

# Limitations of Specific Performance in the China Contract Law and the Convention on Contracts for the International Sale of Goods (CISG)

Dr. Hedayatollah Shenasaee<sup>1</sup>, Dr. Maggie Qin<sup>2</sup>, Faramarz Shirvani<sup>3</sup>

<sup>1</sup>PhD in International Law, China University of Political Science and Law (CUPL)

<sup>2</sup>Associate Professor, China University of Political Science and Law (CUPL)

<sup>3</sup>PhD Candidate, National University of Malaysia (UKM)

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**Abstract:** The specific performance has been recognized in new China Contract Law. Actually, China Contract Law recognized three forms of remedies for aggrieved party, namely, damage, remedial measures and specific performance. However, it should be noted that Article 110 of China Contract Law provided some limitations for awarding specific performance by court, namely, the performance to be impossible in law or in fact, or the cost of performance to be so excessive, as well as, the aggrieved party does not require for implementation of specific performance within a reasonable time. This Article attempt to analysis the legal limitations of Chinese courts to award specific performance to the aggrieved party in result of contractual obligations and with regard to provision of Article 28 of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**Keywords:** specific performance, limitation, China Contract Law, the CISG.

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## I. INTRODUCTION

Generally speaking, the United Nations Convention on Contracts for the International Sale of Goods ("CISG") recognize the specific performance as one of the remedies for both buyer (Article 46) and seller (Article 62). Indeed, Article 46 (1) of the CISG expressly promulgates " the buyer may require performance by the seller of his obligation" and Article 62 also declares " the seller may require the buyer to pay the price take delivery or perform his other obligations". However, the Convention creates many limitations for implementation and awarding such right to aggrieved party. In Common Law system the specific performance has known as 'exceptional remedy', while in Civil Law system, specific performance has recognized as an 'absolute right'. The China legal system was based on Civil Law which generally any type of contract between parties should be performed so that legislation made contract performance compulsory. Thus, the specific performance was one of fundamental principle of China Contract Law.

However, this matter has changed with adoption of new Contract Law of China. Indeed, this provision has essentially abandoned the traditional mandatory rule of specific performance<sup>1</sup>. In this regard, Article 107 of China Contract Law recognizes three forms of remedies for aggrieved party in result of breach of contract, including, specific performance, remedial measures, or damage. It should be noted there is no hierarchy of contractual remedies for aggrieved party in result of breach of contract in new China Contract Law, while in a past the specific performance was the main and compulsory remedy. Moreover, the China Contract Law has restricted awarding specific performance where the performance is impossible in law or in fact, or performance to be with high cost, or aggrieved party does not request in reasonable time. The first objective of this article is to evaluate the concept of 'specific performance' in civil and common

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<sup>1</sup> See Mo Zhang, Chinese Contract Law: theory and practice, Brill Academic Publishers, 2006, p 297.

law systems. The second objective of this article is to analyse the scope and limits of Articles 46 and 62 of the CISG regarding specific performance. The third objective of this research paper is to examine Article 28 of the CISG which provides many restrictions for implementations of such right by contracting parties. The last part of this paper is related to limitations provided by China Contract Law for awarding of specific performance to aggrieved party.

## II. SPECIFIC PERFORMANCE

The UNCITRAL Digest of case law on CISG Article 28 provided definition for specific performance in paragraph 2 which "specific performance means that a party may require the other party to perform its obligations under the contract and seek enforcement through court action"<sup>2</sup>. Specific performance in law dictionaries has been defined as "an equitable remedy granted by the court to compel the performance of contractual obligations by the party whom the order for specific performance is made against"<sup>3</sup>. Moreover, John S. Mo believe "specific performance means that the court directs a party to perform a specific act in pursuance of the contract concerned"<sup>4</sup>. From general overview, in common law system the specific performance can be considered as 'exceptional remedy'. For instance, Sir Treitel observed "the common law did not specifically enforce obligations except those to pay money. With this exception, there was, and is, no right to specific performance: the remedy is equitable and (like most such remedies) discretionary"<sup>5</sup>. In this regard, the 'exceptional remedy' means if there is an "adequate remedy at law coercive relief would be barred and a sum of money would be assessed against the breaching party"<sup>6</sup>. The most important reasons that courts do not like to award specific performance is difficulty of supervision and adequacy of damage. In the United States, the court can award specific performance when it is commercially necessary. For instance, if the goods are unique and substitutional damages are not suitable as adequate relief, the buyer can obtain specific performance. The seller also has the same right and can require "specific performance of payment of the price when resale of the goods is impracticable"<sup>7</sup>. Generally speaking, in common law system there are many restrictions for awarding specific performance. In the United Kingdom, the court cannot order specific performance if there is adequate remedy for aggrieved party such as damage. In this regard, the specific performance can be ordered where "no satisfactory substitute [goods] can be obtained"<sup>8</sup>.

In addition, other legal limitations to award specific performance in the United Kingdom are related 'discretion of the court' means the "court has a discretion to refuse specific performance even where this remedy would be a more appropriate one than damages"<sup>9</sup>; or court cannot "specially enforce a contract of personal services"<sup>10</sup>; or in some cases the court cannot order specific performance against "a party who has the right to terminate it, for he could, by exercising that right, make the order of court nugatory"<sup>11</sup>; difficulty of supervision by the court and impossibility of performance also can be considered as additional obstacles for ordering specific performance by the court in the United Kingdom. The last limitation in the United Kingdom is related to doctrine of mutuality of remedy which "specific performance will not be ordered if the court cannot at the same time ensure that the unperformed obligations of the claimant will also be specifically performed"<sup>12</sup>. In Civil Law systems, "the right to demand contract performance has been said to be an established principle and an "absolute right"<sup>13</sup>.

However, in reality, the availability of specific performance is limited in all legal systems, even in civil law systems<sup>14</sup>. For instance, Article 110 of China Contract Law provided the limitations for ordering specific performance by the court

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<sup>2</sup> CISG, Article 2.

<sup>3</sup> John S. Mo, The Code of Contract Law of the People's Republic of China and the Vienna Sales Convention, American University International Law Review, 1999, pp 1-52.

<sup>4</sup> The UNCITRAL Digest of case law on the United Nations Convention on the International Sale of Goods, provided at: <<http://cisgw3.law.pace.edu/cisg/text/anno-art-28.html>>.

<sup>5</sup> G. H. Treitel, An Outline of the Law of Contract, sixth edition, Oxford University Press, p 409.

<sup>6</sup> See Robert Bejesky, The Evolution in and international Convergence of the Doctrine of Specific Performance in Three Types of States, 13 Indiana International & Comparative Law Review, 2003, pp 1-66. At <<http://www.lexisnexis.com/cn>>.

<sup>7</sup> Ibid.

<sup>8</sup> See G. H. Treitel, *op. cit.*, p 409.

<sup>9</sup> Ibid, p 410.

<sup>10</sup> Ibid, p 411.

<sup>11</sup> Ibid, p 412.

<sup>12</sup> Ibid, p 414.

<sup>13</sup> See Robert Bejesky, *op. cit.*, pp 1-66.

<sup>14</sup> See John M. Catalano, More Fiction than Fact: The Perceived Differences in the Application of Specific Performance under the United Nations Convention on Contracts for the International Sale of Goods, 71 Tul. L. Rev. 1807, 1997, pp 1-34. at <<http://www.lexisnexis.com/cn>>

such as the performance to be impossible in law or in practice, or the cost of it to be so high, request of aggrieved party must be in reasonable time. In civil law systems, the specific performance is considered as one of the main remedies for aggrieved party in result of breaching contractual obligations. For instance, French Civil Code (FCC) provides that "contracts have the force of law and must be performed in good faith, but the innocent party has the ability to choose between specific performance and rescission with substitutional relief"<sup>15</sup>. In German Civil Code (BGB) also "a court can order performance of the original contract terms as long as performance of the original contractual obligation is not impossible or would not otherwise require unreasonable expense or effort"<sup>16</sup>.

### III. THE CISG RULES AND SPECIFIC PERFORMANCE

The most important goal of the CISG is to establish uniformity and certainty in the laws and regulations governing international sales<sup>17</sup>. Thus, the remedies available to the contracting party must be in conformity with the main goal of conclusion of the CISG which is uniformity and certainty. Articles 46 and 62 of the CISG provide rules for specific performance. The CISG recognize the doctrine of specific performance as one of contractual remedies in result of breaching obligations<sup>18</sup>. According to doctrine of specific performance, the laws and regulations can compel parties to perform their contractual obligations. Indeed, in accordance with Article 46 and 62 of the CISG, the aggrieved party has the right to request specific performance where other party has infringed its contractual obligations. Article 46 (1) of the CISG promulgates "the buyer may require performance by the seller of his obligation" and Article 62 also declares "the seller may require the buyer to pay the price take delivery or perform his other obligations"<sup>19</sup>. However, under provision of Articles 46 and 62 of the CISG, there are some limitations for enforcement of specific performance where aggrieved party has resorted to an inconsistent alternative remedy<sup>20</sup>. For instance, under Article 46 (2) the seller must provide substitute good for buyer in result of breaching its obligation, if nonconformity "constitute a fundamental breach of contract", otherwise "aggrieved buyer is entitled only to repair of the goods and to receive ensuing damages"<sup>21</sup>. Article 46 (2) also stipulates the buyer's right to require the seller "to remedy the lack of conformity by repair"<sup>22</sup>. Under Article 49, if the aggrieved party declares the contract is avoided, thus, he loses his right to require specific performance<sup>23</sup>. Moreover, if the buyer reduces the price in result of nonconformity, he cannot compel performance in accordance with Article 50<sup>24</sup>. Similarly, in accordance with Article 64, if the seller declares the contract avoided, he loses the right to payment<sup>25</sup>.

### IV. THE CISG AND ARTICLE 28

Article 28 of the CISG restricted the right of aggrieved party to require other party for specific performance in result of breach of contract<sup>26</sup>. Article 28 of the CISG expressly promulgates: "If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention"<sup>27</sup>. Due to extensive gap regarding the role of specific performance in common-law and civil-law systems, the drafters of the 1980 CISG introduces the Article 28 to compromise between these two legal systems regarding acceptance of specific performance as a general remedy prescribed in Articles 46 and 62 of CISG<sup>28</sup>. However, legal commentators believe this limitations in Article 28 of CISG regarding specific performance is "disruptive [of] the Convention's underlying goal of uniformity"<sup>29</sup>. Although Article 28 of the CISG restricted in certain case the aggrieved

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<sup>15</sup> See Robert Bejesky, *op. cit.*, pp 1-66.

<sup>16</sup> *Ibid.*

<sup>17</sup> Larry A. DiMatteo and Lucien Dhooge, the Interpretive Turn in International Sales Law: An Analysis of Fifteen Years of CISG Jurisprudence, 24 NW. J. INT'L L. & BUS. 299, 2004, pp 1-85. At <<http://www.lexisnexis.com/cn>>.

<sup>18</sup> John Fitzgerald, Recent Development Relating to CISG: CISG, Specific Performance, and the Civil Law of Louisiana and Quebec, 16 J.L. & Com. 291, 1997, pp 1-26. At <<http://www.lexisnexis.com/cn>>.

<sup>19</sup> *Ibid.* See also Article 46 (1) of the CISG.

<sup>20</sup> John Catalano, More Fiction than Fact: The Perceived Differences in the Application of Specific Performance under the United Nations Convention on Contracts for the International Sale of Goods, 71 Tul. L. Rev. 1807, 1997, pp 1-34.

<sup>21</sup> Article 46 (2) of the CISG.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, Article 49.

<sup>24</sup> *Ibid.*, Article 50.

<sup>25</sup> *Ibid.*, Article 64.

<sup>26</sup> John Felemegas, *op. cit.*, pp 144-145.

<sup>27</sup> The CISG, Article 50.

<sup>28</sup> Robert Bejesky, *op. cit.*, pp 1-66.

<sup>29</sup> John M. Catalano, *op. cit.*, pp 1-34. See also Larry A. DiMatteo and Lucien Dhooge, *op. cit.*, pp 1-85.

party's right to require specific performance from a party in breach, but " it does not affect other remedies available under the Convention" such as avoidance or damages ( Art. 74-76)<sup>30</sup>.

According to Article 28 of CISG," if one party is entitled to require performance of an obligation by the other party (i.e. in accordance with Art. 46 and 62 of the CISG): [A] court is not bound to enter a judgment for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention"<sup>31</sup>. The expression of " not bound" in Article 28 of the CISG " does not limit any rights to specific performance that may ensue from the proper application of the convention's provisions"<sup>32</sup>. In fact, this expression indicates " a court that would not require performance under its own law is free either to require performance or to apply other remedies provided by the convention such as awarding damages under Article 74"<sup>33</sup>.The verb "would" in Article 28 of CISG refers to the Vienna Diplomatic Conference which was accompanied with vital change to the text of provision in order to restrict the right to require specific performance. In Article 28 of CISG is written " unless the court would do so under its own law..." rather than "unless the court could do so" which was written in the 1978 UNCITRAL Draft Text of the Convention<sup>34</sup>. The expression "own law" in Article 28 of CISG refers to the application national law. It should be noted the expression "does not refer to the norms of the international private law of the forum"<sup>35</sup>. Thus, in a some case if " the law of the forum would not grant specific performance in a domestic contract of (i.e., accordance with domestic law of contract), the court is not bound to enter a judgment of specific performance in respect of the particular international contract of sale under the convention"<sup>36</sup>.

## V. LIMITATION OF SPECIFIC PERFORMANCE IN CHINA CONTRACT LAW

Article 107 of China Contract Law introduces three forms of remedies for aggrieved party, including, Specific performance<sup>37</sup>, remedial measures, or damage<sup>38</sup>. According to Article 107 of China Contract Law promulgates "If a party fails to perform its obligations under a contract, or rendered non-conforming performance, it shall bear the liabilities for breach of contract by specific performance, cure of non-conforming performance or payment of damages, etc"<sup>39</sup>. In decade ago, in system of planned economy, the contract had to be performed and legislation made contract performance compulsory<sup>40</sup>. With compared to former China Contract Laws, it should be noted the new China Contract Law<sup>41</sup> has expanded contractual remedies for aggrieved party. Actually, " this provision has essentially abandoned the traditional mandatory rule of specific performance"<sup>42</sup>. For instance, in the new China Contract Law, there is no hierarchy regarding contractual remedies, while in the past 'specific performance' considered as the main and compulsory remedy for aggrieved party. It means Article 107 of China Contract Law provides contractual remedies which all are optional to the aggrieved party. Moreover, Article 112 of China Contract Law stipulate in a particular situation when aggrieved party suffers from additional loss in result of non-performance or non-conforming performance, he can also take extra compensation. In fact, in this situation aggrieved party can request for both specific performance and extra compensation.

Some author also believes that the remedies provided in Article 107 of China Contract Law for breach of contracts are much" compensatory rather than punitive in nature"<sup>43</sup>.With regard to the term' specific performance', aggrieved party can require the party in breach to continue the performance of contractual obligations, if it is possible and there is no obstacle

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<sup>30</sup> John Felemegas, *op. cit.*, p 145.

<sup>31</sup> *Ibid*, p 146.

<sup>32</sup> *Ibid*.

<sup>33</sup> John Honnold, the Draft Convention on Contracts for the International Sale of Goods: An Overview, 27 American Journal of Comparative Law (1979) 223-231 at <<http://cisgw3.law.pace.edu/cisg/biblio/Honnold2.html>>.

<sup>34</sup> John Felemegas, *op. cit.*, p 147.

<sup>35</sup> *Ibid*.

<sup>36</sup> *Ibid*.

<sup>37</sup> Some Chinese authors also used these terms instead of specific performance: continuing performance", "compelled performance" and "actual performance". In fact, for them these terms have a same meaning with specific performance which is originally western term. See Mo Zhang, *op. cit.*, p 297

<sup>38</sup> Article 107 of China Contract Law.

<sup>39</sup> *Ibid*.

<sup>40</sup> Patricia Pattison and Daniel Herron, The Mountains Are High and the Emperor is Far Away Way: Sanctity of Contract Law, American Business Law Journal, 2003, pp 1-11. at <<http://www.lexisnexis.com/cn>>.

<sup>41</sup> The new China Contract Law enacted on March 15, 1999.

<sup>42</sup> Wang Liming and Xu Chuanxi, Fundamental Principle of China's Contract Law, Columbia Journal of Asian Law, 1999, pp 1-11. At <<http://www.lexisnexis.com/cn>>.

<sup>43</sup> See Mo Zhang, *op. cit.*, p 296.

for performance of contract<sup>44</sup>. There is no substitute performance because the party in breach must perform its actual obligations agreed in the contract. For this reason some author use term 'continuing performance' because " it involves compelling the party in breach to complete the contract performance"<sup>45</sup>. However, the scholars in China use the terms 'continuing performance', 'specific performance', 'actual performance' and 'compelled performance' in same meaning<sup>46</sup>. In this regard, it should be noted that " continuing performance in China is not an equitable relief but a statutory remedy"<sup>47</sup>. Article 109 of China Contract Law provides "monetary specific performance" for aggrieved party" if a party fails to pay the price or remuneration, the other party may require payment thereof"<sup>48</sup>.

According to Article 109 of China Contract Law, if the party in breach did not pay money or other reward with compliance with the contractual obligations, the aggrieved party has the right to require the party in breach to perform its obligation in accordance with agreed contract<sup>49</sup>. However, if the party in breach again refuses to comply with the request of aggrieved party, the China court can force him/her to pay to the aggrieved party in accordance with Article 109 of China Contract Law<sup>50</sup>. Article 110 of China Contract Law provides the general principle for specific performance. Article 110 of China Contract Law which is related non-monetary performance promulgates " where a party fails to perform, or has rendered non-conforming performance of, a non-monetary obligation, the other party may require specific performance thereof"<sup>51</sup>. John S. Mo also describes this general principle in Article 110 of the China Contract Law regarding specific performance so that " if a party does not perform his or her obligation, which is not a financial obligation, or if the party has not performed the obligation according to the contract, the other party may request the former to perform the obligation concerned"<sup>52</sup>. However, the Article 110 of China Contract Law provides some limitations for the general rules provided in the Article regarding specific performance. This limitation can be articulated as the following<sup>53</sup>:

- (i) Performance is impossible in law or in fact;
- (ii) The subject matter of the obligation does not lend itself to enforcement by specific performance or the cost of performance is excessive;
- (iii) The obligee does not require performance within a reasonable time.

Thus, the specific performance is available in accordance with provision of Article 110 of China Contract Law, unless the obligor proves in the court the existence of one of the limitations prescribed in this Article. For implementation of Article 110 of China Contract Law, the aggrieved party can demand directly from the party in breach for specific performance in accordance with contractual obligations, or make request to the court to order specific performance against the party in breach<sup>54</sup>. This is one of the main distinctions between common law system and China legal system. In common law system the 'discretion of the court' is pre-conditions for awarding the treatment of specific performance to the aggrieved party. The court in common law system can refuse to order specific performance even if this remedy is much more appropriate than other remedies such as damages<sup>55</sup>. There is some type of contracts which are unsuitable for specific performance because the personal nature of these contracts such as partnership contracts. In China legal system also this type of contract cannot be proper for specific performance such as a contract for work, contract for entrustment, contract involving personal service<sup>56</sup>. Actually, this type of contracts strongly depend on personality of contracting party.

Legal commentators believe the personal service cannot be ordered by the court as specific performance because it can lead to unduly interfere in personal liberty of employee<sup>57</sup>. In the German civil code " impossibility is the most important

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid, p 297.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid, p 298.

<sup>48</sup> Article 109, China Contract Law.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Article 110, China Contract Law- See also C. Stephen Hsu, Contract Law of the People's Republic of China, Minnesota Journal of International Law, 2007, pp 1-11. At <<http://www.lexisnexis.com/cn>>.

<sup>52</sup> See John S. Mo, *op. cit.*, pp 1-52.

<sup>53</sup> Article 110, China Contract Law.

<sup>54</sup> John S. Mo, *op. cit.*, pp 1-52.

<sup>55</sup> G. H. Treitel, *op. cit.*, p 410.

<sup>56</sup> Mo Zhang, *op. cit.*, p 301.

<sup>57</sup> G. H. Treitel, *op. cit.*, p 411.

limit on performance"<sup>58</sup>. Nevertheless, the new wording of Article 271 I BGB promulgates the debtor is free from his contractual obligations for specific performance " whether the impossibility accrued before or after the conclusion of the contract, whether the debtor was responsible for it, and whether the impossibility was subjective or objective"<sup>59</sup>. The limitation prescribed in Article 110 (ii) usually is related to economic efficiency for the specific performance. Mo Zhang believe that limitation of specific performance because of excessive cost is related the idea that "a contract represents a balanced interest between the contractual party, and the duty of one party to get what is expected from the bargain"<sup>60</sup>. According to the Article 110 (iii) of China Contract Law, enforcing the specific performance cannot be happened without the request of aggrieved party within a reasonable period of time after breach of contract.

In fact, breaching party should have a reasonable time to complete the performance. In this regard, if breaching party fail or refuse to complete the performance after this period of time, aggrieved party has the right to ask the court to compel. China scholars have different perspective about Article 111 of the China Contract Law. John S. Mo believes the Article 111 of China Contract Law is supplemented to the Articles 109 and 110 of China Contract Law and it should be considered as " different type of specific performance"<sup>61</sup>, while Mo Zhang argues the Article 111 of the China Contract Law should be considered as " the major provision concerning remedial measures"<sup>62</sup>. He defines remedial measures as " the remedies provided by the Contract Law between specific performance and damage, and they are the measures that are purposed to cure the defects in the performance and in the meantime to prevent further losses or damages that may incur in the breach of contract "<sup>63</sup>. However, Mo Zhang continues "although Article 111 mainly deals with defective performance in quality, the remedial measures may also include specific performance when non-conforming performance is involved"<sup>64</sup>. Article 111 of China Contract Law promulgates:" Where a performance does not meet the prescribed quality requirements, the breaching party shall be liable for breach in accordance with the contract. Where the liabilities for breach were not prescribed or clearly prescribed, and cannot be determined in accordance with Article 61 hereof, the aggrieved party may, by reasonable election in light of the nature of the subject matter and the degree of loss, require the other party to assume liabilities for breach by way of repair, replacement, remaking, acceptance of returned goods, or reduction in price or remuneration, etc"<sup>65</sup>.

## VI. CONCLUSION

As mentioned above, some scholars believe that the treatment of specific performance provided by CISG can lead to disparate results when it should be applied in different forums. This is due to "the remedial uniformity under article 28 is extremely uncertain because parties at the time of breach will not know whether the right of performance will eventually be enforced"<sup>66</sup>. In this regard, some other authors also suggest that "the greatest problem of the article 28 compromises ... is that it poses a significant risk of forum shopping by contracting parties, a practice disruptive to the Convention's underlying goal of uniformity"<sup>67</sup>. Without doubt, China Contract Law has progressed in dealing with contractual remedies prescribed in Article 107 China Contract Law. According to Article 107 of CLC there is no difference among contractual remedies for aggrieved party and specific performance should be considered as optional remedy. The main goal of continuing performance is to achieve what contracting parties have bargained for their contract<sup>68</sup>. With regard to specific performance, CLC is more like German Civil Code (BGB). However, there is some uncertainty in China Contract Law regarding how the specific performance must be enforced upon the request of injured party and whether or not injured party should ask a competent court directly to compel the party in breach for continuing performance without notice to the arbitration clause in the court<sup>69</sup>. In sum, Chinese court can order specific performance with regard Articles 46, 62 and 28 of CISG in general because Article 107 of China Contract Law accepted specific performance as one of remedies for

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<sup>58</sup> Basil Markesinis, Hannes Unberath and Angus Johnston, the German Law of Contract: A Comparative Treaties, Second Edition, Hart Publishing, pp 406-418.

<sup>59</sup> Ibid.

<sup>60</sup> See Mo Zhang, *op. cit.*, p 301.

<sup>61</sup> John S. Mo, *op. cit.*, pp 1-52.

<sup>62</sup> Mo Zhang, *op. cit.*, pp 302-304.

<sup>63</sup> Ibid, p 304.

<sup>64</sup> Ibid, p 304.

<sup>65</sup> Article 111 of China Contract Law.

<sup>66</sup> John M. Catalano, *op. cit.*, pp 1-34.

<sup>67</sup> See Olga Gonzalez, Remedies Under the U.N. Convention for the International Sale of Goods, 2 Int'l Tax & Bus. Law. 1984, pp 79-96. Provided by The Berkeley Electronic Press, 1984: at < <http://scholarship.law.berkeley.edu>>.

<sup>68</sup> See Mo Zhang, *op. cit.*, pp 302-304.

<sup>69</sup> Ibid.

aggrieved party in result of breach of contract. For awarding specific performance to the aggrieved party, china court should enforce the provision of Article 110 of China Contract Law. In this regard, if the performance to be impossible in law and practice, or the cost is high, or the request for specific performance is not in reasonable time, the court should not order specific performance.

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