

INTERNATIONAL-LEGAL STATUS OF THE CASPIAN SEA IN ITS HISTORICAL DEVELOPMENT

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ABSTRACT

In retrospective, the geopolitical description of the Caspian Sea is rooted in the depth of thousand years. It was studied and described by scientists and travellers since antiquity. Some of them reckoned that the Caspian Sea had been connected with Black Sea. Other thought it as lake. The discussion on the status of the Caspian Sea started during the period when the confrontation between Russia and Persia, as well as, Russia and Great Britain for possession of the Caspian territories, was under way. A view, which argued that the Caspian was a closed sea, was the most popular in former Soviet legal science. It states that as the Caspian Sea is not linked to neither open sea nor ocean, it should, according to international law, be considered as a closed sea. However, there was also an argument that even without a link to ocean, Caspian Sea was a typical boundary lake situated between two states: the Soviet Union and Iran. On the other hand, the collapse of the Soviet Union and emergence of three new states on the shores of the Caspian brought about fresh discussions on the legal status of the Caspian, as the newly-independent states argued for the delimitation of the Caspian on the national sectors basis. It seems that the exclusive control over Caspian Sea is a practice of past and thus has become obsolete.

KEYWORDS

International Law; Caspian Sea; Azerbaijan; Russia; Iran; International Relations.

1. Introduction

Caspian Sea is one of the phenomenal water basins on our planet. Its biological and mineral resources have served for the economic needs of people and states located on its coast since antiquity. The transport opportunities of the Caspian Sea, its unique tourist and resort centres, and mainly its oil and gas fields, reserves of which, in experts opinion, already exceed reserves of Persian Gulf, turned it into ultimate priority in foreign and internal policies of littoral states, especially of the Republic of Azerbaijan. These aspects explain the increased attention accorded to it by the entire world in the 1990s.

It is known that before the collapse of the Soviet Union at the end of 1991, the Caspian Sea had been under shared authority of the USSR and Iran. However, in reality, only the Soviet Union effectively utilized the entire recourses of the Caspian Sea.

The post-Soviet period has created a new situation around the Caspian Sea, which was caused by the fact that the number of independent littoral states increased from two to five (Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan). Even during the Soviet Era, the Caspian Sea had a lot of political, environmental, hydrologic and other problems. However since 1991, these problems have become critical because new littoral states did not only try to obtain more favourable terms of cooperation, befitting to their own interests, but they also tried to re-define the range of their rights and benefits. During the process, however, the Caspian states sink in mutual grievances and claims. The most dramatic reality is that they could not move towards real cooperation, beneficial for all sides, or solution of the problems of Caspian Basin without the participation of all the coastal states.

The problem of defining of the international legal status of the Caspian Sea is the key problem, as solution of which may affect further cooperation of the Caspian states in terms of skilful and rational utilisation of the region's resources. The number of those who were involved in discussion of the legal status for the Caspian has increased after the breakdown of the USSR and the oil boom in the region. However, many studies, concluded since the end of the Cold War, have rather looked at the top of the iceberg, because the

problems of the Caspian Sea, especially those relevant to its legal status, have rather complicated aspects in terms of theoretical and practical basis. It is possible, however, to find a solution to the problem of the legal status of the Caspian by joining together the scientific and practical knowledge.

2. History of the Caspian Sea as an Issue of Interstate Legal Relations

In retrospective, the geopolitical description of the Caspian Sea is rooted in the depth of thousand years. According to available written sources, the Caspian Sea was studied and described by the scientists and travellers since antique times. Some of them reckoned that the Caspian Sea had been connected with the Black Sea. The legendary heroes of ancient Greek myths (Argonauts) had travelled from the Black to the Caspian Sea through Mannish Strait. According to studies performed by the scientists and geographers such as Hegatey Miletskiy, Herodotus, Aristotle, Erastofen and others, Caspian Sea was described as a closed basin or as a bay of an ocean. Starbon describes it as a basin extended along a parallel of latitude from west to east.¹

In different times Caspian Sea had up to forty different names; they were given to the sea in accordance with either ethnic names of the people living on its coasts (present name of the sea was also given due to tribes of Caspian, who in the old days lived on the western coast of the sea), or based on names of cities, provinces or countries located in its littoral zone. For instance, Caspian Sea was called the *Baku Sea* because of the name of its largest port; the *Girkan Sea* in accordance with a littoral state known as Girkaniya; the *Abeskun Sea* according to a coastal province of Abeskun; the *Hazar Sea* in accordance with people named Hazars who lived in its northwest coast. The Russians called Caspian Sea as the *Hvalinsk Sea* referring to a people who lived in the mouth of Volga River.² In their turn, Iranian called it *Darya-e*

¹K. K. Gull, "From the Historical Geographical Researches of Caspian Sea", *Izvestiya Akademii Nauk Azerbajjanskoy SSR, Series of Geog.-Geology. Sciences* (henceforth *IAN-ASSR-SGGS*), Baku, 1960, No. 2, pp. 90-91.

²P. V. Jiloe, "About the Appellations of Caspian Sea", *IAN-ASSR-SGGS*, 1960, No. 4, pp. 94-95.

Kazar (the Hazar Sea),³ *Darya-e Mazandaran* (the Mazandaran Sea) or *Darya-e Komal* (North Sea),⁴ thereby, taking into account coastal historical zones where ancient Iranian nationalities used to reside, or assuming the geographical location of the sea vis-à-vis the country.⁵

The propagation of Islam and extension of the Arabian Caliphate to the region resulted in the fact that Caspian Sea and its inshore area attracted a special attention from the Arab conquerors and scientists, as well. Therefore, since the 8th-11th centuries, they called the sea alternatively as *Khorezm*, *Djurdzhan*, *Tabaristan* and *Sea of Al Dailem*. Such names as *al-Bab va-l-Abvab* (Derbent), *al-Hazar*, *al-Hazariya* and so on have also been used.⁶

Development and seizure of the Caspian territories started long before Christianity appeared in Russia and Islam did in the south of the Caspian Sea. Judging by available information, it is known that Abbasids who could not force out owners of the Zoroastrian principalities before the 11th century conquered the southern part of Caspian Sea in 760-761. Virtually, the Persian influence in Caspian Sea had not been subjected to any changes up to 1722. The Safavids Dynasty (1501-1722) attached a great importance to the region, including Caspian Sea, and they successfully propagated Schism amid the population of the southern portion of the Caspian region, strengthening their power.⁷ The merchant marine was actively developed in the Caspian during

³Traditionally, *Khazar Denizi* is used in Azerbaijan.

⁴Iranians named Caspian Sea as *Daria-e-komal* (Northern Sea), because it was situated in the north of the country, accordingly Persian Gulf was named Southern Sea.

⁵Mohammad Reza Djalili, "Mer Caspienne: perspectives iraniennes", *Cahiers d'études sur la Méditerranée orientale et le monde turco-iranien*, No. 233, 1997, pp. 127.

⁶Z. M. Bunyatova and N. M. Velixanova (trans.), "Caspian Sea in Arab Sources", *Izvestiya Akademii Nauk Azerbajjanskoy SSR, Series of History, Philosophy and Law* (henceforth *IAN-ASSR-SHPL*), Baku, 1988, No. 3, pp. 113-126.

⁷Djalili, *Mer Caspienne*, p. 138.

this period and later on the Genoese and then British trades people used it.⁸

The Russians were also familiar with the Caspian Basin from ancient times. According to Imam Abul-Hasan Ali-Masudi, famous historian of the East who lived and worked towards the end of the 9th century, the first Russians came to the Caspian region approximately in 880 and soon conquered Abeskun Island.⁹ The most famous Russian campaign around the Caspian Sea took place in 913 under the leadership of Grand Duke Igor when 50,000 of his soldiers on 500 ships advanced to Caspian Sea. The history knows one more Russian campaign to Caspian Sea with support of 72 ships. It occurred in 1175 not long before the Mongol-Tatar invasion of the regions adjacent to the Caspian Sea.¹⁰

After the invasions of the Mongol-Tatar conquerors in the early 18th century, which seized not only the Caspian states but also lower portion of Volga River, the Russian campaigns to the region stopped for a long time. Only three centuries later, in the middle of the 16th century after the merger of some Russian principedoms around the Moscow State, the Russians again attempted to take the Volga and Caspian basins under their control.¹¹

With the arrival of the Romanov dynasty to the power in Russia and gradual centralisation of the regime around the Moscow throne, the interest to Caspian Sea and territories adjacent to it started to grow. Such scientists as Vixen Shiteryan (France)¹² and Roman Yakimchuk (Belgium)¹³ note that the whole western

⁸*History of Azerbaijan* (7 Volume), Vol. III: XIII-XVIII Century, Baku, 1999, pp. 182-220 and 232-236.

⁹A. A. Makovskiy and B. M. Radchenko, *Caspian Red Banner*, Moscow, 1982, p. 4.

¹⁰S. A. Vishnepolskiy, *World Sea Roots and Navy; Essays*, Moscow, 1953, p. 396.

¹¹R. Sardari, "Un chapitre de l'histoire diplomatique de l'Iran" in Maurice Laverque Inprimur, Moscow, 1941, p. 32.

¹²Vicken Cheterian, "Sea or Lake: A Major Issue for Russia", *Cahiers d'études sur la Méditerranée Orientale et le monde turco-iranien*, No. 23, 1997, p. 103.

¹³Romain Yakemtchouk, *Les Hydrocarbures de la Caspienne: La compétition des puisatier*, Bruxelles, 1999, p. 15.

portion of the Caspian region, beginning from the Caucasian mountain ridge on the west to the mountain range of Elbrus in Iran on the east, became a zone of special attention to the Russians. Russia opened the way to this southern sea in 1554 when Ivan IV (Grozniy) first seized Kazan in 1552 and then in 1556 destroyed the Astrakhan Khanate and thus foreordained further territorial expansion to the Caspian basin.

The first Russian warship, named *Orel*, and meant for campaign in the Caspian Sea was built on November 14, 1667 by decree of Tsar Alexey Mikhaylovich.¹⁴ The Cossack detachment of Stepan Razin played the master in Caspian Sea in the 17th century. Using the boats, they plundered such Persian cities as Resht, Farakhabad, Astrabad, etc., situated on the southern coast of the Caspian Sea.¹⁵ In the spring of 1669, Razin's fleet battled near Svinnoy Island in the Caspian Sea (to the south of Baku) against the Persian fleet consisting of 70 ships, and defeated it, which was regarded by historians as one of the biggest Russian victory in the Caspian Sea.¹⁶ The predatory aggressions of Stepan Razin's Cossacks against the Caspian states and especially in 1668 against Mazardan was a signal of total occupation of the sea by Russia.¹⁷

At the beginning of the 18th century, Caspian Sea was reconquered from Persians as a result of Peter I's Persian Campaign (1722-1723). For the period, the political and economic importance of the Caspian Sea was widely recognized: it was considered as an important strategic gateway to the countries of Middle Asia and India.¹⁸ As Gul states, Peter I, having realised the existence of ancient Uzboy's river-bed, "planned to turn Amy-Darya River to its previous direction, and reckoned to obtain a water way down to India".¹⁹ Peter I had justified the idea on necessity of taking control over the whole Caspian Sea and

¹⁴Makovskiy/Radchenko, *Caspian Red Banner*, pp. 5-6.

¹⁵A. G. Vorobyeva, "About Stepan Razin's Arrival in Azerbaijan and Persia", *IAN-ASSR-SIPL*, 1983, No. 3, p. 32.

¹⁶*Ibid.*, pp. 32-33.

¹⁷Djalili, *Mer Caspienne*, pp. 128-129.

¹⁸R. F. Badirbeyli, "Attitude of West European Diplomats towards Peter I's Persian Crusade", *IAN-ASSR-SIPL*, 1979, No. 4, pp. 44.

¹⁹K. K. Gull, *Caspian Sea*, Baku, 1956, pp. 17.

territories adjacent to it, having pointed out that a way to the warm waters should be laid through controlling the entire region.²⁰

In November 1722, Peter I published *Decree on Building a Military Port in Astrakhan*, which laid the legal basis for the war expansion of Russian rule to the Caspian Sea. In 1723, after the Russian troops seized Resht, a Persian port, Persia admitted defeat. Having let Russia occupy Derbent, Baku, as well as Gilyan, Mazenderan and Astrabad provinces in accordance with the St. Petersburg Treaty of September 12, 1723, Persia in fact acknowledged Russia's dominant position with regard to the navy right in the Caspian Sea.²¹

The idea of setting up a navy in the Caspian Sea after Peter I's death was supported by Nadir Shah, an Iranian monarch who was originated from a Turkic tribe called Afshar. According to Dovlyatshahi, he was striving for dominance in the sea. With the assistance of a British engineer, John Elton, a few warships were constructed, including the first battle cruiser. However, unexpected death impeded his dream to come true.²² In any case, Nadir Shah launched first warship on the Caspian in 1742. However, this step could not prevent Iran from losing its control over the sea, and the Russians later destroyed the ship.²³ As a whole, the apogee of the struggle for influence and right of property in the Caspian Sea and Caspian territories also took place during the leadership of the Kadzhar dynasty (1779-1925). However, they, too, were forced to let periodically Russia keep control over the Caspian Sea.²⁴

In spite of the fact that the Resht Treaty on Cooperation between the Russian and Persian Empires was concluded on

²⁰V. P. Lisinov, *Peter I's Persian Crusade in 1722-1723*, Moscow, 1951.

²¹Makovskiy/Radchenko, *Caspian Red Banner*, p. 8; *Diplomatic Dictionary* (III Volumes), Vol. II, Moscow, 1985, p. 483.

²²A. Dowlatchahi, *La mer Caspienne; Sa situation au regard du droit international*, Paris, 1961, p. 112.

²³Djalili, *Mer Caspienne*, pp. 129-130.

²⁴Patrick Clawson, "Knitting Iran Together: The Land Transport Revolution, 1920-1940", *Iranian Studies*, Vol. 26, No. 3-4, Autumn 1993, pp. 241-242; *History of Azerbaijan*, pp. 347-369; A. Abdurrahmanov, *Azerbaijan in Copulation with Russia, Turkey and Iran in Early 18th Century*, Baku, 1964, pp. 20-34.

January 21, 1732 and replaced the Treaty of 1723, the Russian desire to be the only owner of the Caspian Sea did not diminish, which was later realised by further advances of the Russian troops towards the south.²⁵ As a result, Makhachkala was captured in 1784, Derbent was seized in 1796, and Baku was occupied in 1806.²⁶ In 1828, whole northern Azerbaijan (a part of it was conquered by Russia in 1813 as a result of the Gulustan Treaty of 1813) became a part of the Russian Empire. It was legally consolidated by the Turkmenchay Treaty of 1828.²⁷ Turkmenistan was occupied in the late 19th century and Iranian port of Enzeli was conquered in 1920. By the end of the Second World War, northern Iran was controlled by the Soviet Army. However, the Soviet troops were not able keep the northern Iran, including the port of Enzeli for long.²⁸ It was the support of the Great Britain and the USA that finally stopped the Russian advance towards the southern warm waters in the region.

So, in the early 19th century Russia, Great Britain, France and Germany tried to obtain supremacy in the Caspian region by all means. Iran was forced to avoid taking sides. In 1801, an agreement was concluded between Persia and Great Britain, according to which Great Britain promised military support in case of war. In fact, the agreement encouraged the ruling circuits of Iran to start a war against Russia (clause 4). However, when the Iranian Shah in 1805, after a number of serious defeats in the war, insisted on obtaining the support stipulated by the agreement, Great Britain demanded to hold all moorages of the Caspian Sea, permission for constructing a fortress in Bushir and have Khark Island at his disposal in return for its help.²⁹ Later in the century, Great Britain emphatically searched for the ways and opportunities to strengthen the northern regions of Iran, which explains

²⁵S. I. Sichev and V. K. Volkov, *Soviet-Iranian Relations in Treaties, Conventions and Agreements*, Moscow, 1946; *History of Azerbaijan*, pp. 369-370.

²⁶A. A. Kudryavtsev, *Ancient Derbent*, Moscow, 1982, p. 6.

²⁷Sardari, *Un chapitre de l'histoire diplomatique de l'Iran*, pp. 18-20.

²⁸Djalili, *Mer Caspienne*, p. 131.

²⁹N. A. Tumanovich, *European Powers in the Persian Gulf in 16-17th Centuries*, Moscow, 1982, p. 68.

conclusion of further British-Iranian agreements in 1809, 1812 and 1814.³⁰

In short, the international-legal status of the Caspian Sea started its formation in the period when the confrontation between Russia and Persia, as well as, Russia and Great Britain for possession of the Caspian territories, and Caspian Sea, was under way. Due to the fact that by the beginning of the 18th century Russia and Iran have already become firmly established in the region, but Great Britain was just striving to get an access to the area through diplomacy, it should be acknowledged that the St. Petersburg (1723) and Resht (1732) Treaties laid the foundation for the future legal status of the Caspian Sea.

Contractual Practice in the 17th-19th Centuries

The Resht Treaty of 1732 set the rights of the Russian property on some territories yielded by Persia, regulated the freedom of trade and navigation in the Caspian Sea, as well as Araks and Kura rivers.³¹ The Treaty, as opposite to the St. Petersburg Treaty of 1723, stipulated only a few rights for Persia (the right of navigation), and blunted Persians vigilance as it again lost control over a significant part of the southern Caucasus after almost a century of control. Russia also allowed Persia and its merchant marine to use the right to float in the Caspian Sea and moor to its ports. As to the navy, in the peacetime, as in the war, only Russian ships were allowed to float in the Caspian Sea. In other words, in accordance with the Treaty only warships of the Russian Empire could navigate within the defined area of water of the Caspian Sea.³²

Further expansion of the Russian Empire towards the south and defeat of Iran in the war of 1928 led to further loosing of latter's control over the Caspian Sea. Following the Gulustan Treaty of October 12, 1813, the Turkmenchay Treaty of February 22, 1828, by its 8th clause, acknowledged the rights for merchant

³⁰Ibid., p. 85.

³¹*Diplomatic Dictionary, Vol. II*, p. 463.

³²Ibid.

marine by both states to navigate freely, but prohibited Persia to keep the navy in the Caspian Sea.³³ These Treaties defined the first elements of the legal status of the Caspian Sea: pertaining and right for the navigation. They were in force till 1921, i.e. up to concluding of the Russian-Persian Treaty on Friendship.

At present, Iranian authors consider the 18th and 19th centuries as a period of Russian expansion into the Caspian Basin and towards the south of Iran.³⁴ However, the Russian politicians held another opinion. For instance, Barsegov reckons that the above-mentioned agreements became an important "landmark in the history of establishing international-legal status for the Caspian Sea,... confirming the freedom of mercantile navigation and setting an exclusive right of Russia to have navy".³⁵ It is hard to dispute this conclusion, as its clear paradox.

The first scientific information containing comments of provisions of the Russian-Persian treaties dated 1813 and 1828, including those concerning the Caspian Sea, appeared by the end of the 19th century. Fjodor Martens, famous Russian lawyer and diplomat, was one of those who first described the Caspian Sea from the international law point of view. In particular, he wrote:

As opposite to the open seas, the seas which are not only surrounded by the territories of the same state, but also not linked to an ocean, should be considered from another standpoint. These are the enclosed seas: they are under control and authority of a state within which they are situated. On this basis ... Caspian Sea is also enclosed, although, it washes the coasts belonging to Russia and Persia, however, it should be considered as a Russian sea.³⁶

Kamarovski and Ulyanitskiy have backed similar positions: "As opposite to those open seas, the seas which are not directly linked to an ocean, however, judging by their properties they can

³³Ali Geranmayeh, "The Caspian Sea in Iranian History and Politics", *Central Asian Quarterly Labyrinth*, Vol. 2, No. 3, 1995, p. 39.

³⁴Djalili, *Mer Caspienne*, pp. 130-133.

³⁵U. G. Barsegov, *Caspian Sea in International Law and World Policy*, Moscow, 1998, p. 4.

³⁶F. F. Martens, *Modern International Law of Civil Nations*, Vol. I, 5th ed., St. Petersburg, 1904, p. 385.

be named seas but not lakes, are considered enclosed or internal. [Thus, the] Caspian Sea belong[s] to Russia".³⁷

Despite availability of a number of scientific researches and some Russian-Persian legal contractual practice of the 18th and 19th centuries, however, the international status was not clearly legalised as a whole till 1921,³⁸ although some components could already be found. Having become a subject of the interstate legal relation, Caspian Sea at once turned into a victim of the colonial policy and occupation, through which only one country, Russia, established a right of possession over it.

2. The Soviet-Iranian Practice

a) The Russian-Persian Treaty on Friendship and Cooperation, 1921

The 1921 Treaty has been mentioned in articles and speeches many times since the collapse of the Soviet Union, as the primary legal basis for determining the status of the Caspian. It was argued that the 1921 Treaty had defined the foundation for foreign policy of newly established Soviet State and Communist regime that came about as a result of the October revolution in 1917. On the other hand, the Treaty also defined new directions and orientations for Shah and the Islamic regimes in Iran in the 20th century. Tehran, having agreed with unofficial Russian control over the Caspian Sea, has got a phantom right and guarantee of stable peace with Russia and assistance in case of third countries' aggressions against Iran. As the matter of fact, Iran consented to loose territory, possession and sphere of influence in return for a warranty of existence within the borders and shape in which it continued to exist throughout the 20th century. That is why Iran behaved so unequally and unstable with Great Britain,

³⁷L. A. Kamarovskiy and V. A. Ulyanitskiy, *International Law*, Moscow, 1908, p. 79.

³⁸R. F. Mamedov, "International Legal Status of Caspian Sea as a Frontier Lake", *Moscow Journal of International Law*, Vol. 1, No. 1, 1999, pp. 111-112.

and then with Germany and the USA,³⁹ which wished to release Iran from the Soviet pressure and re-subdue it to themselves. Over the years Iran has trusted nobody, but for all that preferred to deal with its northern neighbour on territorial issues. According to an Iranian scientist B. H. Parvizpour,⁴⁰ the Treaty of 1921 aided Iran to become vary between the Soviet Union and the West in solving the problems of foreign policy.

Unfortunately, in the historical, political and legal literature, one can only find a superficial analysis and interpretation of the clauses of the Treaty of 1921. It seems that many scientists even do not realise that through this Treaty the Soviet state and Persia (officially named Iran after the 1930s) ignored the political and economic interests of third countries and agreed on sharing the sphere of influence, including the Caspian basin. In fact, they established a closed, inaccessible for others and colonial in content (Iran has voluntarily accepted the status of discriminated party), status of the Caspian Sea. As a result, various legal institutions and politicians of the world are still today trying to unravel the set of contradictions set by the said Treaty.

That is why today, while new Caspian states (Azerbaijan, Kazakhstan and Turkmenistan), as well as other interested countries, decisively state the archaic character of the Treaty of 1921, the Russian Federation as successor of the Soviet Union and Islamic Republic of Iran as successor of Persia jointly defend the Treaty without revealing the essence of their geopolitical interests at the beginning of the 20th century.

b) Prelude to the Signing of the Treaty of 1921

Interests of the Western European countries in the Caspian Sea significantly rose by the end of the 19th century due to newly

³⁹On October 11, 1955, Iran joined the Baghdad Pact, e.g. pro-western military-political bloc. The confidential protocol to this pact provided for, in particular, the obligations of its members to provide their territory and airports to be used by each other's military forces.

⁴⁰B. H. Parvizpour, "USSR-Iran: Origin and Development of Good-neighborly Relations and Cooperation between 1927-1997", *Historical-Legal Researches' Experience*, Tbilisi, 1977, pp. 20-21.

discovered oil near Baku. According to Yakemtchouk, this politically unstable basin was in the centre of the European attention at the time. In the early-1870s, Russia, which had inexhaustible recourses, still depended on the West. That is why arrival of Nobel brothers, Rothschild and others as representatives of large-scale western capital to the Caspian region, in particular, to the Baku oil fields, was called for and supported by the tsarist Russia. The western businessmen could transport the Baku oil (at that time almost 50% of the world oil production) through various directions to Astrakhan, by constructed railroad from Baku to Tiflis-Poti, through port of Batumi to Switzerland (port of Sen Gotar), Genoa and to other large Mediterranean ports.

The First World War resulted in weakening of the tsarist Russia and strengthening of the role of the Western states on the outskirts of the empire and detenoted national liberation movements.⁴¹ In such a situation on May 28, 1918, the Azerbaijan Democratic Republic (ADR) declared independence. As an independent country, Azerbaijan suited the West more than what it had been; a Russian border area.⁴² In turn, Russia tried to oust leading western powers and their companies from the Caspian oil patches. When, in 1895, the largest of them (Standard Oil, Rothschild and Nobel Brothers Petroleum Production Co.) made an attempt to establish an association in order to obtain full control over the Baku oil fields, it was strongly counteracted by Russia. It was the time that the first oil pipeline on the Baku to Batumi was laid.⁴³ Although in 1907, within the framework of the St. Petersburg Convention on Persia, Afghanistan and Tibet of August 31, 1907,⁴⁴ the tsarist Russia and Great Britain could agree on sharing spheres of influence in a vast Asian region,⁴⁵ interests of the West in the Caspian basin and areas surrounding it were not exactly met. The fact of capturing Baku by the British troops on August 16, 1918, completely confirms this point of view. Immediately after the occupation of Baku, two companies (Royal Dutch Shell and Standard Oil) stated their intention of starting the

⁴¹Yakemtchouk, *Les Hydrocarbures de la Caspienne*, pp. 17-18.

⁴²*Azerbaijan Democratic Republic, 1918-1920*, Baku, 1998, pp. 6-7.

⁴³Yakemtchouk, *Les Hydrocarbures de la Caspienne*, p. 18.

⁴⁴*Collected Treaties of Russia with Other States, 1856-1917*, Moscow, 1952, pp. 386-389.

⁴⁵*Diplomatic Dictionary, Vol II*, p. 482.

development of energy recourses of the Caspian Sea, and even attempts were made to attach judicial feature to it.⁴⁶

A Soviet scientist, R. A. Tuzmuhamedov, has described peculiarities of protecting the western capital in the region by the military forces of the Great Britain. In his opinion, a position of government of the Azerbaijan Democratic Republic, refraining from expansion from the north, had contributed to the patronage. He notes that by October 1918 "the British ships had been unified with the White Guards ships and Central Caspian navy ... [and] Englishmen completely took the navy under their control ... in [the] Caspian Sea".⁴⁷

At that time the government of the Democratic Azerbaijan actively supported this policy, relying on military support from the West. However, the western allies passed Azerbaijan over due to either inability to agree with Russia or military-political problems and interests. In essence, the West yielded Azerbaijan to the Soviet Russia.

This historical fact is referred by Barsegov, however, from a position of protecting the Russian interests. He argues that "when defining its relation to future status of the Caspian Sea, Russia should take into account the factor of political and military security".⁴⁸ In his opinion, presence of Russia in Caucasus and Trans-Caucasus has a great importance to obtain and retain status of Russia as great power:

A front of military and political confrontation of the European great powers that could be observed along Russia's western borders at all times spread [now] over [its] southern wing and covered Black Sea, Caucasus and Trans-Caucasus. Presently ongoing bypass of Russia by NATO from the southern wing -through Turkey and Azerbaijan- is a continuation of a historical geopolitical tendency.⁴⁹

⁴⁶Yakemtchouk, *Les Hydrocarbures de la Caspienne*, p. 19.

⁴⁷R. A. Tuzmuhamedov, *Soviet-Iranian Relations in 1917-1921*, Moscow, 1960, p. 30.

⁴⁸Barsegov, *Caspian Sea in International Law and World Policy*, p. 13.

⁴⁹*Ibid.*

The first conclusion he reaches is that during the both world wars and October 1917 Revolution, the western countries used pan-Turkism in their quest to oust Russia from this region, and from the Caspian basin. However, in his opinion, the danger of severing Turkish-speaking regions from Russia has been neutralised. Then, one more deduction follows: "Present international-legal status of the Caspian Sea, excluding penetration of hostile states, provides security to both Caspian countries, the USSR and Iran from potential objects of aggressive pan-Turkism".⁵⁰ By summarising his considerations of the time, he would formulate the third conclusion: "Development in the Caspian region after the collapse of the USSR is very identical to the events that took place after the first cataclysm connected with the October revolution in 1917 and collapse of the Russian empire".⁵¹

The first effective measures for strengthening the new regime in the region were undertaken after the year 1917. Before signing the Treaty of 1921, a declaration was made on June 26, 1919 by the Soviet Union to the Persian people and government.⁵² It promised that "the Caspian Sea [would] be declared free for navigation of ships under the Persian flags".⁵³ Shortly after that, a similar declaration of Russian SFSRs NKID (Narodnyy Komitet Inostrannykh Del = National Foreign Affairs Commissariat) was announced on August 30, 1919 for the attention of the Persian workers and peasants.⁵⁴

As it is known, in April 1920, the 11th Red Army returned to Azerbaijan under the flag of Russia and started to move to consolidate the unity with Persia. The parties agreed that, under no pretence, there would be any foreigners in the Caspian basin and its surrounding territories.⁵⁵ The corresponding provisions of the Treaty of 1921 (No. 6 and 7) attests this. In return for that, Iran obtained a guarantee that it would not be occupied by Russia.

⁵⁰Ibid.

⁵¹Ibid.

⁵²Tuzmuhamedov, *Soviet-Iranian Relations*, p. 30.

⁵³*Soviet-Iranian Relations in Treaties, Conventions and Agreements*, p. 66.

⁵⁴Ibid., p. 70.

⁵⁵B. K. Parvizpur, *Great October Revolution and Sovereignty of Iran*, Tbilisi, 1984, pp. 13-14.

c) Content of the Treaty of 1921

The Soviet Russia and Persia concluded Treaty on Friendship and Cooperation on February 26, 1921. First clause of the Treaty declared that all agreements and concessions, infringing upon the rights of the Iranian people and concluded between the former tsarist government and Persia should become invalid.⁵⁶ Accordingly, principle of equality was set by the Treaty as a foundation for bilateral relations between the two countries.⁵⁷

The parties also declared their respect to the Russian-Persian border set by Conciliatory Commission of 1881 (clause 3), but without delimiting borders in the Caspian basin. As per clause 8, the agreement of 1921 annulled consular jurisdiction, thus Russia was denied of economic privileges obtained by way of military superiority, including the right on loans granted by the Persia to tsarist government in due course.

Before the October Revolution of 1917, the concession on fishery was under the Russian control.⁵⁸ The Treaty of 1921 also ended this privilege and gave equal rights to Iran on active participation in fishing through additional agreements (clause 14).⁵⁹

The Treaty paid a special attention to the navigation and problems of international security. With regard to navigation, clause 11 states that Persia was given right to have a fleet in Caspian Sea on the same basis as Russia had: "Both Negotiating Parties

⁵⁶E. I. Askerov, *Principles of Peace, Friendship and Cooperation of USSR with Eastern Countries, Turkey, Iran and Afghanistan*, Moscow, 1969, pp. 4 and 11.

⁵⁷S. Vinogradov and P. Wouters, "The Caspian Sea: Current Legal Problems", *Zeitschrift für ausländisches öffentliches. Recht und Völkerrecht, Symposium Paper*, Heidelberg, January 26-28, 1995, pp. 607-608.

⁵⁸R. F. Mamedov, "Legal Regulation of Soviet-Iranian Relations on Fishery in Caspian Sea" in *International-legal forms of Cooperation of Socialist and Developing Countries*, Baku, 1987, pp. 37-38.

⁵⁹Djalili, *Mer Caspienne*, p. 132.

agree on enjoying the equal right of free floating in the Caspian Sea under their own flags".⁶⁰

As to the problems of security provision for the Caspian states (Russia and Persia), corresponding instructions were incorporated into clauses 6 and 7. In particular, the 6th clause states a right of Russia to send troops to Persia in the event of other countries trying to turn the Persian territory into a base for crossing the border and taking the field against Russia. The 7th clause develops an idea of not permitting other countries' entrance to the Caspian Sea. The statement reads: "If a crew of the Persian fleet ships contains citizens of other states who use their presence in the Persian fleet for dissociate purposes against Russia, the Russian Soviet Government has the right to demand from the Government of Persia to remove given detrimental elements".⁶¹

Finally with the article 3, Russia ceded Ashuradeh, an Iranian island, to Persia and, in accordance with clause 10, let Persia have the equipment of the Port of Enzeli.

d) Other Soviet-Iranian Treaties

For the purpose of further evolution of the 14th clause of the agreement of 1921, an *Agreement on Development of the Fishing Resources of the Southern Coast of Caspian Sea* was concluded on October 1, 1927 between the USSR and Iran. In accordance with that agreement, a joint Soviet-Iranian fishing company was established on the basis of concession agreement in order to develop biological resources of the Iranian portion of the Caspian Sea (behind conditional border Astara-Gasankuli) for 25 years.⁶² However, the agreement did not contribute to development of the Caspian international-legal status in the long term,⁶³ and after expiration of the concession period in 1953, Iran did not wish to extend its term, thus the agreement became legally invalid.

⁶⁰*Documents of Foreign Policy of the USSR, Vol. III, Moscow, 1959, p. 538.*

⁶¹*Ibid.*

⁶²Mamedov, *Legal Regulation of Soviet-Iranian Relations*, p. 40.

⁶³*Ibid.*

A mistaken opinion was formed during the Cold War among the foreign international lawyers that the international-legal status of the Caspian Sea had not been established by the negotiating practice of the Soviet period.⁶⁴ From our point of view, however, an imperfect but precise status had been set by the negotiating practice of the Soviet era. For example, the contents of the first official notes, which were exchanged by the governments of the USSR and Persia about port of Pekhlevi (October 1, 1927), underlined that Caspian Sea was the Soviet-Iranian sea,⁶⁵ i.e. the parties considered it as a sea acceptable for both parties. Previously, the negotiating practice of the 19th century had considered it only as the Russian sea.

In accordance with the clause 16 of the *Soviet-Iranian Convention on Settlement, Trading and Navigation*, issued in 1931, only the ships owned by the coastal countries was allowed to float in the Caspian basin. In other words, the sea was closed to other states. The agreement of 1935 under the same title and *Treaty on Trade and Navigation* of 1940, as well as, notes exchanged by the parties while concluding the last agreement, were also based on above-mentioned positions. In particular, in letters on Caspian Sea dated March 25, 1940, which were exchanged by the representatives of the USSR and Iran on the day of signing the Treaty of 1940, it was emphasised that "the Caspian Sea, which was considered by both Negotiating Parties as the Soviet-Iranian Sea, was of great importance for the Negotiating Parties".⁶⁶

The Treaty of 1940 borrowed and developed the principles pronounced in the Treaty of 1921 and all following agreements, having stressed the fact that only ships belonging to two littoral states have the right to float on the Caspian Sea and, that the foreign personnel operating on these ships and at navy ports should restrict their activity within the limits stated in the contracts. An innovation in 1940 Treaty was the creation of a 10-mile sea zone in the Caspian, named fishing zone (clause No.11).

⁶⁴Ph. Pondaven, *Les lacs frontière*, Paris, 1971, pp. 59 and 63.

⁶⁵*Documents of Foreign Policy of the USSR, Vol. V*, Moscow, 1965, p. 429.

⁶⁶*Collected Prevailing Treaties, Agreements and Conventions of the USSR with Foreign States*, 10 ed., Moscow, 1965, pp. 71-72.

It should be noted that the establishment of the 10-mile national fishery zone by the 1940 Treaty introduced a new clause to the Caspian status defined by previous agreements. In essence, the national and international zones in the Caspian Sea have been defined as a result of negotiations. Accordingly the fishing zone clause puts under doubt the position of those who think that the Soviet-Iranian negotiating practice of the 1930-1940s defined the status of Caspian Sea as condominium, e.g. an area of common use.

However, the agreements of 1921-1940 did not define a specific status for the Caspian Sea. On their basis, it was hard to judge by what type of water basin did the parties agree; sea or lake? Virtually the parties have legally determined the closeness of this basin, but not its status. Nothing is mentioned in the agreement on delimitation of its territorial waters and seabed. Moreover, it should be emphasised that, at that time, the negotiating practice of both parties did not set a task of establishing precise status for the Caspian. It seems more likely that the two coastal states preferred to establish a *sui generis* (special status and regime adequate to their military and political doctrines but not easily understood by third parties) status for the Caspian Sea.

3. International Legal Discussion about the Soviet-Iranian Practice with Respect to the Status of the Caspian Sea

The international agreements between the Soviet Union and Iran, despite radical changes in circumstances and appearance of new political, economic and legal conditions, are still being discussed among the Commonwealth of Independent States (CIS), Iran and western countries in order to establish international-legal status of the Caspian Sea. Thus, scientific positions concerning the legal status of the Caspian according to practice of the Soviet Era should be discussed properly. Conflicting positions can be grouped within three groups. The first one reflects opinion of the scientists who think that the Caspian Sea in the Soviet period was considered as a closed, but not looped (or semi looped) sea. Another group argues that the Caspian Sea is a condominium, that is, joint property of coastal states. The last direction indicates a

position of those who consider the Caspian Sea as a boundary (international) lake.

A view, which argued that the Caspian was a closed sea, was the most popular among the former Soviet legal scientists. This standpoint founds its bases on the Russian doctrine phrased during the 19th century. In particular, this approach was stated in *Naval International Law Reference Book*, edited by V. A. Belli and issued in 1940. It was noted in the book that the "Caspian Sea, as a geographically closed and surrounded by two states, the USSR and Iran, is considered as the Soviet-Iranian sea".⁶⁷ Then in a textbook of *International Law* issued in 1957, Caspian Sea was again clearly defined as a close sea. The fact that its waters were not linked to open waters was laid as a basis of the argument.⁶⁸

Same view was also stated in *International Navy Law Reference Book*, edited by P. D. Baraboli and issued in 1966, although, there was also contradictory statements in it. In Ivanashenko's opinion, one of the authors of the reference book, in accordance with their legal status and navigation regime, sea-lakes, which are internal national waters of coastal states within the limits of their state frontiers, can be considered as closed seas. He considers the Caspian Sea as such.⁶⁹ Logunov proposed similar contradictory judgement in the same study. At the beginning, he states that the Caspian Sea is linked to neither open seas nor ocean and therefore, according to international law, it should be considered as a closed sea. However, on the next page, he supports completely new and, as it seems, more correct concept, according to which "even without a link to ocean, the Caspian Sea is a typical boundary lake situated between the two states; the Soviet Union and Iran".⁷⁰ To back this point of view, Logunov notes that "common standards in respect of an open sea (on ships and crews floating in open sea space, on natural recourse of open sea, as well as, on regulations on territorial waters) should not cover the

⁶⁷V. A. Belli, *Navy International-Law Manual, Book 2*, Moscow-Leningrad, 1940, p. 75.

⁶⁸F. I. Kojevnikov (ed.), *International Law*, Moscow, 1957, p. 222.

⁶⁹L. A. Ivanashenko, "International Legal Regime of Closed Seas", *Navy International-Law Manual*, Moscow, 1966, p. 130.

⁷⁰V. D. Logunov "International Legal Regime of Caspian Sea Basin", *Navy International-Law Manual*, Moscow, 1966, p. 371.

Caspian Sea, because they are not applied to the boundary lakes". But, eventually, the author comes to a quite contradictory conclusion that the "Caspian Sea is the Soviet-Iranian sea".⁷¹

Within the same direction, Boytsov, too, acknowledged the fact that the Caspian Sea, though it was a closed sea-lake, should be considered as the Soviet-Iranian Sea in accordance with the concluded agreements.⁷²

The official position of Iran in these issues was almost identical. It was even incorporated into the Iranian national legislation about what Shestopalov states:

Although the law of April 12, 1959 [Law on Amendments to the Territorial Water Law] does not contain any specific clause on the basis of analyses of earlier passed legislation and Iranian treaty practice, a conclusion should be made that this law, cannot cover the Caspian Basin, which is considered as a closed sea. This obvious fact was acknowledged by the Iranian legislative practice early in mid-50s and was reflected in a note to article 2 of Law on Continental Shelf, issued on July 19, 1955. That note says, "regulations of the international law in relation to closed seas can be applied to the Caspian Sea".⁷³

Most of these standpoints were developed during the Soviet era. The fact that a Russian scientist, Y. G. Barsegov, in his monograph issued in the late 20th century, i.e. in the post-Soviet period, supported that mouldy, outworn position, is of great surprise: "The attempts of managing Caspian Sea as a space without any agreed international status are out of any legal ground. It is not possible to realise that a whole sea is out of the control of the international law in the late 20th century. Besides basic logic, availability of the international-legal status of the Caspian Sea can be confirmed on the basis of normative documents [of the Soviet-Iranian agreements concluded in the period of 1921 to 1940]".⁷⁴

⁷¹Ibid., pp. 372 and 375.

⁷²F. S. Boytsov, G. G. Ivanov and A. L., Makovskiy, *Maritime Law*, Moscow, 1985, p. 46

⁷³V. Y. Shestopalov, *Persian Gulf: Problems of Continental Shelf*, Moscow, 1982, p. 73.

⁷⁴Barsegov, *Caspian Sea in International Law and World Policy*, p. 5.

He goes even further to state a more concrete judgement: "Caspian Sea has a closed (from legal point of view) intercontinental sea status set by littoral states and acknowledged by the international community".⁷⁵

Similar views, that recognizes the Caspian Sea as a closed Soviet-Iranian sea, can also be found in a number of studies by other, including foreign, scientists.⁷⁶

As it has been noted earlier, the closed sea conception originates from the Middle Ages. Its originator, John Selden, aimed to prepare the ground for the imperial claims of the Great Britain for vast open spaces of the world's seas. In the 19th and 20th centuries, this concept was put into practice by the Russian imperial policy, and then by its successor the Soviet Union. By advocating the idea of turning the Caspian Sea into a closed sea, Russia and then the USSR emanated from not so much the geographical or scientific and legal factors, but it was rather an official military doctrine of a great power, which did not wish to allow access into its vital zones of interest to outsiders. Particularly, they tried to close the region to the competition from the developed western countries, with which it could not successfully compete in the Caspian Sea even as early as early 20th century. Then why so many famous scientists, including those from Iran, in the period under consideration supported that mistaken position? There can be number of explanations.

First of all, ambiguous position and deductions of the geographical science, which were based on not only present situation of the lake, but also on conception inherited from the depth of centuries, resulted in above said position. Gul has neatly characterised their essence: "Caspian Sea is the greatest lake in the

⁷⁵Ibid., pp. 5-6.

⁷⁶Ngock Min Nguyen, *International Maritime Law*, Moscow, 1981, p. 36; L. A. Modjaryan and N. T. Blatova (eds.), *International Law*, Moscow, 1970, p. 303; D. J. Brown, *Public International Law*, London, 1970, p. 97; F. Riazi, "La réglementation des cours d'eau frontières de l'Iran", *Revue iranienne des relations internationales* (Teheran), No. 13-14, 1979, pp. 145-184.

world. Thanks to the [its] size and water salinity degree it had been named as sea in the ancient periods".⁷⁷

Such an approach to the assessment of the geographical situation of the Caspian Sea is not the only one. Afshin Danekar (Iran) also underlines this mistaken geographical feature.⁷⁸ According to evidence of Nguyen Ngok Meen, it had been used to adduce the opinion on a necessity of considering large lakes as seas. This point of view was reflected in a decision of the US Supreme Court pronounced in 1893 with respect to "US vs. Rodgers" case.⁷⁹

Secondly, a desire of a number of scientists to adhere to the military strategy of their country when assessing military-political importance of the territories, water basins, etc. might have been a reason for the erroneous interpretation of the status of the Caspian Sea. It is clear that during the whole period of Bolshevik leadership, official Moscow based its judgement on any question on requirements of the defence and military interests of the country (which, by the way, have not always been scientifically supported by followers and foreign experts). Thus, we could safely argue that the national security concerns of the Soviet Union have forced the formulation of the closed sea concept. This point is clearly emphasized by Molodtsev; "This does explain a broad recognition, in the Soviet international law doctrine, of the closed sea conception and its application to Black and Baltic Seas, which have strongly marked features of a closed sea".⁸⁰

One of the authors of the Soviet version of the closed sea conception, G. M. Melkov, confirms this view. In his opinion, "before the victory of the Soviet Union over fascism and establishment of a world socialistic system, the closed sea conception had played a favourable role in international-legal

⁷⁷Gull, *Caspian Sea*, p. 12.

⁷⁸Afshin Danekar, "Prevention of Ecological Crisis in Caspian Sea", *Amu-Darya: Iranian Journal on Study of Central Asia*, Vol.1, No. 1, Spring 1999, p. 47.

⁷⁹Nguyen, *International Maritime Law*, p. 35.

⁸⁰S. V. Molodtsov, *International Maritime Law*, Moscow, 1987, pp. 187-188.

security provision for the USSR, including, maritime security".⁸¹ It is clear that these statements have a direct relation to the facts and reasoning of considering the Caspian Sea as a closed sea by a group of scientists, including those from Iran.⁸²

As it is known, in the early-1970s, a new concept named enclosed-sea (or semi-enclosed sea) emerged, which then became a part of the UN Convention on Maritime Law of 1982 (Articles 122 and 123). The major discrepancy between the studied terms consisted in that the UN member states could ignore military-political essence of the term, having attached legal and economic structure to it. The Article 122 of the UN Convention on Maritime Law of 1982 states: "closed or semi-closed sea means gulf, basin or sea surrounded by two or more states and linked with other sea or ocean through a narrow canal, or mainly through territorial states and exclusive economic zones of two or more littoral states".⁸³ Should the declaration of a specific water basin as closed sea stipulates stoppages for all communication, the articles 122 and 123 of the UN Convention on Marine Law issued in 1982, urged conversely the basin's states to economic cooperation and did not stipulate cancellation of any marine facility, emanating from military or political reasons. It is necessary to state the fact that after putting into force the Convention of 1982 in the Soviet Union, the concept of closed sea was intentionally "forgotten" and, the issue of the status of the Caspian Sea was conveniently left unsolved.

As to the second direction, it is worthwhile to mention that for the period of 1921-1991, not many in the Soviet Union considered the Caspian Sea as a joint property (condominium). This idea as applied to the Caspian Sea with Russian insistence,

⁸¹G. S. Gorshkov and G. M. Melkov, *Military Navigation and Strategic Balance: International Law Aspects*, Moscow, 1986, p. 65.

⁸²Kasem Maleki, "Oil Policy in Caucasus", *Amu-Darya: Iranian Journal on Study of Central Asia*, Vol.1, No. 1, Spring 1999, pp.79-81.

⁸³United Nations Organization, *Law of Sea; UN Convention on Law of Sea with Index and Final Act of the 3rd UN Maritime Law Conference*, New York, 1984, p. 59.

became popular for international law science and practice in the early 1990s after the collapse of the Soviet Union.⁸⁴

Although, the Caspian Sea was known as the Soviet-Iranian Sea during the period of 1921-1991, indeed no Soviet-Iranian agreement set an Iranian portion of the sea. In other words, in essence, Iran did not get a share from the Caspian Sea and agreed with that situation "due to well-known reasons. One should consent with the opinion of Gulnar Nugman that "due to geographical and regional allocation of forces, the sea [i. e. Caspian] was actually under the control of the USSR with prevalence of the Soviet navy and oil production platforms. Such status was stipulated in two agreements between the USSR and Iran in 1921 and 1940, which set up relatively stable and satisfactory forces' distribution offshore".⁸⁵

In other words, during that period, Caspian should have been called the Soviet Sea as Iran had even got neither a portion in the Caspian nor navy, merchant or fishing fleet within its boundaries. Even Iranian fishing business was limited to onshore. In other words, Iran did not use Caspian waters, was not so much interested in its resources and opportunities, and not always raised objections against such state of affairs.

On the other hand, the idea of, at least, scientific recognition of the Caspian Sea as boundary or international lake appeared in the Soviet legal science during the 1980s. For instance, according to V. F. Misher, although Caspian Sea has historically been known as a sea, from the geographic point of view, it is nevertheless a usual boundary lake.⁸⁶

⁸⁴P. R. Romano Cezare, "La Caspienne: un flou juridique, source de conflits", *Cahiers d'études sur la Méditerranée orientale et le monde turco-iranien*, No. 23, 1997, pp. 53-58; Kazimpur Ardebily Hosseyn, "Legal Regime of Caspian Sea; Development of Sources and Energetic Roots", *Amu-Darya: Iranian Journal on Study of Central Asia*, Vol.1, No. 1, Spring 1999, p. 17.

⁸⁵Gulnar Nugman, "The Legal Status of Caspian Sea", *Eurasian Studies*, No. 13, Spring 1998, p. 80.

⁸⁶V. F. Meshera, *Soviet Maritime Law*, Moscow, 1980, p. 66.

For the sake of being objective, it should be noted that during the period when a concept of closed sea prevailed in relation to the Caspian Sea, arguments for reconsideration of its international-legal status and recognising it as a boundary lake were brave steps. Typically such proposals have been actively promoted by a group of young scientists: K. A. Bekyashev, V. S. Vereshetin, A. A. Volkov, G. A. Glazunov, A. K. Zhudro, S. A. Malinin, R. F. Mamedov, A. M. Murtazaliyev and H. A. Halafov.⁸⁷

Opposite to the Soviet approach, an opinion in favour of considering the Caspian Sea as a boundary lake appeared and prevailed in foreign legal literature earlier, which is also connected, with a certain political developments of the western conception for the boundary lakes.

As early as the late 1960s, a famous British lawyer W. Butler, wrote that despite the fact that the Caspian Sea as a water basin was under the legal jurisdiction of the Soviet Union, it was indeed the largest lake that was historically named sea.⁸⁸ A French scientist Francis de Herting, notes the same view: "Caspian Sea, like Aral Sea, in fact, big lakes which are under the national jurisdictions. Due to the fact that the Caspian coasts belong to two states, the Soviet Union and Iran, its water is to be considered as boundary".⁸⁹

⁸⁷V. S. Vereshetin, *Free Navigation in the Open Sea*, Moscow, 1958, pp. 7-8; A. A. Volkov and K. A. Bekyashev, *Maritime and Fishery Law*, Moscow, 1980p. 224; G. A. Glazunov, *International Maritime Law Manual*, Moscow, 1985, pp. 172 and 180; S. A. Malinin, "About the Legal Classification of Water Basins" in *Maritime Law and Practice: Collected Materials, TsNIIMF L.*, No. 8 (46), 1960, pp. 13-19; R. F. Mamedov, "Some International-law Aspects of Caspian Sea Regime", *Urgent Problems of Modern International Law*, Baku, 1984 pp. 58-65; R. F. Mamedov, *International Legal Regime of Caspian Sea*, Thesis of Law Doctorate, Moscow, 1989; A. M. Murtazaliyev, *Legal Protection of Fish Reserves in the Northern Part of Caspian Sea*, Thesis of Law Doctorate, Moscow, 1984, pp. 11-12; Khalaf Khalafov, "Le statut juridique de la mer Caspienne, ses fondements en droit international et ses conséquences pratiques", *La région de la mer Caspienne. Colloque du 26 février 1997*, Paris, Académie Diplomatique Internationale, 1997, pp. 14-23.

⁸⁸W. E. Butler, *The Law of Soviet Territorial Waters; A Case Study of Maritime Legislation and Practice*, New York, 1968, pp. 75-76.

⁸⁹F. D. Harting, *Les conceptions soviétiques de droit de la mer*, Paris, 1960, p. 29.

In the opinion of A. Dovlatshahi, an Iranian scientist, duality of criteria in defining status of the Caspian Sea goes back to prehistoric period when it had a natural link with Black Sea and Artic Ocean. "However, its present status allows us to consider it as not a sea but a lake that does not have any link through a channel with an ocean or sea", the author states.⁹⁰ Pondaven, too, in his book *Boundary Lakes* pays a special attention to the Caspian Sea. In his opinion, the Caspian Sea, in spite of its size, recourses and ancient history, nevertheless, from international law point of view, can be considered as one of the least regulated lakes.⁹¹

4. Conclusions

Within the framework of the Russian-Iranian Treaty of 1921, a serious attempt was undertaken in terms of establishing the international-legal status of the Caspian Sea.

The main purpose of the Treaty of 1921, as it was fairly defined by V. H. Ghizzatov, was to counteract the British attempts to control shipping in the Caspian.⁹² It is clear that, in the early 20th century, this Treaty set an alliance of two neighbouring states, which was aimed at suppressing endeavours of the western countries and their trans-national corporations to exploit oil riches of the Caspian basin, particularly, of Baku city.

The Treaty however, bypassed the main issue; determination of the Caspians status, and, in particular, problem of delimiting sovereignties in it.⁹³ In other words, the Treaty did not define legal boundaries of the littoral Caspian states.

As to the security provision in the Caspian Sea, one can see lack of correspondence between the negotiating practice and real life in a clause that limit presence of third countries' citizens on ships in the Caspian. According to the logic of the 7th clause of the

⁹⁰Dovlatshahi, pp. 37 and 146.

⁹¹Pondaven, *Les lacs frontière*, pp. 12, 59 and 63.

⁹²V. Kh. Gizatov, "Caspian Sea and International Security", *Materials of International Conferences*, 2.ed., Moscow, 1996, p. 52.

⁹³Cezare, *La Caspienne*, pp. 42-43.

agreement, presence of foreigners from third countries is not forbidden in case they are not engaged in hostile activity. However, as the matter of fact, the citizens from the third countries could not arrive to the Caspian basin before the *perestroika*.

In the judicial, political literature and journals, it is frequently noted that the Caspian states must adhere to the Treaty of 1921 and following agreements concluded on its basis until the determination of a new international-legal status. However, that position reflects more the interests of the Russian and Iranian parties,⁹⁴ but does not meet the requirements of other Caspian states and countries participating to the implementation of new Caspian projects.

The Treaty of 1921 did not define exactly the international-legal status of the Caspian Sea. That is why it is difficult to judge by the content of the Treaty clauses the real status of the Caspian: no borders are provided, there is no regulation on main navigation rivers and canals, shipping principle were not defined, fishery and other aspects are described in a very poor manner. Although, there are few statements amid the clauses of the agreement, which directly concern the Caspian Sea and actually attempt to lay the foundation of its international-legal status and regime for the Soviet period, it is hard to say, judging by the content of the agreement, how its authors had categorised the Caspian Sea; whether they considered it as sea, lake or something else? Following agreements, in particular, of 1931, 1935 and 1940, also could not answer this question and fill the legal gap.

In 1991, after the collapse of the Soviet Union, a new geopolitical situation appeared: instead of two Caspian states (the USSR and Iran), there are now five (the Russian Federation, Iran, Azerbaijan, Kazakhstan and Turkmenistan). At the same time, a question on relation of these states to the Caspian Sea and its status, i.e. to the Soviet-Iranian agreement practice, became urgent. All new Caspian states have unanimously stated the necessity of

⁹⁴U. Merzlyakov, "On the Way of Division of Caspian: About the Russian-Kazakhstan Agreement on Division of the Sea-bed of Northern Part of Caspian", *Caspian Oil and Gas*, 1998, p. 11; Momtaz Djamchid, "Quel régime pour la mer Caspienne?", *Collection espaces et ressources maritimes*, Droit et sciences numineux, No. 10, Paris, 1996, pp. 83-93.

reconsideration of the agreement practice, as it did not correspond to the realities of the day and to national interests.

Russia and Iran come out in favour of keeping legal force of the Treaties of 1921 and 1940. Why does Russia support obviously obsolete agreements, which do not contribute to development of integration? An answer to this question can be found in a statement made by Viken Shiteryan who precisely caught the situation: "In Moscow, the politicians still have a feeling that the position of the great power and centuries-old domination over Caspian Sea gives special rights [to] them, however, this feeling is not shared by others".⁹⁵

At the same time, the Iranian position to the Soviet-Iranian practice, has not always been simple. Sometimes the leaders of this country, including present regime, favoured the denunciation of the base agreement of 1921. In 1959, the signature of a Soviet-Iranian Agreement on Friendship and Non-aggression was planned, instead of that however, on March 5, 1959 in Ankara, Iran signed bilateral military treaty with the USA for 20 years.⁹⁶

Moreover, even after the establishment of the Islamic Republic of Iran in February 1979, it raised a question on denunciation of the agreement of 1921 (especially, the 5th and 6th clauses of the agreement).⁹⁷ In its note, No. 453/1/7640/18, dated November 11, 1979, the Ministry of Foreign Affairs of Islamic Republic of Iran stated that the Council of Islamic Revolution took decision on declaring the 5th and 6th clauses of the Treaty of 1921 useless and invalid. In the second and third parts of the Iranian memorandum, it was pointed out that the Iranian government made this announcement in connection with changes in conditions stipulated by the 5th and 6th clauses of the Treaty of 1921 and according to *rebus sic stantibus*, i.e. radical change in circumstances, and based on main principles of the UNO regulations. In the same spirit, *Djomhuriye Eslami* newspaper on May 31, 1983, fully representing the official policy of its country,

⁹⁵Cheterian, *Sea or Lake*, p. 104.

⁹⁶A. A. Kutsenkov and A. I. Chicherov, *Foreign Policy of Far and Middle East Countries*, Moscow, 1984, pp. 67-68.

⁹⁷Note MID IRI, No. 453/1/7640/18 in 11 November 1979.

categorised the Soviet Union's right, arising from the 5th and 6th clauses of the agreement of 1921, as a means of putting into effect its aggressive plans.⁹⁸

Then why presently Iran changed its position and again heads for the agreement of 1921 in its regional policy, and therefore, impedes development of new status for the Caspian Sea? Unfortunately, Iranian apprehension is connected with Azerbaijan's independence and its independent foreign policy. An Iranian scientist, Kasem Maleki, in a veiled form, wrote about and supported the Russian position towards Azerbaijan. However, it is obvious that growing influence of Azerbaijan in the region upsets not only Russia but also Iran that due to archaistic strategies forcedly support the agreement of 1921. In particular, Kasem Maleki writes: "Azerbaijan represents a big real and potential danger to the Russian national security interests in Caucasus. In spite of the fact that present rulers of Azerbaijan tactically show their loyalty to Russia, their military and political strategy is focused to the West". And finally, Iran sees the major danger in the fact that "Baku opened gates for penetration of western countries. The interests of the United States of America, Great Britain, Turkey and some other states will eventually prevail in Azerbaijan".⁹⁹

The political reasons in Russian and Iranian attempts to keep the treaties, which evidently hinder rapprochement of the political interests and economic integration of all Caspian countries, become clearer by the passage of the time. Today they are under difficult conditions and they are forced to build relations not on attempts of finding focal points of views and developing common approaches to solve disputable issues, but on mutual claims, blames and designs.

However, one can observe a progress in establishment of a new international-legal status of the Caspian Sea despite of obvious disagreements.¹⁰⁰ It became especially visible after the conclusion

⁹⁸G. Chinashvili, "False Lighting of Soviet-Iranian Relations" in *Djomhuriyye Islami: Islamic Iranian Republic in 5 Years: Special Bulletin*, Moscow, 1985, p. 201.

⁹⁹Maleki, *Oil Policy in Caucasus*, p. 81.

¹⁰⁰N. U. Ivanov, "The Legal Status of Caspian is Identified", *Segodnya*, February 12, 1998.

of the Russian-Kazakh agreement in 1998 on the delimitation of the northern Caspian seabed.¹⁰¹ Bilateral meetings of the Caspian states also indicate that they have actually refused to use the Soviet-Iranian agreement practice. An exclusive control over Caspian Sea is a practice of past and thus has become obsolete. Today, it is necessary to stop using both discriminating and confrontational approaches in resolution of the Caspian problems and determination of its international-legal status and look for ways for equitable and mutually profitable cooperation between the states of the Caspian basin.

¹⁰¹L. Gankin, "Yeltsin and Nazarbayev Divided Caspian", *Kommersant*, April 10, 1998; S. Guliy, "Caspian is Divided in Couples", *Noviy Izvestiya*, July 8, 1998.