LETTER TO THE EDITORS

Dear Sirs

In an article by Professor Jan van Dunné: "The Changing of the Guard: *Force Majeure* and Frustration in Construction Contracts: The Foreseeability Requirement Replaced by Normative Risk Allocation", which appeared in the April 2002 issue of the ICLR, Professor van Dunné states at page 169, with respect to the new *force majeure* clause in the 1999 FIDIC contracts:

> "A statement by another writer, Seppälä, also leaves the reader puzzled: 'the French Civil Code is far narrower in scope than the doctrine of frustration under English law' [citation omitted]. This clearly asks for a reaction from my side, as a true continental ..."

Professor van Dunné has—certainly unintentionally—omitted some words of mine here. In my article "FIDIC's New Standard Forms of Contract—*Force Majeure*, Claims, Disputes and Other Clauses" ([2000] ICLR 235, 242, footnote 8), what I stated was the following:

> "Indeed, *force majeure* as provided for in, for example, the French Civil Code is far narrower in scope than the doctrine of frustration under English law, *see* Nicholas, *The French Law of Contract*, 2nd edition (1992), Clarendon Press, Oxford, p. 202."

Professor van Dunné may disagree with this statement but he should not be "puzzled" about the source for it. On page 202 of Professor Barry Nicholas' book, which I referred to in the above passage, Professor Nicholas states:

> "The scope allowed to *force majeure* [under Article 1148 of the French Civil Code dealing with *force majeure*] is far narrower than that of frustration in English law ..."

Indeed, Professor van Dunné himself cites to Professor Nicholas' book on the previous page of his article (page 168, in footnote 21) as an authority "for the English reader".

Very truly yours,

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