Chapter 4 The International/Transnotional Dimension

Much has already been written about international commercial instruments and their perspective on hardship and its impact on contracts and the right/duty to renegotiate and adapt the contract. It is not the intention of this work to revisit this well-worn ground. The purpose here is to show how the international rules tend to take a similar approach to regulating hardship cases and the question as to whether they represent a sufficiently autonomous solution to the lack of certainty. The methodology taken by these regimes is similar - most begin with a similar conception of hardship usually qualified by unforseeability, absence of fault or control over the intervening event and a significant change in circumstances. This is then followed by a reiteration of the principale of sanctity of the agreement; and finally, in most regimes, provisions for a duty to renegotiate the terms of the agreement and/or an enforced adaptation of the contract. Avoidance of the contract is frequently not envisaged to be a satisfactory remedy.

Referring Principles:

VIII.1 - Definition
VIII.2 - Legal consequences