

NEWS

OF THE NATIONAL ACADEMY OF SCIENCES OF THE REPUBLIC OF KAZAKHSTAN
SERIES OF SOCIAL AND HUMAN SCIENCES

ISSN 2224-5294

<https://doi.org/10.32014/2019.2224-5294.202>

Volume 6, Number 328 (2019), 11 – 17

JEL [341.76](#)Z.K. Ayupova¹, D.U. Kussainov²¹Kazakh national agrarian university, Almaty, Kazakhstan;²Kazakh national pedagogical university named after Abai, Almaty, Kazakhstanzaure567@yandex.ru; daur958@mail.ru

SOME QUESTIONS OF KAZAKHSTAN'S DIPLOMACY IN WATER AREA OF THE CASPIAN SEA

Abstract. The environmental system of the Caspian Sea and all its components are under full protection and protection. In order to effectively implement the Convention on the Legal Status of the Caspian Sea of 12 August 2018, a special mechanism for regular five-party consultations, the High-level Working Group on Caspian Sea Issues, at the level of Deputy Ministers for Foreign Affairs/Plenipotentiary Representatives of Coastal States, is being established. It was signed in Aktau during the Fifth Caspian Summit by the Presidents of Kazakhstan, Azerbaijan, Iran, Russia and Turkmenistan. The Convention regulates issues related to the delineation of national zones, jurisdictions and sovereignty; the exercise of rights to subsoil use; transit and transportation; the laying of submarine pipelines and cables; and the protection of the natural environment and biological resources of the Caspian Sea. Special attention is paid to security issues in terms of countering modern challenges and threats, disaster prevention and response, military activities of Caspian States. According to the Convention, the marine area of the Caspian Sea is divided into zones with different regimes. The parties shall establish territorial waters with a width of not more than 15 nautical miles, and their outer borders shall acquire the status of State waters. Adjacent to the territorial waters are ten-mile fishing zones, where each state has exclusive fishing rights. With a view to maintaining a unique population of biological resources, fisheries throughout the water area are carried out on the basis of agreed national quotas.

Key words: water space, sea frontiers, coastal countries, water area, national quota, freedom of navigation, freedom of transit, subsoil, trunk pipelines, ecological system of the Caspian Sea.

On August 12, 2018, in Aktau, during the Fifth Caspian Summit, the Presidents of Kazakhstan, Azerbaijan, Iran, Russia and Turkmenistan signed the Convention on the Legal Status of the Caspian Sea. The document is a fundamental international treaty that defines and regulates the rights and obligations of the parties in respect of the Caspian Sea, including its waters, seabed, subsoil, natural resources and airspace.

The Convention specifies issues related to the delimitation of national zones; jurisdictions and sovereignty; exercise of rights to subsoil exploitation; transit and transportation; laying submarine pipelines and cables; protection of environment and biological resources of the Caspian Sea. Convention pays special attention to security issues in terms of countering modern threats and challenges, preventing and eliminating emergency situations, and military activities of the Caspian states. The Convention provides for the delimitation of the marine area into zones with different legal regimes.

The parties establish the breadth of their territorial waters up to a limit not exceeding 15 nautical miles, while their external borders acquire the state status. 10 nautical miles-wide fishery zones are adjacent to the territorial waters, where each state has the exclusive right to harvest aquatic biological resources. In order to preserve a unique population of biological resources, fishery throughout the entire water area is carried out based on agreed national quotas. Outside the fishery zones, the parties preserve a common water area. Outside the maritime state borders, ships flying the flags of coastal countries enjoy freedom of navigation. The agreement on the freedom of transit to other seas and the Ocean by all means of transport is also quite important.

The states with adjacent and opposite coasts delimit the seabed and subsoil into sectors by agreement with due regard to the generally recognized principles and norms of international law, to enable those states to exercise their sovereign rights to the subsoil exploitation and other legitimate economic activities related to the development of resources of the seabed and subsoil. It is also possible to lay trunk submarine pipelines and cables on the bed of the Caspian Sea, on the condition that the projects comply with environmental requirements. The parties protect and preserve the ecological system of the Caspian Sea and all its elements [1]. Any activity at sea must not be detrimental to the marine environment and biological diversity. To ensure effective implementation of the Convention, the states establish a special mechanism of regular five-party consultations - High-Level Working Group on the Caspian Sea at the level of deputy foreign ministers/plenipotentiaries of the coastal states.

At present, the parties are conducting domestic procedures for ratifying the Convention, which will enter into force on the date of the receipt by the Depositary of the Convention (Republic of Kazakhstan) of the fifth instrument of ratification. The determination of the legal status of the Caspian Sea and the establishment of stable and friendly relations between the coastal states, based on generally recognized principles and norms of international law, has been one of the strategic objectives of the foreign policy of the Republic of Kazakhstan since independence. Negotiations to determine the legal status of the Caspian Sea were launched in 1992 in order to resolve issues of cooperation at sea among the five Caspian states.

From 1992 to 1996 the parties held five meetings of deputy foreign ministers of the Caspian states, three expert meetings, as well as a number of bilateral and trilateral meetings, where they discussed specific issues related to the Caspian Sea. As a result of the Meeting of Ministers of Foreign Affairs of the Coastal States, held in Ashgabat in November 1996, the parties established an Ad Hoc Working Group to develop the Convention on the Legal Status of the Caspian Sea at the level of deputy foreign ministers of the Caspian states. The parties held the meetings alternately in the territory of each Caspian state. They organized a total of 52 meetings of the Ad Hoc Working Group (the final meeting held on August 10, 2018 in Aktau).

In order to bring the parties' positions closer, the Caspian states held consultations on a regular basis in various formats. As part of the negotiation process, Ministers of Foreign Affairs of the Caspian states held seven meetings (11-12 November 1996 in Ashgabat, 6 April 2004 in Baku, 20 June 2007 in Tehran, 22 April 2014 in Moscow, 12-13 July 2016 in Astana, 4-5 December 2017 in Moscow, 11 August 2018 in Aktau). Before the Summit in Aktau, the Caspian states held four Summits (23-24 April 2002 in Ashgabat, 16 October 2007 in Tehran, 18 November 2010 in Baku and 29 September 2014 in Astrakhan). The First Caspian Summit in 2002 in Ashgabat laid the foundation for other summits [2].

At the Second Caspian Summit, the Republic of Azerbaijan, the Islamic Republic of Iran, the Republic of Kazakhstan, the Russian Federation and Turkmenistan signed the Declaration, which politically consolidated the existing arrangements on the legal status of the Caspian Sea, security and stability at sea, as well as the position of the Caspian states on certain aspects of international relations.

At the Third Caspian Summit, the Presidents signed a Joint Statement and the Agreement on Cooperation in the Field of Security in the Caspian Sea. In the Joint Statement, the leaders of the Caspian states reaffirmed their commitment to the positions reflected in the Declaration of the Second Summit, and urged to agree on the Convention on the Legal Status of the Caspian Sea.

The Agreement on Cooperation in the Field of Security, being a framework document, created a legal basis for the interaction of the coastal states in ensuring security and combating unlawful activities in the Caspian Sea, identifying the main areas and forms of cooperation. The specific mechanisms of such interaction, according to the common understanding of the parties, are enshrined in the relevant protocols to this Agreement.

Convention on the Legal Status of the Caspian Sea delimits national zones of jurisdiction and sovereignty; procedures for the exercise of sovereign rights to subsoil use, navigation, fishing and marine scientific research in areas with different legal regimes were established and issues of security cooperation, as well as the conservation and rational use of aquatic biological resources and the protection of the marine environment, were settled.

In accordance with the Convention, matters relating to the Caspian Sea shall be exclusively addressed within the competence of the parties and settled on the basis of respect for sovereignty, territorial integrity,

and independence, sovereign equality of the states, non-use of force or the threat of force, mutual respect, cooperation and non-interference in the internal affairs of each other.

Andrei Chebotarev noted, that “The Convention is the result of an extensive and very complex negotiating process, accompanied by persistent and principled debates on each issue requiring a legal settlement. The achievement of the agreement was facilitated by a common desire to address the existing problems, as well as by constructivism and mutual understanding of the negotiators. The delegations of the Caspian states have done a lot of hard work to create the fundamental document that takes into consideration the interests of all parties. The parties used the existing world experience to prepare it. The applicable rules of international maritime law were adapted to the Caspian Sea and incorporated into the text of the Convention on the Legal Status. Proposals from experts and national authorities who participated in the talks were widely used in the search for suitable wording” [3].

Each state obtained exclusive rights to harvest biological resources. Fishing will be carried out on a quota basis. As for the so-called shared aquatic biological resources, such as sturgeon species, seals and sprat, agreed norms and rules for reproduction and regulation of their use are applied. Scientific research serves as the basis for both the conservation of aquatic biological resources and the management of shared biological resources. The parties have made mutual commitments to combat the illegal fishing of shared biological resources.

Freedom of navigation is established outside the state maritime borders and is exercised without prejudice to the sovereign and exclusive rights of the parties, covering subsoil use and fishing, respectively. Navigation in the Caspian Sea and passage to/from the sea can be carried out exclusively by ships under the flags of the states of the Caspian Five.

The agreement on freedom of transit by all means of transport from the Caspian Sea to other seas, oceans and back creates favorable opportunities for economic development. It helps us to unite the efforts of our states in expanding the transport infrastructure. Thanks to this, the transit and transport potential of the Caspian region will be significantly increased and the landlocked countries will be connected with the rest of the world [4, P.17].

During the Soviet period the Caspian region was fully controlled by the Soviet Union, sharing the sea with Iran. At that time Moscow could influence global and regional trends around the region. The breakup of the Soviet Union has fundamentally changed geopolitical conditions at the Caspian basin. The emergence of new actors asserting their own national interests, power vacuum created by the loss of control by Moscow, the absence of exact data of untapped energy sources characterize the first period (early 1990-s) of geopolitical game in the region. All players had to identify national interests and to form or transform their strategies in new political environment.

Since mid-1990s there has been an active phase of geopolitical game around the Caspian Sea. It has become obvious that it possesses enormous oil and gas potential. The main feature of the latter half of the 1990-s were competing interests of the western countries and Russia over the issue of pipeline routes.

At present all export pipelines are directed via Russia, including the new big pipeline from the Tengiz oilfields on the Caspian Sea to the Black Sea over the Russian port of Novorossiysk. The only pipeline that does not pass the territory of Russia is the one of Baku- Tbilisi-Batumi.

Such situation benefits Moscow by giving it political tools for strengthening its position in the region. Other littoral states are highly interested in diversification export routes to increase their own economic benefits and to decrease political influence of Russia. These interests are shared by other actors involved in the region, and particularly by the USA.

A new phase of political developments in Caspian region has begun after the events of September 11th, which have changed strategic conditions at international and regional levels. In new strategic conditions, the United States have strengthened political and economic positions in Central Asia and Caspian regions, whereas Russia's political influence has been weakened [4, P.58].

Kazakhstan is one of the richest countries in the world in terms of oil and gas reserves and is a primary producer of oil in the Caspian region. It is the main focal point for geopolitical struggle to control Caspian oil. In these geopolitical conditions to ensure the protection of economic and political interests and to promote national security is the main task for Astana.

For Kazakhstan, the energy sector is the main source of export revenue so needed for economic development. This sector represents a key asset and an attraction for foreign investors, and has been prioritized by the government as strategically important for the Republic.

The existing oil pipeline network through Russia makes vulnerable landlocked Kazakhstan to political and economic pressures. Astana is highly interested in development alternative export routes for energy resources. A number of oil and gas pipeline projects to carry Central Asia's resources have been proposed. The cheapest oil route might be via Iran. However, any scheme involving Iran seems unlikely to attract Western financing, because of tense relations between Iran and the USA. Other routes are substantially costly and cross large, remote and often volatile areas. The routes in direction East-West receive support of Western countries, particularly the USA. But a combination of economic and political factors hinders prospects for most of them [5, P.64].

After gaining independence Azerbaijan found itself in the center of a "geopolitical triangle" of clashing interests of Russia, Iran and Turkey. Baku has chosen a pro-Western orientation based on close relationship with Turkey, representing the interests of the United States in the region.

One of the most important issues in close cooperation of Azerbaijan with Turkey and the USA is the project of construction of Baku-Dzheikhan pipeline, where they have common economic and geopolitical interests.

Relations with Russia were not so close until recently. The rapprochement of Russia and the United States in the Caspian region has created a necessity for Baku to find common grounds with Moscow. This trend eventually has led to the signing of a bilateral Agreement on delimitation of related sectors of Caspian seabed between Russia and Azerbaijan in June 2002 [5, P.27].

Contrary to the close cooperation of Baku with the Western countries, relations between Azerbaijan and Iran have been deteriorated considerably because of disputable oil fields of Alov, Araz and Sharg. The situation had been worsened after an incident in Southern Caspian in 2001, when an Iranian warship forced the Azerbaijani oil field research vessels to stop activities in disputable area.

Turkmenistan ranks third in the region in liquid and gaseous hydrocarbon resources. Its gas reserves are estimated at 8.1-8.7 trillion cubic meters and its prospecting potential at 10.5 trillion cubic meters. But it has achieved less progress toward developing hydrocarbon resources than other littoral states. In early 1990s Turkmenistan could not realize its potential in gas and oil sphere due to the problem of transportation. All of the pipelines to world markets were routed through Russia, imposing big economic and political constraints on Ashgabat.

At present, Turkmenistan is still dependent on Russia in exporting natural gas. This gives an advantage to Russia in comparison with the United States, which is also interested in rich gas deposits of the country. Washington lobbied the project of Transcaspian gas pipeline from eastern Turkmenistan across the Caspian undersea, via Azerbaijan and Georgia to Turkey. This ambitious project has not been yet realized due to some difficulties. Firstly, there were serious disagreements between Turkmenistan and Azerbaijan over disputable area of Serdar and other issues relating to share of participation in the Transcaspian gas pipeline project. Secondly, Russia proposed Turkmenistan to participate in "The Blue Stream" project of transportation of gas via Russian Gazprom pipelines to Turkey.

For Turkmenistan, another attractive direction of cooperation in the energy sector is Iran. The latter tries to strengthen its positions in Central Asia by developing cooperation with Turkmenistan. Both sides consider the possibility of pipeline construction through relatively stable Iranian territory to the Persian Gulf. Recently, Iranian specialists have finished the construction of a gas refinery in Turkmenistan, which constitutes a part of the project on transporting Turkmenian gas to Iran.

The position of the Republic of Kazakhstan in regard to the legal status of the Caspian Sea is application of some provisions of the United Nations Convention on the law of the sea of 1982 concerning regimes and width of the various parts of the sea to the Caspian Sea.

Kazakhstan proposes to establish the territorial sea, a fishing zone and common water zone on the Caspian Sea in accordance with the provisions of the 1982 UN Convention to ensure political and economic interests of the littoral states.

It is necessary to define corresponding regimes in these zones. The external border of the territorial sea should be the state border within the limits of which the littoral state will exercise its sovereign rights.

This will additionally guarantee security in the context of ensuring inviolability of borders and territorial integrity.

Fishery and the use of bio-resources should be allowed in corresponding zones, as well as in the high seas on the basis of agreed yield quotas and licensing. The fishing zone it is suggested to divide as a category with the width and regime agreed with the Caspian states.

Negotiations on these issues are held within the framework of the Special Working Group on elaboration of the Convention on the legal status of the Caspian Sea on the level Deputy Foreign Ministers of the Caspian states.

Issues of the legal status of the Caspian Sea are discussed at bilateral and tripartite consultations. In addition, interaction in the sphere of use of biological and mineral resources, development of navigation, maintenance of security and protection of the Caspian Sea environment are also topics of consultations.

Meetings of experts of the Caspian states on development of international agreements are also held on a regular basis.

The Framework Convention on Protection of the Marine Environment of the Caspian Sea was signed on November 4, 2003.

On July 6th 1998, Kazakhstan and Russia signed the Agreement on delimitation of the bottom of the northern part of the Caspian Sea and the Protocol to this Agreement on May 13 2002.

On November 29 2001 and on February 27 2003 the Agreement between the Republic of Kazakhstan and the Republic of Azerbaijan on the delimitation of the bottom of the Caspian Sea between the Republic of Kazakhstan and the Republic of Azerbaijan and the Protocol to it was signed.

Kazakhstan, Azerbaijan and Russia signed the Agreement on the common point of the lines of delimitation of the neighboring sites of the bottom of the Caspian Sea on May 14 2003.

There were two Summit of Presidents of the Caspian littoral states (23-24 April 2002 and 16 October 2007) and three meetings of Foreign Ministers (11-12 November 1996, 6 April 2004 and 20 June 2007).

B.I. Osminin is sure, that “During the Second Summit of Heads of the five Caspian adopted the Declaration of the Republic of Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation, and Turkmenistan - the first paper concerning the Caspian Sea, signed by all the leaders of all riparian countries. Declaration on political reinforced the existing level of agreement on substantive issues the legal status of the Caspian Sea, security and stability at sea, as well as issues related to the position of the Caspian States on certain aspects of international relations (to strengthen the role of the UN, IAEA, the nuclear non-proliferation, international terrorism)” [6].

Next Summit of Heads of Caspian states held in the Republic of Azerbaijan agreed through diplomatic channels as possible. For a long time, the littoral states have been actively cooperating in this area on the basis of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, signed 15 years ago in Tehran, by jointly and comprehensively regulating anthropogenic impact on the marine environment and solving the problems associated with pollution of the sea from various sources, including those located in the coastal area.

In addition to that, the Convention thoroughly spells out the exclusive rights of the parties to regulate, authorize and conduct marine scientific research in their territorial waters, fishery zones and sectors. Marine scientific research within the territorial waters, fishery zones and sectors of the coastal states can be carried out only with their written permission and on the terms established by them [7, P.14].

A mutually acceptable solution was found to the problem of the potential military activities. Given the likelihood of new challenges and threats to stability in the region, and taking into account the need for the presence of military formations in the Caspian Sea for antiterrorist purposes, the parties developed a principle on “ensuring a stable balance of armaments of the parties in the Caspian Sea, developing military capabilities within the limits of reasonable sufficiency with due regard to the interests of all the parties and without prejudice to the security of each other”. This principle is considered in conjunction with other conventional principles, namely “compliance with the agreed confidence-building measures in the military field in the spirit of predictability and transparency in line with general efforts to strengthen regional security and stability, including in accordance with international treaties concluded among all the parties”, as well as “using the Caspian Sea for peaceful purposes, making it a zone of peace, good-neighborliness”, friendship and cooperation and solving all issues related to the Caspian Sea through peaceful means” [8, P.30].

In the conclusion we would like to note, that the Caspian littoral states demonstrated to the world a unity in creating an effective mechanism to increase the opportunities for tapping their potential. They created favorable conditions for the deepening of mutually beneficial economic cooperation and the development of a new transit-transport infrastructure. The settlement of different territorial and resource issues is aimed at resolving potential differences. This will contribute to sustainable development and stability in the region and will have a beneficial effect on all aspects of life in our countries. Ultimately, the Caspian will always be captive to the interests of the five littoral states and those five states, while often in agreement, and have divergent interests in several important areas.

З.К. Аюпова, Д.Ө. Құсайынов

Қазақ ұлттық аграрлық университет, Алматы қ., Қазақстан Республикасы;
Абай атындағы қазақ ұлттық педагогикалық университет, Алматы қ., Қазақстан Республикасы

КАСПИЙ ТЕҢІЗІНІҢ АКВАТОРИЯСЫНДАҒЫ ҚАЗАҚСТАНДЫҚ ДИПЛОМАТИЯНЫҢ КЕЙБІР МӘСЕЛЕЛЕРІ

Аннотация. Каспийдің экологиялық жүйесі және оның барлық құрамдас бөліктері халықаралық деңгейде қорғалады және күзетіледі. Тиімділік мақсатында Каспий теңізінің құқықтық мәртебесі туралы конвенцияны имплементациялау мәселелері жөніндегі жоғары деңгейдегі жұмыс тобы 2018 жылғы 12 тамыздағы арнайы тетік құрылады бес жақты консультациялар жағалаудағы мемлекеттердің сыртқы істер министрлері орынбасарларының деңгейіндегі өкілеттілігінде өткізілді. Бұл құжатқа Ақтау қаласында Каспий саммиті барысында Қазақстан, Әзірбайжан, Иран, Ресей және Түрікменстан бесінші Президенттері қол қойылды. Конвенция шектеуіне байланысты заңды құзыры мен егемендігін ұлттық аймақтардың мәселелерін реттейді; жер қойнауын пайдалануға құқықтарды жүзеге асырады; транзитпен және тасымалдауға; суасты құбыржолдары мен кәбірлерін қарастырады; табиғи ортаны қорғауға және Каспий теңізінің биологиялық ресурстарын пайдалануға жол ашады. Сонымен қатар қазіргі заманғы қыр көрсетулер мен қауіп-қатерлерге қарсы қауіпсіздік мәселелері, төтенше жағдайлардың алдын алу және оларды жою, әскери қызметке қарсы іс-қимыл тұрғысынан Каспий жағалауы мемлекеттерінің жеке назары аударылды. Каспий теңізінің теңіз акваториясы Конвенцияға сәйкес әртүрлі аймақтарға арналған режимдеріне шек қойылды. Тараптың аумақтық суларды белгілейді, бұл ретте олардың ені кемінде 15 теңіз миль сыртқы шекаралар мемлекеттік мәртебесі алады. Әрбір мемлекет үшін айрықша құқықтары болған аймақта жерлерімен жапсарлас он мильдік аумақтық суларына қойылатын балық аулау кәсіпшілігі қарастырылған. Биологиялық ресурстарды сақтау мақсатында балық аулауға квоталар бүкіл ұлттық бірегей таралымдары акваториясында келісу негізінде жүзеге асырылады.

Түйін сөздер: су кеңістігі, теңіздегі мемлекеттік шекаралар, жағалаудағы елдер, акватория, ұлттық квота, теңізде жүзу еркіндігі, транзит еркіндігі, жер қойнауы, магистральдық құбырлар, Каспий экологиялық жүйесі.

УДК 341.76

З.К. Аюпова¹, Д.У. Кусаинов²

¹ КазНАУ, кафедра права, г. Алматы, Республика Казахстан;

² КазНПУ им.Абая, общеуниверситетская кафедра политологии
и социально-философских дисциплин, г. Алматы, Республика Казахстан

НЕКОТОРЫЕ ВОПРОСЫ КАЗАХСТАНСКОЙ ДИПЛОМАТИИ В АКВАТОРИИ КАСПИЙСКОГО МОРЯ

Аннотация. Экологическая система Каспия и все ее компоненты находятся под всемерной защитой и охраной. В целях эффективной имплементации Конвенции о правовом статусе Каспийского моря от 12 августа 2018 года создается специальный механизм регулярных пятисторонних консультаций – Рабочая группа высокого уровня по вопросам Каспийского моря на уровне заместителей министров иностранных дел/полномочных представителей прибрежных государств. Она была подписана в Ақтау в ходе Пятого каспийского саммита президентами Казахстана, Азербайджана, Ирана, России и Туркменистана. Конвенция регламентирует вопросы, связанные с разграничением национальных зон, юрисдикций и суверенитета; осуществлением прав на недропользование; транзитом и транспортировкой; прокладкой подводных

трубопроводов и кабелей; охраной природной среды и биологических ресурсов Каспийского моря. Отдельное внимание уделено вопросам безопасности с точки зрения противодействия современным вызовам и угрозам, предупреждения и ликвидации чрезвычайных ситуаций, военной деятельности прикаспийских государств. Согласно Конвенции морская акватория Каспийского моря разграничивается на зоны с различными режимами. Стороны устанавливают территориальные воды шириной не более 15 морских миль, при этом их внешние границы обретают статус государственных. К территориальным водам примыкают десятимильные рыболовные зоны, где каждое государство обладает исключительными правами на промысел. С целью сохранения уникальной популяции биологических ресурсов рыболовство по всей акватории осуществляется на основе согласованных национальных квот.

Ключевые слова: водное пространство, морские государственные границы, прибрежные страны, акватория, национальная квота, свобода мореплавания, свобода транзита, недра, магистральные трубопроводы, экологическая система Каспия.

Information about authors:

Ayupova Z.K. - doctor of juridical sciences, professor, chair of law, Kazakh national agrarian university, Kazakhstan, Almaty;

Kussainov D.U. - doctor of philosophy sciences, professor, interuniversity chair of politology and socio-philosophy disciplines, Kazakh national pedagogical university named after Abai, Kazakhstan, Almaty

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