

INTERNATIONAL LEGAL STATUS OF THE CASPIAN SEA: ISSUES OF THEORY AND PRACTICE

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ABSTRACT

Since the collapse of the USSR, long established stability of compromise around the Caspian has left its place to competition and confrontation. While the USSR and Iran were the only coastal states in the Caspian basin during the Cold War, five states came to share the control over the Caspian Sea in the Post-Soviet period, and they were quick to declare their rights to the particular parts of the Sea in a unilateral manner, which led to controversies. Consequently, since 1992, there is a search for allegations, stimuli and causes for the formation of the multilateral relations regarding the status and usage of the Caspian Sea. However, altered geopolitical situation has made the issue of multinational ownership of the Caspian Sea and its delimitation, a matter of urgency. All the post-Soviet Caspian states, except Russia, declared at once their non-recognition of the legal force of the Soviet-Iranian contractual base (1921-1940) pertaining to the Caspian Sea. What followed was a contentious discussion on the legal status of the Caspian and its utilization. International negotiations on the Caspian problems, especially on determination of its international legal status, can be divided into three stages; First stage, which may be defined as the period of investigation, acquaintance and search after reasonable solutions, covers 1991-1994. Second stage covers 1995-1999, during which new ideas and postures were generated, range of serious multilateral meetings and conferences, discussing the national postures toward the Caspian Sea and other issues, were held. The third, and the last stage goes back to January 2000, i.e. to the moment when the new leader of Russia, Vladimir Putin, rise to the power. His arrival precipitated development of a new approach by the Russian Federation regarding the Caspian region and its problems.

KEYWORDS

International Law; Caspian Basin; Energy Resources; Legal Status; International Negotiations.

1. Introduction: Collaboration and Rivalry of the Caspian States on Determination of the International Legal Status of the Caspian Sea

Since the break-up of the USSR, political weather around the Caspian Sea has changed from "calm" to "storm". Long established stability of compromise was terminated. While the USSR and Iran were the only coastal states in the Caspian basin during the Cold War,¹ geopolitical interests of the half independent Soviet republics were ignored for 70 years. Situation has changed, however, with the USSR; breakdown and elimination of the legal mechanisms established by it in the region. The problem of the Caspian Sea became a divisive issue then, as the deputy foreign minister of Turkmenistan E. Kepbanov wrote: "It is obvious that the change of geopolitical situation and occurrence of new independent states in the Caspian region predetermined parity of new interests. It also resulted in a necessity of serious changes in the international relations in the Caspian region".²

New subjects of international law came into existence as a result of the disintegration of the USSR: Russian Federation, Azerbaijan, Kazakhstan and Turkmenistan. Thus, five states (Four newly independent states and Iran) had to share the control over the Caspian Sea in the Post-Soviet period.³ And they were quick to declare their rights to the particular parts of the Caspian Sea in an unilateral manner and designate their claims for the national sectors of the Sea.⁴

All this changes in form and substance of the region has also affected international relations of the Caspian states. Since 1992 there is a search after allegations, stimuli and causes for the formation of the multilateral relations regarding the status and

¹A. Jouravlev, "Ambages Around the Caspian Cake", *Pravda*, August-September 1997, p. 29.

²Yolbars A. Kepbanov, "The New Legal Status of the Caspian Sea is the Basis of Regional Co-operation and Stability", *Journal of International Affairs*, Vol. 2 (4), December 1997-February 1998.

³Y. Choubchenko, "Separate Division of the Caspian Sea", *Kommersant*, July 7, 1998.

⁴S. Vinogradov and P. Wouters, "The Caspian Sea: Quest for a New Legal Regime", *Leiden Journal of International Law*, Vol. 9, 1996, pp. 92-93.

usage of the Caspian Sea, that in practice means acceptance of the reasonable decisions on navigation, fishery, protection and use of biological resources, ecology and economy, especially in the sphere of huge hydrocarbon resources.

Altered geopolitical situation has made the issue of multinational ownership of the Caspian Sea and therefore the problem of delimitation, a matter of urgency. All Post-Soviet sovereign Caspian states, except Russia, declared at once their non-recognition of the legal force of the Soviet-Iranian contractual base (1921-1940) pertaining to the Caspian Sea. Traditional status of the basin adverse to their national interests sharply, restrained their vested rights to the possession of the appropriate parts of the Sea. However, Russian lawyers did not agree with such position. In their opinion, the new states had nailed down their consent to recognise all contractual obligations of the Soviet Union within the Almaata Declaration, signed on December 21, 1991.⁵

However, the articles of the 1921-1940 contracts have already ceased their effect during the Soviet period.⁶ In this context, all Caspian states accepted that an internationally accepted legal status of the Caspian Sea was not properly developed during the Soviet period, and to assume that it was developing was a wrong assumption. Therefore, since 1992, they have laid a foundation for multinational relations and negotiations with a view to creating an internationally recognised status of the Caspian. The principle of the partition of the Caspian Sea area, that is its base and biological and mineral resources, is also depend on the results of these negotiations.

⁵Ibid.; Kiril Guevorguian, "Le cadre juridique d'une cooperation dans la region de la mer Caspienne", *La region de la mer Caspienne*, Colloque du 26 Fevrier 1997, pp. 42-43.

⁶See Rustam Mamedov, "International Legal Status of the Caspian Sea: Yesterday, Today, Tomorrow (Issues of Theory and Practice), Part II: Infancy of the International Legal Status of the Caspian Sea From the Earliest Time Till 1991", *Central Asia and Caucasus, Newsmagazine*, No. 3, September 2000, pp 167-170; Rustam Mamedov, "International Legal Status of the Caspian Sea in Its Historical Development", *Caspian Energy; Quarterly Analytical Journal*, No. 2, Summer 2000, pp. 36-40.

International negotiations on the Caspian problems, especially on determination of its international legal status, can be divided into three stages; First stage, which may be defined as the period of investigation, acquaintance and search after reasonable solutions, covers 1991-1994. Second stage covers 1995-1999, during which new ideas and postures were generated, range of serious multilateral meetings and conferences, discussing the national postures toward the Caspian Sea and other issues, were held. The third, and the last stage goes back to January 2000, i.e. to the moment when the new leader of Russia, Vladimir Putin, rise to the power. His arrival precipitated development of a new approach by the Russian Federation regarding the Caspian region and its problems.

2. The First Stage of the Multilateral Negotiations (1991-1994)

During this period the Caspian states as well as the interested countries (USA, Turkey, China, Western European states and others) began to consider the Caspian Basin as one of the main sources of energy in the world, and determination of the Caspian Sea's legal status became the key question. Formation and identification of the national postures proceeded from the interests of the different states. At the same time formation of priorities of the Caspian states began, and each state tried to take the initiative in order to better defend their national priorities.

The most active state during this period was Islamic Republic of Iran whereas Russia observed developments in the post-Soviet era and Caspian region in silence, and new Caspian states just began to declare their intentions. Within the framework of the intergovernmental conference ECO (Economic Cooperation Organisation - February 17, 1992, Tehran), Iran for the first time put forward the idea to establish an Organisation of the Caspian Sea in order to promote cooperation in exploitation of region's reaches.⁷ As Alen Jiru notes, Iran, putting forward such a motion, hoped to locate the headquarter of the new organisation within its

⁷See Edmund Herzig, *Iran and Former Soviet South*, London, RIIA, 1995, pp. 30-33.

territory so as to link the questions and problems of the Caspian Sea and its foreign policy together in future.⁸

The Final Communiqué, accepted by the conference, incited the Caspian states to create reliable regional mechanism of cooperation in order to decide issues related to the usage of the Caspian Sea and its resources.⁹ According to Djamshid Momtaz, an Iranian expert, the Final Communiqué did not meet the expectations of any of the Caspian states, "for Azerbaijan and Kazakhstan have decided to work together in other direction".¹⁰

A more concrete approach came out of a special conference, held in Tehran (September - October 1992) to establish an international mechanism for settlement of the Caspian Sea problems.¹¹ The subject of determining the international legal status of the Caspian Sea was brought up, for the first time, by the official delegation of the Republic of Azerbaijan at this conference of five Caspian states.¹²

A draft agreement on the Organisation of the *Caspian States Cooperation* (OCSC) was introduced for debate by the Iranian delegation. The proposed interstate organisation was to collect maximum data on the Caspian Sea and its resources at first stages. At the same time, it was expected to reveal development opportunities for the regional countries on the basis of cooperation, stabilisation and peace atmosphere in the region. In accordance with OCSC project, the Caspian states could expand social and economic development through co-ordination of activity in all directions concerning the sea, and also promote realisation of policy on resource use. During constant negotiations

⁸Alain Giroux, "Le Kazakhstan entre Russie et Caspienne; La Caspienne. Une nouvelle frontiere", *CEMOTI; Cahiers d'études sur la méditerranée orientale et le Monde turco-iranienne*, No. 23, 1997, p. 168.

⁹Herzig, *Iran and Former Soviet South*.

¹⁰Djamchid Momtaz, *Quel régime juridique pour la mer Caspienne?*, P.: Pedone, Collection espèces et ressources maritimes. Droit et sciences humaines, No. 10, 1996, pp. 82-83.

¹¹See Mohammed-Reza Djalili, "Mer Caspienne: perspectives iraniennes; La Caspienne. Une nouvelle frontiere", *CEMOTI*, No. 23, 1997, pp. 135-136.

¹²The author of this article was on the delegation of the Republic of Azerbaijan at this and next conferences.

and consultations the main emphasis was put on cooperation among the Caspian states.¹³

At the end of the conference (October 4, 1992),¹⁴ the parties have agreed upon determination of the spheres of joint actions, including protection of natural resources of the Caspian sea, preservation and optimal use of biological resources, and determination of sea routes respecting interests of all parties, and abundance by ecological requirements, particularly, control over sea level increase.¹⁵

With the final communiqué, Caspian states agreed to organise six specialised committees, particularly, dealing with the legal status, environment protection, development, use and protection of biological resources (i.e., petroleum and gas), navigation, scientific researches, study of the reasons and control of the water level of the Caspian Sea.¹⁶ However, only the committee on biological resources appeared viable and began drawing up the projects under the influence and initiatives of Russia. Soon after the Tehran conference, the project of the convention on protection of biological resources was sent to the Caspian states through diplomatic channels. The covering letter specified that protection of biological resources of the Caspian Sea was so important that it made necessary further discussion and resolution of the issue on contractual legal basis.

In 1993, representatives of the Caspian states gathered in Resht, Iran, to participate in intergovernmental conference on use and protection of biological resources of the Caspian Sea.¹⁷ For the first time the conference was attended by experts (ecologists, biologists, ichthyologists, lawyers etc.) instead of officials. During the conference, the Russian draft of the Convention on use and

¹³"Convention on Organisation of the Caspian States Cooperation; Project of Islamic Republic of Iran", 1992, *Records of the Foreign Office of the Azerbaijan Republic*.

¹⁴Djalili, "Mer Caspienne: perspectives iraniennes", pp. 168-169.

¹⁵See "Joint Communiqué of the Caspian States Representatives", October 4, 1992, *Records of the Foreign Office of the Azerbaijan Republic*.

¹⁶Giroux, "Le Kazakhstan entre Russie et Caspienne", pp. 168-169.

¹⁷See "Documents of Resht Conference, August 23-26, 1993", *Records of State Association, "Azerbaijan"*.

protection of biological resources was put forward for discussion,¹⁸ and the first clash of interests and positions of the coastal states became apparent within the framework of the Resht conference.

For example, the Azerbaijani proposal to define the status of the Caspian Sea as a boundary lake got the frozen mitt from Russian and Iranian delegations, though Iran was more diplomatic and moderate in stating its position. Complete indifference to the discussed issues was shown by the Turkmen delegation, which was not ready either to discuss the idea or reveal its position. Kazakhstan, supporting in general the Azerbaijani proposal, at the same time did not accept to discuss the issue either; they too, were not ready yet. Therefore the Azerbaijani proposal did not find support during the conference and was delayed for further consideration. Moreover, another suggestion from Azerbaijan to change the principle of distribution of the Caspian Sea resources for the national division principle in the draft Convention was also rejected by Russia.

In general, it must be stated that the draft agreement on protection and use of biological resources of the Caspian Sea, consisting of a preamble and 17 articles, had been worked out professionally, even though it did not deal with the legal status of the Caspian Sea directly, which was the most important division line between the Caspian states. As a result, having discussed some articles of the project and concluded them in square brackets (which meant they were arguable, null and void), the parties left Resht empty-handed and seriously puzzled.

The next meeting of the Caspian states took place in October 14, 1993 in Astrakhan, the Russian Federation, where Caspian states attempted to reach a compromise on the principle of water area division and common ground on development of mineral resources. Kazakhstan was offered to act as initiator of the draft agreement on the development of natural resources of the Caspian Sea and on the legal status of the Caspian.¹⁹ 1993 closed with yet

¹⁸See "Convention on the Caspian Sea Bio-resources Protection and Use; Project", *Records of the Foreign Office of the Azerbaijan Republic*.

¹⁹B. M. Kuandikov, "Legal Status of the Caspian Sea; Basis of a Staged Development of the Caspian Sea Resources", Presentation to International Scientific-Practical Conference on *Legal status of the Caspian Sea*,

another conference in Ashkhabad (December 8-10), where the issue of establishment of the *International Organisation on the Caspian Sea* was discussed with no result.

However, the main event took place almost a year later on October 11-12, 1994, when special representatives of the Caspian states met in Moscow for a conference on Russian initiative.²⁰ The meeting was to discuss drafts of the convention on the legal status of the Caspian Sea submitted separately by Azerbaijan, Kazakhstan and Russia.

The Azerbaijan version of the draft convention was prepared earlier than the Kazakh one. It was dispatched to all Caspian states in autumn of 1993. However none of the states responded till the beginning of the Moscow meeting. The Kazakh version of the project on the legal status was also circulated on the eve of the meeting. This was put forward as alternate and compromise to the Azerbaijani one, as the Azerbaijani version had been recognised too rigid and regulated, whereas the Kazakhs left opportunities for continuing dialogue between the Caspian states, having found a more flexible version suitable for the needs of all the riparian countries.

While the Azerbaijani draft offered the status of a boundary lake delimited into national sectors, Kazakhstan considered the Caspian Sea as the closed sea, coming within the provisions of the 1982 UN Convention on the Law of Sea (UNCLOS - article 122 and 123). However, discussions within the framework of the Moscow meeting didn't find the Kazakhstan version as the compromise one. Rather, Russia and Iran looked at it with suspicion, as it put them in difficult situation. The sea version of the Caspian did not suit the interests of these countries since they preferred adhesion to the earlier Soviet-Iranian contractual practice, avoiding new developments. Because, should the Caspian Sea is recognised as a sea or a closed sea, then it would be considered within the norms of the positive international sea-law, and also articles 122 and 123 of the 1982 UNCLOS. In this case

Obstacles and Perspectives of Cooperation, Alma-ata, May 15-16, 1995, Alma-ata, Kazakhstan Institute of Strategic Research, 1995, pp. 23-25.

²⁰Vinogradov/Wouters, "The Caspian Sea: Quest for a New Legal Regime", p. 94.

there would be no necessity for the special agreement for delimitation, and the order of sea demarcation would be carried out automatically in strict conformity with the rules of the UNCLOS of 1982. However, the lake version needs additional special agreement of the coastal states on the status and delimitation.

In the event, neither Azerbaijani, nor Kazakh versions were brought up for debate. Draft agreement on *Regional Cooperation of the Caspian States* submitted by Russia was considered as the compromise alternative. However, we should discuss the peculiarities of the projects, and how they differ in order to understand following developments.

The Azerbaijani draft convention on the legal status of the Caspian Sea comprised a preamble and 12 articles.²¹ The preamble stated that the Caspian states, "understanding major political, economic, social and cultural value of the Caspian ecosystem, importance of its resources for the peoples of the Caspian region and all mankind, welcoming cooperation and mutual understanding between these states", should achieve understanding in establishment of the legal status of the Caspian Sea.

Article 1 included terms used in the main body of the agreement text. For the first time in practice of the Caspian states, a concrete definition of the term "boundary-lake" was attempted. Under article 2, it was stated that the cooperation and activity of the coastal states should be developed according to the basic principles of international law. Article 3, proposing to divide the Caspian Sea into relevant sectors of the coastal countries, appeared as a novel idea for the region, and article 4 stated that delimitation should be carried out both on bilateral and multilateral basis. Article 6 stipulated that coastal state legislation should be applied to each sector, except where it is expressly indicated otherwise in international treaties. The draft convention also studied alternative ways for the usage of the Caspian Sea.

Soon after the Moscow meeting, Azerbaijan worked out a new version of the draft convention on the legal status of the Caspian Sea comprising preamble and 14 articles. The main

²¹"Convention on the Caspian Sea Legal Status - Project of the Azerbaijan Republic", *Records of the Foreign Office of the Azerbaijan Republic*.

difference between the first and the second versions was that the last one was more concrete in stating international legal status of the Caspian Sea. Particularly, article 1 gave precise definitions of the terms "Caspian Sea" and "sector of the Caspian Sea", whereas the first version did not define them.

Caspian Sea was defined as inner continent closed basin that had no natural channels with the oceans, and as a result of physical-geographical conditions of its placement and the traditionally established principle of differentiation of its water area during the Russia/USSR-Iran period, it should be considered as "boundary lake." Then, the *sector of the Caspian Sea* was defined as part of water area, bottom and bosom, adjoining to the coastal state and being an integral part of the Caspian state territory that was limited by territorial water boundaries. Accordingly, article 3 of the draft convention stated that "the Caspian Sea (boundary lake)" should be divided into "sovereign sectors being an integral part of the relevant territory of the Caspian states".²²

The draft convention also contained precise instructions on delimitation of the Caspian Sea borders. It proposed that the state borders between the Caspian states would pass on a medial line equidistant from the coast, and in case of presence of islands, on a conditional line connecting island boundaries with a medial line. Besides, it was proposed to define the state water boundary between the adjoining Caspian states on a conditional line that is the natural prolongation of the land boundary perpendicular to the sea medial line. The draft convention put forward the idea to define the external border of Iran water area sector.

Kazakhstan, too, prepared and submitted two versions of the convention on the legal status of the Caspian Sea. Although there was no essential difference in content and sense of interpretation of the main issues between them, the second one was more complete and broad-based: its main provisions have been worked out in a more explicated manner. That is why the number of the articles was increased, approximately, threefold to 35 from 13. There was a range of more precise provisions and concrete phrasing especially concerning the obsolescence and inaction of Soviet-Iranian treaties

²²"Convention on the Caspian Sea Legal Status - Project 2 of the Azerbaijan Republic", *Records of the Foreign Office of the Azerbaijan Republic*.

of 1921-1940, considered by the Russians and Iranians as unique normative base for international legal status of the Caspian Sea. Universal sea legal base (particularly the UNCLOS of 1982) was supposed to be used for formation of the international legal status of the water area under consideration; that is to say, the Caspian was instantly declared as "sea" by the draft convention.

The project had one disadvantage notwithstanding. Article 17 duplicated appropriate clauses of 1921-1940 treaties, stating; "Only the ships of the Parties and, equally, the citizens and legal persons of the Parties sailing thereafter under the flags of Kazakhstan, Azerbaijan, Islamic Republic of Iran, Russian Federation and Turkmenistan are allowed to float in the whole spread of the Caspian Sea".²³

The Russian draft agreement on regional cooperation of the Caspian countries, on the other hand, totally differed from the Azerbaijani and Kazakh versions about the legal status of the Caspian. It was particularly difficult to decide whether the Caspian was a sea or lake according to the content of the Russian document. Article 2 advised the postpone the settlement of this issue to indeterminate future: "The legal status of the Caspian [sea] will be defined by special Convention".²⁴ Until then, parties would adhere to the predetermined legal regime, i.e. provisions of the Soviet-Iranian treaties of 1921-1940.

The proposal provided less for the principle of cooperation than the Azerbaijani and Kazakh ones. Instead of defining the international legal status of the Caspian Sea, the idea to create an international organisation to deal with the Caspian Sea problems (article 5) with various committees (article 7) and secretary (article 8) was reanimated. According to the project, the *Caspian interstate council* was to consider issues of general line and action programs of the Caspian countries, as well as to apply decisions concerning further development of cooperation aspects.

²³"Convention on the Caspian Sea Legal Status - Project 2 of Kazakhstan", *Records of the Foreign Office of the Azerbaijan Republic*.

²⁴"Convention on the Regional Cooperation at the Caspian sea - Project of Russian Federation", *Records of the Foreign Office of the Azerbaijan Republic*.

The basic ideas, discussed during the Moscow meeting add up to the following: Russia and Iran put forward an idea to transform the Caspian Sea into spheres of influence. In real, parties were appealed to recognise the Caspian as condominium. This idea, formulated in a separate article in the Russian draft agreement, was not accepted by Azerbaijan first and thereon by Kazakhstan and Turkmenistan on the next meetings.

The Moscow meeting of October 11-12, 1994, in effect followed the signing of the so-called "Contract of Century" on September 20, 1994 in Baku with participation of the leading oil companies of the West, Russian Lukoil, and Azerbaijani's SOCAR, concerning further development of the "Azerbaijan sector of the Caspian Sea" in an unilateral manner, even before it was determined by multilateral efforts.²⁵ Although the Russian representative, Fuel and Energy Minister Yuri Shafrannik, by his participation and favourable speaking, not only supported the contract, but also recognised the fact of existence of the Azerbaijan sector of the Caspian sea in deed, thus the fact of conditional division of the Caspian on sectors,²⁶ the Russian Foreign Ministry did not like the idea and openly opposed Azerbaijani moves. Thus, the Russian Federation, on December 5, 1994, sent a special document "About the position of Russian Federation concerning the legal mode of the Caspian Sea" to the UN General Assembly for distribution among the members of the UN. It clearly stated Russian discontent about the fact that "several Caspian states choose the way of unilateral actions [and] contradicting principles and norms of international law" in their attempt "to achieve unilateral advantages at the cost of the rights and interests of other Caspian states".²⁷

²⁵See H. Aliyev, *Azerbaijan Oil in the Global Policy*, Baku, 1997, pp. 15-19; N. Aliyev and Kh. Yusif-zade, "Again to the Question of Division of the Caspian Sea into Economic Zones", *Caspian* (Russian ed., Baku), 1997, p. 18.

²⁶See A. Mehtiyev, "The Present Status of the Caspian Sea Doesn't Suit Russia; Fighting for the Caspian Oil, Moscow Could Lose Than Win", *Nezavisimaya Gazeta*, June 15, 1994; L. Savadaro, "Les Regimes internationaux de l'utilisation des ressources minerals de la mer Caspienne", *Annuaire du droit de la mer*, 1997 Vol. 2, pp. 267-270.

²⁷Doc. of UN, A/49/475/5, October 1994, p. 3.

3. Second Stage of Multilateral Negotiations (1995-1999)

The second stage might be described as a "developed geopolitical game with extending geography and circle of the participants",²⁸ i.e. issue of formation of the new legal status of the Caspian Sea became important not only for the coastal states, but also for other countries of the American, European and Asian continents. This stage was marked by a great number of official meetings, scientific conferences, frequent changes in positions and priorities of the coastal states, and straight political collisions during negotiations.

The first of such meetings in a new stage of interaction was conveyed in Ashkhabad between January 30 and February 2, 1995.²⁹ The Russian project on preservation and use of biological resources of the Caspian Sea were the main item of the agenda. Above all, points of view of fishers were confronted by positions of diplomats at the conference. The diplomats affirmed that it was impossible to agree on the concrete issues of use of resources and opportunities of the Caspian Sea before the adoption of the Convention or its special norms concerning the legal status of the Caspian Sea. But fishers of all five states (Iranian representatives were slightly passive in this issue as Iran implemented an independent fishing policy on the Caspian according to its agreements with USSR, and afterwards with Russia), unwilling to understand or change the gist of the matter, insisted that their fishery can not wait while the coastal states haggle on the status and establish fishing rules.

As a result, the draft agreement on preservation and use of biological resources of the Caspian Sea was discussed and in fact, agreed on all items except one. Only the issue of status, i.e. about extension of exclusive jurisdiction zones of the coastal states over fishery, remained unresolved. Various versions were offered: from 15 (Russia) up to 25 (Kazakhstan), 30 (Iran) and 40 miles (Turkmenistan and Azerbaijan). In the long run, four Caspian

²⁸S. Koushkumbayev, "Caspian at the Crossroad of the Geopolitical Interests: Oil, Policy, Safety", *Caspian* (Russian ed.-Kazakhstan), 1999, p. 15.

²⁹Momtaz, *Quel regime juridique pour la mer Caspienne?*, p. 83.

states, except Azerbaijan, have accepted the final text of the agreement and agreed on a 20-mile restriction of fishing zones of the coastal states. Azerbaijan was the only state that refused to recognise this agreement under a pretext that its recognition would predetermine the legal status and regime of the Caspian Sea.³⁰ Therefore the agreement has not been signed.

Another meeting, an international scientific conference with participation of the scientists and official representatives of the Caspian states, took place in Almaata (now Almati) on May 15-16, 1995.³¹ An informal meeting of deputy foreign ministers of four Caspian states (Turkmenistan did not attend) was also held within the framework of the Conference.³²

Defining the international legal status of the Caspian Sea was main subject of discussions both at the conference and the meeting. Kazakh, Russian and Iranian representatives insisted on prompt beginning of negotiations and establishment of a "Committee" with permanent negotiating mechanism. However, Azerbaijan opposed to setting up rigid structures (such as Caspian International Council) in the absence of clearly balanced position of coastal states and, as a compromise, obtained Kazakh and Iranian consent to create a permanent working commission of experts on determination of the legal status of the Caspian.

The parties had been advised before the conference to discuss draft agreements on legal status, use of biological resources, and regional cooperation. However, both the conference and meeting of diplomats were conspicuous for that each party advocated its own vision of the legal status by putting forward completely different and, sometimes, opposite positions. The second version of the Kazakh draft agreement on the status proposed to consider the Caspian as a "sea" and, accordingly, to apply norms and principles of the UNCLOS-1982 to it. It meant,

³⁰S. Vinogradov and P. Wouters, "The Caspian Sea: Caspian Legal Problems", *Hangi Dergi?*, Vol. 55, 1995, p. 606.

³¹See Text of the International Scientific-Practical Conference on *Legal Status of the Caspian Sea* (Russian. ed.), TARİH???, pp. 3-5.

³²See A. Azimov, "Fill-in about informal consultations of the foreign ministers deputies of Azerbaijan, Iran, Kazakhstan and Russia", *Records of the Foreign Office of the Azerbaijan Republic*.

that delimitation of sea areas in the Caspian basin would be carried out in complete conformity with international sea-law, and the institutes of territorial waters, economic zone and continental shelf, etc. would be determined according to it.

In its turn, Azerbaijan insisted on determination of the Caspian as a *boundary lake*, divided into appropriate sectors on a medial line, in the same way as before. Recognising forthcoming difficulties in negotiation with Russia and Kazakhstan, Azerbaijan allowed for possibility of a combination of the approaches concerning use of water surface, biological and mineral resources, but took a strong stand on principle of delimitation of the Caspian bottom and resources.

Russia insisted on establishment of condominium in the Caspian, that is, it proposed to consider the water area a common property of five coastal states and accordingly to forbid any unilateral actions aimed to appropriate its spaces and resources without others' consent. The speech of the then Russian deputy foreign minister, Andrei Chernishev, voiced a certain warning:

Russia is against rough division of the Caspian Sea, when everyone hogs what he wants. We are against plunder of mineral resources of the Caspian Sea. The interests on the Caspian Sea are our interests. We are open to cooperation but on our terms. We are pitted against each other. Opportunities for achievement of compromise do persist, but we are against unilateral production on the Caspian Sea until the agreement of five states is reached. We have already felt a fear of imperial ambitions; we want to solve the problem fairly and according to conscience. If unilateral actions are accepted Russia will have an opportunity to take due measures [should] business goes beyond the mark.³³

In its turn, Iran also preferred condominium, but attempted a compromise in the words of its deputy foreign minister, Abbas Maleki: "To divide the Caspian Sea or not experts have to answer this question. Neither the first nor the second version can be accepted in full. It is necessary to consider historical experience of the Caspian states and the experience of other world regions. May

³³*Diplomatic Calendar* (Russian ed.), No. 12, 1995, pp. 55-56.

be we will come to an accommodation."³⁴ Thus, Iran evaded revealing its intentions and priorities, but supporting Russia and manoeuvring in negotiations.

Agreement of the Caspian states upon establishment of permanent negotiating mechanism on determination of the international legal status of the Caspian in the form of working groups, led by the chiefs of legal departments (later by deputy ministers) of the ministries of foreign affairs became the basic result of negotiations of the Almaata Conference.

The first working group began its work in Teheran on June 28-29, 1995 and its members all at once came into conflict. They divided on the point whether the legal status of the Caspian should be formulated in one document, which could serve as the basis for further multilateral agreements regulating various forms of activity realised in the Caspian sea. Eventually, they accepted consensus principle as the only way to approve all agreements.³⁵

The second meeting of working group was held in September 26-27, 1995 in Almaata.³⁶ Although, the Russian delegation, unsatisfied with the results of the Tehran conference, stayed away,³⁷ others managed to compare the Kazakh, Iranian and Azerbaijani drafts of the convention on the legal status of the Caspian Sea and co-ordinate some of their positions on the Caspian states' activity areas. As a result, participants came to an agreement upon activity grounds of the Caspian states in the Caspian Sea, and a joint Communiqué, putting forward the idea of the Iranian delegation to work out uniform document on the status and regime of the Caspian Sea, was released at the end of the meeting. Nevertheless, The Azerbaijani delegation continued to insist that the status issue should be developed within the framework of an

³⁴Abbas Maleki, "Geopolitical Situation in the Caspian Region: Cooperation Balance", presentation to the International Scientific-Practical Conference on *Legal Status of the Caspian Sea* (Russian ed.), TARİH???, pp. 24-25.

³⁵Momtaz, *Quel regime juridique pour la mer Caspienne?*, p. 84

³⁶See *Records of the Foreign Office of the Azerbaijan Republic*.

³⁷Richard Meese, "La mer Caspienne: Quelques problemes actuels", *Revue Generale du droit Internationale Public*, No. 2, 1999, p. 414.

independent agreement, and then, it would be possible to approve contracts on the special issues of use.

The results of the September meeting were not applied in following months, as regional states preferred unilateral and bilateral negotiations. Especially Azerbaijan, having arrived at a conclusion of futility of its efforts to determine new international legal status for the Caspian Sea, decided to confirm legally the fact of existence of its national sector in the Caspian Sea in an unilateral manner,³⁸ and added article 11/2 to its 1995 Constitution, stating lake-sector version of the Caspian Sea status. According to this provision, the bottom, air space and water area within the frontiers of the Azerbaijan sector of the Caspian Sea were recognised as the property of the Republic of Azerbaijan.³⁹

The idea to establish organisation of intergovernmental cooperation on the Caspian problems has been submerged by the issue of the legal status after this meeting. Iran tried number of times and even presented its own version of the Agreement on regional cooperation, analogous to the Russian one, to reanimate this proposal, but collided each time with indifference from other Caspian states. Nevertheless, on Iranian insistence, another conference on problems of the Caspian petroleum took place in Tehran in December 1995.⁴⁰ After discussing the problems of development and transportation of petroleum and gas in the Iranian sector of the Caspian Sea, the former deputy foreign minister of Iran Mahmud Vaezy, in his speech, put forward an idea about the necessity of urgent establishment of the *Organisation of the Caspian Sea States*, that would discuss and solve political and economic problems, including sphere of energy industry. Iran made it clear that such organisation would take under its control the main property of the coastal states - petroleum and gas - thus attempting to preserve the closeness of the Caspian and to prevent

³⁸D. Koptev, "The Caspian Bottom has Already Been Divided; Water Remains to be Divided", *Russian Telegraph* (Russian ed.), July 30, 1998.

³⁹See *Constitution of the Azerbaijan Republic* (Russian Ed.), 1997, p. 12.

⁴⁰See V. Akimov, "Economic Situation and Interests of the States - Members of the Caspian Oil Developing Project", *Documents of the International Conference; Caspian Oil and International Safety*, (Russian ed.) 2nd ed., Moscow, 1996, pp. 27-29.

entrance of the western states and transnational oil companies into the region.

The Azerbaijani delegation, however, declared that huge energy resources of the region and their importance for the coastal states as well as for other countries have made the problems of the Caspian Sea a global issue. This approach was later supported by the European Union, which created a commission of experts in April 1996 under the TACIS framework, "to study reform supporting means in the sphere of resource transportation and to define alternative decisions for their [i.e. regional states] export from the Caspian region and Central Asia to western markets".⁴¹ This decision was aimed to work out special proposals on large-scale projects alluring to investors. On the basis of recommendations of working groups, TACIS worked out a *Interstate Oil and Gas to Europe* (INOGATE) program.⁴²

Interstate relation practice in the sphere of the Caspian Sea problems indicates the fact that when official negotiations of the coastal countries come to a standstill, states (more often it is Russia or Iran) call an international scientific conference and look up to scientists for help in upholding their positions. Thus, soon after the unsuccessful negotiations, in Tehran in December 1995, an international scientific conference on "Caspian Petroleum and International Security", organised by the international non-governmental organisation *Peace and Consent Federation*, Moscow branch of the Russian scientific fund, *Petroleum and Capital* magazine and German *Friedrich Ebert Foundation*, was held in Moscow on March 5-6, 1996, by the initiative of the Russian Federation with the assistance of the *American Centre of Post-Soviet Researches*.⁴³

Representatives of oil companies, scientists, experts and officials from Russia, USA, Germany, Kazakhstan, Azerbaijan,

⁴¹R. Yakemotchuk, *Les hydrocarbures de la Caspienne. Le competition des puissances dans le Caucase et en Asie Centrale*, Bruxelles, Brulyant, 1999, p. 88.

⁴²See *Programme TACIS; Rapport Annuel*, 1996, Bruxelles, 25 June 1997.

⁴³See Information on the International Seminar "Caspian Oil and International Safety", March 5-6, 1996, Moscow, *Records of the Foreign Office of the Azerbaijan Republic* (Russian Ed.).

Greece and Georgia participated the Seminar program and participant addresses indicated the complex nature of the issues under discussion. Among the issues raised were the share and position of the Caspian petroleum and gas on the world global fuel and energy markets; challenges of the international legal status of the Caspian Sea; features of ownership on natural resources of the sea and its bottom; economic and political problems affecting production, selection of transportation routes of the Azerbaijani oil and, in this connection, interests of CIS, Iran, China, Turkey, USA and other western states; social and ecological consequences of development of oil and gas fields of the Caspian shelf.

In his opening address on behalf of the *Fredrich Ebert Foundation*, P. Shulze noted that although the Caspian Sea housed huge mineral resources, Russia was much more interested in political importance of the Caspian Sea than its resources, as it aspired to keep its former political influence in this region as well as levers of economic impact on the countries of the region.⁴⁴

The main emphasis in addresses of the Russian representatives were on the issues of the international legal status of the Caspian Sea, economic monitoring and oil and gas transportation. In his speech Akimov, for example, noted that the fact of actual illegal division of the Caspian Sea was in evidence in 1996.⁴⁵ In the opinion of Shematenkov, future destiny of the Caspian states depended on whether the issue of mineral resource development was to be solved.⁴⁶ The backbone of some statements came down to the following: Azerbaijani and Kazakh actions cause strengthening of disintegration process in the sphere of cooperation of the Caspian states.⁴⁷ The famous lawyer U. Barsegov came to the top in his attacks against Baku. In his opinion, Soviet-Iranian contractual practice should be recognised as a normative base for determination of the Caspian Sea status. Referring to this practice, he declared that the Caspian Sea is a

⁴⁴P. Shultse, "Caspian Oil: Approaches to the Problem", *ibid.*, pp. 9-15.

⁴⁵See Akimov, "Economic Situation and Interests of the States", pp. 27-29.

⁴⁶V. G. Shematenkov, "Integration of the Caspian States is a Way to Settle a Problem of Mineral Resources of the Caspian Sea", *Caspian Oil and International Safety*, pp. 44-48.

⁴⁷G. V. Marchenko, "Transportation of the Caspian Sea and Settlement of the Regional Conflicts", *Caspian Oil and International Safety*, pp. 75-80.

closed water basin (i.e. third states can't use the Caspian Sea), that it should remain an object of joint usage (in other words, *condominium*) as before, at that it is possible to name the Caspian somehow: A sea or a lake, but it would have no importance about the essentials of the issue, which was to keep in force its previous international legal status.⁴⁸

This position generated strong opposition from Kazakhstan and Azerbaijan. The former deputy foreign minister of Kazakhstan, V. Gizzatov, in criticising the Russian concept of common property on the Caspian Sea, in other words regime of joint possession or joint jurisdiction, came to a conclusion that it did not allow any state to consider the Caspian Sea a condominium. Therefore the appeals of the Ministry of Foreign Affairs of Russian Federation to co-ordinate activity on the Caspian Sea with the Russian Federation addressed to the Caspian states were deprived of any legal base.⁴⁹ Moreover, noting that each state should be independent in its zone, he emphasised that "the Caspian Sea bottom and bosom should be delimitedated between the coastal states which would have national jurisdiction and exclusive rights on investigation and development of mineral resources in their part of the sea".⁵⁰

The Azerbaijani representative, comparing the Azerbaijani and Russian approaches to the issue of the status, argued that Azerbaijani, rather than Russian one, was based on international law and world-wide practice of delimitation of international (boundary) lakes along the middle line.⁵¹ One of the Russian well-known scientists, U. Federov, supported position of the Azerbaijani views by noting the "absurdity of Russian actions constricting western petroleum companies in conducting oil investigation and

⁴⁸Y. Barsegov, "The Caspian Sea in the International Law and Global Policy", *Tribuna* (Russian ed.), September 10, 1998.

⁴⁹V. Gizzatov, presentation to the Conference on *Caspian oil and International Safety*, pp. 49-50.

⁵⁰*Ibid*, p. 57.

⁵¹R. S. Mustafayev, "Positions of the Azerbaijan Republic on the Status of the Caspian Sea and Bio-resources Use", Conference on *Caspian Oil and International Safety*.

production in the Azerbaijan and Kazakhstan sectors of the Caspian Sea bottom.⁵²

It was difficult to expect positive results from a conference that had become a place of so much disagreements, different interpretations and contradictions. As none of the parties changed their points of view on the legal status of the Caspian and on other issues placed on the agenda, the Conference ended up without any definitive result. Then, another conference on "the Caspian Sea Fishery and Biological Resources" was held in May 20-22, 1996 in Tehran with participation of four Caspian states (Russia, Iran, Turkmenistan and Azerbaijan). While the participants could not come to an agreement yet again, the main clash of opinion appeared on establishment of preliminary national allowances for caviar production, aimed to avoid a fall in prices in the world market due to its overproduction.

Six month later, another conference, this time combining the discussions on the legal status and economic cooperation of the Caspian states, conveyed on November 11-12 in Ashkhabad, Turkmenistan, with the participation of foreign ministers of five Caspian states.⁵³ The conference participants decided to evaluate the results of the previous meetings of the Caspian states' delegations in Almaata, Moscow, and Teheran where various versions of the convention on the legal status of the Caspian Sea had been discussed. At the end, the meeting resulted in signing of a tripartite memorandum between Russia, Iran and Turkmenistan on the Caspian Sea problems, particularly on joint use of its natural resources. Azerbaijan and Kazakhstan refused to join to this declaration, and later on, in December 1996, Azerbaijan signed an agreement with Georgia and Ukraine about the transportation of the Caspian Sea oil along the route Baku-Supsa-Odessa-Brody-western Europe.⁵⁴

⁵²Y. Fedorov, presentation to the Conference on *Caspian Oil and International Safety*, p. 53.

⁵³A. Godjayevev, "Status of the Caspian Sea is Only a Subject, Oil is a Key Problem", *Panorama* (Russian ed.), November 14, 1996.

⁵⁴"TRACECA - Push for the Development of Our Country", *Panorama* (Russian ed.), August 19, 1998.

Russia in fact went to Ashkhabad meeting of foreign ministers with what Merzlyakov described as "conciliatory" proposal. Russia declared, that each country should have exclusive or sovereign rights on mineral resources of the sea bosom within a 45-mile coastal zone. Outside this zone, jurisdiction on deposits where any of the states had began or was ready to begin development of a "concrete" site, would be awarded to those states.⁵⁵ At the same time, as he noted further, the central part of the sea could be used jointly by the states, and the riches of the bosom of this site of the sea could be developed by joint-stock companies of five countries. The other Caspian states did not like the idea.⁵⁶

Such developments culminated in decision by Russia, Iran and Turkmenistan to establish a tripartite company on investigation and development of hydrocarbon resources within the framework of above-mentioned memorandum. However, this initiative, as well as many other similar ideas, have not implemented, because difference of opinion among the parties soon emerged.⁵⁷ This time clash of opinions has revealed itself while connecting issue of the bosom delimitation to the problem of determination of the international legal status of the Caspian Sea. Therefore Russia, Iran and Turkmenistan decided to determine first the activity frontiers of the prospective joint oil company.⁵⁸ However, no further progress was achieved in determination of the legal status of the Caspian Sea during this meeting. As a result, Caspian littorals, especially Azerbaijan and Kazakhstan, began to recognise *de facto* "sectoral and divisional exploitation of the Caspian Sea".⁵⁹ In fact, according to Kh. Khalafov, deputy foreign minister of Azerbaijan, the decision of Iran, Russia and Turkmenistan to establish the tripartite company for investigation and development of deposits in

⁵⁵U. Merzlyakov, "Legal Status of the Caspian Sea", *Millenium; Journal of International Studies*, Vol. 45 (1), 1999, pp. 33-39.

⁵⁶M. A. Mirzoyev, "How to Divide the Caspian Sea?", *Vyshka* (Russian ed.), November 26, 1996.

⁵⁷A. Dubnov, "To the Caspian Consensus Through Russian hit-or-miss", *Vremya* (Russian ed.), July 10, 1998.

⁵⁸Meese, "La mer Caspienne: Quelques problemes actuels", pp. 415-416.

⁵⁹K. Khalafov, "Le statut politique de la mer Caspienne, ses fondements en droit international et ses consequences pratique", *La region de la mer Caspienne*, Colloque du 26 Fevrier 1997, p. 20.

usual zones of the states, was considered by Azerbaijan as *de facto* recognition of the middle line principle in the Caspian Sea.⁶⁰

The working group still continued discussions on the Convention of the legal status of the Caspian Sea after a while (May 22-23, 1997).⁶¹ The meeting this time was aimed to develop general approaches to a future convention on the legal status of the Caspian Sea. This meeting was remarkable for that the parties did not hide their intentions to transfer discussions from the multilateral sphere into the bilateral any more. According to the foreign minister of Kazakhstan K. Tokayev, the parties' positions coincided on such issues as environment protection, navigation and fishery, except delimitation of the Caspian Sea bosom and bottom.⁶²

Four versions were introduced for debate this time by Kazakhstan, Russia, Azerbaijan and Iran. However, after short debates, due to its positive provisions being agreed by all of three states, parties decided to take the Kazakhstan version of the convention as a basis for discussion. During the discussions, the parties again confronted each other on the main item of their positions: Russia insisted on 45-mile zone of national jurisdiction, while Azerbaijan argued for boundary lake delimitation of national sectors along the middle line, Kazakhstan for delimitation of the sea bottom, Turkmenistan - the Russian version is acceptable, if not, then the Caspian Sea has to be divided, and Iran - it is necessary to observe the 1921-1940 contracts while the coastal states come to an agreement.⁶³ Since five states had five contradicting positions concerning future status of the Caspian Sea, the meeting naturally resulted in a dead end.

By 1997, the Caspian Sea problem began gradually to grow out of multilateral negotiation framework of the Caspian states and become a global one. On May 13-14, 1997 summit of chiefs of states and chief executives of ECO countries (Turkmenistan,

⁶⁰Ibid.

⁶¹"Status of the Caspian Sea: We'll Take it Share and Share Alike or Fairly", *DERGİ?*, May 23, 1997, p. 6.

⁶²Ibid.

⁶³Gulnar Nugman, "The Legal Status of the Caspian Sea", *Eurasian Studies*, No. 13, Spring 1998 p. 84.

Afghanistan, Iran, Kazakhstan, Kirgizistan, Pakistan, Uzbekistan, Turkey and Tadjikistan) met in Ashkhabad.⁶⁴ Among other issues, they also discussed such issues as infrastructure prospects, transport development, and international oil and gas pipelines from the Caspian basin. It was noted during the summit that "considering the fact of huge power resources of the Caspian Sea and their importance for economy of large number of states located outside of the region that lacked fuel, problems of the Caspian Sea grow out of the regional framework".⁶⁵

Then, two international scientific conference held on June 24-27, 1997 in Moscow and later in Astrakhan on "Oil and Ecological Safety of the Caspian Region" had a great influence on genesis of the idea about necessity of determination of the new international legal status of the Caspian Sea for environmental reasons.⁶⁶ They contained appeals to the Caspian states to finish their works on establishment of the legal status of the Caspian Sea speedily in order to curb the catastrophic environmental problems of the Sea before it was too late. It was accepted all around that there was a serious, annually aggravating ecological crisis, affecting social and economic development of republics located around the Caspian Sea.⁶⁷ Moreover, Conference participants noted that there was no national borders for ecological safety in the Caspian region, therefore urgent co-ordinated actions at various levels were required. They was also put forward an idea of creation of joint and intergovernmental working parties on ecology. Although the participants of this forum did not deal with the question of the Caspian Sea legal status, they, nevertheless, appealed interested parties "to work out and accept an international convention on the Caspian Sea legal status".⁶⁸

⁶⁴Yakemotchuk, *Les hydrocarbures de la Caspienne*, pp. 86-87.

⁶⁵Danenov Nourlan, "L'approche du Kazakhstan aux problemes et aux perspectives de la cooperation des Etats riverains de la mer Caspienne", *La region de la mer Caspienne*, Colloque du 26 Fevrier 1997, p. 32.

⁶⁶"Scientists Discuss Oil and Safety Problems", *Panorama*, June 29, 1997.

⁶⁷See: Addresses of the participants of the International Conference "Oil and ecological safety of the Caspian region", *Records of the Foreign Office of the Azerbaijan Republic* (Russian ed.).

⁶⁸See: Obrasheniye Uchastnikov Mezhdunarodnoy Konferentsii "Neft i Ekologicheskaya Bezopastnost Kaspiskogo Regiona", Moscow-

The process of the Caspian Sea problems universalisation was further reflected in the resolution of EU Parliamentary Assembly on December 3, 1997.⁶⁹ The Resolution 624 argued that a huge amount of foreign companies began "a wild race" for leading in the development of natural riches of the Caspian sea and that Azerbaijan, Kazakhstan and Turkmenistan was under pressure of the states, which challenge benefits from resources exploitation.⁷⁰ The assembly further expressed a wish that the establishment of the international stability, co-ordinated by participation of all interested states and companies, would end the "war of oil pipelines".⁷¹

Failure of direct multilateral negotiations of the Caspian states on the legal status also provoked speeding up of efforts towards bilateral negotiations, and Russia and Kazakhstan concluded an agreement on July 6, 1998 about the bottom and bosom division of the Caspian Sea's northern part.⁷²

On the other hand, in a related issue, ministers of foreign affairs of Turkey, Azerbaijan, Georgia, Turkmenistan and Kazakhstan concluded a declaration in Istanbul at the beginning of March 1998, determining oil and gas transportation through the territory of Turkey, which was later ratified by the presidents of Turkey, Azerbaijan and Georgia on April 28, 1998.⁷³ Almost simultaneously (on April 27, 1998), the EU Council accepted a declaration, announcing that the energy resources of the Caspian

Astrakhan, June 24-27 1997, *Records of the Foreign Office of the Azerbaijan Republic* (Russian ed.).

⁶⁹Yakemotchuk, *Les hydrocarbures de la Caspienne*, pp. 86-87.

⁷⁰Assemblée de l'Union de l'Europe occidentale, Actes officiels, 43 session, Deuxième partie, décembre 1997. *Procès Verbaux, Compte, Rendue du débats*, pp. 51-52.

⁷¹Ibid.

⁷²M. Gafarlı, "Yeltsin i Nazarbayev Razdelili Kaspiy. Podpisana Deklaratsiya o Vechnoy Drujbe i Soyuznichestve i Predlojeno Uregulirovat Vzaimniye Dolgi s Pomoshyu "Nulevogo Varianta", *Nezavisimaya Gazeta*, July 7, 1998; S. Kiyampur, "Moskva i Astana Nachali Razdel Dna Kaspiya po Natsionalnaomu Priznaku", *Russkiy Telegraf*, July 7, 1998.

⁷³See: B. Vinogradov, "Klaspiyskaya Pyatyerka bez Rossii I Irana", *Izvestiya*, March 3, 1998.

sea were of big importance for this organisation and its permanent members.⁷⁴ Following this declaration, third conference that was organised within the framework of the EU project, TRACECA, took place in May 1998 in Tbilisi.⁷⁵ Official delegations from 12 states (Azerbaijan, Armenia, China, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Uzbekistan, Turkmenistan, Tadjikistan and Ukraine) participated to the meeting. Then, another meeting under the aegis of the EU took place in Baku between 7-8 September 1998 to discuss "arrangement of a transport corridor Europe-Caucasus-Asia", where 35 states from Europe and Asia and 12 international organisations were represented.⁷⁶ It was clear that reaches of the Caspian Sea and their transportation to world markets was of great importance to EU members.

Soon after, presidents of Turkey, Uzbekistan, Azerbaijan, Kazakhstan and Georgia, in the presence of US Energy Minister Bill Richardson, signed a declaration in Ankara on October 29, 1998, morally obliging them to begin realisation of the pipeline project Baku-Ceyhan.⁷⁷ While the document was not signed by the president of Turkmenistan, its signature by Kazakh President Nazarbayev was explained as result of Turkish proposal to buy from Kazakhstan up to 20 mlrd.m³ of gas per year. Wishing to promote Baku-Ceyhan as a main export pipeline, Turkish government gave indications that, in the nearest future, it will strengthen a regulation of passage through Turkish straits, i.e. it would set the policy of obligatory insurance that would cause essential restriction of tanker movements.⁷⁸

⁷⁴See: R. Yakemotchouk, Op. cit. P. 86-87.

⁷⁵See: "TRASECA- Noviy Impuls dlya Razvitiya Nashey Strani; Zaglyadivaya v Budusheye", *Bakinskiy Rabochiy*, April 24, 1999.

⁷⁶See: S. Shermatova, "Sholkoviy Put dlya Nefti", *Moskovskiy Novosti*, September 6-13, 1998.

⁷⁷See: Yu. Chubchenko, "Kaspiyskoye More Ostayetsya Nedelimim. Do Nachala Iyulya", *Kommersant*, April 29, 1998.

⁷⁸"Sladkiy Zapakh Kaspiyskoy Nefti", *Vek*, November 27, 1998; N. Ivanov, "Druzhba Druzhboy, a Neft Pydyet Tam, Gde Deshevle. Pri Vibore Putey Tranzita Kaspiyskoy Nefti Ekonomika Vozobladala nad Politikoy", *Segodnya*, October 30, 1998; S. Novoprudskiy, "Pochtoviy Truboprovod Baku-Ceyhan. V Turtsii Otkrilsya Sezon Perepiski Kaspiyskoy Nefti",

By this time, divergence between Iranian and Russian views about the future status of the Sea had emerged after the acceptance of the agreement of 1998 between Kazakhstan and Russia concerning the Caspian Sea. To fix up differences with Iran and Turkmenistan, Russia proposed to resume activity of working groups engaged in discussing of the Caspian Sea status and called a conference in December 16-17, 1998 in Moscow.⁷⁹ The meeting was littered from beginning to the end, by reproaches and whims of Iran. Although Iranian delegation put forward an idea of cancellation of coastal water space division, so that the biggest part of the sea could be used equally by all coastal states, parties could not agree on the delimitation and the legal status of the Caspian Sea, and the final communiqué included a provision (under Iranian protest) that the Caspian states agreed on the necessity of the Caspian Sea division.⁸⁰

This was in fact recognition of the *de facto* situation in the region. Azerbaijan was the first country to realise its aspiration with the signing of the "Contract of Century". Then Kazakhstan (1995-1996) and Turkmenistan (1996) reluctantly recognised the importance of sectional delimitation of the Sea for their economy. Russia came to accept sectional division of the Caspian reluctantly only in 1997-1998. Having realised that Russia was left behind in opportunities of oil transportation, as some Caspian states (Azerbaijan, Kazakhstan and Turkmenistan) began to realise projects bypassing Russia, Russia was compelled to refuse the concept of condominium and recognise what it did not wish: sectional division of the Caspian Sea. Then the signature of the contract with Kazakhstan about bottom and bosom division of the Caspian Sea's northern part came in 1998.

Since Iran's expectation for a statement of a principle of common property of the Caspian Sea bosom and bottom was thus diminished, it put forward a new model, that amounted to argue

Finansoviye Izvestiya, November 4, 1998; "Neft Kaspiya i Politika Azerbajana" *Bakinskiy Rabochiy*, March 31 1999.

⁷⁹See: M. A. Mirzoyev, *Op. cit.*

⁸⁰See: A. Bagirov, "Mozhno li Nakonets Podelit Kaspiy", *Rossiyskaya Gazeta*, January 5, 1999.

that the Caspian Sea was neither a sea nor a boundary lake.⁸¹ Accordingly, it called for a division of the Caspian Sea into five identical sectors, i.e. each riparian state would own %20 of the water area. Although the proposal was not accepted by other Caspian states, it on the whole proved that the recognition of the sectional delimitation became by now generally accepted way forward in establishing the new international legal status of the Caspian Sea.

Iran, being dissatisfied both with contents of the 1998 agreement between Russia and Kazakhstan, and with discussion of problems on the status definition within the framework of the Moscow meeting, decided to take the initiative. Accordingly, an "International Conference on the Caspian Sea: Opportunities and Obstacles" was conveyed in Tehran on June 22-23, 1999, which was attended by the diplomats and experts on the Caspian Sea from 25 countries of Central Asia and Caucasus.⁸²

During the conference, the deputy minister of foreign affairs of Azerbaijan, Kh. Khalafov, acquainted conference participants with the Azerbaijan position on the issue of the Caspian Sea legal status. Having analysed the basic concepts of the issue, he noted that dynamics of negotiations and achieved agreements testified the rapprochement of positions of the coastal states.⁸³ The representatives of Iran and Russia, however, took up aggressive positions. For example, A. Kazemy, from Azad Islamic University, demanded in his speech, not to hasten with an establishment of the new legal status and to adhere to the instructions of the Soviet-Iranian contractual practice of 1921-1940.⁸⁴ It was also offered to divide the Caspian Sea on a validity principle -20 % of the area to everyone and include this item in a prospective convention on the

⁸¹See: Kh. Khalafov, "Iranskiye Trebovaniya po Povodu Statusa Kaspiya ne Imeyut Osnovaniya", *Azadlıg*, August 8, 2000. (Azerbaijani ed.)

⁸²See Proceedings of the 8th International Conference on *Caspian Sea: Opportunities and Limitations*, Tehran, June 22-23, 1999, from the *Records of the Foreign Office of the Azerbaijan Republic* (Russian ed.), 2000.

⁸³Ibid.

⁸⁴See Nacef Safagi-Ameri, "Caspian Sea: Opportunities and Limitations", *Amu-Darya: Iranian Journal of Central Asian and Caucasian Studies*, Vol. 1 (3), Fall 1999, pp. 14-15.

Caspian status as one of the main principles (S. T. Shemirany).⁸⁵ The Iranian party accused Azerbaijan of capturing a part of the Caspian Sea in a unilateral manner, without waiting the definition of its legal status.⁸⁶

It became clear during the conference that, though the Caspian states expressed their desire to co-operate for stability and safety around the Caspian, it was impossible to achieve real guarantees in realisation of such wishes. The conference could not develop the concrete formulas of similar guarantees and creation of favourable conditions for cooperation. It also became clear that, in spite of the fact that Iran had signed the Moscow declaration in December 1998, it did not consider it as an obligatory document. Position of Islamic Republic of Iran by 1999, evidently, was shown by minister of foreign affairs, K. Kharrazi:

On an issue of the Caspian Sea regime, Iran considers that new legal status of the Caspian sea should be made out and accepted unanimously with all coastal countries. While there is no new legal regime, the old one should stand in force (i.e. regime coming out of the contracts of 1921-1940). Any unilateral and unreasonable exploitation of the Caspian Sea, considering its uniqueness will not be recognised by us before acceptance of the new legal status, as all resources of this sea, before definition of a new legal regime, belong to all coastal states. Therefore the states, with unilateral actions, damages to the rights of other coastal countries, will bear responsibility.⁸⁷

Holding such conferences the official circles of Iran aspired to collect as many supporters as possible. Though the character of discussions caused an international resonance, but expected results were not achieved. Participants parted not having changed their opinions and positions. This event finished the second stage of the interstate cooperation of the coastal states on the definition of the Caspian Sea international legal status, and practice of meetings on multilateral basis discontinued for some time.

⁸⁵Ibid.

⁸⁶Ibid.

⁸⁷K. Kharrazi, "Vistupleniya na Zasedanii Otkritiya Sedmoy Konferentsii Tsentralnoy Azii I Kavkaza", *Amu-Darya: Iranian Journal of Central Asian and Caucasian Studies* (Russian Ed.), Vol. 1 (3), Fall 1999, p. 19.

4. Third Stage of the Multilateral Cooperation (2000 onward)

The third stage of the coastal states' multilateral relations in the Caspian basin has taken place since January 2000. The new stage is mainly related to the changes in the Russian policies vis-à-vis the region.

The new president of the Russian Federation, Vladimir Putin, had long before the presidential elections declared his desire to deal with the Caspian Sea. Having been elected President in March 2000, he proclaimed the Caspian region a zone of special interest to Russia.⁸⁸ Then the Security Council of Russia met in April 21, 2000 to discuss the situation in the Caspian region and Russian policy towards it. Defining the Caspian Sea as a "traditional zone of national interest of Russia", Russian foreign minister I. Ivanov meant that Moscow decided to focus efforts to advance its interests.⁸⁹ Then the Security Council of the Russian Federation created a post of special representative of the president of Russia for the Caspian Sea legal status regulation, to which long-time head of Gazprom, V. Kaluzhny was nominated.⁹⁰ It was clear that the Security Council came to a decision that the unsettled status of the Caspian Sea, when the coastal states competed for development of its raw resources, threatens the Russian interests.⁹¹ As a result, we saw a new Russian Caspian concept, put forward by Putin, build around the issue of the Caspian Sea legal status. Therefore Kaluzhny, soon after presidential elections, visited Azerbaijan, Turkmenistan and Iran to restart the meetings of working commissions on the legal status and also to prepare the ground for a new meeting to be held in Moscow in August 2000. However the

⁸⁸Y. Tesemnikova, "Rossiya Smeshayet Aksenti. V Moskve Predlagayut Otdozhit Opredeleniye Statusa Kaspiya na Neopredelyenny Srok", *Nezavisimaya Gazeta*, October 6, 2000.

⁸⁹A. Dubnov, "Napravleniye Glavnogo Udar. Kaspiyskiy Region Stal Prioritetom Rossiyskoy Vneshnoy Politiki", *Vremya Novostey*, May 16, 2000.

⁹⁰V. Zubkov, "Kaspiy na Pereputye", *Tribuna*, October 6, 2000.

⁹¹A. Dubnov, "Napravleniye Glavnogo Udar. Kaspiyskiy Region Stal Prioritetom Rossiyskoy Vneshnoy Politiki", *Vremya Novostey*, May 16, 2000.

trip ended in a fiasco in Ashkabad and Tehran, and the proposed conference was postponed.⁹²

Legal aspects of the new Russian concept on the Caspian Sea was gradually outlined by "vigorous pragmatist" Kaluzhny both during his various shuttle visits to the Caspian states, and in the studies made in Moscow. At the end, his new provisions concerning formation of the new international-legal status of the Caspian Sea were summarised as follows :

- Russia offers step by step approach to the Caspian problems, identifying navigation, ecology, use of biological resources, definition of a coastal line coordinates etc.⁹³
- 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 neighbouring state that earlier engaged in development and production of the Caspian Sea hydrocarbons. In the opinion of Kaluzhny, "nobody will win if we continue arguing, as the counteraction of neighbours in the oil production makes its zero. The arrangement on this principle gives everyone real dividends".⁹⁴
- 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.⁹⁵

⁹²A. Dubnov, "Kaspiy Nado Delit Porovnu. Iran i Turkmenistan, Chto Tak Pravilneye" *Vremya Novostey*, August 1, 2000.

⁹³M. Pereplesin and Y. Yashin, "Ne Sest na Mel v Kaspiyskom More. Spetsposlannik Prezidenta RF Pobival v Ashgabade", *Nezavisimaya Gazeta*, July 20, 2000.

⁹⁴A. Dubnov, "Kalyuzhniy Vvzyalsya v Igru s Irantsami i Napugal Ikh Amerikoy", *Vremya Novostey*, August 3, 2000.

⁹⁵B. Vinogradov, "Turkmenbashi Okazalsya Neustupchivim. Ashgabat Otverg Pozitsiyu Moskvi po Statusu Kaspiya", *Izvestiya*, July 20, 2000; A. Buyantseva, "Kalyuzhniy Predlagayet Delit, Kogda Rech Idyet o Kaspii", *Vedomosti*, July 17, 2000.

- Creation of the Caspian states uniform platform on the issues of the Caspian Sea legal status.⁹⁶
- Establishment of the strategic centre on the Caspian Sea problems with its headquarter in capital of Azerbaijan Baku. The centre must provide monitoring in the Caspian basin, analysis of the geo-information, revealing of polluters, co-ordination of environment-oriented activity, navigation and fishery. This structure should have its own budget, and should function in cooperation with the five Caspian states' leaders.⁹⁷
- If any state prevents negotiation on the Caspian Sea status, other states should not loose time.⁹⁸

Kaluzhny proposals, which became public gradually, generated different responses from other Caspian littorals.

Azerbaijan: Initiatives of Kaluzhny proclaimed during his visits in Azerbaijan (July and November 2000) revealed new approaches in Russian position towards the Caspian Sea legal status. Not giving a decisive answer to Kaluzhny during the meetings in Baku, president Aliyev confined himself to saying that "the question on the legal status of the Caspian Sea should be settled finally". Welcoming new Russian initiatives in the Caspian region, he expressed hope that it will solve the problem, and "that nobody will have any claims".⁹⁹

During November negotiations with Kaluzhny, Aliyev further acceded to a multi-staged consideration of the Caspian Sea delimitation. Therefore it was expected that during Putin's visit to Baku in January 2001, a declaration on the Caspian Sea's bottom

⁹⁶E. Petrov, "Ostriye Berega Kaspiya. Ashgabad I Tegeran ne Soglasni s Predlozheniyami Moskvi po Uregulirovaniyu Problem Morya", *Nezavisimaya Gazeta*, September 11, 2000.

⁹⁷S. Shermatova, "Kaspiy Plyus Karabakh. Kakiye Predlozheniya Prinyes v Baku Kalyuzhny", *Moskovskie Novosti*, July 18, 2000.

⁹⁸A. Gadzhizade, "Rossiya Opredelila Svoi Prioritety na Kaspii. Chto Reshat Ostalnye Pribrejnnye Strani", *Nezavisimaya Gazeta*, July 18, 2000.

⁹⁹Ibid.

division between Russia and Azerbaijan would be signed and the Caspian Sea status definition would finally be determined. However, at the end, the two presidents could only agree on further talks.

Kazakhstan: Kaluzhny didn't visit Kazakhstan after his appointment, as Russia had no disagreement with this country concerning the Caspian Sea status. They had been solved on the basis of an agreement between Kazakhstan and Russia, signed in July 6, 1998. The fidelity to the basic principles of this contract was expressed in a declaration signed between the two states during Putin's visit to Kazakhstan in October 9-10, 2000.¹⁰⁰

According to latest position of Kazakhstan, the Caspian sea can not be considered as sea or lake. In case of a lake variant, navigation and fishery will be excessively complicated as it will necessitate changing of borders of the modern states. The sea variant will not be recognised by Russia, which have long stood up for a 45-mile zone of national jurisdiction. Therefore Kazakhstan, as before, continue to insist on the division of the Caspian Sea into special economic zones by the middle line, equidistant from opposite points of the coastal states, within the limits of which each state will have exclusive right to the resources development. Kazakhstan also argues that the bottom of the sea should be considered as common water, as a way of maintenance of cooperation in the field of navigation, fishery and bio-resources restoration.¹⁰¹

Iran: Official Tehran before and after arrival of Kaluzhny (August 2000) persistently asserted its opinion about the necessity of consideration of the Caspian Sea as condominium, as in this case there will be a joint possession of the sea and its resources will jointly utilised.¹⁰² Otherwise, Iran would also have its claims and approaches to the problem. During the negotiations, Iran at first appeared favourably accepting the idea of "50/50" share

¹⁰⁰N. Ivanov, "Nado Chashe Vstrechatsya na Kaspii", *Vek*, November 14, 2000.

¹⁰¹A. Grozin, "Kaspiy: Variantu Morya-Ozera", *Delovoye Obozreniye Respublika*, Almaty, June 15, 2000.

¹⁰²A. Dubnov, "Kalyuzhny Vvzyalsya v Igru s Irantsami i Napugal Ikh Amerikoy", *Vremya Novostey*, August 3, 2000.

concerning disputable deposits, provided that they will be included in overall 20 % share of the Caspian water area. But, finally, Iran completely rejected the "50/50" principle.¹⁰³

As Iran knows that in case of sectional delimitation, it can receive only 14 % share of the Caspian Sea, it continues to insist on condominium or equal sharing of the Caspian Sea, which obviously contradicts Russia, thus leaves process of the status definition open to attack.

Turkmenistan: The modern position of this country is elementary and rigid: "First - the status of the Caspian Sea should be solved and only then all other problems, including division of disputable deposits would be discussed."¹⁰⁴ This means in fact that at the present stage Turkmenistan is opposing settlement of disputes with Azerbaijan concerning disputable oil deposits.¹⁰⁵

During a conversation with Kaluzhny, president of Turkmenistan Saparmurat Niyazov (Turkmenbashi) noted that the problem of the Caspian Sea international legal status necessitates a coastal states summit, as it is impossible to solve contradicting views by efforts of the experts.¹⁰⁶ In his opinion, it was necessary first of all to sign "the Convention of five", already prepared by Turkmenistan by chance. Thus there is no guarantee that in any other case interests of Turkmenistan will not be supplied properly.¹⁰⁷ As to the model of differentiation of zones of

¹⁰³Yu.Chubchenko, "Kalyuzhni Ispil Svoy Kaspiy. Posledney Kapley Stal Tegeran", *Kommersant*, August 2, 2000.

¹⁰⁴M. Pereplesin and Y. Yashin, "Ispitaniye Morem. Na Kaspii Delyat ne Tolko Neft, no I Politicheskoye Vliyaniye", *Nezavisimaya Gazeta*, October 24, 2000.

¹⁰⁵Y. Tesemnikova, "Rossiya Smeshayet Akcentu. V Moskve Predlagayut Otdozhit Opredeleniye Statusa Kaspiya na Neopredelyenniy Srok", *Nezavisimaya Gazeta*, October 6, 2000.

¹⁰⁶E. Petrov, "Ostriye Berga Kaspiya. Ashgabad I Tegeran ne Soglasni s Predlozheniyami Moskvi po Uregulirovaniyu Problem Morya", *Nezavisimaya Gazeta*, September 11, 2000.

¹⁰⁷B. Vinogradov, "Turkmenbashi Okazalsya Neustupchivim. Ashgabad Otverg Pozitsiyu Moskvi po Statusu Kaspiya", *Izvestiya*, July 20, 2000; A. Buyantseva, "Kalyuzhni Predlagayet Delit, Kogda Rech Idyet o Kaspii", *Vedomosti*, July 17, 2000.

jurisdiction, Turkmenistan considers that there both principle of the sea sectional division, and condominium principle with a zone of coastal territorial waters, could be used together with a differentiation of sea bosom and common usage of a middle part of the water surface.¹⁰⁸

5. Conclusions

The main result of the Caspian states cooperation at its *first stage (1991-1994)* became formation of conditions, preconditions and principles of relationship in definition of the Caspian Sea status. The analysis of this process as well as draft agreements and documents, accepted at the international conferences, would lead us to conclude that the multilateral cooperation on the Caspian Sea status was successful, despite the initial unsuccessful results and non-availability of the co-ordinated international treaties.

Why ever the coastal states could not agree during the first stage of the Caspian co-operation? First, the process of the new legal status formation began spontaneously. Not everyone was ready to this process in 1991-1992. And since 1993, unsuccessfulness of a new stage resulted in realisation of isolation policy. Oil syndrome and worsening economic situation strengthened their dependence on the Caspian Sea. Therefore emerging national or individual programs on the usage of the Caspian Sea resources didn't always harmonise with each other and were often contradictory.

Secondly, the first stage of cooperation revealed three approaches to the Caspian Sea status. The position of Russia was uttered in post imperial approaches to issues of the Caspian Sea belonging. Internal political instability and disorganisation of various Russian political instances caused completely destructive points of view. As to Iran, at this period, the Caspian Sea was not a part of its economic plans, but politically Tehran considered the fact of western oil companies' occurrence in the Caspian Basin as a danger to its national safety. Therefore during this period and

¹⁰⁸M. Pereplesin and Y. Yashin, "Ispitaniye Morem. Na Kaspii Delyat ne Tolko Neft, no I Politicheskoye Vliyaniye", *Nezavisimaya Gazeta*, October 24, 2000.

further, role of Iran was destructive, interfering to rapprochement of the Caspian states positions. Azerbaijan, Kazakhstan and Turkmenistan were keen on search of new ways of economic well-being. They differed in levels of ideas preparation and realisation, and in relation to northern and southern neighbours. Azerbaijan followed more or less an independent course, while the other two countries frequently changed their positions under circumstances and were not absolutely self-assured.

Thirdly, they failed in definition of the Caspian Sea's exact geographical name: a sea or a lake. During the Astrakhan conference of the Caspian states on October 14, 1993, the then premier of the Russian Federation, Victor Chernomyrdyn commented on this issue: "what is the difference between a sea or a lake, let's better cooperate".¹⁰⁹ It was in fact a hint to consider the Caspian Sea as common area and property, which would allow Russia to have more influence on coastal states.

Iran supported Russia in this issue and frequently referred to the treaties of 1921-1940. Kazakhstan offered variant of the closed sea. Turkmenistan was looking on these processes in the region and did not act with any concrete position, though, at this period, it passed a barrier bill of 1993, which created 12-mile territorial zone in the Caspian sea. Thus, Turkmenistan began to consider the Caspian as a sea, though it was rejected during the negotiations. Azerbaijan offered to consider the Caspian as lake.

Fourth, Baku oil summit and signing of the "Contract of Century" in 1994 promoted speeding up of the considering the issue of the Caspian sea legal status. Before this contract, Russia and Iran didn't aspire to solve the problem of Caspian mineral and biological resources development, referring to the new status definition.

Thus, the first stage brought into being elements of confrontation and intrigues in the geopolitical game of large and small, old and new states of the Caspian sea, which was intermingled around the issue of the legal status definition. This motivated cooperation during the second stage of cooperation.

¹⁰⁹"Vstrecha Premyerov v Astrakhani", *Rossiskaya Gazeta*, October 15, 1993.

The *second stage* of the Caspian states cooperation on the multilateral basis, began after 1994. From 1995 till 1999 national egoism predominated constructivism. Motives of the approaches on the status definition did not change, they were same, as during the first stage of interaction. Russia was still unwilling to see "its former vassals having political and economic independence of Moscow, even though USSR [did] not exist any more".¹¹⁰ Iran was not interested either, guided by its overheated opposition to the West and foreign investment. In their turn, Azerbaijan, Kazakhstan and Turkmenistan tried to survive, and liberate from their former patron.

While Russia and Iran persisted to preserve their geopolitical priorities, leading companies of USA, Great Britain, Norway, France, Italy, Turkey, even of Japan began moving to the Caspian Basin. This made the Caspian Sea not only the sea of five coastal states, but major geo-strategic area and energy source of global importance. All these modified the international relations around the Caspian region. Thus, Russia, in 1997-1998, constraining its ambitions in relation to the Caspian Sea, made a decisive step to compromise. Iran began more consistently to argue for the division of the Caspian Sea by five equal parts. Kazakhstan entered in partnership with Russia and its rights to the mineral resources were recognised by the latter. Azerbaijan, concluded new contracts; there were 19 by the end of 1999.

The main achievement of the second stage of cooperation was signing of an agreement between Kazakhstan and Russia (July 6, 1998) "On differentiation of the northern part of the Caspian sea with the purposes of realisation of the sovereign rights to the bosom". The president of Kazakhstan Nursultan Nazarbayev, on the eve of signing of the first contract on the Caspian Sea status, declared that "the issue of the Caspian sea sectional division has rather political sense". As he said, the agreement on differentiation of northern part of the Caspian Sea bosom will benefit future generations and prevent "Balkanisation of the northern

¹¹⁰Michael P. Croissant and Cynthia M. Croissant, "The Caspian Sea Status Dispute: Azerbaijan Perspectives", *Caucasian Regional Studies*, Vol. 3 (1), 1998, p. 7.

Caspian".¹¹¹ After signing the document, Russia completely recognised principle of the Caspian Sea sectional delimitation.¹¹² Azerbaijan, standing up for delimitation both bosom and bottom of the Caspian Sea, accepted decisions of Russia and Kazakhstan on the Caspian Sea sectional division. In the words of Khalafov, deputy minister of foreign affairs of Azerbaijan, this agreement was "a serious step forward".¹¹³

So, the coastal states contributed greatly to the improvement of a dialogue, despite of all problems during negotiations. Thus, the second stage, the coastal states solved the main legal problems connected with the status and forms of the Caspian Sea use. They practically recognised a principle of the basin's sectional division. There was co-ordinated effort to put a quota on fishery and bio-resources because of the threat of extinction.

The *third stage* of the Caspian states negotiations concerning definition of the Caspian Sea status began as a result of the discussions during 2000. However, Caspian states could not yet reach a political compromise concerning the ownership and the usage of the Caspian Sea. Offers and negotiations of Kaluzhny created further rifts between the Caspian states rather than advancing the situation. By now, there emerged a clear rapprochement between the positions of Russia, Kazakhstan and Azerbaijan, which differs from the first two on some concrete aspects. However, Iran and Turkmenistan still differ in their approaches towards the Caspian Sea legal status definition. Unfortunately, these disagreements are increasing.

¹¹¹Saidkasım Kiyampur, "Moskva i Astana Nachali Razdel Kaspiya. Podpisana Deklaratsiya 'o Vechnoy Druzhbe i Sotrudnichestve' i Predlozhenno Uregulirovat Vzaimniue Dolgi s Pomoshyu Nulevogo Varianta", *Nezavisimaya Gazeta*, July 7, 1998.

¹¹²M. Gafarlı, "Yeltsin i Nazarbayev Razdelili Kaspiy. Podpisana Deklaratsiya o Vechnoy Drujbe i Soyuznichestve i Predlojeno Uregulirovat Vzaimniye Dolgi s Pomoshyu "Nulevogo Varianta", *Nezavisimaya Gazeta*, July 7, 1998

¹¹³Saidkasım Kiyampur, "Moskva i Astana Nachali Razdel Kaspiya. Podpisana Deklaratsiya 'o Vechnoy Druzhbe i Sotrudnichestve' i Predlozhenno Uregulirovat Vzaimniue Dolgi s Pomoshyu Nulevogo Varianta", *Nezavisimaya Gazeta*, July 7, 1998.

The principle of "equal and equitable" participation of the Caspian Sea resources among its riparian, maintained by Turkmenistan and Iran, provides for common and equal usage of the Caspian Sea resources by five coastal states, or allocation of 20 % share to each Caspian state. This arrangement completely adverse to the interests of other parties, especially Kazakhstan, which currently possesses 29 % of the Caspian area.

In general, offers of Kaluzhny seem to be interesting, urgent, but far from being perfect. For example, Russian experts, offering staged cooperation on the Caspian problems, didn't suggested for consideration regulation of the legal status. But without this regulation all other kinds of activity in the basin seem to be rather inconvenient. The principle of 50/50 share, suggested by Khaluzny, is also doubtful. It was not applied before anywhere in the world and consequently there is no historical antecedent to take example. In this connection it is necessary to emphasise, that the practice of international or boundary lakes basically bases on customary practice and customary law. It means, that, in fact, coastal states in each concrete case (concerning each lake) work out appropriate norms and approaches concerning decision of the existing problems. In the opinion of French scientist Pondaven, by now there is a large base of time-tested consuetude and examples of practice. They are frequently used as precedent within the framework of new contractual practice of the lake states.¹¹⁴ The majority of consuetude goes back to the Roman law and to the practice of the medieval states.¹¹⁵ The principle of 50/50, put forward by Russia, has not been practised by the lake states. Therefore, it is necessary to modify this offer, so that the parties could precisely predict possible consequences of its application. The concept and principle of Roman law *uti possidetis uta possideatis* could be used.¹¹⁶ In the case of the Caspian sea, it means that the Caspian states during the Soviet era and after the

¹¹⁴Ph. Pondaven, *Les lacs frontieres*, Paris, Pedone, 1972, pp. 59-63.

¹¹⁵Ya. Brounli, *Mejdunarodnoye Pravo*, 2 Volumes, Moscow, Progress, 1977, pp. 26-29; A. I. Kosarev, *Rimskoye Pravo*, Moscow, Yuridicheskaya Literatura, 1986; V. M. Koretski, *Izbranniye Trudi*, Vol. 2., Kiev, Naumova Dumka, 1989, pp. 182-187.

¹¹⁶B. M. Klimenko, *Mirnoye Razresheniye Territorialnikh Sporov*, Moscow, Mezhdunarodniye Otnosheniya, 1982, pp. 141-142; J. Presott, *Boundaries and Frontiers*, Leningrad, 1979, p. 128.

independence have gained property: for example, petroleum deposits opened by them. So the right of the discoverer and the right of development, historically made by any coastal state, would also apply to territorial sites. As a result, the rights that exist at the moment of the establishment of a new status, should continue to the future. The parties have to recognise this principle, as only it could prevent further disputes in the region and create a basis for cooperation. This principle do not apply to other undeveloped territories, even if a new subject maintains them after contractual delimitation. The application of this principle could be used for example to facilitate the settlement of the disputes between Azerbaijan and Turkmenistan.

It is also possible to apply another norm of the Roman law to the territorial disputes on the Caspian Sea, that is the principle of *prescription of possession*.¹¹⁷ According to this principle, the property remains in possession of the party that owned it for a long time without opposition from the other parties.

There is also reason and opportunities for application of a third principle of Roman Law; *estoppel*,¹¹⁸ which provides that each state must be consecutive and should not deny the earlier recognised fact about the property right. It is known, for example, that the right of Azerbaijan on deposits *Azeri, Chirag, Guneshly* and *Kapaz*, developed during the Soviet era, was recognised by all Caspian states, both during the Soviet time, and after independence, i.e. long before 1997, when Turkmenistan put forward its claims.

The third offer of Kaluzhny, concerning simultaneous use of the two status principles (*condominium* and *sectional delimitation*) have so far been practised by Russia and Kazakhstan. Within the framework of the agreement on July 6, 1998, parties, having named the Caspian sea neither sea nor lake, agreed on bottom division and kept the surface of water in common usage. In other words, in relation to the northern part of the Caspian sea, they applied both principles simultaneously. It was clear that it was ensued from the compromise, as Kazakhstan, though preferring

¹¹⁷Klimenko, *Mirnoye Razresheniye Territorialnikh Sporov*, pp. 163-164.

¹¹⁸Ibid, pp. 171-172; Bowett D. Estoppel, "Before International Tribunals and its Relations to Acquiescence", *British Year Book of International Law*. Vol. 39, 1957, p. 177; Brounli, *Mejdunarodnoye Pravo*, pp. 40-41.

sectional delimitation, agreed to recognise Russian condominium variant. However, condominium is not a status, it only refers to a condition and level of the states interaction. However, it is too early to speak about establishment of the common property, as there is a plenty of political and economic disagreements between the Caspian states. The coastal states, at first, should divide the Caspian sea to define limits of their sovereignty and volume of the property. Only then, they can, if necessary, accede to a condominium principle.

The fourth offer concerning formation of a joint platform of the member countries of the CIS on the Caspian sea status deserve closer attention. It will, of course, be possible only when the member countries of CIS prefer this organisation to their bilateral contacts. However, at the moment, general situation of bilateral contacts and arrangements between the riparian states hardly allow to develop a common CIS platform.

As for the establishment of an international non-governmental strategic centre; Though the idea looks attractive, it is also hardly possible to achieve so long as the international legal status of the Caspian sea is not determined.

It is obvious that all the riparian states have to come to an understanding to divide the Caspian Sea into sectors according to the world practice, and then to define common spheres and interests of joint activity, (for example, trade navigation, environmental protection). Instead of confrontation, economic integration in the Caspian basin should become an imperative of national interests of the Caspian states. In this content, as Kaluzhny stated in Baku, it is necessary to continue dialogue even if one of the riparian states does not participate. In other words, in a case when someone deliberately tries to endanger the principle of complete consensus; bilateral, tripartite and even quadruple dialogues with the right to conclude lawful contracts should be contemplated.

Finally, for the Caspian states, it is expedient to accept the following principles and regulation to reach a common understanding about the Caspian Sea's legal statuses and its future:

- To recognise the Caspian Sea as a boundary lake, i.e. water pool which has no natural connection with the World ocean.
- Delimitation of the Caspian Sea on a middle line between the coastal states, firstly on the bottom, and then in process of the arrangement, on the water surface. It is necessary to define limits of sovereignty and volume of the property of the coastal states in the Caspian basin and only then determine the areas and spheres of their joint activity. Such spheres can become navigation, fishery, ecological protection and monitoring, production of hydrocarbons and other mineral resources, meteorology, cooperation in the field of seismology, control of water level, construction of artificial islands, scientific researches etc.
- Only having defined the status of the Caspian Sea, it will be possible to sign the multilateral contracts on various spheres of its use. After definition of the international-legal status it is necessary to work out and accept a convention on the bio-resources protection and ecological safety.
- Supposing, that "the Caspian five" will not be able to come to a compromise in issues of the Caspian Sea status definition in the near future, the usual bilateral contractual practice on the Caspian Sea status definition should be accepted. It would mean that the agreement between Kazakhstan and Russia of July 6, 1998 on the northern part division will be recognised. If this practice will also be maintained by Azerbaijan, i.e. if an appropriate declaration between Russia and Azerbaijan signed, it would then be possible to predict that Turkmenistan will also join this initiative. Though, it will be more difficult with Iran, it will, too, after remaining in a "proud loneliness" for sometime, join to the others. Therefore it is important to support the initiative of Russia, which suppose that five-sided convention on the Caspian Sea status should be realised through bilateral contractual base.

- It is expedient to the coastal states to establish international specialised organisations on the kinds and spheres of use, for example, on ecology or bio-resources, or on navigation.
- To make the Caspian Sea a demilitarised zone.

All disputes between the Caspian states should be settled, on the basis of the international law, and according to consuetude and contractual practice of other boundary lakes. Some time provisions of the Roman law will become imperative in the interstate relations of the Caspian states. Mutual trust and the recognition of the law will lead the Caspian states to necessity of creation of the Caspian international court or arbitration.