



# STRATEGIC OUTLOOK

*Adequatio intellectus et rei*

## **Legal Knot in the Caspian Sea: Hard to Untie**

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When Vladimir Putin called the collapse of the Soviet Union as a biggest geopolitical catastrophe, he meant a lot. Therefore, when Putin first came to power, he tried to restore Russia's lost image and political strength in order to carry out 'therapy for geopolitical catastrophe'. The disintegration of the USSR left dozens of problems and legacies behind, one of which was the legal regime of the Caspian Sea.

The legal status of the Caspian Sea occupied regional agenda since the dissolution of the Soviet Union. The history of the legal status goes beyond the history of the USSR. Initially, legal issues in the Caspian Sea have been agreed and regulated under the Petersburg (1723)<sup>1</sup> and Resht (1731) contracts, as well as the Treaty of Gulistan (Article 5; 1813)<sup>2</sup> and the Treaty of Turkmenchay (Article 4 and 8; 1828)<sup>3</sup> regarding maritime (sailing) questions, though the legal status had not been clearly defined in those treaties. According to those treaties, Iran's navigation right should be limited with merchant ships within the Caspian Sea and it was deprived of having naval forces, while only Russia could have naval forces in the Caspian Sea.

After the Bolshevik Revolution, the USSR and Iran signed 'Treaty of Friendship' (Article 11; 1921)<sup>4</sup> and 'Treaty of Commerce and Navigation' (Article 13; 1940)<sup>5</sup> regarding the legal status of the Caspian Sea. With these agreements Russia lifted some restrictions that applied to Iran, granted it a 10-mile exclusive economic zone for fishery and the Caspian Sea remained under Russian control. Russia divided the Caspian into national sectors among Azerbaijan, Kazakhstan, Turkmenistan and Iran with resolution of the Ministry of Oil Industry of the USSR in 1970.<sup>6</sup> Even after the collapse of the Soviet Union, the littoral states agreed upon their loyalty to the 1970 resolution. 'Legal Status of the Caspian' raised again right after the signing of the 'Contract of the Century'. Hence, Russia was not happy to see external actors (international energy companies) in the region, where Russia considered its area of influence, while the EU and NATO considered here as a new neighborhood.

However, apart from legal status, the definition of the Caspian whether as a 'lake' or a 'sea' is also a disputed question. Azerbaijan, Kazakhstan, and Russia supported the 'lake' thesis, while Iran and Turkmenistan remained in the 'semi-enclosed sea' thesis. The clear definition of the enclosed or semi-enclosed sea has been articulated in the UN Convention on the Law of the Sea. According to Article 122 of the UNCLOS:

“ ‘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”.<sup>7</sup>

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<sup>1</sup> R. Mamedov, "About the international legal status of the Caspian Sea", Institute of Geology and Geophysics of the Azerbaijan National Academy of Science, <http://www.gia.az/view.php?lang=en&menu=47&id=835>

<sup>2</sup> "Treaty of Gulistan (1813)", Website of the Ministry of Foreign Affairs of the Republic of Azerbaijan, <http://www.mfa.gov.az/index.php?language=en&options=content&id=809>

<sup>3</sup> "Treaty of Turkmenchay (1828)", Website of the Ministry of Foreign Affairs of the Republic of Azerbaijan, <http://www.mfa.gov.az/index.php?language=en&options=content&id=810>

<sup>4</sup> "Treaty of Friendship between Persia and the Russian Socialist Federal Soviet Republic", League of Nations' Treaty Series, Publication of Treaties and International Engagements, Moscow, February 26, 1921, page 396, <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%209/v9.pdf>

<sup>5</sup> William Ascher and Natalia Mirovitskaya, "The Caspian Sea: A Quest for Environmental Security", NATO Science Series, Kluwer Academic Publishers, Vol.67, 2000, page.165-166.

<sup>6</sup> "The Caspian - Legal Status", Information portal about Azerbaijan, [http://www.azerbaijan.az/portal/WorldCommunity/CaspianStatus/caspianStatus\\_e.html](http://www.azerbaijan.az/portal/WorldCommunity/CaspianStatus/caspianStatus_e.html)

<sup>7</sup> "UN Convention on the Law of the Sea", December 1982, page 65, [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

The Caspian Sea is connected to other seas with Volga River, which passes through Russian territory. Since Caspian is a landlocked sea, the existing rivers of Russia can enable other littoral states to obtain an access through Volga into other seas, such as Black Sea, Azov Sea, White Sea and Baltic Sea. Hence, it makes the Caspian a semi-enclosed sea. However, only Russia and Iran are signatory to this Convention (though Iran has not ratified it yet), while Azerbaijan, Kazakhstan and Turkmenistan are not, which makes this thesis disputed again. Therefore, UNCLS cannot have binding effect over non-signatory littoral states. From the other side, even Constitution of Azerbaijan does not concretely mention whether Caspian is ‘Sea’ or ‘Lake’ exactly by mentioning both of them together. According to the Article 11.2 of the Constitution of the Republic of Azerbaijan:

“**Internal waters** of the Azerbaijan Republic, sector of the **Caspian Sea (lake)** belonging to the Azerbaijan Republic, air space over the Azerbaijan Republic **are integral parts of the territory** of the Azerbaijan Republic”<sup>8</sup>.

Another approach was ‘the condominium’ principle referred to by Russia, which envisages the common control of the Caspian Sea by littoral states together and authorizes Littoral States with equal sovereignty over sea without belonging them all.<sup>9</sup> This principle would totally contradict to interests of other littoral states, which strongly involved in energy exploration and transportation. Azerbaijan remained loyal to its positions from very beginning and proposed the division of Caspian into national sectors according to which every littoral state would have sovereignty over their sectors.<sup>10</sup> Even, the Constitution of Azerbaijan specify ‘**Internal waters** of the Azerbaijan Republic’ basing on national sectorial division principle. Iran proposed to divide Caspian according to 20% principle by giving equal shares to each Caspian states.<sup>11</sup> Whereas, this proposal is contrary to Azerbaijan’s interests as well, as some oil and gas fields of Azerbaijan would be counted into ‘20% of Iranian sector’. Turkmenistan’s position changed several times. After the exploration in ‘Azeri’ and ‘Chirag’ oil fields by Azerbaijan, position of Turkmenistan shifted to ‘division into national sectors’ as well.

In the early 1990s Russia demonstrated tougher position in regards to delineation of the Caspian Sea and involvement of the foreign energy companies in exploration of the oil and gas resources of other littoral countries. However, given the geopolitical situation in the neighborhood, later Russia understood the importance of cooperation and consensus with littoral countries concerning the legal status, as well as sectorial cooperation by involving with its energy companies into the ongoing exploration and purchase process.

According to Janusz Pawletta, “From a legal standpoint, it's very important whether you call it a sea, or a lake, or a condominium, because then you have to follow rules according to international conventions, However, the Caspian states are not talking about these options anymore, but rather discussing new ones. If they don’t call it a sea, or a lake or condominium, then they can just create their own rules”.<sup>12</sup> The fact that, Caspian states could not define the legal status according to neither international law, nor ‘sea or lake’ principle. Therefore, definition of the final legal regime requires *sui-generis* approach and common political will from littoral states.

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<sup>8</sup> “The Constitution of the Republic of Azerbaijan”, 2009, [http://www.supremecourt.gov.az/store/qanunlar/konstitutsiya\\_en.pdf](http://www.supremecourt.gov.az/store/qanunlar/konstitutsiya_en.pdf)

<sup>9</sup> Yasin Poyraz, "Hazar"ın Hukuki Rejimine İlişkin Sorunlar ve Kıyıdaş Devletlerin Çözüm Çabaları", Uluslararası Hukuk ve Politika, Cilt 7, Sayı: 28, 2011, s.43, [http://usak.org.tr/images\\_upload/files/uhp%2028%203-2.pdf](http://usak.org.tr/images_upload/files/uhp%2028%203-2.pdf)

<sup>10</sup> Poyraz, *Ibid.* p.39

<sup>11</sup> Ilgar Gurbanov, “Hazar Havzasında Stratejik Oyunlar: Hukuki Statü Sorunu Ve Uluslararası Enerji Politikası”, Journal of Turan Center for Strategic Studies, Vol.3, No.12, 2011, [http://www.turansam.org/TURAN-SAM\\_12.pdf](http://www.turansam.org/TURAN-SAM_12.pdf)

<sup>12</sup> Jacopo Dettoni, “Caspian states fight over oil and gas riches”, Asian Review, 28.09.2014, [http://asia.nikkei.com/Politics-Economy/International-Relations/Caspian-states-fight-over-oil-and-gas-riches?n\\_cid=NARAN012](http://asia.nikkei.com/Politics-Economy/International-Relations/Caspian-states-fight-over-oil-and-gas-riches?n_cid=NARAN012)

Given the resistance of Iran and Turkmenistan on legal status issue, Azerbaijan, Kazakhstan and Russia decided to solve their own sectorial problems between each other. Therefore, in 1998, Russia signed an agreement with Kazakhstan on division of the Caspian's seabed according to median line and common usage of the surface. In 2001, Vladimir Putin signed Baku Declaration with then-president of Azerbaijan, Haydar Aliyev on division of the Caspian's seabed into national sectors and common usage of the surface for trade. In order to consolidate the 1998 and 2001 agreements, Azerbaijan, Kazakhstan and Russia jointly signed new agreement in 2003. Since Iran and Turkmenistan were not part to this agreement, it should not be considered a final agreement on legal status of Caspian Sea.<sup>13</sup>

During recent Astrakhan Summit on 29 September, the Caspian States declared that they have agreed upon many issues, notably on demarcation and security issues and less remained to finalize. Finalization of legal status will be laid down in Astana Summit Convention, which is going to be held next year in Astana.

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<sup>13</sup> Gurbanov, "Hazar Havzasında Stratejik Oyunlar", *Ibid.* p.14.