LEGAL STATUS OF THE CASPIAN

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The existence of immense offshore hydrocarbon resources in the Caspian Sea along with its strategic location on a geopolitically significant transport route have made it into a top priority in the foreign and domestic policies of the littoral states.

INTRODUCTION

The controversy over the legal regime of the Caspian Sea began with the breakup of the Soviet Union in 1991. Until then, the Caspian had been considered a common sea between Iran and the Soviet Empire. However, following the collapse of the Soviet Union, the number of littoral states increased from two to five, which in turn dramatically altered the geopolitical dynamic. The birth of the new nation-states along the perimeter of the Caspian Sea transformed the region into an area of conflict, and its legal regime has become one of the contentious disputes among the bordering countries. The existence of immense offshore hydrocarbon resources in the Caspian Sea along with its strategic location on a geopolitically significant transport route have made it into a top priority in the foreign and domestic policies of the littoral states. Its strategic importance has moreover increased the pressure to find a legal solution on which the coastal countries can agree; currently they hold different views on the delimitation of the sea. The bordering states have been unable to find a legal solution of the sea, and this impasse is preventing them from exploring the vast natural resources. In this regard, the objective of this chapter is to provide a historical examination of the legal situation of the Caspian, including analyses of first the political controversy over the delimitation of the sea after the fall of the Soviet Union, and secondly the official positions of the littoral states. The third section will seek to identify which international norms and principles are applicable in order to resolve this contentious problem.

HISTORICAL BACKGROUND: CASPIAN SEA UNTIL THE END OF THE SOVIET UNION

Bordered by Azerbaijan, Kazakhstan, Iran, Russia, and Turkmenistan, the Caspian Sea is the largest body of the salt water in the world without any natural connection to a world ocean. The only links to the outside world are via the Don River and the Volga canal. However, geological studies show that long time ago it had a connection to a world ocean via the Black

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The Caspian Sea is more than 370,000 km² in area, and its length from north to south is nearly 1,200 km, with an average width of around 320 km. More than 80 percent of the border is shared by four former Soviet republics: Azerbaijan, Kazakhstan, Russia, and Turkmenistan. The rest belongs to the Islamic Republic of Iran. Apart from the existence of rich oil and gas resources, it also contains about 90 percent of world's sturgeon stocks.

The first treaty concerning the legal regime of the Caspian Sea was signed at the beginning of the eighteenth century as a result of the confrontation between the Russian and Persian Empires. The political and economic importance of the Caspian Sea, as well as its significance as a gateway increased the desires of those empires to control it. In this regard, the first naval base of the Russian Empire was established in Astrakhan in 1723. The result was the occupation of the five Caspian Sea provinces on the south and east coasts of the sea, which were part of the Persian Empire. The first treaty between these empires was signed on 23 September 1723, in St. Petersburg. The Petersburg treaty transferred control of Derbend and Baku cities as well as the provinces attached to them to the Russian Empire.

Additionally, according to this treaty, provinces belonging to the Persian Empire provinces such as Gilan, Mazandaran, and Astarabad, located in the south coast of the Caspian Sea, became part of Russia.

Another important treaty between the Persian and Russian Empires regarding the Caspian Sea was the Peace Treaty of Gulistán, signed on 24 October 1813, as a result of the 1806-1813 Russo-Persian War. According to the peace treaty, the Araz (Araxes) river was recognized as a border between two empires, with the territories on the north of boundary line as part of the Russian Empire.

According to the article 5 of the Gulistán Treaty, Russian and Persian merchant vessels had the same rights to navigate the sea and to enter into the harbors belonging to one another. However, concerning military ships, only Russia had the exclusive right to sail in the Caspian Sea; no other nation or state was allowed to have warships in the sea.

The Peace Treaty of Turkmenchay, which marked as the end of the 1826-1828 Russo Persian War, was signed on the 10th of February 1828. With this treaty, Russia strengthened its

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position in the Caspian Sea. Article 8 of this treaty gave the same privileges both to the Russian and Persian merchant vessels, as was the case in the Gulistan treaty. However, it repeated the ban on Persian military vessels in the Caspian Sea.

However, these treaties were declared null and void when the Bolsheviks took control in Russia after the end of the First World War. A new legal regime was created under the Treaty on Friendship and Cooperation on the 26th of February 1921 between Soviet Russia and Iran. This treaty created the principle of equal rights. According to Article 11 of the treaty, which nullified Article 8 of the Turkmenchay Treaty, under which Iran was forbidden from having military vessels in the Caspian Sea, both parties had an equal right of free floating in the sea under their own flags.

The treaty of “Establishment, Commerce, and Navigation” signed between Soviet Russia and Iran in 1935 gave each party the right to fish in their coastal waters up to a limit of 10 nautical miles. However, apart from the 10 mile line delimiting territorial water and fishing and commercial rights, no common demarcation or specific regime was defined by these bilateral agreements.

Today, there is a belief that the above-mentioned treaties made the Caspian Sea a Soviet-Iranian sea, and therefore should be regulated according to condominium principles. However, there was no direct statement or article in those treaties defining the Caspian as a ‘common sea’ between two republics. This notion was detailed by Note 13, which was attached to the Convention on Establishment, Commerce and Navigation. “Its purpose was to remind contracting parties of their obligation not to permit foreign workers to be engaged in subversive activities while in Caspian ports”. The intention behind that Note was to keep
Great Britain and later Nazi Germany out of the Caspian.

According to Vyacheslav Gizzatov, the principle of condominium should be settled by treaty or as a matter of international customary law by the historical practice between bordering countries. He states that, "the treaty practice, as discussed above, does not bear out claims that the Caspian was treated by the littoral states as a condominium. On the contrary, there is some evidence in the implementation of the treaties that plainly indicate that it was not".9

In 1949, the Soviet Union began the exploration of oil in the Caspian Sea. If there was a condominium principle that applied to the sea, it was expected that this would entail joint ownership of the natural resources by these coastal states. But there were no cooperation between the parties. Moreover, Iran also began to extract oil in its sector without consulting the Soviets.

Gizzatov argues that given the exploration of natural resources, there is no proof that the sides considered the mineral resources of Caspian Sea as subject to co-ownership, but vice-versa. Furthermore, referring to the 1966 Soviet naval international-juridical reference book, he declares that "the resources of the continental shelf also belong to each party (USSR and Iran) within the limits of its respective area of the sea".10

Furthermore, in 1956, the official land boundary between the Soviet Union and Iran was drawn, connecting Astara village in Azerbaijan to Hasankuli village in Turkmenistan. Although this agreement did not demarcate the Caspian Sea, it had been in practice the unofficial demarcation line, and all operations relating to natural resources had been issued according to this line, limiting Iran's jurisdiction to a small southern portion of the Sea.11 In 1964, the agreement between the Soviet Union and Iran regarding aviation also approved the Astara-Hasankuli line as an airspace boundary and was heavily guarded by the Soviet side. “Those who wished to over-fly the area had to obtain permission from the Soviet authorities”.12

In 1970, the Ministry for Oil and Gas Industry of the Soviet Union divided the north part of this imaginary line (Astara-Hasankulu) into the sector belonging to Azerbaijan, Kazakhstan, Russia, and Turkmenistan. The median line principle provided by international customary law demarcates territory based on an equal distance from the coast of states to the center of the sea until the boundaries meet; this was the basis for this 'sectoral division', and despite the non-property right the coastal states were given a right to conduct geological investigations and development of hydrocarbon resources in their own sectors. The sea basin inside this sectoral divi-

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9 Gizzatov, Vyacheslav, p. 45.
10 Gizzatov, Vyacheslav, p. 46.
11 Karbuz, Sohbet.
12 Gizzatov, Vyacheslav, p. 46.
sion was considered the territory of the coastal state. According to this division, Kazakhstan gained 113,000 km², Russia gained 64,000 km², and Azerbaijan and Turkmenistan each gained approximately 80,000 km². This sectoral division was described in a speech by former Russian Prime Minister Viktor Chernomyrdin during a seminar organized in Astrakhan in 1993.¹³

In relation to the agreements outlined above, the former Deputy Foreign Minister of Turkmenistan, Yolbars A. Kepbanov, indicated that 1921 and 1940 treaties only dealt with navigation, fishing, and trade, and did not define the legal status of the Caspian Sea. Additionally, he argues that parties to those treaties were Soviet Russia and Iran, which no longer exist as subjects of international law; the emergence of the new independent littoral states of Caspian Sea has increased the need to identify a new legal regime for the Caspian Sea in order to respond to the interests of all coastal states.¹⁴

Consequently, none of the above mentioned treaties and agreements between Iran and Soviet Union provided an official demarcation line, and additionally, they did not settle the legal status of the Caspian Sea, that is, whether it is a sea or a lake. Thus after the collapse of the Soviet Bloc in 1991, the Caspian Sea became the subject of a new political, economic, and strategic confrontation among the littoral states, which adopted different views in terms of the most appropriate legal regime for the Sea. In this respect, before addressing the arguments of the five littoral states, different theoretical approaches on the Caspian Sea drawn from various scholars will be reviewed, followed by an assessment of the situation after the collapse of the Soviet Empire.

**THEORETICAL APPROACH: WHETHER SEA OR LAKE?**

There were various opinions and descriptions among scholars regarding the legal status of the Caspian, i.e whether it is a closed sea or a lake. As already mentioned, according to geological research “the petro tectonic characteristics of the south Caspian Sea, its so-called submarine structure, is between land crust and ocean crust”.¹⁵ Due to these geological factors and characteristics, many Soviet scientists considered the Caspian a closed sea rather than a lake.

According to Encyclopedia Britannica, while referring to above mentioned geological factors and characteristics, it is not correct to call the

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¹⁵ Shu, Yand, p. 52.
Caspian the largest salt lake in the world, arguing instead that it is an inland sea: “scientific studies have shown that, until geologically quite recent times, it was linked, via the Sea of Azov, the Black Sea, and the Mediterranean, to the world ocean. This factor has molded strongly all aspects of its physical geography”.16 It was also characterized as a closed sea in a textbook on international law published in 1957.17 On the other hand, there is an argument that due to the lack of any natural connection between Caspian Sea and a World Ocean, it cannot be considered a closed sea. This was the thesis supported by Russia after the collapse of the Soviet Union. As Yusin Lee indicates, “the Russian Foreign Ministry put forward the argument that the Caspian was a lake because it is landlocked and unconnected to the world’s oceans”.18 All this shows that there are divergent scholarly views among the littoral states concerning the legal status of the Caspian Sea. Thus, we will analyze the relevant international norms and principles regarding the delimitation of the Caspian.

Identifying the applicable rules and regulations in the delimitation of the Caspian Sea depends primarily on its legal regime. If the Caspian is characterized as a closed sea, then the following provision of the United Nations Convention on the Law of Sea (UNCLOS) would be applicable; 12 miles territorial water, 200 miles exclusive economic zone, and continental shelf of the littoral states.19 Therefore, it is important to identify the classification of the sea according to UNCLOS. According to Article 122 of UNCLOS, “an enclosed or semi-enclosed sea means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States”.20 However, proceeding from Article 122 of UNCLOS, defining the Caspian as a closed sea is questionable due to the absence of a narrow outlet or natural water reservoir to connect it to the ocean. The artificial Volga Don canal which links the Volga River to other rivers, which eventually flow into the Black or Baltic Seas, is the only connection between the Caspian Sea and an ocean.21

17 A. A., Kovalev, p. 158.
21 Vinogradov, Sergei, & Wouters, Patricia, p. 618.
Even if the Caspian Sea is recognized as a sea,\textsuperscript{22} UNCLOS would not be applied to resolve the question of its legal status as it applies only to its members and only Russia, out of five littoral states of the Caspian Sea has ratified UNCLOS, which opposes the definition of the Caspian as a sea. However, it is notable that Russia’s rejection of the definition of the Caspian as a sea should be considered as a political matter rather than a legal issue. Its concern is the internationalization of the Volga-Don canal that connects the Caspian to Black and Baltic Sea, which would give free navigation rights to all countries.

On the other hand, if the Caspian is defined as a lake, then its status would remain unresolved, because the legal regime governing of international lakes is different from that which governs closed seas; furthermore there is no international convention or uniform practice for the division of international lakes. In this respect, if there were a specific agreement among the littoral states to settle the dispute, then the legal regime of that international lake would be based on that agreement. As Thane Gustafson and his colleagues point out, “under typical practice in international law, lakes and internal seas are not normally considered subject to joint sovereignty, unless specified by a clear treaty”\textsuperscript{23} However, if there is no special agreement or international convention, international customary law will be the primary source for the delimitation of the lake.\textsuperscript{24} If the Caspian Sea is defined as a lake, there are two different perspectives pertaining to the dispute: the condominium and the median line principles.

The first one, the condominium principle, relates to the joint ownership of the Caspian Sea by all littoral states, which was the main argumentation of Iran and Russia referring to the Soviet-Iranian treaties. In international law there is only one special similar case to the Caspian Sea for the condominium, the Gulf of Fonseca, which was part of the Spanish empire. However, after El Salvador, Honduras, and Nicaragua gained independence, joint ownership was given to these countries by International Court of Justice. However, it should be borne in mind that previously the Fonseca Gulf was only under Spanish ownership, but the Caspian was part of the Iranian and Russian Empires.\textsuperscript{25}

Additionally, it was demonstrated in the previous chapter that it is impossible to apply the joint control principle to the Caspian Sea, because from

\textsuperscript{22} Terzioğlu, Suleyman Sırrı, “Hazar’ın Statusu Hakkında Kıyıdaş Devletlerin Hukuksal Görüşleri”, Orta Asya ve Kafkasya Araştırmaları Dergisi, Cilt:3, Sayı: 5, 2008, p. 34.

\textsuperscript{23} Lee, Yusin, p. 39.

\textsuperscript{24} Shafiyev, Farid Rauf oğlu.

\textsuperscript{25} Terzioğlu, Suleyman Sırrı, p. 35.
the viewpoint of international legal practice, none of the Russia-Iranian treaties specify the legal regime of the sea according to the condominium principle.

Regarding the median line method, it should be noted that this is the most commonly used international practice for the delimitation of international lakes. According to the median line principle, which entails dividing and creating boundaries at the mid-point, all littoral states have “an exclusive sovereignty over the biological and natural resources, water surface and shipping in the national sectors”. In international practice, the median line principle used for the division of the Great Lakes between the United States and Canada, Lake Chad among Cameroon, Chad, Niger and Nigeria, Lake Malawi among Malawi, Mozambique and Tanzania, and Lake Geneva between Switzerland and France.

Consequently, proceeding from the above-mentioned opinions of various scholars, the applicability of both the norms of international sea law and the international customary law principles for dividing lakes are questionable in the context of the delimitation of the Caspian Sea. Therefore, the only way to find a solution for the legal status of the Caspian Sea is through a special treaty among the littoral states. In this respect, Guive Mirfendereski states: “whether sea or lake, it is up to the five Caspian littoral states “to negotiate their respective boundaries on the water”.

THE CASPIAN SEA AFTER THE DISSOLUTION OF THE SOVIET UNION: DIFFERENCES AMONG THE LITTORAL STATES

The collapse of the Soviet Union in 1991 pushed the political geography of the Caspian Sea into a period of extensive transformation with...
the emergence of new independent states along its coasts: Azerbaijan, Kazakhstan, and Turkmenistan. This transformation led to the division of the littoral states into two opposing groups for the control of the immense natural resources of the sea basin. According to Russian and Iranian common view before 1991, the Caspian Sea was governed by the Russo-Iranian agreement. The Alma-Ata Declaration of 21 December 1991 declared that all littoral states of the Caspian Sea would observe the international agreements of the Soviet Union and recognize the validity of all of them, including the treaties of 1921 and 1940. Russia and Iran stress that it should be given over to the joint utilization of the coastal states. According to their stance, the Caspian Sea does not fall under the 1982 UN Convention of the Law of the Sea, and these aforementioned treaties “should serve as the legal basis for the rights and obligations of all littoral states in the Caspian Sea”.29

On the other hand, the new independent states of the Caspian Sea brought the legality of the treaties between Soviet Union and Iran into question and argued that the treaties of 1921 and 1940 never addressed the exploitation of the seabed.30 According to them, these treaties have ignored the interests of the new littoral states. Therefore, they supported the division of the Caspian Sea into national sectors, while adopting UNCLOS.31

POSITIONS OF LITTORAL STATES

Azerbaijan was the most adamant in its support for the division of the sea into appropriate sectors on a median line, by which all coastal states would have sovereignty over the biological resources, seabed, navigation, water column, and surface of the Caspian Sea.32 It argued for the definition of the Caspian Sea as a boundary lake. In this regard, the former Ministry of Foreign Affairs, Hasan Hasanov stated that, “the Caspian is a lake and the international conventions say nothing about the status of the lakes. The talks can be only about the practice and Azerbaijan keeps just to this practice”.33

The position of Azerbaijan is reflected in its constitution of 1995, which claims that “soil along with its mineral wealth, inland and territorial waters, continental shelf, flora and airspace over Azerbaijani territory are the exclusive ownership of the republic”.34 Regarding

29 Granmayeh, Ali, p. 16.
30 Haghayeghi, Mehrdad, p. 34.
31 Ladaa, Munir, Transboundary Issues on the Caspian Sea Opportunities for Cooperation (Bonn International Center for Conversion (BICC), 2005), p. 11.
33 Yusin, Lee, p. 39.
34 Ondrejčík, Michal, p. 11.
Russia’s desire to impose the 1921 and 1940 treaties, Azerbaijan claimed that these treaties only dealt with navigation and fishing, and did not define the legal status of the sea, while leaving the exploitation of the natural resources of the seabed as an open issue. Going further, it argues that the parties to the treaties were Iran and Soviet Russia, and this the treaty fails to accommodate the new independent states of Caspian Sea.\textsuperscript{35}

Concerning the legality of the aforementioned agreements, the Ministry of Foreign Affairs of Azerbaijan Republic, claimed in his 14 December 1998 statement that “each sovereign Caspian state develops the mineral resources in its own national sector. The Soviet-Iranian Treaties of 1921 and 1940 covering questions relating to navigation and fisheries do not regulate questions relating to the mineral resources of the Caspian Sea”.\textsuperscript{36} Faraz Sanei, Human Right Watch researcher, summarized the official position of Azerbaijan as follows:

1- “That the seabed must be divided on the bases of the equidistance or median line principle;

2- The Soviet-Iranian Treaties of 1921 and 1940 are inapplicable to mining rights and regulate only fishing and navigation routes;

3- The Soviet Union divided the Caspian into Iranian and Soviet zones by drawing a boundary line across the Sea between Astara and Hosseingholi and further dividing the Soviet sector among Azerbaijan, Russia, Kazakhstan, and Turkmenistan; and

4- The Azerbaijani Majlis (or Parliament) and the Constitution have codified the principle of sovereignty over the Azerbaijani sector of the Caspian”.\textsuperscript{37}

Kazakhstan took a stance similar to Azerbaijan. However, while Azerbaijan supported the division of the sea into national sectors, where all bordering countries would have sovereignty over the seabed and surface of the sea, Kazakhstan stood for the division of only seabed according to a median line principle, with common use of the surface of the sea. This position of Kazakhstan is reflected in its agreement with the Russia in 1998.\textsuperscript{38}


\textsuperscript{38} Terzioğlu, Suleyman Sim, pp. 38/39.
Unlike other newly independent coastal states of the Caspian Sea, Turkmenistan has abstained from a clearly defined policy towards the delimitation of the sea. Its position changed over time because of changes in the political situation and the views of the littoral states regarding the Caspian issue. It was the first country to adopt a law creating coastal water, twelve miles of territorial sea, and an exclusive economic zone. Meanwhile, Turkmenistan signed an agreement with foreign companies in order to develop its “Cheleken” offshore field in the east part of the sea in 1993. Two years later, it seemed to support the Russian and Iranian position whereby the condominium principle is applicable until the littoral states come to an agreement over the legal status of Caspian Sea. In 1996, it switched over to the position of Azerbaijan, supporting the sectoral division of the Sea. After a year, it came to an agreement with Azerbaijan in order to divide the seabed according to median line principles, but could not agree on the point from which the median line should be measured. However, on 8 July 1998, Saparmurad Niyazov, the former president of Turkmenistan, made a joint statement with Iran, declaring that until the final status of the Caspian Sea was resolved, the Russo-Iranian Treaties would remain in force. The dispute that emerged between Azerbaijan and Turkmenistan over the oil fields drove the latter toward the position of Iran.

Russia in its turn opposed the division of the sea according to national sectors and increasingly emphasized the establishment of joint ownership in the Caspian. The Russian claim considered the sea as the common property of the five littoral states, referring to the Soviet-Iranian treaties and prohibiting unilateral action by any coastal state without agreement from other states. It argued that the riparian states should respect the current status of the Caspian Sea, and that UNCLOS could not serve as a basis for the division of the sea.

40 Sanei, Faraz.
41 Terzioğlu, Suleyman Sırrı, p. 42.
42 Ghafoori, Mahmoud, p. 88.
Russia also expressed its position in a note to the UN on 5 October 1994, in which it stated that “unilateral action in respect of the Caspian Sea is unlawful and will not be recognized by the Russian Federation, which reserves the right to take such measures as it deems necessary and whenever it deems appropriate to restore the legal order and overcome the consequences of unilateral actions”.

However, from 1995 Russia began to follow a different policy toward the delimitation of the Caspian basin. The reason for this was the participation of the Russian oil Company Lukoil in the ‘Deal of Century’, signed between Azerbaijan and western oil companies in 20 September 1994, providing the possibility of benefiting from the transportation pipelines passing through Russia. In this respect, in August 1995 Vadim Kuznetsev, the Russian ambassador to Turkey, emphasized that if Azerbaijan was going to export its oil via the Russian pipeline, Russia would be willing to alter its position concerning the legal regime of the Caspian Sea.

While discussing the official stance of Iran toward the Caspian Sea, Mehrdad Mohsenin, an Iranian researcher, emphasized that the Caspian Sea’s legal status should be resolved according to the following principles:

a- “The 1921 and 1940 treaties must be the basic instruments for completion of the future legal regime;

b- The principle of unanimity in all decisions made in relation to Caspian Sea affairs must be established;

44 Aydin, Mustafa, p. 10.
45 Granmayeh, Ali, p. 17.
c- The demilitarized status of the sea must be established;

d- The Caspian must be a center for trade, cooperation and economic convergence among the littoral states;

e- Environmental principles must be observed and any measure that would be harmful to the environment, such as the laying of gas and oil pipelines on the seabed, prevented; and

f- The eventual regime must be defensible at the national level”.

Generally speaking, Iran supported a position similar to the Russian one. In the initial stages, it was totally against the division of the Caspian Sea into national sectors among the five littoral states. Therefore, it insisted on the condominium principle, i.e. that all coastal countries should enjoy joint utilization of the seabed and surface of the Caspian Sea. Later, Iran claimed that it was ready to accept sectoral division of Caspian Sea if its interests are taken into consideration. Its proposal was the division of the seabed and surface of the sea into five equal sectors, whereby all littoral states would have a 20 percent share. However, none of its proposals have been accepted by the newly independent states of the Caspian Sea, and the dispute between Azerbaijan and Iran concerning the delimitation of the southern Caspian is continuing.

The dispute among the littoral states was sparked when Azerbaijan unilaterally signed the “Deal of Century” with the international consortium on 20 September 1994 for the exploitation and development of hydrocarbon resources in the Azerbaijani sector of the Caspian Sea. The Foreign Minister of the Russian Federation opposed the agreement and threatened sanctions against Azerbaijan. According to the official position of the Russian side, the existing oil and gas fields were investigated and developed by the Soviet Union, and thus should be considered as Russian assets. Albert Chernishev, the Deputy Foreign Minister of Russia, described the unilateral action by Azerbaijan as “robbery”. The Russian newspapers reported, “President Yeltsin had is-

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suised instructions to his government for the imposition of financial, commercial and naval sanctions against Azerbaijan if the latter continued to implement the oil agreement”. However, the critics on the Russian side created a paradoxical position regarding its policy toward this issue, given that LUKoil, the Russian oil company, was also part of the consortium. Yuri Shafranik, the Russian Fuel and Energy Minister, “not only supported the contract, but also recognized the fact of the existence of the Azerbaijan sector of the Caspian Sea and thus the fact of conditional division of the Caspian in sectors”. Later, Prime Minister Viktor Chernomyrdin gave a guarantee to Azerbaijan that Russia would not oppose the deal, but Azerbaijan should coordinate its policy with Russia regarding ecological and fishing affairs. The same kind of claim also came from Foreign Minister Andrei Kozyrev, giving assurance that no sanctions would be imposed against Azerbaijan.

During the Ashgabat meeting between the five coastal states in November 1996, Russia declared that it was ready for the division of the sea into 45 nautical miles, whereby each littoral state would have sovereignty to explore the seabed and surface. In this respect, Russian Foreign Minister Yevgeny Primakov emphasized “many Caspian states are pinning their hopes for economic growth on oil production. Russia is ready to recognize their jurisdiction over sites outside the zone, providing they are being or about to be developed”. According to Mustafa Aydin, “this apparent “softening” in the Russian position was mainly due to the realization that “it cannot stop the division of the sea. [...] The only question [was] how the division will now be formalized de jure”. However, Azerbaijan rejected this proposal because its natural resources fall outside the 45 miles.

Starting from 1997, some of the coastal countries of the Caspian Sea began to sign bilateral deals in order to facilitate the exploitation and development of the Caspian Sea resources. The first such agreement was signed between Azerbaijan and Kazakhstan in June 1997. This was followed by another deal between Kazakhstan and Turkmenistan regarding the division of the sea along the median lines that was drawn during Soviet times. A joint statement by the presidents of Kazakhstan and Turkmenistan on February 27, 1997, declared that the Caspian Sea would be divided into two zones: an inner zone of 20 nautical miles and an outer zone of 90 nautical miles. This decision was ratified by all major Caspian states and has served as a basis for further negotiations on the division of the Caspian Sea resources.

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51 Saivetz, Carol R., p. 54.
52 Granmayeh, Ali, p. 18.
54 Terzioglu, Suleyman Sirr, p. 38.
55 Haghayeghi, Mehrdad, pp. 35/36.
1997 emphasized that “until Caspian states reach an agreement on the regime of the Caspian Sea, the parties will adhere to the delimitation of administrative and territorial borders along a line running through the middle of the Sea”.  

By 1998, Russia changed its policy, and agreed with Kazakhstan on the division of the seabed of the northern Caspian while leaving surface of the sea in common utilization. According to analysts, the reason Moscow had reversed its earlier position was the exploration of the huge hydrocarbon resources in its northern Caspian sector and LUKoil’s involvement in the international consortium that signed an agreement with Azerbaijan for the exploration and development of Azerbaijani sector. After Russia diverged from its former position and entered an agreement with Kazakhstan on the division of the seabed into national sector in 1998, Iran became the only supporter of the condominium principle. This event also led to a change in Iran’s position. It proposed the division of the Caspian Sea into five equal parts, such that every littoral state would get a 20 percent share. However, it did not seem to have entirely abandoned its previous approach. Thus, Mehdi Safari, special envoy of Iran for Caspian Sea affairs stated on 30 May 2002 that “Iran insists on a common sovereignty both on the [Caspian] sea’s surface and its bed and considers the completion of the waters’ legal regime tied to a consensus”.

In February 1998, Azerbaijan and Turkmenistan made a joint statement to say that they were ready to divide the Caspian Sea according to the median line principle, but the two parties could not reach a conclusion due to a disagreement on how the median line would be determined. The problem arose over the disputed oil fields. Another dispute played out in the southern Caspian between Azerbaijan and Iran over the Alov-Araz-Sharq oil field. In December 1998, the National Iranian Oil Company (NIOC) signed an agreement with Royal Dutch/Shell and British Lasmo, for exploration and development of the oil fields in the south part of the Caspian Sea, which is considered by Iran as its sovereign territory. The value of the contract was $19.8 million. Azerbaijan did not welcome this event. The Minister of Foreign Affairs of the Azerbaijan Republic sent an official note to the companies operating in the field and to the governments of Britain and the Netherlands. The note stated that the oil field that was the subject of

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56 Shafiyyev, Farid Rauf oglu.
57 Ladaa, Munir, p. 12.
58 Ali Shah, Syed Adnan.
59 Haghayeghi, Mehrdad, p. 34.
60 Lee, Yusin, p. 40.
61 Haghayeghi, Mehrdad, p. 35.
their agreement with Iran was part of the Azerbaijani sector of the Caspian Sea. The vice-president of SOCAR, Ilham Aliyev (now President of Azerbaijan) condemned Iran for the agreement. He stated that, "Iran’s signing of the contract with the British companies Shell and Lasmo for a seismic study in the Caspian will complicate Iranian companies’ activities in Azerbaijan. This will influence the possibility of them getting a project in Azerbaijan in future."

The dispute between two countries was triggered in July 2001, when Azerbaijan signed a contract with British Petroleum (BP) for the exploration of Alov-Araz-Sharg field, which is situated 50 kilometers from the former demarcation line between the Soviet Union and Iran. Iran was continuing to lay claim on the A-A-S field. Therefore, it deployed its naval vessels with support of air forces in order to stop the operation of two Azerbaijani ships Geofizik-3 and Alif Gadzhiev in the disputed area of the sea. Afterwards, Azerbaijan urged Iran to put an end to the increasing tensions and to resolve the dispute through negotiation. Iran stated that it has rights to the 20 percent of the Caspian Sea, thus seabed and surface and the long recognized sector around 12 to 14 percent is not acceptable. Iranian Foreign Minister Kamal Kharrazi stated that “no bordering country has the right to exploit the Caspian energy reserves before a legal status is established for the sea”.

From 2000, Russia began to play more active role in the Caspian Sea affairs. After his election as president of Russian Federation on March 2000, Vladimir Putin declared the Caspian Sea as a zone of special interest for Russia, and nominated former minister of fuel and energy Viktor Kaliuzhniy as his special representative for the Caspian Sea legal status regulation. In July 2000, Kaliuzhniy visited Azerbaijan, Iran, and Turkmenistan to hold negotiations in order to solve the Caspian Sea legal regime dispute. Consequently, the specialist summarized the new Russian proposals regarding the creation of a new legal regime for the Caspian Sea as follows:

- “Russia offers a step by step approach to the Caspian problems, identifying navigation, ecology, use of biological resources, definition of a coastal line coordinates etc."

- The coastal states are to focus their attention on disputable oil deposits, offering in principle a 50/50 share during its development, and in the second stage of development, compensations to be paid to the neighboring state that ear-

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62 Lee, Yusin, 41.
63 Grammayeh, Ali, p. 25.
lier engaged in development and production of the Caspian Sea hydrocarbons.

- The Caspian Sea should be divided into national sectors, which are fixed to the appropriate coastal states. The surface of the Caspian Sea remains in the common usage, only the bottom is divided into national sectors.

- Creation of the Caspian states uniform platform on the issues of the Caspian Sea legal status.

- Establishment of the strategic center on the Caspian Sea problems with its headquarter in capital of Azerbaijan Baku. The center must provide monitoring in the Caspian basin, analysis of the geo-information, revealing of polluters, co-ordination of environment-oriented activity, navigation and fishery.

- If any state prevents negotiation on the Caspian Sea status, other states should not lose time”.

Generally speaking, Russia’s new proposals intended to solve the problem step by step, from navigation and ecological problems to the legal status of the Caspian Sea at the final stage and to solve the disputes among the southern Caspian littoral countries over the oil fields located on the median line through the principle of joint ownership. Russia was increasingly insistent on the division of the seabed into national sectors while keeping the surface for the common usage, because it was aware if the surface of the sea was divided into national sectors, Russia would lose its fishing advantages, because the northern part of the Caspian Sea is not convenient for fishing. Additionally, Russia also has a concern that the division of the surface of the sea would enable the Central Asian countries, especially Turkmenistan and Kazakhstan, to construct a Trans-Caspian oil and gas pipeline, which in turn would threaten the Russian monopoly over the transportation of the hydrocarbon resources of those countries to the European market. Russia was also anxious given the increasing interest of US and NATO in this region; in the event of the division of the surface of sea it would be easy for NATO to enter into the Caspian Sea, which is considered a direct threat by Russia.

The new proposals by the Russian Federation were not accepted by Iran and Turkmenistan. Iran officials were aware that if the median line principles were agreed, Iran would not get more than 14 percent of the Caspian Sea. Therefore, Iran opposed this proposal and emphasized the necessity of the condominium principle. The other proposal made by Iran was the division of the sea according to five equal parts, which was rejected by Azerbaijan and Turkmenistan. The reason for this was that these two countries would have to transfer
part of their national sectors to Iran. Meanwhile, Azerbaijan and Turkmenistan were also unable to come to a conclusion on how to divide the seabed.68

On the other hand, there was a change in the Azerbaijani position: it was moving closer to Russia. In this context, on 9 January 2001 during a visit by Vladimir Putin to Azerbaijan, the two presidents signed an agreement on the principle of dividing the seabed along the median line, while leaving the surface of the sea for common use.69 However, during the Russian-Iranian summit in March 2001, the two presidents, Vladimir Putin and Mohammad Khatami made a joint statement regarding the border of the Caspian Sea among the littoral countries. According to the statement the parties agreed not to recognize any border in the Caspian until the final resolution of the Caspian Sea’s legal status. This step was perceived by Azerbaijan and Kazakhstan as a cancellation of the bilateral agreements reached between Russia and Kazakhstan (in 1998) and Azerbaijan (in 2001). Therefore, Putin's special representative on the Caspian issue, Kaliuzhny, assured Azerbaijan and Kazakhstan during his visit to these countries that the joint statement of March 2001 between Russia and Iran did not invalidate their bilateral agreements with Russia, and that their agreements would remain in force until the final resolution of the Caspian Sea legal status.70 Analysts suggested that Azerbaijan accepted the Russian proposal as a result of the dispute between Iran and Azerbaijan:

“At the informal August summit of CIS heads of state in Sochi, the presidents of Azerbaijan and Kazakhstan sought Russia’s support in the face of Iran's demands. Reportedly, Putin stated that there had been a border between Soviet and Iranian territories in the Caspian Sea and that the Soviet successor states—Russia, Azerbaijan, Kazakhstan and Turkmenistan—had inherited that border with Iran”.71

The aforementioned statement is another case that undermined the legality of Iran’s support for the condominium principle referring to the 1921 and 1940 Russo-Iranian treaties. Russia, the successor state of the Soviet Union, and which had signed those treaties, supported Azerbaijan’s opposition to Iran's demands. According to Svante Cornell, the Research Director of the Central Asia-Caucasus Institute & Silk Road Studies Program, the bilateral agreements among the three northern parties of the Caspian Sea were significant for at least two reasons:

“Beyond legitimizing ongoing projects, they marked a movement away from attempts to find a comprehensive agreement among all littoral states on

70 Haghayeghi, Mehrdad, p. 42.
71 Granmayeih, Ali, p. 29.
all issues relating to the Caspian, and instead toward the resolution of issues on a bilateral level. Second, they effectively killed the idea of a condominium approach to the ownership and exploitation of energy reserves.72

The first Summit of the Heads of littoral states of the Caspian Sea took place on 23-24 April 2002 in Turkmenistan. However, the summit failed to make any important steps toward the legal status of the Caspian Sea, and ended without any progress. On the contrary, it triggered new tensions among the littoral states, especially between Azerbaijan and Turkmenistan. Saparmurad Niyazov, the President of Turkmenistan, described the situation in dramatic terms: "the Caspian Sea is smelling of Blood and each of us must realize it. It is not an easy thing to have a dispute over an oil field".73

However, the failure of the Summit did not stop three northern Caspian countries; Azerbaijan, Kazakhstan, and Russia from dividing the seabed along the median line. Following the Summit, on 13 May 2002, President Vladimir Putin and President Nursultan Nazarbaev signed a new contract related to the previous agreement between Russia and Kazakhstan in order to divide the Caspian Sea along the median line between the two countries. According to the agreement the disputed oil field of "Kurmangazy", "Khvalynskoe", and "Tsentralnoe" located on the median line between Kazakhstan and Russia would be developed commonly on a 50/50 basis. Vladimir Putin declared this step a "breakthrough in cooperation on the Caspian".74 In September 2002 Azerbaijan signed a similar agreement with Russia on the division of the seabed.75 The following year, in February 2003, Azerbaijan signed another agreement with Kazakhstan based on the same principles. Then in May 2003, the three northern states of the Caspian Sea concluded an agreement for the delimitation of their adjacent sectors.76 As a result of the trilateral agreement between Azerbaijan, Kazakhstan, and Russia, the northern 64 percent of the Caspian seabed was divided into national sectors according to the median line principle, giving Kazakhstan 27 percent, Russia 19 percent and Azerbaijan 18 percent.77

The bilateral negotiations between Iran and Azerbaijan did not conclude with any positive outcomes. During his visit to Iran in May 2002, the President of Azerbaijan, Heydar Aliyev proposed the joint exploration and development of the oil fields that had prompted a military

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73 Haghayeghi, Mehrdad, p. 32.
74 A. A., Kovalev, p. 172.
75 Lee, Yusin, p. 44.
76 Cutler, Robert M., "Turkmenistan and Iran Drop Legal Bombshells at Caspian Sea Summit", Central Asia-Caucasus Analyst, 8 December 2010, p. 4.
confrontation in July 2001. However, the proposal was rejected by Iran. Afterwards, several unsuccessful bilateral talks were held until the end of 2002. Iran and Turkmenistan did not accept the partition of the northern Caspian among Azerbaijan, Kazakhstan, and Russia. Iran insisted on equal shares between all five states. Therefore, these two southern Caspian countries, Iran and Turkmenistan joined in an alliance against the northerners. In 2004, Mehdi Safari, an official representative of Iran in Caspian Sea affairs, stated "Iran had prepared documents explaining that according to international law, Iran’s share of the Caspian must be 20.4 percent". However, this document was never made public.

The second Summit of Caspian Sea Heads of States was held in 2007 in Tehran. While the Summit registered no progress and the presidents of the littoral states failed to resolve the pressing matter of the legal regime of the Caspian Sea, they concluded the Summit with a joint declaration, known as the Tehran Declaration, which was ratified as the first political document by the Heads of Caspian Sea coastal countries with a preamble and 25 articles. The Declaration states that the littoral states will make every effort to preserve peace and stability in the region, work together for the efficient use of the sea’s natural resources, and deepen economic cooperation, particularly in the energy and transportation fields; help each other to establish an international transport corridor for the efficient use of transportation in the region, and agree on sailing, fishing, and navigation rights under the flag of the littoral states until the final legal status of the sea is resolved. The document also notes that no other country has the right to deploy ships or military forces into the Caspian Sea. The Caspian Sea should be used only for peaceful matters and the armed forces of the bordering countries should not be used against each other.

At the third Summit in Baku, the leaders of the five littoral states of the Caspian Sea signed an agreement on security cooperation, which was one of the main points on the Summit’s agenda. According to that agreement, only the littoral states are responsible for the security and the protection of the sea. The reason for the security agreement was the militarization of the littoral states. According to Alexander Jackson, Senior Editor of Caucasian Review of International Affairs, Kazakhstan is trying to buy Corvettes armed with formidable Exocet anti-ship missiles. Russia is increasing its Flotilla in Caspian with new frigates. Azerbaijan in its turn is strengthening its radar and command and control systems. Turkmenistan is also trying to increase its

78 Lee, Yusin, p. 44.
naval forces in the Caspian Sea. Iran has announced that it is going to deploy its first destroyer into the sea, which is capable of electronic warfare, anti-submarine and anti-aircraft attacks.81 During the Baku Summit, the leaders discussed the settlement of 25 miles national sector in the Caspian Sea and a ban on sturgeon fishing.82 At the end of the Summit, presidents of the coastal countries again issued a joint declaration, according to which

“The sides declare that they recognize the sovereign rights of littoral states with respect to the Caspian Sea and its resources. They confirm their intention to complete work on the convention on the legal status of the Caspian Sea. This convention will be the basic document that will regulate the activities of the littoral states in the Caspian Sea”.83

However, the Baku Summit also failed to make any progress on the Caspian Sea legal status. Before the Summit, Iran’s new negotiator stated publicly that Iran’s "aim goes further than this [20 percent] limit", which was the line that President Mahmoud Ahmadinejad took during the Baku Summit.84 Generally speaking, negotiations for the final status of the Caspian Sea are still continuing. The three northerners, Azerbaijan, Kazakhstan, and Russia have agreed on the division of the seabed along the median line, however the dispute in the south part of the Caspian Sea between Azerbaijan and Turkmenistan and between Azerbaijan and Iran has been not solved yet, and it seems unlikely to be resolved in the near future.

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82 Blagov, Sergei.


84 Cutler, Robert M., p. 4.