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Article

Research on the Application of Force Majeure Rules in International Commercial Contracts

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Abstract: This paper focuses on the application issues of force majeure rules in international commercial contracts, exploring the challenges and solutions in their practical implementation. Firstly, it systematically reviews the concept, characteristics, legislative models, and legal consequences of force majeure, comparing the relevant provisions in civil law systems, common law systems, and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Secondly, it delves into the main problems in the application of force majeure rules, including the criteria for identifying force majeure events, the distinction between force majeure and the doctrine of changed circumstances, the drafting and interpretation of force majeure clauses, and the conflicts and coordination of legal rules across different jurisdictions. Finally, the paper proposes recommendations for improving the application of force majeure rules, such as clarifying identification standards, standardizing clause drafting, and promoting the unification of rules, aiming to provide theoretical and practical guidance for the practice of international commercial contracts.

Keywords: international commercial contracts; force majeure rules; legal application; changed circumstances; contractual exemption

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1. Introduction

International commercial contracts, as vital instruments in global trade, are inevitably affected by various external factors during their execution, with force majeure events being particularly prominent. Force majeure rules, as an essential legal doctrine in contract law, aim to provide parties with exemptions from liability when contract performance is hindered by unforeseeable, unavoidable, and insurmountable events. However, due to significant differences in the definition, application conditions, and legal consequences of force majeure across different legal systems and countries, the application of force majeure rules in international commercial contracts has become increasingly complex, often leading to disputes and uncertainties in practice. In the context of globalization, with the frequent occurrence of cross-border transactions, the identification and handling of force majeure events not only affect the balance of interests between contracting parties but may also impact the stability of international trade order. Therefore, an in-depth study of the application issues of force majeure rules in international commercial contracts holds significant theoretical and practical value. Scholars both domestically and internationally have primarily focused on the conceptual definition, legal consequences, and the distinction between force majeure and related doctrines (such as changed circumstances). Civil law countries typically regard force majeure as a statutory exemption, while common law systems rely more on force majeure clauses in contracts. Additionally, the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) provide an important reference for the application of force majeure in international commercial contracts. However, existing research predominantly concentrates on the

analysis of rules within specific legal systems or countries, lacking a systematic exploration of the application issues of force majeure rules in international commercial contracts, especially in the context of globalization and the coordination of conflicts between different legal rules [1].

2. Overview of Force Majeure Rules in International Commercial Contracts

2.1. Concept and Characteristics of Force Majeure

Force majeure is a crucial doctrine in contract law, designed to exempt parties from liability when contract performance is hindered by unforeseeable, unavoidable, and insurmountable external events. Its core purpose is to balance risk allocation between contracting parties, ensuring fairness in contractual liability under extreme circumstances. Originating in civil law systems, the concept of force majeure has gradually been adopted by common law systems and international commercial practices, although its specific definition and application conditions vary across legal systems [2]. From a comparative law perspective, civil law countries (e.g., France, Germany) typically define force majeure as a statutory exemption, emphasizing the event's "unforeseeability," "inevitability," and "irresistibility." For instance, Article 1218 of the French Civil Code defines force majeure as an event beyond the debtor's control, unforeseeable, and unavoidable through reasonable measures. In contrast, common law systems rely more on force majeure clauses in contracts, allowing parties to determine the scope and consequences of force majeure through agreement. Additionally, Article 79 of the CISG defines force majeure as "an impediment beyond the control of the party," which could not reasonably be foreseen, avoided, or overcome at the time of contract conclusion. The characteristics of force majeure include:

1. Unforeseeability: The event could not have been reasonably foreseen at the time of contract formation. Examples include natural disasters, wars, or sudden government actions.

2. Inevitability: The occurrence and impact of the event could not have been avoided through reasonable efforts by the parties.

3. Irresistibility: The event renders contract performance impossible or significantly hindered, and the parties cannot overcome the obstacle through alternative means.

In international commercial contracts, the application of force majeure rules depends not only on legal provisions but also on contractual clauses. Parties often explicitly define the scope and consequences of force majeure in contracts to avoid disputes. However, due to the complexity and diversity of force majeure events, their identification and application remain challenging in practice. Therefore, a deep understanding of the concept and characteristics of force majeure is essential for studying its application issues in international commercial contracts [3].

2.2. Legislative Models of Force Majeure Rules

The legislative models of force majeure rules vary significantly across legal systems, primarily reflected in the statutory approach of civil law systems and the contractual approach of common law systems. Additionally, international treaties such as the CISG provide a unified framework for force majeure rules [4]. Civil law countries typically treat force majeure as a statutory exemption, explicitly defined in civil codes or contract laws. For example, Article 1218 of the French Civil Code defines force majeure as an event beyond the debtor's control, unforeseeable, and unavoidable through reasonable measures, exempting the debtor from liability. Similarly, Article 275 of the German Civil Code provides for exemption from performance due to force majeure. The civil law model emphasizes the objectivity and legal enforceability of force majeure, allowing parties to claim exemption even without explicit contractual clauses. In contrast, common law countries (e.g., the UK, the US) do not explicitly define force majeure in statutes but treat it as a contractual matter, relying on party agreement. In common law systems, force majeure clauses are considered part of the contract, with their scope, application conditions, and

legal consequences determined by the parties. For instance, English courts strictly interpret force majeure clauses based on contractual language. This model grants greater autonomy to the parties but requires clear and precise drafting of clauses to avoid disputes. In international commercial practice, the CISG provides a unified framework for force majeure rules. Article 79 of the CISG states that a party may be exempt from liability if it proves that its failure to perform was due to "an impediment beyond its control," which could not reasonably have been foreseen, avoided, or overcome at the time of contract conclusion. The CISG's provisions reconcile the differences between civil law and common law systems, offering a unified standard for international commercial contracts. However, the CISG's principles are general, and their application often requires interpretation based on domestic laws and contractual terms. The civil law model emphasizes legal enforceability and uniformity, while the common law model focuses on party autonomy. The CISG seeks to balance these approaches, providing flexible and unified rules for international commercial contracts. In practice, parties often combine statutory and contractual approaches, referencing legal provisions while detailing the scope and consequences of force majeure in contracts. This hybrid model helps reduce disputes and enhances the predictability and enforceability of contracts. In conclusion, the legislative models of force majeure rules reflect different legal systems' approaches to risk allocation and contractual freedom. Understanding these differences and their application characteristics is crucial for designing effective force majeure clauses and resolving related disputes in international commercial contracts [5].

2.3. Legal Consequences of Force Majeure

The occurrence of a force majeure event may lead to various legal consequences in international commercial contracts, depending on contractual terms, applicable laws, and the nature and impact of the event. Generally, the legal consequences of force majeure include exemption from liability, contract termination, or modification, aiming to balance the interests of both parties and ensure fairness under extreme circumstances. Firstly, the primary legal consequence of force majeure is the exemption of the affected party from performance obligations. When a force majeure event renders contract performance impossible or significantly hindered, the affected party may claim exemption from liability. For example, Article 1218 of the French Civil Code explicitly exempts the debtor from performance obligations in cases of force majeure. Similarly, Article 79 of the CISG provides for exemption from liability due to force majeure. However, the scope and conditions of exemption may vary across legal systems or contractual terms. In some cases, exemption applies only during the duration of the force majeure event, and performance obligations resume afterward. Secondly, force majeure events may lead to contract termination. When a force majeure event severely impacts the contract's purpose or causes long-term impossibility of performance, the parties may have the right to terminate the contract. For instance, in common law systems, if a force majeure event constitutes "frustration of contract," the parties may terminate the contract and be exempt from further performance. In civil law systems, a similar principle known as "collapse of the basis of the transaction" (Wegfall der Geschäftsgrundlage) allows contract termination under extreme circumstances. However, termination typically requires strict conditions and may involve the return of performed obligations or loss allocation. Additionally, force majeure events may result in contract modification. In some cases, force majeure does not completely prevent performance but significantly alters the conditions of performance. Parties may negotiate adjustments to contract terms, such as extending performance deadlines, modifying delivery methods, or adjusting prices. Such modifications aim to maintain the commercial viability of the contract while balancing the interests of both parties. It is important to note that the legal consequences of force majeure are not automatic. The affected party usually must fulfill certain notification and proof obligations. For example, Article 79 of the CISG requires the affected party to promptly notify the other party of the

force majeure event and its impact on performance, providing proof within a reasonable scope. Additionally, force majeure clauses in contracts may further specify the application of legal consequences, such as the scope of exemption, conditions for termination, or procedures for modification. In conclusion, the legal consequences of force majeure reflect the balance between risk allocation and fairness in contract law. In international commercial contracts, clarifying the legal consequences and application conditions of force majeure events is essential for protecting the legitimate rights and interests of both parties and reducing disputes [6].

3. Major Issues in the Application of Force Majeure Rules in International Commercial Contracts

In the practice of international commercial contracts, the application of force majeure rules faces numerous complex issues. These problems not only involve the criteria for identifying force majeure events but also include the distinction between force majeure and related doctrines, the interpretation of contractual clauses, and the conflicts and coordination of different legal rules. Firstly, there is significant controversy over the criteria for identifying force majeure events. Although the core characteristics of force majeure typically include unforeseeability, unavoidability, and irresistibility, determining whether a specific event meets these criteria often becomes a focal point of dispute in individual cases [7]. For example, whether natural disasters, wars, or government actions constitute force majeure requires a comprehensive assessment based on specific circumstances, and different countries or legal systems may have varying interpretations. Secondly, the distinction between force majeure and the doctrine of changed circumstances is particularly prominent in international commercial contracts. The doctrine of changed circumstances refers to situations where significant changes in objective conditions during contract performance lead to the collapse of the contract's foundation or unfairness, allowing parties to request modification or termination of the contract. Force majeure and changed circumstances may overlap in certain cases, such as economic crises or policy changes, which could invoke both doctrines. However, their legal consequences and application conditions differ significantly, making it challenging to accurately distinguish and choose between them in practice. Additionally, the drafting and interpretation of force majeure clauses have sparked widespread controversy. In international commercial contracts, parties typically define the scope and legal consequences of force majeure through specific clauses. However, ambiguous or vague wording in these clauses often leads to disputes in their application. For instance, some clauses may list "market fluctuations" or "supply chain disruptions" as force majeure events, but whether these events truly meet the legal standards of force majeure often requires interpretation based on contractual rules. Finally, the conflicts and coordination of force majeure rules are particularly complex in international commercial contracts. Due to differences in force majeure provisions across countries or legal systems, determining the applicable legal rules becomes critical when contracts involve multiple jurisdictions. For example, civil law and common law systems have significant differences in their legislative models and application conditions for force majeure, while the United Nations Convention on Contracts for the International Sale of Goods (CISG) provides a unified framework for international commercial contracts. However, the CISG's provisions are relatively general, and their application often requires interpretation based on domestic laws, further increasing the potential for conflicts. In summary, the application issues of force majeure rules in international commercial contracts involve multiple layers of complexity, including the identification of force majeure events, the distinction from changed circumstances, the interpretation of contractual clauses, and the conflicts and coordination of different legal rules. Resolving these issues requires comprehensive analysis and judgment based on specific cases, contractual terms, and applicable laws, as well as further efforts by the international community to unify these rules [8].

4. Recommendations for Improving the Application of Force Majeure Rules in International Commercial Contracts

4.1. Clarifying the Criteria for Identifying Force Majeure Events

In the practice of international commercial contracts, the criteria for identifying force majeure events are a core issue in the application of force majeure rules. Due to differences in the definition and application conditions of force majeure across legal systems and countries, disputes often arise in specific cases. Therefore, clarifying the criteria for identifying force majeure events is of great significance for enhancing the uniformity and predictability of rule application. Firstly, the core characteristics of force majeure—unforeseeability, unavoidability, and irresistibility—should be further clarified. Unforeseeability means the event could not have been reasonably anticipated at the time of contract formation; unavoidability means the occurrence and impact of the event could not have been prevented through reasonable efforts by the parties; and irresistibility means the event renders contract performance impossible or significantly hindered, and the parties cannot overcome the obstacle through alternative means. These characteristics should serve as the fundamental criteria for identifying force majeure events and be explicitly stated in international commercial contracts. Secondly, a more specific and actionable list of force majeure event types should be developed [9]. Although force majeure events vary widely, a non-exhaustive list of common event types, such as natural disasters, wars, government actions, and pandemics, can be compiled based on international commercial practice. This not only provides guidance for parties but also reduces disputes in specific cases. Additionally, efforts should be made to unify the criteria for identifying force majeure events internationally. For example, the CISG could be revised, or new international commercial contract rules could be formulated to further clarify the criteria for identifying force majeure events. At the same time, international commercial arbitration institutions and courts should refer to precedents and practices from other jurisdictions when adjudicating related cases to promote the uniform application of identification standards. Finally, parties should specify the scope and criteria for identifying force majeure events in as much detail as possible when drafting international commercial contracts. For instance, the contract can explicitly list the types of events that constitute force majeure and stipulate the specific procedures and proof requirements for event identification. This not only reduces disputes but also enhances the enforceability of contracts. In conclusion, clarifying the criteria for identifying force majeure events is a crucial step in improving the application of force majeure rules in international commercial contracts. By combining legal provisions, contractual terms, and international practice, clearer, more uniform, and actionable identification standards can be established, providing stability and predictability for international commercial contracts [10].

4.2. Improving the Distinction Between Force Majeure and Changed Circumstances

In the practice of international commercial contracts, the distinction between force majeure and the doctrine of changed circumstances often leads to disputes. Although both involve external obstacles to contract performance, their legal nature, application conditions, and consequences differ significantly. Therefore, improving the distinction between these two doctrines is essential for accurately applying the relevant rules and protecting the legitimate rights and interests of contracting parties. Firstly, the core differences between force majeure and changed circumstances should be clarified. Force majeure typically refers to external events entirely beyond the control of the parties and impossible to avoid or overcome through reasonable efforts, such as natural disasters, wars, or government bans. Its legal consequences mainly include exemption from performance obligations or contract termination. Changed circumstances, on the other hand, refer to significant changes in objective conditions during contract performance that lead to the collapse of the contract's foundation or unfairness, such as economic crises, policy adjustments, or

market fluctuations. Its legal consequences usually involve contract modification or termination, but these require adjudication by courts or arbitration institutions. Secondly, specific criteria and application conditions for distinguishing between the two doctrines should be established. For example, a comprehensive assessment can be made based on the nature, impact, and foreseeability of the event. Force majeure events are typically sudden, extreme, and uncontrollable, while changed circumstances events may be gradual, widespread, and partially controllable. Additionally, force majeure events usually directly render contract performance impossible, whereas changed circumstances events more often affect the economic balance or commercial feasibility of the contract. Furthermore, efforts should be made to unify the distinction between force majeure and changed circumstances internationally. For example, the CISG could be revised, or new international commercial contract rules could be formulated to further clarify the definitions, application conditions, and legal consequences of both doctrines. At the same time, international commercial arbitration institutions and courts should refer to precedents and practices from other jurisdictions when adjudicating related cases to promote the uniform application of distinction standards. Finally, parties should clearly define the scope and legal consequences of force majeure and changed circumstances when drafting international commercial contracts. For instance, separate clauses for force majeure and changed circumstances can be included, specifying their application conditions and procedures. This not only reduces disputes but also enhances the enforceability of contracts. In conclusion, improving the distinction between force majeure and changed circumstances is an important measure for enhancing the accuracy and fairness of rule application in international commercial contracts. By combining legal provisions, contractual terms, and international practice, clearer, more uniform, and actionable distinction standards can be established, providing stability and predictability for international commercial contracts.

4.3. Standardizing the Drafting and Interpretation of Force Majeure Clauses

In international commercial contracts, force majeure clauses are essential tools for parties to allocate risks and clarify responsibilities. However, due to the lack of uniform standards for drafting and interpreting these clauses, disputes often arise in practice. Therefore, standardizing the drafting and interpretation of force majeure clauses is of great significance for enhancing the predictability and enforceability of contracts. Firstly, parties should be encouraged to specify the content of force majeure clauses in detail. Force majeure clauses typically include the definition of force majeure, the scope of events, notification obligations, proof requirements, and legal consequences. For example, parties can explicitly list the types of events that constitute force majeure (e.g., natural disasters, wars, government actions) and stipulate the timing, method, and content of notifications after the event occurs. Additionally, the clauses should specify the proof documents required from the affected party (e.g., government notices, third-party reports) and the legal consequences of force majeure events (e.g., exemption, contract termination, or modification). Detailed drafting can reduce ambiguity and disputes in clause interpretation. Secondly, model texts or guidelines for force majeure clauses should be developed. International organizations or industry associations can draw on best practices from international commercial practice to create model texts for force majeure clauses, providing reference for parties. For example, the International Chamber of Commerce (ICC) has published the "Force Majeure Clause Guide," offering drafting suggestions and examples. Model texts not only enhance the standardization and operability of clauses but also promote the unification of international commercial contract terms. Furthermore, efforts should be made to unify the interpretation of force majeure clauses. In judicial and arbitration practices, courts and arbitration institutions should emphasize the rationality and consistency of clause interpretation. For instance, the interpretation principles outlined in Article 7 of the CISG—considering the internationality, uniformity, and good faith of the clauses—can be referenced. At the same time, over-reliance on the interpretation rules of a specific legal

system should be avoided, and a comprehensive judgment should be made based on the specific circumstances of international commercial practice. Finally, parties should be made more aware of the importance of force majeure clauses. During the negotiation and drafting of international commercial contracts, parties should fully consider the possibility of force majeure events and their impact on contract performance, and clearly allocate risks and responsibilities through clauses. Additionally, parties can include dispute resolution mechanisms in the contract, such as selecting international arbitration institutions or applicable laws, to further enhance the enforceability of clauses. In conclusion, standardizing the drafting and interpretation of force majeure clauses is an important measure for improving the stability and predictability of international commercial contracts. By clarifying clause content, developing model texts, unifying interpretation rules, and raising parties' awareness, disputes can be effectively reduced, and international commercial transactions can proceed smoothly.

5. Conclusion

The application of force majeure rules in international commercial contracts involves complex legal and practical challenges. This paper, through analyzing the concept, legislative models, legal consequences, and major application issues of force majeure, reveals the differences and conflicts in rule application across different legal systems and countries. To improve the application of force majeure rules, this paper proposes recommendations such as clarifying identification standards, distinguishing force majeure from changed circumstances, standardizing clause drafting and interpretation, and promoting the unification of rules. These measures aim to enhance the stability and predictability of international commercial contracts, providing clearer legal guidance for parties. In the future, with the continuous development of international commercial practice, the unification and harmonization of force majeure rules will become an important trend, offering robust support for the smooth progress of global trade.

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