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## Is it a Sea or is it a Lake?

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### The Convention on the Legal Status of the Caspian Sea: a welcome development

In August 2018, the signing of the Convention on the Legal Status of the Caspian Sea (the “Convention”) brought some long-overdue agreement to a dispute which has been ongoing for over 20 years.

At around 143,000 sq. km, the Caspian Sea, which is bordered by Russia, Iran, Azerbaijan, Kazakhstan, and Turkmenistan (the “States”), is the largest body of land-locked water in the world. It is known to be very rich in resources with current estimates indicating around 50 billion barrels of oil and over 8 trillion cubic metres of natural gas beneath its seabed. Additionally, the Caspian Sea is renowned for its population of sturgeon from which over 80% of the world’s caviar is sourced.

### The dispute: Is it a sea or a lake?

At the heart of the dispute between the littoral States has been the question of whether the Caspian Sea should be characterised as a sea or a lake. This question has wide ranging economic, military, and political consequences which has made the dispute so difficult to resolve. Essentially, how the body of water is characterised determines how it, and its vast resources, are to be shared between the littoral States.

Before 1991, the Caspian Sea was generally and non-controversially regarded as a lake, with a number of bilateral treaties between Iran and the USSR confirming that it was shared equally between them. However, with the fall of the Soviet Union in 1991 the Caspian Sea no longer sat between just Iran and the USSR, instead it now found itself with 5 littoral States: Russia, Iran, Azerbaijan, Kazakhstan, and Turkmenistan. With the realisation of just how resource-rich the Caspian Sea was, the parties began to turn their mind to how it should be shared between them - which is where the disagreements began.

The characterisation of the body of water determines which international laws it will be governed by. If it were to be deemed a sea, it would fall under the United Nations Convention on Law of the Sea and each State would be allocated the surface and seabed nearest to its shore, according to the length of each littoral State’s coastline. However, if deemed to be a lake, the surface and seabed would be shared and divided up equally between the States.

The primary sticking point has been that if it were characterised as a sea, Iran, with its short Caspian coastline, would be left with a small and deep (and therefore difficult to explore) portion with comparatively scarce resources. Meanwhile, the other littoral States (particularly Kazakhstan which has the longest shore on the Caspian) would have a greater share of the Caspian Sea and as a result benefit economically from its resources. It is therefore not surprising that Iran had for many years resisted the Caspian being characterised as a sea, insisting instead that it continue to be designated as a lake.

### What does the Convention say?

The States did not actually reach agreement on whether the Caspian Sea should be characterised a sea or a lake. Instead, they agreed that the Caspian Sea should have a special legal status and the articles of the Convention set out how it is to be shared and used by the States.

### *The water*

The water area of the Caspian Sea is divided into four categories: “internal waters”, “territorial waters”, “fishery zones” and “common maritime space”:

- Waters on the landward side of the baseline, which is calculated from relevant points on the coastline, are designated the internal waters of each State.
- 15 nautical miles from the coast of each State are its territorial waters, that is a belt of sea to which the sovereignty of each State extends. The outer limits of a State's territorial waters mark its border.
- 10 nautical miles adjacent to each State's territorial waters will be its fishery zone within which it has the exclusive right to harvest aquatic biological resources. The Convention provides that the States must agree a total allowable catch of such resources as well as the quota to be allocated to each State.
- Outside the outer limits of each State's fishery zones is designated to be common maritime space, which is open for use by all the States.

## *The seabed, subsoil, and pipelines*

The Convention confirms the entitlement of each State to exclusive sovereign rights of exploration and exploitation of the seabed and subsoil that falls within its territorial waters as well as within its respective "sector". Whilst this is a welcome clarification, removing any suggestion that the States would have to exercise their rights in respect of the resources within the Caspian Sea jointly, the Convention does not make any provision as to the designation of the sectors that divide the seabed and subsoil outside of the territorial waters between the States. Instead this is indicated to be a matter for agreement between the States separately. This therefore leaves open the important issue of exactly how the natural resources outside of the territorial waters can be explored and exploited by the States.

Notwithstanding this uncertainty, subject to the parties agreeing the delimitation of their respective sectors, the Convention contains some welcome agreement in respect of pipelines. States are permitted to lay pipelines on the seabed of their sector, provided that any such project complies with environmental standards and requirements of relevant international agreements, including the Framework Convention for the Protection of the Marine Environment of the Caspian Sea. Moreover, they can also lay pipelines within the sector of other willing States, without the need for unanimous agreement to such construction between all littoral States. Provided there is agreement between the individual States through whose sectors the pipeline will cross, all that is needed is a communication to the other States of the route the pipeline will follow.

This promises an exciting future in the region in years to come. Projects such as the proposed Trans-Caspian Gas Pipeline will have a renewed sense of hope as the relevant States, Turkmenistan and Azerbaijan (and possibly Kazakhstan), will now be able to agree and progress the construction of a pipeline to transport their natural gas to the European Union and beyond – something which has historically been hindered by the reluctance of Iran and Russia. The development of such projects in the years to come will make the Caspian Sea an area of keen interest in the oil and gas industry, presenting a real alternative to Russian and Iranian supplies within Europe.

Although serious commercial exploitation of oil and gas reserves in the Caspian Sea is likely to still be a few years away, and subject to the States reaching an agreement in respect of their respective sectors, the provisions of the Convention certainly mark a positive development. In particular, players within the oil and gas industry will be keeping a keen eye for the opportunities to bid for exploration licenses in the region in due course.

## *Passage through waters*

The Convention also provides ships flying the flag of any of the party States (excluding warships, submarines and other underwater vessels the regulation of which will be subject to separate agreements) with free navigation rights within the waters of the Caspian Sea. These rights extend to the territorial waters of other States, provided they are not prejudicial to the peace, good order or security of the coastal State. In the interests

of encouraging friendly and mutually beneficial relations between the States, the Convention also requires that where a ship is carrying goods or passengers or performing rescue operations it must be provided access to the ports of any of the littoral States as if it were a national ship.

The States have also agreed (notwithstanding the insistence on peace and cooperation as discussed further below) that in certain circumstances warships, submarines and other underwater vessels are permitted passage through territorial waters of the States. Whilst the general movement of such vessels within the Caspian Sea will be subject to separate agreements between the States, in circumstances where such a vessel needs to enter territorial waters “*due to a force majeure or distress, or to render assistance to persons, ships or aircraft in distress*” the Convention permits passage, on the condition that the same must be notified on approach and once the relevant circumstances cease to exist, it must leave the territorial waters immediately.

## *A zone of peace, good-neighborliness, friendship and cooperation*

The Convention is littered with provisions emphasising the importance of protecting the peace within the region. Indeed, this is a fundamental theme which is highlighted at the very outset and permeates various articles throughout the Convention. At a fundamental level, the Convention sets out amongst the principles to which parties must have regard in their use of the Caspian Sea that it is to be “*a zone of peace, good-neighborliness, friendship and cooperation*” with any issues that may arise in relation to the Caspian Sea being resolved through peaceful means. This commitment to maintaining peace within the region is an important agreement for the States to have reached, particularly given the historic tensions within the region. This will avoid repeats of past instances where States have been on the verge of military action, issuing firm armed threats to exploration projects taking place within the Caspian Sea in the absence of an agreement between the States as to how the resources should be shared.

More specifically, the Convention prohibits the presence within the Caspian Sea of the armed forces of any country other than the littoral States. It also prevents any of the littoral States from allowing its territory (which is not limited to the Caspian Sea) to be used by other countries in order to commit aggression or undertake military actions against any State. This protection is likely, given the current global political climate, of particular importance for States such as Iran and Russia who will be assured that there will be no outside presence within the Caspian Sea region.

## Conclusion

There has been a mixed response to the Convention which despite being signed in August 2018 is yet to enter into force, pending ratification by the States. In particular, there have been reports of strong discontent within some corners of Iran where it has been said that the Convention is not in the country’s economic interests. Notwithstanding the politically significant agreement prohibiting the presence of outside forces within the region, there is a real concern that Iran faces to lose economically in the long term as a result of the agreements embodied in the Convention. Whether these critics are right remains to be seen, but it must be acknowledged that the Convention brings the promise of progress and development to the Caspian Sea region.

Others have also remarked that the Convention is to some extent a “non-event” given that it does not settle the most controversial issue affecting the region – i.e. how the seabed, and the resources that lie beneath it, are to be divided between the littoral States. This is to some extent a valid criticism, but perhaps the more optimistic view is to see the Convention as a promising first step as opposed to expecting a decades-old sensitive dispute to be settled smoothly in one go.

There is undoubtedly a lot of work still to be done before the States are able to realise and benefit from the real potential of the Caspian Sea, however the Convention must be welcomed as a long-awaited milestone that has finally broken the tense stalemate in the region.