Divide and Conquer? The Russian Plan for Ownership of the Caspian Sea

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

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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

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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. 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. 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. Uncertainty about the Caspian’s legal status, however, has hindered development of the sea’s oil reserves. 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.

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. More importantly, Russia has signed bilateral treaties with Azerbaijan and Kazakhstan, effectively dividing the northern part of the seabed

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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 prikaspiskikh 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{15} Early estimates were as high as 659 billion barrels, or two-thirds of the world’s known reserves.\textsuperscript{16} Most of the oil discovered is located off the coasts of Azerbaijan, Kazakhstan, and Turkmenistan.\textsuperscript{17}

\begin{footnotesize}
\begin{enumerate}
\item See D.O.E., Legal Issues, \textit{supra} note 7.
\item D.O.E., \textit{Caspian Sea Region}, \textit{supra} note 4.
\item See Kuniholm, \textit{supra} note 13.
\item \textit{Id.}
\end{enumerate}
\end{footnotesize}
and Kazakhstan, in particular, have concluded deals with foreign oil companies to extract Caspian oil and transport it to world markets.  

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.  

British Petroleum (BP) is leading the Azerbaijan International Operating Company’s efforts to discover, extract, and transport oil located off Azerbaijan’s coast.  

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.  

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.  

Until recently, LUKoil also held a stake in a sizable Azerbaijani oil field.  

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.  

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.  

U.S. policies for Caspian oil development benefit primarily Azerbaijan, Georgia, and United States’

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18 D.O.E., CASPIAN SEA REGION, supra note 4.  
20 Id.  
21 See id.; D.O.E., CASPIAN SEA REGION, supra note 4.  
24 See generally Kuniholm, supra note 13; Robert Ebel & Rajan Menon, Introduction to ENERGY AND CONFLICT, supra note 8, at 4–10.  
NATO ally, Turkey, by routing the BTC pipeline through those countries.\textsuperscript{26} The BTC pipeline will also benefit Kazakhstan if plans to export Kazakhstani oil through it come to fruition.\textsuperscript{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.\textsuperscript{28}

The strategic importance of the Caspian is underscored by security concerns in the region.\textsuperscript{29} To the northwest, Russian forces continue to battle separatists in Chechnya.\textsuperscript{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.\textsuperscript{31} To the east, Tajikistan suffered a protracted civil war in the 1990s.\textsuperscript{32} Kyrgyzstan and Uzbekistan both have faced incursions by Islamic militant terrorists in recent years.\textsuperscript{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.\textsuperscript{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.\textsuperscript{35} U.S. policymakers also fear that the Caspian could become a smuggling route for weapons of mass destruction.\textsuperscript{36}

\textsuperscript{26} See id. at 8–9.
\textsuperscript{27} See id.
\textsuperscript{28} See id.; Kemp, supra note 8, at 158.
\textsuperscript{29} See Ebel & Menon, Introduction, supra note 24, at 7.
\textsuperscript{31} Ebel & Menon, Introduction, supra note 24, at 7.
\textsuperscript{33} Id.
\textsuperscript{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); Kalicki, 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. The Caspian is landlocked and has traditionally been used only by the states that border it. It is therefore unlike the waters governed by the law of the sea, which are open to navigation by all states. Yet, its size, salt water, and hydrocarbon-rich seabed also distinguish it from most lakes under international law. 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.

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. 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.

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. In such cases, boundaries are usually drawn at a point halfway between the two coastlines. 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.

According to one calculation for such a division, Kazakhstan would

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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.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{49}

If the Caspian were treated as a lake, ownership of its mineral resources would not differ substantially from an arrangement under UNCLOS.\textsuperscript{50} Rather, the key difference would lie in the use of its surface waters.\textsuperscript{51} The surface waters of international lakes, unlike those of seas, can be used exclusively by the states bordering them.\textsuperscript{52} Russia has borrowed this principle for the “common waters” element of its proposed solution.\textsuperscript{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.\textsuperscript{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.\textsuperscript{55} The 1940 treaty further stipulates a ten-mile fishing zone extending from each state’s shoreline.\textsuperscript{56}

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

\textsuperscript{47} Clagett, \textit{supra} note 37.


\textsuperscript{49} See Ministerstvo Inostrannykh Del Rossiiskoi Federatsii, Departament Informatsii i Pechati, Interviu spetsialnogo predstavitelia Prezidenta Rossii po uregulirovaniu statusa Kaspiiskogo moria, zamestitelia Ministra inostrannykh del V.I. Kaliuzhvnogo [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. Kalyuzhnny], \textit{at} http://www.mid.ru (May 23, 2002) [hereinafter Kalyuzhnny Interview].

\textsuperscript{50} See Clagett, \textit{supra} note 37.

\textsuperscript{51} See Oxman, \textit{supra} note 37.

\textsuperscript{52} See \textit{id.}


\textsuperscript{54} D.O.E., \textit{LEGAL ISSUES}, \textit{supra} note 7; see Sanei, \textit{supra} note 43, at 768–87.

\textsuperscript{55} See Sanei, \textit{supra} note 43, at 769–70.

\textsuperscript{56} \textit{Id.}
to the “condominium” principle.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{65}


\textsuperscript{58} See Sanei, supra note 43, at 786–87; Safari Interview, supra note 57.

\textsuperscript{59} See Sanei, supra note 43, at 786–87; Safari Interview, supra note 57.

\textsuperscript{60} See BRENDA SHAFFER, PARTNERS IN NEED: THE STRATEGIC RELATIONSHIP OF RUSSIA AND IRAN 51 (2001).

\textsuperscript{61} Mehdiyoun, supra note 48, at 187.

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

\textsuperscript{63} Lelyveld, \textit{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.

\textsuperscript{64} See Kalyuzhny Interview, supra note 49.

Russia has made these concessions for several reasons.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{69} LUKoil is already working in Azerbaijan and Kazakhstan and in new oil fields discovered off Russia's Caspian shores.\textsuperscript{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."\textsuperscript{71}

In contrast to Russia, Iran has shown little willingness to compromise.\textsuperscript{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.\textsuperscript{73} Moreover, Iran has recently attempted to force concessions from the other Caspian states by demonstrating its potential as a spoiler.\textsuperscript{74} In July 2001, an Iranian gunboat chased two BP survey ships from a disputed oil field in the southern Caspian.\textsuperscript{75} BP immediately suspended all activity under its contract with Azerbaijan in the disputed oil field.\textsuperscript{76} Both the United States and Russia protested the Iranian action.\textsuperscript{77}

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

\textsuperscript{67} See Saivet, supra note 65, at 57–59.
\textsuperscript{68} D.O.E., Export Options, supra note 6; Kalicki, supra note 19.
\textsuperscript{69} See Hill, Superpower, supra note 66.
\textsuperscript{70} Dep't of Energy, Azerbaijan, supra note 23; Dep't of Energy, Kazakhstan, supra note 22; see Hill, Superpower, supra note 66.
\textsuperscript{72} See Maleki, supra note 57.
\textsuperscript{73} See id.
\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} Id.
states have aligned themselves with Russia. 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. Azerbaijan and Kazakhstan also took part in the exercises, but Iran was pointedly excluded.

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. 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. To resolve disputes arising over claims to overlapping oil fields, Russia proposes developing sharing agreements on a bilateral basis.

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

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

79 Id.
81 Putin Address, supra note 10.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{90}

Iran’s legal argument concerning the treaties has four main weaknesses.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{95} Some have suggested that Iran’s silence about de facto divisions during the Soviet era should preclude it from raising objections
to national divisions today. Finally, Iran has refused to recognize the continued validity of the 1921 and 1940 treaties in other areas they governed, such as security.

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. First, playing a visible role in securing a legal regime will allow Russia to be seen as a stabilizing force in the region. 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. 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. 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.

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


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.


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. 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. 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.

B. Implications for the United States

The “divided bottom, common waters” approach offers several benefits for U.S. interests. 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. 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.

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. 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. 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).

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104 See Blagov, Kazakhstan, supra note 11.
105 See, e.g., Peimani, supra note 103.
106 See Blagov, Kazakhstan, supra note 11.
108 See Kuniholm, supra note 13.
109 See id.
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." Russian predominance in the Caspian region may have distinct advantages for the United States in this respect. 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. 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.

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. 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.

C. Implications for Iran

For Iran, the Russian-backed, "divided bottom, common waters" approach offers several disadvantages. First, it will deny Iran key economic opportunities. 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. 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.

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.
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. Secondly, 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. Furthermore, Iran’s feelings of insecurity may be exacerbated by tacit U.S. support for Russia’s legal solution for the Caspian. 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.

Iran may yet win some concessions in a final agreement on the Caspian’s status, but given the current situation, that scenario looks unlikely. 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. If Iranian leaders decide they have nothing to lose, they may seek to disrupt other states’ activities in the Caspian. Iran would not have to engage in actual hostilities to have an impact on the economic activities of the Caspian states. As the BP incident proved in July 2001, foreign oil executives have a low tolerance for political uncertainty in the region.

**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.

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123 See Brenda Shaffer, Borders and Brethren: Iran and the Challenge of Azerbaijani Identity 1–7 (2002); Kuniholm, supra note 13.
124 See Kemp, supra note 123, at 1–7; Kuniholm, supra note 13.
126 See id.
127 See id.
128 See Peimani, supra note 103.
129 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.