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REIMAGINING FUTURE RELATIONS BETWEEN INTERNATIONAL AND NATIONAL LAW WITH SPECIAL REFERENCE TO THE PALESTINIAN SITUATION

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ABSTRACT

This paper examines the issue of the relationship between international and national law that leads to the gradation of laws. Is international law superior or inferior to national law? This question pushed the existing theoretical positions to find more convincing answers and practical solutions to this question. The article differentiates between two doctrines, the first is monism between international and national law, and the second is the dualism between international and national law. The status of international law in the national legal system is determined by the national constitution of each country. The article discusses a crucial issue associated with a substantial principle on which international law is based: the principle of state sovereignty and the critical relationship between international law and national

law. The article aims to clarify the nature of the relationship with a specific reference to the experiences and challenges faced by the State of Palestine. To achieve the objectives of the article, doctrinal legal research methodology was adopted. Accordingly, this study concluded that there are two conflicting doctrines in determining the status of international law in the national legal system. Since the establishment of the State of Palestine and being a non-member observer state at the United Nations, the Palestinian legislature has adopted the doctrine of monism. The study would assist the international community in understanding the legal nature of the Palestinian constitutional system and its position related to the value of treaties in Palestine. The study emphasises the need to harmonise Palestinian legislation in order to be in line with international treaties.

Keywords: International and National Law, Doctrine of Monism, Doctrine of Dualism, Palestinian Case.

INTRODUCTION

The relationship between international and national law embodies a fundamentally established principle of international law, which is the principle of state sovereignty. A sovereign state and its legal system and domestic laws do not exist in isolation from the international community (Franck & Franck, 1995). Therefore, the state often finds itself obligated to harmonise its legislation with the provisions contained in the international treaties to which it is a party. Becoming a party to the treaties means the state has to accede to the treaties. Accordingly, the state is required to make amendments to its existing national legal system and domestic laws, for instance, the Committee on the Elimination of Discrimination against Women (CEDAW) Convention regarding the abolition of all manifestations of discrimination against women (Moussa, 2011).

In addition, there is a study concludes that there is no clear treatment with respect to the implementation of the international treaties in the Egyptian and Palestinian legal systems, and there is a special burden on the Egyptian and Palestinian judiciary to create a clear-cut practice on how to implement the treaties and its legal value (Batmah, 2014). Moreover, another study sheds light on the value of treaties in

Egyptian and Palestine, reaching the conclusion that the Egyptian and Palestinian legislator does not address the mechanisms that show how to domicile the international treaties in the Egyptian and Palestinian legal system and does not show the value in a crucial way (Khaldi, 2022).

The Palestinian case is indeed a complicated sample. It highlights how the interaction between legal and non-legal measures, between international and domestic interests, produces undesirable outcomes. Palestine has gone through different political and leadership approaches. It began with the Palestine Liberation Organization, which held power for decades, and then the Oslo Accords of 1993 that brought the establishment of the Palestinian National Authority for a transitional period, and then finally, the establishment of the Palestinian state (Pearlman, 2009).

The effect of political changes, among others, raises critical questions about the status of the international treaties to which Palestine acceded. A large number of international treaties acceded, particularly after Palestine obtained international recognition as a state. Therefore, this article seeks to shed light on the relationship between international law and national law in theory and how it has been translated into practice in the case of Palestine (Kelsen & Trevino, 2017). By discussing and contextualising the theory, accordingly, this article claims its significance to delve into the basic principle of international law, which is the principle of state sovereignty, along with other issues relating to the relationship of international law with national law (Glahn & Taulbee, 2015).

In order to examine the subject matter of this article on the nature of the relationship between international law and national law, four key questions were initially set to guide the investigation as follows: What are the doctrines that determine the relationship between international law and national law? Should the task of determining the status of international law within domestic jurisdiction be left to the legislature or the judiciary? What is the doctrine adopted by the Palestinian legislature and the judiciary in dealing with issues regarding the relationship of international law with national law? Do the distinctiveness and complexity of the Palestinian case require the Palestinian legislature to review its approach and domestic laws to give effects to the internal law?

METHODOLOGY

This article employed doctrinal legal research methodology. Additionally, this article used the qualitative method of research. A library-based approach was used to collect data. The primary data were acquired from legal statutes, treaties, official records, and case law (Kharel, 2018). Whilst the secondary data were gathered from relevant sources such as legal textbooks, journal articles, and reputable websites. Both primary and secondary data were critically and analytically examined in this study using the content analysis approach (Cho & Lee, 2014).

The Concept of the Relationship between International Law and National Law

In order to determine the nature of the relationship between each of the two laws, public international law and internal (national) law, it is necessary to refer to the constitution of each sovereign state. The internal constitution in each country does not only determine the relationship between the state and citizens but also between the state and other states (Sheroun, 2007). Some constitutions provide specific provisions to ratify international treaties and subsequently recognise them as an integral part of their national legal system. To a certain extent, the ratification of international instruments overrides the force previously enjoyed by national law. Even states that traditionally rely on common law or what is known as the Anglo-Saxon system, enact or amend written domestic laws in order to incorporate or give effect to provisions contained in international treaties and other legal instruments (Ingadottir, 2022).

The discussion on the relationship between international law and national law embroils debates when it touches on the status of international law within the framework of the national legal system and laws (Raustiala & Slaughter, 2002). In other words, which one will prevail in the conflict between the provisions of the international convention and the national law of the state?

Arguably, the dispute will not arise if the constitution expressly answers the question. As mentioned earlier, there are national constitutions that provide explicit provisions which govern the process and effects of ratification of international treaties. Therefore, the acceded

international treaties will supersede the national law in the event of a conflict between the two types of laws (Gonenc & Esen, 2006). For example, the Algerian Constitution, article 132 of the Constitutional Amendment of 1996, explicitly stipulates that:

> "Treaties ratified by the President of the Republic according to the conditions stipulated in the Constitution are superior to the law."

Consequently, the treaties which have been duly ratified by the President of the Republic in accordance with the Constitution shall take precedence over national law (Sheroun, 2007).

Nevertheless, not all state constitutions specify the effect of ratification of international treaties on the national legal system and existing domestic laws. For example, the Lebanese Constitution (1926) and the Palestinian Basic Law (2002) are both silent about the relationship between international and national laws (Abu al-Nasr, 2015).

Regardless of whether constitutional law has determined the nature of this relationship or not with regard to the status of international law in relation to national law, there are two general doctrines that seek to determine the legal nature of the relationship between both international law and national law (Burley, 2017). The first doctrine is the doctrine of the dualism of law and the second doctrine is the monism of law.

Doctrine of the Dualism of Law

Based on this doctrine, international law and national law are two separate legal entities, and they also operate independently of each other. Under the doctrine of dualism, the rules and principles of international law will not have any force on domestic law but must be first incorporated into national law before they affect individual rights and duties at the national level. The proponents of the doctrine argue that international and national laws are different in terms of the sources of law, the target or subject of the provisions, and the content and subject matter (Marian, 2007).

Proponents assert that the distinction between the two laws is inevitable, as the obligation resulting from a treaty, which is one of the

sources of public international law, may be incorrect according to what is stipulated in the national law of the state due to non-compliance with certain constitutional requirements required by the national constitution regarding the conclusion of the treaty. But this obligation remains unaffected as long as it conforms to the requirements of international law (Stratton, 2009).

According to Kennedy, "The dualists, holding the distinctness of international and internal law, concluded that while a treaty obligation may be invalid internally because of the failure to comply with constitutional requirements, the international obligation is unimpaired if it measures up to international law requirements because these requirements do not comprehend any reference to the internal law" (Kennedy, 1987).

The proponents of this doctrine are the proponents of the classical volitional school, who see international law as a reflection of the will of the group that organises it and derives its existence from it. Therefore, general international law expresses the will of the international community. However, the national law expresses the will of the society that only regulates it. Accordingly, public international law is independent of national law, and they are two separate systems (Sheroun, 2007).

The evidence of the dualism doctrine is: (1) the difference in sources; the source of public international law is the will of all states, while national law is issued by the individual will of the state. According to Minow (1990), the different sources for each of the two laws are the basis for saying that the two laws should be separated from the other. (2) The change of the persons who are addressed by the provisions of each of them: the individuals, institutions, and companies within the country are the ones who are addressed by the provisions of the national law, while the persons who are addressed by the provisions of international law are the countries and international organisations. (3) The difference in the relations regulated by the author, Masood (2017), contended that the international and internal laws are two completely separate systems and that there is a clear difference between them that appears regarding the sources, content, and persons addressed by the provisions and texts of each. Brownlee (2019) viewed that the different relations regulated by each of these two laws make it difficult for researchers in the field of public international law to recognise

the existence of ideas of national law within the system of public international law and vice versa. (4) The change in the legal structure of each of them, in the internal society, there are higher authorities that have specific competencies, namely, legislative, executive, and judicial, which are not found in international law (Norton, 1991).

The distinction between international and national law entails a number of important consequences, as follows: (1) each of the two laws has its own area of work, which is independent of the other. (2) They are not affected by each other because the illegality of work in public international law does not affect national law. For instance, if the state issues national legislation that contradicts its international obligations, then that legislation is not considered void because the scope of its application is within the state. Therefore, if another country is affected by this legislation, the country that issues it bears responsibility for the violation of its international obligations towards the affected country. On the contrary, the obligation arising from an international convention may be incorrect according to what is stipulated in the national law of the state due to non-compliance with certain constitutional requirements required by the constitution regarding the conclusion of the convention, but this obligation remains unaffected as long as it is in accordance with the requirements of international law. Therefore, the obligation remains valid in the international sphere, even if it is not correct in accordance with national law. (4) National courts do not apply or interpret the rules of international law unless they are transformed into national legal rules by ratifying them by the legislative council in the country. Likewise, international courts do not apply national laws unless they have acquired the description of international legal rules and are expressly accepted in international treaties, or implicitly as is the case with custom (McDougal, 1959).

The authors support what jurisprudence Kelly Vinopal (2015) said about the existence of an independent judiciary in both systems. The national courts apply only the national laws issued by the national legislator in accordance with the rules and provisions drawn up by the constitution. Therefore, national courts do not have the power to apply international rules unless they are incorporated into national legislation or referred to by the national legislature. For instance, in Britain, the doctrine of dualism law is taken, and therefore the citizens of Britain, if they want to be covered by the protection of international

treaties to which Britain has joined, the parliament must integrate the rules of those treaties into British national laws.

Doctrine of the Monism of Law

Proponents of this doctrine perceive the rules of international law and the rules of national law as a single legal bloc subject to the principle of subordination. The legal system, with all its branches, constitutes a set of rules that are gradual in strength (Von Bogdandy, 2008).

This gradation in strength is based on the fact that the validity of each legal rule is due to the existence of another legal rule that approves and adapts it, which depicts the legal system as a hierarchical form whose rules are gradual in reverse and this pyramid is based on a basic rule which is the rule of the fulfilment of the covenant (Mahmood & Masum, 2014). This is what was advocated by jurist Kelsen, the founder of the doctrine of monism of law (Staff & Malanczuk, 1997).

Based on the doctrine of the monism of law, the state's ratification of a convention automatically makes it effective in the national legal system without any need to take any other action, such as a merger, referral, reception, or other means (Jancic, 2013).

The evidence of the monism doctrine is: (1) it is an international law that regulates the state's relationship with other states. (2) Countries are not bound by international treaties unless their constitution allows them to do so. It is committed to it in good faith and the need to respect the principle of the fulfilment of the covenant and in good faith. (3) Basically, international law is superior to national law, as it is what defines the features of the state's sovereignty over its territory and its people (Huong & Khoo, 2019). (4) The Vienna Convention, in article 27 of it, prevents states from invoking their national law to evade the obligations incumbent upon them under a convention to which they are a party, and therefore in the event of a conflict, they shall set their national rules aside, allowing for the application of the international treaties (Robert & Dagmar, 2019).

The adoption of the doctrine of the monism of law requires considering international law at the top of the legal hierarchy in the national system, or, as the jurist Kelsen says, it is the top of the pyramid in the legal structure (Jancic, 2013).

Based on the adoption of this doctrine, there are no basic differences between international law and national law (Ammann, 2019). This is what was stated in the international judiciary on many occasions, including:

1. The Hague Permanent Court of Arbitration, in the dispute between the United States and Norway, has held that national law applies, only if it is consistent with international law.

2. The International Court of Justice ruled in the issue of free zones between France and Switzerland in 1930 that France could not rely on its national legislation to limit its international obligations. It may not absolve itself of its international responsibility on the grounds that the provisions of its national law do not allow it to observe those rules or implement those obligations.

3. It came before the International Court of Justice in the case between the United States of America and Mexico that the rights contained in a treaty ratified by the United States of America must apply to the persons concerned regardless of whether the Constitution of the United States of America recognised those rights in the part of rights and freedoms or not (Hoppe, 2009). Article 139 states that:

4. "It came before the International Court of Justice in the case between the United States of America and Mexico that the rights contained in a treaty ratified by the United States of America must apply to the individual concerned regardless of whether the Constitution of the United States of America recognised those rights in the part of rights and freedoms or not. In other words, the rights granted under the convention [on Consular Relations] are treaty rights that the US has undertaken to comply with in relation to the individual concerned, irrespective of the due process rights under the US constitutional law."

At the end of this point, in the event of a conflict between the international convention and the national law in light of the principle

of the monism of law, it is the duty of the state to harmonise its national legislation with international law. This is a duty imposed by many treaties, and it was shown before that by many international court rulings, including the ruling of the Permanent Court of International Justice in the case of the population exchange between Turkey and Greece, which says,"Self-evident principle in international law, according to which a state which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken" (Müller, 2013).

Based on the above discussion, in determining the relationship between international and national law, the authors could not but point out the opinion to which they are inclined and the doctrine that authors realised as being preponderant over the previous two doctrines, which is the pluralism doctrine, which combines the advantages of the two previous doctrines and avoids their shortcomings. This doctrine helps countries, academicians, and jurists to define the relationship between international and national law, especially in cases where the Basic Law or the constitution is free from any definition of the status of international treaties from the national legal rules. That is why the authors realised that this doctrine deals with international law and its status from national law by de facto and not by what is stipulated in the law.

The Relationship between International Law and Palestinian Legislations: A Practical Study

The Palestinian state has gone through different stages, which in turn are reflected in the nature and features of the relationship between public international law and Palestinian legislation. Like other states which were formed in the post-colonial era, the Palestinian state is often referred to as newly established (Zeitoun, 2007), but it has a long history of people who have inhabited the area for ages, who have witnessed the arrivals and departures of foreign powers.

Before 2013, the state of Palestinian gained no substantial international recognition regarding its status as a state. However, the agreement signed between the Palestine Liberation Organization and Israel created a self-governing authority for a transitional period of five years, extending from 1994 to 1999. Despite the expiration of this

convention after 1999, it remained in practice and de facto extended until the situation changed with Palestine's entitlement to the status of a state after the United Nations recognised Palestine as a non-member observer state in 2013 (Parsons, 2013).

To facilitate the discussion, the authors divided this point into two parts. Firstly, the relationship between international law and national law during the era of the Palestinian National Authority from 1994 to 2013. Secondly, the relationship of international law to national law under the Palestinian state after 2013.

The Relationship between International and National Law in the Era of the Palestinian National Authority

Most international treaties, particularly multilateral ones, are open to all sovereign states. However, does the same rule apply to the self-governing authorities? In the case of pre-2013 Palestine, was it permissible for the Palestinian National Authority, which was created by the declaration of principles or bilateral understanding to join international treaties? In other words, did the Palestinian National Authority have the legal capacity to be part of international treaties?

The declaration of principles agreement signed between two parties, the state of Israel and the Palestine Liberation Organization, did not specify whether the authority created under it has the right to join international treaties or not. Therefore, the matter remains at the heart of the powers of the Palestine Liberation Organization, which retains its powers with regard to the external representation of the Palestinian people, including accession to international treaties. This was confirmed by the Palestinian Central Council in its 26th session in April 2014, where it affirmed several things, including the following; the Palestinian Central Council adheres to the full rights of the Palestinian State, especially its rights to independence, sovereignty, its representation in all international institutions, and its accession to all treaties and covenants. It realises that the current reality of this state is the reality of a state under occupation and that it refuses to accept the continuation of this reality (Meighan, 1993).

In addition, the Palestinian Basic Law of 2002, as amended in 2003, contradicts what was stipulated by the Palestinian Central Council. Article 10, the second paragraph, states that:

> "The Palestinian National Authority shall work without delay to accede to regional and international declarations and covenants that protect human rights."

In view of this provision, the authors made some observations: (1) the previous provision relates to the Palestinian National Authority, contrary to what was stated in the Palestine Liberation Organization charter, which gave the authority for external representation to the PLO. (2) The wording that the article came with does not contain anything that would force the authority to join international treaties, but all that is in the matter is just an urge and encouragement to join whenever possible. (3) International treaties give the right to join them on the condition that the applicant is a (state), but the Palestinian National Authority, in this period, was just a self-governing authority (Salih, 2014).

It is worth noting that during the era of the Palestinian National Authority, no international treaties were acceded to in order to talk about its status as a source of international law in the national legal system (2014).

However, the question remains about the status of the declaration of principles agreement (Oslo) during the aforementioned period of the national legal system; where this status could be clarified by referring to the criminal jurisdiction enjoyed by the Palestinian National Authority and the state of Israel in accordance with the provisions of that agreement (Kontorovich, 2013).

In order to define criminal jurisdiction in detail and because of its sovereign nature, Israel has been keen to draw up Protocol III, which constitutes an agreement on legal matters. The general principle of criminal jurisdiction in the convention is that the criminal jurisdiction of the Palestinian Authority includes all crimes committed in areas under its territorial jurisdiction (Brown, 2003).

Therefore, article 1 of Protocol III concerning legal matters stipulates:

> "The criminal jurisdiction of the Palestinian Authority covers all offences committed in the areas under its territorial jurisdiction."

However, article 2, paragraph (b) refers to the exception created by Protocol III, which is that the Israeli criminal jurisdiction includes Israeli criminals wherever they commit crimes, even if that is within the territories of the Palestinian National Authority (Shehadeh, 1994).

Based on that, if an Israeli committed a crime during the period 1994 to 1999 in the Palestinian territory, the Palestinian judge would immediately refer the dispute to the Israeli court in accordance with what was established by Protocol III and embodying the principle of the monism of law (Fassberg, 1994).

Based on the above discussion, the authors argued that despite the absence of what defines the relationship between international and national law during the period between 1994 and 2013, the Palestinian judiciary adopted the principle of the monism of law, and this is evident from the judicial ruling issued by the Jenin Magistrate's Court, which rejected the implementation of the Oslo Agreement and that citizenship holders shall be tried Israelis who committed crimes on the territory of the Palestinian state. In its ruling, the court added that the Oslo Agreement bore the seeds of its own annihilation, as it was of a temporary and limited nature and limited to arrangements for the transitional phase that extended to five years from the date of entry into force of the agreement. It was not explicitly or implicitly extended in subsequent agreements, and this has led to the saying that the validity of the Oslo Accords expired years ago.

In addition, Palestine has obtained the status of an observer state in the United Nations, and Palestine has joined in this capacity to international treaties, the latest of which was the announcement of accession to the Rome Statute establishing the International Criminal Court (Fletcher, 2020).

The court stated that the recognition of Palestine as a state imposes a new legal reality that goes beyond the boundaries of the Oslo borders agreement and restores Palestine to its natural status in international law, which is a fully sovereign state under occupation. This state is administered by authorities emanating from the Palestinian state and not from the authority of the transitional self-government that resulted from the Oslo Accords (Dinstein, 2019).

This emphasises that the Palestinian state is the holder of legal sovereignty over Palestinian land since the time and objective

conditions imposed by Oslo as a temporary authority had lapsed, which includes provisions in Protocol III related to legal affairs in violation of the right of the Palestinian state to seek punishment (Ben-Naftali et al., 2005). This inherent right amplifies the criminal jurisdiction of the national courts over any persons who commit crimes on the Palestinian territory, which is in line with the principle of territoriality of the criminal law contained in article 7 of the Penal Code No. 16 of 1960 in force (El Zeidy, 2001).

In addition, the jurisdiction of the Palestinian courts derives from the right of the sovereign Palestinian people to exercise their powers in their state and on their land through their three powers under article 2 of the amended Basic Law of 2003, including the judicial authority that is exercised by courts of all kinds and levels, and which pronounce judgments in the name of the Palestinian Arab people (Ben-Naftali & Shany, 2003).

Based on the above discussion, it can be rightly concluded that the Palestinian legislator in the era of the Palestinian National Authority adopted the principle of the monism of law.

The Relationship between International and National Law under the Palestinian State

On November 29, 2012, the United Nations General Assembly voted to raise Palestine's status to an observer state in the United Nations. This new legal recognition facilitates the Palestinian state to join the international treaties and institutions established under the instruments (Wählisch,2012). Accordingly, the Palestinian leadership submitted requests to join 13 international treaties. Among these treaties are the Vienna Convention on International Relations, the Convention on the Rights of the Child, the Convention against Torture, and the Convention against Corruption (Dennis, 2005).

In addition, the four Geneva Treaties of 1949, the Additional Protocol of 1977, and other treaties have been acceded to, which are: The Hague Convention Relating to the Laws and Customs of War on Land and its Annex: Regulation relating to the Laws and Customs of War on Land. International Convention for the Suppression and Punishment of the Crime of Apartheid. Convention on the Prevention and Punishment of the Crime of Genocide. United Nations

Convention against Corruption. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. International Convention on the Elimination of All Forms of Racial Discrimination. Vienna Convention on the Law of Treaties. Convention on the Rights of Persons with Disabilities. Convention on the Elimination of All Forms of Discrimination against Women. Convention on the Rights of the Child. Vienna Convention on Diplomatic Relations. Vienna Convention on Consular Relations. The four Geneva Treaties. The First Additional Protocol to the Geneva Treaties is the Protection of Victims of Armed Conflicts of an International Character. International Covenant on Civil and Political Rights. International Covenant on Economic, Social and Cultural Rights (Mantilla, 2017).

The above-mentioned treaties are indeed important, but the pertinent question is, what is the legal value and status of these treaties to the Palestinian legal system and laws? In other words, what are the changes that the treaties would bring to the existing legal system and legislation?

First: the legal status from the perspective of the regular judiciary. The status of the acceded international treaties ideally should be determined by the constitution or the Basic Law. However, the Palestinian Basic Law is silent about the matter. This arguably highlights a defect of the written constitution. Due to the omission, some argue that the Palestinian Basic Law does not take the principle of the monism or dualism of the law (Shbeir, 2015).

The impact of this defect became more visible after the UN Secretary General, Ban Ki-moon announced the inclusion of the state of Palestine in the international treaties. The state made a request to join the treaties, and such treaties would enter into force 30 days after Palestinian President Mahmoud Abbas signed official requests to join these treaties (Bosco Bortolaso, 2014). Abd al-Karim Shbeir (2015) viewed that the declaration imposes a great test and challenge to the Palestinian state to harmonise its existing legal system and domestic laws in order to comply with the requirements imposed by the treaties and to create the appropriate conditions for the implementation of treaty obligation. It becomes more problematic and complicated due to the additional restrictive policies and measures imposed by the Zionist occupation.

In reality, it appears that in the context of Palestine, the status of international law to national law is not clearly determined by national legislation, specifically the constitution or the Basic Law. In view of that, how does the judiciary deal with the issue? As mentioned earlier, the attitude of the court in this issue can be gathered based on a number of decisions made before the recognition of the Palestinian state in 2013, in which the Oslo Accords were still in force. The judiciary seems to give international law precedence over national law, taking into account the doctrine of monism of laws, and this doctrine continued after the establishment of the Palestinian state (Benvenisti, 2008). For instance, the Jenin Magistrate's Court repudiated the Oslo Agreement as expired after Palestine became a state, and thus priority was given to international law, taking into account the doctrine of monism of laws.

Arguably, what applied to the Oslo Accords should also be applicable to other international treaties. In the absence of a provision in the Palestinian Basic Law that clarifies the status of these international treaties in terms of national law, the doctrine remains the monism of law. But it is worth noting that the uniqueness of the Palestinian case pushed the state of Palestine to give more consideration to the necessity of integrating the treaties within the national laws in order to benefit from them as much as possible, and in particular, the international humanitarian law treaties (Report of the Human Rights Council, 2014).To gain more benefits from these treaties, the state of Palestine has no choice but to follow the recommendations of other countries that have harmonised their national legislation with international treaties. This was demonstrated by the report of the Working Group on the Universal Periodic Review on January 6, 2014, where the report indicated that a number of countries had harmonised their legislation in line with international treaties, especially in the field of human rights (Report of the Human Rights Council, 2014). It is, therefore, correct to contend that the global community, to a certain extent, plays a vital role in influencing a state's attitude in harmonising or incorporating the obligations imposed by international treaties. This factor is also visible in the case of Palestine.

Second: the legal value from the perspective of the constitutional judiciary. The Palestinian High Constitutional Court has the function of interpreting the statutory laws in Palestine according to article 24 of the code of Court. In 2017, a constitutional challenge was brought before the court in light of constitutional case no. 12, the second judicial year. In the legal action, the court was asked to answer a very

important question as to what the value of the international treaties inside the Palestinian hierarchy of laws is. The court first found affirmed its competency to answer such question in exercising its powers to interpret any articles of the Palestinian laws, especially the Palestinian Basic Law, which usually determines the relation between the treaties and the national laws (Palestinian Supreme Constitutional Court, 2017).

It is somehow peculiar when the court relied on article 15 of the Palestinian Basic Law in deciding that relation and the value of the treaties because article 15 never mentions such relation or even value. It only reads:

> "The PNA shall accede to the international treaties related to human rights."

The court considered the treaties higher than the Palestinian laws, even the Basic Law itself. This court decision was arguably a breach of its powers to interpret the laws; since the court, in this case, created a constitutional rule that was not mentioned in the Basic Law, and this would also undermine the principle of separation of power.

Another decision was made by the court in 2018, responding to a constitutional interpretation request filed in 2017. In that decision, the court found that according to the above-mentioned article 15, the treaties have a value that locates in the middle between the Basic Law and the other laws made by the Palestinian Legislative Council (PLC, i.e., the parliament). So, the treaties are below the Basic Law but higher than any other law in Palestine (Palestinian Supreme Constitutional Court, 2018).

To sum up, in both decisions, the court, as the representative of the constitutional judiciary in Palestine, there is a strong tendency to adopt the monism doctrine; however, the court's conduct was not acceptable for breaching the powers given to it by the court's code and for violating the principle of separation of powers.

CONCLUSION

The relationship between international and national law is very significant because of its connection to a fundamental principle,

which is the principle of state sovereignty. In addition, there are two conflicting doctrines about determining the status of international law in the national legal system, which are the doctrine of the monism of law and the principle of the dualism of law. The issue of determining the status is a matter that is often entrusted to the national constitutional legislature. However, in the case where the national legislation is silent on the matter, there is no harm in relying on the doctrine of pluralism, wherever the judiciary determines this status as de facto and not as a legally regulated issue. It should be noted here that the Palestinian legislature, before the establishment of the Palestinian state, adopted the doctrine of the monism of law, and this was evident in many rulings of the Palestinian judiciary and continued to adopt the same doctrine after Palestine became a non-member observer state in the United Nations. Moreover, the specificity of the Palestinian situation imposes on the Palestinian legislator the need to work to harmonise domestic or national legislation in line with the requirements of the international treaties to which Palestine has recently acceded, especially the treaties related to international humanitarian law such as the Geneva Treaties of 1949 and the Additional Protocol attached to them of 1977, as well as the Treaty of Rome which is the founding International Criminal Court. Although the majority of the world's constitutions tend to move towards adopting the monism of law with the supremacy of international law and the preference over national law for several considerations, perhaps the most important of them is that this is an affirmation of the foundation of international law, and the need to adhere to respecting its rules. The study would assist the international community in understanding the legal nature of the Palestinian constitutional system and its position related to the value of treaties in Palestine. However, the authors recommend that the Palestinian legislature must clarify the status of international treaties in the Palestinian legal system. In addition, it has been emphasised that the harmonisation of the international law obligations imposed by the acceded treaties within the domestic law must be carried out, as the treaties arguably would bring more benefits to the state of Palestine, especially the treaties related to international humanitarian law and the Treaty of Rome, in confronting the perpetual Zionist occupation.

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