Challenges to the legal framework governing liability and compensation for oil pollution in the Caspian Sea: the case of the Republic of Azerbaijan

Ramil Gasimov

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CHALLENGES TO THE LEGAL FRAMEWORK GOVERNING LIABILITY AND COMPENSATION FOR OIL POLLUTION IN THE CASPIAN SEA: THE CASE OF THE REPUBLIC OF AZERBAIJAN

By

RAMIL GASIMOV
The Republic of Azerbaijan

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE
IN
MARITIME AFFAIRS
(MARITIME LAW AND POLICY)

2018
DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views and are not necessarily endorsed by the University.

(Signature):

(Date): 24 September 2018

Supervised by: Associate Professor María Carolina Romero Lares

Supervisor’s affiliation: Maritime Law and Policy Specialization
ACKNOWLEDGEMENTS

Undertaking this MSc has been a truly life-changing experience for me and it would not have been possible to do without the support and guidance that I received from many people.

I am using this opportunity to express my special gratitude to the International Transport Workers’ Federation (ITF) for providing me the opportunity to join the World Maritime University.

I would like to express my profound appreciation to Professor Max Mejia, Director of Ph.D. Programme and Head of Maritime Law and Policy Specialization of the World Maritime University (WMU), for giving me the chance to write this dissertation. I also express my sincere gratitude to my supervisor Associate Professor María Carolina Romero Lares for the kind support and help she provided for me. Many Thanks also goes to Assistant Professor Inger Battista who helped me in editing my dissertation.

I appreciate the support of my colleagues from the State Maritime Agency of the Republic of Azerbaijan and my friends. Many Thanks also goes to my WMU friends for all the good times and memories, especially to Alhameedi, Amjath, Balaji, Jamal, Lidya and Wajira.

Finally, I am deeply indebted to my parents and my brother for being the inspiration and support I needed, and also, I am grateful to my sweet nieces Damla and Leyla who make me happy all the time.

Ramil GASIMOV
24 September 2018
ABSTRACT

Title of Dissertation: Challenges to the Legal Framework Governing Liability and Compensation for Oil Pollution in the Caspian Sea: The Case of the Republic of Azerbaijan

Degree: Master of Science

Oil pollution from various sources is a threat to the global environment, including the marine ecosystem in the Caspian Sea, which was subject to the large-scale oil activities during the last seven decades. Concerns about the issues of liability and compensation resulting from damages caused by different sources in the littoral states, including in Azerbaijan, are increasing rapidly due to the growth in the oil-related activities. At the same time, it poses serious threats to the fragile nature of the Caspian Sea due to its enclosed characteristics.

Bearing in mind the mentioned concerns, this dissertation is a study of the available maritime law enforcement measures for oil pollution damages in Azerbaijan, with a particular focus on ship-related, offshore, land-based, and transboundary pollution in order to identify the challenges for the national civil liability and compensation regime. In relation to this, available international and regional instruments, namely the CLC, FUND, BUNKER, CLEE, TEHRAN Conventions, and their applicable protocols are reviewed, for the purpose of finding the gaps which are challenges to the national legislation. Meanwhile, case studies on oil-related marine disasters are provided in this dissertation. Potential dangers are also identified with a particular focus on a detailed examination of the newly signed Convention on the Legal Status of the Caspian Sea.

In addition, findings based on the analysis of the applicable domestic laws which contains issues of liability and compensation are given for ship-related, offshore, transboundary, and land-based oil pollution respectively. Recommendations are provided in order to address the major challenges regarding marine oil pollution in Azerbaijan.

KEYWORDS: Oil Pollution, The Caspian Sea, Liability, Compensation Claims, Gaps, Challenges
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<td>ACSC</td>
<td>Azerbaijan Caspian Shipping Company</td>
</tr>
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<td>AKTAU</td>
<td>Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents</td>
</tr>
<tr>
<td>BP</td>
<td>British Petroleum</td>
</tr>
<tr>
<td>BUNKER</td>
<td>International Convention on Civil Liability for Bunker Oil Pollution Damage</td>
</tr>
<tr>
<td>CLC</td>
<td>International Convention on Civil Liability for Oil Pollution Damage</td>
</tr>
<tr>
<td>EIA</td>
<td>Energy Information Administration</td>
</tr>
<tr>
<td>FUND</td>
<td>International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organization</td>
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<tr>
<td>IOPC</td>
<td>International Oil Pollution Compensation</td>
</tr>
<tr>
<td>ITOPF</td>
<td>International Tanker Owners Pollution Federation Limited</td>
</tr>
<tr>
<td>MARPOL</td>
<td>International Convention for the Prevention of Pollution from Ship</td>
</tr>
<tr>
<td>MoENR</td>
<td>Ministry of Ecology and Natural Resources of the Republic of Azerbaijan</td>
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<td>MoES</td>
<td>Ministry of Emergency Situation of the Republic of Azerbaijan</td>
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<td>MoJ</td>
<td>Ministry of Justice of the Republic of Azerbaijan</td>
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<td>Offshore Pollution Liability Agreement</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>---------</td>
<td>-------------</td>
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<tr>
<td>OPRC</td>
<td>International Convention on Oil Pollution Preparedness, Response and Cooperation</td>
</tr>
<tr>
<td>SDR</td>
<td>Special Drawing Rights</td>
</tr>
<tr>
<td>SMA</td>
<td>State Maritime Agency of the Republic of Azerbaijan</td>
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<tr>
<td>SOCAR</td>
<td>State Oil Company of Azerbaijan Republic</td>
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<tr>
<td>TEHRAN</td>
<td>Framework Convention for the Protection of the Marine Environment of the Caspian Sea</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<tr>
<td>USD</td>
<td>United States Dollar</td>
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Chapter One

INTRODUCTION

1.1. Background

Although there were significant changes in the proportion of consumption of energy resources, particularly development of renewable energy sources during the last two decades, oil remains the primary source of energy consumption, addressing almost one-third of the global energy demand (Gauci, 1997; World Energy Council, 2016).

![Figure 1: Proportion of world energy consumption](image)


Everyday massive oil exploration and exploitation activities are carried out on onshore and offshore fields, as well as a million tonnes of crude oil and oil products are transported via pipelines by oil tankers to different global commodity markets.
According to the indicators provided by the United Nations Conference on Trade and Development (UNCTAD) (2017), the volume of carried crude oil, oil products, and natural gas increased more than two times in the last thirty-six years from 1.4 billion tonnes in 1970 to 3.1 billion tonnes in 2016. Clarkson Research (2018) points out that the total amount of the transported crude oil as at August 1, 2018, accounted for more than two billion tonnes which are over four-fifths of the total carried crude oil in 1990.

### Table 1: The amount of the transported worldwide crude oil

<table>
<thead>
<tr>
<th>Date</th>
<th>Million Tonnes</th>
<th>Thousand barrels per day</th>
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<tbody>
<tr>
<td>1990</td>
<td>1132,75</td>
<td>22,75</td>
</tr>
<tr>
<td>2000</td>
<td>1676,18</td>
<td>33,66</td>
</tr>
<tr>
<td>2010</td>
<td>1871,87</td>
<td>37,59</td>
</tr>
<tr>
<td>2011</td>
<td>1851,53</td>
<td>37,18</td>
</tr>
<tr>
<td>2012</td>
<td>1906,41</td>
<td>38,28</td>
</tr>
<tr>
<td>2013</td>
<td>1836,36</td>
<td>36,88</td>
</tr>
<tr>
<td>2014</td>
<td>1803,03</td>
<td>36,21</td>
</tr>
<tr>
<td>2015</td>
<td>1872,02</td>
<td>37,59</td>
</tr>
<tr>
<td>2016</td>
<td>1949,28</td>
<td>39,15</td>
</tr>
<tr>
<td>2017</td>
<td>2014,13</td>
<td>40,45</td>
</tr>
<tr>
<td>August, 2018</td>
<td>2050,97</td>
<td>41,19</td>
</tr>
</tbody>
</table>


Additionally, it should be noted that crude oil is one of the top-ranking traded goods. Moreover, refined petroleum with more than 800 billion United States Dollars (USD) trade value sharing the second rank by accounting for three percent, while crude oil is sharing the eighth rank with approximately 550 billion USD trade value by accounting for two percent among the most worldwide traded goods. Offshore oil production per
day multiplied almost two times from 14.4 million barrels to 25.78 million barrels during the last three decades (Clarksons Research, 2018). Meanwhile, as a significant source of energy, oil is a privileged source of fuel for all kind of transportation including the shipping industry. Moreover, according to Figure 2 oil will still remain as a leading source of energy until 2040 by accounting for about three billion tonnes equivalent (over four-fifths of total fuel consumption).

Figure 2: The amount of the fuel consumption for transportation (2000-2040)


The increasing number of oil extraction and exploration activities and the fact that currently oil tankers transport almost three-fifth of the total produced worldwide crude oil make these activities potential sources of pollution damages. Although it is not possible to estimate, as well as to achieve zero in the number of oil pollution incidents, by establishing and developing governing liability and compensation instruments at least, it is possible to contribute in reducing negative impacts on the affected victims, and minimize consequences to the marine ecosystem in the world, including in the Caspian Sea region.
1.2. Location of the Study Area

The Republic of Azerbaijan is a landlocked country located on the western coast of the Caspian Sea, has access to the Black Sea through rivers Volga and Don, and the connecting constructed Volga-Don canal. Concerning this, it has to be emphasized that the Caspian Sea has no natural connection to the oceans of the world. As a result, its geographical feature and at the same time it is recognized as the largest lake in the world (Dubner 2000; Barbara, 2015; as cited by Gasimov, 2017; 2018).

The oil and gas industry in Azerbaijan has over 160-years history which started with the construction of the oil refinery in the capital of Azerbaijan (Baku) in the middle of the 19th Century, and which was recognized as the first oil refinery in the world. The number of constructed oil refineries reached fifteen at the end of the 1860s. During colonization years (1922-1990) oil production in Azerbaijan increased several times (approximately nearly one billion tonnes of crude oil), which also negatively affected the marine environment of the Caspian Sea. Moreover, during the Second World War the Soviet Union met its transportation demands with Baku oil, which accounted for eighty percent of its total oil demand (The Caspian Sea Legal Status, 2010).

![Figure 3: Transportation of Baku oil during Second World War](Source: Azerbaijan's contribution to the Victory in the World War II (2016).)

Oil reserves in the Caspian Sea have also attracted big global oil industry investors and companies. After three years of gaining its independence on September 20, 1994 Azerbaijan signed the first international agreement on “The Joint Development and Production Sharing for the Azeri and Chirag Fields and the Deep Water Portion of the
Gunashli Field in the Azerbaijan Sector of the Caspian Sea” with over ten leading global oil and gas companies representing six different countries, namely the United States of America, Russian Federation, Turkey, Norway and Saudi Arabia. Having 7.4 billion USD investment value, this agreement initially estimated production of half billion tonnes of oil during the next three decades. This contract is considered as a “Contract of the Century” and until today Azerbaijan has signed over thirty agreements with over forty oil and gas companies representing approximately over twenty different countries. Production of oil only in the above-mentioned oil fields reached more than three billion barrels of oil (Mustafayev, 2015; Oil and Gas Projects, n.d.). At present, the country’s oil reserves play an essential role in meeting global oil demands. Moreover, Azerbaijan transported oil mainly via Baku-Novorossiysk, Baku-Supsa, Baku-Tbilisi-Ceyhan pipelines, and at the same time the majority of the national fleet engaged in the transportation of crude oil and oil products.

As at September 1, 2018 Azerbaijan has a merchant fleet of 487 vessels. The dominant part of the national fleet are oil tankers and general RO-RO cargo vessels, which are involved in trade of crude oil and oil products to support the national oil industry. In addition, every year thousands of ships from other countries are recorded in the national ports (State Maritime Agency of the Republic of Azerbaijan (SMA)a, n.d.; SMAb, n.d.).

It is worth mentioning that Azerbaijan became a member of the International Maritime Organization (IMO) in 1995 and during this period has acceded to eighteen international conventions and eight protocols in the maritime field such as the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Regulations for Preventing Collisions at Sea (COLREGs), the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC), the International Convention on Civil Liability for Oil Pollution Damage (CLC), the International Convention on Load Lines and the International Convention on Tonnage Measurement of Ships. Further, Azerbaijan adopted the Law, dated 2016 on accession to the United Nations Convention on the Law of the Sea (UNCLOS) and Agreement relating to the
implementation of Part XI of this Convention (IMO, 2017; Ministry of Justice of the Republic of Azerbaijan (MoJ), 2016).

Although Azerbaijan has acceded to the main international and regional pollution-related instruments, there are several gaps in respect of governing liability and compensation issues, which pose several challenges for the Caspian Sea littoral states, including Azerbaijan.

1.3. Aim and Objectives of the Study

The main intention of this dissertation is not to draft legislation and also to describe the negative effects of oil pollution damages to the marine ecosystem of the Caspian Sea. The primary aim of this dissertation is to contribute to addressing the major liability and compensation-related legal challenges arising from oil pollution incidents in respect of Azerbaijan, bearing in mind the newly signed Convention on the Legal Status of the Caspian Sea.

In relation to the aim of this dissertation the research objectives are:

- Provide clarification of existing international, regional as well as national legal instruments dealing with oil pollution damages;
- Review of the main national legislation containing liability and compensation issues and identify the gaps for implementation and enforcement of the instruments;
- Provide an evaluation of the challenges in respect of issues of liability and compensation arising from oil pollution incidents.

1.4. Research Questions

In order to achieve the main aim and objectives, the dissertation will answer the following research questions: What are the leading international and regional instruments dealing with oil pollution damages and how adequate are these instruments on liability and compensation issues? What are the maritime law enforcement
measures available to address liability and compensation issues arising from oil pollution damages at sea? To what extent is the national legislation addressing the obligations imposed upon the applicable international and regional instruments? Who is responsible for oil pollution damages caused by onshore and offshore activities, and from vessels operating in the Caspian Sea waters? What are the main gaps with respect of the legal framework dealing with liability and compensation issues? What are the challenges that create the differences in law enforcement to provide compensation to the victims who victims of oil pollution incidents in Azerbaijan?

1.5. Research Methodology

In order to meet the primary aim and objectives, as well as to answer research questions the dissertation will primarily focus on the qualitative approach by initially gathering and reviewing relevant secondary sources on the legal and environmental problems in the Caspian Sea, specifically from the national perspective. At the same time in order to provide evaluation of the challenges posed by the law enforcement liability and compensation issues, the dissertation will use the case study research method.

1.6. Literature Review

For the achievement of the primary aim and objectives and better answer the main research questions an in-depth reading of the relevant literature will be required. In relation to this dissertation the previous studies on oil pollution matters will be reviewed and summarized as they also contain liability and compensation issues in order to fill the gaps in implementing national legislation.

The literature review will range from general books on oil pollution caused by land-based and offshore activities, and also by ships which are operating in the sector of the Caspian Sea belonging the Azerbaijan from texts on the international maritime law to the reading of marine experts’ and legal practitioners’ works on this issue. The
extensive existing literature concerning the research questions has provided abundant knowledge about marine environmental law. To better understand the legal framework governing liability and compensation issues for oil pollution in the Caspian Sea, it is necessary to identify the leading international instruments dealing with oil pollution damages. In addition, liability and compensations issues arising from oil pollution incidents at the sea need to be identified. Pollution of the marine environment does not recognize borders, and it is governed by international, regional and national legislation. As it is a broad and complex phenomenon, this dissertation will look through a pool of different types of literature.

First of all, it has to be mentioned that the report on different world energy resources published by the United Nations (UN) accredited global energy body World Energy Council (2016) is a comprehensive piece of literature in order to understand the importance of energy resources better and clearly see the general picture of the consumption of world’s primary energy resources. The limitation of this report is that this survey provides general numbers in respect of different regions. It does not focus on regional seas, which may be helpful to describe the importance of the environmental problems in line with providing indicators.

In addition, the IMLI Manual on International Maritime Law (Volume III), which deals with marine environmental and maritime security laws, generally edited by professor D.J. Attard is a comprehensive guide for better understanding international instruments in respect of all sources of pollution, including pollution from land-based, offshore activities, and vessels. For instance, the following manual covers sections regarding major international conventions, such as UNCLOS, MARPOL, OPRC, the International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER), the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), CLC Conventions, their protocols, as well as programmes conducted by the United Nations Environment Programme (UNEP) at a regional level in the different seas all over the world. This literature provides a legal framework for seabed, land-based and ship-source pollution damages. However, the dissertation will provide clarification of governing regional and national instruments
which contain liability and compensation issues by also covering transboundary pollution matters to identify significant legal challenges.

In order to better understand the problems associated with oil pollution damages and their consequences, and provide clarification of existing international and regional instruments, including the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (TEHRAN Convention) and its protocols studies conducted by G.Gauci and Z.O.Özçayir may be helpful. Although these authors focused on regional legislation on oil pollution, there is no information concerning oil pollution damages in the Caspian Sea region, which the dissertation will consider in next chapters.

Additionally, it has to be mentioned that most early studies, as well as current dissertation, at the same time focus on the dispute among the littoral states regarding the legal status problem of the Caspian Sea which lasted more than two decades. Moreover, Barbara Janusz-Pawletta, in her newly published book “The Legal Status of the Caspian Sea: Current Challenges and Prospects for Future Development” emphasized the importance of the Caspian Sea region for the international community and explained how a solution of the legal status problem may be vital for the international community, as well as for the sustainable development of the region. Moreover, the author determines the legal status issues of the Caspian Sea, the consequent uncertainty of the delimitation of the territorial sea and other marine zones, and uncertainty about the extent of their sovereign rights to the exploration and exploitation of oil reserves as major challenges for the littoral states. The dissertation will identify challenges bearing in mind the newly signed Convention on the Legal Status of the Caspian Sea, which also includes liability issues.

At the same time, although there are many studies concerning the legal issues in the Caspian Sea region, the oil pollution matters are discussed in a general context, without providing legal analysis regarding liability and compensation issues. For instance, A.Korshenko and A.G.Gul conducted a study to investigate pollution in the Caspian Sea, but primarily focused on the water pollution problems in the North and South part
of the region without mentioning issues related to the sector of the Caspian Sea belonging to Azerbaijan, which this dissertation will focus on.

Concerning the environmental issues, the report on the “Caspian Sea State of the Environment” published by the UNEP in close cooperating with Norwegian based GRID-Arendal Institution is one of the critical documents in respect of pollution of the marine ecosystem of the Caspian Sea. However, this document mainly focuses on environmental pollution in a general context considering governing regional instruments. The dissertation will examine national legislation on oil pollution parallel with regional instruments which also deal with liability and compensation issues.

In regard to national authors, it should be noted that there have been very few studies on oil pollution at sea covering pollution in the national sector from land-based, offshore, transboundary activities, as well as ships operating in the Caspian Sea. The major environmental threats to the marine ecosystem of the Caspian Sea were studied explicitly by E.Bayramov and I.M.Efendiyeva. Both of the authors mainly examined oil pollution caused from offshore-platforms and emphasized its negative consequences to the marine ecosystem of the Caspian Sea region without examining liability and compensation-related issues. E.Bayramov examined offshore pollution problems, including oil spills in the national sector by using information from several satellite sensors.

According to the studied literature, the major threats to the Caspian Sea Region may be categorized as follows:

- Tectonic and seismic location of the Caspian Sea - the area of the Caspian Sea is a very seismic active zone. Experts claim that intensive oil exploration and exploitation conducted by the littoral states speed up the level of the movement of the seismic plates. In relation to this, it has to be mentioned that the majority of the islands which are located in the sector of the Caspian Sea belonging to Azerbaijan are abundant with mud volcanoes which may be the source of the potential risks for the region;
• Caspian Sea-level changes problem - it is well known that water level fluctuation of the Caspian Sea has over two hundred years history and during the last four decades, the level of the water increased rapidly. According to the forecasts made by several researches, including calculation made by the Geography Institute of National Science Academy, the level of fluctuation will decrease during the next following decades due to the climate change problem. Coastal populations and oil wells are threatened by the potential flood risks, which may pose devastating challenges for the region in the future.

Figure 4: Water-level fluctuations in the Caspian Sea (1840-2050)


• Loss of biological diversity due to the high level of oil pollution;
• Environmental and legal status problems of the Caspian Sea which the dissertation will describe in the next chapters (MoENR, n.d.).

Additionally, in order to identify challenges and fill the gaps for the purpose of implementing instruments governing civil liability and compensation, the dissertation will consider a multitude of sources of available data from public documents and official records from the single electronic database of normative legal acts at a national level.
1.7. Dissertation Outline

This dissertation is divided into six chapters. Chapter one describes the primary aim and objectives of the dissertation by providing research questions. It will further discuss the literature review in detail and explain the methodology of the research. A general overview of oil pollution with a particular focus on ships, offshore activities, land-based, and transboundary pollution is provided in Chapter two. The following three chapters provide review and analysis of the selected governing instruments respectively at international, regional and national levels in order to identify gaps. Chapter five will summarize the challenges for the legal framework governing issues of liability and compensation caused by the identified gaps in Azerbaijan. Finally, the dissertation provides a conclusion and recommendations to fill the main gaps of the national legal framework in Azerbaijan.
Chapter Two

OVERVIEW OF OIL POLLUTION IN THE CASPIAN SEA REGION

2.1. The Caspian Sea as the Largest Isolated Lake

The Caspian Sea is the largest (376,000 km²) isolated inland water body in the world and its coastlines are shared by five countries: The Republic of Azerbaijan, the Republic of Kazakhstan, the Islamic Republic of Iran, Russian Federation, and Turkmenistan, respectively with coastline lengths of 825 km, 2320 km, 724 km, 695 km, and 1200 km. The average water depth is 184 m, and Lankaran Trench has a maximum depth of 1204 m, which is in the Azerbaijani territorial water. Although the Caspian Sea is the largest lake in the world due to its vast area and hydrographic characteristics, it is at the same time accepted as a sea by marine experts (Abbasova, 2015; Dubner, 2000). Under Article 11 of the Constitution of the Republic of Azerbaijan the sector of the Caspian Sea (lake) belonging to Azerbaijan is an integral part of its territory. In addition, all littoral states call it a sea in their respective languages (The Constitution of the Republic of Azerbaijan, n.d.).

Coastal population in the Caspian Sea region is more than fifteen million people and only the capital of Azerbaijan (Baku) with the population more than 2.2 million is located on the Caspian seaside as reflected in Figure 5 (Barbara, 2015). The biodiversity of the Caspian Sea is unique due to its isolated marine ecosystem. Furthermore, more than 1330 marine living organisms, including 111 species of fish, 574 different kinds of plants live in these waters. Sturgeon species is abundant in the Caspian Sea which accounts for more than ninety percent of the total worldwide sturgeon stocks and the primary
source of one of the world's most expensive caviar (Caspian Environment Programme, 2011; Dubner, 2000).

Figure 5: Urbanization in the coastal areas of the Caspian Sea

Unfortunately, currently the marine ecosystem in this region, including endemic living resources are under the potential dangers including pollution damages caused by the oil industry in Azerbaijan. Moreover, sturgeon stocks are decreased more than thirty times compared with the 1980s, which shows how alarming the situation is in the region and that it needs urgent necessary actions (Dubner, 2000).

2.2. Sources of Oil Pollution in the Caspian Sea

In recent decades, the issues regarding water-level fluctuations of the Caspian Sea have been the main problem of the littoral states; however, today pollution has become the biggest concern for the environment of the region. The primary sources of pollution of the Caspian Sea may be classified as follows:

- *Pollution through the rivers* - according to the Caspian Environment Programme (2011), the number of the flowing rivers into the Caspian Sea are over 130. The largest rivers of the region, specifically Volga (Russia), Kura, Araz (Azerbaijan),
Ural (Kazakhstan), Sefid Rud (Iran) are the main contributors to the pollution of the water. As is reflected in Appendix 1, the population living in Armenia and Georgia are the significant polluters of the rivers Kura and Araz. The most massive discharge of pollutants comes from the river Volga, which constitutes more than eighty percent of the total pollution caused by waterways. Untreated and industrial sewage, including radioactive and chemical substances are the primary sources of the contamination of these rivers (Abbasova, 2015; UNEP, n.d.);

- **Land-based pollution** - unthreatened urban discharges, illegal industrial wastes, and particularly oil has been identified as the primary sources of oil pollution in the region, including Absheron peninsula in Azerbaijan. As it is reflected in Appendix 1, onshore oil-related operations, particularly oil drilling in Azerbaijan and Kazakhstan are the main factors for the pollution. Concerns regarding widespread contamination caused by the oil industry in Azerbaijan is expressed in the Caspian Sea State of the Environment Report. Moreover, pollution from oil wells in the peninsula creates oil pools and these polluted areas are at risk of flooding due to climate change which are the potential risks for the environment of the Caspian Sea (Caspian Environment Programme, 2011; Efendiyeva 2000);

- **Pollution from ships and offshore activities** - an offshore oil and gas industry and the busy traffic in the Caspian Sea are also significant sources for the ecological concerns in the region. The oil-related installations and ships operating in the Caspian Sea, including vessels involved in the transportation of crude oil pose potential risks for the environment of the region. Besides, the Azerbaijani fleet plays a significant role in the transportation of the additional amount of Kazakh and Turkmeni crude oil through Baku-Tbilisi-Ceyhan oil pipeline. The growth in oil and gas production in the mentioned littoral states and the capacity for transportation of an additional amount of crude oil affect the number of oil tankers in the region. Further, oil production in the region, including in Azerbaijan is mostly offshore-based. Moreover, Azeri, Chirag, Gunashli (Azerbaijan) and newly discovered Kashagan (Kazakhstan) oil fields are some
of the largest oil stocks in the world, and the large-scale operations in the area are potential dangers for the marine ecosystem in Azerbaijan (Israfilbayova, 2018; Korshenko, & Gul, 2005).

2.3. The Oil Industry in the Caspian Sea Region

The Caspian Sea region is one of the world’s oldest oil industry centers in the world. The rich hydrocarbon resources of this sea have attracted international investors in the past. Currently, the growing trend of onshore and offshore oil industry makes the whole oil-related operation sensitive for the region. According to the United States Energy Information Administration (EIA) (2013), almost three quarters of oil reserves and a large proportion of natural gas stocks are based within hundred nautical miles in an offshore area. In addition, although Azerbaijan is the smallest country among the littoral states, it shares the second rank by accounting for more than thirty percent of total offshore oil deposits in the region as expressed in Table 2. Furthermore, the amount of the extracted crude oil including gas condensate increased two and half times during last three years (EIA, 2013; Bayramov, Kada, & Buchroithner, 2018).

Table 2. Oil stocks in the Caspian Sea

<table>
<thead>
<tr>
<th></th>
<th>Azerbaijan</th>
<th>Iran</th>
<th>Kazakhstan</th>
<th>Russia</th>
<th>Turkmenistan</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offshore</td>
<td>6.8</td>
<td>0.5</td>
<td>15.7</td>
<td>1.6</td>
<td>1.1</td>
<td>25.7</td>
</tr>
<tr>
<td>Onshore</td>
<td>1.73</td>
<td>(s)*</td>
<td>15.5</td>
<td>4.5</td>
<td>0.8</td>
<td>22.5</td>
</tr>
<tr>
<td>Total</td>
<td>8.5</td>
<td>0.5</td>
<td>31.2</td>
<td>6.1</td>
<td>1.9</td>
<td>48.2</td>
</tr>
</tbody>
</table>

Crude oil and lease condensate (billion bbl.)
*(s) = Value is too small for the number of decimal places shown

Source: Overview of oil and natural gas in the Caspian Sea Region (2013).
The volume of exported oil trade in Azerbaijan increased almost seven times between 2000-2009 while this number for Russia was fifty percent and for Kazakhstan two times more compared to previous years. According to the BP Statistical Review of World Energy, Azerbaijan produced daily almost eight hundred thousands of barrels of crude oil. The growth in oil production at the same time is supported by developing the pipeline industry and by the increasing number of oil tankers in the Caspian Sea (BP, 2018; Caspian Environment Programme, 2011).

Besides, last year Azerbaijan reached two billion tonnes in oil production and extended the above-mentioned “Contract of the Century” for the next thirty-three years, which is based on oil production in Azeri-Chirag-Gunashli oil fields and aimed to involve undeveloped oil deposits of these oil fields for the output (in accordance to estimates 0,5 billion tonnes of oil). The next section will express how pollution damages may be devastating for the region, which makes an examination of the legal issues essential from the liability and compensation standpoints (BPb, 2018; Efendiyeva, 2000).

2.4. Cases of Oil Pollution Incident in Azerbaijan

As mentioned before, onshore and offshore-based activities, including ships operating in the Caspian Sea are the major sources of oil pollution damages for the region. The major oil-related incidents in Azerbaijan include:

Case I: The incident is known as Mercury-2 is reported to IMO as a very serious incident in Azerbaijan. Mercury-2, a general RO-RO cargo vessel owned by Azerbaijan Caspian Shipping Company (ACSC) (year of build 1984; gross tonnage 11450) capsized and sank off the coast of Azerbaijan (80 miles off the coast) while sailing from Aktau Port (Kazakhstan) to Baku (Azerbaijan), and caused a discharge of massive amounts of crude oil into the Caspian Sea on October 22, 2002 as it is reflected in Figure 6. As a result of the incident, more than two thousand tonnes of oil (fifteen railway wagons with oil) was released into the sea, and from fifty crews and passengers who were on board forty-three of them were dead. After myth of the incident nineteen vessels, seven helicopters, and one special research-vessel belonging to different
national entities, and BP oil company were involved in search and rescue operations, prevention of oil spill and elimination of its consequences to the region (IMO\textsuperscript{b}, 2017; MoJ, 2002).

![Figure 6: Oil spill size (Sentinel-1A satellite image)](image)

Source: The volume of oil tanker transportation in the Caspian Sea (2018).

Furthermore, the Prosecutor General’s Office launched a criminal case under Article 262.3 (Infringement of traffic safety rules and operation of the railway, water or air transport) of the Criminal Code provision quoted under:

262.3. The act provided by article 262.1 of the present Code [infringement of traffic safety rules and operation of the railway, water or air transport by a person, in connection with carrying out work or post by which a person obliged to observe these rules], committed on imprudence entailed the death of two or more persons – is punished by imprisonment for the term from five up to ten years (Criminal Code of the Republic of Azerbaijan, 1999; PGO 2002).
Information about the issues of liability and compensation on the *Merkuri-2* incident is not available.

Case II: The fire that occurred on December 4, 2015, in Gunashli Oil Field, Deep Sea Platform 10 (owned by State Oil Company of Azerbaijan Republic (SOCAR) off the coast of Azerbaijan lasted more than two months. The incident destroyed the platform and killed more than thirty people, and as a result of this oil disaster, the size of discharging oil was over 380 thousands of gallons, which covered almost 270 square miles of the Caspian Sea (SOCAR, 2016; Ivanov, Bobkov, Terleeva, Yevtushenko, & Filimonova, 2016).

Furthermore, the Prosecutor General’s Office launched a criminal case under Article 225.2 (Infringement of fire safety rules) of the Criminal Code provision which reads:

Infringement of fire safety rules by a person to whose duties assigned its observance brought to death of a victim or other heavy consequences is punished by imprisonment for the term from three up to seven years with deprivation of the right to hold the certain posts or to engage in the certain activities for the term up to three years or without it (Criminal Code of the Republic of Azerbaijan, 1999).

Information about the issues of liability and compensation on the Gunashli Oil Field incident is not available.
Chapter Three

OVERVIEW OF THE GOVERNING INTERNATIONAL REGIMES AND REGIONAL AGREEMENTS DEALING WITH ISSUES OF LIABILITY AND COMPENSATION ARISING FROM OIL POLLUTION DAMAGES

This chapter will briefly discuss the concept of limitation of liability in order to better understand arising issues and will review and analyze existing international regimes and regional agreements (including private agreements) to matters of liability and compensation for oil pollution damages caused by various sources. The chapter will examine governing instruments by dividing them into ship-based, offshore activities, transboundary, and land-based oil pollution with a particular focus on issues of liability and compensation. The chapter will further discuss regional and national legal instruments with respect to the study area by identifying gaps and challenges in available law enforcement measures for the purpose of addressing liability and compensation-related issues.

3.1. Concept of Limitation of Liability

In the time of basic navigation, a major part of the carried cargoes had a much higher value than the vessels involved for the transportation of these cargoes. Bearing in mind the fact that in the majority of cases merchants’ capital was only the vessel itself, so it made the situation much more complex and posed several challenges for the satisfaction of all compensation claims arising from the incidents, which led to the bankruptcy of the owners of the incident-involved vessels. The existing situation made the liability and compensation issues much more sensitive from all perspectives, including from the international shipping and the oil industry’s standpoints. The
traditional recognition of this concept linked with the common law system and the idea of the limitation of liability has been followed in many international regimes dealing with oil pollution damages which this chapter will focus on. Importance of liability and compensation issues regarding pollution are at the same time highlighted in the 13th Principle of the Rio Declaration on Environment and Development which adopted in 1992:

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction (The Rio Declaration on Environment and Development, 1992).

3.2. International Regimes Relating to Ship-source Oil Pollution

3.2.1. The International Convention on Civil Liability for Oil Pollution Damage

First of all, it should be mentioned that historical development of the law in general, including international environmental law, has continuously been influenced by environmental issues. Furthermore, the number of the international shipping regulations dealing with prevention of ship-source oil pollution in respect of liability and compensation issues resulting from pollution incidents have increased dramatically after the Torrey Canyon marine disaster, in which over 120 thousand tonnes of crude oil was spilled around the coasts of England more than a half-century ago. In addition, the current liability and compensation issues in respect of oil pollution damages caused by ships, particularly laden oil tankers (although this expression is a non-conventional
term, it covers ships that have oil as cargo on board) governed by three primary

Being one of the governing international instruments, the CLC Convention was adopted
in 1969 and entered into force six years after its adoption. Three different protocols
updated the convention with intervals of eight years, respectively in 1976, 1984 and
1992. Although the 1984 Protocol did not enter into force, the latter protocol to the
convention was the most successful one, and after this instrument, the convention
mostly replaced the 1969 CLC Convention, which entered into force four years after its
adoption (Attard 2016; Gold, Chircop, & Kindred, 2003). The preamble of the 1992 CLC
Convention provides that one of the major aims of this instrument is to secure an
adequate compensation regime in respect of victims for the oil pollution damages
caused by laden oil tankers that fall into the definition of ships which are actually
involved in the transportation of persistent oil (The International Oil Pollution
Compensation (IOPC) Funds, 2018).

The main achievements of this convention compared to previous ones is that it
increased compensation limits substantially but at the same time based the limitation
tonnage on the vessel’s gross tonnage. Moreover, Article 3(1) of the convention
provides strict liability for registered owners of the ships for any oil pollution damages,
meaning that proof and negligence are not required (there are exceptions in Article 3).
On the other hand, shipowners are always liable for the oil pollution damages and the
costs regarding prevention and mitigation of the consequences of ship-source oil
pollution (Gold et al., 2003; IMO, 2018; IMOa, n.d.). In addition, this document regulates
joint liability and limitation of liability issues arising from the ship-source oil spill
incidents (Articles 4 and 5) and sets out provisions regarding mandatory liability
insurance regime (normally involving Protection and Indemnity clubs) for the vessels
that have on board over more than two thousand tonnes of persistent oil, as well as
bunker oil as a cargo. According to the convention, oil pollution damages may
encompass property-related damages, affecting fishing, as well as coastal activities,
and other related issues, such as clean-up operations and restoration of the
environment where an incident has occurred (Attard, 2016; IOPC Funds, 2018;
International Tanker Owners Pollution Federation Limited (ITOPF), 2018). Additionally, it should be noted that Azerbaijan is a party to the 1969 CLC Convention and accepted its protocols as listed in Table 3.

**Table 3: Status of ratification of the international instruments by the littoral states**

<table>
<thead>
<tr>
<th>Name of the document</th>
<th>Azerbaijan</th>
<th>Iran</th>
<th>Kazakhstan</th>
<th>Russia</th>
<th>Turkmenistan</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLC 1969</td>
<td>X</td>
<td>-</td>
<td>X</td>
<td>D</td>
<td>X</td>
</tr>
<tr>
<td>CLC 1992</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>FUND 1992</td>
<td>-</td>
<td>X</td>
<td>-</td>
<td>X</td>
<td>-</td>
</tr>
<tr>
<td>BUNKER 2001</td>
<td>X</td>
<td>X</td>
<td>-</td>
<td>X</td>
<td>-</td>
</tr>
<tr>
<td>SUPPLEMENTARY 2003</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

X - ratification; D - denunciation.


**3.2.2. The International Convention on Establishment of an International Fund for Compensation for Oil Pollution Damage**

As a second primary international instrument dealing with liability and compensation matters resulting from ship-source oil spill incidents, the FUND Convention entered into forces seven years after its adoption in 1971. In 1992 the mentioned document was
updated by the 1992 Protocol and replaced the 1972 FUND Convention due to the lack of the number of parties after two decades (Attard, 2016; IOPC Funds, 2018).

As it is mentioned above, the 1992 FUND Convention similar to the CLC Convention applies only to the laden oil tankers. In addition, this document at the same time provides definitions of crude and fuel oils which are not expressed by the CLC Convention. The FUND Convention deals with compensation issues regarding the persons who were not able to obtain full compensation under the 1992 CLC Convention (Article 4). Concerning this, Article 7(1) of the 1992 FUND Convention states:

Subject to the subsequent provisions of this Article, any action against the Fund for compensation under Article 4 of this convention shall be brought only before a court competent under Article IX of the 1992 CLC Convention in respect of actions against the owner who is or who would, but for the provisions of Article III, paragraph 2, of that convention, have been liable for pollution damage caused by the relevant incident (IOPC Funds 2018; Xu, 2013).

Furthermore, the IOPC Fund was established under this convention and another Fund launched under the 2003 Protocol established an International Oil Pollution Compensation Supplementary Fund. For settlement claims arising from oil pollution damages caused by laden oil tankers, the IOPC Funds work in close cooperation with shipowners’ Protection and Indemnity Clubs (IMO, 2018; IMO\(^b\), n.d.). In relation to the document, it was revealed that Azerbaijan is not a party to the 1992 FUND Convention and its protocol.
3.2.3. The Protocol Establishing an International Oil Pollution Compensation Supplementary Fund

The importance of adoption of the Supplementary Fund Protocol was raised after the Prestige oil spill incident (2002) and a diplomatic conference held at IMO adopted the protocol to the 1992 FUND Convention which entered into force after two years in 2005. The primary objective of the establishment of the third governing instrument dealing with liability and compensation regime was to ensure additional compensation to the victims who have been unable to cover their loss under the 1992, CLC and FUND Conventions (Attard, 2016; IMO, 2018; Xu, 2013). As it is provided in Article 4(1) of the protocol:

The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 FUND Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in Article 4, paragraph 4, of the 1992 FUND Convention in respect of any one incident (IOPC Funds, 2018).

The contribution system to the Supplementary Fund is different from the 1992 Fund and issues regarding the membership are open to the Contracting Parties to the later Fund. In addition, as a non-contracting Party to the 1992 FUND Convention, Azerbaijan cannot be a member of the Supplementary Fund.
3.2.4. The International Convention on Civil Liability for Bunker Oil Pollution Damage

Regimes in respect of civil liability and funds deal with persistent oil-related spills caused by laden oil tankers and bunker oil-related damages if the fuel is carried as cargo on board of the ship that is actually involved in the transportation of the mentioned commodities. Recognition of the concerns in respect of the non-tanker related bunker oil pollution resulted in the adoption of other international instruments which is known as the BUNKER Convention. The convention entered into force seven years after its adoption in 2001. The primary purpose is to provide adequate compensation for the persons who were affected by bunker oil-related pollution damages caused by non-tankers are not included under the compensation regime that is provided by the 1992 CLC Convention (ITOPF, 2018; Gold et al., 2003; IMO, 2018).

One of the key features of this convention is that it permits a claim against to the registered bareboat charterer, manager, and operator as well as ship owner or insurer. Concerning this, there is no permanent international fund like the IOPC Funds. Besides, like the 1992 CLC Convention, this international instrument also provides strict liability for the polluters and establishes tonnage related mandatory insurance regime for the vessels of >1000 gross tonnage (IOPC Funds, 2018). Moreover, Azerbaijan is a party to the BUNKER Convention since 2010, and therefore pollution from bunkers of non-tanker ships is subject to the limitation under such convention.

3.3. Instruments Relating to Offshore Activities and Transboundary-related Oil Pollution

3.3.1. The Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources

The Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources was adopted in 1977, and its primary objective was to provide a civil liability regime for issues of compensation resulting from
oil pollution damages caused by seabed activities. The Preamble of this convention also expresses concerns regarding major risks posed by oil exploration and oil exploitation activities under the jurisdiction of littoral states. Article 3 of the convention imposes strict liability on operators, which means that they are liable for any pollution damages caused by offshore activities (there are exceptions in Article 3). Under the document ‘operator’ is defined as “the person, whether licensee or not, designated as operator for the purposes of this convention by the Controlling State, or, in the absence of such designation, the person who is in overall control of the activities carried on at the installation” (EcoLex, n.d.).

As the above-mentioned international regimes, which deal with civil liability regimes for oil pollution damages caused by ships, the convention provides provisions on joint liability, channeling, limitation of liability (up to a level 40 million Special Drawing Rights (SDR)), the establishment of the fund, insurance, time bar, etc. (EcoLex, n.d.). Although this convention was adopted more than four decades ago, there is no ratification made by the participating countries. In other words, it has not entered into force and there is no uniform international instrument in place dealing with issues of liability and compensation arising from oil pollution damages caused by seabed operations carried out under the jurisdiction of coastal states. Concerning this, national laws impose obligations on operators of offshore facilities to have insurance in order to address marine environmental issues arising from oil pollution incidents (IMO, 2010).

3.3.2. The Offshore Pollution Liability Agreement

Bearing in mind the fact that oil exploration and exploitation cause potential dangers to the environment, the Offshore Pollution Liability Agreement (OPOL) was established in order to provide an adequate compensation regime for claims arising from oil spill incidents among significant oil companies representing different countries and it came into effect in 1975 one year after its adoption. The private document imposes financial obligations on the parties to address compensation claims arising out of oil discharged
from their facilities, in addition to contributing to the payment of claims due to the other party that fails to meet its claims obligations, subject to certain conditions (IMO, 2011).

Pursuant to OPOL, operators of the offshore facilities are liable for claims arising from oil pollution incident. Limitation of liability per incident under this agreement is up to a level of 250 million USD. In accordance to the provisions set out by the documents, only the operators of offshore facilities may be parties to this agreement and it does not work with permanently abandoned facilities and incidents occurred in the Mediterranean and Baltic Seas. In addition, OPOL covers compensation claims arising from the liability of operators belonging to nine designated countries, i.e. Great Britain, Norway, Germany, France which are parties to this document (IMO, 2011; OPOL, n.d.).

3.4. Legal Framework Relating to Oil Pollution from Land-based Activities

First of all, it is important to note that there is no specific uniform instrument on a global scale encompassing only the issues of liability and compensation arising from oil pollution damages caused by land-based activities. Moreover, these issues are mainly regulated by national legislations and specific regional agreements and the principle of ‘*sic utere tuo ut alienum non laedas*’ (use your property in such a way that does not injure other people’s) is applicable for these matters (Attard, 2016). In addition, only the UNCLOS (Section V) sets out provisions dealing with various sources of pollution including, inter alia land-based pollution. However, Article 207 puts obligations on states with particular focus on protection of the marine environment. In addition, Article 235 dealing with liability and compensation in a general context points out that states should be liable for non-compliance to their commitments and the adequate compensation regime has to be set out by them regarding claims arising from pollution (UN, n.d.).
Chapter Four

LEGAL FRAMEWORK FOR THE REGULATION OF OIL POLLUTION IN THE CASPIAN SEA REGION

In briefly discussing legal issues relating to the status of the Caspian Sea, this chapter will review and analyze applicable regional agreements dealing with various sources of oil pollution in order to identify gaps and challenges for the issues of liability and compensation resulting from oil pollution-related incidents. In addition, the chapter takes into consideration the newly signed Convention on the Legal Status of the Caspian Sea, which will identify difficulties in addressing these issues.

4.1. The Legal Status Problem of the Caspian Sea

In relation to the legal regime issues, it has to be noted that, after the collapse of the Soviet Union the legal status of the Caspian Sea started to be discussed among Russia, Iran and the other three littoral states, which gained their independence almost after seven decades of colonization. Before the dissolution of the Soviet Union, the bilateral agreements between the mentioned two countries gave effect on the legal regime of this enclosed water body. Regarding this, bilateral agreements between Russia and Iran dealt only with fishing, navigation and other related matters, excluding oil and gas-related issues in the Caspian Sea. Delimitation-related issues have been the primary subjects of the clash of ideas among littoral states in the last twenty years. Moreover, Azerbaijan, Kazakhstan and Russian Federation proposed to divide the Caspian Sea based on the median line delimitation method while suggestions offered by Iran and Turkmenistan were based on the equal principle delimitation, which from a legal aspect is a complex issue and its application is difficult (Abbasova, 2015; Barbara,
Unfortunately, these discussions lasted over two decades, and the Caspian Sea littoral states finally agreed on the legal regime of the largest enclosed water body in the world this year.

### 4.2. The Convention on the Legal Status of the Caspian Sea

The Convention on the Legal Status of the Caspian Sea was signed during the Fifth Caspian Summit (Aktau) by all littoral states on August 12, 2018. The convention defines the Caspian Sea as a sea and gives it a special legal regime, which will be developed and agreed among the littoral states in the future. This convention sets out provisions regarding rights and commitments of the parties in respect of the use of the sea, including inter alia its seabed and resources. In accordance with the document, most of the Caspian Sea remains in common use except internal waters (15 nautical miles) and an additional fishery zone (10 nautical miles), which is illustrated in Figure 7.

![Figure 7: Maritime zones of the Caspian Sea](image)

Consecutively, a division of the seabed, natural resources (except under territorial waters) and demarcation of the boundaries will be subject to the future negotiations between individual countries. Azerbaijan already agreed on the issues of seabed and subsoil with Russia and Kazakhstan by signing bilateral and tripartite agreements (Convention on the Legal Status of the Caspian Sea, 2018; Culver, & Kozyrenko, 2018).

Regarding the area studied, it is important to note that the document lays down obligations for littoral states by pointing out that they should carry out activities based on fundamental principles for the region, including the principle relating to liability issues. Moreover, considering all sources of oil pollution, Article 15 lays down general obligations for the states by stating that: “The Parties shall be liable under the norms of international law for any damage caused to the ecological system of the Caspian Sea”. There is no specific provision in respect of compensation issues arising from oil pollution damages. The convention still needs to be ratified by the Caspian littoral states and then it will be used as the basis for detailed agreements on issues mentioned above (Convention on the Legal Status of the Caspian Sea, 2018).

4.3. The Framework Convention for the Protection of the Marine Environment of the Caspian Sea

First of all, individual regional seas programmes within UNEP have reached eighteen and they are divided into three major groups:

- UNEP - administered regional seas programmes (7);
- Non-UNEP - administered regional seas programmes (7);
- Independent regional seas programmes (4) (UNEPc, n.d.).

The area studied falls into the first-mentioned category and within this programme, littoral states adopted significant regional documents, such as the Caspian Environment Programme, the TEHRAN Convention and the Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents (AKTAU Protocol). Moreover, taking into account ecological concerns, as well as the
The fragile nature of the Caspian Sea, the Caspian littoral states signed the TEHRAN Convention in 2003 and it entered into force three years after its adoption finally accepted by Azerbaijan. Before the newly signed Convention on the Legal Status of the Caspian Sea comes into effect, this document will be the only binding regional instrument for all littoral states (UNEP, n.d.; UNEP, 2018).

The preamble of the TEHRAN Convention by raising awareness of pollution from various sources expresses the importance related to the protection of the marine environment in the Caspian Sea region. Concerning this, Article 2 provides:

“The objective of this convention is the protection of the Caspian environment from all sources of pollution including the protection, preservation, restoration and sustainable and rational use of the biological resources of the Caspian Sea.” (The Tehran Convention, n.d.).

By expressing “the polluter pays” principle the document reminds that the parties should be liable for the caused pollution damages in the Caspian Sea. Concerning the area studied, first of all, Articles 7, 8, and 9 deal with pollution respectively from land, offshore and ship-based sources. In addition, taking into account the potential risks posed by transboundary pollution Article 7 sprovides:

If the discharge from a watercourse, flowing through the territories of two or more Contracting Parties or forming a boundary between them, is likely to cause pollution of the Caspian Sea, the Contracting Parties shall cooperate in taking all appropriate measures to prevent, reduce and control such pollution, including, where appropriate, the establishment of joint bodies responsible for identifying and resolving potential pollution problems (The Tehran Convention, n.d.).
All mentioned articles set out provisions regarding prevention, control, and reduction of the pollution and encourage states to cooperate for the development of the detailed protocols (Barbara, 2015; The Tehran Convention, n.d.).

Table 4: Protocols to the TEHRAN Convention

<table>
<thead>
<tr>
<th>Title of the Protocol</th>
<th>Place of signature</th>
<th>Adoption</th>
<th>Simple signature</th>
<th>Ratification</th>
<th>Entry into force</th>
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<td>2 The Protocol on the Protection of the Caspian Sea against Pollution from Land based Sources and Activities</td>
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<td>3 The Protocol for the Conservation of Biological Diversity</td>
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<td>2014</td>
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<td>4 The Protocol Environment Impact Assessment</td>
<td>Moscow Protocol (2)</td>
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Finally, Article 29 of the Framework Convention lays down obligations for the littoral states by stating that they should develop instruments dealing with the issues of liability and compensation arising from violations of the TEHRAN Convention and its protocols. Until today the Caspian littoral states have adopted four protocols as it is listed in Table 4 but only the AKTAU Protocol came into effect (The Tehran Convention, n.d.).
4.4. The Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents

The AKTAU Protocol was adopted by all littoral states in 2011 and entered into force five years after its adoption. The preamble of the document points out that oil pollution incidents are major risks on the region and it is essential to address pollution from various sources, including from offshore, land-based activities and ships operating in the Caspian Sea. The primary aim of this document is to contribute to protecting the marine ecosystem by carrying out necessary measures in addressing oil pollution. Article 11 of the AKTAU Protocol deals with liability and compensation related matters, with a particular focus on cost issues arising from oil spill response operations conducted by other assisting littoral states (EcoLex, 2011).

In accordance with Articles 4 and 5, littoral states are required to establish regional cooperation plans and to develop a national contingency plan to address oil pollution incidents which need urgent measures to be taken. The Caspian littoral states have been working on the preparation of the regional plan with IMO’s close assistance since 2012. Also, under the requirements set out by the AKTAU Protocol Russian Federation, Kazakhstan and Turkmenistan have already approved their national plans. Azerbaijan and Iran are still working on the development of their national plans. Although awaiting approval, the plans are in use in case of emergency (EcoLex, 2011; ITOPF, 2018).

4.5. The Protocol for the Protection of the Caspian Sea against Pollution from Land-Based Sources and Activities

The Protocol for the Protection of the Caspian Sea against Pollution from Land-Based Sources and Activities was adopted in 2012. This document has not been ratified by Kazakhstan and Russian Federation, which means that it did not come into effect. Azerbaijan acceded to the protocol two years after its adoption. The protocol expresses the seriousness of the risks posed by oil pollution and aimed to minimize the adverse impacts of pollution from land-based activities, including oil-related operations. Article 9 taking into account water level fluctuation of the Caspian Sea points out: “The
Contracting Parties shall protect petroleum and chemical facilities and oil contaminated land under potential threat of inundation and shall decommission obsolete onshore installations and storage facilities” (EcoLex, 2012). Furthermore, the convention does not contain any special provision dealing with liability issues and compensation claims arising from oil pollution damages caused by onshore activities.
Chapter Five

INSTITUTIONAL AND LEGAL FRAMEWORKS FOR OIL POLLUTION DAMAGES IN AZERBAIJAN

5.1. National Institutional Framework

Being Party to the governing international and regional instruments regarding ship-source oil pollution, particularly MARPOL, OPRC, CLC, TEHRAN Conventions and their applicable protocols, Azerbaijan bears responsibility for the preservation and protection of the marine ecosystem of the territorial waters. This section will examine the regulatory entities that are involved in the process of addressing oil pollution damages at a national level.

5.1.1. State Maritime Agency

Several national and local authorities in Azerbaijan having more specific statutory obligations than others should take measures in response to incidents leading to pollution in the national sector of the Caspian Sea. SMA is a executive body under the Ministry of Transport, Communications and High Technologies and it is in charge of control and supervision of compliance with the requirements for the prevention of pollution. It is specifically focused on release of crude oil, oil products and other harmful or dangerous substances from ships and assets to the sea, safety of maritime navigation, safety of human life and implementation of the IMO conventions to which Azerbaijan is a Party. This entity operates on the basis of a Statute approved by a Presidential Decree, dated May 22, 2018. SMA is entitled to monitor the area and
impose fines within their area of responsibility, based on data received from various sources (IMO\textsuperscript{b}, 2017; SMA, 2001; SMA, 2018).

5.1.2. Ministry of Emergency Situations

The Ministry of Emergency Situations of the Republic of Azerbaijan (MoES) is the executive government entity in charge of the response to environmental pollution, including pollution from ships, offshore platforms and pipelines. At the same time, the Ministry is responsible for search and rescue operations during accidents and catastrophes in territorial waters by providing instant reaction to emergency situations resulting from oil spills. Further, the Ministry has duties regarding the organization of the activities for the prevention and elimination of oil spill consequences, carrying out control functions concerning technical security issues, management of carriage of dangerous goods by sea and participating in the organization of prevention of emergency situations with other structural units and relevant state entities. MoES operates on the basis of a Statute approved by a Presidential Decree, dated April 19, 2006 (MoES, 2006).

The Caspian Basin Accident-Rescue Service was established within the structure of the Ministry based on the entity which conducted oil spill response activities over three decades. In case of a oil oil spill response, MoES works in cooperation with SMA and, in case of necessity, Coast Guard, which provides maritime assets and human resources, both for investigation and for response to the pollution and other related, such as SOCAR and ACSC. In addition, the Ministry is currently working on a draft version of the “National Plan on oil spill preparedness and response in the Azerbaijani sector of the Caspian Sea”. In accordance with this document, the National Oil Spill Council needs to be established and would be responsible for the development of an oil spill response policy based on cooperation among governmental entities involved and other related stakeholders. The Council is responsible for the coordination at the regional and national levels (IMO\textsuperscript{b}, 2017).
5.1.3. Ministry of Ecology and Natural Resources

The Ministry of Ecology and Natural Resources of the Republic of Azerbaijan (MoENR) is a regulatory and executive body that is, among other obligations, responsible for the protection of the marine environment from various sources of pollution, including the discharge, emission, and disposal of harmful and hazardous substances, wastes and other pollutants from ships. The Ministry operates on the basis of a Statute approved by a Presidential Decree, dated September 18, 2001 and responsible for conducting inspection, taking samples and imposing administrative punishments (MoENR, 2001). MoENR is the lead agency for marine environmental protection enforcement actions. Article 71 of the Law on Protection of the Environment provides the powers for the responsible government entity to conduct investigations into cases of pollution and instigate sanction proceedings. The basis for the inspectors of MoENR to issue sanctions is stipulated in its Statute. In conducting its duties related to enforcement, MoENR may seek assistance from other entities in providing assets under their management (IMO\textsuperscript{b}, 2017).

5.1.4. Ministry of Energy

Under the Statute approved by the Presidential Decree, dated April 11, 2014, the Ministry of Energy of the Republic of Azerbaijan formulates common fuel and energy policies as well as ensures the implementation of State programs and development concepts in the energy sector. The Ministry is, among others, responsible for conducting regulatory activities in the energy sector and for rational utilization of energy resources, including oil. Special permits for oil-related activities, such as exploration and exploitation activities are issued by this entity. Also one of the primary functions of this Ministry is to prepare and develop contracts for the production of the primary energy resources in Azerbaijan which will be discussed in this chapter (MoJ, 2014, Valiyev, & Eminova, 2015).
5.2. National Legal Framework

In Azerbaijan, the government is in charge of the commitment of controlling activities that may pose a risk to human life and the environment, including the marine ecosystem. Oil pollution damages to the marine ecosystem are punishable both administratively and criminally. There is an established national law regime for handling oil and other harmful or dangerous substances.

Articles 39 and 78 of the Constitution of the Republic of Azerbaijan, 1995 declare that everyone has the right to live in an ecologically balanced environment, which is essential for a healthy life. It further determines that no one may cause damage to the environment and natural resources beyond the limitation that is prescribed by law. In addition, the government and Azerbaijani community have a duty to defend and preserve the environment for present and future generations (The Constitution of the Republic of Azerbaijan, n.d.). This section will examine the main documents dealing with oil pollution damages, particularly liability and compensation issues arising from incidents at a national level.

5.2.1. National Maritime Transport Policy

The National Maritime Transport Policy of the Republic of Azerbaijan was approved by the Presidential Decree dated September 11, 2013. The primary objective of this document is to ensure economic, energy security and protection of energy infrastructures at sea. The document provides that the exploitation of all energy sources, including crude oil and natural gas needs the establishment of an effective national regulatory framework. In accordance with paragraph 1.3 of the document, primary national interests in the national sector are classified as:

- To ensure the peace at sea and lawful uses of the sea;
- To use the sector of the Caspian Sea belonging to Azerbaijan and its natural resources;
- To prevent any discrimination act committed against Azerbaijan Republic;
- To effectively address problems related to the use of natural resources of the Caspian Sea and their exploration;
- To reasonably use and improve the use of natural resources of the Caspian Sea for social and economic development;
- To establish an effective transportation system, to control this system and to ensure its security (MoJ, 2013).

At the same time, paragraph 3.3.2.5 of the document points out that pollution damages to the marine environment of the Caspian Sea caused by land-based, offshore activities and different types of ships, particularly from oil tankers is considered one of the main internal threats out of the possible eight internal threats. The document also identifies the primary commitments of competent authorities for the purpose of implementing its objectives (IMO², 2017; MoJ, 2013).

5.2.2. Strategy for Implementing IMO Instruments for the Period 2016-2021

The strategy for Implementing IMO Instruments for the period 2016-2021 was adopted by Order of the Council of SMA, dated January 25, 2016. The following main tasks are identified by the strategy:

- To efficiently implement and enforce provisions of the international instruments which Azerbaijan is a party, including governing IMO instruments dealing with oil pollution damages;
- To maintain safety in the maritime transport sector;
- To carry out preventive measures to address ship-source oil pollution and oil spill incidents;
- To develop a comprehensive and progressive maritime transport sector (IMO², 2017).

Bearing in mind the UN Sustainable Development Goals 13 (Take urgent action to combat climate change and its impacts) and 14 (Conserve and sustainably use the oceans, seas and marine resources), this document puts a target to address risk-related effects on the marine ecosystem, human life and lawful use of the Caspian Sea.
In relation to this effective implementation of the requirements for the prevention of pollution by ships, prevention and elimination of the consequences of the ship-source pollution, specifically oil spill pollution and the necessary measures for the improvement of energy efficiency in shipping are defined as the main objectives of this document. Additionally, the strategy points out that ships with high-risk profile must be part of expanded inspections, which include gas carriers and chemical tankers which are more than 10 years old, bulk carriers which are more than 12 years old, passenger ships which are more than 15 years old, and oil tankers which are greater than 3000 gross tonnage and over 15 years old (SMA\textsuperscript{b}, 2016).

5.2.3. “Azerbaijan 2020: Vision into the Future” Development Conception

“Azerbaijan 2020: look into the future” Concept of Development was approved by Presidential Decree, dated December 29, 2012. Environment and ecology-related issues are accepted as the major issues within this document; therefore, entities are required to carry out the necessary measures in these areas to reduce the negative impacts of the ecological problems to the environment. In addition, one of the major targets of this document is to achieve sustainable protection of the environment and development in social and economic sectors considering all ecological factors. For achievement of the balanced ecology the Concept defines the following activities as the necessary measures:

- Protection of the marine ecosystem, including living resources in the Caspian Sea;
- Reduction the negative environmental impacts of the energy industry for the region;
- Protection and elimination of the consequences of the ship-source pollution, including oil spill pollution in the Caspian Sea;
- Effective and efficient management of the natural resources in the sector of the Caspian Sea belonging to Azerbaijan;
- Cleanup of damaged areas and the establishment of the new green areas.
In this document pollution damages caused by land-based activities, including oil extraction carried out with imperfect methods in Azerbaijan, particularly in the Absheron peninsula are considered some of the main threats to the marine ecosystem of the region (“Azerbaijan 2020: look into the future” Concept of Development, 2012).

5.2.4. Administrative Liability for Oil Pollution Damage

The main legal document dealing with administrative sanctions for oil pollution damages in Azerbaijan is the Code on Administrative Violations. The code was adopted on December 25, 2015. Chapter XXVIII (Articles 307-321) of this document deals with penalties regarding violations of the rules in all kinds of transportation systems, including maritime transport. Article 307 provides sanctions on operation and management of the vessels for non-compliance with provisions of the international documents and applicable domestic laws in maritime transport which may cause actual danger to maritime safety, oil pollution damages, as well as health of people and the environment. Article dictates that violations of this Article can lead to fines for natural persons three hundred manats (as at September 1, 2018, approximately 175 USD), for officials five hundred manats (approximately 295 USD), and for legal persons five thousand manats (approximately 2950 USD) (Code of the Republic of Azerbaijan on Administrative Violations, 2015).

Article 233.1 points out that for exceeding standards of maximum permissible emission, discharge of harmful substances into the environment violations of this Article can lead to fines for officials from two thousand five hundred to four thousand manats (approximately 1460-2330 USD), for legal persons from ten thousand five hundred to twelve thousand five hundred manats (approximately 6125-7000 USD) (Code of the Republic of Azerbaijan on Administrative Violations, 2015).

In addition, the legal basis for enforcement actions, including power to detain vessels, as well as oil tankers if found unfit to proceed to sea and penal proceedings are provided in the “Statute on control on inspection on ships”, approved by Decision of the Cabinet of Ministers, dated April 4, 2013 (SMA, 2013).
5.2.5. Criminal Liability for Oil Pollution Damage

The main legal document dealing with criminal liability issues for oil pollution damages at sea in Azerbaijan is the Criminal Code and it was adopted on December 30, 1999. Article 2 points out that protection of the environment, including the marine ecosystem is one of the primary tasks of the Code. Chapter XXVIII of the document deals with ecological crimes. Article 252 in this Chapter provides penalties imposed in respect of pollution damages caused by land-based, offshore activities and by ships operating in the Caspian Sea. Depending on the environmental consequences of ecological crimes, harm to life of a person and loss of a person’s life, fines may change between three and nine thousand manats (approximately 1770-5300 USD, as at September 1, 2018); in addition, imprisonment may change from six months up to five years (Criminal Code of the Republic of Azerbaijan, 1999).

5.2.6. Merchant Shipping Legislation

First of all, Azerbaijan acceded to the 1969 CLC Convention, and its 1992 Protocol, as well as the 2001 BUNKER Convention. The legal basis for civil liability issues and compensation claims arising from oil pollution damages caused by ships are provided by Merchant Shipping Code, dated 2001. Furthermore, Chapter XVIII (Articles 250-257) of the document deals with pollution damages caused by ship designated or used for the transportation of oil as cargo. The Code sets out provisions regarding joint liability of the owners of the ships (Article 252), certification issues in respect of specific laden tankers (Articles 255-256), limitation of liability for shipowners (Article 253), establishment of the relevant funds (Article 254) as well as channeling of limitation towards shipowners (Article 252) (MoJ, 2001).

Chapter XVIII is developed mainly based on the provisions set out by the CLC Convention, 1969. From Articles provided by the Merchant Shipping Code, specific gaps are visible when the provisions are analyzed. Bearing in mind the fact that the
CLC Convention lays down strict liability on the registered owner of the ship, the first gap is a broad and generic definition of shipowner provided by Article 2.3:

“Shipowner - a person, operating the ship on its own behalf, irrespective of the fact whether he is a shipowner or use it on other legal basis”.

In common law-based systems of law, owners have been recognized as encompassing both registered and non-registered owners of the ship. Similarly, the national document refers to the owner of the ship as follows based on Article 7.2:

The shipowner shall have rights to perform any actions, that comply with laws of the Republic of Azerbaijan and do not infringe statutory rights and interests of other parties regarding the ship, as well as to alienate the ship, to retain the ownership and transfer the rights of possession, use, and disposal and define the mortgage.

The provision set out in Articles 7.2 is different from the definition of the shipowner expressed in the Article 2.3.

At the same time, there is an obvious gap in respect of the geographical scope of application. The Code does not contain any provisions dealing with geographical scope, while Article 2 of the CLC Convention points out:

This convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not
established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage (IOPC Funds, 2018).

Article 257.4 provides civil liability for ship-source oil pollution by shipowners and defines that compensation claims can be raised directly towards the insurer or another party who is liable for these matters and in all cases, they can require the shipowner’s involvement as a co-defendant. However, comparable with governing international regimes the Merchant Shipping Code does not provide provisions regarding time bar for the compensation claims, which is also important in order to address these issues (MoJ, 2001).

5.2.7. Law on the Protection of Environment

National requirements for protection of the environment are set by the Law on the Protection of Environment, dated June 8, 1999. Article 3 of this document defines liability for the violations of environmental laws as one of the fundamental principles for a national legal framework. Under Article 6, persons who are victims of the above-mentioned violations have a right to receive compensation for damages caused by various sources. Articles 78 and 79 deal respectively with the issues of liability and compensation arising from damages, including pollution damages. Moreover, legal persons, as well as officials, are liable for the violations in accordance Article 78 and should pay compensations to the victims pursuant to Article 79 (MoJ, 1999).
5.2.8. Legislation on Energy Sources

The Law on Energy, dated 1998 provides a legal basis for oil-related activities, including oil exploitation, exploration, and its transportation. Concerning the liability issues, Article 11 points out that owners of the energy facilities are liable for the environmental, human health and life damages, as well as for the prevention, control, and reduction of its consequences. Further, the same Article contains a force majeure clause which releases owners from the liability for the pollution damages caused by pollution incidents. The Law also provides provisions for joint liability and compensation issues by referring to the applicable national legislations. It is also stated in Article 12 that owners of the facilities are required to obtain insurance to cover accidental pollution damages. Financial obligations may vary depending on the energy contracts which are also known as Product Sharing Agreements. They provide the basis for legal, financial and commercial obligations between parties. Chapter V of the Law on Energy sets out provisions regarding agreements. Under Article 13, the Ministry of Energy and SOCAR are authorized to sign energy contracts on behalf of the Azerbaijani Government with international oil companies (MoJ, 1998; Valiyev et al., 2015).
Chapter Six

SUMMARY OF LEGAL FINDINGS

6.1. Challenges in Addressing Issues of Liability and Compensation for Oil Pollution Damages

After reviewing governing international liability and compensation regimes for oil pollution damages in chapter three, regional instruments in chapter four and national legislation in chapter five, the dissertation aimed to identify the significant challenges of addressing liability and compensation issues for oil pollution damages caused by various sources at sea in Azerbaijan. Chapter six is intended to draw attention to the difficulties in respect of transboundary oil pollution in the Caspian Sea region. Based on gaps in the national legislation on civil liability and compensation issues and bearing in mind the major oil pollution-related cases the challenges are identified. With a particular focus on matters of liability and compensation arising from ship-source oil pollution, the remaining identified challenges are classified into land-based, offshore activities and transboundary-related oil pollution challenges.

6.1.1. Challenges regarding Ship-source Oil Pollution

By reviewing the national legislation on oil pollution damages, the author revealed that although Azerbaijan has acceded to the 1992 CLC Convention, Chapter XVIII of the Merchant Shipping Code dealing with issues of liability and compensation is developed based on the provisions set out by the 1969 CLC Convention. Bearing in mind the fact that the 1992 CLC Convention as a modern regime providing better protection for potential claimants than the 1969 CLC Convention, it may impose difficulties in
addressing compensation claims arising from oil pollution incidents occurring at sea in Azerbaijan. At the same time gaps identified in this document, such as the absence of time bar and geographical scope of application-related provisions may challenge compensation claims.

The provisions of the international instruments to which Azerbaijan is a party on civil liability and compensation caused by ships’ bunker oil should be applicable preferentially within its respective scope. Azerbaijan is a Party to the 2001 BUNKER Convention. Although Chapter XVIII of the Merchant Shipping Code deals with liability and compensation issues arising from oil pollution damages, it is not applicable to pollution damages covered by such convention. Non-existence of the provisions dealing with bunker oil pollution damages may cause problems in addressing these issues.

Further examination of the national legal framework revealed that Azerbaijan is not a party to the 1992 FUND Convention, which sets out adequate compensation regime for the persons who were not able to obtain full compensation under the 1992 CLC Convention. As mentioned earlier, the newly signed Convention on the Legal Status of the Caspian Sea will pave the way for new oil extraction projects in the region. In addition, the number of oil tankers flying under the flag of Azerbaijan is increasing due to the support for the transportation of the additional amount of Kazakhi and Turkmeni crude oil through the Baku-Tbilisi-Ceyhan oil pipeline. The risks of oil pollution damages caused by ships have been increasing along with the growing intensity of operations in the national sector of the Caspian Sea which makes essential accession to the mentioned international instrument to address issues of liability and compensation arising from incidents.

By reviewing the national legislation dealing with administrative sanctions in respect of oil pollution damages, it was found that penalties set out in the Code of the Republic of Azerbaijan on Administrative Violations are very low and it may cause several difficulties in addressing liability issues resulting from incidents.

Although the legal status of the Caspian Sea is not a disputed issue anymore, commitments set out by the newly signed Convention on the Legal Status of the
Caspian Sea in respect of the problematic issues, such as delimitation of the sea boundaries and disputed oil fields, pose several challenges from the legal standpoint. Because of the absence of multilateral agreement encompassing the (five) states at interest in the mentioned issues and it is feasible, they should be made to negotiate bilateral agreements with countries interested. The littoral states, including Azerbaijan, will face difficulties in settling liability and compensation issues arising from pollution damages caused by laden tankers operating in the Caspian Sea as there is no provision in regard to the geographical scope of application set out by national and regional legislations dealing with ship-source oil pollution matters, including liability and compensation issues.

The research revealed that another problematic issue, which may cause several difficulties in solving issues of liability and compensation arising from oil pollution incidents, is non-existence of the National Marine Oil Spill Contingency Plan for Azerbaijan Sector of the Caspian Sea. Moreover, provisions dealing with civil liability issues and management of the compensation claims are significant components of national contingency plans.

In addition, it was found that there is no regional cooperation plan on addressing oil pollution among littoral states of the Caspian Sea. In relation to this, it should be mentioned that regional cooperation is vital for addressing issues in respect of pollution damages caused by ships involved in transportation of crude oil in the Caspian Sea. Because of the lack of regional planning and cooperation procedures on oil pollution liability and compensation in littoral states, Azerbaijan may face several difficulties.

6.1.2. Challenges for Offshore Activities and Transboundary Oil Pollution

By reviewing legislation in respect of oil pollution, it was revealed that Article 8 of the TEHRAN Convention boosts contracting parties to develop protocols for the purpose of prevention, control, and reduction of pollution from offshore activities in the Caspian Sea. Until today the littoral states have not produced any regional instrument explicitly dealing with oil pollution from offshore operations and regional cooperation plan to
combat incidents of emergency, which may be a significant challenge for them, including Azerbaijan to address these pollution-related issues.

It was also found that Article 29 of the TEHRAN Convention lays down obligations for state parties to develop regulations in respect of issues of liability and compensation arising from pollution damages caused by various sources, including offshore-based activities regarding infringements of the Framework Convention and its protocols. Non-existence of the civil liability regime also poses challenges on the littoral states to deal with offshore-based pollution incidents.

Concerning transboundary pollution, it has to be emphasized that the governing regional instruments mainly focus on the seabed, ship, and land-based pollution with a particular focus on the prevention, control, and reduction of their negative impacts to the marine ecosystem of the Caspian Sea. Furthermore, the AKTAU Protocol does not contain any provision in respect of transboundary pollution, which makes transboundary-related issues much more challenging. The identified gaps and a lack of attention to matters of liability and compensation pose severe difficulties to address problems arising from transboundary pollution-related incidents at sea in Azerbaijan.

By reviewing and analyzing the national legal framework, it was revealed that there is no specific domestic law dealing with liability and compensation issues arising from offshore activities and transboundary-related oil pollution incidents. In addition, the lower level of the penalties set out by administrative legislation and non-existence of punishment in the context of criminal law for damages caused by transboundary pollution is another challenge to address transboundary-related issues. At the same time a common approach set by the Criminal Code to pollution from various sources pose difficulties in addressing devastating effects of the large-scale incidents, including issues of liability and compensation resulting from these incidents.

The issues arising from the newly signed Convention on the Legal Status of the Caspian Sea, particularly unresolved issues in respect of the division of the seabed, natural resources and demarcation of the boundaries make it complicated to address pollution incidents. It should be taken into account that these issues are subject to the
future negotiations between individual countries and there is no uniform universal instrument dealing with pollution damages from offshore facilities shows.

6.1.3. Challenges regarding Land-based Oil Pollution

By reviewing regional and national legal frameworks, the author found that littoral states adopted a specific protocol to the TEHRAN Convention dealing with pollution from land-based activities. However, the document has not come into effect since 2012 and has not included provisions regarding the issues of liability and compensation. Non-existence of this instrument poses severe difficulties for addressing issues arising from land-based activities.

As mentioned earlier, there is no national contingency plan in place, which should also encompass civil liability issues, as well as procedures regarding compensation claims. It should be borne in mind that there is lack of attention of the liability and compensation issues in national legislation, which is creating difficulties in addressing these issues at a national level.
CONCLUSION AND RECOMMENDATIONS

Conclusion

Bearing in mind the research questions, the primary objectives this dissertation aims to achieve is to identify the challenges of the legal framework on the issues of liability and compensation for oil pollution damages caused by various sources in Azerbaijan. To evaluate the challenges of the national legal framework, the dissertation primarily, reviews legal instruments related to the pollution damages caused by ships, offshore, land-based activities and transboundary sources.

Chapter two evaluated the primary pollution sources in the Caspian Sea and large-scale oil projects in the region by providing a comparable assessment of oil activities in Azerbaijan. Concerns about potential dangers from various sources about the oil industry of the littoral states, including Azerbaijan, are increasing rapidly. This is mainly due to offshore oil production in the region. Moreover, it was found that most of the national fleet is involved in the trade of the Kazakh and Turkmeni oil which is delivered through the Baku-Tbilisi-Ceyhan oil pipeline to western oil markets. Further, by providing case studies related to the oil pollution damages caused by ship and offshore activities, the chapter found that data on the liability and compensation issues are not available, which is a challenge to this dissertation.

Moreover, with respect to pollution damages caused by ship-based sources, the CLC, FUND, BUNKER and, the Supplementary conventions were reviewed in chapter three taking into account liability issues and compensation claims. Concerning the legal framework for offshore, land-based and transboundary pollution, the dissertation expressed the non-existence of uniform international instruments. The analysis was made on selected instruments, namely the CLEE Convention and the OPOL agreement. Examination of the mentioned instruments revealed that although Azerbaijan is one of the oldest oil-producing countries, it acceded to only the CLC and BUNKER Conventions. Taking into account the mentioned instruments, the analysis
was made on the national legislations in order to find the gaps that create challenges for the civil liability and compensation regime in Azerbaijan.

Bearing in mind the newly signed Convention on the Legal Status of the Caspian Sea, chapter four examined the legal issues arising from the status problem of the mentioned water body. By analyzing the new convention, it was found that the convention will pave way for new oil extraction projects in the region by identifying difficulties for the littoral states. The analysis was made on the governing regional instruments, such as the TEHRAN Convention and its applicable protocols with a particular focus on liability and compensation issues. Lack of attention to the problems of liability and compensation arising from oil pollution incidents under the available instruments and the non-existence of documents in relation to land-based and transboundary pollution were also revealed in this chapter.

In order to identify the gaps in law enforcement measures for oil pollution, mainly from liability and compensation issues, the dissertation also discussed the competent authorities. Chapter five analyzed the available national legislations, such as the Criminal Code, the Code on Administrative Violations, Merchant Shipping Legislation and other related documents with a particular focus on liability and compensation. Taking into account identified gaps, chapter six evaluated the significant challenges to the legal framework on oil pollution damages from various sources which support the conclusion.

Finally, challenges regarding oil pollution damages caused by ship-based activities were identified. Bearing in mind the challenges posed by the newly signed Convention on the Legal Status of the Caspian Sea, particular attention was paid to the low level of punishment for administrative and criminal violations and lack of implementation and enforcement of the available international instruments, which Azerbaijan is a party to. The chapter identified challenges in connection with offshore-based and transboundary oil pollution by expressing concerns on the lack of attention to the liability and compensation issues by regional instruments, and non-existence of the regional and national instruments related to the offshore and transboundary pollution damages.
Challenges as regards liability and compensation issues resulting from land-based pollution damages posed significant difficulties in addition to the absence of instruments in place to address these issues. The author believes that the most efficient way to deal with the challenges is to expand national and regional law enforcement measures based on governing international civil liability and compensation regimes.

**Recommendations**

Based on the findings of this dissertation, it is recommended that

- The Merchant Shipping Legislation should be updated based on the 1992 CLC and BUNKER Conventions in order to establish a comprehensive legal basis for the issues of liability and compensation resulting from ship-source pollution damages;
- Strict administrative and criminal punishment should be taken bearing in mind the fragile nature of the Caspian Sea;
- Action should be taken to accede to the governing international instruments, particularly to the 1992 FUND Convention and initiatives for the establishment of the special fund dealing with liability and compensation issues;
- The process of preparation of national and regional plans should be speeded up, which may contribute to address pollution risks at the earliest stages;
- Initiatives should be taken to establish regional and national instruments dealing with the issues of liability and compensation related to the offshore-based and transboundary pollution.
References


IMO. (2010). *Proposal to add a new work programme item to address liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation.* Retrieved from https://docs.imo.org/

IMO. (2011). *Information relating to liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation.* Retrieved from https://docs.imo.org/


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SMAa. (2016). *Strategy for Implementing IMO Instruments 2016-2021*


Appendices

Appendix 1 Hazards in and around the Caspian

Appendix 2 The Convention on the Legal Status of the Caspian Sea

August 12, 2018

The Parties to this Convention, the Caspian littoral States – the Republic of Azerbaijan, the Islamic Republic of Iran, the Republic of Kazakhstan, the Russian Federation and Turkmenistan – hereinafter referred to as the Parties,

Based on the principles and norms of the Charter of the United Nations and international law,

Taking into account the atmosphere of cooperation, good-neighbourliness and mutual understanding among the Parties,

Guided by the desire to deepen and expand good-neighbourly relations among the Parties,

Proceeding from the fact that the Caspian Sea is of vital importance to the Parties and that only they possess sovereign rights over the Caspian Sea and its resources,

Emphasizing that solving issues related to the Caspian Sea falls within the exclusive competence of the Parties,

Recognizing political, economic, social and cultural importance of the Caspian Sea,

Aware of their responsibility before the present and future generations for the preservation of the Caspian Sea and sustainable development of the region,

Convinced that this Convention will facilitate the development and strengthening of cooperation among the Parties, and promote the use of the Caspian Sea for peaceful purposes and rational management of its resources, as well as exploration, protection and conservation of its environment,

Seeking to create favorable conditions for the development of mutually beneficial economic cooperation in the Caspian Sea,
Taking into account changes and processes that have occurred in the Caspian Sea region at the geopolitical and national levels, the existing arrangements between the Parties and, in this regard, the need to strengthen the legal regime of the Caspian Sea, have agreed as follows:

**Article 1**

For the purposes of this Convention, the following terms shall mean:


"Baseline" – the line consisting of normal and straight baselines.

"Normal baseline" – the line of the multi-year mean level of the Caspian Sea measured at minus 28.0 meters mark of the 1977 Baltic Sea Level Datum from the zero-point of the Kronstadt sea-gauge, running through the continental or insular part of the territory of a Caspian littoral State as marked on large-scale charts officially recognized by that State.

"Straight baselines" – straight lines joining relevant/appropriate points on the coastline and forming the baseline in locations where the coastline is indented or where there is a fringe of islands along the coast in its immediate vicinity.

The methodology for establishing straight baselines shall be determined in a separate agreement among all the Parties.
If the configuration of the coast puts a coastal State at a clear disadvantage in determining its internal waters, that will be taken into account in developing the above methodology in order to reach consent among all the Parties.

"Internal waters“ – waters on the landward side of the baseline.

"Territorial waters“ – a belt of sea to which the sovereignty of a coastal State extends.

"Fishery zone“ – a belt of sea where a coastal State holds an exclusive right to harvest aquatic biological resources.

"Common maritime space“ – a water area located outside the outer limits of fishery zones and open for use by all the Parties.

"Sector“ – parts of the seabed and subsoil delimited between the Parties for the purposes of the subsoil exploitation and other legitimate economic activities related to the development of resources of the seabed and subsoil.

"Aquatic biological resources“ – fish, shellfish, crustaceans, mammals and other aquatic species of fauna and flora.

"Shared aquatic biological resources“ – aquatic biological resources jointly managed by the Parties.

"Harvesting“ – any type of activity aimed at removing aquatic biological resources from their natural habitat.

"Warship“ – a ship belonging to the armed forces of a Party and bearing external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the Party and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

"Ecological system of the Caspian Sea“ – interacting components of air, water and biological organisms, including human beings, within the Caspian Sea and parts of the land affected by the proximity of the Sea.
"Pollution" – the introduction by man, directly or indirectly, of substances, organisms or energy into the ecological system of the Caspian Sea, including from land-based sources, which results or is likely to result in deleterious effects, such as harm to biological resources and marine life, hazards to human health, hindrance to marine activities, including harvesting of aquatic biological resources and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

**Article 2**

1. In accordance with this Convention, the Parties shall exercise their sovereignty, sovereign and exclusive rights, as well as jurisdiction in the Caspian Sea.

2. This Convention shall define and regulate the rights and obligations of the Parties in respect of the use of the Caspian Sea, including its waters, seabed, subsoil, natural resources and the airspace over the Sea.

**Article 3**

The Parties shall carry out their activities in the Caspian Sea in accordance with the following principles:

1) Respect for the sovereignty, territorial integrity, independence and sovereign equality of States, non-use of force or the threat of force, mutual respect, cooperation and non-interference into the internal affairs of each other;

2) Using the Caspian Sea for peaceful purposes, making it a zone of peace, good-neighbourliness, friendship and cooperation, and solving all issues related to the Caspian Sea through peaceful means;

3) Ensuring security and stability in the Caspian Sea region;

4) Ensuring a stable balance of armaments of the Parties in the Caspian Sea, developing military capabilities within the limits of reasonable sufficiency with due
regard to the interests of all the Parties and without prejudice to the security of each other;

5) Compliance with the agreed confidence-building measures in the military field in the spirit of predictability and transparency in line with general efforts to strengthen regional security and stability, including in accordance with international treaties concluded among all the Parties;

6) Non-presence in the Caspian Sea of armed forces not belonging to the Parties;

7) Non-provision by a Party of its territory to other States to commit aggression and undertake other military actions against any Party;

8) Freedom of navigation outside the territorial waters of each Party subject to the respect for sovereign and exclusive rights of the coastal States and to the compliance with relevant rules established by them with regard to the activities specified by the Parties;

9) Ensuring safety of navigation;

10) The right to free access from the Caspian Sea to other seas and the Ocean, and back in accordance with the generally recognized principles and norms of international law and agreements between the relevant Parties, with due regard to legitimate interests of the transit Party, with a view to promoting international trade and economic development;

11) Navigation in, entry to and exit from the Caspian Sea exclusively by ships flying the flag of one of the Parties;

12) Application of agreed norms and rules related to the reproduction and regulation of the use of shared aquatic biological resources;

13) Liability of the polluting Party for damage caused to the ecological system of the Caspian Sea;

14) Protection of the environment of the Caspian Sea, conservation, restoration and rational use of its biological resources;
15) Facilitation of scientific research in the area of ecology and conservation and use of biological resources of the Caspian Sea;

16) Freedom of overflight by civil aircraft in accordance with the rules of the International Civil Aviation Organization;

17) Conducting marine scientific research outside the territorial waters of each Party in accordance with legal norms agreed upon by the Parties, subject to the respect for sovereign and exclusive rights of the coastal States and to the compliance with relevant rules established by them with regard to certain types of research.

Article 4

The Parties shall conduct their activities in the Caspian Sea for the purposes of navigation, harvesting, use and protection of aquatic biological resources, exploration and exploitation of the seabed and subsoil resources, as well as other activities in accordance with this Convention, other agreements between the Parties consistent with this Convention, and their national legislation.

Article 5

The water area of the Caspian Sea shall be divided into internal waters, territorial waters, fishery zones and the common maritime space.

Article 6

The sovereignty of each Party shall extend beyond its land territory and internal waters to the adjacent sea belt called territorial waters, as well as to the seabed and subsoil thereof, and the airspace over it.
Article 7
1. Each Party shall establish the breadth of its territorial waters up to a limit not exceeding 15 nautical miles, measured from baselines determined in accordance with this Convention.

2. The outer limit of the territorial waters shall be the line every point of which is located at a distance from the nearest point of the baseline equal to the breadth of the territorial waters.

For the purpose of determining the outer limit of the territorial waters, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast. Offshore installations and artificial islands shall not be considered as permanent harbour works.

The outer limit of the territorial waters shall be the state border.

3. Delimitation of internal and territorial waters between States with adjacent coasts shall be effected by agreement between those States with due regard to the principles and norms of international law.

Article 8
1. Delimitation of the Caspian Sea seabed and subsoil into sectors shall be effected by agreement between States with adjacent and opposite coasts, with due regard to the generally recognized principles and norms of international law, to enable those States to exercise their sovereign rights to the subsoil exploitation and other legitimate economic activities related to the development of resources of the seabed and subsoil.

2. Within its sector, a coastal State shall have the exclusive right to construct, as well as to authorize and regulate the construction, operation and use of artificial islands, installations and structures. A coastal State may, where deemed necessary, establish safety zones around artificial islands, installations and structures to ensure the safety of navigation and of the artificial islands, installations and structures. The breadth of the
safety zones shall not exceed a distance of 500 meters around them, measured from each point of the outer edge of such artificial islands, installations and structures.

The geographical coordinates of such structures and contours of the safety zones should be communicated to all the Parties.

3. All ships must respect those safety zones.

4. The exercise of sovereign rights of a coastal State under paragraph 1 of this Article must not infringe upon the rights and freedoms of other Parties stipulated in this Convention or result in an undue interference with the enjoyment thereof.

**Article 9**

1. Each Party shall establish a 10 nautical miles-wide fishery zone adjacent to the territorial waters.

Delimitation of fishery zones between States with adjacent coasts shall be effected by agreement between those States with due regard to the principles and norms of international law.

2. In its fishery zone, each Party shall have the exclusive right to harvest aquatic biological resources in accordance with this Convention, separate agreements concluded by the Parties on the basis of the Convention and its national legislation.

3. On the basis of this Convention and international mechanisms, the Parties shall jointly determine the total allowable catch of shared aquatic biological resources in the Caspian Sea and divide it into national quotas.

4. If a Party is unable to harvest its entire quota in the total allowable catch, it may grant access to the remainder of its quota in the total allowable catch to other Parties by way of concluding bilateral agreements or through other arrangements in accordance with its national legislation.

5. Terms and procedures for harvesting shared aquatic biological resources in the Caspian Sea shall be determined by the separate agreement concluded by all Parties.
Article 10

1. Ships flying the flags of the Parties shall enjoy freedom of navigation beyond the outer limits of the territorial waters of the Parties. The freedom of navigation shall be exercised in accordance with the provisions of this Convention and other compatible agreements between the Parties without prejudice to the sovereign and exclusive rights of the Parties as determined in this Convention.

2. Each Party shall grant ships flying the flags of other Parties that carry goods, or passengers and baggage, or perform towing or rescue operations the same treatment as to its national ships with regard to free access to its ports in the Caspian Sea, their use for loading and unloading goods, boarding or disembarking passengers, payment of tonnage and other port dues, use of navigation services and performance of regular commercial activities.

3. The regime specified in paragraph 2 of this Article shall apply to the ports in the Caspian Sea that are open to ships flying the flags of the Parties.

4. The Parties shall have the right to free access from the Caspian Sea to other seas and the Ocean, and back. To that end, the Parties shall enjoy the freedom of transit for all their means of transport through the territories of transit Parties.

Terms and procedures for such access shall be determined by bilateral agreements between the Parties concerned and transit Parties or, in the absence of such agreements, on the basis of the national legislation of the transit Party.

In the exercise of their full sovereignty over their territories, the transit Parties shall be entitled to take all necessary measures to ensure that the rights and facilities of the Parties provided for in this paragraph in no way infringe upon legitimate interests of the transit Party.

Article 11

1. Ships flying the flags of the Parties may navigate through territorial waters with a view to:
a) Traversing those waters without entering internal waters or calling at a roadstead or port facility outside internal waters;

or

b) Proceeding to or from internal waters or calling at such roadstead or port facility.

2. Terms and procedures for the passage of warships, submarines and other underwater vehicles through territorial waters shall be determined on the basis of agreements between the flag State and the coastal State or, in the absence of such agreements, on the basis of the coastal State legislation.

If the entry of a warship to the territorial waters is required due to a force majeure or distress, or to render assistance to persons, ships or aircraft in distress, the captain of the warship approaching the territorial waters shall notify the coastal State accordingly, with such entry to be performed along the route to be determined by the captain of the warship and agreed with the coastal State. As soon as such circumstances cease to exist, the warship shall immediately leave the territorial waters.

Terms and procedures for the entry of warships to the internal waters due to a force majeure or distress, or to render assistance to persons, ships or aircraft in distress shall be determined on the basis of agreements between the flag State and the coastal State or, in the absence of such agreements, on the basis of the coastal State legislation.

3. Passage through territorial waters must not be prejudicial to the peace, good order or security of the coastal State. Passage through territorial waters should be continuous and expeditious. Such passage shall take place in conformity with this Convention.

4. Warships, submarines and other underwater vehicles of one Party passing through the territorial waters in compliance with the terms and procedures set forth in paragraph 2 of this Article shall not have the right to call at ports and anchor within the territorial waters of another Party unless they have a proper permission or need to do so due to a force majeure or distress, or to render assistance to persons, ships or aircraft in distress.
5. Submarines and other underwater vehicles of one Party shall be required to navigate on the surface and show their flag when passing through the territorial waters of another Party.

6. Passage through territorial waters shall be considered to be prejudicial to the peace, good order or security of the coastal State if any of the following activities is performed in the process:

a) Threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

b) Any exercise or practice with weapons of any kind;

c) Any act aimed at collecting information to the prejudice of the defense or security of the coastal State;

d) Any act of propaganda aimed at affecting the defense or security of the coastal State;

e) Launching, landing or taking on board any aircraft or military device and controlling it;

f) Putting afloat, submerging or taking on board any military device and controlling it;

g) Loading or unloading of any commodity or currency, or boarding or disembarking of any person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

h) Any act of willful and serious pollution contrary to this Convention;

i) Any fishing activities;

j) Carrying out research or hydrographic survey activities;

k) Any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;

l) Any other activity not having a direct bearing on the passage through territorial waters.
7. In its territorial waters, a Party may take necessary steps to prevent a passage through its territorial waters violating conditions set forth in this Article.

8. A Party may adopt laws and regulations, in conformity with provisions of this Convention and other norms of international law, relating to passage through territorial waters, including in respect of all or any of the following:

a) Safety of navigation and regulation of maritime traffic;

b) Protection of navigational aids and facilities, as well as other facilities or installations;

c) Protection of cables and pipelines;

d) Conservation of the biological resources of the sea;

e) Prevention of infringement of fishery laws and regulations of the coastal State;

f) Preservation of the environment of the coastal State and prevention, reduction and control of pollution thereof;

g) Marine scientific research and hydrographic surveys;

h) Prevention of infringement of customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

i) Ensuring national security.

9. A Party shall duly publish all laws and regulations related to the passage through its territorial waters.

10. Ships flying the flags of the Parties, while passing through territorial waters, shall observe all laws and regulations of the coastal State related to such passage.

11. Each Party may, where necessary and with due regard to the safety of navigation, require ships flying the flags of other Parties passing through its territorial waters to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships through its territorial waters.

12. In the case of ships proceeding to internal waters or a call at port facilities outside internal waters, the coastal State shall also have the right to take necessary steps to
prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.

13. A Party may, without discrimination in form or in fact against ships flying the flags of other Parties, temporarily suspend in specified areas of its territorial waters the passage of those ships if such suspension is essential for the protection of its security.

Such suspension shall take effect only after having been duly published.

14. If a warship or a government ship operated for non-commercial purposes does not comply with laws and regulations of the coastal State concerning passage through territorial waters and disregards any request for compliance therewith which is made to it, the Party concerned may require it to leave its territorial waters immediately.

15. The flag Party shall bear international responsibility for any loss or damage to another Party resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with laws and regulations of the coastal State concerning passage through its territorial waters, entering such waters and anchoring therein or with provisions of this Convention or other norms of international law.

16. A Party shall not hamper the passage of ships flying the flags of other Parties through its territorial waters except when acting under this Convention or laws and regulations adopted in conformity therewith. In particular, a Party shall not:

a) Impose requirements on ships flying the flags of other Parties which have the practical effect of denying or impairing unjustifiably the right of passage through its territorial waters;

or

b) Discriminate in form or in fact against ships flying the flags of other Parties or ships carrying cargoes to, from or on behalf of any State.

A Party shall give appropriate publicity to any danger to navigation within its territorial waters of which it has knowledge.
Article 12

1. Each Party shall exercise jurisdiction over the ships flying its flag in the Caspian Sea.

2. Each Party shall, within its sector, exercise jurisdiction over the artificial islands, installations, structures, its submarine cables and pipelines.

3. Each Party, in the exercise of its sovereignty, sovereign rights to the subsoil exploitation and other legitimate economic activities related to the development of resources of the seabed and subsoil, and exclusive rights to harvest aquatic biological resources as well as for the purposes of conserving and managing such resources in its fishery zone, may take measures in respect of ships of other Parties, including boarding, inspection, hot pursuit, detention, arrest and judicial proceedings, as may be necessary to ensure compliance with its laws and regulations.

The application of measures stipulated in this paragraph needs to be justified. If measures applied were unjustified, the ship shall be compensated for any loss and damage incurred.

Measures, such as boarding, inspection, hot pursuit and detention, can be undertaken exclusively by representatives of the competent government authorities of the Parties present aboard warships or military aircraft, or other ships or aircraft bearing the external marks clearly indicating that they are in the government service and are authorized for that purpose.

4. With the exception of cases specified in Article 11 hereof, nothing in this Convention shall affect the immunities of warships and government ships operated for non-commercial purposes.

Article 13

1. In the exercise of its sovereignty, each Party shall have the exclusive right to regulate, authorize and conduct marine scientific research in its territorial waters. Ships flying the flags of the Parties may conduct marine scientific research within the territorial waters of a Party only with its written permission and on such terms as it may establish.
2. In the exercise of its jurisdiction, each Party shall have the exclusive right to regulate, authorize and conduct marine scientific research related to aquatic biological resources in its fishery zone, as well as marine scientific research related to the exploration and exploitation of seabed and subsoil resources in its sector. Ships flying the flags of the Parties may conduct such research in the fishery zone and the sector of a Party only with its written permission and on such terms as it may establish.

3. Terms and procedures for issuing permissions shall be determined by each Party in accordance with its national legislation and shall be duly communicated to other Parties.

4. There must be no unjustified delays or denials in taking decisions on the issue of permissions to conduct marine scientific research in accordance with paragraphs 1 and 2 of this Article.

5. Marine scientific research activities referred to in this Article shall not create unjustified impediments to activities undertaken by the Parties in the exercise of their sovereign and exclusive rights provided for in this Convention.

6. A Party conducting marine scientific research shall ensure the right of the Party that has permitted such research in accordance with paragraphs 1 and 2 of this Article to participate or be represented in the research, especially aboard research ships when practicable, without payment of any remuneration to the scientists of the permitting Party and without obligation of that Party to contribute towards the costs of the research.

7. A Party conducting marine scientific research in accordance with paragraphs 1 and 2 of this Article shall provide the Party that has permitted such research with the results and conclusions thereof after its completion, as well as access to all data and samples obtained within the framework of the research.

8. A Party shall have the right to require the suspension or cessation of any marine scientific research activities in progress within its territorial waters.
9. A Party that has permitted marine scientific research conducted in accordance with paragraph 2 of this Article shall have the right to require its suspension or cessation in one of the following cases:

a) Research activities are not being conducted in accordance with the information provided that served as a basis for granting the permission;

b) Research activities are being conducted in violation of the conditions it has established;

c) Failure to comply with any of the provisions of this Article in conducting the research project;

d) Such suspension or cessation is essential for ensuring its security.

10. Ships flying the flags of the Parties shall have the right to conduct marine scientific research beyond the outer limits of territorial waters subject to paragraphs 2 and 3 of this Article.

11. Bilateral and multilateral marine scientific research shall be conducted by agreement between the Parties concerned.

**Article 14**

1. The Parties may lay submarine cables and pipelines on the bed of the Caspian Sea.

2. The Parties may lay trunk submarine pipelines on the bed of the Caspian Sea, on the condition that their projects comply with environmental standards and requirements embodied in the international agreements to which they are parties, including the Framework Convention for the Protection of the Marine Environment of the Caspian Sea and its relevant protocols.

3. Submarine cables and pipelines routes shall be determined by agreement with the Party the seabed sector of which is to be crossed by the cable or pipeline.

4. The geographical coordinates of areas along routes of submarine cables and pipelines where anchoring, fishing with near-bottom gear, submarine and dredging
operations, and navigation with dredging anchor are not allowed, shall be communicated by the coastal State whose sector they cross to all the Parties.

**Article 15**

1. The Parties shall undertake to protect and preserve the ecological system of the Caspian Sea and all elements thereof.

2. The Parties shall take, jointly or individually, all necessary measures and cooperate in order to preserve the biological diversity, to protect, restore and manage in a sustainable and rational manner the biological resources of the Caspian Sea, and to prevent, reduce and control pollution of the Caspian Sea from any source.

3. Any activity damaging the biological diversity of the Caspian Sea shall be prohibited.

4. The Parties shall be liable under the norms of international law for any damage caused to the ecological system of the Caspian Sea.

**Article 16**

Cooperation of the Parties in the Caspian Sea with natural and legal persons of States that are not parties to this Convention, as well as international organizations shall be in conformity with the provisions of this Convention.

**Article 17**

The Parties shall cooperate in combating international terrorism and financing thereof, trafficking in arms, drugs, psychotropic substances and their precursors, as well as poaching, and in preventing and suppressing smuggling of migrants by sea and other crimes in the Caspian Sea.
Article 18

1. Provisions of this Convention may be amended or supplemented by agreement of all the Parties.

2. Amendments and supplements to this Convention shall be an integral part of the Convention and shall be made in a form of separate protocols that shall enter into force on the date of the receipt by the Depositary of the fifth notification of completion by the Parties of internal procedures required for their entry into force.

Article 19

To ensure effective implementation of the Convention and to review cooperation in the Caspian Sea, the Parties shall establish a mechanism of five-party regular high-level consultations under the auspices of their Ministries of Foreign Affairs to be held at least once a year, on a rotation basis, in one of the coastal States, in accordance with the agreed rules of procedure.

Article 20

This Convention shall not affect rights and obligations of the Parties arising from other international treaties to which they are parties.

Article 21

1. Disagreements and disputes regarding the interpretation and application of this Convention shall be settled by the Parties through consultations and negotiations.

2. Any dispute between the Parties regarding the interpretation or application of this Convention which cannot be settled in accordance with paragraph 1 of this Article may be referred, at the discretion of the Parties, for settlement through other peaceful means provided for by international law.
**Article 22**

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Republic of Kazakhstan acting as the Depositary of the Convention. This Convention shall enter into force on the date of the receipt by the Depositary of the fifth instrument of ratification.

**Article 23**

1. The Depositary shall notify the Parties of the date of submission of each instrument of ratification, the date of entry into force of the Convention and the date of entry into force of amendments and supplements thereto.

2. This Convention shall be registered by the Depositary in accordance with Article 102 of the Charter of the United Nations.

**Article 24**

This Convention shall be of unlimited duration due to its nature.

Done at Aktau on 12 August 2018 in one original copy in the Azerbaijani, Farsi, Kazakh, Russian, Turkmen and English languages, all texts being equally authentic.

In case of any disagreement, the Parties shall refer to the English text.

The original copy shall be deposited with the Depositary. The Depositary shall transmit certified true copies of the Convention to all the Parties.