II.B. The Problem

The tribunal noted that pursuant to that provision as interpreted by the Supreme Court of Libya, force majeure is established only if an event has occurred that, a) is beyond the control of the parties, b) is unforeseeable at the time the agreement, out of which the parties’ duties to perform arise, is entered into, and c) renders the performance of the obligation of the non-performing party absolutely impossible. These requirements are in fact very similar to the general elements of force majeure clauses in international business contracts. Apart from a definition of eligible force majeure events in a specific or generic way or by way of a combination of both, such clauses typically contain the following requirements for any event that qualifies as force majeure under the definition contained in the clause:

- unforeseeability,
- unavoidability,
- uncontrollability and
- the effect of rendering a party’s obligation impossible.\(^\text{17}\)

These requirements are now also reflected in Art. 1218 (1) of the French Civil Code.\(^\text{18}\) They are in line with international arbitral practice.\(^\text{19}\)
[...]