



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

---

**Principles of International Commercial Contracts**  
**Working Group on Long-Term Contracts**

**Second session**  
**Hamburg, 26 – 29 October 2015**

UNIDROIT 2016  
Study L – Doc. 134 rev.  
English only  
January 2016

**Restitution after ending contracts entered into for an indefinite period <sup>(\*)</sup>**

(Draft prepared by Professor Reinhard Zimmermann)

---

(\*) Cf. Study L – Doc. 127, Issue (g).

## ARTICLE 5.1.8

*(~~Contract~~Termination of a contract for an indefinite period)*

A contract for an indefinite period may be ~~ended~~**terminated** by either party by giving notice a reasonable time in advance. **As to the effects of termination in general, and as to restitution, the provisions in Articles 7.3.5 and 7.3.7 apply.**

### COMMENT

#### 1. Contract for an indefinite period

The duration of a contract is often specified by an express provision, or it may be determined from the nature and purpose of the contract (e.g. technical expertise provided in order to assist in performing specialised work). However, there are cases when the duration is neither determined nor determinable. Parties can also stipulate that their contract is concluded for an indefinite period.

~~This~~The Article provides that in such cases either party may ~~end~~**terminate** the contractual relationship by giving notice a reasonable time in advance. What a reasonable time in advance will be will depend on circumstances such as the period of time the parties have been cooperating, the importance of their relative investments in the relationship, the time needed to find new partners, etc.

The rule can be understood as a gap-filling provision in cases where parties have failed to specify the duration of their contract. More generally, it also relates to the widely recognised principle that contracts may not bind the parties eternally and that they may always opt out of such contracts provided they give notice a reasonable time in advance.

This situation is to be distinguished from the case of hardship which is covered by Articles 6.2.1 to 6.2.3. Hardship requires a fundamental change of the equilibrium of the contract, and gives rise, at least in the first instance, to renegotiations. The rule in this Article requires no special condition to be met, except that the duration of the contract be indefinite and that it permit unilateral cancellation.

#### Illustration

1. A agrees to distribute B's products in country X. The contract is concluded for an indefinite period. Either party may ~~cancel this arrangement unilaterally, provided that it gives~~**terminate the contract by giving** the other party notice a reasonable time in advance.

#### 2. Termination and its consequences

The effects of termination in general are those set out in Article 7.3.5. Both parties are released from their obligation to render and to receive future performance.

The fact that, by virtue of termination, the contract is brought to an end does not deprive a party to the contract of its right to claim damages for any non-performance.

#### Illustration

2. The facts are the same as in Illustration 1. After the contract has been in operation for five years, B gives notice of termination. It is subsequently determined that, for a period of six months during the year before B had given notice of termination, A failed to discharge its obligations under the contract. As a result, B suffered a loss of income. Notwithstanding the termination, B may claim damages under the rules set out in Chapter 7, Section 4.

Termination also does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination (see Comments 3 and 4 on Article 7.3.5).

Performance of a contract for an indefinite period might have been made over a long period of time before the contract is terminated, and it may thus be inconvenient to unravel such performance. Furthermore, termination is a remedy with prospective effect only. Restitution can, therefore, be claimed only in respect of the period after termination. This is set out in Article 7.3.7(1), with the consequence that, as far as restitution has to be made, the provisions of Article 7.3.6 apply as set out in Article 7.3.7(2).