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	RESEARCH ARTICLE 
	<h2 style="text-align: center;">The Legal Impact of the COVID-19 Pandemic on the Exemption of International Road Freight Carriers from Contractual Liability: A Comparative and Analytical Study</h2>
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Keywords	COVID-19 pandemic; Force majeure; International road transport; Carrier liability; Delay in delivery; Contractual exemption.
Abstract	<p>Since the end of December 2019, when the Coronavirus (COVID-19) outbreak first emerged in Wuhan, China, the international community has faced an unprecedented global health crisis. By early 2020, the pandemic had spread rapidly across continents, resulting in millions of infections and a significant number of fatalities. Beyond its severe human toll, the pandemic profoundly disrupted global economic activity, particularly the transportation sector, which constitutes a fundamental pillar of international trade and supply chains. International road transport of goods was among the sectors most affected by restrictive governmental measures such as border closures, lockdowns, curfews, and quarantine requirements. These exceptional circumstances raised complex legal questions regarding the contractual liability of international road freight carriers, especially in cases of loss, damage, or delay in the delivery of goods. Given the novelty and scale of the COVID-19 pandemic, existing legal frameworks were confronted with unprecedented challenges in determining whether such a global health emergency could be classified as force majeure or an exceptional circumstance justifying exemption from liability. This study examines the extent to which the COVID-19 pandemic affects the contractual liability of international road carriers of goods. It seeks to determine whether the pandemic and the measures adopted to combat it may constitute force majeure under international conventions, comparative legislation, and national laws, thereby relieving carriers from responsibility. Relying on a descriptive, analytical, and comparative methodology, the research analyzes the legal foundations of carrier liability under international road transport instruments, particularly the Convention on the Contract for the International Carriage of Goods by Road (CMR), alongside comparative legal approaches and judicial trends. The study concludes that while the COVID-19 pandemic may, in certain circumstances, qualify as force majeure, exemption from liability is not automatic. Rather, it depends on the fulfillment of specific legal conditions, including unpredictability, irresistibility, and the absence of fault on the part of the carrier. The paper highlights the need for a nuanced legal assessment that balances contractual stability with the realities of global crises.</p>
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Introduction:

The Coronavirus (COVID-19) pandemic has led countries around the world to impose quarantine measures to combat the spread of this virus during the disease outbreak. Despite human progress in all fields, humanity has been helpless against this pandemic, which is a respiratory disease caused by a newly discovered coronavirus called SARS-CoV-2.

This pandemic is considered one of the most dangerous the world has ever known, leading to the deaths of millions and leaving lasting side effects, particularly chronic diseases such as diabetes and high blood pressure. It also paralyzed various vital sectors globally, most notably the transportation sector, which is one of the most essential services.

All transportation transactions involve a transportation contract, especially land transport contracts, which are among the most vital commercial contracts, essential for trade, economic development, and the social lives of individuals. This is a consensual contract whereby a natural or legal person undertakes to transport another person or goods to another location. They are obligated to deliver the goods in good condition and to protect them, ensuring their safe delivery to the sender or recipient at the agreed-upon place and time. In return, the sender is obligated to pay the transportation fees and receive the goods from the carrier upon arrival at the agreed-upon delivery location. The COVID-19 pandemic is a new phenomenon that has affected land transport contracts, so we faced the following problem:

- To what extent does the exceptional situation of the COVID-19 pandemic affect the liability of the international land freight carrier? In other words, does this pandemic fall under the category of force majeure that exempts the international land freight carrier from responsibility?

To address this issue, we adopted a descriptive, comparative, and analytical approach, reviewing cases of liability for land carriers of goods and the grounds for their exemption. We also defined the concept of the COVID-19 pandemic and force majeure as grounds for exemption, through comparison and analysis of articles from international road transport agreements, comparative legislation, and specific details concerning the pandemic and its potential classification as force majeure enabling international road carriers to be relieved of liability.

Therefore, the study was divided into two parts :

The first part dealt with the legal framework governing the liability of land carriers of goods, addressing the circumstances under which liability arises and the grounds for its dismissal.

The second part clarified the concepts of COVID-19 and force majeure, outlining the most important legal and judicial positions regarding the classification of this pandemic.

First: The Legal Framework for the Liability of International Land Carriers of Goods

The carrier's liability is among the most important issues that can give rise to numerous disputes before judicial authorities. It is a contractual liability stemming from the transport contract, but it does not arise from the time of the contract's conclusion, rather from the time the goods are delivered to the carrier. This has led some to believe that the transport contract is a real contract that is only concluded upon delivery of the goods to the carrier, and the carrier's liability ends upon delivery of the goods to the consignee (Taha, p. 80). The basis of the land carrier's obligation is to achieve a result, which is the arrival of the goods in good condition and complete, and at the time agreed upon in the transport contract. This is done by him exercising the necessary care as a professional carrier. If he neglects his duty of ensuring the safety of the goods until their delivery to the consignee, his contractual liability arises (Saleh, 2009-2010, p. 118).

1-Cases in which the international land carrier of goods is held liable

Article 17/1 of the 1956 Convention on the Carriage of Goods by Road (CMR) (This agreement plays a significant role in road transport, facilitating international trade. It was signed in 1956 but entered into force in 1961. Nine member states signed the agreement before its entry into force, while approximately 44 contracting part)states that "the carrier is responsible for the total or partial loss of the goods and for damage occurring between the date of receipt of the goods and the date of delivery, as well as for delays in delivery." According to the Convention, the carrier's responsibility begins upon receipt of the goods and ends upon their delivery to their owners. If the goods are damaged during this period, the carrier bears full responsibility and must compensate the sender or consignee. This applies in cases of total or partial loss of the goods in transit or in cases of delayed delivery.

The International Convention on International Transport by Rail (COTIF-CIM) of 1980 (The Convention on International Rail Transport, signed on May 9, 1980, in Berlin, entered into force on May 1, 1985. Algeria ratified it with reservations, pursuant to Presidential Decree No. 91-264 of August 10, 1991, published in Official Gazette No. 38, 1980) stipulated in its Article 36/03 that: "The railway shall be responsible for damage resulting from total or partial loss of goods and defects therein from the date of acceptance for transport until delivery, as well as damage resulting from exceeding the delivery period." It is noted that its provisions did not differ from the CMR Convention with regard to the period of liability for the carrier, as well as with regard to cases of damage, except that it added the case of damage by including the term "defect."

The Agreement on the Regulation of the Carriage of Goods by Road between Arab States adopted the approach of the COTIF-CIM Convention by addressing the issue of damage. Article 13/03 states: "The carrier shall be liable for the loss resulting from damage to or loss of the goods, as well as for delays in delivery, if the incident causing the damage, loss, or delay occurred while the goods were in their custody." The Algerian legislator adopted this approach in Article 47 of the Commercial Code (Order 75-59, of September 26, 1975, Law 05-02 of February 6, 2005.), which states: "The carrier shall be liable, from the moment of receipt of the goods to be transported, for their total or partial loss, damage, or delay in delivery."

It is clear from these legal texts that the liability of the land carrier arises if they breach any of their legally stipulated obligations in the land transport contract. Their negligence leads to harm to the sender or the consignee (Boukadda, 2016, p. 263). The most significant instances of harm include the destruction of the goods. The goods, their damage, or the delay in their delivery to the rightful owners. This will be explained as follows:

A-Liability arising from the loss of goods:

There are two types: total loss and partial loss. Total loss is represented by the complete loss of the financial value of the transported goods due to their destruction and total loss, which results in the carrier not delivering the goods to the consignee. An example of this is "theft of goods" or "rainfall on a shipment of sugar, causing it to melt due to the lack of protective plastic wrapping." While partial loss occurs when goods arrive in a deficient condition, whether in weight, quantity, or number of packages, losses due to the nature of the goods or what is called "transit loss," such as evaporation due to heat in the case of liquid goods, do not make the carrier liable as long as they did not exceed the percentages customary in this contract during the transport process (Saleh, 2009-2010, p. 189).

This falls under the discretionary authority of the judge, who determines partial loss based on what is recorded and documented in the transport document issued by the carrier upon receiving the goods from the sender (Ababneh, 1984, p. 250).

B- Liability for Damage to Goods:

This refers to the deterioration of the goods' condition, either wholly or partially, compared to their condition at the time of receipt by the carrier, such as being wet, damaged, or broken. The owner of the goods can prove this through the transport document.

However, reservations made by the carrier upon receiving the goods (the place of transport) serve as evidence to the contrary, as they describe the goods and include all their observations, especially if they notice defects such as unsuitable packaging in poor-quality containers, or if they observe visible damage to the goods. This entitles the carrier to confront the consignee should the latter raise objections upon receiving the goods (Mahrez, 2003, p. 197). Article 8 of the CMR Convention stipulates this, stating: "1. During the handling of the goods, the carrier must verify:

a. The accuracy of the information contained in the bill of lading relating to the number, markings, and numbers of the packages.

b. The apparent condition of the goods and their packaging.

2. If the carrier does not have reasonable means to verify the accuracy of the information contained in paragraph 1a of this Article, the reservations and their justifications shall be recorded on the bill of lading. The carrier must also provide justifications for all reservations expressed concerning the apparent condition of the goods and their packaging.

These reservations shall not be binding on the shipper unless the shipper expressly accepts the bill of lading." The Convention obliges the carrier to express all reservations regarding the transported goods, provided that justifications for those reservations are given. This is the same provision made by Article 4 of the Agreement Regulating the Carriage of Goods by Road between Arab States, which states:

If the carrier suspects that the information provided about the goods in the transport document does not accurately represent the actual goods transferred to their responsibility, and they lack reasonable and practically applicable means to confirm this suspicion, the carrier or their authorized representative must add a reservation to the document specifying the inaccuracy and the reason for the suspicion.

The carrier's signature on the document without any reservations or additions constitutes an acknowledgment of the accuracy of all information contained therein regarding the goods being transported. Thus, reservations serve as a simple legal presumption in favor of the carrier to prove its lack of liability should the goods be damaged.

Without such reservations, it becomes difficult for the carrier to prove its non-involvement in the damage, unless there is an agreement between the carrier and the shipper to omit reservations on the transport document that might diminish the value of the goods (Al-Baroudi, n.d, p. 160), in exchange for the shipper assuming liability for damage. This is stipulated in Article 10 of the CMR Convention: "The shipper is liable to the carrier for personal injury and for costs arising from a defect in the packaging of the goods, provided that the carrier has not expressed a reservation on the matter after becoming aware of the defect or if the defect was apparent when the carrier took possession of the goods."

C. Liability for Delay in Arrival of Goods:

A delay refers to the arrival of goods being transported after the date agreed upon in the contract, or after the time period stipulated by the carrier's regulations or customary practice, as applicable (Hosni Al-Masri, 1990, p. 320). If this delay causes damage to the sender or the consignee, they must prove the damage that gives rise to the land carrier's liability (Dweidar, 2014, p. 152).

Article 19 of the CMR Convention stipulates this, stating: "A delay in delivery occurs when the goods are not delivered within the agreed timeframe, or when the specified timeframe is exceeded, and the time required for full loading exceeds the reasonable time that can be granted to a rigorous carrier, especially since the actual duration of the shipment depends on the circumstances, particularly in the case of partial loads." The same provision is found in Article 13 of the Agreement Regulating Land Transport between Arab States, which states:

- If there is a written agreement between the sender, who has declared their intention to deliver within a timeframe agreed upon by the carrier.

In cases where there is no agreement between the sender and the carrier, delivery shall be made within a reasonable timeframe, taking into account the circumstances causing the delay.

This agreement stipulates a 90-day period after the delivery date agreed upon in the contract, or a period appropriate for this type of transport. If the goods are not delivered within this period, they shall be considered lost unless it is proven that the consignee was responsible. In contrast, both the Convention on Road Transport (CMR) and the Convention on Rail Transport (COTIF-CIM) have set a 30-day (Rodiere, 1977, p. 2133) .

2-period for considering goods lost in case of delay.

Undoubtedly, the land carrier is responsible for the transport process. Whenever the carrier or one of its agents causes harm to the sender or consignee, whether through loss, damage, or delay in the arrival of the goods, it is obligated to provide compensation. However, exceptions to this rule exist. The law and the principle of freedom of contract grant the carrier several grounds for exemption from contractual liability, even if only one of these grounds is present. These grounds are:

A- Legal grounds for exempting the international land carrier from liability:

Most international agreements and domestic laws pertaining to transport contracts have established exceptional circumstances to enable the carrier of goods to be relieved of its liability. These include the fault of the injured party, whether sender or consignee, the nature of the goods, or force majeure, which we will discuss in the second part of this research.

1- Shipper's Error:

The land carrier of goods is exempt from liability if they can prove that the loss, damage, or delay resulted from an error on the part of the shipper, the consignee, or one of their associates, such as inadequate packaging, a defect in the packaging, or providing incorrect information about the nature and type of the goods, thus rendering the carrier unaware of the necessary procedures for handling such goods (Taha, p. 91).

In another context, according to Article 18 of the CMR (Convention on Road Transport), the responsibility falls on the carrier. The carrier may rely on reservations recorded on the transport document, unless an agreement is reached between the consignor and the carrier to omit such reservations. In this case, the consignor assumes responsibility for any damage to the goods, as the purpose of this procedure is to preserve the market value of the goods.

The fault may also originate with the consignee, who might delay, for example, in receiving the goods, leading to damage such as the wilting of flowers. To absolve themselves of liability, the carrier must prove that the damage resulted from the consignee's error or negligence. In such cases, the carrier can dispose of perishable goods, for example, by order of the judge, and can recover their freight charges from the sale proceeds if they have not yet taken possession of the goods (Hosni Al-Masri, 1990, p. 330).

This was stipulated in Article 17/02 of the CMR Convention, which states: "However, the carrier shall be exempt from liability if the loss, damage or delay is due to an error or negligence on the part of the sender," and Article 36/02 of the COTIF-CIM Convention states: "The railway shall be exempt from this liability if the loss or damage, or the exceeding of the delivery period, is due to an error on the part of the holder of the right, or due to an order issued by him that did not result from an error on the part of the railway..."

Similarly, the Convention on the Regulation of the Carriage of Goods by Road stipulated in Article 13/04, paragraph A, which states: "...the carrier shall not be liable if he proves that no error was committed by him or any of his employees or agents that caused or contributed to the delay in the delivery of the goods, or their loss or damage due to one or some of the following causes: a. An error on the part of the sender or the consignee or any of their agents or representatives..." This is what the Algerian legislator stipulated in Article 48 of the Commercial Code (Judicial Journal, 1992, p. 11).

However, if the sender and carrier share responsibility, they are liable to the extent of their respective faults (Isabelle Bon-Garcin, Maurice Bernadet, & , Yves Reinhad, p. 487). This was affirmed by the French Court of Cassation in its decision of November 19, 1996, stating: "The concurrence of the sender's and carrier's faults in causing damage to the transported mechanical equipment does not preclude the judges from assessing the severity of the fault committed by each." (Al-Baroudi, n.d, p. 162)

The carrier is also liable for damages to the goods if they followed the sender's instructions and directions. The carrier is presumed to be a prudent and professional agent who must exercise all necessary care to ensure the goods arrive safely and complete within the timeframe stipulated in the contract or customarily. In this case, the carrier cannot benefit from exemption, as per Article 18/05 of the CMR Convention on Road Transport (Taha, pp. pp100-101).

2- Defect of goods:

The carrier is absolved of responsibility if the loss or damage is due to a defect specific to the goods, meaning any cause arising from their internal nature, or from accidents prior to their delivery to the carrier, such that the carrier has no involvement in their loss or damage. An example of this is: goods that are perishable by nature, such as fruits and vegetables, or transporting live animals that are infected with a disease, for example, or transporting some liquid goods that are exposed to evaporation due to heat, or goods that lose weight when they dry (al-Jadar, 2000, p. 112). It is noteworthy that reservations made by the carrier are considered evidence in their favor. However, both the sender and the consignee can challenge them if necessary (Radhia, 2012, p. 100). This is clarified in Article 17/02 of the CMR Convention on Road Transport, which states: "However, the carrier is exempt from liability if the loss, damage, or delay is due to... or a defect in the goods..." Similarly, the COTIF-CIM Convention on Rail Transport refers to this provision in Article 36, stating: "The railway is exempt from this liability if the loss, damage, or delay is due to... or a defect in the goods (internal damage, shortage during transit...)."

The Agreement on the Regulation of Land Transport between Arab States stipulates this in Article 13/04, paragraphs C and D, stating: "...the carrier shall not be liable if they prove that no fault was committed by them or any of their employees or agents that caused or contributed to the delay, loss, or damage of the goods due to any of the following reasons or to some of them are: C. An inherent or hidden defect in the goods .

D. A decrease in volume or weight during transport due to reasons related to the nature of the transported goods, such as evaporation, drying, or ripening..." If the inherent defect in the goods causes damage to the carrier, such as spontaneous combustion leading to the burning of the means of transport, then the carrier can claim compensation from the sender for the damage incurred. The carrier is exempt from liability if he proves that he exercised the necessary care to prevent the damage resulting from the inherent defect, and he is liable otherwise because he is responsible as a professional carrier, and therefore he must limit the damage resulting from the inherent defect, which causes damage and loss, to the narrowest possible scope.

B- Contractual Cases for Exempting the Land Carrier from Liability :

Freedom of contract is a fundamental legal and jurisprudential principle. Commercial transactions are only valid through agreement between the contracting parties. Therefore, the contract for the transport of goods by road is one in which this freedom is evident. The legislator has left certain essential aspects of the contract to the agreement of the parties, most importantly, certain cases in which the carrier and the sender can agree to disclaim liability. These include:

1- Transport of Live Animals:

This type of transport has a special nature, as demonstrated by the risks associated with transporting live animals during transit. Therefore, the legislation allows the parties to the contract to agree on conditions they deem appropriate, enabling them to exempt themselves and their agents from liability in the event of damage to the transported animals. This is conditional upon no error or negligence on their part or on the part of any of their agents, given their role as a prudent and professional carrier. This is stipulated in Article 17/04, Paragraph (g) of the CMR Road Transport Convention and Article 36/03, Paragraph (h) of the COTIF-CIM Rail Transport Convention.

2-Agreement to transport goods using uncovered vehicles:

The road carrier is exempt from liability if there is an agreement in the contract between them and the shipper permitting transport by uncovered vehicles. This is stipulated in Article 17/04, paragraph A of the CMR Road

Transport Convention and Article 36/03, paragraph A of the COTIF-CIM Rail Transport Convention, which allow the carrier to absolve themselves of liability if there is an agreement stipulating transport by this method and it is recorded in the bill of lading. However, if there is no such agreement between the carrier and the shipper for transport by this method, the carrier cannot evade liability and must compensate the shipper or consignee in the event of loss or damage to the goods.

3- Transport of Dangerous and Specially Characteristic Goods:

These are all goods that endanger human life and the environment, and cause damage such as fires and damage to property and infrastructure. Due to their special nature, the carrier must exercise the care of a prudent person in handling such goods. The sender must inform the carrier of the dangerous nature of these goods and specify how to handle them and prevent their dangers. The carrier has the right to dispose of them whenever it deems it appropriate to preserve lives and the means of transport. This is what we deduce from the text of Article 22, paragraphs 1 and 2 of the CMR Convention on Road Transport, which states: "- When the sender delivers goods of a dangerous nature to the carrier, he must inform the carrier of their dangerous nature and indicate the preventive measures that should be taken if necessary. If this information is not included in the bill of lading, it is up to the sender or the consignee to prove by any other means that the carrier was aware of the nature of the danger posed by the said goods as a result of their transport.

- Goods of a dangerous nature whose degree of danger was not disclosed to the carrier in the circumstances mentioned in Paragraph 1 of this article states that the carrier may unload it at any time and place, or damage it, or cancel its damage without compensation. The sender is also responsible for all costs, loss, and damages resulting from its transfer to shipment or from its shipment itself.

The Convention on the Carriage of Goods by Rail (COTIF-CIM) stipulates in Article 36/03, paragraph (g): "...an irregular, incorrect, or incomplete designation of items prohibited from transport or permitted under certain conditions, or the consignor's failure to observe the precautions observed for items permitted under certain conditions." Consequently, the carrier benefits from the exemptions stipulated in this article when transporting dangerous goods declared by the consignor. However, this does not absolve the carrier from taking all necessary measures and exercising due care to preserve these goods and handle them according to their nature, as a professional carrier.

The Agreement on the Regulation of Road Transport between Arab States also addresses dangerous goods. Article 12 states that if the consignor fails to inform the carrier in writing of the nature of these dangerous goods and the precautions to be taken, the consignor is liable for any losses incurred as a result of transporting such dangerous goods.

Furthermore, the agreement permits the carrier, in the event of an emergency, to dispose of these goods without incurring liability for their loss. In another context, both the CMR Road Transport Agreement and the COTIF-CIM Rail Transport Agreement exempted the road carrier, in the event that he was transporting goods of a special nature, such as antiques, glass or some goods that are susceptible to rust. Article 17/04 of the CMR Agreement states: "...the nature of certain goods which, by virtue of this very nature, are exposed either to total or partial loss or to damage, in particular to breakage, rust, internal and spontaneous corrosion, drying out, seepage, natural waste or the effect of moths and rodents..." Similarly, Article 36/04, paragraph "e" of the COTIF-CIM Rail Transport Agreement states: "...the nature of certain goods which, for reasons inherent to this very nature, are exposed to total or partial loss or damage, in particular to breakage, rust, internal and spontaneous corrosion, drying out or shrinkage."

4- Agreement to exempt the carrier from liability during the loading and unloading process:

The carrier can agree with the consignor to benefit from an exemption from liability if the latter or the consignee carries out the loading and unloading operations. This is stipulated in both the CMR Convention on Road Transport, Article 17/04, paragraph "c," and the COTIF-CIM Convention on Rail Transport, Article 36/04, paragraph "f." However, if the consignor or consignee proves intentional or gross negligence or fraud on the part of the carrier or one of its agents that caused damage to the goods, the carrier bears full liability and is obligated to compensate the owners of the goods. The carrier will not benefit from the exemption or limitation of liability, as stipulated in Article 29, paragraphs 1 and 2, of the CMR Convention on International Road Transport.

Second: The Impact of the Coronavirus on the Liability of International Land Carriers of Goods

The world witnessed the emergence of the Coronavirus (COVID-19) pandemic in late 2019, which spread rapidly. Therefore, we will address its definition and its impact on contractual relationships, including land transport contracts.

1- Definition of the Coronavirus (COVID-19) Pandemic:

The World Health Organization (WHO) defined it as follows: "Coronaviruses are a large family of viruses known to cause illnesses ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome

(MERS) and Severe Acute Respiratory Syndrome (SARS)." It added that COVID-19 "is the disease caused by the novel coronavirus called SARS-CoV-2." This virus was first discovered on December 31, 2019, in the People's Republic of China. Common symptoms of this epidemic include fever, cough, fatigue, shortness of breath, chest pain or tightness, muscle or body aches, headache, loss of taste and smell, confusion, sore throat, nasal congestion or runny nose, diarrhea, nausea and vomiting, abdominal pain, skin rash, and other symptoms that may vary from person to person (World Health Organization, 2020).

In addition to these health effects on humans, this pandemic also had severe negative repercussions on the economic level and social and legal relations. This is evident in contractual obligations. The COVID-19 pandemic is a novel phenomenon, and therefore considered one of the most intractable diseases that affected various countries around the world, including major powers. This forced them to implement quarantines that halted all commercial activities and movements, including the closure of air, land, and sea borders. This made it difficult to fulfill contractual obligations, including the execution of land transport contracts, either rendering them impossible to perform or requiring their execution outside the agreed-upon timeframe (Fouad, 2020).

As an example, we find the statement of the CEO of "MKD Logistics" Khaled El-Sayed, who said that there is an unprecedented decline in international truck transport operating between Egypt and neighboring countries since the spread of the Coronavirus. What complicated the situation was the decisions taken by the Saudi and Jordanian authorities not to allow Egyptian drivers to enter their territories, meaning that trucks loaded with goods remain for a period of time waiting to be unloaded and transferred to Saudi trucks.

This leads to damage to their cargo or delays in delivery, causing exhaustion for the carriers, which led to many truck owners stopping work, so that the number became no more than 100 trucks, while before the Coronavirus pandemic there were more than 400 trucks (- Order 75-58 , 2007). This led to the creation of many disputes regarding the liability of the land carrier, who was authorized by law to benefit from exemption from liability due to force majeure.

2-The Concept of Force Majeure :

Force majeure is considered one of the legal grounds recognized by various international treaties, conventions, and domestic legislation to exempt land carriers from liability. Referring to the Algerian Civil Code, Article 121 stipulates that: "In bilateral contracts, if an obligation is extinguished due to impossibility of performance, (Abdelkader, p. 35) it is extinguished along with the corresponding obligations, and the contract is terminated by operation of law."

It is noteworthy that this article establishes the condition of impossibility of performance as the essential condition for the termination of a contract by operation of law. Although this article does not specify the other two conditions of force majeure—namely, actions beyond the control of the contracting parties and unforeseeability—this does not preclude their inclusion as they are considered general principles of applicable law.

Applying this ruling to the COVID-19 pandemic, we find that it is an event beyond the control of the contracting parties, being a health epidemic over which no one had any part. It is also an unexpected event, as it emerged suddenly in late 2019, without any possibility of its occurrence by either of the contracting parties—the carrier and the consignee, the party entitled to the goods—provided that the contractual obligation arose before the outbreak of this pandemic. Furthermore, it is an unavoidable event, being a hidden epidemic for which there is currently no cure (Ababneh, 1984, p. 253).

A- Definition of Force Majeure:

The Agreement on Regulating Land Transport between Arab States defines it as: "Any unforeseeable and insurmountable act or event due to circumstances beyond the control of the parties to the transport contract and which they cannot avoid."

Egyptian jurisprudence defines it as: "An unforeseeable and unavoidable event that renders the performance of the obligation impossible (Qablan, 2011, p. 17)." French jurisprudence defines it as: "An event external to the control of the contracting parties, unforeseeable and unforeseen, which is impossible to prevent and leads to the impossibility of performing the contractual obligations."

"Force majeure has also been defined in several domestic legislations, including the Moroccan legislator in Article 269 of the Code of Obligations and Contracts, which states: "Force majeure is any event that a person cannot foresee, such as natural phenomena, floods, droughts, storms, fires, locust plagues, enemy gases, and acts of authority, which render the performance of the obligation impossible (Al-Khadrawi, 2020)."

The French legislator, in the contractual field, defined it as "a cause beyond the debtor's control that was not anticipated at the time of concluding the contract, cannot be averted by adequate means, and prevents the debtor from fulfilling the obligation."

The Tunisian legislator, in the Code of Obligations and Contracts, defined it as "the situation in which fulfillment of contracts is impossible, i.e., anything that a person cannot prevent, such as natural disasters like floods, storms, fires, and locust plagues, or foreign invasion, or acts of the state (acts of public authority). A cause that could have

been avoided is not considered force majeure unless the debtor proves that they exercised every diligence in preventing it. (Tabi, 2020)"

The Algerian legislator did not define force majeure but referred to it in the Civil Code, considering it a legal condition for exemption from liability. Articles 138-127-851 (Order No. 75-58 , 1975).

The agreements have considered force majeure as a legal reason for exempting the road carrier from liability, including the Convention on Road Transport (CMR) in Article 17/02, which states: "However, the carrier shall be exempt from liability if the loss, damage, or delay was caused by...or circumstances which the carrier could not have avoided and whose consequences he could not have prevented..."

As stipulated in Article 36 of the COTIF-CIM Convention on Rail Transport, the railway is exempt from liability if the loss, damage, or exceeding of the delivery deadline... or due to circumstances beyond the railway's control or ability to remedy the consequences... Similarly, the Agreement on Regulating Road Transport between Arab States addresses this in Article 13/04, paragraph "b," stating: "...the carrier shall not be liable if it proves that no fault was committed by it or any of its employees or agents that caused or contributed to the delay, loss, or damage of the goods due to one or more of the following reasons:

b- Force majeure as defined by the International Chamber of Commerce..." Therefore, force majeure is a legal reason for exempting the international road carrier of goods from liability, but the assessment of whether the event constitutes force majeure rests with the judge (Isabelle Bon-Garcin, Maurice Bernadet, & , Yves Reinhad, p. 484).

B- Conditions for Force Majeure :

No event can be considered force majeure unless three essential conditions are met:

//Unforeseeability //Impossibility of performance //No fault on the part of the debtor invoking force majeure)

The application of each of these conditions has been subject to differing interpretations in legal theory and comparative legislation. However, in principle, we can conclude that the spread of a health pandemic, as a physical event, can constitute force majeure whenever it has a direct impact on the debtor's non-performance of their contractual obligation. This is evident in the quarantine measures that prevented and halted all commercial activities and contractual obligations. Therefore, two essential conditions must be met: unforeseeability and impossibility of performance. The third condition, in this case (the coronavirus pandemic), remains logically unnecessary (Moulay Zakaria Ben Zine & Khadim , 2020, p. 342).

The coronavirus pandemic is considered an unforeseeable event that no one could prevent. Despite all the tremendous progress humanity has made in various fields, it stood helpless before the spread of this pandemic (Amine, 2020, p. 402). Given that the COVID-19 pandemic possesses all the elements and conditions that necessitate force majeure, it affects various fields, most notably contractual obligations. However, this obligation may become impossible to fulfill due to certain circumstances. Considering the COVID-19 pandemic as a force majeure event inevitably leads to absolute or partial impossibility, thus releasing both parties without compensation. This is based on the fact that the impossibility of performance and the inability to execute are due to the force majeure established by the COVID-19 pandemic as a material fact. Consequently, the carrier can rely on this external cause, beyond its control, as a reason for breaching its obligation to deliver the goods complete, undamaged, and on the agreed date. Therefore, all the conditions of force majeure are met in this pandemic, which led the World Health Organization to classify it as an international pandemic after it swept across the entire world (Kahina, 2020, p. 116).

C- Distinguishing Force Majeure from Unforeseen Circumstances :

Although both force majeure and unforeseen circumstances are forms of external cause, they differ in their impact on the performance of the obligation and the judge's role in classifying them. This is stipulated by the Algerian legislator in Article 107 of the Civil Code.

An unforeseen circumstance results in an unduly burdensome obligation on the debtor to fulfill their obligation. Therefore, the judge intervenes to reduce this obligation to a reasonable level by distributing the burden of the unforeseen circumstance between the creditor and the debtor. In contrast, force majeure renders the performance of the obligation completely impossible.

Furthermore, the provisions governing unforeseen circumstances are related to public order, and it is not permissible to agree to deviate from them. This is clarified by Article 107 of the Algerian Civil Code, which stipulates that any agreement contrary to public order is void. In contrast, force majeure allows the parties to agree in advance that the debtor will bear its consequences, as per Article 178 of the Algerian Civil Code. 3- Jurisprudential and Judicial Positions on Considering the Coronavirus (COVID-19) Pandemic as an Application of Force Majeure

At that time, legal experts at both the local and international levels held conflicting opinions regarding the legal classification of the coronavirus pandemic. Some supported the concept of force majeure, others considered it an emergency situation, while still others left the matter to the discretion of the judiciary.

A- The Position of Jurisprudence and Domestic Legislation :

Several countries adopted different legal approaches in dealing with the coronavirus pandemic. For example, the French Minister of Economy and Finance, Bruno Maire, declared at the beginning of the crisis in February 2020, during a meeting with several economic partners, that the coronavirus constituted force majeure (Tabi, 2020).

For its part, the China Council for the Promotion of International Trade (CCPIT) issued a "force majeure" certificate, aimed at protecting international companies in case of non-performance of their obligations, in light of the outbreak of the Coronavirus. It is granted to companies that provide reliable documents proving the state of delay. According to the latest statistics, the total number of certificates issued by 105 relevant authorities up to 04/20/2020 reached about 7004 forms covering contracts worth 690 billion yuan, or 2225 billion US dollars. However, these certificates may not be considered valid, especially for contracts of an international nature, particularly if it is specified in the contract to follow the law of a particular country (French Economy Minister, 2020).

In the United States, a debate has taken place between Republicans and Democrats regarding the need to provide legal protection for frontline businesses to shield them from lawsuits, particularly in the post-reopening phase (Al-Ba'ini, 2020).

In Morocco, the legislature issued a decree dated March 23, 2020, concerning special provisions for the state of health emergency and the procedures for declaring it. Article 6 stipulates the suspension of all measures stipulated in existing legislative and regulatory texts during the declared state of health emergency, with the calculation of these measures to resume from the day following the lifting of the aforementioned state of emergency (Al-Ba'ini, 2020).

Dr. Mustafa Kamal Taha, a professor of maritime law at the University of Egypt, considered quarantine regulations to fall under the category of force majeure (Taha, p. 98). Counselor Al-Mahza, a lawyer in Bahrain, stated that "while the COVID-19 pandemic is considered an exceptional and unforeseen general event beyond the control of the contracting parties and which could not have been prevented, this is insufficient to classify the pandemic and its effects as force majeure or an emergency situation. In addition, each contract must be examined individually to ascertain whether the pandemic occurred within the contract's timeframe, i.e., after its conclusion and before its completion. Furthermore, it must be investigated whether the pandemic was the direct cause of the extraordinary and burdensome loss suffered by the contracting parties, or whether it rendered the contract's performance impossible." He emphasized that "the legal classification of an event as force majeure or an emergency situation falls under the jurisdiction of the judiciary, which alone has the authority to render a just and equitable ruling." (Walid Sabri, 2020)

As for the Algerian legislature, it remained silent, failing to issue any legal texts to classify this pandemic as a force majeure (Hassaim, 2020, p. 19). This constitutes a shortcoming on its part.

B- Judicial Positions :

The judicial position plays a significant role in resolving disputes during the COVID-19 pandemic. It is the most important source of legal rulings after the law. The Supreme Judicial Council in Tunisia issued a memorandum dated March 15, 2020, stating that the exceptional health situation the country was experiencing due to the coronavirus warranted considering it a force majeure event (Al-Ba'ini, 2020).

Similarly, the Algerian Minister of Justice and Keeper of the Seals, Mr. Belkacem Zeghmami, ordered the activation of Article 322 of the Code of Civil Procedure, which grants the head of the judicial body absolute discretion to consider a request to lift the statute of limitations on exercising the right of appeal in cases of force majeure (Ilham Bouthelji, 2020).

Furthermore, the French judiciary, in a decision issued by the Colmar Court of Appeal on March 12, 2020, considered the impossibility of an appellant attending the hearing due to the possibility of contracting the coronavirus while under quarantine as a force majeure event justifying their absence (Tarek Saad, 2020).

Conclusion:

The COVID-19 pandemic is one of the most dangerous epidemics humanities has faced throughout history. In addition to its impact on human life, it has had a significant effect on economic and commercial activity, leading to numerous legal disputes, particularly in the area of liability.

This has burdened carriers with increased costs and expenses, and affected shipping and delivery rights holders, such as senders and recipients, due to the loss, damage, or delay of their goods, thus depriving them of profit opportunities. This has perplexed legal scholars as to whether it constitutes force majeure or an unforeseen circumstance.

Regarding the proposed legal classification, it is likely that the Coronavirus pandemic should be legally classified, with respect to the contract for the transport of goods by land, as an emergency circumstance that gradually developed globally into a force majeure. This virus affected the movement of goods, both domestic and international, by gradually and partially halting it, starting with a reduction in land transport (rail and road) and culminating in its complete cessation. This impact was not simultaneous worldwide; rather, its timing varied from country to country. Judges must consider this when examining disputes concerning the liability of the land carrier,

particularly those arising from non-performance of contractual obligations. This consideration should focus on the time and place of the contract's conclusion to determine whether it constitutes an emergency circumstance, thereby mitigating the land carrier's obligation and restoring the contract's financial balance, or whether it constitutes a force majeure rendering the carrier's obligation impossible, in which case the contract is terminated.

To achieve contractual balance and legal security amidst the various pandemics that may affect transactions and contracts over time, we propose the following recommendations:

- Judges should be granted discretionary power to resolve these disputes while achieving a fair balance.
- International and national legislators must review the texts of agreements and laws, adopting provisions that align with the various exceptional circumstances that may threaten the world. Currently, there is no explicit legal text that addresses these circumstances and events that have shaken the world to its core.
- Every carrier of goods must adhere to disease prevention protocols, including regular cleaning and implementing precautionary measures against all communicable diseases.
- Vehicles must be continuously cleaned before and after loading and unloading goods.
- Electronic methods must be adopted through digitization, particularly electronic contracts. These have witnessed significant development, especially during the pandemic, and their application and encouragement have been observed across various sectors and transactions, to the point that the state now mandates and approves them.

Ethical Considerations

This research adheres to established academic and ethical standards. The study is based exclusively on publicly available legal texts, international conventions, doctrinal writings, and judicial interpretations. No human subjects, personal data, or confidential information were involved. Proper attribution has been given to all referenced sources, and the research was conducted with integrity, objectivity, and respect for intellectual property.

Author Contributions

- Morsli Abba contributed to the conceptualization of the study, legal analysis, comparative methodology, and drafting of the manuscript.
- Benmansour Mohammed Amin contributed to the analytical framework, interpretation of international conventions, critical revision, and final approval of the manuscript.

Both authors have read and approved the final version of the manuscript and agree to be accountable for its content.

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Conflict of Interest

The authors declare that there is no conflict of interest regarding the publication of this paper.

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