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An Analysis of the Enforcement of Foreign Arbitration Awards in Palestine: Realities, Drawbacks, and Prospects

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Abstract

This article highlights the gaps and difficulties that face the enforcement of foreign arbitration awards in Palestinian courts. In addition, it constructs recommendations for legal and judicial approaches that the Palestinian Authority should adopt to create a 'pro-arbitration' system. The article first provides a general analysis of the regulatory deficiencies in the enforcement of foreign arbitration awards, which include the inapplicability of the New York Convention, the existence of the reciprocity principle as a condition of enforcement, and the lack of presumptive obligation of recognising the validity of arbitration awards in Palestine. Afterward, the article focuses on the procedural level of enforcing foreign arbitration awards. It addresses difficulties that face the award-creditor when attempting to enforce the award through the competent court, as well as the Palestinian courts' approach when reviewing the exequatur, and how this attitude affects the granting enforcement.

Keywords

arbitration – enforcement procedures – Palestine

1 Introduction

Since its establishment in 1993, the Palestinian Authority (PA) has issued multiple strategic economic plans to enhance the investment sector in the West

Bank and Gaza Strip and, consequently, to ensure the sustainability of the Palestinian State.[1] Nonetheless, improving the investment sector is difficult to achieve without a 'pro-arbitration' environment that provides confidence for investors in the State's adjudication system. According to a 2018 survey conducted by Queen Mary University in London, England, arbitration is by far the preferred resolution mechanism for cross-border commercial disputes. Of the survey's respondents, 97% indicated that international arbitration is their preferred method of dispute resolution, a result which is consistent with their 2012 and 2015 international arbitration survey findings.[2] This result is not surprising since arbitration provides many advantages and benefits that make it an attractive tool for investors to resolve their differences, including more party control over the procedure, confidentiality, and the independence of arbitration from the State's jurisprudence.[3]

Unfortunately, the Palestinian arbitration environment encounters many obstacles that affect its efficiency and deter foreign investors. One of the primary obstacles is related to the enforcement framework for foreign arbitration awards.[4] The enforceability of arbitration awards is particularly important

1 The latest is the Palestinian Economic Development Plane 2017-2022 issued in July 2017, available (in Arabic) at: http://www.mne.gov.ps/images/economicdevplan17-22.pdf, accessed 3 March 2020.

2 Queen Mary University London & School of International Arbitration, '2018 International Arbitration Survey: The Evolution of International Arbitration', available at: www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey-report.pdf, accessed 25 February 2020. According to the survey, an external focus group comprised of senior in-house counsel, senior representatives of arbitral institutions, private practitioners and arbitrators provided valuable feedback on the draft questionnaire. 63% (55 of 88) of the firms have positively answered the question: 'Does your organization insist on the inclusion of an arbitration clause in its contracts as a shape matter of practice'? Moreover, when asked why they preferred arbitration, firms indicated that their ability to adjudication to their interests was of central importance. The neutrality of the legal system was considered the single-most important factor, selected by 66% of firms, followed by the utility of a given set of laws for the type of contract, which was emphasized by 60% of firms.

3 N. Shah & N. Gandhi, 'Arbitration: one size does not fit all: Necessity of developing institutional arbitration in developing countries', *Journal of International Commercial Law and Technology* 6(4) (2011): 232.

4 This research is part of a PhD project in which the author will address the problems of the arbitration system in Palestine and examine how it can be improved on the verge of establishing a modern Palestinian State. Examples of the gaps and obstacles facing the Palestinian arbitration system, and thence addressed by other parts of the PhD project, include: the lack of a proper enforcement legal framework for foreign arbitration awards, the lack of special substantive rules governing international commercial arbitration, the absence of the third party's role in the arbitration process.

because it continues to be perceived as arbitration's most crucial characteristic.[5] This article highlights the gaps and difficulties that face the enforcement of foreign arbitration awards in the Palestinian courts and constructs recommendations of legal and judicial approaches the PA should adopt to create a 'pro-arbitration' system.

By highlighting the gaps of the arbitration enforceability in the Palestinian law, this article provides examples from the approaches and the legal texts of the Palestinian arbitration rules versus the Dutch and the United Arab Emirates (UAE) arbitration rules. This comparative analysis leads to a better understanding of the flaws in the Palestinian legal system by providing useful examples of how the enforcement deficiencies were resolved in two 'civil' legal systems, one from a developed state and the other from a developing state.[6] The Dutch legal system provides an ideal basis for comparison because the Netherlands has a developed legal and judicial approach towards international commercial arbitration and hosts one of the leading arbitration institutions, namely The Hague Permanent Court of Arbitration, which has played a significant role in international commercial arbitration for quite some time. Also, part of this research has been done in the Netherlands, which has given the author a better understanding of the Dutch legal system in judicial practice. On the other hand, this article considers the UAE as a model for implementing arbitration within the region. The UAE has recently introduced essential developments in the field of arbitration, including institutional rules, legislative modifications, and notable court decisions concerning enforcement of arbitral awards, which have the potential to impact the arbitration environment in the Arab region, including Palestine. Currently, UAE arbitration institutions, such as the Dubai International Arbitration Centre, are considered the most popular forums in the Middle East for international commercial parties operating businesses within the region.[7]

5 Queen Mary University London & School of International Arbitration, *supra* note 2.

6 It is worth mentioning that both legal systems have recently been amended. In the Netherlands, the new regulations entered into force on 1 January 2015 concerning arbitrations commenced on or after 1 January 2015. The new regulations amended the former Dutch Arbitration regulations, which dates back to 1986, many aspects of which remain unchanged in the new rules. In the UAE, the new Federal Law No. 6 of 2018 on Arbitration was published in the *Federal Official Gazette* No. 630 of 15 May 2018 and came into force in June 2020. This new regulation revokes the previous outdated, and non-comprehensive UAE Chapter on Arbitration contained in Articles 203 to 218 of the UAE Civil Procedures Law No. 11 of 1992.

7 Please note that besides the UAE Federal Law on Arbitration, there are separate jurisdictions and court systems in the UAE's free zones, including the Dubai International Financial Centre–London Court of International Arbitration (DIFC) and the Abu Dhabi Centre for Conciliation and Commercial Arbitration (ADCCAC). However, this research will only focus

This article is divided into three main sections. After the Introduction, Section 2 provides a general analysis of the regulatory deficiencies regarding the enforcement of foreign arbitration awards and addresses three issues that need be resolved by the PA to enhance the enforcement process in Palestine: (a) the inapplicability of the New York Convention; (b) the existence of the reciprocity principle as a condition of enforcement; and (c) the lack of presumptive obligation of recognising the validity of arbitration awards in Palestine. Section 3 focuses on the procedural level of enforcing foreign arbitration awards in Palestinian Courts and addresses difficulties that face the award-creditor when attempting to enforce the award through the competent court as well as the Palestinian courts' approach when reviewing the *exequatur*, and how this attitude is affecting the granting of the *exequatur*.

2 An Analysis of the Legal Framework Applied to the Enforcement of the Foreign Arbitration Awards in Palestine

The Palestinian legislator provides two systems of enforcement for arbitration awards: one is for the enforcement of domestic awards, while the other is for the enforcement of foreign arbitration awards. Although Article 11 of the Law on Arbitration No. 3 of 2000 (PLA) has addressed international arbitration as another type of arbitration, it does not lay further consideration to it in the enforcement stage.[8] When enforcing arbitration awards, the Palestinian leg-

on the FLA because the DIFC and ADCCAC arbitration regulations are modeled on the 'common law' system rather than a 'civil law' system which applied in Palestine.

8 Article 11 of the PLA, influenced by the UNCETRAL Model Law, put forward several conditions in order to considered arbitration related to international trade by stating that 'arbitration is considered International if the issues at conflict related to economic, trade or civil matters in the following cases: (a) If the headquarters of the parties in arbitration are in different countries in the time of conclusion of the agreement on arbitration. If any of the parties has several business centers, his headquarters shall be defined as the center that is more closely linked to the agreement on arbitration. If any of the parties have no business center, his place of residence shall be considered. (b) If the issues at conflict included in the agreement on arbitration are linked to more than one country. (c) If the headquarters for the business of each of the parties in arbitration are in the same country upon signature of the agreement on arbitration and that one of the following centers is in another country. a. The location to make the arbitration as is specified in the agreement on arbitration or as is explained the manner of specification thereof. b. The center for the implementation of an essential part of the commitments arising from the trade or contractual relation between the parties. c. The place that is most linked to the issues at conflict; Foreign if it takes place outside Palestine'.

islation only differentiates between whether the arbitration award is issued outside or inside Palestine, regardless of its connection to international trade.[9]

Foreign arbitration awards are enforced according to Articles 48-50 of the PLA, Articles 78-75 of the Executive Regulation on Arbitration (ERA), as well as Articles 36-38 of the Palestinian Execution Law of 2005 (PEL).[10] By way of summary, when foreign arbitration awards are enforced, the applicant is requested to prove:

(a) that the award is not at odds with the Public Policy in Palestine, and the Palestinian courts do not have the sole competence in resolving the subject matter of foreign judgments (PLA Article 48/2, ERA Article 76/f, and PEL Article 37/a/c);
(b) that the foreign award jurisdiction reciprocally enforces awards of Palestinian courts (PEL 36); and
(c) that the validity of the award in accordance with the Palestinian laws (ERA Article 76/a/b/c/e).[11]

Nonetheless, the enforcement of foreign arbitration awards by Palestinian courts is affected by several hurdles, which makes the process problematic and lengthy. Three significant hurdles are (a) the inapplicability of the New York Convention; (b) the notion of reciprocity; and (c) the lack of presumption application.

9 Besides, the addressing of 'international arbitration' as a separated category is not logical in the Palestinian legal system, since neither the PLA, PEL nor the ERA provides special regulations for 'international arbitration'. The distinction is always made between foreign arbitration and domestic arbitration. Anyhow, the legal discussion on differentiating between domestic, foreign and international arbitration falls out of this research's scope considering that it does not affect in the enforcement process. Read more in A.M.K. Almutawa, *Challenges to the Enforcement of Foreign Arbitral Awards in the States of the Gulf Cooperation Council*, PhD Dissertation, University of Portsmouth, Portsmouth, UK, 2014.

10 Though PEL rules cover international judgments, Article 38 of the same law extends these conditions to cover arbitration awards issued outside Palestine.

11 In this respect, the validity of the award means: (a) the award has been issued in accordance with a valid arbitration agreement; (b) The award has been issued from an arbitration tribunal that was composed in accordance with the arbitration agreement and the applicable laws; (c) Has been issued in accordance with the arbitration law in the country of its origin; (d) Has been issued in accordance with the arbitration law in the country of its origin; (e) Has become acquired the force of a *fait accompli* according to its country of origin; (f) It is a subject matter that is arbitral.

2.1 *Applicability of the New York Convention: National Laws or International Treaties?*

On 2 January 2015, the PA ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereafter NYC).[12] The ratification is considered an advantageous step because of NYC's value for developing states like Palestine. Such value is not only derived from NYC's vast number of party states (currently162) but also from its unique role in promoting international investments by improving the State's legal structure. It is the legal structure as well as the adoption of harmonised international treaties (*i.e.*, NYC) that reassures possible investors and leads to an increased level of foreign investment, which, in turn, produces economic growth and development.[13]

Notwithstanding, there are two concerns at hand. The first concern is related to the significant uncertainty about NYC applicability in practice due to the debate over the status of international agreements (such as NYC) in the Palestinian legal system, which leads to speculation that Palestinian courts will not be fully committed to applying the NYC. The second concern is related to the suitability of the Palestinian procedural regulations for presumably applying NYC, as these regulations are detrimental to the NYC texts. The following will discuss these two concerns in depth.

2.1.1 Statute of International Treaties in the Palestinian Legal System and Its Effect on the Application of the New York Convention

While many countries indicate the status of international agreements in their national laws, the Palestinian Basic Law leaves this matter ambiguous. International treaties are only mentioned in Article 10 of the Basic Law, which mainly pertains to human rights.[14] The issue of ambiguity became pressing as Palestine had joined more than 80 international agreements, many of which had a wide range of requirements that had to be implemented into law. As a result, the Palestinian Constitutional Court (PCC) was asked by the Minister of

12 The Convention entered into force on 2 April 2015. Palestine is also a member state to the Riyadh Arab Convention on Judicial Cooperation, 6 April 1983. It is a regional multilateral convention between Arab States and thus applies only to foreign awards made in other member Arab States.

13 L. Daradkeh, 'Commercial arbitration under investment treaties and contracts: its importance and danger in the Arab world', *Arab Law Quarterly* 27(4) (2013): 393-413. doi: 10.1163/15730255-12341269.

14 Article 10 of the Palestinian Basic Law states that: '1. Basic human rights and liberties shall be protected and respected. 2. The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights'.

Foreign Affairs to clear the vagueness of Article 10, explicitly referring to the question of when international treaties are implemented in Palestine.[15]

In response, the court ruled that international treaties that add to the existing domestic laws are not self-executing, and implementing legislation is necessary for the treaty to have the force of law.[16] Canonically, it is that implementing legislation, not the text of the treaty, which will be given direct application by national courts.[17]

Its generality distinguishes this ruling as it includes all international agreements without specifying the matter mentioned in the referral, which is concerned with international agreements relating to the immunities and privileges of the United Nations Relief and Works Agency (UNRWA).[18] Therefore, the PCC's ruling detrimentally affected vital international agreements, particularly NYC. Based on the PCC's decision, NYC is not yet applicable in the PA, and the NYC regulations must be included in the Palestine national laws as well as applied by courts.

Moreover, this issue of ambiguity on the applicability of NYC becomes more pressing when the PCC's decision is interpreted in line with ERA Article 75 which states that: 'foreign arbitration award is enforceable in Palestine after granting *exequatur* from the competent court as per the terms and conditions specified by the Palestinian law, and as per the bilateral or multi-national agreements in which Palestine is a party'.[19] Although the language of Article 75 indicates the importance of international treaties, it adds more concerns in the discussion at hand, because it equalises between the national laws and international treaties. The vagueness regarding this issue leads to a consistent argument about the applicability of such relevant treaties in practice. Accordingly, it will be challenging for international investors to predict whether NYC will be applied when enforcing their arbitration awards in Palestine.

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15 By way of background, the Minister of Foreign Affairs, via the Minister of Justice, asked the court to clarify its former Decision (No. 4 of 2017, issued on 19/11/2017) which recognized the supremacy of international treaties over national regulations. The purpose of the referral is to clarify when the treaty is implemented in Palestine. The referral was mainly related to the immunities and privileges of the employees of 'UNRWA' organization.

16 R. Twam & A. Khalil, الدستورية والحلول القانونية الإشكاليات فلسطين في الدولية الاتفاقيات إنفاذ (*Enforcing International Treaties in Palestine: Legal Obstacles and Constitutional Solutions*), available at: SSRN: https://ssrn.com/abstract=3318872, accessed 31 January 2019.

17 The Palestinian Constitutional Court's interpretive Decision No. 5 of 2017, issued on 12 March 2018.

18 Twam & Khalil, *supra* note 16.

19 Unofficial translation.

Applying NYC is a crucial concern for a state like Palestine, which has a long-lasting legacy of inadequate legal regulations that have been severely detrimental to the development of the PA economy. For investors, NYC is essential because it presents better regulations for enforcement than the Palestinian law. For example, contrary to the Palestinian law, NYC shifts the burden of proof to the respondent in Articles IV and V as well as providing a presumption of enforceability in Article III. Hence, applying the convention will gradually improve the foreign investors' reliability of an arbitration clause in a contract with a Palestinian party.

To end this regulatory dilemma, international treaties (most importantly, NYC) should be considered an integral part of the Palestinian legal system. Two methods can be used for integration: (a) a judicial method, by a higher court decision, and/or (b) a legislative method, by revising the national laws to meet the requirement presented by the Palestinian Constitutional Court.

Regarding the judicial integration, the Dutch courts have long settled on the applicability of NYC in enforcing foreign arbitration awards in the Netherlands. Instances of applying NYC can be derived from all levels of Dutch Courts. For example, the Court of First Instance of Alkmaar also ruled:

> Because both The Netherlands and Switzerland have adhered to the New York Convention of 10 June 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, an award rendered by a Swiss arbitral tribunal could, in principle, be enforced in The Netherlands by virtue of Art. III of this Convention.[20]

Also, the Provision Judge of the District Court of Rotterdam stated that:

> The present request for recognition and enforcement of these arbitral awards is based primarily on Art. 1076, and in the alternative on Art.1075 CCP in conjunction with [the New York Convention]. According to Art. 1076(1) CCP, an arbitral award made in a foreign State may be recognized and enforced in The Netherlands where it is possible under an applicable treaty to rely on the law of the country where recognition or enforcement

20 'Netherlands No. 7, *Hans Peter Meseck* v. *Claude Rochaix*, Rechtbank [Court of First Instance] of Alkmaar, 18 October 1979', in P. Sanders (ed.), *Yearbook Commercial Arbitration* (The Hague: ICCA & Kluwer Law International, 1983), pp. 398-399.

> are sought. Such a Convention is the New York Convention, to which both the Netherlands and Israel have acceded.[21]

However, a better example can be derived from the UAE judicial experience because of its legal development history that can be beneficial for emerging states like Palestine. In the first few years immediately following its ratification in 2006, the UAE judiciary was not committed to applying the New York Convention because the first court's judgment in the UAE to enforce an award by reference to the NYC was in 2010 by the Fujairah Federal Court of First Instance, 4 years after the initial ratification.[22]

Some decisions occurred after the Fujairah Federal Court's decision that raised concerns about the reliability of the UAE's courts in applying the New York Convention.[23] However, 10 years after the UAE's first application of the New York Convention, the UAE courts have generally accepted the NYC[24] as is evident by the continuous reforms conducted by the UAE Judiciary and Government to ensure a harmonious and consistent approach to the New York Convention. Besides the issuance of new regulations,[25] various high court decisions affirmed the supremacy of the convention over national laws.

For example, in *Airmech Dubai, LLC* v. *Maxtel International, LLC*, the Dubai Courts of Cassation confirms the enforcement of foreign arbitration awards (one on liability and two on costs) rendered in London under NYC. In this case, Airmech (the award-debtor) claimed that the arbitration procedures were invalid according to the UAE Federal Code of Civil Procedures (CPC) because: (a) the arbitrator did not swear in the witness as required by CPC Article 211; (b) the arbitral awards were issued more than 6 months after the first arbitration

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21 'Netherlands No. 19, *Isaac Glecer* v. *Moses Israel Glecer and, Estera Glecer-Nottman*, President, Rechtbank [Court of First Instance], Rotterdam, not indicated, 24 November 1994', in A.J. van den Berg (ed.), *Yearbook Commercial Arbitration* (The Hague: ICCA & Kluwer Law International, 1996), pp. 635-642.

22 Fujairah Federal Court of First Instance, Case No. 35/2010, 27 April 2010. The decision enforced two awards, one on costs and one on the merits, issued by a sole arbitrator under the London Maritime Arbitrators Association (LMAA) rules in London.

23 For example, *Fluor Transworld Services* v. *Petrixo Oil & Gas*, Dubai Court of Appeal, and 30 March 2016, which rejected the enforcement of foreign arbitration awards based on reciprocity (discussed later in this research).

24 Read more in G. Blanke, 'Dubai Court of Cassation confirms Enforcement of Foreign Awards under New York Convention: The End of a Beginning – *Inshallah*', *Kluwer Arbitration Blog*, available at: arbitrationblog.kluwerarbitration.com/2012/11/21/dubai-court-of-cassation-confirms-enforcement-of-foreign-awards-under-new-york-convention-the-end-of-a-beginning-inshallah/, accessed 21 November 2012.

25 Federal Arbitration Law No. 5 of 2018, and the Ministerial Order No. 57 of 2018.

hearing; (c) the award did not include the arbitration agreement and the grounds of the award as required by CPC Article 212(e). The court disagreed that CPC is applied in the case by ruling that:

> Article 238 of the Code of Civil Procedure provides that international conventions that have become enforceable legislation in the UAE by virtue of ratification shall apply as domestic law in the UAE to disputes concerning the enforcement of foreign court decisions and arbitral awards. The UAE agreed to accede to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Therefore, its provisions are applicable to the present dispute.[26]

Notwithstanding, by considering the Palestinian legal reality, the use of the legislative method of integration seems more reasonable. Although the judicial interpretation and implementation are essential for the advancement of the arbitration system, waiting for the Palestinian judiciary to clarify this legal dilemma will not be enough, and, occasionally, it may be considered a barrier to the improvement of arbitration environment in Palestine. It is crucial to take into consideration that the Palestinian judicial system is not capable of providing confidence for international investors due to the lack of experience[27] as well as the narrow interpretation of arbitration agreements by national courts.[28] Additionally, contrary to the court systems in developed countries, the Palestinian judiciary does not render consistent binding legal precedents regarding arbitration to offer the stability and credibility that a foreign investor demands.

The legislature should integrate NYC to its legal framework to create a 'pro-arbitration' environment in the Palestinian legal system. It should start by incorporating NYC into its national laws by issuing legislation to ensure the applicability of NYC. The PA should also amend ERA Article 75 to provide that international arbitration treaties shall obtain supremacy over national laws on

26 BCDR *International Arbitration Review*, '*Airmech Dubai LLC* v. *Maxtel International LLC*, Appeal No. 132 of 2012', Vol. 1, p. 129.

27 The Palestinian judiciary rarely reviews international trade matters. Form all the studied cases for this research, none of them where related to international trade. Many factors contribute for the lake of international trade maters dealt by Palestinian Courts. Besides lack of prober investment environment, the political situation in Palestinian plays a big role. However, the focus of this research is on legal and practical deficiencies in the Palestinian legal environment and its approach to international commercial arbitration. That means that this research will not focus on the political hurdles of investment in Palestine, which has already received some attention in academic discourse.

28 More on the Palestinian judiciary problems are discussed later in this article.

the enforcement of foreign arbitration awards, instead of the statutory equalisation between national laws and international treaties. This adjustment may ensure more confidence in foreign investors to conduct an arbitration related to Palestine, knowing that NYC provisions will govern the enforcement of their awards.

This approach is followed by the Dutch Code of Civil Procedures (DCCP) in Article 1075, which states that an arbitration award 'made in a foreign State to which a treaty concerning recognition and enforcement is applicable, may be recognised and enforced in the Netherlands'. It also provides that DCCP Articles 985-991 relating to the enforcement of foreign judgments accordingly apply to arbitration to the extent that the treaty does not contain deviating or contrary provisions.[29]

Moreover, although in a less comprehensive manner than the DCCP, the UAE Government provided a direct legislative implementation of NYC. In 2006, directly after the ratification of the New York Convention, the UAE Government issued Federal Law No. 43 regarding the enforcing of NYC, which accordingly became part of the UAE national laws. Furthermore, Federal CPC Article 238[30] determines that the enforcement and annulment of foreign awards must occur according to the terms set out in bilateral and multilateral treaties to which the UAE is a signatory.[31]

However, only ensuring the applicability of NYC is not enough on its own to enhance the arbitration framework in Palestine. Even if the issue of supremacy has been resolved, the Palestinian legal system is not automatically 'pro-arbitration'. This argument is presented below.

2.1.2 Suitability of the Palestinian Legal Framework in Achieving the Enforcement Efficiency introduced by NYC

Unfortunately, by analysing the current Palestinian legal framework, one can conclude that even if NYC were to be applicable in the future (when NYC is incorporated within the Palestinian national laws), it would not be as effective in practice as one could hope for the following argument.

The convention relies heavily on national legislation to govern procedural matters.[32] As NYC Article II provides that:

29 The Netherlands has been a party to the New York Convention since 1964.

30 UAE Civil Procedures Code (Federal Law No. 11 of 1992).

31 Contrary to ERA Article 75 that equalizes between national laws and international treaties.

32 The Convention did not adopt proposals, which were made during the drafting process, for a uniform international set of procedures for enforcement of foreign awards. See A. Börner, 'Article III', in H. Kronke, P. Nacimiento, D. Otto & N.C. Port (eds.), *Recognition and*

> Each Contracting State shall recognize arbitral awards as binding and enforce them per the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.[33]

Legal scholars have found NYC Article III to be controversial, undermining the efficiency of NYC due to the uncertainty in the interpretation of what kinds of rules are to be considered 'procedural' and therefore governed by national laws.[34] Thus, national regulations will still govern some critical aspects of the enforcement process such as: the competent court, production of evidence, limitation periods, as well as the extent to whether the grant or denial of enforcement is subject to any appeal.[35] In the preface of her book, Marike Paulsson, stressed this issue by stating that:

> When the application of a treaty lies exclusively in the hands of national courts, its reliability will depend on domestic institutions of an uneven quality. The truth is that a significant number of States have become parties to the convention yet have omitted to take the most basic formal

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Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention (Alphen aan den Rijn: Kluwer Law International, 2010), pp. 115-142: 'The most far-reaching proposal […] was to incorporate basic procedural rules into the Convention'. M. Scherer, 'Article III (Recognition and Enforcement of Arbitral Awards: General Rule)', in R. Wolff (ed.), *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards: Commentary* (Baden-Baden: Nomos, 2012), p. 195: 'While the desirability of uniform procedural rules was widely acknowledged, the proposal proved to be too ambitious and was, therefore, not followed'. See G.B. Born, *International Commercial Arbitration* (Alphen aan den Rijn: Kluwer Law International, 2014), p. 3407.

33 See also Inter-American Convention, Art. IV: 'An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties'. The European Convention does not address the subject.

34 G.A. Bermann, 'Recognition and enforcement of foreign arbitral awards: the interpretation and application of the New York convention by national courts', in G.A. Bermann (ed.), *Recognition and Enforcement of Foreign Arbitral Awards: The Interpretation and Application of the New York Convention by National Courts* (Cham: Springer, 2017), pp. 1-78.

35 ICCA, *ICCA's Guide to the Interpretation of the 1958 New York Convention: A Handbook for Judges* (The Hague: International Council for Commercial Arbitration, 2011), p. 69.

> steps necessary to ensure that its commands are integrated into national law. The result is that the treaty is a dead letter in their courts. The truth is also that courts in other States have interpreted the convention in an arbitrary or chauvinistic fashion without the least regard for consistency or reciprocity with practice elsewhere, thus frustrating the purposes of the convention.[36]

Other scholars from the Arab region agreed with Paulsson's arguments by suggesting that the wording of NYC Article III allows states to create stricter scrutiny over foreign awards than the domestic awards, as long as these measures are not more burdensome than the domestic enforcement procedures.[37] These restrictions may not be significantly higher than the national procedures but can restrain the enforcement process.[38]

Therefore, the efficiency of the NYC application relies heavily on the efficiency of the Palestinian procedural regulations concerning the enforcement of foreign arbitration awards. By way of example, the Palestinian law does not provide a time limit for the judge to grant the exequatur for the enforcement of foreign arbitration awards. Though this rule is purely procedural, it imposes an additional restriction on the enforcement of foreign arbitration awards, considering the time-consuming procedures followed by Palestinian courts. Another example is that PEL Article 36/1 states that foreign arbitration awards may not be enforced if they contradict not only public policy but all Palestinian laws without exceptions, which allows for tremendous grounds for rejection of enforcement of foreign awards in Palestine.[39]

In conclusion, while NYC must be applied in Palestine, its mere applicability will not be the answer to the creation of a 'pro-arbitration' environment in Palestine. The UAE's experience, as a developing Arab state, is a perfect example, again, for this argument. As mentioned above, even with the growing investments and national financial resources, the enforcement of foreign arbitration awards in the UAE took more than 10 years to ensure a harmonious and consistent approach to the New York Convention. It resulted in rendering many court decisions indicating the supremacy of the New York Convention as well as updating its arbitration rules. The Palestinian legal system must be

36 'Preface', in M. Paulsson (ed.), *The 1958 New York Convention in Action* (The Hague: Kluwer Law International, 2016), pp. xxi-xxvi.

37 N.Z. Magableh, *The Enforcement of Foreign Arbitration Awards* (Cairo: Dār al-Nahda al-'Arabiya, 2006), p. 14; E.M. Albuhairy, *The Enforcement of Foreign Arbitration Awards; Comparative Study* (Cairo: Dār al-Nahda al-'Arabiya, 1997), p. 12.

38 *Ibid.*

39 The Palestinian Execution Law No. 23 of 2005.

more systematic and coherent. Regulations and practices need to be altered to secure suitable procedures for the enforcement of the awards.

2.2 *Notion of Reciprocity Applied to the Enforcement of Foreign Awards in Palestine*

In general, reciprocity means mutuality. It is the mutual exchange of privileges between states, nations, businesses, or individuals.[40] PEL Article 36 requires reciprocity to enforce foreign judgments and awards rendered in other countries. However, the use of reciprocity in the Palestinian legal system demands tremendous efforts from the applicant and creates a hostile arbitration environment in Palestine. Proving reciprocity will lead to duplicate litigation on the merits of cases where the foreign award has been denied recognition in Palestine for lack of reciprocity.[41] It may well lead to collateral litigation over whether the requirement of reciprocity has been met.

Practical problems may also arise when applying reciprocity. The process of investigating and evaluating the legislative and judicial systems of other countries may be not only challenging and costly but also misleading.[42]Reciprocity can be unreasonable in matters related to international commercial arbitration because arbitration awards are not official acts of the State where the decision was rendered. Thus, it should not be granted the nationality of that State and treated as such.[43]

It can be argued that reciprocity should not be problematic for awards issued in a NYC signatory state. Yet, in Palestine, it leads to time-consuming judicial procedures for practitioners since there are no specific guidelines as to how to provide evidence to the reciprocity. Therefore, arbitration parties may

40 'Reciprocity', in W.C. Burton, *Burton's Legal Thesaurus*, 4E', 2017, available at: https://legal-dictionary.thefreedictionary.com/reciprocity, accessed 14 June 2019.

41 Which is odd, since Palestine had not made any reservation based on the reciprocity principle according to Article II of the New York Convention.

42 W.L.M. Reese, 'The status in this country of judgments rendered abroad', *Columbia Law Review* 50(6) (1950): 783-800. doi: 10.2307/1118655, cited in Y.J. Mok, 'The principle of reciprocity in the United Nations convention on the recognition and enforcement of foreign arbitral awards of 1958', *Case Western Reserve Journal of International Law* 21(2) (1989): 123.

43 R. Koral, *Hakem Kararlarının Milliyetive Milletlerarası Hakem Kararı Teriminin ÇiftAnlamı* (*Nationality of Arbitral Awards and the Double Meaning of the Term International Arbitral Award*), Bankave Ticaret Hukuku Araştırma Enstitüsü, II. Tahkim Haftası (1983), pp. 22-23. In A.B. Canyaş, 'Enforcement of foreign arbitral awards in Turkey. Further steps towards a more arbitration-friendly approach', *ASA Bulletin* 31(3) (2013): 537-557.

go through an extensive appeal process for enforcing relatively straightforward awards.[44]

For example, in *Fluor Transworld Services* v. *Petrixo Oil & Gas* (*Fluor* v. *Petrixo*), the Dubai Court of Appeal refused to enforce an ICC arbitration award rendered in London for $11 million in favour of US-based Company Fluor Transworld Services against the UAE energy company Petrixo Oil & Gas. The Court stated that the principle of reciprocity in the CPC prevents the enforcement of the arbitration award because there was no evidence that the UK had signed any convention with the UAE to ensure mutual recognition of awards. The decision, however, was reversed by the Court of Cassation, which ruled that both the UK and the UAE were signatories to the New York Convention.[45]

Also, by requiring reciprocity, the arbitration agreement will be deprived of one of its primary benefits, independence from national courts. Foreign investors will lose the reason to engage in arbitration with Palestinian companies knowing that the award of the arbitration will go through extensive court procedures checking for reciprocity. It is recommended to repeal the principle of reciprocity to provide a more pro-arbitration environment that is in harmony with the general structure of international commercial arbitration.

Based on the views that reciprocity is not compatible with the nature of international arbitration, multiple countries have repealed this principle for the enforcement of the foreign arbitration awards.[46] For example, although the Dubai Court of Appeal raised some concerns relating to its implementation of reciprocity in the above-mentioned *Fluor* v. *Petrixo*, the UAE Government

44 See A. Mabrouk, *The Legal System to Enforce Arbitration Awards* (Cairo: Dār al-Nahda al-'Arabiya, 2006), p. 329. Please note that there are no reported Palestinian precedents on how the Palestinian courts shall deals with the reciprocity principle.

45 The court failed to recognise that the UK has been a signatory to the New York Convention since 1975. What is also weird is that neither of the parties questioned the UK's accession to the New York Convention. Instead, the court raised this argument *ex officio*. Read more about the case in G. Blanke, 'Dubai court of appeal questions UK NYC membership: Investors keep calm [...] and carry on!', *Kluwer Arbitration Blog*, available at: arbitrationblog.kluwerarbitration.com/2016/05/06/dubai-court-of-appeal-questions-uk-nyc-membership-investors-keep-calm-and-carry-on/, accessed 6 May 2016.

46 For example, the French Code of Civil Procedures, and the Turkish Code on Private International and Procedural Law. It is worth mentioning that the United States has taken a different approach to reciprocity principle. The US made a reciprocity reservation when it signed the New York Conventions in 1970. As a result, US common law has established an enforcement rule for foreign arbitration awards based on the location of the arbitration. Foreign arbitration awards will be enforced within the US only if it was rendered in a contracting state, whether or not both parties are from contracting states.

has shown a positive trend of recognising foreign arbitration awards.[47] On 9 December 2018, the UAE Government issued a new Ministerial Order (No. 57 of 2018), which in Article 85 introduces significant amendments to the CPC, one of which is the repealing of reciprocity as a condition that needs to be proved to enforce foreign arbitration awards. [48]

On the other hand, The Netherlands made 'reciprocity reservation' within the meaning of NYC Article I(3). Accordingly, it will only apply the Convention to an arbitral award rendered in a contracting state. Nevertheless, this reservation does not make any difference in practice since the Dutch courts are settled on the applicability of the New York Convention.[49] Further, the enforcement under Dutch national law is more favourable than the enforcement regime under the New York Convention because, for example, DCCP does not require reciprocity to enforce foreign arbitration awards.[50]

2.3 *Proving the Validity of the Foreign Arbitration Award: The Lack of the 'Presumptive Obligation'*

The presumptive obligation in the context of this article means that national courts should treat foreign arbitration awards as presumptively valid.[51] Various arbitration statutes, including the Netherlands and the UAE, presumptively require the recognition of arbitration awards subject only to identified exceptions.[52] Additionally, NYC imposes a presumptive obligation on national courts to recognise foreign arbitration awards, subject to only a few exceptions.[53]

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47 H. Al-Mulla, 'United Arab Emirates', in *The Baker McKenzie International Arbitration Yearbook 2016-2017* (Chicago: Baker McKenzie, 2017), pp. 475-486.

48 Article 85 of the UAE Ministerial Order No. 57 of 2018.

49 Bermann, *supra* note 34 at 692.

50 *Ibid.*

51 ICCA, *supra* note 35 at 15.

52 Articles 1063-1065 DCCP. Articles 55-57 in the UAE Federal Arbitration Law. Also, French courts have invoked the so-called *principe de validité*, according to which arbitration agreements enjoy a presumption of validity; only in exceptional cases is the presumption overcome. See e.g., Zanzi, Cass. 1re civ., Rev. arb.1999.260 (5 Jan. 1999).

53 According to New York Convection, only five grounds for refusal are found in paragraph 1 of Article V, which are: (a) The parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made. (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case. (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to

In fact, the presumptive obligation of the foreign arbitration awards' validity is one of the primary objectives of the New York Convention to facilitate the establishment of a 'pro-arbitration environment' in the contracting states.[54]

However, the Palestinian Arbitration Law, as provided in the ERA and the PEL, does not contain such an obligation.[55] This approach is argued to be a significant barrier to the efficiency and effectiveness of the enforcement system in Palestine. If the Palestinian legislature aims to improve its arbitration environment, this approach needs to be amended. The most reasonable amendment in favour of the presumptive obligation is allocating the burden of proof to the party resisting the enforcement of the award rather than being on the party seeking enforcement.

Additionally, by presumably declaring the award as valid, the award creditor will not have to prove its validity in the court of origin. By doing so, the Palestinian legislature will eliminate the double exequatur that resulted in forcing the award-creditor to follow extensive procedures proving the validity of the award.[56] This issue, in particular, has been stressed by scholars who criticized the Geneva Convention[57] on restricting the party who is seeking enforcement to prove the validity of the award. One scholar concluded:

> The Geneva treaties have not produced the widespread international enforcement of arbitration agreements and awards which was expected of them. The primary blame for this failure appears to lie with the structure

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arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced. (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place. (e) The award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made; and two other grounds in paragraph 2, which are: a. The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or b. The recognition or enforcement of the award would be contrary to the public policy of that country.

54 ICCA, *supra* note 35 at 37.

55 What is odd in this case is that the PLA in itself is consistent with the texts of the New York Convention (by not providing conditions for enforcement). However, the ERA, as well as the PEL, has provided these conditions for the enforcement. It is also awkward because both the ERA and the PEL were issued after the PLA.

56 Read more about this in M. Paulsson, 'Chapter 4: The obligation to enforce awards', in *The 1958 New York Convention in Action* (The Hague: Kluwer Law International, 2016), pp. 97-136.

57 Geneva Convention on the Execution of Foreign Arbitral Awards ('Geneva Convention'), 92 L.N.T.S. 302 (1929).

> of the treaties themselves. By effectively placing the burden of proof on every issue upon the successful party, the treaties have eased the path of the defaulting defendant and the partial tribunal.[58]

Consistent with the New York Convention and its pro-enforcement purposes, the Dutch Legislature shifts the burden of proof to the award-debtor who resists the enforcement of the award. DCCP Article 1075, in conjunction with DCCP Articles 985-991, provides that, to enforce a foreign award, the applicant will have to submit a request (*verzoekschrift*) inquiring the issuance of *exequatur* from the competent court.[59] Accordingly, the party that seeks the enforcement of the award is required only to file a duly authenticated original arbitration award together with the original arbitration agreement or certified copies thereof, accompanied by a translation, if necessary. No further requirements are requested, and the *exequatur* does not need to be accompanied by documents from which it appears that the award is enforceable in the country where it was made.

The presumptive obligation is also embodied in the Dutch case law. In *Dunav Re ADO. Beograd* v. *Dutch Marine Insurance BV* (DMI), DMI request, among other things, for a stay of the enforcement decision under NYC Article VI based on the pendency of the Serbian annulment proceedings. The Hague Court of Appeal held that there was insufficient evidence to justify a stay, considering the Convention's presumption in favour of enforcement. The Court stated:

> DMI bases its request for a stay only on the fact that a proceeding is pending in Serbia for the annulment of the arbitral award. Taking also into account that the convention is based on a presumption of enforcement, that circumstance is insufficient to justify a stay. This request shall therefore be denied.

Further, in applying NYC Article V(1), The Netherlands Supreme Court held that:

> However, since such discretion is an exception to the system of Art. V(1) of the New York Convention, the court shall make use of it only in

58 L.V. Quigley, 'Accession by the United States to the United Nations convention on the recognition and enforcement of foreign arbitral awards', *The Yale Law Journal* 70(7) (1961): 1049-1082. doi: 10.2307/794350.

59 DCCP Articles 1063, 1075.

> exceptional circumstances. Accordingly, the party seeking recognition or enforcement of a foreign arbitral award despite the existence of (a) ground(s) for refusal described in Art. V(1) of the New York Convention, has the burden to raise and prove the facts and circumstances which justify disregarding the ground(s) for refusal.[60]

Moreover, the UAE case law has provided examples of allocating the burden of proof on the resisting party. For example, in the case mentioned above of *Airmech Dubai LLC* v. *Maxtel International LLC*, the Dubai Court of First Instance granted enforcement of two awards rendered in London, finding that claimant supplied the necessary documents and the defendant failed to meet its burden to prove the existence of grounds for refusal. The court held that:

> The arbitral awards in question satisfy the conditions stated in the Decree [CCP] and this is not affected by the reasons and arguments Airmech has put forward to set them aside, since the assumption is that arbitration procedures have been observed and the burden is upon the party alleging otherwise to prove his allegation having regard to the particulars of the arbitral award.[61]

3 An Analysis of the Enforcement Procedures before the Palestinian Courts: Why it Is Not Efficient?

Unfortunately, there are no reported cases on the enforcement of foreign arbitration awards in Palestine. However, based on the enforcement of domestic arbitration awards, one can conclude that the possibilities to refuse the enforcement are high.[62] The reason behind this analysis is that the enforcement process in Palestine (whether domestic or foreign) is conducted via ordinary court procedures. Hence, since all of the examination and criticism in this

60 '*Netherlands No. 62, not indicated* v. *OJSC Novolipetsky Metallurgichesky Kombinat*, Hoge Raad, Case No. 16/05686, 24 November 2017', in S.W. Schill (ed.), *Yearbook Commercial Arbitration* (The Hague: Kluwer Law International, 2018), pp. 529-534.

61 'United Arab Emirates No. 2, *Airmech Dubai LLC* v. *Maxtel International LLC*, Court of First Instance, Dubai, plenary session, 12 January 2011', in A.J. van den Berg (ed.), *Yearbook Commercial Arbitration* (The Hague: ICCA & Kluwer Law International, 2011), pp. 355-356.

62 Sixty cases were examined between the years 1995 and 2020. Although none of these cases was directly related to the enforcement of foreign arbitration awards, it can give signs on the Palestinian judicial approach towards the enforcement of arbitral awards and, therefore, one can provide recommendations for future amendments.

section is focusing merely on the enforcement procedures and court's approaches toward arbitration, it logically relevant that the obstacles that face the enforcement of domestic awards are similar to the obstacles that may occur during enforcement of foreign arbitration awards.

By analysing the legal framework and court precedents in Palestine, it can be argued that there are two leading causes for the inefficiency and the delays of the enforcement procedures that need to be addressed by the Palestinian legislature. The first cause is related to procedural regulations for enforcement, while the second is related to the attitude of the Palestinian courts towards arbitration as a mechanism for resolving disputes.

3.1 *Procedural Regulations Governing the Application of Enforcing Foreign Arbitration Awards*

Before the arbitration award can be enforced in Palestine, an *exequatur* must be obtained from the competent state court and attached with the original verdict of the arbitration panel (translated into Arabic if necessary). In this manner, some of the regulations are considered problematic for enforcement efficiency and need to be improved in the following ways.

3.1.1 Competent Court in which the *Exequatur* should be submitted

According to PLA Article 1, the *exequatur* to enforcement shall be filed to the Court of First Instance in Ramallah (as it is the *de-facto* capital of Palestine).[63] Granting jurisdiction directly to the Court of First Instance to decide on the *exequatur* is problematic for several reasons.

First, it increases the length of proceedings and incurs extra costs for parties. All the studied cases for this article went through two stages of appeal: first at the Court of Appeal and, then, at the Court of Cassation. The length of the appeal process can be varied, but the minimum time for the appeal process was 1 year, but, in some cases, it can be up to 7 years.[64]

To solve this issue, international legal regimes have adopted necessary amendments aiming to limit the time and expenses for parties in arbitration proceedings. For example, in the Netherlands, the 2015 DCCP amendments

63 According to Article 1 of the Law on Arbitration No. 3 for the year 2000, the Competent Court is defined as 'In case of foreign arbitration, the competent court in registration and enforcement of the decisions of arbitration shall be the first-instance court in Jerusalem, capital of the state of Palestine or in the temporary premises thereof in Ramallah and Gaza'.

64 For example, the Palestinian Court of Cassation. Case No. 171/2004. The enforcement request was filed in 1997. However, the final judgment of the Court of Cassation was issued in 2004.

provided that to enforce a foreign award, the award-creditor shall apply an *exequatur* before the Court of Appeal. It is a radical improvement from the previous provision, which required that the *exequatur* should be obtained from the President of the District Court.[65] Also, the new UAE Arbitration Law provides that the competent court for granting *exequatur* for enforcement is the federal or local courts.[66] This approach saves time for the applicant and limits the steps of appeal since the *exequatur* will be issued directly by the Court of Appeal and, thus, the Supreme Court will only review the decision.

Second, the PLA and the PEL are conflicted regarding the allocation of the competent court for enforcement. According to PEL Article 36, the *exequatur* for enforcement shall be requested from the Court of First Instance where enforcement is required. It can be debated that the PAL will prevail over the text of PEL according to the principle of '*lex specialis derogat legi generali*'. However, this conflict leads to an unnecessary legal debate, over whether the court should apply the PLA or the PEL rules, taking into consideration that the PEL is the most recent law that may lead to another legal debate under the '*lex posterior derogate legi priori*' principle. Consequently, it will lengthen the process of granting the *exequatur* and provides a legal gap that award-debtors may use to evade their obligation.

Unfortunately, there are no reported cases to examine for this matter. Nevertheless, it is reasonably concluded that such 'small' and unintended mistakes can lead to lengthy and exhaustive court procedures, legal debates, and appeals. Such statutory deficiencies may be swiftly resolved by harmonising the PLA and PEL to avoid any confusion that may occur due to the discrepancy between their versions in determining the competent court.

3.1.2 *Exequatur* Request, the Time Limit, and Challenging the Courts' Decisions

The PLA has no clear rules on the legal form of the *exequatur*'s application and how the court should review it.[67] However, this issue has been resolved by the PEL, which provided that *exequatur* should be processed per the usual procedures of filing lawsuits before the Court of First Instance.[68] Also, no time limit is imposed for the court to decide whether to grant the *exequatur* for the

65 Article 1075 DCCP (foreign awards governed by a treaty) and Article 1076 DCCP (if there is no treaty).

66 Article 1 of the Federal Law No. 6 of 2018 on Arbitration.

67 The PLA and ERA have specified that a leave to enforce should be applied to the competent court with not further regulations on how the court should review the request.

68 Article 38 of the PEL. It should be mentioned that the civil lawsuits are governed by the Palestinian Civil & Commercial Procedures Act No. 2.

enforcement. Although it may not appear problematic in advanced legal systems where courts are efficient and developed, the efficiency of the usual procedures of the lawsuits is questionable in the Palestinian context. Therefore, with no time limit, the decision for the *exequatur* request by the Palestinian Court could take years.[69] Time is an essential factor for foreign investors conducting business in Palestine, and there will be no point in moving forward with arbitration if it falls under the time-consuming court procedures of a developing country.

Even more problematic, the decision of the court regarding the enforcement can be challenged, whether it grants the *exequatur* or not.[70] PLA Article 53 states that: 'The verdict of the competent court on enforcing or rejecting the foreign arbitration award is appealable within thirty days as of the next day of its issuance […]'. Therefore, the losing party can take advantage of PLA Article 53 to hinder enforcement by challenging the verdict of the court even if they have no actual biases for the challenge.

The Dutch legislature has identified the above-mentioned difficulties by providing that the procedures of issuing the *exequatur* are *ex parte*. DCCP Article 1062(2) states:

> The leave [*exequatur*] for enforcement shall be recorded on the original of the award or, if the award has not been deposited, shall be laid down in a decision. The registry of the district court shall as soon as possible send the parties a certified copy of the award on which the leave for enforcement has been recorded or certified copy of the decision in which the leave [*exequatur*] for enforcement has been granted.[71]

In practice, this procedure is *ex parte*; therefore, the parties will not attend the court proceedings unless, in interlocutory procedures, one of the parties requested to be heard.[72] Furthermore, the DCCP limits the authority of the

69 As mentioned earlier, based on the studied cases, it takes between one year (at minimum) and seven years to decide on the case.

70 Article 53 PLA states that: 'The verdict of the competent court on enforcing or rejecting the foreign arbitration award is appealable within thirty days as of the next day of its issuance'.

71 Article 1062(2) DCCP, as translated to English by the Netherlands Arbitration Institutes, available at: https://www.nai-nl.org/downloads/Text%20Dutch%20Code%20Civil%20Procedure.pdf, accessed 10 March 2020.

72 G.J. Meijer & M.R.P. Paulsson, 'National report for the Netherlands (2012 through 2014)', in L. Bosman (ed.), *ICCA International Handbook on Commercial Arbitration* (The Hague: ICCA & Kluwer Law International, 2019, Supplement No. 78, March 2014), p. 54.

competent court to refuse the *exequatur*, which the PLA lacks. DCCP Article 1063(1) states that the judge:

> [...] may only refuse the enforcement of the arbitral award, if it appears to him on a *prima facie* basis that the arbitral award will likely be set aside on one of the grounds as mentioned in article 1065(1) or revoked on one of the grounds as mentioned in article 1068)1), or if a penalty is ordered contrary to article 1056.[73]

Also, if the *exequatur* to enforce is granted, the award-debtor cannot appeal that decision and has only the legal remedies of setting aside or revoking the award at its disposal.[74] This approach is called in the Dutch legal system the 'asymmetric system', which has been confirmed by the Dutch Supreme Court to be applied to domestic and foreign arbitration awards alike. In *OAO Rosneft* (*Rosneft*) v. *Yukos Capital SARL* (*Yukos*), the court decided that since no appeal is available against a decision granting enforcement of a domestic award, no such appeal is available that may also be applied to also in respect of an NYC award under the prohibition of more rigorous procedures for foreign awards in NYC Art. III.

In *Ronsneft* v. *Yukos*, Yukos sought to enforce a foreign arbitration award rendered in Moscow at an amount of 13 billion Russian rubbles. The enforcement was refused by the Amsterdam Court of First Instance but granted by the Amsterdam Court of Appeal. Rosneft appealed to the court of cassation, claiming that Articles 1062 and 1064 of the DCCP's 'asymmetric' system only applies to domestic, but not foreign awards. Rosneft also argued that the application of the 'asymmetric' system of Dutch law to foreign awards is a breach of due process of the law, and, particularly, of the principle of 'equality of arms' enshrined in the European Convention on Human Rights. Therefore, Rosneft should obtain the right to appeal in cassation against an enforcement decision contrary to Articles 1062 and 1064 DCCP. The court disagreed with Rosneft's argument, holding that:

> The exclusion of legal remedies in Art. 1062(4) together with Art. 1064(1) Rv is 'asymmetrical' to the extent that it makes a distinction between a negative and positive decision on the request for leave to enforce with regard to lodging an appeal and an appeal in cassation. If the request is refused, the applicant can institute the legal remedies of appeal or appeal

73 DCCP Article 1063(1).

74 DCCP Articles 1062(4) and 1064(1).

> in cassation against the decision, while if the request is granted these legal remedies are not available to the [defendant]. As considered above at [[5] - [7]], the non-discrimination provision of Art. III of the New York Convention requires that this system also be followed for arbitral awards falling under the convention. The fact that, on the basis of this non-discrimination provision, foreign arbitral awards are subject to the same distinction with regard to positive and negative decisions is as such not in violation of due process of law or the principle of 'equality of arms' protected by Art. 6 ECHR.[75]

In the same manner, although less comprehensive than the DCCP, the new UAE regulation introduces a substantial improvement to the procedures for enforcing arbitration awards through an expedited process. Articles 85 to 88 of the Ministerial Resolution No. 57 of 2018[76] do not require that the *exequatur* be filled per usual court procedures. Instead, it provides that the processes are *ex parte*, and only a request for enforcement shall be submitted to the Executive Judge. It also provides a 3-day time limit for the President of the Court to decide whether to grant *exequatur* for enforcement.[77] Additionally, Article 57 of the UAE Federal Law on Arbitration provides that the award-debtor may only file a grievance against the court's decision to grant the enforcement of an arbitration award before the competent Court of Appeal within 30 days from the date following notification. The Court of Appeal will not review the grievance according to the procedures of a regular appeal; therefore, it will take less time to process.

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75 '*Netherlands No. 34, OAO Rosneft* (Russian Federation) v. *Yukos Capital s.a.r.l.* (Luxembourg), Hoge Raad [Supreme Court], First Chamber, 09/02565 EE, 25 June 2010', in A.J. van den Berg (ed.), *Yearbook Commercial Arbitration* (The Hague: ICCA & Kluwer Law International, 2010), pp. 423-426.

76 The primary purpose of the Cabinet Resolution No. 57 of 2018 is for amending the CPC. It is worth noting that Articles 85-88 of the new Cabinet Resolution ended the legal debate over whether the provisions provided in Article 55 of the Federal Arbitration Law (No. 6 of 2018) applied to foreign arbitration awards, or it only applied to the enforcement of domestic arbitration awards. The debate was based on the ground that the Federal Arbitration Law did not repeal Articles 235 to 238 of the (prior) UAE Civil Procedures Code applicable to the enforcement of foreign arbitration awards. Read more about this in S. Corm-Bakhos, 'Expedited enforcement of foreign awards: A new favorable regime for the enforcement of foreign awards in the UAE?', *Kluwer Arbitration Blog*, available at: arbitrationblog.kluwerarbitration.com/2019/05/26/expedited-enforcement-of-foreign-awards-a-new-favourable-regime-for-the-enforcement-of-foreign-awards-in-the-uae/, accessed 22 May 2019.

77 Article 55(2) of the UAE Federal Law No. 6 of 2018 on Arbitration.

In summary, if the current enforcement provisions remain, the arbitration process will continuously suffer from the same slowdown that faces the judiciary in Palestine and, eventually, lead to an anti-arbitration environment that no investor would wish to encounter. This slowdown is a result of the scarcity of human, material, and technical resources, as well as the limited number of judges, notaries, clerks, data entry workers, and secretaries. The lack of efficiency of some judges and failure to comply with the highest standards of integrity and transparency is the primary cause of the judicial inefficiency.[78] The Palestinian regulator needs to recognise that the enforcement proceedings should be summary in nature, not an extensive litigation process. Instead, a recognition proceeding should be expedited and should involve limited appeal rights to reflect the pro-investment aspiration of the Palestinian government.

3.2 *Palestinian Judiciary Approaches when Reviewing Arbitration Awards and Its Effects on the Enforcement Process*

An essential conceptual problem strictly associated with this area of discussion, and which has the potential for severe practical ramifications, is the judicial approach towards arbitration. Through analysing the most recent arbitration cases dealt by the Palestine courts, it may be concluded that the Palestinian judicial system has settled on several non-pragmatic, non-flexible, and formalistic approaches towards arbitration, which are affecting the efficiency of the enforcement of arbitration awards. These approaches are: (a) the exceptionalism of arbitration as a mean for dispute resolution and (b) the narrow interpretation of the arbitration agreement.

3.2.1 Arbitration Will Always Be an Exception in the Eye of the Courts

Generally, Palestinian courts view arbitration as an 'exceptional' method of dispute resolution that contradicts the people's right to access national courts.[79] Judges generally base the argument for this principle on the Palestinian Basic Law, which provides in Article 30(1) that:

> Submitting a case to court is a protected and guaranteed right for all people. Each Palestinian shall have the right to seek a remedy in the judicial

78 Palestinian Chief Justice Ali Mhanna, *Fifth Conference of Supreme Court Presidents 2014*, available at: carjj.org/sites/default/files/ldr_lqdyy_wthrh_fy_ttwyr_lqd_-_wrq_ml_flstyn.pdf, accessed 10 March 2020.

79 A. Farhad, 'Two steps forward, one step back: A report on the development of arbitration in the United Arab Emirates', *Journal of International Arbitration* 35(1) (2018): 131-142.

> system. Litigation procedures shall be organized by law to guarantee prompt settlement of cases.[80]

This approach is also supported by PLA Article 7, which states that:

> If any of the parties initiates legal action against the other party regarding a matter that was agreed upon to be referred to arbitration, the other party shall have the right to request the court to end this procedure. In which case, the court must make this ruling *if it convinced* of the validity of the agreement on arbitration.[81]

Hence, PLA Article 7 does not limit the court's authority to refuse the application of the arbitration agreement.

In this regard, the Palestinian courts consider that national courts obtain the original jurisdiction over disputes and that arbitration is only an exception to that. For example, the Ramallah Court of Appeal held that:

> [...] arbitration is an exceptional mean of resolving disputes, aimed at ousting the judiciary and its guarantees. Thus, it is limited to what the parties to the dispute intended to present to the arbitration tribunal, and, if the arbitral agreement does not indicate the subject matter of arbitration, the arbitration is void.[82]

The exceptional view on arbitration also allows the courts to maintain a fundamental right to review and supervise the arbitration process as well as the arbitration awards.[83] For example, the Ramallah Court of Appeal stated:

> [...] the court concludes that the mere agreement on arbitration and the appointment of the arbitrator does not mean at all that [...[or that the decision of the arbitrator is upheld without any supervision. Otherwise,

80 The Palestinian Basic Law Article 30(1), as translated into English by the European Commission for Democracy through Law (Venice Commission), available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)008-e, accessed 22 February 2020.

81 Unofficial translation.

82 Ramallah Court of Appeal, Case No. 21/2003, issued 13 June 2005, unofficial translation.

83 See C. Randeniya, 'Is arbitration an exceptional or alternative form of dispute resolution?', *Lexology*, available at: www.lexology.com/library/detail.aspx?g=40608c47-10a7-45f9-945a-6df0e1f8ecf9, accessed 21 May 2019.

> the court will lose its role in supervising the arbitrators' verdicts and providing these verdicts its enforcement form or annulment thereof.[84]

The Court, in another judgment, also held: '[…] the court's authority shall remain over the dispute, even after the dispute has been referred to arbitration until a final decision of the court is issued on enforcing or revoking the arbitral decision'.[85]

This approach explicitly contradicts the PLA goal to create a pro-investment arbitration environment. Arbitration does not appear to be an exception mechanism in matters related to international business transactions. The growing role of commercial arbitration institutions shows that arbitration has become the natural mechanism for resolving international trade disputes. Arbitration has not only become equal to national courts, but it has become the ordinary means by which contracting parties choose arbitration in international trade matters ahead of state jurisdiction. As stated by Gary B. Born, a leading international arbitration lawyer and academic:

> In th[e] realm of international commercial transactions, arbitration has become the preferred method of dispute resolution. Arbitration is preferred over judicial methods of dispute resolution because the parties have considerable freedom and flexibility with regard to choice of arbitrators, location of the arbitration, procedural rules for the arbitration, and the substantive law that will govern the relationship and rights of the parties.[86]

Characterising arbitration as 'exceptional' is common among Arab legal regimes, and the UAE is no exception. For example, the Dubai Court of Cassation ruled that:

> It is also established that arbitration is an express agreement whereby parties agree on referring their disputes to an arbitrator and not to the court. The agreement on arbitration may be an arbitration clause or terms of reference, and this is only valid in writing, whether by signing an instrument between the two parties or the messages, cables or other

84 Ramallah Court of Appeal, Case No. 560/2010, issued 6 March 2011, unofficial translation by the author.

85 Jerusalem Court of Appeal, Case No. 98/2009, issued 10 March 2010, unofficial translation by the author.

86 'Chapter 1: Introduction to international arbitration', in G.B. Born (ed.), *International Arbitration: Law and Practice* (The Hague: Kluwer Law International, 2015), pp. 1-44.

> electronic means exchanged between the parties or through any form of written correspondence. Agreement on arbitration may not be assumed or inferred from general provisions in a document or a quotation as long as the arbitration agreement is not specifically provided for in a way indicating that both parties expressly know about and accept it, because it is an exception from courts' jurisdiction.[87]

However, a new decision by the Dubai Court of Appeal marked a positive step for an improvement in the judicial approach to arbitration, which reflects the general aspiration of the UAE government to ensure a 'pro-arbitration' environment. In January 2019, the Dubai Court of Cassation held that arbitration is an alternative mean of resolving disputes, not an exceptional one:

> [...] arbitration is the agreement of parties to a specific legal relationship (whether contractual or otherwise) to settle a dispute which has arisen or which may arise between them by referring it to persons selected as arbitrators. The parties would determine the identities of the arbitrators or request the arbitral tribunal or a permanent arbitral institution to administer the arbitral process. As such, arbitration is not an exceptional means of resolving disputes but an alternative means that shall be followed once its conditions are satisfied. Arbitration is a matter of the parties' intent and giving expression to their intent in a written agreement, whether in the form of a separate agreement or as a clause within a contract. In all cases, the law requires that such agreement be evidenced in writing.[88]

On the other hand, with an entirely different judicial history, recent Dutch court practices validate the supremacy of arbitration whenever it is the method of dispute resolution chosen by the parties. The potential of denying the enforcement of arbitration awards is low, and Dutch courts usually tend to decline jurisdiction whenever a party invoked the existence of a valid arbitration agreement.[89] For example, Dutch courts, in several cases, ruled that

87 For more on the background of the case, see C. Randeniya, 'Is arbitration an exceptional or alternative form of dispute resolution?', *World Service Group* (*WSG*), available at: www.worldservicesgroup.com/publications.asp?action=article&artid=12075, accessed May 2019.

88 For more on the background of the case, see J. Gaffney, 'Arbitration in the UAE: *Pacta sunt servanda*', Al-Tamimi & Company, available at: www.tamimi.com/law-update-articles/arbitration-in-the-uae-pacta-sunt-servanda/, accessed April 2019.

89 R. Van Agteren & M. Raas, 'The Netherlands', in *The Baker McKenzie International Arbitration Yearbook 2016-2017* (Chicago: Baker McKenzie, 2017), p. 318.

it is possible to enforce a foreign arbitration award even if it was nulled or set aside by the courts in the arbitration seat. In other words, the Dutch judiciary gives arbitration awards, under certain circumstances, a higher authority than the national judiciary. This tendency shows a sold faith of arbitration by the Dutch judiciary as a partial mechanism that is not affected by the political atmosphere of the country, as the judiciary is affected in some countries.

In the landmark case of *Maximov/OJCS Novolipetsky Metallurgichesky Kombinat*, the Netherlands Supreme Court ruled that it is possible to enforce a foreign arbitration award even if it was nulled or set aside by the courts in the arbitration seat. In this case, a foreign arbitration award rendered in Moscow for an amount of USD 153 million against OJSC Novolipetsky Metallurgichesky Kombinat, one of Russia's largest steel companies, was set aside by Russian courts. The award-creditor (Maximov) requested the Dutch courts to bypass the Russian Court's decision arguing that NYC Article V(1)(e) allows the Dutch courts to do so. The Netherlands Supreme Court affirmed that national courts hold a certain margin of appreciation whether to grant an *exequatur* to enforce a nulled foreign award. Nonetheless, this authority may only be exercised in extraordinary situations that must be proven by the applicant. The Supreme Court suggested, *inter alia*, that an extraordinary case may exist if the setting-aside judgment would fail to meet the standards that apply in the Netherlands concerning the potential recognition of a foreign award, including the event in which the foreign procedures violated fundamental obligations of due process. Maximov, however, could not prove the circumstances that the court had provided. Thus, his petition was denied.[90] In this case, The Netherlands Supreme Court concurred with the decision of the Amsterdam Court of Appeal in *Yukos Capital s.a.r.l.* (Luxemburg) v. *OAO Rosneft* (Russian Federation) which ruled that:

> This means that, whatever room the 1958 New York Convention otherwise leaves for granting leave for recognition of an arbitral award that has been annulled by a competent authority in the country where it was rendered, a Dutch court is not compelled to deny leave for recognition of an annulled arbitral award if the foreign decision annulling the arbitral award cannot be recognised in the Netherlands. This applies in particular

90 *Nikolay Viktorovich Maximov* v. *OJSC Novolipetsky Metallurgichesky Kombinat* (NLMK), Supreme Court of The Netherlands, 16/05686, ECLI:NL:HR:2017:2992, 24 November 2017. Viewed in M. Raas & R.J. van Agteren, 'The Netherlands: Enforcement of annulled awards', *Global Arbitration News*, available at: globalarbitrationnews.com/the-netherlands-enforcement-of-annulled-awards/, accessed 23 July 2018.

> if the manner in which that decision came to exist does not comply with the principles of due process and for that reason recognition of that decision is at odds with Dutch public policy. If the decisions of the Russian civil court annulling the arbitral awards cannot be recognised in the Netherlands, then when deciding on the request for a leave to enforce the arbitral awards no account is to be taken of the decisions annulling those arbitral awards.[91]

Such cases offer an example that needs to be followed by developing legal systems regarding the importance of abandoning the traditional view of arbitration. If it does, the door will be open to the application of new principles and practices in the field of international commercial arbitration by the Palestinian judiciary. Therefore, the judiciary will become more trustworthy and efficient. One former English judge stated:

> There is plainly a tension here. On the one hand, the concept of arbitration as a consensual process reinforced by the ideas of traditionalism leans against the involvement of the mechanisms of State through the medium of a municipal court. On the other side, there is the plain fact, palatable or not, that it is only a court possessing coercive powers which could rescue the arbitration if it is in danger of foundering.[92]

Considering arbitration as an 'exceptional' method of resolving disputes goes beyond words on papers. It is a manifestation of a protective policy that aims to secure the interest of the public judiciary of being the guardian of people's rights.[93] Ironically, by following this approach, Palestinian courts are doing precisely the opposite of its objectives, as it interferes with people's right to resolve their disputes as they choose.[94] It will also lead to a much stricter review of the arbitration awards leading to a high number of enforcement rejections, which will interfere with the parties' original will in resolving their disputes through arbitration. This matter is discussed in the following subsection.

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91 *'Netherlands No. 31, Yukos Capital s.a.r.l.* (Luxembourg) v. *OAO Rosneft* (Russian Federation), Gerechtshof [Court of Appeal], Amsterdam, 200,005,269, 28 April 2009', in A.J. van den Berg (ed.), *Yearbook Commercial Arbitration* (The Hague: ICCA & Kluwer Law International, 2009, pp. 703-714.

92 Lord Mustill in *Coppee Levalin NV* v. *Ken Ben Fertilizers and Chemicals*, 2 Lloyd's Rep 109 (116 (HL) (1994).

93 Farhad, *supra* note 79.

94 Lord Saville, *Arbitration and the Courts*, Denning Lecture, 1995, p. 157.

3.2.2 Narrow Interpretation of the Arbitration Agreement by Palestinian Courts

Regarding the scope of the arbitration agreement, the Palestinian courts continuously reviewed arbitration agreements with suspicion and required that the dispute referred to arbitration to be clearly defined. Any doubt concerning the subject matter of the arbitration leads to the exclusion of the dispute from the scope of arbitration since, according to the Palestinian courts, the arbitration agreement should never be expanded. This attitude resulted in a more formal review of the arbitration agreements that tend to reject its enforcement. The following are examples of enforcement rejections by the Palestinian courts.

(a) The Court of Appeal has considered parties that did not sign the arbitration agreement to be barred from the arbitration process, even if they maintain a legal or financial interest in a dispute between other persons who are connected by an arbitration clause.[95]

(b) The Palestinian Court of Cassation ruled that an arbitration agreement that is embodied in the company's bylaws is limited to disputes that arise between partners and are related to the 'company-work'. Consequently, it does not include the request to dissolve the company and liquidate it because it is out of the scope of the 'company-work'.[96] Though the liquidation of the company in the case mentioned above could have been regarded as a contract dispute as appropriate, the court decided that when interpreting the contract concerning arbitration, the court must exercise caution and shall not seek to expand the determination of disputes subject to arbitration.

(c) The Court of Appeal rejected the enforcement of an award because the award-debtor had not received a separate copy of the award, even though he participated in the arbitration procedures and, following the enforcement request, he received a copy of the award-creditor request for enforcement that included the decision of the arbitration panel. Thus, no violation of the due process occurred.[97]

(d) The Court of Appeal repealed the *exequatur* of enforcement because the Court of First Instance incorrectly addressed the name of the award-debtor.[98] In this case, the Court of Appeal sent the case back to Court of First Instance to make the needed correction. The court's

95 Jerusalem Court of Appeal, Case No. 191/2010, issued 23 December 2010.

96 Court of Cassation, Case No. 62/2005, issued 12 April 2006.

97 Ramallah Court of Appeal, Case No. 392/2009, issued 7 July 2010.

98 Ramallah Court of Appeal, Case No. 260/2010, issued 17 Jan. 2011

> decision was bizarre since the name of the parties was indicated in the arbitration award, and it was the Court of First Instance's mistake, not the parties.

It is thus explicit that the general approach of the Palestinian High Courts reflects a tendency to interpret arbitration in a way that justifies its intervention in the arbitration process. This approach, however, is declining in the face of the current arbitration legal developments and practices. Dutch case law has provided examples of flexibility and non-formalistic approaches to arbitration. In *Isaac Glecer* v. *Moses Israel Glecer and Estera Glecer-Nottman*, the Rotterdam Court of First Instance refused to apply Dutch national laws that consider inheritance disputes non-arbitral, and, therefore, issued an *exequatur* to enforce the award issued in Israel. The court based its decision on the ground that national laws of the recognition country do not apply to disputes that have no connection to the recognition forum. The court held that:

> Even if Moses' allegation that the arbitration agreement only aimed at a Jewish religious procedure were valid, still we must not forget that the present case concerns proceedings held in Israel before arbitrators according to the Israeli Arbitration Law and that it is possible in Israel to arbitrate Jewish religious issues.[99]

In *Dunav Re ADO. Beograd* v. *Dutch Marine Insurance BV* (*DMI*), the Court of Appeal of The Hague ruled that, even though required under NYC Article V(2), a Dutch translation to the award was not required because both the defendant's and court master's award language, which is English. In this case, the Claimant (Dunav) asked to enforce an arbitration award rendered in Serbia under the New York Convention. The claimant provided to the court a duly certified copy of the English-language award and arbitration agreement, though unaccompanied by a Dutch translation. The defendant argued that this failure must lead to the inadmissibility of the enforcement. The court ruled that:

> In the court's opinion, the failure mentioned above does not necessarily lead to the consequences claimed by DMI. It appears from the file that the arbitration was conducted in English, [a language], which neither is it claimed, nor does it appear that DMI does not master. When questioned, [counsel for DMI] indicated at the oral hearing that DMI's interests were

99 For more about the background of the case, see *supra* note 21.

> not affected by the fact that no Dutch translation was supplied, but that the convention does require such translation.[100]

In comparison, it is reasonably concluded that the Palestinian approach reveals a lack of accreditation in arbitration by the national judiciary, which contradicts the growing volume of arbitration in international trade. As mentioned, the Palestinian judiciary has traditionally adopted the idea that arbitration is an 'exceptional' mean to settle disputes, favouring the narrow the interpretation of the arbitration agreement and rejecting the enforcement of arbitration awards in doubt on the basis that the priority of judiciary is to guarantee that to no party shall be forced to arbitrate without its consent. This bias standing hinders the development of the arbitration environment.

4 Conclusion

Through this analysis, the question arises regarding the justification for restricting the enforcement of foreign arbitration awards and reviewing it with suspicion and caution. If the PA is willing to increase the volume of foreign investment in Palestine, its judiciary and legislature should be inspired by the practices from other comparative regulations, such as examples provided from Dutch and UAE law. Investors seek friendly arbitration jurisdictions, and the level of support and supervision that national laws offer in arbitration-related matters is frequently used to evaluate that friendliness.[101]

To achieve this goal is not easy; it needs time, financial resources, and, most importantly, political will. However, change is a journey that starts with a few steps, and in the Palestinian case, these steps should include the following:

1. The PA should update its regulations related to the enforcement of foreign arbitration awards. Legislative reform is the primary step that needs to be achieved and should guarantee the implementation of NYC. This step can take two forms: (a) by an implantation regulation issued directly by the government, the UAE example; alternatively, or (b) by a reference in the arbitration law, the DCCP example. The

100 Court of Appeal of The Hague. '*Netherlands No. 63, Dunav Re A.D.O. Beograd* v. *Dutch Marine Insurance B.V.*, Gerechtshof, The Hague, 17 April 2018', in S.W. Schill (ed.), *Yearbook Commercial Arbitration* (The Hague: Kluwer Law International, 2018), pp. 535-537.

101 M.P. Fons & P.T. Alonso, 'Chapter 1: The New York convention and the enforcement of arbitration agreements by national courts: what level of review?', in K.F. Gomez & A.M.L. Rodríguez (eds.), *60 Years of the New York Convention: Key Issues and Future Challenges* (Dordrecht: Kluwer Law International, 2019), pp. 3-18.

legislative reforms should ensure a modern legislative framework that can instil confidence and attracting more foreign investments. This confidence can be obtained through changes such as the elimination of the reciprocity principle and allocating the burden of proof on the party resisting the enforcement.

2. The PA should recognise the necessity of altering the approaches in which the judiciary view arbitration; this would contribute to changing unfavourable perceptions regarding arbitration as a means for dispute resolutions. It is crucial to provide the judiciary with judges specialised in international commercial arbitration who have the necessary skills, experience, and knowledge in international arbitration in general, and the provisions of the international convention and comparative legal systems. Additionally, it is of utmost importance to hold workshops for the workers in the business sector, whether individuals or companies, on the importance and effectiveness of international commercial arbitration as a means of resolving international trade disputes, to expand the arbitration culture in Palestine by the help of this sector. Eventually, this will bring reassurance and confidence to foreign investors that the arbitral awards will be enforced efficiently and quickly by the competent Palestinian courts.