

Legal Status of the Caspian Sea: New Challenges for Energy Policy and Diplomacy

Igbal A. Guliev, Gulshan Zeynalova
MGIMO University
Moscow, Russia

Abstract—The article covers the international legal status of the Caspian Sea. For more than 20 years, the international legal status of the Caspian Sea has been an important aspect of the foreign policy of the Caspian states and not only that, due to the preservation of peace, mutually beneficial cooperation and sovereign rights of coastal states to the wealth of the Caspian Sea. As agreed by all the Caspian states on August 12, 2018, the V Caspian Summit was held in Aktau, during which the heads of state signed the Convention on the Legal Status of the Caspian Sea. Despite inter-state disagreements, it seems that, due to their relevance, the provisions of the Convention deserve a formal legal analysis containing some suggestions and comments. The subject of analysis of this article was international legal norms on the status of the Caspian Sea. This article aims to conduct a formal legal analysis of the Convention on the Legal Status of the Caspian Sea in 2018.

Keywords—Caspian Sea; international legal status; bilateral international treaties

I. INTRODUCTION

Located at the crossroads of the Christian and Islamic worlds, the Caspian Sea has historically been the intersection of the interests of many countries. The Caspian region plays a huge role in modern international relations, which determines many approaches to the analysis of its geopolitical and geoeconomic potential, as well as to the definition of geographical pages. The interest of the majority of regional and world powers in the extraction of hydrocarbon raw materials is so great that the question of the distribution of zones of influence, the delimitation of the Caspian Sea remained one of the urgent on the agenda. Considering the Caspian Sea as a potential transboundary territory, we note that the key contradiction of this region is the fact that the national interests and foreign policies of its member states are of national and regional importance, the implementation of which will allow the formation of a regional security system. At the same time, some regions attract the attention of world powers, becoming the object of their interests. The Caspian region is a vivid confirmation of this, it is of great importance for world energy markets, as well as a transit zone between Europe and Asia.

The goal is expected to be achieved through the use of such general scientific methods as the methods of dialectics, system analysis, formal logic; special methods – formal legal and comparative legal methods.

II. OVERVIEW OF THE BACKGROUND OF DIFFICULTIES IN ESTABLISHING A LEGAL STATUS OF THE CASPIAN SEA

The Caspian Sea is the largest enclosed body of water on Earth, which can be classified, on the one hand, as the largest inland lake in the world, or as a full-fledged inland sea. Located at the junction of Asia and Europe, the Caspian Sea washes the shores of five coastal states – Turkmenistan, Iran, Kazakhstan, Azerbaijan and Russia. The strategic importance of the Caspian Sea region is mainly determined by the presence of oil and gas fields located on the shelf, as well as the ability to use the Caspian Sea as a transit zone for the transfer of energy. In addition, there are a number of other factors that testify to the strategic importance of the region.

The total oil reserves in the Caspian region, according to the latest official data, are estimated at 48 billion barrels, which is 3.5% of world oil reserves. Moreover, not the entire region has been studied, which means that the hydrocarbon reserves of the Caspian Sea may be even greater.

Any issues related to the division of maritime territories between countries should be resolved based on international law established by the United Nations Convention on the Law of the Sea. However, this method is not suitable for resolving the issue of delimiting the Caspian Sea, because the Caspian Sea is a closed inland water body that does not have a natural connection to the World Ocean.

Today, the situation around the Caspian Sea is complicated right away due to the following circumstances:

- Firstly, these international acts do not regulate such important aspects as subsoil use, environmental protection and military activities of countries.
- Secondly, since the signing of these acts of international law, the geopolitical structure of the Caspian region has changed. Currently, in the region there are not two, but five states.

The above reasons require the adoption of new rules to regulate interstate relations in the Caspian Sea.

Since 1992, five littoral states have signed the Convention on the Status of the Caspian Sea. Agreements relating to the determination of the international legal status of the Caspian Sea:

1) The first known agreement was the Soviet-Iranian treaties between the RSFSR and Persia (February 26, 1921) and between the USSR and Iran of March 25, 1940, in which the Caspian Sea is defined as "as the Soviet and Iranian", which implies the possibility of water use by riparian countries. These contracts have legal force under the Vienna Convention (1978) on the succession of states in relation to contracts.

2) In fact, each of the countries of the Caspian Sea has its own point of view on the division of the water area. Three countries (Russia, Kazakhstan, Azerbaijan) offer a separation according to the "midline" rule, so this separation implies an equal distance from the coast, the water area in this separation is common. Agreements that confirm the intentions of this section were signed on July 6, 1998 (Russia–Kazakhstan) and September 23, 2002 (Russia–Azerbaijan).

3) On May 14, 2003, the Republic of Azerbaijan, the Islamic Republic of Iran, the Republic of Kazakhstan, the Russian Federation and Turkmenistan signed agreements that defined the delimitation of the bottom of the Caspian Sea. The absence of Iran during the signing of these agreements jeopardizes its part of the seabed, and, of course, these agreements are not recognized by Iran.

It is worth emphasizing that the existing norms of international law in their legal sources have an algorithm for changing the legal status of the Caspian Sea: this decision can only be made subject to consensus, which means that all five countries should come to a common denominator that at the moment is not possible because of each state's personal interest.

While negotiating and approving agreements regarding the international legal status of the Caspian Sea, the Caspian states encountered a number of difficulties in the form of an insufficient level of importance in the form of a regional format of negotiations (a meeting of foreign ministers of countries). The decision on the status of the Caspian Sea should have been taken at the level of state leaders. The way out of this non-standard situation was the Caspian summits (COP), which were a series of meeting of the heads of state of the Caspian five. Here is a brief description of the past Caspian summits:

- 1st Caspian Summit – April 23–24, 2002, Turkmenistan, Ashgabat. The composition of the summit: the presidents of Russia, Azerbaijan, Iran, Kazakhstan, Turkmenistan (Vladimir Putin, Heydar Aliyev, Mohammad Khatami, Nursultan Nazarbayev, Saparmurat Niyazov). Summit results: the heads of the states did not come to a common point of view on the division of the Caspian Sea; the final agreements were not signed. The Countries identified the importance of annual summits taking into account the principles of rotation in each of the countries of the Caspian region.
- 2nd Summit – October 16, 2007, Iran, Tehran. The composition of the summit: the presidents of Russia, Iran, Azerbaijan, Kazakhstan, Turkmenistan (Vladimir Putin, Mahmud Ahmadinejad, Ilham Aliyev, Nursultan Nazarbayev, Gurbanguly Berdimuhamedov). Summit outcomes: Declaration, which became the basis of the Convention on the legal status of the Caspian. The Declaration also states that

the Caspian Sea should be used only for peaceful purposes. This document limited the presence of military forces of third countries in the Caspian Sea.

- 3rd Summit – November 18, 2010, Azerbaijan, Baku. Composition: President of Russia, Azerbaijan, Iran, Kazakhstan, Turkmenistan (Dmitry Medvedev, Ilham Aliyev, Mahmud Ahmadinejad, Nursultan Nazarbayev, Gurbanguly Berdimuhamedov). Summit results: the following documents were signed: Joint statement by the Presidents, Agreement on Security Cooperation in the Caspian Sea. An agreement on security cooperation in the Caspian is a framework document. This agreement has become the legal basis for contacts of the Caspian countries with the aim of ensuring security and combating illegal activities in the Caspian Sea. Also, the countries participating in the summit reached an agreement on the width of the national zone, which included water under the sovereignty of the coastal country, and agreed on an algorithm for introducing a moratorium on catching the most important resource – sturgeon.
- 4th Summit – September 28–29, 2014, Russia, Astrakhan. The composition of the summit: the president of Russia, Azerbaijan, Iran, Kazakhstan, Turkmenistan (Vladimir Putin, Ilham Aliyev, Hassan Rukhani, Nursultan Nazarbayev, Gurbanguly Berdimuhamedov).
- 5th Summit – August 12, 2018, Kazakhstan, Aktau. The composition of the summit is the President of the Republic of Azerbaijan, the President of the Islamic Republic of Iran, the President of the Republic of Kazakhstan, the President of the Russian Federation Vladimir, the President of Turkmenistan (Ilham Aliyev, Hassan Rukhani, Nursultan Nazarbayev, Vladimir Putin, Gurbanguly Berdimuhamedov).

III. FEATURES OF THE NEGOTIATION PROCESS ON THE CONVENTION ON THE LEGAL STATUS OF THE CASPIAN SEA

The Fourth Caspian Summit is called "breakthrough", since a number of agreements were reached, and it took the countries more than a dozen years to make these decisions. At this summit, the leaders of the states agreed to sign a preliminary agreement on dividing the sea into two zones, which include the zone of state sovereignty of the coastal countries and the fishing zone. The summit participants agreed that the five Caspian littoral countries will receive an exclusive right to the sea space within 15 nautical miles from the coast (the term "national sovereignty space" was used) and, in addition, another 10 nautical miles that the state has the right to use for reconnaissance and extraction of natural resources. Outside the territory of the indicated 25 nautical miles (46.3 km) there will be a common zone for all the Caspian states, in which exploration and development of natural resources will be possible only after additional consultations with all parties to the upcoming Convention.

International law experts believe that the countries of the Caspian region took two important steps in order to develop common principles for the agreement: all countries participating in the summit agreed to continue work within the framework of annual meetings (level of specialists, as well as

deputy foreign ministers of the countries of the Caspian region), came to the unanimous opinion that until the establishment of the legal status of the Caspian, the states will not conduct exploration and production of oil or natural gas in the Barrier, which are controversial. Nevertheless, countries reserve the right to conduct work on the coastal part within the land borders, and which is under their jurisdiction.

Another important agreement of the Astrakhan summit was the agreement that the possibility of the presence of power structures of any third states that are not in the top five is excluded on the Caspian Sea. In a joint statement of the Presidents of the Republic of Azerbaijan, the Islamic Republic of Iran, the Republic of Kazakhstan, the Russian Federation and Turkmenistan of September 29, 2014, the principle of "non-presence of armed forces not belonging to the Parties on the Caspian Sea" was agreed. The reflection of common intentions regarding the demilitarization of the Caspian Sea speaks of the deeper interests of the Caspian littoral states in the region than purely economic ones.

In addition, following the results of the fourth summit, the heads of five states signed a set of documents: three specialized industry agreements for the protection of biological resources, the prevention and prevention of emergencies, as well as cooperation in the field of hydrometeorology. Following the results of the fourth summit, the presidents of Russia, Azerbaijan, Iran, Kazakhstan and Turkmenistan signed a joint statement and adopted a final communique, while expressing their intention to finally sign the Convention on the legal status of the Caspian Sea at the fifth summit of the Caspian littoral states, which was done in Aktau.

The main value of the document lies in the fact that, on the one hand, it fixes the level of proximity of negotiating positions for each of 19 points, and on the other, it indicates a likely way to further solve the existing problems. So, clause 11 addresses the most difficult issue - the settlement of territorial disputes in the region, for which it is proposed to use the existing principles and norms of international law, but by mutual agreement of the parties. In paragraph 7, for the first time in the negotiation process, at the official level, the size of the exclusive economic zone was agreed. The water area 25 miles wide consists of two parts: the exclusive 15-mile zone, which is subject to state sovereignty, and the adjacent 10-mile strip - in its respect, the Caspian countries will have exclusive rights to extract aquatic biological resources. In paragraph 4, the parties acknowledge the existence of an arms race problem in the region and undertake to "carry out military development within reasonable sufficiency, taking into account the interests of all parties." In addition, the document discusses measures to strengthen regional security, it is noted that they should be "transparent and open." During the summit, issues were identified on which the parties have different opinions. The double expressed Turkmen position on the construction of trans-Caspian infrastructure projects attracted attention.

At the same time, Russia and Iran adhere to the principle of the need to coordinate any transboundary projects at sea by all the Caspian countries. In other words, the "five" has not yet come to a single decision on this issue. It should be added that at the summit in Astrakhan the Agreement on Security Cooperation, ratified by all countries, was recognized as having

entered into force. Thus, a serious step was taken in determining the international legal status of the disputed water area, but somewhat overstated expectations, as well as the presence of complex issues requiring a long study and compromise, did not allow the final adoption of the Convention on the Status of the Caspian Sea. For the successful completion of work on this document, it will be necessary to resolve a complex of territorial contradictions concerning the south of the Caspian Sea and affecting relations between Azerbaijan and Iran, Azerbaijan and Turkmenistan.

Thus, a significant success was achieved, since the leaders of the Caspian five countries signed the Declaration, which establishes the legal principles for determining the international legal status of the Caspian. An agreement was also reached towards endorsement of the principle of directed cooperation in the region as a whole and in the issue of ensuring security in particular. The countries participating in the summit determined the vector of the absence of armed forces of third countries in the Caspian and indicated the width of the national zone, taking into account the fishing zone and the zone under sovereignty.

One of the most important dates of the agreements concerning the Caspian Sea was August 12, 2018, it was then that the heads of the five Caspian littoral countries (Russia, Kazakhstan, Azerbaijan, Turkmenistan and Iran) signed a document that has become historic for the region. This document is the Convention on the Legal Status of the Caspian Sea, and work on it has been carried out by the states of the Caspian region for several decades – 52 meetings, about a dozen agreements on delimiting the bottom of the Caspian Sea, four summits of the countries of the Caspian five - became the prerequisites for signing the above Convention. Until 2018, it was not possible to resolve the issue of determining the status of the Caspian Sea. The stumbling block was the principle of delimiting the waters of the Caspian: Russia took the initiative to delimit the sea between neighboring states along a modified midline, Kazakhstan and Azerbaijan supported the Russian position, Turkmenistan insisted on dividing the sea into national sectors as part of the state territory, and Iran adhered to the position on dividing the principle of equal shares.

On August 12, 2018, the parties finally found common ground and signed the Convention, which the media has already called the "Constitution of the Caspian Sea".

It is noteworthy that one of the most controversial issues – delimitation of the bottom of the Caspian Sea for subsoil use, with the adoption of the document has not yet been fully resolved. According to the Convention, the parties are free to carry out subsoil use within their territorial waters, but the rest of the bottom should be divided into sectors "by agreement of neighboring and opposing states, taking into account generally recognized principles and norms of international law". Also, the question of the right of countries to lay trunk pipelines along the bottom of the Caspian Sea is not completely resolved: on the one hand, the Convention does not limit the parties to this right, on the other hand, the determination of the route for laying will be carried out in agreement with the party through which the sector of the bottom should be a pipeline was laid, which could cause new difficulties in the negotiations and new disagreements.

IV. CONCLUSION

<http://mfa.gov.kz/en/content-view/zulfiya-amanzolova-kaspijdi-kkykytk-mrtebesi-aktau-konferenciasyny-mni>

From a geographical point of view, the Caspian is an international lake, but it does not have such a status, since it represents the inland sea under bilateral agreements between the USSR and Iran, which today are largely outdated and do not take into account the interests of other littoral states. The adoption of the convention on the legal status of the Caspian Sea is currently significantly complicated due to the diverging positions of the five Caspian littoral states regarding the division of the seabed and other issues; in particular, there is also no unity on military cooperation in the Caspian Sea. However, in any case, in order to ensure the national interests of the states, security and preserve the biological resources of the Caspian Sea, the adoption of a convention on the legal status of the Caspian Sea is an urgent and necessary step that will mark the latest stage of international legal cooperation of the states to protect the environment of the Caspian Sea. Despite different economic and political interests, the Caspian littoral states are united in the need to protect the ecology of the Caspian Sea from pollution, preserve the biological diversity of the water area, as well as respect for the resources of the Caspian. Legal support for international legal cooperation in this area is the Framework Convention. In the future, we believe that the Caspian should be recognized as a unique closed reservoir, the status of which should be determined on the basis of international law on the delimitation of the continental shelf using the recognized international legal method of equidistance and the norms of agreements of the Caspian states in the field of environmental monitoring and protecting the Caspian's ecological balance seas.

REFERENCES

- [1] Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Concluded in Tehran 04.11.2003).
- [2] Agreement on the conservation and rational use of aquatic biological resources of the Caspian Sea (Concluded in Astrakhan on 09/29/2014).
- [3] Z. Gabieva, "The legal status of the Caspian," *Observer*, 8, 2004.
- [4] I.A. Guliyev, and E.T. Mekhdiev, "The role of fuel and energy sector in the Eurasian economic community integration process," *International Journal of Energy Economics and Policy*, 7 (2), pp. 72–75, 2017.
- [5] I. Guliyev, "Russian foreign energy policy within the conditions of credibility gap," in *Proceedings of the 30th International Business Information Management Association Conference, IBIMA 2017 – Vision 2020: Sustainable Economic Development, Innovation Management, and Global Growth, 2017*, pp. 1741–1750.
- [6] I.A. Guliev, I.I. Litvinyuk, and E.T. Mekhdiev, "The newest tendencies of the world market condensed natural gas: Preconditions expansions of export potential Australia, Canada, Russia and the USA," *SOCAR Proceedings*, (2), pp. 56–66, 2016.
- [7] N.M. Khurchak, "The international legal status of the Caspian Sea and international economic cooperation of the Caspian littoral states," Extended abstract of Cand. Sci. thesis. Moscow, 2006.
- [8] B. Aghai Diba, "What is the meaning of new Moscow Stance on Caspian Sea?," 2014. Retrieved from: <http://www.payvand.com/news/14/sep/1161.html>
- [9] Official Internet Resources of the President of Russia "Speech by the President of the Russian Federation at the Fifth Caspian Summit," 2018. Retrieved from: <http://en.kremlin.ru/events/president/news/58296>
- [10] Caspian: International legal documents, S.S. Zhiltsov, I.S. Zonn, A.G. Kostyanoy, A.V. Semenov, comps. Moscow: International Relations, 2018.
- [11] D.V. Mikerin, "Caspian Knot. Mission feasible," *International life*, 11, 2015. Retrieved from: <http://interaffairs.ru/jauthor/material/1399>
- [12] Z.A. Amanzholova, "The legal status of the Caspian: the significance of the Aktau Convention," 2018. Retrieved from: