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Ben N. Dunlap

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DIVIDE AND CONQUER? THE RUSSIAN PLAN FOR OWNERSHIP OF THE CASPIAN SEA

BEN N. DUNLAP*

Abstract: The search for alternative sources of oil has renewed U.S. interest in the Caspian Sea. Bordered by Russia, Azerbaijan, Iran, and the Central Asian states of Kazakhstan and Turkmenistan, the Caspian Sea contains up to thirty-three billion barrels of proven oil reserves. The legal status of the Caspian has remained unresolved since the collapse of the Soviet Union, however. In the early 1990s Russia joined with Iran to argue for common ownership of the sea by all five states, aiming for veto power over Western involvement in the region. Now, Russia argues for dividing the seabed (and the oil and gas underneath it) into national sectors, while leaving most of the surface waters for common management and use. The Russian solution offers political and economic benefits to both Russia and the United States in the short run, but may be an unsound basis for long-term stability in the Caspian region.

INTRODUCTION

Since the September 11, 2001 terrorist attacks against the United States, fears about U.S. dependence on Persian Gulf oil have intensified.¹ With three-fifths of the world's oil reserves concentrated in the Persian Gulf, the United States and other Western nations have increased efforts to ensure the continued availability of oil elsewhere in the event of a catastrophic terrorist attack or a destabilizing conflict in the region.² As a result, the search for alternative sources of oil has renewed U.S. interest in the potentially oil-rich Caspian Sea.³

* Ben N. Dunlap is the Solicitations and Symposium Editor of the *Boston College International & Comparative Law Review*.

¹ *Addicted to Oil*, THE ECONOMIST, Dec. 15, 2001, at 9.

² *Id.*; *A Dangerous Addiction*, THE ECONOMIST, Dec. 15, 2001, at 15.

³ See Michael Lelyveld, *Caspian: Presidents Launch Construction of Oil Pipeline*, RADIO FREE EUROPE—RADIO LIBERTY (Sept. 18, 2002), at <http://www.rferl.org/nca/features/2002/09/18092002154755.asp> [hereinafter Lelyveld, *Presidents Launch Construction*]; Lucian Pugliaresi, *Energy Security: How Valuable is Caspian Oil?*, Caspian Studies Program (Jan. 2001), <http://ksnotes1.harvard.edu/BCSIA/Library.nsf/pubs>.

Bordered by Russia, Azerbaijan, Iran, and the Central Asian states of Kazakhstan and Turkmenistan, the Caspian Sea contains an estimated seventeen to thirty-three billion barrels of proven oil reserves.⁴ In the early 1990s, U.S. oil companies Amoco and Chevron pioneered the development of Caspian oil reserves off the coasts of Azerbaijan and Kazakhstan.⁵ The U.S. government championed the construction of a new oil pipeline to bypass Russia and Iran by transporting Caspian oil to Western markets via Azerbaijan and Turkey.⁶ Uncertainty about the Caspian's legal status, however, has hindered development of the sea's oil reserves.⁷ Soviet-Iranian treaties governed the Caspian's use in the Soviet era, but since the breakup of the Soviet Union in 1991, the new Caspian states have failed to agree on how to divide its vast resources.⁸

In the early 1990s, Russia joined with Iran to argue for common ownership of the sea by all five states, aiming for veto power over Western involvement in the region.⁹ Now, Russia argues for dividing the seabed (and the oil and gas underneath it) into national sectors, while leaving most of the surface waters for common management and use.¹⁰ More importantly, Russia has signed bilateral treaties with Azerbaijan and Kazakhstan, effectively dividing the northern part of the seabed

⁴ ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, COUNTRY ANALYSIS BRIEFS: CASPIAN SEA REGION, at <http://www.eia.doe.gov/emeu/cabs/caspian.html> (Aug. 2003) [hereinafter D.O.E., CASPIAN SEA REGION].

⁵ See Fiona Hill, *Pipeline Dreams in the Caucasus*, in CAUCASUS AND THE CASPIAN SEMINAR TRANSCRIPTS (SDI Project ed., 1996), <http://www.ciaonet.org/conf/jfk01> [hereinafter Hill, *Pipeline Dreams*].

⁶ *Id.*; ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, CASPIAN SEA REGION: OIL EXPORT OPTIONS, at <http://www.eia.doe.gov/emeu/cabs/caspoile.html> (July 2002) [hereinafter D.O.E., EXPORT OPTIONS]; Lelyveld, *Presidents Launch Construction*, *supra* note 3.

⁷ See ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, CASPIAN SEA REGION: LEGAL ISSUES, at <http://www.eia.doe.gov/emeu/cabs/casplaw.html> (July 2002) [hereinafter D.O.E., LEGAL ISSUES].

⁸ See *id.*; see also Geoffrey Kemp, *U.S.-Iranian Relations: Competition or Cooperation in the Caspian Sea Basin*, in ENERGY AND CONFLICT IN CENTRAL ASIA AND THE CAUCASUS 148-49 (Robert Ebel & Rajan Menon eds., 2000) [hereinafter ENERGY AND CONFLICT]; Peter Rutland, *Paradigms for Russian Policy in the Caspian Region*, in ENERGY AND CONFLICT, *supra*, at 177.

⁹ See D.O.E., LEGAL ISSUES, *supra* note 7; see also Kemp, *supra* note 8, at 148-49; Rutland, *supra* note 8, at 177.

¹⁰ Vystuplenie Prezidenta Rossii V.V. Putina na vstreche glav prikaspiiskikh gosudarstv [Russian President Vladimir Putin, Address at the Summit of Caspian Heads of State], available at <http://www.mid.ru> (Apr. 23, 2002) [hereinafter Putin Address].

into Russian, Azerbaijani, and Kazakhstani national sectors.¹¹ Iran insists that the old Soviet-Iranian treaties are still in force and refuses to sign or recognize any bilateral treaties carving up the sea until a new multilateral convention is concluded by all five Caspian states.¹²

This Note examines Russia's proposed solution for the Caspian's legal status and its implications for U.S. interests in the region. Part I provides a brief history of Caspian oil and an overview of post-1991 attempts to resolve the Caspian's legal status. Part II discusses proposed legal solutions, with special attention to Russia's proposal and its legal validity. Part III analyzes the implications of Russia's proposed resolution for Russia, Iran, and the United States. Part IV concludes that the Russian solution offers political and economic benefits to both Russia and the United States in the short run, but may be an unsound basis for long-term stability in the Caspian region.

I. BACKGROUND

A. *Short History of Caspian Oil*

Caspian oil fields began producing oil near Baku, Azerbaijan in 1871 and accounted for half the world's still limited production in 1900.¹³ The Soviets expanded their extraction operations, but never fully explored the 700-mile-long Caspian Sea for new oil fields, in part because they lacked the technology to exploit effectively the reserves they found.¹⁴

Following the breakup of the Soviet Union in 1991, discovery of significant oil reserves in the Caspian basin cast the region in a new light.¹⁵ Early estimates were as high as 659 billion barrels, or two-thirds of the world's known reserves.¹⁶ Most of the oil discovered is located off the coasts of Azerbaijan, Kazakhstan, and Turkmenistan.¹⁷ Azerbaijan

¹¹ See D.O.E., LEGAL ISSUES, *supra* note 7; Sergei Blagov, *Kazakhstan Pushes for Trilateral Caspian Deal*, ASIA TIMES ONLINE, Oct. 10, 2002, at http://www.atimes.com/atimes/Central_Asia/DJ10Ag01.html [hereinafter Blagov, *Kazakhstan*].

¹² See D.O.E., LEGAL ISSUES, *supra* note 7.

¹³ See Hill, *Pipeline Dreams*, *supra* note 5; Bruce R. Kuniholm, *The Geopolitics of the Caspian Basin*, 54 MIDDLE E. J. 546 (2002), LEXIS, Nexis Library, Magazine File.

¹⁴ D.O.E., CASPIAN SEA REGION, *supra* note 4.

¹⁵ See Kuniholm, *supra* note 13.

¹⁶ *Id.*

¹⁷ D.O.E., CASPIAN SEA REGION, *supra* note 4; ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, CASPIAN SEA REGION: RESERVES AND PIPELINES TABLES, at <http://www.eia.doe.gov/emeu/cabs/caspgrph.html> (July 2002).

and Kazakhstan, in particular, have concluded deals with foreign oil companies to extract Caspian oil and transport it to world markets.¹⁸

Firms in the United States have acquired seventy-five percent of Kazakhstan's onshore Tengiz oil field, while a consortium including Italy's ENI, British Gas, ExxonMobil, France's TotalFinaElf, and Royal Dutch Shell is developing the newly discovered offshore Kashagan field.¹⁹ British Petroleum (BP) is leading the Azerbaijan International Operating Company's efforts to discover, extract, and transport oil located off Azerbaijan's coast.²⁰ Chief among those efforts is the construction of a new pipeline from Baku, Azerbaijan, through Tbilisi, Georgia, to Ceyhan, Turkey, which U.S. policymakers hope will serve as the main export pipeline for Caspian oil.²¹

In addition to U.S. and Western European firms, Russia's largest oil company, LUKoil, is currently a consortium member in Kazakh extraction and transport projects and is negotiating a possible investment in the Baku-Tbilisi-Ceyhan (BTC) pipeline.²² Until recently, LUKoil also held a stake in a sizable Azerbaijani oil field.²³

B. Caspian Geopolitics

Drawn by cheap oil and the Caspian's strategic location at the crossroads of east and west, regional and world powers have converged on the Caspian region to stake out and defend their political and economic interests.²⁴ In particular, the United States, seeking to diversify its energy supply and bolster the independence of the former Soviet states in the region, has been adamant in its support for multiple pipelines to transport Caspian oil to Western markets.²⁵ U.S. policies for Caspian oil development benefit primarily Azerbaijan, Georgia, and United States'

¹⁸ D.O.E., CASPIAN SEA REGION, *supra* note 4.

¹⁹ Jan H. Kalicki, *Caspian Energy at the Crossroads*, FOREIGN AFFAIRS, Sept.-Oct. 2001, LEXIS, Nexis Library, Magazine File.

²⁰ *Id.*

²¹ *See id.*; D.O.E., CASPIAN SEA REGION, *supra* note 4.

²² ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, KAZAKHSTAN: MAJOR OIL AND NATURAL GAS PROJECTS, at <http://www.eia.doe.gov/emeu/cabs/kazaproj.html> (June 2002) [hereinafter DEP'T OF ENERGY, KAZAKHSTAN]; Michael Lelyveld, *Iran/Azerbaijan: U.S. Rejects Military Involvement in Caspian Dispute*, RADIO FREE EUROPE—RADIO LIBERTY (Mar. 15, 2002), at <http://www.rferl.org/nca/features/2002/03/15032002113328.asp>.

²³ ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, AZERBAIJAN: PRODUCTION-SHARING AGREEMENTS, at <http://www.eia.doe.gov/emeu/cabs/azerproj.html> (June 2002) [hereinafter DEP'T OF ENERGY, AZERBAIJAN].

²⁴ *See generally* Kuniholm, *supra* note 13; Robert Ebel & Rajan Menon, *Introduction to ENERGY AND CONFLICT*, *supra* note 8, at 4–10.

²⁵ Ebel & Menon, *Introduction*, *supra* note 24, at 5.

NATO ally, Turkey, by routing the BTC pipeline through those countries.²⁶ The BTC pipeline will also benefit Kazakhstan if plans to export Kazakhstani oil through it come to fruition.²⁷ As a result, throughout the 1990s, U.S. pipeline diplomacy alienated Russia and fueled Iran's fears of a long-term U.S. presence in the region that would exclude it from any future development of Caspian oil.²⁸

The strategic importance of the Caspian is underscored by security concerns in the region.²⁹ To the northwest, Russian forces continue to battle separatists in Chechnya.³⁰ To the west, an uneasy peace holds in Nagorno-Karabagh, the predominantly Armenian enclave in Azerbaijan that was the scene of horrific ethnic warfare in the early 1990s.³¹ To the east, Tajikistan suffered a protracted civil war in the 1990s.³² Kyrgyzstan and Uzbekistan both have faced incursions by Islamic militant terrorists in recent years.³³

Since September 11, 2001, the United States has been particularly concerned about nonstate actors and the threat of terrorism in the Caucasus and Central Asia.³⁴ Proximity to the markets of Europe and Iran and the porous borders of the former Soviet states make the Caspian a convenient conduit for narcotics produced in Afghanistan and Pakistan, and for weapons destined for sale to terrorists and insurgents throughout Central Asia.³⁵ U.S. policymakers also fear that the Caspian could become a smuggling route for weapons of mass destruction.³⁶

²⁶ See *id.* at 8–9.

²⁷ See *id.*

²⁸ See *id.*; Kemp, *supra* note 8, at 158.

²⁹ See Ebel & Menon, *Introduction*, *supra* note 24, at 7.

³⁰ *The Lost Cause of the Caucasus*, THE ECONOMIST, Nov. 2, 2002, at 25.

³¹ Ebel & Menon, *Introduction*, *supra* note 24, at 7.

³² Lena Jonson & Roy Allison, *Central Asian Security: Internal and External Dynamics*, in CENTRAL ASIAN SECURITY: THE NEW INTERNATIONAL CONTEXT 13–14 (Lena Jonson & Roy Allison eds., 2001).

³³ *Id.*

³⁴ See U.S. DEP'T OF STATE, JOINT PRESS STATEMENT BY THE U.S.-RUSSIAN WORKING GROUP ON COUNTERTERRORISM, <http://www.state.gov/r/pa/prs/ps/2002/12224.htm> (July 26, 2002) [hereinafter D.O.S., PRESS STATEMENT]; B. Lynn Pascoe, Security, Stability, Prosperity: Engaging the Eurasian Front-Line States, Remarks Delivered at the International Conference on Central Asia and the Caucasus, Yale Center for the Study of Globalization, at <http://www.state.gov/p/eur/rls/rm/2002/13639.htm> (Sept. 20, 2002).

³⁵ Martha Brill Olcott, Drugs, Terrorism, and Regional Security: The Risks from Afghanistan, Testimony Before the U.S. Senate Judiciary Committee, <http://www.ceip.org/files/Publications/OlcottTestimony031302.asp?from=pubtype> (Mar. 13, 2002).

³⁶ See, e.g., U.S. DEP'T OF STATE, FACT SHEET: U.S. ASSISTANCE TO TURKMENISTAN—FISCAL YEAR 2002, at <http://www.state.gov/p/eur/rls/fs/11037.htm> (June 6, 2002); Kallicki, *supra* note 19.

C. Legal Status of the Sea

1. UNCLOS and the Law of Inland Lakes

Neither the international law of the sea nor the law of inland lakes applies directly to the Caspian Sea.³⁷ The Caspian is landlocked and has traditionally been used only by the states that border it.³⁸ It is therefore unlike the waters governed by the law of the sea, which are open to navigation by all states.³⁹ Yet, its size, salt water, and hydrocarbon-rich seabed also distinguish it from most lakes under international law.⁴⁰ Both the law of the sea and the law of lakes have been useful, however, in shaping the solutions that the littoral states have advocated.⁴¹

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) essentially provides for the extension of a maritime state's land borders 200 miles into the sea.⁴² The first twelve miles are equivalent to a state's sovereign territory on land, while the remainder is the Exclusive Economic Zone (EEZ), in which the state enjoys exclusive fishing and mining rights.⁴³

Application of UNCLOS to the Caspian Sea would be complicated by the sea's dimensions, since the EEZs of Azerbaijan and Turkmenistan, for instance, which are situated less than 400 miles apart across the sea, would overlap.⁴⁴ In such cases, boundaries are usually drawn at a point halfway between the two coastlines.⁴⁵ Thus, UNCLOS would provide for division of the water and seabed into national sectors roughly proportional to the length of each maritime state's coastline.⁴⁶ According to one calculation for such a division, Kazakhstan would

³⁷ See Brice M. Clagett, *Ownership of Seabed and Subsoil Resources in the Caspian Sea Under the Rules of International Law*, CASPIAN CROSSROADS MAG., <http://www.usazerbaijancouncil.org/caspiancrossroads/archive/archive.htm> (1995); Bernard H. Oxman, *Caspian Sea or Lake: What Difference Does It Make?*, CASPIAN CROSSROADS MAG., <http://www.usazerbaijancouncil.org/caspiancrossroads/archive/archive.htm> (1996).

³⁸ See Clagett, *supra* note 37; Oxman, *supra* note 37.

³⁹ See Clagett, *supra* note 37; Oxman, *supra* note 37.

⁴⁰ See Oxman, *supra* note 37.

⁴¹ See *id.*

⁴² See Clagett, *supra* note 37.

⁴³ Faraz Sanei, Note, *The Caspian Sea Legal Regime, Pipeline Diplomacy, and the Prospects for Iran's Isolation from the Oil and Gas Frenzy: Reconciling Tehran's Legal Options with Its Geopolitical Realities*, 34 VAND. J. TRANSNAT'L L. 681, 790 (2001).

⁴⁴ See Clagett, *supra* note 37.

⁴⁵ See *id.* The exact method of division was disputed even after UNCLOS, however, particularly by states that were not parties to the convention. See *id.*

⁴⁶ Sanei, *supra* note 43, at 790.

control 29.9% of the Caspian; Azerbaijan, 20.7%; Turkmenistan, 19.2%; and Russia and Iran—only 15.6% and 14.6%, respectively.⁴⁷

Not surprisingly, in the 1990s Azerbaijan and Kazakhstan argued in favor of applying UNCLOS to the Caspian Sea, aiming to push ahead with big oil projects off their coasts.⁴⁸ In recent years, however, they have come to support the Russian proposal, which incorporates the UNCLOS concept most important for their interests—division of the seabed into proportional national sectors.⁴⁹

If the Caspian were treated as a lake, ownership of its mineral resources would not differ substantially from an arrangement under UNCLOS.⁵⁰ Rather, the key difference would lie in the use of its surface waters.⁵¹ The surface waters of international lakes, unlike those of seas, can be used exclusively by the states bordering them.⁵² Russia has borrowed this principle for the “common waters” element of its proposed solution.⁵³

2. Soviet-Iranian Treaties and the “Condominium” Principle

Much of the current legal dispute regarding the Caspian focuses on treaties signed in 1921 and 1940 by the Soviet Union and Iran.⁵⁴ The treaties provide for exclusive use of the Sea by the Soviet Union and Iran, but cover only fishing and navigation rights, not mining rights.⁵⁵ The 1940 treaty further stipulates a ten-mile fishing zone extending from each state’s shoreline.⁵⁶

Iran argues that the Soviet era treaties provide for common management of the seabed and waters outside the ten-mile zone, according

⁴⁷ Clagett, *supra* note 37.

⁴⁸ See Kamyar Mehdiyoun, Current Development, *Ownership of Oil and Gas Resources in the Caspian Sea*, 94 AM. J. INT’L L. 179, 183, 187 (2000).

⁴⁹ See Ministerstvo Inostrannykh Del Rossiiskoi Federatsii, Departament Informatsii i Pechati, Interviu spetsialnogo predstavitelia Prezidenta Rossii po uregulirovaniuu statusa Kaspiiskogo moria, zamestitelia Ministra inostrannykh del V.I. Kaliuzhnogo [Russian Ministry of Foreign Affairs, Dep’t of Information and Press, Interview of the Special Representative of the President of Russia for Regulation of the Status of the Caspian Sea, Deputy Foreign Minister Viktor I. Kalyuzhny], at <http://www.mid.ru> (May 23, 2002) [hereinafter Kalyuzhny Interview].

⁵⁰ See Clagett, *supra* note 37.

⁵¹ See Oxman, *supra* note 37.

⁵² See *id.*

⁵³ See *id.*; Lelyveld, *Russia: Will a New Formula for Sharing Caspian Riches Work?*, RADIO FREE EUROPE—RADIO LIBERTY (Nov. 28, 2001), at <http://www.rferl.org/nca/features/2001/11/28112001091055.asp> [hereinafter Lelyveld, *Sharing Caspian Riches*].

⁵⁴ D.O.E., LEGAL ISSUES, *supra* note 7; see Sanei, *supra* note 43, at 768–87.

⁵⁵ See Sanei, *supra* note 43, at 769–70.

⁵⁶ *Id.*

to the “condominium” principle.⁵⁷ Under such an arrangement, any oil exploration and drilling operations undertaken in the Caspian would have to meet the approval of all the bordering states.⁵⁸ As a result, Iran suggests that Azerbaijan, Kazakhstan, and Turkmenistan should suspend their oil and gas producing activities in the Caspian until a new multilateral agreement is reached.⁵⁹ Russia also argued for this approach in the early 1990s, but it has recently begun supporting a division of the seabed and common management of the surface waters.⁶⁰

3. Recent Developments: Russia’s Proposed Solution

In 1998, Russia moved closer to the Azerbaijani and Kazakhstani positions by accepting division of the seabed into proportional national sectors, but still insisted on common management of the surface waters.⁶¹ In the spring and early fall of 2002, Russia signed agreements with Azerbaijan and Kazakhstan recognizing national sectors based on lines drawn in the middle of the sea halfway between each state.⁶² Russian diplomats have also succeeded in persuading Azerbaijan and Kazakhstan to support Russia’s “divided bottom, common waters” position in multilateral negotiations on the sea’s status among the five states.⁶³ Thus, there is now general agreement among Russia, Azerbaijan, and Kazakhstan on both the principle and the method of dividing rights to the seabed and the oil beneath it.⁶⁴

For Russia, coming to advocate this position has meant dropping any “Soviet” claims to the oil-rich areas off the coast of Kazakhstan and Azerbaijan, and giving up its struggle to block the BTC oil pipeline.⁶⁵

⁵⁷ See Abbas Maleki, *Caspian Sea and Foreign Policy of Islamic Republic of Iran*, JOMHURI ESLAMI (Tehran), Oct. 23, 2001, at 3, <http://www.netiran.com/clippings.html> *Iran’s Share of the Caspian Sea (Interview with Mehdi Safari)*, TEHRAN PERSIAN DAILY, Apr. 18, 2002, at 2, <http://www.netiran.com/clippings.html> [hereinafter *Safari Interview*]. See also generally Clagett, *supra* note 37; Oxman, *supra* note 37 (describing the “condominium” principle in international law).

⁵⁸ See Sanei, *supra* note 43, at 786–87; *Safari Interview*, *supra* note 57.

⁵⁹ See Sanei, *supra* note 43, at 786–87; *Safari Interview*, *supra* note 57.

⁶⁰ See BRENDA SHAFER, PARTNERS IN NEED: THE STRATEGIC RELATIONSHIP OF RUSSIA AND IRAN 51 (2001).

⁶¹ Mehdiyoun, *supra* note 48, at 187.

⁶² Steven Lee Myers, *Carving Up the Caspian*, N.Y. TIMES, Sept. 24, 2002, at A13; Blagov, *Kazakhstan*, *supra* note 11.

⁶³ Lelyveld, *Sharing Caspian Riches*, *supra* note 53; Kalyuzhny Interview, *supra* note 49. Turkmenistan favors division of the seabed into national sectors, but is unwilling to commit to the method of division proposed by Russia. See Kalyuzhny Interview, *supra* note 49.

⁶⁴ See Kalyuzhny Interview, *supra* note 49.

⁶⁵ See Carol Saivetz, *Caspian Geopolitics: The View from Moscow*, 7 BROWN J. WORLD AFF. 53, 54–55 (2000).

Russia has made these concessions for several reasons.⁶⁶ Most significantly, under President Vladimir Putin's leadership, Russia has become more engaged in the negotiation process and sought to maximize Russia's share of economic wealth and diplomatic influence in the Caspian.⁶⁷ Also, Russia has repaired its pipelines to Western markets, built a new pipeline that bypasses the troubled republic of Chechnya, and completed a joint project with Kazakhstan to transport oil through a new pipeline that crosses Russia.⁶⁸ Furthermore, Russian oil companies, such as LUKoil, have pushed the Russian Foreign Ministry to make a deal with Russia's neighbors so that they can proceed with their own extraction activities in the Caspian.⁶⁹ LUKoil is already working in Azerbaijan and Kazakhstan and in new oil fields discovered off Russia's Caspian shores.⁷⁰ Russia has also proposed an oil export deal with the United States and become a partner in the U.S.-led "war on terror."⁷¹

In contrast to Russia, Iran has shown little willingness to compromise.⁷² In addition to common management of the entire sea and seabed, Iran's negotiators have proposed an alternative solution: division of the sea into five equal national sectors (twenty percent each)—a position which none of the other states supports.⁷³ Moreover, Iran has recently attempted to force concessions from the other Caspian states by demonstrating its potential as a spoiler.⁷⁴ In July 2001, an Iranian gunboat chased two BP survey ships from a disputed oil field in the southern Caspian.⁷⁵ BP immediately suspended all activity under its contract with Azerbaijan in the disputed oil field.⁷⁶ Both the United States and Russia protested the Iranian action.⁷⁷

The July 2001 incident underscored Iran's isolation, and events since then have demonstrated the extent to which the other Caspian

⁶⁶ See Fiona Hill, *Russia: The 21st Century's Energy Superpower?*, 20 BROOKINGS REV. 28 (2002) [hereinafter Hill, *Superpower*].

⁶⁷ See Saivetz, *supra* note 65, at 57–59.

⁶⁸ D.O.E., EXPORT OPTIONS, *supra* note 6; Kalicki, *supra* note 19.

⁶⁹ See Hill, *Superpower*, *supra* note 66.

⁷⁰ DEP'T OF ENERGY, AZERBAIJAN, *supra* note 23; DEP'T OF ENERGY, KAZAKHSTAN, *supra* note 22; see Hill, *Superpower*, *supra* note 66.

⁷¹ See Brenda Shaffer, *The U.S. Needs Russia to Help Contain Iran*, L.A. TIMES, Feb. 21, 2002, at 13.

⁷² See Maleki, *supra* note 57.

⁷³ See *id.*

⁷⁴ Michael Lelyveld, *Caspian: A Delicate Balance Prevails*, RADIO FREE EUROPE—RADIO LIBERTY (July 16, 2002), at <http://www.rferl.org/nca/features/2002/07/16072002153612.asp> [hereinafter Lelyveld, *Delicate Balance*].

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

states have aligned themselves with Russia.⁷⁸ Following the unsuccessful April 2002 Caspian Summit in Turkmenistan, at which Iran alone insisted on an equal division of the sea, President Putin ordered large-scale military exercises on the Caspian for August 2002.⁷⁹ Azerbaijan and Kazakhstan also took part in the exercises, but Iran was pointedly excluded.⁸⁰

II. DISCUSSION

A. *Russia's Legal Arguments*

Russia's current legal argument regarding the status of the Caspian Sea can be described as a "divided bottom, common waters" approach.⁸¹ Russia advocates dividing the seabed into national sectors corresponding roughly to the amount of shoreline controlled by each state, but leaving the surface waters, outside a fifteen-mile territorial band, to be managed by all the states in common.⁸² To resolve disputes arising over claims to overlapping oil fields, Russia proposes developing sharing agreements on a bilateral basis.⁸³

To codify this argument permanently, Russia has concluded bilateral treaties with its neighbors, Azerbaijan and Kazakhstan.⁸⁴ These treaties cover the northern part of the sea, effectively dividing it into Russian, Azerbaijani, and Kazakhstani national sectors.⁸⁵

The legal effect of these bilateral treaties in the absence of a new multilateral convention is not entirely clear, since it hinges on whether the old Soviet-Iranian treaties remain in force, as Iran argues

⁷⁸ Jean-Christophe Peuch, *Caspian: 'Militarization' of the Sea—Myth or Reality?*, RADIO FREE EUROPE—RADIO LIBERTY (June 10, 2002), at <http://www.rferl.org/nca/features/2002/06/10062002165929.asp>.

⁷⁹ *Id.*

⁸⁰ Michael Lelyveld, *Russia: Are Moscow's War Games in Caspian Muscle Flexing?*, RADIO FREE EUROPE—RADIO LIBERTY (Aug. 7, 2002), at <http://www.rferl.org/nca/features/2002/08/07082002161837.asp>.

⁸¹ Putin Address, *supra* note 10.

⁸² Michael Lelyveld, *Caspian: Russia Proposes Wider Offshore Zone for Dividing the Sea*, RADIO FREE EUROPE—RADIO LIBERTY (Aug. 28, 2002), at <http://www.rferl.org/nca/features/2002/08/28082002143244.asp>.

⁸³ See Kalyuzhny Interview, *supra* note 49.

⁸⁴ See Blagov, *Kazakhstan*, *supra* note 11; Michael Lelyveld, *Caspian: Azerbaijan, Iran Seek New Phase in Border Dispute*, RADIO FREE EUROPE—RADIO LIBERTY (June 18, 2002), at <http://www.rferl.org/nca/features/2002/06/18062002165038.asp> [hereinafter Lelyveld, *New Phase*].

⁸⁵ See Blagov, *Kazakhstan*, *supra* note 11; Lelyveld, *New Phase*, *supra* note 84.

they do.⁸⁶ If the Soviet era treaties dissolved along with the Soviet Union in 1991, or if they never effectively governed ownership of the Caspian, then the new bilateral treaties between Russia, Azerbaijan, and Kazakhstan should be governing law in the Caspian.⁸⁷ If, however, the old Soviet era treaties are still in force, then Iran may have a legal foothold for its argument that no new bilateral treaties are valid in the absence of a new multilateral agreement.⁸⁸

B. Iran's Legal Arguments

Iran contends that the 1921 and 1940 Soviet-Iranian treaties will remain in force until a new multilateral convention is agreed upon by all five littoral states.⁸⁹ Furthermore, Iran demands that any new multilateral agreement provide for common management of both the surface waters and the seabed, or, alternatively, for division of the sea into equal national sectors—twenty percent each.⁹⁰

Iran's legal argument concerning the treaties has four main weaknesses.⁹¹ First, it gives great weight to general Soviet-Iranian treaties that make little mention of the Caspian, and are completely silent about division or ownership of the seabed.⁹² Second, it argues for a common ownership regime of the Caspian's resources when in fact such a regime is not explicit in the treaties.⁹³ Such a common ownership regime would, therefore, have to be inferred, but neither the Soviet Union nor Iran treated the Caspian as joint property during the Soviet era.⁹⁴ Third, the Soviets engaged in oil extraction activities outside the ten-mile exclusive fishing zone stipulated in the treaty, with no objection from Iran.⁹⁵ Some have suggested that Iran's silence about *de facto* divisions during the Soviet era should preclude it from raising objections

⁸⁶ See Sanei, *supra* note 43, at 777–80, 786–87.

⁸⁷ See *id.*

⁸⁸ See *id.*

⁸⁹ Maleki, *supra* note 57, at 3.

⁹⁰ *Id.*

⁹¹ See Mehdiyoun, *supra* note 48, at 188–89; Clagett, *supra* note 37. *But cf.* Sanei, *supra* note 43, at 786–87.

⁹² See Mehdiyoun, *supra* note 48, at 188–89; Clagett, *supra* note 37. *But cf.* Sanei, *supra* note 43, at 786–87.

⁹³ See Mehdiyoun, *supra* note 48, at 188–89; Clagett, *supra* note 37. *But cf.* Sanei, *supra* note 43, at 786–87.

⁹⁴ See Mehdiyoun, *supra* note 48, at 188–89; Clagett, *supra* note 37. *But cf.* Sanei, *supra* note 43, at 786–87.

⁹⁵ See Mehdiyoun, *supra* note 48, at 188–89; Clagett, *supra* note 37. *But cf.* Sanei, *supra* note 43, at 786–87.

to national divisions today.⁹⁶ Finally, Iran has refused to recognize the continued validity of the 1921 and 1940 treaties in other areas they governed, such as security.⁹⁷

III. ANALYSIS

A. Implications for Russia, Azerbaijan, and Kazakhstan

If Russia's proposed solution becomes codified as international law—either as a system of bilateral agreements, or as the basis for a new Caspian convention—Russia will likely be the biggest winner for several reasons.⁹⁸ First, playing a visible role in securing a legal regime will allow Russia to be seen as a stabilizing force in the region.⁹⁹ Second, Russia's close cooperation with Azerbaijan and Kazakhstan on this narrow legal question will facilitate reciprocal cooperation from those states on problems Russian leaders care deeply about, such as the instability in Chechnya.¹⁰⁰ Third, division of the seabed into national sectors helps influential Russian oil companies to pursue development of recently discovered reserves in the Russian sector, as well as to engage in joint activities with Azerbaijani and Kazakhstani counterparts.¹⁰¹ Finally, the “common waters” approach will give Moscow a free hand to patrol the Caspian and fight what it calls crime and terrorism as it deems necessary.¹⁰²

Azerbaijan and Kazakhstan have traditionally been cautious in their bilateral relations with Russia regarding the Caspian.¹⁰³ However, the chief advantages of the Russian solution for Azerbaijan and Kazakhstan are the clarity of sovereign rights, and, at least in the short

⁹⁶ See Mehdiyoun, *supra* note 48, at 188–89; Clagett, *supra* note 37. *But cf.* Sanei, *supra* note 43, at 786–87.

⁹⁷ See SHAFFER, *supra* note 60, at 63 n.46.

⁹⁸ See Kalyuzhny Interview, *supra* note 49; Hill, *Superpower*, *supra* note 66.

⁹⁹ See Saivetz, *supra* note 65, at 59.

¹⁰⁰ See Sergei Blagov, *Russia's Asian Policy Gains Momentum*, ASIA TIMES ONLINE, NOV. 14, 2002, at http://www.atimes.com/atimes/Central_Asia/DK14Ag01.html (discussing Kazakhstan's cooperation with Russia in counterterrorist operations); Daan van der Schriek, *Moscow Hostage Crisis Encourages Closer Russian-Azerbaijani Relations*, at <http://www.eurasianet.org/departments/insight/articles/eav103002.shtml> (Oct. 30, 2002) (discussing Azerbaijan's clampdown on Chechen activity in its territory and the recent Azerbaijani-Russian rapprochement).

¹⁰¹ See Hill, *Superpower*, *supra* note 66.

¹⁰² See Peuch, *supra* note 78.

¹⁰³ See generally Hooman Peimani, *Russia Navigates Another Caspian Rapid*, ASIA TIMES ONLINE, Oct. 8, 2002, at http://www.atimes.com/atimes/South_Asia/DJ08Df05.html.

run, cooperative relations with their Russian neighbor.¹⁰⁴ Azerbaijan and Kazakhstan would no doubt prefer a multilateral legal regime codifying the seabed boundaries, which would make abrogation by any one party more difficult.¹⁰⁵ Nonetheless, given their interest in securing their rights sooner rather than later, and Iran's intransigence, a system of bilateral treaties may be the best solution Azerbaijani and Kazakhstani leaders can hope for at the present time.¹⁰⁶

B. *Implications for the United States*

The "divided bottom, common waters" approach offers several benefits for U.S. interests.¹⁰⁷ The chief priorities of U.S. policy toward the Caspian region continue to be the security of energy transport routes, independence of the former Soviet Caspian states, and isolation of Iran.¹⁰⁸ A Caspian legal regime that creates definite boundaries and gives each border state sovereign control over the resources in its national sector will favor these interests.¹⁰⁹

A multilateral agreement based on clear national sectors for the seabed and common management of most of the surface waters would also be an encouraging sign for U.S. investors in the region.¹¹⁰ The actual borders would have to be drawn, and disputes resolved over overlapping claims to oil and gas fields lying between two sectors, but the series of bilateral agreements already in place would help demarcate borders.¹¹¹ The U.S. government has an additional stake in the success of some Caspian investment projects, having provided risk insurance to the corporations investing in the BTC pipeline through U.S. government financial institutions, including the Overseas Private Investment Corporation (OPIC) and the Export-Import Bank (Ex-Im Bank).¹¹²

¹⁰⁴ See Blagov, *Kazakhstan*, *supra* note 11.

¹⁰⁵ See, e.g., Peimani, *supra* note 103.

¹⁰⁶ See Blagov, *Kazakhstan*, *supra* note 11.

¹⁰⁷ See Michael Lelyveld, *U.S.: Official Disputes Iranian Success with Caspian Project*, RADIO FREE EUROPE—RADIO LIBERTY (Oct. 18, 2002), at <http://www.rferl.org/nca/features/2002/10/18102002170429.asp>.

¹⁰⁸ See Kuniholm, *supra* note 13.

¹⁰⁹ See *id.*

¹¹⁰ See D.O.E., *LEGAL ISSUES*, *supra* note 7; Michael Lelyveld, *Iran/Azerbaijan: U.S. Rejects Military Involvement in Caspian Dispute*, RADIO FREE EUROPE—RADIO LIBERTY (Mar. 15, 2002), at <http://www.rferl.org/nca/features/2002/03/15032002113328.asp> [hereinafter Lelyveld, *Caspian Dispute*].

¹¹¹ See D.O.E., *LEGAL ISSUES*, *supra* note 7; Lelyveld, *Caspian Dispute*, *supra* note 110.

¹¹² See Kuniholm, *supra* note 13.

The United States also has important security concerns in the Caspian region with regard to its “war on terror.”¹¹³ Russian predominance in the Caspian region may have distinct advantages for the United States in this respect.¹¹⁴ Both the United States and Russia, for instance, have strong interests in keeping terrorists away from pipelines and oil-rigs, although they may disagree on the best means for doing so.¹¹⁵ Moreover, Russia’s security interests will ensure its engagement in the region for the foreseeable future, while Russia’s proximity to and familiarity with the region make it better positioned than the United States to act on issues of mutual concern.¹¹⁶

Nevertheless, for the long run, the United States should consider carefully the implications of Moscow’s taking on a role as a unilateral military and police power in the Caspian.¹¹⁷ Such a course may be expedient while U.S. and Russian interests overlap, but it will be difficult to intervene if Russian leaders begin to act on interests that conflict directly with those of their neighbors and partners.¹¹⁸

C. Implications for Iran

For Iran, the Russian-backed, “divided bottom, common waters” approach offers several disadvantages.¹¹⁹ First, it will deny Iran key economic opportunities.¹²⁰ The plan effectively excludes Iran from any significant development of the Caspian’s oil and gas, since the fourteen percent share that would be allocated to Iran contains the least proven oil and gas reserves and the deepest water.¹²¹ Meanwhile, proactive treaty-making by Russia, Azerbaijan, and Kazakhstan is rapidly closing off Iran’s ability to bargain for things it desires most, such as securing support for a future oil export route south through its territory.¹²²

¹¹³ See Assistant Secretary of State Beth Jones, U.S. Engagement in Central Asia and the Caucasus: Staying Our Course Along the Silk Road, Remarks at “Central Asia: Its Geopolitical Significance and Future Impact” Conference, University of Montana, at <http://www.state.gov/p/eur/rls/rm/2003/19606.htm> (Apr. 10, 2003).

¹¹⁴ See D.O.S., PRESS STATEMENT, *supra* note 34; Lelyveld, *Caspian Dispute*, *supra* note 110.

¹¹⁵ See D.O.S., PRESS STATEMENT, *supra* note 34; Lelyveld, *Caspian Dispute*, *supra* note 110.

¹¹⁶ See, e.g., Saivetz, *supra* note 65, at 58–59.

¹¹⁷ See generally Jonson & Allison, *supra* note 32; Kemp, *supra* note 8, at 148–49.

¹¹⁸ See Kuniholm, *supra* note 13.

¹¹⁹ See Sanei, *supra* note 43, at 824; Maleki, *supra* note 57; D.O.E., LEGAL ISSUES, *supra* note 7.

¹²⁰ See D.O.E., CASPIAN SEA REGION, *supra* note 4.

¹²¹ *Id.*

¹²² See Sanei, *supra* note 43, at 832.

Second, Iran also fears instability in the region.¹²³ Specifically, Iran has concerns that any strengthening of Azerbaijan will embolden Iran's significant ethnic Azerbaijani population, possibly leading to political and social upheaval in the northern parts of the country that border Azerbaijan.¹²⁴ Furthermore, Iran's feelings of insecurity may be exacerbated by tacit U.S. support for Russia's legal solution for the Caspian.¹²⁵ The possibility of a large U.S. military presence on Iran's border, depending on future events in Iraq, will heighten feelings of insecurity in Tehran.¹²⁶

Iran may yet win some concessions in a final agreement on the Caspian's status, but given the current situation, that scenario looks unlikely.¹²⁷ In the absence of a multilateral agreement involving all five Caspian states, it is difficult to see how the bilateral treaty system created by Russia, Azerbaijan, and Kazakhstan will prevent further conflict arising over the disputed oil fields in the southern part of the sea.¹²⁸ If Iranian leaders decide they have nothing to lose, they may seek to disrupt other states' activities in the Caspian.¹²⁹ Iran would not have to engage in actual hostilities to have an impact on the economic activities of the Caspian states.¹³⁰ As the BP incident proved in July 2001, foreign oil executives have a low tolerance for political uncertainty in the region.¹³¹

CONCLUSION

Russia's proposal for resolving the Caspian's legal status is likely to emerge as the defining legal framework for the sea—either as part of a new Caspian convention or as a system of bilateral treaties. As such, Russia's plan offers important benefits to both Russian and U.S. economic and political interests in the short term. However, it may be an unsound basis for long-term security and strategic interests. In particular, future events in Iran and Russia may have a profound impact on the viability of the Russian-proposed solution.

¹²³ See BRENDA SHAFFER, BORDERS AND BRETHREN: IRAN AND THE CHALLENGE OF AZERBAIJANI IDENTITY 1-7 (2002); Kuniholm, *supra* note 13.

¹²⁴ See SHAFFER, *supra* note 123, at 1-7; Kuniholm, *supra* note 13.

¹²⁵ See Kemp, *supra* note 8, at 158.

¹²⁶ See Sanei, *supra* note 43, at 824.

¹²⁷ See Mehdiyoun, *supra* note 48, at 188-89. *But cf.* Sanei, *supra* note 43, at 786-87.

¹²⁸ See Peimani, *supra* note 103.

¹²⁹ See *id.*

¹³⁰ Lelyveld, *Delicate Balance*, *supra* note 74.

¹³¹ See *id.*

Developments in Iranian domestic politics could affect Iran's willingness to recognize a Caspian treaty regime that excludes its interests. The power struggle between President Mohammed Khatami's moderate administration and the hard-line clerics who control Iran's foreign policy raises questions about the possibility of a leadership change and its effect on Iran's relations with its Caspian neighbors.

Another potential problem with Russia's proposed legal regime is that its success or failure is directly linked to the maintenance of good relations among the Caspian states. Neither Russia's rapprochement with Azerbaijan and Kazakhstan, nor its antiterror partnership with the United States is a significant departure from the country's Russia-first foreign policy. Rather, both developments indicate a pragmatic approach to pursuing Russia's national interests. As those interests change in the coming years, they will likely diverge from the interests of their neighbors and those of the United States.

The "divided bottom, common waters" approach is essentially a political solution to a legal problem. In the next several years, it will help foster cooperation and get the oil flowing. In the longer run, however, a number of events, such as leadership changes in Russia or Iran or new trouble in Chechnya, may undermine the political foundation of any agreement based on the Russian plan.