



Irina Nossova

*Master of Arts in Law  
Associate at Law Office Varul*

# **Cold Arctic and Hot Caspian Side by Side: New Legal Regimes Emerging?**

A Russian Perspective

## **1. Introduction**

If we were to ask ourselves what the Arctic Ocean and Caspian Sea have in common, the first answer to come to mind would probably be: ‘Nothing—except both being large and important reservoirs.’ It is, no doubt, true that the climate, history, and perspectives for development of these regions are significantly different. Furthermore, a legal expert would probably argue that the juridical concepts for these two bodies of water are quite different: the former is unanimously considered an ocean, whereas the Caspian is disputed, either a semi-enclosed sea or an international lake.

However, thorough consideration based on recent developments reveals several common features that unite the seemingly unrelated cold Arctic and hot Caspian. Representatives of both Arctic and Caspian countries have already expressed opinions that, for various reasons, their regions are in strong need of a new, comprehensive legal regime. The point of our particular interest in this article would then be whether there really are any new regimes under international law that can be expected to emerge in the near future. The article takes a glance at these possible new legal regimes and investigates why—and how—Arctic and Caspian states strive for new international agreements or, on the contrary, refrain from them.

In addressing these questions, the article presents a brief case study considering how contemporary international law emerges. Proceeding from the assumption that there is a need for new legal regimes in both regions, the article offers insight on the new treaties via the prism of state interests. Thereafter, the article focuses on examining what the real payoffs and legal forces are that would lead states to accept or reject the Arctic Treaty or Caspian Convention. Particular emphasis is placed on how the ‘common player’ in both the Arctic and the Caspian case, the Russian Federation, proceeds with its own juridical foreign policy in the respective areas.

The methodological insight applied in this article is the so-called rational choice theory, here stating that international law emerges from states acting rationally to maximise their interests, given their perception of the interests of other states and distribution of state power.<sup>1</sup> According to the theory of rational choice, by entering into new treaties the states attempt to resolve problems of co-operation, to commit to a particular code of conduct, and to gain assurance regarding what other states will do in the future. Thus

---

<sup>1</sup> J. Goldsmith, E. Posner. *Limits of International Law*. Oxford University Press 2005, p. 3.

rational choice theory explains that states strive for new treaty law only if it benefits their interests, both political and economic.

But apart from political and economic payoffs playing, understandably, an important role in determining the state's decision to enter into and obey the new legal commitments, there are similarly important legal forces to consider. Andrew T. Guzman, a professor of law at the Berkeley School of Law in the United States, explains in his book *How International Law Works* that 'international agreements are valuable because the forces of reputation, retaliation, and reciprocity give states an incentive to comply with their legal obligations or, more accurately, with their promises, whether or not these are termed "legal"'<sup>2</sup>. Under the so-called compliance theory, a state's reputation for compliance with legal obligation consists of judgements of the state's past behaviour and predictions made about future compliance on the basis of that behaviour. The better the state's reputation, the more credibly it can commit to a particular course of action. Abuse of reputation is followed by a sanction in reputation terms, or the cost imposed on a state when its reputation is damaged. Reciprocity refers to actions that will often be taken in response to violation of an agreement. Retaliation describes actions that are costly to the retaliating state and intended to punish the violating party.<sup>3</sup>

It has been observed that legal forces do not function very effectively in pure co-ordination games among states. These are games in which all players have an incentive to co-operate but also co-operation requires that they co-ordinate their actions.<sup>4</sup> There are many variations on the pure co-ordination game. However, if a game that looks like a co-ordination game has some probability of becoming a more difficult case of co-operation, with different state interests colliding, then reputation, reciprocity, and retaliation come into play.

Assuming now that states act as rational players led by economic, political, and legal factors, and proceeding from the need for new legal regimes in the Arctic and Caspian regions, we shall try to analyse the possible content of the treaties from this perspective. In other words, we are interested in which forces determine (a) the content of the treaties and (b) the decisions of states to negotiate and enter into new international agreements. In particular, we will explore the forces underlying Russian legal thinking and behaviour. We will also try to determine whether the Arctic and Caspian treaties both define 'pure co-ordination games'.

## 2. The need for the Arctic Treaty and the Caspian Convention

Although the introductory part of this article proceeds from the assumption of a need for a new, comprehensive legal regime to manage the Arctic, there is neither agreement on whether such a regime is necessary nor, among those who do regard it as necessary, agreement on either the type or content of such a regime. For instance, in May 2008, representatives of the five Arctic states (Canada, Denmark (through Greenland), Norway, Russia, and the United States) met in Ilulissat, Greenland, to underscore their commitment to the legal framework provided by the 1982 United Nations Convention on the Law of the Sea (hereinafter referred to as the UNCLOS) and to the orderly settlement of any possible overlapping claims. Other legal scholars strongly believe that the UNCLOS is not sufficient to resolve the emerging issues in the Arctic region.<sup>5</sup> Current Arctic issues such as the melting of the Arctic sea ice and its effects on nature, resource access, and navigation routes, as well as rising tensions associated with continental shelf claims, prove the need for a new regime.

The need for a legally binding treaty in the Caspian has totally different grounds. Thus far, there has been no general agreement on the legal status of the Caspian. The Caspian Sea is completely landlocked, creating controversy over whether it is a sea or a lake. Since the collapse of the USSR, the Caspian Sea,

<sup>2</sup> A. Guzman. *How International Law Works*. Oxford University Press 2008, p. 133.

<sup>3</sup> *Ibid.*, p. 34.

<sup>4</sup> *Ibid.*, p. 26.

<sup>5</sup> E.g., D. Rothwell. *The Arctic in International Affairs: Time for a New Regime? – The Brown Journal of World Affairs* 2008 (XV) 1, p. 251.

which was previously shared by the USSR and Iran under bilateral treaties of 1921, 1935, and 1940, has had to be shared by five littoral states: Iran, Kazakhstan, the Russian Federation, Azerbaijan, and Turkmenistan. Since the years of legal vacuum that followed the collapse of the USSR in 1991, some important steps have been taken toward a generally accepted legal solution for the Caspian. As the negotiations demonstrate, all states in the region in one way or another support the division of the Caspian Sea. Therefore, on the second meeting of the heads of Caspian littoral states, in Tehran in 2007, the agenda for developing a Caspian Convention was laid down.

Although the need for a new treaty is more clearly understood and less disputed in the Caspian region whilst subject to general argument in the Arctic, it seems that there is a general perception in both cases that the existing legal framework does not provide sufficient regulation to settle the emerging issues in the regions. Considering the inadequacy of the existing treaty framework in the regions, understanding the need to resolve ongoing territorial disputes, and remembering that states are rational actors that enter into agreements to achieve gains, one can see a strong possibility that a new international legal regime given form in written multilateral agreements will emerge.

### 3. The anticipated content of the new treaties

In both the Arctic and the Caspian, there are territorial and maritime border disputes that need to be resolved in the first step.<sup>6</sup> Dividing the Arctic and Caspian territories means dividing the resources of the subsoil. In 2009, the United States Geological Survey estimated that the Arctic Ocean contains some 30% of the world's undiscovered natural gas and about 13% of the world's undiscovered oil, mainly offshore under less than 500 metres of water.<sup>7</sup> Experts from the United States Department of Energy estimated that proven oil reserves in the Caspian Sea range from 17 to 33 billion barrels. Clearly, therefore, huge material payoffs are at stake. In addition, climate change is opening prospective new sea lanes and lines of communication in the Arctic Ocean; the northern sea route across the north of Russia; the Northwest Passage through the Canadian archipelago; or even, possibly by mid-century, a direct route across the North Pole. The new sea lanes of the Arctic are of great economic significance. The Caspian, in turn, has for centuries been crossed by important transportation routes connecting Europe and Central Asia. The nature of the division of the Arctic and Caspian territories by the littoral states shall determine the extent to which the parties will gain control over them.

In order to find a solution for the territorial disputes in the Arctic region, the Arctic countries need a treaty that will secure the interests of each party concerned, either by division of a disputed area or by creating a joint management zone. Both approaches are based on equidistance, a fundamental principle of maritime boundary delimitation prescribed by the UNCLOS.<sup>8</sup> Hence, Canada and Denmark support the median line method according to which the Arctic Ocean would be divided according to the length of the countries' nearest coastline. Under this approach, the seabed next to internal waters would be under the full sovereignty of the coastal state, resulting in the passage of the North Pole to Denmark and a moderate gate to Canada. Russia, in contrast, is a strong proponent of the sector method, which would take the North Pole as a centre point and draw lines along the meridians. In the past, the United States was opposed to the sector method, but in a 1990 treaty with Russia, the United States accepted a boundary delimitation approach based on the sector method. Disagreements over delimitation methods will further delay the settlement process. The five Arctic parties are in need of an arrangement that would allow them to preserve the strength of their territorial claims and to prevent territorial claims of other countries or intergovernmental bodies. At present, there is no clear consensus on whether this should be a binding 'hard-law' instrument or a package of 'soft-law' recommendations.

Along with resolution of maritime border disputes in the Arctic, the proponents of the Arctic Treaty see a need for a comprehensive framework for regional co-operation and joint ecosystem-based management

<sup>6</sup> E.g., in the Arctic, Canada claims the Canadian Arctic Archipelago its internal waters; Russia is claiming a large extended continental shelf; there also are disputes regarding what passages constitute 'international seaways' and rights to passage along them (Northwest passage). In the Caspian, Azerbaijan's, Turkmenistan's and Iran's sectors are not fully defined.

<sup>7</sup> M. Blunden. *The New Problem of Arctic Stability. – Survival: Global Politics and Strategy 2009* (51) 5, p. 122.

<sup>8</sup> M. Rajabov. *Melting Ice and Heated Conflicts: A Multilateral Treaty as a Preferable Settlement for the Arctic Territorial Disputes. – Southwestern Journal of International Law 2009* (15), p. 438.

in the Arctic. For instance, in April 2010, the WWF presented a report for the WWF International Arctic Programme<sup>\*9</sup> with a proposal for a legally binding instrument with its objectives being the protection and preservation of the Arctic marine environment; the long-term conservation and sustainable and equitable use of Arctic marine resources and marine ecosystems and their functions; maintaining peace, order, and stability in the Arctic; and ensuring socio-economic benefits for present and future generations, with special reference to indigenous Arctic peoples. The need for an agreement on additional protection of the Arctic environment is sensed by many other actors; again, there is no agreement as to whether it should be enacted in the Arctic Treaty or a separate environmental treaty.

The Caspian states, in turn, have agreed that the Caspian Convention should settle the matter of delimitation of territorial waters, fisheries, and common waters of the Caspian; determine maritime boundaries of the littoral states; grant all Caspian states freedom of shipping, fishing, and transit passage in the common waters; and provide a legal framework for co-operation in the spheres of use, protection, and recovery of biological resources.<sup>\*10</sup> The convention has been under development for years, and the Caspian countries have expressed an opinion that it might be adopted already this year.<sup>\*11</sup> As the Caspian states have already ratified the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, in 2003<sup>\*12</sup>, the upcoming Caspian Convention shall encompass just a few environmental issues.

## 4. Co-operation or co-ordination?

It seems that all parties in both the Arctic and Caspian disputes share the idea of common, peaceful, and sustainable division and use of the seas. It is evident that the countries are ready to co-operate and negotiate the terms of any new agreements. So, can this process be viewed as a co-ordination game with an international agreement defining the co-operation among states? The Arctic Treaty is often seen as modelled on the Antarctic Treaty regime.<sup>\*13</sup> Initially, the Antarctic Treaty was an effort to resolve a co-ordination game. The states involved wanted to preserve the territory for scientific purposes and keep it free of military activity and weapons testing. However, the interests of the parties changed over time and additional environmental issues have become important, resulting in additional environmental legislation. Thus it is that the Antarctic Treaty work started as a co-ordination exercise but subsequently changed into a more challenging co-operative exercise.<sup>\*14</sup> Since both the Arctic Treaty and the Caspian Convention, though originating in a general environment of co-operation, face rather difficult problems of colliding interests, it seems safe to assume that the situation around them cannot be viewed as simply a co-ordination of purposeful behaviour of each individual state involved but, rather, should be approached as a much more difficult and complicated co-operation task. This assumption, in turn, implies that both treaties might soon follow the route of the Antarctic Treaty.

<sup>9</sup> T. Koivurova, E. J. Molenaar. A Proposal for Legally Binding Instrument. International Governance and Regulation of the Marine Arctic. Three reports prepared for the WWF International Arctic Programme. December 2009. Available at [assets.panda.org/downloads/zin1\\_final.pdf](https://assets.panda.org/downloads/zin1_final.pdf) (14.6.2011).

<sup>10</sup> О. Цыганов, Ш. Меджидов, А. Караваев. Море новых возможностей (The Sea of New Possibilities). – Известия, 26.11.2009, р. 4.

<sup>11</sup> Конвенция по статусу Каспия может быть принята уже в этом году (Caspian Convention might be adopted already this year). – Вестник Кавказа, 26.4.2011. Available at <http://www.vestikavkaza.ru/news/obshestvo/diaspora/36274.html> (14.6.2011).

<sup>12</sup> Framework Convention for the Protection of the Marine Environment of the Caspian Sea has been criticised for not attracting the public into environmental protection issues as does, for instance, Convention on the Protection of the Marine Environment of the Baltic Sea Area from 1992.

<sup>13</sup> See Note 7, p. 125.

<sup>14</sup> See Note 2, pp. 58, 127.

## 5. The Russian Federation as a common player: Russian interests in the treaties

The Russian Federation is one of the largest players in the Arctic and by far the largest player in the Caspian. As a rational player, Russia intends to obtain as many resources and benefits in the regions as possible. The voice protecting Russian national interests has usually been loud and demanding. Accordingly, on 20 December 2001, four years after the UNCLOS became effective, the Russian Federation presented a submission to the Commission on the Limits of the Continental Shelf to extend the limits of its shelf beyond 200 nautical miles from the baselines. After requesting additional materials from Russia and carefully considering the submission, the commission neither denied the request nor approved it. Instead, the commission requested provision of additional data by 2009. To gather said data, Russia launched the Arctica-2007 expedition to take samples from the Lomonosov Ridge at the points of its conjugation with the Laptev Sea and the East Siberian Sea. Additionally, Russia planted the controversial titanium Russian flag under the North Pole. Recently, Russia's Minister of Natural Resources Yury Trutnev stated that the analysis of samples taken from the ridge showed that the Lomonosov Ridge is part of the structural continuation of the Siberian continental platform and the North Pole belongs to Russia.<sup>\*15</sup>

Not only is Russia putting forward emotional arguments of ownership over the Arctic; the corresponding national policy is laid down in 'Foundations of Russian Federation State Policy in the Arctic through 2020 and Beyond', which the Russian president approved in 2008.<sup>\*16</sup> The strategy clearly emphasises the region's importance to Russia's economy as a major source of revenue, mainly in view of issues of energy production and profitable maritime transport. Russia planned to document its claims to territory lying beyond its current economic zone before the end of 2010 and to establish the outer borders of its Arctic zone by 2015 in order to 'exercise on this basis Russia's competitive advantages in the production and transport of energy resources', according to the Russian Arctic strategy paper. If Russia's diplomatic efforts succeed, by 2020 the Arctic will become 'one of the Russian Federation's leading strategic resource bases'<sup>\*17</sup>.

Additionally, some Russian legal scholars argue that the sector method supported by Russia for division of the Arctic evolved in the 1920s as a customary international norm according to which all water and land falling within the state's sector is under its complete sovereignty. Though the claimed customary international law norm is not enshrined in the UNCLOS, these scholars believe that Article 234, stating that 'Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas', does not rule out sector-based division of the Arctic and, moreover, entitles the coastal states to give Arctic areas a 'special status'.<sup>\*18</sup>

According to the Russian Federation's maritime doctrine for the period until 2020, the Caspian is viewed as a 'region with unique mineral and biological resources. One of the long-term goals set under this regional development is to determine the international legal regime for the Caspian Sea and use of fisheries and of oil and gas resources that would benefit the Russian Federation'<sup>\*19</sup>. According to the Russian position, the Soviet-Iranian treaties from 1921, 1935, and 1940 that settled on equal and exclusive rights for the Soviet Union and Iran to conduct maritime activities in the Caspian are, in the absence of a new convention, still in force. The treaties established a status for the Caspian as a closed sea, which was generally accepted by the international community. Taking into account that the newly emerged Caspian

<sup>15</sup> See Note 7, p. 427.

<sup>16</sup> Основы государственной политики Российской Федерации в Арктике на период до 2020 года и дальнейшую перспективу (Foundations of Russian Federation State Policy in the Arctic through 2020 and Beyond). Утверждена президентом РФ Д. Медведевым 18.9.2008. Пр 1969. Available at <http://www.rg.ru/2009/03/30/arktika-osnovy-dok.html> (18.7.2011).

<sup>17</sup> D. Trenin. The Arctic: A Front for Cooperation not Competition. The Arctic. A view from Moscow. Carnegie Endowment for International Peace 2010, p. 9.

<sup>18</sup> А. Ковалев. Международно-правовой режим Арктики и интересы России (International Legal Regime of the Arctic and Interest of Russian Federation). Available at [http://www.pircenter.org/data/publications/sirus3-09/115-124\\_Analiz-Kovalev.pdf](http://www.pircenter.org/data/publications/sirus3-09/115-124_Analiz-Kovalev.pdf) (15.6.2011).

<sup>19</sup> Морская доктрина Российской Федерации на период до 2020 года (Russian federation maritime doctrine for the period until 2020). Утверждена президентом РФ В. Путиным 27.6.2001, Пр 1387. Available at <http://www.scrf.gov.ru/documents/34.html> (8.4.2011).

countries agreed to follow the international treaties signed by the Soviet Union, as well as the fact that international law does not vest a country with a right to alter its maritime borders unilaterally, there are no legal grounds to deny the validity of the old ‘Soviet’ treaties. The outcome of this position would mean that the Caspian can be solely used by the littoral states while being closed to the rest of the world. Russia agrees that the Soviet–Iranian treaties are outdated (since they do not mention and in that sense regulate the use of the seabed and subsoil) but stands firm on adherence to them. More precisely, the Russian position concerning possible division of the Caspian is held as ‘divided seabed, common waters’.

There is also an interesting opinion expressed by Russian political scientist Pavel Baev, that ‘Russian economic interest in resources camouflages the “lofty ideal” of Russian sovereignty over the Arctic’<sup>20</sup> and the Caspian. ‘While the lure of oil and gas wealth is no doubt attractive, the romantic idea of establishing a hold over new—or old as once belonged to—territories and possessing the ocean depths and icy expanses holds greater appeal,’ Baev maintains. It does not seem at all unlikely that, because the Caspian has for several centuries been within the Russian realm, the Russian patriotic desire to retain control over its territory might also be at work in this particular case.

## 6. Constraints on Russian legal behaviour

Had the Russian Federation been the only rational player in the games for Arctic and Caspian resources (a rather trivial case of a game), it would most probably get the new international agreements to serve its interests, achieve the desired maximisation of its benefits, and satisfy all mentioned claims and pretensions. As seen from the references mentioned above, Russia is willing to adhere to the Arctic Treaty only if the latter establishes sector-based division of the Arctic Ocean. Unless and until that happens, Russia will continue to gain legal grounds to support its territorial claims from Article 234 and other UNCLOS provisions. There are even opinions that Russia is adhering well to the applicable rule of law; at a minimum, Russia’s conduct in the Arctic appears broadly comparable to the conduct of other states with a presence in the region.<sup>21</sup>

Similarly, Russia favours the Caspian Convention only if the countries agree to the concept of divided bottom and common waters. Otherwise Russia’s intention is to stick firmly to the outdated bilateral treaties between the USSR and Iran. It is widely believed that from the political point of view Russia benefits from the absence of a precise treaty in the Caspian region: on the one hand, it enables Moscow—as well as Tehran—to impede building of a trans-Caspian pipeline, a project that would be in the interest of diversifying the energy supply in the European Union, thereby increasing the importance of Turkmenistan and Azerbaijan. On the other hand, the status quo allows Russia to put pressure on both Turkmenistan and Kazakhstan, as the latter still use oil and gas energy supply resources via Russian territory.

We must remember, however, that the Russian Federation is surrounded by other states trying to act rationally, so the rather trivial scenario of a new international agreement, as described above, is, obviously, unlikely. Also, the situation in reality is somewhat different from the Russian perception. Planting a flag on the sea floor of the North Pole was an impressive technical achievement but carried no legal significance for the other states. It neither bolstered nor confirmed a Russian claim to the Arctic seabed, nor did it constitute a violation of international law. Rather, it signalled to the West the Russian intention and ability to continue pressing a legal claim to a significant portion of the continental shelf beneath the Arctic Ocean.<sup>22</sup> The current ice conditions in the Arctic make gathering of precise and detailed information to meet UNCLOS continental shelf prolongation requirements almost impossible. The lack of evidence proving that the Lomonosov Ridge is a natural prolongation for any particular party to the disputes makes Russian, Canadian, and Danish claims to the North Pole vulnerable. The fact that the Lomonosov Ridge extends from the coasts of three states creates grounds for legitimate territorial claims, but the existing ice conditions prevent these states from affirming their position through sample drilling.

Russia perfectly understands the difficulty of amassing a factual basis for its legal claims. No-one has been able to collect rock samples from the Lomonosov Ridge, even from a depth of just a few metres. Geo-

<sup>20</sup> P. Baev. Russian Policy in the Arctic. A Reality Check. *The Arctic. A view from Moscow*. Carnegie Endowment for International Peace 2010, p. 25.

<sup>21</sup> M. Becker. Russia and the Arctic: Opportunities for Engagement Within the Existing Legal Framework. – *Am. U. Int’l L. Rev.* 2009–2010, p. 249.

<sup>22</sup> *Ibid.*, p. 225.

physical and seismological methods—as well as numerous samples of sediment from the seabed—provide no conclusive evidence of the continental origin of these ridges, and Russia does not have the technical capability for deep drilling. The only way to resolve this problem would be to take part in international programmes studying the ocean floor<sup>\*23</sup>, which would require co-operation as well as huge financial investments from the participants.

In addition to the economic difficulties Russia needs to overcome in order to pursue the desired content for the new agreements, there are legal forces that restrain Russian actions. In the late 1980s and early 1990s, the Soviet Union and (after its collapse) Russia went to considerable lengths to rebuild a reputation for compliance with international legal obligations. Following the collapse of the Soviet Union in 1991, the new Russian government announced that it would honour existing Soviet debt despite the change in regime. Had it chosen to repudiate the debt, the new Russia would have compromised its reputation and undermined its efforts to develop financial ties with the West. Abiding by international norms helped Russia to build a new reputation that, in turn, increased its ability to attract financial assistance from the West.<sup>\*24</sup>

Though Russian behaviour with respect to preserving a reputation of compliance has never been perfect, Russia is aware that in a large-scale co-operation game with other economically strong game partners, any violation of its legal obligations or promises might result in reputation sanctions too costly to be paid. Reputational sanctions do not require states to choose to impose costly sanctions in an effort to generate future compliance; they reflect the updating of beliefs by self-interested states. Reputation sanctions of other Arctic players may result in co-operation without Russia: scientific research without Russian scientists, claims of an extended continental shelf, etc. In the Caspian, reputation sanctions could result in bilateral agreements between other states and increased presence of the United States in the region. In addition, mechanisms of reciprocity would mean the remaining states' reciprocal reaction to Russian violation, and retaliation in the form of costly sanctions can be applied.

As a rational player amongst other players, Russia is interested both in co-operation with others and in avoiding reputation-associated sanctions. The country and its leaders understand that only co-operation can lead to a treaty that will grant Russia its desired resources and control. Despite some rather emotional actions, such as the one involving the titanium flag at the North Pole, there are sufficient grounds for expecting Russia to be open to negotiations over the new treaties, to hold back some of its pretentious claims, and to remain in line with its legal obligations and grounded promises—all these in order to reach agreements that shall in one way or another maximise Russian benefits. Even in situations that seem to be dominated by a collision of interest, there is a co-operative element to discern. It seems, therefore, that the emergence of new legal regimes is only a matter of time.

## 7. Conclusions

The processes surrounding the Arctic and Caspian, dissimilar at first glance, are nevertheless good examples of how contemporary international law emerges. This article has provided a brief case study concerning the real payoffs as well as legal forces that would lead Arctic and Caspian states to conclusion, or rejection, of the new Arctic Treaty or the Caspian Convention. The article gave insight into possible content of the new treaties, with the author also discussing whether the Arctic Treaty and Caspian Convention are pure co-ordination games and looking at the forces that define particularly Russian juridical behaviour with respect to these treaties.

The article proceeded from the assumption that both regions are in need of a new legal regime. Namely, there are maritime border disputes in both seas that need to be settled. Agreement on maritime delimitation would mean dividing the subsoil resources and control over transportation routes among the littoral states. Obviously, huge material payoffs are at stake. In addition, environmental and co-operation issues—especially those arising with the melting of the ice in the Arctic—must be resolved. Arctic and Caspian countries feel a strong incentive to co-operate in the creation of new legal regimes, even though there is still no consensus on how this should be done.

<sup>23</sup> See Note 8, p. 27.

<sup>24</sup> See Note 2, p. 89.

The article has applied the methodology of rational choice theory, which posits that states, being rational players, act in a way that maximises their benefits, both political and economic. However, along with possible material payoffs, legal forces, such as reputation, reciprocity, and retaliation, can play a similarly important role in the final decision of a state about entering into a treaty and complying with it. As one such rational actor, the Russian Federation stands firm in protecting its interests in the Arctic and Caspian. It seems perfectly natural that any country will support the conclusion of new treaties only if they serve its interests, and, obviously, the Russian Federation is not the only rational player in these games. But in a world that is increasingly becoming one large global village, in which every party is more conscious and aware of the intentions and actions of others in whatever game they might be involved in, the need to co-operate and to sustain one's reputation for legal compliance become almost as important as any possible material payoff. Accordingly, Russia's rational choice and legal behaviour will be significantly restrained by the desire to keep its reputation for legal compliance intact, as well as by concern over reputation sanctions, reciprocity, and retaliation. Being a rational player that also wants to achieve co-operation, Russia needs to consider the interests and legal behaviour of other countries involved. Thus we have shown that the notion of rationality, as defined by rational choice theory, can, in a sense, in our particular case be extended to include a behaviour that, rather than focusing on material payoffs alone, also considers possible legal 'payoffs', such as reputation sanctions, reciprocity, retaliation, and the like. (After all, it would be hard to say that a state has acted 'rationally' if it were to gain material benefits at the expense of its reputation, co-operation, and the trust of its partners.)

To sum up, the author of this article believes that the Arctic Treaty and Caspian Convention shall find their place among historically important legal documents. The article also has included an attempt to show that the process of birth of new international legal regimes has already started, and that it is going to be difficult but nevertheless very engaging. When and how exactly the Arctic Treaty and the Caspian Convention will be concluded is, the author is convinced, a question for the immediate future.