

## **CASPIAN SEA: THE HEADACHE OF SHARING IT OUT**

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Ever since 1991, the Caspian Sea Basin has been considered as one of the largest energy reserves awaiting major development. According to the U.S. Energy Agency, the subsoil of this immense land-locked sea measuring 374,000 km<sup>2</sup> and its immediate coastal area contain around 250 billion barrels of proven petroleum reserves and some 200 billion additional unproven reserves. The same American agency believes that there are natural gas reserves of around 9.2 trillion m<sup>3</sup>. Taking an average base price of 50 Euros per barrel of crude oil and 200 Euros per 1,000 m<sup>3</sup> of gas, the number we can put to the proven reserves reaches the colossal sum of 4 trillion Euros.

Obviously, such resources place the region at the centre of ferocious competition. Once limited to Russia and the United States, it is now open to many other actors, including China, South Korea, India, Japan and the European Union. The legal headache of dividing up this sea poses a serious obstacle to its use and, consequently, to the economic development of the region. The absence of a treaty on the status of the Caspian Sea has, for example, blocked many Western projects including those of a trans-Caspian gas pipeline (estimated to cost nearly 4 billion Euros and to have an annual throughput capacity of 30 billion m<sup>3</sup>) between Turkmenistan and Azerbaijan; it is also seriously slowing down the European project called *Nabucco*.<sup>1</sup>

### **A. Dividing up the Caspian Sea resources**

#### **1. A legal issue ...**

The evolution over the past ten years of the various positions held by the Caspian Sea states with respect to dividing up the Caspian highlights the need to define its international status because, though to date no agreement has been concluded between the five states with Caspian coastlines – Russia, Iran, Azerbaijan, Kazakhstan and Turkmenistan – mineral extraction operations there have already begun. The oil companies have an obvious interest in this. The existence of a legal regime is indispensable to the development of oil and gas resources of the Caspian, to move the hydrocarbons along the surface or to build gas and oil pipelines under the sea.

Meanwhile, many major oil fields situated in areas contested by several neighbouring states, like the Alov field, which is claimed by Azerbaijan, Iran and Turkmenistan, or the Chirag and

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<sup>1</sup> Cf. <http://www.esisc.org/documents/pdf/fr/turkmenistan-la-revelation-doctobre-421.pdf>

Kiapaz fields, claimed by Azerbaijan and Turkmenistan, constitute a potential source of conflicts.

Up to 1991, when the Soviet Bloc collapsed, energy extraction operations in the Caspian Sea did not pose any problems. The legal basis of the status of the Caspian Sea was defined by the Soviet-Iranian Treaty of 1921 which authorised the Iranians to have their own fleet and to sail under their flag. It also made the Caspian a sea which was jointly and equally tapped by the two States sharing its coastline. The Soviet-Iranian Treaty of 1940 confirmed this agreement and defined the Caspian as a '*Soviet and Iranian sea.*' The break-up of the USSR and the emergence of three new States on the Caspian shoreline - Azerbaijan, Kazakhstan and Turkmenistan – overturned the previous situation in this region.

## **2. Sea or lake?**

The legal status of the Caspian is a serious subject of discord between the nations on its shores and the distinction between lake and sea leads to diametrically opposed consequences. In fact, under international law, the use of resources of a lake can only be decided by unanimity of the countries on its shores, whereas in the case of a sea, each State bordering it is allocated areas where it may freely extract resources as it sees fit.

Moreover, in the case of a lake, the '*offshore*' wealth is shared in five equal parts, whereas in a sea the territorial waters do not go beyond 12 nautical miles, i.e., around 22 km. The Caspian thus constitutes a source of conflicts between, on the one hand Russia, Azerbaijan and Kazakhstan, which wish to confer on it the status of a sea in order to be able to freely enjoy its resources, and, on the other hand, Iran and Turkmenistan, which claim the legal regime of a lake for the purpose of sharing it equally and requiring unanimity in tapping its resources.

Since 1991, the countries concerned have each been arguing in favour of the status meeting their interests best, and these positions have changed following the discovery of new oil and gas fields.

### **a) Russia's geometrically variable position**

Russia long defended the option of *lake*. In Moscow's view, the Caspian Sea constitutes a lake since it is not naturally linked to any ocean of the world. The standards of international maritime law, in particular relating to a *territorial sea*, to an *exclusive economic zone* and to a *continental shelf* are thus not applicable to it.<sup>2</sup> Moscow has substantiated its argumentation by pointing to the existence of treaties earlier than 1991 to defend the principle of shared use of the Caspian.

Russia also has referred to the declaration of Almaty of 21 December 1991 which set up the CIS, according to which '*CIS member states guarantee respect for international commitments assumed by the ex-USSR*<sup>3</sup>.' On this basis it invokes respect for the status coming out of the Soviet-Iranian agreements until a new agreement is signed by the five parties concerned or a new regime of cooperation is established.

Consequently Russia has proposed the creation of a condominium establishing equal and joint use of all Caspian resources.

This proposal was taken up by Iran, qui has a coastline of 1, 146 km and by Azerbaijan which has 825 km of coastline, less than the other States bordering the Sea. They argued in favour

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<sup>2</sup> United Nations General Assembly, 1994

<sup>3</sup> This declaration involves respect for the status coming down from the Soviet-Iranian agreements of 1921 and 1940, meaning the sharing of the Caspian Sea between Russia and Iran until an agreement is signed by the five parties concerned or a regime of cooperation is established.

of a zone of territorial waters for each of the States of the Caspian Basin extending out 45 miles, i.e., much further than the 12 miles provided under international law when speaking of a sea.

Ever since the discovery of new hydrocarbon reserves out at sea off the Russian coast, the position of Moscow has changed appreciably in favour of the option of a sea. On 6 July 1998, the Russian authorities signed a bilateral accord with Kazakhstan, then on 9 January 2001 with Azerbaijan on division of the Caspian according to a median line. In 2002, they signed two other accords with these countries governing use of many offshore fields between them.

According to these documents, Russia supports the de facto division of Caspian reserves and is thus aligned now with the position of Kazakhstan and of Azerbaijan. On 14 May 2003, it perpetuated its position by signing a tripartite agreement with these two countries on the division of the riches of the North of the Caspian depending on length of the respective coastlines, which gives an 18% share to Azerbaijan, 19% to Russia and 27% to Kazakhstan. Iran and Turkmenistan are opposed to this de facto division and challenge Azerbaijan over its rights to many offshore zones.

### **b) Azerbaijan, Kazakhstan**

These two new coastal nations defend the thesis according to which the Caspian is a land-locked sea to which one applies the international law of the sea as regulated by the United Nations Convention of 1982<sup>4</sup>. They claim as theirs the depths of the Caspian as delimited in 1970 by the Soviet Oil Ministry, which gave to the carving up of the sea the name *division of principle*.

### **c) Iran**

For Iran, the legal regime is definitely that of a lake, as set out in the treaties of 1921 and 1940. The border dispute concerns chiefly the Alov field, where the rights of extraction were granted in August 1998 by Azerbaijan to an international consortium led by BP. In July 2001, Tehran had one of its warships inspect two oil exploration boats of this consortium, believing that they were in its territorial waters. The consequence of this incident was to suspend sine die the prospecting undertaken by the British company.

### **d) Turkmenistan**

As a new State of the Caspian Basin like Azerbaijan and Kazakhstan, since 1991 it has conducted an autonomous policy and occupied a less clear-cut position. First it aligned itself with the point of view of the new Independent States, then it agreed with Iran and Russia on 12 November 1996 with respect to a proposal of status recognising for the Caspian nations a zone of territorial waters extending out 45 miles, where each would have exclusive rights to hydrocarbons, while the rest of the Caspian would be shared territory.

Following the example of Iran, Turkmenistan challenges Azerbaijan over its zones of offshore prospecting, particularly the gas exploration around the Chirag field.

Now, when Russia has rallied to the position of Kazakhstan and Azerbaijan, Iran Turkmenistan are in the minority defending the division of the Caspian into equal shares.

The other subject of discord between the Caspian Basin nations is over the regulations to adopt to govern the laying of oil pipelines on the sea bottom. Thus, since May 2003 Russia has agreed with Azerbaijan and Kazakhstan over the division of the Caspian according to a median line. However, it says that the agreement of all five countries is indispensable for

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<sup>4</sup> <http://www.un.org/french/law/los/unclos/closindx.htm>

the laying of submarine oil pipelines while Azerbaijan, Kazakhstan and Turkmenistan believe that only the agreement of the one country being transited is necessary. The consequence of these divergences is that the countries along the coastline continue to develop their navies in a dangerous manner.

## **B. Discussions without end**

Eighteen years after the collapse of the Soviet empire, no treaty has over the status of the Caspian Sea has yet been signed between the five countries located on its shores. This legal vacuum constitutes the main obstacle to the full development of the immense hydrocarbon resources located below the surface in the Caspian Basin.

After two decades of proposals and counter proposals, of demands, of bidding and of the discussions befitting carpet merchants, the 25<sup>th</sup> meeting of the working group of Caspian border States held in Moscow on 14 April seemed to have opened a way to a solution.

The discussions were chiefly dominated by Mehdi Safari, Deputy Minister of Foreign Affairs of Iran and by his Russian counterpart, Alexei Borodavkin. Speaking of the importance that this subject has in the view of the heads of state of the Caspian Basin countries, Mehdi Safari argued the case for accelerating talks in order to arrive quickly at an agreement opening the way to a better and broader cooperation among all the countries located along the shores of the Caspian.

For his part, Alexander Golovin, the roving Russian Ambassador, appeared optimistic that an agreement was well on its way. However, Alexander Golovin's optimism hardly concealed the problems still open – the division of the sea bottom and the delimitation of surface waters – problems which are at the root of the blockage over this matter since 1991.

On the one hand, Iran believes that the Caspian Sea must be shared equitably (sea bottom and surface waters) between the five countries on its shores ; each would thus get 20%. On the other hand, Russia defends the position of division based on the length of the respective littorals. According to this calculation, Iran would only get between 12 and 14% of the water and sea bottom of the Caspian Sea.

Under the firm rule of its capricious leader, the late Saparmurad Niazov, Turkmenistan continually oscillated between the Russian and Iranian positions depending on the mood of the *Turkmenbashi*. The results of international audits given the task of estimating Turkmenistan's energy reserves have propelled this country into the rank of number 2 producer of gas worldwide and President Gurbanguly Berdimuhammedov, successor to President Niazov following his mysterious death at the end of 2006, has just rallied to the Russian position, leading consequently to a weakening of the Iranian position.

Although nothing concrete or definitive came out of the meeting in Moscow, there are certain signs that the Iranian position seems less rigid than in the past. Behind a façade that '*nothing has changed in the Iranian position*,'<sup>5</sup> Mehdi Safari explained that the discussions made it possible for the various proposals to come together. The third annual summit of the States of the Caspian littoral which will take place in Baku before the end of the year is expected to allow observers to see a bit more clarity in this very complicated case.

According to Russian Minister of Foreign Affairs Sergei Lavrov, the '*positions are changing in a favourable manner and the only problem awaiting resolution concerns the delimitation of the surface waters and the division of the sea bottom in the southern part of the Caspian Sea*.'<sup>6</sup> When mentioning the southern part of the Caspian Basin, Sergei Lavrov is sending an

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<sup>5</sup> [http://www.energy-daily.com/reports/Analysis\\_Caspian\\_division\\_inches\\_forward\\_999.html](http://www.energy-daily.com/reports/Analysis_Caspian_division_inches_forward_999.html)

<sup>6</sup> Ibid.

unambiguous signal to the Iranians. Alexander Golovin reminds us in fact that Russia, Azerbaijan and Kazakhstan have approved and already signed an agreement delimiting and dividing up the northern part of the Caspian Basin.

With Turkmenistan openly showing its wish to escape from the impasse which is paralysing use of its resources and shifting in favour of the Russian camp, Moscow would thus isolate Tehran. The Iranian authorities also are keen to be able to use their resources and may be quickly forced to revise their position to say that an immediate certitude over 12 to 14% of the resources of the Caspian Sea is preferable to the hypothetical 20% which they claim.

### **C. The informal summit of 11 September**

The heads of state of the countries of the Caspian littoral, except for Iran, which was not invited, met on 11 September, in the port city of Aktau in Kazakhstan for an *informal* summit to discuss the Caspian Sea. The Iranian authorities immediately expressed their indignation. The Iranian Minister of Foreign Affairs, Manuchehr Mottaki, believes that '*this summit violated earlier agreements which stipulate that every decision relating to the Caspian Sea must be taken in 'unanimity by the countries of the littoral.'*'<sup>7</sup>

For Federico Bordonaro, an analyst associated with the Italian consultants specialising in risk analysis, *Equilibri*, '*the Iranians fear above all the reconstitution around Russia of a bloc of the former soviet socialist republics which would allow this new alliance to dictate its law governing the Caspian.*'<sup>8</sup> Another possible explanation of Iran's not being invited to this summit is the delicate position of Iran on the international scene.

### **Conclusion**

Tangled up for two decades in the twists and turns of endless discussions, the issue of dividing up the Caspian Sea does not seem ready to be resolved. And in view of the latest international developments at the United Nations General Assembly and the G20 summit in Pittsburgh, it could now take a totally different dimension.

In reality, the Russian initiative at the informal summit of 11 September resembles a round of billiards on several strips. On one side of the green cloth is the United States, which is concerned, along with a number of Western countries, to put an end to the Iranian nuclear adventure. On the other side is Russia, which wishes to make permanent the transit of Caspian and Central Asian energy flows across its territory.

Anticipating by several days the official announcement by President Barack Obama of the abandonment of the American initiative to install missiles in Eastern Europe, President Dimitri Medvedev, in exchange for his rapprochement with the Western powers over the Iranian nuclear programme, got the means to pocket dividends from this new geopolitical episode.

By joining in a calculated manner the camp of countries favouring international sanctions against Iran, he offered the United States and its allies a formidable opportunity in this matter. China is now isolated in its '*tacit support*' of Tehran and will be easier to outmanoeuvre within the UN Security Council.

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[http://www.rferl.org/content/Caspian\\_Summit\\_Opening\\_In\\_Kazakhstan\\_But\\_Iran\\_Not\\_Invited/1819715.html](http://www.rferl.org/content/Caspian_Summit_Opening_In_Kazakhstan_But_Iran_Not_Invited/1819715.html)

<sup>8</sup> Ibid.

In any case, the third annual summit of heads of state of the countries along the littoral of the Caspian Sea which is expected to take place in Baku before the end of the year should be one of the most interesting summits if not the most lively.

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