

General definition of „force majeure“ / “extraordinary circumstances” in international law

Legal source	Requirements	Text extract (in italics)	Legal Consequences
CIV Uniform Rules articles 26 or 32¹	<ul style="list-style-type: none"> • Circumstances have no connection with the operation of the railway • Carrier took all care required • Impediment, beyond party's control • Impediment unable to prevent 	<p><i>§ 2 “circumstances not connected with the operation of the railway and which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent”</i></p> <p>The behaviour of third party can also be understood as force majeure when it fulfils the same criteria:</p> <p><i>“behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected”</i></p>	Relief from liability according to article 26 § 1 CIV (loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger).
CIM Uniform Rules article 23²	<ul style="list-style-type: none"> • Impediment, beyond party's control • Impediment, unable to prevent 	<p><i>§ 2 “circumstances which the carrier could not avoid and the consequences of which he was unable to prevent”</i></p>	Relief from liability according to article 23 § 1 CIM (loss or damage resulting from the loss of, or damage to, the goods (...) and for the loss or damage resulting from the transit period being exceeded).

¹ [Uniform Rules concerning the Contract of International Carriage of Passengers by Rail \(CIV\)](#)

² [Uniform Rules Concerning the Contract of International Carriage of Goods by Rail \(CIM\)](#)

Legal source	Requirements	Text extract (in italics)	Legal Consequences
CUI Uniform Rules³ articles 8 § 2 lit. a) Nr.1 or 3 / 9 § 2 lit. a) Nr.1 or 3 articles 8 § 2 lit. b) / 9 § 2 lit.b)	<ul style="list-style-type: none"> “Mirrored” requirements according to CIV UR or CIM UR 	<p><i>§ 2 lit. a 1.) “if the incident giving rise to the loss or damage has been caused by circumstances not connected with the [management of the infrastructure or operations of the of the carrier] which the [manager / carrier] in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent”.</i></p> <p>The behaviour of third party can also be understood as force majeure when it fulfils the same criteria:</p> <p><i>“if the incident giving rise to the loss or damage is due to the behaviour of a third party which the [manager / carrier], in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;”</i></p> <p><i>§ 2 lit.b.) “(...) or by circumstances which the [manager / carrier] could not avoid and the consequences of which he was unable to prevent”.</i></p>	Reference to the requirements according to CIV UR or CIM UR. Therefore relief from liability according to circumstances according to CIV and CIM.
« E-GTC-I⁴ » articles 6.2.2 and 6.3.2 Grounds of relief	<ul style="list-style-type: none"> Force majeure is mentioned but not defined The behaviour of third party can also be understood as force majeure when it fulfils the criteria: Impediment, beyond party’s control 	<p><i>“The [infrastructure manager / railway undertaking] shall be relieved of this liability to the extent that the loss or damage has been caused by (...) circumstances such as force majeure or the behaviour of a third party which the [infrastructure manager / railway undertaking] , in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which it was unable to prevent.”</i></p>	Relief from liability according to articles 6.2.1 / 6.3.1 (loss or damage).

³ [Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic \(CUI\)](#)

⁴ [European General Terms and Conditions of use of railway infrastructure](#)

Legal source	Requirements	Text extract (in italics)	Legal Consequences
	<ul style="list-style-type: none"> Impediment, unable to prevent 		
CMR article 17⁵	<ul style="list-style-type: none"> Impediment, beyond party's control Impediment, unable to prevent 	2. <i>"The carrier shall, however, be relieved of liability if the loss, damage or delay was caused (...) through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent"</i>	Relief from liability according to article 17 § 1 CMR (loss of the goods and for damage thereto (...)) and any delay in delivery.
Athens Convention article 3⁶	<ul style="list-style-type: none"> Enumeration of events in lit a); with regard to natural phenomenon the impediment has to be beyond the carrier's control and was unable to prevent. 	1 <i>"For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account, unless the carrier proves that the incident: (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character";</i>	Relief from liability according to article 3 § 1 (loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident).
Rotterdam Rules article 17⁷ (did not entered into force yet)	<ul style="list-style-type: none"> Detailed enumeration of events in para. 3 a-o. 	3. <i>"The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay: (a) Act of God; (b) Perils, dangers, and accidents of the sea or other navigable waters; (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions; (d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention,</i>	Relief from liability according to article 17 § 1 (loss of or damage to the goods, as well as for delay in delivery) unless the claimant proves the cases listed in Article 17 para. 4 or 5.

⁵ [Convention on the Contract for the International Carriage of Goods by Road \(CMR\)](#)

⁶ [Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 \(Protocol of 2002\)](#)

⁷ [United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea \(New York, 2008\)](#)

Legal source	Requirements	Text extract (in italics)	Legal Consequences
		<p><i>arrest, or seizure not attributable to the carrier or any person referred to in article 18 (Liability of the carrier for other persons);</i></p> <p><i>(e) Strikes, lockouts, stoppages, or restraints of labour;</i></p> <p><i>(f) Fire on the ship;</i></p> <p><i>(g) Latent defects not discoverable by due diligence;</i></p> <p><i>(h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34;</i></p> <p><i>(i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;</i></p> <p><i>(j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;</i></p> <p><i>(k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;</i></p> <p><i>(l) Saving or attempting to save life at sea;</i></p> <p><i>(m) Reasonable measures to save or attempt to save property at sea;</i></p> <p><i>(n) Reasonable measures to avoid or attempt to avoid damage to the environment; or</i></p> <p><i>(o) Acts of the carrier in pursuance of the powers conferred by articles 15 (Goods that may become a danger) and 16 (Sacrifice of the goods during the voyage by sea)".</i></p>	
Montreal Convention⁸ article 18	<ul style="list-style-type: none"> • Enumeration of events in para. 2 (lit. c & d) • Relief from liability only with regard to damage to cargo 	<p><i>2. "However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:</i></p> <p><i>(...)</i></p> <p><i>c) an act of war or an armed conflict;</i></p> <p><i>d) an act of public authority carried out in connection with the entry,</i></p>	Relief from liability according to article 18 § 1 (damage sustained in the event of the destruction or loss of, or damage to, cargo ...).

⁸ [Convention for the Unification of Certain Rules for International Carriage by Air, opened for Signature at Montreal on 28 May 1999](#)

Legal source	Requirements	Text extract (in italics)	Legal Consequences
		<i>exit or transit of the cargo”.</i>	
CISG article 79⁹	<ul style="list-style-type: none"> • Failure due to an impediment beyond a party's control • Not reasonably foreseeable at the time of the conclusion • Impediment or consequences were unavoidable • Party who fails must give notice 	<p><i>(1) “A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.</i></p> <p><i>(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:</i></p> <p><i>(a) he is exempt under the preceding paragraph; and</i></p> <p><i>(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.</i></p> <p><i>(3) The exemption provided by this article has effect for the period during which the impediment exists.</i></p> <p><i>(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.</i></p> <p><i>(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention”.</i></p>	Relief from liability, no further rights for disappointed party

⁹ [United Nations Convention on Contracts for the International Sale of Goods \(CISG\)](#)

Legal source	Requirements	Text extract (in italics)	Legal Consequences
The UNIDROIT Principles of International Commercial Contracts 2010 contain a Force Majeure Clause in Art. 7.1.7¹⁰	<ul style="list-style-type: none"> • Non-performance due to an impediment beyond a party's control • Not reasonably foreseeable at the time of the conclusion • Impediment or consequences were unavoidable • Party must give notice 	<p><i>(1) "Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.</i></p> <p><i>(2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.</i></p> <p><i>(3) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.</i></p> <p><i>(4) Nothing in this article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due".</i></p>	Relief from liability, no further rights for disappointed party

¹⁰ [International Institute for the Unification of Private Law article-7-1-7-force-majeure](#)