Chapter 4
The International/Transnational Dimension

Much has already been written about international commercial instruments and their perspective on hardship and its impact on contracts\(^1\) and the right/duty to renegotiate and adapt the contract\(^2\). 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\(^3\); 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.

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\(^1\) A useful work on the UNIDROIT Principles and hardship as a concept might be had in Maskow, D., Hardship and Force Majeure [1992] 40 Am. J. Comp. L 657 (Mr Maskow, from Germany, was a member of the Working Group of UNIDROIT).


\(^3\) Some perhaps seen to be stronger than others: Article 89(1) of the draft Common European Sales Law Regulation for example stresses that 'a party must perform its obligations even if performance has become more onerous, whether because the cost of performance has increased or because the value of what is to be received in return has diminished' whilst Article 6.2.1 of the UPICC might be seen as less exacting in its terms: 'Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.'