

The legal status of the Caspian Sea

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Currently, there is a controversy concerning the problem of the Caspian Sea, particularly its legal status and the distribution of the sea among its littoral countries. For lack of legal support, the littoral countries are far from reaching unanimity on its division. The problem will not be solved until all the littoral countries agree on its legal status. The length of coastline is of first priority in consideration of dividing the waters. The theme of this article, which proposes to divide the Caspian Sea by coastline and water median line, is only for reference of the littoral countries.

In recent years, there has been a heated argument among the littoral countries, focusing on the exploitation and export of petroleum, and the division and ownership of the area's waters and resources. Up to now, no consensus has been reached. This has become a regional issue attracting worldwide attention. The heart of the problem, is the legal status of the Caspian Sea and the interests of the relevant countries. These two aspects are closely bound together.

Part 1

The Caspian Sea, the largest lake in the world, is part of the line dividing Europe and Asia, which links the Caucasus, Central Asia, Southwest Asia, and Russia. It is an area of great strategic importance. The Caspian Sea has an area of 371,000 square kilometers, with an ultra-depth of 1,025 meters. It is about 1,200 km long from north to south, and 320 km wide from east to west. It is -28 meters in surface height. (In recent years, as more water flowed in, the height of the water surface and depth of the water have increased each year. In 1995, the height of the water surface was -26 m. The data concerning water depth and area listed in different sources varies, due to the unsteady water surface.) Its salt content is 12.7%. There are around 50 islands in the lake, with a total area of 350 square kilometers.¹

The Caspian Sea has three main economic values. First, is shipping. Providing vast waters between Europe and Asia, the Caspian Sea played an important role in shipping during the time of the Soviet Union. Its shipping function should be correctly estimated in the future. I would like to point out that the former Soviet Union had constructed numerous big canals to form a shipping network joining the Caspian Sea, the Baltic

Sea, the White Sea, and the Volga, Don, Dnepr, and Moscow rivers. Ships below 5,000 tons could navigate from Astrakhan to Moscow, St. Petersburg, and Arkhangelsk. With the splitting of the Soviet Union, the Caspian Sea's function in this navigation network has been declining; yet, it will certainly be developed in the future.

The second economic value of the Caspian Sea is to be found in its fishery resources. Annual fishing amounts to hundreds of thousands of tons. It is the main place of production of the world-renowned sturgeon roe, for caviar. During the Soviet period, production of roe in the best years reached more than 4,000 tons, worth hundreds of millions of U.S. dollars. A considerable income is still being made, even when the production of fish and roe is not half of that in the best year.

The third value is oil. Azerbaijan, on the western shore of the Caspian Sea, found oil as early as the 13th century, and there was mass exploitation of oil by the late 19th century. A number of big European companies, such as Nobel Brothers' Petroleum Production Company, Royal Dutch Shell, and Rothschilds, were actively engaged in oil exploitation and export. At that time, the oil produced in the Caucasus accounted for 30% of the total world oil trade. The exploitation of natural gas in the Caucasus area began only in 1928, much later than that of oil. For quite a long time, Azerbaijan served as the most important oil and natural gas production region for Europe. Thus, it was a most significant strategic objective. In 1940, the oil production of Azerbaijan reached 22,200,000 tons, making up 71% of the total for the former Soviet Union.² After World War II, the production of oil in Azerbaijan and its percentage of Soviet production, declined. In 1991, its production was only 11,700,000 tons, making up only 2.3%.³ In recent years, with numerous new discoveries of large oil and natural gas fields, the Caspian Sea once again has become an area of worldwide attraction.

Being a transnational body of water, the littoral countries along the shores of the Caspian Sea have land boundary claims. During the Russian Empire, Russia and Iran had not delimited their boundary on the Caspian Sea. Mainly, it was Russia which was engaged in fishery and shipping, while Iran's backward shipping and fishery were basically confined

2. *Ibid.*

3. Liu Jingbei, et al., *The General Survey on the Countries of CIS* (Publishing House of the East China Normal University, 1993), p. 140.

1. *Bol'shaya Sovetskaya Encyclopedia*, third edition, Vol. II, pp. 499-502, 1970 (in Russian).

to the waters near its shore. Since Iran found no exploitable oil and gas fields in its offshore waters area, most of the oil and gas exploitation was limited to the Russian shore area, mainly in the land and waters near Baku. Early in 1722, Russia founded the Caspian Sea Fleet, which played an important function during the later wars against Persia (1722-23), Iran (1804-13), and the war in the Caucasus, to conquer and seize possession of the areas around the Caspian Sea.

Since the October Revolution in 1917, the attitudes of the Soviet Union and Iran toward the Caspian Sea generally followed those of the Russian imperial era. But there was a difference: Two treaties on the Caspian Sea, one signed in 1921 and the other in 1940, decided that each country had as its economic zone, 10 nautical miles of the waters along its shore, while the rest of the waters were free for fishery and shipping by both countries. Neither treaty involved underwater resources, or the delimiting of any boundary. Since the Iranian shore of the Caspian is only a very small, smooth, and straight part, Iranian economic interests have been confined to a small area of water. Most of the rest of the Caspian Sea had been the Soviet Union's area of activity. Following the policy of the Russian Empire, the Soviet Union also set up a fleet called the Caspian Sea Regional Fleet, a branch of the Black Sea Fleet.

Part 2

For many years, the Caspian Sea was quiet, without controversies or conflicts. Unfortunately, in the past few years, the area has gotten restless. There are two main reasons for that. One is that large-scale oil and gas reserve fields have been newly found; the other is the disintegration of Soviet Union. Urged by political and economic interests, the littoral and other concerned countries of the Caspian Sea area have been deeply involved in this dispute. It has mainly taken place among the Commonwealth of Independent States, i.e., the former Soviet Union's republics, focusing on the exploitation rights of oil and natural gas, together with the boundary delimiting of the Caspian Sea.

In recent years, several large oil and gas fields have been discovered. For example, there are Chirag-1, Azeri, Gjuneshli, Karabakh, and Shakhdeniz fields. The first three oilfields were reported to have reserves of 500 million tons. The other two do not have such big reserves, but they are estimated to have a vast range of prospects. The number most frequently quoted by Western analysts, is 200 billion barrels of petroleum and 7.89 trillion cubic meters of natural gas, which is about the total of the United States' and Mexico's natural gas reserves.⁴ Currently, there is a common view that the Caspian Sea area is going to be the world's main natural gas supply center in the next century. Its prospects are probably no less than the Persian Gulf. Of the current proven reserves, Azerbaijan has the largest proportion, estimated to

4. Rosemarie Forsythe, "The Politics of Oil in the Caucasus and Central Asia," *Adelphi Paper 300*, Oxford University Press, 1996, pp. 6-9.

be more than one-half. Next come Russia and Kazakstan. Turkmenistan and Iran have the least.

Mainly because of economic interests, and for additional political, historical, and geological reasons, the littoral countries have different attitudes toward the division and exploitation of the Caspian Sea. Their attitudes have changed somewhat during recent years. Generally speaking, the gaps between their opinions have narrowed, but are still too great to reach a consensus.

Azerbaijan believes the Caspian Sea to be a sea and not a lake, and that the United Nations Convention on the Law of the Sea should be applied to the boundary delimitation of the waters and the bottom, in order to clarify each country's respective range of sovereignty and exclusive economic zone. Afterwards, the related problems, such as the rights to petroleum exploitation, will be solved accordingly. Azerbaijan adopts this attitude because the petroleum production areas are mainly located near its shore, and it does not want to let any other countries gain benefits from its backyard. Azerbaijan aims to revive its economy through this petroleum, and to rid itself of Russian control.

Russia, on the other hand, holds that the Caspian Sea is not a sea, but a lake, and the Law of the Sea cannot be applied in this case. At the beginning, Russia insisted that the Caspian Sea belonged to all the littoral countries and should be kept in its original status and not be divided. The littoral countries would have equal rights to participate jointly in shipping, fishery, and resources exploitation. Russia's attitude is very easy to understand: In a shared area, the strongest has the most, as history shows. After years of dispute, especially the resolute disapproval of Azerbaijan (which has the support of the United States), Russia has withdrawn a little.

During Nov. 11-12, 1996, five foreign ministers of the littoral countries held a meeting in Ashgabat, Turkmenistan. At the meeting, Russian Foreign Minister Yevgeni Primakov declared that Russia was ready to agree on the 45 nautical miles of jurisdictional area in the Caspian Sea, and to acknowledge the jurisdictional rights of the littoral countries on exploitation of petroleum. However, the central waters should still be shared. This indicates that Russia has given up its original proposition and adopted the attitude of a limited division. At the end of the Ashgabat meeting, a memorandum was signed among Russia, Turkmenistan, and Iran, which expressed their identical views and cooperation on the division and exploitation of the Caspian Sea.

Before that, Turkmenistan and Iran had a similar attitude to that of Russia. Kazakstan's attitude was more like that of Azerbaijan; it stands for division, but in a different way. It advocated that the bottom should be divided, to make the exploitation rights of petroleum and other resources clear. But the waters should not be divided, and an administrative system of fishery quotas and shipping permits should be adopted.

The reasons for Kazakstan, Turkmenistan, and Iran adopting such an attitude are very complicated. The following ex-

planations should be considered: First, all three countries are rich in oil and natural gas reserves, but these are mainly not located along the shores of the Caspian Sea. Kazakhstan's Tengiz Oilfield (not included in the Caspian Sea's oilfields by the author), discovered nearly at the same time as the new Caspian oilfields, is also called "the second Middle East." All three countries, especially Kazakhstan and Turkmenistan, lack the material and financial resources to make an efficient exploitation of their current oilfields, let alone make more investment on the Caspian Sea. Secondly, the oil reserves in the Caspian Sea are not as important to the economies of the three countries as to Azerbaijan (of course, their oil reserves in the Caspian Sea are not as great as those of Azerbaijan). Moreover, the political, economic, and other relations with Russia are of great importance. Kazakhstan has a higher percentage of Russians in its population than any of the other countries in the Commonwealth of Independent States, and Turkmenistan was the first to adopt the policy of dual nationalities and sign an agreement of joint defense with Russia.

The confrontation between Iran and the West, headed by the United States, has lasted for many years, and Iran could not afford the confrontation with Russia, which would put herself in an isolated position. Iran needs to cooperate with Russia in Caucasus, Central Asian, Southwest Asian, and Middle Eastern affairs. All these factors have made Iran, Turkmenistan, and Kazakhstan avoid sharp confrontation with Russia. The slightly different attitudes of the three countries should be considered normal. After all, different countries have their different interests.

Part 3

As we have shown, the heart of the Caspian Sea problem is its legal status. The following analysis is about related matters.

Many people might consider it a strange question, whether the Caspian Sea is a lake or a sea. However, in geographic science, lake and sea have specific, different definitions, which cannot be mixed up. But in the Soviet Union, for particular reasons, there have for a long time been different views about the matter. Geological materials indicate that a long, long time ago, the Caspian Sea once was a part of the Black Sea. The petroTECTONIC characteristics of the south Caspian Sea, its so-called submarine structure, is between land crust and ocean crust. Because of these characteristics and other geological factors, together with the vast area of the Caspian Sea (4.5 times bigger than Lake Superior in the United States, the second biggest lake in the world), many Soviet scholars thought it to be a sea, not a lake, or at least not a typical lake.

The *Great Soviet Encyclopedia* explains it thus: "The Caspian Sea, located in Soviet Union (Russian Federal Republic, Kazakhstan Soviet Socialist Republic, Turkmenistan Soviet Socialist Republic, Azerbaijan Soviet Socialist Republic) and Iran territories, is the biggest closed salt waters. Generally, it is considered to be the biggest lake in the world, but that is

not definite. Because, from the perspective of its size and forming structure characteristics, it is a sea."⁵ Meanwhile, the *Small Soviet Encyclopedia* says: "The Caspian Sea, an inland sea, is the biggest closed saltwater lake in the world, located between Europe and Asia, on the boundaries of Soviet Union and Iran."⁶ This illustrates that the former Soviet Union lacked a definite geographic definition of the special waters of the Caspian Sea.

It should be acknowledged, that the difference between lake and sea is whether the body of water is connected to the open sea. Other factors should not be considered as a basis or reason to identify a body of water as a lake or sea. For the same reasons, marine geological terms have also been used to describe the Caspian Sea. The most-often-quoted term is "continental shelf." Continental shelf is defined as the extension of continental crust into the seawaters, with a slope of less than 0.1°, and with the depth less than 200 m. The area of the Earth's continental shelf is about 7.6% of that of oceans. No countries have included the Caspian Sea in measuring the area of the Earth's continental shelf. Land under the waters of a lake should not be called a continental shelf. It should more accurately be called water bottom or lake bottom. Those who mix up all these concepts might not have thought that such academic arguments could be turned into important considerations in a dispute among countries.

Currently there is no generally acknowledged method or treaty to delimit boundaries of lakes. The delimitation of a boundary on lakes is used in the following cases: 1) A lake between two countries is delimited by the connection line between two points at which the land boundary line crosses the shoreline. Examples are the Aral Sea between Uzbekistan and Kazakhstan, and Lake Xingkaihu between China and Russia. 2) If the shape of a lake is rather complicated, and there are islands in it, the littoral countries should negotiate the boundary based on the principle of equidistance, such as for Lake Superior, Lake Huron, and Lake Ontario between the United States and Canada. 3) If there is no division and the waters, together with the resources are shared, such as the Caspian Sea during the Soviet period, and Lake Malawi in Africa. The Caspian Sea is a unique big lake, among five countries, and there is no precedent to go by.

Since the Caspian Sea is a lake, the Law of the Sea should not be applied. But if we look at this problem from a different perspective, a different result might be reached. One of the starting points of the law of the sea is: The bordering countries divide the waters according to certain principles and methods to clarify their respective range of sovereignty and interest. The littoral countries along the Caspian Sea should have a common understanding of this principle. The historical lack of division does not mean there will be no division now or in the future. Even though the law of the sea could not be applied

5. *Op cit.*

6. *Malaya Sovetskaya Encyclopedia*, third edition, Vol. IV, 1959, pp. 608-609 (in Russian).

to divide it, there are still other ways to be adopted. The dispute over the Caspian Sea is not focused on the division itself, but on each nation's economic and political interests. Experience has proven that whenever there is a confrontation of interests, the best way to handle such a problem is to make a clear distinction of each party's range of interests. Moreover, the attitude toward vested interests receives sufficient consideration. The only way to solve realistic problems is to adopt a realistic method.

During the Ashgabat Meeting attended by five foreign ministers, Russia suggested 45 nautical miles as the judicial range of the respective littoral countries. This indicates that Russia has adopted a comparatively practical attitude toward the division of the Caspian Sea, which has relaxed the dispute to a certain extent. The focus has been shifting from, "Should we divide or not divide?" to, how to divide. At present, among the five countries, only Russia, Kazakhstan, and Azerbaijan have proposed suggestions for division. They can be simplified as, Russia supporting part-division of waters and territory (lake bottom), Azerbaijan for a complete division of waters and territory, and Kazakhstan only for a division of territory. Since the detailed content of their plan is not available, this is only a general comment.

The width of 45 nautical miles proposed by Russia has no legal basis. This figure is the average width of the Earth's continental shelf, although sometimes an equivalent 72 km is used. Since there is no verified width of territorial waters in the world, Russia's suggestion can be understood. According to this plan, the division of about half of the Caspian Sea waters will be decided. Most of the current oilfields' ownership is definite. But what is to be done with the remaining half? If other big oilfields are found outside the 45 nautical mile range, and the reservoir is connected to current oilfields (this is very likely to be the case), might there not be any other confrontations? Russia's plan aims to keep larger areas of public waters, which will not solve the current problems, and might cause problems in the future.

It is estimated that Russia's plan is going to change. The treaties between Russia and Iran on the Caspian Sea could not provide Russia enough legal ground for not dividing the Caspian Sea, because the Commonwealth of Independent States is not a successor of the Soviet Union. Logically, it is not possible for Azerbaijan, Turkmenistan, Kazakhstan, and Russia to take the responsibilities set out by the treaties between Iran and Russia. Recently, Russia's President Boris Yeltsin, at a meeting with Kazakhstan's President Nursultan Nazarbayev, said a framework for the legal status of the Caspian Sea should be proposed before July 1, 1998, to divide its bottom in a just manner. In the meantime, he said that the situation of a shared exploitation of the Caspian Sea water surface should be maintained, including free shipping, fishery regulations, and maintenance of the environment. This might possibly indicate a crucial change in Russia's policy on the Caspian Sea.

Azerbaijan advocates a complete division of the waters

and bottom, but there is still no clear proposal, including principles and plans. But Russia has some comments on this aspect. Russian Deputy Foreign Minister A. Chernishev said in November 1995, that the exploitation of the Caspian Sea should be based on the area of one's territory, population, the distance of oilfields from the respective country's shore, and its ability to exploit the oilfields. Obviously, with these criteria, Russia would have an unreasonable advantage. Its vast area not along the shore, and big population not living in the Caspian Sea area, are of course not a basis for negotiating the division of the sea. While the distance of oilfields from the respective country's shore is reasonable as a criterion, exploitative ability is not, by any means. Chernishev spoke of the distribution of petroleum exploitation, but also reflected a certain attitude.

Many factors had probably restrained Azerbaijan from proposing a plan. One reason, for sure, is that a complete division of the Caspian Sea is a very difficult job.

Up to now, the littoral countries have not proposed any principles or methods (at least none have been publicly proposed) on division of the Caspian Sea. Principles acceptable to all the littoral countries, as the base of solving the problem, are necessary and of first priority. Otherwise, all plans are only empty talk.

If we include a comprehensive consideration of the United Nations Convention of the Law of the Sea, other treaties and customs, of the examples of division of other territorial lakes, and of the delimitation of land and water boundaries, the following are some principles we might reach:

1. A lake should only be divided among the related littoral countries.
2. The littoral countries, through negotiation, should decide upon the division principles and methods for such a lake. If necessary, related countries and organizations might be invited to confer, on occasion.
3. Similar principles and methods should be applied to certain areas of waters.
4. The waters given to a particular littoral country should be based on the shore length of the country. Meanwhile, the characteristics of its shoreline (such as the curve, protrusion into the water, or sunken shore), and the distribution of islands, are to be given special consideration.
5. The individual countries can be technically flexible on the above-mentioned characteristics, for convenience in division and administration through negotiation, such as to use a straight line to replace a complicated coastline, exchange of territorial waters, etc.
6. Since flowing waters are different from land, even after division, the countries concerned should share partial common interests.

Meanwhile, the littoral countries are required, to a great extent, to cooperate on common maintenance and administration in fields of environment and ecology, etc., and on the part that is not divided, but shared. In the recent dispute among the littoral countries, some of the listed principles have been

FIGURE 1

Proposed division of the Caspian Sea



mentioned, some have not. Here, we might as well take Azerbaijan’s opinion of a complete division as an example. Integrating with the above-mentioned six principles, I would like to express some of my views on the division of the Caspian Sea. Since the Caspian Sea is a lake, for the littoral countries, the first problem they face is to delimit their boundaries with respect to the opposite ones. This is the point that distinguishes division of a lake from division of a territorial sea: The division of a territorial sea often sets out a boundary line that differentiates territorial waters from the high seas, based on an acknowledged width of territorial waters.

Considering the specific conditions of the Caspian Sea, we propose the following plan: First, the median line, i.e., the geometrical median line of the Caspian Sea, which reflects the principle of equidistance, should be determined⁷ (Figure 1). The median line is made of equidistant points to the banks, along the long axis of the Caspian Sea. A and B are two ends in the north and south which are about equidistant to the three sides of the bank. (Since the Caspian Sea is not a regular geometric figure, we adopt the method of step-by-step approach to decide the median line. The curve in Figure 1 indicates the emerging procedure of the median line. We can see, End B of the median line in the south, might not be definite, due to the shape of the south part of the Caspian Sea. It could be changed slightly.) C, D, E, F, and G are respective intersection points of boundaries and shorelines between Russia and Kazakhstan, Azerbaijan and Iran, Iran and Turkmenistan, and

7. J.R.V. Prescott, *Political Frontiers and Boundaries* (Allen & Unwin, 1987), pp. 152-155.

TABLE 1

Countries along the Caspian Sea

Country	Azerbaijan	Iran	Kazakhstan	Russia	Turkmenistan
Relative length of coastline	1.00	1.05	2.44	1.56	1.29
Relative size of water area	1.18	1.12	1.84	1.11	1.00
Coastlines in sequence	5	4	1	2	3
Water areas in sequence	2	3	1	5	4

Turkmenistan and Kazakhstan. The five countries’ ranges of territorial waters can be delimited through linking up B-E, B-F, and then making vertical lines to the median line from C, D, and G.

The following is the explanation necessary for such a division.

1. Figure 1 is based on 1:4,000,000 “Map of Union of Soviet Socialist Republics” of 1991, published by the Soviet Union’s Earth-surveying and cartographic General Bureau. The map does not mark out the Kara-Bogaz-Gol Gulf located in Turkmenistan. The gulf covers 18,000 square km, connecting the Caspian Sea by only a canal 13 km long, 3 km wide, and 6 m deep. The average water depth in the gulf is only 10 m.⁸ Obviously, this gulf is not within the division range of the Caspian Sea, and it is excluded in calculation of the shoreline and size in this article.

2. The degree of curvature of the Caspian Sea’s shore varies greatly in different areas. Generally speaking, the Caspian Sea’s shoreline in the south is relatively straight, while in the north it is very winding, especially along the delta of the Volga River, also with many islands. To delimit territorial waters in a case of very crooked shoreline, generally a straight baseline is drawn from which to decide the width of territorial waters toward the direction of the ocean. Despite the fact that the characteristics of the different country’s shorelines differ a lot, this article does not adopt the method of straight baselines.

3. There are about 50 islands in the Caspian Sea. As to the sovereignty of those islands, the principle proposed in this article is that they should be determined by the waters; that is, an island located in one’s territorial waters, shall belong to the country. As to disputed islands, their sovereignty might be solved through negotiation. Therefore, the previous procedure of deciding the median line has not taken the islands into consideration.

4. Under the conditions of a complete division and no public waters left in the Caspian Sea, the littoral countries cannot have territorial waters (or territorial waters plus exclusive economic zones) of the same width. That is, one cannot divide the Caspian Sea like the delimitation of territorial wa-

8. *Mission to Earth: Landsat Views the World*, Plate 257 (Washington, D.C.: National Aeronautics and Space Administration, 1976).

ters. This article does not set out the respective territorial waters or exclusive economic zones.

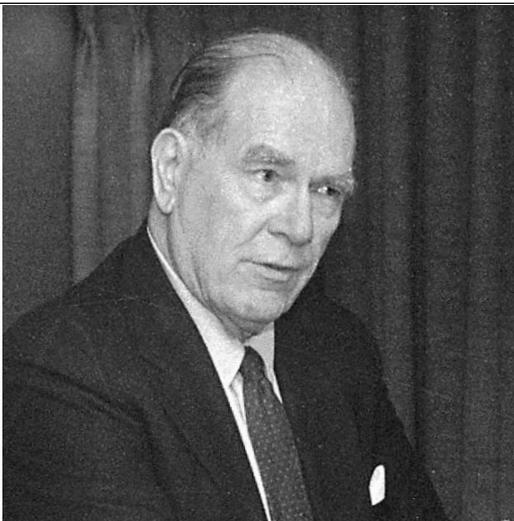
5. In Figure 1, we calculated the length and size of waters of the five littoral countries, and made the comparison. It should be pointed out, that, due to lack of accurate maps and material resources, this calculated result is only an outline, intended to explain a division plan. There is an obvious disorder in the sequence of the coastline length and waters area as a result of calculation: The coastline of Russia comes second, while its area of waters remains fifth; the coastline of Azerbaijan comes fifth, while its area of waters occupies second place. Why is the sequence of Russia and Azerbaijan just the opposite? From the map we can see very clearly: Russia is the only littoral country along the Caspian Sea's coast with its waters sunken into the land, even though Russia has a relatively long coast.

The situation of Azerbaijan is just the opposite. Its territory protrudes into the Caspian Sea, which has the advantage of having more water surface. That is why there is a disorder in the sequence. At this point, we can only say that Azerbaijan is blessed by God.

From the above, we can see the plan for adopting a median line and shoreline is feasible. The principle is just and the result is reasonable. It is not perfect, but please remember, the principle in solving disputes is justice and reason, not mathematical accuracy. There is still much to be done on the

division of the Caspian Sea. There are problems of principles and techniques to be solved. Unfortunately, at present these problems have been scarcely mentioned by the parties concerned. This article has proposed a plan of division based on the coastlines and median line. Even if this plan is accepted, there are still other factors to be considered. For example, in recent years, the surface of the Caspian Sea has been rising about 0.5 m per year. Since the east bank is low and flat, many areas there have been inundated. So the water's surface is getting larger, and will directly influence the length of coastlines and the location of the median line.

The Caspian Sea issue is getting to its crucial period. All the five countries should sit down together to discuss the way out of the problem. All the countries wish to determine the legal status of the Caspian Sea through friendly negotiations, to avoid an unstable situation which would hinder their exploitation and development. A common understanding of all these issues is the basis for solving the issue of the Caspian Sea. I sincerely hope that the five countries will soon reach an understanding and consensus. As to what principles and methods to adopt, it is the five countries' affair, with no interference from any other countries. After the legal status of the Caspian Sea is resolved, accelerated exploitation of oil and natural gas will play an important role in developing and promoting the economy of the littoral countries. This is what we expect.



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