Academic Journal of Management and Social Sciences
ISSN: 2958-4396 | Vol. 13, No. 2, 2025

Application of Force Majeure in Eco-environmental Tort Liability

Ping Huang

School of Law, Shanghai University of Political Science and Law, Shanghai, China

Abstract: Article 1230 of the China's Civil Code stipulates that the actor shall bear the burden of proof for any legal grounds for exemption or reduction of liability. However, except for China's Water Pollution Prevention and Control Law and China's Marine Environmental Protection Law, which explicitly designate force majeure as an exemption ground from tort liability in cases of water pollution and marine environmental pollution tort, other environmental protection laws do not provide for exemptions for eco-environmental tort liability, including force majeure. There is still disagreement in the academic community regarding whether Article 180 of the China's Civil Code applies to eco-environmental tort liability. By analyzing legal provisions, the impact of force majeure on the establishment of liability for eco-environmental tort, and the legal principles and policies governing force majeure, it is suggested that force majeure, as an exemption, should be conditionally applicable to eco-environmental tort liability.

Keywords: Eco-environmental Tort; Tort Liability; Force Majeure; Exemption.

1. Introduction

The eco-environmental tort discussed in this article refers to the civil liability that the tortfeasor should bear for causing personal or property damage to the infringed by polluting the environment or damaging the ecology. Article 1230 of the Civil Code of the People's Republic of China (the Civil Code) stipulates that the actor shall bear the burden of proof for the absence of a causation between the act and the damage, as well as for the exemption grounds from tort liability as provided by law. However, Chapter 7 "Environmental Pollution and Ecological Damage Liability" of Part 7 "Tort Liability" of the Civil Code does not provide for exemption grounds for Eco-environmental tort. It is only stipulated in Article 180 of Part 1 "General Provisions" of the Civil Code that force majeure is an exemption ground for civil liability. If there are other legal provisions, they shall be followed. However, there are still serious differences in the academic community regarding whether force majeure applies to Eco-environmental tort liability, and further discussion is necessary.

2. Different Views on the Application of Force Majeure Legal Provisions to Eco-environmental Tort Liability

At present, there are different provisions in the environmental protection laws regarding whether force majeure as an exemption applies to eco-environmental tort liability. Article 96 of the Water Pollution Prevention and Control Law of the People's Republic of China (the Water Pollution Prevention and Control Law) and Article 116 of the Marine Environmental Protection Law of the People's Republic of China (the Marine Environmental Protection Law) both clearly stipulate that force majeure is an exemption ground for eco-environmental tort liability. The pre revised Environmental Protection Law of the People's Republic of China (the Environmental Protection Law, revised in 2014) and the Air Pollution Prevention and Control Law of the People's Republic of China (the Air Pollution Prevention and Control Law, revised in 2018) also stipulated that force majeure is an exemption ground for environmental tort liability. After the revision, both laws have deleted this provision. Article 29 of the Tort Liability Law of the People's Republic of China (the Tort Liability Law, now abolished) and Article 180 of the Civil Code both stipulate that force majeure is an exemption ground from civil liability. If there are other provisions in the law, they shall be followed. There has always been controversy in the academic community in China regarding the application of force majeure in eco-environmental tort liability. The implementation of the Civil Code has not eliminated these controversies, and there are mainly two views: affirmative and negative. In the affirmative view, some scholars have analyzed from the perspective of legal application rules that force majeure can become an exemption for eco-environmental tort liability, but it does not have universal applicability and can only be applied when there are clear legal provisions.[1] There are also views that, except for special exclusion provisions in the law, force majeure applies to fault liability, presumed fault liability, and no-fault liability[2], and of course, also applies to eco-environmental tort liability. Other scholars analyze from the perspective of obligation provisions and believe that Article 180 of the Civil Code has room for application in no-fault liability, but no room for application in fault tort liability.[3] The negative view holds that dangerous activities are the cause of damage, and although the damage is directly caused by force majeure, it is only the inducement for the damage to occur. The direct source of the damage is the dangerous activities engaged in by the actor. Force majeure does not cut off the causation between dangerous activities and damage, but only realizes the existing danger.[4] “Other provisions of the law” refers to the special provision in the law that force majeure is an exemption ground from tort liability[5], and according to this viewpoint, as there is no special provision in environmental protection laws such as the Environmental Protection Law, force majeure is not an exemption ground from eco-environmental tort liability.

The above viewpoints have certain logical paradoxes in interpreting legal norms. In the affirmative view, it is believed that force majeure only applies when there are special provisions in the law. However, as mentioned earlier, in China's current laws, except for the Marine Environment Protection Law and the Water Pollution Prevention and Control Law, which specifically stipulate that force majeure is an exemption for Eco-environmental tort liability, the Civil Code, the Environmental Protection Law, and other special environmental protection laws do not specifically stipulate exemption grounds. Article 1230 of the Civil Code also stipulates that the actor should bear the burden of proof for the exemption grounds stipulated by law. So, how can the actor prove exemption grounds? Is there no exemption ground for other eco-environmental tort liabilities except for water pollution tort and marine environment pollution tort? The affirmative view holds that force majeure has universal applicability except for exclusion, and there is no need for special legal provisions for exemption from no-fault liability. However, in the ultrahazardous tort liability that also applies no-fault liability, Articles 1237, 1239, and 1240 of the Civil Code specifically provide for exemption grounds such as force majeure. Isn't this a redundant provision? In the negative view, it is believed that force majeure does not sever the causation between hazardous activities and damage, ignoring both the causes of eco-environmental tort liability, namely pollution and ecological destruction, and the direct impact of force majeure on damage. The negative view holds that "the law has other provisions", which refers to the special provisions of the law that exempt force majeure from tort liability. However, due to the lack of special provisions in Chapter 7 of Part 7 of the Civil Code and other special laws on environmental protection, force majeure is not an exemption for eco-environmental tort liability, which also creates the dilemma of the actor having no evidence of exemption, ultimately rendering Article 1230 of the Civil Code ineffective.

3. The Justification of Force Majeure as an Exemption Ground from Eco-environmental Tort Liability

The author believes that force majeure as an exemption ground can be conditionally applied to eco-environmental tort liability.

3.1. Interpretation of Law Provisions

As analyzed earlier, since special environmental laws such as the Environmental Protection Law do not provide for exemption grounds for eco-environmental tort liability, the provisions of the Civil Code should be applied. However, in Chapter 7 of Part 7 of the Civil Code, there are no specific provisions for exemption grounds. Therefore, the general provisions on exemption grounds in the "General Provisions" section of the Civil Code and the exemption grounds in Chapter 1 of Part 7 of the Civil Code should be applied. The provisions on force majeure are reflected in Article 180 of the General Provisions of Part 1 of the Civil Code. The exemption grounds in the General Provisions have universal applicability and are general exemption ones, [6] which are universally applicable to various civil liabilities. Eco-environmental tort liability is also a civil liability. Logically speaking, force majeure should also be applicable to eco-environmental tort liability.

What does Article 180 (1) of the Civil Code, which states that "the law provides otherwise," mean? There are different viewpoints in the theoretical community. One viewpoint holds that "the law has other provisions" is an exception to the principle of force majeure exemption. Another viewpoint holds that "the law has other provisions" is a positive provision, which refers to the special provisions of the law that exempt force majeure from tort liability. [5] Since there are no special provisions in environmental protection laws such as the Environmental Protection Law, force majeure is not an exemption grounds for eco-environmental tort liability.

The author believes that “otherwise provided by law” should refer to the provision that force majeure cannot be used as an exemption ground from tort liability as stipulated by law.

Firstly, the first sentence of Article 180 (1) of the Civil Code affirms that force majeure is an exemption ground from civil liability. Logically speaking, the latter sentence If “the law provides otherwise, follow its provisions” is a negation of the previous sentence, that is, force majeure cannot be used as an exemption ground from tort liability. If the phrase “otherwise provided by law” is understood as a provision applicable to force majeure, then the two provisions are redundant.

Secondly, there are several special tort liabilities that apply no-fault liability, or exemptions are specifically provided in the Civil Code or other special laws. The former includes ultrahazardous liability and liability for harm caused by domestic animals, while the latter includes product liability and motor vehicle traffic accident liability. Does it mean that there are no exemptions for the Eco-environmental tort liability, including force majeure, which are not specifically provided for in Chapter 7 of Part 7 of the Civil Code or in other special laws such as the Environmental Protection Law and the Air Pollution Prevention and Control Law? Obviously not, because Article 1230 of the Civil Code stipulates that ‘the actor shall bear the burden of proof for situations where the law does not provide for liability or reduces liability. This means that eco-environmental tort has exemption grounds from tort liability. So, in the absence of exemption grounds stipulated in special environmental laws, how can the actor provide evidence of "non liability or reduced liability"? The occurrence of such a situation is either due to significant loopholes in legal provisions, or in accordance with the applicable rules of law, the provisions on exemption grounds in the General Provisions or the General Provisions on Tort Liability in Part 7 of the Civil Code shall apply. If it belongs to the former, it is urgent to amend the law or issue judicial interpretations to fill the Legal loopholes; If it belongs to the latter, according to the applicable rules of law, only the exemption provisions in the Part 1 General Provisions or the General Provisions on Tort Liability in Part 7 of the Civil Code can be applied. Therefore, excluding legal loopholes, whether through logical analysis of Articles 180 and 1230 of the Civil Code or from the perspective of the normative system of the Civil Code, it can be concluded that in China's legal provisions, force majeure is a no-fault liability exemption ground, including the eco-environmental tort liability, in the absence of legal exclusion. Article 26 of the Interpretation on Several Issues Concerning the Application of Law in the Trial of the eco-environmental tort Liability Disputes implemented by the Supreme People's Court in 2023 stipulates that if the infringed party has gross negligence in causing or expanding damage to the same polluted environment or ecological destruction, the tortfeasor may request a reduction of liability. For light to heavy, it means that if the infringed party intentionally causes damage to the same polluted environment or ecological destruction, the tortfeasor's liability can be exempted. This indirectly proves that the provisions on exemption grounds in the General Provisions of Part 1 or Chapter 1 "General Provisions" of Part 7 of Civil Code, unless otherwise provided by law, apply to the Eco-environmental tort liability. However, the Civil Code specifically provides for the exemption of force majeure in ultrahazardous liability, which contradicts the logic of legal application rules. From the perspective of legislative technology, it seems to be a redundant provision.

3.2. The Impact of Force Majeure on the Establishment of the Eco-environmental Tort Liability

Exemption refers to the situation where civil liability has been established, but there are legal exemption grounds that result in the exemption of liability. The establishment of tort liability requires certain elements. In theory, it is generally believed that the constituent elements of tort liability applicable to fault liability are fault, damage consequences, and causality. Due to the lack of emphasis on illegality in Article 1165 of the Civil Code, there are differences in academia regarding whether illegality is an independent constituent element of tort liability. Some believe that fault includes illegality, while others believe that although the law does not emphasize illegality, if the actor harms the rights and interests of others, the act has illegality. Other countries (regions) also have different regulations. French Civil Law does not provide for independent elements of illegality, and fault absorbs illegality. German Civil Law distinguishes between fault and illegality, which includes intentional or negligent infringement of absolute rights such as life, health, and ownership of others, violation of laws protecting others, and intentional harm to others in a way that violates good customs. If we interpret Article 1165 of China's Civil Code literally, it can be understood that fault absorbs illegality, and illegality does not constitute an independent element of fault liability. Interpretation of Article 1229 of the Civil Code states that liability for eco-environmental tort Liability is not based on fault or illegality as its constituent elements.

Force majeure is the elimination of tort liability. In fault liability, the rule of "whoever asserts shall provide evidence" is adopted. If the plaintiff can provide evidence to prove that the defendant is at fault, has committed the tortious act, suffered damage to personal or property rights, and there is a causation between the tortious act and the damage, then tort liability is established; Otherwise, the tort liability shall not be established, and the actor shall not bear legal responsibility. In cases where liability is established, the defendant may also be exempted from liability for justifiable grounds, including Justifiable defense, emergency avoidance, self-help behavior, etc. In the case of damage caused entirely by force majeure, the defendant is not at fault. As long as the plaintiff cannot provide evidence to prove that the defendant is at fault, the tort liability cannot be established. Since the tort liability is not established, there is no issue of exemption from liability due to force majeure. Therefore, the civil laws of Germany, France, Japan do not include force majeure as a general exemption for tort, but instead include force majeure as an exemption for external causes in strict liability (no-fault liability). Force majeure (natural force) is only used as a defense for reducing liability under strict liability, and only as an external factor under strict liability does it become a defense.[7] Moreover, many countries or regions have specifically stipulated force majeure as an exemption for environmental tort in special environmental laws, such as Article 107 of the United States Comprehensive Environmental Response, Compensation, and Liability Act, which includes exemption for environmental pollution tort due to force majeure, war, etc. Article 4 of the German Environmental Liability Act stipulates that force majeure is an exemption from tort liability; Section 205 (2) of the Canadian Environmental Protection Act provides that environmental incidents caused by war, hostilities, or rebellion, or by exceptional, unavoidable, and insurmountable natural phenomena, may exempt the tortfeasor from liability. According to Article 7:102 of Chapter 7 of the Basic Principles of European Tort Law, "Defense against Strict Liability", damages caused by natural forces (force majeure) or other grounds can be exempted from strict liability.[8] The Dutch Civil Code stipulates in Article 178 (2) that damage caused by external, unforeseeable, unavoidable, and insurmountable natural events does not result in environmental pollution liability.

The liability for eco-environment tort is a no-fault liability, and the legal basis of no-fault liability is based on the theory of distributive justice of risk control. Regardless of whether the actor is at fault, the plaintiff only needs to provide evidence to prove that eco-environment tort has occurred and caused damage. There is a certain correlation between eco-environment tort and damage, and the actor should bear the liability for tort. If the actor wants to be exempted from tort liability, they need to provide evidence to prove that there is no causality between the eco-environment tort and the damage, or that there is a statutory exemption ground. If the actor cannot provide evidence to prove that there is no causality between the behavior and the damage without any other grounds intervening, the actor shall bear the tort liability. In the case where the normal business activities of the actor do not cause environmental tort damage or environmental pollution but the damage is within a tolerable range, the occurrence of environmental tort damage is caused by the intervention of force majeure, that is, the damage is not caused by the actor's actions or inactions in discharging pollutants or damaging the ecology. Force majeure is the only and most direct cause of damage, and there is a causation between force majeure and environmental tort damage. According to Article 1230 of the Civil Code, if the actor can provide evidence to prove that there is no causation between the damage and their conduct, they can be exempted from tort liability. The view that even in the event of force majeure, the causation between eco-environment tort and damage is certain ignores the impact of force majeure on damage and the fact that the actor loses control over danger when force majeure occurs. The theory of risk control of no-fault liability assumes that the actor has the ability to control danger when it occurs. As mentioned earlier, in fault liability, if the victim cannot provide evidence to prove that the actor is at fault, the actor can be exempted from tort liability without the need for the actor to provide evidence to prove the existence of force majeure. Force majeure as an exemption ground from fault liability has little practical significance. And no-fault liability does not consider the fault of the actor when pursuing liability, which has already increased the liability of the actor. If the damage caused by unforeseeable and uncontrollable reasons cannot be exempted, it is unfair. Therefore, stipulating force majeure as a conditional exemption from no-fault liability, supplemented by corresponding victim relief systems, is of great practical significance for balancing the interests of both parties.

3.3. Legal and Policy Considerations

It is generally believed that the attribution basis of the principle of no-fault liability is the theory of compensation, the theory of dangerous manufacturing, and the theory of risk sharing. Scholars who oppose force majeure as an exemption ground from eco-environmental tort liability believe that the fundamental idea of the above theory is that the actor has created a certain danger, and to some extent, only the actor can control this danger. The actor has also gained benefits from these dangerous activities, and the victim is a weak person who needs to be protected when facing a person who is in charge of dangerous goods or engaged in dangerous activities. Moreover, those who control dangerous goods or engage in dangerous activities often spread the damage through pricing, insurance, and other means. Based on policy considerations and special protection for victims, it is necessary to impose special restrictions on the exemption for no-fault liability. In the absence of specific legal provisions, force majeure is not an exemption for environmental tort liability.

The author agrees that the above theory is the basis for the attribution of no-fault liability. The legal concept of no-fault liability lies in the reasonable distribution of "unfortunate damages"[9], which is distributive justice. Providing special protection for the victims of the disadvantaged party conforms to the spirit of legal fairness and justice, and is also conducive to urging enterprises to actively take preventive measures. However, we should also recognize the rationality of hazardous activities. Denying force majeure as an exemption for eco- environmental tort may affect the enthusiasm of enterprise production and operation, not conducive to the development of social economy, the creation of social wealth, and the progress of technology, be unfair to enterprises, and have a certain negative impact on social and economic development, technological progress, etc., ultimately leading to eco-environment tort liability becoming absolute responsibility. Is precisely because of the existence of force majeure and other exemptions that strict liability differs from absolute liability. Therefore, in order to balance the interests of both the tortfeasor and the victim, it is necessary to stipulate that force majeure can be conditionally exempted from eco-environment tort liability, and establish a corresponding victim relief system, which is the direction of legislative choice.

3.4. Comparative Law Observation

In comparative law, some countries (regions) define force majeure as an exemption for environmental infringement. The exemption grounds for environmental pollution tort as stipulated in Section 107 of the United States Comprehensive Environmental Response, Compensation, and Liability Act include force majeure, war, etc.; Article 4 of the German Environmental Liability Act stipulates that damages caused by force majeure shall not be liable for compensation. According to Section 205 (2) of the Canadian Environmental Protection Act, if an environmental incident is caused by war, hostility, or rebellion, or by abnormal, unavoidable, or insurmountable natural phenomena, the tortfeasor may be exempted from liability. Article 178 (2) of the Dutch Civil Code stipulates that damage caused by external, unforeseeable, unavoidable, and insurmountable natural events does not result in environmental pollution liability. Article 3 (2) of the 1969 International Convention on Civil Liability for Oil Pollution Damage also stipulates that the owner of a ship shall not be liable for damage caused by acts of war, hostilities, civil war or armed rebellion, or natural phenomena of a special, unavoidable and irresistible nature. According to Article 7:102 of the European Principles of Tort Law, which states that if the damage is caused by natural forces (force majeure) or the actions of a third party, strict liability can be exempted or reduced. The extent to which strict liability can be exempted or reduced depends on the importance of external influences and the scope of liability (Article 3:201). Force majeure (natural force) is only used as a defense for reducing liability under strict liability, and only as an external factor under strict liability.

In summary, the author believes that whether it is the interpretation of force majeure legal norms, the impact of force majeure on the establishment of ecological environment tort liability, or from policy considerations and comparative law observations, force majeure as an exemption for eco-environment tort liability is reasonable. However, in order to balance the interests of the actor and the victim, necessary restrictions should be made in its application, and a victim relief fund system should be established.

4. The Limitation of Force Majeure as an Exemption Applies to Eco-environmental Tort Liability

4.1. Limitations on the Scope of Force Majeure

The scope of force majeure can be defined in a narrow concept, a broad concept, or the broadest concept. Narrowly speaking, force majeure refers only to natural disasters that are beyond our control. Broadly speaking, force majeure includes both natural phenomena; This also includes social anomalies such as war, armed conflict, riots, terrorist activities, marches, rallies, strikes, etc.[10] In the broadest concept, it is believed that the exercise of state power and its consequences are sometimes unforeseeable, unavoidable, and uncontrollable by people, and also belong to force majeure.[11] The author believes that in eco-environmental tort, an overly broad understanding of force majeure should not be made. Uncontrollable natural disasters, wars, riots, and armed conflicts can be recognized as force majeure. Terrorist activities, strikes, marches and rallies that do not meet the "three impossibilities" of force majeure should not be recognized as force majeure. In the context of the transformation of government functions, the government is a responsible government that should bear responsibility for errors or omissions in government decision-making and administrative actions. In the field of eco-environment tort, the government should be regarded as a third party.

4.2. Limitations on Applicable Conditions

Although force majeure can be used as an exemption for eco-environmental tort liability, it should be strictly limited when applied. (1) Force majeure has occurred; (2) Force majeure severs the relationship between the behavior of the actor and the eco-environmental tort damage, and there is a causation between force majeure and damage. (3) Force majeure is the only and direct cause of eco-environmental tort and damage. If there has been an eco-environmental tort before the occurrence of force majeure, and there is a correlation between the tort and the damage suffered by the victim, even if force majeure occurs, the actor cannot be exempted from tort liability because they cannot provide evidence to prove that there is no causation between their conduct and the damage. If the damage is caused jointly by force majeure and environmental tort, the actor cannot be exempted from tort liability because they cannot provide evidence to prove that there is no causation between their conduct and the damage. If environmental damage is caused, in addition to force majeure, it is also related to the conduct of the victim, third parties, etc. Further analysis of the causal force between force majeure and damage is needed to determine the mitigation, exemption, or even non exemption of the liability of the eco-environment tortfeasor. (4) After the occurrence of force majeure, the tortfeasor took reasonable measures in a timely manner to avoid the occurrence or expansion of damage. The so-called reasonable measures refer to measures taken to avoid harm by exhausting one's technology and capabilities. Therefore, if the damage caused by force majeure is not aggravated by the act of the tortfeasor, or if their actions are unlikely to cause the damage, it should be determined that there is no causation between their act and the damage. Otherwise, the tortfeasor shall still bear the tort liability. (5) Even if the tortfeasor takes reasonable measures in a timely manner, it is still impossible to avoid the occurrence of harm.

5. Conclusion

In summary, force majeure can be conditionally applied to the liability for eco-environmental tort as an exemption. From the interpretation of legal provisions, in tort liability, except for those explicitly excluded by law, Article 180 of the Civil Code has universal applicability. However, there is a logical confusion between the force majeure clause and Article 180 in the high-risk liability of the Civil Code, and it is necessary to clarify the relationship between the general provisions and the specific provisions. However, from the analysis of the constituent elements and evidentiary rules for the establishment of liability, force majeure has little significance as an exemption in fault liability, but has more practical significance in no-fault liability. Due to force majeure causing environmental tort, in the case where the tortfeasor is exempted from tort liability, the victim cannot obtain compensation from the tortfeasor, nor can they obtain compensation through compulsory environmental liability insurance. It is unfair for the victim to bear the consequences of the damage entirely. According to the provisions of China's Earthquake Prevention and Disaster Reduction Law, Flood Control Law, and other laws, the state has the obligation to prevent disasters and assist disaster victims. The relief for victims should be provided by the state. According to the Interim Measures for the Management of Central Natural Disaster Relief Funds, victims can apply for national natural disaster relief funds in accordance with the procedures.

References

[1] X. F. Cao: On the Application of Legal Norms of Force Majeure in Environmental Pollution Liability - Commentary on Article 29 of Tort Liability Law, Contemporary Law Review, vol. 27(2013), No.5, p.101-107.

[2] Civil Law Office of the Legislative Affairs Committee of the Standing Committee of the National People's Congress: *Explanation of Articles, Legislative Reasons and Related Provisions of Tort Liability Law of the People's Republic of China*, (Peking University Press, China 2010), p.111.

[3] W. F. Nie: The Basis of Obligation Types for Constructing Logic of Force Majeure Exemption Norms - Historical Review of the Legislative Methodology of Article 180 (1) of Civil Code, Legal Methods, vol. 36 (2021), p.291-315.

[4] P. H. Zhang: The Force Majeure in Tort Law, Journal of Hunan Police Academy, vol. 1(2017), No.1, p.42-48.

[5] W.Q. Yuan: Understanding and Application of Force Majeure as an Exemption from Tort Liability - Interpretation of Article 29 of Tort Liability Law of the People's Republic of China, Studies in Law and Business, vol. 32(2015), No.1, p.129-135.

[6] L.X. Yang: Construction and Application of the Tort Liability Exemption System of the Civil Code, Qiushi Journal, vol. 44(2022), No.5, p.107-121.

[7] European Group on Tort Law: Principles of European Tort Law: Text and Commentary, translated by Yu Min and Xie Hongfei, (Law Press, China 2009), p.181-182.

[8] European Group on Tort Law: Basic Principles of European Tort Law, translated by M. Yu, Global Legal Review, vol. 27(2006), No. 5, p.620-625.

[9] Z.J. Wang: Tort Law (Volume 1), (China University of Political Science and Law Press, China 2001), p.16.

[10] K.X. Liu, H.X. Zhang: On Force Majeure, Legal Research, vol.22(2000), No. 6, p.107-118.

[11] X.B. Zhang: *Tort Liability Law*, (Renmin University Press, China 2006), p.86.