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# Exploring the Dualism of Law and its Ramification

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## ABSTRACT

This article analyzes the problem of legal dualism and its ramifications, particularly considering the increased interest of states in exploiting the Arctic subsoil. This article examines the unilateral announcement of the United States government to extend the continental shelf off the coast of Alaska in the Arctic and the Bering Sea, citing provisions from the Russian-American Convention of March 29, 1867, as a prime example of legal dualism. Within this framework, seemingly contradictory concepts are treated as law. The procedural aspects of the treaty that transferred Alaska to the physical administration of the U.S. are analyzed alongside the reasons for the absence of an established border between the U.S. and the Russian Federation. The legal ambiguity surrounding the 1867 treaty, which remains incompletely formalized and thus generates corresponding consequences, is considered. Additionally, this article analyzes actions by the U.S. administration in response to Texas' claims of secession from the U.S., rooted in differing local and federal interpretations of the U.S. Constitution, as well as the implications of the temporary ban on issuing new export permits for U.S. liquefied natural gas. A solution is proposed to address the adverse effects of legal dualism in this domain by using digital financial assets.

**Keywords:** Arctic shelf; dualism of law and its manifestations; ban on export permits for liquefied natural gas; digital financial assets.

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## О дуализме права и его последствиях

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### АННОТАЦИЯ

В статье анализируется проблема дуализма права и проявления его последствий, связанных с повышением заинтересованности государств в эксплуатации арктических недр. Отмечается, что объявление правительством США в одностороннем порядке о расширении континентального шельфа у побережья Аляски в Арктике и Беринговом море, исходя из положений русско-американской конвенции от 29 марта 1867 г., является проявлением дуализма права, в рамках которого воспринимаемые противоположными по своим основополагающим качествам концепты именуется правом. Анализируются процедурные обстоятельства договора передачи Аляски в физическое управление США, а также причины отсутствия установленной границы между Соединенными Штатами и Российской Федерацией. Рассматривается правовая ситуация, которая налагает отпечаток на возможность дальнейшей реализации договора 1867 г.: он не может считаться полностью оформленным, а значит, и порождающим соответствующие последствия. Анализируются действия администрации США, связанные с заявлениями Техаса об отделении от Соединенных Штатов на основании разного понимания и толкования конституции США на местном и на федеральном уровнях, а также последствия введения администрацией США временного запрета на выдачу новых экспортных разрешений на американский сжиженный природный газ. Предлагается использование цифровых финансовых активов для нивелирования негативных проявлений дуализма права в данной сфере.

**Ключевые слова:** арктический шельф; дуализм права и его проявления; запрет на экспортные разрешения на сжиженный природный газ; цифровые финансовые активы.

### Как цитировать

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The modern period of the development of civilization is characterized by an increased interest by entities of international legal relations in the exploitation of the Arctic subsoil, an area which is rich in natural resources, including oil, gas, lithium, and tellurium. Since there is as yet no international treaty defining the legal status of the Arctic, such status is regulated by international law, the national legislation of the five Arctic states, and interstate agreements<sup>1</sup>.

Taking this into account, and understanding the realities determined by the manifestations of the dualism (i.e., the letter and spirit)<sup>2</sup> of the law, in which concepts perceived as opposing in their fundamental qualities are still called law<sup>3</sup>, and with all the ensuing consequences<sup>4</sup>, thereby acquires special practical significance.

This specific circumstance must be taken into account not only by the four Arctic states (i.e., Russia, Canada, Denmark, and Norway) in the framework of their international legal relations with the USA, which have not signed the UN Convention on the Admiralty Law<sup>5</sup>, but also by other states entering into such relations.

Thus, at the end of December 2023, the US government announced unilaterally the de facto expansion of the continental shelf off the coast of Alaska in the Arctic and the Bering Sea<sup>6</sup>, characterizing such an action as legitimate in terms of designating its new borders according to the historic provisions of the Russian–American Convention of March 29, 1867 [1, p. 114].

However, the legitimacy of this position is questionable from a historical point of view; on May 8, 2015, representatives of the indigenous population of Alaska, together with representatives of the Hawaiian Islands, appealed to the international community to ensure their right to self-determination due to the “illegal annexation and occupation of their territories by the USA.”<sup>7</sup> “If we could, working with the Russians, present the truth about what really happened in history and reject distorted concepts about Alaska and our peoples, I think that would be a good way to correct the situation,” said the authorized representative of Alaska, R. Barnes, in Geneva<sup>8</sup>.

In this regard, it is worthy of note that on January 18, 2024, Russian President V. Putin signed an order in respect of the legal protection of Russian historical property abroad, according to which Russia will allocate funding for the search, registration, and legal protection of the overseas real estate belonging to it. This order refers not only to the assets of the modern Russian Federation but also to the assets from the eras of the Soviet Union and the Russian Empire<sup>9</sup>.

According to analysts, the signing of such an order is required partly due to the need to clarify the precise legal grounds relating to the cession of Alaska, which was part of Russia from 1799 up to 1867<sup>10</sup>. Taking into account the verification of the authenticity of the relevant agreement with the USA and the search for documents, it is expected that whether this transaction can actually be considered valid from a legal point of view will be determined<sup>11</sup>.

The fact is that the text of the interstate agreement of 1867 does not contain the word “sale.” The treaty states that “His Majesty the All-Russian Emperor hereby undertakes to cede the entire territory to the North American United States, immediately upon exchange of ratifications...” [1, p. 114]. Thus, the existing treaty, the text of which was being finalized at the moment before its direct signing on behalf of Russia by the Russian envoy to the USA, E. Stekl, at 4 a.m. on March 29, 1867<sup>12</sup>, is, was in reality, an agreement on the cession of the Russian North American colonies to the US federal government. Moreover, following the laws of the Russian Empire, before such an agreement was actually signed, the text should have been submitted to the State Council for discussion, but this was not done<sup>13</sup>.

On the USA side, the treaty on ceding the rights to Russian territories was also drawn up with some procedural violations, since it required ratification by both houses of the US Congress, and not, as was the case, an emergency session of Congress specially convened for this particular purpose<sup>14</sup>.

<sup>1</sup> Frozen borders: how countries divide the Arctic. URL: <https://dzen.ru/a/WiUxa0gmd5VqJl30> (access date 03/14/2024).

<sup>2</sup> Dualism in philosophy: concept and basic ideas, representatives. URL: <https://dnevnik-znaniy.ru/filosofiya/dualizm-v-filosofii.htm> (access date 03/14/2024).

<sup>3</sup> Philosophy of law. Dualism of natural law ontology and its possible explanations. URL: <https://blog.pravo.ru/blog/3277.html> (access date 03/14/2024).

<sup>4</sup> Yu. A. Tikhomirov, Public Law, textbook, Izdatelstvo BEK, Moscow (1995).

<sup>5</sup> Frozen borders: how countries divide the Arctic. URL: <https://dzen.ru/a/WiUxa0gmd5VqJl30> (access date: 03/14/2024).

<sup>6</sup> Limits of the US continental shelf. URL: <https://russiancouncil.ru/analytics-and-comments/interview/predely-kontinentalnogo-shelfa-ssha/> (access date 03/14/2024).

<sup>7</sup> Alaska and Hawaii appealed to the UN for self-determination. URL: <https://rg.ru/2015/05/08/oon-site.html> (access date 03/14/2024).

<sup>8</sup> Ibid.

<sup>9</sup> Order of the President of the Russian Federation dated January 18, 2024 No. 21-rp. (On Determining the Federal State Unitary Enterprise “Overseas Property Management Enterprise” of the Administrative Department of the President of the Russian Federation as the recipient of a subsidy for financial support of costs). URL: <http://www.kremlin.ru/acts/bank/50257> (access date 03/14/2024).

<sup>10</sup> From Texas to Alaska. About crisis America. URL: <https://inosmi.ru/20240210/ssha-267809991.html> (access date 03/14/2024).

<sup>11</sup> Newsweek: Russia is returning Alaska. URL: <https://dzen.ru/a/Za6r79mfcW5WfRuB> (access date 03/14/2024).

<sup>12</sup> Alaska still belongs to Russia. Lawyers proved that Russia did not sell Alaska, but gave it for temporary use. URL: <https://dzen.ru/a/YUh9PO6bPIDSrjqf> (access date 03/14/2024).

<sup>13</sup> “The Americans had something to hide.” Why did Russia give Alaska to the USA? URL: <https://lenta.ru/articles/2017/03/15/alaska/> (access date 03/14/2024).

<sup>14</sup> Can Russia demand the US return Alaska. URL: <https://cyrillitsa.ru/history/178087-mozhet-li-rossiya-potrebovat-u-ssha-vern.html> (access date 03/14/2024).

Given these circumstances, the agreement to transfer Alaska to the physical control of the USA may arguably be considered legally untenable<sup>15</sup>.

In this regard, the statement made in 2022 by the head of the Border Service of the Federal Security Service of the Russian Federation, V. Kulishov, is perhaps quite justified: "Based on the textual features of the 1867 convention on the cession of Alaska to the USA, Russia and the USA still do not have a legally formalized state border."<sup>16</sup> Thus, in the text of the 1867 treaty, the border between the two countries was defined as being at an equal distance between the Ratmanov and Kruzenshtern islands, which are located in the Bering Strait at a distance of less than 4 km from each other [1, p. 114].

Since the midpoint between these islands was chosen as the starting point for drawing a straight line to the north, along the Bering Sea, and to the south, along the Chukchi Sea<sup>17</sup>, it was this line that began to be considered the Russian–American border. However, a map of these new borders was not attached to the agreement, indeed, it was not drawn up, and the text of the agreement itself did not indicate which cartographic projection should be used to establish the midpoints and then draw straight lines on the map. Depending on the projection actually used, the borderline on the map may, in point of fact, differ significantly<sup>18</sup>.

In 1977, an exchange of notes took place between the governments of the USSR and the USA, confirming that the "western border of the ceded territories" provided for in the 1867 treaty, passing in the Arctic Ocean, the Chukchi and Bering Seas, is used to delimit areas of jurisdiction of the USSR and the USA but only in the fishery zones of these marine areas<sup>19</sup>. In 1990, the Minister of Foreign Affairs of the USSR, E. Shevardnadze, and the US Secretary of State, D. Baker, signed an agreement on the state border, according to which the maritime space in the Bering and Chukchi Seas was to be divided, and since this agreement was deemed unequal (it implied significant concessions from the USSR), first the Supreme Soviet of the USSR, and then the Russian parliament refused to ratify it<sup>20</sup>.

In 1999, with the approval of the US federal government, the Alaska parliament adopted a resolution which also contained a refusal to recognize the border established by Shevardnadze and Baker. The resolution states that the proposed treaty should

be canceled and new negotiations should be conducted with the participation of the State of Alaska, on the understanding that the terms of the new agreement relating to the territory, sovereignty, or property of the State of Alaska should only be accepted with the consent of this state, taking into account the fact that the Russian islands off the coast of Chukotka and Kamchatka "historically belong" to Alaska<sup>21</sup>.

Indeed, the main meaning of this resolution is thus reduced to the official presentation of the additional territorial claims against Russia. However, given that the US Supreme Court previously, in its decision, significant for subsequent affairs, and citing a wide range of historical and international sources such as the case of *The Paquete Habana* (1900), indicated that international law will not apply in cases where there is a governing legislative, executive, or judicial act contradicting this [2]. Thus, the 1999 resolution of the Alaska parliament created a new legal situation in which Russia must conduct further negotiations on the state border with the USA, not with the federal government but with the government of the State of Alaska.

By transferring its authority to formalize the boundary amendment to the 1867 convention to the Alaska parliament, the US federal government thereby ceases to be a party to this treaty, which may then be declared null and void from the moment of signing it<sup>22</sup>, since the territory of Alaska as a commodity was ceded to the USA without a clear indication of the boundary of its territory, i.e., without actually determining the size of this commodity.

As a result, the legal situation that developed after 1999 affects the possibility of further implementation of the 1867 treaty since until the border between the states is determined, the treaty on the cession of Alaska, from a legal point of view, cannot be considered fully formalized, therefore, giving rise to corresponding consequences. Based on this, Russia has the right to make claims against the USA and demand the return of Alaska as it was appropriated illegally by it.

From the standpoint of the consequences of this dualism of law manifesting, it is important to address the example of how a coastal Arctic state caused damage to its rights due to the implementation of a less-than-optimal legal policy designed to implement unfounded territorial claims against Russia by way of an analysis of the development of the modern sociopolitical situation in the state of Texas.

This state, some three years later than Alaska, was incorporated into the USA in 1870, having previously existed for nine years as an independent country<sup>23</sup>. In November

<sup>15</sup> Don't be a fool, America! URL: [https://ruskline.ru/news\\_rl/2024/01/25/ne\\_valyai\\_duraka\\_amerika](https://ruskline.ru/news_rl/2024/01/25/ne_valyai_duraka_amerika) ([https://ruskline.ru/news\\_rl/2024/01/25/ne\\_valyai\\_duraka\\_amerika](https://ruskline.ru/news_rl/2024/01/25/ne_valyai_duraka_amerika)) (access date 03/14/2024).

<sup>16</sup> The US is setting the grounds for canceling the sale of Alaska. URL: [https://vk.com/wall-967744\\_756002](https://vk.com/wall-967744_756002) (access date 03/14/2024).

<sup>17</sup> America is closer to us than we thought: the distance between our countries is only 4 km. URL: <https://dzen.ru/a/YDvRG0m05yiqOhbz>. (access date 03/14/2024).

<sup>18</sup> The US is setting the grounds for canceling the sale of Alaska. URL: <https://ren.tv/blog/iurii-gorodnenko/984334-ssha-sozdaiut-pochvu-dlia-otmeny-prodazhi-aliaski> (access date 03/14/2024).

<sup>19</sup> 130 years ago, the treaty for the sale of Alaska was signed. URL: <https://www.kommersant.ru/doc/175292> (access date 03/14/2024).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Russia may declare the sale of Alaska to the United States illegitimate. URL: [https://news.rambler.ru/world/52140080/?utm\\_content=news\\_media&utm\\_medium=read\\_more&utm\\_source=copylink](https://news.rambler.ru/world/52140080/?utm_content=news_media&utm_medium=read_more&utm_source=copylink) (access date 03/14/2024).

<sup>23</sup> Where did this Texas come from and is it worth expecting its separation from the USA? URL: [https://news.rambler.ru/world/52185395/?utm\\_content=news\\_media&utm\\_medium=read\\_more&utm\\_source=copylink](https://news.rambler.ru/world/52185395/?utm_content=news_media&utm_medium=read_more&utm_source=copylink) (access date 03/14/2024).

2012, despite the US Supreme Court decision of 1869 strictly prohibiting the unilateral declaration of independence by any state, a petition for the secession of Texas, signed by more than 125.000 people, appeared on the White House website<sup>24</sup>. Since 100.000 signatures are enough to trigger a consideration of such a petition on its merits in the USA, the response to it from the federal authorities was the phrase “The Founding Fathers who created the USA did not envisage the right to secede from the States”<sup>25</sup>.

However, in 2020, the Texas Republican Party, with the approval of 93% of its members, included in the party platform a clause related to the infringement of Texas’ right to self-government on the part of the federal government and stated that “Texas retains the right to secede if any future Congress or the President will change the political system from a constitutional republic to something else”<sup>26</sup>.

At the beginning of 2024, the contradictions between the authorities of Texas and the US federal government, prompted by the active opposition of the state authorities to the process of illegal migration, became somewhat antagonistic, and the issue of secession from the USA was raised again in Texas<sup>27</sup>. As a result, in the referendum on independence from the USA, which took place in Texas in January 2024, the population of the state largely voted for independence from the USA, and this position was supported by 75% of voters<sup>28</sup>.

The US President and his administration assessed this action by Texans as a potentially destructive decision for the whole country<sup>29</sup>. However, the governor and the people of the state believe that the federal government does nothing, abdicating its constitutional responsibilities to regulate immigration, based on different understandings and interpretations of the US Constitution at the local and federal levels, “not only its substance, but also its spirit — not only on issues of borders but also security, family values, guns, education, history, racial issues, and the powers of government”<sup>30</sup>.

In this regard, the Texas Nationalist Movement called on the governor and state legislature to convene a special session immediately to discuss the issue of Texas independence and border protection, and the governors of

Florida and Oklahoma<sup>31</sup>, and then those of Alaska<sup>32</sup> and 24 other states announced their readiness to send National Guard personnel and military hardware to Texas if such assistance was thought to be required.

Since energy is the main export and source of prosperity of Texas, the US administration responded to these statements by introducing a temporary ban on the issuance of new export permits for American liquefied natural gas (LNG)<sup>33</sup>.

By enacting such a ban, the US administration completely ignored the interests of European consumers of LNG, who had previously entered into long-term multi-billion dollar contracts for gas supplies from the USA. However, the administration’s statement, dated January 26, 2024, stated that a pause in the supply of LNG “may be canceled in case of an unforeseen and immediate national security emergency event”<sup>34</sup>.

According to the International Gas Union, which has more than 150 members, such a US decision “raises serious concerns as it will harm global energy security and reduction of emissions”<sup>35</sup>, since supplies of Russian liquefied gas to European consumers are also significantly reduced due to the introduction of US sanctions against the largest project “Arctic LNG-2”<sup>36</sup>.

Leveling out the negative manifestations of the dualism of law in this field aims to look for alternative payment systems that are not subject to the sanctioning influence of the US financial authorities, for example, conducting cross-border settlements with European and other partners based on those regulatory and infrastructure solutions related to the use of digital financial assets (hereinafter referred to as DFAs), correlated to gold or grain<sup>37</sup>.

<sup>31</sup> Emergency situation. Why is Texas rebelling and is the USA facing civil war? URL: <https://www.belta.by/world/view/vneshtatnaja-situatsija-pochemu-buntuet-tehas-i-grozit-li-ssha-grazhdanskaja-vojna-612550-2024> (access date 03/14/2024).

<sup>32</sup> As it were, Alaska and Texas begin to fight for independence. If a civil war breaks out in Texas, who will lend a helping hand to the Texans? URL: <https://dzen.ru/a/Zb5m5xl4DVI-a9lh> (access date 03/14/2024).

<sup>33</sup> What is behind Biden’s decision to suspend permitting for new LNG export contracts? URL: <https://dzen.ru/a/Zb5GRONjZDBHzBRV> (access date 03/14/2024).

<sup>34</sup> The Biden-Harris administration is announcing a temporary pause pending permits for liquefied natural gas exports. URL: <https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/26/fact-sheet-biden-harris-administration-announces-temporary-pause-on-pending-approvals-of-liquefied-natural-gas-exports/> (access date 03/14/2024).

<sup>35</sup> The European Union and industry are in disagreement on the impact of the Biden administration’s LNG production shutdown on energy security: “worrisome.” URL: <https://www.foxbusiness.com/economy/european-union-industry-at-odds-over-energy-security-impact-biden-administration-lng-pause> (access date 03/14/2024).

<sup>36</sup> “Sanctions act against themselves.” URL: <https://www.kommersant.ru/doc/6495335> (access date 03/14/2024).

<sup>37</sup> Digital assets will be allowed to be used in international payments. [https://iz.ru/1646711/anna-kaledina-mariia-kolobova/sdelano-kitaiu-v-mezhdunarodnykh-raschetakh-razreshat-ispolzovat-tcifrovye-aktivy?utm\\_source=mail\\_json](https://iz.ru/1646711/anna-kaledina-mariia-kolobova/sdelano-kitaiu-v-mezhdunarodnykh-raschetakh-razreshat-ispolzovat-tcifrovye-aktivy?utm_source=mail_json) (access date 03/14/2024).

<sup>24</sup> Media: The USA criticizes Russia for Crimea, but forgets about the independent state of Texas. URL: <https://russian.rt.com/article/24493> (access date 03/14/2024).

<sup>25</sup> The White House has withdrawn the petition to annex Alaska to Russia. URL: <https://ria.ru/20140420/1004713181.html> (access date 03/14/2024).

<sup>26</sup> Texas secession movements. URL: [https://en.wikipedia.org/wiki/Texas\\_secession\\_movements](https://en.wikipedia.org/wiki/Texas_secession_movements) (access date 03/14/2024).

<sup>27</sup> American Texas has taken another step towards independence from the USA. URL: <https://rg.ru/2023/12/05/tekzit-na-gorizonte.html> (access date 03/14/2024).

<sup>28</sup> Texas independence: a new stage in history in 2024. URL: <https://marina-bartsaeva.ru/news/nezavisimost-tehasa-novyy-etap-istorii-v-2024-godu> (access date 03/14/2024).

<sup>29</sup> Ibid.

<sup>30</sup> Texas will change America beyond recognition. URL: <https://ria.ru/20240131/ssha-1924418917.html> (access date 03/14/2024).

Since DFAs are implemented based on blockchain technologies and smart contracts, when used in international payments, the concluded agreement can be perceived both as a computer program and as a special civil law agreement. The need to combine the technical component with the legal component, in this case, is determined not only by the method of execution of the contract (i.e., proof of its conclusion) but also by a special contractual structure (a contractual superstructure) whose conclusion is impossible separately from the contract itself [3, p. 79]. This circumstance requires a legal understanding not only from the standpoint of the methodology for drawing up an agreement, which

is a legal instrument based on some kind of consensus [4, p. 55] but also its interpretation since after the contract is signed, it is converted into an algorithm with the creation of an electronic token of the contract [5, p. 36].

Thus, understanding the problem of the dualism of law and its consequences is currently markedly relevant both from the point of view of understanding sovereign rights and jurisdiction over significant areas in the Arctic, taking into account the presence of the overlapping claims of Arctic states and the implementation of liquefied natural gas supplies outside the USA and the Russian Federation, including using DFAs when paying for such supplies.

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