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Sale of Quotas for Greenhouse Gas Emissions as a Type Civil Sale and Purchase Contract

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ABSTRACT

The article examines the emergence, development and current legal regulation of the sale and purchase agreement and reveals the place of sale of quotas for greenhouse gas emissions in the system of civil contracts. The character of the sale of emission of quotas between states is considered, as well as the legal nature of the quota sale (in carbon units) contract in the framework of national jurisdictions. The authors conclude that the term "quota" means a quantitative limitation of greenhouse gas (G.H.G.) emissions, which should be understood as gaseous waste (G.W.), which has not received clear regulation in the national (Russian) law. Recognition of G.W. as a kind of industrial waste will make it possible to better understand and explain its legal nature, and directly the alienation of a certain amount (quota) of G.W. within the framework of civil legislation is the conclusion of a contract of sale of property rights belonging to the owner of G.W. to another business entity for a fee and for a certain period.

KEYWORDS

Climate; Contract; Emissions; Greenhouse Gases; Quota

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INTRODUCTION

Civil law is one of the most important branches of law in the modern world. After thousands of years of history, modern civil law can boast of various contractual patterns, both strong enough to be tested by time and weak enough to vanish without leaving trace. In the current system of civil contracts, the sale and purchase contract occupies a special place. Having emerged in the early stages of the state - and thus of the legal system, it has undergone a long evolution, during which it showed its viability, entering the civil codes of all modern states of the world. Of course, throughout all historical eras, there can be no question of any single legal regulation of sale and purchase, but at the moment the general trend in most developed countries shows a gradual understanding that globalisation and digitalisation of public life cannot but contact the scope of contract law.

Another question is how the state and society should respond to these challenges. There can hardly be a universal answer to this question.

In our opinion, the answer is necessarily linked to national legal traditions, the level of economic development, cultural and religious characteristics of certain countries - and sometimes the very historical course of development of a particular state and of its legal system. In this sense, Russia and other former Soviet republics are of particular interest due to a unique model of economic reforms associated with the transition from a planned economy to a market economy, which entails “catch-up development” on many issues, including contract law. At the same time, it seems that the law, despite its natural conservatism, should not always only react to emerging social relations which require some regulation. The predictive function of law expects the study and forecast of the development in various spheres of public relations, and it requires an early legal impact on them, this is in the interests of the state and society. One of such promising areas of the legal institution of sale and purchase is the trading of quotas for greenhouse gas emissions, which has officially been recognised by the United Nations [hereinafter U.N.] Framework Convention on Climate Change 1992 with the Kyoto Protocol (1997). This was the first time that the UN has ever proposed a non-standard approach to solving the problems associated with climate change and with the increasing of average annual temperatures. The authors of the Kyoto Protocol assumed that the countries produced different amounts of greenhouse gases which are harmful to the atmosphere and climate, and therefore, they could sell part of such quotas to other countries, thereby reducing the total amount of emissions on a global scale.

This trend was followed by the 2015 Paris Climate Agreement. But even though emission trading has been in practice for many years, this instrument has not yet fully been implemented. At the same time, another question is how the emission quota of a certain state should be differentiated according to national territories and industrial zones. In case this issue is solved positively, amendments should be made to the national civil legislation to regulate this new type of sale and purchase contract. However, it remains unclear what is the subject of this agreement, since the emission of quotas still needs to be recognised as an asset, commodity or property interest.

Therefore, the purpose of our research is to prove that trading in quotas is a new level of development of the sales contract, which requires a change in doctrinal ideas about this contract, as well as the theoretical development of its types, subjects, terms of the contract and several other issues.

Given this, the first Part of our article will try to identify the historical features of the origin and development of the sale and purchase contract; the second Part will be devoted to the modern classification of types of sale and purchase; in the third Part of this article, we will explore the impact of the 2015 Paris Climate Agreement on tackling climate change. Finally, in the fourth Part of the article, we study the civil law specifics and the legal nature of emissions trading and formulate certain proposals for improving national civil law.

1. THE HISTORY OF THE DEVELOPMENT OF THE SALE AND PURCHASE CONTRACT IN THE WORLD AND IN RUSSIA

The history of the sale and purchase contract dates back to centuries ago. Having arisen after the barter and torts agreement, the sale and purchase contract owes its emergence to goods-money relations. We find references to buying and selling in the very early legal documents.

The analysis of the Old and New Testaments shows how the economic issues were regulated in biblical history. Matters of ownership, as well as the transfer of property rights through purchase and sale, are no exception. As early as the Pentateuch of Moses mentioned or, in some cases, described in detail transactions with real estate, the purchase and sale of land plots. Most importantly, the Torah laid down the foundations of both

the Old Testament and the New Testament views on the source of property rights and, in particular, of private ownership of land.[1]

A more detailed description of the property sale and purchase can be found in the Code of Hammurabi, as well as other legal acts of Egypt and Mesopotamia, which require the obligatory presence of witnesses, a written form, a clear indication of the subject of the contract, and oaths as prerequisites for their validity, etc. With the development of trade and the rise of individual cities, during the period of antiquity, this agreement was further detailed in the legal acts of Ancient Greece, and, especially, in those of the Ancient Rome.

It is in Roman law that the original contractual patterns (including sale and purchase) acquired the traits that are familiar to us. Among them: the differentiation between real and consensual contracts (purchase and sale were attributed to the latter) and the definition of a sale and purchase contract as an obligation of one party (seller) to transfer an asset (goods) to the other party (buyer), with the imposition of an obligation on the buyer to pay a certain amount of money for it. The subject of the contract could be anything belonging to the seller and was not withdrawn from the Roman civilian turnover.

A special feature of Roman law (which had not been seen before) is the emergence of the possibility of concluding a sale and purchase contract on a suspensive condition (about a thing that the seller does not own at the moment, for example, the sale of a future crop), and as early as the price was recognised as a significant condition of the contract. According to several researchers, the sale of intangible goods (including the right of claim) corresponds to the specified construction proposed by Roman law.[2]

After the fall of the Roman Empire, subsistence farming prevailed in medieval Europe, and the sale and purchase contract lost its former relevance. However, with the development of crafts and cities, there was a gradual revival of Roman law and its contractual patterns. That trend resulted in the adoption of Napoleon's Civil Code of 1804 and the German Civil Code of 1896, which contained the provisions on buying and selling that are familiar to us today.

In Russia, in the first legal documents (Russkaya Pravda, dating back to the eleventh century), various types of sale and purchase are mentioned, including the sale

[1] Sergey V. Lukin, *The Bible on Land Ownership, Sale and Purchase and Land Valuation,* Probs. of Mod. Econ., 2004.

[2] Boris D. Zavidov, История развития договора купли-продажи товаров в римском частном праве, в праве дореволюционного периода и времена Союза ССР (комментарий законодательства в сопоставлении с нормами ГК РФ [*The History of the Development of the Sale and Purchase Contract in Roman Private Law, in the Law of the Pre-revolutionary Period and the Times of the USSR],* 82-84, 2019, Консультант Плюс [Consultant plus] (last visited Jul. 24, 2021); Oleg A. Kudinov, Римское право [Roman Law] 182-85 (2013).

of enslaved people, for which the presence of witnesses was considered necessary. Since the fifteenth century, the purchase and sale of real estate acquired a mandatory written form.[3] The Cathedral Code of 1649 reproduced many previously existing rules on purchasing and selling and established several restrictions on the Church's rights to sell land. The sale of real estates, livestocks, fisheries, grains and other products, beavers, and handicrafts (pots, iron products, fabrics, etc.) was getting more common. However, the Russian purchase and sale contract acquired the classic modern features of an obligation characterised by a mutual, compensated, consensual nature after the end of Peter the Great's reign, in 1727. Notarization of a pro-real estate transaction appears only in 1886.[4]In Russian jurisprudence of the nineteenth century, the understanding of the legal nature of sale and purchase differed: some authors (D.I. Meyer) considered the sale and purchase as a bilateral agreement;[5] others (K.P. Pobedonostsev) called the sale and purchase an action when one party transfers another thing to the other for a certain price, rather than a contract.[6] At the same time, the Code of Laws of the Russian Empire (1832) does not mention purchasing and selling in general but mentions selling and buying separately.[7] However, it was in this legal document that all the modern elements of this contract were designated, including the consent of the parties (and the requirements for them), the form of the agreement, types of agreement (movable and immovable things, sale of shares in a common property), the essential clauses of the contract.[8]It was noted that the contract object could only be a thing that was not limited in circulation. Moreover, if the purchase and sale were applied to movable things, then the sale of real estate couldn't be considered a type of contract, but only as a way of acquiring property rights.[9] Along with the sale of movable and immovable things, in the nineteenth century the auction sale of certain types of property (goods) was seen as a definite type of a deal, while the likelihood of a sale was limited to tangible things. The rules of sale and purchase did not apply to property rights.[10] The pre-sale (preliminary

[3] Vladimir A. Slyshchenkov, *Purchase and Sale as an Obligation in the Light of the History and Philosophy of Civil Law*, 12 Proc. Inst. State & L. RAS, 2017 No.5, at 58, 61.

[4] Slyshchenkov, *supra*, at 63, 65-7.

[5] Dmitry I. Meyer, Русское гражданское право. В 2 частях. часть 2 [Russian Civil Law. In 2 parts. Part 2] 575 (1997).

[6] Konstantin P. Pobedonostsev, Курс гражданского права. Часть третья: Договоры и обязательства [Course of civil law. Part 3: Contracts and Obligations] 300-30 (Синодальная Типография [Synodal Printing House] 1896).

[7] Georgy T. Slanov & Marina B. Tsalikova, *Evolution of the "Purchase and Sale Agreement"*, 1 Int'l Student Sci. Bull. 28 (2015).

[8] Elena V. Pechurina, *Purchase and Sale Agreement: History and Modernity*, Don's Young Explorer, 2021, No.1, at 90, 91.

[9] Elena V. Mishina, *The Apprenticeships About the Sale Contract in Soviet and Modern Civil Science,* Bull. St. Petersburg Univ. Ministry Internal Aff. Russ., 2008, No.2, at 140.

[10] S.A. Nikishina, *The History of the Development of the Sale and Purchase Agreement in the Law of the Pre-revolutionary Period*, Society and People, 2010, No.1, at 39, 40-1.

contract) and delivery of goods (i.e., transfer of property in the future) got closely related to the sale and purchase contract.[11] During the period of the U.S.S.R., with the abolition of private property and the nationalisation of the economy, the scope of the sale and purchase contract narrowed. However, it is precisely the Soviet law to which we owe the energy supply contracts, public supply of goods and contracting (supply of agricultural products).

Therefore, the development of the sale and purchase contract went through both the improvement of the legal technique of securing its provisions and the refinement of its subject matter, subjects, conditions, etc. Some types of sale and purchase disappeared (sale of slaves), while others, on the contrary, were created (energy supply, contracting). However, a radical quantitative and qualitative growth of fundamentally new types of sales and purchases occurred only in the late twentieth century is due to the information or "digital revolution", which will be discussed further in the next section of this article.

2. TYPES OF PURCHASE AND SALE AGREEMENTS IN MODERN CIVIL LAW

The issue of classifying contracts, including sale and purchase contracts, is significant in the theory of contract law. The theoretical substantiation of the classification backs up a clear system of types and subspecies of contracts in civil legislation codification acts, allowing better resolution of specific issues arising in law enforcement practice.[12] Thanks to the classification, we can identify the similarities and differences between certain types of sale and purchase contracts, which allows us to predict the further development of the contract system, identify potential challenges and eliminate them.

Currently, under the Russian legal system, sale and purchase contracts are subdivided into contracts for the sale of a thing and property rights; commercial and non-commercial; wholesale and retail; the sale of movable and immovable things. Among the varieties of purchase and sale, the Civil Code of Russia differentiates between contracts for retail sale and purchase, supply of goods, supply of goods for public needs, contracting, energy supply, sale of real estate and sale of an enterprise. In other countries, such lists of types of sales and purchases may vary. The French Civil Code does

[11] Julia G. Serova, Institute of Sales in Russian Law of the 18th-19th centuries 9 (2007) (unpublished thesis, Lobachevsky Nizhny Novgorod State University); Yulia Valerevna Repnikova, *Preliminary Contract (agreement to sell) - the Method of Securing the Performance of Obligations?*, 8 Just. & L. 47 (2019).

[12] Hong Ch. L., Sale and Purchase Contract Under the Laws of Russia and Vietnam 54-55 (2000) (unpublished thesis, St. Petersburg State University of Economics and Finance).

not generally contain a comprehensive list of sale and purchase types, although on many occasions it mentions the sale of real estate (including land), shares, food and fodder, commercial complexes, retail sales, sale of properties at public auctions, etc...

The Civil Codes of Georgia, Germany and Turkmenistan are similar to the French Code. In turn, the Civil Codes of Armenia, Belarus, Kazakhstan, Ukraine, and the Kyrgyz Republic are built according to the Russian model, where they define different types of sales and purchases. All these Codes feature a classic set of sale and purchase types, which has not changed for several decades, although the law and society of these countries have changed dramatically.

A similar trend can be observed in private international law. The U.N. Convention of April 11, 1980 "On contracts for the international sale of goods" applies to contracts for the sale of "common" goods between commercial enterprises located in different states. However, this international convention does not reflect the peculiarities of the sale and purchase generated by the "informatization" and digitalisation of the legal space, limiting itself to the traditional understanding of the "product".

Thus, the civil legislation of most countries qualifies a typical set of sale and purchase types. And although they do not mean the literal coincidence of legal regulation measures in this sphere of social relations, we can talk about making a distinction between wholesale and retail sales; the sale of movable and immovable things; establishing a list of objects of civil legal relations, withdrawn, or restricted in circulation, etc. In addition, we can talk about particular rules governing the purchase and sale of an enterprise,[13] establishing the rules of both domestic and international trade[14] (especially when selling oil or other hydrocarbon raw materials - take-or-pay settlement formula),[15] peculiarities of the sale and purchase of natural resources (for example, holding auctions to conclude a sale and purchase agreement for forest plantations or the right to lease a forest plot in the Forest Code of the Russian Federation). In relation to other natural resources, the same structure is established for the sale of the right to use (lease) them (only land plots can transfer to private ownership from the public one in Russia), mainly through tenders. An exception here is

[13] E.A. Malinovskaya, Elena N. Luneva, Особенности купли-продажи предприятия как имущественного комплекса [*Features of the Purchase and Sale of an Enterprise as a Property Complex*], 10-3 Modern Science 189-191 (2019).

[14] P.A. Guseva *On the Issue of Legal Regulation of Relations Arising from an International Sale and Purchase Agreement*, 2 actual problems of jurisprudence 5-10 (2018); M.Ya. Babaev, Условия договора международной купли-продажи товаров [*Terms of the Contract for the International Sale of Goods*], 6 Закон и Право [Justice and Law] 82-84 (2019).

[15] V.A. Saushkin, D.D. Michurin, Договор «бери или плати» в нефтегазовом секторе: нарушаются ли права бизнеса? [*Take-or-Pay in the Oil and Gas Sector: Are Business Rights Violated?*] 45 Молодой Ученый [Young Researcher] 163 (2020).

atmospheric air, the right to use which (for example, in terms of emissions of harmful gases) is regulated by the administrative (public) order, through the establishment of standards for emissions of harmful substances.

A more human treatment of animals can highlight the issues of registration and sale of pets.[16] Within the framework of the classical concepts of a sale and purchase contract, judgments are made about the nature of the electricity purchase,[17] blood and its components,[18] human organs and tissues,[19] future real estate[20] and construction objects in progress,[21] business,[22] property rights[23] and parking spaces in an apartment building as a new property.[24]

In the above examples, despite some specificity of the subject of sale and purchase, "common" objects of civil rights are present, many of which (real estate) existed in the days of Roman law, and the rest (electricity) have also long become "classics".

Meanwhile, the twenty-first century has posed new problems to which the scientific community is still searching for a reasonable and effective response. In recent years, we have received a study on the issues of the purchase and sale contract of a game

[16] M. Timofeeva, Животные как объекты гражданских прав и предмет договора купли-продажи [*Animals as Objects of Civil Rights and the Subject of a Sale and Purchase Agreement*], *in* Актуальные проблемы правотворчества и правоприменительной деятельности [Actual problems of lawmaking and law enforcement. Materials of the Scientific and Practical Conference] 145-148(2010), http://lib.lawinstitut.ru/ru/virtualexposition/newbooks/43-677679.pdf.

[17] Ya.Yu. Zaharenkova, Понятие, стороны, содержание, ответственность и прекращение договора энергоснабжения как разновидности договора купли-продажи [*Concept, Parties, Content, Responsibility and Termination of an Energy Supply Agreement as a Variety of a Sales Agreement*], *in* Сборник научных статей по материалам международной научно-практической конференции. В II частях [Actual Problems of Economics and Law. Collection of papers of the International Scientific and Practical Conference In II parts], (B.M. Magomedova ed.) (Rostov-on-Don: Rostov Institute (branch) of the All-Russian State University of Justice, 2020) 132-135, https://www.elibrary.ru/item.asp?id=43860446.

[18] A.N. Zhigulskikh, Кровь и ее компоненты как объекты купли-продажи в действующем законодательстве [*Blood and its Components as Objects of Sale and Purchase in the Current Legislation*], 1 Административное и Муниципальное Право [Administrative and Municipal Law] 8-11 (2013).

[19] S.A. Mazulina, Ya.V. Emelkina, *Article 120 of the Criminal Code of the Russian Federation: Efficiency and Development Prospects. Can Human Organs and Tissues be Recognized as Objects of Civil Turnover?*, 1 Union Criminalists & Criminologists 139 (2021).

[20] A.X. Chagaeva, *The Legal Nature of the Contract of Purchase and Sale the Future of Real Estate,* 1 Bulletin Ural Inst. Econ., Mgmt. & L. 81 (2018).

[21] *See* Z.K. Kondratenko, R.R. Galiullin, Проблемы судебной практики при рассмотрении дел, связанных с гражданским оборотом объектов незавершенного строительства [*Problems of Judicial Practice when Considering Cases Related to the Civil Circulation of Objects of Unfinished Construction*], 7 Юрисконсульт в строительстве [Legal Advisor in Construction] 44-49 (2018); A.A. Neznamova, Особенности договора купли-продажи объекта незавершенного строительства [*Features of the Contract of Purchase and Sale of an Object of Construction in Progress*], 11 Юридический мир [Legal World] 29-33 (2014).

[22] *See* V.V. Fayustova, Проблема покупки и продажи бизнеса [*The Problem of Buying and Selling a Business*], *in* Prospects for the Development of Enterprises in the Context of an innovative Orientation of the Economy Papers of the III International Scientific and Practical Conference (V.I Budina, A.N. Opekunova eds.) (Penza State University, 2017) 144-148.

[23] *See* E.K. Drapeko, *Property Rights as an Object of the Purchase and Sale Agreement*, *in* Legal System and Challenges of Modernity. Materials of the XIV International Scientific Conference of Students, Postgraduates and Young Scientists in the framework of the II International Legal Youth Forum (Ufa: Bashkir State University, 2017) 88-91.

[24] *See* Olga Grigorievna Lazarenkova, *On the Dual Legal Regime of a New Real Estate Object, Parking Space and a Single Problem in the Execution of Purchase and Sale Transactions*, 3 Notary, 2019, at 26.

account[25] (or, in general, any other transactions for the purchase of game content on the Internet),[26] information and technology,[27] sale of "beautiful" subscribers' telephone numbers,[28] cryptocurrencies,[29] domain names,[30] purchase and sales of a ready-made business on the Internet (and online stores),[31] sale and purchase of mobile applications on the Internet by smartphone users,[32] digital rights or digital civil rights objects,[33] etc... The terms "e-commerce" and "mobile commerce" are spreading,[34] and the likelihood of using robots when concluding contracts are being discussed.[35] Historical bans on human trafficking persist,[36] sale of state awards (orders, medals),[37] drug sale[38] and sale of

[25] *See* I.N. Merkulenko, *Game Account Sale and Purchase Agreement*, *in* LXIII International Scientific Readings (in memory of A.A. Bochvar): Collection of papers of the International Scientific and Practical Conference (Moscow: LLC «European Fund for Innovative Development», 2020) 30-32.

[26] *See* V.K. Kalmyk, Проблемы квалификации сделок по приобретению игрового контента несовершеннолетними в сети Интернет [*Problems of Qualifying Transactions for the Acquisition of Gaming Content by Minors on the Internet*], 8 Вопросы Российской Юстиции [Issues of Russian Justice] 165-176 (2020).

[27] *See* V.V. Braun, Информация и Технологии как объект купли-продажи [*Information and Technology as an Object of Purchase and Sale]*, 21 Наука и современность [Science and Modernity] 198-201 (2013).

[28] *See* P.Yu. Kostin, Абонентский номер и его оборот: вопросы гражданско-правовой квалификации [*Subscriber Number and its Turnover: Issues of Civil Legal Qualifications*], 5 Актуальные проблемы российского права [Actual Issues of Russians Law] 788-793 (2014).

[29] *See* G.A. Petrosyan, *Legal Regulation of the Cryptocurrency Purchase and Sale Agreement*, *in* Constitutional Development of Modern Russia: Problems, Patterns, Prospects. Materials of the All-Russian Scientific Conference (Rostov-on-Don: Individual entrepreneur S.V. Bespamyatnov, 2020) 150-154.

[30] *See* V.V. Kostenko, *Russian practice of domain name evaluation*, 11-4 Intellectual Property Exchange 24-30 (2012).

[31] *See* A.V. Samigulina, Особенности купли-продажи готового бизнеса и нормативного регулирования купли-продажи предприятия в сфере компьютерной сети интернет. Интернет-магазин – объект купли-продажи [*Features of the Sale and Purchase of a Ready-made Business on the Internet. Online Store - an Object of Purchase and Sale]*, *in* Проблемы и перспективы развития наук гражданско-правового цикла. Сборник материалов научно-практической конференции кафедры гражданского права [Problems and Prospects for the Development of Civil Law Cycle Sciences. Collection of Materials of the Scientific-Practical Conference of the Department of Civil Law] (Lyubertsy: Russian Customs Academy, 2014) 44-47.

[32] Nadezhda Kuznetsova, *The Features of Mobile Application Purchase*, 2 Electronic Supplement to the J. Russian L. 73 (2018).

[33] O.S. Grin, *Legally Binding Relationships with Regard to Digital Objects of Civil Rights*, 10 Lex Russica 21 (2020). On the sale of digital financial assets, *see also* Federal'nyi Zakon RF, O Tsifrovykh Finansovykh Aktivah, Tsifrovoi Valute i o Vnesenii Izmeneniy v Otdel'nye Zakonodatel'nye Akty Rossiiskoi Federatsii [Federal Law On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation], Sobranie Zakonodatel'Stva, Rossiiskoi Federatsii [Sz Rf] [Russian Federation Collection of Legislation], 2021, No. 21, item 3495.

[34] *See* D.A. Turicyn, Договор купли-продажи в условиях цифровизации договорного права [*Sale and Purchase Contract in the Context of Digitalization of Contract Law*], 12 Гуманитарные, социально-экономические и общественные науки [Humanities, Socio-Economic and Social Sciences] 309-312 (2019).

[35] V.K Shaydullina, *Transformation of contract law in the conditions of digital economy*, 9 Baltic Humanitarian J. 390 (2020).

[36] *See* A.V. Serebrennikova, A.V. Staroverov, *Socio-criminological and legal nature of human trafficking*, 1-1 Bulletin of the State University Dubna, Series: Science About Man and Society 24-32 (2020).

[37] *See* S.V. Shashuro, *On criminal liability for the acquisition or sale of state awards of the USSR and the RSFSR*, 2 Bulletin of the Belgorod Law Institute of the Ministry of Internal Affairs in Russia 17-24 (2021).

[38] *See* M.V. Borisenko, A.M. Kalyak, *Analysis of the situation of drug consumption, drug trafficking and the fight against their illicit trafficking at the present time*, 4 Interactive Science 170-172 (2017).

weapons (with the establishment of special rules in international law) are not permitted.[39] Foreign trade transactions related to the import and disposal of hazardous waste from one state on the territory of another requires a separate study.[40] A brief review above shows that at the moment in Russian civil law - though not only in Russia, there is a growing number of "non-standard" sale and purchase contracts that are not known to the former legal order. Accordingly, we can classify all existing sale and purchase contracts into four groups: classic types, which have not changed much since the time of Roman law; post-classical, included in the Civil Code of Russia and many other countries of the world; post-classical, not included in the Civil Code, but generally falling within its frames; informational, not fully reflected in civil legislation, requiring further study. This circumstance requires a revision of the contract law concept, including a change in attitudes about the types of sale and purchase, the very action for agreeing, its parties and conditions, for which the Russian legislator is not yet ready. A particular case within this trend is the emerging need for the legal regulation of greenhouse gas trade, which can be both international and domestic in nature.

It should be noted that in the development of modern contract law, in connection with the introduction of more and more new objects into circulation, the legal thought of European scientists and scientists of the United States [hereinafter U.S.A.] is ahead of the Russian one. The same can be said about the inclusion of environmental requirements in the legislation of the Member States of the European Union and in the U.S.A., whereas in Russia the inclusion of environmental requirements in legislation is fragmentary.[41] Nevertheless, a number of scientists pointed out the universal "untapped capacity of existing laws to increase the resilience of socio-ecological systems".[42] Too many actors with divergent interests in this area hinder the advancement of a large-scale reform to restructure legal systems with a focus on the environmental safety of the whole world. As experts note: "There is little evidence that the United States, the European Union, or other nations are prepared and willing at this time to initiate that scale of reform".[43] It is proposed to combine the insights from climate science and economics ("integrated assessment models") to "estimate how industrial and agricultural processes might be transformed to tackle global warming".[44]

[39] *See* A. Haruca, Topical Issues of International Legal Regulation of Arms Sales in the Modern World 8-9 (2011) (unpublished thesis) (Institute of History, State and Law of the Academy of Sciences of Moldova).
[40] *See* I.Yu. Zhilina, *International trade in waste*, 4 Social Sciences and Humanities, Domestic and Foreign Literature. Series 2: Economics Abstract Journal 42-47 (2018).
[41] T.Y. Khabrieva, *Cylic Normative Arrays in Law*, J. Russian L. No. 12, 2019 at 5, 12.
[42] Jason MacLean, *Learning to Overcome Political Opposition to Transformative Environmental Law*, 117 Proc. Nat'l Acad. Sci. 8243 (2020).
[43] Ahjond Garmestani et al., *Untapped Capacity for Resilience in Environmental Law,* 116 Proc. Nat'l Acad. Sci. 19899 (2019).
[44] Wei Peng et. al., *Climate Policy Models Need to Get Real About People Here's How*, 594 Nature 174 (2021).

3. CLIMATE CHANGE AND THE ROLE OF THE PARIS CLIMATE AGREEMENT IN THE EMERGENCE OF NEW FORMS AND METHODS OF COMBATING GREENHOUSE GASES

The growth of industrial production and emissions of harmful substances in the twentieth century had a significant impact, both on the condition of nature (waters, lands, forests, etc.), and on the state of the climate. The main reason for these changes is traditionally associated with the increase in greenhouse gases in the Earth's atmosphere, which entails a growth in average annual temperatures, melting glaciers and a rise in the level of the Oceans. In turn, these changes are driving an increase in climate refugees,[45] desertification, floods, forest fires, and a reduction in permafrost areas in the Arctic north.[46] Two strategies were then proposed: mitigation and adaptation to climate change, which was reflected first in the Kyoto Protocol and then in the Paris Agreement on Climate 2015. In the framework of the latter, most countries in the world have pledged to reduce their greenhouse gas emissions to prevent 1.5 degrees Celsius global air temperature rise. The world community believes that a two-degree increase in temperature will have a catastrophic effect on the Earth's climate.[47]

It should be noted that the Paris Agreement does not expect international payments for emissions, and there are no sanctions for non-compliance with its provisions, which makes it vulnerable and allows us to assume non-fulfilment cases by states.[48] Moreover, the Paris Agreement does not include clear and quantifiable financial commitments from developed countries to help developing countries achieve mitigation and adaptation, and does not impose specific climate change policies or binding emission reduction targets.[49] The agreement's vulnerability was evidenced when the United States withdrew from the Paris Agreement signed in 2016 by President Barack Obama during the presidency of D. Trump, but in 2021, under President J. Biden, the United States returned to it. Given such instability, it is quite expected that various proposals are made in the scientific literature aimed at increasing the level of trust between the parties to the Paris Agreement of 2015 and improving the efficiency of its operation, for

[45] Frank Biermann & Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, Global Envtl. Pol., Feb. 1, 2010, at 60.

[46] S. Kuvaldin, *Nuclear energy and climate change mitigation in the context of the Paris Climate Agreement*, 22, 3-4 Security Index 43 (2016).

[47] O.L. Dubovik, K.N. Averina *Significance of the Paris Agreement for climate protection: large-scale plans and problems with their implementation*, 4 International Law and International Organizations 22 (2018).

[48] Noah M. Sachs, *The Paris Agreement in the 2020s: Breakdown or Breakup?*, 46 Ecology L.Q. 865, 872 (2019); Tatiana Rovinskaya, *U.S. Withdrawal from the Paris Climate Agreement and Its Possible Consequences,* 64 World Econ. & Int'l Rel. No. 4, 2020, at 106, 108.

[49] Paul Lewis & Giovanni Coinu, *Climate Change, The Paris Agreement, and Subsidiarity*, 52 Uic John Marshall L. Rev. 257, 268 (2019).

example, through the creation of a system of deposits of all U.N. countries, which would not be subject to refund in case the country violates its obligations.[50] Alternatively, we can consider the proposal to introduce a carbon tax for the products of countries that do not participate in the 2015 Paris Climate Agreement.[51]

One of the tools to combat climate change, initiated by the Kyoto Protocol, is emissions trading. In its most general form, this measure means that the state or individual economic entities on its territory can sell and buy quotas for greenhouse gas emissions on the national, regional, and international markets.[52]

The development of this emissions trading system was initially based on the trading platforms that already existed when the Kyoto Protocol was signed - the European Union Greenhouse Gas Emissions Trading System and the Regional Greenhouse Gas Initiative signed by a number of northeastern states and the state of California (U.S.A.).[53] It should be noted that the Paris Agreement does not strictly link its goals with the emission trading mechanism, but it also does not contain obstacles to the use of flexible mechanisms for reducing greenhouse gas emissions. Therefore, quotas are still traded, as it is obvious from Article 6 of the Agreement.[54] At the twenty-sixth meeting of the Conference of the Parties [hereinafter C.O.P.26], held from October 31 to November 12, 2021 in Glasgow, in addition to agreements on administrative approaches to reduce emissions in the fight against the climate crisis, states reached new agreements on market mechanisms that support the transfer of emission reductions between states, encouraging the private sector to invest in environmentally friendly solutions. These solutions correlate with the conclusions of those experts who associate the reduction of the load on nature with the motivation of entrepreneurs to attract the best technology, who, due to this, will be able to sell the quotas provided to them and receive additional benefits. In addition, C.O.P.26 solutions related to market-based regulation of emission reductions should push the Paris Agreement member states to introduce national policies that encourage support for enterprises selling their allocated allowances and therefore reducing emissions. Nevertheless, as it is impossible to solve all the details of such a mechanism at the C.O.P.26 level, they must be solved at the level of national legislation. Thus, the question of the legal nature of such trade in quotas, and, in particular, the subject and elements of the contract for their sale, remains open.

[50] Bryan H. Druzin, *A Plan to Strengthen the Paris Climate Agreement*, 84 Fordham L. Rev. Res Gestae 18, 21-22 (2016).
[51] *See* Annum Rashedi, *Can the EU Carbon Tax the U.S. in Retaliation?*, 17 SUSTAINABLE DEV. L. & POL'Y, n. 1, 2017, at 18, 18-19.
[52] *See* Siarhei Zenchenko, *Paris Agreement on Climate Change: Tasks for Belarus and Russia*, *in* Russian-Belarusian Integration: From Idea to Implementation. Collection of Scientific Articles 66 (2016).
[53] *See* David Wirth, *The Paris Agreement as a New Component of the UN Climate Regime*, 12 Int'l Org. Rsch. J., n. 4, 2017, at 185, 192.
[54] *Id.* at 207.

4. GREENHOUSE GAS [HEREINAFTER G.H.G.] EMISSION QUOTAS SALE AND PURCHASE AGREEMENT: SUBJECT, PARTIES AND OTHER FEATURES OF LEGAL REGULATION

4.1. PUBLIC LAW BACKGROUND FOR THE SALE OF G.H.G. EMISSION QUOTAS

The sale of quotas for greenhouse gas emissions between states is one of the most effective tools in combating an increase in average annual temperatures, as well as one of the most important guarantees of environmental human rights.[55] Currently, trading in quotas has not become widespread, because of many reasons. In our opinion, a stimulus for its acknowledgement could be the development of a framework agreement on the emission of quotas' sale, which could be recommended by the U.N. to the Paris Agreement parties. However, the development of such a treaty will inevitably entail discussion of several of its substantive aspects of international and national law. In this regard, we will try to identify the features of national and international systems of quota trading. The pricing mechanism in the carbon market introduced by the Kyoto Protocol is potentially one of the most promising economic methods for the transition of any country to a "green economy", a tool for reducing greenhouse gas emissions.[56] In the scientific literature, attitudes towards greenhouse gas emissions trading are rather conflicting. Some authors compare "emissions trading" with "air trading",[57] thus rejecting the positive role of market mechanisms in the fight against greenhouse gas emissions. Other authors are researching some moral objections to greenhouse gas emissions trading.[58] Others still endorse and support the emissions trading mechanism.[59]

In our opinion, the main advantage of using carbon markets among other measures to reduce greenhouse gas emissions, is that they stimulate emission reductions where it is economically viable, which allows achieving emission targets through lower economic costs. Initially, the volume of emissions is set by the government of each country by

[55] David Hunter, Wenhui Ji & Jenna Ruddock, *The Paris Agreement and Global Climate Litigation after the Trump Withdrawal*, 34 Md. J. Int'l L. 224, 232-33 (2019).

[56] S.Zh. Smoilov, *Issues of legal support of the mechanism of economic regulation of environmental protection and nature management in the Republic of Kazakhstan* (Lev Gumilyov Eurasian National University, Working Paper, 2018) 16.

[57] *See*, e.g., Vladimir Pavlenko & Lesya Tychkovska, *Inward Territorial Capital of National Economy Sustainable Development*, Economics of Nature and the Environment 156, (2012).

[58] *See*, e.g., Ragnhild Haugli Braaten, Kjell Arne Brekke & Ole Rogeberg, *Buying the Right to Do Wrong - An Experimental Test of Moral Objections to Trading Emission Permits*, 42 Res. & Energy Econ. 110, (2015).

[59] *See, e.g.*, N.V. Kichigin, N.I. Hludeneva *Legal mechanism for the implementation of the Kyoto Protocol in Russia* (Moscow: Институт законодательства и сравнительного правоведения при Правительстве РФ [Institute of Legislation and Comparative Law under the Government of the Russian Federation], 2009).

political decisions, but then the total limit is distributed among economic entities, which should not emit more CO2 into the atmosphere than they were prescribed. Those who substantially cut their emissions can sell their surplus. This scheme operates both nationally and internationally, shaping the sales market. Currently, according to some estimates, there are eighteen emission trading schemes in the world, and their number is growing every year. These schemes include the European Emissions Trading System, the Swiss Emissions Trading System, the Kazakhstan Emissions Trading System, etc..[60] Each of them has its features. For example, in China, pilot carbon trading projects were first launched in seven provinces and municipalities (Beijing, Tianjin, Shanghai, Guangdong, Hubei, Shenzhen, and Hebei). In December 2016, Fujian Province became China's eighth pilot carbon trading region with a series of policy documents, including the Fujian Provincial Carbon Trading Market Implementation Plan and Fujian Provincial Carbon Trading Interim Measures.[61] Then these projects started mushrooming in the country. As of May 2019, 310 million tons of carbon dioxide quotas were sold in the pilot carbon trading market in China, with a total value of 6.8 billion yuan. At the same time, the existing schemes for allocating carbon rights consider only the population size and the economic development needs; they rarely reflect differences in natural resources and the environment. But the natural factors of the regions (climatic factors, energy resources, the availability of forest resources) strongly affect the accumulation of carbon.[62]

In Kazakhstan, the mechanism for trading in quotas is stipulated in the Environmental Code of the Republic of Kazakhstan dated January 2, 2021[hereinafter E.C.]. The Code, notes that the carbon quota is the quantitative volume of quota greenhouse gas emissions established for the period of validity of the National Carbon Quota Plan and credited to the corresponding account of the operator of the quota plant in the state register of carbon units. The carbon trading system consists of primary and secondary carbon markets. In the primary market, the carbon trading system operator sells carbon credits from the relevant reserve category of the National Carbon Credit Plan to the carbon market entities at an auction. In the secondary market, the subjects of the carbon market buy and sell carbon units through a direct transaction or a commodity exchange (Article 299 of the E.C. of the Republic of Kazakhstan). In its turn, in 2003 the European Union [hereinafter E.U.] adopted Directive 2003/87/EC on the organisation of the system of trading in emissions of greenhouse gases, according to

[60] *See* Veronica Caciagli, *Emission Trading Schemes and Carbon Markets in the NDCs: Their Contribution to the Paris Agreement.* In: Theory and Practice of Climate Adaptation 541-550 (Fàtima Alves et. al. Eds., 2018).

[61] *See,* e.g.*,* Gang Ding & al., *A Study on the Classification of China's Provincial Carbon Emissions Trading Policy Instruments: Taking Fujian Province as an Example* 5 Energy Rep., 1543 (2019).

[62] *See* Huijun Zhou et. al., *China's Initial Allocation of Interprovincial Carbon Emission Rights Considering Historical Carbon Transfers: Program Design and Efficiency Evaluation*, Ecological Indicators, Feb. 2021, at 1.

which the internal European market for emissions trading started on the 1st of January, 2005. While trading, emission certificates are transferred, and this system includes air traffic in Europe and beyond. Trade does not involve countries, but enterprises. Either the enterprise emissions can be reduced, or additional rights to emissions are bought. For example, in Germany, this Directive was transformed into national law through a special law on greenhouse gas emissions trading.[63] Subsequently, the E.U. adopted several directives and resolutions on this issue.

One of the examples is the Regulation No. 1031/2010 of the European Commission "On the timing, administration and other aspects of auctioning of greenhouse gas emission allowances under Directive 2003/87/EC of the European Parliament and the Council establishing the scheme for greenhouse gas emission allowances trading within the Community" (it defines the requirements for the auctions, establishes bans on abuse during auctions, etc.). Note that the E.U. member states have now decided to raise their targets for reducing greenhouse gas emissions by at least fifty-five per cent compared to 1990 levels by 2030. This is a significant improvement compared to the forty per cent emission reduction target set in 2019. In December 2019, the European Commission launched a European Green Deal to achieve zero carbon emissions by 2050. This target is reflected in the E.U.'s long-term budget package of $2.2 trillion, which was agreed upon and signed by the E.U. members. The aforementioned trends in the development of emissions trading at the level of individual countries or their communities until recently, found little practical response in one of the parties to the Paris Agreement, Russia.

As noted above, in contrast to the Kyoto Protocol, the Paris Agreement does not establish strict limits on emissions, leaving the states to decide this issue themselves. For example, Russia has set a target to reduce G.H.G. emissions to seventy per cent relative to 1990 levels by 2030.[64]

Having signed the Kyoto Protocol, Russia (like other countries) faced a dilemma of whether to use only administrative tools or market mechanisms to achieve this goal. The general climate strategy was formed in 2009 when the Climate Doctrine of the Russian Federation was approved. It focused on the assessment of climate changes, their analysis, the development of measures to mitigate and adapt to climate change, etc.[65]

[63] *See*, e.g., Völkerrecht [International law], Wolfgang G. Witzthum et. al., Международное право [International Law] 670 (2d ed. 2015).

[64] Decree of the President of the Russian Federation of November 4, 2020 No 666 «On reducing greenhouse gas emissions». In: Legal reference system «Consultant Plus», access date 24.07.2021.

[65] *See also* Order of the President of the Russian Federation of 12/17/2009 No. 861-rp «On the Climate Doctrine of the Russian Federation». In: Legal reference system «Consultant Plus», access date 24.07.2021.

Soon, the Government of the Russian Federation ordered to create a register of carbon units,[66] determine the amounts of greenhouse gas emissions,[67] monitor and verify quantities of greenhouse gas emissions,[68] etc... A special federal law[69] commissioned to experiment on administrative (non-market) emission quotas.

The adoption of these measures was necessary because the international transfer of quotas for G.H.G. emissions is specifically linked to certain projects. In other words, one should not just expect the benefits of emissions trading, as this trading is not possible until a national G.H.G. accounting system, an emission inventory and a register of G.H.G. emission allowances transactions are in place.[70] Russian measures resulted in 108 approved projects aimed at reducing G.H.G. emissions with a total carbon potential of 311.6 million tons of carbon dioxide equivalent. Thus, Russia becomes a leader in the global carbon market after China with a project portfolio of 700 million tons of carbon dioxide equivalent, ahead of a number of its competitors.[71]

These trends are of particular interest because, according to the World Bank, the value of the market for emissions quotas can reach two-three trillion dollars per year (in Russia - 1.5-three billion dollars by 2030).[72] 2021 has been marked by two important events in Russia. First, the federal law of July 2, 2021 No. 296-FZ "On limiting greenhouse gas emissions" was accepted. The law provides for accounting and registering carbon units, their circulation and offset, targets for reducing greenhouse gas emissions, etc... Second, an experiment on trading greenhouse gas emissions began on Sakhalin Island, with the goal to achieve the region's carbon neutrality by 2025. This is meant to create optimal conditions to reduce greenhouse gas emissions. As part of the experiment, a

[66] Russian register of carbon units, *see* Российский реестр углеродных единиц, http://www.carbonunitsregistry.ru/default.htm (last visited July 24, 2021).

[67] Order of the Ministry of Natural Resources and Environment of the Russian Federation of June 30, 2015 No. 300 «On approval of guidelines and guidelines for quantifying the volume of greenhouse gas emissions by organizations carrying out economic and other activities in the Russian Federation». *See also* Legal reference system «Consultant Plus» (last visited 24 Jul. 2021).

[68] Order of the Government of the Russian Federation of 04/22/2015 No. 716-r (revised on 04/30/2018) «On approval of the Concept for the formation of a monitoring, reporting and verification system for the volume of greenhouse gas emissions in the Russian Federation». *See also* In: Legal reference system «Consultant Plus», access date 24.07.2021.

[69] Federal Law of July 26, 2019 195-FZ «On an Experiment on Quoting Pollutant Emissions and Amendments to Certain Legislative Acts of the Russian Federation to Reduce Air Pollution». *See* In: Legal reference system «Consultant Plus», access date 24.07.2021.

[70] *See* Серебренникова А.В., Староверов А.В, Yu.V. Smirnova, [International standards for the regulation of anthropogenic emissions of pollutants into the atmosphere in the field of civil aviation], 3 Транспортное Право [Transport Law] 22-27 (2008).

[71] *See also* A.A. Averchenkov, A.Yu. Galenovich, A.Yu. Safonov G.V., Yu.N. Fedorov Регулирование выбросов парниковых газов как фактор повышения конкурентоспособности России [Regulation of greenhouse gas emissions as a factor in increasing Russia's competitiveness] (Moscow: Национальная организация поддержки проектов поглощения углерода [N.O.P.P.P.U.], 2013) 54.

[72] The Expert Estimated the Turnover of Trading in Carbon Units in Russia by 2030. *See* In: <https://1prime.ru/commodities/20210619/833975603.html> (last visited July 24, 2021).

regional inventory of greenhouse gas emissions and removals will be carried out on the island. In 2022, an information system to maintain registers of experiment participants, climate projects, and carbon units will be tested. Carbon trading will start the same year.[73] Nevertheless, according to research by the "Skolkovo" Moscow School of Management Energy Center, published in the report "The Global Climate Threat and the Russian Economy: In Search of a Special Path", in Russia the problem of climate change "is not among the priorities of state policy, both at the federal and at the regional level, however, there is a growing interest from corporations in reducing their carbon footprint".[74] Different political forces have different attitudes to quota trading. Some believe that Russia should take part in the global quota trading market, while others advocate self-isolation and reducing the country's dependence on European processes and emissions quota reforms.[75] Within the framework of this discussion, we advocate the expansion of Russia's contacts with the EU, the growth of quota trade, and approve the conduct of an experiment in one of the Russian regions (Sakhalin Island), which in itself may be of interest to the world community for exploring the potential of the chosen path of development in a particular region and spreading this experience (if good results are obtained) on the territory of other subjects of the Russian Federation and other countries of the world.

Despite the progress of individual countries, the demand of states to buy quotas for greenhouse gas emissions from each other is unlikely to grow.[76] Major discrepancies between intentions to purchase and sell raises new questions about the chances for developing countries seeking to generate additional revenues to meet part of their climate change mitigation commitments through carbon markets to receive the financing they expect. Meanwhile, such cases of carbon cooperation are well known. For example, in December 2010, the Russian Gazpromneft and two Japanese companies (Mitsubishi and Nippon Oil) agreed to develop the Ety-Purovskoye field in the Yamalo-Nenets Autonomous District, within the framework of which Gazpromneft fields pipelines through which associated gas was transported (instead of burning) to the

[73] *See* Duel A. Sakhalin will start trading carbon units, RG.RU, https://rg.ru/2021/01/19/reg-dfo/na-sahaline-nachnut-torgovat-uglerodnymi-edinicami.html (last visited July 24, 2021).

[74] Report of the Moscow School of Management «Skolkovo»: Global Climatic Threat and Russian Economy: Searching for the Way, Представительство Европейского Союза в Российской Федерации [Delegation of the European Union to the Russian Federation], https://www.eeas.europa.eu/delegations/russia/опубликовано-исследование-«глобальная-климатическая-угроза-и-экономика-россии-в_ru (last visited Dic. 20, 2021).

[75] The national market of carbon units will protect exporters. *See* https://www.kommersant.ru/doc/4936775. (last visited Dic. 19, 2021); *see also* Environmentalists object to the trade in «Kyoto quotas» (last visited Dic. 20, 2021), https://ria.ru/20080129/97963595.html (last visited Dic. 20, 2021).

[76] Although at the moment, despite the coronavirus pandemic, emission quotas have risen by thirty percent in 2020.

processing facilities of SIBUR in exchange for compensation of Gazpromneft with technologies and equipment.[77] This transaction in the Russian papers is characterised as the sale of emission of quotas,[78] while it looks more like another economic instrument under the Kyoto Protocol, "The Clean Development Mechanism",[79] when a developed country, instead of reducing its G.H.G. emissions, invests in a project to reduce them in a developing country, offsetting its own commitments to reduce G.H.G. emissions under the Kyoto Protocol.

Thus, now, thanks to the reform of national legislation in many countries of the world, prerequisites have been created not only for the further development of national carbon markets, but also for the development of emissions trading between states. In the latter case, the subject of such an agreement will be an emission quota, the volume of which depends on the extent to which the buying state exceeds the quota of G.H.G. emissions on its territory over its obligations, and the price of the quota can be determined based on the results of negotiations or at auctions (tenders).

4.2. PRIVATE LAW FEATURES OF THE SALE OF G.H.G. EMISSION QUOTAS

Since the Paris Agreement assigns the main responsibility for efficient climate protection to national governments (while international institutions have mainly the coordination function),[80] it is necessary to study the mechanism for reducing G.H.G. emissions through national law. The design of any type of sale and purchase contract assumes that the seller transfers the goods to the buyer with the obligatory payment, which makes this contract bilateral, reciprocal and compensated. However, most countries do not define the legal concept of a commodity. From the context of their provisions, however, we can conclude that a "product" is an object of the material world that has a consumer value. Researchers usually focus on this aspect of the subject of the sale and purchase contract saying that the main property of a product is its ability to be consumed, while it is noted that consumption can be directed not only to the thing itself, but also to the object, not a thing. However, such an object must still be tangible.[81] But is a quota a commodity or some other tangible object? Many researchers answer this

[77] *See* Винницкий Д.В [D.V. Vinnitsky], Международное налоговое право: проблемы теории и практики [International Tax Law: Problems of Theory and Practice] 463(Статут [Statute], 2017).

[78] *See generally* M.M. Kakitelashvili, *Prospects for Russia's participation in the Kyoto Protocol*, 2 Environmental law 28-32 (2016).

[79] Daniya R. Minnekaeva, *Market Mechanisms of the Kyoto Protocol*, Bulletin of T.I.S.B.I., No. 2, 2005, at 84.

[80] *See, e.g.*, Igor A. Makarov & Iliev A. Stepanov, *Paris Agreement on Climate: Impact on World Energy and Challenges for Russia*, Topical Issues of Europe, No.1, 2018, at 77, 81.

[81] *See* Vasilisa M. Marukhno & Yevgenya Y. Rudenkko, *The Ability of Goods to Be Consumed as Their Main Property*, Sci. J. «Epomen», 40 2020, at 223.

question negatively[82] others strongly object to recognizing emission quotas as another natural resource[83] (although some researchers accept it this way, demanding a new policy on its use).[84]

Still others (G. Vinter) point out that G.H.G. quotas are a new type of commodity that is traded like any other commodity. At the same time, it is justly emphasised that trading in emission quotas makes sense for the environment only if the environmental justification of the limit is provided. Otherwise, the trade will not have a positive impact on the environment.[85] Similarly, D.S. Bocklan points out that "greenhouse gas quotas are themselves a commodity".[86]

This view is fully supported by I.V. Zamula and A.V. Kireitseva, who believes that "quotas are a special type of asset that can be a commodity and does not have a material form [. . .]".[87]

No less noteworthy opinion is expressed by Yu.S. Sorokina, argues that quotas for greenhouse gas emissions are neither a commodity nor a service, they are actually a licence that gives the right to a person to carry out regulated activities for the emission of greenhouse gases.[88] This approach is very interesting, but in Russia, greenhouse gas emissions are not subject to licensing,[89] and the sale of quotas for greenhouse gas emissions itself is still of a market and not of an administrative nature. Yu.V. Solovey believes that a quota is the maximum amount of greenhouse gases allowed for free emission into the atmosphere, the ownership of which belongs to a specific individual or legal entity legally registered as a source of greenhouse gas emissions.[90] Opposing him, V.A. Belov points out that "quantity" in itself cannot be an object of civil legal relations

[82] *E.g.*, Vadim A. Belov, *Civil Legal Relations in the Sphere of Turnover of Quotas for Greenhouse Gas Emissions,* Legislation, No.3, 2006, at 7.

[83] *E.g.*, Tatiana Y. Sidorova, *Implementation of the Idea of Differentiated Responsibilities from the Kyoto Protocol to the Paris Agreement*, Siberian L. Herald, No.1 2018, at 138-140.

[84] *See*, *e.g.*, D. Dudek, A.A. Golub & E.B. Strukova, Сопряженные рынки *[Related Markets],* Alfar http://www.alfar.ru/smart/4/838/ (last visited Mar. 03, 2022).

[85] Gerd Winter, *Climate is not a Commodity: Intermediate Results of the Emissions Trading System*, Env't. L., No. 2, 2010, 31-33.

[86] Боклан Д.С [Daria Sergeevna Boklan], Взаимодействие международного экологического и международного экономического права (диссертация доктора наук) [*Interaction Of International Environmental And International Economic Law (Doctoral Thesis)*], Московский Государственный Институт Международных Отношений (место защиты) [Moscow state Institute of International Relations (Place of Defence)] 53, (2016) https://www.prlib.ru/item/680618 (last visited Apr. 19, 2022).

[87] Irina V. Zamula & Anna V. Kireitseva, *Quotas for Greenhouse Gas Emissions as an Object of Accounting at Ukrainian Enterprises*, 46 Int'l. Acc. 50, 52 (2014).

[88] Yu.S. Sorokina, Issues of International Legal Regulation of Trading in Quotas for Greenhouse Gas Emissions 7 (2004) (unpublished thesis) (Peoples' Friendship University of Russia).

[89] [Federal Law of the Russian Federation on Licensing Certain Types of Activities] No 99-FZ (4 May 2011) (Consultant Plus).

[90] Yu.V.Solovey, Civil Law Regulation of Activities in the Field of Emission and Absorption of Greenhouse Gases 16 (2005) (unpublished thesis) (Russian State University for the Humanities).

but is only one of the possible characteristics of an object. By declaring the quota as a "limit on the amount of greenhouse gases", we are to call the greenhouse gases themselves an object of civil legal relations, i.e., we come to what the author of the concept of "quota-quantity" was so eager to distance from.

V.A. Belov then believes that "the prohibition of the emission of greenhouse gases - absolute or exceeding the quota - is, therefore, the border (limit) of such an element of legal capacity as the possibility of exercising subjective civil property rights".[91] This really explains the mechanism for limiting emissions, but does not answer the question of what exactly is sold to another person under the contract for the sale of quotas for greenhouse gas emissions. N.S. Zinovkin proposes to recognise the assimilation potential of the atmosphere as an independent object of civil rights. Then we can talk about owning a "share of the assimilation potential".[92] On the contrary, M.I. Vasilieva[93] believes that securing the right of ownership to the assimilation potential (or to atmospheric air) is impossible due to the "intangible nature" of this object. This remark is not devoid of logic, but the sale of non-material things has been practised since Roman law.

In our opinion, when trading emission quotas, air alienation (or assimilation potential) does not occur. But another important question remains open: can we consider gas (and its emission quota) as a special type of product? On the one hand, such an attitude to the problem is quite possible, because if the subject of the sale and purchase contract can be electricity, a game character, or a domain name, then why can such an emission not be a quota? At one time, the theory of civil law discussed the issue of the legal nature of the contract for the electricity supply. Many researchers were confused by the fact that electricity can not be attributed either to things or property rights. Therefore, the electricity supply agreement was proposed to be considered a kind of contractor agreement.[94] Later, several researchers argued that energy is a commodity, but not a thing.[95] Other Russian Civil Law experts concluded that energy as an object of civil rights "is a movable, simple, divisible, consumable thing, determined by generic characteristics".[96] Perhaps is there a similar problem with emission quotas?

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[91] Vadim Anatolyevich Belov (Белов Вадим Анатольевич), *Civil Law Aspects of the Implementation of the Kyoto Protocol: General Remarks and the Problem of the Object of Legal Relations*, 1 Legislation, 2006 at 9, 16.

[92] N.S. Zinovkin, Payment for Negative Impact on the Environment as an Environmental and Legal Regulator of Economic Activity 135 (2015) (unpublished thesis) (Moscow State Law University).

[93] M.I. Vasileva, *Legal Support for the Implementation of the Kyoto Protocol*, 25 On the Way to Sustainable Development of Russia (2003).

[94] *See* M.M. Agarkov, Подряд (текст и комментарий к статьям 220 - 235 ГК РФ) 13-14 (Law and Life, 1924).

[95] *See,* e.g., Mikhail Isaakovich Braginsky, Vasily Vladimirovich Vitryansky (Брагинский Михаил Исаакович, Витрянский Василий Владимирович), Contracts for the Transfer of Property 459 (4th ed. 2000).

[96] I. D. Egorov et al., Civil Law. Volume 2 83 (A.P. Sergeev & Yu.K. Tolstoy eds, Prospect, 1997); Vladimir Pavlovich Kamyshanskiy et al., Гражданское право: Часть вторая: Учебник для вузов Подробнее 41 (V. P. Kamyshansky, N. M., Korshunova & V.I. Ivanova eds., Eksmo, 2007).

It seems that the very recognition of a quota as a commodity fits well into the existing standards of legal technology when the legal fiction methodology is used. This means that certain legal subjects or phenomena are officially assigned signs (or functions) that they objectively lack. For example, Article 130 of the Civil Code of Russia recognises aeroplanes and ships as real estate objects, although, in reality, this is completely different (they are completely movable objects).

Similarly, it would be possible to deal with emission quotas, having recognised them as a commodity in a regulatory manner. However, in this case, another question arises: will it be a useful and legally practical expedient? Before answering this question, let us consider another scientific concept that offers explanations for the legal nature of emission of quotas. Its authors consider it expedient to fix the emission of quotas as a kind of property right - a separate type of object of civil legal relations mentioned in Article 128 of the Civil Code of Russia.

In particular, the emission quota is considered the property right by T.I. Semkina,[97] M.I. Vasilieva,[98] V.M. Shumilov[99] and other researchers. The authors of the adopted law "On limiting greenhouse gas emissions" adhere to the same position. What are the arguments in favour of this point of view? In the theory of Russian Civil Law, property rights are subdivided into property rights, obligations, and exclusive rights. At the same time, the following features of property rights are highlighted: they always belong to a certain person; represent a means of realising property interests; they can be alienated from one person to another; they have a monetary value.[100] Proceeding from the indicated signs, the right to release is a property right, has a monetary value and can be alienated.

The Civil Code of Russia mentions several special types of sale and purchase contracts, distinguished by the nature of the alienated object (contracts for the sale and purchase of securities, currency values, certain types of goods, as well as property rights), which, under the Civil Code of the Russian Federation, do not have special structural subdivisions, but at the same time, they have direct access to certain legislation with the priority of its specific rules (Paragraphs 2-4 of Article 454 of the Civil Code of the Russian Federation). In our case, such legislation is environmental legislation, which, however, in Russia (as opposed to Kazakhstan) does not contain special requirements for trading in quotas. Moreover, in the Russian Federation, the

[97] T.I. Semkina, *Determination of the Place of Sale of Services when Transferring Quotas for Greenhouse Gas Emissions*, 2 Tax Policy and Practice, 37 (2011).
[98] Vasileva, *supra* note 93.
[99] *See* V. M. Shumilov, International economic law: textbook 269 (Phoenix 2003).
[100] D.E. Menshikov, *Property rights as objects of civil rights*, 3 Ural journal of legal research 409-410 (2019).

climate itself is not object of environmental legal relations, although Russia has signed both the Kyoto Protocol and the Paris Climate Agreement.

While recognising the scientific value of the above concept, it should still be noted that property rights are derived from the possession of any type of property, but what kind of property is it in the case of trading in quotas? The doctrine does not specify nor solve this issue.

We believe that greenhouse gas is the result of the production activity of an enterprise, which adversely affects the environment, and belongs to the owner of the enterprise, who can alienate it on a paid basis by the quota established for him by public authorities (measured in tons). Accordingly, when an enterprise work is in progress, it produces a product (having a market value) and a by-product (emissions, discharges, waste) that the enterprise needs to dispose of. The issue of solid waste and the right of ownership to them as tangible objects have long been resolved in the Federal Law of 24.06.1998 No. 89-FZ "On production and consumption waste". According to Article 1 of this Law, such wastes are understood as "substances or objects that are formed in the process of production, the performance of work, provision of services or in the process of consumption, which are disposed of, intended for disposal, or subject to disposal". The enterprise will be charged a fee for the disposal of such waste.

An enterprise is also charged with a fee for emissions and discharges of hazardous substances; however, the issues of ownership of hazardous gases and liquid waste are not legally regulated. It seems that it is necessary to apply the legal precedent, equalling solid waste (sawdust, shavings, food waste, etc.) as objects of the material world to emissions (discharges) of harmful gases and liquids. In this case, it will become clear what exactly the owner is selling - gaseous waste [hereinafter G.W.], limited to a certain amount (quota). Solid waste can be expensive and can be sold in the market. The same approach should be applied to G.W., at least to greenhouse gases. Like the owner of solid waste, the owner of gaseous waste is limited by the quotas of their production, but there is one difference - the owner of gaseous waste can sell them at a quota auction; the owner of liquid and solid waste is deprived of such a right.

Given the Civil Law, gaseous waste is not a thing or a commodity (and not a property right). This, like solid waste, is a special type of object of environmental (and not civil) legal relations.

To eliminate this contradiction, Article 128 of the Civil Code of the Russian Federation should be supplemented with the following regulatory prescription:

> In cases provided for by federal laws, solid, liquid, and gaseous waste products of production and consumption, as well as other objects of the material world that meet the characteristics of the object of civil rights and are capable of being in civil circulation, may be recognized as objects of civil rights.

Here is the main issue: the current categories of civil and environmental law that emerged at the end of the twentieth century, fail to explain the objective reality, which has appeared and is rapidly developing in the twenty-first century. This explains the multitude of scientific concepts that try to understand the legal nature of emission quotas, and yet they are all equally feeble. Without claiming much, we will state several considerations.

1. G.W. can be recognised with legal status as a thing of a "special nature" that has no consumer value, but, on the contrary, poses a threat to the environment. Similar decisions have already been taken concerning solid waste, for example, radioactive waste, which has special requirements for sale and import into the country for disposal.

2. All-natural resources have their value and an owner. There are three forms of ownership in Russia - state, municipal, and private. Some natural resources can only be state owned, others can only be municipally owned. Private property may include land plots and small water bodies - ponds. There is no ownership of atmospheric air, although, for example, the public ownership of atmospheric air is secured in China, which is logical. In Russia, *de facto*, the air is also state owned, so the state authorities dispose of it - setting limits and standards, as well as emission quotas, receiving corresponding funds from nature users. Thus, our understanding of greenhouse gases will require a revision of the concept of ownership of natural resources. At the current state, there are five natural resources - land, forests, subsoil, etc., which are provided with different forms of ownership, while there is no special ownership on the sixth natural resource, the air. This does not seem logical, especially since all-natural resources are equally important and should be in the same system of "legal coordinates" in terms of issues of ownership of them.

3. The sale of emission quotas means the sale of property rights, or, more precisely, delegated by the G.W. owner the property right to release a certain amount (quota) of G.W. to another economic entity that is unable to emit gases due to the

restrictions on greenhouse gas emissions established by public authorities. As for solid waste, it can be both delivered to the landfill by the owner and disposed of by a certified company. In our case, the "landfill" (i.e., airspace) will in any case receive the amount of gaseous waste established by the state, but G.W. can get there at different times and from different sources (for example, one ton from one pipe and one ton from another).

4. The issue of dividing the territory of the Russian Federation into industrial zones according to the volume of greenhouse gas emissions requires discussion and resolution, and this may result in creating conditions for domestic quota trading.

5. A separate issue is the amending of the Civil Code of the Russian Federation with an additional paragraph on the sale and purchase of new types of civil rights objects, the number of which in the modern digital time is increasing every year. Among other things, it is necessary to develop a draft contract for the sale and purchase of property rights on G.W., while indicating the requirements for its subjects, essential conditions, and subject matter (quota size, type of greenhouse gases), and the contract price, terms, etc... At the same time, we note that the sale of such an object at auction should be legislatively fixed as the most efficient way of determining the price (as is done in the E.U. in Directive 2003/87 EC and Regulation No. 1031/2010).

6. It is necessary to create a pattern for registering quotas, a pattern for maintaining a turnover register, as well as the selection of a responsible public authority which can manage climate protection issues. This has already been partially done in Federal Law No. 296-FZ dated 02.07.2021 "On limiting greenhouse gas emissions", however, this law is too much framework in nature, which requires the adoption of many by-laws, the drafts of which are still under development.

7. In a federal state (including Russia), the effectiveness of these measures will strongly depend on the powers and activities of the subjects of the federation. Thus, the subjects of the federation should participate in the distribution of quotas throughout the country, defending the interests of their citizens and entrepreneurs. In this sense, the experience of the United States is very interesting: states are empowered to establish a maximum limit on greenhouse gas emissions on their territory, imposing restrictions on business entities and making commitments to reduce emissions by a certain year. Moreover, states are free to enter into agreements with each other (and with Canadian provinces) to coordinate emission reductions and emissions trading.

CONCLUSION

The conducted research concludes:

1. Climate change is naturally a global issue and it is closely related to one of the Sustainable Development Goals – which aims at taking urgent measures to combat climate change and its consequences (Goal 13). This goal cannot be achieved through the individual effort of the states. Such understanding led to the enhancement of international cooperation, through the adoption of the United Nations Framework Convention on Climate Change (U.N.F.C.C.C.), the Kyoto Protocol and the Paris Agreement on Climate 2015. Unlike the Kyoto Protocol, the provisions of the Paris Agreement are not mandatory. The intention of the authors of the Agreement is clear: not to overload it with legally binding obligations, so as not to scare away potential participating states. Despite the fact that the Paris Agreement does not specifically provide for the mandatory sale of quotas (although sales of quotas between states are gradually growing), it can be assumed that the aggravation of climate problems will lead to the signing of another agreement with stricter requirements and obligations, including emissions trading. Today, the growing number of signing countries of the Paris Agreement entails the rapid development of national legislation on quota trading, with China and the Republic of Kazakhstan being the leaders. Meanwhile, the civil codes of most countries do not include norms or chapters regulating the nature of such sales and purchases. This is the evidence of a discrepancy between the provisions of civil and environmental legislation.

2. Greenhouse gas must be legally recognised as an issue that, although devoid of consumer value, poses a threat to the state of the environment. The sale of a "quota" means the alienation of the property right to release a certain amount of greenhouse gases from one economic entity (owner of the G.W.) to another. Accordingly, the term "quota" itself is only a quantitative indicator of the alienated thing - G.W., and the gas itself, due to the specifics of this object of civil and environmental legal relations, does not pass from hand to hand, although its owner is changing. As in the case of solid waste, the new owner of a certain volume (quota) of gas pays for the placement of such gaseous waste (within the limits of the quota established by him - to the state, in terms of the purchased quota - to another economic entity).

3. The scope of the sale and purchase agreement has historically been extended to various objects of the material world (including the slave trade), and only in the digital age does it move to the Internet (sale of "virtual reality" or objects of the material world using computer technology)? Meanwhile, the emergence of an environmental global threat (including climate change) called for not only administrative but also market (civil) instruments that create incentives to reduce greenhouse gas emissions. Since both tendencies are poorly reflected in the national civil legislation, the latter requires a thorough reform. Among the issues, G.W. must find its location in the system of objects of civil legal relations, and in the field of environmental legal relations. Climate must be included in the object of civil legislation system.

4. The need to build a three-level legal strategy for climate protection (international-national-regional (local) legislation), is becoming more and more recognised by most countries of the world that are developing market mechanisms for nature protection, establishing partnerships between the public and private sectors to attract business to purposeful efforts to reduce the climate threat.

5. Setting emission quotas and trading in surplus quotas can be an effective tool to reduce greenhouse gas emissions and stimulate the introduction of innovative environmentally friendly technologies. Emission trading must be considered an important, though not the only, strategy in the legal regulation of climate.

In conclusion, we note that in the classic film "Indiana Jones and the Last Crusade", the antagonist must choose one among several bowls to identify the Holy Grail. Seduced by a shiny, bejewelled cube, he drinks from it and turns to dust. The old knight, watching this, sarcastically remarks: "He chose . . . wrong". This plot bears a strong resemblance to the contemporary climate challenge we face. And here - either the peoples of all countries of the world will be able to make the right choice and save the Earth's ecosystem, or the history of human civilisation will end. Given the interest in the climate issue of most countries and peoples of the world, as well as their growing cooperation, let's hope for a favourable outcome!