

Statement of Principles

Force Majeure



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This document includes the Statement of Principles, the issues, historical context and contractual language.

Key Words:

- Activists
- Client
- Contractor
- Force Majeure
- Geophysical Industry
- Geophysical Services
- Standby Rate
- Subcontractor
- Third Party Direct Action Group

Terms that are in bold type are defined in the Glossary which forms part of this family of Statements of Principles.

Statement of Principles

Force Majeure events must be managed in close cooperation between **Client** and **Consultant** from the first sign of danger or occurrence until resumption of **Geophysical Services** or the termination of the **Contract**. In any event, fair compensation of the financial consequences of the **Force Majeure** event must be provided to the **Contractor**. At least three points need to be covered in a **Contract**, in addition to the definition of **Force Majeure**.

1. How and when **Force Majeure** is to be declared: A procedure should be included in the **Contract** to guarantee that the **Client** cannot prevent a fair and justified declaration of **Force Majeure** by the **Contractor**.
2. How the observation period is defined and handled: Three principles must govern this phase:
 - The **Contractor** shall be fully compensated from the moment **Force Majeure** is declared;
 - The duration of the observation period must be clearly defined, and,
 - The conditions under which the **Contract** can be resumed must be specified.
3. How the **Contract** may be terminated if the **Geophysical Services** cannot be resumed. When the **Force Majeure** event continues after the observation period, either party to the **Contract** (not only the **Client**), may decide to terminate the **Contract** with the **Contractor** being compensated for all costs incurred, plus demobilisation and early termination fees.

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Commercial Context

Geophysical Services that are provided in various political and geographical environments and under various climates are exposed to unpredictable events with potentially significant financial, security or HSE consequences.

Force Majeure is normally defined as any unpredictable event beyond the reasonable control of **Client** and/or **Contractor** and which prevents or delays the execution by either party of its contractual obligations. Different interests and perceptions of risk by **Client** and **Contractor** often lead to a delay in declaration of **Force Majeure**. This delay exposes the **Contractor** to potential risks, including safety, security and economic loss resulting from the slow down or cessation of the **Geophysical Services**. It is therefore essential that **Client** and **Contractor** fully cooperate in managing the situation and acknowledging the **Force Majeure** as soon as the danger appears.

Therefore, contractual terms and conditions must clearly define the procedure applicable to **Force Majeure** declaration and the respective rights and obligations of both **Client** and **Contractor**. It shall also provide for the **Contractor's** rights to terminate the **Contract** at its sole option.

For clarity purpose, disruption of the **Geophysical Services** by **Third Party Direct Action Group** shall constitute a **Force Majeure** event. Disruption of this sort should be regarded as an irresistible event for **Contractor** and therefore be considered as a **Force Majeure** event between the Parties. Considering it as targeted to **Client** and not **Contractor** should not be sufficient to avoid it to not be regarded as **Force Majeure**.

Although the definition of **Force Majeure** event is usually well accepted by the **Geophysical Industry** and defined by experience, contractual conditions do not always allow proper management of **Force Majeure**. In addition, **Force Majeure** conditions may need to be reviewed from time to time, such as following the events of September 11, 2001 or the Macondo incident.

Examples:

Assam 1990

Threats by local armed separatist groups that could not be handled by the **Client**, caused the **Geophysical Services** to be abandoned and resulted in a contractual dispute.

Peru 1996

A **Contractor** drilling crew was taken hostage. This **Force Majeure** situation resulted in termination of the **Contract**. This was a typical example of late declaration of **Force Majeure**, underestimation of risk by the **Client** despite numerous warnings from the **Contractor**. Differences in perception and evaluation of risk occur frequently in this context.

Deepwater Horizon Incident 2010

A **Contractor** was working near the vicinity of the Deepwater Horizon when it exploded. The situation was complicated by the government action by the Coast Guard requiring all vessels out of the spill area combined with the pollution release. The lack of clarity in the specific terms of the **Force Majeure** arose over who was paying costs and **Standby Rate** when the Coast Guard left the area and the pollution dissipated but operations were still not allowed. This lack of specific language lead to a contractual dispute.

Contractual Language

1. Definition of Force Majeure

Force Majeure is any event beyond the reasonable control of the **Contractor Group**, which renders impossible or delays the execution by either party of its obligations under the **Contract**.

Such events include, but are not limited to, terrorist attack, foreign wars, riots, civil wars, strikes (other than among the employees of the party seeking to rely on such event), explosions, environmental incidents, epidemics, tsunamis, fires, earthquakes, lightning, floods, landslides, acts of Public Authorities or of a representative thereof, blockade or embargo, threats to personnel and risk of destruction of equipment, personnel kidnapping or any other cause (except disruption by **Activists** or **Third Party Action Groups** if settled by any other provisions of the **Contract**) which is beyond the reasonable control and not due to the fault or negligence of the party invoking **Force Majeure**. Inability to pay amounts due under the **Contract** shall under no circumstances constitute a case of **Force Majeure**.

2. Declaration of Force Majeure

The party affected by a **Force Majeure** event shall give to the other party as promptly as possible notice thereof:

- Informing the other party of occurrence of a **Force Majeure** event (providing evidence of its nature).
- Indicating the effective date of suspension of the **Geophysical Services** and the estimated duration of such suspension.

In such case, both parties shall consult each other without undue delay as to the measures taken or to be taken regarding the continuation of the **Geophysical Services** if reasonably possible.

3. Initial Standby Period

From the occurrence of a **Force Majeure** event and during the first ten days of suspension due to **Force Majeure** event, **Contractor** shall remain ready to resume the **Geophysical Services** and shall be remunerated at a **Standby Rate** as provided in the **Contract**.

4. Resuming/Terminating the Contract

Should suspension extend beyond ten days:

- **Client** may request **Contractor** to remain ready to resume **Geophysical Services** and **Contractor**, if it expressly consents, will be compensated on the basis of a mutually agreed rate.
- **Client** or **Contractor** may terminate this **Contract** without any other obligation for **Client** than payment for the **Geophysical Services** already carried out by **Contractor** prior to the **Force Majeure** occurrence, payment of the stand-by period, payment of demobilization fees, reimbursement of the costs incurred in connection with termination of **Subcontractors**. The party who intends to exercise such a right of termination shall notify the other party in writing. This shall be exclusive of any other indemnity to the account of either party.