The German scholar Ihering, in a famous article published in 1861, introduced the doctrine of culpa in contrahendo, anchored in the notion of good faith. The doctrine of liability for "fault in negotiating" has been received in various guises from Paris to Buenos Aires.

Rabel's summary is useful advice in guiding international negotiating:

"The doctrine [of culpa in contrahendo] is above all a liability for negligently incorrect communications, or negligent failure to communicate during contractual negotiations."

[Subsequently set out in detail.]


7 Culpa in contrahendo doctrine has profoundly affected Austrian and Swiss law. French courts and doctrine refer to "abus de droit". Ostheim has most recently brought up to date the leading German and Austrian decisions, Ostheim, Zur Haftung für culpa in contrahendo bei grundloser Ablehnung des Vertragsabschlusses, Jurisprudenzliche Blätter 1980, 522; Câm. Civ. Capital (2a inst.) Aug. 30, 1960, Jur. Arg. 1965, IV, 301 ("arbitrary" breaking off of negotiations is culpa in contrahendo).


Referring Principles:

IV.8.1 - Principle of pre-contractual liability