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CONVENTION ON THE INTERNATIONAL LEGAL STATUS OF THE CASPIAN SEA — A TREATY THAT WOULD DETERMINE THE FATE OF THE REGION

***Аннотация.** This article examines the issue of international legal status of the Caspian Sea. It is first and foremost the issue of rights to the area and resources of the Caspian Sea. It is also the matter of national security for all Caspian bordering countries. This has become a key concern for the five Caspian Sea nations for over 20 years. The method of this research is the legal comparative analysis of the multilateral agreement that was supposed to solidify the maritime borders of the coastal nations. Despite the fact that this treaty was proposed as a multilateral agreement, or as a declaration, it ultimately pursued a precise goal: to define the maritime boundaries, rights and responsibilities of the coastal nations and therefore, divide the extensive natural resources of the Caspian Sea. The conclusion is that there is yet to be a resolution reached on the subject of the international legal status of the Caspian Sea. Acceptance of the Convention is expected to take place during the fifth summit of the leaders of Caspian nations, which should take place in Kazakhstan. This multilateral document will finally resolve the age-old question: is the Caspian a sea, or a lake?!*

***Ключевые слова:** Caspian Sea, Convention, legal status, multilateral treaty, Caspian nations, Russia, Azerbaijan, Kazakhstan, Turkmenistan, maritime boundaries.*

The recent geopolitical changes raised the issue of the transnational ownership of the Caspian Sea and consequently, the problem of defining its international legal status. In 1992 the search began to find the grounds and motives for the forming of multisided

relations to determine the status and regulations of use of the Caspian Sea (including the issues of marine traffic, fishing, protection and use of bio-resources, ecology and economy, especially with the regards to the use of the extensive carbohydrate resources). [1]

The newly sovereign Caspian nations have immediately declared that they do not recognize the legal authority of the Soviet-Iranian contractual base (1921–1940) pertaining to the Caspian. In their claims that the Caspian's former status did not represent their best national interests, they state that the obligations imposed in those agreements infringe on their legal rights to ownership of the corresponding parts of the sea.

The year 1992 marked the beginning of the search for a solution to the issue of the legal status of the Caspian Sea. In this period the Caspian nations took turns proposing ideas pertaining to the status and use of the Caspian resources, attempting to maintain their own national priorities.

While Russia was still observing the development of the geopolitical situation in the Caspian basin, Iran became the first country to show initiative. In February 1992 Iran called together the intergovernmental conference of the Economic Cooperation Organization (ECO) for the purpose of establishing the process of collective study of the Caspian. It is then that they first proposed the idea of forming the Caspian Sea Cooperation Organization (CASCO). As noted by a French researcher Alain Giroux, when Iran introduced the idea of such organization, they planned to have its headquarters be located on their territory in order to attach the questions and issues of the Caspian Sea to their foreign policy. [2]

In the project of Convention on Organization of Cooperation of the Caspian Countries, the following thought was emphasized: convergence of the economic and political interests of the member-states with regards to the use of the resources of the Caspian Sea (article 3). In order to achieve this goal, the transnational union of the Caspian countries had to broaden its knowledge on the Caspian Sea and its resources. In addition to that, they had to determine the possible ways of developing the region by cooperating and ensuring the stable and peaceful atmosphere within the region. However, the parties were unable to reach an agreement on their views at that time.

Russia's draft of the agreement for the Caspian countries regarding the regional cooperation was unlike any other conventions on the legal status

of the Caspian Sea. According to this draft, the decision about the definition of the Caspian — whether it is a sea or a lake was postponed for an indefinite period of time: «The legal status of Caspian Sea will be determined by a separate Convention». [3] But until the status is determined, Russia proposed that the other sides maintain the regulations established by the 1921–1940 agreements.

This draft recommended creating an international organization — a Transnational Council on the Problems of the Caspian Sea (article 5) with various committees (article 7) and secretariats (article 8). The Council was to handle the main policy issues, regulate the course of actions of the Caspian countries, as well as making the decisions concerning the further development of regional cooperation (article 6).

Russia considers the Caspian to be a lake. This provides a certain level of convenience in regulating it, as this means there are no international rules of conduct which the Caspian countries would have to uphold. It is evident that Russia has no intention of acknowledging the Caspian a «sea». The approach to the Caspian as a «sea» does not benefit the government of the Russian Federation. Recognizing the Caspian Sea as a «sea» would mean opening the access to third party nations and making the Volga an international navigable waterway. Due to the political reasons and security concerns it is doubtful that Russia will ever take this position.

Azerbaijan is the only country that from the very beginning of its independence was against any type of shared usage of the Caspian Sea. They held firmly on the position that Caspian Sea should be divided into national sectors by a median line. In Azerbaijan's version of the Convention the Caspian Sea is defined as a boundary lake, which should be divided into sovereign sectors and be declared an closed basin, similar to some of the African and North American boundary lakes. In 1995, Azerbaijan amended the article 11 of its Constitution stating that: «Internal waters of the Azerbaijan Republic, the sector of the Caspian Sea (lake) belonging to the Azerbaijan Republic and airspace over the Azerbaijan Republic are integral parts of the territory of the Azerbaijan Republic».

The draft convention of the Azerbaijan Republic on the legal status of the Caspian Sea

presented in 1993 consisted of a preamble and 12 articles.

The preamble of this draft underlined the importance of the natural resources for all of the Caspian nations and emphasized the value of good neighborliness and cooperation. The article 2 states that the cooperation and work of the coastal nations must be built on the fundamental principles of the international law. The novelty in the draft was the article 3, which proposed dividing the Caspian Sea into corresponding sectors of the coastal countries. In addition to that, the delimitation should be carried out both, on bilateral and multilateral basis (article 4).

The article 6 stipulated that the legislation of each coastal nation should be applied within the territory of each sector, unless otherwise prohibited by an international treaty.

But a new version of the draft was prepared and presented shortly after. In the latest version of the draft the international legal status of the Caspian was characterized more precisely. In the article 1 the Caspian Sea was defined as an inner continental endorheic basin that had no natural channels to the oceans, which by the physical geographical conditions of its location and based on the traditional principle of differentiation of its water area should be considered as a «boundary lake». The «Caspian Sector» meant that the part of the water area, bottom and below the seabed linking to the coastal country is an integral part of that nation's territory that is demarcated by their borders over the water.

There were also detailed instructions on delimitation of the borders in the Caspian Sea. According to the draft convention, the state border between the Caspian nations had to follow the median line equidistant from their shorelines; in a case where an island is present, a conditional line would be drawn from the side of the island facing the median line. A proposal was also made to establish a state border over the water between the adjacent Caspian countries via a conditional line that would be a natural continuation of the land border perpendicular to the median line of the sea. The draft convention also suggested setting an external border of the sector of water belonging to the Islamic Republic of Iran, which according to the draft could be defined by a straight line connecting the southern land borders

of Azerbaijan and Turkmenistan. It would seem that namely these positions sealed the fate of the draft and it was never even considered as a possible working model.

While Azerbaijan's draft proposed a boundary lake status that would be delimited into sectors, the Kazakhstan's draft viewed the Caspian as an «enclosed sea» and should adhere to the norms of the 1982 Convention on the Law of Sea (articles 122 and 123). Kazakhstan actually presented two drafts that were almost identical, with the exception that the second one was more detailed. The latter described the issues more explicitly and therefore contained 35 articles rather than the original, which consisted of only 13. This draft directly expressed the unsuitability of the Soviet-Iranian agreements of 1921–1940. Instead, they emphasized the maritime legislation upon which the international legal status would be based, and the Caspian Sea would thus be recognized as international waters. Somewhat controversial was the article 17, which recited certain parts of the 1921–1940 agreements that stated: «Only the ships belonging to the parties and equally to their citizens and legal representatives sailing under the flags of the Republic of Kazakhstan, the Azerbaijan Republic, the Islamic Republic of Iran, the Russian Federation, and Turkmenistan can be present on the waters of the Caspian Sea». This article of the Kazakhstan's draft is part of a new draft convention on the legal status of the Caspian Sea and is currently the point of disagreements between the sides, as the rest of the Caspian nations (other than Russia and Iran) have reservations about this position.

In 1994 Kazakhstan proposed a draft convention on the Caspian Sea, according to which the Caspian Sea should be divided among the coastal states by a median line, granting the corresponding nations the sovereignty over their part of the sea and the natural resources therein. By Kazakhstan's draft, the division of Caspian means that each coastal country would have their own territorial waters and correspondingly the fishing and extraction of natural resources would take place on the continental shelf adjacent to these waters. [4] This position was reflected in Kazakhstan's official letter to UN, where they claim that each Caspian nation should have access

to the ocean via Russia's river channels, confirmed by a separate agreement. [5]

Turkmenistan never had a strong position with regards to the Caspian Sea. It has changed several times since 1991. The National Law on the state border holds that Turkmenistan has the right of sovereignty over the internal waters, territorial sea, and exclusive economic zone, which allows the thought that Turkmenistan believed that the regulation set by the Convention on the Law of Sea would also cover the Caspian Sea.

In 2000 Turkmenistan returned to the sector division, noting in their letter to UN that Ashgabat would accept any proposal that considers the interests of all coastal nations.

Even before there was a settlement on the status of the Caspian, sides have already agreed to develop common policies on the preservation of the sturgeon resources, including imposing limits on catching and exporting. During the 8th session of the Special Working Group of the Caspian nations that took place on 26–27th of February 2003, the Deputy Foreign Ministers of Kazakhstan, Azerbaijan, Iran, Russia and Turkmenistan have considered a draft convention that initially consisted of 22 articles. The convention called for all activity of all sides of the convention to be conducted based on the principle of demilitarization of the Caspian, freedom of merchant shipping for the vessels belonging to the Caspian nations, refusing the right to sail the sea for any non-Caspian vessels, implementation of the agreed norms for fishing, protection of the environment of the sea and accountability of the parties for any disruption to the ecosystem of the sea, etc.

The convention stipulated establishing of fishing zones, the size of which was not yet determined. Within their own fishing zone, each side would have the exclusive fishing rights, as well as obtaining other living marine resources according to their national law. At the same time all parties would have a limit on catching the high-value types of living marine resources. The merchant ships sailing under the flags of the Caspian nations would have the right to freely sail the entire sea and touch at any of the Caspian ports. Since Azerbaijan and Turkmenistan do not have access to the world ocean should have the freedom to pass through the territories of Iran

and Russia. The conditions of this transit had to be discussed with the corresponding sides. The draft also included the right for the countries to lay submarine cables.

In the draft convention the sides were bound to protect the Caspian ecosystem. Any activity harming the flora and fauna of the sea was strictly prohibited. In order to develop the core solution to the ecological problems of the Caspian, it proposed a creation of a five-sided intergovernmental Caspian ecological center.

Defining Caspian's legal status will certainly not resolve all the problems, as the legal status does not include the rights and responsibilities of the coastal nations. The legal status determines who has the sovereignty over one or another part of the territory, as well as defines it as a lake, closed or a semi-closed sea. This is how Vasiliy Gutsulyak characterizes this notion: «International legal status of maritime space is their legal position, which is defined first and foremost by its adherence to the sovereignty or jurisdiction of a littoral nation. The international legal regime of the maritime space means the assemblage of the norms of international law that regulate the relations between nations and other subjects of the international law with regards to one or another maritime space». [6]

Furthermore, some of the Caspian nations have already begun creating the legal regime of the Caspian Sea by signing bilateral agreements on exploitation of the oil deposits, especially in the northern part of the Caspian as a result of the agreement between Russia, Azerbaijan and Kazakhstan despite the absence of a legislative regime. [7] As a result, a conclusion can be made that these three nations (Russia, Azerbaijan and Kazakhstan) have divided the Caspian as an international lake, although Kazakhstan held their position that Caspian is a sea.

The final stage in the sequence of multiple sessions of the Caspian nations became the 4th summit of the heads of Caspian states that took place in Astrakhan on 29–30 of September 2014. The question of the international legal status of the Caspian Sea was once again raised at the summit. The parties have yet to accept a convention that would regulate the status of the Caspian, but sides have come to an agreement on many issues, including the questions pertaining

to the division of the Caspian waters, regional security, and protection of the environment and biological resources of the Caspian Sea among other things.

In the course of the summit the nations were able to reach an agreement that the activity of every Caspian nation based on their national sovereignty would take place on the coastal maritime space within 15 miles off shore. Each side would have the exclusive rights to the obtainment of maritime biological resources within 10 miles off their shore. Any maritime

space beyond these territories is to be shared and indivisible. However, the question of defining the initial baselines remained open and was postponed for further refining. [8]

As it currently stands, the question of the draft agreement on the international legal status of the Caspian Sea is yet to be resolved. Acceptance of the convention is expected at the 5th summit of the heads of Caspian states that is to take place in Kazakhstan. This multilateral document should finally settle the age-long dispute: is the Caspian a sea or a lake?!

БИБЛИОГРАФИЯ

1. Мамедов Р. Ф. Международно-правовой статус Каспийского моря: вчера, сегодня, завтра. Баку, 2006. С. 37.
2. Alan Giroux. Le Kazakhstan entre Russie et Caspienne. La Caspienne // Une nouvelle frontier. P.: СЕМОТИ, Cahiers d'études sur la mediterrance orientale et le Monde turco-iranienne, № 23, 1997. С. 168.
3. Проект Конвенции о правовом статусе Каспийского моря.
4. Mehmet Ogutçu. Caspian energy and legal disputes: prospect for settlement, Institut français des relations internationales, 2003. С. 44.
5. The Position of Kazakhstan on the legal status of the Caspian Sea, 3 October 1997, A/52/424.
6. Гуцуляк В. Н. Морское право. М., 2000. С. 417.
7. Jonathan I. Charney, David A. Colson, Lewis M. Alexander, Robert W. Smith. International Maritime Boundaries. Volume 5, The Netherlands, 2005. P. 3539, 3549.
8. www.mfa.gov.kz/index.php/en/poslednie-novosti/1992-kommunike-chetvertogo-kaspiyskogo-sammita
9. Abgarjan D. The Place of the International Tribunal for the Law of the Sea in progressive development of the law of the sea // Международное право и международные организации / International Law and International Organizations.—2014.—3.— С. 463–469. DOI: 10.7256/2226–6305.2014.3.11624.
10. Бабин Б. В. Programmatic Regulation in the Modern International Law // Международное право.—2013.—3.— С. 1–35. DOI: 10.7256/2306–9899.2013.3.9302. URL: http://www.e-notabene.ru/wl/article_9302.html
11. Бурцев С. Н.. Каспийский регион как точка столкновения интересов ведущих мировых держав. // Политика и Общество.—2014.—№ 4.— С. 426–433. DOI: 10.7256/1812–8696.2014.4.11788
12. А. М. Темирбулатов. Геополитические противоречия стратегического развития Каспийского региона. // Политика и Общество.—2012.—№ 3.— С. 85–90.
13. А. С. Лалетина. Трансграничные газопроводы на территории Туркменистана: правовые аспекты. // Международное право и международные организации / International Law and International Organizations.—2011.—№ 3.— С. 120–127.

REFERENCES (TRANSLITERATED)

1. Mamedov R. F. Mezhdunarodno-pravovoi status Kaspiiskogo morya: vchera, segodnya, zavtra. Baku, 2006. S. 37.
2. Alan Giroux. Le Kazakhstan entre Russie et Caspienne. La Caspienne // Une nouvelle frontier. P.: СЕМОТИ, Cahiers d'études sur la mediterrance orientale et le Monde turco-iranienne, № 23, 1997. S. 168.

3. Proekt Konventsii o pravovom statuse Kaspiiskogo morya.
4. Mehmet Ogutçu. Caspian energy and legal disputes: prospect for settlement^{ll}, Institut français des relations internationals, 2003. S. 44.
5. The Position of Kazakhstan on the legal status of the Caspian Sea, 3 October 1997, A/52/424.
6. Gutsulyak V. N. Morskoe pravo. M., 2000. S. 417.
7. Jonathan I. Charney, David A. Colson, Lewis M. Alexander, Robert W. Smith. International Maritime Boundaries. Volume 5, The Netherlands, 2005. R. 3539, 3549.
8. www.mfa.gov.kz/index.php/en/poslednie-novosti/1992-kommunike-chetvertogo-kaspiyskogo-sammita
9. Abgarjan D. The Place of the International Tribunal for the Law of the Sea in progressive development of the law of the sea // *Mezhdunarodnoe pravo i mezhdunarodnye organizatsii / International Law and International Organizations*.—2014.—3.— С. 463–469. DOI: 10.7256/2226–6305.2014.3.11624.
10. Babin B.V. Programmatic Regulation in the Modern International Law // *Mezhdunarodnoe pravo*.—2013.—3.— С. 1–35. DOI: 10.7256/2306–9899.2013.3.9302. URL: http://www.e-notabene.ru/wl/article_9302.html
11. Burtsev S. N.. Kaspiiskii region kak tochka stolknoveniya interesov vedushchikh mirovykh derzhav. // *Politika i Obshchestvo*.—2014.—№ 4.— С. 426–433. DOI: 10.7256/1812–8696.2014.4.11788
12. A. M. Temirbulatov. Geopoliticheskie protivorechiya strategicheskogo razvitiya Kaspiiskogo regiona. // *Politika i Obshchestvo*.—2012.—№ 3.— С. 85–90.
13. A. S. Laletina. Transgranichnye gazoprovody na territorii Turkmenistana: pravovye aspekty. // *Mezhdunarodnoe pravo i mezhdunarodnye organizatsii / International Law and International Organizations*.—2011.—№ 3.— С. 120–127.