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博 士 学 位 论 文

《联合国国际货物销售合同公约》中的合
同解除制度研究

A study on Termination of Contract
under the UN Convention on contracts for
the International Sale of Goods

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内容摘要

《联合国国际货物销售合同公约》（以下简称公约）是调整国际货物买卖最重要的统一实体法，公约本身也是非常先进的合同法律文件。因此，研究公约的合同解除制度，具有理论和实践两方面的意义。

本文以梳理既有的学说和判例为研究的起点，应用合同法理论和公约解释理论，推进公约合同解除制度的研究。与此同时，本文以公约合同解除制度为例，检验当前的主流合同法理论。

除导论与结语之外，本文共分为五章。

第一章是对本文研究背景的评介，主要涉及公约的制定历史与性质，公约的解释问题以及合同解除的术语问题。公约的制定历史表明公约是一个集体智慧和妥协的产物，对公约内容的概述表明公约具有合同法性质和统一法性质。公约的合同法性质意味着可以用合同法理论来研究公约。公约的统一法性质意味着公约的解释非常重要，统一目标的实现依赖于恰当的解释方法。公约英文本中的 *avoid (avoidance)* 这一术语并不恰当，*termination* 这一术语更合适；与 *avoid (avoidance)* 对应的中文翻译——宣告合同无效——也不合理，应该采用合同解除这一术语。

第二章是对公约中的合同解除条件的研究，公约的合同解除条件主要有根本违约和宽限期程序。本章第一节评述比较法中的合同解除条件。第二节论述公约的根本违约制度，先是对规定根本违约制度的公约第 25 条进行了结构上的分析，接着归纳和论证认定根本违约构成与否的考虑因素，最后用类型化的方法分析根本违约的认定问题。第三节论述公约的宽限期程序，具体分析宽限期程序的适用范围、宽限期通知的形式与内容要求以及宽限期程序的法律后果。

第三章是对公约中的合同解除的通知义务的研究。首先是从法理上论证

为什么要规定合同解除的通知义务。然后是分析合同解除通知的形式与内容要求。接下来分析合同解除通知的时间限制。最后分析合同解除通知的生效以及合同解除通知的撤回与撤销问题。

第四章是对公约中的合同解除的法律后果的研究。第一节论述合同解除对合同条款效力的影响。第二节论述为什么合同解除不否定受害方的损害赔偿请求权。第三节论述合同解除后的返还问题。返还问题非常复杂，相关规则的确定应该以返还原则为基础，并参考效率原则。第四节论述合同解除与货物风险转移的关系。

第五章研究中的合同解除与损害赔偿计算之间的关系。本章首先论证公约损害赔偿计算的一般标准是期待利益赔偿原则，并对期待利益赔偿原则的法理基础做了详尽的分析。接下来是对公约合同解除与损害赔偿计算之间关系的实证研究。

关键词：合同解除；根本违约；效率原则

Abstract

UN Convention on Contracts for the International Sale of Goods(hereinafter CISG) is the most important uniform law for international sale. CISG itself is also a good law. Therefore, the research of the contract termination under CISG is of great importance for both theory and practice. This dissertation uses contract law theory and interpretation theory to improve the study of the contract termination under CISG. Concurrently, this dissertation uses contract termination rules to examine the main contract law theory.

In addition to the introduction and conclusion, this dissertation has five chapters.

The first chapter is a restatement and a review of this dissertation's research backgrounds, which includes the drafting history and character of the CISG, the interpretation issue of the CISG and the terminology issue of the contract termination. The drafting history shows that the CISG is a result of group wisdom and compromise. The outline of the CISG shows that CISG has the character of contract law and international uniform law. Therefore, the contract law theory can be used to study the CISG. The character of international uniform law means that the interpretation of the CISG is of great importance. The success of the unification goal depends on proper method of interpretation. The term "termination" is more appropriate than the term "avoid(avoidance)" adapted by the CISG. The equivalent term of "avoid(avoidance)" in the Chinese version of CISG is also improper.

Chapter2 is research on the condition of contract termination under CISG, which includes fundamental breach and Nachfrist procedure. the first part is a review of the condition of contract termination in the main legal systems. The second part discusses the fundamental breach under CISG. This part includes an analysis of the structure of CISG art.25, a research on the factors for the judging of fundamental breach and a research on the judging of fundamental breach by type. The third part discusses the sphere of application of Nachfrist procedure, the notice and consequence of Nachfrist procedure.

Chapter3 is research on the notice procedure of contract termination. Firstly, it use jurisprudence to justify the rule that laid down notice obligation for the party who elect to terminate a contract. Secondly, it discusses the time limit, the form and the content of notice. Thirdly, it discusses the effective withdrawal and revocations of the notice of termination.

Chapter4 is research on the consequence of contract termination. The first part is about the effect of contract termination on the validity of contract clauses. The second part explains why the victim's right to claim damages is not taken away by the contract termination. The third part discusses the restitution issue after contract termination. The rules with concerning restitution shall depend on restitution principle, and they shall also refer to the efficiency principle. The fourth part discusses the relationship between contract termination and the transfer of risk.

Chapter5 discusses the relationship between contract termination and calculation of damages. Firstly, it proves that the general principle for the calculation of damages under CISG is expectation interest principle and explains the jurisprudence of expectation interest principle. Then it discusses the relationship between contract termination and calculation of damages in practice.

Key words: contract termination; fundamental breach ; efficiency principle

缩略语表

公约	1980年《联合国国际货物销售合同公约》
ULIS	1964年《国际货物买卖统一法公约》
ULF	1964年《国际货物买卖合同订立统一法公约》
UCC	美国统一商法典
USA	1906年美国《统一买卖法》
SGA	英国货物买卖法
PICC	国际商事合同通则
PECL	欧洲合同法通则

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案例表

一、公约案例

1. Austria 21 March 2000 Supreme Court (*Wood case*)
2. Austria 28 April 2000 Supreme Court (*Jewelry case*)
3. Austria 23 January 2006 Oberlandesgericht [Appellate Court] Linz (*Auto case*)
4. Austria 6 February 1996 Supreme Court (*Propane case*)
5. Austria 29 June 1999 Supreme Court (*Dividing wall panels case*)
6. Arens Sondermaschinen GmbH v. Smit Draad / Draad Nijmegen B.V. Australia 28
7. April 1995 Federal Dist. Ct., Adelaide (*Roder v. Rosedown*)
8. China 6 June 1991 CIETAC-Shenzhen Arbitration (*Cysteine Monohydrate case*)
9. China 30 October 1991 CIETAC Arbitration proceeding (*Roll aluminum and aluminum parts case*)
10. China 1 February 2000 CIETAC Arbitration proceeding (*Silicon and manganese alloy case*)
11. China 22 March 2001 CIETAC Arbitration proceeding (*Mung bean case*)
12. Downs Investments v. Perwaja Steel
13. FCF S.A. v. Adriafil Commerciale S.r.l.
14. France 23 January 1996 Supreme Court (Sacovini/M Marrazza v. Les fils de Henri Ramel)
15. France 4 February 1999 Appellate Court Grenoble (Ego Fruits v. La Verja Begastri)
16. France 21 October 1999 Appellate Court Grenoble (Calzados Magnanni v. Shoes General International)

17. France 27 May 2008 Court of Appeals Rennes (*Brassiere cups case*)
18. Germany 17 September 1991 Appellate Court Frankfurt (*Shoes case*)
19. Germany 22 September 1992 Appellate Court Hamm (*Frozen bacon case*)
20. Germany 9 December 1992 District Court Frankfurt (*Shoes case*)
21. Germany 24 November 1992 District Court Krefeld (*Shoes case*)
22. Germany 22 September 1992 Appellate Court Hamm (*Frozen bacon case*)
23. Germany 10 February 1994 Appellate Court Düsseldorf [6 U 119/93] (*Fabrics case*)
24. Germany 18 January 1994 Appellate Court Frankfurt (*Shoes case*)
25. Germany 18 January 1994 Appellate Court Frankfurt (*Shoes case*)
26. Germany 10 February 1994 Appellate Court Düsseldorf [6 U 119/93] (*Fabrics case*)
27. Germany 10 February 1994 Appellate Court Düsseldorf [6 U 119/93] (*Fabrics case*)
28. Germany 14 January 1994 Appellate Court Düsseldorf (*Shoes case*)
29. Germany 8 March 1995 Supreme Court (*New Zealand mussels case*)
30. Germany 24 May 1995 Appellate Court Celle (*Used printing press case*)
31. Germany 11 October 1995 District Court Düsseldorf (*Generator case*)
32. Germany 1 February 1995 Appellate Court Oldenburg (*Furniture case*)
33. Germany 5 April 1995 District Court Landshut (*Sport clothing case*)
34. Germany 8 February 1995 Appellate Court München [7 U 1720/94] (*Automobiles case*)
35. Germany 8 February 1995 Appellate Court München [7 U 1720/94] (*Automobiles case*)
36. Germany 27 March 1996 District Court Oldenburg (*Clothes case*)
37. Germany 21 March 1996 Hamburg Arbitration proceeding (*Chinese goods case*)

38. Germany 3 April 1996 Supreme Court (*Cobalt sulphate case*)
39. Germany 21 March 1996 Hamburg Arbitration proceeding (*Chinese goods case*)
40. Germany 28 February 1997 Appellate Court Hamburg (*Iron molybdenum case*)
41. Germany 28 February 1997 Appellate Court Hamburg (*Iron molybdenum case*)
42. Germany 29 December 1998 Hamburg Arbitration proceeding (*Cheese case*)
43. Germany 27 April 1999 Appellate Court Naumburg (*Automobile case*)
44. Germany 13 January 1999 Appellate Court Bamberg (*Fabric case*)
45. Germany 3 November 1999 Supreme Court (*Machine for producing hygienic tissues case*)
46. Germany 3 November 1999 Supreme Court (*Machine for producing hygienic tissues case*)
47. Germany 14 October 2002 Appellate Court Köln (*Designer clothes case*)
48. Germany 17 December 2002 District Court Giessen (*Vehicle safety devices case*)
49. Germany 22 August 2002 District Court Freiburg (*Automobile case*)
50. Germany 31 March 2008 Appellate Court Stuttgart (*Automobile case*)
51. Germany 5 April 1995 District Court Landshut (*Sport clothing case*)
52. ICC Arbitration Case No. 7585 of 1992 (*Foamed board machinery*)
53. ICC Arbitration Case No. 7197 of 1992 (*Failure to open letter of credit and penalty clause case*)
54. ICC Arbitration Case No. 7531 of 1994 (*Scaffold fittings case*)
55. ICC Arbitration Case No. 7531 of 1994 (*Scaffold fittings case*)
56. ICC Arbitration Case No. 7754 of January 1995 (*Computer hardware case*)
57. ICC Arbitration Case No. 9978 of March 1999
58. Italy 24 November 1989 Court of First Instance Parma (*Foliopack v. Daniplast*)
59. Italy 31 March 2004 District Court Padova (*Pizza boxes case*)
60. Italy 20 March 1998 Appellate Court Milan (*Italdecor v. Yiu's Industries*)

61. *Ostroznik Savo v. La Faraona soc. coop. a.r.l.*
62. Spain 17 January 2008 Supreme Court (*Used automobiles case*)
63. Stockholm Chamber of Commerce Arbitration Award of 5 April 2007 (*Pressure sensors case*)
64. Stockholm Chamber of Commerce Arbitration Award of 1998 (*Steel bars case*)
65. Switzerland 26 April 1995 Commercial Court Zurich (*Saltwater isolation tank case*)
66. Switzerland 26 September 1997 Commercial Court Aargau (*Cutlery case*)
67. Switzerland 20 February 1997 District Court Saane (*Spirits case*)
68. Switzerland 5 February 1997 Commercial Court Zurich (*Sunflower oil case*)
69. Switzerland 15 January 1998 Appellate Court Lugano, Cantone del Ticino (*Cocoa beans case*)
69. Switzerland 10 February 1999 Commercial Court Zurich (*Art books case*)
70. Switzerland 3 December 2002 Commercial Court St. Gallen (*Sizing machine case*)
71. Switzerland 21 February 2005 Appellate Court Valais / Wallis (*CNC machine case*)
72. Switzerland 30 August 2007 District Court Zug (*GMS modules case*)
73. Switzerland 30 August 2007 District Court Zug (*GMS modules case*)
74. Switzerland 18 May 2009 *Bundesgericht* [Federal Supreme Court] (*Packaging machine case*)
75. Sunprojuice DK, Als v. San Sebastian, S.c.A.
76. United States 6 December 1995 Federal Appellate Court [2nd Circuit] (*Delchi Carrier v. Rotorex*)

(注：公约案例大多来自 pace 大学数据库，无法检索到当事人名称，因此援用该数据库所采用的案例名称。)

二、英美法案例

1. Bettini v Gye (1876) 1 QBD 183
2. Boone v Eyre (1779), 1 Hy Bl 273
3. Behn v. Burness, 1863, 3 B. & S. 751, 6 R.C. 492
4. Bunge Corpn v Tradax SA, [1981] 1 WLR 711
5. Chanter v Hopkins (1838) 4 M & W 399
6. Conley v. Pitney Bowes, 34 F.3d 714 (8th Cir. 1994)
7. Cehave N.V. v Bremer Handelgesellschaft m.b.H. (The Hansa Nord) [1976] QB 44
Court of Appeal
8. Davidson -v- Gwynne [1810] 12 East 381
9. Dawson v Collis, (1851) 10 CB 523
10. D.E.W., Inc. v. DEPCO Forms, 827 S.W.2d 379 (Tex. App. 1992)
11. Ellison Furniture & Carpet Co. v. Langever, 113 S.W. 178 (Tex. Civ. App. 1908)
12. Kingston v. Preston, 98 Eng. Rep. 606, 608, 99 Eng. Rep. 437, 438 (K.B. 1773).
13. Fothergill v Monarch Airlines Ltd - House Of Lords [1981] AC 251
14. Manifatture tessile v. Askley (1979) 2 Lloyd's Rep. 28
15. Mitsubishi Goshi Kaisha v. J. Aron & Co., 16 F.2d 185, 186 (2d Cir. 1926)
16. Nichol v. Godts (1854) 10 Ex. 191 362.
17. Peeters v. Opie, 85 Eng. Rep. 1144 (K.B. 1671)
18. Poussard v Spiers and Pond (1876) 1 QBD 410
19. Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1961] Int.Com.L.
R. 12/20
20. VITOL SA V NORELF LTD 1996[AC]800

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