The court's power to rebalance the international trade contract in light of the impact of the coronavirus pandemic on its implementation

سلطة المحكم في إعادة التوازن الاقتصادي للعقد التّجاري الدولي في ظل تأثير جائحة كورونا على تنفيذه

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Abstract:

The Corona pandemic has repercussions on all areas of life, including the economic field, It created a state of economic instability, and it affected the implementation of international trade contracts due to the closure measures taken by countries to confront the pandemic, Therefore, amending contractual obligations and renegotiating them, constituted a large part of the disputes brought before the arbitration tribunals From this standpoint, this study aims to search in the role of arbitration in resolving disputes arising from the repercussions of the Corona pandemic on the contract, By examining the arbitration's position on the variance in adapting the pandemic, then the basis on which it rests to restore this balance and the scope of its authority in that.

key words:

commercial arbitration, Corona pandemic, force majeure, emergency conditions theory, contract, The arbitrator commissioner to reconciliation .

ملخص:

أحدثت جائحة كورونا تداعيات على جميع مجالات الحياة، بما فيها المجال الاقتصادي، فخلقت حالة من عدم الاستقرار الاقتصادي، فأثرت على تنفيذ عقود التجارة الدولية بسبب إجراءات الإغلاق التي اتخذتها الدول لمجابهة الجائحة، لذا شكل تعديل الالتزامات التعاقدية وإعادة التفاوض بشأنها، جزءا كبيرا من المنازعات التي تعرض على هيئات التحكيم. ومن هذا المنطلق تهدف هذه الدراسة إلى البحث في دور التحكيم في فض المنازعات الناشئة عن تداعيات جائحة كورونا على العقد، من خلال البحث في موقف التحكيم من التباين في تكييف الجائحة، ثم الأساس الذي يرتكن عليه لإعادة هذا التوازن ونطاق سلطته في ذلك.

الكلمات المفتاحية:

التحكيم التجاري، جائحة كورونا، القوة القاهرة، نظرية الظروف الطارئة، العقد، المحكم المفوض بالصُّلح.

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Introduction:

The Corona virus epidemic, as a material fact, has had its negative effects on the features of human activity, and its impact is clearly visible on legal relations in general, and contractual relations in particular, and international trade contracts come within the scope of contracts that have been directly affected by the repercussions of the Corona virus pandemic due to quarantine procedures and the accompanying closure It has become impossible or at least difficult to implement some contractual obligations regulated by the international trade contract, and from this point of view, the amendment of contractual obligations constituted a large part of the disputes submitted to arbitration to highlight the importance of the latter in restoring confidence in international trade contracts, through economic rebalancing. for the contract.

From this point of view comes the problem of this study about what are the limits of the arbitrator's authority in restoring the economic balance of the international trade contract in light of the impact of the Corona pandemic on its implementation? And what is its scope?

The objective of this study is to clarify the position of arbitration on the discrepancy in the adaptation of the Corona pandemic between the theories of force majeure and emergency conditions, then the basis of its authority and scope in reviewing the international commercial contract affected by the Corona pandemic.

This study relied on the analytical method by analyzing and discussing the phenomena of the subject, in addition to the comparative method. In order to understand the aspects of the subject, it was divided into two sections: the first, the contrast in the adaptation of the Corona pandemic between force majeure and the theory of emergency conditions; And the position of commercial arbitration on that. The second is the basis and scope of the arbitrator's authority in rebalancing the international trade contract affected by the repercussions of the emerging corona virus.

The first topic: the discrepancy in the adaptation of the Corona pandemic between force majeure and the theory of emergency conditions; And the position of commercial arbitration on that

The arbitrator applies the legal concept of force majeure in the event that the contracting parties do not agree on an agreed concept of it (the first requirement). As for the theory of emergency circumstances, the difference in the position of national legislation regarding its adoption affected the position of commercial arbitration in its application. The position of arbitration is sometimes attracted by the positions of rejection and caution in the theory at other times Other (second requirement).

The first requirement: the pandemic of the emerging corona virus and the introduction of the provisions of force majeure theory

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The application of the force majeure theory to the Corona virus pandemic results in the impossibility of implementing the international commercial contract, and this impossibility results in the termination of the contractual relationship by the termination of the contract, and the absence of the debtor's responsibility, unless there is an agreement between the parties to the contrary, according to the legal concept of force majeure (section one), And the fact that the international contract is subject to the principle of the law of contracting parties, it is based on the principle of the parties' freedom to include in it the conditions that serve their interests, and helped them in that because the provisions of force majeure are not from the public order and therefore the parties may regulate their contract in violation of

Its provisions, therefore, its parties formulate the force majeure clause in a broader concept, which leads to results that differ from the results of adopting the legal concept of force majeure (Second Section).

Section one: The traditional content of force majeure in national laws and the consequences thereof

The emerging Corona Virus pandemic is a foreign reason that affects the implementation of contractual obligations, and its consideration of a force majeure results in the impossibility of implementing the international contract, and thus the contract is broken and the debtor's liability is absent according to the legal concept of force majeure. On the basis of this saying, this section includes the legal content of force majeure and the conditions for its application, and the extent to which these conditions match the reality of the emerging corona virus pandemic (first), then the legal implications of implementing the legal concept of force majeure (second).

First: The content of force majeure, the conditions for its application, and the extent to which these conditions are compatible with the emerging corona virus pandemic

The Algerian legislator referred to the provisions of force majeure in Articles 127 and 138 of the Civil Code[1], but he did not know the meaning of force majeure and only stipulated an exemption from liability if the reason for non-implementation was due to a foreign reason[2]. As for the new French Civil Code, Article 1218 of it provided a definition of force majeure. It was defined as "an event outside the debtor's control that was not reasonable to foresee at the date of the conclusion of the contract, and its effects cannot be avoided, and would prevent the debtor from carrying out according to it," which is the same definition that the jurisprudence went

[1] Law No. 10-2005 of June 20, 2005 supplementing Ordinance No. 58-75 of September 26, 1975 amending and supplementing the Civil Code, Official Gazette dated June 26, 2005 No. 44, p. 17.
[2]Article 127 of the Algerian Civil andArticle 338, paragraph 2, of the same Code

to,[1] so he defined it as "an unforeseen event." and payment which prevent a person from fulfilling his obligations "[2].

With regard to international commercial arbitration, the legal concept of force majeure shall be applied if the parties do not agree on a consensual concept of it, whether in cases in which the arbitrator addresses on his own to determine force majeure[3], or in cases in which he applies the general principles of law[4] or in cases based on the provisions of a national law Certain, but it should be noted that the arbitration provisions are strict in taking the concept

Conventional force majeure and instead adopts the expanded concept of contract retention and maintenance.[5]

2- Conditions for implementing force majeure in its traditional sense and the extent to which these conditions are available in the context of the emerging corona virus pandemic:

Force majeure is considered a realistic situation that assumes the availability of a set of legal conditions, and its assessment is left to the judiciary,[6] according to each incident and the circumstances accompanying it, and from it, saying that the Corona virus pandemic is a force majeure or not is the extent to which it meets the following conditions:

2-1- That the event is unpredictable: for a fact to be considered a force majeure, it must be unpredictable, and therefore the expectation of the event or its unforeseen represents the separation between the debtor's ability to avoid the occurrence of the event through his previous preparation for it if he expected it or his inability to do so when it was not possible for him to foresee the event[7]. It is also required that the event be unexpected, not only on the part of the debtor, but on the part of the most careful people in this field, and accordingly the criterion in this matter is the objective criterion, not the personal criterion. [8]

At the international level, the Vienna Convention on the Contract of International Sale of 1980 stipulates in Article 79 of it: "An event is considered

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[1](A),MAZEAUD, *leçon de droit civil obligation, tom2,3éme édition, paris,1966, p.382*

[2]Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations. Le Rapport au Président de la République qui accompagne l'ordonnance du 10 février 2016.Code civil Français

[3]Sentence CCI, rendue dans l'affaire n° 2142 de 1974, JDI, 1974, p. 892

[4]Sentence CCI, rendu dans l'affaire n° 2478 de 1974, JDI, N°4, 1975, p. 925-927.

[5](S), Hasaim, Effects of the Economic Blockade on the Execution of International Contracts, Dissertation for a Doctorate in Law, MouloudMammeri University, Tizouzou, Algeria, 2019, p. 200

[6](J), HEINEICH, « l'incidence de l'épidémie de coronavirus sur les contrats d'affaire : de la force majeure à l'imprévision sur les contrats d'affaires », Dalloz, paris, 2020, p. 611.

[7] (Y), BasemThanoun, 'Force Majeure and its Effects in the Provisions of the Pleadings Law', Al-Rafidain Journal of Rights, Iraq, Vol. 10, No. 36, 2008, p. 64.

[8] (A- R), Al- Sinhouri, the facade in explaining civil law, Part I, sources of commitment, Dar al-Nahda, Egypt, 1952, p .354.

unexpected if it was not reasonably expected that the debtor would take the impediment into account at the time of the conclusion of the contract." This is the same provision contained in the Unidroit principles[1] in Article 7-1-7; Which considered that the event is considered unexpected if it was unreasonable for the debtor to include it in his account when concluding the contract. These texts took the flexible concept of unpredictability.

As for the arbitration panel of the International Chamber of Commerce in Paris "CCI" stricts the condition of non-expectancy, as it considered that the circumstances and events that are foreseeable at the moment of concluding the contract do not fall within the scope of the force majeure conditions, and the parties bear the consequences thereof[2]. Among the judicial applications of the requirement not to foresee a force majeure event is what the French Court of Cassation went to on December 29, 2009, in a case related to the "chukungunya" epidemic, which appeared in January 2006, where it considered that the requirement of non-expectation

The force majeure event that leads to the termination of the contract did not materialize, given that the contract was concluded in August 2006, a period after the outbreak of the epidemic.[3]

2-2- That the incident be impossible to pay: To implement the force majeure condition, it is required that the incident be impossible to pay, that is, impossible for the debtor. Absolute to not pay[4].

2-3- That the incident be independent of the debtor: To describe the incident by force majeure, it must be completely independent of the will of the parties to the contractual bond and beyond their will, meaning that the debtor should not have caused it to happen through negligence [5].

In terms of force majeure conditions, it can be said that they apply to the emerging corona virus pandemic, as it is an event that was not expected to appear, neither in terms of time nor place, impossible to pay, and independent of the will of the parties to the contract considering that the components of this event are the emergence of the corona virus and quarantine procedures And the closure accompanying his appearance, and saying that the pandemic of the emerging Corona virus is a force majeure, is what the "Colmar" court in France went to in March 2020,

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[1] (N), Mahasneh, 'The Impact of Qatar's Blockade on Contractual Obligations from the Perspective of International Trade Laws: The Vienna Agreement and the Unidroit Principles as a Model', International Journal of Law, Qatar University, Vol. 2018, No. 4 on the blockade, p. 205

[2]Sentence CCI, rendue dans l'affaire N° 2216 en 1974, JDI,1975, p.919.

[3](M), Jalati, 'Legal Affairs of Corona Virus on Contracting Liabilities',Journal of Annals of the University of Algiers, Algeria, Volume 34, a number of law and covid 19, in 2020, p .494

[4] (A- R), Al-Sanhouri, op. cit , p. 355

[5] (B), Thanoun. op. cit., p. 65

as it considered the failure of the appellant and his defense at the ruling session due to the possibility of being infected with the Corona virus a force majeure, and the same court considered that it is not The new Corona virus in itself is a force majeure, but the risk of infection and the lack of a vaccine, and the fact that the disease is fatal is what constitutes force majeure,[1] and in another decision of the same court it was stated that the emerging Corona virus pandemic, and the procedures of quarantine and administrative closure accompanying it constitute a force majeure[2], which is what Raised the theory of the "act of the prince"[3] according to which an act or procedure is issued by a public authority unexpectedly, and through no fault of its own, resulting in harm to the contracting party, leading to a breach of the financial balance of the contract. The prince's act constitutes a case of force majeure if it leads to the impossibility of implementing contractual obligations, which applies to quarantine decisions and the closure of border crossings, and the French judiciary has confirmed on many occasions that foreign laws are considered force majeure if they meet their conditions of impossibility of payment, lack of expectation and beyond the will of the parties[4], which is the same matter approved by the arbitration panel "CCI", as it considered that the state's cancellation of the export license resulted in the impossibility of implementation, and that the cancellation of the license constitutes a force majeure in its legal sense[5].

Among the judicial rulings that considered the Corona virus pandemic a force majeure, the ruling issued by the Douy court in France in March 2020; It was stated that the cancellation of a flight by the Italian authorities due to the risks resulting from the emerging Corona virus pandemic is a force majeure[6].**21**

The novel coronavirus pandemic constituted a health crisis with unprecedented legal dimensions, which prompted many to consider it a force majeure. The absolute discretion of the head of the judicial authority to consider the request to lift the waiver of the exercise of the right to appeal in the presence of force majeure. In China, the cradle of the emergence of the emerging epidemic of the Corona virus, the Chinese Commission for the Development of International Trade announced the issuance of force majeure certificates for Chinese companies affected by the emerging Corona virus pandemic, and the same matter went to the Italian Ministry of

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[1] Cour d'appel de Colmar,chambre n° 06,12mars 2020,n° 20/01098.
[2] Cour d'appel de Colmar, 23 Mars 2020, n°20/01206, n°20/01207
[3] (S), Hasaim, . op. cit, p. 182.
[4]Cass,com, 30 Janvier 1990, Bull.civ,III ,n°149 ,CA Paris,22 Septembre 1993 Juriss-Data n°023393.
[5]sentence CCI, rendue dans l'affaire n° 5864 du 1989, JDI. 1997, p. 925- 927.
[6]Douai, 4 Mars 2020, n° 20/00395

Economic Development, as it gave permission to the Chamber of Commerce to grant a force majeure certificate to its companies[1].

Second: The legal effects of force majeure in its legal sense.

Considering the Corona virus pandemic as a force majeure in its legal sense leads to the absence of the debtor's responsibility, and the contract is terminated by the force of law, and we are in front of a case of contract termination if it is impossible for the debtor to implement his original obligations that the contract can only perform, such as the impossibility of delivering the thing sold due to the issuance of the quarantine decision and the application of the general closure due to the outbreak epidemic. But if it is impossible for the debtor to perform a secondary obligation, then the expiration of this obligation does not lead to the expiration of the contract, and from this point of view it is necessary to differentiate between the expiration of the contract and the expiration of the obligations that result from it[2].

As for the level of national legislation; The implementation of force majeure in the Algerian civil legislation results in the termination of the contract and the absence of the debtor's liability, and the fact that force majeure is not part of the public order, as the text regulating it allows the parties' agreement to violate its provisions in accordance with their interests, so it is organized according to their contractual freedom in the manner that will be mentioned In the next branch.

Section Two: Conventional regulation of force majeure content in international trade contracts.

In order to maintain the contract and face the change of circumstances surrounding it, the parties to the contract regulate the force majeure clause in their contracts, by defining its terms and scope of application, including the emphasis on reviewing the contract and adapting it according to the circumstances[3]. Accordingly, the force majeure clause is defined as "a contractual clause that the contracting parties include in their contract to cover various incidents that are not under their control and affect

The contract[4].The force majeure clause seeks to maintain the contract by amending it, not terminating it, because the contracting parties' desire often tends to

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[1] (A), Ishrakiya, "Special Legal Means to Counter the Effects of the New Corona Virus Pandemic on Contractual Relations", Kuwaiti International Law Journal, Kuwait University, Eighth Year, Special Supplement, Issue June 6, 2020, p. 730.

[2] (A), Mohi El-Din Mustafa Abu Hamad, Arbitration in International Administrative Contract Disputes, New University House, Alexandria, Egypt, 2008, p.167.

[3](P-H),ANTOMATEL,contribution à étude de la force majeure, LGDJ, paris, 1992, p.250.

[4] (Y), Salah El Din Ali, 'Force Condition in English Law - An Analytical Study with Iraqi Civil Law,' Journal of the Legal and Political Sciences, the fourth issue, the tenth year 2018, p.239.

maintain it. This desire appears through the characteristics of the force majeure clause, which are represented in the following[1]**:**

It is a condition that is included in the contract to prolong the period required for the implementation of the obligation arising from it, or to stop its implementation for a certain period until the force majeure event ends.

The force majeure clause is an effective way to plan for the future of the contract, and to protect it from unexpected incidents that obstruct its implementation, by providing a certain degree of certainty about how to distribute the consequences of the risks resulting from those accidents.

The force majeure clause is very flexible, which appears in the images that this clause can take.

The force majeure clause suspends the application of the principle of the impossibility of implementing the contractual obligation, which results in the automatic termination of the contract by the force of law, and the expiration of the obligations arising from it.

From the standpoint of these characteristics, the effects of the force majeure clause in contracts appear. These effects differ according to the formulation of the clause included in the contract, as a result of the flexibility that this clause enjoys in its various forms, and the main effect of it is to prevent the principle of impossibility of implementing the contractual obligation from taking effect, and to stop the implementation of The contract and other effects that follow the forms of the force majeure clause. Accordingly, the implementation of the force majeure clause in contracts provides many solutions to the parties to the contract. Some solutions raise the issue of non-liability, and others are a joint agreement to extend the implementation periods after notification, or to terminate the contract after a period of time if the force majeure situation continues.

The second requirement: the Corona pandemic as an emergency circumstance and the different position of commercial arbitration from it

The Corona Virus (Covid. 19) pandemic is a general exceptional circumstance, which could not have been foreseen at the time of the conclusion of the international contract, so does it make its implementation cumbersome? Is the emergency circumstance consistent with the principle of the Sharing of Contracting Parties in the field of international trade? Answering these questions requires studying the content of the theory of emergency conditions and the conditions for its application (section one), then the position of national legislation and provisions of international commercial arbitration in applying them in the field of international contracts (section two).

[1] (Y), Salah al-Din Ali, op. cit., pp. 241,242.

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Section one: The Corona pandemic and the conditions for implementing the theory of emergency conditions

The adoption of the concept of the theory of emergency conditions results in making the implementation of the contract difficult and stressful for the debtor, not impossible, and its implementation results in a re-review of the contract.

First: The occurrence of exceptional, general accidents that could not have been foreseen

Article 107/03 of the Algerian Civil Code stipulates that: "However, if exceptional, general incidents occur that could not have been foreseen, and their occurrence negates the contractual obligation, and if it does not become impossible, it becomes burdensome to the debtor, so that it threatens him with a heavy loss…" 1195 of the French law, which states that: "If unforeseen circumstances arise after the conclusion of the contract that make its implementation severely burdensome for one of its parties..." In the light of these two articles, the application of the theory of emergency conditions requires the occurrence of general exceptional incidents that were not It can be expected, and this condition, in turn, requires that it must meet three conditions: The first is the exceptionality of the emergency, and the accident is exceptional when it does not agree with the normal course of things. Therefore, the provisions of the theory of circumstances are not applied, unless the accident was exceptional and resulted in exceptional results, so that the implementation of the obligation becomes burdensome for the debtor. Exceptional laws, such as health emergency laws, are included in the exceptional accidents that jurisprudence has been accustomed to mention within the theory of emergency conditions[1].

The second condition is the generality of the emergency accident, as the theory of emergency conditions requires that the exceptional circumstance that led to the imbalance of the contract be general, that is, it does not concern the person of the debtor only, but includes all people or at least a class of them, and jurisprudence classifies[2] the external circumstances of the person of the debtor. It falls into two categories: The first relates to the legal aspect, such as changing the law or regulation that leads to an imbalance in the economic performance of the contract, as is the case with health emergency laws. The second category relates to the realistic aspect such as wars, high prices of raw materials, epidemics... and other things that affect the implementation of the contract.. It should be noted that the condition of the generality of the event is not justified in light of the modern trend of the theory of emergency conditions, so that the social dimension The contract guarantees the dedication of cooperation and contractual solidarity, and from this the provisions of the theory of

[1] (PH), STOFFEL-MUNCK, «L'imprévision et la réforme des effets du contrat»,R.D.C., N° Hors-série, 2016, p 32.

[2] (PH), STOFFEL-MUNCK, Op. cit., p 32

emergency circumstances in Algerian law should be reformulated in a manner that suits the purpose of its implementation, which is to protect the debtor in the event of an imbalance of the contract.

The third condition is the non-expectation of the event, and this condition is the separation between the incident being an emergency or a non-emergency, because every activity carries with it some risks, and it is assumed that each contractor has estimated these risks and took precaution and caution about them, because they fall within their contractual obligations, Accordingly, the unexpected event that the legislator was keen to insure the contractor within his risks is the accident that was not expected, and could not be foreseen at the time of the conclusion of the contract, and also from what he could not pay or reduce its effects, and that the criterion by which the lack of expectation is measured is an objective standard - where it is determined The degree of unpredictability, not in view of the circumstances of the contracting party, but rather in view of the objective circumstances of the contract, and accordingly, the accident must be something that he cannot foresee at the time of the conclusion of the contract, not with regard to the contracting party itself, but rather to the person who is in similar circumstances, and accordingly the judge must place In estimating the standard of the ordinary person, the allegiance of the work and its duration, given that long-term contracts have a greater probability of the occurrence of the emergency situation compared to short-term contracts.

Second: the occurrence of fatigue for the debtor

The burdensome obligation of the debtor is the basis on which to judge the existence of an imbalance in the contractual balance or not, and then the application of the theory of emergency conditions. Implementation of the contractual obligation, even if it does not become impossible, has become burdensome to the debtor as it threatens him with a heavy loss..." However, this text revealed ambiguity in determining the amount of fatigue that the debtor must incur in order to apply the theory of emergency conditions, and in front of the silence of the legal text, The jurisprudence puts[1] forward the necessity of adopting the expanded interpretation of the phrase “severe loss”, and that the degree of fatigue is determined by an objective criterion, not the personal criterion, so that it does not look at the extent of the debtor’s personal ability to bear the loss arising from changing economic conditions, under which the contract was concluded, but rather the estimation of fatigue Considering the damage that may be caused to the debtor and the extent to which it can be incurred according to the nature of the contract.

[1](F), POLLAUD-DULIAN, « Réforme du droit civil des contrats parl'ordonnancen° 2016-131 du 10 février 2016 », R.T.D.Com, N° 3, 2016, p. 507.

The second section: The position of international commercial arbitration between rejection and caution in implementing the theory of emergency conditions in international trade contract disputes.

The impact of the different position of national legislation regarding the adoption of the theory of emergency conditions on the position of commercial arbitration from its application, a position that is attracted by positions of rejection at times and careful consideration of the theory at other times.

First: The refusal of international commercial arbitration to adopt the theory of emergency conditions in international trade disputes: International commercial jurisprudence[1] goes to say that the powers entrusted to the arbitrator do not reach the extent of amending the contract and its suitability in the event of its economic imbalance due to changing circumstances surrounding the contract, because the validity of the arbitrator's life is limited to Deciding on the claims of the parties to the contract, and accordingly the arbitrator adheres to the principle of "the contract is the law of the contracting parties", and therefore attaches great importance to the requirements of the contract, and does not interfere to review it no matter how imbalanced it is due to the change of circumstances surrounding it, unless there is a condition in the contract to do so. Therefore, the arbitration judiciary assumes that a contract that does not contain a contract review or suitability clause is a speculative contract, in which the parties bear the risk of future events that they anticipate in advance, and that their silence on the precaution of the risks of circumstances is a voluntary silence[2].

The position of arbitration that refuses to adopt the theory of emergency circumstances in international trade contract disputes is also established on the grounds that international trade dealers are experienced and experts in their field, and aware of the risks that they may encounter during the implementation of their contracts, and therefore if they wish to protect their contract from the risks that may encounter its implementation was They should reserve for that in a contractual clause.

Second: Be careful of commercial arbitration by applying the theory of circumstances in trade contract disputes: since the practices of international commercial arbitration have rejected the principle of changing circumstances and reviewing the contract as a general origin in implementation of the principle of the Sharia of Contracting Contract and the presumption of professional specialization for international trade dealers, the arbitration judiciary has allowed in exceptional cases to review Contract in the absence of a contractual clause.

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[1](K), Mahmoud Al.Sabah, Principle of pacta sunt servanda and restrictions in international trade rel ations, first edition (without mention of publishing house), 2002, p556.

[2] (A), MARCHAND, op. cit., p.319.

The state of applying the national law applicable to the contract, and that this law takes into account the theory of emergency circumstances in its provisions[1].

The second topic: the basis and scope of the arbitrator's authority in rebalancing the international trade contract affected by the repercussions of the emerging corona virus.

The rebalancing of the contract affected by the change in the circumstances surrounding it during its implementation constitutes a large part of the disputes that are presented to the arbitral tribunals, in light of the disagreement of the parties in reaching an agreement to do so. To examine the basis of the power granted to the arbitral tribunal in rebalancing the contract (section one), then the scope of the exercise of this power (section two).

The first requirement: the basis of the arbitrator's authority to restore the economic balance of the decade affected by the emerging corona virus pandemic.

Comparative legislation granted the judge a general authority to amend the contract in legally defined cases, based on fundamental changes in the contract that exceeded the expectations of its parties, and caused an economic defect in it. Economically affected due to changing circumstances surrounding it during implementation. However, this does not mean that the parties do not include a condition in the contract that gives the arbitrator the authority to review it if certain circumstances occur. Based on this saying, the arbitrator's authority to review the contract finds its basis in the parties' agreement (first), but in the event that the parties do not include an agreement condition, where does the arbitrator's authority find Its basis is to review the contract and restore its economic balance? (Secondly).

Section one: The arbitrator's authority to review the contract on the basis of the parties' agreement.

It has already been said that the contractual art of international trade dealers has used to include in their contracts the force majeure clause and the renegotiation clause, and these terms may be in the contract itself or in the arbitration agreement, and these conditions give the arbitrator the power to rebalance the economic balance of the international trade contract, as you find the authority The arbitrator is based on the renegotiation clause. The economic rebalancing of the contract puts on the arbitrator the task of deciding on the realization of the force majeure condition and the consequences of establishing it, which is a technical task in the first place, and this task is multiplied with the passage of time between the occurrence of the force

[1](S), Hasaim, op. cit., p. . 217.

majeure event and the referral of the dispute to arbitration, because it is difficult to be certain that the imbalance The economic was the result of this event or not[1].

In addition to the force majeure clause and the renegotiation clause as a basis from which the arbitrator derives his authority to restore the economic balance of the contract, international trade dealers have deliberately included the clause to ensure good implementation in their contracts, and this clause aims to cover the potential risks resulting from non-performance in whole or in part due to force majeure. It resorts to the inclusion of such a condition for the purpose of determining

The amount of compensation that the aggrieved party will receive from non-performance, and the arbitrator depends on this condition if the parties agree on a law that provides for such a condition even if the parties did not include it in their contract, and the arbitrator can also rely on it if the parties agree to resort to international norms, despite This clause precludes the arbitrator's authority to determine the amount of compensation necessary to restore the economic balance of the contract[2].

The arbitrator can also rely on the obligation to mitigate the damage in order to restore the economic balance of the contract, and the meaning of this obligation is that if the debtor’s failure to implement his contractual obligations or delay in them entails compensating the creditor, the latter is also obligated to mitigate the damage incurred by him by taking measures commensurate with the conditions arising from the force Cairo, which would ensure the continuity of the contract. The obligation to mitigate damage finds its basis in the contractual terms that the parties include in the contract[3], or if the applicable law provides for this[4],and it is also included in the “Unidroit” principles under the heading “Militating harm”, and Article 8-4-7/1 of these principles is not obligatory. The debtor shall compensate the damage in the event that the creditor was able to mitigate it in reasonable ways, and paragraph 2 of the same article added that the creditor can recover what he spent within reasonable limits. Commercial arbitral tribunals recognize the obligation to mitigate harm and defend its existence to ensure the survival of the international contract affected by the change in the circumstances surrounding it, and rely on general principles in

[1] (R), Ali El-Din, 'The arbitrator's authority to restore the financial balance of the contract - a study in light of the current financial crises', a paper submitted to the Scientific Conference on 'Legal and Economic Aspects of Global Crises', held at the Faculty of Law, Mansoura University, on 04/21/2009, p. . 73.

[2] (R), Ali El-Din,. op. cit , p. 76.

[3](Sh),Mohamed Ghannam, As a result of changing circumstances in international trade contracts, N ew University House, Alexandria, Egypt, 2007, p520.

[4]The Algerian civil code is provided for in article 182 of the Code. The French legislature does not expressly provide for it, but it is implicit in article 1151 of the Code of Civil Liability.

international trade law to establish this obligation (the rules of les mecataria), in the absence of the parties' choice of applicable law[1].

The second subsection: The basis of the arbitrator's authority in the absence of the terms of the agreement.

The jurisprudence went[2] to say that disputes related to contract modification are illegal disputes, because they are not based on legal considerations, and from it they are settled based on the principles of justice and good faith, and based on this saying, jurisprudence and the judiciary give the authority to the arbitrator authorized to conciliation in amending the contract and restoring balance to it even in The absence of an express provision for this, even if the applicable law does not allow the judge or arbitrator to amend the contract. This is on the grounds that the arbitration clause with the authorization of conciliation is equivalent to an implicit condition for reconsidering and adapting the provisions of the contract, especially in cases where the circumstances surrounding the contract change and lead to a breach of its balance, and that these considerations find their basis in the principles of justice and fairness.

The authority of the arbitrator authorized to conciliate is not absolute, but rather is limited to the limits of the economic rebalancing of the contract without tending to change the features of the contract or create a new contract, because the limits of his job are to settle two claims, one of which is based on the letter of the contract, and the other on the spirit of the contract. Because the rules of justice and fairness require the lifting of the injustice and fatigue that one of the contracting parties bears during the implementation of the contract that has been affected by the change in the circumstances surrounding it during its implementation[3].

It should be noted that the authority of the arbitrator authorized for conciliation to amend the contract in light of the change of circumstances surrounding it was approved by many judicial and control rulings. The French Court of Cassation issued its judgment dated 02/01/2012, in which it confirmed that the arbitrator authorized to conciliation had benefited from the powers granted and to reconsider the provisions of the contract and its performance through its application of the rules of justice and fairness. His judgment is that he has taken justice and fairness into consideration." As for international commercial arbitration rulings, it was stated in one of the arbitration decisions, a decision issued in 1989 under No. 2972 that "the arbitrator charged with the capacity of a free arbitrator (the commissioner of conciliation) refuses to take into account the legal rights that It is guaranteed by the applicable law or the agreement

[1] (S), Hasaim, op. cit., p. 273.
[2] (R), Ali El-Din, op. cit., p. 78.
[3] (S), Muhammad Ghanim, op. cit., p. 457.

guaranteed by the contractual bond of one of the parties when the claim to benefit from it would be equivalent to the abuse of the right." [1]

However, there are those who refuse to grant the authority to the arbitrator authorized for conciliation to rebalance the economically faltering contract by changing circumstances, and this refusal is based on the consideration that the arbitrator is always equipped with a judicial authority that prevents any construction authority from it, even if it is authorized for conciliation, as the arbitrator authorized for conciliation cannot replace the parties. With regard to the future of the contract and the amendment of its provisions, on the grounds that the arbitrator authorized to conciliation cannot deviate from the principle of the contract, the Sharia of the Contracting Parties in the name of justice and fairness, because this is a deliberate breach of the principle of binding force of the contract, and thus a collision with public order. And one of the rulings of the Paris Court of Appeal went with this direction in its ruling on November 4, 1997, which stated that "the arbitrator of justice may not change the agreement of the parties, nor exceed the powers granted to him." This saying came before in some arbitral decisions, as it was stated in an arbitral award issued in 1977 that "the arbitrators must not conduct a new contractual balance nor replace themselves with the parties who failed in the negotiations in order to adapt the contract... even in their capacity as arbitrators of justice. They are not allowed to amend the contract."[2]

It should be said that it is not an easy matter to restore the economic balance of the contract in the absence of an agreement of the parties or a legal regulation for it, but the most likely between the two directions rejecting and supporting granting the arbitrator authorized to conciliation the power of economic rebalancing tends to the favor of the supporters, given that the rules of justice and fairness do not conflict with the will of The contracting parties that aim to maintain the contract, in addition to taking into account the degree of economic balance of the contract that existed before the change in circumstances, so the parties' choice to resort to arbitration and give it the power to authorize conciliation is the best option to ensure the achievement of the continuation of economic balance between payments contractual and coping with changing circumstances.

[1]These provisions are referred to in the Charter of Students Abd Al.Hamid and Noha Khalid Issa, "t he Authority of the Magistrate in Restoring the Economic Balance of the Decade for Study in Intern ational Trade Contracts", Journal of the Faculty of Education for Educational and Human Sciences, University of Babil, No. 41, 2018, p. 1117.

[2](M), Talib Abd Al.Hamid and (N), Khalid Issa, op. cit., p. 1116

The second second requirement: the scope of the arbitrator's authority to restore the economic balance of the decade affected by the repercussions of the emerging Corona Virus pandemic.

In light of the basis of the arbitrator's authority to restore the economic balance of the contract, talking about the scope of this authority in the economic rebalancing of the contract affected by the repercussions of the emerging Corona Virus pandemic, the matter requires exposure to his authority in interpreting the contract and amending contractual obligations (first), then his authority to terminate the contract and compensate the injured Or an exemption from liability in the event that no solution is found to modify the obligations (II).

Section one: The scope of the arbitrator's authority to interpret the contract and amend contractual obligations.

The interpretation of the contract is considered a preliminary matter that must be decided by the arbitrator within the framework of his task in settling the dispute. When interpreting the contract, the arbitrator is obligated to search for the true will of the parties to the contract, which appears through the terms and circumstances of the contract, which was confirmed by the Paris Court of Appeal in its ruling dated 1976; Which stipulated the illegality of the arbitral tribunal's interpretation of a contract in a way that cannot be interpreted within the framework of the parties' will and the circumstances of the contract, and considered it a violation of public order[1].

And the limits of the arbitrator's authority in interpretation go in his modification of contractual obligations, and accordingly, restoring the economic balance of the contract by amending its conditions is different from the content of the arbitrator's completion of the contractual void, so jurisprudence believes[2]43 that the arbitrator, as well as the judge, may complete what he deems appropriate by filling in the gaps that the parties are unable to agree on. It will resolve the dispute, and this completion is in the presence of an agreement stipulating this, or the applicable law grants the arbitrator this authority.

Subsection Two: The arbitrator's authority to compensate for the damage or be exempted from liability.

The arbitrator has the power to award compensation in the light of what is required by the rules of law applicable to the arbitration litigation, and the compensation for damages is a comprehensive compensation for all the losses he has incurred and the lost gains. It does not order compensation that is not approved by the rules of law applicable to the contract or in violation of public order in the country of implementation.

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[1](R), Ali Eddin, op. cit., p. 84

[2]There is a difference between the exclusion of a clause in the contract and the review of the contrac t, the latter having an impact on the future. When the clause is excluded from the contract, its effect is limited to the rights already acquired. See Rasha Ali Eddin, op. cit., p. 85

However, the majority of international contracts include provisions for the exemption from liability in the event of force majeure, and this exemption is coupled with the absence of fraud or serious error, so the arbitrator must implement the force majeure clause, taking into account the circumstances of each contract and the experience of the contracting parties. Therefore, as soon as the Health Organization declared the Corona epidemic to be a pandemic, many countries granted a force majeure certificate to their companies, considering the solutions provided by force majeure conditions to the parties to the international trade contract.

Conclusion

As a result of the emergence of the new Corona virus, and considering it a global epidemic, countries have taken a number of preventive measures in order to limit it and not spread it, and at the forefront of these measures comes the quarantine that

Accordingly, many commercial transactions were restricted and international transit ports were closed. These circumstances affected the implementation of international trade contracts, and the Corona pandemic raised a new legal problem for the international contract system, where we tried through this study to search for legal rules that can be applied to epidemics as material facts. With a direct impact on contractual obligations, and knowing the fate of the international commercial contract in light of the direct effects of the emerging corona virus pandemic on its implementation, and out of balance between the impact of the corona pandemic on the implementation of the international commercial contract, and the principle of the contract, the law of contractors, this study concluded some results represented in the following :

- Saying that the new Corona virus pandemic is considered a force majeure in its legal sense leads to the impossibility of implementing the contract, and this impossibility results in the termination of the contract and the absence of the debtor’s liability, but the desire of dealers in international trade to stabilize their transactions, and achieve the greatest degree of safety, in the event of changing circumstances. They have deliberately included in their contracts conditions that would ensure the survival of the international contract despite the change of circumstances, and the principle of the Sharia-Contracting Contract helped them to do so.

- The impact of the Corona virus on the implementation of the international contract does not necessarily lead to the impossibility of implementation, but rather to create fatigue for the debtor, which opens the way to apply the theory of emergency conditions to the emerging Corona virus pandemic. However, this theory is not recognized by all legal systems, which leads To the possibility of the judiciary’s rejection of a request to relieve fatigue and restore balance to the contract, and the issue of different legal systems regarding it hinders its application in the field of

international trade contracts, so it remains an unreliable option for many dealers in the field of international trade.

Commercial arbitration is characterized by flexibility and adaptation to the requirements of the contract, so it is considered the best way to consider the disputes resulting from the enforcement of the force majeure clause and the maintenance of the contract. However, in the absence of the arbitration clause, it is possible to resort to arbitration with the authorization of conciliation, which derives its authority from the rules of justice and fairness, although this statement contains controversy between those who support and those who oppose granting the arbitrator authorized to conciliation authority in the absence of the terms of an agreement to the parties that give him the authority to review the contract.

Based on these results, this study proposes the following recommendations

- Force majeure requirements fulfill the legitimate expectations of the contractors, and from this, contractual security is achieved in contracts, so the researcher advises that the force majeure clause should be formulated precisely and clearly, by expanding its definition, to include all events that are likely to occur, including epidemics.

The necessity of mitigating the severity of the public order contained in the provisions of the theory of emergency conditions in Algerian law, and granting the possibility of reviewing the contract between its two contracting parties, under the supervision of the judiciary. The researcher also recommends reviewing the general condition contained in the provisions of the theory of emergency conditions, and leaving the scope of its assessment to the judge, to adapt it for each case separately, decreasing or increasing the obligation or suspending implementation until the emergency circumstance is over.

- In the typical formulation of the arbitration clause, the authority granted to it must be specified, because the more clear and detailed the arbitration clauses, the less the discretionary power of the arbitral tribunal to search for solutions that may not be consistent with the real will of the parties.

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