




# Challenges of the United Nations Convention on Contracts for the International Sale of Goods in the Face of the Obligee's Conduct as an Obstacle to Performance of Obligations

Mehrzad. Masihi<sup>1</sup>, Masoud. Reza Ranjbar Sahraei<sup>2\*</sup>, Zohreh. Farrokhi<sup>2</sup>, Mostafa. Mandegar<sup>2</sup>

<sup>1</sup> PhD student, Department of private law, Shiraz Branch, Islamic Azad University, Shiraz, Iran

<sup>2</sup> Assistant Professor, Department of Private Law, Shiraz Branch, Islamic Azad University, Shiraz, Iran

\* Corresponding author email address: masoodreza.ranjbar@gmail.com

Received: 2025-02-19

Revised: 2025-02-26

Accepted: 2025-03-04

Published: 2025-04-01

One of the most important topics in contracts is the obligee's conduct and their role in the process of fulfilling obligations. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is considered one of the most significant and foundational documents in international trade law. The practices and developments resulting from its adoption have laid the groundwork for the documents and norms of international trade in goods. The aim of the present research, which has been conducted using a descriptive-analytical method with library-based data collection, is to explain the CISG's approach to the obligee's conduct as an obstacle to the performance of obligations and the challenges arising from it. The findings of the study indicate that the Convention has not explicitly and comprehensively identified the instances of the obligee's conduct as an obstacle to the performance of obligations. Furthermore, the Convention has not assigned a distinct and independent legal title to the obstructive behavior of the obligee. In light of these gaps, the Convention requires substantial revisions in the form of a protocol or an annexed document. This is because the issue of the obligee's conduct cannot be resolved simply by amending one article or adding one or more articles, as this issue and its effects extend to various parts of the Convention. Additionally, the Convention is not like the law of a specific country but is applied within different legal systems; therefore, the initial approach should involve an assessment of the different legal systems through a joint commission of experts.

**Keywords:** Sale; United Nations Convention on Contracts for the International Sale of Goods; Obligee's Fault; Obstacles to the Performance of Obligations.

## How to cite this article:

Masihi, M., Reza Ranjbar Sahraei, M., Farrokhi, Z., & Mandegar, M. (2025). Challenges of the United Nations Convention on Contracts for the International Sale of Goods in the Face of the Obligee's Conduct as an Obstacle to Performance of Obligations. *Interdisciplinary Studies in Society, Law, and Politics*, 4(2), 325-334. <https://doi.org/10.61838/kman.isslp.4.2.28>

## 1. Introduction

The performance of contracts and the obligations arising from them is considered one of the most important issues in contract law. Essentially, the design of enforcement mechanisms in contract law is intended for the performance phase and beyond. In the process of fulfilling contractual obligations, it is generally not

possible or advisable to adopt an individualistic approach; that is, to consider only one side of the contract in isolation. Two key points are important in this regard: First, contractual obligations are often designed and accepted as integrated and reciprocal (for example, a contractor is committed to starting and completing a construction project, and in return, the other party is obligated to make payments in accordance



with the progress of the project or is committed to delivering the land and relevant documents on time). Second, in many cases, contractual obligations have preliminaries that must be performed by the other party (i.e., the obligee) (for example, in the above case, the landowner is obligated to provide the land to the contractor so that they can begin the construction work). Therefore, in such cases, a very important issue arises: the performance of obligations is also considered for the obligee. The behaviors of the obligee (whether acts or omissions) in contracts and their relationship with the obligations arising from the contract can be considered in several situations: a) The obligee is explicitly bound by certain duties under the terms of the contract, and these duties are directly and entirely related to the obligations of the other party. b) There is no explicit duty assigned to the obligee in the contract, but by interpreting the obligations of the obligor and the manner of their performance, or through implied conditions, or by resorting to the foundational terms and good faith execution of contracts, an obligation or obligations can be attributed to the obligee. c) Finally, no explicit or implied obligation is attributed to the obligee, but through a specific act, such as damage to property by the obligee, it directly affects the performance of the contractual obligations.

At the time of drafting most contracts, one of the issues that often receives less attention from the parties and is rarely explicitly addressed in the terms of the agreement is the role of the obligee in the process of fulfilling obligations. When the parties do not foresee this issue, the adjudicating body must determine the solution based on the applicable legal norms and standards governing the case. The aim of the present research is to address this issue within the framework of the United Nations Convention on Contracts for the International Sale of Goods (CISG). In other words, this research seeks to answer the question: What is the CISG's approach to the role of the obligee as an obstacle to the performance of obligations? The hypothesis evaluated in response to this question is that the impact of the obligee's conduct on the non-performance of obligations has not been addressed in detail or explicitly in the Convention, and the primary focus of its provisions is on the behavior and execution of the obligor, who is responsible for fulfilling the contract. Regarding the background of the present study, the article by Shaarian and Beigpour, titled "The Impact

of Various Types of Breach of Contract on Its Remedies with Emphasis on International Documents," can be mentioned (Shaarian & Beigpour, 2002). This article is focused on the role or impact of breach of contract by the obligor, whereas the present study aims to explore the impact of the obligee's behavior. The article by Rafiei and Hejazi, titled "Non-cooperation of the Obligee in Breach of Contract under Iranian and European Law," is also significant in this regard. According to the authors, unlike the legal literature and judicial practice in Iran, the role of the obligee's duty to cooperate is explicitly stated in the legal systems of European countries and European legal documents, with different consequences outlined for their non-cooperation. In this article, while referencing the legal foundations of such a duty, the various legal consequences of its breach are examined in order to better elucidate the role of this cooperation (Rafiei & Hejazi, 2023). The focus of the mentioned article is on the Iranian and European legal systems, while the present study is centered on the CISG, which constitutes the novelty of the current research.

## 2. Materials and Methods

The present research utilizes a descriptive-analytical method and library-based sources for writing the article.

## 3. Findings

The findings of this research indicate that, in cases where the obligee's behavior can be explicitly or implicitly considered an obligation, such behavior should be analyzed within the framework of contract law and breach of obligations regulations. However, in cases where no explicit or implicit obligation can be attributed to the obligee, but their behavior (such as damaging property) affects the process of fulfilling obligations by the obligor, such behavior should be analyzed within the framework of general principles of liability, including the action rule and the situation where the performance of the contract becomes impossible.

## 4. Discussion

### 4.1. Concepts of the Research

Good faith in the process of contract execution and the fulfillment of obligations are two fundamental concepts

of the present research, which will be addressed in this section.

#### 4.1.1. *Process of Fulfilling Obligations*

Fulfilling obligations arising from contracts is one of the key topics in contract law. "If any party to the contract, or one of them, refuses to perform their contractual obligations, various remedies are provided in different legal systems. In Iranian law, the punishment for this type of breach is not implicitly outlined in a general rule regarding the consequences of a contract, but is specified in several legal articles within contracts such as sales, leases, and agricultural agreements. The first remedy is the request to the court to compel the breaching party to fulfill their obligations. If this compulsion is not possible, the fulfillment of the obligation by a third party at the expense of the aggrieved party may be authorized, and as a last resort, the injured party may terminate the contract. In other legal systems, various remedies are provided, including contract termination if the obligor fails to fulfill the obligation to compensate the injured party for the damage caused by the breach of the contract. In common law and English law, the general principle in the event of non-performance by the obligor is compensation for damages. In the Roman-Germanic legal system, the obligee has the option to request performance or terminate the contract" (Gandomkar, 2017). In Iranian law, the principle is to compel the obligor to perform the obligation. However, this solution is acceptable only under specific conditions. The definition of fulfilling obligations is usually based on duties and social etiquette, and the proper conduct of individuals with others. The Qur'an, in various parts, addresses the concept of fulfilling promises: "And those who are faithful to their trusts and covenants" (Qur'an, 23:8). Elsewhere, the Qur'an considers fulfilling promises as a characteristic of the righteous: "... those who fulfill their promises when they make a promise..." (Qur'an, 2:177).

In establishing relationships of obligations, particularly contractual obligations, the general principle is the independence of will, whose main goal is the circulation of voluntary rights. Voluntary fulfillment of obligations benefits the country's economic development, provides legal certainty in the execution of obligations, and alleviates or reduces the consequences of non-fulfillment of obligations within a reasonable time and place. The

deadline for fulfilling obligations represents one of the special and important obligations due to its consequences. Initially, the parties may determine the deadline by mutual agreement, but if the parties have agreed on it as a solution, it can be adjusted before the agreed time. If no deadline is set and the purpose of the work, the nature of the obligation, and other conditions do not necessitate a deadline for its fulfillment, the creditor may immediately demand the performance of the obligation, while the debtor may, in turn, request more time from the creditor. Based on this, for the acceptance of fulfillment: 1. When the deadline is solely for the benefit of the debtor, they have the right to perform the obligation even before the agreed time but must notify the creditor and ensure that it is not done in insufficient time. 2. In other cases where the debtor prepares to fulfill the obligation before the deadline, the creditor can refuse to perform the obligation and may also, if notified without delay, accept and retain the right to compensation (Curri, 2018). Thus, "fulfilling an obligation refers to executing an obligation, regardless of whether the source of the obligation is a contract, a unilateral declaration, or other origins. Consequently, regardless of the source and origin, fulfilling the obligation is subject to the provisions outlined in Articles 264 and onwards of the Civil Code. Fulfilling an obligation includes both contractual and non-contractual obligations. In foreign law, the term equivalent to fulfilling an obligation is Payment. Based on this, some legal scholars consider payment in domestic law as equivalent to fulfilling an obligation and keeping promises" (Jafari Langroodi, 1999) and "consider the fulfillment of contractual obligations equivalent to the term Performance" (Guest, 1990; Treitel, 1992; Bridge, 2007).

As stated, "fulfilling an obligation means carrying out a commitment that the debtor has, whether voluntarily (keeping promises) or by force" (Katouzian, 2007) and "through this, the parties achieve the result of the formation of the contract and commitment. Once the contract is terminated, the injured party is not required to accept the remaining obligations from the breaching party. Accordingly, since they are not obliged to accept the performance of the obligation by the breaching party, they are not required to pay any sum if the remaining obligation is fulfilled by the breaching party. Furthermore, they can refrain from performing other

obligations that they were bound to execute under the contract in the future. However, if they have already performed their obligation before terminating the contract, they can request the return of what they have paid to the other party. For instance, they can request the amount they have paid to the other party, provided that the other party has entirely refused to perform their obligation. It is evident that if the other party has performed part of the contract, the injured party is entitled to a fee for the work done. Termination of the contract by the injured party releases the other party from performing the remaining obligations that they were required to fulfill in the future. However, they must fulfill the obligations that have arisen between the time of contract formation and termination. Furthermore, termination of the contract imposes a new obligation on them to compensate for the damage and pay compensation to the injured party" (Shahidi, 1998).

#### 4.1.2. *Good Faith in Contracts*

"Good faith is generally defined as honesty in a person's behavior throughout an agreement. The duty of good faith even exists in contracts where each party is explicitly allowed to terminate the contract for any reason. In this context, fair dealing usually requires more than just honesty" (Diffania & Yulianingsih, 2022). Good faith, which is referred to as the principle of good faith and fair play in legal literature, reflects a form of honesty and ethics in legal relations, and its necessity in contracts is considered an important principle in achieving various goals depending on its application, such as drafting contract terms, balancing the behavior of the parties, concluding and interpreting contracts, etc. "Therefore, it has found a special place in contract law and international contracts, to the extent that Article 1104 of the French Civil Code has established this general principle of good faith. In Iranian law, the concept of good faith as an independent theory is not applicable, and the practical criterion in this regard is the credibility of type emergence (the theory of reliable emergence)" (Karimi & Salimian, 2022).

For the basis of good faith in Iranian law, the obligations of contracts must be considered, as the contract condition, agreement, and interaction are also involved. The parties aim to achieve a shared goal and collaborate to reach that goal. Therefore, the principle of good faith should prevail throughout the contract's life. In general,

every contract contains an implicit duty of good faith and fair dealing. This duty requires that neither party do anything to deprive the other party of the benefits of the contract or harm their interests. However, there is no specific definition of this duty, and courts have the authority to determine its scope. Courts analyze the facts when deciding whether the duty of good faith and fair dealing has been violated and determine what is fair under the circumstances. Generally, this implies that a party cannot act contrary to the "spirit" of the contract, even if they notify the other party of their intention to do so. Based on this, it can be said that "good faith, in a general classification, categorizes this term into protective and obligatory forms. The obligatory aspect of good faith is related to contract law, which entails proper behavior, honesty, and respect for the trust and interests of others. In this sense, good faith is a behavioral rule encompassing the actions or non-actions of the parties. The ethics of good faith reflect the fact that this term has the capacity to play various roles at different stages of the contract. These roles commonly include limiting and completing the rights and obligations of the parties, balancing the contract, interpreting the contract, and serving as the foundation for other rules and principles" (Hajipour, 2011). "In civil law systems, the principle of good faith is used as a tool for evaluating and regulating the actions of contract parties. Generally, good faith is a concept of honesty, meaning acting without any malice or intent to deceive others" (Severine, 2017). It is important to note that the definition and interpretation of the principle varies in each civil law jurisdiction.

#### 4.2. *The International Sale of Goods Convention and the Impact of the Obligees' Behavior on the Failure to Fulfill Obligations*

Among the provisions related to non-performance of obligations in the International Sale of Goods Convention, Articles 79, 58, 71, and 80 are the most relevant. Article 79 addresses the situation when a party fails to perform any of its obligations, including the seller's duty to deliver conforming goods, and the non-performance is not attributable to the party, thus relieving it of liability for damages. Article 79 of the Convention, in explaining the impossibility of performance and its effects, states: "If a party proves that its failure to perform its obligations is due to an impediment beyond its control, and that it could not

reasonably be expected to overcome it, it will not be responsible for the failure to perform. The impediment must be considered from the time of the contract's conclusion, or the party must have avoided or overcome its consequences" (Andersen & Schroeter, 2008).

Accordingly, if the failure or defect in performance is due to the non-performance of a third party, Article 79 sets different conditions for exemption depending on the nature of the third party's involvement with the contract. Paragraph 1 of Article 79 remains applicable even if the contracting party has engaged a third party to fully or partially perform the contract. Two assumptions must be considered here: (a) Generally, the seller is not exempt under Article 79, paragraph 1, when those within their sphere of risk fail to perform, such as the seller's employees or those providing raw materials or semi-finished goods to the seller. The same principle applies to the buyer in relation to their employees or others involved in fulfilling the buyer's obligations under the contract. (b) In exceptional circumstances, a party may be exempt under paragraph 1 of Article 79 for the actions or omissions of a third party if the party was unable to choose or control the third party.

Paragraph 2 of Article 79 applies when a contracting party engages an independent third party to fully or partially perform the contract. In such cases, the party claiming exemption must prove that the conditions outlined in paragraph 1 of Article 79 have been met both for themselves and for the third party. Changes in conditions that cannot reasonably be anticipated and that severely burden performance may be considered an impediment under paragraph 1 of Article 79. The language of Article 79 explicitly distinguishes "impediment" from events that make performance absolutely impossible. Therefore, a party facing hardship may invoke hardship as an exemption from liability under Article 79. In such situations, a court or arbitral tribunal may award additional compensation in accordance with the Convention and the principles underlying it (Andersen & Schroeter, 2008).

Considering the provisions in subparagraphs (a) and (b) of paragraph 2 of Article 79: "If one party's failure to fulfill an obligation is due to the failure of a third party hired to perform all or part of the contract, the party will only be exempt from responsibility if: (a) the party is exempted under the above paragraph, and (b) the third party responsible for performing the obligation is also

exempted from responsibility under the provisions of the above paragraph."

Furthermore, according to paragraph 3 of Article 79, "The exception specified in this rule applies during the period in which the impediment persists."

Additionally, paragraph 4 of the same article stipulates: "The party failing to perform its obligation must notify the occurrence of the impediment and its effect on their ability to perform. If the notice is not received by the other party within a reasonable time after the party becomes aware of the impediment, the party failing to perform will be liable for damages resulting from non-receipt."

Finally, paragraph 5 of Article 79 preserves all other rights of the parties under the contract (except for the right to claim damages under the Convention) that arise from other principles, rules, and documents. However, in addition to Article 79, Article 80 provides that: "A party may not invoke the failure of the other party to perform its obligations if that failure is due to the act or omission of the first party." According to Article 80, it appears that the invocation of this article is valid when both parties have failed to achieve the goals of the contract, and as a result, this article serves as a fair remedy to mitigate the losses caused by the non-performance of mutual obligations.

The discussion around Articles 79 and 80, and even Articles 58 and 71 of the International Sale of Goods Convention, centers around these concepts. Article 79 is considered a general rule, addressing an impediment in the form of force majeure or a third party's actions preventing contract performance, whereas Article 80 clarifies a specific provision regarding the impact of the obligee's behavior on the inability to perform the contract. Our discussion focuses on this point. It is important to note where these provisions appear within the Convention. They fall under Part Four, titled "Exemptions." In fact, Articles 79 and 80 list the justifications for responsibility in international sales of goods, and thus, the interpretation of these articles is limited to a strict meaning, as the imposition of responsibility creates a new status that is presumed to be established, and any obstacles or causes for the removal of responsibility, whether justified or excused, are exceptions to the rule.

5-2-1. General Rule under Article 79

In the process of fulfilling obligations, the role of the obligee is also considered. The behaviors of the obligee (whether active or passive) in contracts and their relationship with the obligations arising from the contract can be conceptualized in several ways: a) The obligee is explicitly bound by the terms of the contract and these obligations are directly related to the obligations of the other party; b) The contract does not explicitly impose obligations on the obligee, but through the interpretation of the obligor's commitments and how those commitments are fulfilled, or through implicit conditions, or through invoking implied terms and the good faith execution of contracts, obligations can be inferred for the obligee; c) Finally, there is no explicit or implicit obligation for the obligee, but due to a specific act such as the destruction of property by the obligee, the performance of contractual obligations is directly impacted. Accordingly, it is possible that the non-fulfillment of obligations, in some cases, may be attributed to the obligor and, in other cases, to the behavior of the obligee.

As previously mentioned, Article 79 of the Convention addresses the non-performance of obligations outlined in the Convention and its effects on international sales. Before examining this article, it should be noted that a review of other provisions of the Convention reveals that the scope of the exemptions in Article 79 is limited, with certain cases such as the loss of goods during transport or defective goods being excluded from its scope. These matters are addressed separately in other parts of the Convention. According to Article 79 of the Convention, it is clear that, aside from the two exceptions mentioned, this article's scope is extensive, as outlined by the Roman-Germanic legal systems, and applies to both parties to the contract, regarding the fulfillment of their respective obligations.

The Convention considers two cases for exemption from contractual responsibility: "First, the impossibility of performance due to an external event; second, the failure of a third party to fulfill their obligations, preventing the performance of the contract." According to Article 79 (paragraph 1) of the Convention, for an external event to exempt an obligor from liability, three conditions must be met: a) The event must be beyond the control of the obligor and must prevent the performance of the obligation; b) The event must not have been foreseeable at the time of the contract's conclusion; c) The

occurrence, continuation, or consequences of the event cannot be prevented. Some have added a fourth element, which is the causal relationship between the event and the non-performance of the obligation, but this element is already included in paragraph (a) and is not independently stated in the text (Gillette & Walt, 2016). The Convention's approach in drafting Article 79 follows certain important Roman-Germanic legal systems and, as a result, differs from both the UCC method and the English legal system. "As stated in paragraph 1 of Article 79, it must be proven that the event causing the non-performance of the obligation was beyond the control of the obligor. It should be noted that proving this is not straightforward. The party claiming that performance is impossible and arguing that they are not liable must prove that: a) The event was beyond their control; b) Typically, such an event could not have been foreseen at the time the contract was signed; c) It was impossible to prevent the occurrence of the event, its continuation, or its effects" (Tugce, 2019).

Thus, the first condition that makes an event an obstacle is that it is beyond the control of the obligor. To better understand the meaning of this condition, it is important to consider what the obligor's scope of authority includes. "Since, in international sales contracts, the seller is obligated to deliver the goods subject to the contract, and payment by the buyer is primarily made through the banking system, the obligor is usually the seller. Therefore, any factor related to the usual organization of production by the seller, or in other words, within their managerial scope, is considered within the seller's control. For example, the contractor must have the necessary personnel and technical equipment and, using them appropriately, must secure the necessary financial support to guarantee production. Timely delivery of raw materials and obtaining the necessary permits from government authorities as far as possible. If the seller fails in any of these areas and encounters an obstacle to fulfilling their obligation, they cannot claim that these matters were beyond their control and seek exemption from liability." The second condition is that it must be proven that the obligor could not have foreseen the event. It should be noted that unlike force majeure events, unforeseeability is not explicitly mentioned in this article. Another point to note is that many of the phenomena that could obstruct the performance of obligations are actually foreseeable, but

no one expects them to occur. Therefore, it can be said that the drafters of the Convention have shown clarity in determining this condition. What matters is that the occurrence of the event is reasonable to expect, and common sense supports it. For an obstacle that existed prior to the conclusion of the contract, it must be examined whether the contracting party was unaware of its existence. In this regard, one of the general obligations of the parties to the contract is to deal with obstacles that arise in the way of fulfilling their obligations. In other words, they must take steps to prevent any obstacle from arising, and if it does, they must act to remove or mitigate its effects. No clear standard can be provided in this regard, and the criterion is based on conventional wisdom" (Gillette & Walt, 2016).

In addition to Article 79, which presents the general rule, Article 80 of the Convention also provides a specific provision. In section 5-2-4, the interpretation and conditions for invoking Article 80 as a special situation, in which another case of non-performance of obligations under the Convention is addressed, will be discussed. Briefly, it can be stated that Article 80 of the Convention is applicable when both parties have failed to achieve their goals under the contract, and as a result, to mitigate the losses resulting from the non-fulfillment of reciprocal obligations, this article provides a fair solution as a specific ruling for relieving both parties of their responsibilities.

#### 4.2.1. *Right of Retention in the International Sale Convention in Case of Non-performance*

The interpretation of Article 80 of the Convention has a significant connection with the concept of the right of retention in civil law. As the right of retention is recognized in Iranian law, it is also acknowledged in the Vienna Convention, where both the seller and the buyer have the right of retention. As long as the opposite party has not fulfilled its obligations, each party may withhold performance of their own obligations. This right is recognized in Article 58 of the Convention. According to this article, the buyer may withhold payment until the seller has delivered the goods or documents as per the terms of the contract and the Convention. Similarly, the seller has the right to withhold delivery of the goods until the purchase price is paid. However, in cases where the payment has been arranged, such as in Iranian law, the

seller loses the right of retention. This is because the seller's obligation to deliver the goods is now mandatory, and the buyer's obligation to pay the price is also mandatory, without any counter-obligation. Thus, similar to Iranian law, a deferred condition may have a direct effect on the suspension of the right of retention. However, the Convention does not consider a deadline as an obstacle to the exercise of the right of retention in one specific case, namely when a breach of contract by the obligee is foreseen. In this case, the legislator has provided the right of suspension of the contract for the obligor under Article 71, provided that the failure to perform the obligation must be of a fundamental nature and the obligee must promptly notify the obligor of the suspension of the contract. In this case, if the obligor provides sufficient guarantees for the performance of the obligations, the other party will lose the right of suspension (Aksoy, 2014). Article 71 of the Convention regarding the right to suspend the contract by the obligor states: "1. If after the contract is concluded, it becomes clear that one party will not fulfill its obligations for the following reasons, the other party will have the right to suspend its obligations: a) if the obligor is unable to fulfill the obligation or if there is a deficiency in their creditworthiness; b) if the obligor's conduct in preparing the conditions for the execution of the contract or in performing the contract is unsatisfactory" (Kryla, 2021).

#### 4.2.2. *Performance of the Obligation After the Expiry of the Performance Deadline*

According to Articles 47 and 63 of the International Sale of Goods Convention, "the buyer or the seller may grant an additional period for payment of the price to the other party. In international commercial law, it is accepted that the buyer cannot simply terminate the contract by failing to deliver the goods on the agreed date. This is because late delivery does not constitute a fundamental breach of the contract, and termination can only occur in the case of a fundamental breach. For this rule to apply, it is required that the additional period granted by the buyer to the seller or by the seller to the buyer be definite and the time allowed for performing the obligation be reasonable" (Greene & others, 2004). The effect of this additional period is that the obligor cannot resort to compensation methods such as contract termination or claiming damages for non-performance of the obligation before the expiration of the time. However, claiming

damages for delay in performance is permissible. Unlike Iranian law, which links the use of the compensatory method of contract termination to the obligor's commitment to perform the contractual obligations and their inability to perform the obligations, the International Sale of Goods Convention allows the obligee to terminate the contract immediately and without requiring the obligor to perform the same obligation if the obligor fails to perform their main obligations. The importance of contract termination as a method of compensation is emphasized to such an extent that Article 28 of the Vienna Convention states that the court is not obliged to issue an order for specific performance of the contract unless allowed by the relevant law. Although, according to the first part of Article 46 of the Vienna Convention, the obligation of specific performance of the contract is recognized, Article 28 conditions the application of this right upon meeting various conditions. Ultimately, in the following cases, the obligee loses the right to specific performance: 1. The seller is not responsible for the breach of contract, 2. The delivery of the subject matter of the contract is impossible, and the seller is unable to perform the contract, and 3. Specific performance is too burdensome for the seller. Therefore, unless the obligor has committed a breach of their contractual obligations, the obligee cannot resort to termination of the contract as a compensatory method, and since the obligor does not have an obligation to perform the contract until the deadline expires, the obligee must wait for the deadline before terminating the contract. However, the Vienna Convention provides a hypothesis that allows the obligee to terminate the contract before the expiration of the term due to the obligor's non-performance (Zeller & Andersen, 2025). In clearer terms, Article 72 of the International Sale of Goods Convention, in accordance with common law, recognizes the legal institution of "anticipatory breach," which allows the obligee to terminate the contract or suspend performance if they believe, based on the obligor's behavior and conduct, that the obligor is refusing to perform the obligation.

#### 4.2.3. *Specific Status of Article 80*

Article 80 of the Convention states, "When the failure of one party to perform contractual obligations results from the act or omission of the other party, the injured party may not rely on the fault of the other party, and this

constitutes an exemption from that party's contractual liability. For this exemption to apply, the non-performance must not be caused by the act or omission of the obligee, and a causal relationship must exist. It is not necessary for fault to exist; merely the existence of a causal relationship is sufficient." In fact, this article represents a special rule in that it relieves the obligor from responsibility when they are unable to perform due to the other party's failure.

According to this article, the act or omission of the obligee may create barriers to the obligor's ability to perform the obligation, and the necessity of the act or omission depends on the relationship between them. It is evident that the conditions outlined in paragraph 1 of Article 79 of the Convention must also be proven in this context.

Some legal scholars, considering the history, background, and development of this article, believe that Article 80 presents a general rule that reflects the overarching principles of international trade law. Based on this understanding, a narrow interpretation of this article would fail to achieve the goals of the Convention. They argue that the foundations of this article are derived from the general principles of fairness, good faith, mutual cooperation, and the prohibition of abuse of rights. However, these scholars also believe that the application of this article requires certain conditions to be met (Neumann, 2012). In fact, this article creates several exceptions to the imposition of liability for the obligor. Because neither Article 80 nor any other provisions of the Convention define the causes or actions that lead to an exemption, the use of terms such as "based on," "causing," and "act or omission" in Article 80 may apply to a broad range of cases.

Therefore, legal scholars argue that claims for specific performance, damages, restitution, and even contractual penalties, as outlined in this article, are subject to exemption (Shoarian & Rahimi, 2021).

However, it seems that since Article 80 is fundamentally based on two types of rules—an affirmative rule of shared cooperation, which is recognized as a principle in international trade, and a negative rule that prevents a party from refusing cooperation, which is regarded as an unauthorized behavior in international trade (Green, 2005)—this article should not be regarded as a "principle of exemption from liability."



This view is consistent with the understanding of those legal scholars who have identified this article as a principle. They argue that five specific requirements can be directly inferred from the text of Article 80 for an exemption from liability. First, it must be established that the obligor has failed to perform their obligation. Second, there must be a causal link between the obligor's non-performance and the obligee's behavior. Additionally, in the third step, it must be proven that the cause of the obligor's failure to perform was the obligee's behavior. The other two conditions refer to the general principles underlying Article 80. The fourth condition is that the obligor must anticipate that the obligee's actions will prevent the performance of the obligation (proving this is the obligor's responsibility, and given the nature of Article 80, this is a flexible and expansive matter where the obligor may deny this by citing various factors). Finally, the fifth condition is that the obligor must have notified the obligee in time that the performance of the obligation would not be possible due to the obligee's actions (Neumann, 2012).

Thus, it seems that given the gaps in the Convention on Contracts for the International Sale of Goods regarding the scope of Articles 79 and 80, especially regarding the definition of the conditions that apply to Article 80, the likelihood of divergent opinions increases.

## 5. Conclusion

The conduct of the obligee in response to non-performance of the obligation has not been sufficiently addressed in the Convention, with the primary focus of the Convention's provisions being on the conduct and execution of the obligor's obligations under the contract. However, it appears that certain provisions, such as Articles 71, 72, 74, and even Article 58, make reference to the behavior of the obligee, which has not been given much attention by the legislator. In fact, the Convention focuses on the execution of obligations, where there is no justification for the performance of contractual obligations under Article 79 of the Convention. This article states, "If the failure to perform is due to an unforeseeable and uncontrollable obstacle, the obligor is exempt from liability for damages." A key point in the Convention regarding excuses for non-performance and exemption from damages due to breach of contract is the avoidance of using domestic legal concepts related to the obstacle that leads to exemption. This is because the goal

of the Convention was to harmonize legal principles and rules governing international commercial relations and resolve conflicts. Articles 62, 85, and 88 of the Convention address the failure of the obligee to accept or conduct that contradicts their obligations, and remedies have been provided for such behavior.

Nonetheless, based on the above, the Convention on Contracts for the International Sale of Goods, in relation to the role of the obligee as an obstacle to performance, considers certain types of behavior. However, this role has not been addressed in detail by the drafters of the Convention. Article 79 is considered a general rule, while Article 80 outlines a specific rule. The importance of recognizing where these provisions are located in the Convention is significant. These articles fall under Part IV of the Convention, titled "Exemptions." In fact, Articles 79 and 80 enumerate the justifications for liability in international sale contracts, and as such, their interpretation is valid only when narrowly applied. The creation of liability establishes a new status, which should be maintained unless there are legitimate obstacles or exceptions, whether justified or exempting, as everything contrary to the principle of liability is in conflict with the core objective.

This leads to potential divergences in the interpretation of the extent of the obligee's responsibility and the method for compensating damages between the authorities resolving disputes. In practical terms, three different scenarios can be envisioned in relation to the behavior of the obligee: First, the obligee is obligated by the contract to perform duties that are directly and fully linked to the obligations of the other party. Second, there is no explicit obligation for the obligee in the contract, but through the interpretation of the obligor's obligations and how they are executed, or through implied conditions and general principles of good faith in performing contracts, obligations may be inferred for the obligee. Third, the obligee's actions, such as the destruction of property, directly affect the performance of contractual obligations. The failure of the drafters of the Convention to define specific behaviors in relation to these situations implies the lack of a precise legal title for such behaviors. Consequently, this has led to a divergence of views and practices in determining the governing principles and rules related to such cases. The Convention, due to existing gaps, requires substantial amendments, either in the form of a protocol or an

annexed document. This is because such issues cannot be confined to a single section of the Convention. The topic and its implications extend to various parts of the Convention. Additionally, since the Convention on Contracts for the International Sale of Goods is a broad instrument signed and ratified by many countries, the approach of different legal systems should be considered when designing and implementing the necessary amendments.

### Authors' Contributions

Authors contributed equally to this article.

### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

### Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

### Acknowledgments

We would like to express our gratitude to all individuals helped us to do the project.

### Declaration of Interest

The authors report no conflict of interest.

### Funding

According to the authors, this article has no financial support.

### Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

### References

- Akıncı, Z., & Gökyayla, D. C. (2010). *Milletlerarası Aile HukukuPB - Vedat Kitapçılık*.
- Akıntürk, T. (2014). *Aile Hukuku* (Vol. II). Beta Yayınevi.
- Arbek, Ö. (2005). Boşanmanın Mali Sonuçları. *AÜHFD*, 54(1). [https://doi.org/10.1501/Hukfak\\_0000000414](https://doi.org/10.1501/Hukfak_0000000414)
- Aydın, M. A. (2013). *Türk Hukuk Tarihi*. Beta Yayınevi.

- Çetintaş, R. (2014). İslâm Hukukunda Evlenmeden Doğan Haklar Bağlamında Nafaka. *İslâm Hukuku Araştırmaları Dergisi*, 24, 185-203.
- Çolak, A. (2017). *İslâm Aile Hukuku*. Öncü Basım Yayımları.
- Doğan, İ. (2015). Türk Medeni Kanununun Düzenlemelerine Göre Tedbir, Yoksulluk ve İştirak Nafakası. *Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni*, 35(1), 59-95.
- Işık, H. (2022). Yoksulluk Nafakasında Süresizlik Sorunu: Hukuk Sistemleri Arasında Bir MukayeseJO - Düzce Üniversitesi İlahiyat Fakültesi Dergisi. 6(1), 66-82.
- Kahraman, A. (2022). İslâm Hukukuna Göre Boşanma Prosedürü ve Ahlakı. *İslâm Hukuku Araştırmaları Dergisi*, 40SP - 27, 74.
- Kulaklı, E. (2018). Yoksulluk Nafakası ve Yoksulluk Nafakasının Süresi Bağlamında Bir Mukayeseli Hukuk İncelemesi. *İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi*, 2.
- Tekin, A. (2020). *İslâm Hukuku ve Modern Hukuka Göre Boşanma Sonrası Kadının Mali Hakları (Nafaka, Mesken ve Miras Hakları)*. İlahiyât Yayınları.
- Tutumlu, M. A. (2009). *Teorik ve Pratik Boşanma Yargılaması Hukuku* (Vol. II). Seçkin yayınevi.
- Uyanık, M. Z. (2019). İslâm Aile Hukukunda Evlilik ve Boşanma Nafakası Bağlamında Süresiz Nafaka Yasası. *Necmettin Erbakan Üniversitesi İlahiyat Fakültesi Dergisi*, 47, 57-87.
- Yeliz, D. (2013). Asgari Ücretle Çalışıyor Olmak Yoksulluk Nafakası bağlanmasına engel midir? Ya da Yoksulluk nafakasının kaldırılmasını gerektirir mi? *Leges Hukuk Dergisi*, 4(42).