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**FORCE MAJEURE AND
HARDSHIP UNDER GENERAL
CONTRACT PRINCIPLES**

EXEMPTION FOR NON-PERFORMANCE
IN INTERNATIONAL ARBITRATION

BY CHRISTOPH BRUNNER



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Christoph Brunner

Berne
September 2008

List of Abbreviations

1978 Draft	1978 Draft Convention on Contracts for the International Sale of Goods approved by the United Nations Commission on International Trade (on which the Secretariat Commentary was prepared), IX YB 11 ff., 14-21 (1978), Pace Database
A.	Atlantic Reporter
AC	Advisory Council
A.C.	Appeal Cases
A.D.	New York Supreme Court Appellate Division Reports
AAA	American Arbitration Association
AAA Rules	International Arbitration Rules of the American Arbitration Association
ABGB	Allgemeines Bürgerliches Gesetzbuch (Austrian Civil Code)
<i>AcP</i>	<i>Archiv für die civilistische Praxis</i>
<i>AJIL</i>	<i>American Journal of International Law</i>
AJP	Aktuelle Juristische Praxis
Alaska	Alaska Supreme Court
ALI	American Law Institute
All E.R.	All England Reports
<i>Am. J. Comp. L.</i>	<i>American Journal of Comparative Law</i>
<i>Am. Rev. Int'l Arb.</i>	<i>American Review of International Arbitration</i>
App. Div.	Appellate Division Reports
<i>Arb. Int.</i>	<i>Arbitration International</i> (London Court of International Arbitration, LCIA)
Art.	Article
Arts	Articles

ASA	Association Suisse de l'Arbitrage (Swiss Arbitration Association)
ASA Bull.	<i>Bulletin of the Swiss Arbitration Association</i>
ATF	Arrêts du Tribunal fédéral (decisions of the Swiss Federal Tribunal, official reporter)
AWD	Aussenwirtschaftsdienst (former name of the journal 'Recht der Internationalen Wirtschaft')
BB	Der Betriebs-Berater
BBl.	Bundesblatt – Swiss Law Gazette
Bd.	Band – Volume
BGB	Bürgerliches Gesetzbuch (German Civil Code), as amended by the Act to Modernise the Law of Obligations (<i>Schuldrechtsmodernisierungsgesetz</i>) which entered into force on 1 January 2002
BGBI.	Bundesgesetzblatt (German Law Gazette)
BGE	Entscheidungen des Bundesgerichts (decisions of the Swiss Federal Tribunal, official reporter)
BGH	Bundesgerichtshof – German Federal Supreme Court
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen (decisions of the German Federal Court in civil law matters)
BIT	Bilateral Investment Treaty
BJM	<i>Basler Juristische Mitteilungen</i>
Build. L.R.	Building Law Reports
Bull.	Bulletin
C.L.R.	Commonwealth Law Reports
C.T.R.	Iran – United States Claims Tribunal Reports
Cal.	California
Cal. App. 2d	California Appellate Reports, Second Series
Cal. Rptr.	California Reporter
Cass. civ. 1re	Cour de cassation, Première chambre civile
CC	Code civil suisse (Swiss Civil Code)
CCit	Italian Codice Civile
CENTRAL	Center for Transnational Law
Cf.	compare
CFR	Cost and Freight
Ch.	chapter
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid To
Cir.	U.S. Circuit Court
CISG	United Nations Convention on Contracts for the International Sale of Goods
CISG-online	Database CISG-online.ch, Schwenger, Ingeborg (ed.), Cases, Materials, Legal Texts, < http://www.cisg-online.ch >
Clunet	<i>Journal du Droit International (J.D.I.)</i>

CO	Swiss Code of Obligations (Code des obligations suisse, Schweizerisches Obligationenrecht)
Co.	Company
Code civil	French Civil Code
Collection of ICC Awards	Collection of ICC Arbitral Awards I-IV: Vol. I 1974-1985 (Jarvin/Derains (eds), ICC Publ. No. 433); Vol. II 1986-1990 (Jarvin/Derains/Arnaldez (eds), ICC Publ. No. 514, 1994); Vol. III 1991-1995 (Arnaldez/Derains/Hascher (eds), ICC Publ. No. 553, 1997); Vol. IV 1996-2000 (Arnaldez/Derains/Hascher (eds), ICC Publ. No. 553, 2003)
Colo. App.	Colorado Court of Appeals
<i>Colum. L. Rev.</i>	<i>Columbia Law Review</i>
COM	Working Documents of the European Commission
Concordat	Swiss Intercantonal Concordat on Arbitration
Contract Code	Contract Code Drawn upon on behalf of the English Law Commission
Corp.	Corporation
CPT	Carriage Paid To
Ct. Cl.	Court of Claims
DAF	Delivered At Frontier
D. Del.	District of Delaware
D.C.	District of Columbia
D.C. Cir.	District of Colombia Court of Appeals Cases
D.P.	Dalloz periodique
DB	Der Betrieb
DDP	Delivered Duty Paid
DDU	Delivered Duty Unpaid
DDR	(ehemalige) Deutsche Demokratische Republik (former German Democratic Republic)
Del.	Delaware Supreme Court
DEQ	Delivered Ex Quay
DES	Delivered Ex Ship
Dig.	Digest(s)
DIS	Deutsche Institution für Schiedsgerichtsbarkeit (German Institution for Arbitration)
Diss.	Dissertation (dissertation, doctoral thesis)
Draft Digest 2004	See in the Bibliography under Ferrari/Flechtner/Brand (eds)
E.C.R.	Report of Cases Before the Court of Justice of the European Communities
E.D. La.	Eastern District of Louisiana
E.D. Mo.	Eastern District of Missouri
E.D. Pa.	Eastern District of Pennsylvania
E.D. Va.	Eastern District of Virginia

e.g.	for example
EC	European Community
ECE	United Nations Economic Commission for Europe
ECJ	European Court of Justice
ECJ Rep.	EJC Reporter
ed.	editor
edn	Edition
eds	editors
EEC Treaty	Treaty establishing the European Economic Community
Einl.	Einleitung
<i>EJCL</i>	<i>Electronic Journal of Comparative Law</i> (http://www.ejcl.org/)
Eng.Rep.	English Reports
et al.	and other
et seq.	and following
EU	European Union
EWCA Civ	Court of Appeal (Civil Division) (England & Wales)
EXW	Ex Works
F.	Federal Reporter
F. 2nd, F.2d	Federal Reporter, Second Series
FAS	Free Alongside Ship
FCA	Free Carrier
FOB	Free On Board
F.Supp.	Federal Supplement
F.Supp. 2nd	Federal Supplement, Second Series
ff.	and following
FIDIC	Fédération Internationale des Ingenieurs Conseils (International Federation of Consulting Engineers) (see also FIDIC Standard Forms of Contract)
FIDIC Standard Forms of Contract (or FIDIC Conditions of Contract)	In September 1999, FIDIC published four new standard forms of contract documents (First Editions 1999): (1) The Short Form of Contract, recommended for a small contracts; (2) the Conditions of Contract for Construction, recommended for building or engineering works where most of the design is provided by the Employer; (3) Conditions of Contract for Plant and Design-Build, recommended for the provision of electrical and/or mechanical plant, and for the design and execution of building or engineering works; (4) Conditions of Contract for EPC (“Engineer – Procure – Construct”)/Turnkey Projects, recommended for the provision on a turnkey basis of a process or power plant, of a factory or similar facility, or of an infrastructure project or other type of development
FS	Festschrift (memorial publication, publication in honour of)

Geneva Draft 1976	UNCITRAL Working Group's Draft, 7th Session (Geneva, 5-16 January 1976), VII YB 89-96 (1976)
GmbH	Gesellschaft mit beschränkter Haftung (Public Limited Company)
H.L.	House of Lords
<i>Harv. L. Rev.</i>	<i>Harvard Law Review</i>
<i>Hastings L.J.</i>	<i>Hastings Law Journal</i>
HGB	Handelsgesetzbuch (German Commercial Code)
Hoge Raad	Supreme Court of the Netherlands
I.L.R.	International Law Reports
IBA	International Bar Association
IBA Rules	IBA Rules on the Taking of Evidence in International Commercial Arbitration adopted on 1 June 1999
<i>IBLJ</i>	<i>International Business Law Journal</i>
ICC	International Chamber of Commerce
<i>ICC Bull.</i>	<i>ICC International Court of Arbitration Bulletin</i>
ICC Court	International Court of Arbitration of the International Chamber of Commerce
ICC Publ.	ICC Publications
ICC Rules	Rules of Arbitration of the ICC International Court of Arbitration in force as from 1 January 1998
ICCA	International Council for Commercial Arbitration
ICJ	International Court of Justice
ICJ Rep.	International Court of Justice Reporter
<i>ICLQ</i>	<i>International & Comparative Law Quarterly</i>
ICSID	International Center for the Settlement of Investment Disputes
id.	ibidem (in the same place, see above; reference to the book, chapter, article, or page cited just before)
<i>IECL</i>	<i>International Encyclopaedia of Comparative Law</i>
<i>IJBL</i>	<i>International Business Law Journal</i>
ILA	International Law Association
ILC	International Law Commission
Ill. App.	Illinois Appellate Court Reports
ILM	International Legal Materials
ILR	International Law Report
IMF	International Monetary Fund
Inc.	Incorporated
Incoterms	International Commercial Terms of the ICC (versions of 1936, 1953, 1974, 1980, 1990, 2000) (version of 2000, ICC Publ. No. 560)
<i>Int. Rev. Law & Econ.</i>	<i>International Review of Law and Economics</i>
Int'l	International
<i>Int'l & Comp. L.Q.</i>	<i>The International & Comparative Law Quarterly</i>

<i>Int'l Rev. L. & Econ.</i>	<i>International Review of Law and Economics</i>
<i>IPRax</i>	<i>Praxis des Internationalen Privat- und Verfahrensrechts</i>
<i>J.</i>	<i>Journal</i>
<i>J. Chinese L.</i>	<i>Journal of Chinese Law</i>
<i>J. Legal Stud.</i>	<i>Journal of Legal Studies</i>
<i>J.D.I</i>	<i>Journal du Droit International</i>
<i>J. Int. Arb.</i>	<i>Journal of International Arbitration</i>
<i>J. Int'l L. & Pol.</i>	<i>Journal of International Law and Policy</i>
<i>J.L. & Com.</i>	<i>Journal of Law and Commerce</i>
<i>Jb.J.ZivRWiss.</i>	<i>Jahrbuch Junger Zivilrechtswissenschaftler</i>
<i>JdT</i>	<i>Journal des Tribunaux</i>
<i>JuS</i>	<i>Juristische Schulung</i>
<i>JW</i>	<i>Juristische Wochenschrift</i>
<i>JZ</i>	<i>Juristenzeitung</i>
<i>K.B.</i>	<i>Law Reports, King's Bench</i>
<i>Kan.</i>	<i>Kansas Reports</i>
<i>L.</i>	<i>Law</i>
<i>L.J.K.B.</i>	<i>Law Journal Reports, King's Bench New Series</i>
<i>L.R.</i>	<i>Law Reports</i>
<i>L.R. 2 C.P.</i>	<i>English Law Reports, Common Pleas Cases</i>
<i>L/C</i>	<i>Letter of Credit</i>
<i>La. App.</i>	<i>Louisiana Court of Appeal</i>
<i>LCIA</i>	<i>London Court of International Arbitration</i>
<i>LCIA Rules</i>	<i>Arbitration Rules of the LCIA effective as of 1 January 1998</i>
<i>LG</i>	<i>Landgericht</i>
<i>LIBOR</i>	<i>London Inter Bank Offering Rate</i>
<i>lit.</i>	<i>litera</i>
<i>Ll.L.Rep.</i>	<i>Lloyd's List Law Reports</i>
<i>Lloyd's L. Rep.</i>	<i>Lloyd's Law Report</i>
<i>Lloyd's Rep.</i>	<i>Lloyd's List Law Reports</i>
<i>Ltd.</i>	<i>Limited</i>
<i>Mass.</i>	<i>Massachusetts Reports</i>
<i>Md.</i>	<i>Maryland Reports, Maryland Court of Appeals</i>
<i>MDR</i>	<i>Monatsschrift für Deutsches Recht</i>
<i>Minn.</i>	<i>Minnesota Supreme Court; Minnesota Reports</i>
<i>Minn. App.</i>	<i>Minnesota Court of Appeals</i>
<i>Mo. App.</i>	<i>Missouri Appeal Reports; Missouri Court of Appeals</i>
<i>Mod. L. Rev.</i>	<i>Modern Law Review</i>
<i>n.</i>	<i>Footnote</i>
<i>N.D. Cal.</i>	<i>Northern District of California</i>
<i>N.D.N.Y.</i>	<i>Northern District of New York</i>
<i>N.E.2d</i>	<i>North Eastern Reporter, Second Series</i>
<i>N.W.</i>	<i>North Western Reporter</i>

N.Y.	New York Reports; New York Court of Appeals
N.Y.S.2d	New York Supplement, Second Series
NBW	Nieuw Burgerlijk Wetboek (New Dutch Civil Code)
NCCUSL	National Conference of Commissioners on Uniform Law
NCPC	Nouveau Code de Procédure Civile (New French Civil Procedure Code)
Nev.	Nevada Supreme Court
NJW	<i>Neue Juristische Wochenschrift</i>
NJW-RR	<i>NJW-Rechtsprechungs-Report</i>
No.	number
NY	New York
NY Convention (New York Convention)	New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards
O.R.	Official Records, in United Nations Conference on Contracts for the International Sale of Goods, Vienna 10 March - 11 April 1980, Documents of the Conference and Summary Records of the Plenary Meetings and the Meetings of the Main Committees, New York, United Nations, 1981
OECD	Organisation for Economic Cooperation and Development
OGH	Oberster Gerichtshof (Austrian Federal Supreme Court)
OJ	Official Journal of the European Communities / Union
OLG	Oberlandesgericht (higher regional court in Germany)
OR	Obligationenrecht (Swiss Law of Obligations)
OR AT	Obligationenrecht Allgemeiner Teil
Or.	Oregon Supreme Court
P.	Pacific Reporter
p.	page
P.2d	Pacific Reporter, Second Series
P.C.I.J.	Permanent Court of International Justice
Pa.	Pennsylvania
Pace Database	Pace database on the CISG and International Commercial Law, Pace Law School Institute of International Commercial Law, Kritzer, Albert (ed.), < http://cisgw3.law.pace.edu/ >
<i>Pace Int'l L. Rev.</i>	<i>Pace International Law Review</i>
para.	paragraph
paras	paragraphs
PECL	Principles of European Contract Law
PILS	Swiss Federal Statute on Private International Law of 18 December 1987 (Bundesgesetz über das Internationale Privatrecht)
pp.	pages

Publ.	Publication
Q.B.	Law Reports, Queen's Bench (3rd Series)
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
<i>RDAI</i>	<i>Revue de droit et affaires internationales (International Business Law Journal, IJBL)</i>
<i>recht</i>	<i>recht, Zeitschrift für juristische Ausbildung und Praxis</i>
Rev.	Review or revue
<i>Rev. arb.</i>	<i>Revue de l'arbitrage</i>
<i>Rev. dr. unif.</i>	<i>Revue de droit uniforme (Uniform Law Review)</i>
RG	Reichsgericht (Germany)
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen
<i>RIW</i>	<i>Recht der Internationalen Wirtschaft</i>
Rome Convention	EC Convention on the Law Applicable to Contractual Obligations (Rome 1980)
S. Ct.	Supreme Court Reporter
S.D. Fla.	Southern District of Florida
S.D.N.Y.	Southern District of New York
S.E.	South Eastern Reporter
S.W.	South Western Reporter
SA	Société Anonyme
s.	section
<i>Sem. Jud.</i>	<i>La Semaine Judiciaire</i>
sent.	sentence
<i>SJZ</i>	<i>Schweizerische Juristen-Zeitung</i>
So.2d	Southern Reporter, Second Series
Supp.	Supplement
Swiss Rules	Swiss Rules of International Arbitration in force as of 1 January 2004
<i>SZW</i>	<i>Schweizerische Zeitschrift für Wirtschaftsrecht</i>
TLDB	Transnational Law Digest & Bibliography, developed and operated by the Center for Transnational Law (CENTRAL), University of Cologne, Germany, at < http://www.tldb.net/ >
TLDB DocID	TLDB document identification number (as indicated in the blue bar at the top of each document)
TLDB-Principles	CENTRAL List of lex mercatoria principles, rules and standards, at < http://www.tldb.net/ >
TranspR	Transportrecht
<i>Tul. J. Int'l Comp. L.</i>	<i>Tulane Journal of International & Comparative Law</i>
<i>Tul. L. Rev.</i>	<i>Tulane Law Review</i>
<i>U. Chic. L. Rev.</i>	<i>University of Chicago Law Review</i>
<i>U. Pitt. L. Rev.</i>	<i>University of Pittsburgh Law Review</i>
U.C.C. Rep.Serv.	Uniform Commercial Code Reporting Service
U.S.	United States or United States Reports

UCC	Uniform Commercial Code
UCP	ICC Uniform Customs and Practice for Documentary Credits
ULF	Uniform Law on the Formation of Contracts for the International Sale of Goods
ULIS	Uniform Law for the International Sale of Goods
UN	United Nations
UN Doc.	United Nations Document
UN Res.	United Nations Resolution
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Model Law	UNCITRAL Model Law on International Commercial Arbitration as adopted on 21 June 1985
UNCITRAL Rules	UNCITRAL Arbitration Rules adopted on 15 December 1976
UNIDROIT	Insitut International pour l'Unification du Droit (International Institute for the Unification of Private Law, Rome/ Italy)
UNIDROIT Principles	UNIDROIT Principles of International Commercial Contracts
<i>Unif. L. Rev.</i>	<i>Uniform Law Review/ Revue de droit uniforme, published by the International Institute for the Unification of Private Law (UNIDROIT), Rome/Italy</i>
UNILEX	Database of international case law and bibliography on the United Nations Convention on Contracts for the International Sale of Goods (CISG) and on the UNIDROIT Principles of International Commercial Contracts by the Centre for Comparative and Foreign Law Studies, Bonell, Michael Joachim (ed.), < http://www.unilex.info/ >
UPICC	UNIDROIT Principles of International Commercial Contracts
v.	versus
<i>Va. J. Int'l L.</i>	<i>Virginia Journal of International Law</i>
<i>Vand. J. Transnat'l L.</i>	<i>Vanderbilt Journal of Transnational Law</i>
Vienna Draft 1977	UNCITRAL Draft, 10th Plenary Session (Vienna, 23 May-17 June 1977), VIII YB 15-21 (1977)
Vol.	Volume
W.D. Pa.	Western District of Pennsylvania
W.D.N.Y.	Western District of New York
W.L.R	Weekly Law Reports
W.L.R.	Weekly Law Reports
W.N.	Weekly Notes of Cases
w/o	without
Wash. App.	Washington Appellate Reports; Washington Court of Appeals

<i>wbl</i>	<i>Wirtschaftsrechtliche Blätter, Zeitschrift für österreichisches und europäisches Wirtschaftsrecht (Wien)</i>
WHO	World Health Organization
WiB	Wirtschaftsrechtliche Beratung
WIPO	World Intellectual Property Organization
WIPO Rules	WIPO Arbitration Rules, effective from 1 October 2002
Wis.	Wisconsin
WM	<i>Wertpapier Mitteilungen</i>
Y.B. Com. Arb.	Yearbook Commercial Arbitration
YB	UNCITRAL Yearbook, New York (United Nations Publication, 1971 ff.)
ZBJV	<i>Zeitschrift des Bernischen Juristenvereins</i>
ZEuP	<i>Zeitschrift für Europäisches Privatrecht</i>
ZfRV	<i>Zeitschrift für Rechtsvergleichung, internationales Privatrecht und Europarecht</i>
ZGB	Zivilgesetzbuch (Swiss Civil Code)
ZGS	<i>Zeitschrift für das gesamte Schuldrecht</i>
ZHR	<i>Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht</i>
ZIP	<i>Zeitschrift für Wirtschaftsrecht</i>
ZPO	Zivilprozessordnung (German Code of Civil Procedure)
ZR	<i>Blätter für Zürcherische Rechtsprechung</i>
ZSR	<i>Zeitschrift für schweizerisches Recht</i>
ZVglRWiss.	<i>Zeitschrift für Vergleichende Rechtswissenschaft</i>
ZZP	<i>Zeitschrift für Zivilprozess</i>
ZZPInt	<i>Zeitschrift für Zivilprozess International</i>

Table of Contents

Detailed Table of Contents	vii
Acknowledgements	xxi
List of Abbreviations	xxiii
Chapter 1	
Introduction	1
§ 1 Force Majeure and Hardship in International Commercial Transactions	1
§ 2 General Principles of Commercial Contracts: Methodological Approach	9
Chapter 2	
Scope of Application of General Contract Principles	23
§ 3 General Remarks on the Governing Law and the Application of General Contract Principles	23
§ 4 Choice of Law Agreement Providing for the Application of a National Law	28
§ 5 No Choice of Law Made by the Parties	43
Chapter 3	
The Concept of Non-performance	57
§ 6 The Concept of Non-performance Under General Contract Principles	57
Chapter 4	
Force Majeure Excuse	75
§ 7 The Force Majeure Excuse as a General Principle of Law	75

§ 8	Individual Requirements of the Force Majeure Excuse Under General Contract Principles	110
§ 9	Legal Effects of the Force Majeure Excuse	345
§ 10	Interpretation and Effects of Force Majeure Clauses	383
Chapter 5		
	Hardship (Change of Circumstances): Fundamental Change of the Equilibrium of the Contract	391
§ 11	Hardship as a General Principle of Law	391
§ 12	Individual Requirements of the Hardship Defence	420
§ 13	Legal Effects of Hardship	479
§ 14	Interpretation and Legal Effects of Hardship Clauses	512
§ 15	Hardship Distinguished from Other Remedies	517
Chapter 6		
	Conclusion	533
	Bibliography	537
	Principles on Force Majeure in the CISG, UPICC, PECL, the TLDB-Principles and ICC Force Majeure Clause 2003	563
	Principles on Hardship in the UPICC, PECL, the TLDB-Principles and ICC Hardship Clause 2003	569
	Index	573

Detailed Table of Contents

Acknowledgements	xxi
List of Abbreviations	xxiii
Chapter 1	
Introduction	1
§ 1 Force Majeure and Hardship in International Commercial Transactions	1
I The Need for Transnational Instead of Domestic Rules in the Context of International Commercial Transactions	1
II The Need for Predictable Rules	6
III The Objective: Establishing Specific Standards and 'Case Groups' for the Different Elements of the Exemptions under Review	8
§ 2 General Principles of Commercial Contracts: Methodological Approach	9
I The Traditional <i>Lex Mercatoria</i> Doctrine, Its Deficiencies and the Distinct Concept of General Contract Principles	9
A The Deficiencies of the Traditional <i>lex mercatoria</i> Doctrine	9
B The Emergence of the New, New <i>lex mercatoria</i>	11
C The Concept of General Contract Principles	12
II General Principles of Law Method	14
A Introduction	14
B Prima Facie Evidence of General Contract Principles	17
1 The CISG	17
2 Soft Law Codifications, Particularly the UPICC	19