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## Agreements of the Russian Federation with Certain Foreign Countries on Delimitation and Development of Adjacent Maritime Spaces, Their Role in the Development of the Unitization Law System

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### Аннотация

In the modern period of formation of unitization legal system it is necessary to summarize the world experience of conclusion and use of unitization agreements in the development of hydrocarbon deposits, maritime spaces, their delimitation between neighboring and opposite states. This article reviews the peculiarities of the approach to the problems of determining the relations of cooperation of the Russian Federation with certain states in the delimitation and use of adjacent maritime spaces in order to use them effectively and efficiently and to avoid negative impact on the environment. Relations in this area should be based on general principles of international unitization, which requires generalization of world practice in this field, creation of the legal framework of unitization agreements on this basis both at the international and national level promoting the harmonization of interests of all participants in development, the development of transboundary fields in the most effective and efficient way, and the decrease of negative impact on the environment.

**Ключевые слова:** energy law, unitization agreements, transboundary fields, development of adjacent maritime spaces

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<sup>1</sup> The Russian Federation pays great attention to the regulation of relations in the exercise of rights to interstate transboundary fields in terms of the procedure of development of such raw hydrocarbon deposits and determination of their legal status. At present, the issues of delimitation of seabed areas and continental shelves of the Caspian, Baltic, and Barents Sea and the Arctic Ocean with neighboring states, determination of the conditions of cooperation in the respective zones, the procedure of revenue sharing, management of these activities, etc. are of particular importance.

<sup>2</sup> In order to resolve the above issues, the Russian Federation has concluded the following agreements: with the Republic of Azerbaijan on the Delimitation of the Adjacent Parts of the Seabed of the Caspian Sea in 2002 [1], with the Republic of Kazakhstan on the Delimitation of the Seabed of the Northern Part of the Caspian Sea for the Purpose of Exercising Sovereign Rights to Subsoil Management in 2003 [2], with the Republic of Lithuania on the Delimitation of the Exclusive Economic Zone and the Continental Shelf in the Baltic Sea in 2003 [3]; the Agreement between the Russian Federation and the Kingdom of Norway on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean in 2010 [4].

<sup>3</sup> In 2001, Russia and Azerbaijan signed the Joint Declaration on the Principles of Cooperation in the Caspian Sea, in which it was proposed to divide the seabed of the Caspian Sea between the respective bordering and opposite states into sectors on the basis of the median line method drawn taking into account the equal distance of points and modified by agreement of the Parties, as well as taking into account generally recognized principles of international law and established practice in the Caspian Sea. The Parties have agreed that each of the littoral states in the sector formed as a result of such division shall be considered to have exclusive rights over the mineral resources.

<sup>4</sup> Pursuant to the above-mentioned Joint Declaration, on September 23, 2002, the Russian Federation and the Republic of Azerbaijan signed the Agreement on the Delimitation of the Adjacent Parts of the Seabed of the Caspian Sea according to which the above-mentioned subjects agreed to exercise their sovereign rights to the development of the mineral resources and other lawful economic activities related to the use of the subsoil of the Caspian Sea bed within their respective sectors of the seabed up to the line of delimitation. According to Article 1 of the Agreement, the seabed and subsoil of Caspian Sea are delimited between the Parties on the basis of the median line, which is drawn taking into account the equidistance of points, as well as taking into account generally recognized principles of international law and established practice in the Caspian Sea. In the Agreement, the Parties established the geographical coordinates of the demarcation line of the adjacent sectors of the Caspian Sea seabed between the

Russian Federation and the Republic of Azerbaijan. The Agreement stipulates that the Parties shall exercise their sovereign rights over the mineral resources and other lawful economic activities related to the use of the subsoil on the seabed within their seabed sectors/zones up to the line of delimitation defined in Article 1. According to Article 2 of the Agreement, the mineral resources of the structures crossed by the line of delimitation shall be developed on the basis of international practices applied to the development of transboundary fields by authorized organizations designated by the Governments of the Parties. In pursuance of the Agreement, the Russian Government designated Lukoil Oil Company OJSC as the authorized organization on the Russian side. On the part of Azerbaijan, the authorized organization is State Oil Company of Azerbaijan Republic (SOCAR). The Government of the Russian Federation and the Government of Azerbaijan shall formalize the right to develop the mineral resources located on the specified territories for their authorized organizations. At the conclusion of this Agreement it was agreed that Russia and Azerbaijan in their activities will facilitate general agreement of the Caspian states on the delimitation of the Caspian Sea seabed taking into account the principles of this Agreement [5].

<sup>5</sup> In 2003, the Agreement between the Russian Federation and the Republic of Kazakhstan on the Delimitation of the Seabed of the Northern Part of the Caspian Sea for the Purpose of Exercising Sovereign Rights to Subsoil Management was concluded. The Agreement establishes the basic principles of cooperation between Russia and Kazakhstan in the development of hydrocarbon resources of the seabed of the northern part of the Caspian Sea with a view to creating favorable conditions for the above-mentioned states to exercise their sovereign rights in the Caspian Sea as well as regulating issues related to the effective use of the mineral resources of the seabed and subsoil of the northern part of the Caspian Sea. In accordance with Article 2 of the Agreement, the Parties shall exercise their sovereign rights to explore, develop, and manage the resources of the seabed and subsoil of the Northern Caspian Sea within their respective parts of the seabed up to the dividing line. The Parties shall have the exclusive right to jointly explore and develop prospective structures and fields if the modified median line passes through them. The participation of each Party shall be determined on the basis of established international practice, taking into account the good neighborly relations between the Parties.

<sup>6</sup> A Protocol to this Agreement was drawn up, according to which the key fields and structures located in the area of the modified median line should be developed as follows: Russia shall exercise its sovereign rights to subsoil use at the Khvalynskoye field and the Tsentralnaya oil-bearing structure, and Kazakhstan shall exercise its sovereign rights at the Kurmangazy (Kulalinskaya) structure. For the Kurmangazy and Tsentralnaya fields, the participation is split 50/50. At the same time, 25 % of the Russian participation in the Kurmangazy field and 25 % of the Kazakh participation in the Tsentralnaya field are reserved in the form of an option, the exercise of which by the Russian and Kazakh companies, respectively, is commercially linked to the discovery of the field. Participation in the Khvalynskoye field shall be as agreed between the Parties' business entities. Subsoil use in the Kurmangazy structure is subject to the laws of the Republic of Kazakhstan, in the Khvalynskoye field and the Tsentralnaya structure is subject to the laws of the Russian Federation. In accordance with Article 3 of the Agreement, a Party or its legal entities and individuals (hereinafter referred to as

representatives) that discovered a hydrocarbon field or identified geological structures promising for the accumulation of hydrocarbons in the northern part of the Caspian Sea in the area of the modified median line has the priority right to obtain a license for exploration and development with the mandatory involvement of representatives of the other Party before this median line is coordinated by the Parties [6].

<sup>7</sup> In case of joint development of the Khvalynskoye, Tsentralnaya, and Kurmangazy structures in accordance with the above-mentioned Protocol of May 13, 2002, the Parties shall take into account the following agreements. The boundaries of the license areas according to the licenses issued to the Parties and the contracts concluded (prior to the signing of the Protocol) shall be aligned with the modified median line of delimitation of the seabed of the northern part of the Caspian Sea as agreed in the Protocol. The authorized organizations of the Parties shall sign an agreement on the form of joint activities: consortium, commercial organization with foreign investment or any other form of joint activities, including the conditions of subsoil use. On the basis of the laws of the state exercising the sovereign rights to subsoil use, the Parties (i.e. Russia and Kazakhstan) may conclude production sharing agreements with the respective enterprise. At the same time, Russia retains the right to apply any subsoil use regime in force on its territory. With respect to Kurmangazy, Kazakhstan shall enter into a PSA in accordance with the Protocol. This agreement stipulates the right of the authorized organizations to assign their participation (or part thereof) to other legal entities with the consent of the Government of their country. In the event of such assignment, each authorized organization shall have a priority right to acquire a share in the organization assigning its share of participation on terms not less favorable than those offered to other legal entities. This priority right shall not apply, however, to an assignment to affiliates of an authorized organization made with the consent of the Government of its country. Authorized organizations which fail to fulfill their financial obligations under a joint activity agreement shall be deprived of a specified approved share of participation in favor of authorized organizations which fulfill their obligations in accordance with the terms of the agreement.

<sup>8</sup> In accordance with the above-mentioned agreements, Russia and Kazakhstan, as neighboring states, have designated authorized companies for the development of the Kurmangazy, Khvalynskoye and Tsentralnoye transboundary fields, which may form a consortium with the specified shares of participation. Only then a Production Sharing Agreement (PSA) will be signed with the consortium (for example, in the case of Kurmangazy) and, in the case of the Khvalynskoye and Tsentralnoye fields, a license will be issued, a PSA will be concluded, or the right to use the subsoil will be determined in accordance with other conditions established by the applicable Russian subsoil laws.

<sup>9</sup> In accordance with the Protocol to the Agreement between Russia and Kazakhstan, the Government of the Russian Federation has designated the following authorized Russian organizations: for the Khvalynskoye field: Lukoil Oil Company; for the Kurmangazy field: Rosneft Oil Company RN-Kazakhstan [7];

<sup>10</sup> - for the Tsentralnoye field - the rights of the authorized organization were transferred to TsentrCaspneftegaz, NC Lukoil, and Gazprom OJSC [8]. On the part of Kazakhstan, the authorized organization for the Khvalynskoye and Tsentralnoye fields is

NC KazMunayGas CJSC, and for Kurmangazy — KazMunayTeniz Offshore Oil Company JSC.

<sup>11</sup> The joint venture Caspian Oil and Gas Company LLC was established on a parity basis for the development of Khvalynskoye, as well as for the transportation and sale of hydrocarbons and their products by the authorized organizations of Russia and Kazakhstan. A 55-year Production Sharing Agreement for Kurmangazy was signed on July 6, 2005. Exploration and production in this field will be carried out on a parity basis by the authorized organizations of the two countries: KazMunayTeniz Offshore Oil Company JSC and RN-Kazakhstan LLC. At the same time, the above-mentioned companies signed an agreement on joint activities, which defines mutual rights and obligations in the implementation of the project. At the same time, oil operations under the project are carried out by the Kazakh operator — a company that is a 100 % subsidiary of KazMunayTeniz Offshore Oil Company JSC. In accordance with the agreement, the Parties have agreed as follows:

<sup>12</sup> - The seabed of the northern part of the Caspian Sea and its subsoil, while sharing the water surface, including ensuring the freedom of navigation, agreed standards of fishing and environmental protection, shall be delimited between the Parties along the median line. The modified median line shall be based on equidistance from the agreed baselines. It shall include areas that are not equidistant from the baselines and are determined taking into account islands, geological structures and other special circumstances and geological costs incurred. The course of the modified median line shall be determined by reference to the points on the coasts of the Parties, taking into account islands, based on the level of the Caspian Sea as of January 1, 1998, equal to minus 27 meters of the Baltic Height System (relative to the Kronstadt tide-gauge).

<sup>13</sup> - The Parties shall exercise their sovereign rights to explore, develop and manage the resources of the seabed and subsoil of the Northern Caspian Sea within their parts of the seabed up to the dividing line and shall have the exclusive right to jointly explore and develop prospective structures and fields if the modified median line passes through them. The shares of participation of each Party shall be determined on the basis of established international practice, taking into account the good neighborly relations between the Parties.

<sup>14</sup> - A Party, its legal entities and individuals who have discovered a hydrocarbon deposit or identified geological structures promising for the accumulation of hydrocarbons in the northern part of the Caspian Sea in the zone of the modified median line prior to its approval by the Parties shall have a priority right to obtain a license for exploration and development with the obligatory involvement of representatives of the other Party.

<sup>15</sup> The Agreement on Joint Activities is also intended to promote cooperation in the development of export pipelines, the use of river and other transportation routes, shipbuilding capacities and other areas. It obliges to protect and preserve the ecosystem of the Caspian Sea and all its components.

<sup>16</sup> At the same time, this Agreement does not affect the rights and obligations arising from international treaties and agreements, both bilateral and multilateral, concluded separately by each of the Parties.

<sup>17</sup> In the event of any dispute between the Parties over the interpretation or application of this Agreement, the Parties shall consult with each other with a view to resolving the dispute through negotiation or other peaceful means of their own choice.

<sup>18</sup> In 2003, the Russian Federation ratified the Agreement between the Russian Federation and the Republic of Lithuania on the Delimitation of the Exclusive Economic Zone and the Continental Shelf in the Baltic Sea. It should be noted that the procedure of interaction between Russia and Lithuania in the development of transboundary fields is defined in general terms in this Agreement, unlike the Agreement on the Caspian Sea. This Agreement does not provide for a joint structure for regulating the development of transboundary fields and appointment of authorized organizations. The Agreement stipulates that if the line of delimitation of the exclusive economic zone and the continental shelf passes through an oil and gas field, the Parties shall endeavor to reach an agreement to resolve any issues arising in connection with the possible development of such field in accordance with the generally recognized principles and rules of international law and with due regard for the rights of each Party to the Agreement to the natural resources of its exclusive economic zone and continental shelf.

<sup>19</sup> In 2010, the Russian Federation and the Kingdom of Norway concluded the Treaty Concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean. The purpose of the Treaty was to delimit the said maritime spaces and strengthen cooperation between the Parties in the Barents Sea and the Arctic Ocean. In this case, the delimitation lines were based on the provisions of the Convention on the Law of the Sea (Annex 11). According to the Treaty, each Party shall respect the established maritime delimitation line and shall not infringe the jurisdiction of the coastal state in the maritime areas beyond this line. In the area to the east of the maritime delimitation line, which is within 200 nautical miles from the baselines from which the breadth of the territorial sea of the Norwegian mainland is measured, but beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of the Russian Federation is measured (referred to as the Special Area), the Russian Federation may exercise its sovereign rights and jurisdiction arising from the jurisdiction in the Exclusive Economic Zone which Norway would otherwise be entitled to exercise under the Treaty. The exercise by the states of their sovereign rights or jurisdiction in the Special Area shall be based on the Treaty and formalized in the relevant regulations and maps.

<sup>20</sup> Thus, the analysis of the Agreements shows positive signs in defining the relations and forms of cooperation between the states in maritime delimitation and development of the maritime space. At the same time, one cannot help but notice the lack of uniformity and ambiguity in approaches to certain issues, such as the licensing procedure, forms of management and control, revenue sharing in the process of joint activities, etc. [9]. It seems that the relations in this area should be based on the general principles of international unitization, which require the generalization of the world practice in this field, the creation on this basis of the legal framework of unitization agreements both at the international and national level, contributing to the harmonization of interests of all participants of development, to the effective and efficient development of transboundary fields by the Parties and to the reduction of negative impact on the environment.

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## Abstract

In the modern period of formation of unitization legal system it is necessary to summarize the world experience of conclusion and use of unitization agreements in the development of hydrocarbon deposits, maritime spaces, their delimitation between neighboring and opposite states. This article reviews the peculiarities of the approach to the problems of determining the relations of cooperation of the Russian Federation with certain states in the delimitation and use of adjacent maritime spaces in order to use them effectively and efficiently and to avoid negative impact on the environment. Relations in this area should be based on general principles of international unitization, which requires generalization of world practice in this field, creation of the legal framework of unitization agreements on this basis both at the international and national level promoting the harmonization of interests of all participants in development, the development of transboundary fields in the most effective and efficient way, and the decrease of negative impact on the environment.

**Keywords:** energy law, unitization agreements, transboundary fields, development of adjacent maritime spaces

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