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NEW OPPORTUNITIES AND UNRESOLVED ISSUES IN THE CONTEXT OF CONVENTION ON THE LEGAL STATUS OF THE CASPIAN SEA

Summary

This article is dedicated for the analysis of the Convention on 'Legal Status of the Caspian Sea' concluded on August 12th, 2018 between the coastal States of the Caspian Sea. The exclusive rights and new opportunities issued to the parties, and alternative resolution to the question 'sea or lake' which has been getting on international dispute are researched throughout the Article. However, some issues arisen before the Convention have not been resolved yet. The research states possible solutions for these issues and clarifies indefinite circumstances not reflected in the Convention. In this paper, contradictions existing within the provisions of the Convention and discrepancies occurred between the clauses and the practice are searched. This Article has been prepared on the basis of the analysis of the articles of the Convention on 'Legal Status of the Caspian Sea' and the comparison of the current situation with the United Nations Convention on the Law of the Sea (UNCLOS- 1982).

Key words: *Caspian Sea, special legal status, international disputes, delimitation, implementation of the strategical projects*

Introduction

The Caspian Sea has attracted the interest of the states as a political, geographical, and strategical important sea basin for centuries. The Caspian Sea had been under the governance of the USSR and Iran until 1991, was divided between five coastal states after the collapse of the USSR. From this day, a lot of legal disputes concerning either littoral states, or entirely law occur. One of the basic problems was the 'a sea or a lake' question which is based on ancient roots. The answer to this question would determine the legal status of the Caspian Sea and appoint a legal regime of it. This issue particularly, in the interest coastal states finally was solved after 22 years' discussions as a result of the conclusion of the Convention on the Legal Status of the Caspian Sea on 12th of August 2018, in Aktau, Kazakhstan. Although the legal regime to be applied to the Caspian Sea has been defined as well, still, some problems remain unsettled.

This paper analyses the difference of identified legal regime from the others, new opportunities established, unresolved and not-touched matters, completely the legal effect of the Convention to the legal-strategical order of the region. The issues to be analyzed under special titles by considering the points arising from the Convention vice versa, not-highlighted questions, and finally, main matters shall be perused within the Convention.

1.Legal Status

Besides the political-strategical significance of the Caspian Sea, the determination of the Caspian Sea is a sea or a lake was essential to construe the obligations of coastal states.

So that, five countries have not been able to reach a unanimous decision until the conclusion of this Convention, many issues remain unsettled from the demarcation of maritime borders to implementation of projects in the seabed. Because each time doubtless, one party put forward the impossibility of the operation to be realized by evaluating the legal status of Caspian Sea in favor of its own interest. As well as, identification of the legal status of the Caspian Sea was a necessary stage in the political-economic life of the region in resolving existing and potential disputes. Ultimately, 'Special legal status' has been issued to the Caspian Sea; despite the parties argued the Caspian Sea is a sea or a lake. As an unseen concept 'Special Legal Status' has deprived the Caspian Sea of either 'sea' or 'lake' status. Taking into consideration that some states wish to recognize the Caspian Sea as a sea and others as a lake, this status is in fact against own interests of each state. Such that, if the Caspian Sea was a lake, any legal

mechanism would not exist, it would be divided in order to international customs and practice. This case would lead to an equal division of the Caspian Sea among states as a lake (20% of the territory to each state). The division on the base of equidistance principle was mostly in favor of Iran has the shortest coastline. The Caspian Sea which was governed by Iran and USSR on the base of the principle of the condominium (joint use) until 1991 and was clarified as a sea, which had to be recognized as a lake and divided equally among parties to comply with current interests of Iran. On the other hand, another way for delimitation of lakes in international practice (only as of the example of Titicaca Lake, Bolivia vs Peru) is having 12 nautical miles territorial sea by the littoral states and the rest of water-basin is in joint-use. (1) It was requested for the realization of the mentioned versions, to determine the legal status of the Caspian Sea and to choose how the legal regime would be applied (2). Those who wish to declare the Caspian Sea as a lake, claim that it cannot reach to the World Ocean naturally, and has no connection with other seas. However, the Caspian Sea, which has access to the world ocean through the Volga-Don and Volga-Baltic canals, increases claims supporting to define as a sea by possessing the features like geographical volume (76,700 cubic meters), depth (the deepest point in the south is 1,200 m in Lankaran, total depth of 1,025 m in the south), salinity and historical experience (3). If the Caspian Sea was a sea, the provisions of the United Nations Convention on Law of the Sea would be applied to the Caspian Sea directly. It establishes the rights of each coastal state same as the rights of each state has the access to the sea; territorial sea extending at most 12 nautical miles, contiguous zone up to 24 nautical miles, the right to claim an exclusive economic zone not exceeding 200 nautical-miles, the rights to obtaining continental shelf covers subsoil and seabed calculating from the baseline up to a limit not exceeding 200 nautical miles (4). After many-years discussions, it has been deemed unsuitable to the territory of the Caspian Sea to make a claim the exclusive economic zone by coastal states. This is one of the main reasons for not identifying the Caspian Sea as a sea. The Caspian Sea is divided into 15 nautical-miles wide territorial seas, fishery zone up to a limit not exceeding 10 nautical-miles, and common maritime space (5). So, The Caspian Sea is not specified as a sea, and the littoral states are deprived of the claim on an exclusive economic zone and continental shelf. And what about the distribution of exclusive economic zone equally among the parties? Should the Caspian Sea have the ‘sea status’ really? 122nd article of UNCLOS states that *"‘enclosed or semi-enclosed sea’ means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal State."*

The Caspian Sea acts as the sea surrounded by two or more states and is connected to the World Ocean by a narrow outlet through the interpretation of this Article. Recognition of the Caspian Sea as a closed sea would give it the right to use the regime applied to the seas provided by UNCLOS. It also would procreate to the littoral states the rights to claim Exclusive economic zone and contiguous zone (6). With this, the parties would achieve the settlement of the delimitation issue of an exclusive economic zone between States with opposite or adjacent coasts (UNCLOS, art.74) with an agreement. Likewise, UNCLOS as the single legal mechanism of maritime law refers to the importance of the mutual agreement in the delimitation of the continental shelf between States with opposite or adjacent coasts (UNCLOS, art. 83)

In such circumstance when the Caspian Sea is conceded as an enclosed sea, the parties are not obliged to create 200 nautical-mile wide exclusive economic zone or continental shelf covering seabed, they also will be able to delimit exclusive economic zone or a continental shelf containing smaller area appropriately to the width and length of the Caspian Sea which appoints the state jurisdiction in subsoil and seabed in accordance with own interests of each state. (An example of the Baltic Sea, delimitation among Estonia, Finland, Latvia, Sweden, and Russia) (7)

But instead of this, the establishment of 10 nautical-mile wide fishery zone from the outer-limit of the territorial sea for the purpose of production of aquatic biological resources and providing states' fishing reserves, somehow replaces exclusive economic zone and is under sovereign rights of the states.

Still not fixed questions in the Convention are not marking out common maritime space and its limits are obscure.

2. Not-delimited spaces

According to the Convention, common maritime space is delineated from the outer limit of the fishery zone belonging to the littoral state. But it is not stipulated that to where common maritime space is extended. It is reflected in the main terms of the Convention that this space is in jointly use of all parties. By reason of the not reflecting any provision in the Convention concerning circumscribing of the common maritime space, it can be interpreted in literal meaning as jointly use of the parties in subsoil and seabed at common maritime space. It is possible to think due to this indeterminacy that the parties can do researches in subsoil and seabed at common maritime space, utilize discovered natural resources as an outcome of researches for their own expediency. However, it is not a true perception, because any provision clarifying them is not accentuated, namely, any obligation confirming or rejecting is not underlined in the Convention text. In addition, the term ‘sector’ which is mentioned repeatedly in the Convention also exists. In the main terms of the Convention, the concept of ‘sector’ is emphasized as parts of the seabed and subsoil delimited between the Parties for the purposes of the subsoil exploitation and other legitimate economic activities related to the development of resources of the seabed and subsoil. The issue concerning the division of the sectors is only defined in article 8.1 of the Convention as delimitation of the Caspian Sea seabed and subsoil into sectors shall be effected by agreement between States with adjacent and opposite coasts, with due regard to the generally recognized principles and norms of international law, to enable those States to exercise their sovereign rights to the subsoil exploitation and other legitimate economic activities related to the development of resources of the seabed and subsoil. This article also proves the presence of the ‘sectors’, but, unfortunately, it does not clarify how to delimit.

‘Own sectors of the parties’ and ‘sector of the state’ phrases are indicated repeatedly in the Convention text. None of the regional treaties regarding the demarcation of the parties' sectors concluded up to now are designed pursuant to the mutual interests of the coastal states. In brief, the mentioned Convention is the first official agreement that each littoral state concur with. Based on this approach, we cannot put forward that the sectors have not been officially declared because not all states have formally agreed. So, the delimitation of the sectors is still indefinite. However, the term ‘common maritime space’ contradicts with ‘own sector of the State’ noted other articles of the Convention. Because ‘own sector of the state’ covers demarked sea column and seabed belonging to the State while ‘common maritime space’ refers jointly use. Therefore, if both of them exist, they overlap each-other.

From this point of view, if common maritime space is fixed as joint used space of the parties, which area the state sector surrounds?

Applying the state sovereignty to just territorial sea in the Convention identifies the existence of states' exclusive rights in the fishery zone. The 6th article of the same Convention states that the sovereignty of each Party shall extend beyond its land territory and internal waters to the adjacent sea belt called territorial waters, as well as to the seabed and subsoil thereof, and the airspace over it. On the base of this article, if the sovereignty of the state belongs only to the territorial sea and in comparison, with article 8.1 (stated as above), two options occur that whether the state sector contains just territorial sea or the Convention send out potential agreements because the state sectors have not been determined yet. Considering that natural resources are in exclusive rights and discovered by littoral states hitherto, and some of them are out of the territorial sea, concluded energy agreements become invalid that it brings about the impossibility of the first option. The second option is a sign of potential agreements on the agenda. So, 'state sector' as a phrase stated quite indefinite in the Convention and caused above-mentioned contradictions, expresses the sectors based on trilateral agreements concluded orally among Russia, Kazakhstan, and Azerbaijan until now, and the sectors to be demarked in future only with an agreement among Iran, Turkmenistan, Azerbaijan which is have not been settled due to being under dispute.

Delineation of national sectors is so necessary to provide exclusive rights of state and state jurisdiction in subsoil and seabed. So that, the existence of disputed natural resources between states is bonded to inability to do determine that the coordinates affiliate to which sector. The disputes concerning the delimitation of the sectors should be resolved firstly for the implementation of projects to be realized in the Caspian Sea.

3.Implementation of the Projects

As an opportunity arisen from the Convention, we can indicate the right to lay submarine cables and pipelines by the parties. Although, not-defining seabed delimitation and how to lay the pipelines, but two essential obligations discern in the Convention. Namely, submarine cables and pipelines should be laid appropriately to ecological standards and demands provided by international treaties, especially Framework Convention for the Protection of the Marine Environment of the Caspian Sea (2003 Tehran Convention) and its Protocols. This provision creates the right to prevent carrying out the projects which can cause ecological pollution by littoral states for the purpose of averting ecological pollution and implementing regional collaboration (8).

As another significant provision, obstructing the project by a littoral state without giving consent is eliminated as much as possible by reason of not relevant to their interests. It implies, as stipulated in 14th article of the Convention, which regulates inevitable theme, submarine cables, and pipelines, routes shall be determined by agreement with the Party the seabed sector of which is to be crossed by the cable or pipeline [9]. For instance, only Azerbaijan and Turkmenistan should agree on the route to be taken while the construction of the Trans-Caspian Pipeline which has not been possible in the region for many years due to disagreements or lack of investment. One of the most historically important steps in the region towards to the solution of the disagreements was laid through the conclusion of the 'Friendship' memorandum on jointly use of Kapaz/Sardar oilfield between Azerbaijan and Turkmenistan on 21st of January, 2021.The operation methods and contracts should be realized as soon as possible by the states. Thus, for the first time in the region, the most favorable conditions arises for the implementation of the Trans Caspian Pipeline project.

4.Protection of security in the region

Providentially, one of the most important steps taken to protect the security of the region is enshrined in the Convention. We can characterize as a substantial success aimed to be defended from potential threats that warships not belonging to parties may pose while considering the historical and strategical-political importance of the Caspian Sea. As a progressive phase, the Convention provides non-presence of the armed forces not belonging to the Parties (art.3.6.) Intercalarily, it subsumes the main principles of using the Caspian Sea for peaceful purposes and expresses all matters related to the

Caspian Sea should be resolved through peaceful means. In order to ensure security and stability in the Caspian region, the principles of providing a stable balance of armaments of the Parties in the Caspian Sea, developing military capabilities within the limits of reasonable sufficiency with due regard to the interests of all the Parties and without prejudice to the security of each other shall be taken as essential [10].

5.The fishery zone

The common fisheries policy is the fisheries policy of the European Union which sets the same opportunities to the parties as mentioned in this Convention. Unspecified matters still have been remained in the legal regime to be applied in the fishery zone surrounding 10 nautical-mile wide space from the outer limit of the territorial sea. Despite of not-listing the activities to be carried out within fishery zone, unless fishing in the Convention, the directing article (art. 12.3.) to this issue clarifies that Each Party, in the exercise of its sovereignty, sovereign rights to the subsoil exploitation and other legitimate economic activities related to the development of resources of the seabed and subsoil, and exclusive rights to harvest aquatic biological resources as well as for the purposes of conserving and managing such resources in its fishery zone, may take measures in respect of ships of other Parties, including boarding, inspection, hot pursuit, detention, arrest and judicial proceedings, as may be necessary to ensure compliance with its laws and regulations. Thus, therewithal determination of exclusive rights of the coastal state to use natural resources in the fishery zone, it is possible to liken the fishery zone to an exclusive economic zone somehow.

The article covering the obligations about fishery zone indicates that the Parties shall jointly determine the total allowable catch of shared aquatic biological resources in the Caspian Sea and divide it into national quotas. Some questions arise from that what distance shared aquatic biological resources environs? If shared aquatic biological resources locate within common maritime space, through which division principle it is distributed between states? The answer is reflected in the same article that terms and procedure of harvesting aquatic biological resources shall be determined by a separate agreement concluded between the parties. Therefore, a new agreement should be concluded and a new issue occurs that should be identified.

Likewise, the total allowable catch of shared biological resources and national quotes issues have been remained as not-distributed, and although it has been a long time passed since the Convention came into force, still, an agreement has not been concluded.

6. National Treatment

So that, Coastal states treat the ships of the parties as the same as national ships of their own about ships flying the flags of other Parties that carry goods, or passengers and baggage, or perform towing or rescue operations the same treatment as to its national ships with regard to free access to its ports in the Caspian Sea, their use for loading and unloading goods, boarding or disembarking passengers, payment of tonnage and other port dues, use of navigation services and performance of regular commercial activities. (11)

Conclusion

The Convention on the Legal Status of the Caspian Sea is a considerable act for littoral states in terms of closely cooperation of the parties with each other. As stated in the text of the Convention, reciprocal activity on the protection of the Caspian Sea's environment, better the ecological status, and defense of the biological resources can be given an example to the collaboration of the states arisen from the Convention. Generally, the Convention imposing all activities held by the states address peaceful purposes and the transformation of the zone to a neighborliness and friendship area is a significant step taken for this aim. Eventually, the Convention shall provide favorable negotiations for future of the region.

This paper looks over main unresolved legal disputes within the Convention arising from the Convention for the purpose of implementation of next activities in the region as law-governed.

Finally, the matters which should be settled are the followings:

1. Delimitation of the common maritime space as per the sectors, division of subsoil and seabed, revision of the contradictory terms of the Convention regarding to the sectors.

2. Determination of the jurisdiction of the states in the sectors, clarification of the 'sovereign' and 'exclusive rights' terms within Convention text, defining the relevance of these concepts in state-owned areas.

3. Declaration of shared aquatic biological resources in fishery zone, detection of total catch quote and division between the states.

4. Conclusion of the contracts on disputed energy resources, thus creating a basis for the projectts to be held through the state sectors.

Mentioned problems should be settled by the agreements concluded between the states in future.

Other obligations and rights regulated in the Convention (immunity of the ships, rights beside the limits of the territorial seas, exclusions when the obligations can be broke, etc.) are designed in order to general principles of the international law, the provisions and general principles provided by the United Nations Convention on the Law of the Sea, despite of the Caspian Sea is not recognized as a 'sea'.

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