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Original Article

Impossibility of Performance of Contract in the United Nations Convention on Contracts for the International Sale of Goods

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ABSTRACT

The Impossibility of performance of the contract as an exemption from liability, arising from the breach of contract, is an issue which is discussed in the sale contracts. International Sale of Goods which is enacted in 1980, discusses the matter in its Article 79. The CISG abstains to use such terms as Frustration and Force majeure which are used in national legal systems. This prevention of using such terms thought to be the way that CISG keeps itself independence from national legal systems. As a result the CISG ordains its specific terms and conditions to set up the exemption for damages arising from the breach of contract by the person who has faced impediments and breached the contract. This research studies different aspects of the impossibility of performance of contract in The Convention on the International Sale of Goods, therefore not only it presents the concept and bases of occurrence of the Force majeure, it discusses applicable examples such as sanctions and changes in regulations as Force majeure.

Keywords: Force Majeure, CISG, Impossibility of Performance, Contract.

Introduction

Whoever studies the Convention on the International Sale of Goods realizes that its context does not involve Hardship and Force majeure, terms that relate specifically to some cultures and national legal systems. John Honnold, one of the most prominent drafters of the text, explained that by doing so the drafters wanted to avoid any reference to concepts pertaining to local legal systems. They wanted the Convention to stand by itself and be interpreted to the furthest extent possible under general principles of international law, with due regard to its international character and the necessity to promote uniformity in its application. Thus, any consideration of a domestic system is to be left as a last recourse if all other methods fail to provide an answer to the question at stake. (Kessedjian, 2005, p.3) However, the convention has an Article that can be count as Force majeure and it is Article 79 which is listed under Exemptions. Article 79 also proposes the

term "Impediment" to address the exemption of compensation for losses for original promisor.

79-1: A party is not liable for a failure to perform any of its obligations if it proves that the failure was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

As clause 1 of the Article 79 refers, the Impediment must have 3 conditions:

1) It must be out of reach, power and control of the promisor.
2) It must be unpredictable.
3) It must be inevitable.

Also it's been said that "by virtue of this clause, the requisite of the exemption of compensation for losses needs the causality between the Impediment and Non-performance of contract. The 3 conditions mentioned above regulate this causality."

(Tavassoli-Jahromi, 2006, p.74) Firstly, discusses the important terms of the 1st clause of Article 79 which shows how the concept of impediment causes the exoneration from responsibility.

First Clause: Impediment

According to Honnold, the word impediment "implies a barrier to performance, such as delivery of the goods. According to Stoll, the term refers to events external to the party in breach which may be "natural, social, or political events or physical or legal difficulties." (Southerington, 2001, p.29)

Purely personal circumstances, such as personal inadequacy or a mistake of law could not amount to an impediment within the meaning of Article 79. Article 79 does not use the term impossibility. The requirement that performance be prevented does, however, seem to refer to impossibility instead of impracticability or other less forceful event. In the case Nuova Fucinati S.p.A. v. Fondametall International A.B the tribunal of Monza found that Article 79 would not excuse a party unless performance had become impossible. It is noticeable that the authorities seem to be of the mind that the impediment or impossibility should be objective. (Southerington, 2001, p.29).

The impediment can be an economic impossibility to which extent that obligations of Article 79 allows. But it seems the increase in production and ordering costs does not cause in Exemption, and that is because the parties of the contract are aware of those costs and financial ability which is needed to guarantee the performance of the contract. On the other hand when a war, siege or such incidents come about which make the performance of the contract impossible, on party could be exempted.

Second Clause: Out of the Promisors' Control

Which incidents are out of the promisors' control? For example can striking workers who work under promisors' supervision be count as an impediment? Or what is the requirements of Public companies which are under the government regulations and because of that are not able to perform their duties based on the contract?

First notion of this condition is if the impediment is under promisors' control, it cannot affect responsibility. For example if government does not give justification to the party who has been omitted and did not succeed to apply for right justification based on its nonchalance, or if the good was being rotted, the party is not subjected to exemption of Article 79.

This part of the condition refers to yet another general principle of international

trade law, that each party controls acts which are internal to their structure. (Kessedjian, 2005, p.3). Incidents can be considered out of control which were not been caused by promisor, its staff, its employees and subcontractors who work for the promisor. (Gholami, 2012, p.30).

The second notion that is related to control is the case of irregularity, to wit something that is irregular to nonchalance of performance or non-performance. A clear example is damages that buyer faces due to faulty good. Is seller able to argue that he did not have the good to discover the fault? The irregularity is not uncontrollable as long as nonchalance of performance or non-performance is at hand. (Darabpour, 1995, p.132)

Generally, a party's sphere of control is extensive. There will rarely be impediments that are deemed to be beyond its control. The most common examples for such cases are unforeseen events, such as natural catastrophes (storms, flooding, fire, earthquakes, disease epidemics, etc.), war or terrorist attacks, and governmental measures affecting trade (export or import bans, embargoes, etc.). The unforeseen event must also be exceptional. Thus, in the Tomato concentrate case, the seller was not exempted from liability under Article 79, even though heavy rainfall had reduced the production of tomatoes.113 According to the Hamburg Appellate Court (OLG), even though the French seller claimed "force majeure", the crop of tomatoes was not entirely destroyed, and the supply was not exhausted, thus, performance was still possible. The reduction of the tomato crop, and the resultant increase in the market price of tomatoes were burdensome, but not impediments that the seller could not overcome. The supply, although restricted, was deemed be within the seller's sphere of control. (Mazzacano, 2012, p.22).

According to Stoll, this requirement is based on the assumption that there is a typical sphere of control: a sphere within which it is objectively possible for, and can be expected of, the promisor to be in control. (Southerington, 2001, p.29).

This is why ordinarily a vendor who its fault in supplying causes the non-performance of contract, would not be exempted and that is because he has to provide the product from another supplier whether it costs more for him or not. Thus, internal excuses connected with business operations, general management of the company, financial structuring of the activities or social management of the undertaking, will probably never be accepted as events beyond the control of that party. (Kessedjian, 2005 ,p.3)

A very good example of this could be the case of a producer whose products contain a defect. He could never claim force majeure, for under no circumstance would a defect in the production process be considered beyond the control of the producer. Negligence however is not required. (Southerington, 2001, p.30).

For example, in a case decided by the High Arbitration Court of Russia, the buyer had paid the price, but the money was stolen from the foreign bank before the seller had obtained it. The Court held that the failure of the buyer was not due to an impediment beyond his control. (Russia 16 February 1998, High Arbitration Court).

Third Clause: Unpredictable

The impediment should reasonably be unpredictable when a contract is being concluded. One should be aware that not only if a matter of market that is normal would be hard to count and accept as unpredictable, the profession of promisor, the date of contract conclusion and surrounding circumstances will affect the matter of unpredictability. For example the

promisor as a businessman couldn't be negligent to circumstances and not predict the predictable matters. (Gholami, 2012, p.35). If there is a realistic risk of an impediment to performance and contract is unconditionally entered into, the risk of the impediment has been assumed and exemption cannot be successfully claimed (Southerington, 2001, p.30).

Contract liability stems from consent. So if an incident is predictable it means that parties have informed consent and for that by occurring the impediment a party can't deny the consent that was been informed before (Perillo, 1997, p.118).

Since the stability of the market cannot be a fundamental assumption of a contract, price fluctuations in long run contracts can't be the cause of force majeure claim too. But are economic depressions that suddenly strike special markets predictable? It seems such fluctuations that are completely unpredictable and out of control are more likely to be count as a force majeure. (Gholami, 2012, p.41). As long as contract terms are not clear to point out an unpredictable impediment, the expectation from a promisor at the date of contract conclusion to predict an impediment must be reasonable. In other words if the impediment was calculable for the promisor, one could expect that it already has accepted the risk of the impediment. In a Greek Company's case against a Bulgarian Company in 2006, Lamias' appeal court had pointed out that the impediment occurrence was predictable for the promisor [buyer]. The case was that a Greek company [buyer] and a Bulgarian company [seller] concluded a contract for the sale of 3,000 tons of sunflower seeds which would be produced in Bulgaria. It was agreed that delivery would be performed at the end of September / beginning of October of 2001. The seller, via a facsimile transmission (19 September 2001), refused to perform the contract by the delivery of the agreed quantity, invoking changes in the market and certain other impediments. The buyer repeatedly notified the seller requesting the delivery of the agreed quantity of sunflower seeds, but the seller continued to refuse.

The seller, in order to be exempted from the above liability for damages, pleaded before the court that its failure to deliver the quantity of sunflower seeds sold to the buyer was due to:

(a) Prolonged dryness, which resulted to the destruction of a large quantity of the current harvest of sunflower seeds in Bulgaria and consequently reduction of production and availability of this product; and

(b) The lowering of the level of the river Danube; thus the seller was unable to load the goods on a ship in a river port which was located in its premises.

Accordingly, the seller claimed that the above were impediments beyond the seller's control which it did not take into account during the conclusion of the contract neither it could avoid them and overcome their effect; therefore, pursuant to CISG art. 79(1), , it was exempted from the liability to pay damages to the buyer.

The court rejected the arguments of the seller since: (a) it was proved that the seller was aware that the production and offer of sunflower seeds would be limited for the specific year due to dryness; and (b) the lowering of the level of the river Danube was an impediment within the control of the seller which should have been taken into account to avoid it, since the same event had occurred several years ago and, in view of this previous experience, the seller should have alternatively proposed an increased price for the goods, where due to the lowering of the level of the river Danube, the need for

the transport of the goods from a port of the Black Sea would emerge (instead of the closest river port); otherwise, it should not have proceeded with the execution of the sale contract.(www.CISG.law.pace.edu/cisg/text/digest cases-79).

It is being said that "not only the prediction is related to state of impediment. But also to the time of its occurrence. For example shutting down the Suez Canal was predictable for some time. The party who couldn't perform its duties is not responsible if occurring impediment to contract is customarily unpredictable." (Darabpour, 1995, p.133). So the question is, do the common sense validate the expectation of an impediment occurrence and is it reasonable? And for impediments that had been excited before the contract conclusion, promisor must prove that it was not aware of them in any way. (Tavassoli-Jahromi, 2006, p.76).

The important point is if an unpredictable impediment at the date of a contract conclusion exists, the reasonable probability of taking care of it after contract conclusion, does not exempt the promisors' responsibility. In other words if an impediment is unpredictable at the date of contract conclusion and it is reasonably possible for the promisor to stop it effect its responsibility, it must commit to its obligations.

Fourth clause: The Inevitable Affair

The impediment and its consequences must have been unavoidable. An impediment may be avoided or overcome, for example, by choosing another form of transport or another route or even by delivering a commercially reasonable substitute for the performance which was required by the contract. However, the promisor should not be expected to risk its own existence by performing its obligations at all costs. (Southerington, 2001, p.31).

In any case that a replaceable way exists (especially when a contract determines such ways), changing methods of a contract performance because of an impediments' occurrence is not a force majeure. This is why the case of Suez Canal was dismissed. Since ships could replace the Cape of Good Hopes' route to transfer goods, courts did not accept the claim of force majeure because the replaced route was harder to sail and costed more. (Gholami, 2012, p.43) It is important to bear in mind that there is a fine difference between "hardship of contract performance" or as German authors say "economic impossibility" and "absolute impossibility", which is needed to be examined case by case. (Darabpour, 1995, p.134). In case goods are missing in sea but possible to retrieve from sea, there is a difference between for example if it's machinery or a valuable statue. Final solution for each of these are different and it's dependent on their value.

Fifth Clause: Third Party

Second clause of Article 79 states about non-performance of the commitment caused by a third party employed to perform some part of or the whole contract:

"If the party's failure is due to the failure by a third person whom it has engaged to perform the whole or a part of the contract, that party is exempt from liability only if: (a) It is exempt under the preceding paragraph; and (b) The person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him". It seems that third parties mentioned in this clause are subcontractors who are employed after the conclusion of contract between buyer and seller; like transport operator.

"requires that there be a sub-contract with an organic link to the main contract. Furthermore, the subcontractor must be legally independent of the party to the main contract. Also, the sub-contractor must at least have been accepted by the promisor, and act under its control". (Southerington, 2001, p.32).

Some theorists believe that part A of second clause of the Article 79 refers to choosing a right third party for the performance. CISG wants to mention that if a third party causes a fault, the fault is on the main party too, otherwise it wasn't necessary to repeat contents of the first clause. So if the main party needs to be exempted of non-performance of contract, it needs to not has been committed any fault by choosing a third party. Therefore CISG recognizes the right of the second party who has sustained losses to the non-performance of contract caused by a fault to revert to the employer. In exchange some believe the opposite and say that when conditions of exemption for the third party is at hand, there is no need to discuss the way it was been chosen. On the contrary if conditions don't refer to the exemption of the third party, choosing the right one does not help the contract at all. (Tavassoli-Jahromi, 2006, p.79).

But based on contents of this statement it seems that not only the buyer must prove that non-performance caused by a third party was out of its control and unpredictable for it, but also it must prove that the non-performance was out of the third party's control and was unpredictable for it too. (Honnold, 1999, p.488).

I fact we can refer to exemption of responsibility when all conditions of clause 1 of Article 79 for both parties of main contract and subcontract are met. The party of main contract must remain fixed to conclude a contract with third party; that way its commitment cold be valid. Other than that it could be presumed that impediment was not out of his power and control and unpredictable. So promisor is responsible for third party's commitment unless it's completely impossible to perform the whole subcontract. As a result buyer not only must prove that the prediction of non-performance was out of its control, but also out of third party's control and unpredictable for it too. So indexes of force majeure must exist for subcontractor too that seller could rely to them for exemption. (Honnold, 1999, p.488).

A German seller, defendant, sold vine wax for the treatment of grapevine stocks to an Austrian buyer, plaintiff. When some plants were damaged after treatment with the wax, the buyer claimed lack of conformity of the goods and sued the seller for damages. The seller denied liability, arguing that it had acted purely as an intermediary and that the failure of the product was due to defective production by its supplier, an impediment that was beyond its control.

The court noted that delivery of defective goods may constitute an impediment under Article 79(1) of the CISG. It also noted that, in order to be exempted from non-performance, the seller would have to prove that the non-performance was due to an impediment beyond the seller's control, that the impediment was not taken into account at the time of the conclusion of the contract or that the impediment or its consequences could neither have been avoided nor overcome by a reasonable seller (Article 79 (1) CISG). The court held that, in the given circumstances, the defect had not been beyond the seller's control; despite the on-going business relationship, it was not reasonable for the seller simply to have relied on its supplier's product without

tests, because it was a newly developed product. The court further held that, even if the seller had acted only as an intermediary, it was still liable for the lack of conformity of the goods. In such cases, the supplier of the intermediary could not be regarded as a third party according to Article 79 (2) of the CISG. (http://cisgw3.law.pace.edu/cases/980331g1.html). So indexes of force majeure for subcontractor must exist that the buyer could refer to them to be exempted.

Sixth Clause: The Necessity of Notice

Fourth clause of Article 79 provides that:
"The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt".
According to this clause we should discuss some necessary points:
1) The Necessity of Notice is mentioned when impediments' occurrence is obvious, other than that a probability of such an occurrence doesn't make the notice necessary.
2) It seems that the purpose of the clause is to prevent further losses of the second party, so it can take any necessary action to protect its interests and that is why the promisor must inform it of type and amount of the occurrence that will affect the contract.
3) In this clause CISG accepts the Acknowledgement of Receipt, so if the notice is being immediately forwarded but not being received customary, the forwarder is responsible.
4) In case of non-collection of the notice, the forwarder party is only responsible for damages related to that, not the damages of the non-performance of contract. (Tavassoli-Jahromi, 2006, pp.80-81).

Seventh Clause: The Time Factor

Third clause of Article 79 provides that:
"The exemption provided by this Article has effect for the period during which the impediment exists".
As this clause mentions, the exemption provided by clauses 1 and 2 will start at the exact time when the impediment occurs and will last as long as the impediment exists.
So if the impediment lasts forever and makes the performance of contract impossible, the promisor will be exempted in general. This clause is based on the hypothesis that defers the performance of contract only when an impediment occurs. So the exemption is only temporary and has effect for the period during which the impediment exists, the moment the impediment extinguishes, obligations of the promisor returns to it and from that moment it is responsible for the non-performance of contract. (Tavassoli-Jahromi, 2006, p.77).

Eighth Clause: The Scope of the Exemption

Fifth clause of Article 79 provides that:
"Nothing in this Article prevents either party from exercising any right other then to claim damages under this Convention".
In other words this Article won't prevent parties from exercising other compensations existing in the convention. The purpose of the Article 79 is to give exemption of paying for damages that were occurred by not committing to contract. When a force majeure exists, promisor is not responsible for non-performance of contract and should not pay for damages, whether the damage is

mentioned in the contract or by getting a verdict from a judge or an arbitrator.

Other ways that compensations could be performed is:

a) The application for enforcing the performance of contract. It has even been said that in case of impossibility of the performance, the promise can apply for the performance, based on Articles 62 and 46.

b) Reducing the price. (Article 50)

c) Repudiation of contract. (Article 49)

Selecting each of these depends on circumstances.

"Tallon" has expressed discontent with Article 79 (5). According to him, the Article leads to unrealistic results, especially in cases of impossibility of performance. Huber refers to the spirit of Article 46 (1) and states that it would be inconsistent to allow a buyer to require performance in cases where performance is prevented by an impediment that the seller is not required to overcome under Article 79. (Southerington, 2001, p.34).

Nowadays it seems to be undisputed that, wherever the right to claim performance would undermine the obligor's exemption, performance cannot be demanded as long as the impediment exists. (Schwenzer, 2008, p.720).

This regulation recommends and allows the law suit for performance of contracts' source for goods that cannot be delivered or for capital and funds which are blocked and cannot be paid. So in case when non-performance is absolute and definitive and penetrates all responsibilities forever, the contract losses its credit on its own and seeking any compensation would be nonsense. In a hypothesis that impediment exists to some part of main obligation but contract could still remain executable, if other party feels that failure of performance could lead to whole breach, it can repudiate the contract based on Article 25 of convention.

If the period of force majeure is short, after its occurrence which leads to impossibility of buyers' obligations, the seller who is not tendentious of contracts' continuation, is not obligated to wait for the reception of good and can repudiate the contract (Article 49) if a halt to the performance of contract is counted as fundamental violation. (Article 25), (Safai, 2013, p.291).

Ninth clause: Force majeure as an Impediment to part of Contract

Is Article 79 actable if only a part of a contract faces an impediment? While the Article 79 uses the term "any of its obligations" it can be interpreted as whole obligations or just part of it. In this case buyer could cite to clause 1 of Article 46 of the convention and asks the seller to perform obligations that are not facing impediments, otherwise if contract faces a fundamental violation from seller, buyer can repudiate the contract and demand for payment of damages. (Article 64-1).

If some part of contracts' obligations of seller face a fundamental violation, buyer has a right to repudiate the performance of remained obligations and repudiate the contract right away. (Article 49-1), (Safai, 2013, pp.292-293).

Tenth Clause: Citation of Public Companies to Changes in Regulations as an Impediment and Force Majeure

One of the examples of impediment and force majeure in Article 79 is interference of the government. In other words a government can enact new regulations that will be impediments to the performance of contract. Legal systems nowadays recognize legal inhibitions as they recognize physical impediments. (Salimi, 2005, p.95).

In case of legal inhibitions, there are 2 hypothesis to discuss:

1) The claim of public companies and state institutions that are independent from government.

2) The claim of government as a contracts' party.

Referring to Article 4 of Iran's general account law (enacted in 1366), a public company is a company that the government owns more than 50% of its share. But it is important to envisage that if such companies are acting independent from government in their daily basis decisions and their commercial transactions as a conventional person, even though they need the government to have final approval on their transactions, they must be counted as pubic independent companies and the government approval and link to them does not damage their independence. (Gholami, 2012, p.33).

In this hypothesis any legislation that impede the contract is certainly a force majeure and causes the exoneration of responsibility. This formula was used in a sugar lawsuit between two polish companies. In this case the defendant was a state agency who was based on a contract responsible for selling and exporting sugar, but caused by government interference and prohibition of exportation of sugar couldn't perform its responsibilities. So the second party claimed actio empty. The Court of Arbitration did not count the case as Force Majeure and pronounced the state agency responsible and tortfeasor. (Salimi, 2005, p.95).

One important thing to point out in this hypothesis is if an independent public company is partnering up with government to make an impediment which makes the contract no-performing, its citation to the impediment as force majeure is not acceptable. So it's important to be attained that authorities of the public company did not encourage government to pass legislations that impede the contract. For example in case related to this subject, the UK House of Lords declared the objection of the authority of a defendant company to a legislation, not partnering up with government. (Gholami, 2012, p.33).

In a second hypothesis that government is a party of contract and refers to legal impediment, if changes in legislations is an excuse to evasion of responsibility, the reference to the legal impediment cannot be count as force majeure. But if changes in legislation is for the interest of public and not to create a legal impediment to contract, accepting the force majeure is not hard to imagine. So in this hypothesis referring to legal impediment as a force majeure requires the action of government to be in favor of nations' interest, not to be in favor of specific interests and damages of contract to the government. (Salimi, 2005, pp.95-96).

In Air France case against …, court did not accept Air Frances' claim to force majeure, because the court believed that government was trying to make the company's responsibility non-performing based on nothing. The other case that for the lack of interest to public the claim to force majeure by government had been refused was the case of Cooper Crop Gmbh against Copex Inc. Since the Polish governments' order was only canceling 21 projects and other projects was at the same time running, court announced that legislation took place was not public and didn't include all the projects related to the matter, court believed that company's relationship with government caused the order. (Gholami, 2012, pp.34-35)

Eleventh Clause: Referring to Sanction as Force Majeure

Is sanction basically an example of force majeure to the contract? It's being said that "Sanction is a tool that group of governments use to guarantee the performance of international regulations and rules by another government. Sanctions could lead to economic sanctions or use of military forces." (Ouyar-Hossein; Ebrahimi, 2012, p.5).

It's also being said that sanction refers to sort of punishments that punish individuals who broke the law. Series of actions to encourage a government to do something are not sanctions. (Gholami, 2012, p.73).

There are adherents and opponents to the idea of sanction being a force majeure. Adherents say that sanction as an impediment is too powerful and uncontrollable that even if it's possible to predict it, it could be known as force majeure. But opponents who are against sanctions as force majeure say that if a matter is predictable then its risk are considered in contract by default and a party who has accepted the risk, whether implied or explicit, cannot refer to it as an impediment to its responsibilities.

In adherents view there are two important aspects to sanction as force majeure. One is the precedence of uncontrollable impediments' index against the lack of ability to predict the impediment. And the other is the necessity of adaptation to state legislations for persons; for that if even an impediment is predictable, when a promisors' respecting state ordains a punishment for noncompliance with law, it is impossible to ask it to commit performance.

Adherents argue that one of conditions to force majeure occurrence is its uncontrollable feature to the promisor that is making the performance of obligation impossible. It's possible that a contingency could be predictable, but as long as it's not mentioned in contract, it can be counted as unpredictable. But sometimes a contingency has been predicted and that is when its risks were being accepted. Also the development of means of communications in any kind, makes the circulation of news and information easy and fast, so counting a contingency could be hard in this age of information technology. So it's better to recourse to more reliable way and that is the theory of "forecast". When a contingency is predicted that its circumstantial evidences and their surrounding circumstances are existing in contract. (Gholami, 2012, pp.113-114).

Since Economic Sanctions, regardless of who is the legislator, are enforced whit Domestic law (which means Security Council's resolution or a state domestic law are enforcing a sanction), nonconcurrence to these legislations has enforcement. (Gholami, 2012, p.115).

When legislating economic sanctions prevent the promisor to continue its obligations contractual relationship, enforcement to these sanctions make performance of contract impossible for it and one cannot expect it to do its obligations. So expecting it to perform at the cost of punishment is not reasonable. So Domestic laws which enforce sanction are legal impediments and enough exemption of obligations.

Opponents believe that sanctions cannot be counted as force majeure, because in their point of view the ability to predict sanctions makes them impossible to be counted as impediments for force majeure stipulation. Even if economic sanctions make the performance of contract hard and costable, determining exemption or adjustment to contract is not acceptable, because unlike force majeure which is a legal principle, economic obstructions even in conditions of economic sanctions,

are not legal principles that without any contractual term the contract could be adjusted. Real life sanctions show that there is possibility and enough time to predict them. (Perillo, 1997, p.122).

For example a condition which is against international law causes the reaction of states and international organizations, which acute conditions lead to long term negotiations and then sanctions. The period which states are joining sanctions and pass legislations in their legal systems to enforce them, a government, a company or an organization which is being sanctioned, can predict it almost definitively. In this condition any promisor and businessman who work internationally and has business relationship to partners in countries which are enforcing sanctions, must be aware of possibilities around sanctions and count risks properly. (Gholami, 2012, p.117). So it seems enforcing sanction and the process of legislating it are predictable, for that risks of parties must be calculated and referring to force majeure is not acceptable.

Conclusion

Existing an impediment to performance of contract base on Article 79 and its terms can cause exemption of contract violations damages for violator. That impediment must be out of persons' control and unpredictable at the date of contract conclusion. It and its effects also must be unavoidable and uncontrollable for violator. An interesting point in convention is that it's not using implications and terms of Domestic Law to explain the impediment related to non-performance of contract and exemptions to damages caused by violation of it. It's because the convention wants to be independent from national legal systems. Based on Article 79 if non-performance of contract that is caused by lack of third party's success to perform a part or whole of contract, due to some conditions, promisor is exempted of its responsibilities. The party who is unable to execute its duties and responsibilities due to an impediment, must notice the other party of occurring the impediment and its effects to performing duties. If the other party couldn't get the notice at proper time after impediment occurring, promisor is responsible for damages of non-collection. Article 79 states that its contents don't impede parties to enforce other rights than claiming damages that are mentioned in the convention.

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