ISSLP
Interdisciplinary Studies in Society, Law and Politics

Original Research

The Mechanism of Contract Termination in the 1980 Convention on International Sale of Goods and Its Comparison with Contract Termination in Iranian and Iraqi Law

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Received: 2025-02-13 **Revised:** 2025-04-12 **Accepted:** 2025-04-27 **Published:** 2025-10-21

The subject of contracts constitutes a significant part of international trade, as they serve as an essential means to fulfill economic needs. Contracts are the primary source of obligations in both domestic and international transactions, as a properly executed contract establishes reciprocal obligations between the parties. In civil law, one of the topics examined under the general rules of contracts is contract termination. Under Iranian law, following the principles of Imamiyyah jurisprudence, the principle of contract necessity is recognized, particularly in Article 219 of the Civil Code. One of the exceptions to this principle is contract termination, which is addressed in the Civil Code under the concept of Khiyar (contractual options), outlining its instances and rulings. Additionally, certain articles, such as Articles 286, 287, 288, and 429, refer to the effects of contract termination. In the United Nations Convention on Contracts for the International Sale of Goods (CISG) (Vienna, 1980), the conditions under which the seller and buyer may terminate the contract are stipulated in Articles 49 and 64, respectively. Furthermore, Articles 81 to 84 address the effects of contract termination, the most significant of which include contract dissolution and the restitution of exchanged goods and payments. This study examines the mechanism of contract termination under the 1980 Convention on the International Sale of Goods and compares it with contract termination in Iranian and Iraqi law. Given the importance of extensive trade exchanges between Iraq and Iran, it is necessary to analyze how contract termination is addressed in the legal frameworks of these two countries and to consider the conditions and procedures for contract annulment in these legal systems. The findings of this research indicate how contracting parties may act in cases of non-compliance with contractual obligations, which, in addition to affecting the enforcement of international contracts, also has broader implications. Furthermore, the concept of contract termination, which is designed to prevent further damage and to bring the legal life of the contract to an end in favor of the aggrieved party, does not conflict with the injured party's right to claim compensation for damages incurred.

Keywords: *Termination, Convention on Contracts for the International Sale of Goods, Commercial Law, Iranian Law, Contract, Iraqi Law.*

How to cite this article:

Abu AlHail, S. F., Radan Jabali, A., Zia, H., & Pourkhaqan Shahrezaee, Z. (2025). The Mechanism of Contract Termination in the 1980 Convention on International Sale of Goods and Its Comparison with Contract Termination in Iranian and Iraqi Law. *Interdisciplinary Studies in Society, Law, and Politics, 4*(4), 1-8. https://doi.org/10.61838/kman.isslp.4.4.9

1. Introduction

The 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG) emphasizes the commitment of contracting parties to the provisions of the contract and the obligations arising from it, treating contract termination as an exceptional measure. The Vienna Convention recognizes contract termination as one of the remedies for breaches of obligations by the seller or buyer, particularly as outlined in Articles 49 and 64. The first paragraph of both articles designates *fundamental breach* as a primary ground for termination. Additionally, in cases where the breach is not fundamental, the right to terminate is granted if an additional period is given to the obligated party to perform, and they fail to do so.

According to Article 49 of the CISG, the buyer may terminate the contract under the following conditions: if the seller's failure to perform any of their obligations under the contract or the CISG constitutes a *fundamental breach* of contract; or if, in the case of non-delivery, the seller fails to deliver the goods within an additional period determined by the buyer under Article 47(1), or declares that they will not deliver within that period. Under the CISG, termination must be exercised by the party entitled to terminate, but its execution requires only a simple notice to be sent to the obligated party, informing them of the terminating party's intent.

Under Iranian law, following the principles of *Imamiyyah* jurisprudence, the *principle of contract necessity* is explicitly recognized, particularly in Article 219 of the Civil Code. One of the exceptions to this principle is contract termination, which is addressed under the concept of *Khiyar* (contractual options), with the Civil Code outlining its instances and legal rulings. Additionally, certain articles, such as Articles 286, 287, 288, and 429, refer to the effects of termination. Similarly, in the CISG, termination by the seller and buyer is provided for in Articles 64 and 49, respectively, while Articles 81 to 84 address the effects of termination.

In Iraq, if an economic imbalance arises during contract performance due to exceptional and unforeseeable events, one cannot invoke *defect of will* as a ground for termination. Addressing such an imbalance and mitigating the resulting harm is based on the doctrine of *change of circumstances*. Contracts are generally binding, and termination or modification due to changed circumstances is an exception to the principle of contractual necessity and adherence to contractual obligations. This doctrine assumes the existence of a contract in equilibrium at the time of formation, but an unforeseen event disrupts this balance, causing an economic detriment to one party beyond ordinary levels. Article 146(2) of the Iraqi Civil Code recognizes this doctrine, whereas the Iranian Civil Code remains silent on the matter, and judicial practice rarely rules in favor of termination or modification. In international trade, contracting parties may agree on the governing law or rely on conflict of laws rules in the forum court, which may recognize the doctrine of *change of circumstances*.

2. The Concept of Termination

2.1. The Linguistic Definition of Termination

Several definitions have been proposed for the concept of termination in linguistic terms, including: "to remove someone's right over something, to render a decision void, to break or nullify an agreement, to dismantle or invalidate a contract, to weaken or destroy an obligation" (Arouji, 2016, p. 26). Prominent Islamic jurists have also stated that *Khiyar* (contractual options) refer to a party's authority over contract termination. This authority may stem from legal and religious provisions—such as most *Khiyarat* (contractual options)—or may be derived from mutual agreement, such as *Khiyar al-Shart* (option by stipulation). Although many scholars define contract termination with slight variations, these definitions often focus only on the effects of termination rather than its origin and legal basis.

Contract termination entails ending the legal existence of a contract and dissolving the contractual relationship. However, a proper definition should also incorporate the legal grounds and rationale behind the right to terminate. A more comprehensive definition is as follows: contract termination refers to a right—primarily financial in nature—granted by law or agreed upon by the parties within a contract to prevent loss or mitigate regret. This right enables one or both contracting parties or a third party to unilaterally dissolve the contract and terminate its legal existence (Arya-Doost, 2015, p. 14). Thus, termination may be defined as an *option* conferred by legislators or contracting parties to allow the entitled party to avoid potential harm through its execution.

2.2. *The Legal Definition of Termination*

The legal concept of contract termination refers to the dissolution, annulment, or cancellation of a contract. In other words, it grants a party the right to revoke a contract under certain conditions. This right may be statutory or contractual (Hassanpour, 2019). In contract law, termination is one of the remedies available for mitigating losses arising from contractual agreements. It allows a party to annul a contract in cases where specific legal or contractual grounds exist.

Termination is categorized into two types: statutory termination and contractual termination. Statutory termination refers to situations where the law explicitly grants the injured party the right to dissolve the contract. For instance, under Iranian law, if a person purchases a defective vehicle without knowledge of the defect and later discovers it, they may terminate the contract under the doctrine of *Khiyar al-Ayb* (option for defect). In contrast, contractual termination arises when the right to terminate is expressly stipulated in the contract. For example, a buyer may have the right to terminate a contract within one month of execution.

Termination is a mechanism for mitigating loss. Its primary function is to provide an alternative remedy in situations where compelling the non-performing party to fulfill their obligations is impractical. Rather than enforcing performance, the contract may be dissolved (Haji Gholam Sarizdi, 2020). In legal terminology, the right to terminate is also referred to as *Khiyar al-Faskh* (option for termination) or *Shart al-Faskh* (stipulated right of termination).

Termination is a widely recognized concept among contracting parties, as it provides a legal basis for dissolving contracts. It allows either party to terminate a contract under specified conditions. The method of drafting and executing a termination clause follows specific legal principles that must be adhered to by contracting parties.

3. Conditions for Contract Termination

3.1. *The Convention on Contracts for the International Sale of Goods (CISG)*

Domestic laws of various countries typically do not explicitly define the doctrine of *fundamental breach* in their legal provisions. Examples include the Civil Codes of Iran and Iraq, which do not provide a direct definition. However, many situations that give rise to the right to terminate a contract under these legal systems closely align with what would be considered a *fundamental breach* under international law. Some scholars have pointed out that the origins of *fundamental breach* can be traced back to the 1964 Hague Convention on the International Sale of Goods (Muhasnah, 2020).

The 1980 Vienna Convention (CISG) explicitly addresses *fundamental breach*, and this concept is clearly reflected throughout the convention. Specifically, Article 25 of the CISG defines *fundamental breach* as a breach of contract by one party that results in such substantial detriment to the other party that it deprives them of what they were entitled to expect under the contract, unless the breaching party did not foresee, and a reasonable person in the same circumstances would not have foreseen, such a result. One of the main consequences of a *fundamental breach* under the CISG is the right to terminate the contract. In general, a party is entitled to terminate a contract only if a *fundamental breach* has occurred (Ajil, 2016).

An exception to this rule is the failure to deliver goods, which grants the right to terminate even without a *fundamental breach*. Article 49(1) of the CISG provides that a buyer may terminate the contract in cases where: (a) the seller's failure to perform any of their obligations under the contract or the convention constitutes a *fundamental breach*. Although *fundamental breach* is defined in Article 25 of the CISG, its interpretation remains ambiguous. Most scholars recommend that, in accordance with Article 6 of the CISG, the contracting parties explicitly agree on which breaches will be considered *fundamental* or specify them in detail under Article 49(1)(a).

For a breach to qualify as *fundamental*, certain conditions must be met. The CISG insists on the fulfillment of these conditions for a breach to be deemed *fundamental*. The essential conditions for a *fundamental breach*, as derived from Article 25 of the CISG, are: (1) the occurrence of a breach concerning the contract, (2) the breach being substantial in its impact, and (3) the foreseeability of the damage resulting from the breach.

Regarding the occurrence of a breach, this condition requires that the seller disrupts the performance of their contractual obligations. This disruption may take the form of complete non-performance, partial performance, or defective performance that does not conform to the

agreed contract terms. A breach is realized when the seller fails to perform what they were obligated to do, preventing the other party from receiving what they were entitled to under the contract. This could occur when the seller delivers a quantity of goods that is less than the agreed amount, delivers the goods after the agreed timeframe, or supplies goods that do not conform to the agreed specifications (Coyle, 2017). The requirement of a breach occurring is an essential element for establishing a *fundamental breach*, in addition to the breach having a significant effect.

Regarding the substantial impact of the breach, not every breach qualifies as *fundamental*; only breaches that cause significant harm to the other party are considered. This means that the damage must be severe enough to deprive the aggrieved party of a fundamental benefit they expected from the contract. The assessment is not based solely on the magnitude of the breach but rather on whether the aggrieved party is deprived of the core benefit they sought when entering into the contract (Karimi Aflak, 2019). Some breaches, such as minor delays in delivery, may not constitute *fundamental breaches* if they do not cause substantial harm. However, if the delay occurs in a time-sensitive transaction, such as the delivery of goods for an exhibition or market event with a short duration, the delay may be considered *fundamental* as it renders the goods useless for their intended purpose. Similarly, if the delivered goods differ significantly in quality or characteristics from those agreed upon, or if the delivery occurs long after the agreed period, the seller's failure may amount to a *fundamental breach*. However, if the seller's breach does not cause harm to the buyer, the provisions of *fundamental breach* do not apply.

For example, if a seller delays the delivery of goods that were contracted for, but during the delay, the price of those goods increases, the delay may actually benefit the buyer financially rather than causing harm. In such cases, while the delay may constitute a breach, it would not be deemed *fundamental* as the buyer does not suffer a loss but instead gains an unforeseen profit (Dahl, 2012, p. 69). Thus, even if a delay is a breach of contract, it does not necessarily constitute a *fundamental breach* unless it causes actual harm to the buyer.

Regarding the foreseeability of harm, this condition requires that the breaching party (seller) must have been able to anticipate the resulting damage, just as any reasonable person in similar circumstances would have foreseen it. The standard of foreseeability is objective, meaning that the expectation of harm is assessed based on the viewpoint of a reasonable person, not the subjective knowledge of the breaching party. Determining whether the breach was *fundamental* involves assessing whether the resulting harm was foreseeable at the time of contract formation rather than at the time of the breach (Karibi-Botoye et al., 2021).

If a reasonable person in similar circumstances could have foreseen the damage, then the breach may be considered *fundamental*. However, if the breaching party can prove that they could not have reasonably foreseen the consequences, nor could any other reasonable person in their position, then the breach may not be deemed *fundamental* (Johnson, 2011). The foreseeability of damage is assessed at the time of contract formation, not at the time of the breach. This principle aligns with Article 74 of the CISG, which limits contractual liability to losses that were foreseeable at the time of contract conclusion. This approach is also consistent with Iraqi law, where liability for damages is restricted unless the breach involves fraud or gross fault, in which case both foreseeable and unforeseeable damages may be considered.

3.2. The Iranian Legal System

There is always a possibility that either party to a contract may breach its terms. If the likelihood of such a breach is minimal and within reasonable expectations, it is legally insignificant. However, if this likelihood increases and there are indications that a breach may occur in the future, the legal system cannot remain indifferent (Katouzian, 2017, p. 305). If the probability of a breach reaches the level of *dominant suspicion*, it may justify the right of *Khiyar* (contractual option). However, if the circumstances do not clearly indicate that the obligor will fail to adhere to their future contractual obligations, or if the obligee cannot prove with certainty that a breach will occur before its due date, the mere likelihood of a future breach is insufficient grounds for contract termination. Nevertheless, given the potential risk of harm to the other party, the suspension of reciprocal obligations and the demand for appropriate guarantees are recognized as preventive measures.

The concept of *anticipatory breach of contract* is not explicitly recognized in the general principles of contract

law in Iran, nor does it have a specific legal remedy. Instead, contractual remedies are available only after the contract has been breached, and these remedies are proportionate to the nature of the breach (Khodabakhshi, 2017). Article 221 of the Iranian Civil Code provides that if a person undertakes an obligation to perform an act or refrain from an act, they are liable for damages if they fail to fulfill their commitment. Article 226 further states: "In cases where one of the contracting parties fails to perform their obligation, the other party cannot claim damages unless a specific deadline for performance has been stipulated and has expired. If no such deadline is provided, the obligee can only claim damages if they had the discretion to determine the time of performance and can prove that they demanded fulfillment of the obligation."

The Iranian legal literature indicates that following the ratification of the United Nations Convention on Contracts for the International Sale of Goods (CISG), which recognizes *anticipatory breach of contract*, this concept has gained attention among international commercial law scholars. Comparative studies have since emerged, with some researchers attempting to establish a legal basis for *Khiyar* (contractual option) due to anticipated breach within Iranian law. Their objective is to enable a party who can demonstrate an impending breach by the counterparty to terminate the contract and prevent or mitigate potential losses. Under the doctrine of *anticipatory breach*, a reasonable person can foresee that one of the parties will violate the contract in the future (Kiai, 2017).

In such cases, merely waiting for the breach to occur and then seeking damages is impractical. Therefore, recognizing the right to terminate the contract can provide some level of protection for the contracting party. However, when the likelihood of a breach is merely speculative and lacks sufficient evidence, the appropriate course of action is unclear. In such instances, allowing the obligee to terminate or suspend the contract may be undesirable, yet expecting them to continue performing the contract while awaiting an expected loss is equally unreasonable (Mohaghegh Damad, 2016).

The Iranian Civil Code does not explicitly provide a legal remedy for *anticipatory breach of contract*. However, the Iranian Commercial Code and its amendments contain provisions addressing situations where there is reasonable suspicion that one party may breach the contract. In such cases, the legislator has introduced specific legal measures. The distinction between civil and commercial law in this context arises from the inherently conditional nature of commercial contracts. Unlike non-commercial transactions, which are typically settled in cash, commercial transactions involve high economic value and frequent dealings, making it impractical for merchants to fulfill their obligations immediately (Kheiri Jabar et al., 2018).

In commercial transactions, goods are often purchased on credit, and payments are made from the proceeds of subsequent sales. If a large volume of goods is sold, immediate delivery is not always feasible. In some cases, the seller produces or procures the goods before shipping them to the buyer. Consequently, situations involving the possibility of future contractual breaches are more prevalent in commercial contracts than in non-commercial ones.

3.3. The Iraqi Legal System

The Vienna Convention does not adopt a specific standard when defining *breach*; however, when addressing the issue of damages, it adheres to the *contract formation date* as the point of reference. This is explicitly stated in Article 74 of the CISG, which provides that "damages for a breach of contract by one of the parties consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach, but shall not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in light of the facts and matters of which they were then aware or ought to have been aware" (Farhoumand, 2018).

The Iraqi Civil Code also adopts the *contract formation date* as the relevant point for assessing foreseeable damage. Article 169(3) of the Iraqi Civil Code states that if the seller does not engage in fraud or gross fault, the damages awarded should not exceed what was reasonably foreseeable at the time of contract formation. This means that the compensation granted should not surpass the actual damage suffered or the loss of expected profit that was reasonably predictable at the time of contract formation.

4. Conclusion

The expansion and development of commercial relations in recent years have necessitated the enactment of new regulations or revisions to existing ones to meet the needs of commercial actors. This clearly demonstrates that past regulations cannot adequately address the demands of today's society and must be replaced with updated legal provisions. In 1930, efforts to unify the law governing international sales began under the supervision of the International Institute for the Unification of Private Law (UNIDROIT). However, these efforts were interrupted by World War II and were resumed in 1951. The project was later discussed at an international conference held in The Hague from April 1 to April 15, 1964. This conference resulted in the adoption of two conventions, collectively known as the 1964 Hague Conventions: one concerning the obligations of the seller and buyer (i.e., the effects of the sale) and the other addressing the formation of contracts of sale.

Regarding the Convention on Contracts for the International Sale of Goods (CISG), this international instrument has not found a substantial place in Iranian law. Its primary function remains within international commercial contracts, as it is not applied to large-scale domestic trade. Nonetheless, the legal systems of both Iran and Iraq have achieved a reasonable degree of compatibility with the CISG, and legislators in both countries have attempted to align their legal interpretations of international commercial contracts with this convention. This effort has been more pronounced in Iraq due to its accession to the CISG, whereas the Iranian legislator has paid relatively less attention to it.

As has been repeatedly stated, one of the legal remedies for breaches of contractual obligations is the termination of the contract. However, there are differences among various legal systems regarding the conditions for contract termination, the manner of its execution, and its consequences. One of the critical issues in this regard is the effect of termination. The CISG does not seek to standardize the domestic laws of its member states. However, given that Article 9 of the Iranian Civil Code states that international treaties ratified in accordance with the Constitution have the force of law, and given the requirement for legal conformity with Islamic principles under Article 4 of the Constitution, assessing Iran's potential accession to the CISG is essential.

The 1980 Vienna CISG represents an effort to harmonize the legal rules governing international sales. Iran's accession to the CISG could facilitate the expansion of foreign trade and contribute to the country's economic growth. However, such accession faces both domestic and international obstacles. Domestic challenges include constitutional limitations, the absence of comprehensive legislative plans and policies, and conflicts between certain CISG provisions and Iranian domestic law. International challenges include opposition from global powers through economic sanctions and the weakness of Iran's economic diplomacy. Nevertheless, none of these obstacles pose a fundamental challenge to Iran's accession to the CISG. The primary hindrance has been the lack of political will among policymakers, despite the extensive efforts of Iranian legal scholars in recent years to reconcile CISG provisions with Iranian law.

In conclusion, contract termination due to *gross disparity* (*Ghabn Hadith*) or a breach of the *implicit common intent* that aimed to maintain contractual balance during execution, as well as contract modification by judicial order, are remedies recognized in domestic legal systems and are also applicable in international trade. This study, conducted through a descriptive-analytical and comparative method, has examined the legal systems of Iran and Iraq in this regard. Article 146(2) of the Iraqi Civil Code recognizes the doctrine of changed circumstances, whereas the Iranian Civil Code remains silent on the matter, and Iranian judicial practice rarely rules in favor of termination or contract modification.

In international trade, parties may agree on the governing law or rely on conflict of laws principles in the forum court, which may apply the law of a country that recognizes the doctrine of changed circumstances. If Iranian law governs an international commercial contract, the judge may invoke the principles of *hardship* (*Osr wa Haraj*) and *no harm* (*La Zarar*) to rule on the termination of a contract whose equilibrium has been disrupted.

It is also essential to note a fundamental difference between Iranian law on one hand and Iraqi law and the CISG on the other, which significantly affects the consequences of termination. Specifically, the general rule in Iraqi law is that contract termination has *retroactive effect*, meaning that the contract loses its

validity from the outset. In contrast, under Iranian law, termination only dissolves the contract from the date of termination. This distinction creates significant differences between Iranian and Iraqi legal systems.

Under the CISG, some provisions, such as Article 84, which requires the buyer to return the benefits derived from the purchase price during the period it was in their possession, suggest that termination has *retroactive effect*. Given that both Iraqi law and the CISG recognize retroactive termination, whereas Iranian law does not, it is natural that differences in the effects of termination are observed. In Iraq, retroactive termination means that any legal actions taken by one of the parties concerning the contract's subject matter between its conclusion and its termination are rendered null, including third-party rights. However, the principle of *good faith* creates exceptions, preserving third-party rights in transactions made in good faith. The Iraqi legal system has carved out exceptions to protect such third parties.

In contrast, under Iranian law, since termination does not have retroactive effect, it does not affect legal acts performed by one of the parties concerning the contract's subject matter between its conclusion and its termination. Consequently, termination does not invalidate third-party rights established during that period. This means that the idea of *prospective termination* aligns better with the stability of transactions and the protection of third-party rights. Thus, the Iranian legislator's position on the effects of termination appears more pragmatic compared to both Iraqi law and the CISG.

Based on this analysis, it is recommended that Iraqi legislators, contract drafters, and enforcement authorities consider adopting a general rule in which contract termination only takes effect prospectively, similar to Iranian law. Finally, given Iraq's accession to the CISG and Iran's non-accession, it is proposed that the legislators of both countries collaborate to develop and ratify a comprehensive legal framework for international trade between the two countries. This framework should be based on the jurisdiction of civil courts in both nations, incorporate the provisions of the CISG, and be aligned with the civil and commercial laws of both countries.

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.

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