A Comparative Study on the Buyer's Remedies for Lack of Conformity of Goods under the CISG and the UAGCL

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ABSTRACT

This research paper seeks to conduct an assessment of the buyer’s remedies for non-conformity of goods under the CISG and the UAGCL. The main aim is to critically examine the relevant provisions, so as to comprehend how each regime has dealt with issues as to those remedies and to identify particular areas of dissimilarity. In its examination of each law, it tries to scrutinize what remedies are available for the buyer who is delivered with goods which are not in conformity with the contract. An emphasis is placed on questioning what way the various courses of action open to the breached buyer is unfolded in a comparative way as well as what requirements must be fulfilled for the buyer to exercise each remedy. In addition, it attempts to compare and evaluate all the relevant rules under the CISG and the UAGCL in light of the discipline of comparative law.

Keywords: CISG, OHADA, Lack of Conformity, Buyer’s Remedies, Defect of Goods, UAGCL

I. Introduction

The divergence of laws is often identified as one of the major challenges affecting the sale of goods across national borders. As international trade and other cross-border commercial activities began expanding around the first half of the 20th Century, due to improvement in transport and communication, there was a need to establish a unified legal framework to regulate international sale of goods. Thanks to the efforts made, the United Nations Convention on Contracts for the International Sale of Goods (hereinafter, referred as the CISG or the Convention) was created on April 10, 1980, in

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Vienna, and came to force on January 1, 1988 (Flechtnor, 2009). Despite its remarkable achievements and worldwide recognition, many still wonder why a lot of African countries are not part of the Convention. In fact, only 13 countries out of 54 in the continent have ratified it.\(^1\) The most prominent African countries that are non-members include: the Republic of South Africa, Nigeria and Kenya.\(^2\) In fact, many Africans are of the view that unification of laws could be more effective if done at the regional levels, rather than in a general global context (Magnus, 2012). In light of this, most French speaking African countries in Central and West Africa saw the importance of creating a harmonized regional legal framework that could reflect their common perspective and enhance legal security in cross-border commercial activities among members (Tumnde, 2004; Tumnde, 2012). As a result, the Organization for the Harmonization of Business Laws in Africa (hereinafter, referred by its French acronym as the OHADA) was established in Port Louis, Mauritius, on October 17, 1993.\(^3\) The OHADA Treaty contains nine legal statutes, commonly referred to as Uniform Acts. They include: Uniform Act on General Commercial Law, Uniform Act on Commercial Companies and Economic Interest Groups, Uniform Act on Insolvency Law, Uniform Act on Cooperative Societies, Uniform Act Organizing Securities, Uniform Act on Carriage of Goods by Road, Uniform Act Organizing Simplified Recovery Procedures, Uniform Act on Arbitration and Uniform Act on Accounting.\(^4\) The main statute that covers this research is the Uniform Act on General Commercial Law (hereinafter, referred as the UAGCL)\(^5\), particularly book eight, which deals with contracts for the sale of goods.\(^6\)

Having said that, the main purposes of this study are twofold; The first is to investigate what remedies are available for the buyer who is delivered with goods which do not conform to the contract under the CISG and the UAGCL. The remedies available to the buyer may be generally divided into three groups; first, specific performance by either repair or replacement, monetary claim by either damages or price reduction, third, avoidance of contract. In this study, an emphasis may be made by questioning what way

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\(^1\) United Nations Treaty Collection available at: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en> African states that have ratified the CISG include the following: Benin, Burundi, Cameroon, Congo, Egypt, Gabon, Ghana, Guinea, Lesotho, Liberia, Madagascar, Mauritania and Uganda.

\(^2\) Ibid.

\(^3\) The OHADA currently has 17 members, mostly from French speaking West and Central Africa. They include: Benin, Burkina Faso, Central African Republic, Chad, Cameroon, Comoros, Congo, Cote d’Ivoire, Equatorial Guinea, Gabon, Mali, Niger, Senegal, Togo, Guinea, Guiana-Bissau and D.R. Congo. <https://www.ohada.org/index.php/en/ohada-in-a-nutsheil/general-overview>

\(^4\) Available online at: <https://www.ohada.org/index.php/en/ohada-reference-texts/uniform-acts>

\(^5\) The original version was produced in 1997, but later revised in 2010. So, the revised version shall be the one to rely on.

\(^6\) Available online at: <https://www.ohada.org/attachments/article/482/AUDCG_EN_Reviewed_Unofficial_Translation.pdf>
such three groups of remedies are unfolded in each jurisdiction, and what requirements must be fulfilled for the buyer to exercise each remedy. The second purpose of this study is to try to compare and evaluate all the relevant rules under the CISG and the UAGCL in light of the discipline of comparative law. Even though it is commonly known that the provisions of both legal frameworks bear very close similarities since the CISG was used as the guiding instrument during the drafting process of the UAGCL (Kahindo, 2014), this research tries to investigate possible areas of divergence and evaluate them with respect to the discipline of comparative law. The key point is to find out whether or not the solution from one jurisdiction may enhance changes and systematic development of another jurisdiction. The research findings may provide good knowledge and advice to legal experts and traders who are interested to do business in the OHADA regions of Africa.

II. Specific Performance

1. The CISG

Article 45(1) is the leading provision that lays down the general principle for the buyer’s remedies for lack of conformity under the CISG. It stipulates that if the seller fails to fulfill any of his obligations under contract or from the Convention, the buyer may rely on any of the remedies provided in articles 46-52, or make a claim for damages as prescribed in articles 74-77. It is important to note that the buyer’s right to claim damages shall not interrupt his right to rely on any of the remedies in articles 46-52.\(^7\)

The right to specific performance is often considered as one of the key remedies for the buyer of non-conforming goods under the CISG. The main provision dealing with the issue is article 46, and it relies mostly on the Civil Law doctrine, which treats specific performance as the primary remedy for breach of contract (Schlechtriem & Schwenzer, 2016). The main purpose is to place the aggrieved party in the same position he would have been if the breach had not occurred. Thus, since the buyer’s interest is to receive goods that match the agreement, his expectation will be satisfied if the lack of conformity is redressed by the seller within the agreed period and without much inconveniences to the buyer. Although the law requires that performance must be done within the agreed period, the CISG demands that the buyer may fix an additional reasonable period for performance,\(^8\) unless, there is clear indication that the seller will not perform the contract within the additional fixed period.\(^9\) Where an additional period has

\(^{7}\) CISG, Art. 45(2).
\(^{8}\) CISG, Art. 47(1).
\(^{9}\) CISG, Art. 47(2).
been fixed, the buyer shall not resort to any other remedy for breach of contract during that period.\(^{10}\) It should however be noted that the right to specific performance is moderated by the provisions of article 28, which demands that a court is not bound to grant it, unless, the same would be done under its own law in respect of similar contracts of sale not governed by the CISG.\(^ {11}\) There are two ways by which specific performance may be done: either by substituting the goods or repairing them.\(^ {12}\)

By requesting substitution, it allows the seller to replace the non-conforming goods with another set of goods that are in compliance with the contract. In order for this to apply, it must be established that the non-conforming delivery had already taken place, and which amounts to a fundamental breach of contract. In addition, the period for substitution must be concurrent with that of providing notice under article 39, or should be done within a reasonable time thereafter (Enderlein & Maskow, 1992; UNCITRAL, 2016; Kröll et al., 2018). Furthermore, the buyer must restitute the non-conforming goods in the same or substantially similar condition he received them.\(^ {13}\) Regarding the place and cost of substitution, it is submitted that it shall be delivered at the same place where the non-conforming delivery took place and the cost shall be borne by the seller (Huber & Mullis, 2007).

The right to specific performance may equally be exercised by requesting the seller to repair the lack of conformity. This may be done by mending the goods, replacing the defective parts (Huber & Mullis, 2007), or installing parts that were originally missing (Schlechtriem & Schwenzer, 2016). According to article 46(3), a buyer of defective goods may request the seller to repair them, and like in the case of substitution, must be done in concurrence with the notice period in article 39, or a reasonable time thereafter.\(^ {14}\) It is often disputed whether the place of repair should be the same place where the goods were delivered or where they have been placed at the time request for repair was made (Kröll et al., 2018). The majority view supports the latter approach since it will be more convenient, and may avoid the additional cost of transporting the goods back to their original place of delivery (Kröll et al., 2018). Regarding the cost of repair, it shall be borne by the seller (Huber & Mullis, 2007).\(^ {15}\) It should however be noted that unlike substitution, the right to request repair is not based on the fundamental breach requirement (Huber & Mullis, 2007; Schlechtriem & Schwenzer, 2016), and the remedy may be relied upon only when is reasonable to do so, taking into account the circumstances (Schlechtriem & Schwenzer, 2016).

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\(^ {10}\) CISG, Art. 47(2).

\(^ {11}\) CISG, Art. 28.

\(^ {12}\) CISG, Art. 46(2), (3).

\(^ {13}\) CISG Art. 82(1).

\(^ {14}\) CISG, Art. 46(3).

\(^ {15}\) Germany, Oberlandesgericht Hamm, 9 June 1995.
2. The UAGCL

The UAGCL, like the CISG, equally grants the buyer the right to request specific performance from the seller where he had delivered non-conforming goods. The system of remedy under the UAGCL largely relies on the Civil Law approach, which recognizes the right to specific performance as the principal remedy for a breach of contract (Santos & Toe, 2002; Djiefack, 2017). So, it takes priority over all other remedies, and would be granted only if all attempts to request specific performance are futile (Djiefack, 2017). Pursuant to article 283(1), if a buyer alleges within the examination and notice period that the goods are defective, the seller may demand their substitution with those that are fit for the purpose.\(^{16}\) The seller shall bear the cost of substitution and it should be done without delay (Djiefack, 2017). However, the buyer may decide to fix an additional time for substitution, and under such circumstances, he shall not invoke the non-execution of the seller’s obligation within the new time fixed unless it expires.\(^{17}\)

3. Comparison and evaluation

From the above analysis, it could be seen that both regimes have dealt with the right to specific performance and is regarded as the main remedy for a breach of contract. But unlike the CISG which prescribes two forms of specific performance (substitution and repair), the UAGCL only prescribes substitution as the sole mode of specific performance. The right to repair has been addressed only with respect to an anticipated delivery. Article 257 of the UAGCL stipulates that where delivery is anticipated, the seller may, until the date of delivery, repair the non-conformity. It is however uncertain whether repair may be requested after the goods have been delivered. Secondly, article 283(1) of the UAGCL provides that the seller may impose substitution of the goods at his sole expense and without delay. That is to say, if the goods can be substituted before the expiration of the delivery period, the seller may request their replacement. But under the CISG, the right to request substitution should be exercised by the buyer, not the seller.

Even though the UAGCL is silent about the request for repair after the goods have been delivered, it is our opinion that if the cost of repair is lesser, and provided the goods will be fit after repairing them (especially in cases of minor defects), then it would be advisable to rely on it.

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\(^{16}\) UAGCL, Art. 283(1).

\(^{17}\) UAGCL, Art. 283(2).
III. Avoidance of Contract

1. The CISG

The term of avoidance of contract is commonly used to refer to the act of cancelling or putting an end to a contract, thereby discharging the parties from their respective contractual obligations.\(^{18}\) It is mostly considered as a remedy of last resort for a breach of contract and may be used only when the victim is no more interested to continue with the contractual relation(Dimatteo, 2014; UNCITAL, 2016).\(^{19}\) This paper seeks to investigate how the remedy has been addressed under the CISG and UAGCL. The main provision dealing with the right to avoidance of contract under the CISG is article 49. It demands that the buyer may unilaterally declare the contract avoided if the seller fails to perform any of his obligations under a contract or the Convention.\(^{20}\) But in order for the remedy to be applicable, it must be established that the seller’s non-performance or poor performance constitutes a fundamental breach of contract.\(^{21}\) The meaning of fundamental breach is contained in article 25. It provides that a breach of contract shall be considered fundamental if the effect is detrimental to the victim to the extent that he is substantially deprived of what he expected from the contract, unless the defaulting party did not foresee or was unreasonable for him to have foreseen the outcome.\(^{22}\)

There have been some concerns whether the delivery of non-conforming goods should be treated as a fundamental breach of contract(Dimatteo, 2014; Kröll et al., 2018). It is generally submitted that it shall be decided on a case by case basis, taking into account the parties’ agreement(Kröll et al., 2018). But in the absence of any such agreement, it shall be based on factors such as the seriousness of the breach, the seller’s right to cure and the reasonable use test(Kröll et al., 2018) As a rule, the buyer must notify the seller about his decision to avoid the contract and may be done in any form(Dimatteo, 2014).

Where the contract has been declared avoided, the buyer must restitute the goods in the same or substantially similar condition he received them.\(^{23}\) Consequently, the contractual relationship will be over and the parties discharged from their respective obligations.

2. The UAGCL

The buyer’s right to avoid a contract has equally been addressed in the UAGCL as a remedy for lack of

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\(^{18}\) The Law Dictionary, available online at: <https://thelawdictionary.org/avoidance-of-contract/>

\(^{19}\) Austria, Oberster Gerichtshof, 7 September 2000, (Tombstones case).

\(^{20}\) CISG, Art. 49(1).

\(^{21}\) CISG, Art. 49(1)(a).

\(^{22}\) CISG, Art. 25.

\(^{23}\) CISG Art. 82.
conformity of goods. It uses the term termination of contract, which literally means to put an end to a contract. The main provision is article 281, which states that a contractual party, who is a victim of the other party’s non-execution of contract, may petition for termination of the contract before a competent judge.\(^\text{24}\) Even though the above provision requires an avoidance of contract through a court process, the second paragraph however provides that it may as well be done unilaterally at the buyer’s risk. But for him to do so, he must notify the seller, which must be done in conjunction with the notice period under article 258.\(^\text{25}\) The ground for avoidance is based on the seriousness of misconduct of the breaching party(Tita Mana, 2015).\(^\text{26}\) This standard is quite vague and hard to interpret since the UAGCL does not specify what factors need to be considered. Notwithstanding, it is submitted that it shall be construed as an action which amounts to more than gross negligence(Tita Mana, 2015).\(^\text{27}\) An avoidance of contract will result to a discontinuation of the contractual relationship between the parties.

3. Comparison and evaluation

The above analysis reveals that both regimes have prescribed the right to terminate a contract as a relief measure to a buyer, who is a victim of a non-conforming delivery. They however differ in that the CISG only allows for a contract to be terminated unilaterally by the disgruntled buyer, whereas, under the UAGCL, the buyer may petition a competent court to dissolve the contract, or he may do so by himself at his own risk.\(^\text{28}\) The two regimes equally differ in regard to the grounds for avoidance. Under the CISG, the buyer cannot rely on avoidance of contract, unless, the non-conformity constitutes a fundamental breach of contract.\(^\text{29}\) Meanwhile, under the UAGCL, it is based on the seriousness of misconduct of the breaching party.\(^\text{30}\)

It should be noted that reliance on the above remedy is available as a last resort, since the parties are often encouraged to preserve their contractual relationship(Dimatteo, 2014). So, may be resorted to only where it is unreasonable for the buyer to keep the goods and make a claim for damages, or reduce the price(Dimatteo, 2014).\(^\text{31}\)

\(^{24}\) UAGCL Art. 281
\(^{25}\) UAGCL Art. 281(3).
\(^{26}\) UAGCL Art. 281(2).
\(^{28}\) CISG Art. 49; UAGCL Art. 281(1).
\(^{29}\) CISG Art. 49(1)(a).
\(^{30}\) UAGCL Art. 281(2)
IV. Monetary Claim

1. Price Reduction

1) The CISG

This remedy is traditionally applied under the Civil Law (Huber & Mullis, 2007; Dimatteo, 2014; Honnold and Flechtnner, 2009) and originates from the Latin maxim actio quanti minoris which allows the buyer to abate the purchase price in the circumstances where the seller has delivered goods that are not in compliance with the contract (Sondahl, 2003). It is a one sided remedy that applies only to the buyer with the aim of readjusting the contract to maintain balance of the contractual exchanges (Dimatteo, 2014).

CISG Art. 50 is the leading provision dealing with the buyer’s right to reduce the price for non-conformity of goods under the CISG. It seeks to allow the parties to commence with their contractual relationship irrespective of the fact that the seller has breached the contract by delivering non-compliant goods (Huber & Mullis, 2007). So, in order to preserve the relationship, the buyer may reduce the price and retain the goods, rather than invoking other hard remedies like avoidance. It shall be applied regardless of whether the seller’s failure to deliver the right goods amounts to a fundamental breach. The reduction must be made in the same proportion as the value that the non-conforming goods bear to the value that conforming goods would have had at the time of delivery (Schlechtriem & Schwenzer, 2016). Also, the buyer must notify the seller about his decision to reduce the price, which must be done in conjunction with the notice period in article 39 (Schlechtriem & Schwenzer, 2016).

2) The UAGCL

Likewise the CISG, the buyer may exercise his right to reduce the price if the delivered goods are defective. The remedy is a special one, and applies irrespective of whether the buyer already paid for the goods. The main provision dealing with the issue is article 288. Its key purpose is to allow the buyer to gain some financial relief as atonement for the lack of conformity, without putting an end to the contractual relationship. The reduction is calculated based on the difference between the actual value of the delivered non-conforming goods at the time they were delivered, and the value conforming goods would have had at that time (Djieufack, 2017).

32) CISG Art. 50.
3) Comparison and Evaluation

Based on the above analysis, it is observed that no clear difference exists between the two regimes in respect to the remedy of price reduction. The provisions of UAGCL article 288 have merely been copied from CISG article 50.

2. Right to Claim Damages

1) The CISG

Practically, a damage claim is recognized as the most relevant relief for the seller's breach of contract because it may either be sought in itself or in conjunction with other remedies (Chengwei, 2003; Dimatteo, 2014; Schlechtriem & Butler, 2009). Its main aim is to compensate an aggrieved party for his loss/injury, by placing him in the same position he would have been had the contract not been breached (Galvan, 1994).

The CISG Art. 45(1)(b) is the leading provision that establishes the basis for the right to claim damages under the CISG. It provides that where the seller has failed to perform any of his obligations under the contract or the Convention, the buyer may claim damages as prescribed in articles 74-77. Under the CISG, damages are generally based on a no fault rule, so may be invoked regardless of whether a lack of conformity resulted due to the seller's fault (Enderlein & Maskow, 1992). Moreover, it may be raised concurrently with other remedies, like specific performance or avoidance of contract (Schlechtriem & Schwenzer, 2016).

Article 74 highlights the principle of full compensation for damages by stating that all damages are compensable, in so far as they meet the foreseeability rule (Huber & Mullis, 2007; Schlechtriem & Schwenzer, 2016). The recoverable damages must be a sum that is equal to the buyer's loss (including loss of profit) (Enderlein & Maskow, 1992). In order for the buyer to exercise his right to the remedy, it must be certified that: i) a causal connection exists between the buyer's loss and the non-conforming delivery (Schlechtriem & Schwenzer, 2016; Kröll et al., 2018), 33) ii) the damages must not exceed the loss that the seller foresaw or ought to have foreseen at the time the contract was concluded, in light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract. 34) iii) Reasonable measures must be taken by the buyer to mitigate his loss. 35)

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33) The key issue will be to determine whether the loss would not have occurred had the contract not been breached by the seller (Huber & Mullis, 2007)

34) CISG Art. 74.
The foreseeability rule mentioned above may be seen as a major limitation to the strict liability principle under the CISG (Schlechtriem & Schwenzer, 2016; Huber & Mullis, 2007). Its assessment is generally based on an objective standard (Schlechtriem & Schwenzer, 2016), which relies on what a reasonable buyer in the same line of business as the seller, at the time of conclusion of the contract, would have foreseen or ought to have foreseen (Schlechtriem & Schwenzer, 2016; Huber & Mullis, 2007). Nevertheless, certain subjective factor may also be taken into account (Schlechtriem & Schwenzer, 2016; Huber & Mullis, 2007). The burden of proof for the non-conforming delivery, causality and foreseeability is generally borne by the buyer (Schlechtriem & Schwenzer, 2016).

There are however certain exemptions from damages as contained in article 79. It stipulates that the seller shall be exonerated to pay damages if the lack of conformity is as a result of an impediment beyond his control that he could not have reasonably expected at the time the contract was concluded; secondly, if the lack of conformity is due to an act of a third party, whom he had engaged to execute either part or the whole contract. But in order for the latter to apply, both the seller and third party must meet the condition for exemption under article 79(1). Also as a rule, the seller must notify the buyer within a reasonable time about the impediment, and his inability to perform the contract as a result.

2) The UAGCL

The UAGCL equally acknowledges the right to claim damages as remedy for lack of conformity of goods. The main provisions are contained in articles 292-293. Like the CISG, the main aim is to compensate the buyer for his loss/injury (Djefack, 2017) by placing him in the same position he expected to be had the contract not been breached (Kante, 2008). It is unfortunate that the UAGCL has not extensively dealt with the issue. It only addresses cases where the buyer has avoided the contract due to the seller breach, and subsequently resorted to a substitute transaction with another seller. In such circumstances, the buyer will be compensated an amount that corresponds to the difference between the contract price and the purchase price of the substitute transaction.

35) CISG Art. 77
36) Austria, Oberster Gerichtshof [Supreme Court], 15 January 2013, (Glass mosaic tiles case).
37) CISG Art. 79(1).
38) CISG Art. 79(2).
39) CISG Art. 79(2)(a) & (b).
40) CISG Art. 79(4).
41) UAGCL Art. 292.
42) UAGCL Art. 292.
Even though the UAGCL strongly adheres to the strict liability principle, it however demands that a seller of defective goods be excused from liability if the lack of conformity was caused by an impediment beyond control, for example, a force majeure. He however bears the burden to prove that the impediment directly resulted to the lack of conformity, and was unforeseen at the time of conclusion of the contract (Kante, 2008).

3) Comparison and evaluation

It could be observed from the above analysis that there exist some differences regarding the manner in which the buyer’s right to claim damages for non-conformity has been addressed under the UAGCL and CISG. Unlike the CISG, the UAGCL does not prescribe the foreseeability rule as a requirement for the award of damages. It is therefore uncertain whether the seller will be liable only for losses that he foresaw or ought to have foreseen when he signed the contract. It is quite unfortunate that there are no legal commentaries or case law from which one may draw reference to. Besides, unlike the CISG which clearly specifies that damages may be claimed for all breaches committed by the seller, the UAGCL only addresses those cases where the buyer has avoided the contract due to the seller’s breach and engaged in a substitute transaction with another seller. Lastly, unlike the CISG, the UAGCL does not exempt the seller from liability, if his failure to deliver conforming goods was caused by an act of a third party whom he has engaged to perform the contract.

IV. Conclusion

In view of the purposes earlier explained in the beginning part, several issues pertaining to buyer’s remedies for lack of conformity of goods have been analyzed through a comparative assessment of the UAGCL and CISG. Despite the close similarity of both regimes vis-à-vis their substantive provisions, the research tried to critically investigate possible areas of contrast.

From the analysis of the scope of application, it is discovered that they both apply to sale of goods contracts between traders whose business places are based in different member countries and also, they do not govern sales involving personal goods, auctions, securities and vessels such as ships. But unlike the CISG, the UAGCL does not prohibit contracts for the supply of goods intended for manufacturing, in which the buyer undertakes to supply a substantial part of the materials required for production (Magnus,

43) UAGCL Art. 294.
44) CISG Art. 45(1)
45) CISG Art. 295.
In relation to the buyer's remedies, both regimes have prescribed certain relief measures that may be utilized in the event of the seller's breach. So, the buyer may: request specific performance, avoid/terminate the contract, reduce the price, or claim for damages. Except for damages, he may only resort to a single remedy. As for damages, it could be claimed in addition to any other remedy.

Their differences could be seen in the following situations. Unlike the CISG that requires specific performance to be done either by repairs or substitution, the UAGCL only makes mention of substitution. In addition, the substitution request under the CISG must be made by the buyer, whereas under the UAGCL, it should be imposed by the seller at his sole expense and without delay.\(^{46}\)

Also, regarding the avoidance of contract, the CISG requires it to be exercised unilaterally by the buyer, whereas under the UAGCL, it may be done either by the buyer himself or through a judicial process. Moreover, the ground for avoidance of contract under the CISG is based on fundamental breach of contract, whereas under the UAGCL, is based on the seriousness of misconduct of the breaching party. In addition, concerning the buyer's right to claim damages, the CISG requires that the foreseeability rule must be met, but this is not contained in the UAGCL. Finally, the CISG exempts the seller from liability if the non-conformity was caused by an impediment beyond his control, which he did not expect at the time of conclusion of the contract. Also, he may be exempted if his poor performance resulted from an act of a third party, whom he had engaged to perform the contract either partially or entirely. But for the UAGCL, only the former applies as an exception. The seller shall not be exempted in the latter situation.

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\(^{46}\) CISG Art. 46(2); UAGCL Art. 283.
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국문요약

CISG 및 UAGCL상 물품의 계약부적합성에 대한 매수인의 구제제도에 관한 비교연구

이병문(Lee, Byung-Mun)*, 엠부아레이존(Mbu-Arrey, Enow-Mangeb John)**

국제물품매매계약에 관한 UN협약(OSG)은 현재 그 체약국이 90개에 이르 정도로 현존하는 가장 성공적인 협약이라고 할 수 있다. 이러한 성공에도 불구하고 아프리카 소재 54개국 중 13개국가만 협약에 가입하는 성과를 낼 것으로 OSG가 아프리카 국가들에 볼리한 규정을 담고 있는 것은 아닌지 등의 문제를 의심하게 되었다. 이에 프랑스어를 사용하는 아프리카 국가들 중심으로 그들간의 국제거래에 적용될 수 있는 협약을 제정하기 위한 OHADA라는 기구를 설립하여 1993년 17개 아프리카 국가들이 체약국으로 한 OHADA Treaty를 제정하기에 이르렀다. OHADA Treaty상 일반 상거래를 규율하는 법은 UAGCL에 해당하는 바, 본 연구는 물품매매계약에 적용 가능한 UAGCL 제8편을 연구의 주 대상으로 하고 있다.

이와 같은 배경 하에서 본 연구는 OSG와 UAGCL상 매도인이 계약에 부적합한 물품을 인도한 경우 매수인이 구할 수 있는 구제제도에 관한 관련규정을 중심으로 고찰하여보았다. 이러한 관련규정의 검토 시 주요 논쟁의 대상이 되는 규정과 그 해석상의 문제점을 중심으로 살펴 보았다. 한편 물품의 계약부적합성 관련 매수인의 구제제도에 대한 비교연구를 통해 관련규정의 제·개정을 위한 시사점 및 실무적 시사점을 도출하였다.

주제어: 계약적합성, 물품의 하자, 매수인의 구제제도, OSG, 국제물품매매계약에 관한 UN협약, UAGCL

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