Chapter 11

The Caspian and International Law: Like Oil and Water?

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The Caspian is a particularly frustrating predicament for international legal scholars. There are almost no treaties specifying which international legal regime has to be applied, and those few that exist are riddled by omissions or are plainly obsolete. Local custom is vague and extremely inconsistent. General international law does not shed much light on the matter either. However the problem is approached, it inevitably makes scholars wonder whether the Caspian is to be legally classified as a lake or a sea. But it does not seem to be either of them. The United Nations Convention on the Law of the Sea does not apply to the Caspian. While customary international law of the sea can help to clarify the nature of coastal states' rights, by itself it cannot help to determine their spatial extension. Similarly, the analysis of the legal regime of international watercourses, or lakes, does not shed any much more light on where or how boundaries should be traced, nor on the extent of customary competencies of Caspian states within those spatial limits. It is not possible to wholesale the legal regime of enclosed seas and/or international lakes to the Caspian without due regard to its historical, geophysical and legal peculiarity. It is up to Caspian states to decide which legal regime the Caspian should have. Customary international law can supplement any agreement they might enter into, but by itself is not enough to reconcile the conflicting interests of the Caspian states and ensure the sustainable development of regional resources.

1. Introduction

Until the demise of the USSR the Caspian attracted the attention of only a few international scholars and practitioners. For much of the 20th century it was the exclusive domain of Iran and the USSR. The USSR enjoyed *de facto* control of much of the Caspian and complete naval dominance, while Iran did not, nor realistically could, contest the supremacy of its powerful northern neighbor. Because of this situation, the two states never felt the urge to codify in a treaty the Caspian's legal regime nor to establish precisely the territorial extension and nature of their respective rights.

On December 8, 1991, the Soviet Union, as a single subject of international law, disappeared to be replaced by the Commonwealth of Independent States, a loose diplomatic caucus. Overnight the number of sovereign states around the Caspian rose to five, each advancing contrasting legal claims on parts or all of it. Since then, the issue of

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how far from the coast and what legal rights Caspian states enjoy turned from a mere footnote in international law manuals into a tangled international dispute with multi-billion dollar stakes (1). Under the Caspian lie vast oil and gas reservoirs. Some have been exploited since the nineteenth century, many more are believed to have great potential (2).

To date, some forty companies from twenty-two different nations have concluded agreements with Caspian states to explore and exploit its riches, investing more than $60 billion (3). Yet, such a gold rush does not seem to have been hampered by the vagueness of the legal situation. The nature and geographic extension of states' sovereign rights is still clouded by a fog which gets thicker as one moves off the Caspian coast. In absence of a clear legal situation, Azerbaijan, Kazakhstan and Turkmenistan have started advancing claims over parts, and Russia and Iran on the whole of it. The failure of negotiations on the sharing of Caspian resources and its sustainable development has eventually opened the way to unilateral actions.

The dispute over the legal regime of the Caspian raises numerous problems that touch on major areas of international law (e.g. law of treaties, law of the sea, environmental law, sources of law, territorial sovereignty, state responsibility, state succession, etc.). Yet, what makes the Caspian a particularly frustrating predicament for international legal scholars is the almost total absence of any hold to cling to. There are almost no treaties specifying which international legal regime has applied to that body of water; and those few that exist are riddled by omissions or are plainly obsolete. Local custom is vague and extremely inconsistent. General international law does not shed much light on the matter either. However the problem is approached, it inevitably makes scholars wonder whether the Caspian is to be legally classified as a lake or a sea. But, it does not seem to be either of them. At best, it might be described as a case of "geographic regionalism", or "situational regionalism" (4) stemming, as one scholar wrote, "...from the totality of ties existing between coastal states of a given maritime space which, at times, leads them to adopt — among themselves — specific regulations uniquely applicable to the area under consideration" (5). Yet again, Caspian states have never adopted any such "specific regulations".

The following pages will try to illustrate the baffling complexity of the Caspian quagmire. The focus is on oil and gas issues. Other issues, such as protection of the regional environment, sustainable management of fisheries (sturgeon foremost), navigation and regional security, while of great importance, have not attracted as much attention as hydrocarbons. Substantial agreement on these issues does not seem to be as close as that on the division of oil and gas fields. After almost a decade of fruitless diplomatic negotiations, it seems that the Caspian seabed is destined to be partitioned according to the principle of equidistance. International law, rendered simplistic by the Caspian's contradictions, can take revenge by answering the question of how the principle of equidistance is to be translated into a line on charts.

2. Is There Anything Like a "Caspian Legal Regime"?

2.1 THE CZARIST AGE

The hallmark of Russian-Persian relations during the eighteenth and nineteenth centuries was Russia's relentless southward expansion towards the Caucasus and beyond. The first

treaty concerning the Caspian region to be concluded between the Russian and the Persian empires was the Treaty of Resht, signed on February 13, 1729. In essence, it demarcated and ceded to Russia some Persian territories, and provided for freedom of commerce and navigation on the Caspian and the Araks and Kura rivers (6).

The second relevant agreement was the so-called Treaty of Gulistan, signed on the River Seiwa on October 12, 1813, which put an end to the nine-years war (1804-1813) between Russia and Persia. While the treaty granted equal rights of navigation to the commercial fleet of both empires, it reserved to Russia the exclusive right of sailing the Caspian with its military fleet (7). This same exclusive right was reiterated fifteen years later, on February 22, 1828, in the Treaty of Turkomanchaï (8), which superseded the Treaty of Gulistan, and which put an end to the 1826-28 Russia-Persia war (9).

2.2 THE SOVIET AGE

The Bolshevik Revolution of October 1917 swept away the heritage of Czarist Russia. As one of the ideological tenets of the early revolution was the forswearing of imperialism and colonialism, on February 26, 1921 Persia and the Socialist Federal Republic of the Soviets of Russia signed in Moscow a new agreement, declaring null and void the treaties of Gulistan and Turkomanchaï (10). However, once again, the issue of the delimitation of sovereignty on the Caspian was not addressed. Except for the restoration of Persia's equal right of navigation, the 1921 Treaty did not specifically address the issue of the legal regime of the Caspian (11).

It was only in the 1930's that increased navigation and fishing in the Caspian forced the two states to develop a limited legal framework to regulate such activities. On navigational issues, negotiations led to the conclusion on August 27, 1935 of the Treaty of Establishment, Commerce and Navigation (12), subsequently replaced, on March 25, 1940, by the Treaty of Commerce and Navigation (13). While the 1935 and 1940 treaties granted unfettered freedom of navigation (military and commercial) to both countries, they nevertheless excluded third states from the Caspian (14).

Concerning the issue of fishing rights, the 1935 and 1940 treaties provided for freedom of fishing for both states in all parts of the Caspian, with the exception of an exclusive ten-mile fishing coastal zone (15). However, for long time, fishing in the southern part of the Caspian, beyond the ten-mile Iranian zone, was carried out on the terms of a concession granted to a joint Soviet-Iranian company, established in 1927 (16).

Beside these two sectoral conventions, and despite the fact that Iran and the USSR eventually agreed on their extended land-border (17), the two countries never resolved the issue of delimiting their sovereignty over the Caspian waters (18). The question of determining how far south the USSR could exercise its sovereignty was left to unilateral Soviet assertions, which Iran never dared to contest (19).

For a long time, the centralism of the Soviet regime did not encourage the establishment of any kind of boundaries on the Caspian between the federated republics either. Only in the 1970s, the USSR Oil and Gas Ministry partitioned the Caspian seabed into Kazakh, Azeri, Russian and Turkmen sectors on the basis of the equidistance principle (20). Yet the legal value of such a delimitation, as well of other subsequent enactments by other authorities, is unclear (21). Strangely enough, Caspian states do not seem to ever have relied on the 1970 USSR Oil and Gas Ministry Ordinance to

substantiate their present claims. Scholars have not explored the applicability of the principle of *uti possidetis juris* (22) to the Caspian puzzle either.

2.3 THE POST-SOVIET AGE

With the collapse of the Soviet Union the number of sovereign states abutting on the Caspian rose from two to five (Azerbaijan, Kazakhstan, Iran, Russia and Turkmenistan). For centuries the Caspian had been regulated by a *de facto* regime where Russia, first, and the USSR later, had the lion's share. However, neither customary international law concerning states succession (23), nor the Minsk Agreement of December 8, 1991 (24), which buried the Soviet Union and regulated the transition to the CIS, could help fill the legal chasm into which newly emerging states eventually fell. Indeed, there are not many treaty-based or customary rights and duties that could be carried over to the successors, while those few that can be transmitted are patently inadequate to answer the challenges of the twenty-first century. Soviet-era agreements are obsolete and do not address the key issues of regional security, trade and communication among Caspian states themselves and with states outside the Caspian area, or the sustainable development of its natural resources.

When confronted with such a legal vacuum (25), the first reaction of several international legal scholars and practitioners has been to wonder whether the Caspian is to be considered a lake or a sea, or, more precisely, an international lake or an enclosed sea (26). Classification under one of these headings would point to the body of law according to which it should be regulated. Admittedly, the scarcity of codified legal rules has made the deductive approach to the Caspian legal regime look like a relatively easy way out of the quagmire. Yet, the results have been dismaying. Even if the Caspian is considered as a sea, the 1982 United Nations Convention on the Law of the Sea (27) cannot be used to determine coastal states' rights and duties. Indeed, beside the fact that of all Caspian states only Russia has signed and ratified the Convention (28), its letter and negotiating history seem to exclude the Caspian from its purview (29). Customary international law of the sea might be resorted to by default, but it might be an utterly complicated and vain exercise to determine to what extent Caspian regional custom does not derogate to general custom (30). Conversely, if the Caspian was to be classified as a lake, the legal situation would not be any clearer because State practice concerning international lakes is far from consistent and, in any event, does not address the key issues at stake in the region (i.e. mineral resources and their transport) (31).

Other scholars have more appropriately pointed out the futility of a deductive and dogmatic approach (32). The real issue is not whether the Caspian is a sea or a lake as such, but rather whether, in light of its own physical, historic and legal characteristics, its regime is, or should be, comparable to the regime we normally associate with lakes or with enclosed seas, in each case bordered by more than one State (33). The definition of the Caspian legal regime and the filling of its lacunae cannot be left to abstract speculations of scholars. It is up to Caspian states to do so. International law does not have ready-made solutions to offer but only general legal principles, which Caspian states are bound to respect and templates from which they may draw inspiration.

2.4 TOWARDS A CASPIAN LEGAL REGIME?

It is a daunting task to summarize the vagaries of almost a decade of bilateral and multilateral negotiations between Caspian states to build a viable legal regime (34). Suffice to say, the geographical position of known and conjectured oil and gas fields has, by and large, shaped legal claims. To different degrees, Azerbaijan, Turkmenistan, and Kazakhstan, the states whose coasts are the closest to the largest known oil fields, have claimed that the Caspian should be partitioned among coastal states (35). Conversely, Russia and Iran, the two powers that formerly controlled it, and whose coasts are the remotest from oil and gas fields, have interpreted the loose legal regime of the Soviet era as a sort of international condominium, where all Caspian states would have equal rights on the whole of it (36). Nonetheless, the *condominium* thesis has gradually lost credibility as all Caspian states, Russia included, since the break-up of the USSR have done very little to behave as actual joint-owners.

The inability to adopt consensually a framework agreement covering all different aspects of concern to Caspian states has eventually opened the way to unilateral actions (37) and bilateral negotiations (38). Wide political, cultural and strategic divides between the five Caspian states make a single, unitary legal regime (perhaps codified in a regional framework convention) seem unlikely (39). Currently, it is much more likely that a series of analogous bilateral agreements between neighboring states will become the basis of the future Caspian legal regime. For instance, the recent agreement concluded on July 6, 1998 between Russia and Kazakhstan (40), partitioning the northern part of the Caspian sea-bed according to the principle of equidistance corrected to achieve an equitable result (41), is the single most significant development towards the genesis of a modern Caspian legal regime. The agreement, however, concerns only the seabed. For all other matters, the parties expressed the intention to jointly regulate navigation, fishing and environmental protection although envisioning, at the same time, the conclusion of sectoral agreements to delimit zones within which each of them would exercise border, custom and sanitary controls as well as fishing areas (42).

Undoubtedly the 1998 Russia-Kazakhstan Agreement is a step out of the Caspian legal quagmire. It is the first bilateral treaty concluded between two of the former Soviet Republics on the key issue of boundary delimitation and exploitation of mineral resources. Yet it is riddled by omissions and ambiguities. The most obvious are, firstly, that it addresses the northern Caspian without specifying its boundaries, and, thus, where the seabed areas of Turkmenistan and Azerbaijan begin. Secondly, it does not establish *per se* a clear demarcation between the seabed belonging to two countries. It merely establishes the general principle on which eventual partition should take place (equidistance corrected by equitable principles), and leaves the task of tracing the boundary to a subsequent protocol to the agreement (see more on the principles of equidistance and equity in delimitation in chapter III.2) (43). To date, Russia and Kazakhstan have not yet reached an agreement on how to trace such a boundary and, given the volatility of regional politics, it is not possible to predict when it will happen.

So far the main import of the 1998 Russia-Kazakhstan Agreement is to suggest that Russia is ready to give up the thesis that the Caspian is an area of joint ownership and is ready to move ahead with partition, maybe through the conclusion of a series of similar bilateral agreements between each and all of other Caspian states. Such agreements, by removing from the table the highly contentious issue of ownership of mineral resources, might eventually facilitate the conclusion of a region-wide agreement on the exploitation

and protection of biological resources, navigation, environmental protection and security.

3. Partitioning the Caspian: a Few Legal Considerations

If partitioning of the Caspian seems to be the way, it is still far from clear not only how it will be effected but also which rights each Caspian state will accord itself and the others within its area. Even in the case of the 1998 Russia-Kazakhstan agreement, the first and so far only treaty sanctioning the division, these crucial issues are left undetermined. Again, the incapacity of the parties to formulate in unambiguous terms their commitments leaves to customary international law the task of filling in the gaps. But this poses again the dilemma of what is the appropriate body of international law to draw from: that of the law of the sea or that of the law of international lakes.

Of course none of the two has to be selected as the customary body of law to govern relations between Caspian states *per se*. As it has already been said, the Caspian does not fall under either classification and Caspian states are free to determine its own original law by way of agreement. What international law can offer in this case are paradigms. The nature of state's rights over the mineral resources in the subsoil of bodies of water, and the answer international law gives to the question of how far from one state's coast its sovereign rights end and at which point those of the neighbors begin, differ in the case of seas and international lakes. It is useful to investigate how they differ.

3.1 THE NATURE OF STATES' RIGHTS ON THE CASPIAN SUBSOIL AND ITS RESOURCES

Whether the Caspian is considered an enclosed sea or a lake does affect the *nature* of states' rights over the mineral resources in the subsoil of their own share of it. This might have multiple consequences for financial matters, particularly for lending institutions (44).

States have full and unfettered sovereignty on the subsoil of lakes up to the international boundary, in a manner not different from that enjoyed on their land (45). No other state has legal entitlements, and it is at the discretion of the state concerned to decide whether it intends to hold title over all mineral resources or allow them to be owned by private parties and on what terms. Conversely, coastal states' sovereign rights on the sea-subsoil beyond the limits of the territorial sea (i.e. continental shelf) are conditional. Indeed, the 1982 United Nations Convention on the Law of the Sea provides that coastal states' jurisdiction extends to the subsoil of the continental shelf only for the purpose of exploration and exploitation of natural resources. It is a sort of functional, conditional sovereignty. This has several legal consequences.

First, being a functional sovereignty, states must ensure that the legislation they pass in relation to the continental shelf is limited only to matters relating to the exploration and exploitation of shelf resources. Second, while no other state may explore and exploit without the coastal state's permission, the granting of licenses for that purpose does not transfer property between the licenser and the licensee. The licensee is simply entitled to explore and exploit. Legal title over mineral resources is not transferred by the license itself, but rather through the eventual (and at this stage hypothetical) action of reduction into possession (i.e. the actual drilling and pumping out of gas or oil). This difference

might be momentous because lending institutions might request higher interest rates to borrow would-be-developers' money against a mere expectation of returns rather than sound proprietary rights.

3.2 THE SPATIAL EXTENSION OF STATES' RIGHTS ON THE CASPIAN SUBSOIL AND ITS RESOURCES

Concerning the question of the *spatial extension* of states' sovereign rights on the Caspian subsoil, and limiting the scope of the analysis to mineral resources, whether the Caspian's legal status is that of a lake or an enclosed sea at first glance does not have relevant implications. Even if it were considered as a sea, because of the relatively limited size of the Caspian the whole of its seabed would be under some states' sovereignty (46). Only Caspian states would have a legal right to the exploitation of the mineral resources of its subsoil. Having said that, while in either case the real problem is to determine how far from one state's coast its sovereign rights end and at which point those of the neighbors begin, the answer international law gives might depend on the legal designation of the body of water.

Since the concept of continental shelf emerged in international law in the 1950s, several dozens of disputes have taken place on its delimitation. Several of them have been settled by agreement, many others through adjudication (i.e. by recourse to permanent international courts or by ad hoc arbitration) (47). The International Court of Justice has developed a substantial and quite consistent jurisprudence on the delimitation of maritime boundaries on the continental shelf which might provide some insight on the factors that might be taken into account by any judicial body eventually called to partition the Caspian (48).

In this regard, the two *North Sea Continental Shelf* cases are probably the most important and seminal, because they involved three competing sovereign claims over the same seabed area (49). The International Court of Justice reached the conclusion that under customary international law delimitation of the continental shelf "...is to be effected...in accordance with equitable principles and taking into account all the relevant circumstances..." (50). Thus, according to the World Court "equitable principles" form part of customary international law, but how they are to be translated on the map seems to be more an art than a science.

The most obvious and most practical method of delimitation would appear to be the drawing of lines each point of which is equidistant from the nearest points of the baselines or shores of the state concerned. However, equidistant lines might not invariably yield equitable results, because of many complicating factors (e.g. islands, peninsulas) (51). According to some scholars, the factors that under customary international law should be taken into account in an "equitable delimitation" are (52):

i) *Geographical factors*, namely the configuration of coasts (concave or convex), the relationship of one coast to another (contiguous or counterpoised), the overall extension of the shelf area abutting on these coasts, and the presence of islands;

ii) *Natural resources across overlapping claims*;

iii) *Proportionality*, namely the element of a reasonable degree of proportionality between the respective coastlines and the extent of the continental shelf areas appertaining to each party. How these factors are to be weighted in each particular case is a matter of judicial wisdom.

Irrelevant factors, conversely, seem to be (53):

i) *Geophysical discontinuity*: the geomorphologic homogeneity of the land mass and of the continental shelf should not be taken into account;

ii) *The size of land mass*: states with a large land surface are not thereby entitled to a larger share of the continental shelf;

iii) *Economic weight*: elements like the population, industrial activity, GNP, or per capita income, should not be taken into account in the determination of the extension of the continental shelf.

Under international law, equitable principles must be applied in the delimitation of maritime boundaries. It is an interesting question, however, how equitable principles would apply if the Caspian were to be regarded as a lake. Admittedly, unlike in the case of the sea, there does not seem to be any customary rule in international law concerning the delimitation of internal waters (54). Nonetheless, there seems to be little reason to believe that the principles underlying maritime delimitation should be inherently different from those of lakes. In the *North Sea Continental Shelf* cases both the majority (55) as well as some individual judges (56) examined the general law of delimitation with respect to marine areas and lakes without much distinction, particularly insofar as internal waters are concerned (57). What is more, even if it is conceded that the delimitation itself of internal waters in not subject to equitable principles, it could be still applied to its resources.

In 1997, after twenty-three years of work by the International Law Commission, the UN General Assembly adopted the Convention on the Law of the Non-Navigational Uses of International Watercourses (the Convention on International Watercourses) (58). While the Convention has not yet entered into force (59), it nonetheless contains a set of general rules that may eventually be applied or adjusted and supplemented by individual agreements between Caspian states.

Article 2 of the Convention defines a "watercourse" as "a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus". An "international watercourse" is defined as "a watercourse, parts of which are situated in different states". The definition of international watercourse provided by the Convention is malleable enough to accommodate the Caspian. Indeed, the Caspian does not flow into a common terminus (it does not have effluents), though the adjective "normally" allows for some flexibility.

Beside terminology and taxonomy, the main limit to the applicability of the Convention on International Watercourses to the Caspian is that it was conceived to resolve the problem of the concurrent use of the water of international watercourses and not, specifically, of the resources under their bed. Yet, the Convention still provides some useful insight on how the idea of "equitable use" should be applied to an international lake. Article 5.1 reads:

> "Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view of attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse."

Article 5.2 follows:

> "Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention".

As the commentary to the International Law Commission's Draft Articles on the Law of the Non-Navigational Uses of International Watercourses makes clear, the fundamental principle of "equality of rights" does not mean that each state is entitled to an equal share of the uses and benefits of the watercourse, nor that the water itself should be divided into identical proportions (60). Rather, it means that each state is entitled to use and benefit from the watercourse in a equitable manner. The scope of a state's rights of equitable utilization depends on the facts and circumstances of each individual case and, specifically, on a weighing of all relevant factors.

Again, as in the case of the delimitation of the continental shelf, we are confronted with the challenge of determining how to turn the notion of "equitable principles" into tangible results. Article 6.1 of the Convention contains an indicative list of those factors, which include, *inter alia:*

> "a) geographic, hydrographic, hydrological, climatic, ecological and other factors of natural character;
> b) the social and economic needs of the watercourse States concerned;
> c) the population dependent on the watercourse in each watercourse State ...."

Clearly the relevant factors in the equitable delimitation of the continental shelf are not the same of those to be used in the determination of the equitable use of international watercourses (mainly because the paramount interest of the Convention is the use of freshwater and not of rivers and lakes subsoil or other resources). The different consideration given to economic factors is, in this sense, evident.

To summarize, states have not revealed any particular penchant in the delimitation of boundaries over internal lakes. They have resorted indiscriminately to medium lines, *Thalweg* (i.e. the middle line of the navigable channel), astronomical references (i.e. parallels and meridians), and other criteria (61). Nonetheless, the delimitation of states' sovereignty over most international lakes has taken place mainly between the nineteenth and the middle of the twentieth century, at a time in which natural resources still appeared to be inexhaustible and largely renewable. Because the evolution of international law since the 1970s has brought to the front and center of the international scene the equitable use of natural resources (62), nowadays any delimitation of states' sovereignty over contested bodies of water can hardly take place without regard to a general need, if not legal duty, of reaching an equitable solution, which should take account not only of the needs of present but also of future generations (63).

Be that as it may, it should be stressed that the settlement of boundary disputes involving natural resources, both over marine or land areas, has traditionally centered on the demarcation of specific lines dividing the disputed resource area between the states involved (64). Yet, modern practice has developed a number of possible alternatives (65), ranging from the limited case of unification of transboundary deposits (66) to an agreement covering the resources of an entire continent (67).

Another alternative to the partition of natural resources is the case of agreement for the joint-development of natural resources (68). This is the case of the Japan/South Korea Agreement of 1974 (69), the Thailand/Malaysia Memorandum of Understanding of 1979 (70), and the Indonesia/Australia Timor Gap Treaty of 1989 (71). The latter provides a particularly interesting case. It covers a large disputed area (60,000 km^2, as compared to 370,000 km^2 of the Caspian) between East Timor and Australia. It is extremely detailed and it deals with several issues of interest to the Caspian case, such as the exploitation of oil fields, taxation, emergency situations, air-traffic services, environmental protection, and criminal and civil jurisdiction. The Timor Gap Treaty has divided the contended zone into three areas. In Area B (closest to Australia) Australia will pay 10% to Indonesia of the gross resource rent tax collected from petroleum production. In Area C (closest to Indonesia) Indonesia will make analogous payments of contractors' income tax collected. The central and largest portion (Area A) is subject to a detailed joint-development regime. Area A is to be managed by the Ministerial Council, which acts by consensus. It may approve production-sharing contracts, perform several supervisory functions and give directions to the Joint-Authority, which concretely manages petroleum exploration and exploitation activities.

4. Conclusion

The apparent existing legal regime of the Caspian, sketched between 1921 and 1940, is anachronistic. Modern states trace their boundaries with pinpoint accuracy. The determination of the exact geographic limits of state sovereignty more often than not is the prerequisite for the orderly exploitation of natural resources in boundary areas. At the end of the twentieth century, the overwhelming majority of bodies of water have been the object of some kind of partition; those few which are not marked by an international boundary line usually do not conceal vast natural resources.

In like manner, since the introduction, about fifty years ago, of the notion of continental shelf in modern international law (and subsequently of the contiguous zone and the exclusive economic zone as other expressions of sovereignty over the high seas), states have rushed to partition the most promising seabed areas. When they could not come to an agreement, international adjudication has often been resorted to with positive results, thus developing an authoritative case law (i.e. law based on judicial decision and precedent rather than on statutes.). While there are still large areas of the high seas where lines have not been drawn, the occurrence of riches eventually seems to be a catalyst of agreement rather than a long-term divide.

Nonetheless, in the Caspian the extension and nature of states' rights and competencies still remain uncertain and subject to unilateral claims. All in all the Caspian is an oddity, whose idiosyncrasy is epitomized by its legal riddles. As this study intended to show, determining the rights and duties of Caspian states by a process of deductive reasoning based on *a priori* pronouncements on the legal classification of the Caspian (sea, lake or other designation) is a purposeless exercise.

The UNCLOS does not apply to the Caspian because its provisions excluded it from its purview and in any event because, out of all Caspian states, it has been signed and ratified only by Russia. What is left is therefore customary law of the sea. Yet, while it can help to clarify the nature of coastal states' rights on the Caspian, by itself it cannot

help to determine their spatial extension. Similarly, the analysis of the legal regime of international watercourses, or lakes, does not shed much more light on where or how boundaries should be traced, nor on the extent of customary competencies of Caspian states within those spatial limits.

For almost a decade, the identification (or creation) of the Caspian legal regime has been left at the mercy of competing geo-economical and geo-political wrangles (72). Each Caspian state has sought in international law ammunition for the struggle. However, international law does not have ready-made solutions to offer but only models from which they may draw inspiration and general legal principles. This chapter has presented some of them and illustrated how they have been implemented in other circumstances with regard to the issue of the exploration and exploitation of Caspian mineral resources.

It is not possible to wholesale the legal regime of enclosed seas and/or international lakes to the Caspian without due regard to its historical, geophysical and legal peculiarity. Indeed different regimes suit different factual situations. To illustrate, concerning the rights of non-Caspian states the appropriate place to look for the relevant rules is probably the law applicable to international lakes. For navigation and communication issues (provided that one or more Caspian states have important navigation or communications interests in areas removed from their own shore) the appropriate place to look for relevant rules might be the law applicable to enclosed seas. If the question concerns boundary delimitation, especially in areas more distant from shore, the learning and jurisprudence developed for marine areas is likely to be useful. Partition would seem to be a sensible result for hydrocarbon and mineral deposits, if transport and environmental concerns are accommodated. This solution is indeed supported by overwhelming State practice. Nevertheless, when it comes to scientific research, fisheries conservation and management, and the general protection of the environment, partition is unlikely to protect the full range of interests of Caspian states and, eventually, may hamper their capacity to cooperate effectively (73).

Should the present anarchic situation continue, in absence of a clear legal title effective control of certain areas of the Caspian might eventually determine the spatial extension of Caspian states' sovereign rights (74). However, to create a legal title effective control must be undisputed, and unilateral actions are, at best, inconsistent with the behavior required to states involved in diplomatic negotiations, posing, at worst, a major threat to regional peace and security (75).

The Caspian and international law have been for too long like water and oil. It is time for them to blend. Yet, it is up to Caspian states to decide which of these solutions, or combination of them, to choose. Customary international law can fill the cracks but it cannot bear the brunt of the Caspian legal regime.

References

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55, 604-623; Oxman, B. (1996), Caspian Sea or Lake: What Difference Does It Make?, *Caspian Crossroads Magazine*, vol. 1, 4, Available: http://ourworld.compuserve.com/homepages/usazerb/casp.htm (site last visited June 1, 1999) ; Clagett, B.M. (1995), Ownership of Seabed and Subsoil Resources in the Caspian Sea under the Rules of International Law, *Caspian Crossroads Magazine*, vol. 1, **3**, Available at : http://ourworld.compuserve.com/homepages/usazerb/casp.htm (site last visited June 1, 1999); Mizzi, A.P. (1996), Caspian Sea Oil, Turmoil and Caviar: Can They Provide a Basis for an Economic Union of the Caspian States?, *Colorado Journal of International Environmental Law and Politics*, vol. 7, pp. 483-504; Dabiri, M. R. (1994), A New Approach to the Legal Regime of the Caspian Sea as a Basis for Peace and Development, *The Iranian Journal of International Affairs*, vol. 6, pp. 28-46; Uibopuu, H.J. (1995), The Caspian Sea: A Tangle of Legal Problems, *The World Today*, vol. 51, pp. 119-123; Elferink, A. (1998), The Legal Regime of the Caspian Sea: Are the Russian Arguments Valid?, in Risnes, B., *The Legal Foundations of the New Russia*, Norwegian Institute of International Affairs, Oslo, pp. 25-42; Allonsius, D. (1997), *Le Régime Juridique de la Mer Caspienne. Problèmes Actuels de Droit International Public*, Librairie Générale de Droit et de Jurisprudence, Paris; Dowlatchaï, A. (1961) , *La Mer Caspienne, sa Situation au regard du Droit International*, Paris, Ph.D. Dissertation.

2. The existence of oil in the basin of the Caspian Sea has been known for centuries. The first exploitation of the Baku oil fields dates back to the beginning of the eighteenth century. The first refinery was founded by the Nobel brothers in 1875. In 1910 Baku oil fields provided 85% of Russian oil output. See CRES-ACI (1995), *Le pétrole et le gaz russes*, CRES, Geneva, pp. 229-230. Whether the Caspian oil reserves deserve to be at the center of such a fierce dispute, however, is arguable. As Robert Cullen wrote: "The idea that [soviet geologists] would have overlooked vast Central Asian deposits that now are await ready for exploitation by more canny Western firms smacks, at best, of hubris and, at worst, of a desire to extract some fat commissions and consulting fees from gullible investors". See Cullen, R. (1994), Central Asia and the West, in Mandelbaum, M., (ed.), *Central Asia and the World*, Council on Foreign Relations Press, New York, pp. 130-146, at 139.
3. Yakemtchouk, *op.cit.*, at 10.
4. Dupuy, R.-J.,/Vignes, D. (1991), *A Handbook on the New Law of the Sea*, Nijhoff, Dordrecht, (2 vols.), vol. 1, pp. 54-55.
5. Quéneudec, J.P. (1977), Les Tendances Régionales dans le Droit de la Mer, in Société Française pour le Droit International, *Régionalisme et Universalisme dans le Droit International Contemporain*, Pedone, Paris, pp. 261-262; Benchikh, M. (1980), La Mer Méditerranée, Mer Semi-Fermée, *Revue Générale de Droit International Public*, vol. 84, pp. 284-297, at 285-286.
6. Parry, G. (1969-1981), *The Consolidated Treaty Series (1648-1919)*, vol. 33 at 157.
7. Article V of the Gulistan Treaty provided that: "... les vaisseaux marchands russes auront, comme antérieurement, le droit de naviguer le long des cotes de la mer Caspienne et d'y aborder ... Quant aux vaisseaux de guerre, comme avant la guerre, ainsi que durant la paix et dans tout temps, le pavillon russe a seul flotté sur la mer Caspienne, il aura aussi maintenant sous ce rapport le même droit exclusif qu'auparavant, de manière qu'outre la puissance russe aucune autre ne puisse arborer un pavillon militaire sur la mer Caspienne". De Martens, G.-F. (1876-1908), *Nouveau Recueil de Traites*, vol. 4, at 89.
8. Ibid., vol. 7, at 568. The Turkomanchaï Treaty provided that Russian military ships are "...ab antiquo les seuls qui aient eu le droit de naviguer sur la mer Caspienne". Under this agreement, Russia further expanded its control over the region, acquiring the northern Persian provinces of Erevan and Nakhitchevan beyond the Araks (approximately currently corresponding to Armenia and Azerbaijan).
9. It is interesting to note that some have seen the exclusive right of navigation of Russian military vessels on the Caspian as the sign of the renunciation of Persia to sovereignty over parts of that body of water. The Enciclopedía Universal Ilustrada Europeo-Americana reads: "Desde el punto de vista del Derecho Internacional, aunque geográficamente no es el Caspio un mar cerrado, por tener costas pertenecientes á Persia y á Rusia, legalmente sí lo es, considerándose como ruso, por virtud del tratado de Tourkmantchaï (1828), por el artículo 8, del cual el Sha cedió perpetuamente á Rusia el derecho exclusivo de mantener barcos de guerra en dicho mar, que está sometido á las leyes y autoridades rusas". See "Caspio", in *Enciclopedía Universal Ilustrada Europeo-Americana*, Madrid, Espasa-Calpe, 1911-1975, vol. 12, at 174.
10. "...nul et non avenu l'ensemble des traites et conventions conclus avec la Perse par le gouvernement tsariste, traites ou conventions qui opprimaient le peuple persan...". *League of Nations Treaty Series*, vol. 9, at 401.
11. Ibid., art. 11.
12. *League of Nations Treaty Series*, vol. 176, at 301.
13. *Sbornik deistvouyuschikh dogovorov, soglasheniy i konventsiy, zaklyuchyonnikh SSSR s inostrannymi gosoudarstvami (Collection of Treaties, Agreements and Conventions, Concluded by the USSR with Foreign States)*, Moscow, Gos. Izd-vo polit. Lit-ry, 1955-1981, vol. X, at 56.

14. "The high contracting parties are agreed that, according to the fundamental principles set forth in the treaty of February 21, 1921, concluded between Iran and the R.S.F.S.R., no vessels other than those belonging to Iran or the USSR or in an equal manner to the subjects and the commercial or transport organizations of one of the high contracting parties, sailing under the flag of Iran or of the USSR, may exist in the whole of the Caspian Sea". Ibid., art. 13. [Quotation from the English text reproduced in Yakemtchouk, *op.cit.*, at 135].
15. Ibid., art. 12.4.
16. Agreement Regarding the Exploitation of the Fisheries on the Southern Shore of the Caspian Sea, with Protocol and Exchange of Notes, (1 October 1927). *League of Nations Treaty Series*, vol. 112, at 297. The company acquired official status with a further agreement signed on October 31, 1931, and maintained its monopoly over certain species of fish until 1953, when the Iranian Government decided not to renew the agreement. *Sobranie zakonov i rasporiazhenii raboche-krest'ianskogo pravitel'stva SSSR (Collection of Laws and Edicts of the Government of Workers and Peasants of the USSR)*, Moscow, 1932, vol. II, n.17, art. 186. See Vinogradov/Wouters, *op.cit.*, at 609.
17. The Eastern part of the Russian-Persian land border was defined first in 1881 by a Bilateral Border Commission, established under the Convention on the Regulation of the Boundary to the East of the Caspian Sea, (9 December 1881). De Martens, *op.cit.*, vol. 3, at 332. The land border was confirmed with minor changes by the 1921 Treaty. For a short history of the Eastern part of the Russia/Iran border, see: Maleki, A. (1992), Iran's North Eastern Border: From Sarakhs to Khazar (The Caspian), *Iranian Journal of International Affairs*, vol. 4, pp. 617-627.
18. For what concerns oil and gas issues, it should also be recalled that in 1946, Persia and the USSR reached an agreement giving the Soviet Union all oil concessions along the Caspian Sea. The agreement covered a region stretching from the border with Turkey to the border with Afghanistan, embracing the whole of the southern shore of the Caspian. The Iranian Parliament, however, never ratified the agreement. Mitchell, M. (1949), *Maritime History of Russia: 848-1948*, Sidgwick and Jackson, London, at 160.
19. A delimitation line on the Caspian as a continuation of the terrestrial border between Astara and Husseinqoli was unilaterally established in 1935 by the Soviet Ministry of Internal Affairs. The 1964 Agreement on Aerial Traffic bears no reference to flights over the Caspian Sea, nevertheless it institutes a Flight Information Region, delimited by an imaginary line uniting the two extremes of the Iran-USSR borders on land (Astara-Husseinqoli). *New Times*, 1964, n. 34, at 29.
20. Yakemtchouk, *op.cit.*, at 99.
21. For instance see, the Ordinance of the Soviet Government of September 23, 1968; Ordinance of the Supreme Soviet of September 20, 1972; Ordinance of the Kazakh Government of April 30, 1974; Joint ordinance of the Soviet Oil and Gas Ministry and Azeri Government, January 18, 1991. According to Soviet scholars the legal significance of the partitioning of the Caspian seabed made by the USSR Gas and Oil Ministry is limited. USSR Oil and Gas Ministry Ordinances had a mere administrative value and could not be interpreted as giving to the republics any proprietary rights, since the Union, according to a principle enshrined in all Soviet constitutions, enjoyed exclusive ownership of all natural resources. See Yakemtchouk, *op.cit.*, at 99; Feldbrugge, F. J. M., Berg, G.P., Simons, W. B. (1985), Natural Resources, *Encyclopedia of Soviet Law*, Nijhoff, Dordrecht, at 533.
22. The principle of *uti possidetis juris* sanctions the respect for territorial boundaries, deriving both from international agreements as well as for those resulting from mere internal administrative divisions, at the time independence is achieved. On the principle see, *inter alia*, the judgment rendered by a chamber of the International Court of Justice in the *Frontier Dispute* Case (Burkina Faso/Republic of Mali), Judgment, *ICJ Reports*, 1986 at 554.
23. The 1978 Vienna Convention on Succession of States with Respect of Treaties provides for the continuation of treaties principle, unless concerned states otherwise agree. This is the case, in particular of Article 34 (Succession of States in Cases of Separation of Parts of a State) and Article 35 (Position if a State Continues after Separation of Part of Its Territory). See Vienna Convention on Succession of States with Respect of Treaties, August 23, 1978, UN Doc. A/CONF.80/31 (1978), *International Legal Materials*, vol. 17, 1978, at 1488. On the 1978 Vienna Convention, see in general, Menon, P.K. (1981), The Vienna Convention of 1978 on Succession of States with Respect of Treaties, *Revue de Droit International, des Sciences Diplomatiques et Politiques*, vol. 59, pp. 1-81; Bello, E.G. (1980), Reflections on Succession of States in the Light of the 1978 Vienna Convention on Succession of States with Respect of Treaties, *German Yearbook of International Law*, vol. 23, pp. 296-322; Gruber, A. (1986), *Le Droit International de la Succession d'État*, Bruylant, Bruxelles.
    However, the 1978 Convention has not yet entered into force and is not likely to be in the near future. The main reason for this is the difference of treatment between "Newly Independent States" (that is states emerging from the decolonization process) and other states emerging from union or dissolution of states. While the 1978 Convention applies to the former the principle of non-transmissibility ("clean slate"

doctrine), the latter remain bound by international treaties concluded by the predecessor. The great majority of scholars do not regard the 1978 Convention as a codification of customary international law. See Brownlie, I. (1990), *Principles of Public International Law*, Clarendon Press, Oxford, at 667-670. States' practice indicates that the rule of non-transmissibility is the principle rather than the exception. A number of writers, however, have taken the view that there is a category of dispositive or localized treaties concerning the incidents of enjoyment of a particular piece of territory in the matter of demilitarized zones, right of transit, navigation, port facilities and fishing rights. This category of treaties in their view is transmissible. See O'Connell, D.P. (1967), *State Succession in Municipal Law and International Law*, Cambridge University Press, Cambridge, (2 vols.), vol. 2, at 12-23 and 231 and ff.; McNair, A.D. (1986), *The Law of Treaties*, Clarendon Press, Oxford, at 655-664.
On states succession from the former USSR, in particular, see: Koskenniemi, M./Lehto, M. (1992), Succession d'États de l'ex-URRS, avec Examen Particulier des Relations avec la Finlande, *Annuaire Français de Droit International*, vol. 38, pp. 179-219; Mullerson, R. (1993), The Continuity and Succession of Sstates by Reference to the Former USSR and Yugoslavia, *International and Comparative Law Quarterly*, vol. 42, pp. 473-493; Lukashuk, I.I. (1993), Rußland als Rechtnachfolger in Völkerrechtliche Verträge der UdSSR, *Osteuropa Recht*, vol. 39, pp. 235-245.

24. See Agreement Establishing the Commonwealth of Independent States (CIS), Minsk, 8 December 1991, (Article 12). *International Legal Materials*, vol. 31, 1992, at 138. See also Declaration by the Heads of State of Belarus, Russia and Ukraine, Minsk, 8 December 1991, (Preamble). *International Legal Materials*, vol. 31, 1992, at 142. Azerbaijan, Kazakhstan and Turkmenistan, *inter alia*, joined the CIS with the Protocol to the Agreement Establishing the CIS signed at Minsk on 8 December 1991 by the Republic of Belarus, the Russian Federation and Ukraine, signed in Alma Ata, on 21 December 1991. *International Legal Materials*, vol. 31, 1992, at 147.
25. Vinogradov and Wouters do not subscribe to the "legal vacuum" thesis. See Vinogradov and Wouters, *op.cit.*, at 620.
26. Pondavin, Dowlatchaï, Dabiri, Dipla, and Mizzi, to cite but a few, consider the Caspian a lake. *Op.cit.* The same view is shared by Butler who, in 1969, wrote: "Soviet jurists regard the Caspian as a large lake that historically has been called a sea. General norms of international law relative to the high seas, to vessels and their crews sailing on the high seas do not extend to the Caspian, whose regime is governed by Soviet-Iranian treaties and agreements". See Butler, W.E. (1969), The Soviet Union and the Continental Shelf, *American Journal of International Law*, vol. 63, at 106. Conversely, Uibopuu, *op.cit.*, considers the Caspian a sea.
27. United Nations Convention on the Law of the Sea, concluded in Montego Bay on December 10, 1982. *International Legal Materials*, vol. 21, 1982, at 1261.
28. Russia acceded to the UNCLOS on March 12, 1997. Http://www.un.org/Depts/los/stat2los.txt. Site last visited May 20, 1999.
29. Article 122 provides 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 states". [italics added]. Because the Caspian has no connection with other seas or the world ocean by a narrow outlet (and considering the Volga River as such would be an absurd), the Convention does not apply to it. As some scholars acutely remarked, the Caspian "... ne peut être juridiquement considéré, malgré la salure de ses eaux, comme faisant partie de *la* mer, car [elle est] fermée. La Mer Caspienne qui baigne plusieurs États peut être l'objet de rapports régis par le droit international; mais, comme mer "privée", sans communication avec le reste des océans, elle n'est pas une dépendance de *la* mer au regard des règles générales du 'droit de la mer'". See Nguyen, Q.D., Dailler, P., Pellet, A. (1991), *Droit International Public*, 4th ed., Librairie Générale de Droit et de Jurisprudence, Paris, at 1015.
30. As a matter of fact, it is doubtful whether the notion of enclosed and semi-enclosed seas introduced by the UNCLOS actually reflects customary international law. See Symonides, J. (1984), The Legal Status of the Enclosed and Semi-Enclosed Seas, *German Yearbook of International Law*, vol. 27, pp. 315-333; Alexander, L.M. (1992), The Management of Enclosed and Semi-enclosed Seas, in Fabbri, P., (ed.), *Ocean Management in Global Change*, Elsevier, London, 1992, pp. 539-549. In other words, it is uncertain whether customary international law of the sea cannot be applied to the Caspian. The concept of enclosed and semi-enclosed seas is not new in the doctrine of international law. But its notion has undergone changes since its emergence. Originally legal scholars differentiated between enclosed and semi-enclosed seas. While the former are completely land-locked and do not have an outlet to other seas, the latter, thought equally land-locked, are connected to other seas through a strait. See, *inter alia*, Gervais, A./Fouilloux, G., Mer, *Repertoire de Droit International*, Paris, Dalloz, vol. 69, at 333. According to Pondavin, enclosed seas should be, therefore, assimilated to international lakes. See Pondavin, *op.cit.*, at 12-13. However, the 1982 UNCLOS changed completely the historically prevailing legal meaning of the

term "enclosed sea". The UNCLOS does not distinguish between enclosed and semi-enclosed seas, but merges them instead into a new general category.

31. Infra [67].
32. For instance, Vinogradov and Wouters, Clagett and Oxman exclude the applicability lock, stock and barrel either of the law of the sea and/or of international law orderly applicable to international lakes. As Oxman pointed out, "To what extent, if any, does the legal classification of the Caspian Sea as a sea or a lake make a difference in selecting between competing legal results?". Oxman, *op.cit.*, at 4.
33. Oxman, *op.cit.*, at 4. Indeed, no matter how the Caspian is considered (sea or lake) this will not change the basic fact that there exist different and concurrent (Nebeneinander verschiedener) sovereign rights. See, Dahm, G. (1989), *Völkerrecht*, 2 ed., De Gruyter, Berlin, vol. 1, at 403. Either way the Caspian is considered, it should be recalled that lakes and completely land-locked seas belong to the territory of their coastal States. See, Verdross, A., Simma, B. (1984), *Universelles Völkerrecht*, 3rd ed., Duncker & Humblot, Berlin, at 672.
34. For an excellent summary, in general see: Yakemtchouk, *op.cit.*; Alexandrov, M., Russian-Kazakh Contradictions on the Caspian Sea Legal Status. Available at: http//www.arts.unimelb.edu.au/Dept/CERC/bulfeb98.htm (site last visited March 6, 1999).
35. See, in general, Yakemtchouk, *op.cit.*. See also the special issue of the *Cahiers d'Etudes sur la Méditerranée Orientale et le Monde Turco-Iranien*, No. 23, 1997 on the Caspian (Vaner, pp. 143-166; Giroux, pp. 167-182; Raczka, pp. 183-207)
36. On the position of Russia on the legal regime of the Caspian, see *Position of the Russian Federation regarding the Legal Regime of the Caspian Sea. Document Transmitted by the Permanent Representative of the Russian Federation to the UN Secretary General. October 5, 1994*, UN Doc. A/49/475, 5 October 1994. See also Ostrovsky, Y. (1994), Russia against Unilateral Actions in Regard to the Caspian Sea, *Rossiyskoye Obozrenye*, n.20, 30 September 1994, pp. 7-8, at 8; Cheterian, V. (1997), Sea or Lake: A Major Issue for Russia, *Cahiers d'Etudes sur la Mediterranée Oorientale et le Monde Turco-Iranien*, n. 23, pp. 103-125.
37. I.e., the enactment of the Turkmenistan "Law on the State Border", adopted in 1993, which established Turkmenistan's jurisdiction on a share of the Caspian sea, implementing the internal waters, territorial sea, exclusive economic zone and continental shelf concepts, or the conclusion by Azerbaijan of the "contract of the century" with a consortium of Western oil companies. See also the Declaration of the Ministry of Foreign Affairs of Turkmenistan of July 5, 1997; Declaration of the Ministry of Foreign Affairs of Kazakhstan of August 29, 1997; the Position Paper of the Islamic Republic of Iran of September 3, 1997. Yakemtchouk, *op.cit.* at 154, 155 and 156.
38. Yakemtchouk quotes a series of joint declarations about the Caspian: Russia-Turkmenistan (August 12, 1995); Russia-Kazakhstan (April 27, 1996); Azerbaijan-Kazakhstan (September 16, 1996). *Idem*, *op.cit.* at 149, 151 and 152.
39. In February 1992 Iran proposed the establishment of a regional organization to coordinate cooperation of Caspian states. Uncertainties over the legal regime of the Caspian, however, killed the project. Yakemtchouk, *op.cit.*, at 37-38.
40. Agreement between the Russian Federation and Kazakhstan on the Delimitation of the Sea-Bed of the Northern Part of the Caspian Sea, concluded in Moscow on July 6, 1998. The text of the agreement has been reproduced, in French, by Yakemtchouk, *op.cit.*, at 162-165. The following analysis has been made on the basis of the text provided by Yakemtchouk. Any gas and oil fields straddling such boundary will be exploited jointly. Ibid., art 2.
41. "Les fonds de la partie septentrionale de la mer Caspienne et son sous-sol sont partagés entre les Parties suivant la méthode de la ligne médiane, telle que modifiée en vertu du principe d'équité et par accord entre les Parties...". Ibid., art. 1.
    The Agreement starts by recognizing the patent inadequacy of the current legal regime as developed by Russia and Iran to regulate relationship among Caspian states and calls all other Caspian states to conclude a framework agreement on the Caspian legal regime (of which the Russia-Kazakhstan agreement is supposed to be an integral part). Ibid., preamble.
42. Ibid. art. 5
43. Ibid. art. 1.
44. Higgins, R. (1991), International Law and the Avoidance, Containment and Resolution of Disputes, *The Hague Academy of International Law, Collected Courses*, vol. 230, No. 5, at 185-186.
45. The same is true, for that matter, in the case of all other internal waters, intended as "Waters on the landward side of the baseline of the territorial sea form part of the internal waters of a State". Article 5.1 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 29 April 1958. *United Nations Treaty Series*, vol. 516, at 205. This definition has been repeated in Article 8.1 of the UNCLOS.

46. The dimensions of the Caspian Sea have sensibly changed during centuries. The Caspian, nowadays, is about 650 nautical mile long on the North-South axis and an average of 180 mile wide on the East-West axis. In its narrower part the coasts of Turkmenistan and Azerbaijan, between capes Apsheron and Tarta, are separated by about 100 mile. In its larger part its coasts are about 270 mile distant. Not even in its largest point the Caspian is wider than 400 nautical mile. The UNCLOS fixed at 200-mile maximum limit for the extension of the continental shelf (Art. 76) (which is gradually getting customary recognition). Beyond the 200 mile-limit the seabed is considered as "Common Heritage of Mankind" (Art. 1.1 and 136).
47. For a comprehensive analysis of existing states' practice in the area of maritime delimitation see: Charney, J.I./Alexander, L.M. (1993), (eds.), *International Maritime Boundaries*, 2 vol., Nijhoff, Dordrecht, Nijhoff. See also, in the specific case of enclosed seas, Alexandrov, S.A. (1992), Delimitation of the Continental Shelf in an Enclosed Sea, *Hague Yearbook of International Law*, vol. 5, pp. 3-32.
48. See in general, Singh Sehgal, B.P. (1988), World Court on Delimitation of Continental Shelf: A Critique, *Indian Journal of International Law*, vol. 28, pp. 486-496.
49. *North Sea Continental Shelf Case* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, *ICJ Reports*, 1969, pp. 1-257.
50. *Idem*, at 53.
51. In the specific case of the Caspian Sea, the equidistance line might prove particularly problematic for Azerbaijan's agreement with foreign oil companies. Considered that the drilling, under that agreement, will take place some 120 mile east of Baku and that the Caspian Sea has an average width of only 200 mile. Therefore, if the equidistance principle was applied, the new oil fields are within the continental shelf of Azerbaijan's opposite neighbor, Turkmenistan. See Uibopuu, *op.cit.*, at 122.
52. Ahnish, F.A. (1993), *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea*, Clarendon Press, Oxford, at 92-106. See also, Evans, M.D. (1991), Maritime Delimitation and Expanding Categories of Relevant Circumstances, *International and Comparative Law Quarterly*, vol. 40, pp. 1-33; Gilas, J. (1991), Equitable Principles of the Delimitation of the Continental Shelf, *Polish Yearbook of International Law*, vol. 19, at 61-69.
53. Ahnish, *op.cit.*, at 88-92.
54. Lagoni, R. (1981-1990), Internal Waters, in Bernhardt, R. (ed.), *Encyclopedia of Public International Law*, Elzevier, Amsterdam, vol. 11, at 154.
55. *North Sea Continental Shelf*, Judgment, para. 80.
56. *North Sea Continental Shelf*, Judge Ammoun (separate opinion), at 124-127; Judge Tanaka (dissenting opinion), at 175.
57. Oxman, *op.cit.*, at 10.
58. Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted by the UN General Assembly in New York on May 21, 1997, UN. Doc. A/RES/51/229. *International Legal Materials*, vol. 36, 1997, at 700-720.
59. On May 26, 1999 the UN Convention on the Law of the Non-Navigational Uses of International Watercourses had been ratified by four States out of thirty-five required for its entry into force. Available at http://www.un.org/Depts/Treaty/ (site last visited May 26, 1999).
60. Draft Articles and Commentaries on the Law of the Non-Navigational Uses of International Watercourses, Adopted on Second Reading by the International Law Commission at its Forty-Sixth Session, UN. Doc. A/CN.4/L.493, Add.1 and Add.2 (12 July 1994). Text reprinted in *Environmental Law and Policy*, vol. 24, 1994, at 335.
61. On the delimitation of States sovereignty over international lakes see: Dipla, H. (1981), Le Tracé de la Frontière sur les Lacs Internationaux, in Zacklin, R./ Caflisch, L., (eds.), *The Legal Regime of International Rivers and Lakes*, Nijhoff, Dordrecht, 1981, pp. 247-306; Pondavin, Ph. (1972), *Les Lacs-Frontière*, Pedone, Paris, 1972; Caflisch, L. (1989), Règles Générales du Droit des Cours d'Eau Internationaux, *Hague Academy of International Law, Collected Courses*, vol. 219, No.7, pp. 113-225.
62. For an analysis of the concept of "equitable use of natural resources", see: Handl, G. (1978), The Principle of "Equitable Use" as Applied to Internationally Shared Resources: Its Role in Resolving Potential International Disputes over Transfrontier Pollution, *Revue Belge de Droit International*, vol. 14, pp. 40-64.
63. On the issue of intergenerational equity in contemporary international law see: Brown Weiss, E. (1989), *In Fairness to Future Generations*, Transnational Publisher, Dobbs Ferry, New York.
64. Oxman, B. (1993), Drawing Lines in the Sea, *Yale Journal of International Law*, vol. 18, pp. 663-674; Sharma, S. (1989), *Delimitation of Land and Sea Boundaries between Neighboring States*, New Delhi, Lancer Books.
65. Auburn, F.M./ Forbes, V./Scott, J. (1994), Comparative Oil and Gas Joint Development Regimes, in Grundy-Warr, C. (ed.), *World Boundaries*, vol. 3 (Eurasia), Routledge, London and New York, pp. 196-212.

66. E.g. the 1976 Frigg Field Reservoir Agreement between UK and Norway. *United Kingdom Treaty Series*, n. 113.
67. This is the case of the 1988 Wellington Convention on the Regulation of Antarctic Mineral Resource Activities (UN Doc. AMR/SCM/88/78). *International Legal Materials*, vol. 27, 1988, at 868.
68. Miyoshi, M. (1988), The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf, *International Journal of Estuarine and Coastal Law*, vol. 3, 1, pp. 1-18; Hui, Y. (1992), Joint Development of Mineral Resources: an Asian Solution?, *Asian Yearbook of International Law*, vol. 2, pp. 87-112.
69. UN Office of Ocean Affairs and the Law of the Sea (1987), *Law of the Sea: Maritime Boundaries Agreements (1970-1984)*, United Nations, New York, at 283.
70. *Ibid.*, at 217.
71. *International Legal Materials*, vol. 29, 1990, at 469. On the Timor Gap Treaty see, in general: Bergin, A. (1990), The Australian-Indonesian Timor Gap Maritime Boundary Agreement, *International Journal of Estuarine and Coastal Law*, vol. 4/5 (1989-1990), pp. 383-397; Moloney, G.J. (1990), Australian-Indonesian Timor Gap Zone of Cooperation Treaty: A New Offshore Petroleum Regime, *Journal of Energy and Natural Resources Law*, vol. 8, pp. 128-141; Wilheim, E. (1989), Australia-Indonesia Sea-Bed Boundary Negotiations: Proposal for a Joint Development Zone in the 'Timor Gap', *Natural Resources Journal*, vol. 29, pp. 819-842. The Timor Gap Treaty is to be in force for forty years and can be renewed for successive terms of twenty years if no permanent continental-shelf delimitation has been reached in the meantime.
72. Dulait, A. and Thual, F. (1998), *La Nouvelle Caspienne*, Ellipses, Paris, at 75.
73. Oxman, *op.cit.*, at 12.
74. Effectivity exists when a State exercises, on the territory over which it claims sovereignty, activities that only sovereign states can carry out, provided that this exercise is continuous and peaceful. *Island of Palmas* Case, *Reports of International Arbitral Awards*, vol. II, pp. 829, at 840. See also *Legal Status of Eastern Greenland* (Norway vs. Denmark), *Permanent Court of International Justice*, Series A/B, n. 54, pp. 22-147, at 45-46.
75. The final paragraph of the Russian Government's communication to the UN Secretary General on its position on the Caspian legal regime issue is, in this sense, ominous. It reads: "Unilateral action in respect of the Caspian Sea is unlawful and will not be recognized by the Russian Federation, which reserves the right to take such measures as it deems necessary and whenever it deems appropriate, to restore the legal order and overcome the consequences of unilateral actions. Full responsibility for these events, including major material damage, rests with those who undertake unilateral action and thereby display their disregard for the legal nature of the Caspian Sea and for their obligations under international agreements". Supra [37].

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