EXTRA-CONTRACTUAL CLAIMS AGAINST STATE ENTITIES UNDER CIVIL LAW

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Christopher R. Seppälä

I. Introduction

In researching the differences between the common law and the civil law in the field of construction contracts for a book,[1] I found perhaps the most striking difference to be the existence in French civil law, in the case of contracts with state entities, of the right of the contractor to make claims against a state entity on grounds having no counterpart in the common law. Moreover, the contractor's right to claim on these grounds is mandatory law, that is, it will apply regardless of whether or not it is provided for in the contract.

As international construction contracts are often with state entities and as this feature of French law is to be found in many civil law countries, common law lawyers practising internationally need to be aware of this matter and it is therefore the purpose of this paper to describe it.

This paper will begin by describing particularities of the French civil law system as compared to the common law system, notably, the formal division between public law and private law (Section II) and the existence of a separate body of public or administrative law in the civil law system (Section III), including the notion of the 'administrative contract' (Section IV). It will then describe three legal doctrines that give rise to extra-contractual claims against state entities under an administrative contract (Sections V, VI and VII), before concluding (Section VIII).

II. Civil law public law/private law distinction

While common law countries make no formal divide between public law and private law, many civil law countries do so. In France, public law regulates the organization of the State (constitutional law) and the relations between the State and private persons (administrative law), whereas private law, usually embodied in a civil code, regulates relations between private persons.

The public law/private law distinction is based on the notion that relations between those who govern and those who are governed call for different

[1] *The FIDIC Red Book Contract: An International Clause-by-Clause Commentary*, Wolters Kluwer, 2023. The FIDIC Red Book Contract: An International Clause-by-Clause Commentary | Wolters Kluwer Legal & Regulatory

regulation from relations between private persons because the public interest and private interests cannot be equated.[2]

The formal public law/private law division applies in countries in the Arab Middle East, French-speaking Africa and Latin America. This division arose in France as a result of the French Revolution.

III. Public or administrative law

At the time of the French Revolution, in 1789, the judicial power was perceived in France as reactionary, hostile to the Revolution and a rival to the king, an absolute monarch. No institution like the English parliament existed. While an elective national representative body, the estates-general, had been convoked by medieval kings, the last time that it had met was in 1614.[3]

Hostility to the judiciary was inspired by memory of the *parlements*, which were supreme and final courts of appeal in France before the Revolution.[4] In addition to their judicial power, these courts had – unlike England's royal courts – extensive legislative and administrative powers including the constitutional right to criticize royal policies through remonstrances and the right to make regulations and bylaws (*arrêts de règlement*) for their regions. The judges on these courts were free to exercise these powers as they were irremovable.[5]

The *parlements* were perceived as reactionary as they had obstructed such efforts at reform as the king had sought to introduce, as well as the actions of the king's agents (*intendants*). What is more, they were seen as hostile to the Revolution itself.[6] Consequently, when the Revolution came the *parlements*, like other feudal institutions, were abolished.

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2 René David and others, *Les Grands Systèmes de Droit Contemporains* (12th edn, Dalloz, Paris, 2016) 69.

3 William Doyle, *Origins of the French Revolution*, (3rd edn, OUP, Oxford, 1999), 65.

4 The French *parlement* had its origin in the French king's council (*curia regis*). In the 13th century, whereas the rest of the council followed the king on his travels, the section of the council concerned with judicial matters, the *curia in parlamento*, literally (from the French word *parler*, to speak), the court which 'speaks', continued to sit in Paris and became a separate entity in 1307. André Castaldo & Yves Mausen, *Introduction Historique au Droit* (5th edn, Dalloz, Paris, 2019) 86. The *parlement* of Paris, as it came to be called, was the first of what eventually became thirteen *parlements* across France. Similarly, the English parliament derived from the English king's council but emerged instead as a national legislature. The different character of these similarly named institutions in the two countries should not be surprising as '(w)hat in later times were seen as two distinct branches of the constitution – the legislature and the judicature – had their origins in a less sophisticated notion of kingship in which legislation and adjudication were not distinguishable. The courts and parliament [in England] both had their origins in the same royal council …' J.H. Baker, *An Introduction to English Legal History* (4th edn, OUP, Oxford, 2007) 204.

5 William Doyle, *Origins of the French Revolution* (3rd edn, OUP, Oxford, 1999), 68–69. This was because the judges' offices were private property and therefore to remove a judge the government would have to pay compensation and, because of the government's financial difficulties in the late 18th century, this could only be managed after the Revolution. *Ibid*.

6 Yves Gaudemet, *Traité de Droit Administratif* (16th edn, LGDJ, Paris, 2001), vol. I, 328.

Due to the unfortunate experience with the *parlements*, the powers of the new judicial courts created by the Revolution were greatly curtailed. By the Law of 16–24 August 1790, they were prohibited from taking cases involving the state:

> 'Judicial functions are and will always remain distinct from administrative functions. Judges may not, under penalty of forfeiture of office, interfere in any manner with the work of administrative bodies, nor summon public officials before them in connection with the exercise of their functions.'[7]

Instead, a system of administrative courts headed by a Council of State (*Conseil d'Etat*) was created to operate alongside the civil courts and to take cases involving the State. These courts have, in turn, through case law developed an extensive body of public or administrative law.

It might be thought that where – as in the case of an administrative court – the state is both judge and party, that a private citizen or contractor is necessarily at a fundamental disadvantage. But, as demonstrated by case law of the Council of State, this has not proved to be the case.

Illustrative of this, English commentators acknowledge that French administrative law 'provide[s] one of the most systematic guarantees of the liberties of the individual against the state known in today's world.'[8] Another claims that a private person may receive better treatment in French administrative courts than in common law jurisdictions.[9]

IV. The Administrative Contract

In the exercise of their jurisdiction, the French Council of State developed the notion of the 'administrative contract' (*contrat administratif*).[10] According to the Council of State, a contract will be an administrative contract and be governed by administrative law where:

- one of the parties is a public entity, such as the state, a division of the state or a public establishment; and
- the contract either:
  - provides for the performance of a public service, or

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7 Article 13 'It was the enactment of this principle that restrained the French law courts from asserting a control over administrative action similar to that exercised by Anglo-American courts. In the common-law world much of constitutional history has been concerned with securing the independence of the judiciary from the executive. In France there has been in addition an even stronger movement aimed at securing the independence of the executive from the judiciary.' Bernard Schwartz, *French Administrative Law and the Common-Law World* (New York Univ. Press, New York, 1954), 7

8 L. Neville Brown and John Bell, *French Administrative Law* (5th edn, OUP, Oxford, 1998) 25.

9 J. Mitchell, *The Contracts of Public Authorities*, (G. Bell & Sons, London, 1954), 164–165.

10 The law of administrative contracts is in France largely judge-made law. *Ibid*, 167. Here and in the remainder of this paper the references to French law are to traditional French law, which spread around the world in the 19th and 20th centuries, rather than to its latest manifestations in France today.

- contains clauses which reserve 'exceptional powers' (*pouvoirs exorbitants*) to the public party[11] (as described below).

Either of these latter two criteria may suffice to make a contract 'administrative' in character.[12]

The French regard an administrative contract as essentially an arrangement between unequal parties.[13] The administration is considered to be in a **superior legal position** vis-à-vis its private counterparty. This is justified because the administration must assure the public interest and the continuity of public services. Thus, in the case of a construction contract, the public party is endowed **by mandatory law** with 'exceptional powers' (*pouvoirs exorbitants*) whether provided for in the contract or not:

- to manage and direct the works,
- to suspend, modify (within certain limits) or terminate the contract, and
- to apply penalties and more broadly adopt the measures it considers necessary.[14]

The administration can make use of these powers unilaterally, at its own initiative, without the need for judicial authorization (*privilège d'exécution d'office*). Thus, in practice, 'the administration is never the plaintiff'.[15]

At the same time, the contractor has the right to require that the 'financial equilibrium' (*l'équilibre financier*) of the contract – notably, the contractor's reasonable expectation of profit when the contract was signed – is preserved.[16] Thus, to counterbalance these 'exceptional powers' and thereby restore and maintain such equilibrium, the contractor enjoys – also by mandatory law –

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11 André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1983) vol I, 125 (para. 83) – 240 (para. 182); L. Neville Brown and others, *French Administrative Law* (5th edn, OUP, Oxford, 1998) 202.

12 L. Neville Brown and others, *French Administrative Law* (5th edn, OUP, Oxford, 1998) 202.

13 *Ibid*.

14 André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1983) vol I, 210 (para. 154) – 239–240 (para. 182); Philippe Malinvaud (ed in chief), *Droit de la Construction* (7th edn, Dalloz Action, Paris, 2018) 1345 (para. 417.471) to 1359 (para. 417.639).

15 Barry Nicholas, *The French Law of Contract* (2nd edn, OUP, Oxford, 1992) 27.

16 L. Neville Brown and others, *French Administrative Law* (5th edn, OUP, Oxford, 1998) 206. According to Rozen Noguellou and Ulrich Stelkens (eds), *Comparative Law on Public Contracts* (Bruylant, Brussels, 2010) the principle that the financial equilibrium of an administrative contract should be maintained is accepted in, among other countries, Belgium 412, Brazil 444, Colombia 531–33, France 691, Spain 580 and Tunisia 989–990. This is also true in Argentina (Hector A. Mairal, 'Government Contracts Under Argentine Law: A Comparative Law Overview' 26 Fordham Int'l L J 1716, 1738 (2002)), Egypt (Ali El Shalakany, 'The Application of the FIDIC Civil Engineering Conditions of Contract in a Civil Code System Country' [1989] ICLR 266, 270) and, given the important influence of Egyptian law in the Arab Middle East, probably in other Arab countries.

certain extra-contractual legal rights under the following doctrines, among others:[17]

- unforeseeable physical difficulties (*sujétions imprévues*);
- hardship (*imprévision*); and
- act of the prince (*fait du prince*).

These three doctrines are described below.

V. Unforeseeable physical difficulties (*sujétions imprévues*)

A common difficulty which a contractor may encounter is unforeseeable physical conditions at the site. For example:

- hard rock where it expected soft ground;
- sinkholes underground where it expected to build; and
- floods where it expected dry ground.

Under the common law, this is the contractor's risk[18] unless the contract provides otherwise. Even where a contract does so, it will normally limit the contractor's entitlement to its costs and/or an extension of time.[19]

On the other hand, the French doctrine of unforeseeable physical conditions (*sujétions imprévues*) will provide relief to the contractor in this situation, whether or not provided for in the contract. In order for it to apply, the following conditions must be satisfied:

(1) the contractor must encounter difficulties of a physical nature;

(2) the difficulties must be absolutely abnormal;

(3) they must not have been reasonably foreseeable at the time of entering into the contract; and

(4) they must make performance more onerous or costly.[20]

If these conditions are fulfilled, the contractor is better compensated than it would be under an international standard form of contract providing for relief in this situation such as a FIDIC form.[21] The contractor is entitled not just to its additional costs and/or to an extension of time (as under FIDIC) but to profit as

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17 Another legal theory which is sometimes referred to in this context is *force majeure*. But this will be of less interest as, among other things, its traditional scope of application (under French administrative law) is even narrower than that of the common law doctrine of frustration. Barry Nicholas, *The French Law of Contract* (2nd edn, OUP, Oxford, 1992) 202. Moreover, in international contracts, the subject is commonly dealt with by a contractual clause. *E.g.* Clause 18 [*Exceptional Events*] of FIDIC Red Book (2017).

18 *Stees v Leonard*, 20 Minn 494 (1874).

19 *E.g*. FIDIC Red Book (2017), Sub-Clause 4.12 [*Unforeseeable Physical Conditions*].

20 André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1984) vol II, 499 (para. 1276).

21 *E.g.* FIDIC Red Book (2017), Sub-Clause 4.12 [*Unforeseeable Physical Conditions*].

well. This theory is **mandatory law** in France and, as indicated above, will apply regardless of what the contract provides.[22]

However, in the case of a lump sum contract, the theory only applies where the unforeseeable condition or circumstance:

- results in the 'upsetting of the economy of the contract' (*bouleversement de l'économie du contrat*);

  or

- was due to the fault of the public party.[23]

To determine whether the economy of a contract has been upset, French courts conduct a case-by-case analysis with no established thresholds. In some cases, they have found that relief was available when the additional costs had reached 7% of the contract price whereas, in others, an increase in cost of 10% of the contract price was considered insufficient. As a practical matter, where the extra costs exceed 10 to 15% of the contract price the economy of the contract may be considered to be upset.[24]

This theory is recognized to apply to administrative contracts in, among others, Argentina, Belgium, Chile, Colombia, Egypt (and, therefore, perhaps elsewhere in the Arab Middle East), and Peru (within certain limits).[25]

VI. Hardship (*imprévision*)

During the execution of a construction contract, unforeseeable economic circumstances may arise which make performance much more difficult or expensive. Common examples would be exceptional inflation or exceptional increases in prices, such as for steel, oil or other commodities, or exceptional increases in wages or salaries.

The common law provides **no** remedy in this situation – the closest legal doctrines in the common law are frustration and, in the U.S., impracticability. However, these doctrines will not apply unless performance has become practically impossible or illegal. Moreover, the only consequence under these doctrines will be that the contract is terminated or, in some cases under U.S. law, temporarily suspended or partially terminated. The affected party has no right to compensation.

The French doctrine of hardship (*imprévision*) is much more favourable to the affected party, usually the contractor. For this doctrine to apply the following conditions must be satisfied:

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22 André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1984) vol II, 503 (para. 1278).

23 Philippe Malinvaud (ed. in chief), *Droit de la Construction* (7th edn, Dalloz Action, Paris, 2018) 1341 (para. 417.428).

24 Fédération Nationale des Travaux Publics, *Avis du Comité Juridique, Possibilités d'adaptation des marchés à l'évolution des prix des matières premières et des fournitures*, October 2021, 6.

25 For references, *see* the author's *The FIDIC Red Book Contract* (*supra* note 1), 117.

(1) the contractor must encounter unforeseeable circumstances of an economic nature;

(2) the circumstances must 'upset the economy of the contract' (as defined above), without rendering its performance impossible; and

(3) the circumstances must cause substantial loss to the contractor.[26]

If these conditions are satisfied, then, while the contractor remains strictly bound to perform the contract, it has the right to require that the public body share in the loss so as to enable the contractor to overcome the difficulty. Thus, in France, the contractor commonly bears 10% to 20% of the extra costs and the public body bears the balance.[27] This doctrine is **mandatory law** – any clause purporting to exclude it is invalid.[28]

The practical importance of this doctrine has diminished somewhat with the increasing use in long-term contracts of a price adjustment clause, although such a clause would not necessarily preclude application of the doctrine. For example, the doctrine may apply where the clause did not function as it was intended (e.g. where the government had blocked prices)[29] or when its application was insufficient to correct the effects of the upsetting of the economy of the contract (e.g. where the clause is found to include no index for the cost of inputs to the works that have caused the cost of the works to increase).[30]

Thus, if a price adjustment clause gives rise to a result which the parties could not reasonably have intended (e.g. by reason of an error in the clause) then, under this doctrine, a court may adjust the result to one which the parties could reasonably have intended when entering into the contract.[31]

The French doctrine of hardship (*imprévision*) has been adopted, sometimes with variations, by numerous countries in Europe, the Middle East and Latin America as illustrated by the following table (which does not purport to be exhaustive):

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26 André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1984) vol II, 560 (para. 1332). As this theory is based, among other things, on the principle of equity, (André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1984) vol II, 563 (para. 1333)), if the employer is the one to have suffered it should, arguably, be entitled to relief under this theory as well.

27 André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1984) vol II, 623 (para. 1394).

28 *Ibid*, 600 (para. 1364 – 1)

29 André de Laubadère and others, *Traité des Contrats Administratifs* (LGDJ, Paris, 1984) vol II, 600–601 (para. 1365).

30 *Ibid*.

31 According to the 'theory of the imperfect operation of a price adjustment clause' (*théorie du jeu imparfait de la formule de révision*) applied by two decisions of the Council of State of November 5, 1937 (*Département des Cotes du Nord and Sieur Ducos et Fils)* and more recently. Legal opinion, September 1986, of Prof. Maurice-André Flamme, Brussels, Belgium, provided to the author.

Europe	Middle East	Latin America
France (Civil Code, art 1195)	Algeria (Civil Code, art 107)	Argentina (Civil Code, art 1091)
Finland (Contracts Act, s 36)	Bahrain (Civil Code, art 130)	Brazil (Civil Code, arts 478–80)
Italy (Civil Code, arts 1467–69)	Egypt (Civil Code, art 147)	Chile (case law)
Netherlands (Civil Code, Bk 2, art 258 (6:258))	Iraq (Civil Code, art 146(2))	Colombia (Commercial Code, art 868)
Poland (Civil Code, art 357)	Jordan (Jordanian Civil Law, art 205)	Peru (Civil Code, arts 1440–46)
Portugal (Civil Code, art 437)	Kuwait (Civil Code, art 198)	
Russia (Civil Code, art 451)	Libya (Civil Code, art 147(2))	
Sweden (Contracts Act, s 36)	Oman (Civil Code, art 159)	
Switzerland (Code of Obligations, art 373*)	Qatar (Civil Code, art 171(2))	
	Sudan (Sudanese Law of Civil Transactions, art 177)	
	Syria (Civil Code, art 148)	
* limited to construction contracts	UAE (Civil Code, art 249)	
	Yemen (Civil Law, art 211)	

In the Middle East, this doctrine applies not just in public or administrative contracts, as in France, **but in contracts between private parties as well**. As an example, under the Egyptian Civil Code (applicable to both private and public contracts), the doctrine of hardship is defined as follows:

> 'The contract makes the law of the parties […]. When, however, as a result of exceptional and unpredictable events of a general character, the performance of the contractual obligation, without becoming impossible, becomes excessively onerous in such way as to threaten the debtor with exorbitant loss, the judge may, according to the circumstances, and after taking into consideration the interests of both parties, reduce to reasonable limits, the obligation that has become excessive […]'
>
> 'Any agreement to the contrary is void.'[32]

The last sentence of the above quotation denotes that the doctrine of hardship is **mandatory law** in Egypt. What is also extraordinary is that the civil codes of 12 other Arab countries (see the above table) contain a provision to identical effect.[33]

While traditionally the doctrine of hardship was not recognized in French private law, in 2016 an article on the subject was introduced into the French Civil Code, which applies, of course, to private contracts. This creates a **right for a party to renegotiate** a contract upon the occurrence of circumstances:

- which were not foreseeable when the contract was made;
- which make performance of the contract excessively onerous for the party; and
- where the risk of such onerous performance was not assumed by that party.[34]

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32 Egyptian Civil Code, Article 147.

33 In addition, rules on hardship are provided for in Article 6.2 of the UNIDROIT *Principles of International Commercial Contracts* (2016).

34 Article 1195 French Civil Code.

The affected party is required to continue to perform its obligations during the renegotiation. If the other party refuses to renegotiate or renegotiations fail, a court may, at the request of the affected party, revise or terminate the contract.[35]

This article has resulted in a significant liberalization of French private law as, before the 2016 reform, it was at least as difficult under French private law for a party affected by exceptional circumstances to be released from the strict terms of a contract as was the case under English common law.[36]

VII. Act of the prince (*fait du prince*)

The signing by a state of a contract with a private party will, in practice, rarely fetter the state's sovereign powers and duties. The state will continue to have power to tax, to issue health and safety regulations and to regulate the economy (e.g. prices and wages etc.) without regard to existing contracts with private parties.

But the exercise of these powers by a state may have the incidental effect of causing unforeseeable damage to a private party having a contract with it. In these circumstances, the private party may have a remedy against the state under the French doctrine of act of the prince (*fait du prince*).

While the common law may provide some relief in this situation (under the law of tort),[37] the English courts 'are reported not to have been prepared to establish the general liability of the administration for negligence … or a liability to pay damages for losses arising out of legislation.'[38]

For the doctrine of act of the prince (*fait du prince*) to apply, the following conditions must be satisfied:

(1) an action or measure has been taken (e.g. a new law, decree or regulation) by the public body that signed the contract;

(2) it has been taken by the public body in its public role[39] and not in its capacity as a contracting party;

(3) it was unforeseeable when the contract was signed; and

(4) it affected 'an essential element' of the contract, rendering its performance more difficult or onerous.

The following are examples of where this doctrine was invoked: in the first case it was denied and in the second case it applied.

In the first case, the holder of a concession for a parking lot from the City of Paris claimed an indemnity under this doctrine from the City on account of the damage it had suffered because the City had installed parking meters and the

35 As this article is not mandatory law, it may be excluded by contract.

36 Barry Nicholas, *The French Law of Contract* (2nd edn, OUP, Oxford,1992) 202.

37 L. Neville Brown & John S. Bell, *French Administrative Law* (5th edn, OUP, Oxford, 1998), 207.

38 J.W.F. Allison, *A Continental Distinction in the Common Law: A Historical and Comparative Perspective on English Public Law* (OUP, Oxford, 2000), 181.

39 In French, by virtue of *la puissance publique*.

police had allegedly not done enough to prevent illegal parking. In this case, the holder was denied relief because these grounds were held to have had only an incidental effect on the frequency of parking and **did not affect an essential element** of the contract.[40]

In the second case, a company had a contract with the State for the execution of certain embankment work under which the company had to obtain the approval of a local official before each stage of the work. After having completed the first stage, the company was denied the approval to execute the remainder on the ground that a change in the zoning law had rendered the embankment work incompatible with the permitted use of the land. In this case, it was found that **an essential element of the contract** had been affected and the company was entitled to **full compensation for its losses**.[41]

In general, it is necessary to distinguish between measures or decisions taken by a public body against a party individually and laws, decrees or regulations having general application to the public. Any individual measure or decision taken by the public body which signed the contract, which affects either its terms or the conditions for its performance, such as a unilateral modification of the contract, may entitle the contractor to compensation under this theory.[42] On the other hand, it is much less clear that a contractor can recover for general measures, such as those affecting a whole class of persons (e.g. increased general taxes or customs duties where the public body concerned is the state), as the requirement for a contractor to comply with them is among the normal risks of performing a contract.[43]

The normal remedy for an act of the prince is damages.[44] However, if the public body's action has made performance of the contract impossible, the contractor could be excused from performing the contract. If the action made performance of the contract more onerous, though not impossible, this might relieve the contractor of liability for any liquidated damages for delay it might otherwise incur. Finally, if the measure would cause the contractor difficulties above a certain threshold, the contractor might be entitled to request termination of the contract.[45]

As this doctrine is – like the other two doctrines described above – a matter of public policy (*ordre public*), it is **mandatory law** and a contractor may not generally waive in advance its entitlement to relief under it.

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40 CE, May 5, 1982, *Ville de Paris v Société du Parking de la Place de la Concorde*, req. no. 19463, 19464.

41 CE, December 29, 1997, *Société Civile des Néo-Polders*, req. no. 146753.

42 André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1984) vol II, 543 (para. 1315).

43 *Ibid*., 528–42 (paras 1304–1314).

44 Philippe Malinvaud (ed. in chief), *Droit de la Construction* (7th edn, Dalloz Action, Paris, 2018) 1344 (para. 417.454).

45 André de Laubadère and others, *Traité des Contrats Administratifs* (2nd edn, LGDJ, Paris, 1984) vol II, 552 (para. 1324).

As today the risk of act of the prince is often dealt with by a contract provision;[46] this theory has lost some of its practical application.

VIII. Conclusion

As explained above, under a French administrative contract a state entity enjoys 'exorbitant powers' not available to it under the common law. To counterbalance these powers, the contractor enjoys extraordinary remedies, also unavailable under the common law, entitling it to compensation and/or an extension of time.

As has been stated of the French government: '*Elle peut tout, mais si elle fait mal, elle paie.*' ('[t]he government can do anything, but if it causes damage, it must pay').[47]

A simplified comparison of the theories described above is, as follows:

- unforeseeable natural phenomena may give rise to the theory of unforeseeable physical difficulties (*sujétions imprévues*);
- unforeseeable economic events may give rise to the theory of hardship (*imprévision*); and
- unforeseeable actions or measures of a public body, which is the other contracting party, may give rise to the theory of the act of the prince (*fait du prince*).

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46 In the case of a FIDIC contract (2017), Sub-Clauses 8.6 [*Delays Caused by Authorities*] and 13.6 [*Adjustments for Changes in Laws*] provide the contractor with relief which might otherwise be available under this theory.

47 J. Brèthe de la Gressaye, *Droit Administratif et Droit Privé* (1950) 304 ff cited in Bernard Rudden (ed.), *A Source-Book on French Law* (3rd edn, OUP, Oxford, 1991), 150.

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