The Caspian Sea: A Special Regime for the Management of its Living and Non-living Resources?

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ABSTRACT

The dissolution of the Soviet Union in 1991 reshaped the strategic balance of the Caspian Sea region and produced a frustrating uncertainty among both old – the Russian Federation and Iran - and newly emerged Caspian states: Azerbaijan, Turkmenistan, and Kazakhstan. Each of them pursued its own economic and political preferences in order to maximize access to this unique water basin and its resources. This, however, remains problematic given the disputed legal situation of the Caspian Sea. The problem of applicability, or non-applicability, of the treaties concluded between the Soviet Union and Iran in the past, and the difficulties in formulating a common position among new Caspian states transformed the Caspian Sea into an area of volatile geopolitical disputes. The legal situation of the Caspian Sea is undoubtedly unique and its denomination as a "sea" does not really reflect its geographical features. Neither does its denomination as a 'lake'. The main purpose of this thesis is to explore the legal situation of the Caspian Sea, past, present and future, and to focus on the problem of the management, protection and conservation of its living and non-living resources. The starting point of this thesis is the observation that the legal situation of the Caspian Sea remains unclear and contentious. It is a significant problem for all littoral states and obstacle to successful and effective management of its rich living and non-living resources, especially hydrocarbons. It remains contentious in the literature as well where different models for the Caspian Sea have been formulated and different predictions concerning the prospect for a new comprehensive Caspian regime made.

Keywords: international law, the Caspian Sea, legal regimes

ÖZ

Sovyetler Birliğinin dağılması Hazar bölgesinin stratejik öneminin yeniden şekillendirilmesine ve yeni ortaya çıkan Azerbaycan, Türkmenistan ve Kazakistan gibi yeni kıyıdaş devletler arasında neticesiz bir çekişmenin yaranmasına sebebiyet vermiştir. Yeni ortaya çıkan kıyıdaş devletlerin her biri Hazar bölgesindeki canlı ve cansız kaynakların yönetimini manipüle etmek için kendi geliştirdikleri iktisadi ve siyasi yolu takip etmektetir. Sovyetler döneminde İranla her iki ülke arasında bağlanan anlaşmaların uygulanamazlılık hali, mevcut anlaşmaların ise eskimişliği, ayriyetten kıyıdaş devletlerin destekledikleri çeşitli yasal konumlar su havzasını jeopolitik oyunların çatışma noktasına çevirmiştir. "Deniz" kavramının diğer su kütle ve havzaları için her yerde mevcut olan coğrafi özelliklerini yansıtmaması gerçekten uyarılmıştır. Bu paradoksal kavramın yanı sıra, uluslararası akademisyenlerin merak odağı olan bir diğer konu bu vaka için hangi rejimin uygulana bilirliliğidir. Özellikle Hazar Denizinin yasal sınıflandırılması ne Birleşmiş Milletler Deniz Hukuku Sözleşmesinin hükümlerine ne de uluslararası su yollarını yöneten yasal rejimlerin kategorilerine uymaktadır. Peki o zaman, Hazar sularının idaresinde yeni bir rejime ihtiyaç var mı ? Tez boyunca hukuki bağlamda tartışılan bir diğer konu da geleneksel hukukun Hazar devletlerinin bağlaya bileceği herhangi bir anlaşmanın bütünleşmesine yardımcı olacak niteliğe sahip olması, ama aynı zamanda çatışan devletlerin güç politikalarını uzlaştırmak konusunda yetersiz kalması üzerinedir.

Anahtar kelimeler: uluslararası hukuk, Hazar Denizi, yasal rejimler

DEDICATION

To my lovely Mother, who has been a good listener, supporter, and advisor to me. I owe all of my successes and achievements to your endless efforts, love, and care. I am really thankful to you for not leaving me alone even in the darkest moments of my life.

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Chapter 1

INTRODUCTION

The Caspian Sea, the largest enclosed body of salt water, is in many respects unique. Its geopolitical, economic, environmental and legal characteristics make it a case in its own right[1]. It contains enormous oil and gas reserves, large scale fishing resources including 90% of the world's sturgeon stock, and constitutes a strategic route that bridges Europe and the Caucasian region with Central Asia (Zimnitskaya & von Geldern , Is the Caspian Sea a sea; and why does it matter?, 2011, pp. 1-5). Most importantly, however, it is the legal framework, its legal situation that has turned the Caspian Sea into the chessboard of multi-dimensional players and a subject of inconclusive academic debate.

1.1 Background

The end of the Cold War and the dissolution of the Soviet Union in 1991 opened a new chapter in the turbulent history of the Caspian Sea. Its situation became, even more than before, a subject of conflicting claims and counterclaims, inconclusive negotiations and debates involving 'old' and 'new' littoral states. In particular, the emergence of Azerbaijan, Kazakhstan and Turkmenistan as new and independent Caspian states placed the future of the Caspian Sea on the domestic and international agenda and added a new dimension to old problems concerning the

[1] On average, the Caspian Sea is longer than 1,200 km from north to south, and 300 km from east to west. Estimated surface area of the water is 436 square kilometers. See: (Chufrin, 2001, pp. 2-3)

delimitation of the Caspian Sea and the use of its living and non-living resources.

The phenomenal geopolitical and geostrategic features of the Caspian Sea have become disputed and debated again in recent years.

Unresolved disputes concerning the delimitation of the Caspian Sea, the establishment of a new regime to govern the exploration and exploitation of its resources, a number of legal issues, for instance the applicability of the international law of the sea and involvement of numerous private companies, organizations as well as non- littoral states seem to be the four main hurdles or problems that remain contentious and need to be addressed by the Caspian states. In reality, however, increasing level of political influences, shifting powers and mainly the participation of non-riparian actors make the resolution of those four items difficult and unpredictable (Kondaurova, 2008, pp. 78-80). It is very likely that all of them will remain disputed making the Caspian Sea a "disputed" Sea.

The problems facing the Caspian states today are not new. They are deeply rooted in the history of the region.

As it is known, the Caspian Sea was for more than 70 years a principal subject of the Soviet Union's relations with Iran. Indeed, today's experts, lawyers and political thinkers, take the treaties concluded between the Soviet Union and Iran as a necessary point of reference and some as a model for the solution of the legal problems. In reality, however, those treaties addressed the problems such as fishing and navigation but kept silent on the issue of the legal regime (Carlo Frappi, 2015, pp. 21-25). Of course, for those times, treating the Sea as a property of the two coastal states (the Soviet Union and Iran) locked up the possible ways to the third

party or, in other words, excluded other countries, especially capitalist ones, from having influence and participation in the management on this area.

Two major treaties concerning the situation of the Caspian Sea were concluded by the Soviet Union and Iran. The first, the Treaty of Friendship, was signed in 1921 and admitted to the Persian side (called Iran after 1935) some naval rights, which allowed it to exercise sovereignty over the free shipping and fishing (Volodarsky, 1994, pp. 33-39). The second, the Treaty of Commerce and Navigation was signed in 1940 with the aim of prohibiting any third state to have access to the Caspian Sea water basin. Even individuals, citizens of third states, were not able to become the Caspian board members (Wouters, 1995, pp. 604-607). Another key point included in this treaty was the determination of exclusive fishing rights in the 10-mile zones. However, from today's perspective, in the final account, both treaties gave to the Persian/Iranian side an opportunity to increase its marine rights and to amend its previously disadvantaged position. In any case, the Caspian Sea reality forced both parties to negotiate with the intention of increasing security and cooperation.

Both treaties granted equal treatment to the two parties, access to the Caspian water basin and exercise of their sovereign rights over maritime matters. Nonetheless, their success was limited to the above-mentioned issues of commercial intercourses, naval as well as fishery rights, because the material interests of Iran and the Soviet Union to get access to the exploitation of non-living resources, such as oil and gas, had not been taken into consideration. In other words, the two Treaties did not provide a reliable solution to the question of the legal situation of the Caspian Sea and exploitation of the Caspian Sea resources. Nevertheless, the regime established by the two treaties survived for many decades (Darabadi, 2010, pp. 1-4). By the

assistance of existing Soviet-Iranian treaties and bilateral agreements, this thesis will not only analyze the context of documents by historical reasons, but also focus on the law perspectives to determine available options for current coastal states. For several historical and political purposes, existing Soviet-Iranian treaties illustrate closed body of water as the special property of two coastal states treating it as "Iranian-Soviet Sea". The question is derived from this treatment has been raised several times about how properly to delimitate boundaries among littoral states, whereas has not been answered yet. Boundary debate of Caspian seabed and totally maritime spaces have been the consequences of Iran-Soviet treaties which unreliably referred to the establishment of "condominium" regime (Mamedov, 2001, pp. 228-233).

The dissolution of the Soviet Union brought an end to the supremacy of the Soviet-Iranian alliance and the Caspian 'condominium' regime, hence, raised the question of the validity of previous treaties in new circumstances (Mamedov, 2001, pp. 228-230).With the emergence of new littoral states, Kazakhstan, Turkmenistan and Azerbaijan, the principle of state succession affected and changed the paths of negotiations among Caspian littoral states.

The analysis of the two Soviet-Iranian treaties will help this thesis not only to explain the historical context but also to focus on the options current Caspian coastal states have in regulating its legal situation. The departure from the treatment of the Caspian Sea as a closed body of water divided between the Soviet Union and Iran and being treated as some sort of 'property' of the two states, was, by all means natural. The legacy of the Soviet-Iranian treaties, however, must not be forgotten. In the ongoing academic debate concerning the delimitation of the Caspian boundaries and the

recognition of the Caspian Sea as a ‘closed’ sea, references to those two treaties continue to be used.

Following the historical background of the Caspian Sea disputed status; this thesis will consider the changed political atmosphere in the 1990s and focus on the emergence of new, independent states that have become integral parts of the Caspian chessboard. Consequently, it is worth taking an account of new initiatives including all five Caspian states. One of the most promising is, perhaps, the draft convention on the legal status of the Caspian Sea adopted by foreign ministers of five coastal states (Russia, Iran, Turkmenistan, Kazakhstan, and Azerbaijan) in 1995 in Almaty.

It is, in fact, framework agreement establishing a mechanism for further negotiations. It reflects a consensus concerning some basic principles, such as possible application of public international law to the Caspian case. The final approval of the convention, however, remains uncertain and cannot be expected in the foreseeable future. The works on its text have been conducted for over 20 years and remain at the stage of negotiations. One area of contention remains the question of state succession after the dissolution of the Soviet Union, in particular, state succession with respect to international treaties the Soviet Union was a party to, including its treaties with Iran concerning the situation of the Caspian Sea (Darabadi, 2010, pp. 2-5).

The document, despite all controverses, seems to be very important. It brought together, for the first time, all Caspian states and succeeded in formulating certain common principles. It, for instance, distinguishes between the ***legal status*** and the ***legal regime*** of the Caspian Sea and opens the door for the recognition of international maritime standards. The Caspian states have never attempted these

before. It may offer a platform for the settlement of disputes concerning, for example, the delimitation of maritime areas, the delimitation of the national seabed sectors or disputes concerning environmental conservation (Eichelberger, Wilkes , Zobel, Butler, & Quigley, 1969, pp. 447-455). However, the efforts of all five littoral states to achieve a continuous peace and stability in the region are still blocked by the drawbacks, which prevent parties from reaching an agreement. All these make the case of the Caspian Sea both important and interesting case to study.

1.2 Significance of the Study

The starting point of this thesis is the observation that the legal situation of the Caspian Sea remains unclear and contentious. It is a significant problem for all littoral states and obstacle to successful and effective management of its rich living and non-living resources, especially hydrocarbons. It remains contentious in the literature as well where different models for the Caspian Sea have been formulated and different predictions concerning the prospect for a new comprehensive Caspian regime made.

It is important to re-visit the Caspian Sea case and to address, or re-address problems related to its legal situation for at least three reasons. First, it is necessary to move beyond the traditional rhetoric that focuses on the past regulations – the two treaties concluded between the Soviet Union and Iran in 1921 and 1940. The end of the Cold War and the creation of three new Caspian states have dramatically challenged the old regime and opened the door to new ideas and solutions (Dubner, 2000, pp. 56-58). New developments such as lifting sanctions imposed on Iran need to be taken into consideration as well.

Second, yet, another reason to deal with the Caspian Sea case is to powerfully underline the importance of ecological and environmental matters which are far too often either totally neglected or receive little attention. The question of ruinous developments in the field of oil and gas industry and fisheries, reported by the Caspian Environment Program, that threaten the Caspian Sea biodiversity must receive more prominence. (Nouri, Karbassi, & Mirkia, 2008, pp. 44-49) If the responsible parties do not take proper measures to reduce the level of sea and land based pollution, so probably the future of the Caspian Sea will be at stake. Indifference of the coastal states has already resulted in practically uncontrollable use of the resources. Predictions of hydrometer experts warn about the gradually increasing level of water that has started in the 1970s and is going to inundate dozens of inhabited lands in the next 25 years (Afshar, 2004, pp. 56-58).

Third, it is essential to properly identify the contentious issues that divide the three new Caspian states – Azerbaijan, Kazakhstan and Turkmenistan to allow their effective settlement. Their positions vary as far as the principles of delimitation – the use of the median line -of the Caspian Sea is concerned and differently shapes their relations with the Russian Federation. Their inability to act with one voice is a major drawback that has transformed the Caspian Sea into an area of failed initiatives and ineffective legal frameworks.

Finally, examining possible scenarios for the settlement of disputes related to the legal situation of the Caspian Sea, this thesis will offer a future oriented analysis of the most acute problems facing the Caspian littoral states and suggest principles and an integrated course of action that may help to solve them. The thesis intends to stay at the heart of the problem. It is important to realize that no solution can be found

without taking into consideration the interests of all littoral states, old and new, and without their consensus, if not unanimity, at least to the main principles.

1.1 Research Questions

The main purpose of this thesis is to explore the legal situation of the Caspian Sea, past, present and future, and to focus on the problem of the management, protection and conservation of its living and non-living resources. Consequently, its main research question that is about law which governs, or should govern, the Caspian Sea and options the Caspian states have in this respect. The determination of applicable law leads to a further question concerning the prospect of an effective legal regime for the protection of the Caspian Sea environment and resources. Characteristic of this thesis is streamed out the ideas of establishing new, specific kind of regime for the Sea with the purpose of covering main maritime problems as conservation, protection, and exploitation of water and land-based resources.

A number of subsidiary questions will be addressed as well concerning, *inter alia*, the legacy of agreements between the Soviet Union and Iran and their applicability to the new Caspian states; the question of the applicability of the 1982 United Convention on the Law of the Sea concerning enclosed seas and other matters; the question of how should the waters and the seabed of the Caspian Sea be divided and delimited; what exactly are the rights and duties of the Caspian states with respect to the protection of the Caspian Sea's environment and conservation of its both living and non-living resources. The thesis will also identify the differences between the Caspian states and obstacles that prevent them from concluding urgently needed comprehensive agreement concerning its maritime environment and resources.

The thesis is meant to be as comprehensive as possible in dealing with the legal situation of the Caspian Sea. At the same time, however, it has to acknowledge that the legal problems do not exist in isolation and must not be disentangled from the history of the Caspian states, their mutual relations, especially after the dissolution of the Soviet Union and particular interests originating from their often divergent, foreign policies and political systems. An effective, comprehensive - covering main maritime problems as conservation, protection, and exploitation of water and land-based resources - and manageable regime of the Caspian Sea should in any case be in the interest of them all.

1.3 Methodology and Theoretical Framework

Data necessary to address research questions will be collected from different sources, both primary and secondary. It will, in the first place, include a thorough content analysis of relevant legal documents, primarily international treaties and legislative acts of the Caspian states. A comprehensive review of the literature is undertaken to show the origin of the problem and its relevance. For the same reason, a short historical analysis will be carried out focusing on developments preceding the dissolution of the Soviet Union as well as context analysis to explain the circumstances that guided the Caspian states in the past and guide them at present.

The conceptual framework of this thesis will draw from different approaches. In the first place, in chapter 3, it will use the traditional legal positivist techniques in order to determine and describe the Caspian law as it is. Different methods of interpretation – literal, contextual, purposive – will be used in this part. It will primarily focus on states – the Caspian states. In dealing with the change, and its political context, the thesis will adopt the elements of the policy oriented

jurisprudence and international legal process focusing on authoritative decision being taken by different Caspian states.

More specifically, the thesis will be organized with reference to the concept of the legal regime and the concept of the legal status. The former dealing with the areas and sectors attributed to sovereign states; the latter, will take account of all rights and obligations of states in order to use as well as to control those areas (Zimnitskaya & von Geldern, 2011, pp. 2-5).

Other legal concepts that will help to address the main and supplementary research questions include the concept of the closed sea, originating from the United National Convention on the Law of the Sea and the concept of international lake (with the absence of any international convention, referring to the international customary rules) (Eichelberger, Wilkes , Zobel, Butler, & Quigley, 1969, pp. 448-453). It may be noted here that the concept of international lake is not well established and finds relatively little attention in literature. Finally, the Law of the Sea Convention will help to introduce to the Caspian Sea context the concepts of marine resource management and marine environmental protection (chapter 4).

1.4 Thesis Structure

The thesis is divided into five chapters. The first chapter begins with a short explanation of the background and significance of this thesis and continues with the presentation of its research questions – main as well as supplementary – methodology, conceptual framework and thesis structure.

Chapter two provides a comprehensive literature review focusing on two major debates – one, concerning the legal nature of the Caspian Sea and its particular

denomination as either sea or lake, and the other one focusing on the future of the Caspian Sea law.

The third chapter will address the main research question – it will identify law applicable to the Caspian Sea case. It will do it in four stages. First, it will offer a short historical analysis of the events that shaped and influenced the development of the legal situation of the Caspian Sea. Second, it will identify and thoroughly interpret international treaties in one way or another related to the Caspian Sea. Third, it will construct a legal regime that applies to the Caspian Sea case today and finally, it will provide conclusions concerning applicable law.

Chapter 4 will address the other research question – the one concerning the prospect of developing a comprehensive, accepted by all Caspian states, regime for the management of the Caspian Sea resources, living and non-living and its environmental protection.

The last chapter, chapter 5, will offer a number of general conclusions. It will include a number of suggestions and proposals for the establishment of a workable, mutually accepted legal regime. It will consider the probability of acceptance of different legal models e.g. a condominium model, an international lake model or a closed sea model. Also, the final chapter will review previously analyzed views, commentaries about the possibility of establishing a new regime, considering the provisions of the Almaty Draft Convention on the Caspian Sea legal status. Concluding remarks summarize and assess the outcome of the previous meetings of littoral states and emphasize the importance of their next meeting in Kazakhstan in 2018.

Chapter 2

LITERATURE REVIEW

The status of the Caspian Sea in international law and domestic laws of its littoral states remains highly debatable. This chapter provides a critical analysis of the literature concerning the denomination of the Caspian Sea as a sea or a lake and three models of the settlement of this problem advocated by different writers. Secondly, a debate concerning the future of this basin is briefly recapitulated.

2.1 Is the Caspian Sea a Sea or a Lake? The Debate over the Status of the Caspian Sea

It is quite obvious that during existence of the Soviet Union the problem of the legal status of the Sea was not so critical because its waters were effectively divided between two countries: USSR and Iran. With the appearance of newly independent states, the process became gradually hard to resolve. The problems relating to fishing, exploitation of non-living and living resources and the exploration of the water basin acquired a new significance. As it is known from the history, at the beginning of the 1990s, the dissolution of the Soviet Union and the changed patterns of bipolar system paved the way to either reappearance of old problems or appearance of new contentions in the newly reshaped international relations (Carlo Frappi, 2015, pp. 27-33). The fundamentally affected the circumstances of the Caspian basin as well.

Indeed, for many scholars, this region has become an area of a new struggle often described as a new "*Great game*". Respectively, the Caspian region with its re-

shaped boundaries has been transformed into one of the most turbulent areas in the world. As Witt Raczka noted, dissolution of USSR not only brought the changes to the situation of the Caspian Sea, but also transformed relict, commonly regulated Iran-Soviet Lake into the littoral open sea (Raczka, 2000, pp. 196-198).

Raczka is the one of those scholars who argues that taking into consideration unique geographical features (water salinity, fauna, flora and etc.) of the Caspian Sea, this marine basin should be labeled as a "Sea".

However, referring to the multilateral debate, Raczka evaluates the distinct attitudes of littoral states as the results of new economic interests. Besides consensus about exploitation of oil and gas resources, other issues such as navigation and ecological problems have been downgraded to secondary importance. Most writers are primarily concerned with the problem of dividing natural resources and changed circumstances in the region of the "Caspian dispute". As a matter of the fact, it could be seen that notional categorization of the Caspian basin and its classification as this or that particular regime is no longer vital (Raczka, 2000, pp. 189-193).

Through analyzing different approaches of littoral states, Raczka argues that three scenarios could be considered as possible solutions in the Caspian dispute in the near future:

- Convincing other littoral states to accept the model of the *Russo-Kazakh bilateral agreement* of July 1998, which this model introduces a half-condominium regime with the division of the seabed, and the surface water mass between state parties.

On the positive side, that offer brought about a coalition of northern partners in the Caspian Sea and resulted in the adoption of several declarations and communiqués such as Azerbaijani-Russian (January 2001) or Azerbaijani–Kazakh (November 2001). The 1998 historical document, the Russo-Kazakh agreement is often described as 'historic' since it was first international legal document that declared the end of common use of the notion "The Caspian Sea".

While reaching a consensus about the division of the seabed with the implementation of the single median line, northern partners or, in other words, northern neighbors of the Caspian Sea- Azerbaijan, Kazakhstan and Russia- planned to keep govern the surface of the water and mass jointly (Raczka, 2000, pp. 198-212). On the negative side, the Russo-Kazakh agreement lead to the polarization among Caspian states and their division into two categories: Northern states- having a consensus about dividing the seabed and southern states- Iran and Turkmenistan- which did not agree with the method of delimitation.

It could be seen that Russo-Kazakh agreement appears as settlement for the northern neighbors in order to utilize non-living resources, significantly hydrocarbon reserves. Respectively, officials of those countries announced northern parts of the Caspian to be fully opened to third parties for business management and foreign investment. Analyzing the current geopolitical as well as the political atmosphere in the region, Raczka comes to the conclusion that the probability of the acceptance of the first scenario and the extension of the Russo-Kazakh agreement towards the southern partners is weak.

- The second scenario identified by Raczka seems to him more probable. However it does requires a compromise and a number of concessions among

southern and northern neighbors. The essence of this scenario is the establishment, by agreement of a stable 'dual regime' by all littoral states and the division of the Caspian Sea into national sectors (Raczka, 2000, pp. 198-211). In this case, Raczka too refers to the *temporal validity* of the bilateral Russo-Kazakh agreement which is not able to manage the ecological and,-commercial problems anymore. Undeniably, this scenario would best suit the long-standing interests of the Azerbaijani side who advocated the delimitation of the Sea with dividing into district national sectors. If Azerbaijan accepts a compromise with its southern partners in concerning for instance, median-line based division it would very likely become a conclusion with the government of Turkmenistan. On the other hand, there is also a positive change on the Iranian side, following the lifting economic sanctions by the EU (the solution advocated by Iran included equal 20% share for each Caspian state). In any case, this scenario would lead to the total division of the Sea.

- Raczka's worst scenario case is the maintenance of *no-solution* regime, in other words, no consensus about the delimitation of the Caspian Sea. No-solution regime could only bring new series of conflicts, disagreements and several new claims. The proliferation of new conflicts could create a turbulent atmosphere in the ongoing dispute. Surely, this scenario would be played by the third countries (US, EU, China, Turkey) which are indeed not Caspian states and have commercial interests in the area (Raczka, 2000, pp. 212-218).

It is important to note that the situation of the Caspian Sea attracted attention of writers not only from the Caspian states but also from third or non-regional countries. Yusin Lee is one of those researchers who has looked into questions related to the Caspian case in a couple of articles such as *"Toward a New*

International Regime for the Caspian Sea" or *"Policies of five Caspian coastal states: Do concerns about relative gains play any role?"*. Lee argues that the determination of the status or regime in this case is not as easy as it seems to be. In fact, in both cases- the defining of the status of "sea" or status of "lake" – legal problems of littoral states would be likely as unsettled and unresolved (Lee, 2005, pp. 38-42).

Two of those highly debated problems are the definition of the Caspian as a "lake" and leaving a number controversial issue to the management of the littoral states without referring to any internationally accepted practices. With this respect, it should be mentioned that unlike conventional rules of law that regulate enclosed or semi-closed seas, there is no universally accepted document, charter, declaration or accord addressing all kinds of activities in the *"lake"* cases (Lee, 2004, pp. 99-104).

On the other hand, the situation of lakes, as internal water sources is regulated by the specific agreements concluded between two or more boundary states. Some writers, for instance, Thane Gustafson argues that lakes and internal seas could not be subjects of intervention and notions like joint sovereignty make no sense in such cases (Gustafson, 2012, pp. 66-75).

On another point, Lee focused on a number of cases in which two or more littoral states came to an agreement and concluded specific treaties concerning the situation of water basins. Examples of Lake *Victoria* (Eastern Africa, demarcated by Uganda, Tanzania, and Kenya), Lake *Malawi* (South-Eastern Africa, demarcated by Mozambique and Malawi), Lake *Chad* (Western Africa, demarcated by Niger, Chad and Nigeria), and Lake *Constance* (Central Europe, demarcated by Germany,

Switzerland, and Austria) are worth mentioning. Yet another example and precedent of regulation is the *Great Lakes* demarcated by Canada and USA (Lee, 2005, pp. 40-42).

Another model for a long-lasting regulation of the situation of the Caspian Sea is 1982 United Nations Convention on Law of the Sea. In this case the position of the Caspian Sea is understood to be a *"sea"*, the Convention must be recognized legal basis defining morality, activities and other rights of the littoral states. This model requires the Caspian states to give consent to the Law of the Sea Convention. Unfortunately, not all littoral states have either signed, ratified or acceded to the Convention on Law of the Sea, or agreed to implement the relevant provisions of the Convention (Oceans & Law of the Sea United Nations, 2017, pp. 44-48). As the Convention on the Law of the Sea must be implemented only by the states which are officially and legally parties to this document the application of the Convention in the case of Caspian is still questionable and leaves the dispute unresolved.

In contrast to the above-mentioned models, Dr. Sergei Vinogradov, whose main field of expertise is international regulation of natural resources and the law of the seas, argues that the unique characteristics of the Caspian Sea requires more certain, specific and distinctive approach. This argument is derived from the fact that, bilateral agreements between Iran and the Soviet Union are no longer able to manage the current situatio (Vinogradov & Wouters, 1995, pp. 604-612). Putting this statement in another way, the ongoing problems of the Caspian Sea which is related to the littoral states commercial, political and geostrategic interests could no longer be dealt with the present regime.

Theoretically, a new regime of comprehensive character is needed to all the parties involved to the final decision over coherent and balanced utilization of the Caspian resources. Vinogradov surely considers, unilateral claims made by littoral states over the past twenty years inadmissible constructive and practical. On one hand, he rejects in the validity of solutions which in favor dividing the sea either totally or into national sectors. Explaining the current atmosphere in the region, further application of the *condominium* regime is not acceptable even in the sense of dominium too (Vinogradov & Wouters, 1995, pp. 604-618). Specifically, the internationally regulated special legal regime is able to not only cover common interests of littoral states on the issue of exploitation of resources, but also to deal with the exclusive sovereignty rights and transform the ongoing regional custom of resource management. In Vinogradov's view, the establishment of a new regime has to be reached only by the consensual approaches of each littoral state.

This view is complemented Mirfendereski one of the authors of "The diplomatic history of the Caspian Sea", and a number of articles concerning historical aspects of the Caspian dispute. Mirfendereski is one of those academians who advocate the joined action plan and concluding of a multilateral, convention by all littoral states which will cover not only the legal status of the Caspian itself and its water basin, but also negotiations on the delimitation method (Mirfendereski, 2001, pp. 188-204).

2.2 The Future of the Caspian Sea Debate

Another issue debated in the literature is the future of the Caspian Sea. Many predictions have been already made some of which come from the officials of the Caspian littoral states. One of them is Yolbars A. Kepbanov, Turkmenistan foreign minister. In an article that published in 1997, in the Journal of International Affairs,

he highlights solutions over Caspian legal status, the importance of regional cooperation and finally preparation for the final international document concerning the Caspian Sea (Kepbanov, 1997, pp. 1-5). For the sake of regional balance, he advises decreasing the chances of foreign involvement, in other words, influence of non-Caspian states in the process. Certainly, he noted it is in the interests of eliminating distrust and divergences among littoral states, and maximizing their collaboration if the influence of the third parties in the field of fishing, access to non-living resources, especially reaching hydrocarbons is reduced. It would, he claims, enhance the chances for an agreement (Kepbanov, 1997, pp. 1-5).

Kepbanov advocates a united approach to the establishment of the new regime for the Caspian Sea rather than unilateral actions. Paradoxically, the legal framework for reestablishing a new regime could be based on the unanimity of the Caspian states to choose the maintenance of the status-*quo.* Putting it differently, the probable solution includes respect to the current administrative borders of littoral states and the implementation of the rules of the Helsinki accords relating to the determination of territorial integrity (Kepbanov, 1997, pp. 4-5). Indeed, the median line based on the past practice should be considered as the legal framework dividing Caspian states Azerbaijan, Kazakhstan, and Turkmenistan when they were under control of the Soviet Union. Taking into consideration of the Helsinki accords, Kepbanov submits that administrative borders approved and administered by former Soviet socialist republics could be taken as a legal basis for identification of water borders in south, west, and north of the Caspian Sea (Kepbanov, 1997, pp. 3-5).

On yet another point, there is still some kind of positive attitude exhibited by some of the Caspian States such as Azerbaijan supporting international agreements, in the first place the UN Convention on the Law of the Sea. Ganjaliyev, for instance is one of the writers who understand the importance of UNCLOS and its provisions the Caspian Sea and its legal status (Ganjaliyev, 2012, pp. 22-36).

For Ganjaliyev the difficulties concerning the application of UNCLOS to the case of the Caspian Sea stem not only from its geographical features, mentioned but not fully addressed by the Convention, but also from the limited acceptance of the Convention by the Caspian littoral states. For many years Russia was the only Caspian state that signed and ratified the Convention, including its Part IX dealing with enclosed and semi-enclosed seas. Iran has signed but never ratified the Convention. Azerbaijan has recently, in 2016, acceded to the Convention (Azerbaijan joins on more UN Convention, 2016). Unfortunately, Kazakhstan and Turkmenistan have never intended to become parties of the Law of the Sea Convention.

Referring to the provisions of the Law of the Sea Convention, Ganjaliyev points out that consideration of water body as a sea or a lake is not merely connected to its size, rather its connection to the open seas, especially to oceans. Highlighting the fact the Caspian Sea does not have any direct, salty connection to the oceans (despite of its connection through artificial canals) the Caspian Sea is far from being recognized as a "sea" at that moment. In such a case, international law could be replaced by the administrative maritime law, in the determination the legal status of the Caspian reservoir. Ganjaliyev makes this observation that littoral states have in fact informally to recognize the legal status of the Caspian reservoir as a *"lake"* when they started calling it as *"internal affair of five littoral states"*. That would place it

under the framework of maritime law (Ganjaliyev, 2012, pp. 39-47). However there is still hope that the legal regime of the Caspian Sea could be guided by general international practice and consequently customary law.

Nonetheless, no primary sources and past state practice are able to guide with the delimitation of the Caspian boundaries in the situation of non-consensus and unilateral decisions taken. As a result of this the delimitation of the international lakes is falling under the control of the state's sovereignty with the support of clearly concluded bilateral agreements. Under those agreements, states possess absolute sovereign rights to control and use different areas and carry out all sorts of activities in their national sectors. Bilateral agreements serve as legal base, giving authority to the exploitation of living and non-living resources. The legal instrument used for the purposes of delimitation of national sectors is predominantly, the median line (Ganjaliyev, 2012, pp. 74-78).

Concerning the application of this median line Ganjaliyev submits that it could be applied as a delimitation method in the southern part of the Caspian Sea as well, the Iranian side changed its unilateral and isolated stance based on the Soviet-Iranian agreements. Ganjaliyev has also suggested reviewing provisions of the old Soviet type treaties which were not concerned with the exploitation and ownership of the living as well as non-living resources (Ganjaliyev, 2012, pp. 74-78).

The Iranian position is best explained by Aghai. In contrast to Genjaliyev 'joint action plan', Aghai is in favour of non-divisional regime for the management of the Caspian water basin and using the Caspian Sea and its resources as a 'common property'. His argument is heavily based on treaties concluded by Iran with the

Soviet Union. He rejects the idea that the legal situation of the Caspian Sea should remain solely in the hands of individual littoral states. Instead, Aghai offers a solution based on joint ownership of all non-living and living resources (Aghai-Diba, 2003, pp. 50-55).

As it was mentioned before, Aghai consistently argues for the continuation of the legal regime established between Iran and the Soviet Union. He is of the opinion this regime must not be violated by the emergence of newly independent Caspian states. The provisions of the Soviet – Iranian treaties should be respected and applied with identical commitments by Azerbaijan, Kazakhstan, and Turkmenistan in the same manner the Russian Federation succeeded to obligations of the Soviet Union by, for instance, taking its seat in the United Nations or accepting the liability for the Soviet debt. It would enable the continuation of regulations contained in the 1921 and 1940 treaties. (Aghai-Diba, 2003, pp. 55-67). So, as a matter of fact, the previous, "condominium" regime could continue to govern the Caspian Sea.

Finally, Aghai explains his idea with reference to the Roman law. For instance, the Caspian Sea could not be considered "***res-nullis"***, a specifically ownerless property belonging to nobody and subject to specific dominion belonging to whoever discovered it first.

Going further, he is tries to highlight yet another misinterpretation of the legal regime allegedly justified after the demise of the Soviet Union. The ***"clasula rebus sic santibus"*** is not, in his opinion, applicable to the situation of the Caspian Sea either. Surely, some scholars argue that the dissolution of the Soviet Union and the emergence of a number of new, independent Caspian states could be considered as a

fundamental change of circumstances and justify the amendments to the regime of the Caspian Sea. Aghai, however, claims that this is unacceptable since it would violate the principle of ***pacta sunt servanda*** which obliges states to follow their obligations from international treaties. Moreover, even if the argument of the fundamental change of circumstances be, somehow, justified, it is ineffective because the 1921 and 1940 Treaties were, in fact, border, territorial agreements and as such are not subject to change. (Aghai-Diba, 2003, pp. 60-67)**.**

This short literature review very clearly reveals the differences of opinion concerning the legal situation of the Caspian Sea at present as well as differences of opinion concerning what model should apply, or is likely to apply, to the Caspian Sea in the future. It seems to be a useful step before the determination of applicable law in the next chapter.

Chapter 3

THE LEGAL STATUS OF THE CASPIAN SEA

The main purpose of this chapter is to determine what law does and will in the future govern the legal status of the Caspian Sea. At first, however, it will explore the legacy of various bilateral agreements concerning the situation of the Caspian Sea concluded between the Russian Empire and Persia.

3.1 Historical Overview

The historical development of the legal status of the Caspian Sea is not ultimately linked to its original name. At the end of the day, the oldest version of this name could not cover the nature of the disputed water body. The origin of the name "Caspian" dates back to the first inhabitation of the tribes of "Caspian" in the west coast of the Caspian Sea. However, there are approximately 40 others, earlier and later designations. Most of them were closely related to the ethnic background of the inhabitants and conquerors. In Russian, it was also called Hvalinsk Sea and in Persian Khazar Sea. Other names made references to nearby, coastal cities, ports and states, for instance, it had been called the Baku Sea or the Abaskun Sea (Zimnitskaya & von Geldern, 2011, pp. 2-6).

It is important to note that most of the names used referred to the Caspian as a sea without reference to its legal situation. Historical references could be found in the early works of some ancient scientists, travelers and geographers as Miletus, Eratosthenes, and Herodotus referred to the sea like an ocean bay, or else described it as a closed basin that differs from today's status (Frappi & Garibov, 2015, pp. 44-

49). Designated versions were based on the merely geopolitical and geographical conditions, rather than on the legal framework. Nevertheless, the non-legal significance of the water body had reached its first clarity under struggle between Persia and Russian Empires. Outcomes of this struggle are the treaties, protocols, agreements and diplomatic exchanged notes that were concluded bilaterally between two estates and still survive until today as the first reference of the Caspian's legal status.

Interestingly, the provisions of those agreements that are still considered as being in force could not be avoided from omissions. Besides obsolete part of the provisions, those principles, derived from the regional customary law with the intention of managing the Caspian basin, still is not able to clarify the applicable branch of the law. Devoid of giving a clear comprehension of the legal status of the Caspian Sea, conditional agreements that were concluded between Russian and Persian Empires, afterward Soviet Union and Iran may not deal with the hybrid of political, economic and legal problems anymore. Even this problem should be taken as an essential reason for introducing new series of rules and provisions with respect to governing today's Caspian legal problems.

However, another step that had been taken in the way of controlling the Caspian Sea was the further defeats of Persians against Russian conquests. That's why Golestan (October 12, 1813) and Turkmonchai (February 28, 1828) agreements had been seen as solidification of the Russians.

3.2 The Treaties

It is important to realize that the governance of the regime of the Caspian Sea had a principal diplomatic as well as geostrategic importance for the relations between the Kingdom of Persia and the Russian Empire (after 1921 the Soviet Union). When it comes to the subject of bilateral relations, the Caspian Sea remained under control of the two parties and its situation was regulated by a chain of bilateral treaties and agreements between them. (Mirfendereski, 2001, pp. 76-77).

The intentions of Russian Empire governed by tsarist regime driving territorial limits along Caspian coast has been raised up at the early beginning of the 19th century. Interminable and endless wars brought about the end of the Persian Kingdom, while Russian Empire constantly continued to be predominant in the Caucuses with the aim of extending its boundaries too far, to southward. The subsequent defeat of the Persian Kingdom ended with the concluding two main treaties which defined the border limits with Russians and established management of naval rights in the Caspian Sea (Afshar, 2004, pp. 757-763). Conversely, the signed treaties which are considered as the basis of the present debate of the Caspian regime remained silent about the application of any international law to the Caspian Sea, and mostly focused on the issue of navigation, trade, fishing sectors of the interests between them.

One fact must be remembered, that after Catherina I death, weakened the Russian tsarist regime started to use the treaty law in order to maintain stability in the Caucasus, whereat extend their territorial limits along the Caspian coastline. This was the kind of political maneuver based on buying temporary time to solve the internal struggle for a crown. One of these treaties concluded with the aim of legitimizing territorial claims of the Russian Empire was a treaty of Rasht. Treaty of

Rasht (1732) is also known as the friendship treaty that did not mention the Persian hegemony over any part of the Caspian Sea (Romano C. P., 2000, pp. 47-54).

The unclear explanation of terms still puts this type of agreements in questionable terms. Article 8 is a more excellent example of the unclear and unwarranted terms used in the Rasht Treaty where article did not obviously address the questions of trade between parties. Avoiding previous disputed issues and problematic territorial questions, indeed, the treaty gave recognition of trade partnership, whereas the term of "by land or by water" remained unclear. One of the popular estimation among scholars is the relevance between the term of "water" and the other rivers (including the Caspian Sea) linking somehow Persians and Russians.

Russians have had hegemony in the region and it subjected the Sea to their area of influence. Putting it in a different way, having privileged rights had belonged to the Russian side which as against the Persians in the sphere of navigation, commerce and military navy. Elements of those above-mentioned treaties have not only defined legal regime over the Caspian Sea but also been considered first legal documents in the historical development of the Caspian status. Both of those treaties have been in force until the collapse of the Russian tsarist regime and replaced with others during the existence of Soviet Union (Bantekas, 2011, pp. 49-54).

Intending not to skip this part, I would like to go into details and try to highlight provisions of those agreements, the consequences of them to both parties and giving final analysis about a role of Golestan and Turkmanchai treaties in the process of formation of further conventions, and agreements (here is namely, the Treaty of Friendship 1921, and the Treaty of Commerce and Navigation, 1940).

Being known as the treaty of peace and perpetual friendship, Golestan established a general rule of navigation in the Caspian Sea. Regarding the equal arrangement of treaty provisions, both sides had got a right to navigate by merchant's vessels as they used to do previously in the cities or lands of the Caspian coast. Provided with the right of commercial navigation (civil navigation is also included) on the Caspian waters, unfortunately, Persian side was banned from keeping its warships in the Caspian Sea (Mirfendereski, 2001, pp. 92-104). Indeed, Article 5 makes it clear that having the exclusive right of sailing warships in the Caspian sea shall always belong to the Russians, no side or in other words, no power else.

Following with Turkmanchai treaty, the general rule of reciprocal navigation had been kept in the signing processes of this agreement, whereas the right of deploying the military naval belonged only to the Russian side. Article 8 of Turkmanchai treaty in some way, solidified the privileged rights that were accorded to the Russians. Besides ensuring the rights to sail and deploy flotillas, Article 8 also provided the tsarist regime to reserve this concession until today (Mamedov, 2001, pp. 228-234). For this reason, except Russian Federation, none of the other coastal states does have this kind of right to keep military navy in the Caspian Sea.

However, an interesting part of the Turkmanchai treaty is not only limited by the provisions of Article 8, it also opened up a new era in the process of development of the Caspian legal status by admitting Article 4. An impression that was given by the end of this article was based on the recognition of the Caspian Sea as nobody’s sea (as a mare nullius).

The prerogative position of the Russian side came to an end with the collapse of the tsarist regime, when Bolshevik revolution succeeded to establish a new Soviet government which showed noticeable antagonism toward the heritage of the tsarist regime. New series of treaties, especially Treaty of Friendship, concluded in 1921 declared all preceding treaties signed during tsarist regime as invalid, in other words, void to be realized. Nugatory nature of all concessions reconstructed the underrated rights of Iranian people and for the first time established "the principle of equality" as a legal base for the bilateral relations (Dubner, 2000, pp. 54-58).

3.3 Establishment of the "De Facto" Legal Regime the Caspian Sea

Diminishing support of British government resulted in denouncing previously signed an Anglo-Persian agreement which caused concluding new series of treaties with neighboring Russians. One of those treaties known as Treaty of Friendship was signed on February 26, 1921, with the aim of restoring some privileges that were being taken from Persia by force during the tsarist regime (Vinogradov & Wouters, 1995, pp. 612-616). Majority of articles such as 9, 10 and 11 in this agreement intended to shift off the early subjugator policies of Russians toward Persians and focused more on the commercial and economic issues. In response, the Persian side gave the promise not to cede any kind of concession to any third party, and this issue was non-directly related to the management of the Caspian waters.

In the case of restoration of navigation in the Caspian waters, Article 11 focused on highlighting the equal and mutual basis of freedom regarding that issue. Enjoyment of keeping a marine navy in the Caspian still belonged exclusively to the Russian side, but both of articles 11 and 7 recognized the right of the Persian side to possess the same privileges even in the non-directed and unexpressed way. Namely, from the tandem readings of those provisions, it became crystal clear that the Treaty of

Friendship, at least, solidified a textual basis of the Iranian navigation rights. However, the paradox is based on the practical scope where Persians could not possess the navy at the time.

Besides restoration of some rights and privileges for the Iranian side, Treaty of Friendship did not expressly address the legal issue, hence the treaty aimed to keep the stability between the adjacent parties after World War I. Only after the 30s, parties could develop the way to progress negotiations in order to succeed bilateral agreements in the area of fishing and trade. The legal framework focusing on those activities was only recorded in 1935, by the Treaty of Establishment, Commerce, and Navigation. Even this treaty could not address such kind of activities in a detailed way.

Nevertheless, it is important to mention that Friendship Treaty presented both limits and paradoxes in the resolution of border issues. For instance, Article 3 referred to the continuation of the previously admitted "frontier rules" by the Akhal-Khorosan Treaty, 1881.

Akhal-Khorasan Treaty, known also as Boundary treaty is one of the Russo-Persian agreements which were signed in December 1881 with intention of limiting two-sided boundaries along the east sector of the Caspian Sea. Treaty was regulated by the special demarcation commission to apply the same frontline to the land borders. According to the Article 1, Haasanqoli Bay would become the starting point of the line and follow along by Atrak River to the northeastward (Mirfendereski, 2001, pp. 112-123).

Falling apart from the above-mentioned provisions, unfortunately, the Treaty of Friendship did not address any issues related to the territorial sovereignty of the adjacent states over the Caspian waters, whereas could progress the bilateral relations between Iran and the Soviet Union.

In short, the Treaty of Friendship is considered by a majority of scholars and academics as the constitutional document signed in the historical development of international legitimacy of the Caspian Sea. Lack of the termination date and unclear provisions increased the ambiguity of the treaty in several ways. The Treaty survives till nowadays because of the fundamental significance that settled a new framework regarding the Russo-Persian (Iran-Soviet Union) relations. At the same time, while formulating a new type of modus vivendi (mode of living) for reciprocal interdependence, it left many questions and unclear details for further negotiations (Frappi & Garibov, 2015, pp. 68-76).

Increased tensions of navigational and commercial (namely, fishing) problems led to signing of another agreement which fulfilled the existing legal framework of the Caspian waters. Firstly, adjacent parties - Iran and the Soviet Union adopted the Treaty of Establishment, Commerce, and Navigation in 1935; the later treaty was altered by the acceptance of Treaty of Commerce and Navigation (shortly CN treaty) on March 25, 1940, which established the second phase of bilateral interrelations. When Iran and the USSR entered into an agreement over commercial and navigational issues, the validity of the Treaty of CN was considered up to 3 years, but the lack of consensus regarding the termination date of the treaty had been in force for a long time, hence continued its legitimacy (considered for the unlimited period) until today (Kondaurova, 2008, pp. 78-82).

The CN treaty involved distinct, but at the same time, notable provisions addressed to the equal trade and treatment between the littoral states. Article 12 stated that fishing should be remained as free over all sectors of the Caspian Sea, excluding 10 nautical miles of the exclusively regulated fishing zone in the coastal areas. Respectively, reservation of the exclusive rights for the fishing just belonged to each party's own vessels. Unfortunately, the conclusion of this treaty was also silent for the determination of the legal regime in the Caspian water, but instead, it proposed the common and joint sovereignty over all sectors of the Sea, with the exception of exclusive fishing territories (Mirfendereski, 2001, pp. 133-136). Meanwhile, the concerned sides did not consider the delimitation of the Caspian waters with the territorial division, and subsequently, made the same decision on the "no border" principle (Aghai-Diba, 2003, pp. 56-64).

Even in the treaty dated to 1964 (also known as air agreement), concluded with the intention of controlling airspace security could not refer or address any issue related to flight over the Caspian Sea. Meanwhile, a connecting suppositional line was drawn according to the land border rules determined by the Akhal-Khorasan treaty (Conforti & Bravo, 2004, pp. 19-24). The air agreement somehow reciprocated to the decision that was proposed unilaterally by the USSR, in 1935 with a purpose to delimit the Caspian Sea attributable to each side's respecting sectors. In fact, this step was taken by the decision of the Internal Affairs of the Soviet Ministry in a single-acting way.

Just because of the boundary line in the Caspian Sea had never been determined or regulated by any convention or treaty concluded by two adjacent states, this issue continued to remain as the subject for open theoretical debate. Delimiting the

portions of the Caspian waters thanks to Astara-Hosseingulu border that determined the extension of a terrestrial border, unfortunately neither has been recognized by the Iranian government as a legal border nor solved territorial delimitation of the sea (Aghai-Diba, 2003, pp. 68-72).

The common features of those treaties concluded during the period of 1921-1940 were based on the exclusive rights of the adjacent states. Another point was untouchable issues such as progressing scientific research in the Caspian sea, exploitation of the non-living resources and drilling in respected areas were put to the backstage or, in other words, were beyond of Soviet –Iranian relations. For sure, non-realization of those activities could be linked to the political as well as historical reasons that were not beneficial in that period of time. An underlying principle of them aimed to make the Caspian Sea as the "Soviet –Iranian" sea that was closed to the all third countries and parties (Mirfendereski, 2001, pp. 133-136). *Instead of addressing the issues of delimitation, all of those treaties namely do not permit citizens and nationals of other parties even to work and being a member of the crew ship.*

On the other hand, lack of the existence of legal provisions over the status of the Caspian Sea in the Soviet-Iranian treaties had been replaced by the different legal instruments, especially with the Exchange of Notes in the period of 1931-40 years. According to the demonstration of each state's position in these notes, the Caspian Sea was called as "the Soviet and Persian Sea" in several times. Especially, Iranian scholars supported the idea of sui generis that closely linked to the mentioned phrase and considered it as a valid source (Mirfendereski, 2001, pp. 133-136). Indeed, the essential conclusion could be drawn that nothing else, except Exchanged Notes in the

developmental history of the Caspian's international status, would mention or address the sea as the "Russian-Persian Sea".

But sometimes, this fact is a mere reason for some authors to be a sufficient principle to determine a certain legal status for the Caspian Sea. M.R.Dabiri is one of those scholars who advocated that the Caspian Sea has always been regulated by the principles of sui-generis status; hence as the continuation of that status, the condominium could be the main resolution for determination of the legal status (M.R.Dabiri, 1994, pp. 29-32).

By all means, the Caspian Sea and its resources had been continued to be managed under exclusive control of 5 littoral states. The complicated situation once was approved by the legally designed international doctrines. Referring to this fact, although the Soviet officials used to call the Caspian Sea as a "large lake" and highlighted the historical basement of the "sea" term, general provisions of the international law of the seas could not be applied to the Caspian case. It meant norms, regarding the high seas such as vessel sailing, doing scientific researches and finally exploiting resources, did not relate properly to the Caspian regime regulated by the bilateral treaties of the Soviet and Iran. Nevertheless, manually written Soviet law decided to extend the exclusivity of the littoral states to the continental shelf and its resources. Putting it in other words, each party of the Caspian Sea could possess the right of using resources located in their respective area, including the resources of the continental shelf (Butler, 1969, pp. 103-106).

Summarizing the final points gives us to understand the relevance of theoretical framework that may apply to the case of the Caspian Sea. Due to an absence of a

conventional determination of Caspian's legal status, it is essential to examine the conclusive legality of this case with help of current prevailing regimes such as enclosed seas and international lakes.

3.4 Determination of Applicable Law

Looking through a historical evolutionary process of the Caspian international status, the threshold point should be based on the area of law. Definitive identification of the water body may conduct the applicability of law on the issue of the Caspian dispute. In this case, delimitation of the Caspian Sea is supposed to be overviewed by the regulatory rules of international lakes and seas (as well as semi-closed and enclosed seas). Indeed, regulation of semi-closed and enclosed seas is the codified area of law which is written down by the UNCLOS (United Nations Convention of the Sea) on the 10 December 1982. Contrasting to it, the lack of existence of the conventional illicit documents over the management of the riparian state activities in the lakes could not be assisted either by any state practice or unchanging, uniform agreement (Vinogradov & Wouters, 1995, pp. 620-623). Hence, the legal regime of the international lakes is diverse and differentiated by the variously concluded regulatory agreements (including bilateral, multilateral).

UNCLOS as the codified international agreement came out as the result of the third UN conference on the Law of the Sea in 1982 but came to the force little bit later in 1994. The convention is considered as an internationally recognized document which determines the responsibilities and rights of different nations due to the utilization of the world's ocean and designs the main guidelines for the governing of the ocean resources, as well as defining the protector rules for marine's living and non-living resources. As the written form of a codified customary area of law, UNCLOS has a

binding power over the states which had not even officially ratified it (Moore & Nordquist, 1995, pp. 36-44).

In the first place, international courts and arbitrational bodies are the juridical bodies that regulate the provisions of the UNCLOS as it falls under the public international law. In fact, it is clear from the Preamble of the UNCLOS that any nation-state does not possess the right of using the resources of the oceans for beneficiary reasons because particular areas of the oceans such as subsoil, floor, and the seabed are considered as the common heritage of the humanity. Referring to the provisions pointed out in the Preamble, national jurisdiction is silent on the issues of exploitation of the natural resources of the oceans for the benefits of states.

On the other hand, entire international waters coasted by more than one state are usually governed by the particular body of the law as admiralty law. An admiralty law is composed of a domestic and specific body of international law which regulates the interconnections between private companies related to the issues of sailing, vessel management and etc. Respectively, immunity of the provisions of the admiralty law is protected by the jurisdiction of national state courts (Zimnitskaya & von Geldern , 2011, pp. 5-9) .This is the necessary point to highlight, for why the disputed waters of the Caspian Sea could be subject to the above-mentioned body of the laws.

The first version is based on whether UNCLOS has a binding power over the Caspian problem or should the Caspian problem be regulated with the provisions of the UNCLOS or admiralty law? In the latter case, admiralty law of littoral states bordering the Caspian Sea (Iran, Russia, Azerbaijan, Kazakhstan, and Turkmenistan)

might be established by a consensual agreement which would be free for the utilization and exploitation of the natural resources of the Sea. Even in the case of the non-reachable agreement, each party is free and unfettered to establish its own admiralty laws over the waters, even though those regulations that are supported by one state's admiralty law could contrast to the other's regulations and limitations.

While revising the major provisions of the public international, first thing that seems unclear is the attribution of UNCLOS to the former Soviet states. Putting it in other words, it is under question if the Caspian Sea is managed by UNCLOS and how the former Soviet states could be bound by the rules of UNCLOS (Aghai-Diba, 2003, pp. 52-56).

Interestingly, the unique geographical features of the Caspian Sea are directly connected to the determination of its legal status according to the provisions of the UNCLOS, whereas those provisions are still complicated for finding a proper answer. While revising the high provisions of the Law of the Sea Convention, the primary aim is to understand the definition of the "enclosed or semi-closed seas". Article 122 of the IX part in the Convention says it clearly that the gulf basin water body which is bounded by more than two states and has a connection –narrow outlet- with another sea (in other way linked to oceans) is considered as an either enclosed or semi-closed sea. At the same time, enclosed seas are supposed particularly to combine territorial sea part of the littoral states (Frappi & Garibov, 2015, pp. 78-83).

Additionally, followed article 123 request that bordered by the enclosed seas each littoral state should corporate without violating not only the performance but also the

exclusive rights of other states which are guaranteed by the Law of the Sea Convention (Colombos C. J., 2007, pp. 324-327).

In terms of regulation, there is yet another gap (the distinction between legal status and regime) which demands a clear explanation. Regarding explanation, Draft Caspian Status Convention would be a unique example of work which has been done till now. As mentioned in the previous chapters, Draft Convention was aimed to be developed as the results of contributions of the Caspian working group. During Almaty conference (1995), all littoral parties considered establishing a new set of rules in accordance with international maritime principles and assisting the development of numerous issues (Janusz-Pawletta, 2015, pp. 39-44). For sure, settlement of the Caspian dispute is quite important either in context of strategic development or political stability in the region. A possible implementation of Convention's context would give a chance to good-neighbor relations, littoral and eternal cooperation among littoral states.

The principles of the Convention may create a comprehensive legal basis for dispute resolution, and make it possible to implement all necessary standards of public law. Questions of political independence, territorial integrity are covered as key provisions of respect for sovereignty to all of the Caspian states. Compared to previous Russian pro-Soviet stance, this convention drafted "***the principles of demilitarization***" proposing to categorize Caspian waters as a demilitarized zone. Although the Russian government still rejects to approve the idea of the demilitarized zone, it has been exclusively added to the main provisions of the Preamble (Janusz-Pawletta, 2015, pp. 42-44).

Regarding the above-mentioned context of sovereignty, Draft defines the scope of this premise as an authority of individual states. It proposes to understand a sovereignty concept carrying out states sovereign rights over the Caspian waters, recognition of its authority over a certain geographical zone of the Caspian Sea. However, the Russian side again rejected to implement a premise of "sovereignty" and suggested to remove the word, refusing to approve any division of waters. An idea of practicing sovereignty may assist to realize sovereignty of the Caspian states over off-shores.

Despite the fact that Caspian Draft is a unique basis for a new regulation, but it could not be applied with the provisions of UNCLOS. That's why provisions of UNCLOS could not see a new set of rules as a legal point of reference. At this point, question of "Why?" is raised up. It is because, only Russian government was ratified to be a party of UNCLOS agreement and till now none of other four littoral states indicated obvious statement joining the agreement.

The above-mentioned summary of some numerical articles and documents is not unnecessarily pointed; in contrast, it has convenient linkage with the determination of the definition question. In the first place, the question of "outlet" is covered by the fact that World Bank claiming the Caspian's optional connections with the Black Sea through Don-Volga canal (Cisse`, Madhava Menon, Cordonier Segger, & Nmehielle, 2014, pp. 34-37). Indeed, it is openly stated in the legal review of the World Bank that hybridization of sturgeon species is the phenomenal threat streaming from the Black Sea via Don-Volga canal and gradually spreading in the Caspian waters could cause the detriment unique diversity of waters.

Comparing with the fact that the Caspian Sea is covered by flowing 130 of diverse sized (small, large) seas, the explanation of the World Bank could change the route of the "outlet" issue in another way. Giving the reason for being not framed by the enclosed and semi-closed sea definition, the legal status of the Caspian Sea should be determined to focus on the term "cooperation of littoral states" which is mentioned in an article (Dubner, 2000, pp. 276-279). In fact, excluding 8 percent of the coastal line which is shared between four littoral states - Azerbaijan, Turkmenistan, Kazakhstan and Russia, the entire area is regulated and controlled by the Iran Islamic Republic. However, none of the littoral states has shown any sign of initiative to reach an agreement about performing their rights and duties under a framework of the Convention.

Ironically, Article 122 and 123 neither provides a legal framework nor establishes primary guidelines for the cooperation type, and does not point any structural body of organization regulating the situation in the case of conflicts and disputes. Lack of the clearness in the issue of jurisdiction does not leave any room to understand legal relationship between international and domestic maritime law over the determination of body of water. Generally, as we found tandem readings of Articles 122 and 123, at the end of the day, UNCLOS created dual verdict system in which international law is responsible for determination of the body of water, whether it is enclosed sea or not but meanwhile leaving other issues to the judgment of littoral states (Zimnitskaya & von Geldern, 2011, pp. 10-12).

In a nutshell, a dispute over the legal status of the Caspian states somehow links to the consensus between the littoral states. In a first option, if the Caspian Sea was considered as an inland sea, the water body and respected areas of the sea,

additionally the natural resources of it would be regulated by the UNCLOS. In this case, they are not only accessible and open for the bordering states (hereinafter littoral states), but also for the existence of the international petroleum entities. Secondly, if the Caspian Sea fell under the category of an international lake, the natural diversity of the Sea including resources and water body would be divided into national sectors among the littoral states.

On one hand, admission of the validity of the Soviet-Iranian treaties by the other littoral states would not be accepted due to the reason of the non-application of Vienna Convention. Though Vienna Convention on the Succession of states in respect of treaties is considered an international document concluded in 1980, it could not provide any reasonable answer to the validity of the Soviet-Iranian agreements. In one possible case, if those treaties were considered as statutory, then as the successor of the Soviet Union, Russia, and the other major side Iran would act as the principal of the Caspian waters. Under the framework of Vienna Convention, the new littoral states - Turkmenistan, Azerbaijan, and Kazakhstan are not seen to be covered by the agreements which had been ratified pre-independence.

Generally accepted provisions of treaty obligations of newly decolonized states are pointed out for the benefit of independent states and aimed to preserve their rights from previous colonization jurisdiction. But assumingly, claiming to be the protector of the all colonized human beings in the world, USSR persisted to insert to this point into agenda (Highet, et al., 1983, pp. 159-163). Regarding to this presumption, ongoing obligations of the newly decolonized states are named as “clean slate rule”, so, they have the right to choose to be or not the part of those obligations.

Chapter 4

ENVIRONMENTAL ISSUES AND THE MANAGEMENT OF RESOURCES

The delimitation of the Caspian Sea is considered as the essential element for its future legal status. Legal issues related to the delimitation of the Caspian waters are based on the establishment of state borders between newly emerged littoral states and directly affect the nature of prosperous negotiations. As mentioned in the previous chapters, the situation that is associated with border issues has been the consequences of incompetent negotiations which could not lead legalized border rules. Together with an abundant base of resources, the unclear situation of delimitation of the Caspian waters paved the way to the political instability between the littoral parties. As the consequences of dissidences, each party decided to stabilize and to balance their economic power as well as political influence by own way (Janusz-Pawletta, 2015, pp. 125-130). For sure, the management of living and non-living resources such as oil and gas created a new critical topic for every five littoral states. In combination with the above-mentioned issues, littoral states experienced the drawbacks of environmental security problems that are still taking a major place on the Caspian's agenda.

For the purpose of highlighting the three key problems related to the determination of Caspian’s future legislations, this chapter will firstly focus on the alternatives of delimitation. With intention of analyzing delineation of the Caspian waters, in other

words, determination of states borders, the chapter will provide an insight for comparing past actions with the current de facto regime, moreover will seek future legal solutions. Secondly, the chapter will cover the problems linked to the management of living and non-living resources in the Caspian Sea. This part of the chapter will not only point out the previous steps that have been already taken by the littoral states, but also will more concentrate on the possibility of future actions. Finally, the third part of this chapter will merely be based on the environmental security of the Caspian Sea. As the environmental results of exploitation of the Caspian resources have raised a worldwide interest, a continuation of research on those issues should be more essential (Frappi & Garibov, 2015, pp. 73-77).

In details, it will touch the points about institutional frameworks for the regional cooperation of the Caspian states; moreover will preview the decisions made for the establishment of legal protection of Caspian environment.

4.1 Delimitation of the Maritime Boundaries

The questions of delimitation problems have always been debated and discussed by all of the littoral states since the dissolution of the Soviet Union. After the first decades of the Soviet dissolution, all littoral states took a contrary stance on how to delimit the Caspian waters. The key difficulty on this issue has been related to the failed attempts of all littoral states to find a general and permanent solution to delimit the natural resources of the Sea. Coupled with a justifiable and equitable manner of delimitation, this process in first place has to satisfy all the rights and interests of each party. As a breakup of Soviet regime created new littoral states (Azerbaijan, Kazakhstan, and Turkmenistan) and turned the situation over the Caspian Sea to the

multilateral nature in previous years, it is important to show the opposite views of all littoral states regarding delimitation of the Caspian Sea (Bantekas, 2011, pp. 49-52). To understand the gravity of the delimitation problems on the Caspian Sea, it has been significant to realize the struggle of the new littoral states to transform their previous administrative into international ones. Transformation of the newly emerged littoral states, in fact, caused several geopolitical and geo-economic differences. Generally, the large scale of consequences depends on the determination and preferences of littoral parties to cooperate with each other either on bilateral or multilateral levels (Janusz-Pawletta, 2015, pp. 66-69). Apart from its legal aspects, clearly designed borders of the Caspian states will play a unique geostrategic role in the region as a division of national sovereignties zones could serve a security example for problems like trade and migration. Together with those mentioned issues, all littoral states have already understood the seriousness of defining adjacent border problems which has both legal and geopolitical importance.

Delineation process is another form of determination of the international borders which presupposes two diverse procedures in terms of technics and legality. The first and principal operation regarding determination of border status is delimitation that identifies the elements of adjacent borders. The second operation is named as demarcation that has more physical character and plays a role to design, moreover fixate borders (Zimnitskaya & von Geldern, 2011, pp. 7-12). One and an only legal reason for delimitation of adjacent borders as well as delineation of natural resources is linked to the constraint of the sovereign power of the littoral states with an intention of getting ahead of different characters of conflicts among them and stabilize a cooperation in a peaceful manner.

In the first place, the lack of historical bases, such as the existence of bilateral treaties and agreements, may put the delineation process under legal questions. As it is mentioned in the previous chapters, the Soviet regime had been fully satisfied with supremacy in the areas of navigation and possessed total de-facto control over most part of the Caspian waters. Because of those reasons, the Soviet Union as the major party of that control did not either initiate to sign or to modify any type of treaties with the Iranian side on clearly defined territorial borders that could cover the alternation of domestic legislation (Romano C. P., 2000, pp. 146-152). It is also worthy to mention that previous Soviet republics- Turkmenistan, Azerbaijan, and Kazakhstan had a very limited autonomy under communist rules. Putting it in a different way, the limited sovereignty of the previous Soviet republics neither represented full-scale of demarcation of state borders nor was a basis for delimitation process.

On another hand, in 1970 Ministry of Oil and Gas of the USSR established a formal "intra-union" delineation by dividing the seabed of the Caspian Sea into national sectors (Azerbaijani, Russian, Kazakh, and Turkmen) with the principle of the median line. In that case, a used principle for such a division was simply based on equidistance. However, the legal validity and value of that division still remain as unclear.

Instead of using the former internal Soviet agreements as the source of negotiation over the new status of the Caspian Sea, the littoral states could not reach an agreement, hence did not pay more attention to the applicability of ***uti possidetis juris*** principle (Pourkazemi, 2008, pp. 11-14). As key instruments of international law, this principle is applied to the newly emerged or decolonized states from the

beginning of its formation. Putting it in a different way, states that become either decolonized or independent are supposed to establish their borders according to the previous lines existed during the colonial period. Equally, an important issue is related to the determination of the situation that would develop after the dissolution of the colonial regime. If we try to link the applicability of ***uti possidetis juirs*** to the above-mentioned fact that in 1970 Ministry of Oil and Gas of the USSR divided the Caspian waters into national sectors (establishing the administrative and territorial borders of Soviet republics) by using median line principle, then it could be concluded that the applicability of ***uti possidetis juris*** to the successor states is very legal and has reliable explanations (Mamedov, 2001, pp. 126-129).

Taking into account the customary practice of international law over delineation problems, a principle of ***uti possidetis juris*** could be used in the case of "Sea". The classical interpretation of this principle tells us the applicability of it to the land borders, whereas later with the decision of International Hague Court, in 1992, ***uti possidetis juris*** applied to the islands, seas, and lakes too. The most interesting thing in this issue is the application of this principle to the inland water bodies and lakes (South China Sea) as the Caspian Sea.

Concluding with this fact, it is possible to say that, the principle of ***uti possidetis juris*** can be alternatively applied on the case of the Caspian Sea. As it was mentioned in the previous chapters, the validity of the Iranian thesis about condominium regime is no longer available to solve the undetermined rights of the littoral states and undefined sovereign rights of the littoral states hinder their subsequent economic growth either (Ghoudarzi & Koulaei, 2009, pp. 71-77). Indeed, application of the ***uti possidetis juris*** principle can be the best option for the division

of the sea into national sectors, whereas it needs more academic research being developed as a new framework for the Caspian dilemma.

Regarding this fact, equally, the important matter is concluded with the attitudes of the littoral states toward establishing de-facto situation over the Caspian waters. With the aim of realizing the rights of using mineral resources of the sea, being agreed to the position of Azerbaijan on dividing the sea into national sectors together with Kazakhstan Russian side signed the agreement on particular delimitation in 1998. So-called agreement delimitation of the seabed in the northern part of the Caspian Sea along modified median line in order to establish sovereign rights to subsoil use was strictly based on the joint development of some disputed fields (Zonn, 2005, pp. 224-235). This agreement has been made as a factual proof of delimitation of the northern part of the Caspian Seabed. Later the same document was signed with Turkmenistan, despite the fact that Turkmenistan, as one of the southern littoral states, advocated the strict division of the entire sea.

Facts relating to the treaty say that the northern part of the seabed and subterranean areas should be divided between parties with the median line principle and should be based on the unanimous consent of them (Zonn, 2005, pp. 224-227). As it was pointed out in the agreement, observance of the fishing rules, regulations of the environmental protection and freedom of navigation were the main points of this document. Another key point was the designed technical coordination for the delimiting sectors which have to be managed by the water level in the sea.

As multilateral treaties have been left indecisive, bilateral arrangements have already brought some temporary solutions. Continuing to take gradual advantage of the de

facto status of the Caspian Sea, Russian Federation concluded another agreement with Azerbaijan in 2002, in order to delimit adjoining, in other words, contiguous zones of the Caspian shelf. This delineation also included utilization of other areas in the Sea, such as islands, coast and baselines and specified coordination established by equidistance rules (O'Lear, 2004, pp. 171-174).

Followed by a final arrangement which concluded in 2003 between three Caspian countries- Azerbaijan, Russia, and Kazakhstan- total delimitation of the northern part of the sea ended up with the approval of junction point. Distinctly defined coordination of the junction point established delimitation of the relevant maritime boundaries of the Azerbaijan, Kazakhstan and Russian sides (Sultangaliyeva, 2016, pp. 63-68). Regarding the final document, the respective shares of the three parties concluded in this way: Azerbaijan 19%, Kazakhstan 29%, and Russia 19%. Nevertheless, the Iranian side rejected the adoption of this agreement, the series of Northern Caspian treaties concluded with signing of the Tri-Point-Border agreement on May 14, 2003.

Iran, as the southern littoral state, rejected several time the adoption of the series of the northern Caspian treaties regarding the fact that it violates and contradicts the legitimacy of the existed Soviet-Iranian treaties which were concluded between 1921-1940 years (O'Lear, 2004, pp. 166-171). Nevertheless, the northern adjacent states refused the Iranian allegations on this issue. In this matter, it should be pointed out that both of the southern Caspian states- Iran and Turkmenistan- are not bound by those series of treaties. Regarding the Article 34 of the Vienna Convention on the Law of the Treaties of 1969, codified treaties neither create obligations nor rights for a third party that not gave its consent to the adoption and ratification process

(Haghayeghi, 2003, pp. 32-36). With the compliance to the international law principle, series of the northern Caspian treaties are not binding both of those states, whereas they still remained as binding to the parties that signed it out.

Additional contributions have been also made to put under guarantee the recognition of the legality of northern series of treaties in order to facilitate a further multilateral negotiation on the determination of the Caspian international status. Indeed, several regulations have been already stated in the Draft Caspian Status Convention regarding the territorial delimitation problems between the parties. According to the Article 8, all issues related to the delimitation of the seabed and subsoil would be considered in accordance with such agreement if parties sign the respective agreement (Haghayeghi, 2003, pp. 32-36). This provision could be seen as potential attempt to guarantee legally general recognition of the Northern Caspian agreements. The above-mentioned article also may include an indirect indication to the series of northern Caspian agreements which already succeeded to share and divide non-living resources into those parts of the Sea between contracting states and do not taking into account the consent of remaining littoral states.

Despite the fact that the Draft Caspian Status Convention has not been yet unanimously accepted and ratified among all littoral states, it has many controversial aspects to be approved. First, a draft could not be seen as a source of the law for the current de-facto situation in the Sea. Secondly, the provisions of the UNCLOS, a fundamental document of the maritime law could not be valid and applicable on the case of the Draft Caspian Status. If we consider the UNCLOS provisions as a legal reference, none of the littoral states except Russia has become a signatory party to

those provisions, moreover, still, there are not any assumed intentions that remained littoral states would join this agreement.

Nevertheless, it should be emphasized that the process of the adoption of the Draft Convention is a long and critical issue. Taking all of these facts into consideration, it is possible to say, in the absence of multilateral consensus over management of the resources; existed Draft could serve as the basis for the lawful use of the resources (Bantekas, 2011, pp. 52-55). In addition, the agreement of the prospective status of the Sea would be a part of the public maritime law; so that the rules are currently presenting a particular tendency in the development of the Caspian's international status would be transformed into legally binding rules for all littoral states.

Interestingly different scholars, academicians, critical thinkers are supporting a different kind of attitudes on the future of the delimitation process. From the point of Viktoria Kondaurova views, the adopted temporary resolutions in the northern part of the Caspian Sea could not be legally framed under international law. Delimitation of the northern part used to be managed by Kazakhstan, Russia and Azerbaijan is namely restricted just because it came to pass among three parties and is far from adequate delimitation rules of the international law. In this case, international law could only show the certain directions about by what way to deal with the dispute, such as pointing to the peace talks, negotiations, and common decisions. Or if the common document approved, the other resolutions and arrangements that achieved in previous time would be eliminated automatically (Kondaurova, 2008, pp. 77-79). On the other hand, talking about adoption of a common agreement that would be able to regulate not only seabed, subsoil, water surface, but also a free navigation and flights over the sea is not realistic yet.

From a realistic perspective, it seems that de facto delimitation of the northern part of the sea would settle down the major problems that are related to the three states for a long time, said V. Markov, who is the analytical advisor in EEC. Considering the stubborn attitude of the Iranian side on the insistence of applying "***condominium"*** regime is not leaving any room for the Caspian Convention or, in other words, common and multilateral agreement, current de facto delimitation of the particular part of the Caspian Sea will be continued to remain as the basis for bilateral relations among the littoral states (Bantekas, 2011, pp. 55-57).

In a concluding remark, it has to be pointed out that the future legal status of the entire Caspian Sea is unquestionably dependent on the common consent of the littoral states. All in all, the clearly delimitated sovereign border of the littoral states would be a perfect startup for the peaceful as well as secure interrelations. And whether it is realistic or not, whether it is optimistic or not, the current de-facto situation is still on its place and continuing to manage not only issues related to the exploitation of resources, scientific researchers based on discovering the new oil fields, but also environmental protection too.

4.2 The Management of Non-living and Living Resources of the Caspian Sea

In the first place, the Caspian Sea possesses critical oil and gas stores which make it one of the world's most productive zones. According to the recent statistics, a combination of the three littoral states' proven non-living resources is represented approximately by 5 billion tonnes. Since 2013, it has been almost clarified that most of the oil sources are located in three countries: Azerbaijan, Turkmenistan, and Kazakhstan. In its own place Kazakhstan holds the leading position with 78.0% of

reserves, followed by Azerbaijan with 20%, leaving Turkmenistan no more than 2.00%. Important to realize the greatest amount of oil production belongs to the onshore zones, whereas offshore fields giving hopes for alternative opportunities in near future left to the squalidness in decades. Underdevelopment of offshore areas could be compared with the considerable amount of gas reserves that the three countries have. Going further with details, Turkmenistan is one of those littoral states having the largest part of gas reserves at 17.5 trillion m 3 that contains 9% of world's total gas reserves (Romano C. P., 2000, ss. 148-151). Particularly, Azerbaijan and Kazakhstan are also a substantial part of this share, despite having less reserve than their neighbors. Nevertheless, later countries are still the necessary exporters of a respective amount of gas resources to the third countries such as China and EU.

During Soviet ruling years, the infrastructure of the Caspian's pipelines had been designated to the Soviet government's major needs which were based on the connection of the northern areas to the Russian side by the main pipelines. After the dissolution of the Soviet Union in 1991, three northern littoral states presumed the ownership of the Caspian reserves which were discovered on their national sectors (Romano C. P., 2000, ss. 148-153). Apart from this fact that western international oil companies started to flock gradually into the region, over a period of 20 years numerous countries from different corners of the world got the access to the abundant resources of the Caspian Sea. In this manner, Turkey, China, Japan, India would be a perfect example of those countries. Henceforth, the Caspian Sea has turned not only to the center of the overlapped geopolitical interests but also has become a crucial source for the global energy producers.

The rights of the littoral states to use non-living resources in maritime space sometimes could cause various claims on the management of the delimitation in the maritime areas. It also adds a sufficient and significant value to the economic development of the littoral states. The international law of the sea clearly describes the frame of the state rights regarding the management of the non-living resources such as exploitation and exploration in their respective maritime boundaries (Frappi & Garibov, 2015, ss. 58-67). In the case of the overlapped claims of the littoral states, defining the rights of the adjacent states is quite challenging, whereas still, we can find certain legal methods which are available and covered by international praxis.

According to the existed scope of the non-living resources (principally oil and gas fields) in the Caspian Sea, it is problematic to solve the delimitation problem in a legal way. During the Soviet years, the conduct of the non-living resources in the sea was under the jurisdiction of the Soviet-Iranian treaties and controlled by the principle of the ***mare clausum***[2]. Referring to practices of the states, the Caspian waters were informally split into two distinct zones. However, after the dissolution of the USSR, the management of the non-living resources created an initial debate which led to the application divorce concepts over, such as a sea, lake (namely, ***condominium***).

[2] Mare clausum is the term that generally used in the international law and contradicts to the term of *mare liberium* (free sea). Origins of the concept are coming from the periods of Roman Empire. Mare clausum is the legal principle of recognizing any navigable body of water(sea, ocean) under jurisdiction of mere state, in other words, particular body of the waters could be attributed to the exclusive jurisdiction of certain littoral state.

The present development of the use of non-living resources could be classified in two ways: a) acceptance of the northern Caspian treaties which already divided the northern seabed of the sea by concluding bi- or trilateral agreements; b) succeeding to get an agreement of the future convention on its legal status with help of multilateral negotiations. Apart from the above-mentioned facts, disagreements among the littoral states are still going on over the management of resources (Janusz-Pawletta, 2015, ss. 119-124). Those disagreements could be seen clearly from the legal attitudes of the littoral states which were mentioned in the Draft Convention of the Caspian's legal status. Actually, disagreements are based on the questions related to the recognition of the territorial seas of the coastal states, moreover, the extension of the territorial seas to the seaward and division of the seabed are included in the debated issues. Parties could not reach a unanimous agreement over the total delimitation of the sea and the way, a method for delimitation as well.

The reason for this disagreement is caused by the area of the territorial sea as each littoral state has the right to possess sovereignty over the resources in this sector. The resources of those areas are considered the same with coastal state's internal waters. The different zones of the territorial sea are also playing an immense role for the coastal states and that point also could create lots of controversies among the littoral states. According to the provisions of the draft Convention, there are two different, but at the same time incompatible concepts that may reshape the future legal status of the sea and the sovereign rights of the littoral states regarding the management of non-living resources.

First of all, the recognition of the sovereignty rights of the five littoral states- Russia, Azerbaijan, Kazakhstan, Turkmenistan, and Iran is the concept which is represented

by the principle of the territorial sea. In this case, all littoral states possess the right to advocate the unanimous recognition of the complete sovereignty over their respective areas including coastal seas and its resources. Nevertheless, this concept is already overthrown. The second conception is the recognition of specific zones which are protected under a framework of the law of the sea and having the same status with a contiguous zone (Janusz-Pawletta, 2015, pp. 124-127). But unfortunately, this idea also indicated some rejections of the littoral states with the reason of having an exclusive sovereignty over any area of the entire sea.

Interestingly, as it is mentioned in the draft agreement, all Caspian States excluding Russia come to the agreement to accept the idea of exercising sovereignty over the respective areas of the sea, whereas the understanding of the “legal" status of the respective zones, which is also covered by the exclusive sovereignty of the states, is given differently in this agreement. Regarding the positions of Azerbaijan, Kazakhstan and Turkmenistan, sovereignty of the littoral states should cover both airspace and seabed of its national sectors. In other words, each littoral state should extend its territorial sea with the above-mentioned elements.

Contrasting to it, Iranian official stance is based on an extension of the littoral state’s sovereignty to the superjacent waters and reason for it restricting the rights of littoral states in national sectors. So, as a matter of fact, limiting the rights of the littoral states can lead to the development as well as the exploitation of the maritime resources, moreover, it could play an immense role for application of other activities at the seabed. Somehow, it clearly shows the extreme refusal of the Iranian side to the concept of “***sovereignty over national sectors***” (Frappi & Garibov, 2015, ss. 85-89).

Another controversial factor derives from the current installations of the Caspian Sea, as according to the present structure of the Sea, each littoral state should possess its sovereignty over respective national sectors and naval ships owned by them. Indeed, article 12 states that each littoral state also has the right to exercise its sovereignty over the existing structures in the Caspian Sea and it would definitely not violate the principle of international law (Frappi & Garibov, 2015, ss. 85-88). If we interpret such principle: each littoral state shall have a right to exercise double sovereignty. Primarily state shall practice its absolute sovereignty rights over its territorial sea, henceforth shall be able to concern marine resources of the sea.

Secondly, each state shall exercise an unlimited sovereignty over the respective economic zone and be able to apply its rights to the extracted non-living and living resources. However, the codification of Article 12 also created some troubles in the case of Russia when this side insisted to replace the term of "sovereignty" with the "jurisdiction" in the Draft Caspian Status Agreement (Janusz-Pawletta, 2015, ss. 128-130).

In concluding remarks, it must be stated that despite all the facts of disagreement among littoral states, and all the facts of diverse views over the further delimitation of the Sea, ongoing multilateral talks and negotiations demonstrate that states do not consent to sign any implicit agreement on the initial stage of delimitation process. Even if series of Northern Caspian agreements approved, it does not give any guarantee that unanimous comprehensive agreement will not be concluded by all littoral states. Putting it in other words, those agreements do not possess the legal sufficiency to predetermine ultimate settlement of maritime demarcation in the northern part of the Sea. But it may reveal all claims of the littoral states on the issue

of border demarcation in order to manage the non-living resources of the Caspian Sea.

4.3 Environmental Security

For a long time, Caspian's environmental problems have been on the agenda of the all littoral states. The unique characteristic of the Caspian's fauna and flora have been faced with troubles of the extermination threat. Drastically this situation could be compared with an environmental disaster which is catastrophic consequences of the oil production in the region. The wastes of the oil companies consequently created shrinking of the Caspian marine population with the decrease of sturgeon, seal and unique fish categories (Dubner, 2000, pp. 270-273).

However, the reasons that caused the disastrous atmosphere in the Caspian Sea could not be limited only with consequences of the local oil business. Alongside with stealing, unlawful export of the Caspian's sturgeon (including black caviar) is the most widespread but prohibited acts of the littoral states in the sphere of fish business (Kondaurova, 2008, ss. 78-81) . Overfishing problem namely can influence any single state around the Caspian Sea and turned blind eyes of littoral states may cause suffering of the region by poachers, actors of organized crimes.

It must be mentioned that the average prices of Caspian's black caviar change around 800,000 dollars in the region, whereas the population of sturgeons has been gradually declining since 2001. According to the specialists, a faulty approach of the littoral states has paved the way for the creation of environmental problems in the region. In fact, Professor A.Butaev pointed out that the non-living resources, specifically oil and hydrocarbons, which have been explored recently in the different sectors of the

Sea, have a risk of running out approximately in 50-60 years (Butaev, 2013). However, fish stocks of the national sectors could exist for centuries if bio-diversity of the Caspian Sea would be preserved properly.

Keeping in mind the fact that a marine environment of the Caspian Sea, as a self-sufficient unit, symbolizes a crucial element in the life-supporting system, it must be developed by sustainable and planned measures. Nevertheless, self-interested littoral actors concern about their economic development with the help of exploring common-pool resources and struggle for more political influence over the resolution of the Caspian's international status.

As it is previously stated, possessing many common-pool resources, which are naturally limited, carries the risk of being overexploited. Overexploitation is a disastrous environmental threat that either is caused by economic activities of one littoral state or arises out of the inadvertent interactions of all state's collective conducts. In academic literature, this term is comparably used with the new phenomenon called the "*tragedy of commons*"[3].

[3] The "tragedy of commons" was firstly brought to the academic literature in 1968 by Garrett Hardin. With help of this phrase Garret tried to explain that if a finite or limited resources is accessible for two or more than two actors (generally for beneficial reasons), then those actors have the possibility of motivation which could led to the exploit the resources in extreme way. This extremity somehow is the consequence of overutilization and intense exhaustion of the resources. In this article Hardin took pessimistic stance about probability of avoiding resource exhaustion as each actor in accordance to their interests would only concern the utilization of resources.

Economic development of the littoral states has already reflected the environmental conditions of the sea. One of the affected elements was the demographic changes in the regions of the littoral states. All those factors, with a combination of socio-economic growth, formed the ecological situation of the Caspian Sea. Recent statistics highlight the demographical changings and gradual growth of Caspian coastal population up to 14 million people (Frappi & Garibov, 2015, ss. 91-96).

Meanwhile, substantial numbers of migrants moved from one coastal state to another one as a result of intra-coastal migration. This factor indeed brought about dwindling of fishing societies to the enormous industrial centers. That's why the common nature of the Caspian's environmental problems is based on the *Transboundary* factors (Ghoudarzi & Koulaei, 2009, ss. 71-74). To make this expression clear, it is necessary to understand that particular hydrological features of the Caspian Sea, especially vertically flowing water exchanges, could cause the creation of pollution in one area and unchangeably led it to flow to the other water areas.

If we compare the drawbacks of the littoral states over the issues of environmental security with the other regions that have also got in troubles with the common-pool resources, it has been a long time since the break-up of the Soviet Union that tensions between the actors have been eased in a gradual way. Nonetheless, all negative impacts (the political struggle between the actors, the influence of third states, and unclear international status of the Sea) have paved the way to the establishment of a more cooperative situation in the region.

The first half of the 1990s was not successful enough for the beginning of negotiations over the environmental cooperation and outlining a proper framework for it. This period is widely called as the transnational stage in the diplomatic history of the Caspian Sea in which disagreements and conflicts among littoral states just took off environmental problems from top of their agenda. The environmental protection of the Caspian Sea was evidently considered an issue which has "low priority" (Janusz-Pawletta, 2015, ss. 134-142). However, threats of environmental deterioration reminded the littoral states about the factual sides of domestic security, hence, transnational period gradually came to the end. That was the beginning of the regional cooperation and the main reason for moving environmental issues forward to the top of the agenda of the littoral states (Ladaa, 2005, ss. 28-34).

A cooperative program outlined by results of long-lasted negotiations started in 1992, whereas after 1995, it was replaced with the approval of Caspian Environment Program (CEP). Guiding committee of this program consists of 5 littoral states- Azerbaijan, Kazakhstan, Russia, Iran, Turkmenistan- and 4 international organizations which are playing donor roles- World Bank, UNEP, EU/TACIS and UNDP. For sure, the main outcome of the approval of this program is framing Caspian Transboundary Diagnostic Analysis which was output in 2002. The aim of this analysis targets to reach an unbiased consensus on the current situation of the Caspian resources that lead to the establishment of a clearer picture about environmental issues. The components of this program are merely based on the sub-regional and national actions of all actors which included the regional advisory groups, and secretariat (Ghoudarzi & Koulaei, 2009, ss. 76-78).

One of the main duties of the Secretariat is to coordinating primary environmental problems of the different areas of the sea by proposed advisory groups. In detail, a priority of environmental concerns is the business of the local National Coordination Structures which have to implement two different types of action plans: National Caspian Action Plans (NCAP) and Strategic Action program (SAP). The first action plan expects each littoral state to implement its own domestic regulation, while the latter addresses the outcomes of the multilateral negotiations instead of domestic legislation (Pourkazemi, 2008, ss. 11-14).

However, the main success had already been achieved during Tehran conference in 2003 when all littoral states unanimously signed later - ratified the Tehran Convention. So-called agreement - Framework Convention for the Protection of the Marine Environment of the Caspian Sea - was adopted to achieve an environmental protection and considered a high point in the environmental cooperation among the littoral states (Pourkazemi, 2008, ss. 14-17). Officially, with the adoption of Tehran Convention, all parties came to the agreement on the principles of a common action, in other words, a collective implementation of states in order to regulate their activities. Despite the fact that Tehran Convention is just framework for collective environmental cooperation, adoption of this framework was followed by rational actions of actors and was strengthened by signing respective binding protocols (Janusz-Pawletta, 2015, ss. 136-139).

General obligations of the littoral states under this Convention is not limited by the individual action, at the same time demands jointly made decisions for the purpose of protecting, preserving and reinstating the environment. Article 4 states that the term of “environment” should not be understood in a narrow scope and interpreted as to

extend its meaning to the areas which “surround” the Caspian Sea. Referring to the provisions of UNCED (United Nations Conference on Environment and Development), the convention also aims to achieve the common objects which are namely protection, preservation and restoration of the maritime environment. In detail, it focuses on the protection of biodiversity, individual or collective management of coastal zones and lasting further scientific research on fluctuation level of the sea (Weiss, 1992, ss. 815-817).

Convention also includes the applicable environmental laws which are internationally recognized and have strong roots in the history of international norms. These laws are based on the principles of: sustainable development, future generations, and the precautionary (originally coming from German law has a similar meaning to protection) and the polluter pays (in the case of pollution each coastal state bears a respective amount of compensation) principles (Ghoudarzi & Koulaei, 2009, ss. 73-77). Additional to these factors, Tehran Convention addresses the pollution problem that is properly categorized as land-based pollutions, caused by human activities, pollution from vessels and ships, dumping based pollution and results of seabed activities.

Apart from its goals, objectives, and adoption of regulatory methods, it seems that Tehran Convention alone could scarcely succeed to any practical result. Despite taking any actions that pointed out in the agreement, all littoral states are only obliged to undertake some specific actions. It could not be denied that Tehran Convention meets the major internationally recognized maritime rules that focus on the protection of the environment (Mousavii, 2008, ss. 2-7). Nevertheless, the weakness of this agreement is based on the impossibility of implementing these

norms and forcing to bind them to all parties. For having legally binding nature of agreements, it is necessary to adopt relevant protocols, sanction mechanism, and conflict-resolution or, in other words, conflict settlement roundtable which would turn those principles into international norms.

Chapter 5

CONCLUSION

The main purpose of this thesis was the determination of the legal situation of the Caspian Sea with a view of a new effective regime for the management of its non-living and living resources and protection of its environment.

First of all, it should be pointed out that the question related to the legal status of the Caspian Sea is inherently linked to its geographical, historical, geopolitical as well as legal features. The lack of a well-defined identification of the Caspian water basin and the absence of the legal status bring along divergences of the littoral states to come to an agreement about delimitation of the national sectors in order to distribute the fields of non-living resources, maritime zones. The absence of cooperation among littoral states and their inability to produce a unanimously approved legal document also lead to an intensification of disputes concerning, for instance, illegal fishing and an increasing likelihood of pollution in the region.

As it is known, the problems around the Caspian Sea could not be limited to a couple of issues. Indeed, comprehensive nature of this debate involves both legal (legal status, delimitation of maritime borders, official positions of the littoral states) and illegal (prohibited fishing, unlawful caviar business and etc.) aspects. Nevertheless, this thesis has been more concentrated on the legal features of this problem, which are directly connected with the international status of the Caspian Sea. The determination of applicable law and available alternatives were discussed in one of

the major chapters. It is also covered in the chapter dealing with the historical development of the international status of the Caspian Sea, in particular, bilateral agreements and treaties that shaped de-facto status of the Sea. But more attention was placed on the period after the dissolution of the Soviet Union and creation of a multilateral system in the region.

Regarding previous chapters, it is clearly seen that the breakup of the USSR led to the emergence of new littoral states such as Azerbaijan, Turkmenistan, and Kazakhstan. Newly emerged independent states played a great role in the evaluation of the international status of the Caspian Sea after the 1990s. The importance of the Caspian-Caucasian region as the oil and gas-rich area has been increased gradually year by year. Alongside with the development of its oil and gas resources, tensions, geopolitical games and political struggle between all littoral states have been increasing in a parallel way.

Over a period of 26 years, conflicting stances and official positions of five littoral states have clashed several times as each party persisted to realize its own concept of delimitation of the Sea. For sure, domestic as well as regional interests of the littoral states have been and probably will always be linked to the historical background (excluding Iran, rest of the Caspian states were the socialist republics under the jurisdiction of the USSR). It is concluded that interest games of littoral states will never bring them into a radical conclusion. Nevertheless, instead of continuing the debate that has already lasted for some 25 years, it seems that providing a mutually agreed solution leading to the regional cooperation would be the best way to solve the problem of the Caspian Sea.

The major and more essential issue is based on the application of the international law in the case of the Caspian "sea". According to our research, a name of the water basin does not derive from its geographical features and is not able to cover legacy of the Sea. Conversely, the origins of the "sea" link to the historical naming by particular tribes and ethnicities. Secondly, except for some features such as rich bio-diversity and water salinity, no one of the basic geographical characteristics may be found in the case of the Caspian Sea. In this term, the applicability of the both LOS (Law of the Seas) and international lake law is not appropriate. Respective chapters suggested devoting hundreds of scientific works to the clarification of the existed ambiguity in the "Sea".

As it was found out, the problem of applicability of LOS Convention is caused by a number of bounding parties as only Russia and Iran among the all littoral states signed it, whereas the Iranian parliament has not ratified it yet. The same scenario has occurred with the application of the Convention of Contiguous Zone and Territorial Sea that came into the force in 1958. As a matter of fact, in the case that all littoral states including Russia and Iran insisted not to approve the application of LOS Convention, then all Caspian states have to reach a unanimous agreement to accept those norms which have a force of a custom.

However, international law could not consider all of the provisions codified in UNCLOS as norms of customary laws. Additionally, Russia, as a successor of the USSR and the only party that is bound by UNCLOS norms, does not show any will to consider water basin as a "sea". Hence, the application of LOS Convention will seem to be very slim if none of the other littoral states attempt to either ratify or reach a mutual agreement by the help of peaceful cooperation.

It is been apparent that the series of Soviet-Iranian treaties and customary regional laws are not satisfactory anymore to cover a new set of political, economic as well as environmental problems. Treaties, agreements that concluded during the existence of two littoral states either have many oversights or partly outdated. The absence of sufficient legal agreements and convention, which does not have any relevance to the international law, also warns about the emergency situation. Until now, only one agreement has been succeeding to establish a new set of principles by the mutual consent of all littoral states, which is Framework Convention for the Protection of the Marine Environment of the Caspian Sea. Nevertheless, so far negotiations among the Caspian states have not reached an agreement, and by this means, beginning of unilateral actions started.

Through analyzing existing legal alternatives for determination of the Caspian's legal status a weight of previous arguments advocates that it is managed by neither condominium regime nor provisions of UNCLOS. It is also clearly seen that the Caspian Sea could not be considered as an international lake or an inland water basin. After all, which set of rules of legal concept could adequately apply to the determination of the Caspian's international status? To answer this question is really difficult and great differences between the littoral states make the realization of this concept very hard.

A dispute over the Caspian waters has been already debated by many scholars, academicians even by political thinkers who believe the evolutionary nature of the international law. It's always been an open book and new set of principles have been constantly established by the practices as well as actions of the actors and parties, thus, in the case of the Caspian Sea; the legal answer may take a long time. In other

words, considering all available options and scenarios related to the regulation of the legal status of the Caspian Sea, the future prediction is impossible.

As a matter of fact, some littoral states have already attempted to realize the above-mentioned approach by signing some set of agreements which conclusively divided particular part of the Sea. Northern neighbors of the Caspian Sea Russia, Kazakhstan, and Azerbaijan already started to create a legal regime by signing a tri-point agreement which did not take absence of an internationally recognized status of the Sea into account. As a consequence, the northern part of the Sea is divided into national sectors. It might appear that signing parties have already considered the water basin as an "international lake" and continue to treat it in this manner. One point is that neither Iranian nor the Turkmen side has approved or accepted series of a bilateral agreement concluded between northern neighbors in order exploit and explore the oil fields and to manage non-living resources of the sea in their own part.

On the other hand, Russia, as a successor of the USSR, is still going to maintain its traditional spheres under imperialist interests. The regional hegemony of Russia is somehow linked to its relations with the previous socialist republics, having a strong historical background of political as well as economic activities. On the diplomatic front, Russia is presented as a major player which is able to influence the management of conflicts in the region. With help of using different strategies, the Russian side is intending to become a winner part in the Caspian chessboard game and manipulate the regional struggle in order to put pressure on the Caspian states into advantageous concessions. Nevertheless, imperialist interests of "Mother Russia" cannot be allowed to regulate the dispute anymore. It should be kept in mind

that, the Caspian Sea is surrounded by five littoral states and each of them is sovereign, independent states.

Despite all suspicions, there are still positive signs of reaching a mutual agreement among the littoral states. In this part, we are supposed to restate the importance of Draft Status Convention and significance of working group which provides all littoral states with annual statistics and reports. Officials still continue to give information about arranging a new Caspian summit in 2018 which could frame particular issues related to the international status of the sea.

Ideally, ratification of Draft Convention should be considered as a unanimous agreement which would be able to determine the legal status of the Caspian Sea. However, many scholars and politicians still suspicious about the final ratification of the Convention, and consider the realization of this step as difficult, at least in near future.

Finally, it has to be pointed out that as the result of lifting particular international sanctions; Iran is estimated to have more realistic and appropriate diplomacy with the conditional optimism. Consequences of the Vienna deal that has been signed between UN P5+1 group and Iran about the nuclear program will let Iran possess abundant natural resources and be less reliant on the Russian foreign policy. According to the governmental statistics, the largest oil and gas reserves of Iran are located on the coast of Persian Gulf. For sure, relief of sanctions will recognize Iran an opportunity to export more barrels of oil from its sector of Gulf, gradually withdrawing its isolated, non- radical stance from the Caspian part. A more balanced

position of the Iranian side can give respective chances for the other Caspian states to succeed a wide-ranging, inclusive agreement.

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