

RESEARCH
ARTICLE

The Legal Framework for International Commercial Contract Negotiations

Terchi Ahmed

Researcher

Université d'Alger 1

Algeria

E-mail: terchiaahmed7@gmail.com

Terchi Al-Hawari

Researcher

Emir Abdelkader University for Islamic Sciences

Algeria

Email Id: howr.tour15@gmail.com

Doi Serial

<https://doi.org/10.56334/sei/8.9.13>

Keywords

Legal system; negotiations; commercial contracts; international law; liability

Abstract

Negotiations represent a fundamental preliminary stage in the conclusion of international commercial contracts. With the increasing complexity of contractual arrangements and the emergence of new forms of commercial agreements, this stage has become an essential component of the contractual process. Negotiations play a critical role in constructing the core clauses of the contract and in interpreting its content, especially in cases of ambiguity. Furthermore, this stage imposes legal obligations on both parties, aiming to ensure a minimum standard of good faith and seriousness throughout the negotiation process. Any negligence or breach of these obligations by either party may result in legal liability, whether contractual or tortious.

Citation

Terchi, A., & Terchi, A.-H. (2025). The legal framework for international commercial contract negotiations. *Science, Education and Innovations in the Context of Modern Problems*, 8(9), 146–154. <https://doi.org/10.56352/sei/8.9.13>
Issue: <https://imcra-az.org/archive/383-science-education-and-innovations-in-the-context-of-modern-problems-issue-9-vol-8-2025.html>

Licensed

© 2025 The Author(s). Published by Science, Education and Innovations in the context of modern problems (SEI) by IMCRA - International Meetings and Journals Research Association (Azerbaijan). This is an open access article under the **CC BY** license (<http://creativecommons.org/licenses/by/4.0/>).

Received: 23.04.2025

Accepted: 12.06.2025

Published: 15.07.2025 (available online)

Introduction

Historically, contract formation was marked by simplicity and flexibility, often requiring no more than an immediate exchange of offer and acceptance. This approach reflected the uncomplicated nature of interpersonal dealings in earlier societies. However, with the rapid advancement of science, technology, and the globalization of economic activities, commercial practices have significantly evolved. The scope of contractual relationships has expanded beyond domestic boundaries, contributing to the rise of international economic exchange. Consequently, the structure of contracts has become more complex and financially demanding, particularly in the domain of **international commercial contracts**, which now require extended negotiation periods prior to their formal conclusion.

International commercial contracts may be broadly defined as a series of legal acts and agreements entered into by parties governed by private law for the purpose of conducting cross-border trade. These contracts fall within the scope of **international trade law**, which comprises model contracts and multilateral treaties rooted in established commercial customs and practices. Notably, Article 9 of the **United Nations Convention on Contracts for the International Sale of Goods (CISG)** highlights the importance of customary commercial usage in the formation and execution of such contracts.

Given the high financial stakes and complex legal dimensions involved, pre-contractual negotiations have emerged as a critical phase in the lifecycle of international trade contracts. This **preliminary stage** serves as an exploratory platform where parties engage in dialogue to align their mutual interests and define essential contractual terms before reaching a final agreement.

This research focuses on analyzing the **legal significance** of the negotiation phase preceding contract formation. Specifically, it seeks to assess the normative frameworks that govern this phase and the legal responsibilities that may arise from it. The study aims to answer the following central research question:

What is the legal value of the pre-contractual negotiation stage in international commercial contracts?

To address this question, the research adopts a **descriptive methodology** to define and contextualize pre-contractual negotiations, complemented by an **analytical approach** to examine relevant legal texts and doctrines.

The study is structured into two main sections:

- **Section One:** Explores the regulatory framework and principles governing the conduct of negotiations in international trade contracts.
- **Section Two:** Examines the legal liabilities and consequences that may result from the negotiation process.

Section One: Regulatory Framework for Conducting Negotiations in International Trade Contracts

International trade contracts serve as pivotal instruments for facilitating cross-border commercial transactions. The increasing globalization of commerce—intensified by the signing of the **General Agreement on Tariffs and Trade (GATT)** and the establishment of the **World Trade Organization (WTO)**—has led to a proliferation of international contracts. The WTO, based on the foundational principles of **non-discrimination**, **trade liberalization**, and **negotiation-based dispute resolution**, underscores the critical role of negotiations in international trade governance.

From an economic perspective, the international character of a contract can often be discerned through its underlying commercial intent—namely, the exchange of goods, services, or financial value across national borders. Even a simple cross-border exchange may suffice to qualify a contract as international in scope.

The necessity of a negotiation phase prior to contract conclusion is driven by multiple factors:

- **Economic Factors:** The high financial value of many international contracts—such as those involving large-scale infrastructure, energy exploration, or multinational supply chains—necessitates careful negotiation and risk assessment.
- **Legal Factors:** The complexity of international contracts often renders default legal provisions (i.e., supplementary or dispositive rules) inadequate, thereby requiring tailored negotiation to address specific legal contingencies and obligations.

In light of these factors, it is essential to examine the **obligations arising from negotiations** in the international trade context. This section will be structured into two primary subtopics:

- **First Requirement:** The obligation to negotiate in **good faith** within international commercial contracts.
- **Second Requirement:** The legal **regulatory controls** governing the conduct of pre-contractual negotiations.

Section One: The Obligation to Negotiate in Good Faith

1.1 The Principle of Good Faith in Pre-Contractual Negotiations

In international commercial negotiations, there are fundamental principles that parties must adhere to in order to achieve optimal contractual outcomes. Chief among these is the principle of **good faith**, which plays a critical role not only during the execution of the contract but also in the preliminary negotiation phase. In the context of international trade contracts, good faith extends beyond the traditional obligation of faithfully performing contractual terms. It encompasses a broader ethical and legal responsibility during the **pre-contractual phase**, requiring the parties to act with honesty, fairness, and transparency in their dealings.

The principle of good faith in pre-contractual negotiations demands that parties refrain from deceptive behavior, misrepresentation, or manipulation that could compromise the other party's understanding or consent. This duty implies that negotiations must be conducted in a manner grounded in **integrity, openness, and mutual trust**, without exploiting asymmetries in knowledge or power. While deceit during contract performance is universally condemned, deception during negotiation is particularly egregious, as it corrupts the formation process itself and potentially invalidates the very basis of consent.

1.2 The Concept of the Obligation to Negotiate in Good Faith

The obligation to negotiate in good faith is inherently **voluntary** and stems from the mutual consent of the negotiating parties. In legal scholarship, it has been defined as the obligation to engage with the other party honestly and sincerely, ensuring that the exercise of one's rights remains within the bounds of legitimate commercial purpose, and does not cause undue harm to the counterparty. Another perspective in jurisprudence defines it as a commitment to **honest conduct** that reflects commercially reasonable standards of fair dealing.

Despite its critical importance, most civil legal systems do not explicitly codify a duty to negotiate in good faith. Instead, they enshrine a more general obligation of good faith in the **performance** of contracts. For instance, Algerian civil legislation imposes this duty in **Article 107, Paragraph 1** of the Civil Code, stating: *"The contract must be performed in accordance with its content and in good faith."* This provision, however, does not extend explicitly to the negotiation stage.

Good faith manifests in two primary forms:

- **Negative obligations**, such as the duty to avoid deceit, coercion, or exploitation of the other party's vulnerability; and
- **Positive obligations**, such as the duty to disclose relevant information that may materially affect the other party's decision-making process.

In its jurisprudence, the **Algerian Supreme Court** has affirmed the principle of good faith in contractual implementation, particularly in its decision dated *24 October 1999*, which recognized the need to restore equilibrium in contractual obligations when unforeseen exceptional circumstances arise, thereby underscoring the interpretive authority of the judiciary in monitoring fairness.

1.3 Scope of the Obligation to Negotiate in Good Faith

The obligation to negotiate in good faith constitutes a **fundamental legal and ethical principle** underpinning international commercial negotiations. Even in the absence of explicit statutory provisions, this obligation is implied

due to its indispensable role in ensuring the legitimacy of the negotiation process. Attempts to contractually exclude this obligation are generally regarded as void and unenforceable, as they contradict foundational norms of fairness and contractual integrity.

However, this obligation does not equate to a mandatory conclusion of the contract. The **pre-contractual phase** is characterized by non-binding expressions of interest, and the negotiating parties retain full contractual freedom. Nonetheless, the **freedom to negotiate** is tempered by the requirement of good faith. A party may not unilaterally withdraw from negotiations without **just cause**, especially if the withdrawal results in significant reliance-based harm to the other party.

The tension between the **principle of liability** and the **principle of contractual freedom** is central to this discussion. While parties retain the right to discontinue negotiations, this right is not absolute. If withdrawal is accompanied by misconduct, bad faith, or abuse of discretion, it may give rise to **pre-contractual liability**. For example, initiating negotiations without the intention or capacity to finalize the contract, or deliberately rejecting reasonable proposals while offering non-viable alternatives, may constitute violations of the principle of good faith under **Algerian civil law**.

Judicial discretion plays a crucial role in this context. Courts are empowered to evaluate whether parties have acted in good faith during negotiations, particularly in cases of unilateral withdrawal. Some arbitral rulings have further recognized a **duty of cooperation** between negotiating parties, asserting that mutual collaboration is essential to resolve obstacles and progress toward final agreement. This obligation of cooperation is rooted in the overarching principle of **intentionality and fairness** in the implementation of commercial contracts.

The Second Requirement: Controls Governing the Conduct of International Trade Contract Negotiations

Effective negotiation of international commercial contracts requires a set of conditions that foster productive and constructive dialogue between the parties. These conditions—both **objective** and **subjective**—contribute to a negotiation environment conducive to achieving mutually satisfactory outcomes. This section addresses these controls through two branches: objective factors and personal (subjective) factors.

2.1 Objective Factors in Successful Negotiation

Objective factors pertain to external elements that support a comfortable and cooperative negotiation setting. These include:

(a) Selection of the Negotiation Venue. The physical setting of negotiations plays a pivotal role in shaping the dynamics between parties. The negotiation room should be appropriately sized, well-lit, and equipped to provide a neutral and comfortable space conducive to dialogue. The choice of table layout, breakout rooms for private discussions, and ergonomic design all contribute to a constructive atmosphere. Often, negotiations are conducted in the home country of one of the parties for logistical convenience. Alternatively, a rotational or neutral location may be selected to ensure balance and avoid perceived power asymmetries.

(b) The Role of Language in Negotiations. Language is a critical tool in negotiation. While English has emerged as the predominant language of international commerce, its complexity and semantic ambiguity can lead to miscommunication. In contrast, languages such as Chinese or Japanese may pose challenges due to translation difficulties. To enhance clarity, negotiators should employ **simple, unambiguous language**, articulate their points **deliberately**, and practice **active listening** to ensure mutual understanding. Sensitivity to cultural communication styles further enhances negotiation effectiveness.

(c) Time Management in Negotiations. Time is an essential variable in negotiation strategy. The duration of negotiations is influenced by the complexity and scale of the transaction. Simple agreements may require brief discussions, while high-value or technically complex international contracts necessitate prolonged negotiation periods.

Additionally, cultural perceptions of time vary, influencing expectations and pacing. Effective time management requires aligning negotiation schedules with the **strategic importance** and **intricacies** of the deal at hand.

2.2 Personal Factors in Negotiations

Personal factors refer to the qualities and interpersonal competencies of the negotiator, which significantly influence the outcome of the negotiation process. For negotiations to succeed, the negotiator must possess a combination of technical knowledge and soft skills. Among the most important personal attributes are:

(a) Influence and Persuasion

Influence and persuasion are central to successful negotiation, representing cognitive and communicative abilities that enable a negotiator to effectively present and defend their position. A skilled negotiator must be able to organize ideas logically, utilize compelling arguments, and appeal to the reasoning of the other party.

For persuasion to be ethically and effectively employed, the negotiator should follow four essential principles:

1. Focus on problem-solving rather than personal confrontation.
2. Avoid misrepresentation or misleading tactics.
3. Propose multiple viable alternatives.
4. Ensure full comprehension of the issues before making decisions.

When faced with a sensitive or difficult counterpart, the negotiator must exercise discretion and empathy to preserve the working relationship and advance the negotiation.

(b) Mastery of Listening and Focus

Listening is not passive silence but an active skill that enhances understanding and reduces conflict. Effective negotiators demonstrate attention, retention, and accurate interpretation of the other party's statements. Concentration and rapid comprehension are vital. A negotiator's ability to listen attentively reduces misunderstandings, de-escalates disputes, and facilitates constructive engagement.

(c) Integrity and Ethical Conduct

Integrity is a cornerstone of credible and sustainable negotiations. Honesty, reliability, and avoidance of deceit—such as the dissemination of false information, unjustified delays, or manipulative tactics—are critical. Misconduct during negotiations, including bribery or unauthorized disclosure of financial conditions, may lead to **legal liability** if harm is caused to the other party.

Under **Algerian anti-corruption law (Law No. 06-01)**, bribery is criminalized. Article 27 prescribes imprisonment ranging from ten (10) to twenty (20) years and a fine between 1,000,000 and 2,000,000 DZD for such offenses. The ethical conduct of negotiators must therefore align with both **domestic law** and **international commercial standards**.

Legal responsibility may arise from negotiations if a party breaches obligations—whether explicit or implied—during the pre-contractual phase. Where a binding agreement exists to negotiate in good faith, the breach of this duty constitutes **contractual liability**. Even in the absence of a formal agreement, the conduct of negotiations may give rise to **pre-contractual liability**, particularly where one party induces reliance or acts contrary to the principle of good faith.

This section is divided into two main subsections:

- **First Requirement:** Unjustified termination of negotiations.

- **Second Requirement:** Legal implications of agreements made during preliminary negotiations.

3.1 Unjustified Termination of Negotiations

(a) Traditional vs. Modern Perspectives on Termination

Historically, negotiations were viewed as **non-binding material acts**, and parties were considered free to end negotiations at any time without liability. Under this **traditional approach**, the absence of a final agreement meant that law did not intervene, and the negotiator could terminate discussions without consequence—unless accompanied by an actionable error.

Some legal scholars, however, acknowledge that termination of negotiations with **intentional or negligent error** may trigger **tort liability**, even if no contract was concluded. The mere act of negotiating creates expectations and obligations consistent with the evolving **principle of good faith**.

As commercial transactions have grown more complex and resource-intensive, a **modern understanding** of negotiations has emerged. Under this view, initiating negotiations creates a **duty of care** and a **positive obligation to act in good faith**. Therefore, parties must not arbitrarily withdraw from negotiations without **serious and justifiable reasons**, especially when the other party has incurred costs or altered their position based on a legitimate expectation of contract formation.

(b) Defining Arbitrary Interruption

Arbitrary interruption refers to the termination of negotiations **without valid justification**, particularly when negotiations have reached an advanced stage or created reliance. The mere fact that the contract is not concluded does not exempt a party from liability; rather, it is the manner and circumstances of the termination that are evaluated.

Withdrawal may be deemed illegitimate if it:

- Violates established **commercial customs**,
- Contravenes the **principle of trust and reliance**, or
- Occurs **in bad faith**, such as deliberately stalling negotiations or accepting better offers without disclosure.

Where termination is arbitrary and unjustified, liability may be established under **general tort principles**, even in the absence of a finalized agreement.

3.2 Errors Committed During Pre-Contractual Negotiations

Errors during the negotiation phase may give rise to liability when they breach legal or ethical obligations. This includes conduct that violates the principles of transparency, confidentiality, or fairness. The following are key sources of pre-contractual liability:

(a) Failure to Disclose Material Information

Withholding critical information may hinder contract formation or invalidate consent. If the omitted information pertains to essential characteristics of the proposed contract, the omission may constitute **fraud or misrepresentation**. In such cases, even if the contract is not concluded, the harmed party may seek compensation for reliance damages.

(b) Misuse of Confidential Information

During negotiations, parties often share sensitive technical or commercial information under the assumption of confidentiality. The unauthorized use or disclosure of this information, especially for competitive advantage or commercial exploitation, constitutes a **breach of the duty of confidentiality**. This breach may lead to civil liability and, in some jurisdictions, criminal sanctions.

(c) Arbitrary Interruption

This remains one of the most frequent causes of negotiation breakdowns. The abrupt withdrawal by one party—without clear justification or advance notice—may be deemed arbitrary. If such termination causes economic harm or prejudices the legitimate expectations of the counterparty, it may form the basis for **legal recourse**.

3.3 Legal Implications of Agreements During Negotiations

While the final contract may not yet exist, **interim agreements** formed during the negotiation process may carry binding force. These may include:

- Memoranda of Understanding (MoUs),
- Letters of Intent,
- Preliminary Agreements on certain terms.

According to **Article 106 of the Algerian Civil Code**, *“The contract is the law of the contracting parties and may not be annulled or amended except by mutual consent or for legally prescribed reasons.”* Consequently, parties may be held to their commitments even before the main contract is finalized, particularly when their conduct demonstrates **intent to be bound**.

It is critical to distinguish between non-binding discussions and **agreements that create legitimate expectations**, such as promises to continue negotiations in good faith or agreements to share costs and responsibilities during pre-contractual cooperation. Violating such commitments—especially through arbitrary withdrawal—may result in **contractual or quasi-contractual liability**.

Section One: Concluding the Contract

A contract is deemed concluded when there is a complete alignment of the two wills—offer and acceptance—and both are validly expressed, free from vitiating factors such as fraud, coercion, or error. Furthermore, the parties involved must possess full legal capacity to engage in contractual obligations. When consensus is achieved during pre-contractual negotiations, and all essential matters are agreed upon, the contract is considered valid and enforceable.

Once acceptance is communicated in response to a binding offer, the contract becomes effective, resulting in reciprocal rights and obligations for both parties. This reflects the natural outcome of negotiations conducted in good faith. The contract thus serves as a manifestation of the binding force of agreement, whereby it assumes the status of law between the contracting parties.

The obligation to execute the contract encompasses all duties stipulated within it. Article 199(2) of the Jordanian Civil Code provides: *“Each party must fulfill what the contract requires of them.”* Likewise, Article 315 affirms: *“The right must be fulfilled whenever it meets the conditions for its legal entitlement. If the debtor defaults, it must be enforced either in kind or through compensation, in accordance with the provisions of the law.”* These provisions enshrine the principle of *pacta sunt servanda*, thereby reinforcing the enforceability of contractual commitments under civil law.

Section Two: Rejection of the Contract

There are instances where one party may refrain from concluding a contract due to conflicting interests, leading to the rejection of the agreement. In such cases, rejection implies the absence of mutual consent, which is essential for contract formation. This raises a legal question: does the refusal to contract constitute an abuse of right?

The right to refrain from entering a contractual relationship is fundamental and must be protected. Imposing a contractual obligation on an unwilling party contradicts the principle of autonomy of will and undermines the concept of consensual engagement. Hence, a party cannot be compelled to contract in the absence of genuine consent.

Nonetheless, this principle faces challenges, particularly in sectors governed by public utility monopolies—such as electricity, water, and telecommunications—where *adhesion contracts* prevail. In these scenarios, consumers are often left with no alternative but to accept the pre-determined terms set by the dominant service provider. Their bargaining power is virtually nullified, and any request to alter contractual terms is typically denied.

Such imbalances may lead to abuse of contractual dominance, which is addressed by Article 119 of the Algerian Civil Code: *"If one of the contracting parties does not fulfill his obligation, the other party may, after notifying the debtor, demand the execution or termination of the contract, with compensation if applicable. The judge may grant the debtor a delay depending on the circumstances and may also refuse annulment if the breach is minor."*

Conclusion

The foregoing discussion demonstrates the critical role of pre-contractual negotiations in shaping legally binding agreements. These negotiations are governed by certain principles, chief among them being the duty of good faith. This includes the obligation to provide relevant information, maintain confidentiality, and refrain from deceptive practices.

In international commercial contracts, the duty to negotiate in good faith is particularly important due to the complexity and cross-border nature of such transactions. The advancement of digital communication and information asymmetry has necessitated an increased emphasis on disclosure obligations and the duty of care. Negotiating parties must strive to equalize access to essential data to ensure fair and informed decision-making.

A significant issue in this context is the safeguarding of confidential information. If negotiations collapse without resulting in a contract, sensitive information disclosed during discussions may be misused. A practical solution lies in requiring written confidentiality undertakings from the receiving party, ensuring that the disclosed data is not exploited or disclosed subsequently.

Recommendations

1. The Algerian legislator should formally regulate the pre-contractual negotiation phase by enacting legal provisions specific to this stage, while preserving the principle of freedom of contract and legal certainty in commercial transactions.
2. Legal attention should be expanded to include the protection of confidential information exchanged during negotiations, obligating all parties to uphold confidentiality both during and after the negotiation process.
3. It is essential that all negotiating parties adhere strictly to the principle of good faith throughout the negotiation of international commercial contracts.

Conflict of Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Acknowledgment

The authors would like to acknowledge the academic support provided by Université d'Alger 1 and Emir Abdelkader University for Islamic Sciences in the preparation of this study. Special thanks are extended to the faculty members and legal experts who offered insights into the contractual obligations under Algerian and Jordanian civil law.

References

1. United Nations. (1980). *Convention relating to contracts for the international sale of goods* (Article 9, Vienna).
2. Abdullah, R. K. (2001). *Negotiating the contract: A fundamental analytical comparative study*. Arab Renaissance Study.
3. Ibrahim, M. M. (2006). *Good intention in implementing contracts*. Zain Human Rights Publications.
4. Saleh, A. A. (2012). *Negotiations in international trade contracts*. Dar Houma for Printing, Publishing and Distribution.
5. Muhammad, A. N. (n.d.). *The mediator in international trade contracts*. Dar Al-Kutub Al-Ilmiyyah.
6. Al-Arabi, B. (2010). *The legal framework for the stage preceding the conclusion of the contract in light of Algerian civil law: A comparative study* (Ed.). Wael Publishing House.
7. Abu Amoud, M. S. (2012). *International negotiation* (Ed.). Dar Al-Fikr University.
8. Anem, M. A. (2008). *The legal framework for transnational bribery*. New University House.
9. Saadi, N. B. (1999). *Technology transfer contract in the field of international exchange* (Ed.). Yuan University Publications.
10. Al-Alwani, F., & Al-Rubaie, A. J. (n.d.). *General provisions in negotiation and contracting* (1st ed.). House of Wisdom.
11. Al-Shoubari, A. B. (2019). Contractual negotiation in its legal framework and its impact on commitment. *Journal of the Faculty of Islamic and Arab Studies for Girls in Damanhour*, (4), 13.
12. Hussein, T. M., & Hamza, I. M. (n.d.). Obligations of negotiating parties in international trade contracts. *Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences*, 6(4), Babylon University.
13. Salama, A. A. K. (2000). The legal system for international trade contract negotiations. *Egyptian Journal of International Law*, 56, 44.
14. Al-Nimr, A. A. (2006). Commitment to preserving secrets in technology transfer disobedience. *Journal of Legal and Economic Sciences*, 14, Faculty of Law, Ain Shams University, 42.
15. Abdullah, M. S. M., & Al-Badou, A. M. H. (2016). The impact of the objectivity of contractual will in the negotiation stage. *Al-Rafidain Journal of Rights*, 13(43), 432-433.
16. El-Din, H. S. S. (1997). Negotiations on international commercial contracts: A comparative study in Egyptian and English law. *Journal of the Union of Arab Universities for Legal Studies and Research*, 4, Cairo University, 82.
17. Al-Shammari, K. K. (2006). Responsibility in the pre-contract period. *Al-Fath Magazine*, 27, 58.
18. Algerian Civil Code. (1975). *Order No. 75/58 including the Algerian Civil Code* (No. 12, J.R., issued 09/26/1975), 40.
19. Algerian Supreme Court. (1999). *Decision of the Civil Chamber*, File No. 191705, Issue 2 (issued 10/24/1999), 95.
20. Bin Fakha, S. (2022). *Commitment to continuing negotiations in international trade contracts* (Doctoral dissertation, Moulay Taher University, Saida).
21. Namshi, M. K. (2014). *The legal system for preliminary contract negotiations* (Master's thesis, Middle East University).
22. Sheikh, B. (2008). *Diversity of laws in individual labor relations* (Doctoral dissertation, Djilali Al-Yabis University, Sidi Bel Abbès).