

**LIABILITY FOR ETHICAL HARM ARISING FROM THE USE OF
ARTIFICIAL INTELLIGENCE IN INTERNATIONAL COMMERCIAL
CONTRACTS: GAPS AND CONTRACTUAL MECHANISMS**

Uktamova Farangiz Muzaffar qizi

Masters student of Interdisciplinary study of law

“International arbitration and dispute resolution”

of Tashkent State University of Law

**ОТВЕТСТВЕННОСТЬ ЗА ЭТИЧЕСКИЙ ВРЕД ПРИ
ИСПОЛЬЗОВАНИИ ИСКУССТВЕННОГО ИНТЕЛЛЕКТА В
МЕЖДУНАРОДНЫХ КОММЕРЧЕСКИХ КОНТРАКТАХ: ПРОБЕЛЫ И
КОНТРАКТНЫЕ МЕХАНИЗМЫ**

Уктамова Фарангиз Музаффар кизи

Магистр Междисциплинарного изучения права факультета

«Международный арбитраж и разрешение споров»

Ташкентского государственного университета права

Abstract: *This article examines the issue of the lack of legal mechanisms for redressing harm arising from ethical breaches in artificial intelligence (AI) algorithms within international commercial practice (B2B). Based on an analysis of the 1980 Vienna Convention, the UNIDROIT Principles, as well as the provisions of the EU AI Act and UNESCO’s codes of ethics, gaps have been identified: ethical harm cannot be reduced to traditional categories of loss, and soft law does not create liability between contracting parties. The author proposes a classification of AI ethical violations*

(discrimination, lack of transparency, absence of human oversight), justifies the possibility of translating these into legally significant harm, and develops a draft contractual clause on ethical liability for cross-border B2B contracts.

Аннотация: В статье рассматривается проблема отсутствия правовых механизмов возмещения вреда, возникающего вследствие этических нарушений алгоритмов искусственного интеллекта (ИИ) в международной коммерческой практике (B2B). На основе анализа Венской конвенции 1980 г., принципов УНИДРУА, а также положений AI Act ЕС и этических кодексов ЮНЕСКО выявлены пробелы: этический вред не сводим к традиционным категориям убытков, а мягкое право не создает исковой ответственности между контрагентами. Автор предлагает классификацию этических нарушений ИИ (дискриминация, непрозрачность, отсутствие человеческого контроля), обосновывает возможность их перевода в юридически значимый ущерб и разрабатывает проект контрактной оговорки об этической ответственности для трансграничных B2B-контрактов.

Keywords: artificial intelligence, ethical harm, cross-border contracts, liability, good faith, AI Act, CISG, UNIDROIT Principles.

Ключевые слова: искусственный интеллект, этический вред, трансграничные контракты, ответственность, добросовестность, AI Act, CISG, принципы УНИДРУА.

Introduction

The active integration of artificial intelligence (AI) systems into international commercial activity-ranging from automated counterparty scoring to dynamic pricing and autonomous contract formation-creates new risks that are not addressed by traditional contract law. One such risk is ethical harm: losses or adverse consequences arising from AI decisions that violate generally recognized ethical principles (non-discrimination, transparency, accountability, and human oversight). Unlike moral harm

suffered by individuals, ethical harm in the B2B context manifests in the form of reputational damage, regulatory penalties, loss of trust among counterparties, or indirect financial losses caused by algorithmic behavior that is formally lawful but ethically questionable.

The problem is further aggravated by the fact that most international commercial contracts are governed by uniform instruments such as the United Nations Convention on Contracts for the International Sale of Goods (CISG, 1980) or the UNIDROIT Principles of International Commercial Contracts. Neither of these instruments contains the concept of “ethical harm” or establishes liability for ethical violations caused by algorithms. At the same time, various ethical frameworks and guidelines (including the EU AI Act, OECD recommendations, and UNESCO principles) exist, but they are non-binding in nature and do not create enforceable obligations between private parties.

The purpose of this article is to determine the place of ethical harm within the system of international contract law and to propose contractual mechanisms that enable the integration of ethical requirements into commercial relationships involving AI.

Objectives:

1. To define ethical harm caused by AI in B2B relations and distinguish it from traditional categories of damages.
2. To analyze the gaps in international uniform instruments and soft law with respect to liability for ethical violations of algorithms.
3. To develop a classification of AI-related ethical violations that may be considered legally relevant.
4. To propose a model contractual clause on ethical liability for AI in cross-border transactions.

The modern development of international commercial activity is characterized by the widespread use of AI systems in counterparty assessment, pricing, document

verification, and even autonomous contract formation. However, the use of such systems gives rise to risks not contemplated by traditional contract law. One such risk is ethical harm, which in the B2B context should be understood as adverse financial consequences resulting from a decision or omission of an AI system that violates generally accepted ethical principles, including non-discrimination, transparency, accountability, and human oversight. Unlike moral harm suffered by individuals, ethical harm in the commercial sphere takes the form of concrete economic losses: lost profits from unrealized transactions, reputational damage, costs of remediation, and regulatory fines. The key issue is that existing international uniform instruments and soft law frameworks do not provide mechanisms for compensating such harm.

Most international commercial contracts are governed either by the CISG (1980) or the UNIDROIT Principles of International Commercial Contracts. Neither instrument contains provisions directly regulating the use of AI or introduces the concept of ethical harm. Articles 74–77 of the CISG, which establish rules for the calculation of damages, are based on the breach of an explicit contractual obligation or a wrongful act. At the same time, discriminatory or non-transparent algorithmic behavior, if not explicitly prohibited by the contract, does not formally constitute a breach. The principle of good faith, reflected in Article 7 of the CISG and Article 1.7 of the UNIDROIT Principles, is generally interpreted in doctrine and case law as a tool of interpretation rather than as an independent basis for claiming damages. Consequently, a party that suffers ethical harm due to the use of AI by its counterparty cannot obtain compensation under these uniform instruments.

A potential regulatory source could be the European Union's AI Act (2024), which prohibits certain types of high-risk discriminatory AI systems and provides for administrative fines of up to EUR 30 million. However, such fines are payable to the state rather than to the affected contractual counterparty. Moreover, the AI Act does not directly regulate horizontal B2B relationships: if an AI system violates ethical principles but does not fall within the prohibited categories (for example, by failing to

explain its decision), liability does not arise. The OECD Recommendations on Artificial Intelligence (2019, revised 2024) and the UNESCO Recommendation on the Ethics of Artificial Intelligence (2021) constitute soft law instruments that do not create enforceable liability between private parties. As a result, there is a legal vacuum with respect to liability for ethical harm caused by AI in international commercial practice.

At present, the only viable way to address this gap is through private regulation by means of contractual provisions. The parties to an international commercial contract may independently define the ethical principles with which the AI system must comply and establish liability for their breach. To achieve this, it is necessary, first, to develop a classification of ethical violations that may be considered legally relevant, and second, to draft a model contractual clause suitable for inclusion in cross-border B2B contracts.

The following types of ethical violations with economic implications are proposed. Non-discrimination requires that an algorithm must not create unjustified distinctions between counterparties based on race, nationality, gender, age, religion, or other protected characteristics, unless such distinctions are justified by objective commercial criteria. Transparency and explainability require that the party using AI be capable, upon request, of providing a meaningful explanation of the logic, significance, and consequences of any decision affecting the other party. Human oversight implies the existence of a mechanism allowing for human review (human-in-the-loop) upon request. Accountability requires a clear allocation of responsibility (to the provider, the user, or another party) for the consequences of AI operation.

Each of these violations may be translated into legally cognizable damage through specific methods of calculation. In cases of discrimination, damages may consist of lost profits from unrealized transactions (calculated based on average profit from comparable deals) and reputational harm. In cases of lack of transparency, it is appropriate to apply liquidated damages in the form of a fixed percentage of the contract value for each proven instance of failure to provide an explanation. In the

absence of human oversight, damages may be calculated as the difference between the price generated by the AI system and the market price at the time of contract conclusion.

For illustrative purposes, consider a hypothetical scenario based on real-world incidents. A German software provider supplies a Turkish distributor with an AI system for assessing the credit risk of counterparties. The algorithm, trained on historical data in which companies from a particular region of Turkey exhibited higher default rates, automatically assigns all firms from that region a “high-risk” status. Relying on the AI output, the distributor refuses to grant payment deferrals and consequently loses several profitable transactions. Under the current legal framework, the Turkish distributor cannot recover damages from the German provider: the CISG does not prohibit algorithmic discrimination, and the AI Act imposes fines payable to the state rather than providing compensation to the counterparty. The inclusion of a contractual clause on ethical liability would allow such discrimination to be qualified as a breach of contract and damages to be calculated according to an agreed formula.

Based on the above, the following model contractual clause is proposed (in English, as the language of international commerce). The clause may be incorporated into the main contract or included as a separate annex:

Clause X. Ethical responsibility for Artificial Intelligence

1. ***Definitions.*** «AI System» means any software or hardware system that uses machine learning, rule-based algorithms or other techniques to make decisions affecting the performance of this Contract. «Ethical Harm» means any loss or damage resulting from a decision or omission of the AI System that violates the Ethical Principles set out in paragraph 2.

2. ***Ethical Principles.*** The Parties agree that the AI System used in performance of this Contract shall comply with: (a) *Non-discrimination* – no unjustified differential treatment of counterparties based on race, nationality,

gender, age, religion, or other protected characteristics; (b) *Transparency* – upon request, the Party using the AI System shall provide a meaningful explanation of the logic, significance, and consequences of any AI decision affecting the other Party; (c) *Human oversight* – the Party using the AI System shall maintain a mechanism allowing the other Party to request human review of any adverse AI decision; (d) *Accountability* – the Party that deploys the AI System (or, if specified, the provider) shall bear liability for Ethical Harm caused by the AI System.

3. ***Liability for Ethical Harm.*** If the AI System causes Ethical Harm to the other Party, the liable Party shall compensate: direct damages (e.g., lost profit from a specific transaction that was unjustifiably rejected by the AI); liquidated damages in the amount of [X]% of the contract value for each proven violation of Transparency or Human oversight; reputational damages calculated as the actual costs incurred to mitigate reputational harm, up to a cap of [Y] euros.

4. ***Dispute resolution.*** Any dispute concerning Ethical Harm shall be resolved by arbitration in accordance with [ICC/UNCITRAL] rules. The arbitral tribunal may appoint a technical expert to examine the AI System's compliance with Ethical Principles, provided that trade secrets are protected by a confidentiality order.

This clause establishes direct contractual liability for ethical violations that would otherwise remain without legal consequences. The use of liquidated damages enables compensation in situations where proof of actual loss is difficult (e.g., lack of transparency or absence of human oversight). Reputational damage is recognized but subject to a reasonable cap to ensure predictability of liability. The arbitration clause, combined with the possibility of appointing a technical expert, addresses the evidentiary challenges posed by “black box” systems without requiring full disclosure of trade secrets. The parties may adapt the proposed text by modifying the list of ethical

principles, types of damages, and liability limits depending on the specific commercial context.

The proposed contractual mechanism does not eliminate the need for the development of an international treaty or uniform instrument directly regulating ethical aspects of AI in commerce. However, in the medium term, given divergences between major legal systems (EU, US, China), the adoption of such an instrument appears unlikely. A contractual clause therefore represents the only practically viable tool enabling parties to integrate ethical principles into legal regulation today. Moreover, even if an international convention emerges, it is likely to establish only minimum standards, while contractual provisions may go further.

Thus, ethical harm resulting from the use of AI in international B2B contracts constitutes a real category of damages not covered by existing uniform instruments or soft law frameworks. The proposed classification of ethical violations (discrimination, lack of transparency, absence of human oversight) allows such harm to be translated into legally cognizable damage through specific methods of calculation. The developed model contractual clause enables parties to fill the regulatory gap, reduce risks, and create incentives for the development of ethical AI systems. Promising areas for further research include the analysis of emerging arbitral practice in disputes involving AI-related ethical violations, the development of sector-specific ethical standards (e.g., in finance, logistics, and trade), and the examination of the compatibility of the proposed clause with mandatory rules of national law, particularly restrictions on the limitation of liability for intentional misconduct.

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