BUILDING AZERBAIJAN'S LEGAL FRAMEWORK FOR MARINE OPERATIONS ON THE BASIS OF UNCLOS

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ABSTRACT

This study will consider the advantages of the UNCLOS (United Nations Convention on Law of the Sea) and other vital maritime conventions. It is obvious that UNCLOS is like an “umbrella” in the field of maritime law. All the maritime treaties, laws, regulations and other relevant legal instruments for the State Party have to be in compliance with the above mentioned Convention. This Convention answers queries on how continuously you balance on one hand, the rights of the international community with the rights of the State party and the rights and benefits of the State party including the undertaking of duties and obligations on the other hand. It is based on the paramount duty that all States must respect the acts of others. This omni-present duty which attempts to balance the rights of States is done in good faith as is declared in article 300 of the treaty. State parties shall fulfill in good faith the obligations assumed under this convention and shall exercise the rights, jurisdiction and freedoms recognized by the convention in a manner which does not constitute an abuse of right.

Therefore, taking into consideration the above, and bearing in mind the present situation in the Republic of Azerbaijan, namely: shortage of the professionals in this area, lack of legislation and at least insufficient understanding of the importance of this paramount legal tool, this study will examine the current status of compliance of the national legislation with the UNCLOS. It is findings will be brought to the attention of the Administration as will the advantages and necessity of ratifying of this vital Convention.

The Legal Status of the Caspian Sea should also be of concern as the coastal States factually recognized the Caspian Sea as a lake. Nevertheless, they have been unable to reach any agreement on the division of the water body amongst themselves. From the viewpoint of maritime law, the answer to whether Caspian Sea is a sea or a lake is a vital one in respect to its division. If we recognize the Caspian Sea as a semi-closed sea, it should be regulated by the UNCLOS. According to the provisions of this Convention, each of the coastal States would exercise exclusive jurisdiction over 12 miles of territorial water and 200 miles of an exclusive economic zone. From the other point of view, if the Caspian Sea is recognized as a lake, the UNCLOS will not be applicable and the division of the Caspian Sea would be subject to an agreement between the coastal States. Therefore, such a complicated and vital issue should be considered through the comprehensive legal analysis which will be the part of this study.

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ABBREVIATIONS.

ASMA –Azerbaijan State Maritime Administration.
ECE – Economic Commission for Europe.
ECAFE – United Nations Economic Commission for Asia and the Far East.
EEZ – Exclusive Economic Zone.
EMSA – European Maritime Safety Agency.
EU – European Union
GATT – General Agreement on Tariffs and Trade.
GDS – Geographically Disadvantaged States.
IMO – International Maritime Organization.
IMCO – Intergovernmental Maritime Consultative Organization.
ILO – International Labour Organization.
ISA – International Seabed Authority.
ISPS Code – International Ship and Port Facility Security Code.
ITO – International Trade Organization.
LLS – Land–locked States.
LOSC – Law of the Sea Convention.
MARPOL – International Convention for the Prevention of Pollution From Ships.
MLA - Basic Multilateral Agreement on International Transport for Development of the Europe-the Caucasus-Asia Corridor.
MSC – Maritime Safety Committee.
PARIS MOU – The Paris Memorandum of Understanding on Port State Control.
PSC – Port State Control.
SOLAS – International Convention on Safety of Life at the Sea.
STCW – International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.
TIR Convention – Transport International Routiers.
TRACECA - Transport Corridor Europe- the Caucasus-Asia.
UN – United Nations.
UNCLOS – United Nations Convention on the Law of the Sea 1982
UNCLOS I – First United Nations Conference on the Law of the Sea 1958.
UNCLOS III – Third United Nations Conference on the Law of the Sea 1973–82.
UNCTAD – United Nations Committee on Trade and Development.
UNESCO – United Nations Educational, Scientific and Cultural Organization.

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INTRODUCTION.

The United Nations Convention on the Law of the Sea (UNCLOS)[1] is a significant input to the rule of law. It already forms a substantial part of current international law. It sets out principles and norms for the conduct of relations among States on maritime issues. As such it contributes immensely to the maintenance of global peace and security.

It has been described as a "Constitution for the Oceans" and is widely considered to be a most significant achievement of the international community, and is ranked together with the Charter of the United Nations.

The former Secretary-General of the United Nations, Boutros Boutros-Ghali[2] at the inaugural meeting of the International Seabed Authority on 16 November 1994, spoke of the Convention as follows:

> The dream of a comprehensive law of the oceans is an old one. Turning this dream into reality has been one of the greatest achievements of this century. It is one of the decisive contributions of our era. It will be one of our most enduring legacies.

The UNCLOS 1982 Convention, together with the Implementing Agreement relating to the provisions of Part XI of the Convention[3], adopted in 1994, is a success story. Its success is not only determined by the number of States that have signed the Convention and the Agreement, or ratified or acceded to it – and that number is already remarkable; the Convention's success is also determined by its general acceptance by States, which is venture to say is universal. More importantly for a law making treaty such as this Convention, its success is measured by its tangible achievements, i.e., by its widespread and consistent and uniform application in State practice.

This is self-evident from a careful examination of the practice of States around the world. In addition the UNCLOS has become basis of settlement of disputes of marine – related matters. Thus, the UNCLOS is recognized as the pre-eminent source of international law of the sea by the States, the International Court of Justice, the International Tribunal for the Law of the Sea and other judicial or arbitral bodies dealing with marine-related issues.

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[1] UNCLOS is the international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place from 1973 through 1982. The Law of the Sea Convention defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources.

[2] Was an Egyptian diplomat who served United Nations Secretary General from 1992-1996.

[3] Part XI of the UNCLOS provides for a regime relating to minerals on the seabed outside any state's territorial waters or EEZ (Exclusive Economic Zones). It establishes an International Seabed Authority (ISA) to authorize seabed exploration and mining and collect and distribute the seabed mining royalty.

The achievements of the UNCLOS are many. It has resolved number of critical issues, some of which had eluded agreement for centuries. It reflects a delicate balance between competing interests in the use of the ocean and its resources by taking a functional approach in establishing the various maritime zones and the rights and duties of States in those zones, including areas beyond national jurisdiction[4].

To give effect to some of its most important provisions, the Convention establishes three new institutions: the International Seabed Authority, which is responsible for administering the resources of the Area; the Commission on the Limits of the Continental Shelf, which will make recommendations to coastal States on matters related to the establishment of the outer limits of the continental shelf; and International Tribunal for the Law of the Sea, which has a central role in the system for the settlement of disputes arising from the interpretation and application of the provisions of the Convention. These institutions are already functioning and each has made a good start. Other responsibilities for the implementation of the Convention have been delegated to the Secretary – General of the United Nations and the technical bodies with marine-related matters, such as the International Maritime Organization, the Food and Agriculture Organization of the United Nations and the International Oceanographic Commission of UNESCO.

As of today 03 June 2011, the UNCLOS has 162 parties[5]. This number includes States from all continents and regions, with all geographical characteristics. For States which are still to become parties, the delay in most cases is due to inadvertence, in that steps to complete the internal procedures have not yet been initiated or completed. On the other hand, some States have certain specific difficulties peculiar to them. These are either constitutional or bilateral issues, such as delimitation of boundaries which cannot be resolved in a treaty of general application. In light of the overwhelming support for the UNCLOS as reflected in the number of States parties and the practice of States, these States must, however, recognize that the Convention embodies the prevailing international law of the sea.

Azerbaijan, after gaining independence in 1991, has carried out fundamental reforms of the legal system. These reforms, while serving to establish real democratic society based on national, cultural, and historical traditions of the Azerbaijani people, were mainly aimed at greater ensuring human rights.

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[4] "An introduction to the 1982 United Nations Conventions on the Law of the Sea" by **Satya N. Nandan,** "Order for the Oceans at the Turn of the Century" edited by Davor Vidas and Willy Ostreng, The Fridtjof Nansen Institute, Norway, 1999.

[5] See: Chronological lists of ratifications of, accessions and successions to the UNCLOS at: **http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm**

Implementation of the reforms resulted in profound changes in the legal system followed by adoption of new advanced Laws on Constitutional Court, Courts and Judges, Prosecutor's Office, The Police, Operative-Research Activity and other laws.

Azerbaijan law is based on civil law system and the Constitution of Azerbaijan Republic[6] has the highest legal force in the territory of Azerbaijan and acts directly. The first democratic Constitution of the State was developed in compliance with democratic values and principles and adopted via nation-wide voting in 1995. One third of provisions of the Constitution are devoted to human rights and freedoms as well as to establishing the principle of division of powers. It paved the sound base for the development of democracy and rule of law in Azerbaijan and set up conditions for implementation of legal reforms. The Constitution of the Azerbaijan Republic is the basic foundation of the Legislative system in the Republic. The Constitution created the system of presidential republic with a separation of powers among the legislative, executive and judicial branches. The Constitution provides an adequate legal basis for the domestic implementation of international law in general. The international treaties, to which Azerbaijan is a Party, are recognized as a constituent part of the internal legal system given a higher hierarchical status in the case of a conflict with a national law. While expressly stipulating that an international treaty may not contravene the Constitution and laws adopted by referendum. The Constitution at the same time implicitly, as a lex specialist rule, provides for the primacy of international human rights over the appropriate constitutional provisions. Thus, Art. 12(II) of the Constitutions empowers domestic courts to apply International Human Rights treaties to which Azerbaijan is party. This is a very progressive statement which needs to be corroborated and developed by the judicial practice, particularly by the jurisprudence of the Constitutional Court.

The Constitution of the Republic of Azerbaijan and a series of laws passed in the second half of the 1990s reflect the aspiration to institute in Azerbaijan a democratic system of Government and establish its formal mechanisms and institutions. More than 700 legislative acts have been adopted since 1991. These new legal acts created the basis for a pluralistic political system, provided for an independent mass media, established a framework for foreign investments, proclaimed private ownership. Having established this fundamental legal framework, Azerbaijan went on to further define and develop its legal system.

[6] See also: Constitution of Azerbaijan Republic at: http://www.un-az.org/doc/constitution.doc

Azerbaijan Republic is a democratic, legal, secular, unitary republic. In terms of internal problems State power in the Azerbaijan Republic is limited only by law, in terms of foreign policy—by provisions resulting from international agreements, wherein the Azerbaijan Republic is one of the parties.

State power in the Azerbaijan Republic is based on a principle of division of powers:

1. National Parliament of the Azerbaijan Republic exercises **legislative power**;
2. the **executive power** belongs to the President of the *Azerbaijan Republic;* and
3. Law courts of the Azerbaijan Republic exercise **judicial power**.

After the dissolution of the Soviet Union, Azerbaijan emerged as a landlocked country. As such Azerbaijan differs in its particular relation to the sea and maritime uses on account of its geographical situation. This particular situation is due to Azerbaijan's isolation from the ocean, the consequent need of transit through the territory of foreign States, and the necessity to have access to seaports of transit States in order to reach the coast and make use of the sea. Azerbaijan considers its geographical situation to be disadvantageous as compared to that of coastal States, and a restriction imposed by nature upon its economic and political opportunities and upon its option for development as well.

This assessment relates in particular to the primordial function of the sea as a means of communication. It is argued that the landlocked situation entails additional costs for the foreign trade of such a State: the differential costs of transportation, which are said to reach sometimes 10% of the value of the total foreign trade and to originate[7], in particular, from the lack of control over the transit routes, the insufficient legal regulation of transit and the predominance of the interests of transit States.

As to Azerbaijan, the nearest maritime coast is at a distance of about 400 km from the eastern border of the Black Sea with the ports (mainly port of Poti) in Georgia, which play key roles for Azerbaijan's import and export business. However, Azerbaijan is at the same time a transit State for neighboring countries which are themselves landlocked such as Kazakhstan, Turkmenistan and other central Asian countries. Azerbaijan has always offered transit routes as a consequence of its geographical position and its particular transportation features, such as the railway system and pipeline transportation passes across the Georgia to the Black Sea and Turkey to the Mediterranean Sea which are used as the most appropriate transit routes.

[7] See: World Trade Organization, The International Trade Statistics at: http://www.wto.org/english/res_e/statis_e/statis_e.htm

Azerbaijan is poised to become a major regional transportation and communications hub for the Trans-Caucasus and Central Asian republics. The TRACECA Programme (Transport System Europe-Caucasus-Asia, informally known as the Great Silk Road) was launched by the European Union (EU) in 1993[8], and encourages the development of a transport corridor on an East-West axis from Central Asia through the Caucasus, across the Black Sea, to Europe. In 1998, twelve nations signed a multilateral agreement known as the "Baku Declaration" to develop the transport corridor through closer economic integration, rehabilitation and development of new transportation infrastructure, and by fostering stability and trust in the region. The corridor includes all forms of transport.[9]

These aspects, the landlocked position on the one hand and the transit routes on the other, have governed Azerbaijan's relations to the sea and maritime uses.

A "*landlocked country*" is defined in the UNCLOS as a State that has no sea coast.[10] In practical terms, landlocked countries are located in the interior of continents, hundreds or even thousands of kilometers from maritime ports. As of 1 January 2010 there were 44 such States, and half of these have ratified the LOSC as shown at the table below:

Table 1: Land-locked States and the Law of the Sea Convention.

Land-lock States Parties to the LOSC	Land-lock States Not Parties to the LOSC
Armenia	Afghanistan
Austria	Andorra
Belarus	Azerbaijan
Bolivia	Bhutan
Botswana	Burundi
Burkina Faso	Central African Republic
Czech Republic	Chad
Hungary	Ethiopia
Laos	Holy See (Vatican City)
Lesotho	Kazakhstan
Luxemburg	Kosovo
Mali	Kyrgyzstan
Moldova	Liechtenstein
Mongolia	Macedonia
Nepal	Malawi
Paraguay	Niger
Serbia	Rwanda
Slovakia	San Marino

[8] International Energy Agency IEA (2008). IEA energy policies review: the European Union. OECD. p. 127.
[9] Gültekin-Punsmann, Burcu (May 2008). International Centre for Black Sea Studies. "Black Sea Regional Policy Approach: A Potential Contributor to European Energy Security. P 9-10.
[10] Collier, Paul (2007). *The Bottom Billion*. New York: Oxford University Press. pp. 56-57.

Switzerland Uganda Zambia Zimbabwe	Swaziland Tajikistan Turkmenistan Uzbekistan

Access to the sea for land-locked States is a vital and continuing need. The sea has been determined *res communis*, the common property of all, giving all States, whether coastal or not, the right to transit freely to and from it and navigate freely upon it.[11] In the past, there have been instances of transit being denied altogether, forcing land-locked nations to find alternative methods of transporting goods to and from the sea. Part X, Article 125 of the UNCLOS states that, "land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport." Article 127 states that, "Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic." This is to ensure that land-locked States are not further hindered economically because of their geographical disadvantage.

One of the most disadvantageous features of being land-locked is the lack of a seaport. Seaports play a very important role in the development process of any country. Without a seaport, land-locked States must depend on the use of neighboring coastal States' ports for their imports and exports. This leads to the issue of equal treatment in ports for land-locked States. Any deprivation or indirect refusal of access to ports is tantamount to a denial of freedom of the high seas. Efforts to grant equality in maritime ports date back to 1923 with the Statute of the Convention on International Regime of Maritime Ports[12]. Article 131 of the UNCLOS states that, "Ships flying the flag of land-locked States shall enjoy treatment equal to that accorded to other foreign ships in maritime ports." Bilateral agreements between coastal and land-locked States also allow for equal access for land-locked States to the sea via maritime ports. In fact, a document endorsed by the Trade and Development Board of UNCTAD pointed out that, "the use of international agreements has long been a successful instrument in promoting an efficient and reliable transit transport system and land-locked and transit developing countries should consider further enhancing efforts to adhere to those agreements."

[11] Dr. Stephen C. Vasciannie "Land-Locked and Geographically disadvantages states in the international law of the sea" Clarendon Press Oxford. 1990, p-5.

[12] This Convention is one of the 1921-1929 conventions by which, the League of Nations engaged in an effort to encourage States to open their economies and to cooperate in an overall facilitation of international trade.

Even though Azerbaijan is a landlocked country it has a 800 km coastline with the Caspian Sea, which its current legal status still has not been defined till now. The Caspian Sea is a landlocked reservoir to the east of the Caucasus Mountains, bordered in the west by Azerbaijan and Russia, in the northeast and east by Kazakhstan, in the east by Turkmenistan, and in the South by Iran. It is a remnant of the ancient ocean, which once connected the Atlantic and the Pacific Oceans.

According to scientists, the Caspian possesses characteristics of both a sea and a lake. As the largest inland salt water reservoir in the world, the Caspian boasts a surface of area of approximately 143,000 square miles and is surrounded by several States, which is not common for lakes. Furthermore, its depth and salinity are comparable to some semi-enclosed seas, and the connection to the ocean exists only via artificial canals. Some dictionaries refer to its connection to the ocean in the past as well as to its large size and, therefore define as a sea.

To define the Caspian as a lake or a sea is easier from a legal point of view than a scientific one. International law does not consider a reservoir a sea or lake depending solely on its size. Experts in maritime law emphasize that, according to the UNCLOS, the basic principle for definition of a body of water as a sea is its connection to an ocean. A sea is a water reservoir with a direct connection to an ocean. Flowing waters such as rivers and canals, are subject to internal affairs of affected States. According to the definition of the UNCLOS, the Caspian Sea, which is 1,000 miles away from any ocean and has no natural outlet to it, is not a sea. Although the Caspian Sea is connected with the Black Sea through a navigable channel, the Don-Volga river system is not a salt-water body[13], and transit depends exclusively upon the permission of the affected States, which is acknowledged under customary international law,[14]

The UNCLOS provides that a State may claim 12-nautical mile (nm) territorial sea and a 200 nm exclusive economic zone (EEZ). The Caspian Sea is not wide enough to allow for the full extent of 200 nm EEZs for States on opposing coasts. The threshold legal question is how the Caspian Sea is free of the international rules governing oceans.

[13] 'Wherever there is a salt-water sea on the globe, it is part of the open sea, provided it is not isolated from, but coherent with, the general body of salt water extending over the globe, and provided that the salt-water approach is navigable and open to the vessels of all nations. The enclosure of the sea by the land of one and the same State does not matter, provided a navigable connection of salt water, open to vessels of all nations, exists between such sea and the general body of salt water, even if that navigable connection itself be part of the territory of one or more littoral States', in L. Oppenheim, *International Law*, ed. H. Lauterpacht, 8th edn (London and New York: Longmans, Green, 1955), Vol. I, p. 587.

[14] ibid. pp. 477-8.

The initial Russian position, addressed to the UN General Assembly in 1994[15], was that international ocean law, particularly those pertaining to territorial seas and EEZ, do not apply since the Caspian is a landlocked body of water without natural links to the worlds' oceans. Their position was that there are no grounds for unilateral claims to areas of the Caspian and that the entire sea is a joint venture area. The implications are that any activity with respect to utilizing the seabed by one country encroaches upon the interests of all the bordering countries. In 1996 Russia softened their position by suggesting the establishment of a 45 nm EEZ for all littoral States with joint ownership beyond the 45 nm limit[16]. The Azerbaijan position differed considerably from that of the initial Russian position. Azerbaijan claimed that the Caspian Sea falls within the jurisdiction of the International Law of the Sea. Using this approach, a median line is drawn using the shores with the coastal States having full sovereignty in their respective sectors.[17]

[15] Letter dated 5 October 1994 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General (Position of Russian Federation regarding the legal regime of the Caspian Sea), UN Doc.A/49/475 (1994), *reprinted in* 10 INTERNATIONAL ORGANIZATIONS AND THE LAW OF THE SEA: DOCUMENTARY YEARBOOK 1994, at 195, 196 [hereinafter Russian 1994 Letter]

[16] "Oil and Geopolitics in the Caspian Sea Region "By Michael P. Croissant, Bülent Aras, Greenwood Publishing Group, 1999. pp 34-35.

[17] Ocean Development & International Law. Vol. 35. No 1. 2004. "Geology, Oil and Gas Potential, Pipelines, and the Geopolitics of Caspian Sea Region."

CHAPTER ONE: Practice of Landlocked States in the International Law of the Sea.

Section 1: Historical background.

Leaving aside technical issues relating to statehood, the term 'land-locked State' gives rise to no particular problems of definition. In both law and geography, it connotes a State which has no sea – coast and which must therefore rely on one or more neighboring countries for access to the sea. By this criterion, there are currently forty five land-locked States in existence: 15 in Africa, 13 Europe, 12 in Asian, and 2 in Latin America. These States have obviously had diverse historical experiences and, this together with their differences relating to factors such as size, population, and topography, indicates that their political unity in international relations cannot be presumed as a matter of course.[18]

During the nineteenth century the first attempts were made by the nationals of land-locked States to make their own in the uses of the seas as means of communication. In the course of the World War I, land-locked States such as Switzerland clearly felt the great disadvantages of not having ships under their own flag in order to safeguard the supply of their population. After the close of the war the number of landlocked countries in Europe increased and thus further aggravated this problem. The Paris peace treaties first recognized the rights of land-locked countries of fly their flag on the seas; this was later confirmed by the "Declaration of Barcelona of 1921 recognizing the right to a flag of States having no sea-coast[19]." Furthermore, the Barcelona Convention and Statute on Freedom of Transit-1921 suffered from inherent deficiencies as well as from a limited number of ratifications.[20]

In the process of decolonization in the last three decades, there has been large increased in the number of land-locked countries; they were newly-independent, developing and poor countries. In that contrast, their legitimate demands shed new light on the question of transit to the sea for different purposes.

[18] Dr. Stephen C. Vasciannie "Land-Locked and Geographically disadvantages states in the international law of the sea" Clarendon Press Oxford. 1990, p-5

[19] United Nations Treaty Collection, http://treaties.un.org/pages/LONViewDetails.aspx?src=LON&id=557&lang=en

[20] Helmut TUERK and Gerhard HAFNER, Law of the Sea, *the library of essays in international law*, edited by Caminos, Hugo, The Cromwell Press, 2001, P.357.

1. The Geneva Conventions on the Law of the Sea (1958) and the Convention on Transit Trade of Land-Locked States (1965):

The Geneva Conventions on the Law of the Sea of 1958 and the Convention of Transit Trade of Land-Locked States of 1965 were both based on draft articles complicated by the International Law Commission. There was a lack of status of landlocked countries in the matter of maritime status. However, Switzerland played a vital role to convene a conference of the land-locked States preceding the first UN Conference on the Law of the Sea in 1958. This pre-conference also contributed to an intensification of the consciousness of land-locked States with respect to their particular situation and led to a general arrangement of these States at the conference.

The ten among total of ninety States that participated in the 1958 Conference on the Law of the Sea were land-locked. A special commission dealt with this particular problem. Article 3 of Convention on High Seas 1958[21] states that "in order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea". This article was in favour of land-locked States however it depended on contingent agreement and on the good will of the coastal States concerned. In review, it is quite clear that the most important decision concerning maritime resources taken at the 1958 Conferences was preserved in the Convention on the Continental Self[22].

In 1965 the pressing demands of newly-independent land-locked States led to the elaboration within the framework of UNCTAD of the Convention of Transit Trade of Land–Locked States[23]. This Convention in its preamble sets forth a number of principles reflecting the main aspirations of the land-locked countries, including *inter alia* free access to the sea, identical

[21] The **Convention on the High Seas** is an international treaty created to codify the rules of international law relating to the high seas, otherwise known as international waters. The treaty was one of four agreed upon at the first United Nations Convention on the Law of the Sea (UNCLOS I). The treaty was signed 29 April 1958 and entered into force 30 September 1962.

[22] The **Convention on the Continental Shelf** was an international treaty created to codify the rules of international law relating to continental shelves. The treaty, after entering into force 10 June 1964, established the rights of a sovereign state over the continental shelf surrounding it, if there be any. The treaty was one of three agreed upon at the first United Nations Convention on the Law of the Sea (UNCLOS I). It has since been superseded by a new agreement reached in 1982 at UNCLOS III

[23] The General Assembly of the United Nations at its 1328th plenary meeting on 10 February 1965 decided to convene an international conference of pleni potentiaries to consider the question of transit trade of land-locked countries and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. This decision was taken in pursuance of a resolution adopted by the First United Nations Conference on Trade and Development at Geneva in June 1964

treatment for vessels flying the flag of land–locked States to those of coastal States, free and unrestricted transit-however, once again on the basis of reciprocity.[24]

The Third United Nations Convention on the Law of the Sea of 1982: At UNCLOS no separate committee to deal with question relating to land locked and geographically disadvantaged States was established: instead such questions were discussed in each of the Conference's three main Committees. In order to try to improve their negotiating position at the conference, the land-locked and some geographically disadvantaged States formed themselves into a group comprising 55 States (about a third of the total conference membership). Although the States which were members of this group were very diverse politically, economically and geographically, they agreed on trying to obtain during UNCLOS confirmation of the existing navigational rights of land-locked States; transit rights through States laying between land-locked States and the sea; access to the resources of neighbouring coastal States' EEZs; and proper recognition of their interests in the internationals sea bed regime.[25]

Section 2: Transit and access in the 1982 Convention.

At Part X of the UNCLOS (Articles 124-132) number of rules concerning the right of access of land-locked States to and from the sea. The main provision in this regard is to found in Article 125 "*Right of access to and from the sea and freedom of transit"* of the 1982 Convention. It states that:

1. Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.
2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.

[24] Helmut TUERK and Gerhard HAFNER, Law of the Sea, *the library of essays in international law*, edited by Caminos, Hugo, The Cromwell Press, 2001, P.357.
[25] Churchill and Lowe, Law of the Sea, third edition, Manchester University Press (1999), P. 434.

3. Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

Articles 124 through 132 of the draft Convention now address the rights of access and free transit of land-locked States. Article 124 defines relevant terms, and article 125 established the general principle of access and free transit. The right is accorded for the express purpose of exercising other rights provided in the Convention, 'including those relating to the freedom of the high sea and the common heritage of mankind[26]'. Transit States are authorized to take "all measures necessary" in protection of their legitimate sovereign interests[27]. Article 126 excludes application of the most-favoured-nation clause to privileges accorded under the Convention, and also immunizes all agreements granting special rights of access or facilities based on the geographic position of land-locked States. Art. 127 provides traffic in transit shall not be subject to any customs duties, taxes or other charges, with the exception of fees levied for specific service provided. In addition, the means of transit and facilities provided for land-locked States are not subject to taxes or other charges higher than those levied on transport of the transit State. Art. 128 allows the provision of free zones or other customs facilities at ports of entry and exit in the transit State when agreed upon by the States concerned. Art. 129 importunes transit States to cooperate with their land-locked neighbours in the construction or improvement of means of transport in the transit State. Art. 130 obligates transit States to take "all appropriate measure to avoid delays or other difficulties of a technical nature in traffic in transit". If delays or difficulties should occur, the competent authorities of both States are required to cooperate in their expeditious elimination. Art. 131 states that ships flying the flag of land-locked States are to enjoy treatment equal with that accorded other foreign ships in maritime ports. Finally, Art. 132 provides for continued operation of existing facilities greater than those mandated by the UNCLOS, if the parties so desire, and grants of greater facilities in the future also are not precluded.[28]

[26] The main innovation included in the UNCLOS is the concept of common heritage of mankind. The concept of common heritage of mankind has a revolutionary character. It presupposes a third kind of regime which is different from both the scheme of sovereignty, which applies in the territorial sea, and the scheme of freedom, which applies on the high seas. See also UNCLOS Part XI, Section 2.

[27] See UNCLOS Part X, Art, 125 par. 3

[28] A. Mpaszi Sinjela, *Freedom of transit and the right of access for Land-Locked states: the evolution of principle and law,* Heinonline—12 Ga. J. Int'l & Comp. L. 50 1982.

Hence, the UNCLOS sets out a legal rule in favour of transit rights for land-locked States. On the other hand, it is not altogether clear that land-locked States have a legal right of access to the sea across the territory of transit States that have ratified only the High Seas Convention 1958, or across the territory of transit States that have ratified neither the law UNCLOS nor the High Seas Convention 1958.

Section 3: Landlocked States and Rights of Navigation

The Law of the Sea Convention strengthened the rights of access by land-locked States to the sea. For land-locked States, such access rights could be justified in large part because of the navigational rights of land-locked States which have attracted long-standing acceptance, and which received recognition in Part X of UNCLOS. The argument is that if the freedom of the seas is a right accorded to all States of whatever geographical position, then rights of access must necessarily follow, otherwise the freedom of the seas is deprived of meaning.

For most of the history of the Law of the Sea, the nationality of ships depended upon the port of registration. As land-locked States possess no sea – ports, it was originally thought that land-locked States could not have their flag flown by vessels. However, the situation changed in the early twentieth century in the aftermath of World War I. Switzerland pressed at the Paris Peace Conference for recognition of the right of landlocked States to grant nationality to vessels, and to be accorded full rights of navigation upon the sea. Without such rights, Switzerland argued, it would not be able to establish a commercial fleet in its own right. The Swiss proposal was adopted to in the 1919 Treaty of Versailles[29], which in Article 273 provided that recognition shall be accorded to the certificates and documents to their vessels by Governments, whether or not they possessed a coastline. Vessels of land-locked States were to be registered in a specified place in their territory, which was to serve as the port of registry for such vessels.[30]

At UNCLOS I, the navigational rights of land-locked States were recognized more systematically. The 1958 Convention on the Territorial Sea and the Contiguous Zone, in it's Article 14 (1) stipulated that all States, whether coastal or not, enjoyed the right of innocent passage through the territorial sea. The 1958 Convention on the High Seas declared in Article 2 that the high seas are open to all nations, and that coastal and non–coastal States enjoyed the

[29] 1919 Versailles Treaty, pt XII, s II.
[30] Donald R Rothwell and Tim Stephens "The International Law of the Sea" (Oxford and Portland, Oregon 2010) p. 199.

established freedoms of the seas, including the freedoms of navigation and fishing. Under Article 4, every State, whether coastal or not, has the right to sail ships under its flag on the high seas.[31] These rights now also appear to be the same under customary international law. At present only thirteen landlocked States (Austria, Azerbaijan, Czech Republic, Ethiopia, Hungary, Kazakhstan, Laos, Luxemburg, Malawi, Paraguay, Slovakia, Switzerland and Turkmenistan) possess merchant fleets[32] and so exercise these rights in practice.

1.1. Access to ports

The right to navigate through the territorial sea and EEZ and on the high seas is of limited benefit to landlocked States unless they also have the right to use the ports of a coastal State (particularly an adjoining coastal State), and a right of access to the sea across the territory of States lying between landlocked States and the sea. As regards to the use of ports, under customary international law there is not general right of access to ports (except for ships in distress). Rights of access are, however, granted under bilateral treaties of friendship, commerce and navigation and, for the forty States parties to (which include six land-locked States) the 1923 Convention and Statue on the International Regime of Maritime Ports. The Law of the Sea Convention provides that 'ships flying the flag of landlocked shall enjoy treatment equal to that accorded to other foreign ships in maritime ports.' (UNCLOS, art. 131)

[31] Donald R Rothwell and Tim Stephens "The International Law of the Sea" (Oxford and Portland, Oregon 2010) p. 199.
[32] Lloyds Register of Shipping, World Fleet Statistics 1995 (1996), pp. 11-13.

Section 4: Practices

The terms and modalities for exercising the freedom of transit are left to agreement between the land-locked and transit State. Perhaps by using the word 'shall', the UNCLOS suggests an obligation to enter into an agreement. Indeed, the UNCLOS, which is the latest word on the right of free access to and from the sea of landlocked States, speaks of the need for bilateral regional and sub-regional cooperation agreements for the implementation of the rights secured under the convention. One cannot agree more with Professor Glassner[33] when he states that economic cooperation 'short of complete economic and /or political integration' among landlocked and their transit States is the only way that the handicap of land-lockedness can be overcome. But this raises some difficulties. Can international conventions impose such an obligation without an express statement to that effect? If the transit State refuses to enter into such an agreement impossible, or creates conditions that make agreement impossible, what remedy would the land locked States have? This obligation seems to be in the category of an 'imperfect right' incapable of being enforced against the will of the State possessing the territory. If that is so, it would be without substance. To avoid problems these could have been defined in more specific language, as in the case of the provisions on innocent passage in the UNCLOS[34]. Some provisions for compulsory dispute settlement should also have been considered for disputes arising under this part of the convention. Art. 297 enumerates the cases when "the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this convention, shall be subject to" compulsory dispute settlement. Id. Art. 297 there is no reference to transit across the coastal State so it would be a fair inference that the issue of transit is excluded from compulsory dispute settlement.

[33] Martin Ira Glassner "Access to the Sea for Developing Land – locked States" Martinus Nijhoff Publishers, Jul 1, 1971. p-20.

[34] Art. 21 specially allows the coastal state to establish laws and regulations relating to "the prevention of infringements of the customs, fiscal, immigration or sanitary laws and regulation of the coastal state.

4.1. Bilateral Treaties.

In general, bilateral treaties have played an important role in regulating the relationships between land-locked States and their coastal neighbours in matters concerning access to the sea. This is especially true for the European continent, where a complex network of bilateral co-operation has evolved, but it applies to Latin America, Asia, and Africa as well. The question arises whether these treaties may sustain the argument that there is a customary right of transit for land-locked States under the prevailing law.[35]

It is well established that, in certain circumstances, a number of similar bilateral treaties may serve as evidence that a particular rule has assumed the status of general international law. The main problem with using bilateral treaties for this purpose, however, is that the same set of treaties may conceivably be used both to prove and to disprove a given point in customary law. This well-known paradox is perhaps unavoidable, for, on the one hand, States may enter into a series of bilateral treaties out of a sense of legal compulsion, while, on the other, they may follow the same course of action precisely because they wish to derogate from customary law or because they consider customary law to be inadequate. This being the case, it will not be assumed that the existence of a long line of treaties on transit raises any presumption in favour of a customary right in this area. Instead, these treaties will be considered only as starting – point for our analysis, and, as such, they will be regarded as having probative value in customary law only if this result is clearly established on the facts.

[35] Dr. Stephen C. Vasciannie "Land-Locked and Geographically disadvantages states in the international law of the sea" Clarendon Press Oxford., 1990, p-209.

4.2. Treaties concluded in Europe.

Before World War I, Switzerland, feeling the great disadvantage of not having ships under its own flag to safeguard supplies for its population was the first LLS to ask for the right to have a maritime flag. Previously, also for the first time, through a treaty on March 16, 1816, it had tried to solve its transit problem with the kingdom of Sardinia, then its neighbor. From World War I onward, the number of treaties in Europe grew significantly, mainly because so many States without maritime access emerged from the dismemberment of the Austro-Hungarian Empire[36].

On 21 April 1921, Germany, Poland and the Free City of Danzig signed a Convention on Transit Freedom Between Eastern Prussia and the rest of Germany[37]. The 'corridor of Danzig' which allowed Poland and Danzig to freely approach the sea, separated East Prussia from the rest of Germany, making East Prussia a German enclave within a foreign territory. On its side, Germany granted to Poland and to Danzig the same transit freedom throughout its territory.

Article 2 of the agreement exempted all goods in transit from all customs or similar duties. Trains containing goods traveled under seal, and persons in transit, along with their baggage, were exempted from all customs duties.

Poland had also concluded on 9 November 1920, an Agreement with the Free City of Danzig. According to that agreement, Poland was authorized to establish in Danzig Polish administrative services for the inspection of the condition of navigability of Polish vessels (Article 8). Danzig granted to Polish vessels the same treatment as it granted to its own (Article 10). It also agreed to grant a free zone in Port.

In fact, this zone had existed before the agreement. Its maintenance was placed under the Jurisdiction of the Council of Ports and Waterways of Danzig. The Council was in charge of ensuring Poland is "free use, service, and means of communication". The means of communication covered by the agreement were waterways and railways.[38]

A legal instrument granting facilities to a State without access to a port in a transit State was the Agreement dated 23 March 1921, between Czechoslovakia and Italy that related to concessions and facilities granted by Italy in the port of Trieste. This agreement aimed at facilitating transit

[36] "The Transit Regime for Landlocked States" by Kishop Uprety, p-118.
[37] Treaty Series, League of Nations, Vol. XII (1922), at 308.
[38] This Agreement was signed in a special context after World War I: the defeat of Germany and creation of the Danzig corridor. The facilities were granted not exclusively because of a benevolent willingness to apply international law and facilitate the access to the sea of neighbours deprived of direct access but also because of the psychosis that prevailed in aftermath of a devastating war.

between the two States. Czechoslovakia obtained the right to install its own customs office in the port of Trieste, and the Italian administration authorized the transit of Czech vehicles originating at the port through Italian territory. Czechoslovakia also obtained the right to use a hangar to facilitate loading and unloading of goods through the railways. Interestingly, another convention dated 8 March 1923, between Czechoslovakia and Hungary, two LLS sharing the same kind of difficulties regarding free access to the sea, guarantees similar facilities.

These agreements demonstrate a relatively liberal attitude on the part of transit States. This evolution in the direction of further liberalization of transit continued on the European continent. In the period after World War II, the contribution of the Economic Commission for Europe (ECE) became determinative. Its Committee of Internal Transport facilitated the adoption of two conventions concerning overland and railway transit.

The two conventions signed on 10 January 1952, each had a specific ambit: one to exempt from taxes and duties at the frontiers goods transported by railway; and the other to facilitate transit of passengers and baggage on railways at the frontiers. These conventions entered into force on 1 April 1953. The ECE also took into consideration overland transport: it prepared a draft convention relating to international transport of goods covered under TIR (Transport International Routiers) Carnets. Commonly known as the TIR Convention, it was signed in Geneva on 15 January 1959, and entered into force on 7 January 1960.

The TIR regime, which concerns transport of goods in overland vehicles or containers loaded on such vehicles, is the simplest system for customs and police formalities. Transit States party to this convention agreed to introduce simplification through their own legislation. In view of its innovative approaches, the TIR Convention played a considerable role in stimulating overland transport in European States, which led Marion to emphasize that without TIR, life would be impossible in Europe.[39]

Most European States, among them six LLS, adhered to the TIR Convention, which is an example of a multilateral solution to the transit problems of a continent. It facilitated and liberalized international transport among European States without creating any obstacle to the conclusion of agreements on, for instance, customs unions or economic zones. After the TIR Convention was adopted, many other international legal instruments dealing with specific issues were signed in Europe, each increasingly more liberal.

[39] This Convention was revised in 1975 to take into account practical experience in operating the system and to give effect to technical advances and changing customs and transportation requirements. *See* generally, *The TIR Transit System*, ECE/Trans/TIR2 UN, 2 (United Nations 1991).

4.3. Treaties concluded in Asia.

The first LLS in Asia to conclude a bilateral agreement with a view to facilitating its transit trade was Afghanistan, which signed a treaty with its southern neighbor, British India, on 22 November 1921[40]. It dealt not only with trade and transit but also with other aspects of relations between States.

Article 6 was of particular interest. In it, Great Britain granted Afghanistan the right to freely import, from British islands, ports, and British India to its own territories, all materials necessary for the its power and well being. Afghanistan in turn was allowed to freely purchase and export to India all kinds of goods. The Treaty stated that no clearing duty would be levied in the Indian ports on goods exported by Afghanistan; any customs duties levied from Afghanistan would be reimbursed. The Anglo-Afghan Convention on Trade dated 5 June 1923, completed the Treaty of 1921.[41] It specified measures to attain the objectives fixed by the treaty and filled in some lacunae.

After the transfer of sovereignty resulting from the emergence of Pakistan, similar questions concerned the Governments of Pakistan and Afghanistan, which lead to Agreement between the Government of Afghanistan and the Islamic Republic of Pakistan on Regulation of Traffic in Transit on March 2, 1965.[42] Through it each State grants to the other freedom of transit for traffic to or from the territory of the other. It contains most of the classic provisions, such as exemption of all duties, taxes, and clauses concerning the means of transport and warehouse, which recur in such agreements.

Similar agreements were concluded by other Asian LLS. For instance, in order to facilitate their transit trade, Lao PDR and Thailand signed an agreement that guarantees freedom of transit or goods through both countries.[43] The goods benefited from rights and privileges of transit according to the principles and exceptions provided by the Barcelona Statue.[44] Lao PDR

[40] The Anglo-Afghan Treaty entered into force on 1922. Document ECAFE/1 and F/T/Sub 4/2. The Spirit of granting free navigational rights was also present in the Asian region: Although not necessarily related to the navigation of an particular LLS, on March 13, 1843, the Governor General of India had declared the navigation of the Indus free for the vessels of all nations.
[41] See *id*.
[42] For the text, *see* R. Gopalakrishnan, *The Geography and Politics of Afghanistan* 238–241 (Prometheus Books 1983).
[43] *See* the Agreement Facilitating Transit of Goods, in UN Treaty Series, vols. 200 and 216.
[44] *League of Nations Treaty Series*, vol. 7, p. 12-33.

concluded two other treaties with transit neighbors Cambodia and Vietnam that contain similar provisions.[45]

The first treaty between Nepal and India dealing with trade and transit was signed on 31 July 1950. It recognized without reservation to right of free transit of goods through the territory and ports of India. The treaty was renegotiated in 1960, 1971 and 1978[46]. In the beginning of 1989, the Nepalese and Indian Governments held discussions and decided that the 1978 treaties would be renewed when they expired on March 31, 1989, but in March, due to some thorny political issues that had surfaced between the two countries, renewal was postponed. It was two years later, after the formation of a completely new Nepalese Government in 1991, that Indo-Nepal treaties were signed. On a reciprocal basis, both countries agree to exempt primary products of the other from basic customs duty and from quantitative restrictions on imports. Both accord each other no less favorable treatment than that accorded to any third country with respect to customs duties and other charges. Traffic in transit is exempt from customs duties and from all transit duties except reasonable charges for transportation. India agreed to provide warehouses, sheds, and open space in the port of Calcutta for the storage of transit cargo from and to Nepal through India. Nepal may use road or railway for transit.

All the bilateral treaties discussed above – a small sample of the hundreds in the field – show clear parallels with the multilateral instruments so far as defining the regime for LLS is concerned. Imbued in those instruments are patterns that more or less reinforce the reciprocity principle. Interestingly, if the bilateral have been influenced by the multilateral agreements, it is also true that some bilateral agreements are more generous to LLS neighbors and provide more multilateral treaties do. One weakness in all these treaties, however, is the lack of efficient mechanisms to settle disputes.[47]

[45] Document E/CONF 46/AC 2/5, Annexes 9 and 1 or http://untreaty.un.org/cod/UNJuridicalYearbook/pdfs/english/ByChapter/bibliography/1964/chpIX-X.pdf

[46] Although the treaty seems liberal, most of its clauses have remained purely theoretical. Several books dealing with this problem have been published in Nepal and India. See, in particular; N.P.Banskota, *Indo-Nepal Trade and Economic Relations* (B.R. Publishing Cy 1981); see also generally Kishop Uprety, Nepal's demand for separate treaties for trade and transit was accepted by India in 1978. The Indo-Nepal Trade Treaty mainly dealt with the free flow of goods between the two countries. Its objectives were to promote, facilitate, expand, and diversify trade between the two countries. For those purposes, Nepal and India granted each other, unconditionally, treatment no less favorable than that accorded to third countries regarding customs charges and duties on export and import regulations. In addition, certain primary products were exempted on reciprocal basis from basic customs duties and quantitative restrictions.

[47] "The Transit Regime for Landlocked States" by Kishop Uprety, p-118.

4.4. Treaties concluded in Africa.

Almost all of sub-Saharan Africa became independent after 1956; before which only Liberia and Ethiopia were independent. Until 1956, most bilateral agreements were between colonial powers seeking free access to the sea for their colonies: For instance, a treaty signed between Great Britain and Portugal on 14 November 1890, guaranteed free navigation on the Zambezi[48]. In Article 3 of this agreement, the King of Portugal agreed to improve the means of communication between Portuguese ports and territories that were in the British zone of influence. A similar example is the Treaty of 15 March 1921, between Great Britain and Belgium, dealing with the measures taken to facilitate Belgian trade in the East African territories by allowing access to British ports on the Indian Ocean.

Ethiopia, at the time the only independent African LLS, concluded an agreement with Italy on 2 August 1929 that dealt with construction of a route linking Assab (now Eritrea) to Dessia[49]. Italy granted Ethiopia a free zone in the port of Assab where Ethiopia could construct warehouses. Another agreement, signed on 15 May 1902, in Addis Ababa and concerning the demarcation of boundaries between Ethiopia and Sudan,[50] had already granted Great Britain the right to construct a railway through Ethiopian territory to link Sudan and Uganda.

The Convention of 17 June1950, between Great Britain and the Republic of Portugal concerned the port of Beira (now in Mozambique).[51] This agreement ensured access to the sea for the British colonies of Northern Rhodesia (Zambia), Bechuanaland (Botswana), Swaziland, and Basutoland (Lesotho). The contracting States also agreed to avoid any discrimination in applying railway tariffs within these territories.

[48] Agreement between Great Britain and Portugal, recording a *modus vivendi* respecting the Spheres of Action of the two Countries in Africa. For the text, *see* Edward Hertslet, *The Map of Africa by Treaty* vol. 3, 1014–16 (Harrison and Sons 1909).

[49] *See* The Report of the Secretariat of the ECE, Problems of Transit of East African LLS. Document E/CN 14/INR/44, at 12; *see also* for a detailed discussion of several agreements, Jean Grosdidier de Matons, *Facilitation of Transport and Trade in Sub-Saharan Africa: A Review of International Legal Instruments* (The World Bank 2004).

[50] Treaties between Great Britain and Ethiopia and between Great Britain, Italy and Ethiopia, relative to the Frontiers between the Sudan, Ethiopia and Eritrea, signed at Addis Ababa on May 15, 1902. For the text, see I. Brownlie, *African Boundaries. A legal and Diplomatic Encyclopaedia 866-67 (C.Hurst & Company 1979).*

[51] 537 U.N.T.S. 167.

After decolonization began, the African LLS began signing their own bilateral agreements with transit neighbors. A great number of these concerned overland public transport and applied to transport of both goods and passengers.[52]

With regard to port installations, Mali and Senegal signed on 8 June1963, an agreement that seems to be highly significant[53]. It stated that the port installations of Dakar and Kaolack for transit of goods to or from Mali form distinct free zones within these ports, with the customs authorities of both States supervising entry and exit. By creating free zone for LLS in the port of a transit State, the agreement seems more generous than the bilateral agreements that merely provide warehousing facilities. A more recent example is the Protocol between Rwanda and Kenya regarding warehousing facilities at Maritini (Mombasa).[54]

Besides bilateral agreements, a number of international organizations, generally regional or sub regional communities, facilitate exchange between African States. Most of these were created as instruments of economic cooperation among States in the area. Within these institutions have been created organizations facilitating transit among member States. Such African organizations have been perceived as less efficient than the European ones, perhaps simply because they are more recent origin.[55]

[52]Agreement on 26July 1968 Between Mali and Upper Volta; Agreement of October 10, 1966 between Niger and Upper Volta See Document UNO A/AC 138/37, June 11, 1971. Note: Upper Volta officially changed its name to Burkina Faso on August 4, 1984.

[53] U.N. Doc., A/AC, 138/37, 1971.

[54] Agreement dated on 26 February 1992, between the Rwandese Republic and the Republic of Kenya, Rwanda Gazette Officielle (1994). An interesting example of constructive cooperation in Africa relates to a petroleum development and pipeline project for Chad and Cameroon. In order to develop the oil fields at Doba in Southern Chad, including construction of a 1, 070 km pipeline to offshore oil-loading facilities on Cameroon's Atlantic coast, Chad (landlocked) and Cameroon (transit) entered into a bilateral treaty in 1996. This treaty, signed on February 8, 1996, made clear and unambiguous references in its preamble to the GATT, the spirit of the 1965 Convention on Transit Trade of Landlocked States, and UNCLOS III.

[55] Examples are: COMESA-Common Market for Eastern and Southern Africa; EAC-East African Community; ECCAS-Economic Community for Central African States; SADS-Southern African Development Community; SEMAC-Monetary and Economic Community of Central Africa and etc.

Section 5: Concluding remarks

The land-locked countries won recognition of their rights of access to and from sea at UNCLOS III, although the conditions under which these rights are maintained may have fallen somewhat short of the land-locked States' expectations. They also won certain privileges, particularly with respect to activities in the Area, and on the continental margin beyond the 200-miles limit.

The Geographically Disadvantaged States also shared with the land-locked compensations with respect to the Area, and 'least developed' among the GDS joined the LLS in sharing revenues from resource exploitation on the continental margin beyond the 200 mile limit. Moreover, States with 'special geographical characteristics' are, like the land-locked States, entitled to participate on an equitable basis in exploiting an appropriate part of the surplus of the living resources of the exclusive economic zones nearby States.

But the modalities for exercising these rights and privileges are couched in very general terms, and it may be some years after a UNCLOS has entered into force that the actual conditions will be worked out under which the special needs of the 'land-locked' States can be accommodated. In the meantime, such rights and privileges as they receive respecting access to the sea and its resources, will continue to be secured largely on an *ad hoc* basis.[56]

[56] The Disadvantaged States and the Law of the Sea, Alexander Lewis, M, marine policy, July 1981, p. 185.

CHAPTER TWO: International Maritime Conventions, Azerbaijan's perspective.

Section 1. Introduction.

The industrial revolution of the eighteenth and nineteenth centuries and the development in international commerce which followed resulted in the adoption of a number of international treaties, conventions related to shipping, including safety, environment and etc. The subjects covered included tonnage measurement, the prevention of collisions, signalling and others.

By the end of the nineteenth century suggestions had even been made for the creation of a permanent international maritime body to deal with these and future measures. The plan was not put into effect, but international co-operation continued in the twentieth century, with the adoption of still more internationally-developed treaties.

In October 1946 an agreement was reached to establish an *ad hoc* Maritime Consultative Council, one of whose tasks was to prepare a draft constitution for a permanent intergovernmental maritime organization. To this end an international conference was held in February and March 1948, attended by delegations from 32 States and 9 international organizations. The conference approved the Convention on the Intergovernmental Maritime Consultative Organization. The Treaty, which needed 21 ratifications including seven from States which each had at least one million gross tons of shipping, entered into force in 1958. The period before entry into force is not over-long by international convention standards, but it might have been expected to be speedier in the immediate post-war circumstances. In fact, divergence of views as to whether the new organization should be limited to the formulation of technical rules or whether it should embrace commercial matters inhibited its approval. Even after entry into force the question of the full participation of open registry States in its Maritime Safety Committee delayed immediate operation. In 1975 at the 9th session of its Assembly, 50 States approved that name should be amended to the International Maritime Organization (IMO).

The IMO has six main organs:

1. The Assembly consisting of representatives of all Member States;
2. The Council of 32 Members;
3. The Maritime Safety Committee;
4. The Marine Environment Protection Committee;
5. The Legal Committee and the Technical Co-operation Committee.
6. A Facilitation Committee was set up in 1972 as a subsidiary body of the Council and is dedicated to the elimination of unnecessary formalities.

The headquarters of the Organization are in London where a Secretariat operates under the leadership of a Secretary General.[57]

By the time IMO came into existence in 1958, several important international conventions had already been developed, including the International Convention for the Safety of Life at Sea (1948), the International Convention for the Prevention of Pollution of the Sea by Oil (1954) and treaties dealing with load lines and the prevention of collisions at sea.

IMO was made responsible for ensuring that the majority of these conventions were kept up to date. It was also given the task of developing new conventions as and when the need arose.

The creation of IMO coincided with a period of tremendous change in world shipping and the organization was kept busy from the start developing new conventions and ensuring that existing instruments kept pace with changes in shipping technology. It is now responsible for nearly 50 international conventions and agreements and has adopted numerous protocols and amendments.

Adoption of convention is the part of the process with which IMO as an Organization is most closely involved. IMO's six main bodies concerned with the adoption or implementation of conventions. The Assembly and Council are the main organs, and the committees involved are the Maritime Safety Committee, Marine Environment Protection Committee, Legal Committee and the Facilitation Committee. Developments in shipping and other related industries are discussed by Member States in these bodies, and the need for a new convention or amendments to existing conventions can be raised in any of them.

Normally, the suggestion is first made in one of the committees, since these meet more frequently than the main organs. If agreement is reached in the committee, the proposal goes to the Council and, as necessary, to the Assembly.

If the Assembly or the Council, as the case may be, gives the authorization to proceed with the work, the committee concerned considers the matter in greater detail and ultimately draws up a draft instrument. In some cases the subject may be referred to a specialized sub-committee for detailed consideration.

Work in the committees and sub-committees are undertaken by the representatives of Member States of the Organization. The views and advice of intergovernmental and international non-Governmental organizations which have a working relationship with IMO are also welcomed

[57] Ratification of Maritime Conventions I.1-2. - Published with the Institute of Maritime Law, University of Southampton, and in consultation with the International Maritime Organization.

in these bodies. Many of these organizations have direct experience in the various matters under consideration, and are therefore able to assist the work of IMO in practical ways.

The draft convention which is agreed upon is reported to the Council and Assembly with a recommendation that a conference be convened to consider the draft for formal adoption.

Invitations to attend such a conference are sent to all Member States of IMO and also to all States which are members of the United Nations or any of its specialized agencies. These conferences are therefore truly global conferences open to all Governments who would normally participate in a United Nations conference. All Governments participate on an equal footing. In addition, organizations of the United Nations System and organizations in official relationship with IMO are invited to send observers to the conference to give the benefit of their expert advice to the representatives of Governments.

Before the conference opens, the draft convention is circulated to the invited Governments and organizations for their comments. The draft convention, together with the comments thereon from Governments and interested organizations is then closely examined by the conference and necessary changes are made in order to produce a draft acceptable to all or the majority of the Governments present. The convention thus agreed upon is then adopted by the conference and deposited with the Secretary-General who sends copies to Governments. The convention is opened for signature by States, usually for a period of 12 months. Signatories may ratify or accept the convention while non-signatories may accede.

The drafting and adoption of a convention in IMO can take several years to complete although in some cases, where a quick response is required to deal with an emergency situation, Governments have been willing to accelerate this process considerably.

Section 2: Evaluation of IMO in terms of International Conventions.

In general, it must be said that the IMO has performed a very useful service in drafting the number of vital conventions. While the criticism may be made that the conventions have been rather slow to enter into force and are not always widely ratified, this is scarcely the fault of the IMO, since ratification of conventions is entirely a matter within the discretion of its member States. Furthermore, it should be pointed out that the most important conventions – SOLAS, the Collision Regulations and Load Lines – have been ratified by virtually all the major shipping nations. See the table below:

Table 2: Ratification of IMO maritime safety conventions[58]

Convention	*Date of signature*	*Date of entry into force*	*Number of ratifications*	*Fleets of ratifying States as percentage of world merchant shipping fleet*
SOLAS 1974	1.11.1974	25.5.1980	159	98.36
Load Lines	5.4.1966	21.7.1968	141	98.34
Collision Regulations	20.10.1972	15.7.1977	131	96.43
Special Trade passenger ships Protocol	6.10.1971	2.1.1974	16	22.78
Fishing vessels	2.4.1993	Not in force (fifteen ratifications required representing an aggregate fleet of at least 14.000 fishing vessels)	6	6.10
Seafarers certification, etc.	1.12.1978	28.4.1984	132	98.04

[58] The Law of the Sea, Churchill, R.R and A.V Lowe, Manchester: Manchester University Press, 1999. page 272.

As far as speed of entry into force is concerned, the use of the tacit amendment procedure for the technical annexes of all IMO Conventions concluded since 1972, whereby amendments enter into force unless objected to, rather than – as formerly – requiring positive approval by a certain number of States, means that it is easier and quicker to amend the annexes of IMO conventions in order to keep them abreast of technical developments than was at one time the case. The one major Convention which is not currently covered by this procedure is the Load Lines Convention, with the result that nearly all amendments to it have never entered into force. This situation will be improved if and when the 1988 Protocol to the Convention enters into force, as this introduces the tacit amendment procedure. In addition to bringing amendments (which are normally adopted by consensus) into force more quickly, another advantage of the tacit amendment procedure is that the date of entry into force of the amendment is known from the outset, thus allowing ship owners and others to plan in advance.[59] In fact the tacit amendment procedure has almost become the victim of its own success. The frequency and volume of amendments has now become so great that it is causing difficulties in implementation and the IMO is accused in some quarters of going too fast. To this end, therefore, there is now an understanding that the SOLAS Convention should not normally be amended more often than once every four years.

There is no shortage of legislation on ship safety. The problem today is with the implementation and enforcement of this legislation. The primary responsibility for such implementation and enforcement lies with flag States. It is a widely held view that a number of flag States (some, but by no means all, of them flags of convenience) are unable or unwilling to enforce the provisions of IMO conventions to which they are parties: evidence for this view is the fact that the casualty rate for ships of some States is much greater (up to one hundredfold in some cases) than ships for other States. The IMO has begun to address the problems of inadequate flag State implementation and enforcement. In 1992, it set up a special committee to monitor implementation of IMO Conventions by flag States and to identify the measures necessary to ensure effective and consistent global implementation. Based on the preliminary work of this committee, the IMO Assembly in 1993 adopted a set of Interim Guidelines to Assist Flag States, replace by Definitive Guidelines in 1997, which set out the means for Flag States to establish and maintain measure for the effective application and enforcement of the relevant conventions. The IMO also helps flag States to fulfil their responsibilities through its Technical Co-Operation Programme, particularly through the provision of training, although the programme's resources are limited. The problems of flag State jurisdiction, which are

[59] Ibid. 273.

compounded by the proliferation in recent years of classification societies, many of questionable competence, which often undertake surveying and inspection on behalf of flag States, and by the use of multilingual crews who often do not stay together or on the same ship for long, might also be improved if the UN Convention on Conditions for Registration of Ships were to enter into force and be widely ratified, since article 5 of the Convention requires flag States to implement, and ensure compliance by their vessels with international rules and standards concerning safety of shipping.[60]

Section 3: International Conventions and Agreements[61]

3.1. The Barcelona Conventions of 1921.

Two of the principal means of providing access to the sea for land-locked States – corridors and navigable waterways – have already been discussed. Of these, corridors were considered *ad hoc* arrangements which might be arrived at by negotiation but were not suitable for regulation by the world community. While they may assure a Mediterranean State of access to the sea, they raise questions of self-determination for peoples living in such corridors and rights of transit across the corridors themselves. Again, the Polish Corridor is the classic example,[62] None has actually been created, as such, in more than forty years and it seems unlikely that any will in the foreseeable future.[63] Some existing ones, in fact, were eliminated during the period 1939-45. The second – navigable waterways – and a third, overland transit, were considered in great detail by the General Conference on Communications and Transit which met at Barcelona in 1921 under the auspices of the League of Nations.

The practice of granting overland transit rights had, like that of free navigation of international waterways, deep roots in the commerce of Man and the special status accorded the merchant and the caravan in ancient societies. It did not become institutionalized, even on a bilateral basis, however, until the nineteenth century and was not formalized by the world community until Barcelona Conference. Examples of nineteenth century treaties granting transit rights

[60] Ibid., page 273-274.
[61] Martin Ira Glassner "Access to the Sea for developing Land – Locked States" Martinus Nijhoff/The Hague, 1970., page 20-21.
[62] A good theoretical and historical discussion of corridors and transit may be found in Osborne Mance, *Frontiers, Peace Treaties, and International Organization* (London: Oxford University Press, 1946) pp.6-11. See also Richard Hartshorne, "The Polish Corridor" Journal of Geography, XXXVI (1937) for a through analysis of this particular problem.
[63] The Jerusalem Corridor, created by the Israelis during their War of Independence in 1948 to link Jerusalem with the sea, conforms in principle with the three alternate corridors proposed by the Palestine Partition Commission of 1938 and may be considered as an exception. Air corridors, such as those of the Western powers in West Berlin, are a special case and need not be considered here.

were those between Portugal and the United Kingdom regarding their respective territories in Africa and between the United States and Canada granting reciprocal privileges in rail transit across southern Ontario between Detroit and Buffalo and the State of Maine between Quebec and New Brunswick. Nevertheless, few of these arrangements concerned land-locked States and none was based on mutual acceptance of an inherent right (under natural law or any other regime) of a land-locked State to access to the sea.

The Barcelona Conference, then, adopted the Convention and Statue on Freedom of Transit,[64] commonly known as the Barcelona Convention. This agreement obligates the contracting parties to facilitate free transit by rail or waterways on routes convenient for international transit through their territory. The principle of non–discrimination in freight rates on the basis of nationality was defined and a number of other issues were clarified. A one–sentence Declaration Recognizing the Right to a Flag of States Having no Sea Coast was the only document produced by the Barcelona Conference which mentioned land–locked States specifically. Moreover, the conference broke little new ground, essentially codifying most of the more liberal provisions accumulated in international law by custom, treaty and interpretation to that date. Nevertheless, by not distinguishing between coastal or riparian States and land–locked States with or without navigable rivers, the international community, backed by the prestige of the League of Nations (which in 1921 was still considerable), did make tangible and important contribution to the establishment of the rights of land–locked States to access to the sea.

The system established by the Barcelona Convention on Freedom of Transit provides clear proof on the firm determination of the States represented at the conference to recognize the right of the land–locked countries to transit through surrounding territories, a right supported by strong guarantees regarding equality of treatment and permanent enjoyment, as well as by a machinery for the settlement of disputes to which its implementation might give rise.

The Barcelona Convention, indeed, despite its weaknesses, came to be regarded as a datum plane, a minimum standard to be used thenceforth in negotiations for bilateral and multilateral agreements on transit, including those involving access to the sea. It retained its value and prestige for many years.

[64] An International convention signed in Barcelona on April 20, 1921 to ensure freedom of transit for various commercial goods across national boundaries. It was registered in *League of Nations Treaty Series* on October 8, 1921. It went into effect on October 31, 1922. The convention is still in force at present. *League of Nations Treaty Series*, vol. 7, pp. 12-33.

3.2. Developments After World War II (GATT Agreement)[65]

Shortly after the end of the Second World War, the major trading States of the world undertook, on the initiative of the United States, a commitment to reduce tariffs and other barriers to trade for their mutual benefit. The general principles of liberalized trade and the participants' specific undertakings (123 bilateral trade agreements) are embodied in the General Agreement on Tariffs and Trade (GATT), adopted at Geneva on 30 October 1947. Article V of GATT is entitled "Freedom of Transit". While not referring specifically to land-locked States, Article V does reaffirm the principles of the Barcelona Convention by stating, *inter alia*,

> 2, There shall be freedom of transit, through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties.
>
> 6, Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party.

Other provisions of GATT include non-discrimination in "charges, regulations and formalities", prohibition of "any unnecessary delays or restrictions" and similar protection for goods (including baggage) and vessels and other means of transport in transit across the territory of a contracting party.[66] In some respects, particularly in regard to provisions for settlement of disputes, GATT was less extensive and less emphatic than the Barcelona Convention. It amounted, in fact, to little more than a reaffirmation of the general principle of freedom of transit and made some recommendations which applied only to the contracting parties. Simultaneously with GATT, however, the Geneva Conference prepared a draft Charter of World Trade for submission to a plenipotentiary conference which was to take place shortly in Havana. This draft went further, in some respects, than GATT itself with regard to rights of land-locked States.

The purpose of the conference which opened in Havana in November 1947, the month following the adoption of GATT, was to organize an International Trade Organization (ITO) which would supervise a vastly expanded world trading system based on the freest possible

[65] Ibid., Martin Ira Glassner "Access to the Sea for developing Land – Locked States" Martinus Nijhoff/The Hague, 1970., page 24-26.
[66] See GATT, art. V.

trade in accordance with principles of competitive private enterprise. The conference produced a charter which was never ratified by more than one State (Australia, with reservations) and never entered into force. Nevertheless, Article 33 of the Havana Charter of 24 March 1948 is considered to have been a step forward on the road to "a free and secure access to the sea" for land-locked States.

Again, the Havana Charter reaffirmed, and in some respects strengthened the Barcelona Convention's provisions for freedom of transit. In seven of its eight paragraphs, Article 33 of the Havana Charter was virtually identical with the seven paragraphs of Article V of GATT. Two differences are significant, however. GATT establishes a multilateral most-favored-nation-system with respect to transit traffic in paragraph 5; the Havana Charter includes this identical provision in its own paragraph 5, but an interpretive note provides specifically that if:

> A member grants to a country which has no direct access to the sea more ample facilities than those already provided for in other paragraphs of Article 33, such special facilities may be limited to the land-locked country concerned unless the Organization finds, on the complaint of any other Member, that the withholding of the special facilities from the complaining Member contravenes the most favoured nation provisions of this Charter.

The purpose of this provision was to encourage "the conclusion of special arrangements going beyond the normal rules regarding transit between countries.

The Havana Charter contained, in addition, a wholly new provision, not included in either the Barcelona Convention or GATT.

> 6. The Organization may undertake studies, make recommendations and promote international agreement relating to the simplification of custom regulations concerning traffic in transit, the equitable use of facilities required for such transit and other measures designed to promote the objectives of this Article. Members shall cooperate with each other directly and through the Organization to this end.
>
> This was indeed one of the most constructive and promising work envisaged for the ITO, in as much as it was not enough to propound the principle of freedom of transit. The promotion of adequate administrative and other procedures and measures to achieve freedom of transit was considered equally important.

Since the Havana Charter never entered into force, the Barcelona Convention and Article V of GATT remained the yardsticks by which facilities for transit trade of land–locked States could legally be measured.

In January 1956, the United Nations Economic Commission for Asia and the Far East (ECAFE) considered the problems of its land-locked members (Afghanistan, Laos and Nepal) and after discussion of the issues approved a resolution in which it recommended

> That the needs of land–locked member States and member having no easy access to the sea in the matter of transit trade be given full recognition by all member States and that adequate facilities thereof be accorded in terms of international law and practice in this regard.

This was the first time that a major international body gave special consideration to the 'needs' of land–locked States as such. The word "needs" is prominent here, and not "rights", but there is no indication of a necessity for new rules or procedures for the benefit of land–locked States. Significantly, reliance was still placed on existing "international law and practice".

ECAFE did not let the matter rest, however, but produced a report several months later devoted to *Problems of Trade of Land-locked Countries in Asia and the Far East.* This is more evidence of the increasing emphasis upon existing or potential trade problems rather than "rights" of land–locked States. The report contains valuable historical background and texts of existing trade and transit agreements, in addition to a discussion of the "problems of transit trade and their solution." The recommendations, however, were relatively conservative:

(1) The countries who have so far not acceded to the Barcelona Statue of Freedom of Transit may be urged to do so at an early date […..] It may also be hoped that all the countries of the region would eventually join the General Agreement on Tariffs and Trade and thereby also accede to the principles and articles relevant to the transit trade.
(2) The countries are urged to negotiate and conclude bilateral agreements in conformity with the principles of the Barcelona Statue, the Havana Charter and the GATT and also the necessity for adopting concrete administrative procedures and practices to facilitate the implementation of the basic principles of freedom of transit.
(3) That the officials and personnel handling or dealing with the various phases of transit trade be imparted proper training.
(4) The countries should include in their economic development plans, plans for improvement of transport, development of new routes [….] which will facilitate the transit trade between neighboring and contiguous countries and which will particularly provide additional transport for the trade of landlocked countries.

3.3. Examples:

Austria and the law of the sea.[67]

The problem of access to the sea had for a long time been the major concern of landlocked States, including Austria, claimed their share in the use of the sea as a major means of communications and put forward their first claims for the recognition of their right to fly their flag. This right was thought necessary to the land-locked States in order to enable them to secure the supply of necessary resources for their populations even in times of international crisis. In 1993, the commercial fleet under the Austrian flag comprised 26 high seagoing vessels with a total tonnage of 123.600 GRT.

Austria is engaged maritime scientific research, particularly in the Adriatic Sea; its State–owned Petrol Company has engaged in off-shore drilling and oil exploitation activities. Hence, geographical position was no longer considered as a major impediment to maritime uses by landlocked countries when the discussion on the new maritime legal order started. However, the growing demands of the coastal States to extend their national maritime zones also increased the "land-lockedness" of the landlocked countries, as they could not benefit from such an extension. On the contrary, since such an extension of the maritime jurisdiction of coastal States necessarily diminished the maritime area open to all States including the land-locked States, the latter felt like a double disadvantage. In order to oppose the growing demands of the coastal States they joined forces with those States which likewise were unable to extend their maritime areas for reasons of geography – the geographically disadvantaged States. At UNCLOS III, these formed the group of landlocked and geographically disadvantaged States, comprising more than 50 States, under the chairmanship of Austria.

This group claimed: a right to maritime uses including maritime scientific research independent of any coastal State's jurisdiction; a right to benefits from the exploration and exploitation of the international area; participatory rights in the different legal systems relating to the sea and transit to and from the sea. These claims became dominant for position of such States in the negotiations at UNCLOS III and for the proposals they put forward.

Austria voted in favor of the 1982 Law of the Sea Convention and signed it on 10 December 1982. Austria ratified the Convention on 14 July 1995 with a declaration concerning the choice of the means for the settlement of disputes on the interpretation or application of the Convention.

[67] Gerhard Hafner "Austria and the Law of the Sea" p.29-30, The Law of the Sea: the European Union and its member States., Treves, Tullio and Laura Pineschi (Eds.) the Hague: Martinus Nijhoff Publishers, 1997.

The landlocked countries to a great extent depend on access to maritime ports and the use thereof. Thus Austria has concluded an agreement with Italy on the use of the port of Trieste. The Port of Trieste has also been used by the Trans – Alpine Pipeline which has served as one of the main arteries through which Austria has been supplied with crude oil.

Although as a landlocked country Austria does not dispose of a territorial sea, it nevertheless sponsored a proposal on the regime of the territorial sea at UNCLOS III. This proposal provided for an extension of the territorial sea to 12 n.m., which then formed the basis of the existing regulation in the 1982 LOS Convention.

In order to ensure the availability of vessels to safeguard the supplying of Austria with necessary goods even in times of crisis, Austria enacted the Act on the Maritime Flag. According to this law the right to fly the Austrian flag could be granted only if at least 75% of the vessels was owned by Austrians or Austrians disposed of the vessel on the basis of a bareboat charter contract. The registry and the procedure for the immatriculation is regulated by a law of 1940. As to the classification of Austrian ships, Austria has authorized by a regulation certain international classification societies to inspect ships under the Austrian flag and ascertain the recognition of their certificates.

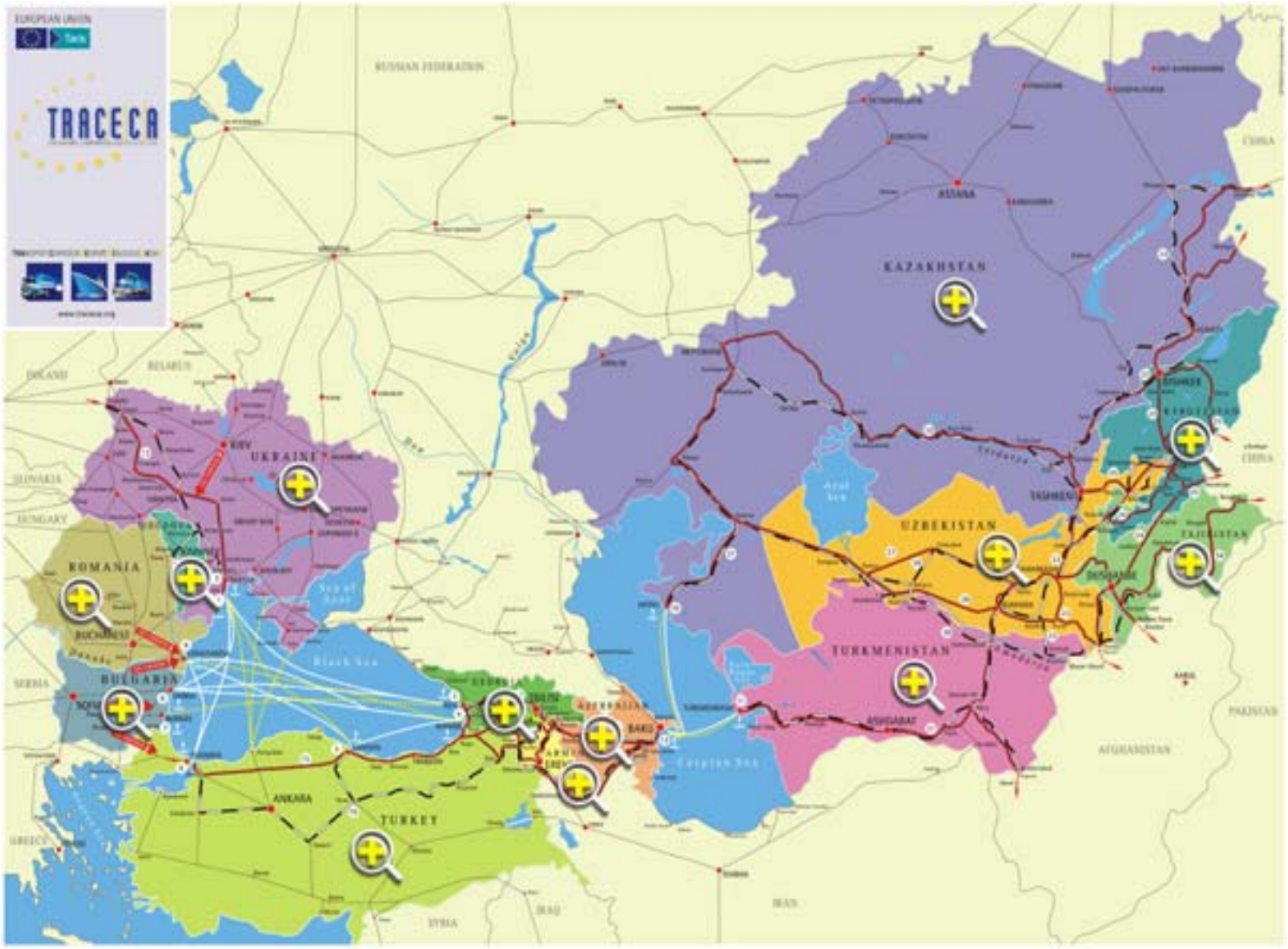
3.4. Transport Corridor Europe – Caucasus – Asia **(TRACECA).**[68]

TRACECA is an internationally recognized programme aimed at strengthening of economic relations, trade and transport communication in the regions of the Black Sea basin, South Caucasus and Central Asia owing to active work based on political will and common aspirations of all member-States.

The transport corridor TRACECA is the renaissance of the Great Silk Road, one of the ancient routes in the world. The corridor starts in the Eastern Europe (Bulgaria, Romania, Ukraine) and also crosses Turkey. There are routes passing through the Black Sea to the ports of Poti and in Georgia, further using transport networks of the Southern Caucasus, and a land connection towards this region from Turkey. From Azerbaijan, by means of the Caspian ferries (Baku – Turkmenbashi, Baku – Aktau) the TRACECA route reaches the railway networks of Central Asian States of Turkmenistan and Kazakhstan. The transport networks of these States are connected to destinations in Uzbekistan, Kyrgyzstan, Tajikistan, and reach the borders of China and Afghanistan.

[68] See: TRACECA home page at: http://www.traceca-org.org/en/traceca

Figure 1: major routes for the member States of TRACECA



Source: Adopted from GIS database/maps downloads at: http://www.traceca-org.org/en/routes/gis-database-maps-downloads/

For the first time, the TRACECA program was initiated at the Conference in Brussels in May 1993, involving Ministries of Trade and Transport from eigtht countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Members of this conference adopted the Brussels Declaration to give rise to implementation of the interregional programme of technical assistance "TRACECA", financed by the European Union and aimed at the development of the transport corridor from Europe, crossing the Black Sea, Caucasus, the Caspian Sea and reaching the Central Asian countries.[69]

[69] See: EU, Caspian, Black Sea States Plan Common Energy Market at: http://www.ens-newswire.com/ens/nov2006/2006-11-30-02.asp

The Programme plan was developed through the four sectoral working groups (Trade Facilitation, Road, Rail and Maritime Transport) with representatives from all the participating States taking active part.

In September 1998 at the historic Summit in Baku (Azerbaijan) 12 TRACECA countries signed the Basic Multilateral Agreement on International Transport for Development of the Europe-the Caucasus-Asia Corridor (MLA) with the aim of implementing in full of their geopolitical and economic potentials. In 2009, the Islamic Republic of Iran joined TRACECA.

Today the TRACECA route comprises the transport system of the 13 member-States of the "Basic Multilateral Agreement on International Transport for Development of the Europe-the Caucasus-Asia Corridor" (MLA TRACECA): Azerbaijan, Armenia, Georgia, Iran, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey, Ukraine and Uzbekistan.

Currently, new roads and railways are being built along the whole length of the TRACECA corridor. New bridges, ports and other transport infrastructure are being constructed, accompanied by simultaneous rehabilitation of the existing roads and railways, as well as bridges and ports. Corresponding unified regulatory basis and tariff rules are being developed. TRACECA countries join the international conventions and agreements. Transport infrastructure necessary for the development of multimodal transport is being established supported by adequate capacity building required for professional international transportation.

3.4.1. Baku Initiative.[70]

Initially, TRACECA is aimed at developing a West-East transport corridor from Europe, across the Black Sea, through the South Caucasus and the Caspian Sea, built on the Trans-European Networks on the EU territory, the Pan European Transport Corridors in Europe, especially the Black Sea Pan European Transport Area and the New Silk Route to Asia.

After the start-up phase (1993-1995), projects focused on making the physical corridor operational and on strengthening the Black Sea–Caspian link as well as the Central Asian.

[70] Basic multilateral agreement as a base for TRACECA programme implementation-strategic direction for broaden co-operation in the field of transport long Europe-Caucasus-Asia Corridor.

In September 1997 there was a welcome initiative by Presidents Haydar Aliyev of Azerbaijan and Eduard Shevardnadze of Georgia who jointly proposed to host a Presidential Conference in the Caucasus I 1998 that could lead to the signing of Basic Multilateral Agreement on Transport initiated within the TRACECA programme.

With the support of the TACIS[71]-TRACECA programme of the European Union acting at that time, this initiative has resulted in the International Conference "TRACECA – Restoration of the Historic Silk Route" that held on 8 September 1998 in Baku – Azerbaijan.

The conference was attended by the Presidents of Azerbaijan, Bulgaria, Georgia, Kyrgyzstan, Moldova, Romania, Turkey, Ukraine and Uzbekistan, representatives of the European Commission, heads of Governments and transport ministries and experts from 32 countries as well as representatives of 12 international organizations. The important achievement of the conference was the signing of the Basic Multilateral Agreement on International Transport for Development of the Corridor Europe-the Caucasus-Asia and its Technical Annexes on international railway and road transport, international maritime navigation, customs and documentation procedures.[72]

Regulations of the MLA and its Technical Annexes have determined the main aims and objectives of the regional transport cooperation among the participating countries.

1. Development of economic relations, trade and transport communication in Europe, the Black Sea region, the Caucasus, the Caspian Sea region and Central Asia;
2. Ensuring the access to the world market of road, rail transport and commercial navigation;
3. Ensuring traffic security, cargo safety and environment protection;
4. Harmonization of transport policy as well as legal framework in the field of transport; and
5. Creation of equal conditions of competition for transport operations.

After the signing the Basic Multilateral Agreement in September (1998) Baku, TRACECA programme became the programme of development cooperation in the field of transport along Europe-Caucasus-Asia Corridor.

[71] Technical Assistance to the Commonwealth of Independent States to their transition to the democratic market – oriented economy launched by the European Commission in 1991.
[72] EU and Central Asia: Commercialising the energy relationship, Michael Denison, July 2009.

Azerbaijan's and Central Asian countries' access to the sea will still depend for long time not only establishing good relationships with transit Coastal States but also marine policies, national legal framework should be elaborated and incorporated to the international standards in order to exercise maritime rights.

Section 4: Marine legislation and status of compliance with international maritime conventions in Azerbaijan.

4.1. Introductory explanation.

The safety of a ship, its passengers and crew, and its cargo may be at risk from a large number and variety of hazards arising either from factors within the ship or from the environment in which it sails. The task of the legislator has been, and continues to be, to develop, through legislation, requirements for ensuring that the ship itself is intrinsically safe and able to be handled in a safe manner, is staffed by people who can safely and competently handle it and that it is properly and safely loaded with its cargo. If that safety is compromised by any particular situation then regulatory requirements aim to provide for means to rectify that situation and in the ultimate if the ship is lost, to maintain the safety of passengers and crew and provide for their rescue, and also to reimburse or compensate the owner and those who have entrusted cargo to the ship, or who have tried to salvage the ship.

To accomplish these objectives legislation has been developed to cover all relevant aspects of ship safety both at sea and in port. These include detailed requirements for the construction of the hull and machinery, for the carriage of safety equipment and navigational aids, for the provision of trained personnel to operate the ships and deal with emergency situations, for preventing collisions between ships, and so on. The protection of the environment is also legislated – for particularly in respect of the prevention of pollution of the sea by oil or noxious substances, sewage discharge from ships and the disposal of unwanted materials into the sea. The identity and ownership of ships is legislated for through registration and tonnage measurement and the latter is also used as a measure for collection of dues and levies. There is also legislation which deals with other aspects of the shipping industry such as insurance of ship and cargo, salvage, wreck, and so on but this topic concentrates on those particular aspects which are concerned with safety of life and navigation.

Under Article 94(3) of the UNCLOS, flag States are under an obligation to take such measures as are necessary to ensure safety at sea with regard to the construction, equipment and seaworthiness of ships, the manning of ships, labor conditions and the training of crews, the

use of signals, the maintenance of communications and the prevention of collision. These measures are to ensure that ships are regularly surveyed by qualified inspectors; have on board the necessary charts and navigational equipment; are in charge of a qualified master and crew which are conversant with and required to observe standards for safety of life at sea, the prevention collisions and the prevention, reduction and control of marine pollution.[73] These are not generic requirements, as Article 94(5) makes clear that States are required to conform to generally accepted international regulations, procedures and practices. This incorporates into the LOSC the rules of SOLAS, the other IMO conventions, codes and guidelines concerned with maritime safety.[74]

Maritime safety legislation can be multilateral, bilateral, or unilateral in character and application, and can result from internationally desired and agreed upon standards, perception by maritime and Government Organizations as to national requirements, and Government response to community pressures.

International legislation is usually in the form of conventions which are often developed as the result of major disasters. The loss of the Titanic in 1912 resulted in international acceptance of better subdivision and more lifeboats whilst more recently the loss of the Torrey Canyon in 1967 and Amoco Cadiz in 1978 gave rise to legislation on oil pollution and more stringent constructional requirements in respect of large tankers.

Since World War Two however, we have witnessed an extraordinary growth in the number of conventions and laws dealing with international shipping and these have codified much of what was previously accepted as the "traditional custom of the sea". The organization which has been responsible for most of these Conventions is the IMO an agency of United Nations. In addition a number international organizations associated with ships and shipping have consultative status and participate in its work. IMO deals with technical and safety aspects of shipping and environmental protection. Another UN agency, the United Nations Conference on Trade and Development (UNCTAD) plays a prominent part in economic and commercial maritime matters and is probably best known for its "Code of Conduct for Liner Conferences" (which includes the 40 – 40 – 20 cargo sharing provisions) and for its efforts to eliminate open registries on flags of convenience. The International Labour Organization (ILO) also plays an important role in the area of seafarers' welfare and working conditions, but unlike IMO and

[73] UNCLOS, art 94(4).
[74] "The International Law of the Sea" Rothwell, Donald R and Tim Stephens, page 359. Oxford: Hart Publishing, 2010.

UNCTAD which are intergovernmental in composition, ILO is tripartite and employers, employees and Governments have equal status.

Some of the international conventions which have been drawn up in the last decade and which have already, or will in the future significantly influence maritime safety legislation are:

1. The 1969 Tonnage Convention
2. 1972 Safe Containers Convention
3. 1972 Prevention of Collisions at Sea Convention
4. 1973 Marine Pollution Convention (MarPol) and its 1979 protocol
5. 1974 Safety of Life at Sea Convention (SOLAS)
6. The 1978 Standards of Training, Certification and Watch keeping (STCW)

Some of the consequence of these conventions have been, or will be:

1. Improvements in, and more stringent requirements for, ship construction, safety equipment, and for the transportation and handling of hazardous cargoes and goods:
2. Improved and more uniform standards of personnel training and watch keeping;
3. A new system of tonnage measurement which, although it will take some time to come completely into force, will ultimately remove many of the anomalies that exist under the present systems;
4. More stringent controls over pollution of the sea and means whereby countries can be more easily and realistically reimbursed for the costs of cleaning up pollution damage, which in some cases are enormous; and
5. More control over substandard ships by national and port authorities.

These conventions, which are already in force internationally must, of course be incorporated into domestic law before they become effective for individual countries.

4.2 Status of Compliance with International Maritime Conventions in Azerbaijan.

The following section will describe the existing situation of compliance with international maritime conventions in Azerbaijan and the national institutions responsible for the implementation of international maritime conventions. It lists the IMO Conventions to which Azerbaijan is a party and discusses existing national legislation on maritime safety and security, prevention and response to marine pollution and ship inspections and the facilities, personnel and organisation for education, training and certification of seafarers are described.[75]

Over the past three years Azerbaijan has undergone significant changes in terms of the distribution of national competencies regarding the implementation of international maritime conventions will be described. On 20 April 2006, the State Maritime Administration of the Republic of Azerbaijan (ASMA) was established under the Presidential Decree No. 395. The principal aims of the State Maritime Administration are to implement State policy in the maritime sector and to develop the maritime sector.

In accordance with its Statute, the State Maritime Administration is the Central Executive Power on implementation of the State Policy and control in the field of maritime navigation. In its activities it is guided by the Constitution and laws of the Republic of Azerbaijan, decrees and orders of the President of the Republic of Azerbaijan, resolutions and orders of the Cabinet of Ministers, and international conventions to which the Republic of Azerbaijan becomes a party. The State Maritime Administration is situated in Baku and is financed by the State budget and other legal sources.

The Administration's activities include participation in the formation of a unified State policy in the field of maritime navigation. Its main duties are described in Part III of its Statute and include:

1. Ensuring the implementation of the State programmes and development concepts;
2. Ensuring coordination with other relevant authorities in the maritime sector;
3. Ensuring the implementation of the international agreements to which the Republic of Azerbaijan is a party;

[75] This information available on the IMO website as well, presentations and legislative instruments made available by the national maritime administration and independent research on international and national online sources, e.g www.sasepol.eu

4. Implementation of scientific or technical developments taking into account advanced international experience in the field;
5. Taking the necessary measures for preservation of State secrets and undertaking safety measures pursuant to areas of activity;
6. Ensuring the training of staff;
7. Exercising port State control of the ports located in the territory of the Republic of Azerbaijan and flag State control of ships entitled to sail under its flag;
8. Taking part in the organisation of the system of safety of navigation;
9. monitoring implementation of the rules of navigation in the area under the jurisdiction of the Republic of Azerbaijan;
10. Undertaking the measures for safety of life at sea and prevention of marine pollution;
11. Issuing ship certificates in accordance with existing legislation;
12. Monitoring the activity of international classification societies acting in the territory of the Republic of Azerbaijan;
13. Preparing the drafts of rules for the issue of seaman passports, seaman's ranks and submitting them to the Cabinet of Ministers for approval;
14. Issuing seafarer's diplomas and passports;
15. in cases of emergency, providing assistance on investigation with other relevant authorities;
16. Monitoring availability of navigational aids on the sea ways and making arrangements for Vessel Traffic Services in waters under its jurisdiction;
17. Implementation of necessary measures for preventing pollution of the marine environment by oil and other dangerous, harmful substances from ships; and
18. Participating in common activities of the sea and air rescue services for implementation of the necessary measures connected with search and rescue of persons in accidents in the Caspian Sea taking measures to bring to account violators of the relevant rules.

According to its statue, the State Maritime Administration (ASMA) is responsible for safety of navigation, accident investigation, flag State and port State policies, protection of the marine environment, navigational aids and navigational systems, search and rescue at sea, pilot services, ship registration, maritime training, establishment of security measures, survey and certification of port facilities.[76]

[76] Statue of the State Maritime Administration of the Republic of Azerbaijan (ASMA). Internal Document.

Legislation drafting and control of implementation of legal requirements also fall within the competence of the ASMA. It also is mandated to prepare or participate in the preparation of legislative Acts and puts forward proposals for accession of the Republic of Azerbaijan to international maritime conventions.

The Administration's staff is determined by the Cabinet of Ministers of the Republic of Azerbaijan. Its activities are led by the Head of Administration appointed by the President of the Republic. The Head of the organises and manages the activity of the Administration, approves the rules of structural subdivisions of the Administration, carries out the negotiations connected with international agreements and monitors their implementation.

The Board of the Administration consists of the Head of Administration (chairman), Vice-Chairman (deputies) and members of senior staff of the Administration. Specialists and scientists can also be included in the structure of the Board which is approved by the Cabinet of Ministers.

The ASMA coordinates the activities of flag State and port State inspectors and port authorities and has authorised a number of international classification societies to act on their behalf in connection with ship inspections and issuing of certain certificates.[77]

Whilst the main responsibility for the implementation of international maritime conventions rests with the State Maritime Administration, the latter works together with the Ministry for Ecology and Natural Resources of Azerbaijan in some fields. The Ministry provides monitoring in the Caspian Sea.

The Ministry of Ecology and Natural Resources deals with pollution response but the relevant information goes to the State Maritime Administration and Ministry of Emergency Situations.

The Ministry of Emergency Situations, the Ministry of Ecology and Natural Resources and the State Maritime Administration are in cooperation for the development of a National Oil Spill Preparedness Plan.

It is worth noting that the Ministry of Transport does not play any significant role in the implementation of international maritime conventions in Azerbaijan. The Caspian shipping line

[77] Example for those societies:
RMRS (Russian Maritime Register of Shipping)
ABS (American Bureau of Shipping)
DNV (Det Norske Vertitas)

and Baku International Sea Trade Port are within the structure of the Ministry of Transport but only nominally. All decisions on maritime transport are made at State Maritime Administration, Caspian shipping line and Baku port level without the participation of the Ministry of Transport.[78]

The State Maritime Administration coordinates the activities of sea inspectors, port authorities and operators on marine maintenance. The Administration maintains close contact with other important stakeholders such as shipping lines, immigration and customs services, coastguard and police.

Baku International Sea Trade Port, founded in 1902, is the largest and most important port on the Caspian Sea. The Caspian Sea provides vital transport links with other countries and the Baku International Sea Trade Port specifically is considered to be the marine gateway to Azerbaijan and thus plays a vital role in trans-Caspian trade. Its importance as a transit point in trade between Europe and Asia is being promoted within the TRACECA project – Restoration of the Historic Silk Route.

Between April and November, when Russian inner waterways are navigable, Baku International Sea Trade Port is accessible by ships loading cargoes for direct voyages from West European and Mediterranean ports.

Increasing volumes of trans-Caspian oil trade and considerable import to Azerbaijan have made necessary the further development and expansion of existing equipment and infrastructure for offshore oil activities. The Baku Port now provides a number of services including handling of dry, liquid bulk and general cargoes, warehousing, storage and container handling. It consists of the Main Cargo Terminal, Dubendy Oil Terminal, Ferry Terminal and Passenger Terminal. The Port is widely used by international traders and its throughput capacity has been constantly growing and reaches up to 15 million tons of liquid bulk and up to 10 million tons of dry cargoes.

The Caspian Shipping Company is the largest ship-owning company operating in Azerbaijan. Other shipping companies include the Caspian Sea Oil Fleet (SOCAR) and Caspian Sea Ways.

[78] Maritime Transport in Azerbaijan is governed by the ASMA, to this end the ASMA was established on 20 April 2006, by Decree No. 395 of the President of the Republic of Azerbaijan with an aim to implementing the State policy in the maritime sector.

4.2.1 National legislation concerning maritime safety and security, prevention and response to marine pollution and ship inspections.

Azerbaijan has ratified number of significant international maritime conventions, which include the 1974 SOLAS, and 1978 STCW and the 1973/79 MARPOL and became an IMO member in 1995 and since then it has acceded to the majority of the IMO mandatory instruments, such as:

1. IMO Convention 48;
2. IMO amendments 1991;
3. IMO amendments 1993;
4. SOLAS Convention 74;
5. SOLAS Protocol 88;
6. LOAD LINES Convention 66;
7. LOAD LINES Protocol 88;
8. TONNAGE Convention 69;
9. COLREG Convention 72;
10. STCW Convention 78;
11. FACILITATION Convention 65;
12. MARPOL 73/78 (Annex I/II);
13. MARPOL 73/78 (Annex III, IV, V);
14. MARPOL Protocol 97 Annex VI;
15. London Convention 72;
16. CLC Convention 69;
17. CLC Protocol 76;
18. CLC Protocol 92;
19. LLMC Convention 76;
20. SUA Convention 88;
21. SUA Protocol 88;
22. SALVAGE Convention 89;
23. OPRC Convention 90; and
24. Bunkers Convention 2001.

The main national legal framework is provided by the Merchant Shipping Code and by the Statue of the State Maritime Administration (SMA).[79]
Implementation of the international conventions being into force for Azerbaijan on the vessels flying the Azerbaijani flag, relation and regular communication with IMO, and other international organizations and maritime authorities is done by the International Relation and Conventions Department of the State Maritime Administration of the Republic of Azerbaijan.

The requirements of these international conventions are properly implemented by Azerbaijan through the application of various administrative regulations which implement the requirements of IMO Conventions. However, owing to the fact that the State Maritime Administration was only established four years ago, it has been difficult to prepare all the necessary legislation incorporating the international requirements into national law. Typically, the legislation must be adopted by the Cabinet of Ministers or by Presidential Decree. This is a lengthy process and therefore administrative regulations are adopted which allow for the direct application of the convention obligations in the national context whilst work on the draft regulations is under way.

Bearing in mind that the MARPOL, SOLAS and STCW are the main conventions of IMO, currently there are some problems for implementation of requirements of those Conventions in Azerbaijan. For example the MARPOL Convention; Considering the vessels which fly Azerbaijani flag mostly operate at the Caspian Sea territory, the MARPOL Convention is not really being applied to the Caspian Sea. Its requirements are implemented for ships on international voyages but the obligations contained in the Framework Convention for the Protection of the Marine Environment of the Caspian Sea are held to be similar to those found in MARPOL and prohibit all forms of dumping in the Caspian Sea.[80]

The Framework Convention was adopted in response to the considerable degradation suffered by the marine environment of the Caspian Sea from various sources of human activity over the years. It was adopted on 4 November 2003, entered into force on 12 August 2006 and is the first legally binding agreement adopted by the five Caspian States on the matter. It recognises the importance of protection of the marine environment of the Caspian Sea and of cooperation among the Caspian States and with relevant international organisations with the aim to protect and conserve the marine environment of the Caspian Sea and to use its resources sustainably.

[79] The Merchant Shipping Code was adopted in 2001 and revised in 2006. This is the primary law on maritime transport. Internal document of ASMA.
[80] See: Caspian Environment Program, Conventions at:
http://www.caspianenvironment.org/newsite/Convention-FrameworkConventionText.htm

The convention covers pollution from land-based sources, seabed activities, vessels, dumping, emergencies, marine living resources, sea-level fluctuation, and monitoring and other researches.

The ship oil spill pollution plan is prepared by the ship-owners and approved by the State Maritime Administration. The national plan for combating oil spill pollution has not yet been adopted. At present, there are only internal procedures in place which do not always make clear how the activities of the different authorities should be coordinated. The Ministry of Emergency Situations has recently been tasked with the drafting and finalisation of the National Oil Spill Contingency Plan. In connection with marine oil spills, the Ministry will co-operate with the State Maritime Administration which, in case of a response operation, will be in charge of the on sea operation.

There are no regional arrangements for oil spill response. This is linked to the fact that the exact maritime borders have not yet been determined in the Caspian Sea. Azerbaijan has agreements with the Russian Federation and Kazakhstan.[81] However, the absence of defined territorial seas is considered as a highly controversial issue whilst this represents significant obstacles in the practical implementation of the requirements of international conventions.

Port State Control.

Port State Control (PSC) is a response to flag States not being able or being unwilling to exercise effectively their responsibility in implementing international conventions on ships flying their flag. As attention has focused on the wider cost of accidents, welfare and safety of the crew, and protection of the natural environment from the risks generated by the operations of ships, and recognizing that flag States have not always been effective in carrying out their responsibilities, a regime of PSC has come into being. The UNCLOS gives port States the right to exercise some level of control on visiting ships. The IMO resolution A.787 (19) Procedures for Port State Control (1995), as amended by Resolution A.882 (21), provides the necessary

[81] September 23, 2002: The Agreement on Division of the Adjacent areas of Caspian Sea bed between the Republic of Azerbaijan and the Russian Federation.
The Agreement between the Republic of Azerbaijan and the Kazakhstan Republic on Division of Caspian Sea bed between the Republic of Azerbaijan and the Kazakhstan Republic, on November 29, 2001, and an appropriate Protocol attached on February 27, 2003;
The Agreement on Division of the Northern Part of Caspian Sea bed for the purpose of implementing the sovereign rights in the usage of the seabed between the Kazakhstan Republic and the Russian Federation (July 6, 2002) and the requisite Protocol (May 13, 2002).
The Agreement on the crossing points of Caspian Sea bed co-linear areas among the Republic of Azerbaijan, the Republic of Kazakhstan and the Russian Federation (May 14, 2003);
For further details See: Eng/Foreign Policy/Bilateral Treaties at: www.mfa.gov.az

operational framework under which ship inspections can be carried out of foreign ships in host countries. This makes PSC and important and effective link in the regulatory oversight and control of ships trading in all parts of the world. In would be very costly, if not impossible, for flag States to implement their rules through the inspection and detention in foreign ports of ships registered under their flags.[82]

Various memoranda of agreement cover nearly all the sectors of the world where trading ships operate. The first of these was signed in 1982 in Paris (referred to as the Paris MoU), by 14 EU member States. Over the next two decades, eight other MoUs have come into effect in different parts of the world.

There are 12 port facilities in Azerbaijan about six of which are certified under the requirements of the ISPS Code because it is not mandatory, only voluntary. Some ports only receive vessels operating in domestic waters. The ports had all necessary security in place including video security systems, X-ray screening devices, guarded fences and other typical port security mechanisms.

The Port Security Plan details the appropriate procedures and compliance measures for Baku International Sea Trade Port, the Caspian Oil Sea Base and another two ports. An organisation is responsible for preparing the Port Security Plan which is then submitted to the State Maritime Administration for approval. The Port Security Plan is reviewed every year.

The Ship Security Plan was formerly certified by the Russian Register. Since the establishment of the State Maritime Administration this is no longer the case and ships are certified and have a Ship Security Plan issued by the Administration.

The State Maritime Administration, Coastguard and Ministry of Emergency Situations coordinate search and rescue operations. The coastguard is responsible for the response to all accidents in inland waters. A radar monitoring system is in place and the Administration must send the first information of a disaster to the Ministry of Emergency Situations and the Coastguard.

The Azerbaijan State Maritime Administration and other relevant Government agencies are currently in the process of developing a Maritime Security Strategy which is being prepared within the framework of the Azerbaijan National Security Concept.

[82] Maritime Safety, Security and piracy. Talley, Wayne K. London: Informa, 2008. page 21

But there is no regional Memorandum of Understanding on Port State Control in the Caspian Sea. The State Maritime Administration is the executive power in the maritime field responsible for flag State implementation and port State control. The Administration is currently working on a draft version of regulations on port State control which should be completed within the some period of time and then submitted to the Cabinet of Ministers for approval.

Overall, there is a positive picture of Azerbaijan's position vis-à-vis implementation of international maritime conventions. However, national legislation incorporating the requirements of the relevant IMO Conventions is still in the process of being drafted and adopted. In the meantime, the international requirements are implemented directly. Another issue is the fact that the Caspian States have no defined territorial sea limits which consequently creates several difficulties from the perspective of practical implementation as it can be disputed which State is responsible for taking action. For example, if the oil spill occurs in a part of the Caspian Sea then The State Maritime Administration will consider to fall within its jurisdiction and they will take action. Nevertheless, this is a very controversial matter which leaves open the question as to what would happen and who would be responsible if no action is taken.

Finally, it must be noted that Azerbaijan is in fact on the grey list of the Paris Memorandum of Understanding. Between 2006 and 2008, 115 Azerbaijani ships were inspected and 11 of these were detained. This indicates that there is a degree of non-compliance by Azeri ships with the requirements of international maritime conventions.

4.2.2 Facilities, personnel and organization of education, training and certification of seafarers.

The 1978 STCW Convention was the first to establish basic requirements on training, certification and watchkeeping for seafarers on an international level. Previously, the standards of training, certification and watchkeeping of officers and ratings were established by individual Governments, usually without reference to practices in other countries. As a result standards and procedures varied widely, even though shipping is the most international of all industries.

The STCW Convention prescribes minimum standards relating to training, certification and watchkeeping for seafarers which countries are obliged to meet or exceed.

The 1995 amendments, adopted by a conference, represented a major revision of the STCW Convention, in response to a recognized need to bring the STCW Convention up to date and to respond to critics who pointed out the many vague phrases, such as "to the satisfaction of the Administration", which resulted in different interpretations being made. The 1995 amendments entered into force on 1 February 1997. One of the major features of the revision was the division of the technical annex into regulations, divided into Chapters as before, and a new STCW Code, to which many technical regulations were transferred. Part A of the Code is mandatory while Part B is recommended.

Dividing the regulations in this way makes administration easier and it also makes the task of revising and updating them more simple: for procedural and legal reasons there is no need to call a full conference to make changes to Codes.

Another major change was the requirement for Parties to the Convention are required to provide detailed information to IMO concerning administrative measures taken to ensure compliance with the convention. This represented the first time that IMO had been called upon to act in relation to compliance and implementation - generally, implementation is down to the flag States, while port State control also acts to ensure compliance. Under Chapter I, regulation I/7 of the revised STCW Convention, Parties are required to provide detailed information to IMO concerning administrative measures taken to ensure compliance with the convention, education and training courses, certification procedures and other factors relevant to implementation. The information is reviewed by panels of competent persons, nominated by Parties to the STCW Convention, who report on their findings to the IMO Secretary-General, who, in turn, reports to the Maritime Safety Committee (MSC) on the Parties which fully comply. The MSC then produces a list of "confirmed Parties" in compliance with the STCW Convention.

Azerbaijan has a number of facilities and arrangements in place for the training and certification of seafarers.

The Centre of Certification and Training of Seafarers provides courses on the ISM Code and the ISPS Code. It also provides training on the handling of cargo containing dangerous and hazardous substances, qualification for ro-ro passenger ships, proficiency in survival craft and boats, medical first aid and care, survival techniques, fire prevention and fire fighting, elementary first aid, personal safety and social responsibilities. Besides being equipped with

facilities and laboratories for training in these fields, the Centre has a Global Marine Distress Safety System (GMDSS) training centre and a radar training centre. A number of computer programs are also used in training activities.

The Preparation of the Rating (Sea School) Department prepares seafarers for Azeri marine establishments. The qualifications received at sea school are in line with the minimum requirements of the STCW Convention:

1. Able seaman;
2. Motorman of the watch.
3. Electrician of the watch;
4. Engine pumping man-sailor of a bulk-oil vessel;
5. The fitter-ship repairer; and
6. Electrical-gas welder.

The Azerbaijan State Maritime Academy also provides a range of courses for seafarers. The Teaching and Training Centre for Saving Life at Sea conducts a number of courses, such as vessel crew training, ISM Code, fire fighting, radar observations and course plotting, global maritime distress and safety system, and lifeboat and raft.

Moreover, the State Maritime Academy concluded a memorandum with the Occupational Training International (OTI) Safety Programme concerning the use of its Training Centre which complies with all of the requirements of the relevant international conventions. This Programme provides activities in fields such as “Advanced Fire-Fighting”, “Safety Management” and “STCW 78/95 Courses”.

Within the framework of the mutual recognition of seafarers’ certificates of competency, the European Maritime Safety Agency (EMSA) visited the State Maritime Administration in February 2009 as part of the process of recognition of Azerbaijani certificates by EU countries.

Azerbaijan is one of the Parties to STCW 78, as amended, which has been confirmed by the IMO Maritime Safety Committee to have demonstrated that full and complete effect is given to the convention’s requirements. Azerbaijan has in fact been on the IMO STCW “White List” since 2001.

Section 5. Concluding Remarks.

The mission of the IMO as a United Nations specialized agency is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. This will be accomplished by adopting the highest practicable standards of maritime safety and security, efficiency of navigation and prevention and control of pollution from ships, as well as through consideration of the related legal matters and effective implementation of IMO's instruments with a view to their universal and uniform application.

The Republic of Azerbaijan is member of the IMO and has ratified and acceded to the main IMO Conventions (MARPOL, STCW and SOLAS/ISPS). But Azerbaijan still lacks operational and practical rules in order to ensure an effective implementation of the legal provisions and IMO requirements for safety, security and environmental protection standards. Domestic maritime legislation should be brought into compliance with international standards.

As an oil and gas producer and transit country, the Republic of Azerbaijan has an essential role to play in ensuring maritime safety, maritime security and environmental protection in existing and alternative transportation routes to be opened for energy resources from the Caspian and from Central Asia to Europe.

CHAPTER THREE: Legal Issues of the Status and Territorial Division of the Caspian Sea.

Section 1. Introductory explanation.

Two–thirds of our planet's surface is covered by water. With exception of a narrow belt of sea surrounding a nation's coastline, the world's oceans have for several centuries enjoyed freedom from any jurisdiction. This status was determined by Hugo Grotius's doctrine of the freedom of the seas (*mare librum*), which prevailed until the mid–twentieth century and proclaimed the world's oceans free to all nations.[83]

The exploration of the oceans far away from the coast in the twentieth century has caused their uncontrolled exploitation and pollution, as well as disputes among rival States. To solve the ensuing problems and conflicts, the UNCLOS was adopted in 1982. The UNCLOS abolished the doctrine of the freedom of the seas and settled most disputes over the identity of the controllers of the oceans and the regulation of their exploitation.

The dispute over the ownership of the Caspian Sea has a long history that commenced long before its rich natural resources were discovered. The earliest discord relates to the Russian campaign against Persia in 1722–1723. At that time, the Russian–Persian treaties subordinated the Caspian Sea solely to Russian jurisdiction. Soviet Russia rejected its exclusive rights over the Caspian Sea. The Soviet – Iranian treaties of 1921 and 1940 established equal rights and a joint ownership of the Caspian for both countries. The treaties did not mention any division of the territory of the Caspian Sea; On the contrary, the two countries emphasised the absence of State borders on water. Nevertheless, the Soviet Union determined that the factual border with Iran fell between the southernmost points of its territory and thus that it controlled approximately 86 per cent of the sea, including all living and non – living resources of the seabed and subsoil. The unilaterally established borderline was patrolled by the Soviet frontier marine coast guard.

[83] ***Mare Liberum*** **(English: *The Free Sea* or *The Freedom of the Sea*)** is a book published in 1609 in Latin on international law written by the Dutch jurist and philosopher Hugo Grotius. In *The Free Sea,* Grotius formulated the principle that the sea was international territory and all nations were free to use it for seafaring trade.

1.1. Oil and Gas Reserves, Production, and Exports

With the collapse of the Soviet Union, the Caspian Sea suddenly found itself bordered by five independent countries instead of just two: Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan. (See the figure below)

Figure 2: map of the Caspian Sea and its' littoral States

Source: Adopted from World Map-Asia- Caspian Sea
http://www.worldatlas.com/aatlas/infopage/caspiansea.htm

The Caspian Sea and surrounding regions, in particular Azerbaijan, have a long history relating to petroleum.[84] Stories abound with respect to the use of petroleum seeps in the fourth century

[84] Narimanov A. A., and I. Palaz. 1995. Oil history, potential converge in Azerbaijan. *Oil and Gas Journal* 93.21: 32 – 39; Sagers, M. J., and J.R Matzko. 1993. The oil resources of Azerbaijan: Survey and current developments.

BC by soldiers of Alexander the Great. Marco Polo, when travelling on the silk route in the thirteenth century, noted its great abundance. The very first oil exploration well ever drilled was in Baku (Azerbaijan) in 1848, long before the first gushes in Texas and Arabia.

The commercial production in the Baku area dates from the 1870s, when the Russian Government first allowed private development of the oil fields. By 1900, there were about 3,000 oil wells and Azerbaijan accounted for 50% of the worlds oil production: In 1924, the first offshore well was drilled. As late as 1940, Azerbaijan accounted for over 70% of the Soviet oil output.[85]

The politics of the Caspian region have changed since the breakup of the Soviet Union. Azerbaijan, Kazakhstan and Turkmenistan are no longer part of the Russian Federation and have now opened up their fossil fuel prospects to foreign investors. The area does not have quite the prominence it had in the late nineteenth century, when the concern was not in finding oil but in what could be done with it when it came out of the ground. However, the proven oil reserves in the onshore and offshore Caspian region of between 17 and 39 billion barrels (with estimates of possible oil reserves reaching 230 billion barrels) are similar to Western Europe and other major oil–producing areas of the globe, excluding the Middle East. A major problem exists in the transporting of this potentially enormous amount of oil and gas for export to the western and Asian markets from the land–locked Caspian region.[86]

Pipeline routes that transport oil to the east do not presently exist. The major pipeline routes that transport oil from the Caspian region to the west include the following:

1. The 830 km *Baku–Supsa* pipeline has a capacity to transport – 100, 000 barrels of oil per day (b/d) from Baku, Azerbaijan to the Georgian Black Sea port of Supsa. Proposed upgrades would allow for transport of 300,000 – 600,000 b/d: and
2. The 1400 km *Baku–Novorossiysk pipeline* has a capacity to transport – 100,000 b/d from Baku, Azerbaijan to the Russian Black Sea port of Novorossiysk.

These pipeline routes all pass through Black Sea ports before entering western markets. There are many environmental and safety concerns in having oil transported in the Black Sea and

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International Geology Review 35: 1093 – 1103 Abrams, M. A., and A. A. Narimanov. 1997. Geochemical evaluation of hydrocarbons and their potential sources in the western South Caspian depression, Republic of Azerbaijan. *Marine and Petroleum Geology* 14(4): 451 – 468.

[85] Mir-Babayev, M.F., "Absheron Oil: The Development of Oil Business in Azerbaijan" in Chemistry and Technology of Fuels and Oils, Moscow, No. 3 (1993), pp. 36–37.

[86] Ocean Development & International Law., Vol. 35. No 1. 2004. “Geology, Oil and Gas Potential, Pipelines, and the Geopolitics of Caspian Sea Region.” 26-29.

through the Straits of Bosporus at Istanbul. These straits presently accommodate shipments of 1.2 million b/d and Turkey has expressed concern about increasing this number.

In order to decrease this heaviness from the Black sea and Bosporus Straits, the 1768 km *Baku – Tbilisi – Ceyhan pipeline* was constructed with a capacity to transport 1 million b/d from Baku, Azerbaijan to the Mediterranean port of Ceyhan, Turkey.[87] (as shown below)

Figure 3: transport routes of Caspian oil

Source: Baku-Tbilisi-Ceyhan pipeline Edited by S. Federick Starr and Svante E. Cornell See http://www.silkroadstudies.org/new/inside/publications/BTC.

The Ceyhan port in Turkey has several advantages over the Black Sea ports. First, though it is expensive, with an estimated cost of completion of $3–4 billion, this pipeline route is over land and thus does not have to cross the Black Sea and go through the Bosporus Straits. Ceyhan port also has the capability of handling large tankers, whereas the Black Sea ports are constrained to small tankers in order to go through the Bosporus Straits. Favourable weather conditions and proximity to growing markets in Europe are also advantages[88].

[87] See: Tbilisi-Ceyhan pipeline Edited by S. Federick Starr and Svante E. Cornell at http://www.silkroadstudies.org/new/inside/publications/BTC.pdf

[88] U.S. Energy Information Administration, International Petroleum Information, Crude Oil Reserves and Resources, www.eia.doe.gov, 2000, 2001, 2002.

This pipeline is also intended to transport oil from Kazakhstan's Kashagan oil field as well as from other oil fields in Central Asia. The Government of Kazakhstan announced that it would build a trans-Caspian oil pipeline from the Kazakhstani port of Aktau to Baku, but because of the opposition from both Russia and Iran, it started to transport oil to the BTC pipeline by tankers across the Caspian Sea.

1.2. Environmental issues in the Caspian Sea.

The Caspian Sea is highly polluted by chemicals, municipal discharges, and hydrocarbon pollutants. In addition, sea level rise and desertification of the surrounding Caspian region greatly affect the environment. All of these have consequent effects on, among others, the fishing industry and well being of the people in the surrounding regions.

Since the Caspian is an enclosed body of water, discharges from rivers are major contributors to the ecosystem of the basin. The numerous rivers flowing into the Caspian contribute annually 300 km^3 of water. Three main rivers, the Volga, Ural, and Terek rivers, discharge 88% of the waters into the Caspian, with the Volga contributing 95% of the chemical pollutants.[89] The annual concentrations of these pollutants consist of major amount of oil, and other chemicals.[90] The average depth in the northern part of the Caspian, in the region where the Volga River discharges, is about 5 meters. The pollutants tend to concentrate at these shallow depths without dispersal, leading to high concentrations of hazardous components in the water in the north. Recent studies have shown minor decreases in the concentration of these pollutants owing to upriver de – industrialization since the breakup of the Soviet Union. [91]

Petroleum refineries contribute greatly to the overall impact of pollution to the Caspian. Areas most affected by oil such as Baku Bay, Apsheron Archipelago and surrounding islands, Turkmenbashi, Chelekin offshore, Mangishiak, Tengiz, and other oil industry sites have described virtual "dead zones".[92] Radioactivity near sites of oil production exceeds in places 50 – 150 times permissible background levels. Studies have demonstrated that diseases such as tuberculosis, among others, are several times more numerous in the Caspian region of the littoral States than in the rest of the countries on average.[93]

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[89] Froelich K., K.Roznski and P. Provinec. 1999. Isotopic studies in the Caspian Sea. *The Science of the total Environment.* 237: 419 – 427.
[90] Kobori, I., and M. H. Glantz, eds. 1998. *Central Eurasian water crisis: Caspian, Aral and Dead Seas.* Tokyo: United Nations University press.
[91] Ibid.
[92] Dahl, C., and K. Kuraybayeva. 2001. Energy and the environment in Caspian. *Energy policy* 29: 429 -440
[93] Ibid.

Sea level, which has fluctuated significantly during the geologic and historic past, has also significantly affected the environment of the Caspian. For example, from 1880 to 1977, sea level dropped 3.5 meters, with minor fluctuations in between. From 1977 to 1998 sea level rose 2.5 meters.[94] Recent isotopic studies show that sea–level fluctuations are caused by primarily by changes in river inflow.[95] Tectonic processes and climate change can also be partially responsible for these changes. Since a thin layer of oil on the sea surface may prevent water from evaporating, leaks from oil fields may contribute to sea–level fluctuations. Flooding from recent sea level rises cause abrasive erosion on the shelves and can possibly affect oil infrastructure. Scientists forecast that during the next 20 years the Caspian will rise 1.5 meters and will stabilize over the following 40–50 years.[96]

Desertification has become an important concern for the countries surrounding the Caspian Sea. Reasons for desertification include loss of fertility of soil due to poor agricultural practices, destruction of the vegetative cover, and infringement of the soil layer as a result of industrial activities, use of wood as a fuel, and population growth.[97]

Pollution and human activity (overfishing) has greatly reduced the population of Caspian Sturgeon, a major world source of black caviar. In order to monitor and restore sturgeon population, officials from the Caspian added species of sturgeon to the protected list of the Convention on International Trade in Endangered Species.[98]

The lack of regional cooperation among the Caspian Sea Countries continued to undermine individual State efforts to protect the sea and surrounding region. The challenge of protecting the Caspian's environment will become more difficult. Without increasing cooperation by the littoral States, the country of the environment in the Caspian Sea and surrounding areas will remain threatened.

Robinson, J. 1996. *Cleaning up in Azerbaijan*. From the web site of the Business Information Serice for the Newly Independent States, US Department of Commerce International Trade Administration Washington, DC.

[94] Kobori, I., and M.H. Glantz, eds.1998. Central Eurasian water crisis: *Caspian, Aral and Dead Seas*. Tokyo: United Nations University Press.

Voropayev, G.V. 1997. The problem of Caspian Sea level forecast and its control for the purpose of management optimization. In *Scientific environmental and political issues in the circum – Caspian Region*, ed. M. H. Glantz and I. S. Zonn, pp 105 – 118. Cambridge, UK: Cambridge University Press.

[95] Froelich, K. 2000. Evaluating the water balance of inland seas using isotopic traces: The Caspian Sea experience. *Hydrological Processes* 14: 1371 – 1383.

[96] Kobori, I., and M.H. Glantz, eds.1998. Central Eurasian water crisis: *Caspian, Aral and Dead Seas*. Tokyo: United Nations University Press.

[97] Gurbanov, E., and Z. Ramazanova. 2000. *Desertification in Azerbaijan: Causes and consequences, Baku*: Organizing Environmental Movement to Combat Desertification

[98] Cullen, R. 1999. The Caspian Sea. National Geographic. 195(5): 2 – 35.

Section 2: Territorial division and Legal Status of the Caspian Sea.

2.1. Legal history of the Caspian prior to 1991.

The current legal status and regime of the Caspian Sea are based both on the Soviet–Iranian treaties concluded in the first part of the twentieth century and on earlier State practice and agreement. The first such treaty, on the demarcation and cession of certain territories, was the Treaty of Resht (1729) concluded between the Russian and the Persian empires, which provided for freedom of commerce and navigation.[99] It was followed by the Golestan Treaty (1813) and the Turkomanchai Treaty (1828), which provided Russia with the exclusive right to have a naval fleet in the Caspian Sea. In 1917, the Soviet Government drew up a new agreement with Persia, which declared that all previous international agreements between them were abrogated. The Treaty of Friendship between the Russian Socialist Federal Soviet Republic (RSFSR) and Persia (26 February 1921)[100] became the basis for bilateral relations between the two States. However, except for the restoration of Persia's equal rights of navigation, it did not specifically address the issue of the legal regime of the Caspian. Natural resources were mentioned only in connection with the renewal of fisheries agreements.

During the 1930s, increasing navigation and fishing in the Caspian Sea resulted in bilateral negotiations to develop the existing legal framework. On navigational issues, the 1935 Treaty of Establishment, Commerce and Navigation between Iran and the Union of Soviet Socialist Republics[101] was replaced in 1940 by the Treaty of Commerce and Navigation. Both treaties reserved navigation (military and commercial) as well as fishing rights in the Caspian Sea for Soviet and Iranian vessels and other vessels flying their flags. They therefore excluded third States from the Caspian Sea and restricted the rights of innocent passage of ships of these other States.[102] Nationals of third States were not even allowed to be crew members or port personnel.[103] Both the 1935 and 1940 treaties provided for freedom to fish for both States in the entire Caspian Sea, except within a 10-mile zone along their respective coasts.

[99] The Treaty of Resht (13 February 1729) between Russia and Persia on the demarcation and cession of certain territories provided for freedom of commerce and navigation. C. Parry, *The Consolidated Treaty Series (1648-1919)* (Dobbs Ferry, NY: Oceana Publications, 1961-86).
[100] League of Nations Treaty Series (LNTS), No. 268.
[101] LNTS, No. 4069. The ratification instruments were exchanged in June 1936. The official change from Persia to Iran occurred in 1935.
[102] Treaty of Commerce and Navigation, Art. XIV.
[103] *Documenty Vneshney Politiki SSSR* (Soviet Documents on Foreign Policy), Moscow, 1965, pp. 428–34

However, the coastal States have never resolved the boundary lines in the Caspian Sea. An Exchange of Notes attached to the 1940 treaty includes only one clear expression referring to an international instrument of the condominium, that the Caspian Sea is 'regarded by both contracting parties as a Soviet and Iranian Sea'.

2.1.1. New position of principles?

Consequently, on the basis of the Soviet–Iranian agreements and regional customary law, the current legal principles governing the Caspian Sea no longer appear sufficient to deal with the new complex of political, economic and environmental problems. Existing treaties have too many omissions or are partly obsolete.[104]This would suggest the need for a new set of provisions regarding the Caspian's legal status. Until now there has only been one agreement accepted by all the littoral States, the Framework Convention for the Protection of the Marine Environment of the Caspian Sea.[105] So far, however, negotiations between the interested States have failed to achieve agreement on a new international legal status for the Caspian Sea, thereby opening the way for unilateral action.

There are a number of important questions here: What should be the legal status of the Caspian Sea from the point of view of international law? How far does the riparian States' sovereignty extend? Which States are entitled, and to what extent, to use the Sea and its natural resources? Finding the right solutions will be very difficult, if not impossible. As mentioned earlier, regulation of the future status of the Caspian falls exclusively within the competence of the riparian States. However, given the great number of often contradictory legal opinions on its status, it seems that, rather than looking for new future regulation, it would be more rational try to assess the compatibility of every option with current international public law doctrine. Because there have been no agreed State practice or clear treaties on the Caspian's status, no one may claim the correct and definite 'recipe' on this issue.

2.1.2. Sea or lake? Territorial division problems.

From the viewpoint of maritime law, the answer to whether the Caspian Sea is a sea or a lake is important with regard to its division.

[104] C. P. R. Romano, 'The Caspian and International Law: Like Oil and Water', in Ascher and Mirovskaya (eds), *The Caspian Sea*, p.145.

[105] It is a regional convention signed by the official representatives of the five littoral Caspian states: Azerbaijan, Iran, Kazakhstan, Russian Federation and Turkmenistan in Tehran (Iran) on 4 November 2003. The Framework Convention, also called Tehran Convention, entered into force on 12 August 2006.

Provided the Caspian Sea is recognised as a semi–enclosed sea, it would be regulated by the United Nations Convention on the Continental Shelf 1958 and the UNCLOS 1982. According to these conventions, each of the littoral States would exercise exclusive jurisdiction over 12 miles of territorial water (continental shelf) and 200 miles of an exclusive economic zone. In addition, all littoral and non–littoral States could exercise freedom of navigation, over flight and other rights the Caspian Sea. Bearing in mind however that the maximum width of the Caspian Sea does not exceed 200 miles, Article 15 of UNCLOS mandates that the territorial sea of States with opposite or adjacent coasts must not extend beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the [two] States is measured. If, considering the channel connections between the Caspian and Black Sea and Caspian and Baltic Sea, the Caspian Sea were recognized as a sea, the three newly independent States, as land-locked States, could claim the right of access to the high seas under Articles 69 and 124–132 of UNCLOS.

However, even if the Caspian were to be recognized as a sea, which is geographically not the case, UNCLOS could not be used to determine coastal States' rights and duties.[106] First, out of all of the Caspian riparian States only Russia has ratified the Convention and Part IX of UNCLOS concerning enclosed or semi-enclosed seas was not regarded as customary international law. Secondly, the proposal to include 'a small body of inland water' connected to the open sea by one or more narrow outlets, which was how the Caspian could be seen, was not even discussed in relation to Part IX of UNCLOS. The Soviet Union, as well as Iran, accepted this international interpretation of enclosed and semi-enclosed sea.

Finally, even if Part IX of UNCLOS could be regarded as customary international law, difficulties would remain in applying it to the Caspian Sea case. In its commentary on Article 26 of the 1956 draft Convention on the Law of the Sea, Part II (the High Seas), the International Law Commission stated that:

> Some large stretches of water, entirely surrounded by dry land, are known as 'lakes', others as 'seas'. The latter constitute internal seas, to which the regime of the high seas is not applicable. Where such stretches of water communicate with the high seas by a strait or arm of the sea, they are considered as 'internal seas' if the coasts, including those of the waterway giving access to the high seas, belong to a single State. If that is not the case, they are considered as high seas. These rules may, however, be modified for historical reasons or by international agreement.[107]

[106] According to Kazakhstan, the Caspian Sea meets the definition of an enclosed or semi-enclosed sea. See 'The Position of Kazakhstan on the Legal Status of the Caspian Sea', 3 October 1997 (UN Doc. A/52/424)
[107] *II Yearbook of the International Law Commission 1956*, p. 277–8.

According to scientists, the Caspian possesses characteristics of both a sea and a lake. As a largest inland salt water reservoir in the world, the Caspian boasts a surface area of approximately 143,000 square miles and is surrounded by several States, which is not common for the lakes. Furthermore, its depth and salinity are comparable to some semi – enclosed seas, and the connection to the ocean exists only via artificial canals.[108] Some dictionaries refer to its connection to the ocean in the past as well as its large size and, therefore, define as a sea.

To define the Caspian as a lake or a sea easier from a legal point of view than a scientific one. international law does not consider a reservoir a sea or lake depending solely on its size. Experts in maritime law emphasise that, according to the UNCLOS the basic principle for definition of a body of water as a sea is its connection to an ocean. A sea is a water reservoir with a direct connection to an ocean. Flowing waters such as rivers and canals, as mentioned above, are subject to internal affairs of the affected States and do not change the legal status of a reservoir into which they flow. According to the definition of the UNCLOS, the Caspian Sea, which is 1,000 miles away from any ocean and has no natural outlet to it, is not a sea. Of course, another common principle is that littoral States can decide through unanimous agreement whether or not an international lake is a sea. However, the Caspian Sea is not a sea according to the UN Conventions, and there is no respective unanimous agreement of the five littoral States. Following the logic of this argument, the Caspian Sea should be considered a lake in terms of maritime law. Since the littoral States have always considered the issue an internal affair, they factually recognized the Caspian Sea as a lake. Nevertheless, they have been unable to reach agreement on division of the water body amongst themselves.

With the exception of Iran, Caspian littoral States agree in principle on a division via a median line method (as shown on the figure 4 below).

[108] Caspian Sea is connected with the Black Sea through a navigable channel, the Don-Volga river system is not a salt-water body, and transit depends exclusively upon the permission of the affected states, which is acknowledged under customary international law.

Figure 4:Median line division method between Caspian littoral States

Source: International Center for Caspian Studies : http://www.american.edu/sis/blacksea-caspian/index.cfm

The exact location of this median line, however, is disputed between Azerbaijan and Turkmenistan. While Azerbaijan favours the method of the so–called modified median line, which considers all peculiarities of the shore, Turkmenistan rejects this approach. The Azerbaijani Absheron peninsula protrude far from the regular shoreline, meaning that the median line would be positioned strongly in favour of Azerbaijan and to be detriment of Turkmenistan, which would lose a rich off–shore oilfield if this method were used.

Consequently, Turkmenistan suggests drawing the median line strictly in the middle from north to south with no regard for the Absheron peninsula.

Meanwhile, Iran has taken its own unique position, Iran suggests the joint use of the Caspian Sea with no sectoral divisions, including joint ownership of oil and gas reserves by all littoral States. Iran's diplomats argue that prior to the independence of the new littoral States, the Caspian Sea was in common use between Russia and Iran. Regulations of treaties between the Soviet Union should be maintained in the future. Iran's other suggestion, based on the same argumentation and recently confirmed by the new Iranian Government, is to divide the seabed and surface of the Caspian Sea as well as its oil and gas wealth in equal parts, each littoral State to hold 20 percent.

Countering Iran's position, the four other littoral States emphasize that historic practice speaks against Iran's approach. The Soviet Union and Iran have never addressed the exploration of oil and gas in the Caspian Sea in any of their treaties. Despite a formally declared joint ownership, the Soviet Union explored off-shore for oil far away from its coast and was tapping it for decades, never suggesting Iran's participation in either oil exploration or in profit sharing. Moreover, before the Soviet – Iranian treaties, Russian empire was the unilaterally declared sole owner of the Caspian Sea. Thus, the Caspian Sea has never been treated common property. Against Iran's suggestion of equal division of the Caspian Sea, the remaining littoral States argue that prior to the breakup of the Soviet Union, Iran's national sector was the same as it would be if divided according to the median line principle. Following this argument to its conclusion, there would be no reason to revise the size of the Iranian sector.

Despite the unsettled official status of the Caspian Sea, several countries have concluded bilateral and multilateral agreements to divide it into national sectors until a final convention between all littoral States is agreed and signed. Bilateral agreements have been signed between Kazakhstan and Azerbaijan, Kazakhstan and Turkmenistan, Kazakhstan and Russia, Russia and Azerbaijan. Furthermore, Azerbaijan given situation with Armenia regarding land territory is especially sensitive about securing its territorial integrity. Azerbaijan defined the sector of the Caspian Sea which it considers as a sovereign part of its territory and recorded this in the State's constitution.

In the absence of an international convention regarding international lakes, apart from those that are part of an international watercourse, international custom appears to be the primary source for establishing the Caspian Sea's legal regime. State practice supports this view that the international boundaries dividing the waters are usually well established. The practice of

delimiting lakes between littoral States shows that lakes are divided so that each coastal State has exclusive sovereignty over the biological and natural resources, water surface and shipping in its national sector. The most popular principles for delimitation of international lakes are: *thalweg*, *coastal line and middle line (median)*. The thalweg[109] is usually applied to border rivers, and relatively seldom to international lakes.[110] The coastal line principle was mostly applied in a period of colonization of tropical countries and later often replaced by middle line.[111] Invariably, in international practice the principle of geographical middle line[112] and approximate (formal) middle line were most frequently applied. However, for the Great Lakes in North America three different kinds of borderlines have been established.[113]

[109] The *thalweg* is the principle in which the boundary between two political states separated by a watercourse is denoted as the thalweg of that watercourse, if those two states have agreed to use the thalweg definition. Various states have also defined their watercourse international boundaries by a median line, left bank, right bank, etc. The precise drawing of river boundaries has been important on countless occasions; notable examples include the Shatt al-Arab (known as Arvand Rud in Iran) between Iraq and Iran, the Danube in central Europe, the Kasikili/Sedudu Island dispute between Namibia and Botswana, settled by the International Court of Justice in 1999, and the 2004 dispute settlement under the UN Law of the Sea concerning the offshore boundary between Guyana and Suriname, in which the thalweg of the Courantyne River played a role in the ruling.

[110] Lake Superior, The US Supreme Court Minnesota v Wisconsin [1920] 252 US 273; Lake Borgne, The US Supreme Court Louisiana v Mississippi, 1906, 26 S. Ct. 408,571 and 202 US 1, 50, 58.

[111] Lake Malawi, 1890 German–British agreement and 1891 Luso-British agreement; 1954 Great Britain–Portugal agreement in Lisbon; Caspian Sea, 1828 Turkmanchay Treaty, 1940 Soviet–Iranian Trade and Navigation Agreement.

[112] Lake Tanganyika; Lake Lugano, 2 June and 15 February 1932 Lapas protocols; 1941 Convention on Italian–Swiss border.

[113] 9 August 1842 Webster-Ashburton treaty and 11 April 1908 Washington agreements, *British and Foreign Papers*, vol. 101, p. 210 and 224, see C.A. Esterhay, 'Restoring the water quality of the Great Lakes: the joint commitment of Canada and United States', *Canada–United States Law Journal,* Cleveland, Ohio, 1981 No. 4, pp. 208–31.

Section 3. Concluding remarks.

The Caspian Sea region is certainly beset with legal, economic, and environmental problems associated with exploration and recovery of its vast natural resources. Questions remain with respect to defining the offshore territorial limits, legal status and ownership of resources beneath the sea floor. Though considerable progress has been made on this topic between Russia, Kazakhstan and Azerbaijan there is still controversy with Iran and to some degree with Turkmenistan that has led to flare–ups in the past and could possibly lead to major confrontation. All above mentioned concerns can only be addressed politically by the five countries. They must decide on the territorial jurisdiction and set strict standards with close monitoring.

Analyzing the above mentioned issues, it forms that the Caspian Sea is not governed by the condominium regime.[114] It also does not appear to be a sea, so the UNCLOS does not apply. Nor does it seem to be an international lake. Thus which legal concept should be applied to successfully define the legal status of the Caspian? It is clear that there are great difficulties in resolving this issue.

Ideally the legal status of the Caspian Sea falls under the authority of the littoral States and can be committed only by their unanimous approval. At present, the Caspian littoral States negotiate on both a bilateral basis as well as collectively. These negotiations are typically secret and only tangible results are made public. Nevertheless, it does not interfere with the process of reaching an agreement on the legal status of the Caspian if treaties are concluded on other matters concerning its legal regime. The first such example is the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, concluded in November 2003 between all five Caspian littoral States.

A number of points emerged from this analysis:

1. The existing treaties on the Caspian Sea, concluded before the dissolution of the Soviet Union, create a legal framework for the Caspian region and remain binding for all Caspian States until they are changed by their common consent. However, they have many omissions or are partly obsolete.

[114] In international law, a **condominium** (plural either *condominia*, as in Latin, or condominiums) is a political territory (state or border area) in or over which two or more sovereign powers formally agree to share equally *dominium* (in the sense of sovereignty) and exercise their rights jointly, without dividing it up into 'national' zones.

2. Even if the Caspian were to be recognized as a sea, UNCLOS would not apply to it, because only Russia has ratified it, and its provisions regarding enclosed or semi-enclosed seas were not regarded as part of customary international law.

3. The historical evidence suggests that the Caspian could be designated an international lake. This would lead to the application of one of the international principles of the division of international lakes. However, with regard to the specific legal position of the Caspian Sea in the previous Soviet doctrine, it does not seem possible to subordinate the Caspian entirely to principles established for international lakes.

4. Throughout the history of negotiations over a new legal status for the Caspian Sea, Russia and Iran supported the position that it was a condominium regime. However, from the point of view of current international legal practice neither the provisions of the treaties determining its current status nor the prior existing State practice between the Soviet Union and Iran seem to justify such a position[115].

5. One possible solution to the dispute over the Caspian's legal status could be a model of a joint development approach, as exemplified, for instance, in the agreement between Japan and South Korea.[116]

Consensus on the legal status of the Caspian Sea would bring stability to the region. It would also enable the littoral States to regulate their rights and responsibilities, not least to ensure the protection of the Caspian Sea's environment. Isolated from world's oceans, the Caspian Sea is a habitat for numerous plants and animal species, whose diversity is very unique. Some of them, such as the sturgeon and the freshwater seal, can be found only in a few other locations on earth. This unique enclosed reservoir needs protection and judicious utilisation. Assigning a Special legal status to the Caspian Sea would guarantee its environmental protection and the peaceful exploration of its rich natural recourses.

[115] The Caspian Sea – Legal Status and Regime problems, *Chatham House*, Russia and Eurasia program, REP BP 05/02, August 2005. *Barbara Janusz, Stiftung Wissenschaft und Politik, Berlin*

[116] The model of a joint development approach, as exemplified in the two agreements between Japan and South Korea which constitute the only officially announced boundary settlement in the northwest Pacific region. In 1974, after six years of negotiation, agreements were concluded between the two countries regarding exploration rights in overlapping zones. The first agreement created a joint development zone in the area of the overlapping claims. It was divided into nine sub-zones, which were to be developed by concessionaires appointed by each country. The concessionaires were required to reach agreements among themselves, later to be approved by the states, and the laws of each country apply to its concessionaires, if the latter are the operators. The parties can terminate this agreement by mutual consent if the development zone is no longer regarded as exploitable. The second agreement delimits a continental shelf boundary along an equidistant line. These joint development agreements do not settle any maritime borders between Japan and South Korea and are a way of finessing the situation. However China has constantly regarded them as a violation of its rights.

CONCLUSIONS.

On the basis of the foregoing, it is apparent that land-locked States played an active and prominent role in the negotiations at the UNCLOS III. From an early stage in the deliberations they formed an alliance which numbered over fifty States, and, with this foundation, they made strenuous efforts to win support for their views on a wide range of issues.

It resulted that some parts of the Convention such as: Part X of this Convention (art. 124-132) specially a number of rules concerning the right of access of Landlocked States to and from the sea and the Part V regime includes several safeguards in relation to access to Landlocked countries to EEZ fisheries. Part XI declares that the international seabed, and resources found within it, constitute the common heritage of humankind. Activities in the Area to be carried out for the benefit of humankind as a whole 'irrespective of the geographical location of States, whether coastal or landlocked.

Along with UNCLOS there are number of international conventions provide certain provisions in favour of the Landlocked States. An example of this is the 1921 Convention and Statute on Freedom of Transit, agreed at a conference convened by the League of Nations in Barcelona in 1921. Article 2 of the convention provided that States are to ensure that there is free and no – discriminatory transit across the territory of contracting States. Another general transit regime is found in the 1947 General Agreement on Tariffs and Trade (GATT), which was subsequently reproduced in the 1994 General Agreement on Tariffs and Trade, the first and most important of the 'covered agreements' of the World Trade Organization. Article V of the GATT provides that 'there shall be freedom of transit through the territory of each Contracting Party, via the routes most convenient for international transit'.

Most of the State Parties of UNCLOS apply IMO rules and standards. The fact that Parties to the UNCLOS should apply IMO rules and standards should be seen as a paramount encouragement for them to become Parties to the IMO Conventions containing those rules and standards. The UNCLOS urges all States to collaborate on a global basis in formulating rules and standards and take measures for the same purpose. This has already become a major factor in the strengthening of international standards which are already adopted and which are in a process of adoption in IMO Conventions.

Providing the fact that after dissolution of the Soviet Union Azerbaijan became the Landlocked State in world map. But at the same time the State has a convenient location on the crossroad of major international traffic arteries, such as the Silk Road and the South-North corridor,

highlights the strategic importance of transportation sector for the country's economy. The transport sector in the country includes roads, railways, aviation, and maritime transport. The last few decades Azerbaijan has also succeeded to construct major pipelines to export its oil and natural gas to the world markets. Exportation of its oil and natural gas the merchant fleet of the Azerbaijan takes imperative function.

Bearing in mind all these facts and carefully analyzing the outcome of this research and Azerbaijan's location as a Land-locked State but at the same time being in the center of the main transport routes e.g. TRACECA and sharing coastline only with enclosed body of water the Caspian Sea, and considering that with such great extent the United Nations Convention on Law of the Sea provides such distinctive and exclusive rights to the Land–locked States to access to the sea, so therefore the Republic of Azerbaijan, as possessor of merchant fleet and currently practicing its' rights in international waters, should consider the ratification of this vital Convention. The Ratification of UNCLOS will provide a strong establishment for Azerbaijan to proceed organizing its maritime affairs.

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ANNEX I

PART V, article 69 of the United Nations Convention on the Law of the Sea.

Article69

Right of land-locked States

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, *inter alia*:

(a) The need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.

4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

ANNEX II

PART X of the United Nations Conventions on the Law of the Sea.

PART X

RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT

Article124

Use of terms

1. For the purposes of this Convention:

(a) "land-locked State" means a State which has no sea-coast;

(b) "transit State" means a State, with or without a sea-coast, situated between a land-locked State and the sea, through whose territory traffic in transit passes;

(c) "traffic in transit" means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or terminates within the territory of the land-locked State;

(d) "means of transport" means:

(i) railway rolling stock, sea, lake and river craft and road vehicles;

(ii) where local conditions so require, porters and pack animals.

2. Land-locked States and transit States may, by agreement between them, include as means of transport pipelines and gas lines and means of transport other than those included in paragraph 1.

Article125

Right of access to and from the sea and freedom of transit

1. Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.

2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.

3. Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

Article126

Exclusion of application of the most-favoured-nation clause

The provisions of this Convention, as well as special agreements relating to the exercise of the right of access to and from the sea, establishing rights and facilities on account of the special geographical position of land-locked States, are excluded from the application of the most-favoured-nation clause.

Article127

Customs duties, taxes and other charges

1. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.

2. Means of transport in transit and other facilities provided for and used by land-locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

Article128

Free zones and other customs facilities

For the convenience of traffic in transit, free zones or other customs facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States.

Article129

Cooperation in the construction and improvement of means of transport

Where there are no means of transport in transit States to give effect to the freedom of transit or where the existing means, including the port installations and equipment, are inadequate in any respect, the transit States and land-locked States concerned may cooperate in constructing or improving them.

Article130

Measures to avoid or eliminate delays

or other difficulties of a technical nature in traffic in transit

1. Transit States shall take all appropriate measures to avoid delays or other difficulties of a technical nature in traffic in transit.

2. Should such delays or difficulties occur, the competent authorities of the transit States and land-locked States concerned shall cooperate towards their expeditious elimination.

Article131

Equal treatment in maritime ports

Ships flying the flag of land-locked States shall enjoy treatment equal to that accorded to other foreign ships in maritime ports.

Article132

Grant of greater transit facilities

This Convention does not entail in any way the withdrawal of transit facilities which are greater than those provided for in this Convention and which are agreed between States Parties to this Convention or granted by a State Party. This Convention also does not preclude such grant of greater facilities in the future.

ANNEX III

PART XI section II of the United Nations Conventions on the Law of the Sea.

SECTION II: PRINCIPLES GOVERNING THE AREA

Article136

Common heritage of mankind

The Area and its resources are the common heritage of mankind.

Article137

Legal status of the Area and its resources

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.

2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority.

3. No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.

Article138

General conduct of States in relation to the Area

The general conduct of States in relation to the Area shall be in accordance with the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international cooperation and mutual understanding.

Article139

Responsibility to ensure compliance and liability for damage

1. States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part. The same responsibility applies to international organizations for activities in the Area carried out by such organizations.

2. Without prejudice to the rules of international law and Annex III, article 22, damage caused by the failure of a State Party or international organization to carry out its responsibilities under this Part shall entail liability; States Parties or international organizations acting together shall bear joint and several liability. A State Party shall not however be liable for damage caused by any failure to comply with this Part by a person whom it has sponsored under article 153, paragraph 2(b), if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153, paragraph 4, and Annex III, article 4, paragraph 4.

3. States Parties that are members of international organizations shall take appropriate measures to ensure the implementation of this article with respect to such organizations.

Article140

Benefit of mankind

1. Activities in the Area shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States and of peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions.

2. The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160, paragraph 2(f)(i).

Article141

Use of the Area exclusively for peaceful purposes

The Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part.

Article142

Rights and legitimate interests of coastal States

1. Activities in the Area, with respect to resource deposits in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such deposits lie.

2. Consultations, including a system of prior notification, shall be maintained with the State concerned, with a view to avoiding infringement of such rights and interests. In cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required.

3. Neither this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.

Article143

Marine scientific research

1. Marine scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole, in accordance with Part XIII.

2. The Authority may carry out marine scientific research concerning the Area and its resources, and may enter into contracts for that purpose. The Authority shall promote and encourage the conduct of marine scientific research in the Area, and shall coordinate and disseminate the results of such research and analysis when available.

3. States Parties may carry out marine scientific research in the Area. States Parties shall promote international cooperation in marine scientific research in the Area by:

(a) participating in international programmes and encouraging cooperation in marine scientific research by personnel of different countries and of the Authority;

(b) ensuring that programmes are developed through the Authority or other international organizations as appropriate for the benefit of developing States and technologically less developed States with a view to:

(i) strengthening their research capabilities;

(ii) training their personnel and the personnel of the Authority in the techniques and applications of research;

(iii) fostering the employment of their qualified personnel in research in the Area;

(c) effectively disseminating the results of research and analysis when available, through the Authority or other international channels when appropriate.

Article144

Transfer of technology

1. The Authority shall take measures in accordance with this Convention:

(a) to acquire technology and scientific knowledge relating to activities in the Area; and

(b) to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties benefit therefrom.

2. To this end the Authority and States Parties shall cooperate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote:

(a) programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, *inter alia*, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;

(b) measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

Article145

Protection of the marine environment

Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. To this end the Authority shall adopt appropriate rules, regulations and procedures for *inter alia*:

(a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to

the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;

(b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

Article146

Protection of human life

With respect to activities in the Area, necessary measures shall be taken to ensure effective protection of human life. To this end the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as embodied in relevant treaties.

Article147

Accommodation of activities in the Area and in the marine environment

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.

2. Installations used for carrying out activities in the Area shall be subject to the following conditions:

(a) such installations shall be erected, emplaced and removed solely in accordance with this Part and subject to the rules, regulations and procedures of the Authority. Due notice must be given of the erection, emplacement and removal of such installations, and permanent means for giving warning of their presence must be maintained;

(b) such installations may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity;

(c) safety zones shall be established around such installations with appropriate markings to ensure the safety of both navigation and the installations. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes;

(d) such installations shall be used exclusively for peaceful purposes;

(e) such installations do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

3. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

Article148

Participation of developing States in activities in the Area

The effective participation of developing States in activities in the Area shall be promoted as specifically provided for in this Part, having due regard to their special interests and needs, and in particular to the special need of the land-locked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it.

Article149

Archaeological and historical objects

All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.