THE IMPACT OF THE DOCTRINE OF FORUM NON CONVENIENS ON NATIONALITY CRITERION IN THE LIGHT OF PALESTINIAN CIVIL AND COMMERCIAL PROCEDURES LAW: THE CASE OF PALESTINIANS WITH RESIDENCY IN ISRAEL

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Abstract: *This paper explores the doctrine of forum non conveniens as it serves those resident in Israel with Palestinian nationality and Israeli identity cards. These Palestinians are situated under the jurisdiction of the Palestinian court, regardless of whether the plaintiff's nationality is Palestinian or foreign. It is important to note that the doctrine is less useful for a foreign plaintiff;*[1] *however, this notation also applies to a lesser degree to Palestinian plaintiffs, as they enjoy the merits of the doctrine when instituting litigation in Palestinian courts, despite the impossibility of executing Palestinian decisions in the Israeli legal system. Thus, a "Palestinian" person, in this paper, faces the dilemma of having a Palestinian passport and nationality, but an Israeli identity.*

Keywords: *Palestinian nationality, Israeli identity, trial, judicial jurisdiction, forum non conveniens*

1. INTRODUCTION

The individuality and significance of this research concerns the provisions of Palestinian law due to its complex connection with Israeli law, which is the crux of the issues under study.[1] The Palestinian legislator organised the provisions of international judicial jurisdiction within Articles 27–31 of the Civil and Commercial Procedural Law (hereinafter PCCPL) and international judicial jurisdiction rules are applied when Palestinian courts consider a dispute.[2] The PCCPL adopts the criterion of nationality, in contrast to the Jordanian Civil and Commercial Procedures Law, which does not.[3] For example, Article 27 of the PCCPL authorises Palestinian courts to exercise jurisdiction when a claim is made against a Palestinian with an Israeli identity card or residency in Israel, regardless of whether the plaintiff is Palestinian or not.

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[1] WILSON, J. R. Coming to America to File Suit: Dr. Firas Abdel Massedeh, College of Law, Al Ain University, UAE; WILSON, J. R. Coming to America to File Suit: Foreign Plaintiffs and the *Forum Non Conveniens* Barrier in Transnational Litigation. *Ohio State Law Journal*. Vol. 65, p. 659.

[1] Institute of Law. In: *Birzeit University Institute of Law* [online]. [2021-03-21]. Available at: <http://lawcenter.birzeit.edu/lawcenter/ar/homepage/>.

[2] *Civil and Commercial Procedures Law*. 2001, Vol. 38 of Palestinian Events (Palestinian Authority 05/09/2001. p. 5.

[3] ABU MOGHLI, M. A. M. National Attitude and Voluntary Subjugation: Legal Problems in the International Jurisdiction of the Jordanian Judiciary. *Jordanian Journal of Law and Political Science*. 2013, Vol. 5, No. 4, p. 125.

The doctrine of *forum non-conveniens* is an Anglo-American resolution to the shortcomings of international judicial jurisdiction dealing with fairness and litigation. It is also concerned with the unwritten principle in the common law judicial system that an accused's trial in the State's jurisdiction is the sole litigation process. This procedural approach may not be the fairest judiciary system, as it depends on coincidental circumstance and the location of a person as the reason for litigation, rather than an objective criterion when the subject matter of the dispute is foreign. A solution to this situation is provided by the international judicial jurisdiction of the local judge, by creating a link between the accused and a local court. From this point, the approach taken within the paper is to set the balance of international judicial jurisdiction towards the accused, in order to exercise the principle of a fair trial by seeking a more suitable judicial jurisdiction.

Non-competent courts are strongly related to the nationality of the accused even though the criterion has been criticised since, as noted, it has no real connection to the accused. However, public order aspects can provide the legal background on which to implement the non-competent court criteria into the Palestinian legal system and the Israeli-Palestinian situation. This is key when the political status quo influences legal issues. Indeed, both parties have worked together to organise the legal situation through the Oslo Accords and its follow up protocols, to identify judicial jurisdiction in Israel and Palestine. Article 27 of the Accords is a significant provision which gives jurisdiction over Palestinians residing in Israel, without mutual citizenship and not holding Israeli citizenship, to Palestinian courts. In reality, however, the application of this provision is controversial when the accused Palestinian is in Israel, due to the judicial procedures becoming more complicated when the dispute relates to the geographical jurisdiction of Israeli judicial authority rather than Palestinian jurisdiction, as stated in Article 27 of the Accords.

The issue at hand is also very clear when a Palestinian court convicts a Palestinian residing in Israel and the plaintiff wishes to implement the verdict in Israel. Such implementation is impossible as Israeli courts refuse to implement the verdict of Palestinian courts, despite Article 27, even though Palestinian court precedents have approved the implementation of Israeli court decisions. This contradictory procedural conflict is a practical justification for the application of *non conveniens*.

As a direct outcome of this procedural contradiction, the most appropriate solution might be approval of an Israeli verdict delivered on an accused Palestinian residing in Israel, and indeed many recent Palestinian verdicts have adopted this approach. For the Palestinian judicial system, following in the footsteps of the Egyptian Court of Cassation (ECC) by adopting the Latin Law judicial/legal system may be appropriate. For example, the ECC's most recent verdict adopting the *non conveniens* court principle is one which Palestinian courts could follow. Further, the Palestinian Court of Cassation's most recent verdict considered that a Palestinian residing in Israel fell under the jurisdiction of Palestinian courts rather than Israeli and its previous precedents create judiciary justification to apply *non conveniens*.

2. ANALYSIS OF THE NON CONVENIENS COURT

2.1 The Concept of the Theory and its Historical Evolution[4]

The *forum non conveniens* doctrine emerged in some common law states, particularly in Scotland,[5] England,[6] and the USA,[7] in cases when the court finds another forum more compatible for the interests of all parties involved, and which serves justice better.[8] The doctrine has become more apparent in countries with Latin laws which take the content of the doctrine without actually making reference to it. These countries include France,[9] Switzerland,[10] Germany,[11] and the Netherlands.[12] Many countries have adopted the doctrine explicitly, or inclusively by adopting concepts derived from it, but all agree on the court's right to retain or decline jurisdiction according to whichever juridical forum is more appropriate and of service to justice.[13] However, it is the court's function to recom-

[4] The *non conveniens* doctrine differs from judicial delegation of powers since in *non conveniens* there is no conflict of laws in its traditional concept. There is no mutual case in two national jurisdictions, but rather a case being litigated in a certain local court, which decides that the most suitable solution is for a foreign court to have jurisdiction over the subject matter of the dispute. HLO, A. Judicial Delegation. *Legal and Political Science Journal*. 2015, Vol. 4, No. 12, p. 115.

[5] BIES, J. Conditioning forum non conveniens. *University of Chicago Law Review*. 2000, Vol. 67, No. 489, p. 492.

[6] GARDNER, M. Retiring forum non conveniens. *New York University Law Review*. 2017, Vol. 92, No. 390, pp. 390–460.

[7] Ibid. p. 392. See more: REUS. A. Judicial Discretion: A Comparative View of the Doctrine of Forum Non Conveniens in the United States, the United Kingdom, and Germany. Loy. *L. A. Int'l & Comp. L. Rev*. 1994, Vol. 16. No. 2, pp. 464–467.

[8] LINARELLI, J. Toward a political theory for private international law. *Duke Journal of Comparative and International Law*. 2016, Vol. 26, No. 299, p. 320.

[9] Article 96 of the new French procedural law: "1- If the judge finds that the case is within the jurisdiction of a criminal, administrative or arbitration court or a foreign court, it is limited to referring the litigants to litigation before it. 2- In other cases, the judge shall, in the judgment not having jurisdiction, decide to designate the parties and the other judge referred to him by the competent court, and such determination shall be binding". This Article is fit to establish the basis of *forum non conveniens*.

[10] Swiss Private International Law in 1987 approved the content of the theory in some of its texts. Such as, Article 77(2): "when it appears that adoption will not be recognized in the State in which the adopter is domiciled or of its nationality, nor in the State in which the adoptive spouse is or is of national origin, the court must take into account the conditions for recognition of adoption The State concerned, and if recognition of adoption would not be guaranteed. Nevertheless, the case of adoption should not be adjudicated". This article – even though restricted in its scope of application – still contains the philosophy of the doctrine.

[11] Although the existence of the doctrine is not settled – see in this meaning VERHEUL, J. P. The forum (non) conveniens in English and Dutch Law and under some international conventions. *International and Comparative Law Quarterly*. 1986, Vol. 35, No. 2, article 413, [2021-03-21]. Available at: <https://www.jstor.org/>. The Court of Appeal of Frankfurt decided in 1982 that "the inappropriate court theory of American law […] provides significant legal protection in international procedural law, whereby foreign parties can be obliged to lift their dispute before their national judge All parties", cited in AL-ROUBI, M. The "forum non conveniens" theory as a means of international judicial cooperation. *Journal of Security and Law*. 2014, Vol. 22, No. 1, p. 45. Supra note. 8 REUS. A., pp. 492-493. Also see the German Civil Procedure Statute ("ZPO"), p. 650 and p. 651 of the Statute which are in line with the Hague Convention. The Supreme Bavarian Court adopted the doctrine as alternative in OLG Nurnberg IPRspr. 1960/61 No. 207; 1961 AWD 18. and other decisions followed on in; OLG Bamberg, 1982 IPRax 28; OLG Frankfurt, 1986 IPRax 284; AG Würzburg, 1985 1PRax 111; AG Eggenfelden, 1982 IPRax 78.

[12] Article 429 of the Dutch Code of Civil Procedure states that "a Dutch judge shall not have jurisdiction to adjudicate proceedings if such action is not sufficiently linked to the Dutch legal system." Although there is difference between the "minimum contacts," as the Article states and "forum non conveniens," this article has the essence of the forum non conveniens doctrine.

[13] BRAND, R. A. Comparative forum non conveniens and the Hague convention on jurisdiction and judgments. *Texas International Law Journal*. 2002, Vol. 37, No. 467.

mend parties to the convenience forum. The theory's popularity in countries adopting Latin legal systems led to international recognition by the International Law Institute (Institute De Droit International) in 2003 in Belgium.[14]

The Israeli judiciary stance has evolved over the years prior to the enactment of the doctrine on various stages of development from the personal jurisdiction over Palestinians residing in the Palestinian Territories (hereinafter PT). The standpoint differed form 1967- early 1980s.[15] The stance in the early 1990s and beyond the Oslo Accord was more appreciative towards the *Forum Non Convenies* on residing Palestinians in the West Bank and Gaza.[16]

The philosophy of the doctrine is enshrined in the 2004 ALI/UNIDROIT Principles of Transnational Civil Procedure. Its second principle concerns court jurisdiction to parties and provides that the "more appropriate forum consider the dispute."[17] Palestinian courts may draw inspiration from these principles as global standards for civil procedures.[18] In addition, the approach taken by the Egyptian Court of Cassation, discussed later, is considered a pioneering adoption of the *forum non conveniens* doctrine, and united some scholars and courts,[19] even though other scholars believe the doctrine to be contrary to courts' national jurisdiction.[20]

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[14] "I. when the jurisdiction of the court seized is not founded upon an exclusive choice of court agreement, and where its law enables the court to do so, a court may refuse to assume, or exercise jurisdiction in relation to the substance of the claim on the ground that the courts of another country, which have jurisdiction under their law, are clearly more appropriate to determine the issues in question". Institut de Droit International, Session de Bruges, 2003. Second Commission. The Principles for determining when the use of the doctrine of forum non conveniens and anti-suit injunctions is appropriate.

[15] Israeli Judiciary adopted the personal jurisdiction upon Palestinian residents in the PT. This was exemplified in Israeli Supreme Court in *CA 55/71 Al-Khir & Sons Co. v. Van Der Hurst Fruit Import*. In which, the Israeli court extended and recognised its jurisdiction on the defendant a Palestinian residing in Gaza which has been supported in the Rule 6 of the Rules of Civil Procedures 1984 which stated an action that is not within the proper jurisdiction of a court under these rules or any other law is to be brought before a court in Jerusalem that has proper subject matter jurisdiction, but the court in Jerusalem may order otherwise should it believe that under the circumstances trial in another forum would be more convenient for the parties. However, the Al-Khir Case and the legislative amendment on RCP lead to an overload of cases in Israeli courts with no logical or local jurisdiction other than personal jurisdiction and the provisions of the above Rule. For more detailed information see NATHAN, E. Israeli Civil Jurisdiction in the Administered Territories. *Isr. Y.B Human Right.* 1983, Vol. 13, p. 90. The same statement could be addressed in CC (Jer) 748/82 *Jabbour v. Hanitan, [1982] Isr DC* 5743(1) 499 (A judgment delivered by Israeli District Court the Honorable Judge Eli Nathan. Which lead to more reserved personal jurisdiction and closer to the *Forum Non Conveniens* Doctrine. KARAYANNI, M. M. The Quest for Creative Jurisdiction: The Evolution of Personal Jurisdiction Doctrine of Israeli Courts Toward the Palestinian Territories. *MICH. J. INT'L L.* 2008, Vol. 29, p. 697.

[16] *CA 2705/97 Ha-Geves A. Sinai Ltd. v. Lockformer* [1998] Isr SC 52(1) 109. KARAYANNI, M. M. *Forum Non Conveniens in the Modern Age: A Comparative and Methodological Analysis of Anglo-American Law*. Leiden: Brill – Nijhoff, 2004, pp. 181–183. BAUM, I. Legal Transplants v. Transnational Law: Lessons From the Israeli Adoption of Public Factors in Forum Non Conveniens. *Brooklyn Journal of International Law*. 2015 Vol. 40, No. 2, pp. 380-381.

[17] DAWAS, A. Applicability of the 2004 ALI/UNIDROIT principles of Transnational Civil Procedure. *Journal of Al-Najah University for Research (Humanities)*. 2008, Vol. 22, No. 4, p. 1274.

[18] Ibid., p. 1288.

[19] SADEK, H. A. The extent of the right of the Egyptian judiciary to abandon on its international jurisdiction over disputes civil and commercial: comment on the decision of the Egyptian Court of Cassation, issued 24 March, 2014.

[20] SABOSI, A. S. A. Principles of UAE international judicial jurisdiction: in family matters analytical study. *Dubai Police Academy Journal*. 2017, Vol. 25, No. 2, p. 289.

It is important to note that the doctrine is not, as shown in the International Law Institute, compulsory.[21] It is considered an optional subsidiary for national courts and is not included in the procedural laws of Arab countries, including Palestine. As such, its implementation remains within the judge's discretionary power, and this is a key point to note since, although Palestine courts respect judiciary precedents, they are not entirely binding. This does not mean, however, that the doctrine is failing to influence regional judges, as addressed in the ECC.

2.2 Conditions of the Doctrine

Forum Non Conveniens and the Court's View of the Dispute

Many judicial considerations need to be available for the implementation of the doctrine, although not all are required. These are:

a) The dispute relates to another country's judicial jurisdiction and the conflict between the parties has strong ties with the jurisdiction of another country;[22]
b) The court's authority extends to all elements of the trial, even though it may complicated for regarding access to witnesses and documents;
c) The plaintiff's purpose for litigation based on the nationality of the accused is not ill-intentioned, in order to undermine the accused's ability to set a capable defence;
d) The judge must balance the different interests of the litigating parties, taking into consideration the cost of travel and the trial/litigation, and whether the jurisdiction of the court is appropriate;[23]
e) A competent court is an essential condition despite various views to the contrary.[24]

3. DISTINGUISHING THE DOCTRINE OF *FORUM NON CONVENIENS* FROM *SIMILAR DOCTRINE*

3.1 The Doctrines of Forum Non Conveniens and Minimum Contacts

The differences between the two doctrines need to be determined to identify the most applicable for Palestinian courts when serving both parties' interests. The American legal system adopted the minimum contacts doctrine in *International Shoe v. Washington*;[25] rather than exercising discretionary authority, the adoption nevertheless constitutes an objective standard, with specific conditions.[26] However, even if such an adoption is par-

[21] *Supra* note 15.
[22] As seen in *supra* note 2. Also see SHA'BAN. H. The modern trends of waiver of international jurisdiction on light of decision of Egyptian Court of Cassation. *International Review of Law*. 2017, Vol. 3, p. 41.
[23] MAHDI. K., SAFA. A. The analysis of the defendant code and its impact in the domain of the international jurisdiction —a comparative study. *Ahel AlBayet Journal*. 2019, Vol. 1, pp. 524–526.
[24] *Supra* note 12 AL RUBI, P. Scotland and England are of the first view that the doctrine is an essential judicial concept, the United States considers it a secondary concept that relies on the discretionary opinion of the court. Also see BAUM, I. *Supra note 17*, pp. 383–384.
[25] See SIMARD, L. S. Exploring the limits of specific personal jurisdiction. *Ohio State Law Journal*. 2001, Vol. 62, No. 1619, p. 2. See also more about the doctrine at the same reference.
[26] HOOTA, *op. cit*, p. 168.

tially logical, the doctrine requires particular objective cases in order for the courts to have wide discretionary power. It does not authorise the court to abandon its jurisdiction to another appropriate forum, but instead allows the court to decide, according to specific conditions, whether the dispute is related to a serious contact in its jurisdiction; this jurisdiction this would mean a negative role by the court, without hope of a practical solution.

In contrast, *forum non conveniens* more broadly relies on convenience and appropriacy both of which give wide discretionary power to the courts to decide which jurisdiction would be more helpful and provide wider scope for courts to escape from the restrictions of certain objective cases.[27] Thus, the doctrine provides the court with more elasticity to determine which cases it can consider efficiently for both parties.[28] Indeed, in this regard it has received criticism based on the fear that wide discretionary authority might be misused by courts, and lead to the need for restricted observations by appeal courts.[29] Despite this reservation, the author believes it is essential to adopt this doctrine, albeit restricted by the achievement of objective conditions and reasonability.

Practically speaking, the minimum contacts doctrine is still difficult in Arab countries because of its genesis in common law states, especially the USA. However, *forum non conveniens* is becoming recognised in Arab countries, at least practically speaking. Despite the traditional orientation represented by the Jordanian Cassation Court in many cases, some scholars have refused parties' agreement to foreign jurisdiction,[30] which could be considered a form of, or the result of, the application of *forum non conveniens*; this is similar to the Algerian High Court of Refusal Orientation.[31]

3.2 The Doctrines of Forum Non Conveniens and Jurisdiction Deprivation Condition

The parties may consider excluding jurisdiction based on the nationality of the defendant due to prior knowledge of the difficulty of the procedures and the existence of a more contractually appropriate foreign jurisdiction. However, such a contractual agreement is ineffective because the deprivation condition of jurisdiction is null and void, as is the standpoint of the Jordanian judiciary.[32] Because jurisdiction based on the nationality of the defendant is sovereign in nature, it overrides the agreement of the parties. Conventional rules also do not necessarily guarantee the exclusion of national jurisdiction, which is ingrained judiciary tradition. Discretion appears to take precedence when the jurisdiction of another court is more appropriate, although the application of *forum non conve-*

[27] SADEK, H. A., *supra* note 18 pp. 23–24.

[28] BURKE, J. A. Foreclosure of the doctrine of forum non conveniens under the Brussels I regulation: advantages and disadvantages. *The European Legal Forum*. 2008, pp. 1–123.

[29] See FROMHERZ, N. A. A call for stricter appellate review of decisions on forum non conveniens. *Washington University Global Studies Law Review*. 2012, Vol. 11, No. 3.

[30] BASHAYRI, M. M. A. *The Position of Jordanian Law on the Condition of International Jurisdiction: A Critical Study, Compared to the Hague Convention*. 2005, pp. 469–470.

[31] BELGITH, A. Jurisdiction of the nationality criterion. *Private International Law*. 2016, Vol. 5, p. 72, [2021-03-21]. Available at: <https://www.asjp.cerist.dz/en/downArticle/76/3/1/10198>.

[32] ALHAJAYA, N. Agreement on picking the competent court. *Disputes of International Nature*. 2009, Vol. 33, No. 2, pp. 289–290.

niens or implementation of the deprivation condition of national jurisdiction are not guaranteed. Accordingly, in light of the Palestinian legislator's silence on regulating the negative condition for jurisdiction, Jordanian law, which takes a similar approach to Palestinian law, may be applied to Palestinian law. This is because, although the texts for the application of Palestinian jurisdiction over the dispute based on the Palestinian nationality of the defendant are applicable in terms of the agreement to remove the jurisdiction of the Palestinian courts, in principle they are fraught with concerns over nullity.

It is true that jurisprudence, unlike the judiciary, does not take a unified position regarding the negative condition of jurisdiction, as jurisprudence has criticized it based on considerations of public order and sovereignty; modern jurisprudence, however, supports it if there is no close link between the dispute and the State of the defendant, and this connection is closer to a foreign jurisdiction. It has also been said that it is possible to activate the negative condition of jurisdiction by granting foreign jurisdiction, as here the national judiciary relinquishes consideration of the dispute.

An agreement between parties to grant jurisdiction to the foreign judiciary is, nevertheless, insufficient to dismiss national jurisdiction. Instead, the latter must approve the legitimacy of the parties' agreement to grant jurisdiction, because the national judiciary does not relinquish jurisdiction until after the competence of the foreign judiciary is confirmed. Notwithstanding this, if the national judiciary relinquishes jurisdiction based on such an agreement, and it then becomes evident there is no foreign jurisdiction, the national jurisdiction is not recognised or implemented based on the said agreement, but rather on the decision of the national court.[33]

However, the problematic issue with the Palestinian situation is that the parties may not resort to the condition that grants Israeli jurisdiction. It is presumed that the Palestinian judiciary will refuse to apply the deprivation condition, based on sovereignty and public order, and abandon its jurisdiction, because the Palestinian judiciary does not address the issue of jurisdiction at all in this respect. Moreover, the approach of the Palestinian judiciary in many rulings indicates a lack of recognition of Israeli courts, and this prompts Palestinian contractors to feel the uselessness of a condition granting jurisdiction over the courts of Israel. The outcome of this political standoff is that converting the jurisdiction of national courts is inappropriate to the dilemma at hand.[34]

4. JUSTIFICATIONS FOR APPLYING THE FORUM NON CONVENIENS DOCTRINE IN PALESTINE

Arguments supporting the adoption of *forum non conveniens* by the Palestinian judiciary and its implementation in the Civil and Commercial Procedural Code can be seen. The courts' reasons to adjudge a case are different, and the availability of one may be sufficient to decide it has no jurisdiction. The following section thus considers arguments

[33] Ibid., p. 290.

[34] MUISI, F. Converting the International Jurisdiction Term. Masters' thesis, Qassdi Merbah University, Algeria, 2015, pp. 29–31.

proposing that it is inappropriate for the Palestinian courts to adjudicate jurisdiction, and then clarifies how the Israeli courts may be more appropriate.

4.1 The Applicability of the Oslo Accords to Palestinian Residents of Israel

Both the Palestinian territories and Israel are bound by the Oslo Accords, which regulate legal matters to avoid sovereignty problems. When a dispute comprises an Israeli party, Article 3(1) of Annex 4 regulates the jurisdiction. However, Article 3(2) stipulates that:

In cases where an Israeli is a party, the Palestinian courts and judicial authorities have jurisdiction over civil actions in the following cases:

a) The subject matter of the action is an ongoing Israeli business situated in the Territory (the registration of an Israeli company as a foreign company in the Territory being evidence of the fact that it has an ongoing business situated in the Territory);
b) The subject matter of the action is a real property located in the Territory;
c) The Israeli party is a defendant in an action and has consented to such jurisdiction by an in-writing notice to the Palestinian court or judicial authority;
d) The Israeli party is a defendant in an action, the subject matter of the action is a written agreement, and the Israeli party has consented to such jurisdiction by a specific provision in that agreement;
e) The Israeli party is a plaintiff who has filed an action in a Palestinian court. If the defendant in the action is an Israeli, his/her consent to such jurisdiction in accordance with subparagraphs (C) or (D) above shall be required; or
f) Actions concerning other matters as agreed between both sides.[35]

The Oslo Accords explain their application to Palestinian territories, and it is the focus of this paper's discussion that the Palestinian court has jurisdiction covering areas A and B, but area C is covered by the Israeli court. Additionally, the Article excludes situations where the defendant is Palestinian, meaning that a Palestinian remains under Palestinian jurisdiction. The Accords may also indicate that Palestinian residents of the West Bank and Jerusalem without Israeli citizenship are considered Palestinian. Aside from the Accords, there is no Palestinian legislation on citizenship issues, and recognition of citizenship is more dependent on the status quo, the Oslo Accords, and judicial verdicts which have laid the concept that residents of Jerusalem who do not hold Israeli citizenship are Palestinians. This is supported in Palestinian Public Elections Code No. 1 of 2007, Article 27(2).[36] Recently, the Ramallah Court of Appeal applied Article 27 as the legal doctrine for granting Palestinian citizenship. It also concluded that even Palestinians in Jerusalem with Israeli identity papers hold Palestinian citizenship, based on a lack of jurisdiction.

[35] Article III. In: *Jewish Virtual Library A Project of AICE* [online]. [2021-03-21]. Available at: <http://www.jewishvirtuallibrary.org/oslo-ii-annex-i-4#article3>.

[36] Article 27(2/a) "For the purposes of this law, a person shall be considered Palestinian: A. If he/she was born in Palestine with borders defined in the British Mandate, or was entitled to acquire the Palestinian nationality under the applicable laws during that era. B. If he/she was born in the Gaza Strip or the West Bank, including Holy Jerusalem (Alquds Alshareef) C. If one of his/her ancestors falls under the application of paragraph (1) above irrespective of where he/she was born. D. If he/she is a spouse of a Palestinian as defined above."

However, the lower court neglected to consider that the owner of the disputed subject-matter, a Palestinian and holder of a blue I.D. card based on an International Agreement (signed by both Israel and Palestinian parties), was not an Israeli citizen. Therefore, according to the Accord's provisions, the dispute should have fallen within Palestinian jurisdiction.[37]

4.2 The Link between Forum Non Conveniens and the Nationality of the Defendant

The connection between the doctrine and the nationality criterion relies on two elements. The first is based on the shortcomings of the criterion, and the second is that the criterion and its flaws make application of the *forum non conveniens* more logical.

4.2.1 The Shortcomings of the Defendant's Nationality Criterion

Traditionally, a defendant's nationality determines court jurisdiction, and although the criterion is considered common judicial practice, it remains optional.[38] Among its main defects are issues regarding applicability to superficial entities,[39] the inability to implement the criterion on real estate disputes,[40] and the lack of enforceability of verdicts, as in the Palestinian situation, due to the political status quo.[41] Another issue is that the nationality criterion is considered an individual doctrine,[42] meaning that the Palestinian legislator is not required to address other criteria to support it. This may lead to difficulties when a dispute lacks a logical connection between an individual and their country of citizenship,[43] and the issue has led to heavy criticism.[44]

Scholars have also discussed how nationality should be considered a sub-criterion unconnected to the public policy rules that inspired the flexible nature of this criterion,[45] saying that "Not all rules of International Jurisdiction are on the same level regarding compulsory rules [and] the nationality of the defendant is an optional criterion unrelated to principles of public order."[46] On this basis, the criterion may harm a defendant's interests because it forces them to incur high costs to travel to their state, or bring evidence, even if the dispute was raised in their place of residence, far away from their country. In such

[37] Ramallah Court of Appeal Civil Chamber Case No. 362/2014, Session 16/03/2015.

[38] BA'DE, F. International Jurisdiction According to the Provisions of Saudi Civil Procedural Law and Trial Regulations, Masters thesis, Jordan University, College of Higher Education, Jordan. 1995, pp. 80–81.

[39] Ibid., p. 83.

[40] Article 27 of Civil and Commercial Procedural Law.

[41] SALAMEH, N. J. International judicial jurisdiction original criteria. *Palestinian Social and Legal Studies Journal*. 2019, Vol. 46, No. 3, p. 253. SHMOH, S. The extent of the optional nationality criteria impact on international judicial jurisdiction. *Journal of Law and Business*. 2018, Vol. 21, p. 61. FALHOOT, W. M. Rules of international jurisdiction – a comparative study of private international law. *Journal of Law*. 2018, Vol. 42, No. 3, p. 405.

[42] AHMED, H. Y. Conflict of international jurisdiction in private international law and islamic *fiqh*. A Masters' Thesis *College of Higher Education, University of Quran and Islamic Sciences*, Khartoum, 2003, pp. 42–43.

[43] *Supra* note 40, SALAMEH, p. 253.

[44] *Supra* note 19, SUBOSI, p. 288.

[45] FAHMY, M. K. Legal study in the relationship between international jurisdiction and the rules of public order. *Journal of Economic and Legal Sciences*. 2009, Vol. 25, No. 1, pp. 331–332.

[46] JABER, A., AL MAYTHA, M. M. The lack international judicial jurisdiction - analysis of jurists' opinion and Jordanian Civil Procedural Law. *Journal of Social and Humanities Science*. 2018, Vol. 33, No. 6, p. 48.

a case, this reduces the link between States of nationality and residence.[47] Considering these different views, scholars have suggested that more efficient guarantees are required for judgements to be executed.[48]

Other voices have called for the elimination of the nationality standard in favour of more effective mechanisms, such as the domicile standard adopted in Tunisian Law. Chapter 3(2) of the Journal of Private International Law of Tunisia states that, "Tunisian courts consider civil and commercial disputes among all persons regardless of their nationality if the applicant is a resident of Tunisia."[49] Even those not adopting the latter provision under law are trying to shrink the standard relating to sovereignty concepts. For example, nationality is based on the fact that private international law does not represent conflict between sovereign States, in direct contrast to the approach of public international law. The former aims to ensure equity between international private connections and the most advantageous jurisdiction for the parties' interests.[50] This purpose requires an applicable, efficient and convenient standard in adopting the domicile criterion, regardless of the nationality criterion.[51]

4.3 The Impact of the Forum Non Conveniens Doctrine on the Nationality Criterion

Initially, the concept of *forum non conveniens* needs to be considered in terms of international jurisdiction, and whether the Palestinian court might adopt the doctrine, especially for the many, large cases of non-settlement of the legal adoption of nationality. The question which therefore arises concerns whether it is effective for the Palestinian court to abandon jurisdiction to the Israeli court in the case of a Palestinian defendant with an Israeli identity and residence in Israel. This issue is significant, considering that Palestinian courts face significant problems, particularly for the abovementioned defendants, due to the complex situation concerning nationality. In this regard, the criterion for jurisdiction on nationality is related to *forum non conveniens* when the court deems that an adequate forum exists when the defendant is subject to personal jurisdiction, and there is no legislation, such as a statute of limitations, which precludes invoking the merits of the solution of an alternative appropriate forum.[52] Moreover, the doctrine also has application when the defendant is not resident within the jurisdiction where the plaintiff invokes proceedings.[53]

Regarding the focus of this paper, when the Palestinian party, according to the nationality criterion, is not resident in the plaintiff's jurisdiction in the Palestinian West Bank,

[47] AL-FADHLI, A. M. Organisation of natural habitats of the natural person in Jordanian Private Law. *Jordanian Journal of Law and Political Science.* 2011, Vol. 2, pp. 15–17.
[48] HOOTA, *op. cit,* p. 140 and pp. 180–181.
[49] Law No. 97 of 1998 related to the issuance of the Journal of Private International Law.
[50] ABDEL KARIM, S. A. Jurisprudence of Pleading, p. 300.
[51] HOOTA, *op.cit,* p. 140.
[52] HEISER, W.W. The Hague Convention on choice of court agreements: the impact on forum non conveniens, transfer of venue, removal, and recognition of judgments in United States courts. *U. Pa. J. Int'l L.* 2010, Vol. 31, No. 4, p. 1017.
[53] MIKIS MANOLIS, F., VERMETTE, N. J., HUNGERFORD, R. The doctrine of forum non conveniens: Canada and the United States compared. *FDCC International Practice and Law.* 2009, Fall Quarterly, pp. 3–4.

invoking the doctrine is very significant for the defendant. As the doctrine requires the forum to be available and valid without great risk, it is this point which the author argues applies in the context of the paradigm of this paper.[54] The doctrine's requirements are linked to the existence of the defendant's residency and funds, *inter alia*. Clearly, for a Palestinian party in Israel, the initiation of legal action in Israeli courts is more convenient for trial and the provision of witnesses and other evidence.[55] However, it may be proposed that other criteria should be adopted to support nationality as a form of personal criteria, for example, requiring that a dispute must have arisen in the defendant's country, in order to form a link between the dispute and State of jurisdiction.

4.4 The Contradiction between the Nationality Criterion, Palestine, and Verdict Execution

The application of international jurisdiction requires the execution of the competent court, which must have international jurisdiction in order to claim that the nationality criterion is applicable. If this is not so, the applicability of the nationality criterion is meaningless.

4.4.1 The Refusal of Israeli Courts to Implement Palestinian Verdicts

The ability to execute a judgement is key to the exercise of the discretionary authority of *forum non conveniens*.[56] Commonly, national courts require the issuance of a foreign law from a court which has jurisdiction to provide judgement in line with international provisions within the court's State.[57] Based on this, Israeli courts should admit Palestinian court judgements insofar as they correspond with the provisions of jurisdiction under the PCCPL. This indicates that the decisions made by Palestinian courts in disputes comprising Palestinian parties with residence and domicile in Israel shall be executable within the Israeli courts. Likewise, Palestinian courts must execute decisions comprising Palestinians parties (with residence and domicile in Israel) by Israeli courts, if these decisions correspond to the provisions of jurisdiction in Israeli law, according to Article 3(4) of Annex 4 of the Oslo Accords. These stipulate that:

> Israelis, including registered companies of Israelis, conducting commercial activity in the Territory, are subject to the prevailing Civil Law in the Territory relating to that activity. The enforcement of judicial and administrative judgements and orders issued against Israelis and their property shall be in force by Israel, within a reasonable time, and in coordination and cooperation with the Council.[58]

[54] Bies, *op.cit.*, p. 501.

[55] ELLIS, E. J., *op.cit.* REUS, A. Judicial discretion: a comparative view of the doctrine of forum non conveniens in the United States, the United Kingdom, and Germany. *Int'l & Comp. L. Rev.* 1994, Vol. 455, pp. 472–473, [2021-03-21]. Available at: <http://digitalcommons.lmu.edu/ilr/vol16/iss2/10>.

[56] HOOTA, A. A. H. M. The role of sufficient links in achieving the balance of international jurisdiction. *Egypt Contemporary Magazine*. 2015, Vol. 106, No. 5, p. 73.

[57] ABU SABIA, A. R. K. The impact of international jurisdiction in conflict of laws, p. 167.

[58] Article III. In: *Jewish Virtual Library A Project of AICE* [online]. [2021-03-21]. Available at: <http://www.jewishvirtuallibrary.org/oslo-ii-annex-i-4#article3>.

However, the execution of such decisions is unfortunately not possible. Therefore, the fact that decisions of Palestinian courts are inexecutable within Israeli legal systems is a very reasonable condition on which the courts can invoke *forum non conveniens*, as the said dispute has no "executive future."[59] This means that decisions are useless for both parties. The defendant wishes to be judged where judgements are executable, and the plaintiff wishes to take legal action against a Palestinian citizen through the Palestinian courts. However, if it is instituted in the Israeli courts. This reason justifies the appropriacy of the alternative forum, since the doctrine was established for both parties' interests.[60] It precludes the court from making a decision in the knowledge that this decision will not be executed in Israeli territories (as the proper place for the plaintiff's execution proceedings). Moreover, the decision held by Palestinian courts cannot be executed in the Israeli courts by each of the parties, whilst Israeli court decisions can be executed in the Palestinian courts, according to some orientations of Palestinian judgements.

At this point, it is important to examine the required elements for the implementation of Article 37 of the Palestinian Execution Code:

1. Provisions, decisions and orders issued in a foreign country may be ordered to be implemented in Palestine under the same conditions as are prescribed in that country for the implementation of the Palestinian provisions, decisions and orders, provided that they do not contradict Palestinian laws or cause harm to the supreme national interest;
2. The order shall be applied for the execution of judgements, decisions and orders issued in a foreign country on the grounds that they are submitted before the Court of First Instance which is intended to be executed in its district, provided that such provisions, decisions and orders are duly certified by the competent authorities.

Despite the importance of the conditions provided for in Article 36, what is of concern here is the very sensitive condition of the requirement for reciprocity in the implementation of foreign rule in Palestine. This is in the sense that the State's judicial judgements are required to recognise the execution of Palestinian judicial judgements in its territory. The core issue is that the Israeli courts do not execute Palestinian provisions inside Israel, potentially raising problems when the Palestinian judiciary uses *forum non conveniens*. At present, when a dispute is referred to the Israeli courts and a decision is declared, the defendant then needs to execute the decision in the Palestinian territories.

4.4.2 Recognition by Palestinian Courts of Israeli Verdicts

Of course, a plaintiff can enforce judgement in Israeli courts inside Israel, but it may be in their interest to execute judgement in the territories of the Palestinian National Authority, in cases when Palestinian courts refer a dispute based on the defendant rather

[59] AL-RUBI, M. The *forum non conviniens* theory as a means of international judicial cooperation. *Journal of Security and Law*. 2014, Vol. 22, No. 1, p. 133.

[60] ELLIS, E. J. National treatment under the Berne Convention and the doctrine of forum non conveniens. *The Journal of Law and Technology*. 1996. JENNER, P. Copyright in the digital age: benefitting users and creators? *Review of Economic Research on Copyright Issues*. 2011, Vol. 8, No. 2, pp. 55–64.

than the plaintiff's interests. This may lead to the executing court in Palestine failing to recognise the Israeli judgement, by applying Article 36, as the judgement of an Israeli court is treated as foreign. It may also fail because of the principle of reciprocity, an important condition of Article 36, and one which is unavailable in Israel. In this regard, the issue cannot be considered as having been referred by the Palestinian courts to the Israeli courts, thus implicitly recognising the possibility of subsequent enforcement in the Palestinian territories.

However, a dispute referral based on *forum non conveniens* does not necessarily mean that the Palestinian courts expect the Israeli courts to enforce it in Palestine. There is recognition of Palestinian courts by Israeli courts and the State of Israel, in line with the Oslo Accords, and this recognition permits referral to a more appropriate foreign court to adjudicate a dispute. Nevertheless, when Israeli court judgements are to be executed, the reason for refusing to execute them is not non-recognition of the Israeli side —as there is an implicit recognition —but due to Article 36, which permits refusal to execute. In response, the following Palestinian decisions support more varied options for parties ruled by Israeli forum jurisdiction at least under the non-admission of Palestinian court decisions. The legitimacy of the execution of these judgements is based on protecting Palestinian interests as a priority over the sovereignty conflict between Palestinian and Israeli territories, and the need for practical solutions.

One decision of the Palestinian Jerusalem Court of Appeal in Ramallah made a breakthrough judgement on the execution of an Israeli court decision within Palestinian territories, when it ruled that:

> […] according to the concept of our court, we find that we are not in relations between States to engage in the issue of reciprocity or recognition of a state or the search for the legitimacy of the authority that issued the law as long as this authority is able to achieve its implementation, ignoring in this case is a disregard for the reality and its consequences are negative and dangerous for the rights of Palestinian citizens living in the Green Line, specifically Al-Quds Al-Sharif [… then] which we see as the reasons for appeal to the decision appealed because these provisions issued by a legitimate Islamic body, and although it is subject to the occupation authorities, but it belongs to the Palestinian citizen primarily and the implementation of these provisions is in itself the realisation of the right and implementation, especially as these judgements are issued by an official Islamic body. We cannot ignore them and respect them respectfully and, thus, there is no longer room to cling to words that do not really work.[61]

This decision preferred to protect parties' rights instead of holding onto theoretical concepts that do not serve the purpose of *forum non conveniens*. This paper therefore suggests that this decision established a logical understanding of the practical application of the law, and also gives responsibility to Israeli courts to dismiss the complicated view of the execution of Palestinian court decisions. This is especially so when the matter relates to more explicit individual rights that do not reflect the conflict of sovereignties between

[61] Palestinian Jerusalem Appeal Court held in Ramallah, No. 123/2010. In: *Birzeit University Institute of Law* [online]. [2021-03-21]. Available at: <http://muqtafi.birzeit.edu/courtjudgments/ShowDoc.aspx?ID=90556>.

Israeli and Palestinian territories. Another decision by the Palestinian Cassation Court inclusively touched on the same orientation when it declared that:

> […W]ith reference to the provisions of the Special Law on Legal Assistance in Civil Matters between the Palestinian Authority and Israel represented in Annex III of the Legal Matters of the Fourth Oslo Accord, which stipulated that the Execution Office under the responsibility of Israel and the Palestinian Authority should implement these provisions and that such implementation mechanisms. And where no mechanisms have been put in place to implement such provision and to indicate the meaning of Office of Implementation and whether to resort to the office directly or after the procedures stipulated in the Law on the Implementation of Foreign judgements due to the disruption of the Israeli-Palestinian peace process.[62]

This decision sought the implementation of judgements by the two parties and pointed out that this impediment to the execution of a judgement is not in the interests of a Palestinian party; rather, it stems from the lack of mechanisms which can ensure that the execution is a cooperative solution serving the litigants' interests. Even though both these decisions tended not to serve parties' interests through the admission of the execution of Israeli court decisions, the Israeli court's refusal to execute Palestinian court decisions is opposed. In this situation, until Palestinian court decisions are admitted, Palestinian courts may find sanctuary in *forum non conveniens*, to protect parties' interests and abandon its jurisdiction when the defendant is a Palestinian party with residency in Israel, to ensure that decisions are executed.

Another decision by the Palestinian Cassation Court pointed out that, if the Oslo Accord regulates cooperation between Israel and Palestine concerning judgement execution, then there is no need to verify the reciprocity requirement, because the text of the Oslo Accords is sufficient justification for the execution of Israeli judgements in the territories of the Palestinian Authority. The judgement states that:

> […T]he Jerusalem Court of Appeal supported the contested judgement by considering that the Oslo Agreement regulated the execution of the judgements issued by the two countries' courts, which the Court of Cassation sees that the conclusion of the Court of Appeal is in accordance with the right of the law is not affected by these two reasons cannot be refunded.[63]

On the other hand, a decision issued by the Palestinian Court of Appeal in Ramallah rejected the execution of Israeli judgements in the territories of the Palestinian Authority:

> […I]n the Oslo Agreement, there is no agreement on judicial cooperation, which contradicts the principle of reciprocity, and the court points out that this does not stop at this point, and that the occupation still does not recognise the declaration of the Palestinian state and therefore prevents the ratification of the judgements issued by the occupation courts as a Foreign decision.[64]

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[62] Palestinian Cassation Court held in Ramallah, No. 10/2010. In: *Birzeit University Institute of Law* [online]. [2021-03-21]. Available at: <http://muqtafi.birzeit.edu/courtjudgments/ShowDoc.aspx?ID=86625>.

[63] Case No. 302/2016 held in the Ramallah Court of Cassation, 21. 12. 2016.

[64] Case No. 797/2016, held in the Ramallah Court of Appeal, 2016-11-29, In: *An-Najah National University* [online]. [2021-04-29]. Available at: <https://maqam.najah.edu/judgments/3130/>.

The applicability of Article 37's Execution Code on Israeli Courts Verdicts if *forum non conveniens* is implemented is covered as follows:

a) The courts of the State of Palestine shall not be competent solely to adjudicate the dispute in which the judgement, decision or order was issued, and the foreign courts issuing it shall be competent in accordance with the rules of international jurisdiction established by its law;
b) The judgement, decision or order has the force of the matter ordered in accordance with the law of the court which has rendered it;
c) The judgement, decision or order is not inconsistent with a judgement, decision or order issued by a Palestinian court, and does not contain anything contrary to public order or morals in Palestine.

The most sensitive and relevant condition is the provision in the first paragraph, namely that the Palestinian courts do not have sole jurisdiction in the dispute. Thus, the foreign court must have jurisdiction in accordance with the provisions of international judicial jurisdiction, according to its law.

As for the beginning of Article 37(1), with regard to this paper's theme, the courts of the Palestinian National Authority have jurisdiction on the basis of the nationality criterion, and then refer the dispute to an Israeli court to issue the judgement for execution. The Palestinian courts do not have sole jurisdiction, since the Israeli courts have jurisdiction over the dispute based on the territorial criterion, since the person holding Israeli identity – as in the case under discussion – resides in Israel. Of course, the Israeli courts have jurisdiction over the dispute, and this is imposed on the resident, whether they are an Israeli citizen, or only holding Israeli identity and have Palestinian nationality. Therefore, the condition mentioned in (a) above is available. Finally, the conditions stipulated in (b) and (c) are required. In this regard, the jurisdiction of the Palestinian courts in consideration of the dispute under the rules of international jurisdiction does not preclude the implementation of the foreign sentence, as long as there is another foreign jurisdiction in the same dispute, as in the 'sole' reference in paragraph (a) of the Execution Law.

Moreover, even in the laws of countries where the provisions of the Execution Law in this regard are more stringent, such as Egyptian law, which does not provide for the term 'sole', jurisprudence considers that the jurisdiction of the Egyptian courts is insufficient to reject the execution of foreign rule. If another foreign jurisdiction exists besides the Egyptian, the foreign judgement may be executed if it is more relevant to the dispute, and there is a 'close link' between the foreign jurisdiction and the dispute. This is in line with the idea of *forum non conveniens* in that even in countries with strict provisions in the Execution Law, the 'close link' between jurisdiction and conflict is used. This means that *forum non conveniens* and related theories such as minimum contacts are in fact theories whose role is not limited to the stage of determining jurisdiction. This is initially on the basis of the rules of international judicial jurisdiction, but also on the execution of foreign judgement phase, which helps to eliminate the oft-rigid text.

4.5 The Egyptian Cassation Court Adopts Forum Non Conveniens

Recently, the Egyptian Cassation Court (ECC) adopted this doctrine after decades of refusal to do so.[65] This decision is relevant because the ECC is the sole Arab court also to adopt most of the features of *forum non conveniens*, and may lead to the adoption of the doctrine in Arab laws or —at least —in judicial practice. According to the ECC decision, the conditions of *forum non conveniens* are:

a) Serious contact between the dispute and the jurisdiction of the foreign forum.[66]

Scholars criticise this orientation, emphasising that there is nothing that precludes permissive submission to the judicial jurisdiction of an indifferent State with no contact in the dispute. This has been so in certain French judgements.[67] However, in this regard, another standard may be adopted: the availability of legitimate interest for the parties towards the jurisdiction of a foreign forum.[68]

b) The admission of foreign law in the jurisdiction of its courts for handling the dispute.[69]

c) The dispute must be international.

d) The lack of a strong connection between the dispute and the court of the judge.

The legal nature of the ECC's decision to abandon its jurisdiction is still inscrutable, especially given that the decision did not include a dispute's reference to another court.[70] However, at any rate, the decision was in favour of the *forum non conveniens* doctrine and not minimum contacts. This is because it embodied the conditions of the first doctrine when it held the jurisdiction to the Egyptian court, and then declared the abandonment of it for the foreign forum. In contrast, the minimum contacts doctrine does not include the role of the court in suggesting another appropriate forum for the parties' interests.[71]

Despite this, it can be deduced that the court did not adopt the entire character of the doctrine as seen in the Scottish, English and American versions in terms of relying on certain conditions, mentioned above. These conditions reflect a personal criterion, such as the application of the optional negative submission to the jurisdiction. However, the phrase "the court is more convenient to handle the legitimate dispute" that the court mentioned is an objective criterion of *forum non conveniens*.[72] This has been adopted as a sufficient criterion for the doctrine in the American version, which provides the court with more discretionary authority, free of restricting conditions.

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[65] Decision of the Egyptian Cassation Court (Civil Commercial Department) 24. 3. 2014 at SADEK, H. A., *op.cit.*, pp. 77–84.

[66] BAUER, H. Compétence Judiciaire int. des Tribunaux Civils Français et Allemands. *Revue internationale de droit comparé*. 1966, Vol. 18 No. 4, p. 43.

[67] HADDAD, H. cited in HISHAM, S., p. 44.

[68] Ibid., p. 45.

[69] Ibid., p. 46.

[70] HISHAM, S. *op.cit.*, p. 68 ff.

[71] See HOOTA, A. A. H. M. *op.cit.*, pp. 66–67.

[72] *Supra Note 64.*

5. PROSPECTS FOR THE ADOPTION OF FORUM NON CONVENIENS BY PALESTINIAN COURTS

The Palestinian Cassation Court (PPC) handled a dispute between a plaintiff (a Palestinian from Ramallah), who filed against two Palestinians from East Jerusalem. The defendants argued that the Palestinian courts have no jurisdiction over a dispute including a party resident in Jerusalem, according to the Oslo Accords. They also preferred, based on non-local jurisdiction, to refer the dispute to the Israeli courts. In its decisions, the PCC declared that Article 3(1) of Annex 4 of the Oslo Accords regulates the situation when the dispute includes an Israeli party; however, citizens domiciled in East Jerusalem Israeli territory,[73] even with an Israeli identity card and no Israeli nationality, are Palestinians. This indicates that they are not foreign parties in the eyes of the Palestinian judiciary concerning the jurisdiction provisions of private international law. Thus, this case is subject to the first part of Article 27 of the PCCPL, and as a result the court declined the defendants' argument and approved the Court of Appeal's decisions. Perhaps the more appropriate and valid legal provisions for regulating the situation above are the first half of Article 27 of the PCCPL, which adopts the nationality criterion. It should be noted that the previously mentioned Article of the Oslo Accords also obliges each party to the Oslo Accords to accept the execution of the other party.

This paper argues that the orientation of the Court of Appeal was peculiar because the decision emphasises the jurisdiction of Palestinian courts over Palestinian citizens living in Jerusalem but with Israeli identity, without justified inducement. This decision was a response to conceptual, illusory perceptions about the conflict of sovereignties, and fails to consider the reality of the execution of Palestinian decisions in Israeli territories. As a result, this negatively impacts the plaintiff's interests if they must execute a decision in Israeli courts. It is important to remember that the defendants in the Ramallah case did not explicitly invoke the literal features of *forum non conveniens* but, ultimately, directed the court to another forum more convenient to their justice, based on the justifications mentioned. Additionally, as for the plaintiff's interests, according to *forum non conveniens,* no restricting conditions prevent the court from exercising its discretionary authority on its own when the court faces an impasse, as mentioned in the previous justifications.[74] This means that the doctrine serves both parties in choosing an appropriate forum, since it was established to do so. Contrary to the previous decision, some decisions have dealt with sovereignty and the conflict between Israel and Palestine in a more reasonable, realistic way, as shown in this paper.[75]

To summarise, it would have been better if the Cassation Court had abandoned its jurisdiction and recommended the parties to the Israeli jurisdiction forum, following the decision of the ECC, which pointed to the objective criterion of *forum non conveniens*; in this way, it has opened the door for the establishment of the doctrine in the future. In the

[73] Palestinian Cassation Court held in Ramallah, No: 20/2003. In: *Birzeit University Institute of Law* [online]. [2021-03-21]. Available at: <http://muqtafi.birzeit.edu/courtjudgments/ShowDoc.aspx?ID=34593>.

[74] AL-ROUBI, *op. cit.*, p. 138.

[75] Pp. 13–14 of this research.

same line, it is essential to point out how the Palestinian Arbitration Law of 2000 stipulates, in Article 7, that,

If an arbitral party initiates any legal proceeding before a court against the other party in respect of an order agreed to be referred to arbitration, the other party may, prior to entering into the basis of the case, request the court to suspend such action and the court shall render a decision if satisfied of the validity of the arbitration agreement.[76]

This Article relies on a similar philosophy to *forum non conveniens*, because it attributes the dispute to another jurisdiction that is more appropriate, even if court jurisdiction is also available. The Article does not determine the nature of the arbitration tribunal (i.e. national or foreign), such as by indicating correspondence between this case —when the arbitration tribunal is foreign —and one referring a dispute to a foreign court. This is regardless of the different conditions in the Article and the features of *forum non conveniens*. However, at least it provides reasonable legal grounds for the doctrine and may be considered additional justification for adopting the doctrine under the PCCPL. Moreover, the doctrine has some features in Palestinian law, and this may lead to a wider scope in its adoption in future.

6. CONCLUSION

This study proposes the adoption of the theory of *forum non conveniens* by the Palestinian judiciary, in the light of the close relationship with the nationality criterion. The defendant's nationality criterion was analysed according to the Palestinian Civil and Commercial Procedures Law. The criterion has received some criticism as being weak and irrelevant to a dispute, leading to calls to cancel or amend it. However, this criterion was the legal basis on which the Palestinian Court of Cassation relied in judgements in trials of Israeli identity holders before the Israeli courts. They refused to refer to the Israeli courts, despite the defendants' adherence to it, and did not consider the possibility of relying on *forum non conveniens* in the abandonment of jurisdictions. At the very least, referral to the Israeli courts would have been more appropriate for the consideration of a dispute, due to the place of residence of the defendant, the location of their property, and the ease of providing evidence, but, above all, because of the execution of judgements, whether in Israel or the territories of the Palestinian National Authority. This is because the judgement of Palestinian courts cannot be executed inside Israel due to non-recognition of these provisions.

The doctrines of both minimum contacts and *forum non conveniens* were analysed, and the latter was found to be more harmonious in relation to the case presented in this paper, as it provides greater power to the judiciary in the discretion of the court to adjudicate a dispute. The former, however, is restricted by specific, objective conditions which permit the court only to determine whether it is competent or not, without being able to abandon a dispute in favour of a more appropriate court. The Egyptian Court of Cassation

[76] Arbitration Law of 2000. In: *Birzeit University* [online]. [2021-04-29]. Available at: <http://muqtafi.birzeit.edu/pg/getleg.asp?id=13486>.

took the lead in this regard by adopting *forum non conveniens* as an Arab judicial precedent which can be built upon should the Arab courts adopt this doctrine.

We call on the Palestinian judiciary to employ the doctrine, and not invoke issues of sovereignty and strictness in the application of the nationality criterion, especially in the absence of an executive future for the Palestinian provisions inside Israel. Alternatively, *forum non conveniens* can be adopted so that a dispute can be referred to the Israeli courts when the defendants are Palestinian citizens and Israeli identity holders not residing in the territory of the Palestinian National Authority. In such cases, the Israeli courts are more appropriate to the dispute. Additionally, concerning the possibility of executing Israeli judgements in Israel and in the territories of the Palestinian National Authority, there is no need to fear the reciprocity of the condition in Article 36 of the Palestinian Execution Law, as some Palestinian judicial jurisprudence has done well when it exceeded this condition and permitted the execution of the judgements of Israeli courts in the territory of the Palestinian National Authority.