their national jurisdictions. Other part of the sea and its surface will be opened only for vessels of the coastal states for free navigation, fishery on the basis of the coordinated quotas. The air space over the

sea for flight of aircrafts on the coordinated routes will also be open. The midland Caspian states should have the right of using the Russian waterways, on the basis of separate agreements with Russia, for an exit in other seas and the World Ocean.

Turkmenistan, owing to its relatively stable and political development, has declared that abstains from joining to any political, economic or military structures in the region. As a whole, Turkmenistan together with Iran adheres to a position that Caspian Sea is a lake and should be in the general using. Also Iran openly declares about belonging to it of 20% of water territories of Caspian Sea, and the others of 80% should be divided among Kazakhstan, Azerbaijan, Russia and Turkmenistan. Russia offered a stage-by-stage way of disentangling of the Caspian problems ball and declared division of Caspian Sea into national sectors which are fixed to the corresponding coastal states. Thus on national sectors the bottom shares, and the surface remains in the general using [8].

It is necessary to note the high degree of multilateral cooperation of all Caspian bordering countries. So, on May, 16-17<sup>th</sup>, 1995 in Almaty, the arrangement on creation of constantly operating talk-back mechanism concerning legal status of Caspian sea in the form of the working groups headed by heads of legal services of the Ministries of Foreign Affairs of Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan was reached. And in 1995 meetings took place in Teheran and Almaty. An important result of the Teheran meeting was the agreement that legal status of Caspian sea should be fixed in the uniform conceptual document, based on which, it will be possible to conclude subsequently a series of the multilateral agreements regulating various kinds of activity on the Caspian Sea. At an Almaty meeting another step forward was made, namely, a number of main principles of activity of the Caspian states was formulated which will be included into the future document on legal status of the Caspian Sea. It includes:

- respect of Caspian bordering countries in their relations the principles put in the Charter of the United Nations including principles of respect of the sovereignty, territorial integrity, political independence, sovereign equality of the states, non-use of force or threat of application of force;
- demilitarization of the Caspian Sea and use it only in the peaceful purposes;
- transformation of Caspian Sea into a zone of peace, good neighborliness, friendship and cooperation, solving of all the problems connected with the Caspian Sea by peaceful means;
- preservation of the environment and prevention of pollution of the Caspian Sea;
- preservation, reproduction and rational use of biological resources of the Caspian Sea;
- responsibility of all Caspian bordering countries for the damage caused to environment and each other, as a result of activity on development and use of the Caspian Sea;
- freedom and safety of merchant shipping of Caspian bordering countries [9;349].

Since 2000 the new stage in multilateral relations of the bordering countries and in the pool of the Caspian Sea begun. On January 9<sup>th</sup>, 2001 the Presidents of Russia V.V.Putin and President of Azerbaijan G.A.Aliev signed joint statement under the status of the Caspian Sea. In this

statement proves the position «about use of Caspian Sea exclusively in the peaceful purposes, and also that it should be zone of peace and friendship and all problems, concerning Caspian Sea, should be solved only by peaceful means» [10].

At the first stage it is offered to differentiate the bottom of the Caspian Sea between the corresponding adjacent and opposite states on sector-zones on the basis of a method of a median line, and also taking into account the conventional principles of international law. Also on November 29<sup>th</sup>, 2011 the agreement on differentiation of the bottom of Caspian Sea was signed between Republic of Kazakhstan and Azerbaijan Republic. In this agreement it was said that «the bottom of Caspian sea and its bowels are differentiated between the parties on a median line which is under construction on the basis of equal removal from» similar base points on the coastal line and islands. The co-ordinates of initial base points are defined proceeding from average long-term level of Caspian sea equal to the mark minus 28 meters of the Baltic system of heights » [11]. Also the agreement was signed between the Russian Federation and Republic Kazakhstan about differentiation of the bottom of the Northern part of Caspian Sea on Russian and Kazakh sectors on a median line, equidistant from coast.

On March, 10<sup>th</sup>, 2003 in Ashkhabad two-day negotiations of the Iranian and Turkmen delegations about differentiation of a bottom of the Caspian Sea begun. During the negotiations the parties agreed that problems on differentiation of Caspian Sea between Turkmenistan and Iran should be solved according to positions of the Convention of the United Nations on a marine law, norms and international law principles. The management of Azerbaijan, in turn, welcomes aspiration of Iran and Turkmenistan to conclude the two-way deal about sectioning of Caspian Sea.

In the second ten days of December, 2003 in Teheran took place the twelfth meeting of a task force by definition of the status of Caspian Sea. The Iranian delegation not only did not begin to object, but also has informed that together with the others will spend «split level negotiations». However, in March, 2004 after the end of 13<sup>th</sup> sessions of working group across Caspian sea and Baku, the special representative of Islamic Republic Iran concerning Caspian sea Mehdi Safari named illegal two and tripartite agreements of the near-Caspian states and that Iran does not intend to refuse the position in the problem of section of Caspian sea. Iran continues to insist that the package agreement under the legal status of Caspian Sea will not be signed yet by all five near-Caspian states, it will not accept the documents signed by other countries.

One of the powerful steps on the way on settlement of disputes in the Caspian region became the Teheran summit of presidents of Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan which took place on October, 16<sup>th</sup>, 2007. In spite of the fact that legal status of Caspian Sea was not defined yet, strategic positions of the countries have not changed, it was possible to co-ordinate basic world outlook positions. And the most important thing that all five countries of region have incurred the obligation under no circumstances not to allow other states to use the territories for fulfillment of aggression and other military operations against any of the near-Caspian countries. The near-Caspian states have declared that only they have the sovereign rights to Caspian Sea, and in it vessels exclusively under flags of the near-Caspian countries can float. It closes

access to Caspian Sea to the extra regional forces which have aggressive plans [12].

By the present moment, despite the presence of certain disagreements concerning vision of legal status of Caspian Sea, five near-Caspian states could achieve certain progress recognizing as application possibility on Caspian Sea of a principle of sectorial sectioning. As clear proof of it serves the agreements on differentiation of the bottom of northern part of Caspian Sea signed between Kazakhstan, Russia and Azerbaijan. The given arrangements allowed to establish sea borders of national sectors of three states by a principle of the modified median line. However, despite it, a question on an establishment of their sovereign zones, allowing to outline frontiers and to define width of internal and fishing waters, yet has not approached to the legal permission. Complicates process of legal registration of national ground sectors absence of the arrangement between Azerbaijan, Iran and Turkmenistan of section concerning of disputable deposits on the Caspian shelf.

Nevertheless, in the only way to resolve the problem of international legal delimitation of Caspian Sea is a negotiating process. For today on a regular basis sessions of Special working group (SWG) on working out of the Convention on legal status of Caspian Sea at level of assistants to heads the Ministry of Foreign Affairs of the near-Caspian countries are held. 30 sessions SWG by this time have already taken place, last of which was in Astana on November, 22-23<sup>rd</sup>, 2011.

Following the results of the meeting, participants of negotiations noticed that they managed to promote by many positions, which else yet do not send the definitive coordination. Proceeding from it, it is possible to ascertain that discussion of legal status of Caspian Sea has accepted more dynamical and forward character. Meetings within the limits of working group allow a management of the countries to carry out «the Caspian five» work by definition of the legal status of Caspian Sea, coordinating key positions of the future Convention. Now the parties participating in negotiations intend to intensify the designated process that in 2012 to have possibility to prepare a definitive variant of the document regulating the international legal status of Caspian Sea.

However it is necessary to note that the most effective mechanism of regulation is summit talks, namely, the Summits of heads of the near-Caspian states. On November, 18<sup>th</sup>, 2010 in Baku III Summit of heads of the near-Caspian states has taken place. The Baku Summit has shown readiness of leaders of "the Caspian five» to overcome a stage of the coordination of positions on the most problem aspects of regional cooperation and to pass directly to coordination and planning of joint actions on Caspian Sea. Following the results of the meeting leaders of the states signed the agreement «About cooperation in safety sphere on Caspian sea» and the joint statement. Beside it, the parties agreed to speed up the work on Convention completion on legal status of Caspian Sea, and expressed their desire to reduce a time interval between meetings at the highest levels, and also to raise quantity of sessions of SWG at the level of deputy ministers of foreign affairs to five times a year. Beside it, during the designated international forum President of Republic of Kazakhstan N.A.Nazarbaev sounded the initiative about moratorium introduction on fishing sturgeon in Caspian Sea [13].

There is a hope that in the near future problems of the status of Caspian Sea, its natural resources and ecology will be solved by teamwork of all near-Caspian states. Even taking

into account that hydrocarbonic resources in this region are very effective foreign policy factor, the base of the decision of the given problem is already put. It is important that Kazakhstan, Russia, Azerbaijan and Turkmenistan clearly stated their positions and agreed to make a compromise in their official statements. More than likely, in the near future Iran will soften its position, considering its present situation and strained relations with the USA. It is necessary to remember that the problem of Caspian sea includes not so much disagreement of the coastal states and their specificity of their relations, as taking into account the place and role of the Caspian region in global geopolitical deals of the new world which are developed by such main characters of modern world politics as the USA, Europe, China, etc. It is obvious that these states today have their own interests in this region. And the roots of the given problem are in the mutual relations between two former enemies of the bipolar world. The destiny of this region will depend on how the geostrategic problems will be solved. As a counterbalance to these tendencies we can use the creation of the near-Caspian organization which will adjust development of potential possibilities of political, economic and legal regulation of the ripened problems of region as a whole and each near-Caspian state separately.

### Conclusion

Thus, it is possible to ascertain that the problem of Caspian Sea is not a new one. The history of "division" of Caspian Sea begins in the ancient time, namely in VIII century. It is remarkable that each times more and more states appear applying their rights on use of the Caspian Sea. First of all, it is connected with rich oil fields and other minerals, and also with convenient geopolitical and geostrategic position. Contradictions especially become aggravated that interests of leading world powers face here. But meaningful dialogue begun, so, there is a hope that legal status of Caspian Sea will be coordinated and the problem will lose its importance. Everything depends on mobility, concurrence and rationality of actions of all Caspian bordering states.

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