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Title	OHADA（アフリカ商事法調和化機構）による統一契約法の挑戦と挫折
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Citation	北大法学論集， 66(4)， 316[1]-294[23]
Issue Date	2015-11-27
Doc URL	https://hdl.handle.net/2115/60263
Type	departmental bulletin paper
File Information	lawreview_vol66no4_03summary.pdf, summary



THE HOKKAIDO LAW REVIEW**Vol. 66 No. 4(2015)
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OHADA's Uniform Contract Law: Challenge and Failure

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OHADA (l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires) is an intergovernmental organisation with the purpose of unifying commercial laws. Most of the seventeen member states are countries in Western and Central Africa, many of them belonging to the French law tradition. Having successfully adopted several uniform acts, OHADA embarked on a project to enact the Uniform Contract Act in 2001. The draft, modelled after the Unidroit Principles of International Commercial Contracts, was finalised in 2004, but was never adopted as a Uniform Act. After some debates about the future work of OHADA in the field of contract law, the project on the Uniform Contract Act seems to be virtually abandoned.

One of the strong arguments against the Uniform Contract Act was that the proposed scope of application extended to civil law matters, going beyond the scope of commercial law which is OHADA's mandate. As one empirical study has indicated, the acceptance of OHADA law by local lawyers has not been satisfactory in some member states, which might have been the cause of reluctance toward broadening the scope of the Uniform Contract Act. Another argument against the draft was that it discarded the concept of "*cause*", which was deeply embedded in the thinking of local lawyers who have been trained under the tradition of French law.

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The two arguments that frustrated the adoption of the Uniform Contract Act seem to imply tensions among the leading elites in the society. While some of them are responsive to the most up-to-date developments in the global fora, others prefer to maintain the established framework, succeeded from the Western powers generations ago. Whichever prevails politically, the legal system needs to interact with the general constituents of the society, such as the informal sector economy or traditional society. The true difficulty that OHADA's Uniform Contract Act faced may have been the absence of consensus about what role the modernised legal system should have *vis-à-vis* the society in general. It is easy to see that the issue of reception of law raised here has universal relevance, not limited to Africa.