

By Adam Dempsey, Research Associate, U K Defence Forum

The Caspian Sea is the world's largest body of inland water by volume. According to the United Nations' Atlas of the Oceans the Caspian Sea covers a surface area of 371,000 km² and has a maximum depth of 1025 metres. The Caspian Sea is classified by geographers as a 'terminal lake' meaning that its water does not reach the ocean. Yet whilst this may imply that the Caspian Sea is a freshwater lake it nevertheless shows characteristics common to the world's oceans. As a 'terminal lake' the Caspian Sea's minerals build up in the water as it evaporates thereby increasing salinity. It is estimated that the Caspian Sea has a salinity of 1.2%, around a third of the oceans' salinity.

Historically the legal status of the Caspian Sea as a lake or sea appears to have been a minor concern. Instead a range of bilateral and multilateral agreements have been negotiated between the Caspian Sea states that attempt to build viable legal frameworks for operating within this water basin. For much of the twentieth century the Caspian Sea was the exclusive domain of the Soviet Union and Iran. This inevitably ensured that the legal status was based on Soviet-Iranian treaties. In the 1940s, for example, a range of treaties reserved navigation and fishing rights for Soviet and Iranian vessels at the exclusion of third states. The treaties provided freedom to fish for both states throughout the entire Caspian Sea except within a ten-mile zone along respective coasts.

In terms of natural reserves on the sea-bed such as gas and oil, Iranian and Soviet government thinking concurred that where the sea-bed touched each state's respective shorelines then all resources belong to the country in question. In 1970, the Soviet Ministry of Petroleum divided the Caspian sea-bed of the Soviet Union into sectors assigned to each littoral union republic. A median line was in turn utilised as the basis of this division. Yet this division was not supported by the listing of any geographical coordinates of points.

This reflects the fact that neither Iran nor the Soviet Union ever resolved issues regarding the boundary lines of the Caspian Sea. Instead the Caspian Sea was regarded by both as a Soviet and Iranian domain.

With the decline of the Soviet Union the newly-founded states of Azerbaijan, Kazakhstan and Turkmenistan joined Russia and Iran in having a vested interest in the development of a viable legal framework for the Caspian Sea. Yet further complicating such issues were key stipulations of the Vienna Convention on Succession of States in Respect of Treaties, 1978. The Convention indicates that any treaty in force at the date of the succession of states stays in force unless agreed otherwise. Yet by becoming signatories to the 1991 Declaration of Alma Alta, the new littoral states of the Caspian Sea effectively gave up their rights to negotiate a new framework. Despite the Declaration confirming the replacement of the Soviet Union with the Commonwealth of Independent States the newly-independent republics agreed to continue

observing the international treaties of the former USSR.

As the Caspian Sea basin has continued to show potential as a significant reserve of natural resources the Soviet-Iranian agreements that govern the sea appear insufficient. Despite initially agreeing to the Declaration of Alma Alta, changing economic and political realities have influenced all the region's former Soviet states to seek a new consensus regarding the Caspian Sea. Currently there are a range of positions regarding the Caspian Sea's contemporary status. Russia, for example, suggests not dividing the surface area of the Caspian Sea into national sectors for ease of navigation. Yet Russia also advocates dividing the sea-bed based on a median line. Russia's outlook underpinned its 2003 agreement with Azerbaijan and Kazakhstan that divided the northern 64% of the Caspian Sea on a median line basis.

However, the Russian approach has been opposed by Iran and Turkmenistan. Despite accounting for 14% of its coastline, Iran wants the Caspian Sea divided into equal shares. Yet under this arrangement both Azerbaijan and Turkmenistan would potentially have to transfer parts of their national sectors over to Iran. As these sectors contain significant natural resources both states do not favour the Iranian proposal. Furthermore, Azerbaijan and Turkmenistan continue to press individual territorial claims of the Kyapaz, Azeri and Chirag oilfields. In drawing a median line that fairly divides such resources Azerbaijan continues to maintain taking the tip of the Absheron Peninsula as the point of division. In response, Turkmenistan argues that the drawing of median line through the centre of the Caspian Sea is a more equitable solution.

Despite considerable differences regarding the legal status of the Caspian Sea emphasis continues to be placed on all states participating in the resolution of issues. In the build-up to the Astrakhan meeting of ambassadors to the littoral states Deputy Foreign Minister Karasin indicated that Russia would consider the interests of all actors when determining the legal status of the Caspian Sea. Russia believes this is necessary to develop economic and cultural relations as well as a security system that promotes regional stability. Such an outlook will likely underpin Russia's approach to a meeting of all five littoral states in Baku in late October.

Whilst the legal status of the Caspian Sea remains a source of contention it seems likely that natural interpretations will remain a secondary consideration. Nevertheless issues related to the regulation of the Caspian Sea will need to consider international legal classifications and their accompanying bodies of law. If, for example, the Caspian Sea is to be regarded as a sea then the United Nations Convention on the Law of the Sea (UNCLOS) would be applicable. UNCLOS makes provisions for each state to have a territorial sea with a breadth not exceeding twelve miles and an exclusive economic zone not exceeding 200 miles. Yet the Caspian Sea does not possess a maximum width that exceeds 200 miles.

A further challenge to UNCLOS is presented with Article 26 of the 1956 Draft Convention on the Law of the Sea Part II (the High Seas). Article 26 indicates that:

Some large stretches of water, entirely surrounded by dry land, are known as 'lakes,' the others as 'seas.' The latter constitutes internal seas, to which the regime of the high seas is not applicable.

However, where stretches of water communicate with the high seas via a strait or arm of water, they can be considered as an internal sea if the coasts, including those of the waterway giving access to the high seas belong to a single state.[1] Accordingly, the Caspian Sea's connection to the Black Sea via the Don-Volga River potentially challenges the classification of the Caspian Sea as a 'terminal lake.' However, the fact that the Don-Volga River is not recognised as a salt-water body advances the case for recognising the Caspian Sea as a freshwater body.

If the Caspian Sea is to be recognised as a trans-boundary lake then regulation will theoretically be achieved via agreements with the littoral states. It would be expected that such agreements would determine each states marine borders and rights of navigation. Historically, the practice of delimiting lakes has resulted in each coastal state receiving exclusive sovereignty over the resources, surface and shipping in its national centre.[2] Such arrangements therefore suggest that the drawing of a median line should be integral to determining the legal status of the Caspian Sea. Yet Iran's objections to Russian proposals regarding the status of the Caspian Sea demonstrate that this is likely to be a legal definition subject to geopolitical challenges.

As the Caspian Sea continues to increase in geopolitical significance it also becomes increasingly important that the littoral states reach an agreement regarding a legal framework. Political expediency suggests that natural determinations of the Caspian Sea are of lesser importance than an effective and equitable division of territory and resources. Whilst international legal classifications of the Caspian Sea cannot be ignored when determining its status, the geopolitical implications of such definitions may potentially do more harm than good. This helps to explain why dialogue amongst the littoral states has concentrated more on issues of economic and political concern.

[1] Janusz, Barbara. 'The Caspian Sea Legal Status and Regime Problems.' Russia and Eurasia Programme, Rep. BP 05/02, Chatham House, 2005 pp. 3 - 4