Applicability of SOLAS to the Caspian Sea

Submitted by IHB

SUMMARY

Executive Summary: This document provides the response from the IMO Legal Office regarding the applicability of the SOLAS Convention to the Caspian Sea and Lake Victoria

Action to be taken: 3

Related documents: CPRNW9 Report – Action Item CPRNW9 3.2.1

1. Action Item CPRNW9 3.2.1 requested IMO to provide guidance on the applicability of SOLAS to bodies of water such as the Caspian Sea and Lake Victoria.

2. The following is the text received from IMO:

"The IMO Legal Office recently considered the application of the SOLAS Convention to the Caspian Sea and provided the following background, comments and advice.

Caspian Sea

The Caspian Sea is the largest inland body of water in the world, bordered by five countries: Azerbaijan, Iran, Kazakhstan, the Russian Federation, and Turkmenistan. Of these countries, all are Party to SOLAS 74, except Turkmenistan.

As a matter of general background, it may be noted that negotiations have been underway among the littoral States since the collapse of the Soviet Union to determine the legal status of the Caspian Sea*. The main issues concern the rights of access to hydrocarbon resources, and access to international waters through Russia's Volga River and the canals connecting it to the Black Sea and Baltic Sea. Limited agreement has been reached on protection of the environment. The five States have negotiated and signed, under the auspices of UNEP, a "Framework Convention for the Protection of the Marine Environment" which among other things, requires States Parties to "take all appropriate measures to prevent, reduce and control pollution of the Caspian Sea from vessels and shall co-operate in the development of protocols and agreements to the Convention prescribing agreed measures, procedures and standards to that effect, taking into account relevant international standards" (emphasis added). This Convention entered into force on 12 August 2006. According to the UNEP website** , this Convention "is the first legally binding agreement signed by all five nations surrounding the Caspian Sea*." One of the key provisions in this Convention is article 37 on the "Relationship with the negotiations of the legal status of the Caspian Sea"

which states that “Nothing in this Convention shall be interpreted as to prejudge the outcome of the negotiations on the final legal status of the Caspian Sea.” This provision is critical because there is no consensus at the moment on whether, for example, the principles of UNCLOS (such as the “Enclosed and Semi enclosed Seas” provisions of articles 122 and 123, and the EEZ provisions) apply to the Caspian. Recently, in the context of a discussion on the access by foreign military ships to the Caspian, Russia (Premier Putin) said “The Caspian Sea is an inland sea and it only belongs to the Caspian States, therefore only they are entitled to have their ships and military forces here.”

With regard to SOLAS, an academic argument might be made that the Convention applies to the Caspian, based on the fact that Chapter I of SOLAS applies to ships engaged on international voyages (i.e., “a voyage from a country to which the Convention applies to a port outside such country, or conversely”) and Chapter V applies to “all ships on all voyages”. The fact that ships navigating solely on the Great Lakes of North America are explicitly excluded under regulation I/3(b) and V/1(2) can be cited in support of the principle that that the scope of SOLAS extends to semi-enclosed seas. However, as indicated in the discussion above, the legal status of the Caspian Sea is much too unsettled at this time for IMO to make an arbitrary declaraion as to the application of SOLAS in the absence of agreement by the littoral States concerned.

Conclusion

Taking all the above into account, and in the absence of any positive indication from any of the States Parties concerned that they consider SOLAS to be applicable, the appropriate course of action would be to assume, at this stage, that the Convention, as a practical matter, does not apply to the Caspian Sea or to Lake Victoria. Consequently, it would seem to be inappropriate as well to designate the Caspian Sea and Lake Victoria as NAV/MET areas under the World-wide navigational warning service without the consent of the States concerned unless the benefits of the service can be achieved without imposing any treaty obligations on them.

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* Previously, there had been a number of bilateral agreements between the USSR and Iran. For an extended and in depth discussion of the legal statues of the Caspian Sea, see “The Caspian Conundrum: Reflections on the Interplay between Law, the Environment and Geopolitics” by Christopher C. Joyner, The International Journal of Marine and Coastal Law, Vol 21, No 2 (2006).

** http://www.unep.ch/roe/Caspian_cop1.htm "

3. CPRNW is requested to note this information.