



## THE LEGAL REGIME OF CASPIAN SEA

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**ABSTRACT**

My goal in doing this research was to reach at a certain definition of the legal regime of Caspian Sea. We know that there are different methods to divide the border seas and lakes. In this article, the scholar has tried to explain all the ways through which Caspian Sea can be divided. At the same time, the advantages and disadvantages of each way have been analyzed. Different viewpoints of the littoral countries of this sea are also stated. All the investigations done show the fact that Caspian Sea is a closed and big lake and it takes its own specific solution to divide its bed and under bed. In short, the legal regime of this sea is unique in the world. It should be done based on the agreements between Iran and the former soviet union. Considering the rights of the newly formed countries from the former soviet union, a new legal regime has to be written for this sea. The best solution to that is to divide this sea equally among the littoral countries for the resources of under bed and to form a shared ownership for the surface waters of the sea.

**KEYWORDS :****INTRODUCTION**

The legal regime of Caspian Sea is one of the important discussions among the countries of the region after collapse of Soviet Union. The legal regime is not agreed upon unanimously by mentioned countries. The legal regime has been one of the main challenges of this sea regarding exploitation of the oil rich regions of the sea and the ownership of sea. We intend to explain about the Caspian Sea to see whether it is a sea or a lake. The legal argument about that is brought in this article. The agreements on this sea made between Iran and former Soviet Union will also be discussed. There are basically several ways for dividing the Caspian Sea that is tried to be retold in this article. The policies of littoral countries of Caspian Sea will be studied from the beginning till now. The best possible solution for dividing the bed and under bed of the Caspian Sea is tried to be offered.

**Is Caspian Sea a sea or a lake?**

One of the main discussions which has to be considered regarding determining the legal status of Caspian Sea is the fact that whether the Caspian Sea is basically to be seen as a sea or a lake from the international viewpoint of the seas? Clarification of this issue will help the countries surrounding it in a considerable way at the time they try to signify the legal status of this sea. The reason for that is that using the title of lake or sea will have specific significance from the political and legal viewpoint. It is so much so that if it is proven that this body of water is a sea, we can use legal concepts like domain sea, supervision region, monopoly region and the plateau for this body of water too as they are used for the open seas. We need to apply the convention of seas law to this discussion in order to signify the reality of this sea. But if the reservoir of water is considered to be a lake, the legal regime of the closed seas and lakes would be used for it. Therefore, it is very important to clarify this issue.

What is certain is that it is mentioned in the dictionaries and a lexicon about definitions of sea is that sea is a geographical unit which has connection to the world oceans and it is a part of the oceans. Lake is a geographical unit which is made from accumulation of water in certain regions of earth and is not connected to sea. Therefore, one of the criteria which have to be considered for knowing the distinction between the lake and sea is their position in the earth. We have to know that we

cannot use the dimension of area a body of water covers as the only measure for recognizing the difference between a sea and a lake. With the above explanation, a sea like Azov having 38000 sq km of area and 14 meters of depth is a sea but Caspian sea having ten times more the area and 105 meters of depth is a lake with its own special circumstances. Despite that, keeping the measure in the head that Caspian Sea is a lake, they call it a sea conditionally in many scientific works. Because it has the characteristics of sea such as salty water, its area is not less than that of Black, Baltic, Red and North seas and it is even more than Azov and other similar seas. Part of its flora and fauna has the characteristics of that flora and fauna found in the seas. Shelyamin.b(1974)

Despite that, Caspian is the biggest lake in the world and deserves to be called sea rightfully. Because it cannot be compared with the concept of lake at all from the dimension of area it covers. It includes by itself almost about 40% of the area of all the world lakes and it is five times wider than Superiver which is second largest world lake. It is even larger than the total area of Persian Gulf and Oman Sea. But this body of water has a special position from the legal aspect which is the base of our work in this research. Prof. Paul Taverine who is an expert on the seas' laws and is a professor of Paris University states about the Caspian Sea that: "The legal regime of Caspian is about the subject that whether this body of water is a sea or a lake." He goes on to say that: "I have visited the Iranian shores of this sea. It had high waves, its water was salty but I did not feel that I was standing at the seaside. Therefore, it could clearly be said that it is a big lake. The geographical and legal definition of sea should be equivalent to each other and both definitions about the Caspian Sea would state that it is a lake. Maleki.a(1998)

Therefore, Caspian Sea is a closed basin as it does not have natural path to world oceans. The measures which are used for the international law of seas such as regulations about the domain sea, the supervision region, the economic monopolies region and plateau cannot be used for it. The legal regime of Caspian is related only to it (It has no similarity with other similar lakes or closed sea and it is for the specific status of Caspian Sea.). The legal regime of Caspian Sea was established through some agreements between governments of Soviet Union and Iran before the collapse of Soviet Union.

Maleki.a(1998)

In this part, definition of the legal regime will be done and it will be extended to the lakes and seas

### The legal regime of lakes and closed seas

The legal regime includes the collection of rules and regulations applied to the method of exploiting all the sea potentials by the countries surrounding the sea. It includes different grounds for exploitation of waterway, the animate life in the sea, the mines and the natural reservoirs of the plateaus and the domain right of each country over its littoral waters.

Considering that Caspian Sea is a closed sea and a lake, investigation of the legal regime of the closed seas- using international laws- seems necessary from this viewpoint.

In the yearly report of the international law of 1956 regarding the seas, three different types of the closed seas were recognized; each one of them was distinct from the other:

1. The sea which is surrounded by the soil of a limited number of countries and is connected to other open seas through one or more narrow straits. The legal regime about them will be signified by the international conventions such as the Black and Baltic seas.
2. The sea which is surrounded by the soil of one or more countries but its legal regime is not signified by the international conventions such as the Japanese Sea and the Akhtask Sea.
3. The sea which is surrounded by one or more countries and has no connection way whatsoever to other seas such as Caspian Sea. Nameless(2004)

Seas and lakes inside a country are part of that country and no country or state has the right to have any claim over exploiting it. But regarding lakes and seas that are located among some countries, the scholars of the international law have different views. Most of them are of the belief that such lakes are part of the lands which make up the territory of the neighboring countries. Among such people is Oppenheim. He believes that existence of different agreements for dividing such lakes is a clear reason for that idea. Ganji.m(2002)

Some of the scholars are of the belief that in case there is no argument for this issue, such lakes would not be part of the territory of the neighboring countries and such countries have the right to rule over only the littoral waters which are already signified. Beyond such waters, the lake would be ruled according to the international law applied to open waters. Some others believe that such lakes cannot be completely and permanently closed to other countries at the time of peace. The rights conventions of United Nations for the seas which are made in Jamaica in the year 1982 and came to force from the year 1994 and is the most reliable document at the time being has nothing to say in this regard except for certain cases. Based on the article 122 of the rights conventions for the seas, the closed and semi closed seas are equal to bays, water basins or seas which are surrounded by two or several states and would be connected to the ocean through a narrow water way or another sea. This convention would encourage the neighboring states with the closed and semi closed seas to cooperate in fulfilling their rightful rule over the sea and executing their duties under the above mentioned convention and believes that such countries have to be active directly or through regional organization in fulfilling the following cases. These cases are stated as such in the article 123 of the 1982 convention:

1. Coordination of management, protection of extraction and production of the animate life of the seas.
2. Coordination in executing the rights and duties by considering the reservation of supporting and protecting of the sea environment.

3. In case of necessity, invitation of other interested countries or the international organizations for cooperating in the cause of promoting such cases. Ganji.m(2002)

Of course, the convention of the seas law won't impose the obligatory mechanism to signify the legal regime over the littoral states. We should take into account that the Caspian Sea has its own conditions. This fact is the result of its specific geography which is being completely surrounded by countries and being disconnected from open seas and its political specificity which is being in the middle of two states of Iran and the former Soviet Union. To that, historical considerations have to be added to understand the unique situation of this sea. It does not have any of the cases which were mentioned for closed and semi closed seas and were defined according to international law of seas. Based on the criteria which were clearly mentioned in the 1982 convention, more than 20 sea regions can be named as the closed or semi closed seas. Of such seas, we can mention the Baltic Sea, Bering Sea, Black sea, Oman bay and Persian Gulf. Emami.m(1992)

After the general definitions about the closed and semi closed seas, we should notice that the above mentioned sea has its specific unique and legal situation. The legal regime of this sea was signified by the agreements and memorandums between its two littoral countries i.e. Iran and former Soviet Union. This holds true about the legal regime of the seas and lakes which are located between two or more countries. This sea, only through the created channel (artificial) has been connected to the Baltic and Black seas. And from the viewpoint of international law, it is considered to be part of the closed waters and the rules and regulations applied for the general international law regarding the open seas do not include the above mentioned sea. In the historical agreements and memorandums between the two states of Iran and the former Soviet Union, there was no mention of the international terms of rights for seas such as territorial sea, the supervisions region, the monopolized economic region, the plateau and the open sea about the Caspian Sea. Emami.m(1992)

Considering that, it became clear that Caspian Sea is a closed sea according to the international law and is not included within the article of the international law regarding the open seas. We can study the lakes similar to Caspian sea which are located among several territories and will investigate the method of agreement among the littoral countries of such lakes.

### The legal situation of the lakes similar to Caspian Sea

**1. The Constantine bou den se lake( map no.1):**The most important and known principle about the border lakes located among two or more countries, has been the agreement of the littoral states about the legal regime based on the principle of unanimous vote. Such a principle is not only clarified in the international law of seas but also it has similar cases to that, given in the historical context, which would have helped such principle to become international even more. From such lakes, the Constatine bou den Se Lake can be mentioned. It is located among three countries of Germany, Austria and Switzerland geographically and is the clear example of the execution of the principle of the unanimous vote. This case is the only one in which the neighboring waters of the respective states are divided but the rest of it is shared. There is the shared domain over the sea regarding Austria and to some extent Germany and only the waters of up to 25 meters of depth are claimed by Austria as the territory of that country. Aghaee.b(1987)

In general, the legal regime of this lake is formed based on five regional conventions among its littoral countries. One of the characteristics of the legal system of the above mentioned

lake is that there is no signified border among the countries based on any given agreement. About the conventions related to this lake, it has to be said that the 1960 convention among these countries about the pollution of the environment has specified some rights and duties for any of the mentioned states. Emami.m(1992)

The legal system of this lake has found reality not based on division but in the form of shared ownership of three countries. Considering that all the important issues of the sea have been solved by the multilateral agreements, any issue resulted from it which is not predicted in the above mentioned agreements has been solved by far through the spirit of interaction and cooperation. Except the above mentioned sea, the suggestion for the shared ownership does not have precedence in the world. Aghae.b(1987)



## 2. The five seas:

They include Superior, Michigan, Huron, Erie, and Ontario lakes. These lakes are located between the two countries of United States and Canada. The legal regime of these lakes which determines the affairs related to the shipping, consulate regulations, fishing, military affairs and etc. is signified based upon the agreements between the two countries and in this regard, about 200 mutual agreements have been signed between the two countries. The above mentioned countries have used secular international law and also the general rules of the contract laws in the necessary grounds in compliance to the legal system of the above mentioned seas. The two countries have accepted that the northern border of America is the mid-line of this lake. That is why the two sides of the above-mentioned line is part of the national waters of each of the two countries. Therefore, there is no territorial water for this lake. The lakes are not open to other countries. Only the two countries at its shores are qualified to use this lake.

Hence, the legal status of the five lakes, contrary to the previously discussed lake (Constantine bu dan se), has been shaped not based on the shared ownership but on determining the area of each country. Maleki.a(1998)

What is understood from investigating the legal regime of lakes similar to Caspian Sea was that though it might be possible that form and type of complying legal regime for big lakes and closed seas can be different but the mentioned regime would be signified by the littoral countries which can have different forms in accordance to the interests of such countries.

But there are two major important principles in complying the legal regime of such seas which include: the principle of unanimous agreement and the specific characteristics of the closed seas. These two principles have been accepted by the countries of Caspian Sea. It means that all the countries at the shore of Caspian sea have admitted this reality by far that legal regime of Caspian sea has to be complied by all the littoral countries. Though, they have difference of opinions in the form and type of the legal regime. This is one reason why

complying the legal regime of Caspian Sea is delayed. Maleki.a(1998)

The agreements between Iran and former Soviet Union about Caspian Sea

In this section, we would investigate the agreements between Iran and tsarist Russia and later former Soviet Union, so that we can clarify the content of the agreements about the Caspian Sea, and can find a correct approach to complying the legal regime of Caspian Sea.

### 1. The Golestan agreement

In the 19<sup>th</sup> century AD, we witnessed two major wars between tsarist Russia and Iran which both lead to the defeat of Iran. The first war was in the year 1804 AD. Iran, under pressure from England, made a peace agreement with Russia. According to this agreement, the government of Iran became deprived of the military marine force in the Caspian Sea. In the fifth chapter of this agreement, it is stated that ships of the government of Russia which move in the sea for transactions can go near the ports and shores of Iran like older days and regarding the military war ships of Russia, they can move in the Caspian sea as before and no other government but Russian has the right to own ships in the Caspian sea. Madani.j(2001)

Till before this agreement was made, no other legal document, which had notions regarding how this sea was to be used, was made. Following this agreement, some restrictions were made for Iran. Such restrictions were further confirmed after a new war began and the imposition of the Turkmanchay on Iran occurred.

### 2. Torkmanchay agreement

After about 12 years of the relative peace between Iran and Russia following the Golestan agreement, Russia violated Iranian borders and blackmailed the residents of those areas that brought Iran to the point of declaring war to Russia. But the fact that Iranian military equipments could not be compared to Russian military and the British diplomatic activities were in favor of Russia lead to defeat of Iran. Nafisi.s(1998)

Following that, the agreement of Torkamanchay was made in the year 1828 AD between the two countries. This agreement confirmed the restrictions imposed on Iran regarding the military usage of sea in Golestan agreement and emphasized that except for Russia, no other government can have warships in the Caspian Sea. Nafisi.s(1998)

This unfavorable situation for Iran regarding military usage of the Caspian Sea till the end of First World War remained in place till the Bolshevik revolution of Russia.

### 3. The 1921 agreement

Following the occurrence of the Bolshevik revolution in the year 1921, the Bolsheviks started to hold peace agreements with their neighboring countries in order to protect the revolution and provide for the security of Russia and territories around it and to stop the support of neighboring countries for the anti revolutionary forces. They went as far as giving some concessions to the neighboring countries. In the year 1921, friendship and peace agreement was made between Iran and the federation republic of Russia. After Russian revolution, the government of Iran was the first government to hold peace agreements with Russia, the purpose of which was to facilitate political and business deals. Sheikh eslami.j(1991)

This agreement is arranged in 26 chapters. According to which the imposed agreements of tsarist Russia on Iran were cancelled.

But the most important chapters of this agreement are the 11<sup>th</sup> and 14<sup>th</sup> ones. In the 11<sup>th</sup> chapter of this agreement, it is stated that some of the contents of Golestan and Torkamanchay were cancelled. Such contents would include the military usage of Caspian Sea by Iran which was no longer in place. In the mentioned chapter, it is written that " based on the privilege mentioned in 8<sup>th</sup> chapter of the agreement on 10<sup>th</sup> Feb. of 1828 between Iran and Russia in Torkamanchay, Iran is deprived from the right of having military force in Caspian which is no longer valid. Therefore, both parties agreed that from the time of this agreement onward, both countries have the right to freely ship in the Caspian with their own national flags. Therefore, the mentioned agreement, settling down the land borders of two countries, created a new situation about the Caspian Sea. Velayati.a(1991)

An important point from among points that make 1921 agreement is the emphasis on the shared rights of Iran and the federation of Russia and cancellation of the discriminatory previous agreements. That is the reason why this agreement is seen as a beginning point for the legal outlook towards Caspian Sea based on two principles of justice and equality of rights. Nameless.(1959)

From other agreements, the rules and content of which, help form the legal regime of this sea and some of littoral countries emphasize upon its credibility as the base for the new move is the shipping and business agreement of 1940 between Iran and the former Soviet Union.

#### 4. The shipping and business agreement of 1940

Regarding the conditions to sign the 1940 agreement, we have to state that this time period is simultaneous with the second year of Second World War. Based on the above mentioned agreement, it would be clearer that except for a strip of littoral land which belonged to each of the two parties exclusively, fishing has been free throughout the Caspian Sea and determining this sea limit does not have any effect on the parts of Caspian Sea shared among countries. From among other cases that were emphasized upon by this agreement was that only the ships belonging to Iran and former Soviet Union have the right to move and the ships of other countries don't have the right to enter this sea. Nameless.(1959)

The consequence of the two agreements of 1921 and 1940

In short, about the two agreements of 1921 and 1940, it can be said that based on these two agreements and from theory viewpoint, the Caspian Sea is known as the shared sea between Iran and former Soviet Union and any kind of exploitation of that sea is forbidden for any other third country. There is not signified any border between Iran and former Soviet Union in the sea and both countries had equal rights regarding shipping and fishing.

From among cases that were not referred to by these agreements as a result of temporal and technological reasons was the issue of the exploitation of sea resources at the bed and under bed of this sea and this has caused conflict between the opinions of the littoral countries and some of such countries have seen these agreements as invalid for the same reason. Sheikh eslami.j(1991)

#### The collapse of Soviet Union and the issue of replacement of the governments

After collapse of the former Soviet Union, from the viewpoint of international law, all the newly formed republics from former Soviet Union signed agreement of Almaty on 21<sup>th</sup> December of 1991 and referring to that, they confirmed all the independent common wealth governments would guarantee on their side to stay committed to contents of the agreement made by the former Soviet Union regarding certain important

privileges for Iran. It does not need to be reminded again that Iran and former Soviet Union's agreement about the Caspian Sea is considered as the commitments of the former Soviet Union towards Iran's rights in the Caspian Sea. And therefore, the agreement of 1921 and 1940 are still valid. Hermidas bavand.d(2003)

But, some of the newly independent countries such as Kazakhstan and Azerbaijan, using the doctrine of changing the status quo, believed that such an agreement is not valid. It means that they don't see themselves as committed to the agreements between former Soviet Union and Iran. The analysis of Azerbaijan is that considering the change in the status quo, such agreements are not valid anymore and when in the year 1956, exploiting the resources of Azerbaijan began, the government of Iran showed no objection to this act and therefore, its silence can be interoperated as their consent to that behavior. Oxman.b(1996)

Kazakhstan, ignoring this agreement, began negotiating with the reliable western companies and did not accept this agreement as valid. But Russia has intensely objected to these unilateral actions and has presented its opinion officially to the United Nations on 16<sup>th</sup> October of 1994 through a document named the federation of Russia's position about the legal regime of Caspian Sea. In the above mentioned document, it is stated that according to international law, the legal regime of Caspian Sea was signified between Iran and former Soviet Union based on the series of agreements of 1921 and 1940 and this legal regime is valid and has to be observed till all the littoral countries have not signed any new agreement. In the April and September of 1994, Russia informed Britain that the agreement between Britain and Azerbaijan about oil extraction is illegal because there is nothing as Azerbaijan part in the Caspian Sea. Kohen.a(1996) Now the question is raised that whether the newly independent states i.e. Russia, Kazakhstan, Azerbaijan and Turkmenistan are according to international law committed to the content brought in the agreements and contracts between former Soviet Union and Iran or not.

Before answering this question, it is first needed that a short explanation be given about the replacement of the states in the international law.

What we mean by the replacement of states is that when the land is transferred from one government to another, what rights and duties would be handed over from previous government to the new one. The general rule in the international law is that when a new government rises, that government, based on the principle of the replacement of government, would not be committed to the execution of agreements that were made by the previous government; because a new government which was not party to an agreement cannot be basically held responsible towards that agreement. This principle is known as the rule of non-transferring or the doctrine of the blank board. This rule is true about both the newly independent governments and the governments formed from disintegration and unity. But there is an exception to the non-transferring or the blank board, in the sense that the new government is committed towards the agreements about the transit right, shipping, port facilities, determining the territorial borders, the river banks, the water ways, the railways, the telegraph lines which are in the land of another government. Therefore, answering the main question of this section which is whether the newly formed countries of Caspian Sea are committed to the contents of the former Soviet Union agreement with Iran, it has to be stated that the agreements between Iran and the former Soviet Union are basically about shipping in the sea and are not included in the rule of non-transferring or the blank board. Consequently, the new governments of Caspian Sea have to execute the former

Soviet Union government's commitments towards Iran. Moghtader.h(1995)

Besides, through the articles 17 and 24 of the Vienne convention in the year 1987 about the replacement of agreements regarding the newly founded governments, the consent of the new governments about the agreement is to be considered. But about the new governments which are established based on separation and division of one government, they will automatically become the substitute of the former governments. Moghtader.h(1995)

Therefore, based on the above mentioned rule, the littoral countries of Caspian Sea are committed to two agreements of 1921 and 1940. Commitment of the republics from former soviet union to the mentioned agreements is not only from the rule of international law, but also confirmed by these republics in the statement of Almaty dated 21st December 1991. According to the same statements, all the independent common wealth governments guarantee the execution of the contents from the agreement by the former Soviet Union and in other words, they can break them. Despite that and according to the rules applied to closed seas, the agreement of the littoral countries of the Caspian Sea is absolutely essential to reach at an agreement. Moghtader.h(1995)

**Different types of suggestion to make divisions in the Caspian Sea**

The governments have used different methods by far in order to signify their territory in the lakes. Such methods include:

**1. Comprehensive condominium:**

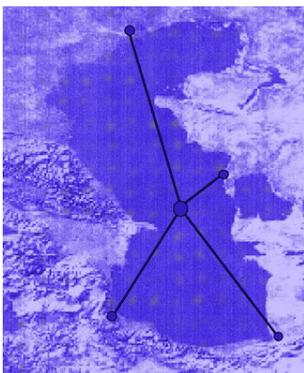
This method was suggested by the government of Russia and is accepted by government of Iran too and is the confirmation of the agreements of 1921 and 1940 and is opposed by other countries specially Azerbaijan.

**2. The method of connection line between the shores of the countries**

In this method, the last connection point in the land border is connected to another one and the waters behind it will be monopolized by every country ruling it. If this method is used, countries of Azerbaijan and Kazakhstan will have the least share from Caspian Sea.

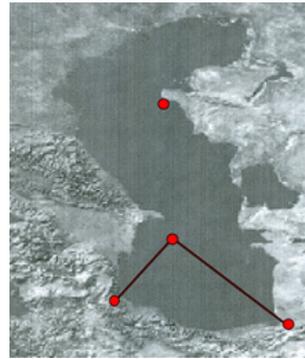
**3. Method of division based on one focal point**

In this method, the central point of Caspian Sea will be signified and the lines of land border leading to the sea will be drawn towards central point of Caspian Sea. This method will give the biggest share to Iran and Kazakhstan (map no.2)



**4. Method of division based on two focal points**

In this method, the sea would be supposed to be oval and will have two focal points. Connecting the two points by one line would make the end of land borderline stretch towards that line and the distance between the two stretched lines would make the marine border of the littoral country. In this method, Iran's share would be almost 20% of the whole sea area. (map no.3)



**5. Method of using the most projected land point into the sea**  
In this method, the projected points of land into sea will be used. Kazakhstan will have more share than other countries and the share of countries of Russia, Turkmenistan and Azerbaijan is almost the same.

**6. Method of the most projected sea point into the land**  
This method is the same as the other one. The only difference is that in this method, the most projected point of the sea into land of littoral countries would be considered.

**7. Division based on the length of littoral line**  
In this method, the northern-southern dividing line would be drawn and proportionate to the length of each country's shore, the land border would be connected to the dividing line.

**8. Method of dividing into five equal parts**  
In this method which is called 20-20, a completely equal share in the water, under water and under bed of sea has been considered for five littoral countries. In this method, the land border towards the sea is as such that the water surface would be divided into five equal parts.

**9. Method of layer division of the sea**  
In this method, each of the sea parts would be divided in a special way. In the layer division method, the resources of bed and under bed of the sea would be divided equally and the resources in the water itself are divided in a shared manner. Vahidi.m(2001)

Now that the viewpoints of international law about the closed seas and its legal regime are analyzed and the agreements of 1921 and 1940 and 1991(Almaty) have been studied and different methods of dividing the sea is discussed, we would investigate the viewpoints of each of the littoral countries of Caspian sea. Hermidas bavand.d(2003)

**The viewpoints and the positions of the littoral countries of Caspian Sea**

**1. The viewpoints and positions of Russia about the legal regime of Caspian Sea**

From the beginning, this country has had a completely double way of dealing with the issue about the legal regime of Caspian Sea .It means that it first supported the shared ownership of Caspian Sea and later on, it supported the theory of dividing Caspian Sea into parts. Besides, it has to be said that foreign ministry of this country has considered itself a supporter of the shared ownership of the sea and on the other hand, the oil and energy ministry of Russia and the oil companies ,by making mutual agreements with governments of Azerbaijan, Kazakhstan and Turkmenistan, have practically confirmed the positions of the above mentioned republics and the principle of division is officially accepted. Hermidas bavand.d(2003)

The Russia's viewpoints are divided into two groups on the whole: a. After gaining independence, Russia has had the same outlook as Iran and through an official document

named the Russia's position about the legal regime of Caspian in the year 1994, announced that considering that Caspian Sea is a closed sea, this sea is closed on all the countries which do not have any border in this sea. Therefore, this sea does not follow the principle of the international law of seas. But it has a special legal situation. Russia is worried that if the rules of international law of seas are used about the Caspian Sea, the canals of Volga-Dan, Volga-Baltic will be known as international water ways and the Caspian Sea would be opened to other countries. Russia believed that the agreements of 1921 and 1940 are credible but considering the new regional changes, the above mentioned legal regime cannot give proper answers to the related issues and this issue has to be solved through making new agreements. Hermidas bavand.d(1997)

b. But with a look at the Russia's behavior, we can understand that sometimes the national interest of countries cause the countries to overlook many of the internationally accepted rules and make new decisions contrary to the international law. Russia, on 6th July 1998, in an agreement with Kazakhstan, divided the northern part of Caspian Sea which shows big differences from its previous positions about the legal regime of Caspian Sea. Based on the agreement of 6th June of 1998 between Russia and Kazakhstan, the resources of the bed and under bed of sea are divided between the two countries and the water surface between the two countries are declared to be shared between them. Hermidas bavand.d(2003)

What is understood from the double viewpoints and positions of Russia regarding Caspian Sea is that this country is looking for more shares and the privilege of drawing the oil and gas pipeline through the sea. Therefore its positions are tactical. The Russia's action in making the agreement with Kazakhstan is officially discrediting the agreement of 1921, 1940 and 1991 (Almaty). Hermidas bavand.d(2003)

## 2. Viewpoints and positions of Azerbaijan republic about the legal regime of Caspian Sea

The republic of Azerbaijan is one of the countries which support the theory of dividing the Caspian Sea into national parts intensely. The government of Azerbaijan after gaining independence has tried to have an independent policy away from its past. From the beginning, this country has supported the complete division of the sea and demanded that methods used for the closed lakes to be used for the Caspian Sea too. Azerbaijan's goal form choosing this strategy was to completely divide the resources of the sea in its bed and under bed. It has persisted to keep its position throughout the past years. azari.a(2001)

Azerbaijan claims that usage of Caspian Sea as Border Sea or an open one is accepted for that country. Based on the legal concept of lake, any littoral country would gain its share from Caspian Sea which is made from a littoral stretch to the central line and it would practice the monopolized domain rights in this part. The arrangements of the open sea are accepted by Azerbaijan too. The reason for that is that based on the convention of 1982 of United Nations about the seas' rights, not only 12 miles of the land waters but also 200 miles of the monopolized economic region would be considered as official. Yakoshik.v(1998)

The country of Azerbaijan welcomes dividing the northern bed of Caspian Sea between Kazakhstan and Russia and sees that as a useful step towards reaching at its own goals but it has emphasized that this division should include the surface waters of the Caspian Sea. Farhadi.j(2004)

In short, the positions and viewpoints of Azerbaijan republic can be mentioned as the following:

1. Emphasis on the division of the sea and the legal regime of division
2. Kazakhstan position is the same as Azerbaijan's regarding the legal regime.
3. The extant agreements of Caspian are not seen by Azerbaijan to be appropriate for the current situation.
4. Azerbaijan considers no objection from the countries which accept the validity of agreements of 1921 and 1940 and also the investment of other littoral countries as a reason for the consent of those countries regarding the division that Azerbaijan has suggested. Noori.k(1994)

## 3. Viewpoints and positions of Kazakhstan about the legal regime of Caspian Sea

The republic of Kazakhstan along with Azerbaijan is among the littoral countries of Caspian Sea which support the theory dividing the Caspian Sea and has clearly stated its positions in this regard. Kazakhstan believes that the agreement of 1921 and 1940 considering the occurred political changes does not account for the new political and geopolitical situation of the region anymore and it cannot be seen as legal document to determine the legal regime of Caspian Sea. Kazakhstan believes that by the increase of the littoral countries, there would occur a new legal situation for the Caspian sea and in complying the new legal regime, the interest of the newly founded countries have to be predicted and signified.

In a plan compiled and arranged by this government, the Caspian Sea is evaluated as a closed inside continent water basin which does not have any connection to world oceans. Based on the same understanding, Kazakhstan has presented its plan of legal regime by considering the convention of 1982 regarding the seas' rights, based on which the national and territorial waters of each country would be demarked. This country, following its policies on the 6th July of 1998, has divided the shores of the country with Russia based on the mid line. Saliken.k(2002)

In short, the viewpoints and positions of Kazakhstan about the legal regime of the Caspian Sea are as the following:

- sees the convention of 1982 of the law of the seas as the basis
- supports the division of the sea based on the agreement of 6<sup>th</sup> July of 1998
- emphasis on the demarcation of limits and division of the sea into territorial sea and the monopolized economic region
- considers no credibility for the agreements of 1921 and 1940. Gizatov.v(2002)

## 4. The viewpoints and positions of Turkmenistan about the legal regime of Caspian Sea

The country of Turkmenistan is located at the east side of Caspian Sea. Considering the geographical situation of this country (no access to the open seas), it has always adopted a cautionary approach and positions similar to those of Russia and Iran regarding the legal regime of Caspian Sea. This country supports the shared ownership of the sea and its resources and believes that recourse in the under bed of the sea should be divided by the agreement of all the littoral countries. This country sees the Caspian Sea, as a result of its special conditions, to be unique and contrary to Kazakhstan, emphasizes on not using the international conventions regarding Caspian Sea. Nameless.(2000)

But the positions of this country began to change gradually as a result of spread of western influence and weakness and double positions of Russia. At the present moment, this country along with Kazakhstan and Azerbaijan, has admitted the regime of division and is after drawing the agreement of westerners and specially America for the plans of exploiting oil and gas. Turkmenistan has announced in its last positions

that if the regime of shared ownership cannot be practiced for the Caspian Sea, it will support the theory of dividing the sea to the national parts using the mid line and the division should include bed and under bed of the sea. There should be a unitary legal regime dominant over the sea too. Nameless.(2000)

### 5. The viewpoints and positions of Islamic republic of Iran about the legal regime of Caspian Sea

The viewpoint of the Islamic republic can be divided into two periods:

The first period which has always emphasized on the shared ownership of the Caspian Sea. The second period which is from 6th July of 1998 onwards which was announced following an agreement between Kazakhstan and Russia in which the two countries have divided the northern part of the Caspian Sea.

1. In the first stage, it believed that legal regime of Caspian Sea would be signified based on the agreements of 1921 and 1940 and the documents annexed to it. In these documents, except for the 10 mile limit, other parts of Caspian Sea were announced as the sea of Iran and Russia and the two countries used to do the shared exploitation of the sea. Iran believed at that time that the basis for negotiation should be the two agreements of 1921 and 1941. Zarif.j(1997)

Considering the present conditions, Iran understands the necessity of completing the extant legal regime and believes that according to Almaty agreement of 1991, the newly founded countries of Caspian were committed to practice the two above mentioned agreements (1921, 1940). And any one sided action from any of those countries would be seen by Iran as the violation of the two agreements. Yovedda.d(1998)

2. But following the agreement of 6th July of ` 1998 between the two countries of Kazakhstan and Russia and dividing the northern part of Caspian Sea, we could see limited flexibility in the positions and viewpoints of Iran. In this stage, the Iranian authorities speak through their basic and ideal approach which is to use the resources of sea in shared way by the littoral countries but following the agreement between the two countries of Kazakhstan and Russia, a second approach was adopted by Iran too and Iran has joined the idea of dividing Caspian Sea. jamshidi.m(1998)

Iran believes that if the Caspian Sea is to be divided, this division should be fair and equal and include surface, bed and under bed of the sea. It means that division will be in totality of the sea. In other words, each of the five littoral countries of Caspian Sea would receive 20% of Caspian Sea. Kharraazi.k(1998)

### CONCLUSION

On the whole, we should state in the conclusion that Caspian Sea is a closed one and is not included in the international laws as an open sea. That is the reason why it has its own specific and unique legal status. The legal regime of this sea, throughout the agreements of 1921 and 1940 is signified between Iran and Russia. After collapse of Soviet Union and dividing of one country to four littoral countries, there occurred issues between these countries. Regarding the legal regime of Caspian Sea which led to the beginning of negotiations about the new legal regime of Caspian Sea, many claims have been posed by these countries about Iran's share in this sea.

It should be stated that till a certain result about the legal regime of the Caspian sea is achieved, all the content of the previous agreements of 1921 and 1940 between Iran and Russia are kept valid and these countries (the separated countries from former soviet union), based on Almaty agreement, have guaranteed the execution of the

commitments from the agreements of former soviet union. The agreements of 1921 and 1940 are part of these agreements naturally.

Basically, Iran's policy about the Caspian Sea was formed as such that the best way to provide for its interests was to emphasize upon the agreements of 1921 and 1940. But after a while, in a sudden change of positions, the foreign ministry of Iran brought forth the idea of 20% share of the sea and accepted that Caspian sea be divided. It meant that removing the agreements of 1921 and 1940 from the place of validity. On the other hand, Russia which would follow the agreements of 1921 and 1940 till 1997 as a basis for negotiations began to make mutual agreements with Kazakhstan and Azerbaijan in a 180 degree of change of positions. This practically meant the division of Caspian Sea and was against the previous agreements.

We should admit the fact that as a result of collapse of former Soviet Union, the littoral countries surrounding the Caspian Sea were five countries from former two countries. Considering the previous agreements and the recent events, it seems that if the member countries could reach at a collective agreement about the Caspian Sea after long negotiations, it would be that Caspian sea be divided into five equal regions among its littoral countries (Each of the countries will have 20 % of the sea) (Division would be based on two focal points brought in the map no.3). They can also reach at an agreement of shared ownership about fishing and environment. Such an agreement would provide for the interests of all the littoral countries of Caspian Sea and will be an end to disagreements in this region.

### REFERENCE

1. Shelyamin.b(1974)."caspien sea".translator:soniya habibian. Iranian Fisheries Company Publication Center.tehran.p 2-4.
2. Maleki.a(1998)." Seminar report on the development of the Caspian Sea region". Central Asia and Caucasus Studies magazine.no 17.p 196-199.
3. Nameless(2004)."Caspian sea, Review the legal regime ". Islamic Republic News Agency. Volume 4.p 43-45
4. Ganji.m(2002)." Public International Law". volume 1.samt publications.p 256-259.
5. Emami.m(1992)." International law Fishing and its implementation on the Caspian Sea". Proceedings of the conference of Caspian Sea resources.babolsar.p 565-570.
6. Aghae.b(1987)." Legal Aspects of Marine Pollution by Oil" Foreign Policy magazine.volume 1.p 105-107.
7. Madani,j(2001)." The political history of modern Iran".islamic publications center.p 32-35.
8. Nafisi.s(1998)." Social and political history of contemporary".bonyad publications.tehran.p 310-330.
9. Velayati.a(1991)."the history of foreign relation". Political and International Studies center.tehran.p 96-99.
10. Sheikh eslami.j(1991)." October Revolution of 1917 and Soviet-Iranian treaties.political and economical information magazine.volume 56.p 12-15.
11. Nameless.(1959)."cet of contracts Of the Soviet-Iranian treaties".volume 2 . Publications of the Ministry of Foreign Affairs.p 88-101.
12. Oxman.b(1996)."Caspian sea of bake :what reference does it make?". caspien cross roads magazine.p 47-49.
13. Hermidas bavand.d(2003)." Legal regime of the Caspian Sea". Journal of tomorrow's economy.vulome 7.p 12-14.
14. Kohen.a(1996)."great game:oil politics in the Caucasus and central asia".heritage foundation.usa.p 24-25.
15. Moghtader.h(1995)." Public International Law". Publications of the Ministry of Foreign Affairs.tehran.p 70-73.
16. Vahidi.m(2001)." Russian foreign policy in the Caspian Sea". Central Asia and Caucasus Studies magazine.vulome 32.p 85-86.
17. Hermidas bavand.d(1997)." Caspian Sea and Iran's Foreign Policy". Journal of Middle East Studies.vulome 1.p 14-15.
18. Yakoshik.v(1998)." Political disputes about the legal status of the Caspian Sea". Central Asia and Caucasus Studies magazine.vulome 22.p 6-38.
19. Noori.k(1994)." Iran's economic relations with the countries of Central Asia and the Caucasus". Central Asia and Caucasus Studies magazine.vulome 8.p 122-124.
20. Saliken.k(2002)." Kazakhstan plans on the legal regime of the Caspian Sea".payam darya magazine.vulome 53.p 41-43.
21. Gizatov.v(2002)." The legal status of the Caspian Sea".payam darya magazine.vulome 53.p 43-45.
22. Nameless.(2000)." Comments Turkmenistan on the Caspian Sea legal regime".iran economy magazine.vulome 5.p 7-8.
23. Zarif.j(1997)." Caspian Sea and Iran's Foreign Policy". Journal of Middle East Studies.vulome 1.p 15-16.
24. azari.a(2001)." Iran's policies regarding the legal regime of the Caspian Sea".etelaat magazine. Vulome 352.p 8.
25. Yovedda.d(1998)." Investigation of Iranian policy toward the Caspian Sea

- legal regime". *Central Asia and Caucasus Studies magazine*. volume 33.p 119-122.
26. jamshidi.m(1998). " Iranian perspectives on the legal regime of the Caspian Sea". *hamshahri magazine*. volume 253.p 8.
  27. Kharrazi.k(1998). " Iranian perspectives on the legal regime of the Caspian Sea". *Publications of the Ministry of Foreign Affairs*.tehran. volume 121.p 42-43.
  28. Farhadi.j(2004). " The legal status of the Caspian Sea". *Journal of the National Defense University*. volume 58.p 42-43.