

Juliana J. J. Almassri¹

An Investigation of International Legal Marginalisation

Abstract

The Israeli–Palestinian conflict remains one of the most protracted disputes under the United Nations purview. While international law provides a framework for resolving such conflicts, this study demonstrates that the UN's inconsistent application of legal principles in the case of Palestine has institutionalised Palestine's legal marginalisation.

This study critically examines the UN's inconsistent application of international law in the case of Palestine, arguing that such inconsistency has contributed to a condition of international legal marginalisation.

Also, the study presents the actions taken by the UN over the years and how they have kept Palestine in an international state of legal marginalisation. While the UN and the international community promise justice through international law, it is repeatedly postponed or denied. This study highlights the difference between the UN's words and actions, showing how its approach has prolonged injustice in the Israeli–Palestinian conflict.

Keywords: Palestine, conflict, international organisations, international law, the United Nations

Introduction

The question of Palestine remains one of the most contested and enduring challenges in international law, it is, therefore, now more necessary than ever to re-evaluate its position on the issue. The situation should be observed together with its legal, political, social and economic aspects.² While the United Nations has long positioned itself as the guardian of international law, its inconsistent application in the Palestinian case raises critical questions about systemic bias and legal marginalisation and despite

¹ PhD student, Ludovika University of Public Service, Doctoral School of Military Sciences, e-mail: julianaalmassri@gmail.com

² IMSEIS 2020.

sustained involvement, the Palestinian aspirations for statehood and justice remain unresolved.

This article revisits the role of the UN in shaping legal outcomes in the Palestine–Israel conflict, emphasising its implications for the credibility of international law and focuses on the following question: How has the UN's approach to international law contributed to the legal marginalisation of Palestine, and how does this approach compare to its handling of other occupation-related cases? This question is explored through a critical and comparative analysis to examine UN interventions in five cases: East Timor, Kuwait, Namibia, Western Sahara and Cambodia. While scholars have examined UN bias in the Palestinian issue, none have systematically compared its legal marginalisation to other occupations. This research fills this gap by examining how the UN's selective enforcement of international law and will reveals significant inconsistencies in legal standards, political will and institutional behaviour, as it is very important to compare the UN's handling of the Palestine issue with other cases of occupation and to briefly describe them.

The examination of the gap between international law application and the UN's position, where the organisation has failed to meet the goal of having lasting peace and raising queries about the rule of the international law as its practice appears to be in effect, rather than the rule of law itself. The actions done by the UN have placed the Palestinians in legal marginalisation with only a promise of justice under legal theory while in reality it is nothing to be.³

This unresolved issue raises further legal questions that require structured examination: what if, as universal guardians of the international system, their actions or inactions are not aligned with international public law? Palestine's case is old and the UN worked on it since its entire existence. Here, it is a good opportunity to show the development of control by law in the contributions of the UN to Palestine's case after World War II. It is critical to examine how the legal position of Palestine within the international order has been challenged.⁴

Moreover, there is a difference between the rule of law and the control by the same law, where the latter are imperialist practices codified in laws and regulations to control and maintain power. And the law as the preferred international principle of governance that demands equality, which the situation in Palestine does not meet according to the UN, results in a state of legal dependency. This invites a deeper inquiry into the origins of international law and whether adherence to its norms would yield different legal outcomes for Palestine.⁵

To interrogate this inconsistency, the analysis proceeds in four parts. First, it traces the origins of Palestine's legal marginalisation to the League of Nations Mandate system,⁶ exposing how Eurocentric legal frameworks embedded subordination. Next, it compares the UN's responses to five occupations, highlighting disparities in enforcement. Third, it examines Palestine's exclusion from full UN membership as

³ ANGHIE 2005.

⁴ FALK 2014.

⁵ JABER 2022.

⁶ ANGHIE 2005.

a symptom of systemic bias. Finally, the conclusion proposes structural reforms to realign the UN with its Charter principles.⁷

The origins of Palestine's legal marginalisation

The idea is not claiming that the UN created the state of legal marginalisation in Palestine, but rather raises the question whether the way Palestine was treated under the Eurocentric international legal order established after 1945 led to this disenfranchisement. It also argues that the institutionalisation of the legal marginalisation of Palestine and its people has its roots in the League of Nations' mandate system.⁸

Historically, the legal and social marginalisation of Palestine was significantly influenced by the Jewish national movement. For instance, Herzl promoted a colonialist idea by calling it a civilisational mission of the Western colonialists. However, the goal was to have a Jewish state from Palestine that would be "protected by law" to civilise an already populated land through the adoption of legal discourses. The British Mandate administered international control favouring the Jewish State movement at the expense of the pre-guaranteed political rights of the indigenous majority.⁹

Here, the Jewish national movement made things worse for Palestinians by adding an existential threat – meaning their very existence as a people was put at risk through systematic efforts to displace or eliminate them. European powers used laws to create a system where Palestinians were marginalised. This marginalisation was not just a one-time thing; it had to be maintained over time to keep the colonial system in place.¹⁰

One of the most important resolutions to mention was proposed and established in 1945 by the UN and supported mainly by Western powers, including the U.S. and the Soviet Union, known as Resolution 181 (II). The resolution aimed at dividing Palestine into two separate states including a Jewish (Israel) state and Arab (Palestine) state, while placing Jerusalem which was originally in Palestine under international control. While it sought peace, it overlooked Palestinian rights and self-determination, leading to conflict instead of resolution. The plan kept the region under international oversight, deepening tensions and marginalising Palestinian voices.¹¹

The argument here is that from the outset, the resolution proposed the partitioning of Palestine against the will of the majority of the native Palestinian population, giving priority to the interests of the West over the existing international law as applied to the Palestinians. Here, according to the rule of law,¹² this partition is not legal because it does not have the approval of the governed and it has created not only a homeland for the Jewish people but also a state.¹³

⁷ KOSKENNIEMI 2001.

⁸ ANGHIE 2005.

⁹ KHALIDI 2007.

¹⁰ PAPPE 2007.

¹¹ United Nations 1947.

¹² TAMANAHA 2004.

¹³ JABER 2022.

Furthermore, the resolution sparked outrage among Arab leaders and Palestinians. They felt it was unfair because the majority of the Palestinians were Arabs, and the plan gave a significant portion of the land to the Jewish minority. The Arab states, including Egypt, Syria, Jordan, Iraq and Lebanon among others, strongly opposed the plan. They submitted their disapproval to the UN, arguing that the resolution ignored the rights of the Palestinians. Palestinians also protested, calling the plan a betrayal.¹⁴ However, the decision was made, and tensions quickly turned into violence. As a result, a conflict ensued between Jews and Arabs in Palestine that led to war. Then, in May 1948, Israel was established under Jewish leadership.¹⁵

The Arabic neighbouring countries denounced the partitioning and made a resolution to engage the military to fight the newly established Israel. When the fighting broke out between the newly created Israel and its neighbours, it marked the beginning of the 1948 Arab–Israeli War. Over 700,000 Palestinians were displaced during the war and the displacement was known as the Nakba (which in Arabic means “catastrophe”). In Palestine, entire villages were destroyed and the residents were made refugees.¹⁶

The UN partition plan was never fully implemented. The proposed Arab state was never created, and the conflict over the land continued. To this day, the Palestinian struggle for statehood and rights remains unresolved, and the legacy of that 1947 decision still shapes the region's history.¹⁷

Moreover, the UN was aware of the existing military confrontations between Jews, Arabs and the British at the time and the military capabilities of all sides involved. Also, the possibility of post-partition violence was overlooked. It indicates the unwillingness of the UN to consider force and the consequences the Arab civilian population might face that could impact the political and demographic situation. Here, it is obvious that there was a misapplication of the law in enacting the two-state (Israel–Palestine) framework as the foundation of the legal position on Palestine by the UN.¹⁸

In Palestine's case, we can observe the “dominance and marginalisation” rooted in legal control. This is evident in the neglect of non-Western concerns asking for neutral intervention and the dismissal of Palestinian opposition to the partition plan. The UN's structure, which allows such divisions, raises questions about whether it truly upholds the rule of law.¹⁹

The UN's role and legal control

The UN's post-1967 approach to Palestine exemplifies ‘rule by law’ – the instrumental use of legal frameworks to maintain political control – as opposed to ‘rule of law’, which requires impartial application of law to constrain power.²⁰ In Palestine, the UN employs legal processes (e.g. resolutions, negotiations) without enforcing substantive rights,

¹⁴ KHALIDI 1987.

¹⁵ United Nations 1947.

¹⁶ PAPPE 2007.

¹⁷ United Nations 1947.

¹⁸ QUIGLEY 2005.

¹⁹ KHALIDI 1987.

²⁰ KOSKENNIEMI 2001.

thus perpetuating occupation under a veneer of legitimacy and despite recognising Palestinian rights, the UN partially applied international law with regard to ending Israel's occupation. Instead, it has relied on a humanitarian approach to documenting violations, while promoting unbalanced bilateral negotiations, making the realisation of Palestinian rights virtually impossible.²¹

The UN has allowed negotiations and bilateral talks, despite the occupation's clear violation of principles prohibiting forceful territory acquisition, right of self-determination, and prolonged illegal and illegitimate military occupation. This double standard has reinforced the marginalisation of Palestinians, unlike the UN's firm stance in other cases of occupation.²² By prioritising cases where the UN's capacity for decisive action was demonstrably deployed, this analysis sharpens the contrast with its systematic deferral of Palestinian self-determination, thereby isolating the role of political bias in shaping legal outcomes. Examples are as follows:

The occupation of East Timor by Indonesia (1975–1999)

UN Action: The UN consistently rejected Indonesia's occupation of East Timor, declaring it illegal and calling for an immediate withdrawal. In 1999, Indonesia was forced to withdraw after the vote for independence in East Timor in a UN-sponsored referendum. The UN did not negotiate the legitimacy of the occupation but instead was determined to end it by pursuing for self-determination of East Timor.²³ Unlike East Timor, where the UN invoked Chapter VII to enforce withdrawal (Resolution 1264), Palestine's occupation persists despite identical violations of *jus cogens* norms (e.g. prohibition on territorial acquisition by force). This disparity underscores how geopolitical interests override legal consistency.²⁴

Iraq's occupation of Kuwait (1990–1991)

UN Action: Following Kuwait's invasion by Iraq in 1990, Resolution 678 was passed by the UN Security Council demanding the immediate and unconditional withdrawal of Iraq. In this instance, the UN went ahead and authorised the use of force to end the occupation, and Iraq was compelled to withdraw without negotiations over the legitimacy of its presence in Kuwait.²⁵ Here, the UN mandated Iraq's unconditional withdrawal under Resolution 678 with military authorisation, while allowing Israel's occupation of Palestine through endless negotiations, violating the same Charter principles.²⁶

²¹ QUIGLEY 2005.

²² United Nations 1967.

²³ United Nations 1999.

²⁴ United Nations 1999.

²⁵ United Nations 1990.

²⁶ IMSEIS 2020.

The occupation of Namibia by South Africa (1966–1990)

UN Action: The UN declared South Africa's occupation of Namibia between 1966–1990 illegal and demanded for an immediate end to its administration. The UN-recognised Namibia had the right to self-determination and independence. In 1990, South Africa was forced to withdraw without negotiations over the legitimacy of its occupation.²⁷ The UN consistently deemed South Africa's occupation illegal and enforced withdrawal, whereas it has tolerated Israel's prolonged occupation of Palestine through bilateral talks.²⁸

The occupation of Western Sahara by Morocco (1975–Present)

UN Action: The UN has called for Morocco's withdrawal from Western Sahara and supported the right of the people from Sahrawi to self-determination through a referendum. While the conflict remains unresolved, the UN has not legitimised Morocco's occupation and continues to push for a solution based on international law, not negotiation over the occupation's validity.²⁹ In this case, the UN denies legitimacy to Morocco's occupation, insisting on a referendum, but has never applied this standard to Palestine, where self-determination remains deferred.³⁰

Vietnam's occupation of Cambodia (1978–1989)

UN Action: The UN rejected Vietnam's occupation of Cambodia, calling for an immediate withdrawal of Vietnamese forces. The UN supported Cambodia's right of self-determination and sovereignty, leading to Vietnam's eventual withdrawal in 1989 without negotiations over the legitimacy of its presence.³¹ In Cambodia, the UN demanded Vietnam's immediate withdrawal without negotiations, contrasting with its acceptance of Israel's "security" claims in Palestine.³²

The UN's approach to occupation reveals glaring inconsistencies when comparing Palestine to other cases. In Kuwait (1990–1991), the Security Council authorised military force to reverse Iraq's invasion, demanding immediate and unconditional withdrawal. Similarly, in Namibia (1966–1990), the UN consistently rejected South Africa's occupation, leading to independence. Yet in Palestine, decades of bilateral negotiations have failed to enforce the same legal standards, allowing Israel's occupation to persist. Even in prolonged conflicts like East Timor (1975–1999), the UN prioritised self-determination through a referendum – a measure never seriously pursued for Palestinians. The most telling comparison is Western Sahara, where

²⁷ United Nations 1966.

²⁸ KHALIDI 2007.

²⁹ United Nations 1975.

³⁰ FALK 2014.

³¹ United Nations 1979.

³² ANGHIE 2005.

Morocco's claims remain unrecognised, while Israel's territorial expansions face only rhetorical condemnation.

Three patterns emerge from these cases: 1. the UN acts decisively when occupiers lack Western patronage (Kuwait, East Timor); 2. it delays justice for 'Cold War orphans' (Cambodia, Namibia) but still rejects occupation legitimacy; and 3. it legitimises prolonged occupation only when aligned with powerful states' interests (Palestine, Western Sahara). This hierarchy of enforcement reveals how international law, as Koskeniemi (2001) notes, "operates as a politics of inevitability" – naturalising Palestinian subjugation while framing other occupations as aberrations.

Moreover, these disparities expose a troubling trend: the UN applies international law selectively, with Palestine often receiving the weakest enforcement. The contrast raises urgent questions about why Palestinian rights are systematically deferred, even as other occupied territories have seen decisive intervention.

Also, during the era of decolonisation, Third World Countries played a vital role in reshaping the dynamics of the UN, particularly through their collective efforts to challenge colonial domination and promote self-determination. These efforts included:

- Non-Aligned Movement (NAM) Formation: NAM, established in 1961, brought together newly independent nations from Asia, Latin America and Africa to oppose colonialism, imperialism and great-power dominance. This movement amplified the voices of Third World nations within the UN, pushing for resolutions that supported decolonisation and the rights of oppressed peoples.³³
- UN General Assembly Resolutions: Third World countries used their growing numbers in the UN General Assembly to pass resolutions that condemned colonialism and supported self-determination. Key examples include Resolution 1514 (1960): The "Declaration on the Granting of Independence to Colonial Countries and Peoples", affirming that groups of peoples have the right of self-determination and pushed for an end to colonialism;³⁴ and Resolution 3236 (1974), which recognised the right of the Palestinians to self-determination, sovereignty and independence.³⁵
- Challenging Western Dominance: Third World countries worked to reduce the influence of Western powers in the UN by advocating for a more equitable international order. This included calls for restructuring the UN Security Council to better represent the Global South and address its marginalisation in decision-making processes.³⁶
- Support for Anti-Colonial Struggles: Developing nations consistently supported liberation movements in colonised territories, such as in South Africa (against apartheid), Namibia (against South African occupation) and Palestine. They pushed the UN to take stronger stances against colonial and occupying powers.³⁷
- Economic Justice Campaigns: Through initiatives like the New International Economic Order (NIEO), developing nations sought to address global economic

³³ United Nations 1960.

³⁴ United Nations 1974b.

³⁵ United Nations 1974a.

³⁶ KHALIDI 1987.

³⁷ FALK 2014.

inequalities and reduce the exploitation of developing nations by wealthy, industrialised countries.³⁸

Despite these efforts, the UN failed to fully address the marginalisation of Palestine. The UN adopted a negotiating approach that legitimised Israel's position and undermined Palestinian sovereignty.³⁹ Here, there is a need for continued pressure on the UN to align its actions with the principles of justice and equality it claims to uphold.⁴⁰ These lessons can help peoples, especially Palestinians, avoid the repetition of the marginalisation of their rights, and perhaps direct efforts towards radical change in UN structures.

Membership in the United Nations

Palestine's inability to gain full UN membership, when the UN applies different standards to Palestine compared to other countries, goes against its own rules about equality. Historically, statehood applications to the UN are a process where standards are highly inconsistent and often politicised, largely influenced by the interests of a few powerful members. Palestine's admission process to the UN is a good example of how different standards apply in the case of Palestine, the admission process was plagued by arbitrary conditions and double standards, reflecting the broader inequalities embedded in the international legal order.

For instance, while UN admitted Israel in 1949 despite unresolved territorial disputes and ongoing military expansions, Palestine's application was subjected to stricter and often irrelevant criteria, such as the requirement for a "negotiated settlement" with Israel. This effectively granted Israel veto power over Palestine's right to self-determination and statehood, directly contradicting the UN's Charter principles.⁴¹

The UN has been heavily dominated by the influence of powerful nations such as the United States, which have impacted the admission of other Nations to the organisation. The dominance of the powerful states played a vital role in the marginalisation of Palestine in joining the UN. The admissions committee's refusal of Palestine's membership by citing lack of unanimity is a great example of how interests of influential countries can override the rights of weaker states. Such practices weaken the legitimacy of the UN and reinforces ill practices such as the systematic subordination of marginalised groups and countries within the international framework. In addition, imposition of special conditions indirectly unrelated to the criteria under the Montevideo Convention – such as the "broader political context" – further highlights the constant manipulation of international law as a tool of control rather than a justice mechanism.⁴²

³⁸ QUIGLEY 2005.

³⁹ QUIGLEY 2005.

⁴⁰ United Nations 1974b.

⁴¹ United Nations 1949.

⁴² QUIGLEY 2005.

In 2012, Palestine was offered a Non-member Observer State Status by the UN, a significantly symbolic move that still failed to address the systemic structural inequalities within the organisation. A Non-member Observer State Status restricts Palestine from taking part in UN operations, such as voting, nominating candidates, or making appointments. Although the status gives the Palestinian people a platform to voice their issues, it falls short of achieving equality or addressing the root cause of the marginalisation of Palestine and its people. Palestine's participation limitations in UN activities is a representation of partial measures inadequacy in equal justice and underscores the urgency in substantive reforms in the international system.⁴³

The inconsistency in UN membership admission reflects a pattern where international law is constantly manipulated when dealing with different parties. The inconsistency also represents the manipulation of international laws to serve the interests of dominant nations rather than a function for equality and justice. Palestine's case is a stark reminder of systematic bias in the international legal order and the urgent need for fundamental reforms to address these shortcomings.⁴⁴

Palestine's marginalisation in the admission to the UN has implications more far reaching than the issue of statehood. The inconsistent and arbitrary application of the international law undermines its effectiveness and legitimacy as a tool for equality and justice for the member states. The case exposes the biases and flaws in the international system, while highlighting the need for a more inclusive and equitable approach to global governance. Addressing these issues demands a rethinking of the processes and structures that govern the international system, ensuring that interests for all are met and not for just the powerful few.⁴⁵

The handling of Palestine's membership application into the UN highlights and reflects the broader issues of power, control and marginalisation in international organisations and legal order. The inconsistent and arbitrary implementation of international law, coupled with the influence of dominant powers perpetuated the marginalisation and subordination of Palestine and undermines the principles of equality and justice. To address these challenges in the international space, the international community need to urgently rethink the processes and structures that govern global systems to ensure that the interests of all parties are equally met. Such reforms can provide glimmers of hope for the promises of justice and equality for states like Palestine and other marginalised nations.⁴⁶

Conclusion

The Jewish national movement that was proposed and supported has set the foundation for the systemic subordination and displacement of the native Palestinians under the watch of international law and at the expense of the Palestinian people.⁴⁷

⁴³ United Nations 2012.

⁴⁴ FALK 2014.

⁴⁵ KHALIDI 1987.

⁴⁶ QUIGLEY 2005.

⁴⁷ QUIGLEY 2005.

Moreover, the UN's actions have stamped the legal, political, economic and social marginalisation of the Palestinian people. As a result, Palestine's admission process has been met by a stumbling block of control that has denied it justice.⁴⁸ The UN's handling of Palestine exposes a fundamental contradiction: the organisation enforces international law only when doing so aligns with the interests of its most powerful members.⁴⁹ And Palestine's fate has been deferred to endless negotiations that tacitly endorse Israel's violations.

However, Palestine's marginalisation has a broader implication in the legitimacy of international organisations and law. The inconsistent implementation in the legal principles undermines the credibility of international law as a framework for justice. The case exposes the biases and the flaws within which international organisations and laws have operated in over the years, thus creating the dire need for equitable and inclusive approach to global governance. It is a process that requires fundamental rethinking of the processes and structures governing the international system to guarantee equal representation of all interests.⁵⁰

Looking to the future, addressing the issue of Palestine demands a rethinking of the international legal order. On the one hand, this process must tackle the systematic inequalities and biases that perpetuate Palestinian marginalisation, including the unchecked power of dominant states within the UN. On the other hand, it requires renewed commitment by international organisations to the UN Charter's core principles: equality, justice and self-determination.

To realign the UN and its Charter principles, concrete structural reforms must be addressed. First, the Security Council's veto power – routinely wielded to shield Israel from accountability – should be curtailed in cases of prolonged occupation or mass human rights violations, as proposed in the French–Mexican 2015 initiative. Second, the General Assembly could leverage its Uniting for Peace Resolution (377/V) to bypass Security Council deadlock, as it did during the Suez Crisis. Third, the International Court of Justice (ICJ) and the International Criminal Court (ICC) must be empowered to investigate violations of Palestinian rights without political interference, building on the ICJ's 2004 Wall Advisory Opinion and the ICC's 2021 jurisdictional ruling. Finally, grassroots movements like boycott, divestment and sanctions (BDS) and civil society litigation campaigns can pressure states to comply with international law.

Above all, the international community needs to recognise the resilience and the agency of Palestine and its people in the struggle for self-determination, justice and constant request for equal treatment. The UN, as a global unifier, must acknowledge the efforts of civil and social rights movements advocating for Palestinian rights – and confront the narratives and structures that perpetuate their marginalisation.⁵¹

⁴⁸ United Nations 1949.

⁴⁹ ANGHIE 2005.

⁵⁰ KHALIDI 1987.

⁵¹ FALK 2014.

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