

# UN Engagement and Constitutional Governance in Contested Territories: A Comparative Study of Palestine and Kashmir

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## KEYWORDS

*International Law;*  
*Sovereignty;*  
*Jammu and Kashmir;*  
*International Legal*  
*Subalternity;*  
*Occupational*  
*Constitutionalism;*  
*TWAIL;*  
*Post-Colonial*  
*Governance*  
*Self-Determination;*  
*United Nations;*  
*Palestine.*

## ABSTRACT

Contested territories in the post-colonial international order present a fundamental challenge to international law, particularly in reconciling state sovereignty with the right of peoples to self-determination. Palestine and Jammu and Kashmir exemplify this tension, as both remain protracted disputes shaped by decolonization processes, competing sovereignty claims, and prolonged United Nations (UN) engagement. Despite extensive international involvement, these cases reveal a critical gap between the normative commitments of international law and the practical realities of governance under conditions of contested sovereignty. This study investigates how UN engagement and domestic constitutional frameworks have interacted to structure governance in Palestine and Kashmir, with particular focus on the concepts of “international legal subalternity” and “occupational constitutionalism”. The research adopts a qualitative, doctrinal, and comparative case study methodology, drawing on primary legal instruments including UN General Assembly Resolution 181 (1947) and UN Security Council Resolution 47 (1948) as well as domestic legal frameworks such as the Palestinian Basic Law (2003/2005) and the Jammu and Kashmir Reorganisation Act (2019). The analysis demonstrates that UN engagement has evolved from early mediation and plebiscite-oriented mandates toward a model of humanitarian management, reflecting structural constraints imposed by great-power politics within the Security Council. Simultaneously, domestic constitutional mechanisms in both contexts have facilitated the gradual erosion of autonomy and the consolidation of external control under a veneer of legality. The findings indicate that international legal processes often function within a “rule by law” paradigm, privileging geopolitical stability over substantive justice and thereby perpetuating conditions of legal subalternity. The study concludes that the persistence of these conflicts is not merely a failure of implementation but reflects structural limitations within the international legal order itself. It recommends a recalibration of UN institutional practices, including enhanced accountability mechanisms and a renewed emphasis on self-determination as a primary legal obligation, in order to move beyond the current state of institutional stasis.

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## Introduction

The governance of contested territories remains one of the most persistent and unresolved challenges within contemporary international law, reflecting a deep structural tension between the principles of state sovereignty and the right of peoples to self-determination. Although both principles are firmly embedded in the post-1945 legal order, their coexistence has produced enduring contradictions, particularly in disputes rooted in

decolonization (Weller, 2009; Senaratne, 2021). In such contexts, international law has often struggled to reconcile competing claims to authority, resulting in protracted conflicts that resist both legal resolution and political settlement. The cases of Palestine and Jammu and Kashmir exemplify this dilemma. Emerging from the collapse of British imperial governance in 1947, both disputes have remained on the agenda of the United Nations (UN) for over seven decades. Early UN interventions—most

notably UN General Assembly Resolution 181 (1947) concerning Palestine and UN Security Council Resolution 47 (1948) on Jammu and Kashmir—reflected a normative commitment to resolving territorial disputes through self-determination mechanisms, including partition and plebiscite (Quigley, 2010; Weller, 2009). However, the failure to implement these frameworks has resulted in a transition from normative ambition to institutional inertia, raising critical questions about the effectiveness of international law in contexts characterized by entrenched geopolitical interests.

Contemporary scholarship increasingly suggests that this trajectory is not merely the product of political contingency but reflects deeper structural limitations within the international legal order. From the perspective of Third World Approaches to International Law (TWAIL), international law is understood as historically embedded within colonial power structures that continue to shape its contemporary operation (Chimni, 2006; Anghie, 2004). In this vein, Imseis (2023) argues that the UN’s engagement with Palestine illustrates a broader pattern in which legal frameworks function less as instruments of justice than as mechanisms for managing political conflict. This phenomenon, conceptualized as “international legal subalternity,” captures the condition in which certain populations are formally recognized within international law yet remain effectively excluded from its protections.

Parallel to these international dynamics, domestic constitutional frameworks have played a central role in structuring governance within contested territories. Scholars have conceptualized this process as “occupational constitutionalism,” whereby legal and constitutional mechanisms are deployed to consolidate external authority while maintaining

the appearance of legality (Duschinski & Ghosh, 2017). In Jammu and Kashmir, the gradual erosion and eventual revocation of constitutional autonomy under Article 370 illustrate how domestic law can facilitate territorial integration under contested conditions (Noorani, 2011). Similarly, in Palestine, the institutional architecture established through the Oslo Accords and codified in the Palestinian Basic Law has produced a fragmented governance system in which local administrative authority operates under continued external control (Osuri & Zia, 2020; Quigley, 2010).

Against this backdrop, this study seeks to examine how UN engagement and domestic constitutional frameworks interact to shape governance in contested territories, focusing on Palestine and Jammu and Kashmir as comparative case studies. By integrating TWAIL insights with a realist understanding of international institutions, the research aims to demonstrate that these conflicts are sustained not only by political disagreement but also by legal and institutional structures that stabilize contested sovereignty rather than resolve it. In doing so, the study contributes to a growing body of scholarship that re-evaluates the role of international law in managing, rather than resolving, protracted conflicts.

## **Historical Foundations and Evolution of Governance**

### **Decolonization and the Origins of Contestation (1947–1948)**

The disputes in Palestine and Jammu and Kashmir are deeply rooted in the processes of decolonization that followed the decline of the British Empire. In Palestine, the termination of the British Mandate culminated in the adoption of UN General Assembly Resolution 181 (1947), which proposed the partition of the territory into

separate Arab and Jewish states, alongside an internationally administered Jerusalem. While this plan was endorsed by Jewish leadership, it was rejected by Palestinian Arab representatives, who viewed it as inconsistent with the principle of self-determination (Quigley, 2010). The ensuing conflict resulted in the displacement of a significant portion of the Palestinian population, an event that has come to define the foundational context of the dispute (Imseis, 2023).

In parallel, the partition of British India in 1947 generated a comparable crisis in Jammu and Kashmir. The contested accession of the princely state to India triggered armed conflict between India and Pakistan, prompting intervention by the UN Security Council. Through Resolution 47 (1948), the Council called for a ceasefire and the holding of a plebiscite to determine the region's political future. Although this framework formally acknowledged the right of self-determination, it was never implemented, leaving the dispute unresolved and institutionalizing a pattern of deferred sovereignty (Weller, 2009).

### **The Evolution of United Nations Engagement**

In the immediate post-1947 period, the UN adopted an active role in mediating both conflicts, reflecting a broader commitment to collective security and peaceful dispute resolution. Mechanisms such as the United Nations Commission for India and Pakistan (UNCIP) and various diplomatic initiatives concerning Palestine exemplified this early interventionist approach. However, the effectiveness of these efforts was gradually undermined by geopolitical divisions, particularly within the Security Council, where competing interests among major powers limited the scope of collective action (Luck, 2006).

Over time, UN engagement evolved from direct conflict resolution toward a more constrained role centered on monitoring, humanitarian assistance, and normative reaffirmation. In Palestine, this shift is evident in the continued operation of humanitarian agencies such as UNRWA and the adoption of UN General Assembly Resolution 67/19 (2012), which granted Palestine non-member observer State status. While such measures have enhanced Palestine's international legal recognition, they have not resolved the underlying sovereignty dispute (Imseis, 2023).

In contrast, UN engagement in Jammu and Kashmir has become increasingly limited, largely confined to monitoring mechanisms such as the United Nations Military Observer Group in India and Pakistan (UNMOGIP). The absence of sustained diplomatic initiatives reflects both geopolitical sensitivities and the declining prioritization of the dispute within the UN system (Weller, 2009). This divergence highlights the uneven application of international legal frameworks across contested territories.

### **Constitutional Governance and the Erosion of Autonomy**

Alongside international developments, domestic constitutional frameworks have played a decisive role in shaping governance within both territories. In Jammu and Kashmir, Article 370 of the Indian Constitution initially provided a framework for limited autonomy, including a separate constitution and legislative authority. However, this autonomy was progressively eroded through a series of legal and administrative measures, culminating in the Jammu and Kashmir Reorganisation Act (2019), which revoked the region's special status and integrated it more fully into the Indian constitutional structure (Noorani, 2011).

In Palestine, governance has been shaped by the Oslo Accords (1993–1995), which established the Palestinian Authority as an interim administrative body. The Palestinian Basic Law (2003/2005) serves as the constitutional foundation of this governance system. However, the territorial fragmentation of the West Bank into Areas A, B, and C has limited the effective exercise of Palestinian self-governance, leaving significant aspects of authority under Israeli control (Osuri & Zia, 2020).

In both contexts, constitutional frameworks have evolved in ways that institutionalize asymmetrical power relations, transforming temporary arrangements into enduring governance structures. This process reflects the broader phenomenon of occupational constitutionalism, whereby legal mechanisms are used to normalize contested authority and limit the scope of political autonomy.

### **Contemporary Dynamics and Structural Continuities**

In the twenty-first century, both Palestine and Jammu and Kashmir have entered a phase characterized by entrenched governance structures and limited prospects for negotiated settlement. In Kashmir, the post-2019 constitutional transformation has redefined the region's legal status, raising significant questions about representation, autonomy, and federalism. In Palestine, ongoing settlement expansion, territorial fragmentation, and periodic escalations of violence continue to undermine efforts toward statehood (Quigley, 2010; Imseis, 2023).

These developments reflect a broader shift in the international management of contested territories. Rather than resolving disputes through political processes grounded in

self-determination, international and domestic legal mechanisms increasingly function to stabilize existing power configurations, often at the expense of substantive justice. This structural continuity underscores the central argument of this study: that contested territories such as Palestine and Jammu and Kashmir are sustained not only by political conflict but also by legal and institutional frameworks that reproduce conditions of contested sovereignty over time.

### **UN Engagement, Subalternity, and Constitutional Governance in Contested Territories**

The literature on contested territories has moved beyond state-centric boundary disputes to examine how international institutions and domestic legal frameworks co-produce governance in protracted conflicts. In the cases of Palestine and Jammu and Kashmir, four interrelated strands are central: (i) UN engagement and its institutional constraints; (ii) the doctrine of self-determination and its limits; (iii) TWAIL and the notion of international legal subalternity; and (iv) occupational constitutionalism as a mode of governance under contested sovereignty.

### **United Nations Engagement and Institutional Constraints**

Early UN practice reflected a normative commitment to collective security and self-determination, evidenced by mediation efforts and plebiscite-oriented frameworks (Weller, 2009). However, subsequent scholarship emphasizes the structural limits of UN action, particularly the role of Security Council veto politics in constraining enforcement and implementation (Luck, 2006).

Weller (2009) demonstrates that while the UN has developed tools such as referenda, autonomy arrangements, and transitional

administrations, their effectiveness depends on great-power consensus—often absent in geopolitically sensitive disputes. Ratner (2005) similarly observes a shift from ambitious forms of international territorial administration toward more pragmatic, governance-oriented interventions.

In the Palestinian context, Imseis (2023) provides a detailed institutional history, arguing that UN engagement has been normatively expansive yet practically restrictive: Palestinian rights are repeatedly affirmed, but their realization is structurally contained. For Kashmir, the trajectory has been one of diminishing engagement, with early mediation (e.g., UNCIP) giving way to limited monitoring (Weller, 2009). Together, these patterns reflect what can be characterized as institutional stasis—continued engagement without transformative capacity.

### **Self-Determination and the Limits of International Law**

Self-determination remains a cornerstone of international law, yet its application is doctrinally fragmented and politically contingent. Classical accounts frame it as a decolonization right enabling independence (Cassese, 1995). Contemporary scholarship, however, distinguishes between external self-determination (statehood) and internal self-determination (autonomy within an existing state) (Senaratne, 2021).

International practice has increasingly favored internal self-determination, thereby reinforcing territorial integrity and narrowing pathways to secession (Weller, 2009). This has direct implications for Palestine and Kashmir, where claims to full sovereignty encounter resistance grounded in regional stability concerns.

Critical scholars challenge the neutrality of this doctrinal evolution. Anghie (2004) and Chimni (2006) argue that international law remains embedded in colonial and post-colonial hierarchies, producing uneven application of self-determination. In both Palestine and Kashmir, formal recognition of the right has not

translated into effective political realization, raising questions about whether international law functions as adjudicator or manager of geopolitical tensions.

### **TWAIL and International Legal Subalternity**

TWAIL scholarship reframes international law as a system historically implicated in imperial governance, with enduring effects on contemporary legal outcomes (Chimni, 2006). Within this tradition, Imseis (2023) advances the concept of international legal subalternity to describe populations that are legally recognized yet materially excluded from the protections and benefits of international law.

Applied to Palestine, this framework shows how UN processes can stabilize political arrangements without addressing underlying injustices (Imseis, 2023). Extending this lens comparatively, Osuri and Zia (2020) conceptualize Palestine and Kashmir as “archives of coloniality,” where imperial legacies continue to shape governance and legal discourse.

This strand of literature shifts the analytical focus from doctrine to structure, suggesting that persistent conflicts reflect not only legal ambiguity but also systemic inequalities within global governance. It also opens space for comparative inquiry into how similar dynamics operate across different contested territories.

### **Occupational Constitutionalism and Governance under Contested Sovereignty**

A complementary body of work examines how domestic legal frameworks structure governance in contested territories. The concept of occupational constitutionalism captures how constitutional and legislative instruments are used to consolidate external authority while maintaining formal legality (Duschinski & Ghosh, 2017).

In Kashmir, Duschinski and Ghosh (2017) show how emergency powers and preventive detention regimes have become institutionalized, producing a normalized state of

exception. Noorani (2011) documents how Article 370 functioned as a mechanism for incremental integration, culminating in its effective abrogation.

In Palestine, Quigley (2010) and Imseis (2023) highlight how the Oslo framework and the Palestinian Basic Law generated a fragmented, dependent governance system, where local administrative authority operates under continued external control. Comparative analyses suggest that in both contexts, law transforms temporary arrangements into durable governance structures, blurring the line between occupation and integration.

### **From Conflict Resolution to Conflict Management**

A final strand identifies a broader shift from conflict resolution to conflict management. Ratner (2005) notes that international interventions increasingly prioritize security, governance, and humanitarian stabilization, often sidelining core political questions.

In both Palestine and Kashmir, this shift manifests in sustained international presence without political settlement (Imseis, 2023; Weller, 2009). While such approaches may mitigate immediate violence, they risk entrenching asymmetrical power relations and prolonging disputes.

The existing literature demonstrates that international and domestic legal systems play a central role in structuring governance within contested territories. Nevertheless, important analytical limitations remain within contemporary scholarship. One of the most significant gaps concerns the limited comparative engagement between Palestine and Jammu and Kashmir despite the clear structural similarities characterizing both disputes. Much of the existing literature examines these conflicts separately, thereby restricting broader theoretical understanding of how contested sovereignty is reproduced across different geopolitical contexts.

Another important limitation concerns the insufficient integration of TWAIL perspectives with doctrinal and institutional legal analysis. While doctrinal scholarship frequently focuses on legal instruments, institutional procedures, and sovereignty claims, critical approaches such as TWAIL emphasize the structural inequalities and colonial continuities embedded within international law. These analytical traditions are often treated independently rather than as interconnected frameworks capable of explaining both legal doctrine and institutional behavior.

A further gap exists in relation to the interaction between international institutional engagement and domestic constitutional governance. Existing scholarship often analyzes UN involvement and constitutional restructuring separately without fully examining how these frameworks operate together to institutionalize asymmetrical authority and normalize prolonged uncertainty within contested territories.

This study addresses these limitations by advancing a comparative and theory-integrated analysis of Palestine and Jammu and Kashmir. By combining TWAIL insights, realist institutionalism, and occupational constitutionalism, the research demonstrates that international law increasingly operates as a framework for managing instability and stabilizing contested sovereignty rather than resolving underlying political disputes.

### **Discussion and Analysis: The Comparative Governance of Contested Sovereignty**

The comparative analysis of Palestine and Jammu and Kashmir reveals not merely parallel territorial disputes, but a deeper structural convergence in how international and domestic legal frameworks interact to manage contested sovereignty. Rather than functioning as neutral mechanisms for conflict resolution, these frameworks operate as instruments of stabilization, producing enduring governance arrangements that reconcile competing claims without resolving them. This section advances four interrelated arguments: (i) the

institutionalization of constrained UN engagement, (ii) the co-constitution of international legal subalternity, (iii) the role of occupational constitutionalism in normalizing authority, and (iv) the shift from self-determination to managed stability.

### **From Mediation to Management: The Transformation of UN Engagement**

A central finding of this study is the transformation of UN engagement from normatively ambitious mediation to pragmatic conflict management. In the immediate post-1947 period, UN interventions in both Palestine and Kashmir were explicitly oriented toward self-determination, reflected in frameworks such as partition (Palestine) and plebiscite (Kashmir) (Weller, 2009; Quigley, 2010).

However, the persistent failure to implement these mechanisms has led to a gradual recalibration of UN practice. As Luck (2006) demonstrates, the institutional structure of the Security Council—particularly the veto power of the Permanent Five—has limited the organization’s capacity to enforce politically sensitive decisions. In the absence of consensus among major powers, UN engagement has increasingly focused on humanitarian assistance, monitoring, and normative reaffirmation, rather than political resolution.

In Palestine, this shift is evident in the coexistence of strong normative recognition—such as non-member observer State status—with the absence of effective enforcement mechanisms (Imseis, 2023). In Kashmir, the decline of active UN mediation has resulted in a more marginalized and symbolic role, with limited influence over contemporary governance arrangements (Weller, 2009).

This transformation suggests that the UN functions less as a conflict-resolving authority and more as a manager of protracted disputes, prioritizing stability over structural change.

### **International Legal Subalternity and the Limits of Normative Recognition**

The persistence of these governance arrangements can be understood through the lens of international legal subalternity. While international law formally recognizes the rights of populations in contested territories, this recognition does not translate into effective political agency or legal protection (Imseis, 2023).

In Palestine, repeated affirmations of self-determination coexist with ongoing territorial fragmentation and limited sovereignty. Similarly, in Kashmir, the formal acknowledgment of the dispute within UN resolutions has not prevented the consolidation of domestic legal control. In both cases, international law operates within what may be described as a “recognition–implementation gap,” where normative commitments are decoupled from institutional outcomes.

From a TWAIL perspective, this gap reflects the broader structural asymmetries of the international legal order, in which the interests of powerful states shape the scope and application of legal norms (Chimni, 2006; Anghie, 2004). The result is a form of legal inclusion that is simultaneously a form of exclusion—populations are recognized as rights-bearing subjects but remain subordinated within the global legal hierarchy.

This dynamic reinforces the argument that international law, in these contexts, operates less as a mechanism of justice and more as a framework for managing inequality.

### **Occupational Constitutionalism and the Normalization of Authority**

While international law provides the external framework, domestic constitutional mechanisms play a crucial role in internalizing and stabilizing contested sovereignty. The concept of occupational constitutionalism is particularly useful in understanding this process.

In Jammu and Kashmir, the gradual erosion of autonomy under Article 370—culminating in the 2019 Reorganisation Act—illustrates how constitutional mechanisms can

facilitate the progressive integration of contested territories (Noorani, 2011; Duschinski & Ghosh, 2017). Rather than a sudden rupture, this transformation occurred through incremental legal changes that normalized central authority over time.

A similar dynamic is evident in Palestine, where the Oslo framework and subsequent legal arrangements have produced a fragmented governance structure in which local administrative authority operates within constraints defined by external control (Osuri & Zia, 2020; Imseis, 2023). The Palestinian Basic Law provides a formal constitutional framework, yet its practical scope is limited by territorial and political fragmentation.

In both contexts, constitutional law serves not merely as a reflection of political authority but as a mechanism for producing and legitimizing it. Temporary arrangements become institutionalized, and exceptional measures are normalized, blurring the distinction between occupation, autonomy, and integration.

### **The Reconfiguration of Self-Determination: From Right to Management**

The combined effect of international and domestic legal dynamics is a reconfiguration of self-determination. Rather than functioning as a transformative principle enabling political emancipation, self-determination is increasingly reframed as a managed and deferred process.

Weller (2009) notes that international practice has shifted toward prioritizing internal self-determination, often at the expense of claims to full sovereignty. While this approach is justified in terms of preserving territorial integrity, it has the effect of limiting political possibilities for contested populations.

In Palestine and Kashmir, this reconfiguration manifests in governance models that emphasize administrative autonomy without sovereign authority. These arrangements create the appearance of self-governance while maintaining underlying asymmetries of power. As Ratner (2005) suggests, such models reflect a

broader trend in international practice toward stabilization rather than transformation.

From a critical perspective, this shift represents a move from the politics of emancipation to the politics of management, in which legal frameworks are used to contain, rather than resolve, claims to self-determination.

### **Law as a Mechanism of Managed Stability**

Taken together, these findings support a broader theoretical conclusion: in contested territories such as Palestine and Jammu and Kashmir, international and domestic legal systems operate as interlocking mechanisms of managed stability.

The UN provides a framework of normative recognition without enforcement, while domestic constitutional systems translate this framework into institutionalized governance arrangements. The result is a form of stabilized contestation, in which disputes persist but are contained within predictable legal and political boundaries.

This synthesis challenges conventional understandings of international law as a progressive force for conflict resolution. Instead, it suggests that in contexts marked by deep power asymmetries, law may function as a conservative mechanism, preserving existing structures while mitigating their most destabilizing effects.

### **Conclusion**

This study has argued that Palestine and Jammu and Kashmir are not merely unresolved territorial disputes but enduring sites of managed sovereignty, where international and domestic legal frameworks interact to stabilize, rather than resolve, competing claims. By integrating TWAIL insights with realist institutionalism and the concept of occupational constitutionalism, the analysis demonstrates how the post-1947 legal architecture—anchored in early UN initiatives such as UNGA Resolution 181 (1947) and UNSC Resolution 47 (1948)—has evolved into a regime of normative recognition without effective realization.

Across both cases, UN engagement has shifted from mediation-oriented mechanisms

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(partition, plebiscite) to humanitarian management and monitoring, reflecting structural constraints imposed by great-power politics within the Security Council. This institutional trajectory produces what has been conceptualized as international legal subalternity: populations are formally recognized as rights-bearing subjects, yet remain materially excluded from the effective protection and enforcement of those rights.

Concurrently, domestic constitutional frameworks have not functioned as neutral guarantors of autonomy but as legal technologies of governance that normalize asymmetrical authority. In Jammu and Kashmir, incremental constitutional integration culminating in the Jammu and Kashmir Reorganisation Act (2019) illustrates how law can convert exceptional arrangements into durable structures. In Palestine, the Oslo framework and the Palestinian Basic Law have produced a fragmented system of administration in which local governance operates under persistent external constraint.

Taken together, these dynamics reveal a broader transformation in the function of international law—from a project of political emancipation grounded in self-determination to a regime of managed stability that prioritizes order over resolution. The persistence of these conflicts, therefore, is not solely attributable to political intransigence but is embedded in legal and institutional structures that reproduce contested sovereignty over time.

The study thus contributes to ongoing debates by demonstrating that international law, in contexts of deep power asymmetry, may operate less as a mechanism for resolving disputes and more as a framework for their containment. Re-centering self-determination as a substantive, enforceable principle—rather than a deferred or symbolic commitment—remains essential to any meaningful reconfiguration of the international legal order.

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