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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**IDENTIFYING THE APPLICABLE LAW AND
APPROACH TOWARD THE CASPIAN SEA
DELIMITATION.**

By

SEDIGHEH ZAREI

Iran

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

MASTER OF SCIENCE

in

MARITIME AFFAIRS

(MARITIME LAW AND POLICY)

2021

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):15/09/2020.....

Supervised by: **Professor Henning Jessen**

Supervisor's affiliation: **MLP**

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Abstract

Title of Dissertation: **identifying the applicable law and approach toward the Caspian Sea delimitation.**

Degree: **Master of Science**

The dissertation is set out to identify the applicable law to the Caspian Sea delimitation and the best approach in this regrades.

In this vein, a brief look is taken at the literature review in two categories of before and after signing the convention on the legal status of the Caspian Sea as well as the geopolitical importance of the Caspian Sea in the region and world. To explore the applicable law, the international law resources based on Article 38 of the status of the international court of justice has been outlined and to explore the best approach, the present international norms, principle, and methods of maritime delimitation have been discussed. Additionally, Main sources of present and past legal statutes of the Caspian Sea, the Soviet-Iranian agreements, bilateral seabed delimitation agreements between the northern littoral states of the Caspian and the Caspian Sea Convention has been analysed.

Additionally, the potential special circumstance such as the configuration of coast, natural resources, and presence of islands which relevant to the delimitation of the Caspian Sea has been assessed. The concluding chapters examine the results of the assessment resources and discuss the best approaches and crucial steps in the negotiation of the Caspian Sea delimitation.

KEYWORDS: International law of the sea, Norm and Principles, Delimitation, Caspian Sea.

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List of Abbreviations

BBL	Barrel of Crude Oil
CEP	Caspian Environment Program
DOALOS	The Division for Ocean Affairs and the Law of the Sea
FAO	Food and Agricultural Organization
Km	kilo meter
TCF	Trillion Cubic Feet
TSC	Convention On the Territorial Sea and Contagious Zone
TS	Territorial Sea
UNDP	United Nations Development Program
UNCLOS	United Nation Convention on the Law of the Sea
UNEP	United Nations Environment Program
VCLT	Vienna Convention on Law of Treaties
TCF	Trillion Cubic Feet

Chapter 1

1. Problem statement

The Caspian Sea is known as the world's largest inland water reservoir which is located in a geopolitical location between Europe and Asia with the 390 000 km² area, mean and maximum depth of 208 m and 1025 m respectively (Kosarev,2005).



Figure 1. Caspian Sea and littoral states. source: worldatlas. 2017.

The Caspian Sea is a source of 48 billion barrels of oil, 292 trillion cubic feet (TCF) of gas (Kalanter, et al., 2021), special biodiversity, and species such as sturgeons. According to the Food and Agricultural Organization (FAO) report (n.d.), *“the Caspian Sea is the traditional home of sturgeons and the main producers of caviar on a worldwide level are four states bordering the Caspian Sea: Azerbaijan, Iran, Kazakhstan, and Russia”*. During the Soviet era, the Caspian Sea was governed just by Iran and the Soviet Union based on the Friendship and Cooperation Soviet-Iran Treaty in 1921 and the 1940 Soviet-Iran Treaty of Commerce and Navigation. After the disintegration of the Soviet Union and the independence of three new countries, the number of countries which are bordered by it became five, Azerbaijan, Kazakhstan, Turkmenistan, Iran, and Russia and the disputes of the succession of Soviet-Iran treaties arose and the legal statutes of the sea became complicated. since, the only way

to reach the World Oceans from the Caspian Sea is via the Volga-Don, man-made canals, which is located entirely within the territory of the Russia, and connect the Caspian Sea to the Black sea (karataeva, 2019), Iran and Russia argued Article 122 of the United Nation Convention on the Law of the Sea (UNCLOS) was not applicable, which defined enclosed and semi-enclosed seas as “*gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States*”. Although UNCLOS didn’t explain the type of “narrow outlet” whether it must be natural or artificial, Iran and Russia to reduce the risk of the presence of third parties and due to shorter coastline, Iran with 750 Km (Pak and Farajzadeh, 2007) and Russia with 695 Km, insisted since the only way is a canal and artificial for connection to other seas, the Caspian Sea is not the sea, semi-enclosed or enclosed sea and it is a lake and common property. Furthermore, Iran was not a member state of UNCLOS since didn’t ratify it and Kazakhstan and Turkmenistan have neither signed nor acceded either the Convention.

Lack of cooperation, an increase of disputes, and unilateral actions increased possibilities of pollution, illegal fishing, drug trafficking, and illegal migration (Zhekenov,2020) and in addition, the risk of military conflicts, as Azerbaijan and Iran had a dispute over oilfield which ended into the point that warplanes exchanged fire in mid-air in 2001 and also Azerbaijan and Turkmenistan closed their embassies in other countries due to disputes for resources in the region. In this regard, Littoral states started negotiation for the new legal status of the Caspian Sea in 1991, for over twenty years. However, the states came to realize the Caspian Sea environment is fragile and over-exploitation, habitat destruction, invasive species, oil pollution threatened the sea (Tsutsumi and Robinson, 2008) and to protect the environment of the Caspian Sea regional cooperation was crucial and these matters had to be resolved before States define legal regime. In recognition of this, The United Nations Development Program (UNDP), The United Nations Environment Program(UNEP), and the World Bank to assist the littoral states to reach the goal of environmentally sustainable development and management of the Caspian environment, established the Caspian Environment

Program (CEP), as a regional umbrella program in 1998 and after that, the Convention for the Protection of the Marine Environment of the Caspian Sea which is called the Tehran Convention was signed in 2003 and enter into force in 2006. Besides the Tehran convention, four protocol has been signed. However, undefined legal status was one of the most important barriers that prevent the development and adoption of the protocols. Furthermore, the discovery of oil deposits in the northern part of the Caspian Sea lead to bilateralism trend, which Zimnitskaya and Geldern (2011) called the innovative approach of “common waters, divided bottom” principle in the region, and by 2003 north part of the Caspian seabed was divided by agreements between three States, the Russian Federation, the Republic of Azerbaijan and the Republic of Kazakhstan, however, the agreements focused only on the seabed. Finally, in August 2018, the Convention on the Legal Status of the Caspian Sea has been signed by the five States, in Aktau in Kazakhstan. After two decades, this convention was a tremendous achievement since the United Nations Secretary-General welcomed the signing of the Convention on the Legal Status of the Caspian Sea and mentioned “*This historic document demonstrates the importance of regional cooperation, which is vital for maintaining international peace and security and is a significant step in the easing of regional tensions*”.

Under Article 1 of the convention, the Caspian Sea has been defined as “*the body of water surrounded by the land territories of the Parties*”, this definition lifted the dilemma of whether it is a sea or not. Also, the new convention has brought some vital benefits for the littoral state, such as regional security by the prohibition of the presence of non-littoral states, in addition, it makes opportunities for constructing the "Trans Caspian" pipeline to transport natural gas to Europe. Further, Agazade (2018) believed this convention will motivate China to invest in the Baku-Tbilisi-Kars transport corridor. Even though the convention brings different political, environmental, economic benefits for the states, there were crucial issues of contention that remain unresolved.

Article 8 (1) of the convention states “*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” and it does not clarify what norms and principles of international law should be applied. In the same vein, Article 7(3) and Article 9(1) of the convention declared delimitation of internal and territorial waters and delimitation of fishery zone between States with adjacent coasts shall be effected by agreement according to principles and norms of international law. Since “*each maritime delimitation case differs and flexible consideration of relevant factors is required to achieve an equitable result*” (Tanaka, 2019) and delimitation of maritime zones is an important requirement for peaceful relations between neighbouring States (Lagoni and Vignes, 2006), defining the norm and principles of delimitation will be a vital factor for the success of the new convention.

Nevertheless, it should be stressed out that besides unclear delimitation of seabed and zones, another problem which the region has faced since 2018, is the matter of entering into force of the convention. Article 22 of the convention declared “*This Convention shall enter into force on the date of the receipt by the Depositary of the fifth instrument of ratification*” and Iran has not ratified it yet which would obstacle to achieving the goals of the convention, since all rest states ratified it. The signing of the convention has raised criticisms among Iranians specially parliaments members. Since Article 77 of Iran's Constitution declared “*International treaties, protocols, contracts, and agreements must be approved in the Islamic Consultative Assembly*”, parliaments have a key role in the ratification process. Although the Caspian Sea convention has been signed by Iran’s president, with the approval of the supreme national security council and supreme leader, should be presented to parliament for ratification. However, many parliament members, on social media, have been complaining about Iran's unfair share of the Caspian Sea based on new conventions. Toktassynov (2019) argued the convention has revealed that Iran changes its priority to security and geopolitical issues than economic goals since America imposed sanctions. Based on these opinions, Iranian parliament members were seeking clarification by the foreign ministry or

president (icana, 2019), and the Iranian foreign ministry provided clarification in parliament meetings regarding questions surrounding the convention, however till now convention is a controversial issue in Iran. In this regard, Iran subjected ratification of the Caspian Sea convention to the delimitation agreements.

In light of this, it is necessary to ascertain what are the norms and principles of international law for maritime delimitation and identify what are applicable law for the Caspian sea's zone and seabed delimitation.

2. Objectives

The primary objective of this research is to identify generally recognized norms and principles of international law for the delimitation of seabed and subsoil of the body of water, besides, the following objectives will be addressed.

- Recognizing norms and principles of international law which are applicable for delimitation of the Caspian Sea
- Exploring the best approach to the delimitation of the Caspian Sea
- Identifying relevant circumstances which have to be taken into consideration of the Caspian Sea delimitation

3. Questions

To achieve the aim and objectives of the research, the following questions will be answered:

1. What are generally recognized norms and principles of international law for the delimitation of seabed and subsoil of the body of water?
2. What are the applicable norms and principles of international law delimitation of the Caspian Sea?
3. What is the best approach to the delimitation of the Caspian Sea?
4. What relevant circumstances have to be taken into consideration of the Caspian Sea delimitation?

4. Methodology

To use the relevant and efficient research methods in pursuing the research problem that has been described and to properly address the research questions, in each step of research different method has been chosen.

Since addressing the problem statement is the core of research, at the first step of research, descriptive research has been conducted, as its name suggests, it describes the situation as it exists at present. It declares what has happened or what is happening. In this regard, an overview of the Caspian Sea and a new convention has been shown in chapter one. However, conventions and international agreement cannot be made out of their economic, environmental, historical, and political contexts and the process of legal research often involves investigation into other relevant disciplines some social, political, environmental and economic factors which triggered signing the convention has been demonstrated in chapter two.

In the next step of research since the research is aiming to identify generally recognized norms and principles of international law for delimitation, Doctrinal legal research will be conducted in chapter three, which gives emphasis on analysis of legal rules, principles and it is “research in black-letter of law” (Tyler, 2017).

To conduct the research, the variety of information from primary and secondary sources will be used.

Chapter 2

1. Literature review

The current literature review is based on prominent academic journals and is divided into two main sections. Since the Convention on the legal status of the Caspian Sea has been signed in 2018, in the first and second section, publication and academic papers, according to the two-time stage, before and after signing the convention has been reviewed.

It should be pointed out, there is plenty of literature on different aspects of the Caspian Sea, historical, political, economic, legal, and environmental matters, in different languages other than English. Nevertheless, this research limited the scope of review to Persian and English-speaking papers and publications.

1.1. Before Signing the Caspian Sea Convention

Due to more than two decades of conflict and unclear legal regime of the Caspian Sea and the dilemma of whether it is sea or lake, before 2018, an extensive literature has developed on three main subjects, the importance of the Caspian Sea region in the past and present, unresolved legal regime issues and political and environmental threat to this sea and this section reviews the literature on the importance of this region and its legal regime.

The Caspian Sea, based on the size of its natural reserve has a fourth-place after Russia, Iran, and Qatar (Alkuwaiti et al, 2019). Croissant and Aras (1999) mentioned in their book, named Oil and geopolitics in the Caspian Sea region, “*The Caspian Sea has a long history on oil production and Baku was famous for eternal fire, Honduras complained about the evil smell of Persian oil and described the production of oil and salt from springs and wells*”. Its resources attract many major countries and famous oil companies and led to disputes in the region, as schofield (2014) reviewed the oil factor in the context of maritime boundary and argued that the belief that such

resources exist and that they are being used to further the state's important national interests can be a potent motivator for policymakers to territorial claims.

The region resources are not as important as a foreign policy issue for Russia and Iran since these countries have main oil and gas resources in their land side and the Caspian energy resources found mostly on the coasts of, Kazakhstan, Turkmenistan and Azerbaijan and make it their key for economic development (Zhiltsov, 2014). This kind of controversy between the states was sparked when Azerbaijan unilaterally signed the contract, called “Deal of Century”, with the international consortium in 1994, to the exploitation of gas resources in the Caspian (Abilov, 2013). In addition to the ownership of hydrocarbon deposit disputes, another heat contention was the route for transporting the oil and gas. It was the most controversial and political tension (Askari and Taghavi, 2007) since most gas pipelines pass through Russia, and this country tries to keep its preeminent position. However, the rest states want to escape this dependency on Russia. This matters became more sensitive when turkey threatened to impose restrictions on tanker vessels sailing through the Bosphorus and Dardanelles, for environmental reasons (Cufrin and Chufrin, 2001), although, Gelb (2005) believes energy sources of the Caspian Sea are an opportunity for Turkey to increase its revenue through transit fees for shipments across its territory. Furthermore, turkey’s energy demand is growing faster than supply, making it an importer of oil and gas.

Besides its resources and wealth, the Caspian Sea possesses the crucial geopolitical function of connecting Europe to Asia. In this regard, it can be argued that the Caspian Sea attracts not only littoral states interests but also many states which are not located in this region such as America, members of the European Union, China, and Turkey. Coffee, (2015) believed America is assisting new littoral states, especially after the 9/11 attack, to make the region stable for energy production, secure transit and also monitoring Russia and Iran and its operation in Afghanistan. However, Chrysoulaki (2015) argued after the oil crisis in 1973 and the tendency of the Organization of the Petroleum Exporting Countries (OPEC) to politicize energy, America focused to improve the independence of Central Asian states to the diversification of energy

supplies to reduce the world needs from the Persian Gulf States supplies. Another strategic reason for the interest of America in the region is to be close to Russia, China, Iran, Pakistan, and India, which are international players of the political systems. Furthermore, new littoral states to strengthen their political and military power and position started cooperation with western countries and The North Atlantic Treaty Organization (NATO) which was not in favour of Iran and Russia and it increases the tensions in the region.

Apart from America, European countries toward to cope with the growing demand for oil and gas have different options, which all are related to the Caspian Sea region, first piping the Caspian Sea resources through Russia, secondly construction pipelines, through the Caspian Sea and the third option is piping the energy through Iran to Turkey and onwards to the EU (Ibrayeva, 2018). Furthermore, after the gas crisis in the winter of 2009, when Russian pipelines through Ukrainian territory were cut off, Europe got more motivated to seeks diversification of supply routes. Similarly, along with Europe, China's reserves are not sufficient for the current and potential size of its economy as an emerging country.

As well as all-natural energy resources and the geopolitical situation of the Caspian Sea, its environment also is unique. Approximately 90% of the world's wild caviar is supplied from the Caspian Sea (Mirrasooli et al, 2019). However, Sturgeon populations have declined, in the mid-1970s global sturgeon catch was over 30,000 t which dropped to 286 t in 2009 (Bianchi et al, 2014). Overfishing led to sturgeons of the Caspian Sea be on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), appendix II, and the International Union for Conservation of Nature (IUCN) list of critically endangered species. In this regard, littoral countries adopted policies for the conservation of the sturgeon such as a fishing ban for commercial purposes, but results have not been satisfactory due to the lack of legal regime and real cooperation between states.

Furthermore, oil pollution, which is associated both with oil production, exploitation, and transportation in the Caspian Sea is significant due to it is a closed basin and has not an opportunity to ventilate itself through connection to the ocean or open Sea

(Matikolaie, 2021) and all these pollutions calls for the legal regime and littoral states cooperation.

As a result, before signing the Caspian Sea convention (before 2018), the above-described situations motivated scholars to search in different aspects such as lack of cooperation between littoral states, legal regime of the Caspian Sea, and besides, plenty of works are devoted to this question. Is it Lake or sea? Since, in the interest of identifying the applicable rules and regulations for delimitation, which needed to find which legal statutes will be applicable?

Vinogradov (1996), Dubner (1999), and Ramazanov (2012) argued the Caspian Sea fails to meet the definition of enclosed or semi-closed sea based on Article 122 of UNCLOS although, Dunbar believed UNCLOS didn't explain the type of "narrow outlet" whether it must be natural or artificial to connect enclosed or semi-closed sea to the ocean. Besides, Vinogradov (1996) remarked size and geophysical features of the Caspian Sea distinguish it from the typical lake, conversely, Ramazanov (2012) advocates if the Caspian Sea is not recognized sea, based on the UNCLOS definition, it should be classified as a lake. This approach was in favour of Iran and Russia since it offers no access to the Caspian Sea to non-littoral states. Nevertheless, Babazade (2020) believed, the Caspian Sea might have the prerequisites criteria of the "enclosed sea" definition of Article 122 of UNCLOS and Janusz-Pawletta (2015) argued in case of application of UNCLOS since the breadth of the Caspian Sea is not more than 200 nautical miles, States will have disputes over the outer edge of the exclusive economic zone (EEZ) due to overlapping.

Moreover, Labardini (2020) pointed out that the Caspian Sea has been included in the Regional Seas Program (RSP) under the United Nations Environmental Program (UNEP) and international maritime organization (IMO) standards are referred to in "Concerning Regional Preparedness, Response, and Cooperation in Combating Oil Pollution Incidents protocol" to the Tehran Convention, in this regard, even the UNCLOS is not applicable for the Caspian Sea, but it is recognized as a sea for purposes of RSP and IMO.

Scholars tried to investigate conflicts between littoral states, based on different theories and were seeking for a solution to solve the matter. Abilov (2013) compared Iran and Russia argumentation regarding the applying the condominium principle, which relates to the joint ownership of the Sea by all littoral states as Samuels (2008) stated “*A condominium in international law exists when two or more States exercise joint sovereignty over a territory*”, to the Caspian Sea with the case of the Gulf of Fonseca, which was under the sovereignty of the Spain. After the independence of El Salvador, Honduras, and Nicaragua, joint ownership was given to them by International Court of Justice (ICJ). However, the Fonseca Gulf belonged to just one country, but the Caspian was governed by two states, Iran and Russia.

Historically, there has been a great deal of confusion in the literature regarding legal regime issue till the convention on legal statutes of the Caspian Sea has been signed in 2018. In the next section, a review of recent literature on the new convention has been presented.

1.2. After Signing the Caspian Sea Convention (After 2018)

The previous studies reveal the political, economic, and environmental effects of the unresolved legal regime of the Caspian Sea, and the majority of prior researches have emphasized that efficient utilization of the Caspian Sea resources depends on settlement of the legal status of the sea. This section presents a review of recent literature on the evaluation of the new convention.

1.2.1. Evaluation of the Caspian Sea Convention

In the Fifth Caspian Summit in 2018, Iranian President Hassan Rouhani remarked “*the signing of the Caspian Sea convention is a successful model for guaranteeing peace, stability, friendship, good neighborliness*”, in like manner, President of Russia, Vladimir Putin called the convention a success and added “*It showed that joint efforts can result in achieving ambitious goals in any, even the most complicated issues, in finding a compromise and balanced solutions of mutual interest. In today's difficult international conditions, this carries a lot of weight*”. Indeed, From the security viewpoint, the convention provides regional security since states have agreed on the

prohibition of the presence of third parties in the Caspian Sea and its obstacles to Azerbaijan's interaction with NATO. Besides all positive views to the new convention, there is a critical approach toward that in academic researches and several authors have recognized, the new convention does not resolve the main problems. For instance, based on Article 8(1), 7(3), and 9(1), the new Convention fails to clarify key aspects, which is delimitations of internal, territorial, and fishery zones and seabed, although, Russia, Azerbaijan, and Kazakhstan have already delimited the seabed by agreements and the seabed issue remain a controversy for Turkmenistan, Azerbaijan, and Iran. Moreover, there is some negative view toward the convention which argued, some Articles of convention act as obstacles to the exploration of oil and gas in the Caspian Sea and Iran and Russia intentionally put these Articles, such as article 14(2) which declared "*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 for⁵ the Protection of the Marine Environment of the Caspian Sea and its relevant protocols*" (Gurbanov, 2018; Bayramov, 2020). In parallel, Pritchins and Anceschi (2019) asserted, the convention does not satisfy the environmental requirements for the construction of the Trans-Caspian Pipeline (TCP) and it just provides Russia and Iran environmental monitoring powers, however, Janusz-Pawletta (2020) believed the new convention is an important factor for sustainable development since it regulates the environment protection and access to energy.

The research by Pietkiewicz (2020) analysed and compared a number of basic provision of UNCLOS with the Caspian Sea convention and concluded despite some similarities between the two legal regimes, the new convention led raising more questions, for example, whether other maritime international conventions should apply to ships sailing on Caspian Sea now, since the Caspian Sea is not part of the World Ocean or a sea under UNCLOS?

Besides extensive papers which addressing the main gaps of the new convention, the norms and principles of international law for delimitation of the Caspian Sea zones

and seabed, since it's not recognized as sea in the new convention, has been addressed only to a very limited and uncompleted extent in literature.

Araee et al. (2019) looked at Iran's request for "principle of equity" as a basis for the Caspian Sea seabed delimitation and they tried to define this term and concluded due to lack of insufficient, out of date and inaccurate geography information of southern part of the Caspian Sea, it is important before any claiming regard delimitation of the seabed, littoral states should conduct legal and technical cooperation to collect reliable and valid data.

1.2.2. Iran View Points Towards the New Convention

The convention has increased criticism of Iran's elected officials, since, it does not satisfy the Iranian demands, about equal share of the sea and access to energy resources of seabed. Iranian delegation has been accused by media and parliament member of not defending the country's interests (Kinik and Erkan, 2019). The new convention has become the subject of disputes in Teheran (Latsabidze, 2020). Since Iran was developing the "Look East" approach in its foreign policy, trying to strengthen its ties with the Eastern powers to escaping the isolation due to the sanction, there is the belief that Iran did a lot of compromise in the Caspian Sea convention to have littoral states supports. Toktassynov (2019) argued, the Iranian part of the Caspian Sea is deep and in terms of resource potential, are unexplored and underdeveloped and it requires enormous investment and advance technology, since Iran does not possess them and due to sanction it will be hardly to acquire it, in this case the Caspian Sea has not high economic priority for Iran and it is more concerned about the military-security issues than economic. Similarly, Karamzadeh and Qeshlaqi (2018), in their Persian paper claim, Article 9 of the convention which declared "*Each Party shall establish a 10 nautical miles-wide fishery zone adjacent to the territorial waters*" and article 1 where defines Common maritime space as "*a water area located outside the outer limits of fishery zones and open for use by all the Parties*" is not in favor of Iran since the rest of littoral states have advance technology to harvest more aquatic biological.

Two years after signing the Caspian Convention, it has been ratified just by four littoral states, Turkmenistan on December 1, 2018, Kazakhstan on February 8, 2019, Azerbaijan on February 22, 2019 and Russia on October 1, 2019, and the Islamic Republic of Iran's Majles is the only parliament that has not yet ratified it.

2. Conclusion

The analysis of the body of literature highlights the importance of the Caspian Sea for not only littoral states but also the world. Its geopolitical location and possessing valuable energy resources and precious biodiversity made its legal status, controversial issue for more than two decades, and signing the convention in 2018, was a tremendous achievement for the region although, as McConville (2017) argued, no legal regime or convention can be completely clear, some key questions and notions still call for clarification. systematic and theoretical analysis is required to recognizing norms and principles of international law for zones and seabed delimitation.

Chapter 3

1. Introduction

Tanaka (2015) defined Maritime delimitation as “*the process of establishing lines separating the spatial ambit of coastal state jurisdiction over maritime space where the legal title overlaps with that of another state.*” Accordingly, maritime delimitation is not unilateral action as the ICJ stated:

“No maritime delimitation between states may be affected unilaterally hence, maritime delimitation in international law is by nature.” (Gulf of Main, 1984)

The establishment of a maritime zone might result in overlapping claims that need maritime boundary delimitation which is one of the politically sensitive processes. It has a direct relation to the states' national jurisdiction, states' rights to fishing, exploitation of mineral and hydrocarbon resources, navigation, and other maritime uses. The delimitation of boundaries is controlled by a corpus of law that has grown through time via codification, as represented in treaty stipulations. Its growth has also been substantially aided by the jurisprudence of the International Court of Justice and ad hoc tribunals. Miron (2020) believed “*The law on maritime delimitation is often characterized as judge-made law*”. In this vein, in this chapter sources of international law of the sea and the norms and principles of maritime delimitation will be discussed.

2. Sources of international law of the sea

Before discussing what the international rules, norms, and principles are for maritime boundary delimitation, it is appropriate to take a look at the sources of international law of the sea.

It is generally accepted that the recognized source of international law is reflected in paragraph 1 of article 38 of the statute of the ICJ which stated:

“The court whose function is to decide under international law such disputes as are submitted to it shall apply:

- a) general or particular international conventions, establishing rules expressly recognized by the contesting states;*

- b) international custom, as evidence of a general practice accepted as law*
- c) the general principle of law recognized by civilized nations,*
- d) judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law”*

This article enumerates sources of formal and material international law (Fitzmaurice, 2017), which are legal procedures by which legal rules come into existence.

Customary law has two categories of general and special or local customary law. Since treaties are binding just to the parties to them, it is accepted that the rule of general customary law is binding to all states of the international community¹. As the ICJ stated:

“general customary law must have equal force for all members of the international community and cannot be subject of any right of unilateral exclusion.” (the North Sea Case, 1969)

Tanaka (2015) argued the customary law results from two elements, objective which is state practice, and subjective element which is *opinio juris*. In addition to state practice, the treaty also may generate a new rule of customary law. Roach, (2014) in his study provides a list of provision of the convention on the territorial sea 1958, the convention on the continental shelf and UNCLOS, demonstrated in table 1, which the international court has found them to be customary international law of the sea.

Another source of international law that needs special notice is judicial decisions as a material resource. The judicial decision has a different function as an identification of rules, consolidation of rules, clarification of rules, and the formation of rules.

¹ For example, in Qatar / Bahrain (2001) and Nicaragua / Colombia (2012) cases, Qatar and Colombia were not a party to the UNCLOS.

Zone	Convention	Article	Topic
Territorial sea	the 1958 Convention on the Territorial Sea and the Contiguous Zone	Articles 1(1) and 2	sovereignty over territorial sea
		Article 4(3)	straight baseline from low-tide elevations
		Article 11(1)	low-tide elevations
		Article 12(1)	territorial sea delimitation
		Article 14	right of innocent passage
	UNCLOS	Article 2	legal status of the territorial sea, of the airspace over the territorial sea
		Article 3	breadth of the territorial sea
		Article 5	normal baseline
		Articles 7(1), 7(3), and 7(5)	straight baselines
		Article 7(4)	straight baselines
		Article 10	Bays
		Article 13(1)	low-tide elevations
		Article 15	delimitation of the territorial sea between states with opposite or adjacent coasts
		Article 17	right of innocent passage
		Article 18	meaning of passage
The Continental Shelf	The 1958 Convention on the Continental Shelf	Article 1	definition of the continental shelf
		Article 2	rights of the coastal state over the continental shelf
		Article 3	legal status of the superjacent waters and air space
		Article 4	submarine cables and pipelines
		Articles 5(1) and 5(6)	rights and freedoms of other states
	UNCLOS	Article 76(1)	definition of the continental shelf
		Article 83(1)	delimitation of the continental shelf between states with opposite and adjacent coast
High sea	UNCLOS	Article 87	freedom of the high seas
		Article 89	invalidity of claims of sovereignty over the high seas
		Article 90	right of navigation
		Article 91	nationality of ships
		Article 92	status of ships
		Article 93	Ships flying the UN flag

	Article 87	freedom of the high seas
	Article 94	duties of the flag state
	Article 95	immunity of warships on the high seas
	Article 96	immunity of ships used only on government non-commercial service
	Article 97	penal jurisdiction in collisions
	Article 98	duty to render assistance
	Article 99	prohibition of transport of slaves
	Articles 100	Piracy
	Article 110	right of visit
	Article 111	right of hot pursuit

Table 1. the provisions which became customary international law of the sea. Source:
Roach, 2014.

3. Conventions provisions concerning maritime delimitation

Three conventions deal with the maritime delimitation of some special zones, Convention On the Territorial Sea and Contiguous Zone 1958 (hereinafter TSC), Convention On the Continental Shelf as Well as Convention On Law of the Sea (UNCLOS) 1982, as below. However, according to Article 311 of UNCLOS, the 1982 Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958:

- Article 12 of the TSC and article 15 of the UNCLOS: Delimitation of the territorial sea
- Article 24 of TSC: delimitation of the contiguous zone
- Article 6 of the Convention On the Continental Shelf and Article 83 of the UNCLOS: delimitation of the continental shelf
- Article 74 of UNCLOS: delimitation of the EEZ

The rules applicable to the delimitation are different depending on the zones concerned.

3.1. Delimitation of TS zone according treaty law

Paragraph 1 of Article 12 of TSC and Article 15 of UNCLOS provided the triple rule of “agreement- equidistance (median line)- special circumstance” for delimitation.

These two articles are commonly believed to reflect customary law coincide by applying the method of the median line when states fail to agree between them and apply in the case of adjacent and opposite coasts. However, the conventions did not define the special circumstances and it must be clarified during the development of jurisprudence and state practice in the field of maritime delimitation.

3.2. Delimitation of Continental Shelf and EEZ According Treaty Law

Article 6 of the convention on the continental shelf 1958² introduced the notion of a special circumstance, addition UNCLOS contains special provisions, Article 74 and 83, for EEZ delimitation and continental shelf which stated: “the delimitation of the exclusive economic zone [the continental shelf] between states with opposite and adjacent coasts shall be effected by agreement based on international law, as referred to in article 38 of the statute of the international court of justice, to achieve an equitable solution.” These two articles omit any reference to a method of delimitation. However, it is noteworthy that the fundamental procedural principle has been introduced by UNCLOS to sea delimitation is the peaceful settlement of international disputes and emphasis on an agreement in good faith as the ICJ stated:

“Any delimitation must be effected by agreement between the states concerned, either by the conclusion of the direct agreement or, by some alternative method which must be based on consent” (the Gulf of Maine, 1984)

The most essential implication of the fundamental rule that maritime border delimitation should be accomplished via agreement is that parties are free to choose

² “where the same continental shelf is adjacent to the territories of two or more states whose coast are opposite each other, the boundary of the continental shelf appertaining to such states shall be determined by agreement and in absence of agreement and unless another boundary is justified by special circumstance the boundary is the median line”

any delimitation line they choose based on political, economic, geographic, or other considerations (DOALOS, 2000).

4. Approaches of Jurisprudence to The Maritime Delimitation

Delimitation by judicial process is a legal operation and it is based on consideration of the law and there is the distinction between delimitation based on legal rules and delimitation by states during negotiation which is based on political consideration. There are different approaches towards delimitation as is described in the following parts.

4.1. Equidistance

Territorial Sea Convention and Continental Shelf Convention defined equidistance line as *“the line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each of the two States is measured.”*

Equidistance is the predictable method and delimitation line mathematically determined. After 1958 in many cases, governments begin the negotiations by considering an equidistance line and the majority of bilateral treaties³ on maritime delimitation used this method. However, there may be complications if one state uses normal baselines that follow the sinuosity of the coastline while the other uses a straight baseline system that connects the outermost islands, promontories, and rocks (Charney and Alexander, 1993).

The ICJ and arbitral tribunals reduced the equidistance technique's privileged standing as the basis of entitlement to both the EEZ and the CS within 200 nautical, viewing it as a method that, in some situations, may result in inequitable and irrational outcomes.

4.2. Equity principles

The equitable principle stems from court jurisprudence, which is the general guiding principle. It combines two types of principles: procedural and substantive. The

³ Denmark/United Kingdom, Norway/Sweden, Norway/United Kingdom, Denmark/Norway.

procedural principle is that the delimitation is done by agreement, and the substantive include equity. Cottier (2015) believed equity has been a companion of the law ever since rule-based legal systems emerged, and it provides a path to justice if the law is unable to appropriately respond. Equity fundamentally corrects legal flaws and deficiencies. The equitable principle as customary law became the main aspect of the law of maritime delimitation (Østhagen, 2020). The principle of equity and relevant circumstances has been stressed in article 59⁴ of UNCLOS as a basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the EEZ. However, the approaches toward this principle were different as is described in the following parts.

4.2.1. Result oriented equity approach

In the North Sea Case 1969, which involved disputes of the Federal Republic of Germany with the Netherlands and Denmark as regards their continental shelf delimitation, the ICJ held “*there is no single method of delimitation the use of which is in all circumstance obligatory, but one goal.*” and court decided delimitation should be effected by agreement on the basis of equitable principle. The ICJ stated equidistance line is not appropriate due to the shape of the coasts of the Federal Republic of Germany, which was concave (Guernsey, 2000). Concavity of coast has been demonstrated in figure 1.

⁴ “*In cases where this Convention does not attribute rights or jurisdiction to the coastal State or other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved based on equity and in the light of all the relevant circumstances*”

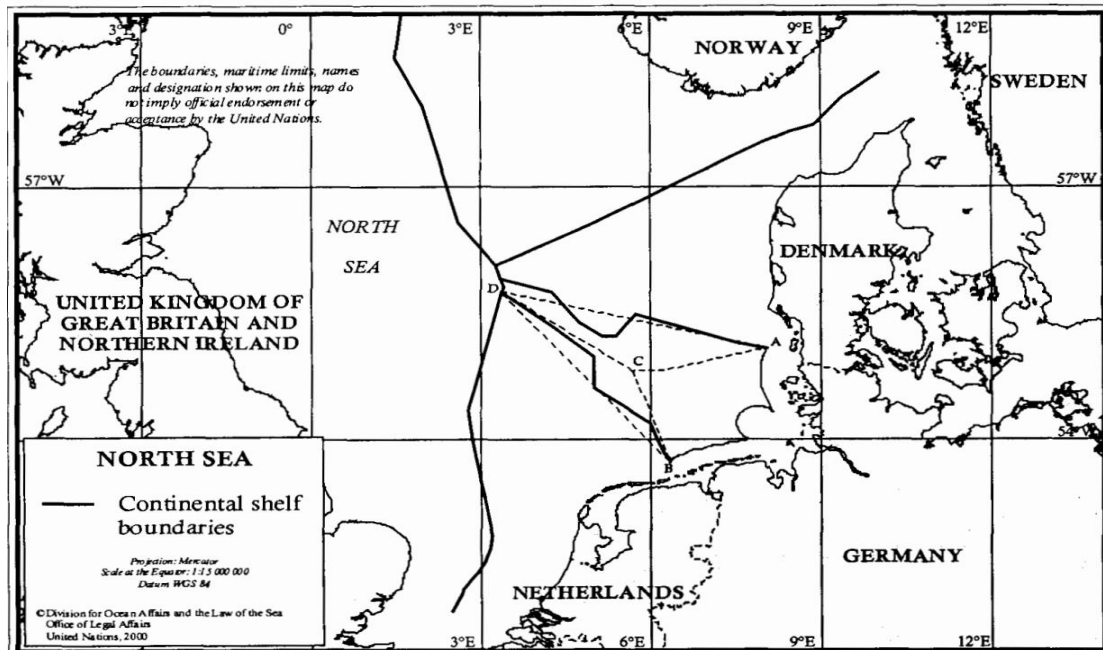


Figure 2. North Sea continental shelf boundaries. source: DOALOS., 2000

In the same manner in the case of Guinea and Guinea-Bissau before Arbitration Tribunal in 1983, the arbitral decided to reject the application of the equidistance method because of the existence of geographical circumstances, such as the concave coasts of the States (McLarky, 1987). This approach has been called the result-oriented approach and it has been used in 1985 in Guinea/Guinea-Bissau arbitration and St. Pierre and Miquelon cases.

In the Tunisia v. Libya case regarding delimitation of continental shelf, the ICJ pronounced:

This approach, focused on the equitable outcome rather than the means and techniques to be used and provides the international court and tribunals opportunity to do not bind any method and decided each case based on its own circumstance. As the IJC stated:

“The result of the application of equitable principles must be equitable and the result which is predominant, the principles are subordinate the goal. The equitable of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result”. (Tunisia v. Libya case, 1978)

4.2.2. Corrective Equity Approach

In the Libya/Malta case of 1985, the ICJ used the equidistance method just as starting point and equity as a corrective element and shift the equidistance line based on special circumstances of the case. This approach has been called corrective –equity approach. In 1993, regrading delimitation of the continental shelf and fishery zone, the court by considering Article 6 of CS convention and customary law of the Award of the Angelo – French continental shelf case, held:

“Even if it were not appropriate to apply, not Article 6 of CS convention, but customary law concerning the continental shelf as developed in the decided cases, it is in accord with precedents, to begin with, the median line as a provisional line and then to ask whether special circumstance require any adjustment or shifting that of the line” (Greenland v. Jan Mayen case, 1993)

In this case, the court applied this approach as customary law. In the Cameron v. Nigeria case, the court adopted a new interpretation, and since there was no particular reference to any technique of delimitation in UNCLOS articles 74 and 83, it determined that a specific method, namely the equidistance method, should be incorporated into these provisions. Similarly, in Qatar v. Bahrain 2001 and Barbados v. Trinidad, the ICJ and arbitration used this approach.

4.2.3. Three Stage Approach

For the first time in the Black sea case 2009 between Romania and Ukraine, the ICJ used new formula which called “three- stage approach”. Based on this approach, establishing the equidistance line is first stage, then court will check the relevant circumstances in order to adjustment of provisional line and at the third stage, to avoid any inequality the disproportionality test has to be applied. this approach also called the equidistance/relevant circumstances method.

Elferink et al., (2018), believed this approach “*confirm the normative value of the Black Sea judgment, which provides 'a cogent formulation of the three-stage methodology of maritime delimitation'*”. This approach has made maritime delimitation

more predictable and transparent (Miron, 2020). However, till now courts have not established any recommended technique for disproportionality test calculation (Fietta and Cleverly, 2016).

In 2012, the ITLOS used this approach and held:

“At the first stage it will construct a provisional equidistance line, based on the geography of the casts and mathematical calculation, it will proceed to the second stage of the process, which consists of determining whether there are any relevant circumstances to adjustment, if so, it will make an adjustment the produces an equitable result. At the final stage, the tribunal checks whether the adjusted line results in any significant disproportion between the ratio of the respective coastal lengths and the ratio of the relevant maritime areas allocated to each party.” (Bangladesh v. Myanmar, 2012)

The ICJ, ITLOS and arbitration used three stage approach, the ICJ in the Chile v. Peru case and Costa Rica v. Nicaragua case, the ITLOS in the Ghana v. Cote d'Ivoire case and the arbitration in the Bangladesh V. India case.

Nowadays, international courts have transited from the result-oriented-equity approach to the three stage approach which concerns some procedural norms in maritime delimitation (Chuanxiang, 2016). Tanaka (2019) believed the three stage approach provides balancing of predictability and flexibility. In the next parts the relevant circumstances to maritime delimitation will be discussed.

4.3. Relevant Circumstances

The relevant circumstances are those circumstances are taken into account in the delimitation process by States and the courts. Most relevant and dominant geographical, historical, political, economic, socio-economic, security, and other kinds of factors can be taken into account by states, open-ended categories, since till today not only the conventions, especially Article 6 of the convention on the continental shelf and Article 15 of UNCLOS but also courts did not provide the list of circumstances. In the Anglo- French case the United Kingdom argued it does not mean there is no limitation for a special circumstance under Article 6 of the convention on the

continental shelf but the court rejected this claim (Evans,1991), which means there is no limitation. However, DOALOS (2000), stated “in the delimitation based on legal rule the international court has interpreted “relevant” criteria and factors as directly relevant to the delimitation, therefore, of a non-political or economic nature.”, in the negotiation stage, states have the flexibility to influence the outcome in favor of their interest.

In the following section, the relevant, the circumstance which has been used by states in their submissions and also awards will be introduced.

4.3.1. Geographical factors

There is no doubt that geographical factors play a crucial role in maritime delimitation, and the decision of courts emphasized the central role of geographical factors in determining boundaries. The following are the main elements of these categories of factors.

4.3.1.1. Regional Characters and Configuration of Coast

This category includes, general characteristics and particular features of the region such as sea or semi-enclosed sea, direction, comparative length of coast, adjacency and oppositeness and concave or convex shape of coast.

- **Particular Feature of the Region:** To facilitate the delimitation process the state may enclose, totally, or partially the area in geometric shapes, rectangles, squares or even cones. This technique will help the parties to focus on the general orientation of the line, when they dealing with open oceanic space in negotiations (DOALOS, 2000).
- **Adjacency and Oppositeness:** In the North Sea case and Libya v. Malta case, the ICJ stated there is the risk of inequity due to the differences in equidistance method between opposite and adjacent coasts however Tanaka (2019) argued since nowadays courts more intend to use the equidistance method just as the first step of delimitation, this differences are not important anymore.

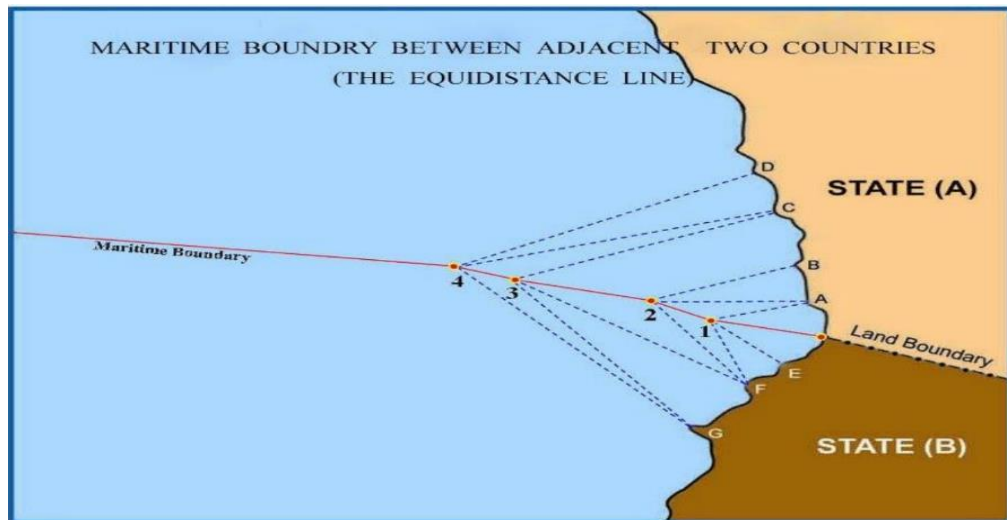


Figure 3. Adjacent states delimitation boundaries. source: ILLSS., n.d.

- **Concavity or Convexity:** The character of the coast is important criteria as the court in the Gulf of Maine held “the facts of geography are not the product of human action amenable to negative or positive judgment, but the result of natural phenomena so that they can only be taken as they are”. In the Bangladesh v. Myanmar case, ITLOS indicated the Bangladesh coast is concave and should be considered as a relevant circumstance and adjust the equidistance line.

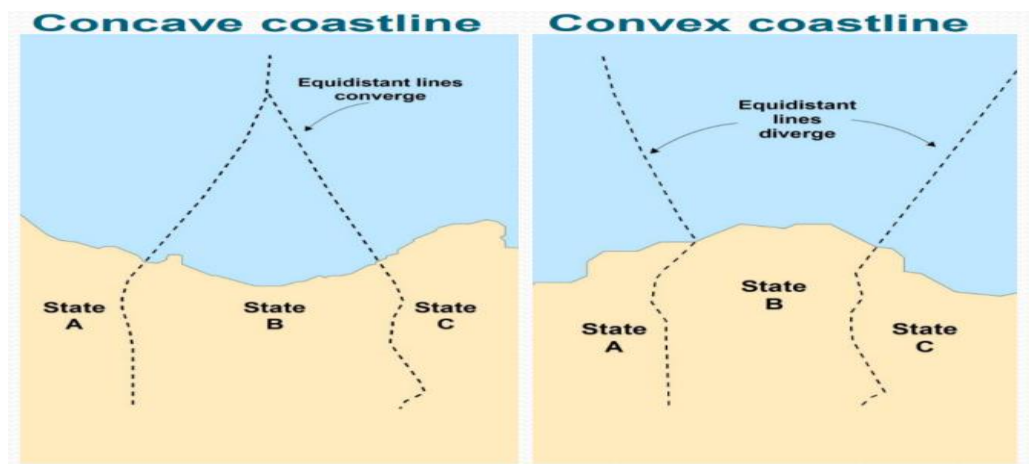


Figure 4. effect of concave and convex cost on equidistance lin. source: DOALOS.2000

- **Direction of The Coast:** In the initial stage of delimitation, states must agree on the sector of the coast which is the target of delimitation and defining its general direction. In the case of Tunisia/ Libya, the court to identify the general direction of the coast, selected two points located in the third state.

4.3.1.2. Basepoints

Article 15 of UNCLOS declared that to apply the equidistance method, the median line should be drawn from “the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.” However, in the practice of states and international courts, there is the possibility that the baseline used to delimitate zone does not necessarily have to be the one for measuring the breadth of the territorial sea drawn by states. (Tanaka, 2019). There is the need to bear in mind, in some cases, some relevant features such as island, islet, rock, or low tide elevation must be regarded as a basepoint since they have the capability of forming part of the straight baseline. There are different cases where these feature has been given no effect or full effect. In Bahrain V. Qatar the court stated Bahrain was not entitled to use a straight baseline and in the Black Sea case the ICJ held “*the issue of determining the baseline to measure the breadth of the continental shelf and the exclusive economic zone and the issue of identifying base point for drawing the median line for the delimiting are two different issues*”.

4.3.1.3. Presence of Islands and Rocks

In the past three decade islands were claimed as independent sources of all maritime zones based on Article 121(2) of the UNCLOS but in practice as Crawford, (2019) argued, island may be given full or half effect, may be ignored or enclaved in maritime delimitation and it depend on the stage of delimitation and negotiation. It will have significant effect in the drawing provisional line and the impact will be reduced in the adjustment of the equidistance line. As well DOALOS (2000) declared the need for concluding an equitable result sometime will have concluded in reducing the effect given to island. In the Eritrea V. Yemen case, Arbitration tribunal took new approach and used criteria to determine the effect given to islands, “integrity test”. Based on the

new test any island which forms an integral part of the general coastal configuration have been given full effect.

In the Nicaragua V. Honduras case, ICJ gave full effect to the Nicaragua cay (Tanaka,2015). On the other hand, in the Tunisia V. Libya, the ICJ neglected the Jerba island completely and in the Angelo –French continental shelf gave just partial effect. half effect which means, ICJ at the first stage drew a provisional line without considering islands as basepoint then drew an equidistance line by using islands and at the final stage a boundary line was drawn midway of these two lines.

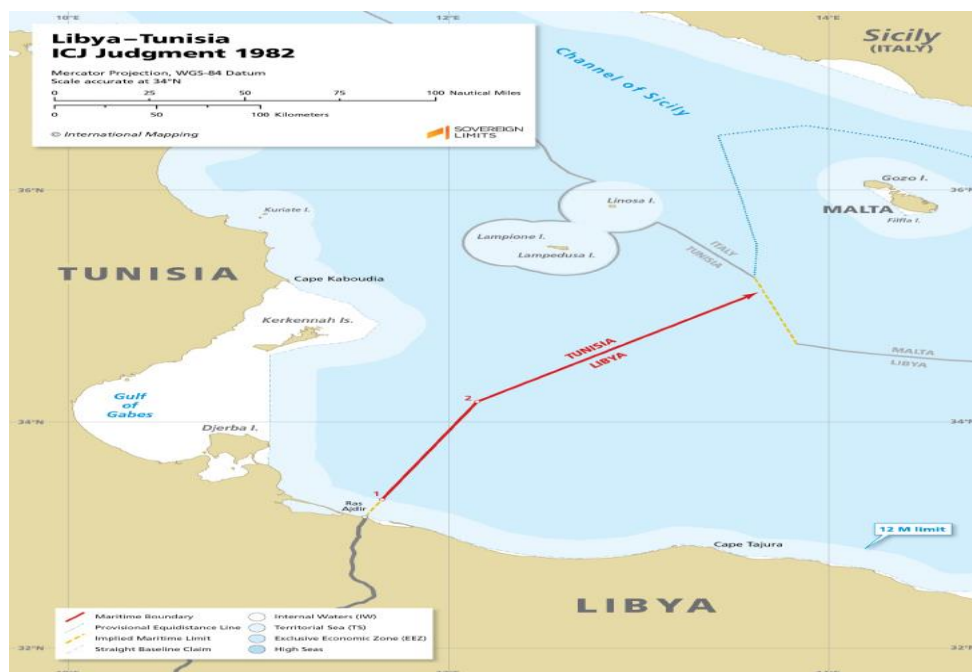


Figure 5. Tunisia v. Libya delimitation boundary. source: sovereign limits, n.d.

The state practices are so diverse and that make it difficult to specify the general rule.as ITLOS stated “*the effect to be given to an island in the delimitation of the maritime boundary in the exclusive economic zone and the continental shelf depends on the geographic realities and the circumstance of the specific case. There is no general rule in this respect. Each case is unique and require specific treatment.*” (Bangladesh v. Myanmar, 2012)

4.3.1.4. Presence of Third State

DOALOS (2000) stated almost half of the maritime delimitation claims involve more than two states. The bilateral character of maritime delimitation between two States necessitates that the delimitation procedure not jeopardize third-party legal rights and interests and the court always preserved third state rights (Xu, 2019). The presence of third state create difficulty to the principle of *res inter alios acta*⁵.

The international courts took cut off approach in some cases. In this kind of approach, the courts stop the delimitation line where is the right of third state.⁶ In order to apply this approach the court conduct legal credibility test. Based on this test the court identifies the right of the third state on the basis of equidistance method.

4.3.1.5. Proportionality

The idea of proportionality is based on the link between, the length of the relevant coast of two or more nations whose marine zones must be delimited and the area of maritime space to be assigned to each of the parties by the delimitation.

The idea of proportionality was first articulated in the context of maritime delimitation by Germany in the North Sea continental shelf cases, in 1969. The ICJ rejected Germany's contention that each state should get a "just and equitable share" of the accessible continental shelf equal to the length of its coastline or sea frontage and it held:

“There are three states whose North Sea coastline are comparable in the length and which therefore have been given broadly equal treatment by nature except that the configuration of one the coastline would, if the equidistance method is used, deny to one of these states treatment equal or comparable to that given the other two and what is unacceptable in this instance is that a state should enjoy continental shelf right

⁵ According Australian Law Dictionary, inter alios acta is Latin abbreviated form of Res inter alios acta, aliis nec nocet nec prodest which means a thing done between others does not harm or benefit others.

⁶ In the Tunisia / Libya, Qatar/ Bahrain, Barbados /Trinidad and Cameron/ Nigeria cases.

considerably different from those of its neighbor because in the one case the coastline is roughly convex and in the other it is concave” (North sea case, 1969)

Dundua (2007) believed the use of proportionality in the delimitation process may provide equal access to resources, such as not putting one State's fisherman at a significant disadvantage in comparison to the fisherman of the other State.

Anderson, (2015) argued this test is difficult to apply where a court has to decide on a partial boundary such as the Peru v. Chile case, where the first 80 miles of the boundary was held to have been established by agreement. another difficulty is where there are islands in the vicinity of the boundary or the coasts are indented or separated by sea. which is difficult to determine the relevant coasts and areas.

4.3.1.6. Geomorphological and Geological Factors

The two words of geology and geomorphology are different since geomorphology relates to the shape and form of seabed the geology concerns the composition and structure of it. These two factors have been taken into consideration in the case of the continental shelf, however, they do not have a direct effect on the delimitation line. Takana (2019) believed these factors play a secondary role and states claim the EEZ and continental shelf regardless of the geomorphological and or geological characters of the coast. Concerning these factors, ICJ developed the principles of natural prolongation and non-encroachment (DOALOS, 2000).

4.3.2. Non Geographical Factors

4.3.2.1. Historical Factors

It is crucial to distinguish between historical right and historical title. Whereas historical title refers to the historic sovereignty over the land or maritime area. The scope of historic rights falls short of sovereignty and may be categorized in historic right of passage and historic fishing rights. This type of title and right also has been stipulated in Article 15 which include the historic title in a special circumstance of delimitation of territorial waters and also Article 51 (1) of the UNCLOS, which

prescribes “an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighboring States”.

Although, these factors were not mentioned in the Article 74, regarding EEZ, and 83 of UNCLOS (Dundua, 2006) believed, the historic title appears to allow states to assert sovereignty over regions that extend beyond the territorial sea right but the existence of such sovereignty would be dependent solely on the existence of the historical title and it is difficult to conceive in practice since it is requisite of acquiescence or recognition by the international community.

In the Eritrea/ Yemen case, the Arbitral Tribunal did not take into account the fishing right for delimitation on the ground free access to fishing which is an easier solution to make a distinction between delimitation and traditional fishing regime since this factor could be protected by the agreement (Tanaka, 2019).

4.3.2.2. Economic Factors

Economic factors as a relevant circumstance in the delimitation process may include the availability of natural resources such as oil, gas, and fish, as well as socioeconomic issues such as states' economic reliance on natural resources and national economic prosperity and the main interests of states in the delimitation of the continental shelf, EEZ, or the fishery zone, are economic benefits of the exploitation of living and non-living resources, in those maritime zones.

a) Hydrocarbon Resources (Oil and Gas)

DOALOS (2000) stated the availability of natural resources has often been the driving factor behind the negotiation between states for maritime border delimitation agreements. Ioannides, (2020) believed the idea of “predominant interest” should be utilized as a defensive tool with the goal of either avoiding any adjustment of the provisional line to reduce the risk of jeopardizing a state's fundamental/vital interests. Nevertheless, in jurisprudence this factor remains modest, the ICJ held:

“oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on an express or tacit agreement between the parties may they be taken into account.” (Cameroon V. Nigeria case, 1999)

In some cases, ICJ used the economic factors to the verification test of the equitableness of the provisional line. The purpose of the test was to *“verified whether the result would be ‘radically inequitable’ or entail ‘catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned and came up with negative answers”* (Gulf of Maine case, 1984) and these factors have had no direct influence on the delimitation of the continental shelf or single maritime borders. However, in certain accords, states have handled economic interest flexibly by introducing “common deposit clauses” or forming “joint development regimes”.

Joint exploitation can be divided into two categories, the first category is the areas may which be adopted in conjunction with a delimitation line such as the Iceland-Norway case 1981, or be a solution in the absence of agreement between the parties on the course of a delimitation line, Indonesia v. Australia.

The Gulf of Persia is an excellent example. The border point in the 1969 agreement between Qatar and Abu Dhabi, was placed on a known petroleum field that was to be under Abu Dhabi's authority, but earnings from which were to be divided equally by the parties (Dundua, 2007).

b) Fishery

Fishery as a source of income and economic factor is in high priority of countries in the negotiation step for delimitation and even after that. In practice, states have agreed to create shared fishing zones which as DOALOS (2000) “Because of the non-stable nature of fisheries, this method appears to be even more suited.” And also it can be the solution for the absence of agreement on a particular delimitation line.

The historical right of Fisheries is one of the primary concerns of states when negotiating a maritime delimitation. This goal is easily attained by ensuring fishermen of both states have access to fisheries such as the Agreement between India and Sri

Lanka. (Sherif, 2017). But in the court's view access to fishery resources may be considered at the final stage of the delimitation of the EEZ or the fishery zone to check that the delimitation does not result in inequitable situation.

c) Navigation

Despite the right of innocent passage of ships is guaranteed, in principle, State practice appears to show a greater concern for navigation protection in agreements of delimiting territorial waters than delimitation of EEZ or continental shelf.

However, the effect of this factor remains also modest in court's practice for maritime delimitation.

d) Socio Economic Factor

Although socio economic factors may play an essential part in the delimitation negotiating process between states, but the Court views these elements as mainly irrelevant to delimitation since equity does not work as distributive justice in this context, since based on ICJ award in 1982, these circumstances are extraneous factors to delimitation as stated:

"They are virtual/y extraneous factors since they are variables which unpredictable national fortune or calamity, as the case may be, might at any time cause to tilt the scale one way or the other. A country might be poor today and become rich tomorrow as a result of an event such as the discovery of a valuable economic resource ... " (the Tunisia/ Libya case, 1982)

The reason that Court should have excluded this factor from the category of relevant circumstances, was that tribunal did not have the power to rebalance the economic inequalities of the States and stated *"it would be neither correct nor fair to base a delimitation on the evaluation of data which changed under the influence of sometimes uncertain factors"* (Guinea and Guinea-Bissau, 1985).

4.3.2.3. Security and Political Factors

Dispute and war avoidance, good-neighborliness, foreign policy objectives are examples of the political factor which states take into account for delimitation negotiation however states seldom make public the political motivations that led to the conclusion of their agreements.

Although the notion of security itself can be construed in a variety of ways, including merely military considerations or, in a broader sense, access to resources, navigation, environmental issues, ICJ considered the security factor in delimitation and stated: *“not so near to the coast of either Party as to make questions of security a particular consideration in the present case”* (Libya v. Malta case, 1984).

5. Conclusion

Based on the above mentioned approaches and factors, it is possible to conclude that maritime delimitation is a multifaceted issue. Geographical factors play a significant influence in this procedure. However, there is a significant variation depending on whether the delimitation procedure was completed by third-party settlement or agreement. Since the international courts have not concluded list of special circumstances, during negotiations, states may take into consideration important geographical and non-geographical conditions, or they may disregard both.

Nonetheless, since there is no agreement on what conditions constitute as relevant circumstances, states have been forced to take a precedent like approach, and in proceedings, they inevitably seek to fit the facts of their case into one of the previously recognized as relevant categories (Evan, 2018). there is therefore, the need to bear in mind in terms of relevant circumstances, it is feasible to state that without taking into account factors relevant to the specific situation, an equitable conclusion would not be attained.

Chapter 4

1. Introduction

This chapter aimed to explore the applicable law to the delimitation of the Caspian Sea. In this vein, based on Article 38 of the statute of the ICJ and regarding sources of international law, international treaties, bilateral agreements, littoral states' practices will be reviewed, followed by an assessment of relevant circumstances which could be considered in the Caspian Sea delimitation negotiations.

2. Sources of International Law for the Caspian Sea Delimitation

2.1. Agreements

To find the applicable law for maritime delimitation, ascertaining whether there is any pre-existing agreement relating to the maritime delimitation is crucial, in this regard Soviet-Iran agreements, additionally, delimitation agreements of the north part of the Caspian Sea will be reviewed.

2.1.1. Soviet –Iran agreements

During the era of the USSR, the Caspian Sea was treated based on two agreements between Iran and USSR, the first one was signed on 26 February 1921 (Mehdiyou, 2000), and two parties were given equal shipping rights in the Caspian Sea as well as the right to fly their flags on their commercial vessels and two states reaffirmed the 10-nautical mile fishing zone in the Treaty of Commerce and Navigation in 1941 agreement (United Nation, Treaty Series, 1959) After the disintegration of the USSR, these two agreements were inadequate to deal with the presence of the new littoral states and their demand toward delimitation and consequently exploration and exploitation of natural resources in the seabed of the sea. The treaties of 1921 and 1940 solely addressed navigation, fishing, and trade and did not clarify the legal status of the Caspian Sea, and did not provide an official and final delimitation line. In addition, in this period (1921-1940) the concept of EEZ and continental shelf was still some long years away, while its general acceptance in practice and being introduced in the UNCLOS 1982. in this regard riparian states took various measures, which

showed that they did not accept the validity of these agreements, nevertheless Turkmenistan in its letter to the UN general assembly (UN General Assembly, 1998) accept it. However, by increasing the heated contention in the region, Iran, and Russia as a party to these agreements, in their joint statement (UN General Assembly, 2000) stated: *“until the new legal status is devised for the Caspian Sea, these two treaties retain their full legal validity”* which gave the valid duration to these agreements till the new legal regime, and the texts represent evidence of the Parties’ understanding as far as the establishment of future legal status of the sea is concerned.

2.1.2. Delimitation Agreements

USSR in 1970 by its unilateral action set a delimitation line on the Caspian between Iran and USSR and then divided its part into national sectors among its Unions. In 1993, this delimitation was approved by Russia for the benefit of Kazakhstan, Turkmenistan, and Azerbaijan after disintegration (Nourian, 1996). Russia entered into the seabed delimitation with Azerbaijan and Kazakhstan by different agreements including the agreement between, Russia and Kazakhstan in 1998, Russia and Azerbaijan in 2002, and the Agreement on the Convergence Point of the Delimitation Lines of Adjacent Areas of the Caspian Seabed between Russia, Azerbaijan, and Kazakhstan in 2003. Regarding the above-mentioned agreements, the following matters call special attention.

- The preamble of these agreements stated “being guided by the conventional principles and rules of international law”
- Justified equidistance line method has been used for delimitation in these agreements
- Configuration of coast and islands has been taken into account as a relevant circumstance
- Based on article 2 of the agreement between Russia and Azerbaijan and Article 2 of the agreement between Russia and Kazakhstan *“Development of mineral resources of the structures crossed by the line of demarcation will be performed based on the international practice applied in case of development*

of cross-border fields, the authorized organizations appointed by the Governments of the parties”

- These agreements just delimited the seabed, leaving main activities such as shipping, fishing, and environment regimes to be determined later
- All agreements have been declared illegal by Iran

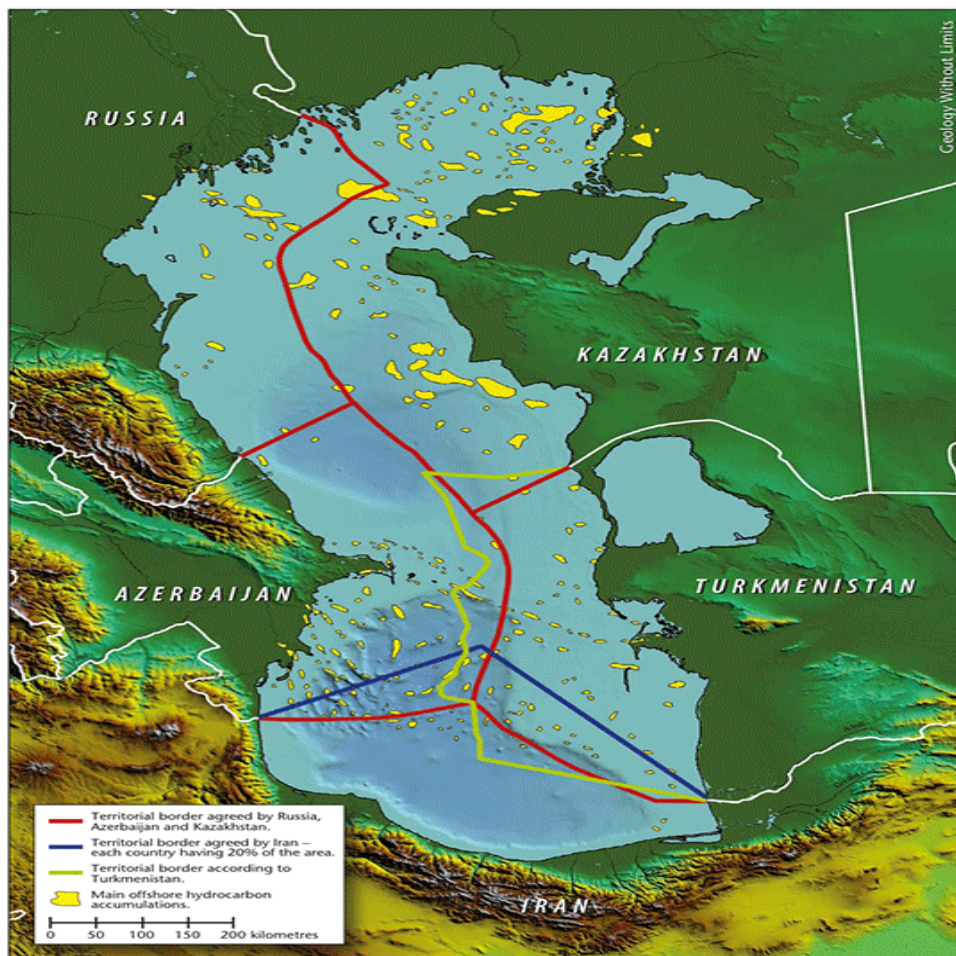


Figure 6 Caspian sea delimitation . source: geoexpro. n.d.

2.2. Littoral States Practice

Tunkin (1961) believed custom norms are being formed in international practice, as a rule, and opinio juris is an essential element of customary norms. States practice can be a physical act, or what they say such as policy statements, press released, opinion of official legal advisers and also Opinio Juris include public statements of states, diplomatic correspondence, resolutions adopted by the international organization and it can play a crucial role in reflecting the interest of the international community. Following the disintegration of the USSR, the political view and practices of the coastal States were contrary to each other. These views have been shown in their letters to the UN general assembly as the following table.

	State	Letter code	Important points of statements
		Date	
1	Russia	A/49/475 October 1994	<ul style="list-style-type: none"> The Caspian Sea is a land-locked body of water. The norms of international maritime law, particularly the territorial sea, EEZ and the continental shelf, are not applicable to it. There is no basis for unilateral claims relating to the establishment of zones of this type and any questions relating to activities, including the exploitation of its resources, must be decided jointly by all states.
2	Russia and Turkmenistan	A/51/73 March 1996	<ul style="list-style-type: none"> The sides confirm that the questions relating to activities in the Caspian Sea, including the use of its aquatic area, and natural resources, must be regulated by multilateral agreements with the participation of all States.
3	Azerbaijan and Kazakhstan	A/51/529 October 1996	<ul style="list-style-type: none"> The legal status of the Caspian Sea must be based on the generally recognized rules and principles of international law and the international treaty practice of States situated on the shores of similar bodies of water The Parties recognize rights of the littoral States to carry out activities connected with the exploitation of the mineral and biological resources in their sector.
4	Turkmenistan	A/52/259 July 1997	<ul style="list-style-type: none"> Turkmenistan would welcome Russian-Azerbaijani agreement on the joint exploitation the Caspian Sea if it were not for the fact that the area of joint exploitation includes the Serdar (formerly, Promezhutochnoe) deposit, which belongs to Turkmenistan. In this regard Turkmenistan lodge, a strong protest.

5	Kazakhstan	A/52/318 September 1997	<ul style="list-style-type: none"> • Russian Federation has invited tenders for the exploitation of the mineral resources of the Caspian Sea and the areas involved lie partly within the Kazakh sector. This sector has been determined on the basis of the principle of delimiting the sea-bed along the median line. Kazakhstan does not rule out the possibility of exploiting jointly with them the deposits in the Kazakh sector and such activity must be carried in accordance with the norms and principles of international law
6	Iran	A/52/324 September 1997	<ul style="list-style-type: none"> • It should be recalled that the successor States of the former USSR, in accordance with the Alma Ata Declaration of 1991, have guaranteed "<i>the discharge of the international obligations deriving from treaties and agreements concluded by the former Union of Soviet Socialist Republics</i>". Therefore soviet-Iran agreements are binding on all successor States.
7	Iran	A/52/325 September 1997	<ul style="list-style-type: none"> • The joint statement signed by Kazakhstan and Turkmenistan relating to "the delimitation of administrative and territorial borders along a line running through the middle of the Sea" bears no legal value .
8	Kazakhstan	A/52/424 October 1997	<ul style="list-style-type: none"> • Any use of the Caspian Sea will take place within the demarcation zones established during the existence of the former USSR, using the median-line method adopted in international practice and soviet- Iran treaties contained no reference to the borders. Kazakhstan's position is that individual provisions of the UNCLOS should be extended to the Caspian Sea.
9	Iran	A/52/588 November 1997	<ul style="list-style-type: none"> • The official announcement by Azerbaijan, regarding extraction and exploitation of oil from the Cheragh reservoir of the Caspian Sea, is unilateral measures and violate existing legal regime as defined in soviet Iran treaties
10	Russia and Kazakhstan	A/52/802 February 1998	<ul style="list-style-type: none"> • the sides agreed to demilitarize the Kazakhstan-Russian part of the Caspian seabed on the basis of the principle of equidistant as well as the principle of agreement by the sides on separate sections
11	Iran	A/52/913 May 1998	<ul style="list-style-type: none"> • Treaty 1921 and 1940 contain no provisions relating to the delimitation. Therefore, as long as the legal regime of the Caspian Sea is not complemented with the agreement of all coastal States, the existing legal regime established by the above-mentioned instruments remains binding and any attempt to divide the Caspian Sea is unacceptable. Consequently, the inclusion of such terms as the "Kazakhstan Part" or the "Russian Part" in the recent statement by the Russia and Kazakhstan is in contravention of the existing legal regime.

12	Russia and Kazakhstan	A/52/983 S/1998/693 July 1998	<ul style="list-style-type: none"> • The seabed of the northern part of the Caspian Sea and the subsoil thereof, without prejudice to the continued common use of the water's surface, including protection of the freedom of navigation, agreed fishing quotas and environmental protection, shall be delimited between the Parties along a median line adjusted on the basis of the principle of justice and the agreement of the Parties. The adjusted median line is based on a line equidistant from the agreed baselines; it includes sectors that are not the same distance from the baselines and are determined by taking account of islands and geological features, as well as other circumstances and geological expenditure incurred. The configuration of the adjusted median line is determined by starting from the coastlines of the Parties, taking account of islands.
13	Iran	A/52/1011 August 1998	<ul style="list-style-type: none"> • The Agreement signed by Russia and Kazakhstan regarding the legal status of the Caspian Sea bears no legal merit.
14	Iran and Turkmenistan	A/53/453 October 1998	<ul style="list-style-type: none"> • Until the finalization of the new legal regime, soviet- Iran agreements are the sole international documents governing the Caspian Sea legal issues • Condominium arrangement for the common use of the Caspian Sea by the littoral States through assuming a sectoral coastal strip as the national zone is the most appropriate basis for the legal regime. • In case of division, the two sides emphasized the principle of equal share for all littoral States and equitable exploitation of the resources of the Caspian Sea.
15	Azerbaijan	A/53/741 December 1998	<ul style="list-style-type: none"> • An agreement between Iran and the Shell and Lasmo oil companies on geological and geophysical prospecting in an area which includes part of the Azerbaijani sector is illegal action. • The sovereign rights of the littoral States of the Caspian Sea extend to the corresponding national sectors which have been established as a result of the traditional activities of the littoral States. • The de facto tradition of the use of the Caspian Sea within national sectors on the basis of the recognized customary rules of international law remains in effect, and each State develops the mineral resources in its own national sector. • Iranian claims to 20 per cent of the territory are contrary to the rules and principles of international law
16	Iran	A/53/890 March 1999	<ul style="list-style-type: none"> • Rejecting the protest made by Azerbaijan regarding the Iran agreement with oil companies by invoking the 1921 and 1940 agreements • Raising the Azerbaijani sector of the Caspian Sea is legally unfounded.

17	Iran and Russia	A/54/788 March 2000	<ul style="list-style-type: none"> • The parties consider that, until some new legal status is devised for the Caspian Sea, soviet –Iran treaties retain their full legal validity
18	Iran	S/2001/598 June 2001	<ul style="list-style-type: none"> • The Caspian Sea is a closed sea and has been under a special legal regime decided upon by Iran and the former Soviet Union.
19	Iran	A/56/304 August 2001	<ul style="list-style-type: none"> • The state-owned Oil Corporation of Azerbaijan, intends to carry out activities in the Alborz oil field and to conduct any kind of activities, such as research projects, exploration and exploitation in this oil field, necessary permission should be obtained from Iran. Thus, the said activities in the Alborz oil field would be contrary to the interests of Iran.
20	Iran	A/56/850 February 2002	<ul style="list-style-type: none"> • Agreement signed on 29 November 2001 by the Republic of Kazakhstan and the Republic of Azerbaijan regarding the division of the Caspian Sea is in contravention of the existing legal status of the Caspian Sea.
21	Azerbaijan and Kazakhstan	A/56/927 April 2002	<p>Kazakhstan and Azerbaijan find the Iranian side's contention that the Agreement of 29 November 2001 between the Kazakhstan and the Azerbaijan concerning the delimitation of the bed of the Caspian Sea contravenes "existing legal instruments governing the legal status of the Caspian Sea" to be unfounded.</p>
22	Iran	A/56/1017 July 2002	<ul style="list-style-type: none"> • In accordance with the norms and principles of customary international law, as codified in article 12 of the Vienna Convention, the soviet – Iran treaties are binding on all successor States. • The general agreement of all coastal States of a given lake is the only principle that applies to the delimitation of international lakes. Since, the Caspian Sea is a unique international lake, bilateral agreement between Azerbaijan and Kazakhstan contravenes the said principle.
23	Russia and Azerbaijan	A/58/719 S/2004/137 2004	<ul style="list-style-type: none"> • The parties attach exceptional importance to the signing of bilateral and multilateral agreements to delimit the Caspian seabed between Russia, Azerbaijan and Kazakhstan, including the Agreement between Russia and Azerbaijan in 2002 and the Agreement on the Convergence Point of the Delimitation Lines of Adjacent Areas of the Caspian Seabed between Russia, Azerbaijan and Kazakhstan in 2003.

Table 2. littoral state practice in the Caspian Sea region. Source: United Nation, General Assembly.

As it is shown in table 2, however, all five states had diverging approaches toward the Caspian Sea, and a considerable number of the arguments presented by states to the UN general assembly concerning delimitation, they believed the delimitation has to be done by bilateral or multilateral agreement on the bases of international law and principles. The following table provides the summary of the state's views.

State	States view
Russia	<ul style="list-style-type: none"> • UNCLOS is not applicable to the Caspian Sea • The exploitation of resources must be decided jointly by all states • Accepting the validity of Soviet-Iran agreement till new legal status of the sea • Using justified medial line by taking into account islands and configuration of coast in bilateral agreements to delimitate the seabed between Russia – Kazakhstan, and Russia - Azerbaijan
Iran	<ul style="list-style-type: none"> • Soviet-Iran agreements are binding on all successor States till new legal status of the sea • Unilateral action and bilateral agreement of littoral state for delimitation bears no legal value • Condominium arrangement for the common use of the Caspian Sea is an appropriate basis for the legal regime • Emphasized the principle of equal share for all littoral States and equitable exploitation of the resources • The Caspian Sea is a closed sea • The Caspian Sea is a unique international lake
Azerbaijan	<ul style="list-style-type: none"> • The legal status of the Caspian Sea must be based on the generally recognized rules and principles of international law • Each State has the right to develops the mineral resources in its national sector based on traditional activities • Using justified medial line by taking into account islands and configuration of coast in bilateral agreements to delimitate the seabed between Russia and Azerbaijan
Kazakhstan	<ul style="list-style-type: none"> • The legal status of the Caspian Sea must be based on the generally recognized rules and principles of international law • UNCLOS should be extended to the Caspian Sea • delimitate part of the Caspian seabed based on justified median line
Turkmenistan	<ul style="list-style-type: none"> • Activities in the Caspian Sea, must be regulated by multilateral agreements of all States. • Condominium arrangement for the common use of the Caspian Sea is appropriate basis for the legal regime • Emphasized the principle of equal share for all littoral States and equitable exploitation of the resources.

Table 3. littoral state approaches towards Caspian Sea. Source: United Nation, General Assembly

2.3. UNCLOS 1982 and Customary Law

Regarding the applicability of the UNCLOS 1982 as a treaty source of international law for delimitation of the Caspian Sea, two issues call for brief comments. Firstly, according to Article 34 of the VCLT, “*a treaty does not create either obligations or rights for the third state without its consent*”. Some of the littoral states of the Caspian Sea are not members of this treaty, in addition, Article 1 of the convention on the legal status of the Caspian Sea, defined this sea as a body of water which surrounded by the land territories of the Parties, nor sea nor closed sea, consequently the UNCLOS as treaty law is not applicable. However, the fact that not all coastal states are party to the UNCLOS does not preclude the application of customary international law, which has been recognized by international tribunals. To the subject matter, as in chapter 3 has been discussed, Article 15, 74 and 83 of UNCLOS which related to delimitation of maritime zones, became customary international law. In addition, based on Articles 74 and 83 of UNCLOS, as customary law, delimitation must be achieved by agreement and results in equity. The doctrine of equitable principle, which is based on *Ex aequo et bono*, is the fundamental norm of customary international law related to maritime delimitation and provides effective delimitation by agreement (Kwiakowska, 1988).

2.4. Convention On Legal Status of Caspian Sea

Although the Caspian Sea Convention has been signed by the littoral state in 2018, it establishes only basic concepts, and other contentious topics have been postponed to future treaties. Reviewing the strength and weaknesses of the convention is beyond the topic of this research, however, some points merit particular attention as follow.

- According to the preamble of the convention “*the Convention is based on the principles and norms of the Charter of the United Nations and international law*”.

- Convention defined maritime zones differently from the UNCLOS. The Caspian Sea According to Article 5 of the convention, is split into territorial seas, fishery zones, sectors and common maritime space
- 15 nautical miles from the baseline has been allocated as the breadth of the territorial zone
- Based on article 7, “*delimitation of internal and territorial waters between States with adjacent coasts shall be effected by agreement based on the principles and norms of international law*” and the article does not cover the opposite costs delimitation such as Turkmenistan and Azerbaijan situation.
- Based on the convention, where the coastline is indented or where there is a fringe of islands along the coast in its immediate vicinity, Straight baselines shall be used and Article 1 declared “*the methodology for establishing straight baselines shall be determined in a separate agreement among all the Parties*”. This means states to negotiate for delimitation first must gain approval of all states to draw Straight baselines. However, as Schofield (2012) stated, claim from straight baseline arise from varied interpretation of cut or indented coast, how many, how close to one another and how far offshore fringing islands need to be. In this vein, there is a lot of possibility for such claim.
- Based on Article 9, 10 nautical miles-wide adjacent to the territorial waters has been defined as a fishery zone which has to be delimited between States with adjacent coasts by agreement based on the principles and norms of international law and it does not cover the opposite costs delimitation.
- Contrary to the UNCLOS, which defined the maximum extension of the continental shelf by each state, the Caspian Sea convention named the parts of the seabed and subsoil for the subsoil exploitation as “sector” and without allocation specific breadth.
- Similarly, to the UNCLOS, the seabed delimitation shall be effected by agreement between States with adjacent and opposite coasts.
- The convention is silent about the validity of the seabed delimitation agreements of the north of the Caspian Sea.

- Ratification of the convention by parties is not subject to the delimitation agreements however Iran postponed the ratification of the convention to the agreements of delimitation and defining the methodology of the drawing baseline by coastal states
- The convention has not entered into force yet.

In summary, by taking everything into account, at this step the conclusion could be drawn that the applicable law to the delimitation of the Caspian case is customary law and the sources of judicial decisions, since the Caspian Sea convention has not been entered into force and some of the littoral states are not a party to the UNCLOS. It is noteworthy, even in case of entering into force of Caspian Sea convention, the new convention introduces the same way of maritime delimitation which has been declared by Article 74 and 83 of UNCLOS, by agreement. However, Article 74 and 83 of UNCLOS did not specify any delimitation method, emphasized the content of “*an equitable solution*”. Regardless of whatever method is employed the delimitation must be equitable, and to achieve equity, consideration should be given to the possible existence of special circumstance relevant to the area to be delimited. In this regard in the next part, some special circumstances relevant to the Caspian Sea will be discussed.

3. Relevant Circumstance

What “special circumstance” may include, is unclear due to lack of definition in UNCLOS and ICJ awards, and the legal status of sea and maritime delimitation involves complicated geological, non- geological and geopolitical issues which concern the interests of coastal states, and it is beyond the scope of this dissertation. In this vein, just some special circumstances of the Caspian Sea which have been the contention topic between littoral states will be reviewed.

3.1. Geography of The Caspian Sea

According to the United Nations Global International Waters Assessment (GIWA) (2013) the Caspian Sea is the world's largest endoergic water body and contains more

than 40 percent of the world's inland waters. Based on the surface area, the Caspian Sea is the world's largest inland water body. It covers approximately 371,000 square kilometers (143,200 square miles). The Sea darkens from north to south, as it is shown in the following figure, due to depth, sediments, and other discharges. The lake's north side is just 5 to 6 meters deep, on the other hand, the southern end drops more than 1,000 meters (NASA., 2010). It's length from north to south is nearly 1,200 km, with an average width of around 320 km. The Caspian Sea is divided into three distinct physical regions: The Northern, Middle, and Southern Caspian (EIA.,2013).

3.1.1. Shape and Length of the Coastline

Iranian coastlines are the deepest and saltiest in the Caspian Sea, and the shape is quite concave, although the interpretation of the configuration of the coast may vary according to the scale of the map or micro or macro geography. Iran has the shortest border, 728 kilometers of coastline. All these geographical factors have an impact on determining Iran's straight baselines. Moreover, the Iranian coastline lacks cuts and coastal promontories that can be connected as baseline points. contrary, Azerbaijan, and Turkmenistan have convex coasts with advanced points and numerous islands. The Azerbaijani Geographical Society (2012) declared the following is each state's length of the coastline (km): Azerbaijan 813, Kazakhstan 1422, Iran 728, Russia 747, and Turkmenistan 1035.

3.1.2. Adjacent and Opposite Coast

Some of the Caspian states are adjacent to each other; some are opposite, and some present mixed relationships of adjacency and opposition. Azerbaijan and Turkmenistan are completely opposite; Russia and Kazakhstan are predominantly opposite but present an element of adjacency at the northern end of the Sea. The Russia/Azerbaijan and Turkmenistan/Turkmenistan relationships are adjacent and Turkmenistan to Iran is one of mixed adjacency and opposition (Clagett, 1995).

3.1.3. Islands

There are about 50 small islands scattered throughout the Caspian Sea (worldatlas, n.d.). The Orguja Ada is the biggest island in the Caspian Sea which belong to Turkmenistan however, there are no permanent residents on this island, in particular, one of the contention between Turkmenistan and Azerbaijan is, giving effect to the Chilov (Chilos) Island and Absheron peninsula of Azerbaijan as it is shown in the following figure.



Figure 7. Chilov and Orguja Ada islands in the Caspian Sea. source: Nasa., 2013.

3.1.4. Natural resources

In general, the majority of offshore oil deposits are located in the northern Caspian Sea, whereas the majority of offshore natural gas reserves are located in the southern Caspian Sea (Toktassynov, 2019). Azerbaijan and Kazakhstan contain the majority of

oil resources in the Caspian basins, the EIA (2013) estimates that offshore fields include 41 percent of total Caspian crude oil and lease condensate (19.6 billion bbl.) and 36 percent of natural gas (106 Tcf.). Within 100 miles of the coast, an additional 35% of oil (16.6 billion bbl.) and 45% of gas (130 Tcf.) can be discovered, primarily in Russia's North Caucasus area. Six projects, Kashagan, Tengiz, Karachaganak, Azeri- Chirag-Guneshli, Shah Deniz, and Severnyi contain approximately 39 percent of region liquid resources (Mahnovski, 2003).

In 2019, 16.8 billion cubic meters of gas and over 28.6 million barrels of condensate were produced just in the Shah Deniz field which was discovered in 1999 (bp., 2019). Since USSR integration, natural resources in the region were subject of disputes and claims, sedar field has been claimed by Turkmenistan, as well Cheragh reservoir, Alborz oil field and Sardar Jangal by Iran. In 2001, Iran and Azerbaijan were engaged in a dispute over oil and gas field that almost ended in the mutual declaration of war.

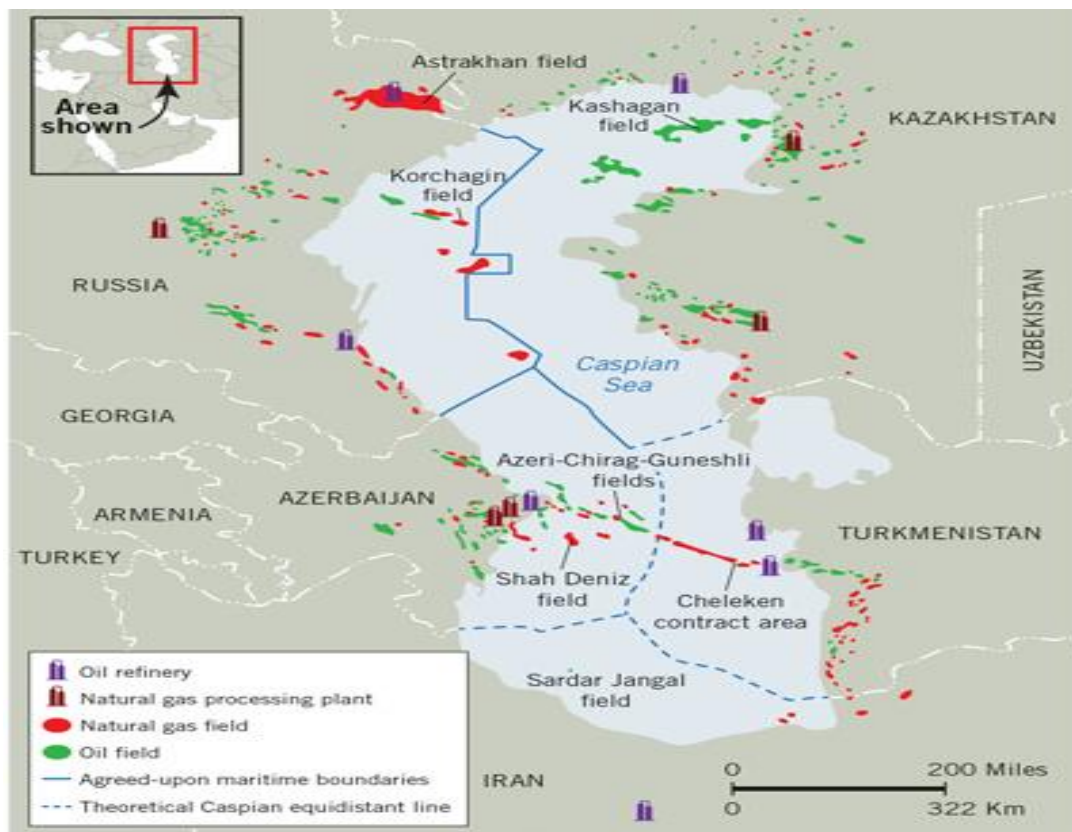


Figure 8. Caspian Sea natural resources. sources: eia., 2013.

3.2. Historical Factor

Soviet- Iran treaties are viewed as the historical right which Iran relied on, However, based on Article 2 of the Iranian law on the exploration and exploitation of the resources in the continental shelf, declared “as regards the Caspian Sea, the rule of the international law relating to close sea are applicable”. It is obvious, the Iranian lawmakers recognized that Soviet-Iranian Treaties did not apply to the delimitation of Caspian Sea resources. As a result, neither these Treaties nor the notion of shared development was addressed in Iranian law. On the other hand, Azerbaijan's insistence on sovereignty over its portion in the Caspian Sea and natural resources in seabed based on economic, geographic (Mehdiyev, 2000), and traditional activity (UN general assembly, 1998), since the Oil industry in Azerbaijan started in the 1870s.



Figure 9. Azerbaijan oil exploitation in Caspian Sea region. source: geoexpro. 1870s

4. Conclusion

Besides the international law resources for delimitation, the Caspian Sea convention has been reviewed and it has been revealed that the main norm for maritime delimitation acknowledged by both conventional and customary law is that it must be accomplished by agreement and considering the relevant circumstance of the area. Although the Caspian Sea convention has not entered into force yet, it reflected optimism about the future demarcation of the Caspian Sea. In addition, Reviewing the littoral state's practice, unveiled that, although sometimes states unilaterally proclaimed certain maritime rights and have adopted fundamentally different positions, in the end, all riparian states believed, delimitation has to be done by agreement and based on justified median line method, and the relevant circumstances such as the configuration of coast, natural resources, and presence of islands must take into account. However, according to the Caspian Sea Convention, the methodology for establishing straight baselines shall be defined by agreement between all littoral states, which means delimitation of maritime zones requires two separate agreements, the first one shall define the methodology of straight baseline between all states to identify the location of the starting-point of that boundary and the outer limits of the littoral States maritime zones and another one between adjacent or opposite states.

Chapter 5

1. Conclusion

1.1. Approach Towards Delimitation

The Caspian Sea region is critical not only for the littoral states but also for regional and global powers, particularly in terms of security and economic interests and the crucial geopolitical function of connecting Europe to Asia. As Zonn (2005) remarks *“the Caspian Sea region plays a significant role in the world economic system; the world’s economics, in general, depends to a great extent on the economic situation and development in this region, and the active involvement of the region in the world’s economic relations”*. In this vein, increasing the disputes between states regarding the natural resources, also the military-political situation which is forming in the region, drug trafficking, and illegal migration terrorist activity (Alkuwaiti et al.,2019) and, environmental pollution and requirement for conservation management of living resources, increase the strategic importance of this sea and maritime delimitation. Over two decades, the legal regime and status of the Caspian Sea remain to be debated among scholars and politicians till the convention on legal statutes of the Caspian Sea has been signed in 2018 which the Kazakh President Nursultan Nazarbayev considered as the *“constitution of the Caspian Sea”*. However, this instrument just reflects a compromise trend between the littoral States and creates a vicious circle since the sea bed and zones should be delimited by agreements (Karateka, 2020).

Unsettled delimitation of zones and seabed would lead to a variety of risks such as breach of international peace, security, and political instability, reducing economic activities, an increase of pollution and risk of losing biodiversity due to lack of environmental cooperation, obstacles for navigation, shipping and fishing activity, and unclear sovereign rights and jurisdiction. In this vein, the dissertation was set out to

explore applicable norms and principles of international law for delimitation of the Caspian Sea, Identify the best approach, and also relevant circumstances.

In this regard, a brief account has been given to the introduction of the issue and literature review before and after signing the convention, and in the next step, the norm and principle of international law in maritime delimitation have been reviewed. Therefore, based on an assessment of the entirety of the sources, agreements, texts, and negotiating history, as well as the state's practice in formulating their maritime claims, support the conclusion that the rules embodied in UNCLOS and jurisprudence are indeed likely to become central to the delimitations as customary law, even between those states which are not parties to the UNCLOS and as the region's political stability has been affected by different reason during decades and due to an ever-increasing demand for resources, it is in the best interests of coastal states to engage in negotiations to reach an agreement on maritime boundary delimitation on the base of principle of customary international law, the principle of equity to secure the economic benefits and sustainability goals, that will be derived from a clear and recognized definition of the maritime zone's extension.

The negotiation stage can be planned based on a three-stage approach which is the methodology that has been usually employed in seeking an equitable solution recently. Based on this approach, a preliminary delimitation line is established first to reach an equal outcome, as DOALOS (2000) stated *“Practice has shown that it is better to start the bilateral negotiations with a line and not to introduce right at the outset the notion of the relevant area, this may be prescribed for early disagreement since relevant will reveal itself in the process of the negotiation”* and then at the next step relevant factors are reviewed to adjust the line to reach an equity outcome.

In the negotiation, states have the flexibility to influence the outcome in favor of their interest by applying different factors for drawing the line that they consider equitable. Without a doubt, boundary delimitation impacts and interacts with a variety of variables, including political issues, historical and cultural considerations, strategic and security concerns, main economic interests, and demographic group interests. In the case of the Caspian Sea, the configuration of coast, presence of the island, and

natural resources, and historical rights can be discussed in this stage. For instance, the island can have two effects on the delimitation line, it can be utilized as a point to create the baseline from which the delimitation line will be measured, or it can be used as a special circumstance which relevant to adjustment of the median line. However, regarding fishery right DOALOS advised *“fisheries, in particular, are better avoided in such an agreement. As fisheries dynamics change over time, there may be a consequent need to renegotiate such issues. If included in the agreement, these issues may give rise to reopening the agreement as a whole, including its part on the delimitation. A more advisable approach, if politically feasible, would be to deal with living marine resources separately from the maritime boundary delimitation agreement, since the parties have full latitude to complement that agreement with resource-sharing agreements”*.

Finally, states assess whether the effect of the line, as adjusted, is such that the Parties' respective shares of the relevant area are markedly disproportionate to the lengths of their relevant coast Disproportionality test is not in itself a method of delimitation, it is just a checking step.

Delimitation Agreements of the north part of the Caspian Sea, does not bear out claims that the Caspian was treated by the littoral states as a condominium, on the other hand, demonstrate that the littoral states acknowledged the justified median line for delimitation and regrading mineral resources demarcation will be performed based on the international practice applied in case of development of cross-border fields. In the same manner in other parts of the Caspian Sea, states may be aware of or expect to discover petroleum or gas deposits in regions where the boundary line passes. Various resource-deposit provisions are commonly used to deal with this problem. These could be resource-sharing clauses, resource-unity clauses, or resource conservation, management, and management clauses.

1.2. Necessary Negotiation Steps Toward Maritime Delimitation

Although there is no generally applicable negotiation approach toward negotiating maritime delimitation agreement, the United Nations general assembly in resolution 53/101 and DOALAS (2000) provided some principles and guidelines in this regard.

Since Certain important requirements of an economic or political nature (e.g., pressure from the oil industry or pressure from fishermen) may initiate the process of delimitation, before beginning negotiations, it is prudent to analyze the overall national maritime and marine policy and identify its main aspects from the legal, geographic, economic, and historical perspectives.

DOALOS (2000) stated the degree of success in negotiating a maritime delimitation is generally directly related to the quality and depth of the coastal State's prior work and setting up the negotiation team properly. The complex character of delimitation necessitates the formation of a national team comprised of specialists from many disciplines including legal advisers, an expert on bilateral relations with the country concerned, as well as experts in the field of cartography, hydrography, geodesy. Not involving the parliament of Iran in negotiation steps of signing the Caspian Sea convention was one of the obstacles of delay in Iran ratification (due to conflict of perspectives toward the matter), since the parliament members have a different view toward the new convention. It is crucial to highlight that having key ministries, government departments, and other agencies represented in the team, or at least contacted and involved in the negotiating process, should assist the process of negotiation as well as the execution of the result of negotiation. This preliminary stage appears to be the most opportune time for any issues to be defined and competing interests to be resolved. Since according to article 7 of the Caspian sea convention "The outer limit of the territorial waters shall be the state border." and based on Article 78 of Iran constitution "All changes in the boundaries of the country are forbidden, except for minor amendments in keeping with the interests of the country, on condition that they are not unilateral, do not encroach on the independence and territorial integrity of the country, and receive the approval of four-fifths of the total members of the Islamic Consultative Assembly."

Besides setting up the team, it is advised that all essential and relevant documents and data be gathered and analysed. According to the preamble of the united nations general assembly resolution 53/101, principles and guidelines for international negotiations, *"the identification of principles and guidelines of relevance to international*

negotiations could contribute to enhancing the predictability of negotiating parties, reducing uncertainty and promoting an atmosphere of trust at negotiations". In this vein decisions or awards rendered either by the ICJ, ad hoc arbitral tribunals, or ITLOS, legislation concerning baselines and maritime zones, and chart of the neighboring states which demonstrates the outer limit lines or delimitation zones should not be ignored.

before starting a negotiation, any public or official pronouncements on delimitation should be avoided since making written or oral declarations on delimitation to the State concerned maybe amounted to a unilateral proclamation and might subsequently be used in adjudication.

According to paragraph 2(b) of the United Nations general assembly resolution 53/101 - principles and guidelines for international negotiations "*States should take due to account of the importance of engaging, appropriately, in international negotiations the States whose vital interests are directly affected by the matters in question*", in this regard multilateral agreement between southern states of the Caspian Sea is advised rather than bilateral.

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Appendices