UNLOCKING THE POTENTIALS OF NIGERIA'S COMMERCIAL ENVIRONMENT THROUGH THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS 1980*

Abstract

This paper proposes the ratification of United Nations Convention on Contracts for the International Sale of Goods (CISG) 1980 in Nigeria. It analyses the success of the Convention, drawing analogy from jurisdictions that have ratified the Convention and those that have not. The paper draws comparison between the Sale of Goods Act 1893 (a statute of general application), being the extant principal law governing sales transaction in Nigeria and the CISG 1980. It discusses the limitations, likely and practicable obstacles to its application in the event of its ratification in Nigeria, and proffered possible solutions to the obstacles and limitations. In carrying out this work, the paper reviewed a vast number of literatures, cases and statutes, employing the doctrinal approach and the analytical technique. The paper found that the Sale of Goods Act 1893 aside being obsolete, left much to be desired, as the Act does not reflect the divergent legal system, and global nature of modern International sales transaction, hence there is need to incorporate the CISG; a common sales code, (albeit the legislative magical wand) that unifies the legal system of both civil and common law jurisdictions, and reflects the global, and modern practices of international sales transaction into Nigeria's legal order. The researcher therefore recommends that ratification of the convention in Nigeria is now of necessity considering the surging increase in cross border trade and modernity of sales transaction among citizens of different nations.

1.0 Introduction

The desire for and the effect of increased trade levels in the twentieth century provided the impetus for the nations of the world to attempt to unify international sales law, as it is an undeniable fact that one of the obstacles that frustrate the development of International trade is the divergence of rules among different legal systems, which among other things give rise to litigation and increases transaction costs for all parties. Hence, the promulgation of the United Nations 'Convention on Contracts for the International Sale of Goods' by the UN Commission for International Trade Law (UNCITRAL).[1] The CISG has been ratified by 97 States which constitutes two-third of the global economy and represent all geographical regions of the world, all stages of development and all known legal system.[2] Although, uniform law does not necessarily mean uniform results, common law countries appear to have quite a lot of issues with the interpretation of the Convention. However, recent researches and case laws have shown that the common

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[1] Hereinafter referred to as the CISG or the Convention; sometimes referred to as either the UNCITRAL or Vienna Convention on the International Sale of Goods, (April 11, 1980, S. Treaty Doc. No- 98-99 (1983)1489 U.N.T.S) < www.daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/390/70/IMG/NR039070.pdf> Accessed 11 September, 2024

[2] A Vizcarra; '*Thirty- Five Years of Uniform Sales Law: Trends and Perspective'* (Proceedings of the High Level Panel held during the forty-eight session of the United Nations Commission on International Trade Law, Vienna 6th July, 2015). 30 <www.Uncitral.org/uncitral/en/uncitral/texts/sale-/goods/1980CISG.html> Accessed on 11 September, 2024; A Gartner; 'Britain and the CISG: The case for ratification – A Comparative Analysis with Special reference to German Law Review of the Convention on Contracts for International Sales of Goods (CISG) [2001] *Kluwer Law International* <www.cisg.law.pace.edu/cisg/biblio/gartner.html> Accessed 17 August, 2024

law interpretational quagmire can be resolved. Thus, presently the CISG appears to be and is generally considered the most successful Convention in the area of international trade law.[3] It is therefore quite puzzling that irrespective of the global endorsement of the CISG, Nigeria, which is one of the biggest commercial hubs in Africa, has not ratified it nor has any viable step been taken to domesticate the CISG into Nigeria's jurisprudence.

Furthermore, since trade and commerce between nations is now so swift, easy, and routine just like international communications, countries with different legal systems are being forced to come to terms with a new commercial reality.[4] This reality is that countries, lawyers and business communities can no longer rely solely on the knowledge of their own legal systems as there is need to have knowledge of the laws of the other contracting party in the event of international sales. While it appears unrealistic to expect a business or business owners to familiarise themselves with the legal systems of all its trading partners, the CISG solves this problem by providing the parties with a common sales code which will apply regardless of whether the action is brought in the country of the seller or the buyer's place of business.
This paper undertakes a review this international legal framework viz-a-viz the Nigerian legal framework on contracts for sale of goods, in a bid to educate, promote and propose the adoption of this international legal framework.

1.1 Brief Background and History of the CISG

There is no doubt that globalisation has been one of the vital developments in the past 50 years and counting, thus, lowering the barriers of trade has become the axiom of countries around the world. This is aptly reflected by an American Journalist George Parker who postulated that 'rejecting globalisation is like rejecting the sunrise."[5] Globalisation has greatly increased the importance of cross-border trade[6] and significantly contributed to the internationalisation of trade. The Nigerian economy is developing and depends largely on importation of goods hence there is need to protect businesses from legal uncertainties resulting from the laws of different trading partners.

It is easily agreeable that commerce is at the centre of the economy of every nation. This is because for there to be economic growth and development in a nation, with its attendant effects on a country and her citizens, there must be a high level of commercial activities in that nation. Modernisation and globalisation have further ensured that commerce does not only happen intra-States but can also happen at the global community.

Often, citizens of nations and even nations themselves get in confusion and troubles whenever they engage in international commerce. This is mostly due to the conflict of laws, confusion as to the

[3] For argument against the Convention see K. Sono; 'The Rise of a National Contract Law in the Age of Globalisation (2001) 75 *TLR* 1185: S. A Davis; 'Unifying the Final Frontier: Space Industry Financing Reform' [2001] 106 *CLJ* 455,477, S Gopalan, 'The Creation of International Commercial Law: Sovereignty Failed? [2004] *San Diego Int'l Journal* 267, 289. P Schlectriem; 'Of Words and Issues: Finding a Common Language for Common Issues, Review of the Convention on Contracts for International Sale of Goods (CISG)' 79, 80, [2003-2004]
[4] M. Gleeson, 'The State of the Judicature' (1999) *The Law institute Journal* 76
[5] G Parker, 'Hillary Clinton and the Populist Revolt' [*The New Yorke*r 31, October 2016] <https://www.newyorker.com/magazine/2016/10/31/hillary-clinton-and-the-populist-revolt> Accessed 12 July, 2024
[6] B. Zeller, 'The Development of Uniform Laws: A Historical Perspective' *PACE Law School CISG Database* <www.cisg.law.pace.edu/cisg/biblio/zeller5.html> Accessed 17 June, 2024

applicable domestic laws, language barriers, etc. Hence, there is need to adopt an internationally acceptable system that ensures uniformity in international commerce. This led to the birth of the United Nations Conventions on Contracts for International Sales of Goods.

Since 1920, there have been attempts by the International Institute for the Unification of Private Law (UNIDROIT) in collaboration with lawyers working in the League of Nations to harmonise or unify the law relating to international sale of goods. Sequel to that, in 1964, two conventions was completed namely; the Convention relating to a Uniform Law on the International Sale of Goods (ULIS), and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF). These 1964 Hague Conventions in spite of their fundamental importance failed to command wide acceptance internationally. Consequently, in 1966 the United Nations established the United Nations Commission on International Trade Law (UNCITRAL)[7] with the goal of promoting the progressive harmonisation and unification of international trade law. One of the major achievements of UNCITRAL is the United Nations Convention on Contracts for the International Sale of Goods.[8] The CISG becomes binding on any country once the legislation of that country formally adopts it as forming part of their national law.[9]

2.0 Overview of the CISG

The CISG[10] is the main result of a diplomatic conference[11] held in Vienna from 10th March, to 11thApril 1980. The CISG establishes a modern set of rules through the creation of a uniform law of contracts for international sales of goods thereby creating legal certainty, reducing transactional cost, and providing a basis for international trade. It appears as the international community's most viable effort to promote efficiency and sustained growth of international trade.[12] The Convention, in accordance with its article 99(1)[13] came into force[14] on 1st January 1988 following its adoption by 11 states,[15] including the United States. Since then, the number of States that have adopted the Convention has rapidly increased; hence as of November 2023, UNCITRAL reports that 97 states have adopted the CISG.[16] Rwanda is the latest

[7] This Commission was set up by virtue of UN Resolution 2205 (XXI) of 17 December 1966

[8] U.N Doc.A/Conf./97/18 Annex 1 (April 10, 1980)

[9] J Chuah, *'Law of International Trade: Cross-Border Commercial Transactions'* (5th edn., London: Sweet & Maxwell, 2013)175

[10] U.N Doc.A/Conf./97/18 Annex 1 (April 10, 1980)

[11] Convened in accordance with the United Nations General Assembly Resolution 33/93 of 16 December 1978, following the preparation of the working group whose work was carried out over the course of nine session from 1970-1977

[12] These goals are evident in the preamble of the CISG which states in part: "being of the opinion that the adoption of uniform rules which governs contracts for the international sale of goods and take into account the different social economic and legal system would contribute to the removal of legal barrier in international trade and promote the development of international trade"

[13] CISG 1980, art. 99(1)

[14] United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11 April 1980, S. Treaty Document Number 98-9 (1984), UN Document No A/CONF 97/19, 1489 UNTS 3. <http://www.uncitral.org/uncitral/en/uncitral texts/sale goods/1980CISG.html> Accessed 11 November 2023.

[15] The eleven States were Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, the United States of America, Yugoslavia, and Zambia.

[16] CISG: Table of Contracting States , < http://www.cisg.law.pace.edu/cisg/countries/cntries.html> Accessed 7 July 2024; PACE Law School website <www.iicl.law.pace.edu/cisg/page/cisg-table-contracting-states> Accessed 11 September, 2024

State to have acceded to the CISG.[17] For a State to adopt the CISG, it is required that notification be deposited with the United Nations after which the Convention will enter into force on the first day of the month after the date of the deposit of notification, being either an instrument of ratification, acceptance, approval or accession according to Article 99(2). These CISG contracting States constitute two-third of the global economy and represent all geographical regions of the world, all stages of development and all legal system.[18] This makes it one of the most successful uniform international Conventions till date, the *Mona Lisa artwork* of modern commercial transaction. Hence, it is not surprising, why some commentators will applaud it as the greatest legislative achievement aimed at harmonising private international commercial law.[19] Surprisingly Nigeria is yet to key into this legislative magical wand that has the potential of unlocking the commercial sphere of her economy.

2.1. Scope, Structure, and Interpretation of the CISG

The CISG is made up of 101 articles and divided into four parts: Part I, which comprises of Articles 1-13, deals with the statute's sphere of application of the Convention and its general provisions.[20] Part II, Articles 14 -24 concerns the formation of contracts. Part III, Articles 25 - 88 deals with substantive rights and obligations of buyer and seller arising from the contract and Part IV, Articles 89 - 101 deals with the procedural issues.[21] The articles on its scope of application state both what is included in the coverage of CISG and what is excluded from it.

The CISG applies to contracts of Sale of goods between parties whose place of business are in different states and either both of those states are contracting states.[22] Or the rules of private international law lead to the law of a contracting state.[23] The CISG governs contracts for International sales only, and Article 3 distinguishes such contract of sales from contract for service in two respects, 'Contracts for the supply of goods to be manufactured or produced' are considered to be sales unless the party who orders the goods

[17] Other African countries that have adopted CISG include Benin, Gabon, Ethiopia, Egypt, Guinea, Liberia, Mauritania, Uganda and Zambia. <http://iicl.law.pace.edu> accessed 7 July 202

[18] A Vizcarra, '*Thirty-five Years of Uniform Sales Law: Trends and Perspectives'* (Proceedings of the High Level Panel held during the Forty-eight Session of the United Nations Commission on International Trade Law, Vienna, 6 July, 2015), 30 <http://www.uncitral.org/uncitral/en/uncitral-texts/sale-goods/1980CISG.html> Accessed 7 July 2024

[19] J Honnold, *'Uniform Law for International Sales: Under the 1980 United Nations Convention'* (1982)

[20] By the provision of Article 1(1), the Convention applies to "contracts of sale of goods between parties whose place of business are in different States." The definition of the place of business leaves significant ambiguity about what law governs where a party has multiple places of business; See also U Anyamele, *'The United Nations Convention on Contracts for the International Sale of Goods: A proposal for Nigeria*' <http://www.cisg.law.pace.edu/cisg/biblio/anyamele.html> Accessed 7 July 2024

[21] Such procedural issues include the ability of countries who wish to become contracting States to declare their unwillingness to be bound by certain provisions, and the terms under which CISG becomes effective among contracting states. D Sim, '*The Scope and Application of a Good faith in the Vienna Convention on Contracts for The International Sale of Goods'* <http://www.cisg.law.pace.edu/cisg/biblio/sim1.html#i> Accessed 7 July 2024.

[22] The CISG, Article 1(1)(a); it is interesting to observe that in *Cedar Petrochemicals, Inc v Dongbu Hannong Chemical Co Ltd* (2007) Federal District Court New York, the Court held that the CISG would only apply between contracting parties and did not apply to any third parties to the contract although they might have a nationality of a country member of the Convention.< http://cisgw3.law.pace.edu/cases/070719u1.html> Accessed 9 July. 2024

[23] The CISG, Article 1(1) (b). A few States have availed themselves of the authorisation in Article 95 of the CISG to declare that they will apply the convention only in the former and not the later of these two situations. It is believed that as the CISG becomes more widely adopted, the practical significance of such a declaration will diminish.

undertakes to supply a substantial part of the materials necessary for their manufacture or production.[24] In addition, when the preponderant part of the obligations of the party who furnishes the goods consist of the supply of labour or other services, the CISG does not apply.[25] The CISG contains a list of types of sales that are excluded from its application, either because of the purpose of sale,[26] the nature of the sale,[27] or the nature of the goods.[28] In many States, some or all of such sales are governed by special rules reflecting their special nature. It is made clear by Article 4 that the subject matter of CISG is restricted to the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise provided in the convention, it is not concerned with the validity of the contract,[29] or the effect which the contract may have on the property in the goods sold.[30] It is as well not concerned with the liability of the seller for death or personal injury caused by the goods to any person.[31] There is no specific methodology laid down by the CISG regarding interpretation.[32] However, Article (7) and the preamble of the convention provide guidance to promote friendly relations among states and to resolve matters in accordance with the general principles. The CISG once ratified becomes the domestic law of contracting state.[33]

In analysing the CISG, it is important to note that its provisions have played a supporting role and supplied those terms of the contract that have not been included between the parties.[34] Hence if there is a dispute between the contract's terms and the CISG, the first one will prevail.[35] Alternatively, parties to the contract may opt out to disregard the Convention's provisions entirely.[36]

3.1 Measuring the Success of the Convention

Some commentators are of the opinion that forty-four years after the CISG came into force, it might be failing to accomplish its task of bringing uniformity and predictability to International Sales law. Some argue that the Convention, not only fails at its goal of bringing uniformity, but harms this goal.[37] While

[24] The CISG, Article 3(1), hence in *Amco Ukrservice v. American Meter Company* [2004] Civ A. 00-2638, the US Federal District Court for the Eastern District of Pennsylavia held that a distributorship agreement is not covered by the Convention as it is not a sale or supply contract. <http://cisg3.law.pace.edu/cases/040329u1.html> Accessed 24 July 2024

[25] The CISG, Article 3(2),

[26] The CISG, Art .2(a) example goods bought for personal, family or household use.

[27] The CISG, Art. 2(b), (c) example sale by auction, on execution or otherwise by law.

[28] The CISG, Art. 2(d), (e), (f) example stocks, shares, investment, securities, negotiable instrument etc

[29] The CISG, Art. 4(a)

[30] The CISG, Art. 4(b)

[31] The CISG, Art. 5

[32] The interpretation of the CISG has attracted a lot of criticism. The Structure of the CISG has been termed "uneasy and strange"; A Rossett, 'Critical Reflections on the United Nations Convention of Contracts for the International Sale of Goods' 45 (1984) *Ohio St. L.J*. 265,281

[33] Michael Bridge, *The International Sale of Goods: Law and Practice'* (Oxford: Oxford University Press 1999)37; <http://www.cisg.law.pace.edu/cisg/cisgintro.html> Accessed 7 July 2024

[34] SS. Grewal, 'Risk of Loss in Goods Sold During Transit: A Comparative Study of the U.N Convention on Contracts for the International Sale of Goods, the U.C.C, and the British Sale of Goods Act' (1991) 14 *Loy. L.A. Int'l & Comp. L. Rev.* 93 -94

[35] The CISG, Art. 6

[36] *Ibid*

[37] P Hackney, 'Is the United Nations Convention on the International Sale of Goods Achieving Uniformity' *Louisiana Law Review* (2001) 473- 486, <http://www.cisg.law.pace.edu/cisg/biblio/hackney.html> Accessed 8 July 2024

these scholars point out the difficulties with the Convention's inability to bring harmonisation to international sales law, others believe that the convention remains 'the greatest legislative achievement aimed at harmonising private international commercial law',[38] and 'a monumental achievement'.[39]

There has been doubt however on the criteria used in measuring this success. Ferrari is of the opinion that those criteria such as: number of ratifications, the increased application by arbitral tribunals and the percentage of world trade which it governs are not sufficient to justify the conclusion that it is a success. He opined that these criteria only evidence CISG's political acceptability.[40] Gillette and Scott suggest that the normative goals of a uniform international sale should be to provide the substantive solution to particular contracting problems.[41] It appears parties want a commercial law statute that can solve their contractual problems,[42] thus the question is whether or not CISG is sufficient to do for the parties what they cannot do for themselves and its impact on national law[43] While Ferrari's arguments[44]above appears plausible, however, the researcher adopts the submissions of Gillette and Scott[45] and wonders what use an International commercial statute would be if not to find a common ground and assist in solving contractual problems for people from different legal system.

4.0 Proposing CISG for NIGERIA

In Nigeria, it is quite unfortunate that the legal framework that essentially regulates sales of goods and commerce is the Sales of Goods Act of 1893. This 18th century Act is archaic considering the nature of international trade that occurs in this 21st century. In fact, one can liken the use and applicability of this 18th century Act in this 21st century to pouring new wine into an old wineskin, the resultant effect being that the new wine will burst the wineskin; consequently it will be spilled and ruined. Nigeria's commercial law jurisprudence appears weak and non-functional because of the irrelevance of the extant law on modern day sales transaction. Adoption of CISG in Nigeria will resurrect and reinvigorate the commercial legal framework of our economy.

In proposing the adoption and ratification of the Vienna Convention for Nigeria, this paper will be considering the benefits of ratification of the convention, but before then it is necessary to compare and contrast certain provisions of both the Convention and Sales of Goods Act 1893 (SOGA) in order to show some of the dividends that will be earned by Nigeria in the ratification of the Convention.

First, under SOGA, s.5 provides of two types of goods: the subject matter of a contract of sale. The two types of goods are existing goods and future goods.[46] Nevertheless, the Act further provides that a

[38] J Lookofsy, 'Loose Ends and Contorts in International Sales: Problems in the Harmonization of Private Law Rules' *American Journal of Comparative Law* (1991) 39, 403, 403

[39] W Barnes, 'Contemplating a Civil Law Paradigm for a Future International Commercial Code' 65, *Louisiana Law Review* (2005) 677, 678.

[40] F Ferrari, '*The CISG and its Impact on National Contract Law-General Report* <.https://arcivos.juridicas.unam.mx/www/bjv/libros/6/2843/8.pdf> Accessed 8 July 2024

[41]C Gillette and RE Scott, 'The Political Economy of International Sales Law' (2005) *New York University Law and Economics Research Paper Series Working Paper No 05-02* <https://papers.ssrn.com/sol3/paper.cfm?abstract_id=709242> Accessed 8 July 2023

[42] They can be legal knowledge cost and problem-solving cost.

[43] F Ferrari, (n. 40)

[44] *Ibid*

[45] C P. Gillette and R E. Scott, (n. 41)

[46] See *Watts v Friend* (1830) 10 B & C, 446

contract for future goods is known as an agreement to sell.[47] However, under the Convention, Art.3(1) provides that contracts for the supply of goods to be manufactured or produced are to be considered as sales, unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production. This provision clearly ensures that a buyer of future goods has a right of action in case of anticipatory breach in law, unlike the equitable right of action of the buyer under the Nigerian law.

Another difference between the Convention and SOGA is that the Convention had clearly stipulated the place of business of the parties, for parties that have different places of business. If a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.[48] So, this settles the issue as to where official documents are to be served and where is to be considered the place of business of the parties, irrespective of the business headquarters. Nevertheless, if a party does not have a place of business, reference is to be made to his habitual residence.[49]

Another perk of the Convention is that it provides in part II as to how a contract of sales of goods may be entered; how an offer is to be made, how acceptance is also to be made and when an acceptance can be revoked.[50] The importance of this is that it straightens, gives more effect to the terms of the agreement and helps prevent conflict that may arise from determining whether offer or acceptance of the sales of goods contract was properly made or whether there was a valid revocation of offer.

A very innovative provision of the convention is the provision of the *force majeure* clause. This clause was inserted to protect parties form liabilities in a case where there is a breach of contract arising not from the making of the party. This provision considers performance of a contract as an obligation under the contract, but also provides a balance that when there is non-performance, following an act that was not reasonably contemplated or foreseen by the parties; liability for breach of contract will not arise. For the purpose of clarity, the provision in question is reproduced thus:

> A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.[51]

This provision is very important considering that unforeseen events may arise to make the performance of contracts impossible. A recent example is the outbreak of the coronavirus pandemic in 2020 that affected the entire world and made transactions and businesses almost impossible. This provision is necessary to ensure that parties do not incur liability for acts and events beyond their hindsight or control that frustrate the contract.

[47] Sales of Goods Act 1893, s.5(3)
[48] Convention on Contract for Contract of International Sales of Goods, article 10(a)
[49] Ibid, Art.10(b)
[50] Ibid, Art. 14-24
[51] *Ibid*, Art. 25

Having examined some of the attractive provisions of the Convention on the Contract for International Sales of Goods, it is necessary to now examine some of the benefits of ratifying the Convention by Nigeria.

Firstly, ratifying the convention will promote the equality of nations and promote the sovereignty of nations. Developing countries like Nigeria may be afraid of ratifying the convention because they believe that the convention is a way of overriding their powers of law making. However, the reverse is the case. Ratifying the convention will ensure that nations of the world, whether considered as developed, developing or underdeveloped, will be seen as equal when entering into contracts for sales of goods. This is in line with the preamble of the convention that provides that the parties to the convention consider that an important element in promoting friendly relations among states is the development of international trade on the basis of equality and mutual benefit. This will ensure that the sovereignty of nations, particularly developing countries, are not trampled upon by developed countries, whilst entering into commercial transactions with them.

A similar benefit of the adoption of the convention is that it ensures uniformity of rules applicable in international commercial transactions. This is also provided in the preamble of the convention that provides that the state parties, in desiring to develop international trade, had provided for a uniform rule that will take into account the different social, economic and legal systems which would contribute to the removal of legal barriers in international trade. This is also in line with Art. 7 of the convention that provides that in the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

Another benefit of Nigeria adopting the convention is that it will provide some form of certainty and prevent conflict of laws that usually arise when there is an international commercial transaction. Also, the Convention is neutral and was not made to suit any particular country.

Another benefit of Nigeria ratifying the convention is that it will help in the reduction of cost. It is a known fact that when a country or her citizens wishes to enter into a contract of sale of goods with another nation, that country or its citizens spend a lot of money in hiring the legal services of professionals that will aid in the interpretation of the laws of the other climes. However, this cost is reduced by the adoption of the Convention as the Convention ensures that the contracting states have uniform rules.

Despite the innovative provisions of the Convention and the benefits of Nigeria ratifying it, there exists certain provisions of the Convention that are worrying. Art. 4 of the Convention provide a worrying provision. The provision states as follows:

> This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:
> (a) the validity of the contract or of any of its provisions or of any usage;
> (b) the effect which the contract may have on the property in the goods sold.

The Convention is supposed to ensure that a contract of sales of goods entered into by parties is valid, under international and municipal laws of the contracting states. Also, the Convention should be

interested in the effect of the contract on the property in the goods sold. This is because the passage of property is central in a sale of goods contract. So, the Convention should ordinarily have interest in this.

Another troubling provision of the convention is article 5 that provides that the Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person. By this, the Convention is silent about the goods being of merchantable quality. This is even made worse by part II of the Convention that talked about the obligations of the seller, without talking about the buyer being obligated to deliver goods that are of merchantable quality. There is a possibility that the goods may cause injuries to the buyer after taking possession of the goods. This may have nothing to do with the acts of the buyer but may be due to the fact that the seller had not done something to make the goods merchantable. In *Morelli v Fitch and Gibbons*,[52] X bought a bottle of Stone's Ginger wine from Y. as he was opening it, the bottle broke at the neck and cut his hand. The defect was held to render the wine as sold not of merchantable quality and the seller was liable for the personal injuries caused on the buyer. Also, in Wilson v Rickett Cockerell & co. Ltd.,[53] X sold to Y coalite which was mixed with explosives. When lit, an explosion occurred. The court held that the seller was liable. So, it was a big misgiving of the Convention to have excluded the liability of the seller when the subject matter of the contract causes personal injury or death without the fault of the buyer or the third party handling it.

However, in assuaging this, the Convention had given parties to the contract of sales of goods the power to exclude the terms of the Convention or to vary the effects of any of the provisions of the Convention.[54] This is a very good development as it allows the party the autonomy of choosing the terms of the Convention that is to be applicable to their contract and which is not applicable.

4.1 Challenges Confronting the Adoption of the Convention in Nigeria.

The major problem confronting the applicability of the Convention in Nigeria is the constitutional and procedural bureaucracy associated with ratification of Convention in Nigeria. Nigeria, as a sovereign State, operates the principle of dualism. By this principle, conventions entered into and signed by Nigeria, whether bilateral or multilateral, have to be enacted by the National Assembly for it to have the force of law in Nigeria. Section 12(1) of the CFRN 1999 which provides thus: 'No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.'

In *Abacha v Fawehinmi*,[55] Ogundare JSC held that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law, it has no such force of law as to make its provisions justiciable before the Nigerian Courts.

A scholar has posited that the intention of the draftsman of the Constitution in adding that provision to the Constitution is to act as a check on the powers of the executive and also to preserve the sovereignty of a nation.[56]

[52] (128) 2 K.B 636
[53] (1954) 1 Q.B. 598
[54] Convention on Contracts for International Sales of Goods, Art. 6
[55] [2000] 6 NWLR (pt 660) 228 at 228
[56] FA Onomreirhinor 'A Re-examination of the Requirement of Domestication of Treaties in Nigeria' *African Journals Online* (2016) 3(1), 17-25

This problem is aggravated by the fact that signing the Convention is not enough to make it binding; a nation has to take an extra step of ratifying the Convention.[57] Ghana and Venezuela had, in 1980 and 1981, signed the Convention without more.[58] It is to be noted that for the purpose of the Convention, they are not yet contracting States until they ratify the Convention. This opens the floodgate for some head of States or politicians to play politics with this law.

Another problem with the application of the convention in Nigeria is the problem of awareness. A lot of persons in Nigeria, business owners, lawyers and even law makers are ignorant of the existence of this Convention. There is no way they will move for the adoption and ratification of the convention if they do not know of its existence, hence the relevance of this work in creating awareness of this law.

4.2 Ways of Incorporating the CISG in Nigeria

There have been suggestions by scholars on possible ways the CISG can be incorporated in some countries that have not incorporated them, in the event of ratification. Georgiadou[59] opined two different strategies, namely; the `a la carte strategy and the parallel strategy, which this paper adopts and avows.

4.2.1 `A La Carte Strategy

Georgiadou[60] opined that, 'the CISG is an `a la carte convention, which enables the parties involved to select the provisions they prefer in the same way they would choose a meal from a restaurant menu.'[61] It is her submission that upon a community reading of Arts 6[62] and 12[63] of the CISG 1980, there is no obligation to comply with all CISG provisions, thus a contracting member may choose to ratify only some of the Convention articles. In order words, Nigeria would in a legislation implementing CISG choose only to incorporate provisions of the CISG that are appropriate for her legal order and disregard the rest that may be non- suitable.

4.2.2 Parallel Strategy

Under the parallel strategy, the CISG will exist together with the Sale of Goods Act 1893, allowing contracting parties the option to either create a contract under the terms of CISG or the Sale of Goods Act 1893. This parallel strategy will be helpful to both traders who wish to contract under the terms of the up-to-date legislation created solely for international contracts, as well as traditional traders who prefer the old and familiar Sale of Goods Act 1893.[64]

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[57] Convention on Contract for International Sale of Goods, Art. 91(1)

[58] CISG, 'CISG Contracting States' < https://cisg-online.org/cisg-contracting-states> accessed on the 9 July, 2024

[59] K Georgiadou, 'Apathy vis-a-vis the UN Convention on Contracts for the International Sale of Goods (CISG) in the UK and the Two Proposed Strategies for CISG'S Incorporation in the UK Legal Order' (2012) 3 *Pace International Law Review Online Companion* 256, 268 <http://digitalcommoms.pace.edu/cgi/viewcontent.cgi?article=1032&context=pilronline> Accessed 10 July 2024

[60] *Ibid*

[61] *Ibid*

[62] CISG 1980, Art. 6 provides: 'the parties may exclude the application of this convention or, subject to Article 12, derogate from or vary the effect of any of its provisions.'

[63] Article 6 establishes Art. 12 of the CISG as the only provision in the Convention that parties are not permitted to derogate from. hence it is the only provision that is compulsory in the Convention.

[64] K Georgiadou (n. 59), 268 & 269

5.0 Conclusion

Trade and commerce are at the centre of the development of every nation. In this current age, modernisation and globalisation has made international trade a big deal. So, there is need for nations to ensure that they and their citizens who enter into international commercial transactions are on the same pedestal with the nations they enter into contracts with. It is based on this that this paper considered the great benefits Nigeria stands to gain if it adopts and ratifies the Convention on Contract for International Sales of Goods. However, there are some challenges that may hinder the successful ratification of this convention, which this work has already considered. It is based on this that this work makes the following recommendations:

1. Nigeria needs to ratify the Convention as the Sales of Goods Act of 1893, being the extant principal law governing sales transaction in Nigeria is now archaic considering the nature of international trade that occurs in this 21st century. As it is, Nigeria can decide to exclude any part of the Convention that does not suit it. It may also decide to renounce the Convention at will.
2. There is need to educate Nigerians on the existence of the Convention and its applicability. Thus, enlightenment should be carried out at various levels starting from the members of the National Assembly down to companies, businesses and to individuals. This is because people cannot accept what they are not aware of.