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The Statistical Impact of the COVID-19 Pandemic on the Implementation of International Contractual Obligations

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Abstract: Since the economic conditions in the performance of international commercial contracts are constantly changing, new concepts are introduced regarding the practical and legal challenges of international commercial contracts in view of the methods to cope with this changing situation. The rules and legal system of national legislation lack effectiveness in resolving issues related to the changing conditions in the field of international commercial contracts. The provisions of the force majeure theory are no longer suitable for these changing circumstances, because giving judges the power to modify contracts within the scope of the law does not conform to the reality of international commercial contracts, which usually contain clauses that modify the contract under certain circumstances. The practice of resorting to arbitration. Likewise, the traditional conditions of superior force theory (impossibility) no longer fit the evolving current situation. The reality of international trade agreements therefore requires solutions to respond to these changes in economic conditions, particularly through renegotiation or revision of agreements.

Keywords: Corona Pandemic, Force Majeure, Unforeseen Circumstances Theory, International Trade Contracts.

1 Introduction

Growing global concern about the novel coronavirus (COVID-19) has prompted legal discussions regarding its direct negative impact on the fulfillment of international or national treaty obligations. These implications extend to a negative impact on the fundamental principle that treaties must be observed, which is a solid foundation for jurisprudence and law and is consistent with the values of justice. Otherwise, what is the value of the contract if the parties are not bound?

The novel coronavirus spreads globally and affects various fields, and the resulting unforeseen circumstances paint a vivid picture, making the application of the principle of will to contracts and agreements under these unforeseen circumstances unacceptable and unacceptable. This applies particularly to contracts entered into before the outbreak, as this could cause serious damage to a party in the contractual relationship and upset the balance of the contract once it has been legally entered into. Furthermore, it creates fear among parties and threatens another key principle – the principle of transaction stability. Therefore, the equation becomes challenging as one party adheres to contractual principles as rights of contracting parties while the other adheres to the concept of unforeseen circumstances or force majeure [1].

This exceptional situation seriously damages and threatens the stability of international trade agreements. In this regard, the parties have no choice but to resort to the principles of private international law to restore the balance of the contract. As a result, numerous multinational companies in the energy, gas, air transport, shipping, automotive, components, petroleum products, technology and textile manufacturing sectors have invoked force majeure or unforeseen circumstances and exempted or temporarily released them from contract performance citing obstacles to their performance. Contractual obligations. A pause in their performance. They attempt to reschedule their obligations based on changing circumstances without paying delay penalties or compensation for delayed performance of these contracts. Against this background, the question arises: to what extent has the COVID-19 pandemic affected international contracts?

This special situation seriously damages and threatens the country's stability in terms of the budget deficit they encountered as shown in tables (1), table (2), and figure (1). As the epidemic spreads, the situation in some countries has become chaotic, and opinions and judicial interpretations have diverged.

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Table (1): Size of International Corporate debts

The size of international corporate debts in 2019 as a percentage of global gross output	The size of international corporate debts in 2009 as a percentage of global gross output
%92	**%84**

Here's the change in the percentage from 2009 to 2019:

Percentage in 2019: 92%

Percentage in 2009: 84%

Change in Percentage = Percentage in 2019 - Percentage in 2009

= 92% - 84%

= 8%

So, there was an 8% increase in the size of international corporate debts as a percentage of global gross output from 2009 to 2019. This suggests a relative growth in international corporate debts in comparison to the overall global gross output over the specified period

Table (2): Total corporate debt in the world's eighth largest economies

The size of corporate debt in the world's eighth largest economies in the year 2019	The size of corporate debt in the world's eighth largest economies in the year 2009
51 trillion dollars	**34 trillion dollars**

Here's the change in corporate debt from 2009 to 2019:

Corporate Debt in 2019: $51 trillion

Corporate Debt in 2009: $34 trillion

Change in Corporate Debt = Corporate Debt in 2019 - Corporate Debt in 2009

= $51 trillion - $34 trillion

= $17 trillion

So, there was an increase of $17 trillion in the size of corporate debt from 2009 to 2019 in the world's eight largest economies. This indicates significant growth in corporate debt over the decade.

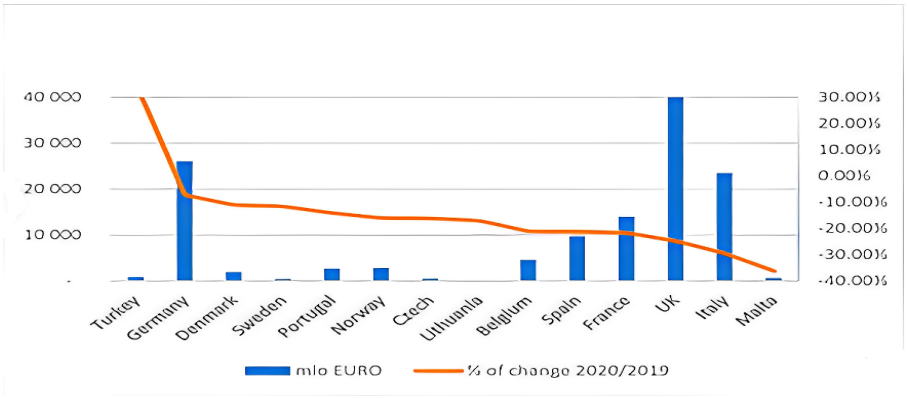

Fig. (1): Total corporate debt in the world's eight largest economies

This situation has caused millions of people to think about whether the COVID-19 pandemic should be classified as a force majeure event or a special situation, or whether there is a subtle relationship between the two. Furthermore, given that each factor is an exogenous cause affecting the performance of the contract, what is the difference between them and what effect does this have on the contractual obligations? This study therefore aims to shed light on the impact of the COVID-19 pandemic on the fulfillment of international treaty obligations by asking a series of questions. Through these inquiries, we endeavor to elucidate this impact by proposing the following questions:

1. Did the 1994 General Agreement on Tariffs and Trade (GATT) include provisions exempting liability in the event of disasters?
2. Is it possible to renegotiate the agreed-upon terms regarding the burden of performance in international contracts in the context of the COVID-19 pandemic?
3. What is meant by the condition of renegotiation?
4. Does the issue of the time and place of the formation of an international contract pose challenges in the context of the COVID-19 pandemic?
5. What if one of the contractual parties contracts the coronavirus; can this be considered force majeure or an unforeseen circumstance?
6. What are the international legal solutions to mitigate the impact of COVID-19 on the implementation of international contractual obligations?

2. General Framework

2.1 Research Problem

The COVID-19 pandemic has caused fear and concern around the world [2]. This statement has been reinforced by the measures taken by governments when they decided to completely or partially halt many economic activities [3]. Against this background, many questions arise about the fate of civil and commercial relations between natural persons and legal entities. In addition, the legal consequences of failure to perform or delays in performing these obligations due to the spread of coronavirus are under review. However, the challenge lies in practical implementation, which has prompted debate as to the extent to which coronavirus can be considered a force majeure to justify a party's exemption from its obligations. Is it just an unforeseen circumstance that delays the performance of the contract, but does not become a reason to terminate the contract? What are the limits of judicial power in adapting to the consequences of the pandemic? What means can the judge employ to restore contractual balance between the parties?

2.2 Research Objectives

1. Clarifying the importance of including a renegotiation clause in international contracts
2. Studying of the impacts of the coronavirus on international contractual obligations
3. Highlighting the practical international solutions amid the Coronavirus Pandemic
4. Explicating the international judicial opinions in comparative laws regarding COVID-19

2.3 Importance of the Study

The study is noteworthy in that it sheds light on a global pandemic that quickly led to a global economic crisis that left millions unemployed. Although similar pandemics have occurred simultaneously on a continental scale in the past, the COVID-19 pandemic has clearly emerged as the most severe due to its accelerating impact on the global economy. The negative impacts of this epidemic are numerous and difficult to quantify. Throughout history, the world has witnessed the spread of numerous deadly diseases and pandemics, characterized by their widespread and challenging nature, referred to as "pandemics." Among these are the Black Death Plague in 1331, the Great Plague of London in 1665, the Spanish flu in 1918, the Severe Acute Respiratory Syndrome (SARS) in 2002, the H1N1 influenza in 2009, and the Ebola outbreak in 2014. Each of these pandemics had its repercussions on countries worldwide, which dealt with them based on their economic, social, and perhaps political conditions. This left distinct legal effects and imprints on transactions, relationships, and contracts in various fields.

3. Methodology

This study is based on a descriptive analytical comparative approach, based on an analysis of legal texts and court opinions in different countries. The purpose is to discuss the concept of pandemic and its impact on international treaties. The study illustrates different judicial interpretations of the adaptation of legal framework conditions to the COVID-19 pandemic. Some countries classify it as force majeure, while others consider it an unforeseen circumstance.

4. The Impact of the Coronavirus on the Implementation of International Contractual Obligations

International trade contracts differ from domestic contracts in that they have a longer term. The duration of these contracts can be attributed to the parties' agreement, reflecting their desire to achieve a degree of stability in the transaction (such as oil supply contracts and concession contracts), or to the inherent nature of the contract and the tasks required scope. Technology transfer contracts, finished product factory construction, and international road or communications network construction require long periods of time for both parties to fulfill their obligations under such agreements. As long as the contract period is long, it will undoubtedly be susceptible to changes in the surrounding environment. The conditions under which decades-long contracts are signed cannot remain unchanged during this period. If the circumstances under which the contract was entered into change, this will undoubtedly have an impact on certain parts of the contract and thus on the obligations of the contracting parties [5].

The continuous evolution of this situation has led to the emergence of new concepts that are affected by the conditions and dynamics of international trade and has shown that the various legal rules and institutions in national legislation are not enough to keep up with the pace of developments in international trade. The solutions provided by domestic law deal mainly with problems arising from internal relations, while consideration of international relations and related issues is unpredictable and limited. The force majeure theory and similar theories established in the legislative jurisprudence and legal systems of most countries do not cover cases with economic and technical characteristics, which makes it difficult to apply them to international contracts in these aspects. The decision issued in case number 2478 of the year 1974 affirmed that the threats invoked by the plaintiff company to excuse its non-receipt of petroleum products do not meet the conditions of force majeure. This is due to the absence of the conditions of unforeseeability and impossibility of payment, in addition to the fact that the national legislator has proven with sufficient evidence that during the same period when the defendant company did not receive the products due to the threats imposed by some companies holding privileges on these products, other buyers were able to regularly receive these products. The application of general legal principles to dispute resolution cases is consistent in cases handled by the arbitration board. Clear applications of these cases can be found in the arbitration decision issued in case number 2478 of the year 1974. In this case, the Romanian company absolved itself of responsibility for not delivering the agreed-upon quantities of carbon to the French company due to a force majeure situation represented by the decision issued by its government to prohibit the export of petroleum from Romania. The arbitration board examined the presence of force majeure conditions in the decision issued by the Romanian government, relying on general legal principles and contract provisions. The board concluded that the cancellation of the export license by the Romanian government, being recognized, constitutes a force majeure situation based on the general principles of law and Article 9 of the contract. Force majeure, as clarified in the decision, is the situation that meets the conditions of unforeseeability and impossibility of payment, leading to absolute impossibility of execution, and absolves the debtor from all responsibility. The same applies to the theory of unforeseen circumstances, since its provisions no longer correspond to the reality of international commercial agreements in these areas.

In order to discuss the impact of the coronavirus pandemic on international contracts, we divide this section into two subtopics: In the first subtopic, we discuss the possibility of mutual renegotiation of the performance burden conditions of international contracts in the context of the coronavirus pandemic sex. In the second subtopic we will look at the powers and interventions of the judiciary in the field of enforcement examining contractual obligations during the COVID-19 coronavirus pandemic.

4.1 The Possibility of Mutually Renegotiating the Hardship Clause in International Contracts amid the COVID-19 Pandemic

A hardship clause can be defined as a clause in an international commercial contract whereby the parties agree to renegotiate with each other in the event of certain unforeseen events or circumstances specified by the parties to the contract. This can be an expressly stated condition in the contract or a separate agreement. These events are independent of their wishes and expectations when entering into the contract, inevitably destroying the balance of the contract and causing serious damage to one party to the contract. The purpose of a hardship clause is to adapt the conditions of the contract to new circumstances. In international commercial contracts, hardship clauses are often used at the time of contract formation and during the execution stage, especially when execution is impossible or unfavorable due to unforeseen circumstances or obstacles [7].

The application of this can be found in the judgment of the Paris Court of Appeal in SHELL/E.D.F. case. The facts of this case assume that SHELL has a long-term heating oil supply contract with E.D.F. completed. to ensure price advantage. There was a clause in the contract that provided that if the price of heating oil increased by more than 6 francs from its original value, the parties would review what modifications should be made to the contract, whether in terms of price or any other conditions. In interpreting this clause, the Court of Appeal held that the parties did not intend to terminate the contract, but rather to maintain it while seeking to modify it in light of new circumstances. Therefore, the court invites both parties to negotiate, appoints a mediator to supervise the negotiations, and instructs them to submit reports when

negotiations fail to ensure an orderly entry into the negotiation process [8]. Activating the hardship clause creates two types of reciprocal obligations:

1. First, the party affected by the difficulty is obliged to inform the other party of the event, its scope and its impact on the performance of the contract. This notice marks the starting point of the negotiation process and allows the other party to respond to the invitation to begin negotiations. In most cases, both parties will agree that this notice should be given as soon as possible or within an agreed timeframe.
2. On the other hand, secondly, it imposes an obligation on the other party to participate in negotiations. The existence of this condition requires that the parties discuss and negotiate in good faith and have the opportunity to amend the contract to adapt its terms to the new circumstances. A party's refusal to engage in these discussions will be deemed to freeze the effect of the renegotiation terms and allow the other party to make a claim for any damages resulting from the refusal.

It is worth noting that the refusal of a party to participate in negotiations is an unreasonable refusal and unacceptable. In this case, reasonable refusal means that the party has legitimate reasons for preventing it from complying with the other party's request. This is the case if the contractual partner has serious reasons for the occurrence of an event that does not qualify as a difficult situation, whether because the occurrence of the event was foreseen or because the event only resulted in an increase in costs without a balancing balance Affect the performance of the contract according to the conditions. In this case, the contractual partner can avoid negotiations until the existence of these characteristics is established. However, the party may not, recognizing the existence of these features, refrain from negotiations on the ground that the contract will not materially affect its interests and therefore renegotiation would not be beneficial to it.

The solution to this problem mainly depends on the agreement between the parties and the provisions of the contract. If the parties clearly define the nature of these events and the characteristics necessary to consider them as "difficult cases", there will be no significant problems in resolving the dispute. Examples of such specifications can be found in the previously mentioned contract between the E.D.P. and Shell. In this contract, the two parties agreed that if the price of heating oil increased by more than 6 francs from the original price, the two parties would meet to discuss and review the contract.

4.2 The Consequences Arising from the Activation of the Renegotiation Clause in the Contract Due to the COVID-19 Pandemic

Suspension of contract performance is the first direct effect of the activation of clauses related to renegotiation clauses in international contracts. Although it appears in a limited number of renegotiation clauses, the reason for this is that its application is implicit and does not require express provision. The situation itself demands it.

The reality of international treaties ensures appropriate solutions to the COVID-19 pandemic, allowing international treaties to continue to exist and shape their effects in a way that achieves their intended goals. This is done by suspending the execution of the contract until the pandemic subsides, then resuming it once the relevant conditions no longer apply. Negotiation between parties is considered one of the most effective ways to protect long-term business relationships.

Renegotiation to adjust or review the contract is one of the possible mitigation measures. The party harmed by non-performance or delay in performance of a contractual obligation undertakes to do everything in its power to mitigate or reduce the harm caused by taking advantage of the obligation to mitigate damages. This includes the need to put in place appropriate measures available to deal with the COVID-19 pandemic, ensuring that contracts continue to be valid should circumstances change.

It is worth noting that the obligation to mitigate harm, whether explicit, direct or implicit in the legal text, may not be recognized in some national legal systems. The reason is that this undertaking, combined with the principle of good faith, requires both parties to cooperate to ensure the continuity and durability of the contract.

The obligation to mitigate damage and prevent deterioration constitutes a duty of care, which is achieved by taking all reasonable measures or actions appropriate to the circumstances arising therefrom and by using various means. These measures may vary depending on the subject of the contract and the general conditions. They can include changes to elements or terms of the contract to ensure its continuity, such as: B. Measures such as handling goods that may deteriorate or changing the mode of transport of goods. Conditions caused by viruses require measures to help contain the effects of the virus.

Under French law, a contract remains valid throughout the negotiation process unless the parties agree otherwise. After renegotiation, the contract remains valid unless both parties expressly agree to enter into a new contract. It is at the discretion of a judge or arbitrator to determine whether a contract remains valid or whether a new contract has been entered into based on a change in the terms of the contract. If the change is considered material, it may be a new contract. Otherwise, the contract remains valid and continues even with minor changes. Additionally, review of a contract may result in termination if the essential elements of the contract: B. The price is eliminated and execution becomes too expensive. Possibility of terminating the contract.

Since international commercial contracts involve parties from different countries and the measures taken by various countries to contain the spread of the coronavirus pose obstacles to the performance of the contract, the assessment of whether these measures should be classified as force majeure depends, or not, on the nature of the government action, the type of epidemic, the subjects involved and the extent to which they are affected by these measures. If the conditions of

force majeure are met, the debtor's debt is discharged; otherwise, the debtor remains liable. The relative nature of the matter depends on the discretion of the court hearing the case and the debtor's ability to prove the existence of force majeure circumstances. Article 7 of the General Agreement on Tariffs and Trade (GATT) 1994 provides for the excluded effects of force majeure, such as natural disasters, transportation disruptions or other force majeure events that have a significant impact on exported products. The International Contract Principles aim to unify the rules of private international law in the event of force majeure and, as stated in Article 6, give the injured party the right to negotiate the terms of the contract with the other party. If he accepts, the international treaty remains in force; if negotiations fail, the only way out is to terminate the contract, but the injured party retains the right to compensation. This principle has been reaffirmed in various international agreements, including the 1980 Vienna Convention, whose Article 81 provides that upon termination of a contract, the parties are each released from their contractual obligations without prejudice to the right to compensation. Likewise, Article 179 of the United Nations General Agreement on Tariffs and Trade Treaty (GATT) provides similar protection through force majeure clauses applicable to international contracts unless expressly excluded by the parties.

In practice, unforeseen circumstances are a key element of force majeure, and determining whether an event was foreseeable depends on a review of the date the contract was signed. In the French legal context, it was generally accepted that, before the outbreak, contracts must contain unforeseeability clauses that would justify termination.

The question raised in this context concerns the dates that should be taken into account when declaring the presence of coronavirus. Specifically, it relates to the date of an announcement in China, the date of an announcement invoking force majeure in the company's country, or the date the World Health Organization classified it as a pandemic.

On July 25, 1998, the Paris Court of Justice issued a ruling confirming that aircraft landing in neighboring countries where plague outbreaks occurred did not constitute a risk of force majeure. Generally speaking, Article 79/1 of the United Nations Convention on Contracts for the International Sale of Goods provides that a party is not liable for non-performance if it proves that the failure was due to an impediment beyond its control. It would be unreasonable for him to consider the impediment or to avoid or overcome the impediment and its consequences when entering into the contract.

It is worth noting that the exemption provided for in this article is limited to the period of disability (Article 79/3 of the aforementioned Convention). Paragraph 4 of the same article also provides that a party not performing a contract must notify the other party of the impediment and its impact on its ability to perform, even if the other party does not receive notification within a reasonable time. Knowing or ought to have known of the disability, he shall be liable for losses resulting from non-delivery. There are two remarks:

1. The text limits the exemption from liability to force majeure only, excluding other emergency circumstances. This is evidenced by the text's reference to the impossibility of avoiding the impediment, its consequences, or overcoming it.
2. The text emphasizes that the contracting party, hindered from fulfilling its obligations due to the impediment, must promptly notify the other party of the impediment and its impact on its ability to fulfill those obligations within a reasonable period. Failure to do so would result in the responsible party being liable for compensation for the damages incurred due to the lack of such notification.

5. Legal Solutions to Mitigate the Impact of COVID-19 on the Implementation of International Contractual Obligations

The judge, being in control, holds the authority to adjust the situation based on his own judgment and personal beliefs. He can categorize it as either an unusual and unexpected event that makes it difficult for the debtor to fulfill their obligation or he can consider the COVID-19 pandemic as a force majeure, if certain conditions are met, that have been previously discussed. As a result, the contract becomes impossible to fulfill and is terminated without any compensation, releasing both parties from their obligations.

During this pandemic, certain countries, including the United States, have implemented a legal measure known as a force majeure certificate. This certificate serves as a solution to absolve parties involved in contracts from their obligations, which may prove difficult to fulfill due to the presence of the COVID-19 virus. Notably, prominent multinational corporations have sought this certificate to exempt themselves from fulfilling their commitments and avoid incurring late penalties or having to offer compensation. However, it is important to note that these companies must provide authenticated documents to support their claim of delayed implementation. It is also worth mentioning that this certificate holds validity both domestically and internationally.

It is important to mention that the China Council for the Promotion of International Trade, a Chinese entity that operates with some involvement from the government, issued 3,325 certificates on February 21, 2020. These certificates were granted to various Chinese companies engaged in international contracts, including those in the iron and steel industry, electronics sector, automotive industry, automotive parts supply, and medical equipment supply. The total value of these contracts amounted to 270 billion RMB (equivalent to 38.5 billion USD), indicating the exceptional circumstances faced by China. It should be noted that these certificates do not automatically release Chinese companies from their obligations. In order to benefit from these certificates [9], it is necessary for these companies to demonstrate the true impossibility of fulfilling these commitments. The question arises, will other countries, both locally and internationally, follow a similar

path in order to safeguard contracting companies, particularly those involved in international transactions? This is a suggestion that we put forth for the Jordanian government's consideration: to explore the possibility of issuing force majeure certificates for private or public sector companies after carefully evaluating their contracts. Such a measure would align with and support the state's overarching economic policy, especially its emphasis on private sector investments and partnerships.

I would like to draw your attention to the fact that the International Monetary Fund (IMF) has recently released a statement addressing the assistance it can provide to nations grappling with the difficulties posed by the COVID-19 pandemic and the subsequent global economic crisis. This crisis has jeopardized the stability of major economies, putting them at risk of bankruptcy or financial setbacks in various international trade agreements. These agreements include contracts pertaining to maritime or aviation transportation, imports and exports, supply chains, construction projects, as well as contracts related to oil exploration, refining, transportation, and drilling [10].

The question that arises is, what about the matter of time and place? Can the COVID-19 pandemic potentially impact the disturbance of global agreements regarding the timing and location of contract establishment?

Let's make it clearer that parties' demand to change contractual obligations because of the pandemic involves several issues that need to be figured out. Contracts made before the pandemic in regions where it started can possibly ask for changes in contractual obligations, whether it's considered force majeure or an unforeseen event. But contracts made after the pandemic began cannot, in any situation, use force majeure or unforeseen circumstances as an excuse because the Chinese government's announcement about the pandemic makes it predictable. In principle, this is done by looking at the date of contract formation, as decided by the French Court of Cassation on 29th December 2009 in a case related to the chikungunya epidemic that appeared in January 2006. The court considered that the condition of unforeseeability justifying the termination of the contract was not met as long as the agreement was made in August 2006, months after the outbreak of the epidemic. In my opinion, this judicial trend suggests that this issue will not be raised now in the case of the old contracts regarding the coronavirus. However, the question will be posed for contracts entered into after the appearance of this virus. Here, too, we anticipate a serious debate about the date to be adopted for declaring the emergence of the coronavirus, whether it is the date of its announcement in China, the country where the company insisting on force majeure is located, or the date specified by the World Health Organization. The problem of determining the regions affected by the epidemic is also discussed, as mentioned earlier.

Regarding the aspect of location, contracts that are made in distant places from where the pandemic first emerged and are not directly related to the COVID-19 pandemic may potentially raise an objection based on the occurrence of the pandemic in the place where the contract was formed and subsequently declared. Nevertheless, given that the World Health Organization has officially declared it as a global pandemic affecting all nations, it is expected that parties involved in the contract should not oppose the alteration of contractual terms, particularly considering the extensive influence of the pandemic on airports, land transportation, and maritime routes. Hence, it is anticipated that the inability to meet responsibilities or even delays in carrying them out can be foreseen. Identifying these areas is challenging because of contrasting criteria and this matter has been raised in conflicts concerning travel problems. In such cases, trips to neighboring regions are deemed unsafe due to the escalation of a health crisis, resulting in their rejection. Take for instance the Paris court's decision on 4/5/2004, where it was determined that the health threat in Thailand was not excessive and thus it could not be deemed impossible to travel there. In this context, we find that during the years 2003 and 2004, with the appearance of the SARS (Severe Acute Respiratory Syndrome) virus, the Court of Appeal in Paris, on 4th May 2004, rejected the claim presented by the travel agency due to its inability to fulfill its obligations, citing force majeure represented by the presence of the SARS virus in the country to which the travel was intended. The decision stated that the health risks were not significant in Thailand, and it could not be acknowledged that the trip to that country was impossible due to the SARS disease, and therefore, there was no room for the application of force majeure.

On a different occasion, specifically on the 25th of July in the year 1998, the Paris court came to a decision that upheld the notion that when an aircraft makes a stopover in a neighboring country to a region affected by the spread of the plague, it does not pose a danger that can be seen as force majeure. Therefore, we find ourselves confronted with a worldwide health predicament that brings forth a multitude of inquiries and trials with regards to both economic and legal aspects. It necessitates the adoption of a careful approach to ensure fairness in contracts and highlights the crucial role played by the judiciary in attaining the desired level of legal and social security.

We must now address an additional question: is it possible to classify the contraction of COVID-19 by one of the parties involved in the contract as force majeure? And why have we not discussed the option of categorizing the contraction of COVID-19 by one of the parties as an unforeseen circumstance? In simpler terms, it should be noted that the contraction of this disease by one of the parties is not deemed a general circumstance; instead, it is regarded as a specific circumstance. This differentiation serves as the primary condition for fulfilling the criteria necessary to apply the theory of unforeseen circumstances. However, the reason for mentioning the possibility of considering it as force majeure is because all the conditions of force majeure can potentially be met. Despite this, the French Court of Cassation did not provide a unified stance regarding the consideration of the illness of one of the contracting parties as force majeure. In some of its rulings, it considered it to be a force majeure, stating that it is an illness of the debtor that prevents them from fulfilling their

commitment, constituting force majeure as long as it bears the mark of unforeseeability at the time of contract conclusion, in addition to being unable to resist it during execution (Civil 14 / April / 2006).
However, the French Court of Cassation, in its other rulings, dismissed the idea that the debtor's illness could be considered as a force majeure. In a judgment delivered in 2001, the court refused to recognize the illness of an individual in their sixties, which took place on the very day they were embarking on an organized trip organized by a travel company, as a force majeure that would entitle them to claim a reimbursement of the amount they had paid. This was particularly so since they had the option to purchase trip cancellation insurance (Civil 1, 2 / October / 2001). The commercial chamber of the same court, when faced with the dilemma, made the decision to reject the notion that a company manager's battle with cancer in his leg could be deemed as an "act of God" that would absolve him from repaying the loan he had acquired from a bank, utilizing his company as collateral. The court provided justification for their ruling by pointing out that the aforementioned manager had intentionally concealed his illness from the bank at the time of borrowing. Furthermore, while his illness may not excuse him from fulfilling his obligation to repay the loan installments, it may potentially exempt him from incurring any additional charges in the form of late payment interest (Commercial 16 / September / 2014).
In a recent ruling issued by the Court of Appeal in Colmar, the coronavirus was deemed force majeure in a case unrelated to contractual obligations. This ruling could shed light on how the judiciary can adapt in addressing this virus. The case involved a person who had received an administrative summons but did not attend court due to their prior contact with individuals suspected of being infected with the virus. Hence, the court deemed his absence justified for two main reasons. Firstly, the virus symbolizes an unpredictable and unstoppable force majeure. Consequently, dispatching a bailiff to summon him to court entailed significant risks due to the potential of him contracting the virus and the subsequent hazards of spreading it. This aspect is especially crucial as the symptoms of the virus may take time to surface in infected individuals or might not manifest any symptoms at all. The second reason revolves around the fact that the court lacked the necessary equipment to conduct a technological defense (video) for the individual (Court of Appeal in Colmar, March 12, 2020).

5.1 Judicial Authority and its Intervention in the Execution of Contractual Obligations amid the COVID-19 Pandemic

After discussing the legal rules regarding force majeure and unforeseen circumstances, as well as their application to the COVID-19 pandemic and its impact on contracts, we must now consider the role of the judicial system in enforcing contractual obligations during this time of unexpected disruptions. The question at hand is whether the courts have the authority to intervene in the performance of contracts amidst the ongoing COVID-19 crisis, which involves a delicate balance between force majeure and unforeseen circumstances. In this analysis, we ponder the limits of the judge's power and interference. We delve into how the regulation of COVID-19 virus adaptation is handled, which involves a wide array of measures including prohibition, restriction, and release. Our investigation is grounded in the legal frameworks established by Jordanian legislation and comparative laws. We closely examine the intricate approaches taken by each framework when confronted with force majeure or unexpected situations [13].
The lawmakers in Jordan have come up with a concept called the theory of unforeseen circumstances. This theory gives the judge the power to look into unexpected events that happened after a contract was made and during its execution. These events can make it difficult for the person who owes something to fulfill their obligation. In situations like these, the judge has the authority to reduce the burden of the commitment to a fair level. The goal is to create a balance in the contract or divide responsibilities and rights between both parties involved. Sometimes, this can even mean changing what both parties are obligated to do, either by increasing or decreasing it. Judgment Number 10850 of the year 2020 - Amman court of magistrates, issued on 2020-08-13, states: Therefore, the Jordanian legislator, in Article 205 of the Civil Code, has granted the judge the authority to adjust the burdensome obligation to a reasonable extent, and there is no restriction on the judge in choosing the type of modification to be introduced to the contract terms except what is dictated by achieving a balance between the interests of both parties. This may involve reducing the burdensome obligation or increasing the corresponding commitment in a way that distributes the loss between the creditor and the debtor. Therefore, lease contracts are contracts with deferred execution, and the COVID-19 pandemic is an exceptional, unexpected, and irresistible event. The court must distribute the loss equally between the creditor and the debtor to achieve justice. It has been established that the defendant's liability for the rent due in his account to the plaintiff for the period from (1/3/2020) until 30/6/2020. Since the defendant is obliged to pay the entire wages from 1/3/2020 until 17/3/2020 and from 26/5/2020 until 30/6/2020, totaling one month and 23 days, and since the monthly wage is 150 dinars and the daily wage is 5 dinars, the plaintiff's claim to obligate the defendant to pay the full wages for this period, amounting to 265 dinars, is justified and subject to legal judgment. In addition, as stated in Article 205 of the Civil Law, the judge has the power to give the debtor more time based on the situation. Furthermore, if what the debtor did not fulfill is not very important compared to all their obligations, the judge might choose not to cancel the contract. Alternatively, the judge can delay enforcing the commitment until the unforeseen circumstance no longer exists. As is the case with the supplier's suspension of the execution of the supply contract for a month or two without causing significant harm to the importer or if the damage is relatively minor, the judge has the authority to rule on the suspension of the contract, with an immediate resumption upon the removal of the circumstances that led to the suspension. It is evident that today, after a month or two of implementing strict health measures, and the

significant economic damage incurred, countries are seriously considering reducing these measures and gradually reopening various sectors, with varying proportions from one country to another depending on the infection rates and the severity of the disease spread. This suggests the possibility of resuming the execution of contracts in the coming period, if not fully, at least partially. It is worth mentioning here that the French Ministry of Labor issued a directive on December 18, 2007, clarifying how business activities and the employment of private sector workers should continue in the event of a pandemic influenza. This directive was issued in response to the spread of avian influenza in France and was updated in 2009 due to the spread of swine flu. The French government today seeks to reactivate this directive to enable companies to minimize disruptions to their operations and preserve their activities as much as possible, while protecting their employees, by taking appropriate measures to reduce or limit the general spread of the virus.

I would like to highlight that the judge has the power to determine the legal classification of each situation. When we consider the COVID-19 pandemic and apply the previously discussed concepts, if the judge finds it impossible to fulfill contractual obligations due to the precautionary measures implemented by countries to control the virus's spread, they can invoke the theory of force majeure. This would lead to the termination of the contract in a legal sense. However, should the judge come to the conclusion that it is not absolutely impossible to fulfill the contractual obligations, but rather a great hardship that puts the debtor at risk of significant losses due to the pandemic, then the force majeure theory cannot be applied. In such a scenario, the judge may instead invoke the theory of unforeseen circumstances, which permits some adjustment to be made to onerous commitments within reasonable limits. When faced with situations where the contract remains unaffected by these circumstances, both parties are bound by their agreement in the contract and must fulfill their respective obligations as stipulated [16].

5.2 The Applicable Law to International Contracts

In this section, we start off by pondering a thought-provoking question: What happens when the parties involved in a contract turn to the courts to ensure the implementation of the force majeure theory amidst the difficulties brought about by the COVID-19 pandemic? Does the judge have a duty to apply the force majeure theory in such a scenario? But what if the contract doesn't include any explicit provisions regarding force majeure? Moreover, which law should the judge follow when dealing with an international contract?

If the parties involved in an international contract decide to go to court to request the use of the force majeure theory because of the obstacles caused by the COVID-19 pandemic, the judge, with the intention of making a suitable adjustment based on the evidence provided by the debtor, first examines the force majeure clause stated in the contract that outlines the requirements for activating this provision. The judge determines if these requirements cover the impact caused by the COVID-19 pandemic, including the measures taken during the health emergency, on the contract. Afterwards, an investigation is carried out regarding the applicable law specified in the contract [17].

If a clause or provision regarding the choice of law is absent in the contract, then the judge turns to the doctrine of renvoi in their national law. Comparative civil laws have a set of criteria for renvoi, which the judge is required to apply in order as mandated by the legislator, considering its cyclical nature. Hence, the governing law can either be the judge's own domestic law or foreign law. If foreign law is applicable, then the judge does not follow renvoi but instead directly examines the concept of this theory within the internal rules of the relevant law.

Upon determining the applicable law, a complication may arise due to the absence of consensus on the regulation and definition of force majeure in national laws (which varies from country to country). While some nations have addressed this matter in their legal frameworks, others have not. Therefore, we have decided to categorize them into three groups:

1. Force majeure is not acknowledged in certain legal systems, such as the Moroccan one. Nevertheless, its influence persists through practical instances, like the regulated hardship as outlined in Article 128 of the Law of Obligations and Contracts. It should be noted that common law systems do not embrace this concept; however, they do adopt comparable theories, such as the 'frustration theory' in English law. This particular theory necessitates the occurrence of an unforeseen event without any involvement from the involved parties. It is applicable not only in situations where performance becomes impossible but also when it becomes burdensome for the debtor. If English law is the governing law, the impact of the COVID-19 pandemic or the emergency measures arising from it in international contracts can potentially fall within the purview of the frustration theory. For instance, it could become burdensome for the debtor to fulfill their obligation of delivering goods on the designated date due to limitations on cross-border movement as a precautionary measure during health crises or as a consequence of fluctuating economic circumstances. This scenario becomes particularly relevant if the contract in question pertains to those with immediate applicability.
2. Despite the fact that there are no laws in place to officially recognize the theory of force majeure, it is still acknowledged by the judicial system. A prominent instance of this can be seen in the legal system of Spain, where there is currently no legislation specifically regulating the force majeure theory. However, it is important to mention that the lawmakers have not forbidden the judiciary from utilizing this theory. It is worth mentioning that the Spanish judiciary has consistently followed this principle. Two judgments were indeed issued applying the judge's theory on the effects of the coronavirus (COVID-19) pandemic. In both cases, the judge approved the requests of two companies to prevent the contracting party from implementing specific clauses in the contract as a precautionary measure, relying on the theory of force majeure resulting from the COVID-19 pandemic. The first judgment was issued by the Court of

Instance of Zaragoza on April 29, 2020, regarding a franchise contract between Adidas as the franchisor and one of its contracted distributors. The distributor requested to prevent the franchisor from activating the country's payment guarantees granted to it in the contract. The court reasoned that the economic situation resulting from the closure measures of public establishments is likely to have a significant impact on the contractual relationship, which is considered a reciprocal relationship. Activating the guarantees by the supplier may threaten the distributor's continued business. The court recognized that the COVID-19 pandemic could be in the interest of the parties at the evidentiary level, and they can rely on it to demand the application of the force majeure theory, as well as the application of the principle of good faith between the contracting parties. In the same context, the Court of Instance of Madrid, on April 30, 2020, approved a request filed by the largest iron and steel production company in Spain to prevent a group of joint banks from activating a clause requiring the immediate payment of a 900 million Euro loan in case of failure to pay one of the due payments or non-compliance with financial ratios. The court considered it necessary for institutions to adapt to the current social situation, and jurisprudence must lean towards supporting the application of the force majeure theory in light of the current economic crisis, which will have a profound impact, economic recession, and may become an economic phenomenon leading to a serious disruption in contract conditions.

3. In 2016, the French law was amended to explicitly adopt the force majeure theory in their legislative text, joining the Polish civil legislation, Italian civil legislation, as well as the Egyptian and Jordanian laws. Moreover, the Egyptian Court of Cassation considered that force majeure is not considered a matter of public policy, and therefore, the judge does not have the authority to raise it ex officio. This was stated in a decision dated January 15, 2014, where it was explicitly mentioned that invoking a foreign cause, whether it is a sudden accident, force majeure, error of the necessitated or others, does not relate to public policy. It should be explicitly asserted, and the judge must assess the evidence of its legal conditions. The court does not have the power to determine the occurrence of the foreign cause and apply its provisions on its own. Let me give you an example. Article 205 of the Jordanian Civil Code states that if unexpected events happen which make it really difficult for the debtor to fulfill their part of the contract and it puts them at risk of suffering major losses, then the court can step in and decide, based on the situation and after considering the interests of both parties, to relieve the debtor from some of their obligations. This relief would be reasonable. The Algerian judicial ruling in a decision issued by the Real Estate Chamber of the Supreme Court, Decision No. 191705, dated 24/10/1999, states: The contract must be executed according to its contents and in good faith, but if exceptional general events occur that could not have been anticipated, the judge, based on the circumstances and after considering the interests of both parties, may reduce the burdensome commitment to a reasonable extent, and any agreement to the contrary is deemed void. The beneficiary of the contested decision is that the judges, despite approving a 10% increase in the total price of the housing according to the allocation contract, in line with the fairness and balance of the contract, overlooked the possibility of amending the conditions stipulated in the contract in accordance with the provisions of Article 107/2 of the Civil Code. If exceptional circumstances of a general and unforeseen nature arise that make the obligations burdensome, they have erred in applying the provisions of Article 107 of the Civil Code, necessitating the annulment of the contested decision. Moreover, the judge has the discretionary power to adopt the force majeure criterion, provided that documents proving it are submitted by the debtor, rendering the execution of the commitment impossible. Consequently, the contracting parties are released from their obligations. In fact, if it’s necessary for fairness, the court can even declare any agreement that goes against this null and void. The same principle is also indicated by Article 147 of the Egyptian Civil Code, stating: However, if exceptional general events occur that could not have been anticipated, and as a result, the execution of the contractual commitment, even if it does not become impossible, becomes onerous for the debtor to the extent that it threatens significant loss, the judge may, based on the circumstances and after balancing the interests of both parties, increase the burdensome commitment to a reasonable extent, and any agreement to the contrary is deemed void. Considering the different ways that national laws handle the force majeure theory, it is better to have a clause in the contract that allows parties to reassess the agreement when circumstances change. Regarding the legislations that have adopted the theory of force majeure, such as Jordan and Algeria, they have granted the judge the authority to intervene in modifying the contract in line with unexpected circumstances that could impact the contractual relationship and burden the obligor's performance, as is the case with the COVID-19 virus. However, this authority is not uniform but ranges between restriction and broad discretion. For example, in France, under civil law and according to Article 1195, the judge has the possibility of intervening to modify the contract in the presence of exceptional circumstances, but this power is limited by the requirement of a request from a party with an interest in it. In contrast, the Egyptian legislator considers force majeure as part of the public order under Article 147 of the Egyptian Civil Code. Therefore, the judge can intervene on his own to apply the theory of force majeure, provided that the debtor submits documents and evidence to the judge on one hand. On the other hand, the element of time and the date of the pandemic are crucial, where the French judiciary takes into account the date of contract conclusion and compares it with the date of the pandemic, whether before or after. This was affirmed by the Court of Appeals in Saint-Denis in its decision of December 29, 2009, during the spread of the chikungunya virus. The court stated that the arguments presented by the plaintiff were not based on a solid foundation because the pandemic began in January 2006 and cannot be considered

an event that could be predicted, justifying the breach of the contract concluded in August 2006. Therefore, the alleged force majeure was not present. The "Hardship" clause, which deals with renegotiating contracts due to changed circumstances, is seen as the most effective method of handling contract reviews. Furthermore, it is suggested that using international commercial arbitration with a provision for conciliation is a good alternative to going to national courts. This approach [assists in] conquering the obstacles presented by domestic regulations and [enables] the necessary adjustment to the hurdles presented by the COVID-19 crisis. International arbitration [lies] beyond the jurisdiction of national assignment regulations and [can take into account] provisions considered appropriate in domestic legislation, global treaties, or worldwide trade traditions in order to achieve a fitting resolution for the contractual parties.

6. Conclusion

The study has come up with several results and recommendations, the most prominent of which are listed as follows:

6.1 Results

1. A significant consequence that arises from labeling the COVID-19 pandemic as a force majeure is the reengagement in discussions concerning the contractual conditions. This can happen when both parties mutually agree or when a court or arbitrator makes a decision. These discussions might result in alterations to the contract and the restoration of balance. Alternatively, if the parties are unable to find a satisfactory resolution, they may choose to terminate the contract by mutual consent.
2. The hardship clause, my dear reader, is a provision that is often added by the parties involved in international trade contracts. It serves as a means to address circumstances or events that were not foreseen when the contract was made. These unforeseen events can be outlined within the same clause or in a separate agreement. What makes these events special, you ask? Well, they are completely beyond the control and foresight of both parties at the time of contract formation. And what's more, these events have the power to disturb the delicate balance of the contract and cause great harm to one of the parties involved.
3. The International Agreement of 1994, known as GATT, has a provision in Article 7 that mentions the exemption of liability under certain circumstances. These circumstances include natural disasters, transportation disruptions, or any other force majeure that has a significant impact on exportable products. Article 6 of the agreement deals with the principles of international contracts and aims to create a unified set of rules for private international law in cases of force majeure.
4. The judge has the power to determine the legal nature of each situation. In the case of the COVID-19 pandemic, we can understand that if the judge believes it is absolutely impossible to fulfill contractual obligations because of the precautionary measures taken by countries to control the virus, then they can apply the theory of force majeure. This could ultimately lead to the termination of the contract. If the judge concludes that fulfilling contractual obligations is not completely impossible but rather burdensome due to the pandemic, posing a severe threat to the debtor, then force majeure cannot be applied. Instead, the judge should consider invoking the theory of unforeseen circumstances. In such a scenario, the judge has the authority to modify the onerous obligations to a reasonable extent. If the contract remains unaltered by this situation, both parties are obligated to honor their contractual commitments as initially agreed upon.
5. If a contract fails because of the COVID-19 pandemic, the parties involved can take legal action to enforce the theory of force majeure. In this situation, the judge must carefully analyze the evidence presented by the debtor to accurately classify the pandemic. To do this, the judge first reviews the force majeure clause in the contract that governs the circumstances that activate this provision. The judge then decides whether these circumstances cover the effects of the COVID-19 pandemic and the related health emergency measures on the contract. After receiving confirmation, the judge then embarks on an investigation of the relevant law that is stated in the contract. In situations where the contract does not include this provision or a clause that designates the applicable law, the judge turns to their national law and employs the mechanism of renvoi.
6. There are several factors that determine the issue of timing, place, and parties' demand for modifying contractual obligations due to the pandemic. These factors include the timing at which the contract was formed, the location where it was made, and whether the contract was entered into before or after the onset of the pandemic. Contracts that were made before the emergence of the pandemic in regions where it appeared may have grounds to claim modification of their contractual obligations. This could be under the principle of force majeure or an unforeseen circumstance. On the other hand, contracts that were concluded after the start of the pandemic cannot benefit from either force majeure or unforeseen circumstances theories under any circumstances.
7. Various countries have taken different approaches in classifying the COVID-19 pandemic. For instance, France, as seen in the Colmar case, views it as a force majeure event. On the other hand, Jordan categorizes this global health crisis as an unforeseen circumstance.

6.2 Recommendations

1. In order to address the unique nature of pandemics, it becomes imperative to formulate legal regulations that align with this specificity. This entails a reevaluation of the clauses pertaining to force majeure. By doing so, it becomes possible to adapt to the ever-changing dynamics of global trade and empower parties involved in international agreements with the ability to alleviate the gravity of its aftermath.
2. We are hopeful that lawmakers will give due importance to the need for including a clause in global agreements that permits renegotiation in case of changing circumstances. This provision would enable parties to adjust themselves in line with emerging developments. To strengthen this provision, it is essential to have legal clauses that acknowledge the necessity for such renegotiations under both force majeure and unforeseen circumstances theories. Additionally, it is crucial to incorporate explicit clauses in international contracts that specifically address force majeure and unforeseen circumstances, while also considering pandemics. This will prevent the absence of necessary conditions in these contracts and ensure their proper handling during such challenging situations.
3. Resorting to international arbitration instead of national litigation in international contracts is a means of dispute resolution aimed at ensuring expeditious resolution, specifically in resolving disputes arising from the pandemic.

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