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**Abstract**

This piece tries to establish how parties to oil and gas agreements may rely on Hardship and Force Majeure clauses as means of encouraging renegotiation, particularly in cases lacking a contractual term providing for renegotiation. In doing so, I first give a definition of Hardship and Force Majeure clauses. I, then, provide examples form recent practice of both Hardship and Force Majeure clauses. I conclude that Hardship clauses clearly can deal with renegotiation but the traditional view is that Force Majeure clauses deal with suspension or termination of the contracts. I, hence, argued that although the traditional response was suspension or termination of contract, another possible response is renegotiation.

## Defining Force Majeure and Hardship

Force Majeure and Hardship clauses are meant to be used in contracts for different purposes. In a traditional sense, Force Majeure clauses exist to solve the problems arising from events that are beyond the control of the parties to the agreement. They tend to give the party the right to request the termination or suspension of the agreement.[1] A Force Majeure clause has

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recently, therefore, been defined as clause which "entitles a party to *suspend or terminate* the contract on the occurrence of an event which is beyond the control of the parties and which prevents, impedes, or delays the performance of the contract."[2] The International Institute for the Unification of Private Law (UNIDROIT)[3], under Article 7.1.7 of the Principles of International Commercial Contracts, a restatement of the currently accepted rules and principles of international contract law, defines Force Majeure as follows.

> Force Majeure
>
> (1) Non-performance by a party is excused if that party proves that the non-performance was due to *an impediment beyond its control* and that it *could not reasonably be expected* to have taken the impediment into account at the time of the conclusion of the contract or to have *avoided or overcome it* or its consequences.
> (2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.
> (3) The party who fails to perform must give *notice* to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.
> (4) Nothing in this article prevents a party from exercising a right to *terminate the contract or to withhold performance* or request interest on money due.

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[1] H Konarski 'Force Majeure and Hardship Clauses in International Contractual Practice' (2003) 4 International Business Law Journal 405, 405–407

[2] E McKendrick *Contract Law* (2nd edn OUP Oxford 2005) 434

[3] The UNIDROIT Principles are available online at www.unidroit.org; see J M Perillo 'Force Majeure and Hardship Under the UNIDROIT Principles of International Commercial Contracts' (1996) 5 Tulane JI & Com L 1; for first comment on UNIDROIT Principles see MJ Bronell 'UNIDROIT Principles 2004: The New Edition of the Principles of International Commercial Contracts Adopted By International Institute of Unification of Private Law' [2004] Uniform Law Review 5, 5-40; and for comprehensive introduction to UNIDROIT Principles see M Bonell *An International Restatement of Contract Law -The UNIDROIT Principles of International Commercial Contracts* (3rd edn Transnational Publishers Inc Ardsley NY 2005); also see 34 ILM 1067 (1995)

Hardship clauses, on the other hand, are meant to solve unforeseen events that make performance of the contract more burdensome than initially predicted.[4] Schmitthoff defines the situations in which the Hardship concept exists by establishing three elements: one, that the event must have arisen beyond the control of the parties; two, that the event must be of a fundamental character; and three, that the event must be entirely unforeseen.[5] (UNIDROIT) Principles of International Commercial Contracts also defines Hardship and lists its legal consequences in Articles 6.2.2 and 6.2.3 respectively:[6]

> Definition of Hardship
>
> There is Hardship where the occurrence of *events fundamentally alters the equilibrium of the contract* either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and (a) the *events* occur or become known to the disadvantaged party *after the conclusion of the contract*; (b) the *events could not reasonably have been taken into account* by the disadvantaged party at the time of the conclusion of the contract; (c) the events are *beyond the control* of the disadvantaged party; and (d) the risk of the events was *not assumed* by the disadvantaged party.

> Effects of Hardship
>
> (1) In case of Hardship the disadvantaged party is entitled to request *renegotiations*. The request shall be made without undue delay and shall indicate the grounds on which it is based. (2) The request for *renegotiation does not in itself entitle the disadvantaged party to withhold performance*. (3) Upon failure to reach agreement within a reasonable time either party may resort to the *court*. (4) If the court finds Hardship it may, if reasonable, (a) *terminate* the contract at a date and on terms to be fixed; or (b) *adapt* the contract with a view to restoring its equilibrium.

[4] J M Perillo 'Hardship and its Impact on Contractual Obligations: A Comparative Analysis' Saggi Conferenze E Seminari #20 Rome (1996) unpublished but obtained from the author via e-mail
[5] CM Schmitthoff 'Hardship Clauses' [1980] The Journal of Business Law 82, 85.
[6] The UNIDROIT Principles of International Commercial Contracts, see note 3

Based on one the above definitions, Hardship and Force Majeure clauses share a common link: the occurrence of unforeseeable and usually unavoidable events. They both also aim to protect the contracting parties from unforeseen and unavoidable events. Both are related to events of a fundamental character that constitute permanent or temporary obstructions and are, therefore, recognised as grounds for being excused from having to fulfil the contract.[7] Further, Force Majeure and Hardship clauses are often included in contracts that are considered to be long-term contracts[8] which often fall within the same sectors, such as iron, steel, gas and oil. However, where Hardship clauses differ from Force Majeure Clauses is that they are meant to be used by parties to an agreement where the contract performance has reached the "limit of sacrifice",[9] ie in situations where the performance has not become impossible but extremely burdensome.[10] So, Hardship clauses, unlike some Force Majeure clauses, do not reflect situations which bring the contract to an end.[11] That means that unlike some Force Majeure clauses, which usually provide for the suspension or termination of the agreement when the performance has become too onerous or impossible, Hardship clauses

[7] H Konarski 'Force Majeure and Hardship Clauses in International Contractual Practice' (2003) 4 International Business Law Journal 405-428; K Bockstiegel 'Hardship, Force Majeure and Special Risk Clauses in International Contracts' in N Horn Adaptation and Renegotiation of Contracts in International Trade and Finance (Kluwer International London 1995) 131

[8] For more details on what constitutes a long-term contract see E McKendrick 'The Regulation of Long-Term Contracts in English Law' in J Beatson and D Friedmann *Good Faith and Fault in Contract Law* (OUP Oxford 2001) 305-333

[9] K Blinn International Petroleum Exploration and Exploitation (Barrows New York 1986) 287

[10] W Peter *Arbitration and Renegotiation of International Investment Agreements* (Kluwer Law International London 1995) 238

[11] H Berman 'Excuse for Non-Performance in the Light of Contract Practices in International Trade' (1985) 63 Columbia LR 1413, 1419; and A El Chiati 'Protection of Investment in the Context of Petroleum Agreements' (1987) RDCL 1, 99

usually seek to re-establish the equilibrium of the contract.[12] Hence, El Chiati and Peter, for example, state that Hardship clauses in international business transactions can be "a specific type of renegotiation clause"[13] in that they seek to adjust some of the contractual terms in order to adapt the contractual balance which may have been upset by the unexpected circumstances.

**Examples of Force Majeure and Hardship Clauses**

The scope of Hardship and Force Majeure clauses largely depends on their specific wording.[14] In order to see how both Hardship and Force Majeure clauses have been used in practice, we need to look at some examples.

**Hardship Clauses**

An example of a Hardship clause in a contract for the sale of natural gas agreement which is often cited by writers[15] provides the following:

> When entering into this Agreement the parties contemplate that the effects and/or consequences of this Agreement will not result in economic conditions [which are substantial Hardship] to any of them; provided that they will act in accordance with sound marketing and efficient operating practices. They therefore agree on the following: Substantial *Hardship* shall mean if at any time or from time to time during the term of this Agreement without default of the party concerned there is *the occurrence of an intervening event or change of circumstances beyond said party's control* when acting as a reasonable and

[12] K Berger 'Renegotiation and Adaptation of International Investment Contracts: the Role of Contracts Drafters and Arbitration' (2003) 36 VJTL 1347, 1352; H Strohbach 'Force Majeure and Hardship Clauses in International Commercial Contracts and Arbitration: The East German Approach' (1984) 1 JIA 39, 41;

[13] A El Chiati 'Protection of Investment in the Context of Petroleum Agreements' (1987) RDCL 1, 99; and W *Peter Arbitration and Renegotiation In International Investment Agreements* (2nd Kluwer Hague 1995) 237

[14] E McKendrick *Contract Law* (2nd edn OUP Oxford 2005) 434

[15] Originally cited in CM Schmitthoff 'Hardship Clauses' [1980] The Journal of Business Law 84, 85

> prudent operator such that the consequences and effects of which are fundamentally different from what was contemplated by the parties at the time of entering into this Agreement (such as, without limitation, the economic consequences and effects of a novel economically available source of energy), which consequences and effects place said party in the situation that then and for the foreseeable future all annual costs (including, without limitation, depreciation and interest) associated with or related to the processed gas which is the subject of this Agreement exceeded the annual proceeds derived from the sale of said gas. Notwithstanding the effect of other relieving or adjusting provisions of this Agreement the party claiming that it is placed in such position as aforesaid may by notice *request the other for a meeting* to determine if said occurrence has happened and if so *to agree* upon what, if any, *adjustment* in the price then in force under this Agreement and/or other terms and conditions thereof is justified in the circumstances in fairness to the parties to alleviate said consequences and effects of said occurrence. *Price control by the Government of the state of the relevant Buyers(s) affecting the price of natural gas in the market shall not be considered to constitute substantial Hardship*.

Another example of Hardship clause is provided by clause 7 of the agreement between the parties in *Superior Overseas Development Corporation and Phillips Petroleum (UK) Co Ltd v British Gas Corporation*.[16] The clause states:

> (a) If at any time or from time to time during the contract period there has been any *substantial change in the economic circumstances* relating to this Agreement and (notwithstanding the effect of the other relieving or adjusting provisions of this Agreement) either party feels that such change is causing it to *suffer substantial economic Hardship* then the parties shall (at the request of either of them) *meet together to consider what (if any) adjustment in the prices* then in force under this Agreement or in the price revision mechanism contained in Clauses 4, 5 and 6 of this Article are justified in the circumstances in fairness to the parties to offset or alleviate the said Hardship caused by such change. (b) If the parties shall not within ninety (90) days after any such request have reached agreement on the adjustments (if any) in the said prices or price revision mechanism which are to be made then the matter may forthwith be referred by either party for determination by *experts* to be appointed in the manner set out in Article xviii hereof save that the *appointment of the third expert* referred to in Clause 1(c) of that Article shall in

[16] [1982] 1 Lloyd's Rep 262, 264–265; the clause is also available in E McKendrick *Contract Law* (2nd edn OUP Oxford 2005) 439–440

> any event be made by the Minister of Power in consultation with the Lord Chancellor. (c) *The experts shall determine what (if any) adjustments* in the said prices or in the said price revision mechanism shall be made for the purposes aforesaid and any revised prices or any change in the price revision mechanism so determined by such experts shall take effect six (6) months after the date on which the request for the review was first made.

In both of the above examples, the parties attempted to define the circumstances in which Hardship exists by referring to a "substantial change in the economic circumstances". By employing the language "beyond the said party's control," the first clause, however, meets Schmitthoff's definition better. Hardship clauses by definition are designed to allow the relationship between the parties to carry on. Hence, by requesting a meeting to determine whether an event of Hardship has occurred and if so to agree on an adjustment, the parties clearly took extra care in recognizing an obligation on each party to engage in negotiation should a Hardship situation exist. By doing so, the above-two clauses are visibly using Hardship clauses to re-establish the equilibrium of the contract as opposed to suspension or termination of the contract. On the other hand, the second clause above is better drafted in that it provides a method to be followed should the parties not reach a mutual agreement to adjust the terms of the contract; that is by stating, in the second clause, that "the experts shall determine what (if any) adjustments in the said prices or in the said price revision mechanism shall be made." Experts usually mean arbitrators, but not a judge sitting in a court as some writers have rightly stated.[17] It should be born in mind here that the main goal of having a Hardship clause is to restore the relationship between the parties so that the contract can

[17] R Goode note 66 at 139; S Woolman *Contracts* (3rd edn Green's Concise Scots Law 2001)130, E McKendrick *Contract Law* (2nd edn OUP Oxford 2005) 440

flourish, and that is not usually assured in courts. As we saw earlier in this Chapter, not every legal system distinguishes the concept of change of circumstances similarly or recognises the validity of an obligation to renegotiate the contract.

Interestingly, however, Hardship clauses seem to be rare in current oil and gas contracts.[18] One reason is that parties to current oil and gas agreements believe that the scope of Force Majeure largely depends on the wording of such a clause, to the level that they have a freedom to combine Hardship and Force Majeure events in one clause. Sometimes, parties to oil and gas agreements believe that a Force Majeure clause may suffice to bring the parties back to the negotiation table, and use them not simply to suspend or terminate the agreement, but as a means of re-establishing the equilibrium of the contract.[19] This would mean that Force Majeure clauses do not always typically deal with renegotiation, though they could, I argue, be drafted in such a way in current oil and gas industry. If they are drafted in such a way, they provide a high degree of flexibility and, thus, have a wider meaning[20] than the meaning of the traditional Force Majeure, which they usually provide for the suspension or termination of the contract if the performance of the contract has become impossible or onerous. To distinguish between the traditional Force Majeure clauses and the clauses which

[18] We failed to find any recent hardship clauses in current oil and gas agreements either in Qatar or indeed in the available literature on this subject. Therefore, we rely on an interview with the Qatar Petroleum Legal Department. See the following footnote number 108

[19] This reasoning is based on the experience of Qatar Petroleum (QP) with some foreign oil and gas companies. Interview in April 2007 with the legal advisors in QP.

[20] See W Peter *Arbitration and Renegotiation of International Investment Agreements* (Kluwer Law International London 1995) 235–236 citing a French study about Force Majeure clauses in the 1970s which tries to convince the reader that Force Majeure clauses can in practice have a wider meaning than the termination of the contract. For the original French study see M Fontaine 'Etude de groups de travail contrats internationaux: des causes de forces majeures' (1979) 5 DPCI 469

we argue to have a wider meaning, we shall look at six examples of Force Majeure clauses and discuss their various components. The first four are traditional Force Majeure clauses and relatively old. Given the manner in which they are drafted they cannot, we think, encourage renegotiation. The last two are, we argue, drafted in a good and comprehensive way. Both are recent and have a wider meaning than the traditional Force Majeure clauses. The clauses are mentioned below in a chronological order.

**Force Majeure Clauses**

The first example is clause 22 of the Grain and Feed Trade Association (GAFTA) 100, quoted in *Alfred C. Toepfer v Peter Cremer*.[21] It provides:

> Sellers shall not be responsible for delay in shipment of the goods or any part thereof occasioned by any *act of God, strike, lockout, riot, or civil commotion, combination of workmen, breakdown of machinery, fire or any cause comprehended in the term "force majeure."* If delay in shipment is likely to occur for any of the above reasons, Shippers shall give notice to their Buyers by telegram, telex or teleprinter or by similar advice within 7 consecutive days of the occurrence, or not less than 21 consecutive days before the commencement of the contract period, whichever is later. The notice shall state the reason(s) for the anticipated delay. If after giving such notice an extension to the shipping period is required, then Shippers shall give further notice not later than 2 business days after the last day of the contract period of shipment stating the port or ports of loading from which the goods were intended to be shipped, and shipments effected after the contract period shall be limited to the port or ports so nominated. If shipment be delayed for more than one calendar month, Buyers shall have the option of *cancelling* the delayed portion of the contract, such option to be exercised by Buyers giving notice to be received by Sellers not later than the first business day after the additional calendar month. If Buyers do not exercise this option, such delayed portion shall be automatically extended for a further period of one month. If shipment under this clause be prevented during the further one month's extension, the contract shall be considered void.

[21] [1975] 2 Lloyd's Rep 118; the clause is also available in E McKendrick *Contract Law* (2nd edn OUP Oxford 2005) 435. The contract terms of GAFTA NO 100 are available at www.medimedica.com

> Buyers shall have no claim against Sellers for delay or non-shipment under this clause provided that Sellers shall have supplied to Buyers, if required, satisfactory evidence justifying the delay or non-fulfilment.

Second example: Force Majeure clause 17 (*Cancellation*) of the contract between the parties in *J Lauritzen AS v Wijsmuller BV*[22] (The 'Super Servant Two'), which states:

> Wijsmuller has the right to *cancel* its performance under this Contract whether the loading has been completed or not, in the event of *force majeur* [sic], *Acts of God*, *perils or danger and accidents of the sea, acts of war, warlike-operations, acts of public enemies, restraint of princes, rulers or people or seizure under legal process, quarantine restrictions, civil commotions, blockade, strikes, lockout, closure of the Suez or Panama Canal, congestion of harbours or any other circumstances* whatsoever, causing extra-ordinary periods of delay and similar events and/or circumstances, *abnormal increases in prices* and *wages, scarcity of fuel* and similar events, which reasonably may impede, prevent or delay the performance of this contract.

The third example, Article XIII in a 1982 liquefied natural gas sales agreement involving the Canadian Petroleum Company and Japanese buyers, provides:

> In the event that any party to this Agreement is rendered unable, wholly or in part, by *Force Majeure* to carry out its obligations under this Agreement, such party shall give notice by telex or telegraph to the other parties to this Agreement in the English language setting forth the full particulars of such *Force Majeure* and the estimated duration thereof as soon as possible after the occurrence of said *Force Majeure*. Upon the giving of such notice the obligations of such party, insofar as they are affected by such *Force Majeure*, shall be *suspended*, except for the obligations to make payments hereunder, during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with reasonable dispatch. The party claiming *Force Majeure* shall *exercise reasonable efforts to mitigate the effects* of such *Force Majeure* on the performance of its obligations under this Agreement. The term "*Force Majeure*" as employed herein shall mean *any event beyond the reasonable control* of the parties hereto, including without limitation, *acts of*

[22] [1990] 1 Lloyd's Rep 1; the clause is also available in E McKendrick *Contract Law* (2nd edn OUP Oxford 2005) 434-435

> *God; forces of nature; perils of the sea; shipwrecks; collisions; stranding; bursting of boilers; breakage of shafts; acts of the public enemy; wars; blockades; civil wars …*

Fourth example: Article 17.7 of the Lasmo Group Production Sharing Contract 1992 between Vietnam National Oil and Gas Corporation of the Socialist Republic of Vietnam, Lasmo Vietnam Ltd & C Itoh Energy Development Co Ltd for Offshore Block 04-2 provides as follows:

> The obligations of each of the Parties hereunder, other than the obligation to make payments of money, shall be *suspended* during a period of *Force Majeure* and the term of the relevant period or phase of this Agreement shall be *extended* for a time equivalent to the period of Force Majeure situation. In the event of *Force Majeure* the Party affected thereby shall *give notice* thereof to the other Party as soon as reasonably practical stating the starting date and the extent of such *suspension* of obligations and the cause thereof. A Party whose obligations have been suspended as aforesaid shall *resume* the performance of such obligations as soon as reasonably practical after the removal of the *Force Majeure* and shall notify the other Party accordingly.

Fifth example, this of a recent Force Majeure clause found in a 2001 Qatari Rasgas Joint Venture Agreement. Article 13 Reads:

> Each party shall act in good faith and shall without delay *renegotiate* the terms of all agreements and other related documents in an event or circumstances of *Force Majeure*. In this Agreement, *Force Majeure* means *Act of God, explosions, fires, acts of war, public disorder, strikes, breakdown of machinery and equipments*, but only if the event of *Force Majeure is beyond the reasonable control of the party* claiming *Force Majeure*.[23]

Sixth example: The other recent Force Majeure clause is from a 2002 gas Joint Venture Agreement between Qatar Petroleum, Exxon Mobile, and LNG Japan, and reads:

[23] Article 12 of Rasgas Joint Venture Agreement 2001 (in English)

Force Majeure

12.1 Consequences

No failure, delay or omission by any party in the performance of any obligation under this agreement shall give rise to any claim against that party or to be deemed a breach of or default under this agreement if such performance is prevented or hindered due to the consequences of an event or circumstance of Force Majeure.

12.2 Definition

In this agreement Force Majeure means (a) acts of God, explosions, fires, flood, earthquakes or other natural calamities; (b) insurrection, rebellion, or sabotage and acts of war or public enemy whether war be declared or not; (c) public disorders, riots or demonstrations; (d) strikes, lockouts and other labor disorders; (f) breakdown of machinery and equipments; (g) any other event or circumstance but only if the event or circumstance of Force Majeure is beyond the reasonable control of the party.

12.3 Notification

A party affected by an event or circumstance of Force Majeure shall (a) give notice to other parties of the occurrence of the vent or circumstance; (b) use reasonable diligence to rectify or overcome the event or circumstance and minimize the loss caused hereby to other parties; and (c) give notice to the parties forthwith upon the ending of the vent or circumstance of Force Majeure.

12.4 Mitigation

Upon the giving of notice, the parties shall meet to discuss what action, if any, is practicable to take to mitigate or overcome the effects of the event or circumstance of Force Majeure. If the event or circumstance arises in the State of Qatar, the parties shall, if appropriate, seek the assistance of the Government in removing or mitigating such event or circumstance.

12.5 Extension of Time

Any period during which performance of any obligation is prevented or hindered due to the occurrence of an event or circumstance of Force Majeure shall be

added to the period or periods set out in this agreement for the performance of such obligation.[24]

Examining the above six examples, we can list four important components of a well-drafted Force Majeure clause.[25] The first component is that parties agree explicitly on what exactly constitutes a Force Majeure event or circumstance. As we can see from the examples given above, the clauses vary in defining those events. The first four differ in terms of the number of events specified which parties intended should fall within the scope of the clause. Some have extensive lists, others shorter. The third example (Lasmo clause) however did not define what constitutes a Force Majeure event at all. Regardless of the advantage or the practicality of listing every event, in reality it might be impossible to foresee or even agree on every event beforehand. But a well-drafted Force Majeure clause should at least state that the event must be "beyond of the control of the parties," otherwise, should any dispute arise between the parties, it would become hard to focus on the interpretation of the term "Force Majeure" per se. The second component is that the clause obliges the parties to give notice to other parties of the agreement, by any method, in which the notice must set forth the particulars of such claimed Force Majeure event or circumstance. Again, not all of the above examples pay great regard to this obligation. While the majority vary in the detail of such an obligation (where the report should go, the time limit of the notice, consequences of a failure in giving a notice), the second and fifth examples have no reference to such an obligation on the parties in this regard. The third component is where the clause provides a remedy as a result of

[24] Ras Laffan Liquefied Natural Gas Company Limited, Joint Venture Agreement 2002 (in English)
[25] In *Contract Law* (2nd edn OUP Oxford 2005) page 435 E McKendrick mentions three principal components. They are the description of the vents that constitute Force Majeure, the obligation of the parties in regards to reporting the occurrence of Force Majeure, and the remedial consequences of the occurrence of Force Majeure.

the occurrence of a Force Majeure event or circumstance. In this regard, some of the examples are more elaborate than others. The fifth example is silent in that it does not state what would be the result should a Force Majeure event or circumstance take place. The second example simply provides for the right to cancel the contract. The third and the fourth examples clearly provide for the "suspension" of the contract. But the first and the sixth give the parties a greater degree of flexibility. The first example mentions the cancellation of the contract, and also gives a right to extend the contract; the sixth has no mention of the cancellation but gives a clear right to an extension of the contract. The fourth component might be the most important one. It is where parties not only provide a remedy such as cancellation or extension of the contract, but also clearly insist on ways to overcome Force Majeure events. That is, we argue, by re-negotiation. The fifth example explicitly obliges the parties to engage, in good faith, in re-negotiation should an event or circumstance of Force Majeure occur. The sixth example too, under mitigation, states that the parties shall meet to discuss what action to take to mitigate or overcome the effects of the event or circumstance of Force Majeure. This fourth component proves that a Force Majeure clause, in the oil and gas industry, can have a wider meaning than the traditional Force Majeure clause. This more liberal clause compares favourably to the traditional Force Majeure clause in that it:

1. is used to reduce the damage that may result to one of the parties because the contract to be performed has faced changes of circumstances;
2. does not refer to the suspension, cancellation or termination of the contract;
3. includes a duty to make best efforts to solve the Force Majeure events;

4. it clearly aims to find ways to overcome the situations resulting from Force Majeure events;

**5.** and makes Force Majeure closer to the meaning and purposes of Hardship clauses, ie both aim to re-establish the equilibrium of the agreement as opposed to the suspension or termination of agreement.

**Conclusion**

The recognition of changes in circumstances concept does not mean that parties are entitled to adjust a contract by means of renegotiation. It means that parties to oil and gas agreements, even when great attention is paid to choosing a well-defined legal framework which recognises the changes in circumstances concept, should not expect their contractual terms to be easily adjusted. This led me to pick other means on which parties to oil and gas agreement may rely to encourage renegotiation, such as Hardship and Force Majeure clauses. Based on the literature, Hardship clauses clearly can deal with renegotiation but the traditional view is that Force Majeure clauses deal with suspension or termination of the contracts. I, however, argued that although the traditional response was suspension or termination of contract, another possible response is renegotiation. In other words, while Force Majeure clauses do not typically deal with renegotiation, they could be drafted in such a way. Hence, relying on some examples of Force Majeure clauses from practice, we found that they do exist in a wider meaning, and explained that in contrast to the traditional meaning of Force Majeure, those clauses in oil and gas agreements sometimes provide the parties with an opportunity to save much of the expense and efforts spent on the venture. To deal with those clauses in a

productive way, however, parties to oil and gas ought to understand this phenomenon. Hence, we argued that it is not enough to rely on widely drafted Force Majeure clauses *per se*, such a clause must explain the steps and actions that a renegotiation obligation entails for the parties. The parties wishing to preserve to themselves a degree of flexibility, in the widely drafted Force Majeure clause, therefore included statements enumerating, for instance, "a duty to make best efforts to solve the Force Majeure events," or that parties shall "without delay renegotiate the terms of all agreements". So, parties to oil and gas agreements should lay down what (in the opinion of the parties) steps and actions a renegotiate obligation entails for the parties. Other details, too, such as the consequences of refusing to renegotiate the contract could come from the terms of the contract itself.