

## ФІЛОСОФІЯ ТА ПОЛІТОЛОГІЯ В КОНТЕКСТІ СУЧАСНОЇ КУЛЬТУРИ

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### INTERNATIONAL LEGAL SOLUTION TO THE PROBLEMS OF THE ARAL AND CASPIAN SEAS

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#### **Abstract**

*The causes and consequences of the drying up of the Aral Sea have been determined. The international initiatives of the leaders of the Central Asian states are considered, the activity of the International Fund for Saving the Aral Sea is analyzed. It was found that the uncertainty of the legal status of the Caspian Sea, the lack of agreement on the distribution of the bottom of the Caspian Sea and the order of subsoil use have become destabilizing factors in shaping the geopolitical situation in Central Asia. The settlement of the conflicting interests of the Caspian states on a bilateral basis in 1998-2014 is analyzed. It is established that the result of international agreements was the Convention on the Legal Status of the Caspian Sea (2018). This agreement formalized the sovereign and exclusive rights of the parties, the collective use of marine resources and the responsibilities of the parties and paved the way for the construction of submarine pipelines, which will enhance the Caspian Sea as one of the key centers of geopolitical and geoeconomic processes. However, the signing of the Convention on the Status of the Caspian Sea did not solve all the existing problems. Regional platforms set up to address the problems of the Aral Sea have proved ineffective and have not improved the environmental situation in the Aral Sea. The region continues to be a zone of global environmental disaster.*

**Keywords:** *Aral Sea, Caspian Sea, Central Asia, international legal status, environmental issues, international law.*

### Міжнародно-правове вирішення проблем Аральського та Каспійського морів

#### **Анотація**

*Основну увагу в статті приділено екологічним проблемам Приаралля (Узбекистан, Казахстан) та Каспію. Визначено причини та наслідки висихання Аральського моря. Розглянуто міжнародні ініціативи керівників центральноазійських держав, проаналізовано діяльність Міжнародного Фонду порятунку Аралу. Відзначено визнання проблеми та розглянуто спроби її вирішення міжнародними організаціями, зокрема ООН. З'ясовано, що невизначеність правового статусу Каспійського моря, відсутність згоди у питаннях розподілу дна Каспійського моря і порядку надрокористування стали дестабілізуючими чинниками формування геополітичної обстановки у Центральній Азії. Проаналізовано шляхи врегулювання на двосторонній основі у 1998-2014 рр. суперечливих інтересів прикаспійських держав (Азербайджан, Іран, Казахстан, Росія, Туркменістан). Встановлено, що результатом міжнародних домовленостей стала Конвенція про правовий статус Каспійського моря (2018). Ця угода формалізувала суверенні та ексклюзивні права сторін, колективне використання ресурсів моря та обов'язки сторін, а також відкрила шлях для будівництва підводних трубопроводів, що сприятиме посиленню значення Каспійського моря як одного з ключових центрів геополітичних та гео економічних процесів. Встановлено однак, що підписання Конвенції про статус Каспійського моря не вирішило всіх наявних проблем. Створені для вирішення проблем Аральського моря регіональні платформи виявилися неефективними і не покращили екологічної ситуації у Приараллі. Регіон продовжує залишатися зоною екологічного лиха світового значення.*

**Ключові слова:** Аральське море, Каспійське море, Центральна Азія, міжнародно-правовий статус, екологічні проблеми, міжнародне право.

### **Международно-правовое решение проблем Аральского и Каспийского морей Аннотация**

*Определены причины и последствия высыхания Аральского моря. Рассмотрены международные инициативы руководителей центральноазиатских государств, проанализирована деятельность Международного Фонда спасения Арала. Установлено, что неопределенность правового статуса Каспийского моря, отсутствие согласия в вопросах распределения дна Каспийского моря и порядка недропользования стали дестабилизирующими факторами формирования геополитической обстановки в Центральной Азии. Проанализировано урегулирование на двусторонней основе в 1998-2014 гг. противоречивых интересов прикаспийских государств. Установлено, что результатом международных договоренностей стала Конвенция о правовом статусе Каспийского моря (2018 год). Соглашение формализовало суверенные и эксклюзивные права сторон, коллективное использование ресурсов моря и обязанности сторон, а также открыло путь для строительства подводных трубопроводов, что будет способствовать усилению значения Каспийского моря как одного из ключевых центров геополитических и геоэкономических процессов. Однако подписание Конвенции о статусе Каспийского моря не решило всех имеющихся проблем. Созданные для решения проблем Аральского моря региональные платформы оказались неэффективными и не улучшили экологическую ситуацию в Приаралье. Регион продолжает оставаться зоной экологического бедствия мирового значения.*

**Ключевые слова:** Аральское море, Каспийское море, Центральная Азия, международно-правовой статус, экологические проблемы, международное право.

#### **Formulation of the problem.**

One of the largest anthropogenic environmental disasters of the twentieth century is the loss of 90% of the volume of water in the Aral Sea and the formation of the Aralkum Desert in its place. As early as the 1960s, the entire runoff of the Amu Darya and Syr Darya, the rivers that filled the Aral Sea, was used to irrigate cotton fields. Numerous reservoirs and canals upset the balance between evaporation and water flow. At the same time, the Caspian Sea is increasingly attracting the attention of environmentalists, doctors and economists due to pollution. Central Asia is usually perceived as a region with an arid climate. In fact, there is a powerful water potential in the region, which is formed from a network of large and small rivers, natural and artificial reservoirs, groundwater reservoirs. Another thing is that the countries of Central Asia have not saved or rationally distributed water resources for decades. As most of the problems of the Aral and Caspian Seas are cross-border, these challenges require active cooperation between the countries of the region.

#### **Analysis of recent research and publications.**

Problems of the international legal status of the Caspian Sea were studied in the works of V.Batyr [Batyr 2019] and D.Shikheli [Shihelili 2018]. Environmental problems in the foreign policy of the post-Soviet states of Central Asia were considered in the works of I.Voloshenko [Voloshenko 2015], Z.Gorvett [Gorvett 2018], R.Kobil, P.Harris [Kobil, Harris 2018], Ph.D. Micklin, K.White, Z.Alimbetova, Z.Ermakhanov [Micklin, White, Alimbetova, Ermakhanov 2018], M.Malimir paid special attention to the institutional mechanism for resolving the environmental problems of the Caspian Sea [Malimir 2019]. Nutsalkhanov analyzed in the context of international law the Convention on the Legal Status of the Caspian Sea [Nutsalkhanov 2019]. The analysis of available research shows that the international legal solution to the problems of the Aral and Caspian Seas requires a comprehensive study.

**The purpose of the article** is to investigate the international legal solution to the problems of the Aral and Caspian Seas.

#### **Presenting main material.**

The drying up of the Aral Sea is the biggest catastrophe in Central Asia, affecting not only the

regional but also the global ecological system. The Aral Sea is an inland body of water in the Central Asian region, a salt lake located north of the Caspian Sea. Territorially, the Aral Sea covers two countries in the region: the northern part of Kazakhstan and the southern part of Uzbekistan (more precisely, the Autonomous Republic of Karakalpakstan, which is part of Uzbekistan) [Aral Sea. Encyclopaedia Britannica]. The Aral Sea is filled with water through the region's two main transboundary rivers, the Amu Darya and the Syr Darya.

By the middle of the twentieth century. The Aral Sea was considered the fourth largest in the world. Beginning in the 1950s, the vast amount of river water that previously flowed into the Aral Sea began to be used to irrigate vast cotton fields [Aral Sea. Encyclopaedia Britannica]. The Soviet government turned large areas of pastures and arable land in present-day Uzbekistan, Kazakhstan, and Turkmenistan into irrigated agricultural land [Russell 2019]. As a result, the sea has shrunk tenfold to its former size. During the drying process, the reservoir was divided into two parts: the northern part of Kazakhstan and the southern part of Uzbekistan [Boldyrev 2018]. The increase in salt concentration has led to the death of most fish in the remnants of the lake, depriving fishing communities of livelihoods and livelihoods. Without the sustained impact of the large body of water, the climate in the surrounding areas has become harsher, with colder winters and hotter summers. The lack of water has exposed a layer of pesticides from agriculture along the former seabed, causing toxic clouds of dust during storms. This leads to respiratory and health problems in the local population [Russell 2019]. In particular, the level of respiratory diseases and infant mortality in the territories adjacent to the Aral Sea in the 1980s was several times higher than the All-Union [Kobil, Harris 2018].

With the drying up of the Aral Sea, the island of the Renaissance, located in the southwestern part of the lake, merged with the mainland. This caused great concern to both local authorities and the world community, as in 1942-1992 there was a secret biochemical test site "Barkhan" on the island, where Soviet bacteriological weapons were developed and tested [Boldyrev 2018]. In

particular, experiments on pathogens of tularemia, brucellosis, bubonic plague, etc. were performed at the landfill in order to make bacteria and viruses more contagious and resistant to various treatments [Gorvett 2018]. Hundreds of tons of live anthrax bacteria were buried on the island in the 1980s, and in 1999 its still-living spores were found at the site. The situation was so serious that a team of specialists from the United States intervened and disposed of hazardous bacteriological waste. However, the abandoned dilapidated research laboratories on the island were not cleaned, but were simply abandoned [Gorvett 2018].

The concerns of the top leaders of the Central Asian countries about the ecological catastrophe in the Aral Sea region were manifested even before the acquisition of the status of independent states by these countries. In particular, back in June 1990, the first joint statement of the leaders of the Central Asian states (then the Soviet republics) and their appeal to the peoples of Central Asia were published. Addressing the President of the USSR Mikhail Gorbachev and the Supreme Soviet of the USSR, the leaders of the Central Asian republics asked to declare the Aral Sea zone a national environmental disaster and launch the process of developing and implementing a state program to restore the environmental fund. Already as the head of the independent Republic of Kazakhstan, N. Nazarbayev addressed other heads of Central Asian states in 1992, proposing to unite efforts to mitigate the negative impact of the drying up of the Aral Sea on the environment and the population of the region. The intermediate result of the negotiations in this direction was the signing of the "Agreement on Joint Action to Address the Aral Sea and the Aral Sea Region, Environmental Rehabilitation and Socio-Economic Development of the Aral Sea Region" and the Regulation on the International Fund for Saving the Aral Sea (IFAS). In Kizilord on March 26, 1993 Nazarbayev was elected President of IFAS [Istoriia sozdaniya i stanovleniya MFSA].

In 2005, a project to partially restore the Aral Sea was completed with the participation of the World Bank and the Government of Kazakhstan, which co-financed the construction of a dam to reduce sea salinity and restore extinct fish pop-

ulations. The implementation of the project allowed to improve the environmental conditions and restore fishing, which was a major factor in improving the economy and living conditions in the area adjacent to the North Aral Sea. The results of this project allowed the authorities of Kazakhstan with the support of the World Bank to plan the second stage of reconstruction of the Aral Sea [Micklin, White, Alimbetova, Ermakhanov 2018]. To stop the drying up of the Aral Sea, assistance is offered by Switzerland, which is ready to provide its own technical developments in irrigation systems. They increase the efficiency of irrigation water by reducing the amount of water loss [Boldyrev 2018].

The leaders of the Central Asian states have repeatedly addressed the world community from the rostrum of the UN General Assembly to draw attention to the Aral Sea problem, emphasizing its close relationship with regional and global security issues. Thus, at the sessions of the UN General Assembly in 1993 and 1995, they called on international financial institutions and developed countries to join in saving the Aral Sea region, and also asked the UN to act as an organizer of this process. At the session of the UN General Assembly in 2008, at the initiative of the President of Tajikistan E. Rahmon, the International Fund for Saving the Aral Sea (IFAS) was granted observer status. The problems of the Aral Sea region were also raised in 2000 at the UN Millennium Summit in New York [Voloshenko 2015: 38].

In 2010, UN Secretary-General Ban Ki-moon visited Central Asia and called the drying up of the Aral Sea one of the most shocking disasters on the planet. He also called on the leaders of the region to intensify cooperation in solving this and other environmental problems [Boldyrev 2018].

The activities of the International Fund for Saving the Aral Sea throughout its existence have been criticized. In particular, it pointed out such negative aspects in its work as the presence of inefficient bodies in the structure of IFAS, lack of transparent reporting on financial costs, focusing on the needs of the fund only to the needs of the agricultural sector, inconsistency of the fund needs and interests of some countries. Due to these factors, in 2016 Kyrgyzstan suspended its participation in the activities of the IFAS, de-

manding to reform the structure of the IFAS and revise the scale of state contributions to the activities of the fund [Prezydent Sooronbai Zheenbekov].

In August 2018, the five presidents of Central Asia met at their first Aral Sea summit since 2009. The summit agreed to reorganize the almost ineffective International Fund for Saving the Aral Sea and to encourage more efficient water use by modernizing irrigation systems. Much more radical action will be needed to fully rehabilitate the Aral Sea (which currently receives only 10% of the required water from the Amu Darya and Syr Darya) [Russell 2019].

Since the 1980s, when the problem of the drying up of the Aral Sea and the desertification of its bottom became more acute and became a global problem, a number of projects to save it have emerged, on which research institutions have been working. Among them, various options for returning water to the Aral Sea were proposed, including the diversion of Siberian rivers or the combination of the Aral Sea by a special canal with the Caspian Sea, which for some time recorded rising water levels. In recent years, international projects dedicated to saving the Aral Sea have recognized these projects as unrealistic to address Central Asia's water problems due to their high cost, complexity of technical implementation, potentially serious environmental consequences, and complex international legal regulation of such projects. Instead, it is proposed to focus on developing ways to improve the efficiency of water use for irrigation, as well as to take measures to preserve and partially restore parts of the Aral Sea. In any case, the situation around the Aral Sea requires immediate action, because, according to scientists, the water resources of the Aral Sea may be depleted in 2030-2045 [Kratkoe Sankt-Peterburhskoe zaiavlenye ob Aralskom more].

Uncertainty over the legal status of the Caspian Sea has long been a powerful destabilizing factor in shaping the geopolitical situation in Central Asia. With the collapse of the Soviet Union, the number of coastal states in the Caspian Sea increased: instead of two (USSR and Iran), five appeared, including Kazakhstan and Turkmenistan. These states sought to fully ex-

ercise their sovereign rights over the resources of the Caspian Sea and ensure their recognition, despite regional disputes. After gaining independence, Kazakhstan and Turkmenistan denied the legitimacy of the Soviet-Iranian treaties of 1921 and 1940, which regarded the Caspian Sea as an inland lake and its natural resources as common property that could be evenly distributed among coastal states. Central Asian states have insisted on defining the Caspian Sea as a closed sea, which will be divided into national sectors that grant coastal states exclusive economic rights in accordance with the 1982 UN Convention on the Law of the Sea [Jafalian 2019].

The difficulty of regulating the use of resources of the Caspian Sea is that it, having specific geographical, hydrological and other characteristics, is neither a sea nor a lake. The Caspian moraine belongs to the seas because it is defined as an inland body of water that has no direct connection with the World Ocean. Accordingly, the provisions of the UN Convention on the Law of the Sea of 1982 could not be applied to it. At the same time, the legal norms concerning transboundary lakes cannot be applied to the Caspian Sea [Nutsalkhanov 2019].

The lack of agreement on the distribution of the Caspian Sea floor and the order of subsoil use caused tension and mistrust, prompted the Caspian states to military-political confrontation, and the willingness to defend their national economic and political interests in the region created a violent solution to this problem [Shihelili 2018]. The Caspian states are members of the United Nations and its specialized agencies, as well as a number of regional organizations. This creates an intertwining of international legal obligations of states, for example, in the field of defense and security [Batyr 2019]. In addition, the intense struggle for oil-rich Caspian Sea has been a factor in the militarization of Central Asian countries. The military component of the rivalry for Caspian resources included military training, development and equipment of the navy, training of military personnel, and so on. In fact, due to military power at sea, neighboring countries are trying to prove their right to dispose of the waters and resources of the Caspian Sea [Chekalenko 2018].

The conflicting interests of the Caspian states in 1998-2014 were partially settled on a bilateral basis. In the period 1998-2003, Kazakhstan signed agreements on the division of the Caspian Sea with Azerbaijan and Russia, in 2014 a similar agreement was signed between Kazakhstan and Turkmenistan [Batyr 2019]. Finally, after lengthy negotiations, in August 2018, during the V Summit of the Caspian states in Aktau (Kazakhstan), representatives of Kazakhstan, Turkmenistan, Azerbaijan, Iran and Russia signed the Convention on the Legal Status of the Caspian Sea [Konventsiya o pravovom statuse Kaspyiskoho moria]. This agreement formalized the sovereign and exclusive rights of the parties, the collective use of marine resources and the responsibilities of the parties, and paved the way for the construction of submarine pipelines, which will enhance the Caspian Sea as one of the key centers of geopolitical and geoeconomic processes [Jafalian 2019].

The procedure for laying cables and pipelines on the bottom of the Caspian Sea, agreed by the 2018 Convention, formally makes it possible to build the Trans-Caspian gas pipeline from Turkmenistan, Kazakhstan and Uzbekistan to Azerbaijan. The connection of the gas transmission systems of these countries will allow to supply Turkmen gas in transit through Georgia and Turkey to Europe. This plan creates an alternative to Russian gas through access to significant Turkmen gas deposits. Such a project has been discussed since the mid-1990s, but the deterrent is its doubts about its economic feasibility [Batyr 2019]. At the same time, the 2018 Convention was signed despite a number of unsettled reciprocal claims. In particular, heated discussions continue between Azerbaijan and Turkmenistan on the ownership of three Caspian oil fields. The option of joint development of deposits was rejected by Turkmenistan. As the Convention does not contain mechanisms for the peaceful settlement of such disputes, there may be a need for mediation mechanisms in the future [Batyr 2019].

Active land and water activities of the Caspian states, related to exploration, fishing, construction, settlement of the Caspian coast, led to the beginning of destructive processes for the ecosystem in the Caspian region. Discussions on how to regulate environmental issues date back

to the 1990s, when the Tehran Summit of the Caspian Sea Coastal States was held in 1992 at Iran's initiative. At this event, the idea of creating a number of committees to address certain environmental issues of the Caspian Sea was put forward [Malmir 2019].

The environmental problems of the Caspian Sea have recently become a real threat to both the marine ecosystem and the coastal population. Factors exacerbating the environmental danger in the Caspian region are, in particular, the oil production activities of the Caspian states. Thus, Kazakhstan and Turkmenistan are intensifying oil production, and in addition, use an outdated system of waste oil discharge, which leads to heavy pollution of the Caspian Sea [Malmir 2019]. Significant damage to the Caspian Sea ecosystem is also expected from the implementation of the project of the international transport route "Caspian Sea - Black Sea", in which Turkmenistan participates from the Central Asian states [Malmir 2019]. Already today, according to some data, the level of pollution of the Caspian Sea exceeds the established standards by 11 times [Voloshenko 2015]. Offshore hydrocarbon production not only increases the level of pollution of the Caspian Sea, but also significantly increases the likelihood of irreversible degradation of its biosystem. Of particular concern is fishing

for sulfur gas fields in eastern Turkmenistan [Voloshenko 2015]. Recently, it has been suggested that the Caspian Sea may repeat the fate of the Aral Sea, in other words significantly dry up. The reasons for the decrease in the water level of the Caspian Sea, researchers call the increase in evaporation due to rising air temperatures, as well as economic activities of people [Crisis in the Caspian Sea].

Thus, the situation around the Aral and Caspian Seas requires the combined efforts of Central Asian countries to prevent the aggravation of environmental problems in the respective regions. At the same time, it should be noted that the regional platforms created to solve the problems of the Aral Sea proved to be ineffective and did not improve the environmental situation in the Aral Sea region. Despite the successful implementation of international projects to preserve the remnants of the Aral Sea, the Aral Sea continues to be a zone of environmental disaster of global importance. The signing of the Convention on the Status of the Caspian Sea did not solve all the existing problems. The desire of the Caspian states to extract the maximum benefit from mineral deposits in their own coastal zones increases environmental risks and turns the Caspian Sea into a source of tension in the region.

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