

HUMAN RIGHTS UNDER PROLONGED OCCUPATION: CONDITIONAL *ERGA OMNES* TRUSTEESHIP AS A LEGAL PATHWAY TO PALESTINIAN SELF-DETERMINATION UNDER INTERNATIONAL LAW

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This article examines the legal status of Israel's prolonged occupation of the Occupied Palestinian Territory and the human rights entitlements of the Palestinian population under public international law. It addresses two questions: how international human rights law, international humanitarian law, and International Court of Justice (ICJ) jurisprudence characterise the occupation and Palestinian rights; and which existing or innovative legal pathways might realistically advance Palestinian self-determination in accordance with universal justice and the rule of law. Employing doctrinal legal research, the article analyses primary sources including the Charter of the United Nations, the Universal Declaration of Human Rights, the 1966 International Covenants, the Hague Regulations, the Fourth Geneva Convention, relevant United Nations resolutions, and ICJ jurisprudence, supported by peer-reviewed scholarship and competing doctrinal arguments. The analysis finds that the international legal framework provides a substantial basis for Palestinian self-determination and identifies significant consequences arising from Israel's unlawful continued presence, including duties concerning cessation, non-recognition, non-assistance, and reparation. The article also distinguishes the established judicial finding of unlawful racial discrimination from the contested characterisation of apartheid and examines Israel's security and self-defence arguments. Existing enforcement pathways remain constrained by institutional deadlock, political discretion, and State cooperation. To address this enforcement gap, the article proposes a Conditional Erga Omnes Trusteeship, drawing upon the Charter's Trusteeship System, Uniting for Peace, UNMIK, and UNTAET. It concludes that carefully constrained and time-bound institutional coordination could provide a credible supplementary pathway for translating recognised legal obligations into practical conditions for Palestinian self-determination.

Keywords: Human Rights; Prolonged Occupation; Self-Determination; Conditional Erga Omnes Trusteeship; Universal Justice.

1. Introduction

1.1 Background: Occupation and the Erosion of Normative Order

Since 1967, the West Bank, including East Jerusalem, and the Gaza Strip have remained under a condition of belligerent occupation whose duration has stretched far beyond the temporary horizon envisaged by the law of occupation. What was designed as an exceptional legal arrangement has endured for more than half a century, turning a supposedly provisional condition into a defining feature of Palestinian political and legal life. The sheer longevity of the occupation raises a fundamental question: how long can an arrangement conceived as temporary remain legally sustainable when its effects become increasingly permanent? Time, in this sense, is not merely a matter of chronology. It becomes a legal variable capable of testing the very foundations upon which the regime of occupation was constructed.¹

The law of occupation, codified principally in the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, rests upon a carefully drawn distinction between administration and sovereignty. An occupying power may exercise authority necessary for the administration of territory, yet it acquires no title to that territory through occupation. The underlying bargain is fairly clear-cut: authority may be exercised for the protection and orderly administration of the occupied population while the territorial status remains unsettled pending a return to normal governance. The regime was never crafted as a back door to permanent territorial control. Its logic is rooted in restraint, stewardship, and temporariness. Once that temporal premise begins to fade, the legal architecture starts to creak, raising serious questions about whether prolonged administration can remain detached from the realities it creates on the ground.²

The problem becomes sharper where prolonged occupation operates alongside settlement expansion and sustained demographic transformation. Territorial control can acquire an appearance of permanence through facts established over time, particularly where civilian settlements expand, land use is reconfigured, and demographic patterns are deliberately reshaped. Such developments place pressure on a foundational rule of international law: territory cannot lawfully be acquired through force. A measure initially justified as temporary administration may therefore demand closer scrutiny when its practical consequences point

¹Regulations concerning the Laws and Customs of War on Land, annexed to Hague Convention (IV) (adopted 18 October 1907, entered into force 26 January 1910), arts 42–43.

²Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, arts 47, 49 and 53.

towards lasting territorial integration. The issue is not simply whether an occupying power continues to exercise authority. The deeper question concerns what that authority produces, whose rights are preserved, whose political future is constrained, and whether a temporary legal status is being used as a vehicle for a permanent political reality.³

Universal justice offers a normative yardstick for confronting that tension. Human dignity and legal entitlement cannot sensibly depend upon nationality, race, or political usefulness. The United Nations Charter places equal rights and the self-determination of peoples among the principles underpinning friendly relations between nations, giving the concept a place within the architecture of the international legal order. Viewed through this universalist lens, the Palestinian experience reveals a striking distance between legal principle and lived reality. Prolonged military administration, restrictions on movement, territorial fragmentation, and settlement encroachment affect not merely day-to-day welfare, but the practical capacity of a people to exercise rights recognised by international law. The real challenge, then, is to keep the promise of universal justice from becoming mere legal window dressing. International law must retain sufficient normative force to protect human dignity where political circumstances have allowed a temporary condition to acquire the trappings of permanence.⁴ Reading the occupation of Palestinian territory through this universalist lens exposes a persistent gap between the normative commitments of the international legal order and the lived reality of a population subject to prolonged military administration, movement restriction, and settlement encroachment.

The novelty of this article lies in moving beyond the familiar question of whether Palestinian rights are recognised under international law towards the harder question of how those rights might be made operational when established mechanisms remain stuck in institutional deadlock. Existing scholarship and practice have examined self-determination, occupation, non-recognition, international criminal accountability, and the consequences of the ICJ's jurisprudence through distinct doctrinal lenses. This article brings these strands into a single enforcement-oriented framework and proposes **Conditional *Erga Omnes* Trusteeship** as an innovative institutional pathway. The proposal does not seek to reinvent the wheel or

³Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), arts 1, 2 and 13.

⁴Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 1(2).

manufacture a new legal entitlement. It recombines existing legal and institutional building blocks, including the Charter's Trusteeship System, the Uniting for Peace framework, the transitional administration models of UNMIK and UNTAET, third-State obligations of non-recognition and non-assistance, and the supervisory role of the ICJ.

The article's further contribution lies in connecting *erga omnes* responsibility with a time-bound transitional mechanism directed specifically towards the practical exercise of self-determination. The proposed model responds to a structural gap identified throughout the analysis: international law may recognise rights and impose obligations with considerable clarity, while implementation remains vulnerable to veto politics, fragmented State practice, and uneven cooperation. **Conditional *Erga Omnes* Trusteeship** is therefore conceived as a bridge between normative recognition and institutional enforcement, subject to General Assembly authorisation, defined temporal limits, third-State cooperation, and continuing judicial scrutiny. Its ambition is deliberately measured: not to replace the Security Council, predetermine a political settlement, or impose permanent international administration, but to explore whether existing legal machinery can be sequenced more effectively when ordinary pathways fail to deliver meaningful conditions for Palestinian self-determination.

1.2 Research Problem and Scope

The first research problem arises from a striking gap between the growing clarity of international legal norms and the unresolved legal reality of prolonged occupation. How should international human rights law, international humanitarian law, and the jurisprudence of the ICJ legally characterise an occupation that has endured for decades alongside territorial control, settlement expansion, demographic change, and restrictions affecting the Palestinian population? The problem becomes sharper where the legal characterisation of particular practices remains contested, including the apartheid allegation, while Israel continues to invoke security and self-defence. The inquiry therefore examines whether the existing body of international law provides a coherent basis for determining the legal status of the occupation and the corresponding human rights entitlements of the Palestinian population, while maintaining a careful distinction between established judicial findings and contested scholarly or political claims.

The second research problem emerges from the enforcement gap between recognised rights and their practical realisation. If Palestinian self-determination constitutes a protected legal entitlement, what lawful and realistic mechanisms can translate that entitlement into meaningful institutional action when Security Council deadlock, permanent-member vetoes, fragmented State practice, and uneven compliance with third-State obligations continue to constrain implementation? The inquiry therefore evaluates established pathways, including State recognition, Security Council action, Uniting for Peace, international criminal accountability, and third-State non-recognition, before examining the proposed **Conditional Erga Omnes Trusteeship** as an innovative supplementary mechanism. The central concern is whether international law can move beyond declaring rights and provide a credible institutional route towards their practical exercise without displacing the existing constitutional architecture of the United Nations.

2. Research Method

2.1 Doctrinal Legal Analysis

This article employs a doctrinal and normative legal research methodology grounded in a systematic analysis of primary sources of public international law. The research examines relevant treaties, provisions of the Charter of the United Nations, resolutions adopted by the General Assembly and Security Council, and the jurisprudence of the International Court of Justice, with particular attention to the 2004 and 2024 Advisory Opinions concerning the Occupied Palestinian Territory. These materials constitute the principal legal foundation for determining the applicable rules governing belligerent occupation, human rights protection, self-determination, State responsibility, and the legal consequences arising from prolonged unlawful presence. The methodology is therefore primarily source-driven, with legal propositions derived from authoritative materials rather than from political narratives or policy preferences.

Treaty provisions are interpreted systematically in accordance with the interpretive principles reflected in the Vienna Convention on the Law of Treaties, particularly the ordinary meaning of treaty terms, their context, and the treaties' object and purpose. The analysis also considers subsequent practice and relevant jurisprudence where necessary to establish the

meaning and application of the applicable rules. United Nations resolutions are assessed according to their legal character, institutional source, operative language, and relationship with the underlying Charter framework. Judicial pronouncements of the ICJ receive particular weight as authoritative statements of international law, while the distinction between contentious judgments and Advisory Opinions is maintained throughout the analysis. This approach ensures that each legal proposition is anchored to the appropriate source and evaluated according to its actual legal force. The study further incorporates a structured examination of secondary legal scholarship published in peer-reviewed international law journals. Academic literature is used to corroborate doctrinal propositions, illuminate areas of uncertainty, identify competing interpretations, and trace the development of scholarly debate. Particular attention is given to contested questions, including the characterisation of apartheid, the scope of third-State obligations, the interaction between self-defence and the law of occupation, and the practical implications of prolonged occupation.

The methodology ultimately adopts an evaluative and synthesis-oriented approach. Established legal rules are distinguished from contested interpretations, while doctrinal gaps and enforcement limitations are identified before considering possible institutional pathways towards Palestinian self-determination. The proposed **Conditional *Erga Omnes* Trusteeship** is therefore developed from the cumulative analysis of existing legal and institutional materials, including the Charter's Trusteeship System, the Uniting for Peace framework, UNMIK, UNTAET, State responsibility, and the ICJ's jurisprudence. The method does not treat the proposed mechanism as an assumed legal conclusion; rather, it tests its legal foundation, institutional compatibility, practical limitations, and relationship with existing United Nations structures. The objective is to produce a rigorous, transparent, and even-handed doctrinal analysis in which normative claims remain traceable to legal authority and innovative proposals remain subject to the same standards of legal scrutiny as established rules.

2.2 Evaluation Criteria

Sources are evaluated according to three principal criteria: authority, currency, and diversity of perspective. Authority is assessed according to the legal weight and institutional status of each source, with binding treaty provisions, applicable rules of customary international law, and judicial pronouncements placed above non-binding resolutions,

institutional commentary, and scholarly opinion where their legal force differs. Particular weight is given to primary sources because the analysis seeks to establish the content of applicable international obligations rather than merely describe academic positions. The 2024 ICJ Advisory Opinion receives especially close attention as the most recent and comprehensive judicial assessment of the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem.

Currency is assessed by considering whether a source reflects the current state of international law and whether subsequent developments have affected its continuing relevance. Earlier authorities, including the 2004 Wall Advisory Opinion, remain important where they establish doctrinal foundations or provide continuity in the Court's reasoning, while later developments are examined to determine whether the legal position has evolved. Diversity of perspective is applied to contested issues by consulting scholarship that advances competing interpretations of the same legal questions. This is particularly important regarding the apartheid characterisation, where supportive analyses and critical responses are examined side by side. The purpose is to avoid cherry-picking authorities that merely reinforce the article's preferred position and instead test each proposition against the strongest available counter-argument. Sources are therefore not treated as equally persuasive simply because they reach similar conclusions; their legal authority, temporal relevance, methodological quality, and argumentative position are considered together to produce a balanced and defensible doctrinal analysis.

3. Analysis and Discussion

3.1 The Normative Architecture of Self-Determination and Human Rights

The starting point for any serious inquiry into universal justice lies in Article 1(2) of the Charter of the United Nations, which places respect for the principle of equal rights and self-determination of peoples among the Organisation's foundational purposes. The provision gives self-determination a firm place within the architecture of international law. It treats the political agency of peoples as a matter of legal principle rather than a privilege granted at political convenience. The language is strikingly clear: peoples are entitled to equal rights, and their capacity to determine their political destiny forms part of the legal grammar of the

international order. Any examination of Palestinian self-determination therefore begins with a principle written into the Charter itself.⁵

That commitment gains further weight through Article 55 of the Charter, which connects self-determination with higher standards of living, full employment, economic and social progress, and universal respect for human rights. The provision paints a broader picture of what meaningful self-determination is meant to support. Political freedom cannot be reduced to a flag, a seat at an international forum, or a line on a map. It carries practical consequences for human welfare, social development, and the enjoyment of basic rights. The legal architecture therefore points towards a simple yet powerful proposition: self-determination should have substance on the ground. A right that exists only on paper risks becoming little more than legal window dressing.⁶

The Universal Declaration of Human Rights carries this normative architecture into the sphere of individual rights, proclaiming that all human beings are born free and equal in dignity and rights, while affirming freedom from discrimination and the freedom of movement and residence within one's own state. These guarantees bring the discussion from the collective level of peoples to the lived experience of individuals. A people's claim to self-determination is closely intertwined with the everyday ability of its members to live with dignity, move freely, and enjoy equal rights. The universalist promise of international law therefore reaches beyond diplomatic language and institutional design. It touches the ordinary realities of human life, where freedom, dignity, and belonging are tested day after day. That is where the principle of self-determination stops being an abstract legal slogan and starts carrying real human weight.⁷ Crucially, the common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights elevates self-determination from aspiration to binding legal right: 'all peoples', without qualification, possess the right freely to determine their political status.⁸

⁵Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 1(2).

⁶Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 55.

⁷Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), arts 1, 2 and 13.

⁸International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 1; International Covenant on Economic, Social and Cultural Rights (adopted 16

Layered upon this human-rights architecture is the law of belligerent occupation, which places strict limits on the authority of an occupying power. The Hague Regulations of 1907 frame occupation as a temporary form of administration rather than a legal gateway to permanent territorial control. Articles 42 and 43 establish the basic parameters of occupation, recognising the factual authority of an occupying power while requiring respect for the existing legal order and public life of the occupied territory. The underlying logic is remarkably straightforward: occupation may alter who exercises authority, yet it does not transfer sovereignty. An occupying power is therefore expected to act as a temporary administrator, keeping the wheels of public life turning without remaking the territory in its own image. The longer such authority persists, the more pressing the question becomes whether temporary administration is still being exercised within the legal boundaries originally designed for it.⁹

Read as a coherent legal framework, these rules establish a fundamental distinction between administering territory and owning territory. An occupying power exercises authority in a fiduciary capacity, with its powers directed towards the welfare and protection of the occupied population rather than the consolidation of its own permanent interests. Occupation carries responsibilities, not a proprietary title. Its legal foundation rests upon temporariness, restraint, and the preservation of the existing order pending a lawful resolution of the territorial situation. Any attempt to use occupation as a means of entrenching permanent facts on the ground therefore strikes at the very logic of the regime. The law permits administration under occupation; it does not hand the administrator a blank cheque to reshape the territory, its population, or its political future.¹⁰

3.2 From the Wall to Unlawful Presence: The 2004 and 2024 Advisory Opinions

In its 2004 Advisory Opinion on the construction of the wall in the Occupied Palestinian Territory, the International Court of Justice established an important legal benchmark for assessing Israel's conduct in the West Bank. The Court held that the construction of the

December 1966, entered into force 3 January 1976) 993 UNTS 3, art 1, both sharing a common Article 1 on the right of peoples to self-determination.

⁹Regulations concerning the Laws and Customs of War on Land, annexed to Hague Convention (IV) (adopted 18 October 1907, entered into force 26 January 1910), arts 42–43.

¹⁰Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, arts 47, 49 and 53.

separation barrier, together with its associated regime, violated international law. It further determined that Israel was required to cease construction, dismantle the structures already built, and make reparation for the damage caused. The ruling placed the legal consequences of the wall squarely within the framework of international responsibility. What appeared on the ground as a physical barrier therefore carried consequences far beyond bricks, concrete, and fencing.¹¹ The 2004 Opinion also addressed the position of the Palestinian people under international law, affirming that their right to self-determination was no longer seriously in issue. This observation gave the principle considerable doctrinal weight. Palestinian self-determination was treated as an established legal entitlement rather than a purely political aspiration awaiting diplomatic recognition. The Court's reasoning helped anchor the issue within the wider architecture of international law, where the rights of peoples retain legal significance even amid prolonged territorial disputes.¹²

The General Assembly later requested the International Court of Justice to provide a further advisory opinion on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem. The request was made through General Assembly Resolution 77/247 of 30 December 2022, pursuant to Article 96 of the Charter of the United Nations. The move reflected a search for greater legal clarity concerning the cumulative consequences of policies and practices that had developed over decades. Rather than confining the inquiry to a single measure or isolated incident, the request invited the Court to examine a broader legal landscape shaped by prolonged occupation, settlement activity, territorial control, and their consequences for the Palestinian population. It marked a significant attempt to bring the accumulated weight of these developments before the principal judicial organ of the United Nations.¹³

The Court responded with a far more comprehensive assessment in its 2024 Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the

¹¹Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

¹²Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136, para 159, on the duty of all States not to recognise the illegal situation and not to render aid or assistance in maintaining it.

¹³UNGA Res 77/247 (30 December 2022) UN Doc A/RES/77/247, requesting the advisory opinion pursuant to art 96 of the Charter of the United Nations.

Occupied Palestinian Territory, including East Jerusalem. The Opinion expanded the judicial examination beyond the narrower questions addressed in the Court's earlier jurisprudence and placed the continuing occupation within a wider framework of international legal obligations. Its significance lies in the breadth of the legal questions considered and the cumulative character of the Court's assessment. The Opinion therefore became a major reference point for understanding the legal consequences of prolonged occupation and the measures associated with it, giving fresh doctrinal weight to questions of territorial control, settlement policy, Palestinian rights, and self-determination.¹⁴

The Court concluded that Israel's continued presence in the Occupied Palestinian Territory is, as such, unlawful. It further held that Israel is under an obligation to bring that presence to an end as rapidly as possible, cease all new settlement activity, evacuate existing settlers, and provide reparation to all natural and legal persons affected. These conclusions give the 2024 Opinion considerable doctrinal significance. The passage of time does not, on the Court's reasoning, provide a legal clean slate for an unlawful situation. Prolonged occupation cannot simply acquire legitimacy through endurance, while settlement activity cannot be insulated from legal scrutiny merely because facts on the ground have become deeply entrenched. The Court's findings therefore place the continuing occupation within a framework of concrete legal obligations, reinforcing the proposition that international law retains its force even where an unlawful situation has persisted for decades.¹⁵

The significance of the 2024 Opinion extends beyond its substantive findings to the way it distributes consequential legal obligations among three distinct addressees. For Israel, the Court's conclusions point towards immediate cessation of the unlawful presence and the fulfilment of reparation obligations. The legal burden therefore falls directly upon the State exercising control over the territory. The Opinion leaves little room for the notion that prolonged administration can operate indefinitely without corresponding responsibility.

¹⁴Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Opinion) [2024] ICJ Rep, General List No 186 (19 July 2024).

¹⁵Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Opinion) [2024] ICJ Rep, General List No 186 (19 July 2024), Operative Clause, finding Israel's continued presence in the Occupied Palestinian Territory unlawful and requiring cessation of settlement activity, evacuation of settlers, and reparation.

Continued control carries legal consequences, and those consequences become harder to sidestep when the underlying situation has been judicially characterised as unlawful.¹⁶ For the United Nations, the Court places particular responsibility upon its political organs, with the General Assembly and the Security Council called upon to determine the precise modalities for bringing the unlawful presence to an end. The point is significant because the Court does not treat its judicial pronouncement as the final stop on the road. The legal finding must be translated into institutional action. The question therefore shifts from what international law says to how the international system gives that law practical effect. This places the political organs before a familiar test of credibility: whether a clear legal determination can move beyond the page and acquire meaningful institutional force.¹⁷

The advisory character of the 2024 Opinion warrants careful attention. Unlike a contentious judgment, an Advisory Opinion does not bind States in the same procedural manner. Its advisory form, however, should not be mistaken for legal insignificance. The ICJ is the principal judicial organ of the United Nations, and its advisory opinions carry substantial authority as judicial statements on questions of international law. The distinction is therefore between formal binding force and legal authority, not between law and mere opinion. An Advisory Opinion may lack the enforcement mechanism attached to a binding judgment, yet its reasoning can still shape the interpretation of international obligations, guide the conduct of States and international organisations, and influence the development of international legal doctrine. Its force lies less in coercion than in the authority of law articulated by the world's principal international court.¹⁸

3.3 The Genocide Convention Proceedings: South Africa v Israel

¹⁶Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Opinion) [2024] ICJ Rep, General List No 186 (19 July 2024), holding that the General Assembly and the Security Council must determine the modalities for ending Israel's unlawful presence, and that third States are under a duty of non-recognition and non-assistance.

¹⁷Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Opinion) [2024] ICJ Rep, General List No 186 (19 July 2024), holding that the General Assembly and the Security Council must determine the modalities for ending Israel's unlawful presence, and that third States are under a duty of non-recognition and non-assistance.

¹⁸Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 96(1)–(2), permitting the General Assembly, Security Council and other authorised organs to request advisory opinions, which are not binding but carry significant legal authority.

Parallel to the advisory proceedings, South Africa instituted contentious proceedings against Israel before the International Court of Justice under the Convention on the Prevention and Punishment of the Crime of Genocide. South Africa alleged that Israel had breached Article II of the Convention through its conduct in the Gaza Strip. The proceedings placed the alleged treatment of the Palestinian population under a distinct treaty-based legal framework, bringing the prohibition of genocide directly before the principal judicial organ of the United Nations. The legal stakes were therefore exceptionally high. The case asked the Court to examine conduct occurring during an active conflict through one of the most serious prohibitions recognised by international law.¹⁹

Without prejudging the merits of the case, the Court issued provisional measures in January 2024, directing Israel to take all measures within its power to prevent acts falling within Article II of the Genocide Convention and to ensure the provision of humanitarian assistance. The order did not determine whether genocide had occurred. Its immediate function was protective: to preserve rights capable of suffering irreparable harm while the proceedings moved forward. The Court's approach reflected the urgency of the situation presented to it, where waiting for a final judgment could carry consequences that no later remedy could fully repair.²⁰

In March 2024, the Court issued further provisional measures in response to the deteriorating humanitarian conditions in Gaza. Israel was required to ensure the unhindered provision of basic services and humanitarian assistance without delay. The order sharpened the protective dimension of the proceedings, recognising that access to essential supplies and humanitarian relief had become a matter requiring judicial attention. The language of urgency is important here. Provisional measures are designed to operate before the full merits are resolved, creating a legal shield around rights that may otherwise be placed beyond meaningful recovery.²¹ In May 2024, the Court addressed the specific humanitarian consequences

¹⁹Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art II.

²⁰Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) (Provisional Measures, Order of 26 January 2024) ICJ Rep.

²¹Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) (Provisional Measures, Order of 28 March 2024) ICJ Rep, requiring Israel to ensure without delay the unhindered provision of basic services and humanitarian assistance in Gaza.

associated with military operations in Rafah and issued additional provisional measures. The order reflected the Court's continuing assessment of circumstances capable of causing irreparable prejudice to the rights at issue. Rafah had become a particularly acute point of humanitarian concern, giving the proceedings another layer of urgency. The Court's intervention demonstrated that provisional measures can function as a form of judicial triage, responding to immediate risks while leaving the ultimate merits of the dispute for determination at a later stage.²²

The proceedings remain pending on the merits, and the provisional measures ordered by the ICJ should not be read as a judicial finding that genocide has occurred. That distinction is fundamental to maintaining doctrinal accuracy. Provisional measures operate at an earlier procedural stage, where the Court is concerned with safeguarding rights that may suffer irreparable prejudice before the substantive case can be fully examined. The Court is therefore not required at this stage to determine whether the alleged acts ultimately satisfy every constituent element of genocide. Any attempt to treat an interim order as a final determination would blur a procedural distinction that carries serious legal consequences. At the same time, the Court's orders cannot be brushed aside as mere procedural formalities. The indication of provisional measures reflects the Court's assessment that the rights asserted by South Africa were sufficiently plausible to satisfy the applicable threshold for interim protection and that circumstances existed requiring urgent judicial attention. The successive orders issued during 2024 also demonstrate the Court's continuing engagement with the humanitarian situation as it developed. The legal significance lies in that careful middle ground: the Court has not declared that genocide has been established, yet it has considered the circumstances sufficiently serious to justify judicial protection pending a final determination.

The proceedings therefore illustrate a broader feature of international adjudication: law does not always arrive with a final answer at the first knock on the door. In situations involving potentially irreversible harm, judicial protection may need to operate before the full evidentiary record has been tested and before ultimate responsibility can be determined. Provisional

²²Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) (Provisional Measures, Order of 24 May 2024) ICJ Rep, addressing the humanitarian consequences of the Rafah offensive.

measures serve precisely this protective function, preserving the integrity of rights while the merits remain under examination. Their value lies neither in prematurely deciding the case nor in standing on the sidelines, but in creating legal breathing space while the Court undertakes the much heavier task of determining the substantive claims. The case consequently demonstrates how international law attempts to balance procedural caution with the urgent demands of human protection when the cost of waiting may be impossible to undo.

3.4 Contested Characterisations: The Apartheid Analogy and Scholarly Disagreement

A significant strand of contemporary scholarship examines whether aspects of Israel's governance of the Occupied Palestinian Territory satisfy the legal elements of apartheid under international criminal law. The Rome Statute of the International Criminal Court defines apartheid as an inhumane act committed within an institutionalised regime of systematic oppression and domination by one racial group over another, accompanied by an intention to maintain that regime. The definition places particular emphasis on the structure and purpose of the regime rather than on isolated acts viewed in isolation. This makes the inquiry inherently systemic. The legal question turns upon whether patterns of authority, restriction, and control operate within an institutional framework designed to preserve domination over a distinct racial group.²³

Dugard and Reynolds developed this line of analysis in their influential 2013 article, examining the differentiated legal and administrative regimes applied to Israeli settlers and Palestinian residents of the West Bank. Their argument focused on the cumulative operation of those regimes and assessed whether their combined effect satisfied the constituent elements of apartheid. The analysis moved beyond individual policies to examine how different rules operate across the same territory for different populations. That approach gives the argument its particular force: the legal character of a system may emerge from the interaction of numerous measures rather than from a single policy bearing an unmistakable label.²⁴

²³Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(1)(j) and 7(2)(h), defining the crime of apartheid as an inhumane act committed in the context of an institutionalised regime of systematic oppression by one racial group over another.

²⁴John Dugard and John Reynolds, 'Apartheid, International Law, and the Occupied Palestinian Territory' (2013) 24 European Journal of International Law 867.

Their analysis drew particular attention to movement restrictions, the existence of separate judicial systems, and planning regimes operating across the occupied territory. These features were examined as part of a wider architecture of differentiated governance affecting Israeli settlers and Palestinian residents in markedly different ways. The significance of the argument lies in the cumulative picture. A movement restriction may appear administrative when viewed alone; a planning rule may appear technical; a separate judicial arrangement may appear institutional. Put them under the same analytical microscope, and a broader question comes into view: whether these mechanisms collectively produce and sustain a system of institutionalised domination. That question remains legally and academically contentious, making careful engagement with the underlying evidence essential rather than optional.²⁵

This characterisation remains contested within the scholarly community, and a framework of universal justice demands that the disagreement be placed on the table rather than quietly brushed aside. In a direct response to Dugard and Reynolds published in the same issue of the *European Journal of International Law*, Zilbershats challenged the apartheid analogy on the ground that it insufficiently distinguishes between the legal regime governing occupied territory and the legal regime applicable within a State's own sovereign territory. She further argued that any assessment that leaves aside the security conditions of an ongoing armed conflict risks presenting an incomplete picture, particularly where attacks against Israeli civilians form part of the factual setting. Her critique therefore shifted attention from the existence of differentiated treatment to the legal framework within which that treatment must be assessed.²⁶

Zilbershats ultimately maintained that the accusation of apartheid was not established when tested against the specific elements required by the Rome Statute. Her position illustrates why legal characterisation cannot rest solely upon the appearance of unequal treatment. The relevant question is whether the evidence satisfies each constituent element of the international crime, including the required institutional structure, systematic oppression and domination, and the requisite intent. The distinction matters because international criminal law demands more

²⁵John Dugard and John Reynolds, 'Apartheid, International Law, and the Occupied Palestinian Territory' (2013) 24 *European Journal of International Law* 867, 885–891.

²⁶Yaffa Zilbershats, 'Apartheid, International Law, and the Occupied Palestinian Territory: A Reply to John Dugard and John Reynolds' (2013) 24 *European Journal of International Law* 915.

than a compelling political analogy; it requires a disciplined fit between facts and legal elements. The debate therefore turns upon the threshold between describing a system as discriminatory and proving the distinct crime of apartheid.²⁷ The 2024 Advisory Opinion adds a further and particularly important layer to the legal debate concerning racial discrimination and apartheid. In its assessment of Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, the ICJ found that certain Israeli laws and measures violated Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination. The finding brings racial segregation and apartheid into the judicial discussion through the specific treaty framework governing racial discrimination. It is a significant judicial finding in its own right because Article 3 addresses practices of racial segregation and apartheid as matters engaging international legal responsibility. The Court's reasoning therefore gives considerable weight to the proposition that discriminatory legal and administrative arrangements may attract consequences under international law when their operation produces prohibited forms of racial segregation.

The legal significance of that finding must, however, be kept within its proper doctrinal lane. The ICJ did not formally determine that the separate international crime of apartheid under the Rome Statute had been established. That distinction matters because the two legal frameworks do not operate through identical tests, thresholds, or consequences. A finding that particular laws or measures violate Article 3 of the Convention cannot simply be lifted from its treaty setting and presented as a judicial conviction for apartheid under international criminal law. The temptation to collapse these categories may be rhetorically attractive, yet legal analysis demands a steadier hand. International law is built upon distinctions, and those distinctions become especially important when the allegation concerns one of the gravest international crimes. The present state of the law therefore calls for intellectual honesty rather than doctrinal shortcuts. There is a substantiated judicial finding concerning unlawful racial discrimination under the applicable treaty framework, supported by the 2024 Advisory Opinion, while the broader question of whether the system of governance satisfies every

²⁷Yaffa Zilbershats, 'Apartheid, International Law, and the Occupied Palestinian Territory: A Reply to John Dugard and John Reynolds' (2013) 24 *European Journal of International Law* 915, 916–917, arguing that the apartheid analogy fails to differentiate between the legal regime governing occupied territory and that governing sovereign territory, and does not adequately account for the security context of an ongoing armed conflict.

constituent element of apartheid remains subject to serious scholarly disagreement. That disagreement should not be treated as an inconvenience to be swept under the carpet. Nor should the existence of disagreement be used to dilute the significance of the ICJ's findings.

Universal justice gains credibility through precisely this kind of discipline. It does not require every legal argument pointing in one direction to be accepted, nor does it demand that inconvenient evidence be placed out of sight. A rigorous analysis must allow judicial findings, scholarly arguments, competing interpretations, and the constituent elements of the relevant offences to sit at the same table. The distinction between unlawful racial discrimination and the crime of apartheid should therefore remain firmly in view throughout the analysis. The former carries serious legal consequences without needing the latter label, while the latter requires its own evidentiary and doctrinal assessment. That intellectual restraint is not a weakness in the argument; it is part of its strength. When international law speaks clearly, it should be heard clearly. When the law remains contested, that uncertainty should be acknowledged without dressing it up as settled doctrine.

3.5 Comparative Pathways to Palestinian Self-Determination

Universal justice is meaningful only when it has a route from principle to practice. A legal right that cannot find an institutional pathway risks becoming little more than a noble promise on paper. For Palestinian self-determination, the international legal order already contains several possible avenues, each resting upon a different legal foundation and each carrying its own institutional constraints. Some pathways operate through State recognition, some through United Nations machinery, and others through international criminal accountability or the obligations of third States. The real challenge is to identify which mechanisms can move beyond declaratory language and generate practical consequences.

Bilateral or plurilateral State recognition represents one established pathway, grounded in the customary international law of statehood and the accumulated practice of States. Recognition can strengthen Palestine's international standing, widen diplomatic relations, and reinforce the legal personality associated with statehood. Its limitation is equally clear-cut: recognition can alter diplomatic and legal relationships without, by itself, dismantling an occupation or changing conditions on the ground. Yet the permanent-member veto remains a

formidable gatekeeper, capable of stopping even a legally significant initiative before it reaches the point of implementation.

Pathway	Institutional / Legal Basis	Principal Limitation
Bilateral / plurilateral State recognition	Customary international law of statehood; State practice	Politically fragmented; does not by itself end the occupation on the ground
Security Council resolution	Charter arts 24, 39–42	Subject to permanent-member veto
General Assembly action (Uniting for Peace)	UNGA Res 377(V)	Recommendatory only; lacks enforcement teeth absent State cooperation
ICC investigation / prosecution	Rome Statute	Jurisdictional and enforcement constraints; State non-cooperation
Third-State non-recognition and countermeasures	ARSIWA arts 41, 48; Namibia Opinion	Depends on the political will of individual States
Proposed: Conditional <i>erga omnes</i> trusteeship	Charter arts 75–85 + UNGA Res 377(V)	Novel; requires broad General Assembly consensus (see 3.6)

Table 1. Contemporary Legal Pathways and the Proposed Conditional *Erga Omnes* Trusteeship

3.6 Toward an Innovative Doctrine: Conditional *Erga Omnes* Trusteeship

Existing pathways, while doctrinally established, share a structural weakness: their practical force remains tied to institutional or political discretion. The Security Council retains primary responsibility for international peace and security, yet substantive decisions remain vulnerable to the veto of its permanent members. The architecture of collective security therefore contains a built-in pressure point: a legal pathway may exist on paper while its implementation can still be halted by a single permanent member. The problem is not the absence of legal machinery, but the distance between legal authority and institutional action.²⁸ A similar difficulty arises with the obligations of third States. International law may require States to refrain from recognising or assisting an unlawful situation, yet the practical record of compliance has been uneven. Scholarship examining the obligation of non-recognition in relation to EU–Israel relations has highlighted the persistent gap between the existence of the legal obligation and the political choices made by individual States. The doctrine therefore faces a familiar problem in international law: obligations may bind in principle while their

²⁸Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 27(3) (permanent member veto) read with art 24 (primary responsibility of the Security Council).

practical effectiveness depends upon the willingness of States to give them genuine effect. Universal justice begins to lose its bite when legality relies too heavily upon voluntary political convenience.²⁹

Against this structural gap, this article proposes a supplementary mechanism termed ‘**Conditional *Erga Omnes* Trusteeship**’, designed to convert already-recognised *erga omnes* obligations into an operative institutional process. The concept rests upon a simple philosophical premise: certain obligations belong to humanity’s legal conscience as a whole because their violation injures values that transcend bilateral interests. *Erga omnes* obligations are therefore more than legal duties owed between States; they express the idea that some rules protect a common moral and legal inheritance. A trusteeship mechanism built upon such obligations would seek to give institutional form to that shared responsibility, creating a pathway through which the international community could act when an unlawful situation persists beyond the effective reach of ordinary political mechanisms.

The deeper idea is that sovereignty should never become a shelter for sustained illegality, just as institutional paralysis should never become a substitute for justice. **Conditional *Erga Omnes* Trusteeship** would treat self-determination not as a favour to be negotiated indefinitely, but as a legal entitlement carrying consequences for the international community as a whole. Its philosophical foundation lies in the proposition that international law is not merely a catalogue of permissions between sovereign States; it is also a collective commitment to protect fundamental values when their violation becomes systemic and prolonged. In that sense, trusteeship would not seek to replace Palestinian agency or appropriate the Palestinian right to self-determination. Its purpose would be precisely the opposite: to create temporary international stewardship capable of protecting the conditions in which self-determination can become genuinely exercisable, while ensuring that stewardship remains conditional, accountable, and directed towards its own extinction. The ultimate measure of such a mechanism would therefore be its ability to make itself unnecessary: justice

²⁹Valentina Azarova, ‘The Secret Life of Non-Recognition: EU–Israel Relations and the Obligation of Non-Recognition in International Law’ (2018) 4 Global Affairs 23.

would be served not when trusteeship becomes permanent, but when the people whose rights it was designed to protect can stand fully on their own legal and political feet.

The proposal draws first upon the International Trusteeship System established under the Charter of the United Nations. Although the system has remained dormant since the independence of Palau in 1994, its legal foundations have not disappeared from the Charter. Articles 75–85 preserve an institutional framework designed to administer territories under international supervision with the objective of guiding them towards self-government or independence. Its dormant status should therefore not be mistaken for legal extinction. The machinery may have fallen quiet, yet the legal architecture remains standing, offering an intriguing foundation for reconsidering how international trusteeship might serve the principle of self-determination in circumstances where ordinary political mechanisms have reached an impasse.³⁰

The United Nations has also demonstrated that transitional international administration is not merely a theoretical construct. In Kosovo, the Security Council established the United Nations Interim Administration Mission in Kosovo through Resolution 1244, granting an international presence authority to perform substantial administrative and governmental functions while the territory's final status remained unresolved. This precedent matters because it shows that international institutions can assume meaningful governmental responsibilities where ordinary structures are unable to secure stability or protect the population effectively. It provides a real-world example of international administration operating as a bridge between an existing legal predicament and a future political settlement, rather than as an end in itself.³¹

The third building block emerges from the Uniting for Peace framework established by General Assembly Resolution 377(V). Where the Security Council is prevented from exercising its primary responsibility because of the veto, the General Assembly may recommend collective measures aimed at maintaining or restoring international peace and security, including, where necessary, measures involving the use of armed force. The

³⁰Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, arts 75–85 (International Trusteeship System).

³¹UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244, establishing the UN Interim Administration Mission in Kosovo (UNMIK).

significance of this mechanism reaches beyond institutional procedure. It reflects a deeper constitutional idea within the United Nations system: collective responsibility need not simply fall silent when the Security Council is unable to act. The General Assembly may become a channel through which the international community expresses and organises its response to circumstances demanding collective attention. For a proposed *erga omnes* trusteeship, that residual institutional capacity provides the missing bridge between universal legal obligations and a mechanism capable of giving those obligations practical effect.³²

Synthesising these elements, a **Conditional *Erga Omnes* Trusteeship** could begin with a qualified two-thirds majority of the General Assembly determining that a Security Council deadlock is preventing the effective discharge of *erga omnes* obligations concerning a people's right to self-determination. Such a determination could be informed by an ICJ Advisory Opinion, including the 2024 Opinion, without treating the Court's findings as the sole legal trigger. The Assembly could then authorise a time-bound UN Transitional Administration modelled on the institutional experience of UNMIK in Kosovo, with an initial mandate not exceeding five years. The proposal would therefore borrow from an existing UN practice rather than seek to build an entirely new institutional creature from scratch.³³

A comparable model can be found in the United Nations Transitional Administration in East Timor, established by Security Council Resolution 1272. UNTAET was entrusted with broad transitional responsibilities while East Timor moved towards self-government and independence. Read alongside the UNMIK model, this precedent demonstrates that transitional international administration can perform governmental functions for a defined period while remaining directed towards a determinate political destination. A **Conditional *Erga Omnes* Trusteeship** would adapt this experience to a different legal setting, with self-determination serving as the destination rather than indefinite international administration becoming the destination itself.³⁴

³²UNGA Res 377(V) (3 November 1950) 'Uniting for Peace', UN Doc A/RES/377(V).

³³UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244, establishing the UN Interim Administration Mission in Kosovo (UNMIK).

³⁴UNSC Res 1272 (25 October 1999) UN Doc S/RES/1272, establishing the UN Transitional Administration in East Timor (UNTAET).

The proposed mechanism would further incorporate the third-State duties identified in the 2024 Advisory Opinion and developed in scholarship concerning non-recognition. States participating in the arrangement, as well as States outside it, would be expected to respect the legal consequences arising from the unlawful situation and refrain from conduct that would undermine the transitional mandate. The underlying logic is straightforward: an international administration cannot operate effectively if external actors continue to sustain the very circumstances it was established to address. Non-recognition would therefore function not merely as a passive legal prohibition, but as part of a wider architecture designed to prevent the normalisation of an unlawful situation.³⁵

The cooperative dimension would draw upon Article 41 of the Articles on Responsibility of States for Internationally Wrongful Acts, particularly the obligation of States to cooperate in order to bring serious breaches of obligations arising under peremptory norms to an end through lawful means. Scholarship on the duty not to render aid or assistance reinforces the proposition that third States may bear responsibilities extending beyond simple abstention from formal recognition. Within the proposed trusteeship, this principle would acquire an operational role: States would be expected to refrain from rendering aid or assistance to actors seeking to obstruct the Administration's mandate. The idea is to close the legal escape hatch through which an unlawful situation might otherwise continue to receive external support.³⁶

The Administration's exercise of authority would further be subjected to periodic compulsory review by the ICJ acting in its advisory capacity. Such judicial review would provide an additional legal safeguard, allowing the international community to scrutinise whether the Administration remains within its mandate, respects applicable international law, and continues to serve the objective of self-determination. This judicial element would add a layer of accountability absent from the original conception of the Uniting for Peace framework. Trusteeship, in this design, would therefore be neither unchecked administration nor open-

³⁵Valentina Azarova, 'The Secret Life of Non-Recognition: EU-Israel Relations and the Obligation of Non-Recognition in International Law' (2018) 4 Global Affairs 23.

³⁶Ana Zdravković, 'Obligations Erga Omnes: Jus Cogens in Statu Nascendi?' (2021) 12 Pravni Zapisi 577.

ended international control; it would operate under a legal timetable, institutional supervision, and continuing judicial scrutiny.³⁷

The proposal would not seek to sideline the Security Council's primary responsibility under Article 24 of the Charter of the United Nations. Its purpose is narrower and more practical: to activate the General Assembly's residual capacity under the Uniting for Peace framework when Security Council paralysis prevents effective action concerning *erga omnes* obligations. The 2024 ICJ Advisory Opinion provides a timely legal anchor by identifying obligations concerning the termination of Israel's unlawful presence and the duties of third States relating to non-recognition and non-assistance³⁸

These findings give the proposal a contemporary doctrinal foundation, allowing it to build upon legal obligations already articulated by the principal judicial organ of the United Nations. The proposal therefore avoids attempting to reinvent the wheel. It brings together institutional tools already used by the United Nations, including UNMIK, UNTAET, and Uniting for Peace, alongside obligations recognised through international jurisprudence and State responsibility. Each component has an existing legal pedigree, giving the proposed mechanism a firmer footing than an entirely novel institutional creation.

Its novelty lies in the combination rather than the invention of new rules. By sequencing established mechanisms within a single framework, the proposal seeks to bridge the familiar gap between legal recognition and practical enforcement. That bridge matters because international law can speak with considerable clarity while implementation remains stuck in the mud of institutional deadlock and political hesitation. The result is a sequenced mechanism designed to move recognised legal duties off the page and into institutional action, creating practical conditions for genuine self-determination. Put simply, the idea is to use the tools

³⁷Djamchid Momtaz, 'The Obligation not to Render Aid or Assistance so as to Maintain a Situation Created by the Breach of a Peremptory Norm of General International Law' (2017) 10 *Anuario Colombiano de Derecho Internacional* 205.

³⁸Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Opinion) [2024] ICJ Rep, General List No 186 (19 July 2024), holding that the General Assembly and the Security Council must determine the modalities for ending Israel's unlawful presence, and that third States are under a duty of non-recognition and non-assistance.

already in the toolbox, connect them properly, and give international law a workable route from legal principle to political reality.

3.7 Counter-Perspectives and Limitations

Universal justice cannot rest on a one-sided presentation of international law, particularly where a State invokes a legal basis grounded in the Charter itself. Israel has consistently relied upon Article 51 of the Charter of the United Nations, asserting an inherent right of individual or collective self-defence in response to the armed attack of 7 October 2023. In proceedings before the ICJ, Israel characterised the application brought by South Africa as unfounded and argued that the Court was being drawn into a political dispute through the instrumentalisation of judicial proceedings. These positions form an important part of the legal debate because any serious assessment of the conflict must confront the security claims advanced by the State concerned rather than simply brush them aside.³⁹

A universal-justice framework must therefore recognise that security threats can be genuine, particularly where armed attacks target civilians and create continuing risks of violence. The existence of occupation does not erase the broader framework of international law governing the use of force, while the invocation of self-defence does not place military conduct beyond legal scrutiny. The law of self-defence, the law of occupation, and international humanitarian law operate within an interconnected legal landscape, each carrying distinct rules and limitations. The harder legal question lies in determining where those regimes meet, how their obligations interact, and whether measures adopted in the name of security remain within the boundaries set by international law. That tension deserves careful examination because universal justice must protect security without allowing security claims to become a blank cheque for conduct that international law otherwise prohibits.⁴⁰

³⁹Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 51, on the inherent right of individual or collective self-defence, invoked by Israel in relation to the armed attack of 7 October 2023.

⁴⁰Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Public Hearings (11–12 January 2024), in which Israel characterised the application as unfounded and asserted that its military operations were conducted in self-defence in accordance with international law.

The apartheid characterisation, despite its influence within contemporary legal scholarship, remains genuinely contested. As the discussion in section 3.4 demonstrates, serious scholarly disagreement persists over whether the available evidence satisfies the distinct legal elements of the crime under the Rome Statute. A rigorous account must therefore resist turning a plausible legal characterisation into a settled proposition. The distinction is more than academic housekeeping. International criminal law demands a careful fit between factual evidence and constituent legal elements, and universal justice loses credibility when contested conclusions are presented as though the law has already spoken with one voice.⁴¹

ICJ Advisory Opinions present a related limitation. Their authority is substantial, yet their advisory character distinguishes them from binding judgments in contentious proceedings. Under Article 96 of the Charter of the United Nations, authorised organs may request advisory opinions on legal questions, allowing the Court to provide authoritative guidance without creating the same binding effect associated with a contentious judgment. The practical gap between legal authority and implementation can therefore be considerable. The 2004 Wall Advisory Opinion illustrates the difficulty: despite the Court's findings and the legal consequences identified, compliance over the following two decades remained partial. A judicial pronouncement can clarify the law with considerable force; it cannot, by itself, guarantee that States will do the heavy lifting required to implement it.⁴²

The proposed **Conditional *Erga Omnes* Trusteeship** faces substantial practical objections of its own. Its creation would require an unprecedented degree of General Assembly consensus, raising questions about the political feasibility of securing the necessary support across States with competing strategic interests. Its relationship with the Security Council could generate further institutional concerns, particularly given the Council's primary responsibility for international peace and security under the Charter. The proposal must therefore confront a delicate institutional question: how can the General Assembly exercise a residual collective role without being perceived as simply stepping around the Council's constitutional position?

⁴¹Yaffa Zilbershats, 'Apartheid, International Law, and the Occupied Palestinian Territory: A Reply to John Dugard and John Reynolds' (2013) 24 *European Journal of International Law* 915.

⁴²Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 96(1)–(2), permitting the General Assembly, Security Council and other authorised organs to request advisory opinions, which are not binding but carry significant legal authority.

That tension cannot be wished away. It would need to be addressed through a carefully defined mandate, clear legal limits, and a demonstrable connection to the protection of *erga omnes* obligations.

The experience of UNMIK in Kosovo offers a useful warning about the difficulties of transitional international administration. Establishing an international authority can provide a framework for governance where domestic institutions are fragmented or unable to perform essential functions, yet institutional authority does not automatically translate into local legitimacy. Questions concerning political representation, public confidence, administrative capacity, and the eventual transfer of authority can become deeply contested. UNMIK therefore illustrates a basic lesson for any proposed trusteeship: international administration may stabilise institutions, yet legitimacy must be cultivated rather than assumed. A mechanism imposed from above without meaningful local participation could risk creating another layer of governance that struggles to command public trust. UNTAET in East Timor provides a different yet equally instructive precedent. The transitional administration exercised extensive governmental functions during the territory's passage towards independence, demonstrating the capacity of the United Nations to assume substantial administrative responsibilities under international authorisation. At the same time, the experience exposed the sheer complexity of governing during political transition, particularly where institutional capacity, local expectations, security arrangements, and the transfer of authority must develop simultaneously. UNTAET therefore demonstrates both the potential and the limits of international trusteeship. Transitional administration can serve as a bridge towards self-government, yet the bridge requires credible foundations, local ownership, and a clear destination.

The proposed mechanism would face comparable challenges in relation to security-sector control and competing authorities on the ground. An elegant institutional design can quickly become considerably messier when confronted with rival centres of power, entrenched political interests, competing claims to legitimacy, and rapidly changing security conditions. Questions would inevitably arise concerning who exercises coercive authority, who protects civilians, how existing institutions are integrated or replaced, and how the Administration prevents its mandate from becoming open-ended. These are not technical footnotes to the proposal. They go to its very viability. Any **Conditional *Erga Omnes* Trusteeship** would

therefore require precise temporal limits, transparent accountability, meaningful Palestinian participation, judicial oversight, and a credible transition strategy directed towards self-determination. Any serious attempt to strengthen enforcement should therefore proceed incrementally, with legitimacy and accountability built into the architecture from the outset. Universal justice is strongest when normative ambition meets institutional realism. Lofty principles matter, yet they must survive contact with the political and legal machinery through which they are expected to operate. The measure of the proposed trusteeship would therefore lie not in the elegance of its design, but in its ability to protect rights, command legitimate authority, withstand institutional pressure, and move the people concerned closer to genuine self-determination.

4. Conclusion

The applicable corpus of international law provides a substantial and increasingly coherent legal basis for assessing Israel's occupation and the rights of the Palestinian population. The Charter of the United Nations, the Universal Declaration of Human Rights, the 1966 Covenants, the Fourth Geneva Convention, and the jurisprudence of the International Court of Justice collectively affirm the Palestinian people's right to self-determination, impose legal constraints upon the exercise of authority in occupied territory, and recognise significant obligations arising from the continuation of an unlawful situation. The 2024 ICJ Advisory Opinion gives particular doctrinal weight to this body of law by concluding that Israel's continued presence in the Occupied Palestinian Territory is unlawful and by identifying consequences for Israel, the United Nations, and third States, including obligations concerning cessation, reparation, non-recognition, and non-assistance. The legal picture is therefore considerably clearer than public discourse often makes it appear. Genuine areas of dispute remain, most notably the characterisation of particular practices as apartheid and the interaction between security claims, self-defence, occupation, and international humanitarian law. Those disputes do not justify collapsing distinct legal questions into a single political narrative. A sound public international law analysis must keep established findings, contested characterisations, and unresolved questions in their proper lanes.

Existing mechanisms offer important tools, including State recognition, Security Council action, General Assembly measures under Uniting for Peace, international criminal accountability, and third-State duties of non-recognition and non-assistance, yet each faces institutional, jurisdictional, political, or enforcement constraints. Against that backdrop, this article has proposed a **Conditional *Erga Omnes* Trusteeship** as a supplementary mechanism combining existing legal and institutional building blocks, including the Charter's Trusteeship System, the transitional administration models of UNMIK and UNTAET, the Uniting for Peace framework, third-State obligations, and periodic judicial scrutiny by the ICJ. The proposal is deliberately incremental rather than presented as a legal silver bullet. Its purpose is to explore how obligations already recognised by international law might be translated into a more coherent institutional process capable of protecting the conditions necessary for genuine self-determination. Universal justice requires fidelity to established rights, intellectual honesty towards competing arguments, and genuine humanity towards every person affected by prolonged conflict, including legitimate security concerns. The proposed mechanism is offered not as a final settlement, but as a doctrinal contribution to credible enforcement where international law remains under-implemented.

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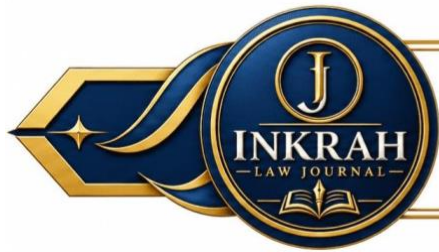
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