

OPEN PEER REVIEW

Actions of the Injured Party in Mitigating Damages in the Practice of International Investment Arbitration

Mohammad. Rahimi¹ Behnam. Ensafi Azar^{2*} Mustafa. Mandegar² Mahsa. Hosseini Moghadam²

¹ PhD student, Department of Private Law, Shiraz Branch, Islamic Azad University, Shiraz, Iran

² Assistant Professor, Department of Law, Shiraz Branch, Islamic Azad University, Shiraz, Iran

* Corresponding author email address: ensafy@gmail.com

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EDITOR:

Tahereh Ebrahimifar^{id}

Head of Sociology Department, Faculty of Arts, Helwan University, Cairo, Egypt. Email: Tah.Ebrahimifar@iauctb.ac.ir

REVIEWER 1:

Muhammad Abdul Rahman^{id}

Department of Humanities, Rajaratnam School of International Studies, Nanyang Technological University, Singapore. Email: muhammadrahman@ntu.edu.sg

REVIEWER 2:

Zeynep Karal^{id}

Department of Computer and Instructional Technologies Education, Trabzon University, Trabzon, Türkiye. Email: zeynepkaral@trabzon.edu.tr

1. Round 1

1.1. Reviewer 1

Reviewer:

You write, "Nonetheless, damages and their compensation are inseparable aspects of legal disputes..." — this generalization would be stronger if you cited a major case or authoritative source to ground the claim.

The phrase "guided by economic foresight" in "all guided by economic foresight" is vague. Please provide a clearer explanation or an example of what constitutes "economic foresight" in this context.

The definition of mitigation is mostly based on Treitel but lacks direct quotation or pinpoint reference. Please add a full quotation or page number for "Treitel, Law of Contract" to strengthen academic rigor.

The sentence "The injured party may choose to claim compensation, waive it, or abandon the legal process in exchange for partial compensation" needs legal or doctrinal support (such as examples from ICSID cases or civil codes).

The reference to "Article 8(1) of the UNCITRAL Model Law" is good, but its connection to damage mitigation is not clearly explained. Please elaborate: how exactly does referral to arbitration under UNCITRAL relate to the injured party's obligation to mitigate?

You state, "economic interests form a significant foundation for this principle" (damage mitigation). It would strengthen your analysis to add a concrete example from UNIDROIT Principles or ICSID case law demonstrating this.

When referring to the 2001 Paris Court of Appeal ruling, please specify the case name and docket number if possible. It would also help to briefly explain how "bad faith" directly relates to failure to mitigate.

The sentence "Moral damages primarily relate to domestic legal systems..." is somewhat sweeping. Some international arbitral awards do recognize moral damages (e.g., *Desert Line v. Yemen*). Please acknowledge this nuance.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

You mention that "damage mitigation has never been addressed in Iranian domestic law." This important claim needs a reference to Iranian civil law texts or scholarly works to substantiate it.

The description of Piri et al.'s work seems slightly unrelated to your main research question. Please explain more directly how their findings on "necessity" defenses relate to injured party actions in mitigation.

In mentioning "the contributory negligence rule," you introduce an important comparative concept. However, it would improve the article if you briefly differentiated between contributory negligence and mitigation of damages here, since they are not identical.

You assert, "some legal scholars do not differentiate between mitigation of damages and contributory negligence." Please cite specific scholars or cases who make this argument to support the claim.

When discussing the *Lusitania* case, it would be helpful to include the exact legal standard the Commission used to justify awarding compensation for moral damages.

The sentence "Faced with two options—returning the shipment or accepting a reduced price—the buyer chose the latter" is clear. However, it would strengthen your argument to explicitly link this case outcome to the broader duty to mitigate under the CISG.

You say, "negotiation can serve as an effective solution." Could you provide an ICSID or UNCITRAL case where negotiation was successfully used as a mitigation strategy, to illustrate this better?

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.

Editor in Chief's decision: Accepted.