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Selective Universalism: The Israeli Case and the Crisis of International Law

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Abstract

This article examines the transformation of international law from a classical order centred on sovereignty, territorial title and interstate stability into a contemporary normative order structured around self-determination, human rights, decolonisation and international accountability. It argues that this transformation has generated both emancipatory potential and opportunities for selective legal mobilisation. The Israeli case, particularly within the United Nations system, provides a paradigmatic field in which to

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examine the tension between universal legal principles and their politically asymmetrical deployment. The article investigates how the cumulative use of legal categories — occupation, colonialism, apartheid, genocide and denial of self-determination — has produced a distinctive pattern of institutional exceptionalisation. By comparing the Palestinian case with other unresolved claims of self-determination, especially the Kurdish question, the article distinguishes legal accountability from the strategic, differential and delegitimising use of international law. Its central claim is that the crisis of contemporary international law does not lie in its commitment to accountability, but in the risk that universal legal categories may be selectively activated through particularistic institutional pathways.

Keywords: international law; lawfare; self-determination; Israel; Palestine; United Nations; institutional selectivity; uti possidetis juris; decolonisation; territorial title.

1. Introduction

International law has undergone a profound transformation over the last century. The classical international legal order was primarily structured around sovereignty, territorial title, recognition, effective control and the stabilisation of interstate relations. Its central subjects were States; its dominant grammar was that of territorial order, diplomatic accommodation and the legal consolidation of political facts. Contemporary international law increasingly presents itself as a normative order in which sovereignty is constrained and reinterpreted through principles such as self-determination, human rights, decolonisation, international humanitarian law, international criminal responsibility and the prohibition of the acquisition of territory by force.

This transformation is often described as a movement from a law of coexistence among sovereigns to a law of accountability, emancipation and universal values. Such an account points to a substantive structural shift. The legal consolidation of self-determination, the delegitimation of colonial rule, the prohibition of aggressive war and the emergence of human rights law have reshaped the international legal system in ways that cannot be reduced to ideology. At the same time, this very transformation has introduced profound legal indeterminacy, along with new institutional asymmetries and avenues for political contestation. Once international law becomes a privileged language through which political legitimacy is conferred or denied, legal categories may be mobilised not only to regulate conflict but also to structure, intensify and legitimise political struggle.

This article argues that this transformation — from a classical order centred on sovereignty, territorial title and interstate stability to a contemporary order structured around self-determination, human rights and accountability — has generated both emancipatory potential and opportunities for selective legal mobilisation. The Israeli case, particularly within the United Nations system, provides a paradigmatic field in which to examine the tension between universal legal principles and their politically asymmetrical deployment.

The concept used to analyse this structure is lawfare. In its narrowest formulation it refers to the use of law as a weapon of war; in the broader sense adopted here, it denotes the strategic mobilisation of legal norms, institutions, procedures and vocabularies to obtain political, diplomatic, reputational or coercive effects, distinguished by the selective and cumulative deployment of legal categories in ways that depart from the universalistic premises of the legal order itself. The central institutional setting is the United Nations, which since 1945 has been at once the principal site of international legal universalisation and one of the main arenas of international political conflict: decolonisation turned the General Assembly into a forum for the consolidation of self-determination, and the post-Cold War period intensified the use of human rights, humanitarian protection, international criminal law and accountability mechanisms as languages of legitimacy — developments that expanded the normative reach of international law while exposing it to politicisation by majorities, blocs and institutional repetition.

The Israeli-Palestinian conflict holds a distinct place in this history. Originally subsumed within the wider Arab-Israeli interstate conflict, it was gradually recast in the language of occupation, colonialism and Palestinian self-determination. From the 1970s onwards, the recognition of the Palestinian people as a holder of an international right to self-determination became a central element of UN practice. Over time, this recognition was incorporated into resolutions, reports, special procedures, advisory proceedings and institutional mandates. The result has been not only the legal affirmation of Palestinian claims, but the construction of a durable institutional framework through which Israel is repeatedly examined, condemned and symbolically positioned as a paradigmatic violator of contemporary international legality.

This framework has become increasingly cumulative. Israel is addressed not only through the law of occupation or the legality of settlements, but through a widening vocabulary — denial of self-determination, annexation, settler colonialism, apartheid, war crimes, crimes against humanity and genocide — whose elements differ in legal structure and evidentiary threshold. Their aggregation produces a powerful narrative effect: Israel comes to be represented not merely as a State responsible for discrete violations, but as a structural embodiment of the very pathologies that contemporary international law claims to overcome.

The case also exposes the unresolved relationship between classical and contemporary international law. Questions central to classical reasoning — territorial title, succession, the legal effect of armistice lines, the consequences of defensive war and the relevance of *uti possidetis juris* — remain pertinent to the legal history of the conflict, whereas the dominant contemporary framing begins instead from occupation, Palestinian self-determination, settlements and the illegality of Israel's continued presence. The shift from territorial title to self-determination is therefore not merely doctrinal; it reflects a deeper ideological reconfiguration of international law, whose structure the next section reconstructs.

Self-determination is central to this reconfiguration and among the most unevenly institutionalised of its principles. Palestinian self-determination is now deeply embedded in UN practice and ICJ jurisprudence, whereas other peoples with strong claims to peoplehood, territorial continuity and historical repression — most notably the Kurds — have received no comparable treatment. The asymmetry suggests that the international activation of self-determination turns not only on legal criteria but on geopolitical coalitions, regional blocs, symbolic visibility and institutional pathways.

The argument moves from the shift between these two legal frameworks (§ 2) to its refraction within the dualistic structure of the United Nations (§ 3); from a working concept of lawfare (§ 4) to the specific UN architecture built around Israel and Palestine (§ 5); and from the comparative test furnished above all by the Kurdish case (§ 6) to the cumulative mechanics by which distinct categories — occupation, apartheid, genocide — are fused into a single stigmatising and coercive narrative (§ 7). Its central contribution is to identify the point at which international law's universal vocabulary becomes vulnerable to selective institutional capture. If law is to retain its claim to universality, its categories must be applied with comparative discipline, procedural symmetry and conceptual precision; deployed cumulatively against one State while analogous or graver situations remain under-institutionalised, they pose not a problem of political inconsistency but a challenge to international law as law.

2. From Territorial Order to Normative International Law

2.1. The classical grammar of territorial order.

The contrast between classical and contemporary international law should be understood as a shift in the centre of legal reasoning rather than as a simple opposition between power and justice. Classical international law was primarily a law of interstate coexistence. Its central subjects were sovereign States; its dominant concerns were territorial order, recognition, treaty relations, war, neutrality and the stabilisation of relations among formally equal sovereigns (Oppenheim, 1905; Koskenniemi, 2001; Shaw, 2021). The function of law was to translate political facts into legal situations capable of being relied upon by other States.

Territorial title occupied a central place in this structure. Territory was the material basis of sovereignty, and sovereignty was the organising principle of the international system. The legal determination of territorial status depended on categories such as occupation, cession, prescription, conquest, effective control, recognition, acquiescence and treaty settlement (Jennings, 1963; Brownlie, 2008; Shaw, 2021). The relevant question was often not whether a territorial arrangement reflected the will of the population, but whether sovereignty had been validly acquired, effectively exercised and internationally accepted. Legitimacy was mediated primarily through interstate forms.

The classical grammar did not disappear after 1945. Territorial title, boundaries, recognition, succession, effective control, acquiescence and treaty interpretation remain indispensable legal categories (Crawford, 2006; Shaw, 2021). Boundary treaties enjoy special durability; the doctrine of intertemporal law limits the retroactive application of later norms to earlier legal situations (Island of Palmas, 1928); and the principle of *uti possidetis juris* preserves inherited boundaries at moments of independence (Ratner, 1996; Shaw, 1996; Crawford, 2006).

The modern legal order has nevertheless altered the position of these classical categories. Sovereignty and territorial stability are no longer treated as selfsufficient values. They must be reconciled with self-determination, human rights, the prohibition of the use of force, the illegality of annexation and international accountability (Cassese, 1995; Crawford, 2006). This is the central tension in contemporary international law: the system still needs stable territorial baselines, but it increasingly evaluates them through normative principles that may challenge inherited arrangements.

The Israeli-Palestinian conflict is one of the clearest examples of this tension. Arguments concerning the Mandate for Palestine, the legal character of the 1949 Armistice Lines, the absence of prior Palestinian statehood, the status of Jordanian and Egyptian control before 1967, the consequences of defensive war and the possible relevance of *uti possidetis juris* belong largely to the classical vocabulary of territorial title and legal inheritance (Blum, 1968; Stone, 1981; Bell and Kontorovich, 2016). The dominant contemporary framing begins instead from occupation, Palestinian self-determination, settlements, human rights and the illegality of Israel's continued presence in the occupied Palestinian territory (Benvenisti, 2012; ICJ, 2004; ICJ, 2024d). The methodological problem is that the second vocabulary often displaces, rather than answers, the first.

2.2. War, anti-annexation and the 1967 territorial problem

The most important twentieth-century transformation of international law concerns the legal status of war. Classical international law regulated war but did not absolutely prohibit it as an instrument of national policy (Oppenheim, 1905; Brownlie, 1963; Hathaway and Shapiro, 2017). The gradual outlawry of war, symbolised by the 1928 Kellogg-Briand Pact and consolidated by the United Nations Charter, fundamentally altered the relationship between force and territorial title. Article 2(4) of the Charter prohibits the threat or use of force against the territorial integrity or political independence of any State, subject to the exceptions of Security Council authorisation and self-defence (UN Charter, 1945, arts. 2(4), 42, 51).

This prohibition had direct consequences for territorial law. If aggressive war is illegal, territorial acquisition resulting from aggression cannot be treated as a normal mode of acquiring sovereignty. The principle of the inadmissibility of the acquisition of territory by force is therefore one of the central markers of contemporary international law (Brownlie, 1963; Crawford, 2006). It reflects the idea that unlawful violence cannot generate lawful title. The modern law of non-recognition developed precisely to prevent unlawful territorial situations from being consolidated through acquiescence (Lauterpacht, 1947; Dugard, 1987; Talmon, 2005).

The principle is more complex than its most general formulations suggest. The paradigm case is territorial acquisition resulting from aggression. More difficult are cases in which territory comes under the control of a State as a result of a defensive war, especially where the prior sovereign status of that territory was itself disputed or legally unsettled (Schwebel, 1970; Stone, 1981; Shaw, 2021). Contemporary international law is generally reluctant to recognise acquisition of sovereignty even after defensive war, because doing so could encourage territorial expansion under the language of self-defence. At the same time, a purely formal application of the anti-annexation principle fails to capture the difference between conquest by aggression and territorial control resulting from the defeat of an aggressor.

This distinction is especially relevant to Israel after 1967. The legal status of the territories captured in that war cannot be reduced to the proposition that defensive war generates sovereign title. But neither is the situation identical to the conquest of the recognised sovereign territory of another State by an aggressor. The West Bank had been annexed by Jordan in 1950 in a move recognised only by a very limited number of States, while Gaza was administered by Egypt without being incorporated as Egyptian sovereign territory (Blum, 1968; Stone, 1981; Kattan, 2009; Quigley, 2010). The 1949 Armistice Lines were expressly not final political borders. These facts complicate the ordinary analogy with the occupation of another State's settled territory and require a more precise account of the relationship between territorial control, prior sovereignty, armistice lines and self-determination.

Security Council Resolution 242 reflects this complexity. Adopted after the 1967 war, it affirmed the inadmissibility of the acquisition of territory by war and called for withdrawal of Israeli armed forces from territories occupied in the conflict, together with termination of belligerency and respect for every State's right to live within secure and recognised boundaries (UNSC Res. 242, 1967). The drafting and interpretation of the withdrawal clause have generated extensive debate, especially regarding the absence of the definite article before "territories" in the English text (Schwebel, 1970; Rostow, 1979; McHugo, 2002). The deeper point is that Resolution 242 linked territorial withdrawal to peace, recognition and secure boundaries, rather than presenting withdrawal as an isolated legal act detached from the regional conflict.

The contemporary UN paradigm tends to flatten this distinction, treating the territories captured in 1967 as occupied Palestinian territory and marginalising the unresolved questions of prior sovereignty, armistice lines and defensive war (Benvenisti, 2012; ICJ, 2004; ICJ, 2024d).

2.3. Self-determination, uti possidetis juris and the Mandate inheritance

If the prohibition of force transformed the legal status of war, self-determination transformed the legal status of peoples. In the classical paradigm, peoples were largely objects of territorial sovereignty. In the contemporary paradigm, they may become subjects of legal entitlement (Cassese, 1995; Crawford, 2006; Getachew, 2019). This is one of the defining achievements of modern international law.

The decisive consolidation of self-determination occurred in the context of decolonisation. General Assembly Resolution 1514 proclaimed that all peoples have the right to self-determination and that colonialism should be brought to a speedy and unconditional end (UNGA Res. 1514, 1960). General Assembly Resolution 2625 then integrated self-determination into a broader statement of principles governing friendly relations among States (UNGA Res. 2625, 1970). Together with common Article 1 of the International Covenants on Human Rights, these instruments shifted self-determination from political aspiration toward legal principle (Cassese, 1995; Crawford, 2006).

The doctrine remains unstable outside classical decolonisation. International law recognises self-determination, but it does not treat every distinct people as automatically entitled to independent statehood. It protects territorial integrity, while condemning alien domination, racial subjugation, foreign occupation and denial of meaningful political participation (Hannum, 1990; Crawford, 2006; Vidmar, 2013). What emerges is a structured tension between emancipation and stability.

The principle of *uti possidetis juris* illustrates this ambivalence. It supports self-determination by allowing new States to emerge within determinate borders, but it limits self-determination by privileging inherited administrative boundaries over ethnic, linguistic or national distributions (Frontier Dispute, 1986; Ratner, 1996; Shaw, 1996). Its purpose is conservative: to prevent the transition from colonial rule to independence from producing open-ended territorial revisionism. The principle has been criticised for freezing colonial boundaries, but its alternative — the wholesale redrawing of borders according to competing national claims — could generate even greater instability (Ratner, 1996; Anghie, 2005; Getachew, 2019).

The possible relevance of *uti possidetis juris* to the Mandate for Palestine is controversial. Bell and Kontorovich argue that Israel, as the only State to emerge from the Mandate, inherited the boundaries of Mandatory Palestine subject to valid subsequent agreements or modifications (Bell and Kontorovich, 2016). On this view, the absence of a Palestinian State in 1948 and the non-binding character of the partition recommendation strengthen the claim that the unallocated territories of the Mandate were not automatically Palestinian sovereign territory. Critics reject or substantially qualify this approach, emphasising the specific character of the Mandate, the political rights of the Arab population, the international endorsement of partition and the later consolidation of Palestinian self-determination (Kattan, 2009; Quigley, 2010; Erakat, 2019).

The argument from *uti possidetis juris* should not be overstated. It does not automatically establish Israeli sovereignty over the West Bank or Gaza; its importance is diagnostic. It reveals that the territorial question is more complex than the dominant occupation/self-determination paradigm permits: a serious account must explain why Mandate succession, armistice lines and inherited boundaries do or do not matter, rather than treating them as simply irrelevant. That displacement is itself an instance of the larger pattern examined below — the selective activation of one legal vocabulary and the silencing of another, the elementary move on which lawfare depends.

2.4. Partition, armistice and the displacement of title

The Mandate for Palestine is central to the legal history of the conflict. It was not a simple British colonial possession. It was a League of Nations mandate entrusted to Britain under Article 22 of the Covenant. Its text incorporated the Balfour Declaration, recognised the historical connection of the Jewish people with Palestine and called for the establishment of a Jewish national home, while requiring that the civil and religious rights of existing non-Jewish communities be protected (Mandate for Palestine, 1922; Crawford, 2006; Kattan, 2009).

The Mandate therefore contained an internal duality. It did not create immediate Jewish sovereignty, but it gave international legal recognition to the project of a Jewish national home. It did not recognise Arab political self-determination in equivalent terms, but it protected civil and religious rights and contemplated the development of self-governing institutions (Kattan, 2009; Quigley, 2010). This asymmetry remains at the heart of the legal dispute. For some authors, the Mandate supplies an international legal foundation for Jewish national rights in Palestine (Stone, 1981; Rostow, 1979; Bell and Kontorovich, 2016). For others, it was a colonial instrument that subordinated the political rights of the Arab majority to an externally sponsored Zionist project (Kattan, 2009; Erakat, 2019).

When the Mandate ended, the legal destiny of the territorial unit remained unresolved. General Assembly Resolution 181 recommended partition into Jewish and Arab States, with a special international regime for Jerusalem (UNGA Res. 181, 1947). The Jewish leadership accepted partition as a basis for statehood; Arab actors rejected it. As a General Assembly recommendation, Resolution 181 did not itself transfer sovereignty or bind the parties in the manner of a treaty or Security Council enforcement measure (Stone, 1981; Kattan, 2009; Quigley, 2010). Its legal and political significance was nevertheless enormous: it expressed an international view that the Mandate should be divided into two States, but implementation depended on acceptance, effective control and political realisation.

The rejection of partition and the subsequent 1948 war are often marginal in contemporary legal narratives. Those narratives tend to move from Palestinian dispossession to Israeli statehood and then to occupation after 1967, but the failure of partition is also legally relevant. Palestinian statehood did not fail because Israel obstructed it; it failed primarily because the partition framework was rejected by Arab actors and overtaken by war (Morris, 2008; Shlaim, 2000; Kattan, 2009). This historical sequence changes the juridical texture of the Palestinian claim. Palestinian self-determination today is not the restoration of a State unlawfully conquered in 1967, but a right progressively recognised after the collapse of partition, successive wars, armistice arrangements, Arab control over parts of Mandatory Palestine and the later institutionalisation of Palestinian peoplehood.

The 1949 Armistice Lines further complicate the baseline. As already noted, they expressly avoided prejudicing future political settlement and created no settled Palestinian sovereign title, the West Bank passing under Jordanian and Gaza under Egyptian control (Blum, 1968; Stone, 1981; Kattan, 2009). The counterargument — that prior Palestinian statehood is not required for occupation law or self-determination to apply (Benvenisti, 2012; Quigley, 2010;

ICJ, 2004) — is strong in contemporary law, but should be stated as a legal development, not as a historical given.

The contemporary paradigm effectively uses Palestinian self-determination to resolve the territorial ambiguity left by Mandate termination, failed partition, armistice and the 1967 war. The territory becomes ‘Palestinian’ not because a Palestinian State previously exercised sovereignty over it, but because the Palestinian people are recognised as the self-determination unit entitled to determine its political future (Quigley, 2010; ICJ, 2004; ICJ, 2024d). The significance lies in the substitution effect: self-determination does not merely supplement an unresolved territorial history but reorganises the entire territorial frame.

2.5. The unresolved tension

As noted above, the passage from classical to contemporary international law has not abolished sovereignty, title, boundaries or territorial stability. It has overlaid them with self-determination, human rights, accountability and anti-annexation. In some cases, contemporary principles correct classical injustice. Decolonisation is the clearest example (Cassese, 1995; Anghie, 2005; Getachew, 2019). In other cases, classical principles restrain destabilising claims by preserving boundaries and preventing endless territorial revisionism. In still other cases, the relationship between old and new principles remains unresolved. The Israeli-Palestinian conflict belongs to this third category.

At its core, the difficulty is that contemporary legal discourse tends to present its conclusions as though the underlying normative shift were seamless and uncontested: occupation, self-determination and illegality figure as immediate starting points rather than as conclusions reached after engaging with title, boundaries, Mandate succession, armistice and war. The problem is therefore not only argumentative but structural — the frame supplies its own premises, and it is on that foundation that the selective mobilisation analysed below operates.

That structure matters. When complex territorial histories are translated into morally charged legal categories while competing legal frameworks are pushed outside the field of legitimate argument, international law becomes vulnerable to selective mobilisation. Its authority then derives less from the disciplined comparison of rival legal claims than from the institutional repetition of a dominant frame (Koskenniemi, 2005; Kennedy, 2006). The Israeli case thus illustrates a broader feature of contemporary international law: precisely because it speaks in the language of universal values, it can conceal its political selectivity more effectively than the older law of sovereignty.

3. The United Nations between Universalisation and Selectivity

3.1. Institutional ambivalence

The United Nations occupies an ambivalent position in the history of contemporary international law. It is the institutional framework within which the prohibition of force, sovereign equality, decolonisation, self-determination, human rights and international accountability have acquired global legal visibility. At the same time, it is a political organisation composed of States, structured by voting rules, regional alignments, diplomatic bargaining and bloc politics (Claude, 1966; Franck, 1990; Alvarez, 2005; Hurd, 2011). Its legal authority is therefore inseparable from its political structure.

This ambivalence is built into the Charter. Article 2 affirms sovereign equality, prohibits the threat or use of force and embeds the principle of non-intervention. The Security Council, however, is structured around permanent membership and veto power. The Charter universalises legal principles while preserving the privileges of great-power management (Simpson, 2004; Mazower, 2009; Hurd, 2011). International legality is placed inside an institutional order that is formally universal but politically unequal.

The General Assembly represents the opposite pole: one vote per Member State, and the principal site for the articulation of universal claims. Its resolutions are generally non-binding, yet they shape legal expectations, consolidate normative vocabularies and structure the interpretation of disputes (Chinkin, 1989; Boyle and Chinkin, 2007). The UN therefore does not merely apply international law; it produces, amplifies and stabilises legal meanings, identifying — through resolutions, reports, special procedures, commissions of inquiry and advisory-opinion requests — which conflicts become legally visible and which categories define them.

3.2. Decolonisation and General Assembly normativity

The most important transformation in the UN's legal-political role occurred during decolonisation. As newly independent States entered the organisation, the General Assembly became the central forum for anti-colonial legal production. Resolution 1514 on the granting of independence to colonial countries and peoples and Resolution 2625 on friendly relations gave self-determination a central place in the normative vocabulary of the post-war order (UNGA Res. 1514, 1960; UNGA Res. 2625, 1970; Cassese, 1995).

This transformation altered the function of the Assembly. It became not merely a deliberative body but a producer of international normative meaning. Through repeated resolutions, it articulated collective positions on colonialism, racial discrimination, apartheid, foreign domination, occupation and the rights of peoples. General Assembly resolutions did not operate as legislation in a formal sense, but they contributed to the formation of legal consensus, the interpretation of the Charter and the political legitimation of emerging norms (Abi-Saab, 1962; Chinkin, 1989; Boyle and Chinkin, 2007).

The decolonisation moment also changed the relationship between law and political identity. Peoples, liberation movements and non-State collective actors entered the vocabulary of international legality. The UN gave institutional form to claims that had previously been marginal within a State-centred order. This was a major normative achievement. It also created new forms of indeterminacy. The category of "people" did not always coincide with existing State boundaries, colonial administrative units or stable territorial settlements. The Assembly's role in recognising, naming and supporting claims of peoplehood therefore became politically consequential (Cassese, 1995; Rajagopal, 2003).

The Palestinian case developed within this postcolonial grammar. Initially addressed through partition, armistice, refugees and regional peace, the conflict was, from the late 1960s, recast in the vocabulary of peoplehood, national liberation and self-determination — the General Assembly resolutions of 1974 marking the turn, as examined more fully below. That shift began to reconstruct Israel from a State in conflict with its neighbours into the power said to obstruct the self-determination of a people, supplying the foundation for later developments: occupation as denial of self-determination, settlements as colonial implantation, and Israel as the standing object of a permanent UN legal narrative.

3.3. Soft law, bloc politics and institutional repetition

The UN’s influence often operates through soft law. Resolutions, declarations, reports, recommendations and institutional findings may lack binding force, but they shape expectations, provide interpretive frameworks and generate cumulative authority through repetition (Chinkin, 1989; Boyle and Chinkin, 2007; Alvarez, 2005). This repetition creates a legal archive: a General Assembly resolution frames a conflict in a particular vocabulary; a Human Rights Council resolution adopts that vocabulary; a special rapporteur report develops it; a commission of inquiry applies it to facts; an advisory opinion refers to the institutional record; later resolutions and reports then cite the advisory opinion as confirmation of the legal frame.

The process is not inherently illegitimate. International law often develops through repetition, interpretation and institutional practice. The problem arises when repetition substitutes for analysis and when heterogeneous materials are aggregated as if they carried the same legal weight. A General Assembly resolution, a special rapporteur report, a commission of inquiry finding, an NGO report and an ICJ advisory opinion do not have the same authority, procedure or evidentiary foundation. Their cumulative use can nevertheless produce a powerful sense of legal closure.

This process is shaped by blocs. Regional groups, the Non-Aligned Movement, the Organisation of Islamic Cooperation, the Arab Group, Western States, postcolonial coalitions and great-power alignments all affect the production of legal language (Peterson, 2006; Hurd, 2011; Freedman, 2013). These blocs frame legal questions, support mandates, sponsor resolutions and determine which situations receive sustained attention. Bloc politics does not explain every legal conclusion, but it helps explain why some conflicts become permanent legal objects while others remain episodic.

The Israeli-Palestinian conflict illustrates this mechanism with particular clarity. Arab and Islamic States had a direct regional and ideological interest in the Palestinian cause; newly independent and non-aligned States read the conflict through the anti-colonial vocabulary of foreign domination and national liberation; Soviet and allied diplomacy amplified the framing of Israel as a Western-aligned actor. These currents converged in the General Assembly, where numerical majorities could repeatedly condemn Israel and affirm Palestinian rights (Golan, 1990; Sayigh, 1997; Peterson, 2006).

The 1975 resolution equating Zionism with racism was the most explicit expression of this convergence (UNGA Res. 3379, 1975). Its revocation in 1991 removed the formal equation from UN practice, but not the broader structural frame that had made it possible (UNGA Res. 46/86, 1991). The contemporary vocabulary is more juridically refined: settler colonialism, apartheid, racial domination, denial of self-determination and structural oppression. The logic remains similar. Israel is positioned as the representative case through which anti-colonial, anti-racist and anti-Western legal vocabularies are mobilised.

3.4. Institutional selectivity and legal visibility

Selectivity is not merely a matter of how many resolutions are adopted against one State; it concerns the organisation of legal perception — which facts, actors and categories become central to the international legal imagination. In the Israeli-Palestinian conflict the UN has rendered certain elements highly visible (occupation, settlements, Palestinian self-determination, refugees, East Jerusalem, annexation, racial discrimination and apartheid) while others receive far less systematic attention: the legal ambiguity of Mandate termination, the Arab rejection of partition, the provisional character of the 1949 Armistice Lines, the absence of prior Palestinian statehood, Hamas rule in Gaza, attacks on civilians, hostage-taking, incitement and the security logic of Israeli policy. These do not structure the dominant institutional narrative.

This is the institutional background of lawfare. The UN has universalised central principles of contemporary international law: self-determination, human rights, decolonisation, non-acquisition of territory by force and accountability. It has also created pathways through which those principles may be selectively activated. The next section defines this process more precisely.

4. Lawfare as Selective Legal Mobilisation

4.1. Concept and definition

The expansion of international law has changed the role of legal argument in international conflict. Law no longer functions only as an external constraint on political conduct. It has become one of the principal languages through which political actors seek legitimacy, condemn adversaries, mobilise institutions, shape public opinion and generate diplomatic or economic pressure (Kennedy, 2006; Hurd, 2017). This transformation is inseparable from the legalisation of international relations: the proliferation of treaties, courts, monitoring bodies, fact-finding mechanisms, sanctions regimes, human rights procedures and international criminal jurisdiction (Abbott et al., 2000; Alter, 2014).

The term is contested. In its narrow formulation, associated with Charles Dunlap, lawfare is the use of law as a weapon of war, especially where legal claims constrain or neutralise an adversary's operational advantages (Dunlap, 2001) — a real but insufficient dimension, since contemporary lawfare operates equally through international organisations, human rights bodies, advisory opinions, criminal jurisdiction, sanctions, corporate due diligence and civil-society mobilisation (Kittrie, 2016).

International lawfare may therefore be defined as the strategic mobilisation of international legal norms, institutions, procedures and labels in order to obtain political, diplomatic, military, economic or reputational advantage, particularly where such mobilisation is marked by selectivity, asymmetrical framing, cumulative delegitimation and departure from comparable standards of application.

This definition contains four elements. First, lawfare is strategic: it is oriented toward effects beyond legal clarification. Second, it is institutional: it operates through courts, UN organs, treaty bodies, commissions of inquiry, special rapporteurs, domestic prosecutors, sanctions regimes, regulatory systems and civil-society networks. Third, it is discursive: it relies on legal categories whose symbolic force exceeds their technical content, including occupation, apartheid, genocide, war crimes, crimes against humanity, denial of self-determination and complicity. Fourth, it is comparative: lawfare becomes visible through disparity. A legal category selectively activated against one actor while analogous cases remain weakly institutionalised raises the question whether law is functioning as a universal standard or as a strategic instrument.

4.2. Accountability, strategic mobilisation and lawfare

Legal contestation is ordinary in international law: states disagree about treaty interpretation, jurisdiction, proportionality, self-defence, occupation, attribution, statehood and responsibility. Victims, NGOs and affected populations invoke legal norms to demand remedies. Courts and international bodies assess claims. These practices belong to the normal operation of a legal order.

Accountability becomes lawfare when legal mechanisms are embedded in a structure of selective mobilisation. The difference lies not in the mere use of law, nor in the political consequences of legal proceedings. The difference lies in the combination of selectivity, asymmetrical framing, cumulative labelling and strategic operationalisation.

A State may be responsible for unlawful conduct and still be the target of lawfare: the two can coexist. Lawfare does not require false allegations — it may operate through legally serious claims that are selected, amplified and combined into a broader project of delegitimation, as when a valid claim about settlement illegality is folded into a wider narrative of colonialism, apartheid and state illegitimacy. Three levels may thus be distinguished: ordinary legal contestation, advancing arguments to resolve disputes within recognised procedures; strategic legal mobilisation, in which law is used deliberately to shape political or reputational outcomes, common and not necessarily abusive; and selective lawfare, in which mobilisation becomes structurally asymmetrical, cumulative and delegitimising, particularly where the same categories are not applied with comparable intensity to analogous situations.

4.3. Indicators and comparative test

While no single indicator is decisive in isolation, selective lawfare leaves a distinct institutional footprint. Its presence is typically marked by forum selectivity and mandate asymmetry, coupled with a noticeable elasticity in evidentiary standards. More broadly, it relies on categorical inflation and institutional repetition, on the comparative displacement of analogous cases and on remedial maximalism, working to recast the most far-reaching political demands as legal necessity and ultimately producing what might be termed stigmatic irreversibility.

Because selectivity is comparative, lawfare analysis requires a comparative test. The inquiry is not whether a State has violated international law, but whether the institutional response bears a reasoned relation to the gravity, legal character and treatment of analogous situations. Relevant factors include legal comparability, gravity, institutional intensity, mandate symmetry, categorical escalation, remedial consequences, institutional permanence and the presence or absence of a credible comparative explanation.

This test does not require identical treatment of all conflicts. International law operates under conditions of limited capacity, political constraint and evidentiary variation. But a system that claims universality must be able to explain why some cases generate dense legal architectures while comparable cases do not. Without such explanation, the difference between universal accountability and selective mobilisation becomes unstable.

These indicators and this comparative test do not constitute an algorithm. They are an interpretive heuristic: their presence does not demonstrate selective lawfare in the manner of a proof, but organises disparate institutional facts into a pattern that can then be assessed. The argument advanced here is accordingly diagnostic rather than demonstrative.

4.4. Legalisation and the vulnerability of contemporary international law

The vulnerability of contemporary international law to lawfare derives from its own achievements. The expansion of human rights, self-determination, humanitarian law and international criminal law gives legal vocabulary to forms of suffering and domination that classical international law often ignored (Henkin, 1995; Meron, 2006; Teitel, 2011). It also supplies powerful tools for political mobilisation. The more morally authoritative a legal category becomes, the greater its strategic value (Kittrie, 2016).

Genocide, apartheid, colonialism, occupation and denial of self-determination are not ordinary legal terms. They carry historical memory, moral force and institutional consequences. Their invocation can reorganise diplomatic relations, corporate behaviour, academic life, sanctions policy and criminal exposure. International law's normative strength therefore becomes a source of strategic attraction.

The response is not to reduce international law to politics but to restore methodological discipline: the cluster of commitments — categorical, evidentiary, institutional and remedial — set out in the conclusion. Without them, the universal vocabulary of contemporary international law can be converted into a selective technology of delegitimation.

5. Israel and the UN Architecture of Exceptionalisation

5.1. From Arab-Israeli conflict to the "Question of Palestine"

The institutional treatment of Israel within the United Nations cannot be understood without tracing the transformation of the conflict's legal grammar. As already pointed out, in the first decades after 1948, the conflict was framed primarily through partition, refugees, armistice, interstate war and regional security. General Assembly Resolution 181 had recommended partition; the State of Israel was established by the May 1948 declaration of independence, while the ensuing war produced the Palestinian refugee question and armistice arrangements with neighbouring Arab States; Security Council practice then focused on ceasefires, belligerency, borders, recognition and the conditions for peace (UNGA Res. 181, 1947; Morris, 2008; Kattan, 2009).

After 1967, the legal centre of gravity shifted. The territories captured by Israel — the West Bank, East Jerusalem, Gaza, Sinai and the Golan Heights — brought the language of occupation to the foreground. Security Council Resolution 242, examined above, captured this transitional moment: the conflict still appeared as an interstate and territorial dispute, but the occupation paradigm had now entered the legal field.

The decisive transformation came in the 1970s, when the Palestinian question was separated from the broader Arab-Israeli conflict and reconstructed as one of peoplehood, national liberation and self-determination. General Assembly Resolution 3236 recognised the inalienable rights of the Palestinian people — self-determination, national independence and sovereignty — while Resolution 3237 granted observer status to the Palestine Liberation Organization (UNGA Res. 3236, 1974; UNGA Res. 3237, 1974; Khalidi, 1997). These resolutions did not merely recognise a political actor; they reorganised the conflict's legal structure and thereby repositioned Israel — no longer simply a State in conflict with its neighbours, but the power said to obstruct a people's self-determination, cast in the correlative role of occupying and denying State. This reclassification became the foundation for later UN practice.

The expression "Question of Palestine" is itself significant. It identifies Palestine as a permanent object of institutional attention and creates continuity between successive resolutions, committees, reports, mandates and debates. Each new institutional act is inserted into an existing archive; each new allegation is interpreted through an already stabilised legal vocabulary. This is one of the principal mechanisms through which the UN transformed a territorial and political conflict into a standing legal question.

5.2. General Assembly, Security Council and institutional displacement

The General Assembly has been the principal organ through which Palestinian self-determination has been internationalised. Its resolutions have repeatedly affirmed the Palestinian people's rights, condemned Israeli occupation and settlement policy, supported the PLO and later Palestine's institutional status, and framed the conflict through decolonisation, anti-racism and human rights (UNGA Res. 3236, 1974; UNGA Res. 67/19, 2012; Erakat, 2019).

Assembly resolutions are not legislation in the strict sense, but repetition over time gives them legal and political weight (Chinkin, 1989; Boyle and Chinkin, 2007; Alvarez, 2005). In the Palestinian case, the General Assembly progressively consolidated three propositions: Palestinians are a people entitled to self-determination; the territories occupied in 1967 form the territorial basis of that right; Israel is the actor whose conduct prevents its realisation.

The aforementioned 1975 "Zionism is racism" resolution and its 1991 revocation belong to this same Assembly practice: the resolution was its most overt expression, while the revocation removed the formal equation from UN practice without dissolving the broader structural frame, which survives in more juridically refined vocabulary — settler colonialism, apartheid, racial domination and denial of self-determination.

The Security Council has addressed the conflict through resolutions on war, occupation, settlements, Jerusalem, terrorism, ceasefires and peace processes, yet its role has always been constrained by great-power politics, especially the United States' protection of Israel and the veto structure of the Council (Bailey and Daws, 1998; Luck, 2006; Hurd, 2011). Resolution 242, already examined above (§ 2.2), does not adopt the later vocabulary of Palestinian self-determination, apartheid, colonialism or structural illegality; later practice, especially Resolution 2334, condemned settlements and measures altering the status of the occupied territories (UNSC Res. 2334, 2016).

The Council has thus not been the primary engine of the broader architecture on Palestine. Veto politics and diplomatic constraint have shifted institutional production to the General Assembly, Human Rights Council, special procedures, commissions of inquiry and advisory proceedings, where political majorities, soft-law repetition and mandate design matter more than Council enforcement. The result is a bifurcated system: the Security Council remains central to formal peace and security, while the delegitimising legal archive concerning Israel has been built largely elsewhere.

5.3. Human Rights Council Agenda Item 7 and Special Rapporteur mandate

The Human Rights Council supplies the clearest institutional evidence of exceptionalisation. Agenda Item 7, devoted to the "Human rights situation in Palestine and other occupied Arab territories," is the only standing item dedicated to a specific country situation within the Council's regular agenda (HRC Res. 5/1, 2007; Freedman, 2013). Its existence creates a permanent procedural distinction between Israel-Palestine and all other human rights situations.

The significance of Item 7 is structural. The Council's Universal Periodic Review is formally universal: every State is examined. Item 7 interrupts that logic by placing one situation in a permanent separate category — a distinction extended to no other context, including Syria, Iran, North Korea, Myanmar or China, however grave, none of which has been assigned a comparable standing country-specific item.

The mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 is another central element of this architecture. The mandate is structurally directed at Israel's conduct as occupying power. Its legal foundation lies in the occupation frame, but its institutional effect is broader: it makes Israeli conduct the permanent object of a specialised human rights inquiry (Falk, 2014; Lynk, 2022; Albanese, 2024).

Mandate asymmetry is not a question of individual bias but of institutional design. A mandate focused on the human rights situation in territories occupied by Israel will naturally organise facts around Israel's obligations, policies and responsibility. Palestinian authorities, Hamas, regional sponsors and internal Palestinian repression may be mentioned, but they do not occupy the same structural position: they appear as contextual or episodic actors rather than as co-constitutive sources of the conflict's legal reality.

The effect has intensified over time. Earlier occupation-focused analysis has increasingly been supplemented by the vocabulary of apartheid, settler colonialism and, after 2023, genocide (Dugard and Reynolds, 2013; Tilley, 2012;

Albanese, 2024). The Special Rapporteur framework thereby contributes to categorical escalation. The legal object is no longer only occupation, but the character of the regime allegedly produced by occupation.

5.4. The open-ended Commission of Inquiry

The Independent International Commission of Inquiry created in 2021 represents a further step in institutionalisation. Unlike many commissions created to investigate specific episodes of violence, this Commission has an open-ended mandate covering the occupied Palestinian territory, including East Jerusalem, and Israel, with attention to underlying root causes, systemic discrimination and repression (HRC Res. S-30/1, 2021; COI, 2022).

The open-ended character of the mandate is crucial: a time-limited inquiry investigates a defined event, an open-ended inquiry investigates a structure. The mandate therefore directs analysis beyond individual incidents to the broader system said to generate them — occupation, settlement enterprise, discrimination, annexationist policy, denial of self-determination and structural domination. Palestinian armed groups may be condemned for specific violations, but the architecture of inquiry remains centred on the system attributed to Israel.

After 7 October 2023, the Commission's work entered a more radical phase. The Gaza war was no longer treated only as a theatre of alleged war crimes and crimes against humanity. It became the factual basis for the most severe classifications available in international law. In its 2025 conference room paper on genocide, the Commission analysed Israel's conduct in Gaza directly under the Genocide Convention. It concluded that several underlying acts of genocide had been committed and that genocidal intent could be inferred from statements of Israeli officials and from the pattern of military and administrative conduct in Gaza (COI, 2025). This marks a decisive stage in the Commission's trajectory: the frame moves from unlawful conduct during war to State responsibility for genocide.

The escalation continued with the Commission's 2026 conference room paper on Palestinian children. That report did not merely document the severe impact of the war on children. It framed Israeli conduct as involving the deliberate targeting of Palestinian children and linked that framing to findings concerning extermination, wilful killing, persecution, enforced disappearance, torture, sexual and gender-based violence, attacks on healthcare and educational facilities, reproductive violence and conditions of life affecting children in Gaza (COI, 2026). The child-specific frame intensifies the stigma of the broader legal narrative: the object of alleged targeting is no longer only the Palestinian civilian population, but the most vulnerable symbolic embodiment of the group's biological and social future.

5.5. Advisory opinions and judicial reinforcement

The ICJ advisory opinions of 2004 and 2024 are the most authoritative legal components of the architecture. The 2004 Wall opinion affirmed the applicability of international humanitarian and human rights law, found the wall and its associated regime unlawful, linked the situation to Palestinian self-determination and articulated obligations for Israel and third States (ICJ, 2004). The 2024 opinion went further, concluding that Israel's continued presence in the occupied Palestinian territory is unlawful and identifying obligations of non-recognition, non-assistance and cooperation for other States (ICJ, 2024d).

Advisory opinions carry judicial authority, yet they arise from politically framed requests: the General Assembly formulates the question, the Court answers within the architecture presented, and the opinion is reabsorbed into resolutions, reports, advocacy and litigation. In the Israeli case this circuit has been decisive. The 2004 opinion consolidated the occupation/self-determination/third-State frame; the 2024 opinion shifted the centre from the illegality of specific policies to the unlawfulness of continued presence — and with it the stakes, since an unlawful presence implicates the entire structure of territorial control and all third-party relations with it, not merely particular settlements or measures.

The opinions also interlock with other categories — settlement illegality feeding the annexation frame, annexation the denial of self-determination, that denial the third-State obligations, and discrimination findings the apartheid discourse — so that they operate not only as judicial documents but as nodes in a broader system of legal escalation.

5.6. Institutional exceptionalisation

The UN architecture surrounding Israel is cumulative rather than episodic, and multi-institutional: General Assembly resolutions establish the Palestinian people as the central legal subject, Security Council resolutions condemn settlements while preserving the withdrawal-and-recognition framework, the Human Rights Council maintains a permanent agenda item, the Special Rapporteur produces continuing reports, the Commission of Inquiry accumulates structural findings, advisory opinions supply judicial authority, and NGO reports, scholarship and civil-society campaigns circulate and operationalise the same categories. These mechanisms reinforce one another, generating the impression of convergent legal consensus, while the governing vocabulary migrates from occupation and settlements to self-determination, annexation, racial discrimination, apartheid, settler colonialism, war crimes, crimes against humanity and, after 2023, genocide. Israeli conduct occupies the structural centre of the archive; Palestinian conduct is addressed, but rarely with comparable centrality.

Exceptionalisation refers to this institutional intensity, permanence and cumulative structure. No other State has been placed — for decades, and across every principal organ — within an equivalent combination of dedicated agenda treatment, specialised rapporteur mandate, open-ended inquiry, repeated General Assembly mobilisation, advisory-opinion circuit and global civil-society legal campaign.

This exceptionalisation fixes Israel as a permanent legal defendant and makes Palestinian self-determination the organising principle of the conflict. It marginalises the territorial and historical questions that do not fit the dominant frame, and transforms occupation into a broader theory of structural illegality — one that enables the migration from occupation to colonialism, apartheid and genocide. It converts third-State relations with Israel into questions of complicity, recognition and assistance, and supplies civil-society campaigns with a dense institutional archive from which to derive legal legitimacy.

The Israeli case therefore satisfies the principal structural indicators of selective lawfare identified in the previous section (§ 4.3): forum selectivity, mandate asymmetry, institutional repetition, categorical inflation, comparative displacement, remedial maximalism and stigmatic irreversibility. The UN architecture is not merely a forum in which lawfare occurs. It is the institutional condition that makes lawfare effective.

6. Self-Determination and Comparative Selectivity

6.1. Self-determination as legal principle and institutional pathway

Self-determination is one of the central achievements of contemporary international law and one of its most selective mechanisms. Its basic formulation is universal: all peoples have the right freely to determine their political status and to pursue their economic, social and cultural development (UNGA Res. 1514, 1960; UNGA Res. 2625, 1970; Cassese, 1995). Its institutional activation is not universal. Some claims of peoplehood become permanent objects of international legal attention; others remain fragmented, domesticated, securitised or politically marginal.

The principle emerged with particular force in the context of decolonisation. In that setting, the relevant people was generally identified with the population of a colonial territorial unit, and the remedy was independence within inherited boundaries (Cassese, 1995; Crawford, 2006; Getachew, 2019). The territorial unit supplied the legal container. *Uti possidetis juris* stabilised the outcome by converting colonial administrative borders into international boundaries, thereby preventing the decolonisation process from becoming an open-ended redrawing of maps (Ratner, 1996; Shaw, 1996; Crawford, 2006).

Outside classical decolonisation, self-determination becomes more indeterminate. International law recognises that peoples may hold rights against alien domination, racial subjugation, foreign occupation and systematic denial of political participation. At the same time, it does not treat every distinct national, ethnic, linguistic or cultural group as entitled to external statehood (Hannum, 1990; Crawford, 2006; Vidmar, 2013). The legal system preserves the territorial integrity of existing States while also condemning the denial of collective political freedom. The result is not a mechanical rule but a field of institutional judgment.

That judgment is mediated by recognition, repetition and forum access. A group becomes legally visible as a "people" not only because it possesses sociological markers of identity, but because its claim is named, supported, repeated and attached to a territorial and institutional pathway. The international legal system does not simply discover peoples; it selects, amplifies and stabilises some claims of peoplehood while leaving others weakly institutionalised (Anderson, 1983). The Palestinian case is the most important contemporary example of successful institutional activation.

6.2. Palestinian peoplehood and UN institutionalisation

The Palestinian people are today widely recognised as holders of the right to self-determination (Quigley, 2010; ICJ, 2004; ICJ, 2024d). The central question for this article is not the abstract existence of that right, but the process through which Palestinian peoplehood became deeply embedded in international legal practice.

Palestinian national consciousness developed through the late Ottoman period, the Mandate, opposition to Zionism, Arab nationalism, the experience of 1948, refugeehood, the 1967 war and the rise of the PLO (Porath, 1974; Kimmerling and Migdal, 2003); like other modern national identities, it was constructed through conflict, memory, institutions and mobilisation (Anderson, 1983). Its juridical consolidation, however, occurred through the United Nations. The 1948 war turned Palestinian identity into a collective experience of dispossession; the 1967 war gave the claim a territorial focus in the West Bank, East Jerusalem and Gaza; and the PLO, General Assembly recognition and subsequent UN practice supplied representation and continuity (Quigley, 2010).

The decisive role of General Assembly Resolutions 3236 and 3237 (1974) in reconstructing the conflict as a question of Palestinian peoplehood has been examined above (§ 5.1). Later developments, including Palestine's non-member observer State status in 2012, further consolidated its legal personality without resolving effective statehood (UNGA Res. 67/19, 2012; Erakat, 2019).

This process transformed the conflict: Palestinian self-determination became the central legal axis through which Israeli conduct was read — occupation as denial of self-determination, settlements as colonial implantation, annexation as obstruction of national independence, security measures as restrictions on collective freedom. The legal personality of the Palestinian people thus supplied the organising frame for the architecture examined above.

The Palestinian claim acquired additional force through the political grammar of decolonisation. Arab and Islamic States, the Non-Aligned Movement and Soviet and postcolonial actors inserted Palestine into a global anti-colonial narrative (Golan, 1990; Sayigh, 1997; Peterson, 2006), framing Israel not only as an occupying power after 1967 but as a Western-backed settler-colonial project obstructing the liberation of an indigenous people. This connected Palestinian self-determination to broader struggles against colonialism, racism and imperial domination, generating an exceptional institutional density: the claim is not merely recognised but repeatedly affirmed, procedurally embedded, judicially endorsed, diplomatically mobilised and tied to third-State obligations. Few self-determination claims have achieved comparable visibility.

6.3. The Kurdish counterpoint

The Kurdish case is the strongest counterpoint. The Kurds are commonly described as one of the largest stateless peoples in the world. They possess linguistic distinctiveness, cultural identity, historical consciousness, demographic weight and territorial concentration across parts of Turkey, Iraq, Iran and Syria (McDowall, 2004; Natali, 2005; Gunter, 2011). Kurdish political movements have pursued autonomy, federalism, cultural rights or independence in different contexts. Kurdish populations have also experienced repression, forced assimilation, displacement, denial of language rights, military campaigns and mass violence (McDowall, 2004; Yildiz and Taysi, 2007; Gunter, 2011).

On conventional sociological indicators of peoplehood, the Kurdish claim is at least as strong as many claims that have received greater international recognition. The Kurds have a distinct language family, a geographically identifiable homeland, enduring political movements and repeated experiences of collective repression. In Iraq, Kurdish autonomy has acquired substantial institutional form. In Turkey, Iran and Syria, Kurdish claims have more often been treated as internal security problems, separatism or counterterrorism questions.

The UN system has not transformed Kurdish self-determination into a standing international legal project. There is no permanent "Question of Kurdistan" comparable to the Question of Palestine. There is no Human Rights Council agenda item dedicated to Kurdish self-determination. There is no open-ended UN commission of inquiry on the denial of Kurdish national rights across Turkey, Iraq, Iran and Syria. There is no comparable advisory-opinion circuit establishing the legal consequences of the denial of Kurdish self-determination. Kurdish suffering is addressed episodically, usually through the frameworks of human rights, minority protection, humanitarian crisis, armed conflict or counterterrorism. It is not institutionalised as a unified international law question of peoplehood.

This asymmetry cannot be neutralised by observing that none of the Mandates established after the Ottoman defeat made provision for the Kurds — unlike the Arabs, for whom the post-war settlement produced the several Arab States of the region, and, within the limits of the Mandate for Palestine, the Jews. On the contemporary paradigm's own terms, that observation cuts the other way. Resolutions 1514 and 2625 locate the right of self-determination in the people as such, not in any inherited administrative entity; if the right followed from a prior colonial attribution rather than from peoplehood, it would not be the universal right those instruments proclaim. The absence of a Mandate therefore does not attenuate the Kurdish claim — if anything it sharpens it, exposing how far the operative criterion of activation has drifted from the people in whom the right is said to inhere towards the contingent cartography the post-Ottoman settlement happened to produce. What the Kurds lack is not the fact of peoplehood, amply attested above, but its translation into a permanent institutional pathway — an institutional deficiency, not a factual one.

The contrast exposes the political conditions of legal activation. Palestinian self-determination challenges Israel, a State with exceptional symbolic position and limited regional support. Kurdish self-determination challenges several established States simultaneously, including States with significant regional, strategic and diplomatic weight. Arab, Islamic and non-aligned coalitions strongly supported Palestinian self-determination; no comparable bloc has consistently promoted Kurdish self-determination at the UN. The territorial implications of Kurdish statehood would destabilise multiple borders at once; the Palestinian claim has been channelled into the territory occupied in 1967 and presented as the completion of a two-State settlement.

The point is not that the Kurdish and Palestinian cases are identical; they are not. It is that the divergence in their legal treatment is not explained by the factual predicate of the claim, but by institutional sponsorship, geopolitical alignment, regional opposition and symbolic framing, which determine whether self-determination becomes a central legal pathway or remains marginal.

There is a further, and more structural, way to read this asymmetry. The criteria ordinarily invoked to explain why the Kurdish claim remains marginal — the absence of a Mandate, the fragmentation of the Kurdish population across established States, the inviolability of those States' borders — are not neutral facts. They are themselves an application of the classical, territorial paradigm: of *uti possidetis* and the integrity of existing States. Yet that is precisely the paradigm whose authority the dominant discourse sets aside in the Israeli-Palestinian case, where territorial title, Mandate succession and the provisional character of the 1949 armistice lines are displaced in favour of self-determination (§§ 2.3, 2.5). The system thus appears to apply not one paradigm but two, and to select between them by result. The classical paradigm is operative where it constrains a self-determination claim that would destabilise established States, as with the Kurds; the contemporary paradigm is operative where self-determination advances against a State that lacks the coalition to resist it. The same selectivity governs the converse hypotheses, which need only be stated to be recognised: were the classical paradigm applied consistently, the succession to the Mandate would generate a territorial-title argument in the Israeli case that the prevailing discourse declines to entertain; were the contemporary paradigm applied consistently, the right of a people would generate a self-determination claim for the Kurds that the same discourse declines to activate.

The classical branch would alter even the basic characterisation of the conflict: a consistent application of territorial title and of the rule against acquisition of territory by States lacking valid title would describe the areas entered in 1967 not as 'occupied' in the strict sense — a description that presupposes the displacement of a prior legitimate sovereign — but at most as territory recovered from States that had themselves taken it without valid title in 1948, Jordan in the West Bank and Egypt in Gaza (Blum, 1968). The present analysis does not adopt that description; its mere availability is what matters here, for it shows how completely the governing account of the conflict depends on a prior, and largely unargued, choice of paradigm. None of this denies that belligerent occupation supplies a distinct and, in itself, neutral legal trigger in the Palestinian case; but that trigger explains only why one claim is justiciable as occupation. It does not explain why the other people is denied the self-determination analysis on its own terms, nor why the classical paradigm is treated as authoritative against the Kurds and inadmissible for Israel. The decisive variable, in each instance, is not the condition of the people or the strength of the title — it is which paradigm is selected; and the selection tracks geopolitical convenience rather than any stable principle. This is selectivity not merely in the application of a category, but at the prior level of the choice of governing paradigm — and it is the clearest demonstration that the asymmetry documented throughout this article is structural rather than incidental.

6.4. Comparative selectivity and the structure of activation

The comparison permits a more precise account of selective activation. Self-determination becomes operative through the convergence of six factors:

recognised peoplehood, territorialisation, institutional sponsorship, symbolic resonance, procedural permanence and operational consequences.

Recognised peoplehood means that the group is named as a people rather than merely as a minority, population, displaced community or security problem. Territorialisation attaches the claim to a determinate territorial frame. Institutional sponsorship supplies State support, bloc mobilisation and procedural access. Symbolic resonance places the claim inside a broader moral-political vocabulary, such as anti-colonialism, anti-racism or anti-imperialism. Procedural permanence is produced by repeated resolutions, standing agenda items, special mandates, commissions and advisory opinions. Operational consequences arise when the claim generates effects for third States, corporations, courts, universities, international organisations and civil society.

Palestinian self-determination combines all six factors; Kurdish self-determination, despite strong peoplehood and historical grievance, lacks comparable institutional sponsorship, procedural permanence and operational reach.

The consequence is selective universalism. The language is universal; the pathways — institutional, diplomatic, procedural — are particular. Some peoples acquire a full legal architecture. Others remain objects of humanitarian concern, minority protection, domestic reform or security management. The law does not disappear in these cases, but it changes register. It speaks less as self-determination and more as human rights, autonomy, non-discrimination, protection from atrocity or conflict resolution.

In the Israeli-Palestinian conflict, self-determination functions as more than a right of the Palestinian people. It is the central legal axis through which Israel is institutionally constructed as occupying power, denier of national freedom, colonial actor and object of third-State obligations. This is the point at which self-determination becomes directly connected to lawfare. Its selective activation transforms a universal legal principle into a pathway of cumulative delegitimation.

Read in this light, the Kurdish case is not merely one comparator among others but the controlled term of the comparison. It isolates the operative variable. Two peoples emerging from the collapse of the same imperial order, neither in prior possession of a sovereign State, present claims of comparable doctrinal standing; one becomes the object of a permanent legal architecture, the other remains a humanitarian and security question addressed episodically. What separates them is not peoplehood, suffering or territorial attachment, but the presence or absence of an institutional pathway capable of translating identity into operative law — and the availability of that pathway is itself a function of coalition, procedural access and symbolic resonance. Self-determination, so deployed, operates less as a legal algorithm applicable irrespective of the claimant than as a field of selective mobilisation. Where recognition would destabilise systemically important actors, the right remains a normative promise without effectivity; where it attaches to an already consolidated narrative, it hardens into coercive architecture. The comparison establishes no hierarchy of suffering — it establishes only that the variable determining justiciability is institutional, not factual, which is to say that the selectivity analysed here is a property of the system rather than an accident of any single case.

7. Cumulative Delegitimation and Coercive Legal Effects

7.1. From legal classification to cumulative narrative

Two clarifications frame this section. First, the analysis concerns the structure through which severe legal categories are mobilised cumulatively, not the merits of any individual finding, several of which may be well founded when assessed on their own terms. Second, whereas the institutional accumulation examined above — the multiplication and mutual reinforcement of organs, mandates and procedures — made such mobilisation possible, the present section concerns the categorical mechanism itself: the way the substantive legal categories collapse into a single grammar of stigma.

The Israeli case shows how international law's most powerful categories may operate cumulatively. Occupation, annexation, denial of self-determination, colonialism, settler colonialism, apartheid, war crimes, crimes against humanity and genocide are analytically distinct — each with its own legal structure, evidentiary threshold and remedial consequence — yet in the UN-centred discourse on Israel they increasingly function as mutually reinforcing elements of a single delegitimising grammar. Occupation supplies the territorial baseline; settlement activity the annexationist dimension; self-determination the collective-rights axis; colonialism the historical frame; apartheid the regime-of-domination frame; and genocide — the terminal category, around which the others are eventually reorganised — the ultimate criminal stigma. Third-State obligations, sanctions, criminal jurisdiction, divestment and boycott then translate the narrative into practical effects.

This cumulative structure is central to lawfare. A discrete violation can be disputed, contextualised, remedied or adjudicated; a totalising narrative, in which each category supports the others — and in which genocide, once reached, retroactively radicalises the reading of occupation, military conduct and humanitarian collapse — is far harder to contest. The problem is categorical fusion. The legal system needs severe categories for severe wrongs, and occupation, apartheid and genocide are indispensable; but when the distinctions among them are compressed, the accumulation itself comes to be treated as evidence of systemic criminality, and legal analysis hardens into a hierarchy of stigma. This casts Israel not as a State responsible for distinct violations but as the embodiment of structural illegality.

7.2. Occupation, colonialism and the expansion of the frame

Occupation remains the foundational category. Under the law of belligerent occupation, territory is occupied when placed under the authority of a hostile army, and the occupying power assumes duties toward the protected population without acquiring sovereignty (Hague Regulations, 1907; Fourth Geneva Convention, 1949; Dinstein, 2019). In the Israeli-Palestinian context the occupation paradigm has been repeatedly affirmed by UN organs, the ICJ and much of international legal scholarship (ICJ, 2004; Ben-Naftali, Gross and Michaeli, 2005; ICJ, 2024d).

In the Israeli case, occupation has evolved from a regulatory category into a broader theory of illegality (Wilde, 2021). The 2024 ICJ advisory opinion, examined above, is the most authoritative expression of this development: in finding Israel's continued presence unlawful, it shifted the object of condemnation from settlement policy and specific measures to the territorial regime itself. Yet this development abstracts from features of the situation that resist a uniform occupation analysis. The Oslo Accords had introduced a negotiated and avowedly interim framework, dividing the West Bank into areas of differentiated jurisdiction and transferring substantial civil and security powers to the Palestinian Authority pending permanent-status negotiations (Declaration of Principles, 1993; Interim Agreement, 1995). The 2005 unilateral withdrawal of settlers and forces from Gaza then raised a question intrinsic to the occupation category itself — when an occupation ends — Israel maintaining that it had ceased to be the occupying power, while the prevailing UN and scholarly view held that continuing control over borders, airspace, the population registry and movement preserved occupation in functional form (Benvenisti, 2012; Dinstein, 2019). Neither the consensual and interim character introduced at Oslo nor the disengagement from Gaza is readily absorbed by a theory that condemns the territorial regime as unlawful as such; both tend to be marginalised in the dominant framing.

The colonial frame adds historical depth. In the Israeli-Palestinian context it is increasingly cast as settler colonialism: a project in which an incoming population establishes sovereignty, transforms territory, displaces or dominates the indigenous population and normalises its own presence (Wolfe, 2006; Veracini, 2010; Tilley, 2012). This frame does not stop at post-1967 occupation; it reaches backward to Zionism itself, interpreting the conflict not as the outcome of competing national movements, failed partition and unresolved security dilemmas but as the continuation of a foundational colonial structure.

The strategic effect is to expand the object of critique: occupation condemns Israel's control beyond the Green Line, but settler colonialism delegitimises its foundational national project, moving the critique from specific policies to the historical legitimacy of Zionism and the State itself — a central step in the transition from accountability to delegitimation. The category also flattens historical specificity. Zionism was a national movement of immigration and state-building rooted in historical attachment, persecution and the search for collective security after European exclusion and genocide (Avineri, 1981; Morris, 2008; Shapira, 2012), and it developed under an international mandate that expressly recognised a Jewish national home (Mandate for Palestine, 1922; Kattan, 2009). Treating it simply as European settler colonialism reduces a complex legal and historical formation to a single accusatory model.

7.3. Apartheid as regime designation

Apartheid is among the most stigmatic classifications in contemporary international law. Its legal content is not limited to South Africa, although the South African experience remains the historical paradigm. The Apartheid Convention and the Rome Statute define apartheid in terms of inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over another, with the intention of maintaining that regime (Apartheid Convention, 1973; Rome Statute, 1998; Dugard and Reynolds, 2013).

Applied to Israel and the occupied Palestinian territory, the apartheid claim has developed in stages. Earlier arguments focused on the West Bank and Gaza — dual legal systems, movement restrictions, settlement infrastructure, land allocation, military law for Palestinians and civil law for settlers (Dugard and Reynolds, 2013; Tilley, 2012); more recent NGO and scholarly accounts extend the claim to a broader regime encompassing Israel, East Jerusalem, the West Bank, Gaza and Palestinian refugees (B'Tselem, 2021; Human Rights Watch, 2021; Amnesty International, 2022). The expansion matters: a territorially limited claim remains tied to occupation and settlement policy, whereas a comprehensive claim presents Israel as a single regime of Jewish domination over Palestinians wherever they are situated, moving closer to structural delegitimation of the State as such.

The ICJ's 2024 advisory opinion strengthened the legal salience of the segregation/apartheid frame by finding that Israeli legislation and measures breach Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination, which concerns racial segregation and apartheid (ICJ, 2024d). That finding is not identical to a criminal conviction for apartheid under the Apartheid Convention or the Rome Statute, but it reinforces the migration of the apartheid vocabulary from advocacy into authoritative legal discourse.

The lawfare potential of apartheid lies in its remedial imagination. It is not merely a violation but a regime designation: once a State is labelled an apartheid State, the South African analogy activates a repertoire of sanctions, boycotts, divestment, cultural exclusion and moral ostracism, importing a pre-existing global memory of legitimate anti-apartheid struggle and mapping it onto Israel.

The analytical risk is threshold erosion. Apartheid requires a specific institutionalised regime of domination and the intent to maintain it; discrimination, security-based restriction, ethno-national conflict and unequal citizenship may overlap with it but are not legally interchangeable. When the term becomes a general synonym for more or less pronounced, more or less justified differential treatment, its legal precision weakens and its political force comes to dominate.

7.4. Genocide and the ultimate stigma

Genocide is the most severe legal and moral category in international law. The Genocide Convention defines it not by the scale of killing alone, but by the commission of prohibited acts with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such (Genocide Convention, 1948; Schabas, 2009; Ambos, 2014). The specific intent requirement — *dolus specialis* — distinguishes genocide from other mass atrocities, including war crimes and crimes against humanity.

The Gaza war after 7 October 2023 brought genocide into the centre of legal and political discourse concerning Israel. South Africa instituted proceedings against Israel before the ICJ under the Genocide Convention. In its provisional measures orders, the Court did not make a final determination on genocide; it ordered measures directed to the protection of rights under the Convention, prevention of prohibited acts, humanitarian access, preservation of evidence and prevention of incitement (ICJ, 2024a; ICJ, 2024b; ICJ, 2024c). The litigation nevertheless inserted genocide into the formal judicial structure of the conflict.

The UN institutional archive intensified the shift. As examined above (§ 5.3), the Special Rapporteur's 2024 report found reasonable grounds to believe the threshold for genocide had been met (Albanese, 2024), and the Commission of Inquiry's 2025 conference room paper analysed Israel's conduct under the Genocide Convention and inferred genocidal intent from statements and patterns of conduct (COI, 2025). Genocide thereby moved from allegation to institutional classification.

The legal stakes are extreme. Civilian casualties, destruction, forced displacement, starvation, siege, attacks on healthcare, dehumanising rhetoric and humanitarian collapse may all bear on a genocide analysis, but they may equally support war crimes, crimes against humanity, collective punishment or unlawful siege without establishing genocidal intent. The inference from pattern to *dolus specialis* requires disciplined exclusion of alternative explanations — military objective, reckless disregard, punitive strategy, disproportionality, operational failure, urban warfare, combatant embedding and the strategic use of civilian infrastructure by Hamas. The Commission's reports illustrate the difficulty: in both the 2025 analysis and the 2026 children paper, military destruction, siege, civilian death and inflammatory statements tend to be organised into a single evidentiary chain running toward specific intent, while the competing explanations carry comparatively little structural weight.

The children-focused report of 2026 radicalises the stigma further. Cataloguing the harms to children set out above, it gives the cumulative narrative its most emotionally powerful form (COI, 2026). Crucially, it does not position the targeting of children alongside genocide as one further category but folds children into the genocide qualification itself: the killing of and serious harm to children, and the conditions of life imposed on them, are analysed as genocidal acts, and the targeting of children is presented as central to establishing genocidal intent, on the reasoning that children embody the biological and social continuity of the group. The final category thus does not merely extend the sequence; it feeds back into it, re-reading the entire architecture — occupation, siege, healthcare collapse, reproductive harm — as evidence of intent to destroy the group as such.

Genocide functions as the culmination of categorical escalation. Once it becomes the dominant label, the other categories are reorganised around it: occupation becomes the prehistory of destruction, apartheid the structure that made it possible, military operations the execution of group-destructive intent, humanitarian collapse evidence of calculated conditions of life, and official statements windows into genocidal purpose. The legal field becomes morally saturated.

7.5. Evidentiary slippage and the disappearance of gradation

The cumulative discourse on Israel repeatedly risks evidentiary slippage. The first slippage is between status and conduct. Occupation is a status; violations of occupation law are conduct; unlawful occupation is a further legal conclusion; criminality requires still more specific elements. Treating occupation as already equivalent to systemic criminality compresses distinct levels of analysis.

The second slippage is between discrimination and apartheid. Discrimination, unequal legal regimes and movement restrictions may be grave and unlawful. Apartheid requires the additional structure of an institutionalised regime of domination maintained through inhumane acts with the relevant intent (Apartheid Convention, 1973; Rome Statute, 1998; Dugard and Reynolds, 2013). The distinction is central if the term is to retain legal meaning.

The third slippage is between civilian harm and genocide. Massive civilian harm in war may be evidence in a genocide analysis, but genocide requires specific intent to destroy the protected group as such (Schabas, 2009; Ambos, 2014). Without disciplined analysis of alternative explanations, the inference to genocidal intent becomes unidirectional. The legal category then operates less as a conclusion reached through proof than as the final stage of a pre-existing narrative.

The fourth slippage is between foreseeable harm and intentional targeting. Foreseeable civilian death, even on a large scale, may raise issues of proportionality, precautions, indiscriminate attack or reckless disregard. It does not automatically establish that civilians, children or the protected group were targeted as such. The distinction is especially important in urban warfare, where military actors may be embedded in civilian areas and where the evidentiary reconstruction of individual incidents is difficult.

The fifth slippage is between legal responsibility and ontological illegitimacy. A State can violate international law without becoming illegal in its essence. Lawfare tends to move from the former to the latter. In the Israeli case, the cumulative use of colonialism, apartheid and genocide often presents Israel not merely as a State responsible for violations, but as a State whose national project is structurally criminal.

The disappearance of gradation is one of the principal effects of cumulative lawfare. War crimes become rhetorically insufficient; crimes against humanity become intermediate; apartheid becomes structural; genocide becomes ultimate. The legal vocabulary moves toward the highest available categories. Political clarity increases as legal precision decreases.

7.6. From legal characterisation to coercive effects

The cumulative grammar does not remain discursive; its significance lies in operationalisation. Once Israel is characterised through unlawful occupation, annexation, denial of self-determination, apartheid or genocide, the question shifts from condemnation to consequences, and legal characterisation becomes a platform for sanctions, non-recognition, criminal complaints, corporate pressure, boycott, divestment and institutional isolation.

Third-State obligations are central. Under the law of State responsibility, serious breaches of peremptory norms entail duties not to recognise the situation created as lawful, not to render aid or assistance in maintaining it, and to cooperate to bring it to an end (ILC Articles on State Responsibility, 2001; Crawford, 2002; Dawidowicz, 2010), reasoning the ICJ applied in Namibia, the

Wall opinion and the 2024 advisory opinion (ICJ, 1971; ICJ, 2004; ICJ, 2024d). If Israel's continued presence is unlawful, third-State relations with it become legally charged: non-recognition and non-assistance may reach trade with settlements, public procurement, corporate activity, military cooperation, research partnerships, investment and diplomatic engagement, so that the territorial finding becomes a basis for globalised pressure.

Sanctions are the most visible coercive effect. In the Israeli case the discourse concerns settlements, extremist settlers, arms transfers, dual-use technology, military cooperation, trade preferences and entities operating beyond the Green Line; after 2023, calls for arms embargoes and suspension of military assistance intensified, often tied to alleged violations of humanitarian law and the duty to prevent genocide (Arms Trade Treaty, 2013; Genocide Convention, 1948; ICJ, 2024a).

International criminal law adds a further layer. The ICC investigation in Palestine and the 2024 arrest warrants against Israeli leaders and a Hamas commander show how criminal jurisdiction individualises responsibility while producing major political effects (ICC, 2021; ICC, 2024); warrants are not convictions, but they alter diplomatic status, travel and reputational standing. Universal jurisdiction multiplies the effect through domestic courts, where even complaints that never reach trial create reputational exposure, travel risk and diplomatic incident (Reydams, 2003; Kaleck, 2015).

Boycott, divestment and corporate due diligence extend the logic into civil society and private governance. The BDS movement invokes occupation, self-determination, apartheid, refugee rights and anti-colonial struggle to justify economic, academic and cultural pressure (Barghouti, 2011; Erakat, 2019), while businesses face expectations under the UN Guiding Principles, OECD guidelines, domestic due-diligence regimes and reputational-risk systems (Ruggie, 2011; Deva and Birchall, 2020); companies linked to settlements, infrastructure, surveillance, banking or construction have been targeted by UN databases, NGO reports and divestment campaigns (UN Database, 2020; Human Rights Watch, 2016; Amnesty International, 2022). The legal challenge is proximity: a company building settlement infrastructure is not in the position of one selling generic goods in Israel, a bank with indirect exposure or a university cooperating with Israeli researchers, yet lawfare compresses these distinctions by expanding the language of complicity, so that companies withdraw not because liability is established but because reputational exposure becomes costly.

Academic and cultural boycotts are the most symbolic extension. Their premise is that Israeli academic and cultural institutions are implicated in occupation, apartheid or militarism and should be excluded from normal international cooperation (Barghouti, 2011). The difficulty is the move from institutional complicity to identity-based exclusion: universities and cultural institutions are not State organs, and excluding them because they are Israeli risks converting legal critique into collective institutional stigma.

7.7. Legal encirclement

These mechanisms interact through feedback loops: advisory opinions strengthen non-recognition, UN and NGO reports support due diligence, divestment and domestic litigation, ICC warrants intensify reputational risk, and political campaigns then cite the spread of sanctions, lawsuits and boycotts as evidence of emerging consensus. The loop creates an appearance of legal inevitability. Yet the underlying materials differ in authority — advisory opinions, provisional measures, arrest warrants, NGO and special-rapporteur reports, General Assembly resolutions, commission findings and domestic complaints do not share the same evidentiary or normative status — and lawfare depends precisely on their rhetorical aggregation.

These mechanisms are not inherently illegitimate, but their convergence produces a structure of legal encirclement: a form of pressure broader than accountability, extending from the State to its allies, corporations, courts, universities, cultural institutions and civil society, in which engagement becomes normalisation, neutrality assistance and disagreement denial of international law. The Israeli case thus shows how international law's authority can be used to produce not only responsibility — which addresses violations through defined consequences — but isolation: a comprehensive strategy of delegitimation that seeks to redefine the targeted actor's place within the international community.

7.8. Categorical irreversibility and the asymmetry of revision

The categories examined in this section share a structural feature that compounds their cumulative force: they are easier to pronounce than to withdraw. In the Israeli case, legal characterisation has moved in a single direction. Occupation gave way to colonialism, colonialism to apartheid, apartheid to genocide, and genocide to the targeting of children as proof of genocidal intent. At no stage has the institutional archive moved in the opposite direction — from a graver to a less grave qualification — even where evidence, context or the evolution of events might have warranted reconsideration. The escalation is directional, and the direction does not reverse.

This irreversibility is in part a matter of register. To move from 'serious violations of international humanitarian law' to 'genocide' is to change not only the legal threshold but the moral and political stakes of the characterisation. Once the gravest label has been attached, any subsequent qualification reads as minimisation and any call for evidentiary caution reads as complicity. The burden of argument becomes asymmetrical: those who assert the qualification need only invoke the accumulated archive, while those who question it must justify, against the moral weight of the terms, why the gravest category should not apply. The structure of the debate thus rewards escalation and penalises revision.

The asymmetry is reinforced by the nature of the most severe categories themselves. Apartheid and genocide are defined by a mental element — the intent to maintain a regime of racial domination, the intent to destroy a group as such — that is typically established by inference from a pattern of conduct. Once a pattern has been read as evidence of such intent, the same facts can no longer easily be read otherwise: the qualification reorganises the interpretation of everything that preceded it. Inference hardens into premise. What began as a contestable reading of conduct becomes the settled lens through which all further conduct is assessed.

The cumulative effect is a characterisation whose authority outruns the authority of its proof. The qualification acquires institutional permanence not because the evidentiary threshold proper to the gravest crimes has been met to the standard those crimes require, but because the discourse has reached a point at which the gravest label has become the default frame. This is the most consequential property of lawfare understood as a structural phenomenon: not that it necessarily applies a false category, but that it renders the category resistant to the ordinary processes of legal revision. On the merits, a determination of this gravity is harder to sustain on internal legal grounds alone than its institutional momentum suggests.

8. Conclusion: International Law, Lawfare and the Crisis of Universalism

The transformation of international law from a classical order of sovereignty, territorial title and interstate stability into a contemporary order of self-determination, human rights, decolonisation and accountability has reshaped the structure of legal argument: it has expanded the subjects of legal concern, strengthened the claims of peoples and individuals, delegitimised colonial domination, constrained the use of force and created new mechanisms for addressing grave violations. These achievements define the modern identity of international law. They have also made it more vulnerable to selective mobilisation: the more law becomes a language of legitimacy, and the more its categories acquire moral authority, the more useful they become as instruments of political struggle. Contemporary international law therefore operates simultaneously as a system of accountability and as a field of lawfare.

The Israeli case is the paradigmatic site for observing this tension. Israel is subject to the ordinary regime of international legal responsibility. Its policies concerning occupation, settlements, annexationist measures, military operations, detention, movement restrictions and the treatment of Palestinians raise serious legal questions and have been condemned by international bodies. The analytical question, however, is not whether Israel may be legally scrutinised. It is whether the international legal treatment of Israel, especially within the UN system, has assumed a distinctive structure of exceptionalisation, cumulative legal labelling and institutional delegitimation.

The preceding analysis answers that question in the affirmative. Within the UN system, Israel is not evaluated only through discrete adjudications of State responsibility; it is subjected to a mechanism of categorical fusion, in which occupation, apartheid and genocide are aggregated irrespective of their distinct evidentiary thresholds. The outcome is not accountability but ontological delegitimation. The State is reconstructed as the structural embodiment of the very pathologies that contemporary international law seeks to eradicate: colonial domination, racial hierarchy, territorial illegality, mass violence and denial of peoples.

The institutional setting is decisive. General Assembly practice has consolidated Palestinian self-determination as a permanent legal claim; the Human Rights Council has preserved a standing agenda item; special rapporteurs and the open-ended Commission of Inquiry have produced continuing records of structural responsibility; and the ICJ advisory opinions of 2004 and 2024 have lent judicial authority to the occupation/self-determination/third-State obligations frame. Civil-society campaigns then circulate these categories through sanctions, boycotts, divestment, universal jurisdiction, corporate due diligence and academic-cultural exclusion.

This is the architecture of lawfare. It does not require fabricated law. It is most effective — and this is the point most easily missed — when it operates through legal materials that possess real authority. Its distinctive feature is selectivity: the concentration of legal attention, institutional permanence, asymmetrical mandates, categorical escalation and remedial maximalism around a particular target.

More fundamentally, this architecture achieves its dominance by silencing competing paradigms. The sustained focus on self-determination and unlawful presence systematically marginalises the classical vocabulary of territorial title, Mandate succession, the provisional character of the 1949 armistice lines and the consequences of defensive war. This displacement, far from being a mere doctrinal preference, confirms a deeper ideological reconfiguration of the international legal order — one in which universal normative claims are selectively deployed to circumvent unresolved historical complexities.

The comparative analysis reinforces the diagnosis. Palestinian self-determination has been institutionalised with exceptional density; Kurdish self-determination, despite strong indicators of peoplehood, demographic significance, territorial continuity and historical repression, has not received comparable UN treatment. The principle is universal in vocabulary, but selective in activation.

This disparity cannot be explained by legal criteria alone. It reflects geopolitical coalitions, regional blocs, advocacy networks, media visibility, symbolic politics, Arab and Islamic diplomatic mobilisation, postcolonial framing and the unique position of Israel as a Western-aligned Jewish State in conflict with a stateless people. International law does not stand outside these forces; it translates them into legal form.

The result is a crisis of universalism: contemporary international law speaks in universal terms, but its institutions often apply those terms through particularistic structures. The problem is not ordinary inconsistency. No legal system applies every norm with perfect uniformity. The deeper problem is structural asymmetry: the same categories — though universal in form — do not travel across comparable cases with similar intensity, permanence or remedial force. Universal language becomes vulnerable to selective institutional capture.

The normative response is not a return to classical international law. A purely classical order centred on sovereignty and territorial title would be incapable of addressing colonial domination, mass atrocities, denial of peoples, human rights violations and structural subordination. The achievements of contemporary international law must be preserved. The appropriate response lies in the rigorous application of methodological discipline within contemporary international law itself.

This discipline demands five fundamental commitments. First, legal categories must remain distinct. Occupation, annexation, colonialism, apartheid and genocide cannot be treated as interchangeable terms of condemnation. Second, evidentiary thresholds must be respected. Allegations, reasonable grounds, plausibility, provisional measures, advisory opinions, arrest warrants and final judgments do not carry the same legal weight. Third, mandates must be scrutinised. A mechanism that structurally foregrounds one actor and marginalises others will tend to reproduce its own frame. Fourth, self-determination must be applied through more generalisable criteria. The Palestinian claim cannot remain the paradigmatic claim of self-determination while analogous or stronger claims are left without comparable institutional recognition. Fifth, remedies must remain connected to specific legal findings. Non-recognition, non-assistance, sanctions, boycotts, divestment, arms restrictions, universal jurisdiction and academic exclusion require legal specification, not derivation from cumulative stigma.

The danger of classical international law was apology: the risk that law would ratify power, stabilise conquest and disguise domination. The danger of contemporary international law is accusation: the risk that law, speaking in the name of universal values, becomes a selective instrument of delegitimation. The Israeli case reveals this second danger with unusual clarity.

International law cannot escape politics. It can discipline the way politics enters legal reasoning. Its authority depends on comparative consistency, procedural fairness, categorical precision and institutional restraint. Without these, law does not disappear. It becomes a language of legitimacy deployed through structures of power.

There is a further implication that reaches beyond the Israeli case. The irreversibility analysed above is not merely a feature of how one State has been judged; it bears on the nature of legal order as such. The revisability of determinations — the capacity to qualify or withdraw a characterisation when evidence requires — is one of a legal system's constitutive properties. The Israeli case is significant less because it shows that institutional irreversibility can befall a State than because it shows that it can befall the law itself: what is placed at risk is the capacity of international law to remain a system of judgment rather than a register of stigma.

The final question is not whether international law should judge Israel. It should. The question is whether international law can judge Israel without transforming judgment into a substitute for political delegitimation. If it cannot, the Israeli case reveals not only the vulnerability of one State to lawfare, but the vulnerability of contemporary international law itself to the loss of its universal claim.

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