OPEN PEER REVIEW

The Role of Renegotiation in Commercial Disputes under Iranian and Iraqi Law

Hossein. Mahmoudi[1*], Leila. Javanmard[1], Mohammad. Hatam Hatef Al-Khafaji[2]

[1] Assistant Professor, Department of Law, Lorestan University, Khorramabad, Iran
[2] Master's Student, Department of Law, Lorestan University, Khorramabad, Iran

*** Corresponding author email address**: Mahmoodi.h@lu.ac.ir

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EDITOR:
Ghasem Eftekhari
Associate Professor, Department of Political Science, University of Tehran, Tehran, Iran. Email: eftekhari@ut.ac.ir
REVIEWER 1:
Mohammadbagher. Jafari
Department of Sociology of Culture, Istanbul, Türkiye. Email: mbjafari@kmanresce.ca
REVIEWER 2:
Vanessa Indama
Public Administration Department, Basilan State College, Isabela City, Basilan, Philippines. Email: vanesindama@gmail.com

1. Round 1

1.1. Reviewer 1

Reviewer:

The Introduction asserts that "The role of renegotiation becomes particularly significant when a commercial disagreement has already begun to develop." This sentence risks narrowing renegotiation unnecessarily to situations involving an existing disagreement. One of the strongest characteristics of renegotiation clauses is their preventive function: they may be activated before any legal dispute arises, merely because a triggering change has altered the economic basis of performance. The authors should reformulate this discussion to distinguish preventive renegotiation from dispute-oriented renegotiation. Doing so would strengthen the article's title and thesis, because the "role" of renegotiation in commercial disputes includes both preventing disputes and resolving them after they arise.

In the paragraph discussing Iranian and Iraqi law, the article states that "both legal systems belong broadly to civil-law traditions in which contractual obligation, party autonomy, and legally recognized methods of settlement have major importance." This comparative characterization is too general and should be replaced with a more legally specific foundation. The authors should identify the principal domestic legal doctrines supporting renegotiation in each jurisdiction and explain whether the relevant rules arise from civil codes, contractual freedom, binding force of contracts, exceptional circumstances, or dispute-settlement provisions. A comparative legal article should not rely primarily on broad legal-family classification where more precise doctrinal comparison is possible.

In the third section, the sentence "The legal position of renegotiation in Iranian and Iraqi law is characterized by an important common feature: neither legal system has developed a fully independent and comprehensive statutory regime" is central to the comparative study, but the section that follows remains disproportionately conceptual. The authors should provide more direct, article-by-article engagement with the relevant provisions of Iranian and Iraqi contract law. The current analysis often infers legal consequences from general principles without identifying the precise statutory provisions or authoritative doctrinal rules

from which those consequences arise. A comparative legal article of this nature should demonstrate the legal pathway from domestic sources to the proposed recognition of renegotiation.

The paragraph on Iranian law states that "The Iranian legal approach can therefore recognize the clause without abandoning the broader principle that contracts must be respected." This conclusion requires a more precise discussion of the relationship between freedom of contract and the principle of binding force. The authors should identify whether a renegotiation clause is treated as a condition, ancillary obligation, procedural covenant, or independent contractual undertaking under Iranian law. The classification matters because it affects enforcement, damages, termination rights, and whether non-compliance can prevent recourse to litigation or arbitration. The present formulation establishes validity but does not sufficiently analyze legal characterization.

The discussion of Iraqi law states that "The general structure of Iraqi contract law permits parties to define their obligations through agreement, subject to mandatory limitations." This is too general for a comparative analysis. The Iraqi section should engage specifically with the doctrine of exceptional circumstances and explain its relationship with consensual renegotiation. The authors should determine whether contractual renegotiation operates independently from judicial adjustment under Iraqi law, supplements it, or can affect the conditions for judicial intervention. This is a particularly important comparative point because Iraqi law may provide a more explicit doctrinal basis for responding to exceptional circumstances than the Iranian system, and this potential difference should be explored rather than subsumed under a general statement of similarity.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The final paragraph of the Introduction states that "The central argument is that both Iranian and Iraqi law possess sufficient contractual foundations for recognizing renegotiation clauses." This constitutes the article's main thesis, but the methodological pathway for proving it is not sufficiently developed. The authors should specify the criteria by which "sufficient contractual foundations" are evaluated. For example, the analysis could assess validity of the clause, enforceability of the duty to negotiate, procedural consequences of non-compliance, availability of damages, effects on adjudication, and the possibility of adaptation after failed negotiations. Establishing these analytical criteria at the outset would make the comparative conclusions more demonstrably derived from the analysis rather than asserted.

In the second section, the sentence "Renegotiation is best understood as a process through which parties to an existing contract reconsider one or more elements of their contractual relationship after circumstances affecting performance have changed" provides a useful working definition but is too broad. Under this formulation, voluntary commercial discussions following even minor changes could qualify as legal renegotiation. The authors should refine the definition to incorporate the elements that distinguish legally significant renegotiation: an existing contract, a material subsequent change, a contractual or legal basis for reopening discussions, and an objective of preserving or adapting the contractual relationship. A precise definition is especially important because several later conclusions about enforceability depend on the concept adopted here.

The discussion stating that "The contractual renegotiation clause differs from a simple agreement to discuss future matters because it is ordinarily linked to defined circumstances that materially affect the contract" should provide a more systematic account of triggering conditions. The article should analyze at least materiality, unforeseeability, externality, absence of assumption of risk, causal connection, and excessive burden. At present, these elements appear at different points in the manuscript but are not organized into a coherent legal test. A clearly articulated set of cumulative or alternative triggering criteria would substantially improve doctrinal precision and would also facilitate the later comparison of Iranian and Iraqi law.

In the paragraph beginning "The idea of contractual equilibrium does not imply that every contract must remain economically equal in a mathematical sense," the article correctly rejects simplistic economic equality, but the concept of "contractual equilibrium" remains insufficiently defined. The authors should clarify whether equilibrium refers to equivalence of prestations, preservation of the contractual economic ratio, maintenance of the original risk allocation, or protection against excessive onerousness. This is particularly important because "restoration of contractual equilibrium" is repeatedly presented

as the purpose of renegotiation. Without defining what constitutes the relevant equilibrium, the concept risks becoming conclusory rather than analytically useful.

The paragraph distinguishing hardship from force majeure states that "Force majeure typically concerns an obstacle that prevents performance … whereas hardship or unforeseen circumstances assumes that performance remains possible." Although this distinction is broadly useful, it is presented too categorically. Modern contractual instruments and domestic doctrines may adopt varying thresholds for impossibility, prevention, excessive burden, and temporary impediment. The authors should acknowledge that the boundary between force majeure and hardship depends on the governing law and contractual wording. More importantly, the article should explain the legal consequence of misclassification in Iranian and Iraqi law, because the practical significance of the distinction lies in whether the contract is suspended, terminated, adjusted, or renegotiated.

The statement that "The most persuasive approach treats the obligation ordinarily as an obligation of conduct rather than an obligation to produce a particular result" is one of the article's most important doctrinal claims, but it requires deeper analytical support. The authors should explain the criteria used to classify the obligation as one of means rather than result and should separately consider whether parties can expressly create a stronger obligation, such as a duty to achieve adaptation through a defined mechanism. The article should also discuss the evidentiary consequences of this classification: what must a claimant prove to demonstrate breach of an obligation to negotiate seriously? Greater precision here would significantly strengthen the discussion of liability and remedies.

In the paragraph addressing good faith, the article states that a party may breach its obligation by "refus[ing] to provide information indispensable for assessing the changed circumstances, repeatedly delay[ing] meetings, submit[ting] manifestly unrealistic proposals, [or] insist[ing] that no adjustment is conceivable." These examples are valuable, but the manuscript should convert them into a more coherent standard for assessing good-faith renegotiation. The authors should distinguish objective procedural duties, such as attendance and timely response, from subjective or evaluative conduct, such as seriousness of proposals. Otherwise, courts and arbitral tribunals would face difficulty determining when aggressive bargaining becomes bad faith. The article would benefit from proposing measurable indicators of compliance.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.