

LEGAL STATUS OF THE CASPIAN SEA IN INTERNATIONAL LAW

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ABSTRACT: *The legal status of Caspian Sea has caused a lot of disputes since former USSR dissolution in 1993. The littoral states of this basin have been affected by political and legal views which stated in international relations between these countries. There are different and controversial doctrines among littoral states which caused deep separation between them. Also, different seminars and conferences have been held to find a positive solution for dividing this International Lake, the legal system and limitation of every littoral state have been remained as a dilemma.*

KEYWORDS: legal system, littoral states, International law, Caspian Sea.

INTRODUCTION

Perhaps no other location has been known by so many different names throughout history than the Caspian Sea. It should not come as surprise that 36 names have been mentioned for the sea in historical and geographical documents. The reason is that in ancient times and even during the second half of the 19th century at a time when traveling by road was very difficult and people residing along its shores had little contact with each other remote areas and even most frequented places used to be known by names derived from the local population's ethnic background.[1]

These places had diverse names just as two sides of a river or a mountain were named differently. Similarly, the Caspian Sea was not known by one name in all periods. [3] The sea used to be associated with a name for some time before it underwent a change based on the local language of its coastal residents. At times, the name would be influenced by those of the surrounding areas or towns. The first reference to Caspian Sea can be found in the books of Herodotus (407- 484 BC). In his books, he refers to Caspian Sea as a landlocked body of water with no access to any other sea. The early maps of the Caspian Sea also show that it is a circle in the form of a gulf stretching up to the Arctic Ocean. [3]

Historical documents dating back to the 6th century BC state that the Caspian Sea has always been an integral part of Iranian waters. However, after the two wars in early 19th century, Iranian warships were denied access to the Caspian Sea, especially after its defeat and signing of the Treaty of Turkmenchay in 1824. During this period, Iran lost a huge part of its territories and had to suffer from the imposition of Capitulation. Subsequently, the sea was controlled by the Russian Navy.[6] After World War I and the fall of the Tsar, the Bolsheviks took control of Russia by creating a new political- security ambience around Iran. An important development came in the form of the

nullification of former colonial treaties. [5] The revolutionary government in Russia signed a new treaty with Iran on good neighborliness and friendship on February 1921. The treaty defined a new basis on which Iran and Russia could cooperate in the Caspian Sea. On March 1942, the two neighbors signed another trade and maritime agreement to indirectly define the basis for the Caspian Sea legal regime.

The treaties of 1921 and 1941 formed the basis of legal relations between Tehran and Moscow regarding Caspian Sea until the disintegration of the former Soviet Union In 1992. Due to its military and naval superiority, the Soviet Union had a greater share of the Caspian Sea and despite the spirit of equality envisioned in the 1921 treaty, it achieved a military and security edge in the sea. [2] The collapse of the Soviet Union and formation of new republics bordering the Caspian Sea led to the formation of new political, economic, security and strategic configurations across the region. The huge geopolitical changes created new opportunities and challenges in the Caspian region for Iran. The situation became even more complex when the newly-established republics redefined themselves and adopted different views and stances vis-à-vis the region and the world.[4]

Caspian Sea Legal status

The Common and collective interests of the Caspian Sea littoral states compel the five neighbors to appreciate the fact that firstly, in the Caspian Sea, due to its special geographical and landlocked position, no state can unilaterally come up with a demarcation in line with its own national interests, or even try to use force to secure its interests. [7] Secondly, unilateral actions could lead to huge losses for the entire region, the littoral states and the country itself. The littoral states have consensus over the fact that the Caspian legal regime should include every discussion related to the sea. [9] Therefore, they must reach consensus over the legal regime as well. It is necessary to point out that after the disintegration of the Soviet Union, Iran and Russia maintained that the Caspian Sea had a legal regime based on the treaties of 1921 and 1941. They also insisted that the regime should be finalized.

However, Turkmenistan, Kazakhstan and Azerbaijan stated that the treaty was between Tehran and Moscow and did not concern them. Therefore, they rejected both the treaties. After lengthy discussions, based on the principle of state succession regarding the commitments of states established after the Soviet Union and the Almaty Declaration (1995), the littoral states agreed in general that the previous treaties are valid until the littoral states reach consensus on the legal regime of the Caspian Sea. [5] This is while they adopted different approaches in the degree of the treaties' validity. Under the 1921 and 1940 treaties, there is no mention of the Caspian Sea's surface, seabed and resources. Hence, the littoral states define the division or demarcation based on their own national interests.[8] The latest stances adopted by these states regarding the division of the sea are as follows:

Russia believes that surface area should remain undivided among the littoral states and the seabed should be divided on the basis of resources and not land. This means if there are oil reserves in the

divided sectors, they will be owned by that country. But the seabed can not be owned by any of the states and submarines are allowed to pass through these territories. [2]

Kazakhstan has to a large extent approached the stance of Russia. However, Azerbaijan and Turkmenistan defended the idea of dividing the seabed as the area of sovereignty. However, after lengthy discussions, they have finally given up on that and now favor the idea of non-sovereign demarcation. Iran is also not opposed to keeping the surface undivided and demarcating the seabed, though it favors an equal division of the Caspian Sea among the five littoral countries. [3]

Iran's call for a 20 percent share of the sea is neither simplistic nor based on the division of the entire sea surface or its seabed; rather it falls in line with the existing international treaties in demarcating the borders of the seas based on the types of shoreline and the modified median line which, based on different geographical and periodical conditions, include between 19.03 percent and 20.04 percent of the entire sea.[3]

Apart from the official position of the Islamic Republic of Iran regarding the Caspian Sea and its insistence on dividing the sea based on the modified median line that includes a 30 percent share for Iran, two other discussions concerning the maximal and minimal sovereignty domain of Iran in this basin must be examined closely as well. [1] As for the maximal sovereignty of Iran in the Caspian Sea, which encompasses a domestic interpretation of the 1921 and 1941 treaties, the assumption is that under the friendship treaty of February 26, 1921 and the commercial and maritime treaty of March 25, 1941, as well as their annexes, the Caspian Sea is the sea of Iran and Russia. So, it is a shared sea and the two nations have equal rights over it. [2]

Therefore based on the principle of state succession and the Almaty Declaration, following the disintegration of the Soviet Union, the newly - established republics of Turkmenistan, Azerbaijan and Russia are bound by its commitments. In addition, Iran's share of the sea remains intact just as before and the other half must be divided among the other four littoral states, i.e. Azerbaijan, Turkmenistan, Kazakhstan and Russia. Those in support of such a vision compare the legal regime of the Caspian Sea for the newly- established republics of the former Soviet Union to a father that has just passed away and his heirs are trying to define the rights of their neighbors in addition to their own inheritance. [8]

From this viewpoint, Iran's share of the whole sea from south to north and east to west is 50 percent jointly and its ownership of all resources and rights, including the space above the sea, water surface and seabed. Regardless of debates over the joint ownership of the sea or the division of its waters, another topic for discussion in determining the Caspian legal regime is on the fishing and coastal water borders. There are different views in this respect and the dispute is over 10 to 25 miles. Under the 1941 treaty, a 10-mile radius was designated for fishing in the sea between Iran and the Soviet Union.[8]

Tehran Summit, a Diplomatic Victory for Ninth Administration, The Second Summit of Caspian Sea Heads of State on October 16, 2009, was a huge diplomatic success for the Islamic Republic

of Iran during the administration of President Mahmoud Ahmadinejad. This is because the first summit of Ashkhabad in April 2001 failed to achieve anything significant and, on the contrary, it further disturbed the region's political and security situation. For instance, former Turkmen President Safarmurat Niyazov said at the end of the summit that "the Caspian Sea smells of blood". [4]

After the summit, former Russian president Vladimir Putin left Ashkhabad for Astrakhan to take part in a military maneuver in which more than 70 Russian gunboats, jet fighters as well as thousands of troops were involved. The military maneuver took place in a region that was not part of the Russian territory in the Caspian Sea, as highlighted invariably during the Ashkhabad summit. Moscow did not give any specific reason for the drill but later in public interviews, statements and analyses announced that it was aimed at ensuring the security of Caspian Sea, Dagestan and Northern Central Asia, waging war on terrorism and drugs in Caspian Sea, defending the North-South Corridor, securing the Caspian energy resources and conducting search operations in case of emergency. The Russian military maneuver took place in a landlocked sea. [9]

Given the upper-hand of the Russian military, it can be safely concluded that the failure to achieve regional consensus over the Caspian Sea at the summit signified the Niyazov's term as "the Caspian Sea smells of blood" and this made the region insecure for all littoral states. The Summit of Caspian Sea Heads of State in Ashkhabad ended without any final declaration. But the participants agreed to meet again in Tehran. Consequently, the foreign ministers of littoral states in the Moscow meeting of April 2003 agreed to hold the Second Caspian Summit in the second half of 2004 in Tehran. [8] The summit was called off after the death of Turkmen President Safarmurat Niyazov as well as Azeri President Heidar Aliyev. Finally, the summit was held in Tehran on October 16, 2009, with all presidents of the littoral states in attendance. [9]

This summit concluded very important declaration which provided that all littoral states will do their best to make Caspian Sea the region of stability and peace where international law is guaranteed. [5] They are firm about cooperating in political, diplomatic, commercial, economic, scientific, technical, cultural, public and other spheres in the framework of bilateral and multilateral relations, agree to sail, fish and navigate until the new legal regime of the Caspian Sea is determined. It will be possible only when ships sail under the flags of the littoral states. The parties states agreed that the determination of the legal regime of Caspian Sea and conclusion of a related convention are very important. The convention, as the main document of the legal regime of the Caspian Sea, will determine the authority of littoral states and comply with their laws. It will also contain ecological regulations. It will emphasize the efficient use of natural resources, as well as marine life, navigation and other related issues. But precious achievement which concluded in Tehran was an important convention about Caspian sea's environmental status and its protocol which annexed to it in 2012.[9]

CONCLUSION

Although there are some great achievements about Caspian sea's new legal system, As a hole I think, there are deep political frictions between some littoral states such as political disputes between Iran and Azerbaijan. I think this matter will be remained as an unsolved issue in this area.

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