BRILL | NIJHOFF

ARAB LAW QUARTERLY (2025) 1–31

Arab Law Quarterly
brill.com/alq

A Quest for Improvement: The Need for the Palestinian Law to Adopt Joinder and Intervention as a Right for Third Parties

Mohammad Adeb Abu Shehab | ORCID: 0000-0003-0493-5818
Faculty of Law, An-Najah National University, Nablus, Palestine
School of Law, Utrecht University, Heidelberglaan 8, 3584 CS Utrecht, The Netherlands
mohammad.eu@najah.edu

Received 24 November 2022 | Accepted 5 May 2025 |
Published online 29 May 2025

Abstract

This research will analyse the principles of joinder and intervention and how it is treated within the Palestinian legal systems. The focus will be on provisions that explicitly or implicitly affect third parties' interests in an existing arbitration and analyse if adopting rules on joinder and intervention of third parties are wise, necessary and legally possible under current Palestinian laws. This research will construct recommendations for legal and judicial approaches the Palestinian Authority should adopt to overcome the disadvantages that may emerge when adopting joinder and intervention rules by presenting examples from other countries. This discussion is not meant to be theoretical but intends to highlight the laws of some of the more popular or innovative arbitral forums. Also, although limited, the analysis of this research will use case law when it is relevant and available. Finally, the research provides a model rule of law on joinder and intervention that aims to enhance the Palestinian Authority's effectiveness and promote the use of arbitration to resolve disputes in Palestine.

Keywords

arbitration – intervention – joinder – Palestine – third parties

1 Introduction

As international transactions become increasingly complicated, the multi-party nature of international commercial agreements will logically lead to multi-party commercial disputes. Therefore, specific procedural problems are becoming more common. One of the most troubling issues in this area of law concerns the joinder or intervention of third parties into an existing arbitration procedure. This is because multiple parties, even if they are not signatories to the contract, either have an interest in the dispute or reciprocal lawsuits emerging from the same conflict. In such cases, efficiency concerns require the participation of these third parties in the arbitration.

As this research shows, several legal systems and institutions provide rules on joinder and intervention. However, the Palestinian Law on Arbitration No. 3 of 2000 ('the PLA') and the Cabinet Decision No. (39) of 2004 regarding the Executive Regulations of Arbitration ('ERA') are silent towards third-party joinder and intervention. In fact, many Palestinian courts have held that third parties have no right to intervene or join in a pending arbitration, citing that arbitration is a creature of a contract with no validity outside the four corners of the parties' agreement. Nevertheless, it may be time to change this narrow interpretation of arbitration's rules in Palestine and provide a reform more compatible with the realm of multi-party international disputes.[1]

This research argues that ensuring arbitration effectiveness requires accepting joinder and intervention rules into the Palestinian legal system. This research will analyse the principles of joinder and intervention and how it is treated within comparative legal systems. It will also provide the importance of incorporating such a concept in Palestinian law and how to overcome the disadvantages that may emerge when adopting joinder and intervention rules by presenting examples from other countries. This discussion is not meant to be theoretical but intends only to highlight the laws of some of the more popular or more innovative arbitral forums. The focus will be on provisions that explicitly or implicitly affect third parties' ability to intervene or be joined in an existing arbitration, since the goal is to see if adopting rules on joinder and intervention of third parties as of right in an arbitral proceeding are wise, necessary, and legally possible under current Palestinian laws. Also, although

1 Before beginning any analysis, it is essential to define terms. For this article, joinder refers to the method used by an existing party to bring third parties into an arbitration, while intervention refers to the process used by the third parties to make themselves parties to the arbitration.

limited, the analysis of this research will use case law when it is relevant and available.

The structure of this research is as follows. Besides the introduction and conclusion, Part two discusses arbitration's contractual roots and the current status of joinder and intervention within the Palestinian legal system. Part three outlines some of the benefits of joinder and intervention rules to facilitate multi-party arbitration. Part four define third parties and suggests a set of factors to determine when to admit (or deny) joinder or intervention. Part five will address the most critical matters that need to be considered by the PLA when adopting a joinder and intervention rules: the consent for joinder and intervention, the competence of issuing a joinder and intervention order, the appointment of arbitrators, and the matter of confidentiality. Part six provides a model rule of law on joinder and intervention that aims to enhance the Palestinian Authority's effectiveness and promote the use of arbitration to resolve disputes in Palestine.

2 The Current Framework of Third-Party Joinder and Intervention in Palestine v. Selected Comparative Legal Systems

Similar to many states, the PLA does not expressly regulate matters related to third parties' joinder and intervention.[2] When encountering a case of joinder and intervention, the Palestinian judiciary relies on the Ottoman civil Law (the *Majallah*)[3] to derive precise principles concerning the issue of extending the arbitration agreement to third parties. As a contract, arbitration is subject to the general rules of civil law, including the rule of privity. This conclusion is

2 That is true under arbitration statutes in the United States, France, Switzerland, Italy, Jordan and Egypt. However, judicial authority in these (and other) jurisdictions does deal with these topics, often in ways not dissimilar from statutory solutions in those states that legislatively address the subject. See G. Born, 'Consolidation, joinder and intervention in international arbitration', in G. Born (ed.), *International Commercial Arbitration* (Alphen aan den Rijn: Kluwer Law International, 2021), 2759–2816.

3 This is the general body of law that parties refer to in the absence of specific law governing a disputed matter in civil and commercial matters. Al-Majalla is still valid both in the West Bank and Gaza. Book 16 of the *Majallah*, titled the Administration of Justice by the court, is based on the legal administration of justice including codification of judges, judgments, retrial, and arbitration. The code also deals with arbitration in articles 1841 to 1851. These articles address the issues that can be arbitrated, the appointment and role of the arbitral tribunal, the decision of the arbitration, and the execution or enforcement of the arbitral award. In practice, these articles are not applicable since various special arbitration laws have been enacted and are in force and address the same issues in detail.

reflected by Article 5 PLA, which describes the arbitration as contractual by stating that 'an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them.'[4]

The principle of contract privity, according to the *Majallah*, means that contracts do not have a legal effect beyond their parties. Based on this rule, the *Majallah* intends to protect the personal welfare of others who did not participate in the contract's formation and observe their independence. This approach minimises the application of third parties involved in the arbitration procedures, mainly to universal or singular successors.[5]

Multiple Palestinian court decisions reflect this analysis; for example, the Jerusalem Court of Appeal states that: 'Considering that Arbitration is a type of conciliation, its provisions apply only to its signatories, which means that the arbitrator may not include third parties in the arbitral award [...] hence, the Court of First Instance's verdict on recognising the arbitral award is void because it included a party who is not a signatory to the arbitration agreement.'[6]

The court of appeal went further by deciding that even holding companies are not entitled to joinder or intervention in an arbitration agreement made by its subsidiaries, even if it has considerable interest in joining the arbitration procedures. In that regard, the Ramallah Court of Appeal ruled that:

> The appellant's attempt to prove that the Jordan River Company — an existing party in the arbitration proceedings — is the same as Al-Quds Pharmaceutical Company is not essential in this case, even if the latter is a shareholder in the first. This is because although it is true that the appellant — Al-Quds Pharmaceutical Company — owns shares in the

4 Unofficial translation. The PLA uses the exact definition provided by Article 7(1) of the UNCITRAL Model Law, which defines an arbitration agreement as 'an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them.' Also, Article 1020 of the DCCP provides that ' The parties may agree to submit to arbitration disputes which have arisen or may arise between them out of a defined legal relationship, whether contractual or not.'; French Code of Civil Procedure, Article 1442 ('An arbitration clause is an agreement whereby the parties to one or several contracts commit themselves to refer to arbitration the disputes their contract or contracts may give rise to. A submission agreement is an agreement whereby the parties to a present dispute commit themselves to refer it to arbitration'); the UAE federal law on arbitration Article 1 'Arbitration Agreement: An agreement by the Parties to refer to Arbitration whether such Agreement is made before or after the dispute has arisen.'

5 According to *Majallah*, a Universal Successor is a person who succeeds in the totality of the rights and duties of a deceased person. By contrast, a singular successor, for example, a purchaser, acquires right only to a particular title, for example, ownership of a plot of land.

6 Jerusalem Court of Appeal Case Number 336 of 2017. Unofficial translation.

> Jordan River Company, this does not mean that the arbitration procedures apply against Al-Quds Pharmaceutical Company, even if the latter is a holding company. [...] The authority of the holding company's jurisdiction over the subsidiary company is in the financial and administrative affairs only, and the holding company has no authority over the subsidiary company in litigation or legal representation.[7]

By analysis of the above, Palestinian courts consider that joinder and intervention entail the possibility of forcing parties to arbitrate against third parties with whom they never agreed, contrary to the solid provisions of consent and privity. The courts firmly hold that parties' autonomy is one of the foundation stones of arbitration, which means that a party must have consented to it. Otherwise, there is no legal basis for depriving it of its right to access national courts. According to one court, it is a fact that the parties agreed to arbitrate with other, specified parties, not with any stranger to their contract.[8]

Furthermore, for multiple Palestinian scholars and practitioners, the question of third-party intervention and joinder is relatively easy to answer. Relying on the Article 5 PLA definition of arbitration as a contractual construct, they argue that if the parties to the arbitration do not agree to joinder or intervention, neither the courts nor the arbitral tribunal can order such measures.[9] As the argument goes, to allow joinder or intervention would result in rewriting the contract and upsetting the dispute resolution mechanism negotiated for by the parties. In addition, Palestinian scholars argue that because arbitral authority is limited to the terms of the contract, an arbitrator would have no power to hear the joined dispute unless the party to be joined either expressly or impliedly agreed to arbitrate.[10]

Nevertheless, despite the above-mentioned approach and concerns raised by the Palestinian courts and scholars, the practical reality demonstrates the opposite. In some cases, third parties' joinder and intervention are vital to achieving justice and stability of transactions, as contracts containing arbitration clauses may constitute a legal instrument invoked by or against third

7 Ramallah Court of Appeal Case Number 978 of 2018. Unofficial translation.

8 Ramallah Court of Appeal Case Number 238 of 2017. Unofficial translation.

9 Y. Al Shindi, التحكيم الداخلي و الدولي في ظل قانون التحكيم الفلسطيني (*Domestic and International Arbitration in Palestine*) (Birzeit: Birzeit University, 2014), 202–275. *See, also,* O. Takrouri, أسس التحكيم المحلي والدولي (*The Principles of Domestic and International Arbitration*) (Nablus: Alshamel Publishing & Distribution, 2019), 132.

10 This problem is easily overcome by permitting courts whose powers are not limited by the parties' contracts to order joinder or intervention of third parties.

parties.[11] Commercial contracts may concern different stakeholders who are not always signatories to the contract, but either have an interest in the dispute or reciprocal lawsuits emerging from the same dispute. In such cases, efficiency concerns necessitate joining these third parties in the arbitration. This requires searching for clear regulations to extend the arbitration agreement to others without harming the interests of contractual or third parties.

As the Palestinian Authority ('PA') confirmed its commitment to adopt an arbitration-friendly environment, Palestinian regulators are advised to benefit from comparative legal systems' vast experience with multi-party disputes and adopt rules of joinder and intervention similar to those in comparative laws. Also, since Palestinian laws adopt mandatory arbitration agreements, such as those found in employment law, it may be even more necessary to recognize the right to join or intervene in arbitration to offset the hardships associated with mandatory arbitration provisions.[12] For example, in upholding mandatory arbitration agreements, courts may create a class of third parties with no effective remedy for their claims if they are not permitted to intervene in the arbitration for multiple reasons: a) there may be contradictory verdicts between the court and the arbitral tribunal, b) a necessary delay may occur because the courts may order a hold on the arbitration procedures or vice versa, and c) the rights of these third parties may not be presented equally in the arbitration procedures.

An excellent example of such improvement can be derived from a neighbouring Arab country, the UAE. In June 2018, the long-awaited UAE Federal Arbitration Law No. 6 of 2018 ('Federal Arbitration Law' or, simply, 'FAL') entered into force, revoking the arbitration rules included in the Civil Procedures Law. The law incorporates several new provisions, notably improving arbitration proceedings in the UAE by providing the arbitral tribunal with the authority to authorize the joinder of a third party in arbitration if the initial party of

11 A. Fiqh *et al.*, 'Abla Khaled Abdel Salam Abdel Majid, امتداد أثر اتفاق التحكيم للغير (The extension of the arbitration agreement for others), *Journal of Law for Legal and Economic Research* (2013): 285.

12 Mandatory arbitration is recognized in Article 63 of the Palestinian Labour Law No. 7 of 2000, which states that: 'If neither of the two parties resorts to the judiciary and the labour dispute affects the public interest, in such case the Minister shall have the right to oblige both parties to appear before an Arbitration Committee, established by the Minister in coordination with the relevant authorities. The composition of such committee shall be as follows : (A) A judge as the chairman of the Committee. (B) A representative of the Ministry. (C) A representative of the workers. (D) A representative of the employers.' Unofficial Translation.

the arbitration or the joining party makes such a request.[13] These provisions are novel for two main reasons: a) it granted the authority to order the joinder to the arbitration tribunal, rather than a national court or arbitral institution, which will overcome the delays that may occur if such authority was granted to courts,[14] and b) it does not require the consent of the initial arbitration parties for the joinder. Nevertheless, Article 22 FAL requires that the joining party has to be a party to the arbitration agreements, even where all of these agreements are compatible, providing for arbitration in the same seat and before the same number of arbitrators. As a result, the application of Article 22 FAL may limit the application of such rules and lead to the question of what the definition of an arbitration party is, a question that will be addressed below.

On the other hand, the Netherlands is among the few states to address third parties' interests in arbitration.[15] It has long recognized the rights of the third party to join the arbitral proceeding within certain limitations. According to Article 1045 of the Dutch Code of Civil Procedure ('DCCP') a third party who has an interest in the outcome of the arbitral proceedings may ask to intervene in the proceedings.[16] Similarly, a party seeking indemnification from a third party may serve a notice of joinder on that third party.[17] The arbitrators will

13 Article 22 FAL states that: 'The Arbitral Tribunal may authorize the joinder or intervention of a third party into the arbitration dispute whether upon request of a party or upon request of the joining party, provided that he is a party to the Arbitration Agreement after giving all Parties including the third party the opportunity to hear their statements.' Please note that this is an official translation of the law released by the United Arab Emirates' Government portal, available online at https://u.ae/en/information-and-services/justice-safety-and-the-law/litigation-procedures/alternative-methods-to-settle-disputes-/uae-federal-law-on-arbitration.

14 More on this in Section 5.2 of this article.

15 Other examples are the New South Wales Commercial Arbitration Act, para. 27C, New Zealand Arbitration Act, para. 6(2), Schedule 2, Article 2, and the United States' Revised Uniform Arbitration Act, para. 10(a)(4).

16 Article 1045 DCCP states that (1) At the written request of a party the arbitral tribunal may allow that party to implead a third person, provided that the same arbitration agreement as between the original parties applies or enters into force between the interested party and the third person. (2) A copy of the notice of impleader shall be sent to the arbitral tribunal and the other party as soon as possible. (3) The arbitral tribunal shall give the parties and the third person the opportunity to make their opinions known. (4) The arbitral tribunal shall not allow the impleader if the arbitral tribunal finds it implausible, in advance, that the third person will be required to bear the adverse consequences of a possible judgment against the interested party or is of the opinion that impleader proceedings are likely to cause unreasonable or unnecessary delay of the proceedings. (5) After allowing the impleader the arbitral tribunal shall determine the further course of proceedings unless the parties have made provision for this by agreement.'

17 *See Ibid.* Article 1045(2).

decide whether to permit the third party to participate in the proceedings, but they shall give the parties and the third person the opportunity to make their opinions known.[18] If the arbitrators allow the third party to participate in the arbitration, the third party becomes a party to the arbitral proceedings, and the arbitrators determine the further course of the proceedings.[19]

Furthermore, following recent revisions to many of the main institutional rules, most of these rules are now containing a specific provision for joinder and intervention of third parties to the arbitration. For example, Article 7(1) of the International Chamber of Commerce Rules of Arbitration ('ICC') provides that:

> A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the 'Request for Joinder') to the Secretariat. The date on which the Request for Joinder is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party [...] No additional party may be joined after the confirmation or appointment of any arbitrator, unless all parties, including the additional party, otherwise agree. The Secretariat may fix a time limit for submitting a Request for Joinder.

Also, the Swiss Rules of International Arbitration ('Swiss Rules'), the Arbitration Institute of the Stockholm Chamber of Commerce Rules ('SCC Rules'), the London Court of International Arbitration Rules ('LCIA Rule's), the Singapore International Arbitration Centre Rules ('SIAC Rules'), the Hong Kong International Arbitration Centre Rules ('HKIAC Rules') and the Australian Centre for International Commercial Arbitration Rules ('ACICA Rules') all contain relatively new provisions for joinder and/or intervention.[20]

Finally, even though the United Nations Commission on International Trade Law ('UNICITRAL Model Law' or, simply, the 'Model Law') has not included rules on joinder and interventions in its previous editions, it has included a new rule in 2016 amendments.[21] The final version of the revised

18 *See Ibid*. Article 1045(3).

19 *See Ibid*. Article 1045(4).

20 Article 6 Swiss Rules; Article 22 LCIA; Article 7 SIAC; Article 27 HKIAC and; Section 17 ACICA.

21 Article 17(5) Model Law. Please note that the Model Law's drafters considered but rejected proposals to address these subjects, both in the original 1985 version of the Law and in the subsequent 2006 revisions. *See* UNCITRAL, *Possible Uniform Rules on Certain Issues Concerning Settlement of Commercial Disputes: Conciliation, Interim Measures*

Rules included a provision dealing with multi-party issues — Article 17(5). The revised Article 17(5) provides: 'The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds … that joinder should not be permitted because of prejudice to any of those parties.' This provision allows the arbitral tribunal to authorize the joinder or intervention of third parties into arbitration procedures. Article 17(5) also provides that the tribunal may deny joinder if it concludes that a party will be favoured. In contrast, and similar to the UAE federal law, joinder under Article 17(5) is not contemplated where there are multiple contracts between multiple parties, with multiple different arbitration agreements. Revised Article 17(5) only provides for joinder where the additional party is a party to '*the* arbitration agreement' — not a party to *another* arbitration agreement, even if that agreement is compatible with *the* arbitration agreement.

3 The Benefits of Adopting a Joinder and Intervention Rules

Currently, the Palestinian economy is increasing, with economic growth of 26.7% during the last ten years, and at the end of 2020, GDP was 14 037.4 million USD.[22] Also, the latest survey of the Palestinian Central Bureau of Statistics on the Foreign Investment of Resident Enterprises in Palestine revealed that the stocks of foreign direct investment in Palestine raised from 147 million USD in 2010 to 304 million USD in 2020.[23] The increased level of international businesses in Palestine led to the emergence of complex forms of international legal relations. These legal relations are complex and often mean involving multiple parties to contracts or multiple contracts relating to a single commercial transaction. In this regard, international businesses are increasingly

of Protection, Written Form for Arbitration Agreement, U.N. Doc. A/CN.9/WG.II/WP.108, (2000), 6–10.

22 Investment Promotion and Industrial Estates Agency, *10 motivating factors to invest in Palestine*, available online at http://www.pipa.ps/page.php?id=1b9d59y1809753Y1b9d59 (accessed 20 July 2022).

23 Palestinian Central Bureau of Statistics, *Main indicators of the foreign investment survey of resident enterprises in Palestine* (*stocks*) *at the end of years 2010–2020*, available online at https://www.pcbs.gov.ps/statisticsIndicatorsTables.aspx?lang=en&table_id=1173 (accessed 31 October 2022).

relaying on arbitration as a mean for resolving their complex legal disputes worldwide, including Palestine.[24]

While it is not a comprehensive solution to all the challenges faced by the business community,[25] improving the arbitration law in Palestine can influence economic growth and establish a more favourable business climate by providing an efficient and trustworthy mechanism for settling conflicts as well as promoting a more conducive business atmosphere and building confidence among investors.[26] 2016 empirical research published in the Journal of Law and Economics has shown the effect of international commercial arbitration on foreign direct investment. The study found that reforms in arbitration resulted in an increase in foreign direct investment.[27] The impact of these reforms on foreign direct investment is particularly significant in countries with weaker institutions for several reasons, such as the creation of a level playing field for both investors and investment recipients, reducing the influence of jurisdiction biases, and providing enforceable awards.[28]

Permitting third-party involvement in the arbitration process can positively impact the Palestinian Arbitration system by increasing the efficiency and fairness of dispute resolution. Allowing for the participation of relevant parties in arbitration proceedings enhances the process's efficiency and ensures that all relevant perspectives are considered in resolving a dispute. This also helps ensure that the arbitration outcome is equitable and fair. Furthermore, allowing for third-party intervention can minimize the time and cost involved in

24 According to a 2021 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, 90% indicated that international arbitration is their preferred method of dispute resolution, a result which is consistent with their 2018, 2015, 2012 international arbitration survey findings. *See* Queen Mary University London & School of International Arbitration, *2021 international arbitration survey: adapting arbitration to a changing world*, available online at: https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey.

25 Considerable problems hinder economic growth and foreign investment in Palestine, including the ongoing conflict with Israel and political instability, ultimately undermining investor confidence in dispute resolution mechanisms and detrimental economic growth.

26 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): 232–242.

27 A. Myburgh & J. Paniagua, 'Does International Commercial Arbitration Promote Foreign Direct Investment?', *The Journal of Law and Economics* 59(3) (2016): 597–627.

28 *Ibid.*

resolving disputes, improving the investment climate in Palestine and attracting more foreign investment.[29]

Moreover, adopting joinder and intervention rules into the PLA can provide some apparent benefits. First, as with litigation, a single arbitration can sometimes be more efficient than two or more separate arbitrations. A single proceeding enables the same savings of overall legal fees, witnesses' time, preparation efforts, and other expenses that exist in arbitration.[30] Moreover, a single arbitral proceeding avoids the expenses associated with multiple arbitral tribunals, each of whose members must be paid by the parties. According to one commentator: 'On the whole it seems reasonable to conclude that the consolidation of closely-related disputes, where essentially the same evidence will be presented, will result in significant savings of both time and money.'[31] Second, permitting joinder and intervention in arbitral proceedings lowers the risk of conflicting outcomes in two or more separate arbitrations. One party to a multi-party dispute may be found liable to another party in one arbitration, while in a second arbitration, the same party may be denied recovery on a theory inconsistent with the first proceeding. More alarming, one tribunal may issue injunctive relief requiring a party to do something that another tribunal forbids it from doing. Neither outcome is probable when allowing third parties to join the same proceedings of the initial parties.[32] Third, there are apparent advantages to the joinder of third parties to arbitration proceedings where disputes involve similar subject matter, shared facts, and common issues of law, such as preventing inconsistent or conflicting decisions, tribunals having a complete view of a transaction, and usually allowing savings of time and cost. Further, joinder and intervention should be permitted if failing to allow such measures would violate public policies, such as due process regulations and equal representation, requiring that no party's rights or interests may be adjudicated without the party being present.[33] Finally, permitting joinder and

---

29 A. Meligy, اختصام الغير وادخال ضامن في الخصومة المدنية اما محاكم الدرجة الاولى والا ستئناف و النقض-وفقا لقانون المرافعات و اراء الفقه و احكام القضاء (The Litigation of Third Parties and the Inclusion of a Guarantor in Civil Litigation in the Courts of First Instance, Appeal and Cassation — According to the Law of Civil Procedures, Jurisprudence Opinions and Judicial Rulings) (Cairo: Dar Al-Fikr Al-Arabi, 1988), 25–28.

30 D. Thomson, 'Arbitration theory & practice: a survey of AAA construction arbitrators', *Hofstra Law Review* 23(1) (1994): 137–172, at 165–167.

31 J. Chiu, 'Consolidation of arbitral proceedings and international commercial arbitration', *Journal of International Arbitration* 7(2) (1990): 53–76. doi: 10.54648/JOIA1990018.

32 Born, *supra* note 2 at 2763.

33 S. Strong, 'Intervention and joinder as of right in international arbitration: an infringement of individual contract rights or a proper equitable measure?', *Vanderbilt Journal of Transnational Law* 31 (1998): 915–996, at 980–981.

intervention may eliminate the attempt of some parties to avoid adherence to arbitration by claiming to be third parties. Consequently, the arbitrators can make a comprehensive and fair decision, considering the interests and responsibilities of all parties involved.

Further, adopting rules on joinder and intervention within Palestinian law is crucial, even if it is not the procedural law (*lex arbitri*) chosen by the parties, and arguably even over the objections of the existing parties to the arbitration. That is because these rules can significantly impact the enforcement process by providing a basis for courts and arbitrators to permit joinder or intervention. Such approach helps preserve the parties' autonomy in selecting the procedural law governing their arbitration, contributing to the legitimacy and enforceability of arbitral awards.[34] Therefore, rules regarding joinder and intervention in arbitration proceedings will help proceedings to occur more efficiently, avoid the possibility of inconsistent results and reduce the risk of annulling arbitral awards by Palestinian courts because such awards allow for joinder and intervention.

Notwithstanding, whilst joinder or intervention is likely to improve the efficiency of the overall arbitration procedure, the benefits of joinder or intervention will differ amongst the parties. It may be more efficient and cost-effective for some parties to conduct arbitration proceedings solely with an opposing party rather than being joined into a more complex arbitration among multiple parties concerning multiple issues. Nevertheless, this argument should not affect the importance of adopting joinder and intervention rules because there are other circumstances where joinder and intervention can improve efficiency, avoid contradictory decisions, and provide a more comprehensive resolution to disputes involving interconnected issues and multiple parties.[35] The critical argument at this stage is to ensure that the arbitrators provide equal treatment to all parties and not allow third parties to join the arbitration process on an unequal basis.[36] After all, every judgment by a court or tribunal favours one party's position over the other.

On the other hand, joinder and intervention in arbitration also have disadvantages and may, in particular cases, favour one party at the expense of a counterparty. Also, the arguments against joinder and intervention involve a lack of party autonomy arising from the lack of consent to joinder or intervention and

34 Meligy, *supra* note 29

35 Strong , *supra* note 33.

36 For example, only permitting joinder of third parties when they helped the respondent's case or setting an arbitrary limit on the number of third parties that could participate in the proceedings.

the method of appointing the arbitral tribunal in multiparty arbitral proceedings, discussed below.[37] However, these disadvantages and challenges, though critical, can be overcome by the legislator through providing limitations and requirements regarding the joinder and intervention procedures. For example, as shown earlier, the DCCP has provided certain limitations of the arbitrators' authority when allowing a joinder or intervention to prevent a lack of consent. In this regard, Article 1045(3) restricts joinder or intervention if the original parties have excluded the possibility of such joinder and intervention in their contract. This article serves as a model for the Palestinian Legislator and Judiciary to balance the need for multiparty arbitration and respecting party autonomy. As a result, excluding joinder and intervention based on party autonomy concerns, as shown in the earlier examples, is not recommended. Instead, these concerns should be addressed and treated carefully without losing the essential advantages of accepting third-party's interest in arbitration through joinder and intervention.

4 Existing Parties v. Third Parties to the Arbitration Agreement

As mentioned above, many states have addressed issues of joinder and intervention mainly by referring to party autonomy and contractual privity principles, emphasizing the importance of parties' agreement to arbitrate and their procedural autonomy.[38] Therefore, the characterisation of the parties is an essential question in the formation and validity of the arbitration agreement.[39] The Ramallah Court of Appeal has reflected this analysis by stating that:

> Arbitration is a form of dispute resolution in which obligations and rights are arranged by providing profits to the winning parties, while the other may bear monetary damages. Accordingly, the parties need to be signatories to the arbitration agreement and have the capacity to be bound by it.

Further, in some jurisdictions, the question of joinder and intervention relies heavily on defining the party to the arbitration agreement. For example, the UAE Federal Arbitration Law, ICC, and the Model Law, required that to permit

37 Fiqh *et al.*, *supra* note 11 at 354. More about parties' consent in Section 5.1 of this article.
38 Born, *supra* note 2 at 2759–2816.
39 Jerusalem Court of Appeal case number 44 of 2017. Unofficial translation.

the joinder of third parties, they shall be part of the arbitration agreement.[40] Also, the Supreme Court of the United States has held that: 'arbitration is strictly a matter of consent [……] and thus that courts must typically decide any questions concerning the formation or scope of an arbitration agreement before ordering parties to comply with it.'[41]

Hence, in order for this research to draw recommendations on adopting joinder and intervention rules, it is crucial first to define the parties to arbitration agreements, which are bound and may invoke the arbitration process, then clarify what standards shall be considered to identify 'others' as third parties with rights to join or intervene in the arbitration process.

In this regard, the PLA and the Palestinian judiciary, as well as most international arbitration conventions and national arbitration legislations, provide no express guidance in identifying the parties to an international arbitration agreement. For example, Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('NYC') stresses that arbitration agreements obligate their parties without addressing how an arbitration agreement's parties are determined.[42] Also, the Model Law and most other national arbitration legislation are substantially similar.[43]

Still, Article 5 PLA provides that the arbitration agreement is the agreement signed by the parties or at least included in the communications between such parties.[44] Accordingly, one may conclude that the PLA defines arbitration parties as two or more parties who signed the arbitration agreement or included the arbitration agreement directly in their communications; other entities, who are 'non-signatories', are not parties to the arbitration agreement and are, hence, not bound by, or able to enforce, its terms.

---

40 Article 22 FAL; Article 7 ICC; Article 17 Model Law.

41 *Granite Rock Co. v. Int'l Bhd of Teamsters*, 561 U.S. 287, 298 n. 6 (U.S. 2010).

42 Article II NYC states that 'Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.' *See* G. Schramm & Pinsolle, 'Article II', in H. Kronke, P. Nacimiento, D. Otto, N.C. Port, A. Armer, H. Bagner, A. Börner, S.E. Bowers, B.A. Davis Noll, O. Elwan, X. Fuentes, D.M. Fuhr, E. Geisinger, A. Jana, J. Klein Kranenberg, P. Pinsolle, D. Schramm and J.R. Simonoff (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention* (Alphen aan den Rijn: Kluwer Law International, 2010) 62.

43 Article 7(1) Model Law. In this regard *see* Born, *supra* note 2 at 1518–1521.

44 Article 5/3 PLA states' The agreement on arbitration shall be considered written if it includes a text signed by the parties or if it is implied by exchange of letters, telegrams or any other written documents between them.' Unofficial Translation.

Despite the previous, the party performing a contract is not necessarily a party to that agreement or the associated arbitration clause. Regardless of their status as non-signatories, there are circumstances in which third parties that have not signed or approved an arbitration agreement may be both bound and benefited by its terms. For example, an agent may enforce an agreement on behalf of its principal, producing the result that the principal is a party to the agreement, but the agent is typically not. As put by a leading European commentator, 'persons other than the formal signatories may be parties to the arbitration agreement by application of the theory of apparent mandate or ostensible authority or because they are third-party beneficiaries [or on other grounds].'[45]

In the absence of statutory guidance, disputes over the identities of the parties to international arbitration agreements, and the application of non-signatory doctrine, have been left almost entirely to national courts, arbitral tribunals, and jurisprudence.[46] In this regard, multiple court decisions from developed law systems have recognized the rights of non-signatory third parties to intervene in the arbitration.

For example, the Paris Court of Appeal upheld an ICC award rendered in the Dow Chemical arbitration[47] in which the arbitral tribunal obliged a non-signatory third party to a contract containing an arbitration clause to submit to arbitration proceedings because the shared intentions of the signing parties demand such interpretation. The arbitral tribunal reached its decision by considering the unique circumstances of international commerce, particularly in the presence of a group of companies (the group of companies doctrine). The court stressed that this might be the case in particular if the non-signatory company has actually participated in the conclusion, execution, and termination of the contract, appeared as the actual party both to the contract and to the arbitration clause, and has benefited or will probably benefit of such appearance.[48] It is important to note that the decision of the court has caused multiple arbitral tribunals in the following cases to accept jurisdiction over non-signatories of the arbitration clause. A similar decision was issued in

45 B. Hanotiau, *Complex Arbitrations: Multi-Party, Multi-Contract and Multi-Issue* (Alphen aan den Rijn: Kluwer Law International, 2005), 12.

46 B. Hanotiau, 'Problems raised by complex arbitrations involving multiple contracts-parties-issues — an analysis', *Journal of International Arbitration* 18(3) (2001): 251–260, doi: 10.54648/354644.

47 ICC Case No. 4131, Y.C.A. Vol. IX (1984), 131.

48 *The Dow Chemical Company and Others v ISOVER Saint Gobain*, Interim Award, ICC Case No. 4131, 23 September 1982, in P. Sanders (ed.), *Yearbook Commercial Arbitration 1984-Volume IX* (Alphen aan den Rijn: ICCA & Kluwer Law International), 131, 136–137.

British Colombia. In *Northwestpharmacy.com Inc v Yates*, the Supreme Court of British Columbia held that non-signatories can be parties to arbitration agreements. The court ruled that in certain circumstances, non-signatories can be parties to arbitration agreements. Such circumstances include when the plaintiff treats the defendant as the true party to the contract.[49]

Other than in France, some national courts lean towards a conservative approach concerning non-signatory issues and adopt a thorough analysis of the specific circumstances of a case. For example, the Supreme Court of the Netherlands has accepted the Hague Court of Appeal ruling that confirmed that non-signatory third parties may be bound to an arbitration agreement only if exceptional circumstances existed that justified or necessitated such extension.[50] Further, unlike other jurisdictions such as the UAE and the Model Law, the DCCP did not provide that the third party should be signatories to the arbitration agreement. Article 1045 DCCP states: 'At the written request of a party the arbitral tribunal may allow that party to implead a third person, provided that the same arbitration agreement as between the original parties applies or enters into force between the interested party and the third person.'[51] It also added that the arbitral tribunal should only allow the parties and the third person to make their opinions known, with no requirements regarding their consent.[52] These provisions provide two possibilities, either the arbitration agreement between the original parties also applies to the third person or a new arbitration agreement enters into force between the third party and the exiting parties. In both possibilities, the DCCP permits the participation of a third party in the arbitration process without demanding them to be a signatory to the original arbitration agreement.

Nevertheless, the decision on joinder and intervention for non-signatories cannot be based on a single and general rule. Instead, the contractual language and factual settings must be examined in order to determine the parties' intentions and, hence, the legal consequences of those intentions in particular cases. In many instances, analysis shall be conducted on a fact-intensive, case-by-case basis. One arbitral award put this clearly:

---

49 *Northwestpharmacy.com Inc. v. Yates*, 2017 BCSC 1572. See L. Cundari & B. Gordon, *B.C. Supreme Court extends arbitration agreement to non-signatories*, available online at https://www.lexology.com/library/detail.aspx?g=04af2962-e100-43be-860c-b27c99f109ab (accessed 29 November 2017).

50 The Netherlands, *Judgment of 20 January 2006*, ECLI:NL:HR:2006:AU4523, paras 4, 5 (Netherlands Hoge Raad).

51 Article 1045 (1)DCCP, *supra* note 16.

52 Article 1045 (3)DCCP, *supra* note 16.

> The question whether persons not named in an agreement can take advantage of an arbitration clause incorporated therein is a matter which must be decided on a case-by-case basis, requiring a close analysis of the circumstances in which the agreement was made, the corporate and practical relationship existing on one side and known to those on the other side of the bargain, the actual or presumed intention of the parties as regards rights of non-signatories to participate in the arbitration agreement, and the extent to which and the circumstances under which non-signatories subsequently became involved in the performance of the agreement and in the dispute arising from it.[53]

In this regard, several international institutions, although varying in their approach, have stressed the importance of examining all circumstances in order to permit (or deny) joinder or intervention to arbitration procedures. For example, under Article 7(2) of the ICC Rules, the party filing the request for joinder may submit 'such other documents or information as it considers appropriate or as may contribute to the efficient resolution of the dispute', which indicates the ICC Court would consider the efficiency of joinder in the disputes.[54] Also, LCIA, HKIAC, and ACIC rules specify that the arbitral tribunal shall consider all circumstances when ordering on the matter of joinder and intervention.[55]

Based on the above, this research stresses that the PLA, when adopting joinder and intervention rules, should create a criterion to assess whether it is more efficient and cost-effective to grant the application for joinder, and this will include consideration of the legal, factual, and technical connections between the pending arbitration and arbitration involving the additional party, and the stage of the pending arbitration.

The primary step of this assessment is based on providing a clear definition of a 'third party' to determine who is permitted to join or intervene in the arbitration procedures. Although the determination of a 'potential third party' shall be, and always remains, decided by courts on a case-by-case concern, it is vital to provide grounds for the courts to utilize it. Otherwise, we may risk the case where an outsider is involved in the arbitration dispute without any genuine interest in it, or vice versa. These grounds may include, among others, the following: first, a third party, whether a signatory or not to the arbitration agreement, will have a right to intervene in arbitration when:

53 *Interim Award in ICC Case No. 9517*, quoted in Hanotiau, *supra* note 46 at 203.

54 Article 7(2) of the ICC.

55 Article 22 LCIA; Article 27 HKIAC and; Section 17 ACICA.

(1) the third party maintains an interest connecting to the dispute subject of the arbitration.
(2) the arbitration may harm the third party's capacity to defend that interest; and
(3) the existing parties will not sufficiently represent the third party's claim in the arbitration.

On the other hand, an existing party shall have a claim to join a third party into arbitration when:

(1) the absence of a third party will prevent a genuine relief to the existing parties; and
(2) the third party maintains a vital interest connecting to the dispute that the disposition of the arbitration in the third party's absence may harm the third party's capacity to defend that interest or leave any other existing parties subject to a considerable risk of incurring several conflicting obligations because of the claimed interest.

In sum, whereas courts will eventually determine the participation of third parties on a case-by-case basis, providing guidelines for courts to follow is vital to avoid involving parties without a genuine interest or excluding those with a valid stake in the dispute. By establishing the above-mentioned criterion, the PLA will ensure the need for multiparty arbitration and preserve party autonomy while guaranteeing that the arbitration process remains fair and efficient in addressing the complications of multiple parties arbitration.

5 Methods of Incorporation and Practical Matters Concerning Joinder and Intervention

When adopting efficient rules for joinder and intervention, many concerns of the law shall be addressed; these concerns have resulted from the vast experience of developed legal systems and the best practices in international arbitrations. By considering these matters, the Palestinian law will have a better opportunity of adopting efficient rules on joinder and intervention. In this section, the research will address the most critical matters that are raised regarding adopting a joinder and intervention rule; these matters result from the procedural nature of the joinder and intervention rules, which are: the consent for joinder and intervention, the competence of issuing joinder and intervention order, the appointment of arbitrators in case of joinder and intervention and the matter of confidentiality.

5.1 *The Quest for Consent. Shall the Joinder be Discretionary?*

Because arbitration is contractual in nature, consent has been generally deemed the cornerstone for permitting joinder or intervention in the arbitration processes.[56] One French court stressed the significance of consent in arbitration agreement by stating that: 'The law of arbitration, based on the consensual nature of the arbitration clause, does not allow to extend to third parties, foreign to the contract, the effects of the disputed contract, and bars any forced intervention or guarantee procedures.'[57]

Hence, the court or the arbitration tribunal who are faced with a joinder or intervention request in a pending arbitration will look first to the contractual language of the arbitration agreement to see what the contracting parties agreed concerning third parties.[58] In this regard, the contract may have expressly allowed, banned, or it could be silent on joinder or intervention of third parties. If the parties have agreed to permit third parties to the contract to intervene, then the courts or arbitral tribunals should sustain such language, notwithstanding subsequent objections of a party — assuming that the PLA will adopt joinder and intervention rules.[59]

The issue is mainly raised when the arbitration agreement bans or, in most cases, is silent on joinder and intervention. Most scholars provide that party autonomy requires arbitrators and courts to uphold the explicit prohibition on joinder or intervention.[60] Indeed, it would be difficult to confound such banning, although some jurisdictions diverge by permitting non-consensual joinder or intervention, quoting considerations of efficiency and fairness as reasons for this approach.[61] However, this research does not support such approach as these jurisdictions are exceptions to the general recognition of the parties' procedural autonomy in most states, and their approaches are likely contrary to the New York Convention due to public policy concerns.[62]

Silence on the issue of intervention or joinder of third parties is more important to discuss here since it is the most typical case. One reason why

56 F. Sami, التحكيم التجاري الدولي: دراسة مقارنة لأحكام التحكيم التجاري الدولي (*The International Commercial Arbitration: A Comparative Study of International Commercial Arbitration Awards*) (Amman: Dar Al Thaqafa, 2009) 122–25.

57 *'OIAETI et Sofidif v. COGEMA*, SERU and others, Cour d'appel de Versailles (Chambres réunies), 7 March 1990', Revue de l'Arbitrage, 1991(2) (1991): 326–337.

58 A. Rau & E. Sherman, 'Tradition and innovation in international arbitration procedure', *Texas International Law Journal* 30 (1995): 110–111.

59 Born, *supra* note 2 at 2766.

60 Rau & Sherman, *supra* note 59 at 111.

61 *Id*., describing public policy rationales that would establish third party joinder and intervention as of right as a mandatory, unwaivable principle of law.

62 Born, *supra* note 2.

contracts are frequently silent concerning third-party rights is the incapacity to anticipate who those third parties might be in advance.[63] Although arbitral tribunals or courts in Palestine might rely on contractual principles of interpretation derived from the *Majallah* (as the civil law in Palestine) to determine whether to authorize third parties to join or intervene in the arbitration, those principles contain very little actual guidance, as they are often both ambiguous and inconsistent.[64] Nowadays, the default action of Palestinian courts is not to allow intervention or joinder in circumstances where the contract does not expressly permit third parties to participate in the arbitration.[65]

This research recommends that the PLA assumes a positive approach towards joinder and intervention by adopting guidance to interpret parties' silence as implied consent concerning joinder and intervention. Since parties are usually hesitant to consent to joinder or intervention after a dispute, adopting this approach allows the PLA to overcome potential hurdles of multi-party disputes by providing arbitral tribunals authority to order joinder and intervention, even if the arbitration agreement was silent on the matter, without the risk of annulment by national courts.[66] The role of implied consent is particularly effective when three or more agree to arbitrate, but their agreement does not expressly permit joinder and intervention. In this case, it is impractical to assume that the parties allow the involvement of only some and not the other parties in the arbitration proceedings.[67]

Legally, there is no reasoning to prohibit implied consent for joinder or intervention in Palestine since different aspects of an arbitration agreement are implied. For example, the tribunal's power to determine the seat of

63 *See* Rau & Sherman, *supra* note 59 at 115.

64 The contractual rules contained in the *Majjalah* have not been updated since it was first applied in 1877. Therefore, these rules are casuistic in regulating certain cases and do not provide broad legal principles applicable in various cases.

65 *See* Ramallah Court of Appeal Case number 916 of 2016; Jerusalem Court of Appeal Case number 216 of 2017; Jerusalem Court of Appeal Case number 44 of 2017; and Ramallah Court of Appeal Case Number 238 of 2017.

66 G. Smith, 'Comparative analysis of joinder and consolidation provisions under leading arbitral rules', *Journal of International Arbitration* 35(2) (2018): 173–202, doi: 10.54648/JOIA2018010. Instead, parties agree to arbitration to obtain a neutral, enforceable and speedy decision, and procedural details on the level of consolidation are often not considered. As a result, determining parties' intentions concerning joinder and intervention often turns on presumptions regarding their expectations.

67 Hanotiau, *supra* note 46 at 767.

arbitration,[68] confidentiality,[69] and the choice of procedural rules.[70] Regardless, although the implied consent approach is necessary, it may be challenging to apply it without national arbitration legislation providing the basis for joinder and intervention.[71] Hence, it is recommended that the PA enact specific joinder and intervention regulations that support the presumptive application of joinder and intervention.

By way of example, some comparative legal systems do not require parties' consent concerning joinder and intervention. For instance, Article 22 of the UAE Federal Arbitration Law does not require the consent of the existing parties to joinder and intervention.[72] Instead, the arbitration tribunal, authorized to issue the joinder or intervention order, must only give the existing parties to the arbitration an opportunity to be heard on whether to allow the third party to join or intervene. Further, in France, although there are no legal regulations explicitly addressing the issues raised by multi-party arbitrations, it appears that consent to joinder and intervention may be implied based on French law and judiciary.[73] In the same context, however different in approach, in the Netherlands, Article 1045 DCCP provides that the arbitrators will decide on permitting the third party to participate in the proceedings. The DCCP does not require a parties' consent; however, it has provided certain requirements that the arbitrators should observe before allowing third parties to participate in pending arbitral procedures. These requirements are: a) a written request must be submitted from the third party showing its interest in participating in the arbitral procedures, b) the third party must be a party or must become a party to the same contract with arbitration clause as the original parties, and c) the arbitration agreement allows such joinder and intervention.[74] Nevertheless, the arbitrators are not obliged to allow the joinder and intervention if all the requirements are met, allowing the arbitration tribunal to act in a fair manner. For example, the arbitrators can refuse in a case where they rule that the

68 Article 21 PLA.

69 Article 50 ERA states that '*The arbitral tribunal shall consider the dispute presented to it confidentially, provided that it is permissible to make the session public based on the parties' agreement.*' Unofficial translation.

70 Article 18 PLA.

71 Strong, *supra* note 33 at 924–925.

72 FAL Article 22, *supra* note 13.

73 *Judgment of 7 March 1990, OIAETI v. COGEMA, SERU, Eurodif, CEA*, 1991 Rev. Arb. 326 (Versailles Cour d'Appel).

74 Article 1045 DCCP, *supra* note 16.

request for joinder or intervention would bring an unacceptable delay to the arbitration processes.[75]

Equally important, under the Swiss Rules, the SIAC Rules, HKIAC Rules, ACICA Rules, the SCC Rules, and UNCITRAL Rules, consent is not required from the parties in case of joinder or intervention to the arbitration procedures. The ICC Rules are similar as consent is not required for joinder or intervention before the appointment of an arbitrator. However, the ICC Rules provide an additional restriction that the consent of all parties is required after the appointment of an arbitrator.[76]

As a final note, it is important to stress that adopting this line of analysis concerning consent for joinder or intervention will enhance the enforcement process under NYC, to which Palestine is a party.[77] If the parties' silence regarding joinder and intervention is interpreted as not to allow joinder or intervention, an order permitting joinder or intervention would violate the parties' agreement and, as a consequence, Article II NYC.[78] Alternatively, if the parties' silence is subject to a presumptive application of joinder or intervention, then statutorily based joinder or intervention is consistent with the Convention.[79]

75 *Ibid.*

76 LCIA Rules are the most restrictive in requiring, in an application by an existing party, consent from the additional party, but not from the opposing party in the arbitration proceedings, see Article 22 LCIA. Please note that the differences among the Rules as to consents required for an additional party to be joined to the proceedings, and whether intervention should be permitted, reflect institutional differences in philosophy on the extent to which the rules should impinge upon party autonomy.

77 However, at the time of writing this research, NYC is not enforced as a law in Palestine. *See* M.A.A. Shehab, 'An analysis of the enforcement of foreign arbitration awards in Palestine: realities, drawbacks, and prospects', *Arab Law Quarterly* 36(1–2) (2020): 158–191, doi: 10.1163/15730255-BJA10062.

78 Article II NYC provides that: '1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration. 2. The term 'agreement in writing' shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams. 3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.'

79 Read more in Born, *supra* note 2 at 2787.

5.2 *The Competence of the Authority Issuing the Order for Joinder and Intervention*

Adopting rules concerning joinder and intervention might raise questions regarding the authority to issue the order concerning joinder or intervention in a pending arbitration; is that up to national courts or arbitration tribunals? Several national arbitration laws authorize national courts to order (or refuse) joinder and intervention of third parties, such as Article 27 of the British Columbia International Commercial Arbitration Act and Article 2 (Schedule 20) of the New Zealand Arbitration Act. In other jurisdictions, matters of joinder and intervention are typically for arbitral tribunals, not national courts. For example, both Article 1045 DCCP and Article 22 FAL provide that the arbitral tribunal will have the authority to allow a third party to join or intervene in the arbitration proceedings.[80] Further, many institutional arbitration rules provide arbitral tribunals the authority to order joinder or intervention, including the ICC, SIAC, LCIA, Swiss, and HKIAC. Nonetheless, even in the jurisdictions where the decisions on joinder and intervention are allocated to the arbitral tribunal, the decision of the tribunal will be subject to subsequent judicial review in the annulment and recognition proceedings.[81]

This research suggests that when adopting joinder and intervention regulations, the PLA should provide arbitral tribunals with the authority to issue the initial decision on joinder and intervention, subject to subsequent judicial review in the annulment or recognition stage. By adopting the above-mentioned approach, national courts in Palestine will serve as a default solution, only intervening when the parties and arbitral tribunal cannot effectively address joinder or intervention issues, such as when the requests for joinder or intervention were raised before the formation of the arbitral tribunal.

This recommendation is based on the notions of judicial non-interference in the arbitral procedures and the arbitral tribunal's procedural authority, which refers to the principle that courts should not interfere in arbitration procedures unless absolutely needed.[82] By limiting the involvement of courts,

80 Article 1045 DCCP, *supra* note 16. Also Article 22 FAL, *supra* note 13.

81 *See* M. Carrion, 'Joinder of third parties: new institutional developments', *Arbitration International* 31(3) (2015): 479–505, doi: 10.1093/arbint/aiv020.

82 Based on the principle of judicial non-interference, national courts should generally refrain from interfering in the arbitral process. Courts should instead allow the arbitral tribunal to resolve disputes following the parties' agreement and the applicable law. To read more about the Judicial non-interference, *See* G. Born, 'The Principle of Judicial Non-Interference in International Arbitral Proceedings', *University of Pennsylvania Journal of International Law* 30(4) (2009). Online at SSRN: https://ssrn.com/abstract=1959827. This article asserts that the principle of judicial non-interference is based on several

parties can benefit from the flexibility and speedy efficiency that arbitration is intended to provide, considering that the question of joinder and intervention is 'an issue that involves questions of case management, procedural efficiency, and fairness that are quintessentially for arbitral resolution.'[83] In this regard, the Cairo Court of Appeal has indicated support for the notion of judicial non-interference in the arbitral procedures by rejecting the interference in the arbitral tribunal's decision to join parties to the arbitration procedures even if it violates applicable procedural rules.[84]

Likewise, by allocating the authority to order joinder and intervention to the arbitral tribunal, the PLA will overcome the conflict of which law shall apply to joinder and intervention in international arbitration, whether the law of the seat or the law of the agreement. This conflict of law can significantly impact joinder and intervention in arbitration since different legal systems may have varying conditions for allowing third parties' involvement, leading to inconsistencies in the arbitration process. For example, the French legal system adopted the group of companies doctrine to extend arbitration agreements to non-signatories, while this doctrine is not typically recognized under English law.[85] In addressing the conflict of law issue, it is essential, first, to examine the parties' choice of governing law. If the parties have made an explicit choice of law that governs these issues, that choice would be respected and enforced. In the absence of an explicit choice-of-law agreement, two legal systems may be applied to questions of joinder and intervention: (a) the law governing the arbitration agreement and (b) the law of the arbitral seat.[86]

While the law of the arbitration agreement is crucial in determining whether the parties have expressly or impliedly agreed to a joinder or intervention in their arbitration agreement, several national arbitration legislation tends to address issues of joinder and intervention within the context of the arbitral seat's law because it also governs other procedural issues in the arbitration.[87]

---

factors, including the finality of arbitral awards, the principle of party autonomy, and the necessity to promote the efficiency of the arbitration process.

83 Born, *supra* note 2 at 2791.

84 Egypt *Judgment of 7 May 2008*, Case No. 76/123 (Cairo Ct. App.)

85 For example, in the Dow Chemical case, the court stated that "a group of companies constitutes one and the same economic reality of which the arbitral tribunal should take account when it rules on its own jurisdiction." *see* Dow Chemical France, *supra* note 49. On the other hand, applying the group of companies doctrine was rejected in several cases under English law. *See Peterson Farms Inc. v. C&M Farming Ltd.*, [2004] EWHC 121 (Comm) 1 [2004], Arbitration Law Reports and Review, 2004. https://doi.org/10.1093/alrr/2004.1.573

86 *See* Born, s*upra* note 2 at 2768.

87 *See*, *also*, D. Choi, 'Joinder in international commercial arbitration', *Arbitration International* 35(1) (2019): 29–55, doi: 10.1093/arbint/aiz001. (addressing factors relevant to

Thus, allocating authority to order joinder and intervention to the arbitral tribunal endorses consistency and predictability in resolving disputes related to these matters. This is achieved by allowing the tribunal to apply the same legal principles in each case, which are the rules of the tribunal seat, regardless of the parties' location or the particular circumstances of the dispute. This approach will make the arbitration process more efficient and streamlined, reducing the possibility of conflicting decisions. Also, harmonising procedural rules on joinder and intervention further promotes arbitration as a preferred method for resolving international disputes. By adhering to consistent legal principles, parties can predict the arbitration process more efficiently, making it more attractive for businesses seeking efficient and reliable dispute resolution mechanisms.[88]

In sum, allocating authority to the arbitral tribunal to order joinder and intervention provides several benefits. These include improved consistency and predictability, increased efficiency, neutrality, and harmonisation of procedural rules, contributing to a more effective and reliable dispute resolution process in Palestine.

5.3 *The Matter of Equal Participation in Appointing Arbitrators*

The appointment of arbitrators is an essential element of arbitration and a significant factor for the parties to choose to arbitrate, which requires an equal opportunity for all parties to participate in the appointment of the arbitral tribunal.[89] This issue becomes pressing when the arbitration agreement establishes the traditional three-person panel since there will be more than two parties to the arbitration and all have distinct interests.[90] Therefore, permitting joinder and intervention to third parties in the arbitration procedures will require considerable attention to the parties' ability to appoint arbitrators. Any unequal treatment in this regard will present profound public policy concerns and may constitute a basis for challenging the validity of the formation of the

exercise of discretion to order joinder; suggesting that joinder rules applicable in national courts in arbitral seat are relevant).

88 *Ibid*.

89 Sami, *supra* note 57 at 136–140.

90 If the parties have all agreed to a sole arbitrator, then the constitution of the tribunal in multi-party cases is not particularly difficult; all the parties can attempt to agree on an acceptable individual, or, if no agreement can be reached, the appointing authority can appoint an acceptable person. Also, please note that the PLA, in Article 8, that the three-person panel is the default method of appointing arbitrators unless the parties agree otherwise.

tribunal, which would, in turn, form a basis for challenging the arbitral awards issued by the tribunal.[91]

Although most arbitration laws, which address joinder and intervention, do not provide attention to the process of appointing arbitrators in case of joinder and intervention, such as the DCCP and the FAL, many jurisdictions have provided specific regulations on appointing arbitrators in case of joinder or intervention. For example, the newly issued Dubai International Arbitration Centre ('DIAC') Arbitration Rules,[92] HKIAC,[93] LCIA,[94] SIAC,[95] CIETAC,[96] ICDR,[97]and the ICC do so.[98]

Despite that all of the above regulations provide devoted procedures for arbitrators in case of joinder or intervention, they adopted different approaches, which reflect the theoretical disparities in the notion of equal protection rights. For example, the HKIAC Rules provide that when the request for joinder or intervention is submitted before forming the tribunal, all parties to the arbitration shall be deemed to have waived their right to appoint an arbitrator, and HKIAC may revoke the appointment of any arbitrators already appointed and appoint a new arbitral tribunal. In cases of a request made after its confirmation, joining parties will be deemed to waive their rights to appoint arbitrators and must arbitrate without participating in tribunal formation.[99]

Also, the LCIA and SIAC Rules provide that all parties, including existing and joined parties, will have to express the joining party's waiver of the right to participate in the tribunal appointment.[100] Likewise, the CIETAC provided that the joining party might participate in the multi-party appointment procedures if a joinder or intervention occurred before the tribunal's formation. However, after the formation of the tribunal, the joining party has two choices:

91 Article 43/2 PLA as well as Article V(2)(b) NYC at the annulment stage may provide a basis for challenging arbitral awards on grounds of public policy concerns relating to the formation of a tribunal.

92 Article 9 2022 DIAC Rules. DIAC is also called the 'off-shore' regulation to distinguish it from the mainland UAE federal arbitration law 'onshore.'

93 Article 27.11 HKIAC.

94 Article 22(viii) LCIA.

95 Article 7.12 SIAC.

96 Article 18 CIETAC which stands for China International Economic and Trade Arbitration Commission.

97 Articles 7 and 12 of the ICDR (International Centre for Dispute Resolution), which is the international division of the American Arbitration Association (AAA).

98 Article 7.1 ICC.

99 Article 27/13 HKIAC.

100 Article 22 LCIA and Article 7 SIAC.

to waive the right to appoint arbitrators or to request to nominate or authorize the Chairman of CIETAC to appoint an arbitrator.[101]

Based on the previous analysis, this research advises the PLA, when adopting joinder and intervention rules, to differentiate between the pre-constitution and the post-constitution stages of the arbitral tribunal with regards to the rights of appointing arbitrators. Suppose the request for joinder or intervention was applied before the formation of the arbitral tribunal; in that case, the joining third party shall be treated as an existing party and participate in the appointment process. If the parties could not agree on the selection of arbitrators for any reason, the court can intervene via a request to nominate arbitrators.[102] On the other hand, where joinder or intervention takes place after the formation of the tribunal, in this case, the joining party will have to consent to waive the appointed arbitrators' rights in order to approve the joinder or intervention. The consent at this stage is designed to preclude the joining party from securing grounds to challenge an unfavourable award on the allegation of equal participation issues.[103]

A final remark is that the association between parties and their appointed arbitrators is not as crucial as some believe; hence, any party to the arbitration should not expect fairness only from an arbitrator it has appointed because assuming otherwise will prejudice the notion of independence and fairness of arbitrators.[104] Suppose third parties are offered the choice of participating in the arbitration without nominating arbitrators or not participating at all. In that case, and logically, most third parties with a vital interest in the dispute will willingly choose to join the arbitration without appointing arbitrators.[105]

5.4 *The Matter of Confidentiality*

Confidentiality is among the essential factors for parties to choose arbitration. Parties expect their arbitration to be confidential because they do not want

101 Read more in Choi, *supra* note 88.

102 Please note that the court intervention to support the nomination of arbitrators is imbodied in article 11 PLA, which states 'Upon request of any of the parties or the arbitration panel, the competent court shall assign a casting arbitrator from the records of arbitrators certified by the Ministry of Justice.' Unofficial Translation.

103 Note that it could be argued that parties ought to have anticipated that the intervention or joinder of third parties might result in the loss of a party's right to choose an arbitrator. In such a scenario, an appointing authority or a national court could end up appointing all the arbitrators.

104 *See* L. Kamaiko, 'Reinsurance arbitrations', *PLI/LIT* 557 (1997): 201, 240–243, in Strong, *supra* note 33 at 928–929.

105 Strong, *supra* note 33 at 915.

certain information, such as trade secrets, revenue and other sensitive data, to become public.[106] Against this background, when adopting joinder and intervention rules, the PLA needs to pay attention to confidentiality since approving a joinder or intervention may increase the risk of confidential information being disclosed to parties who are not obligated by the same confidentiality terms as the original parties of the arbitration agreement.

To reduce this risk, adopting methods that aim to protect confidentiality is essential, such as adopting remedies for unauthorized disclosure and implementing strict measures for transferring confidential information.[107] For example, the arbitration tribunal may obligate third parties who wish to join or intervene in the arbitration proceedings to sign confidentiality agreements that address their obligation to preserve confidential information. Such agreements may ensure that all the parties can be held accountable in case of violating confidentiality.[108]

Further, the Palestinian Authority needs to establish a code of ethics that set forth legal norms and professional conduct for all parties involved in the arbitration proceedings, as well as the arbitral tribunal, including the duty to maintain the confidentiality of the arbitration proceedings.[109] For example, imposing censorship on confidential information by removing it from any documents shared with outside parties, such as witness statements, to decrease the risk of unauthorized disclosure. This code of conduct may also promote or require separate proceedings for addressing confidential matters, with limited attendance and access to confidential information. Adopting these measures can decrease the risk of disclosing confidential information when allowing

106 Please note that Article 50 ERA addresses confidentiality as a general rule. However, this article does not specifically provide that any violation of confidentiality will be deemed a breach of the arbitration agreement, potentially resulting in sanctions or damages. *See supra* note 70.

107 The Palestinian legal system encounters hardships when it comes to awarding damages. One significant barrier is the restriction on granting damages solely for the actual damages that the plaintiff has incurred. Hence, seeking compensation for potential or speculative damages is challenging, especially in cases where confidential information is leaked without any initial agreement to safeguard such information. *See* Articles 19, 20, 27, and 31 of the *Majallah*.

108 *See* C. Baldwin, 'Protecting confidential and proprietary commercial information in international arbitration', *Texas International Law Journal* 31 (1996): 451–494, at 453, 460–461.

109 Several legal systems have established codes for professional conduct and ethics in arbitration. For example; The American Arbitration Association ('AAA') and the American Bar Association ('ABA') Code of Ethics for Arbitrators in Commercial Disputes, which was initially prepared in 1977 by a joint committee consisting of a special committee of the American Arbitration Association and a special committee of the American Bar Association.

joinder and intervention in the PLA while assuring that the arbitration proceedings are conducted fairly and efficiently.

Finally, it is interesting to mention that many potential third-party participants already have full or partial knowledge of the issues, thus eliminating many of the parties' confidentiality concerns.[110] For example, most parties who have some interest in the outcome of commercial arbitration are connected to the parties through contracts or other business contacts. Therefore, it is difficult to argue that confidentiality concerns should bar third-party joinder or intervention if proper precautions are taken to protect the existing parties' legitimate privacy issues.

6 A Proposed Solution

Based on the analysis above, this study proposes amendments to the PLA to include new rules for joinder and intervention, enabling third parties to join or intervene in an existing arbitration procedure provided they have an evident interest in the arbitration.[111] The following suggested amendments require the arbitral tribunal to evaluate the impact of a party's request on the efficiency and fairness of the proceedings, the timing of the request, and any damage that may be caused to the existing parties. This amendment guarantees that the tribunal will remain in charge of the proceedings and that the rights of the current parties will not be prejudiced. Further, as confidentiality is a critical aspect of arbitration, the following amendment includes provisions that impose confidentiality obligations on all parties, including those who join or intervene. This requirement ensures that the proceedings remain private, and parties' interests are protected. Sanctions or damages may apply for any violations of confidentiality.

The following amendment also aims to provide more flexibility in the arbitration process while maintaining the integrity and confidentiality of the proceedings. The arbitral tribunal's decision would be final, binding on all parties

110 C. Browen, 'Presumption Meets Reality: An Exploration of the Confidentiality Obligation in International Commercial Arbitration', *The American University International Law Review* 16(4) (2001): 969–1025, at 1020.

111 Due to the dissolution of the Palestine legislative council, the process of enacting or amending a legal rule in Palestine is complicated, with more limited democratic oversight and potentially slower decision-making processes. Generally speaking, the President of the Palestinian Authority can issue decrees with the force of law, but these decrees are subject to review by the Higher Court of Justice. The Palestinian Cabinet can also issue temporary laws and regulations but must be approved by the President.

to the arbitration, including those who joined or intervened, and enforceable per the rules of the PLA and any international treaties to which Palestine is a party. Overall, these changes would enhance the PLA's effectiveness and promote the use of arbitration to resolve international disputes in Palestine.

The following details the provisions of the proposed rule:

Article X: Joinder and Intervention:[112]

(1) A request for a joinder or intervention may be applied to the arbitration tribunal in writing, provided that the arbitration agreement approves such a joinder or intervention and the request for joinder or intervention is submitted before the conclusion of the arbitration proceedings.[113]

(2) If the arbitration agreement is silent on the joinder or intervention, the parties' silence shall be interpreted as their implied permission to joinder or intervention, provided that the rights of the parties are not prejudiced.[114]

(3) The arbitration tribunal may hold the request for joinder or intervention if the additional party has a direct and material interest in the result of the arbitration procedures.[115] The arbitration tribunal shall consider all the relevant circumstances when assessing the request for joinder or intervention, including the impact of the joinder or the intervention on the fairness of the arbitration procedures, the urgency of the joinder or intervention request, and the damages that may result from allowing or denying joinder or intervention on all the parties, including third parties.[116]

(4) The arbitration tribunal shall impose the necessary measures to secure the confidentiality, when needed, of all parties involved in the arbitration proceedings. Any breach of confidentiality shall be considered a breach of the arbitration agreement and may result in sanctions or damages.[117]

112 The author refers to the article number as 'X' in anticipation of its adoption into the PLA, which is uncertain as to when or if it will occur.

113 Please refer to the discussion in Section 5.1 of this article.

114 *Ibid.*

115 Please refer to the discussion in Section 5.2 of this article.

116 Please refer to the discussion in Section 4 of this article.

117 Please refer to the discussion in Section 5.4 of this article.

(5) If the tribunal approves a joinder or intervention, the additional party will be treated as an existing party and shall have the right to select the arbitrators.[118]

(6) If a party intervenes or joins the tribunal after the arbitral tribunal has been appointed, the new party must agree to waive its right to object to or challenge the appointment of arbitrators, unless the Arbitral Tribunal deems such waiver will prejudice the additional party's material rights in the arbitration procedures.[119]

(7) The award of the Arbitral Tribunal shall be final and binding on all parties to the arbitration proceedings, including parties joined or intervened.

7 Conclusion

The increased level of international business in Palestine has led to complex international legal relations, often involving multiple parties or contracts relating to a single commercial transaction. Therefore, the Palestinian Authority should recognize the third parties' interest in the arbitration to create an arbitration-friendly environment. This research provides recommendations based on comparative legal systems' extensive experience with multi-party disputes. Firstly, defining 'third parties' clearly is necessary to determine who can join or intervene in the arbitration procedures. Also, the PLA should adopt a positive approach towards joinder and intervention by allowing implied consent as well as providing arbitral tribunals with authority to order joinder and intervention. The national courts should only intervene when the parties and arbitral tribunal cannot effectively address joinder or intervention issues. The integrity of the arbitration process must be maintained when adopting joinder and intervention rules. Two crucial issues to consider are the parties' ability to appoint arbitrators and confidentiality concerns. To address these concerns, the arbitral tribunal should maintain procedures to ensure confidentiality or require intervenors and joined third parties to sign confidentiality agreements with strict penalties for noncompliance. Finally, this research provides a model rule of law on joinder and intervention that aims to enhance the Palestinian Authority's effectiveness and promote the use of arbitration as a means of resolving disputes in Palestine.

118 Please refer to the discussion in Section 5.3 of this article.

119 *Ibid.*