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

BY

ELCHIN GANJALIYEV*

UNITED NATIONS – THE NIPPON FOUNDATION FELLOW 2011-2012

UNIVERSITY OF SOUTHAMPTON

*Senior Consultant – Law, Personnel, International Relations and Conventions Department of the State Maritime Administration of the Republic of Azerbaijan.

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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

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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.

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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

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

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.

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 easie

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

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[19] of States having no sea-coast[19]

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

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 confir

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

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

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/TIR/2N, 2 (United Nations 1991).

States.

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

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

a.

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

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

in these bodies. Many of these organizations have direct

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

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

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 l1.78t501 Tc 0.1401 Tw 11e

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 agreemen

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

Azerbaijan’s and Central Asian countries’ access to the sea will still depend for long time not only establishing good relationships with trans

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 •ÚŽÂ ðð !À" ÓV"F\Þ À

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 internati

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 0,67 0,uia the C288 6n April - P

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.

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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

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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

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,

1.1.

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%

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 Caspia w9803 Tm7.980489 47

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.

However, the coastal States ha ve never resolved the boundary lin es in the Caspian Sea. An

Exchange of Notes clear expression 1940 treaty to

the condominiu m, that the Caspian Sea is ‘regarded by both

and Iranian Sea’.

2.1.1.New position of principles

Current legal principles of the Caspian Sea no longer appear sufficient to deal with the new complex of political, economic and environm ental 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

of the framework

[105]between the littoral States on a new international legal status fo

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, 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 permission

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

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 internationa

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

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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

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.

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

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

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

(c) effectively disseminating the results of research and ng th

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 acce

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.