Chapter 12

Basic Legal Issues of the Management of Natural Resources of the Caspian Sea

ALEXANDRE N. VYLEGJANIN
Law Research Centre, Institute of External Economic Relations
Ministry of Economy of the Russian Federation
Moscow 103756 Russia

Taking into account different interpretations of legal status of the Caspian Sea, the paper focuses on the current and future legal regime of its natural resources. The relevant international instruments are considered and in this context national approaches of the Caspian states to resource management are legally assessed. In conclusion, some basic prerequisites for the developing scope of the legal regime of the Caspian natural resources are suggested.

1. Introduction

The legal regime of natural resources situated within state territories does not pose complicated questions for international law. Such natural resources fall under the legal notion of “state territory”[1] and, in several resolutions, the General Assembly of the United Nations confirmed the sovereignty of a state over the natural resources within its territory [2]. This is not the case for Caspian Sea natural resources. Several international treaties provide the legal states of the Caspian. They are: Treaty between Russia and Persia, concluded in 1723 in St.Petersburg; Treaty between these two countries concluded in Resht in 1732; the Gulistan Treaty of 1813, concluded between these two countries; the Turkomanchai Treaty of 1828 between them; Additional Treaty of 1838 between the same countries; Convention between Russia and Persia concerning the delimitation to the East of the Caspian Sea, signed in Teheran in 1881; Treaty between Russia and Persia of 1921, concluded in Moscow; Agreement between these states on Exploitation of Fishery Resources along the Southern Coast of the Caspian Sea of 1927; two bilateral treaties on Establishment of Communities, Commerce and Navigation, concluded in 1931 and 1935; Treaty on Trade and Navigation of 1940; Agreement between Russia and Iran on Cooperation in the Field of Fisheries of 1996. According to such international treaties the Caspian Sea is not part of the state territory of Russia or of Iran, however, only these two states have the exclusive rights to use the water space and

natural resources of the Caspian Sea.

For several decades, this legal regime was not questioned by any state. It was following the termination of the 1922 Treaty on the Formation of the USSR in 1991 that three new Caspian states - former Soviet republics Azerbaijan, Kazakhstan and Turkmenistan - questioned the legal validity of the Caspian treaty system of the previous centuries and its adequacy in the contemporary legal environment.

There are three major legal issues within this problem: first, how is the legal regime of natural resources and water spaces of the Caspian Sea determined de lege lata (i.e., by the rules of international law which are already in force)? Second, what are the legal dimensions of management concepts for the spaces and natural resources of the Sea advocated by the Caspian Sea states? And third, a forecast of legal future of Caspian natural resources (de lege ferenda issue): bearing in mind the growing interdependence of states and the environmental security of the Caspian Sea, what are the legal interests of the world community in the development of a new legal regime for Caspian natural resources?

2. De Lege Lata (The Legal Regime of Caspian Natural Resources under the Treaty Law in Force)

It is already described in detail in the literature on international law that the legal status of the Caspian Sea was formed in previous centuries by two littoral states: Russia and Persia. Thus, statements made by high-ranking officials and businessmen that the legal status of the Caspian Sea has not yet been determined are in contradiction with the history of international law and with the rules of international treaty law [3]. Such statements are a myth; in the end of the 20 century there are no seas or lakes on our planet or any other part of the surface of our planet without any legal status, that is, which is neither a part of a state territory nor have status determined by treaty law [4]. According to the Gulistan Treaty of 1813 concluded between these two countries, the Caspian Sea and its coasts are recognized as being under the exclusive authority of Russia. The treaty rules specify that only Russia has the exclusive right to maintain its navy in the Caspian Sea [4]. The exclusive rights of Russia in the Caspian Sea are also confirmed by the Turkomanchai Treaty of 1828 [5], and in particular by its Articles 1 and 3. Another confirmation of these rights is presented in the 1881 Tehran Convention on Delimitation [6]. Taking these international treaties as a basis for legal expertise, it’s not surprising that the famous Russian scholar of law N. Korkunov concluded in 1886: “All the Caspian Sea belongs to Russia” [7].

A second myth, sometimes disseminated in newspapers, is that these treaties of the eighteenth and nineteenth centuries between Russia and Persia have no legal effects at all because their rules were completely repealed by the Treaty of 1921 between Soviet Russia and Persia concluded in Moscow on February 26, 1921. Such a myth has no foundation in international law. According to the Treaty of 1921 between Russia and Persia, “Both Contracting Parties agree to recognize and implement the boundary between Persia and Russia as delimited and depicted in the Convention concerning delimitation of 1881” (Article III of the Treaty of 1921). The reference to the rules of the previous treaty system is legally important. However, through the Treaty of 1921, Russia voluntarily gave up some islands and pieces of continental territory in the south