



ORIGINAL ARTICLE

INTERNATIONAL LAW AND PRACTICE

Postwar development of offshore energy resources: Legal and political models for developing the Gaza Marine gas field

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Abstract

This article examines the case of Gaza Marine, a small offshore natural gas reservoir in Gaza that has remained undeveloped since its discovery in 2000. Due to the complicated political status of the Gaza Strip over the past two decades, neither the Palestinian Authority, Hamas, nor Israel could claim full rights to Gaza's maritime zones or develop the Gaza Marine field. However, the devastating 2023 Israel-Hamas war created four possible scenarios of administration over Gaza, each with its own legal implications for the development rights of the field. These scenarios include Palestinian independence, continued Israeli occupation, international transitional administration (ITA) over Gaza, or partial Israeli annexation of Gaza. This article argues that the development of Gaza Marine is a vital part of Gaza's postwar reconstruction and is possible under these scenarios, the most understudied of which is the ITA model. This article can thus serve as a roadmap for other postwar coastal territories with contested rights over offshore energy deposits.

Keywords: EEZ; Gaza; Israel; natural gas; Palestine

1. Introduction

Interstate disputes over offshore energy production have become a prominent feature in the study of international law, from the South China Sea to the Eastern Mediterranean Sea. These disputes are further entangled when they involve coastal territories where access to sea is blocked or controlled by another entity following a major war, such as the Crimean Peninsula, North Cyprus, or Western Sahara. Postwar disputed territories typically assume one of four models of administration, each introducing different legal implications for the right to extract natural resources discovered in the area. These models range from granting independence to the local population, establishing an international transitional administration (ITA), maintaining belligerent occupation with varying degrees of autonomous local governance, or forcefully annexing the territory. However, the right to develop resources under these four models becomes more complicated when the disputed territory has access to sea and the resources are discovered in the maritime zones rather than on land. This complication is primarily because of the application of additional legal frameworks, such as the Law of the Sea (LOS), that do not account for cases in which it is unclear who holds rights to the maritime zones in question. These cases raise

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longstanding questions regarding the effectiveness of current legal frameworks as tools for regulating such disputes.

This article adds to the discussion by focusing on the development of the ‘Gaza Marine’ offshore natural gas field in the aftermath of the devastating 2023 Israel-Hamas war in the Gaza Strip. The case is instructive for examining the unique legal complications surrounding the postwar development of offshore energy resources due to the way that the war fundamentally altered the political reality in Gaza. This article will not point to a recommended or preferable scenario for Gaza’s future, but rather examine the legal implications for the development rights of the Gaza Marine gas field under the four possible models of administration. Its only assumption is that the development of the field is important for the reconstruction of Gaza and will benefit the Palestinian people.

Gaza Marine is a natural gas reservoir discovered in the Gaza Strip’s exclusive economic zone (EEZ) in 2000. Although the quantity of gas in the field is relatively modest on a regional scale, the development of Gaza Marine is viewed by analysts as important to the Palestinian Authority (PA), both in its potential to generate export revenue and in its ability to enhance Palestinian energy independence by reducing the PA’s reliance on Israeli gas supply and electricity provision.¹ Despite its promise, the field has remained undeveloped for over two decades due to three limiting factors. The first is that the maritime area where the field was discovered is under the *de facto* military control of Israel, which has contractual right to approve its development.² The second is that the PA, the entity that does claim rights to the field, was forced to cede control of the coastal area to the Hamas militant organization in 2007, and has had no effective access to Gaza’s waters since 2007.³ Lastly, Hamas, which does have *de facto* control over the coastal territory since 2007, is not recognized as the legitimate governing authority over Gaza by either Israel, the PA, or most of the international community,⁴ and thus has no rights under LOS with respect to the field.

Despite this longstanding legal deadlock, this article argues that the prospects for developing Gaza Marine may improve in the aftermath of the Israel-Hamas war. Although the full implications of the war may take years to fully comprehend and materialize, in terms of legal and political outcomes they will likely follow the four typical models of postwar administration over disputed territories. In the case of Gaza, these will translate to either the establishment of an independent Palestinian State in Gaza and the West Bank, the establishment of a temporary ITA designed to eventually pave the way toward an independent Palestinian State, a renewed Israeli occupation of Gaza with autonomous Palestinian governance, or a partial Israeli annexation of Gaza. By examining the legal implications for each of these models on the development rights of the Gaza Marine gas field, this analysis serves as an instructive case for other postwar territories with contested ownership over offshore energy deposits.

It is important to note that this article will not address the question of Palestine’s statehood. Whether Palestine is defined as a state or self-governing authority, this article argues that it has sufficient political organization to have rights and obligations under the Convention on the Law of the Sea (UNCLOS).⁵ However, determining the application and scope of LOS requires a clear identification of the relevant political entities, their nexus to the land territory, and whether they have a high enough degree of political order to regulate domestic and international affairs, and specifically issues regulated in UNCLOS. Thus, this article will refer to the PA to indicate the governing entity in Palestine in the West Bank and Gaza, to distinguish it from other possible

¹E. Rettig and B. Spanier, ‘Striking Energy Deals in Disputed Seas: The Case of the Gaza Marine Gas Field’, (2024) 17(2) *Journal of World Energy Law & Business* 128; S. Henderson, ‘Natural Gas in the Palestinian Authority: The Potential of the Gaza Marine Offshore Field’ (2014) *Washington Institute for Near East Policy* 1, available at www.washingtoninstitute.org/poli-cy-analysis/natural-gas-palestinian-authority-potential-gaza-marine-offshore-field, at 5.

²See Section 3, *infra*.

³M. Kear, *Hamas and Palestine: The Contested Road to Statehood* (2018), 1–21.

⁴G. Jeroen, *Hamas in Politics: Democracy, Religion, Violence* (2023), 1–24.

⁵1982 United Nations Convention on the Law of the Sea, 1833 UNTS 3, Art. 305.

governing entities, especially with respect to Gaza, such as Hamas. Since it is not clear what will be the status of the relevant actors in Gaza in the coming years, and since the factual, legal, and political situation in Gaza may substantially change following various regional initiatives, this definition allows the article to address all possible scenarios.

This article will first review the history of the Gaza Marine field and its main legal complexities. It will then review the four models and their legal implications concerning the development of Gaza Marine. Although this analysis does not give preference to either model, it provides a spotlight on the ITA model due to the scarce legal literature that exists on this topic. Lastly, the article will highlight a few key issues to consider and will take note on how the Gaza Marine case can apply to other disputed coastal territories and maritime zones with contested natural resources.

2. Historical background on Gaza Marine

After the 1967 war between Israel and neighboring countries, Israel gained military control over the West Bank and the Gaza Strip and its Palestinian population. A series of negotiations with the Palestinian Liberation Organization (PLO) made limited progress until a significant breakthrough was achieved through the Oslo Accords. These accords consisted of several agreements between Israel and the PLO, later known as the Palestinian Authority (PA), which would grant it autonomous rights over parts of the territories and recognize it as the only international representative of the Palestinian people, as opposed to other rival Palestinian organizations such as Hamas. A crucial aspect of this diplomatic milestone was the Gaza-Jericho Agreement in Washington, D.C., on 28 September 1995. Article XIV of Annex I of this agreement explicitly defined the administrative jurisdiction of the maritime areas adjacent to the Gaza Strip.⁶

As part of the Gaza-Jericho agreement, the waters off the coast of Gaza Strip were divided into three maritime activity zones. Zone L was the primary area, Zone M bordered Egyptian waters, and Zone K bordered Israeli waters. These zones extended up to 20 nautical miles (nm) from the shore. While the agreement granted the PA permissions for fishing, recreational activities, and economic pursuits (presumably including drilling), it also granted Israel the authority to control maritime traffic within this zone for security reasons.⁷

In 1999, the British Gas Group (BG) secured a 25-year licence from the PA to explore natural gas reserves offshore the Gaza Strip. The subsequent year marked the drilling of two exploratory wells, Gaza Marine 1 and 2, confirming the presence of commercially viable natural gas in a quantity of around 32 BCM. According to a 2017 World Bank report, the estimated cost of developing the field is US\$1.2 billion, potentially generating approximately US\$2.7 billion in revenue for the PA over 25 years.⁸ However, because the field is positioned approximately 17–21 nm offshore, it falls within Gaza's EEZ and continental shelf and thus necessitates vessels beyond those delineated in the Annex of the 1995 Agreement, making approval from Israel a prerequisite before any exploration and exploitation activities can take place.

The development of Gaza Marine has thus been marked by controversy from its outset. Although the Israeli government did not contest the PA's ownership of the field upon its discovery, several private Israeli companies raised some objections. In 2000, the Israeli Yam Thetis consortium, which owned a neighboring gas field, petitioned Israel's High Court of Justice, seeking to prohibit BG from drilling off the Gaza coast. According to court records, Yam Thetis argued

⁶1995 The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Ann. I, Art. XIV, available at www.gov.il/en/Departments/General/the-israeli-palestinian-interim-agreement-annex-i.

⁷*Ibid.*, Ann. I, Art. XIV (4); A. Antreasyan, 'Gas Finds in the Eastern Mediterranean: Gaza, Israel and Other Conflicts', (2013) 42(2) *Journal of Palestine Studies* 29, at 31.

⁸S. Badiel et al., 'Securing Energy for Development in The West Bank and Gaza', *World Bank*, 2017, available at documents1.worldbank.org/curated/en/351061505722970487/pdf/Replacement-MNA-SecuringEnergyWestBankGaza-web.pdf.

that the PA lacked the necessary jurisdiction to grant BG drilling rights, contending that the PA, not being the government of a sovereign state, lacked authority over an EEZ.⁹ In 2001, the Yam Thetis consortium again pursued legal action to challenge the license. However, the court refrained from delivering a verdict, as Israel considered the license area ‘no man’s water’, pending a conclusive peace agreement. Consequently, the court affirmed the government’s decision and acknowledged the PA’s authority to grant drilling rights within Gaza’s EEZ.¹⁰

In 2005, Israel unilaterally withdrew from the Gaza Strip, evacuating both civilian settlements and military installations, thereby putting an end to its presence in Gaza.¹¹ Shortly after the withdrawal, a contested elections in Gaza between the PA and Hamas led to an armed conflict between the two factions, and in 2007 the Gaza Strip came under the de facto control of Hamas, leading to its separate governance from the West Bank.¹² Despite several attempts since then by Hamas and the PA to form a unity government,¹³ numerous violent clashes between the sides created a reality in which the PA lost any effective control, access or presence in Gaza.¹⁴

The years that followed were marked by recurrent conflicts between Israel and Hamas in Gaza, leading to a halt in discussions concerning the development of the Gaza Marine gas field. With no legal claim to the field, the Israeli government’s opposition to its development was primarily political. Israel’s main concern was that the field’s revenue would flow to Hamas rather than the PA, potentially financing militant activities against it. As a result of these prolonged delays, BG Group eventually closed its Israeli office in 2008. The following year, Israel imposed a naval blockade on Gaza, citing security concerns, and issued a notice to mariners of the blockade that is still in force as of 2023.¹⁵ In 2016, Shell PLC acquired BG Group, and by 2018, it decided to relinquish its stake in the Gaza Marine field, returning ownership to the PA. The field then came under joint ownership by the Palestine Investment Fund (PIF) and the Consolidated Contractors Company (CCC), which had previously collaborated with BG Group.¹⁶

Despite these complexities, an unexpected breakthrough unfolded in June 2023 when Israel declared its approval for the development of Gaza Marine for the first time since the Hamas takeover of Gaza. This endorsement followed a year of undisclosed negotiations involving Israel, the PA, and the Egyptian government. The development plan outlined the involvement of the Egyptian Natural Gas Holding Company (EGAS) and an independent exploration and production company.¹⁷ The proposal envisioned a small portion of the gas serving local Palestinian consumption while the majority would be exported to Egypt to be utilized for domestic

⁹T. Boersma and N. Sachs, ‘Gaza Marine: Natural Gas Extraction in Tumultuous Times?’, (2015) 36 *Brookings Institution* 1, at 7–8.

¹⁰See Henderson, *supra* note 1, at 5; Antreasyan, *supra* note 7, at 31.

¹¹Y. Shany, ‘Faraway, So Close: The Legal Status of Gaza after Israel’s Disengagement’, (2005) 8 *YIHL* 369, at 369.

¹²The Turkel Commission, ‘The Public Commission to Examine the Maritime Incident of 31 May 2010, 2010, Part one at 30, available at www.gov.il/BlobFolder/generalpage/downloads_eng1/en/ENG_turkel_eng_a.pdf; Y. Ronen, ‘ICC Jurisdiction over Acts Committed in the Gaza Strip: Article 12(3) of the ICC Statute and Non-state Entities’, (2010) *JICJ* 1, at 17; N. J. Brown, ‘The Hamas-Fatah Conflict: shallow but wide’, (2010) 34(2) *The Fletcher Forum of World Affairs* 35, at 35, 37, 41.

¹³Available at <https://ecf.org.il/issues/issue/1190>.

¹⁴P. Beaumont, ‘Palestinian Authority Would Face Many Challenges in a Post-Hamas Gaza’, *Guardian*, 5 November 2023, available at www.theguardian.com/world/2023/nov/05/palestinian-authority-would-face-many-challenges-in-a-post-hamas-gaza. See also recent statement about regaining control over Gaza: G. Pacchiani, ‘Abbas Says PA Willing to Take Control of Gaza, but Only under a Broader Deal’, *The Times of Israel*, 10 November 2023, available at www.timesofisrael.com/liveblog_entry/abbas-says-pa-willing-to-take-control-of-gaza-but-only-under-a-broader-deal/.

¹⁵State of Israel, Ministry of Transport, ‘Blockade of Gaza Strip’, Notices to Mariners, No. 1/2009, available at www.gov.il/en/departments/publications/reports/mariners-1-2009; see The Turkel Commission, *supra* note 12, at 36–42.

¹⁶Palestine Investment Fund, ‘Press Release – New Arrangements for Gaza Marine Development License’, 2023, available at www.pif.ps/2018/04/04/3566/.

¹⁷P. Stevenson, ‘Gaza Marine Advances’, (2023) 66(25) *Middle East Economic Survey*, available at www.mees.com/2023/6/23/oil-gas/gaza-marine-advances/f80c3750-11b2-11ee-aeaf-6fb234887785.

consumption or for further export to Europe in the form of liquified natural gas (LNG).¹⁸ Through EGAS, the Egyptian government likely provided assurances that the revenue from gas purchases would benefit the PA rather than Hamas, alleviating Israel's concerns. The press release from Israel's Prime Minister's Office (PMO) stressed that the agreement was conditional upon close security co-operation between Israel and Egypt, in co-ordination with the PA, without explicit mention of Hamas.¹⁹

The sudden approval of Gaza Marine sparked various political speculations and surprised many analysts given the fact that Israel's ruling party opposed a similar deal signed by the previous government with Lebanon in 2022. Speculations for the approval thus ranged from an Israeli ruse to appease the United States regarding a recent settlement expansion plan to a genuine Israeli effort to prevent further economic decline in Gaza. Some also suggested that Israel was aiming to foster deeper co-operation with regional actors like the UAE and Saudi Arabia through the Gaza Marine development initiative, while others viewed the approval as an Israeli reward to Hamas, which was perceived at the time as a party willing to negotiate economic deals with Israel and even assist it against another militant group active in Gaza, the Palestinian Islamic Jihad (PIJ).²⁰

Despite the notable political progress, the unexpected attack by Hamas against Israel on 7 October 2023, and the subsequent Israeli military incursion into Gaza have introduced a myriad of new complications regarding the development of the Gaza Marine gas field. These challenges revolve around determining which entity will ultimately assume control over the Gaza Strip in the aftermath of the conflict – whether it be Israel, Hamas, the PA, or a temporary international administrative force.

3. The legal status of the maritime area of Gaza

Until 2005, Gaza was under Israeli belligerent occupation within the framework of International Humanitarian Law (IHL).²¹ The two applicable laws concerning maritime zones of occupied territories were thus IHL, and specifically the law of occupation, and the LOS, specifically the legal regimes of the continental shelf and the EEZ.²² According to both laws, the occupying power has no legal claim to maritime zones and marine resources within these zones for three main reasons. The first reason is that entitlement to the continental shelf is based on the coastal state's sovereignty over the land to which the shelf is connected,²³ but the occupying power is not the sovereign of the land but rather an administrator. Thus, the necessary link to the continental shelf and its resources is missing.²⁴ Furthermore, the right of usufruct does not apply to maritime zones under LOS.²⁵ The second reason is that coastal states' sovereign rights in the continental shelf do not depend on occupation.²⁶ Thus, the occupied coastal state still retains its 'sovereign rights', and

¹⁸D. S. Elmas, 'Israel Consents to Palestinian Gas Field Development', *Globes*, 18 June 2023, available at <https://en.globes.co.il/en/article-israel-consents-to-palestinian-gas-field-development-1001449748>.

¹⁹State of Israel, Prime Minister's Office, 'Press Release: The Prime Minister's Office Instructed to Carry out the Development Project of the Gas Field in front of Gaza', 2023, available at www.gov.il/en/departments/news/spoke-gas180623.

²⁰E. Rettig and B Spanier, 'Why Israel Approved Development of the Gaza Marine Gas Field', (2023) 2207 *BESA Center Perspectives Paper*, available at www.besacenter.org/why-israel-approved-development-of-the-gaza-marine-gas-field/.

²¹1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, Regulation 42 (Hague Convention); 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287 (Fourth Geneva Convention).

²²S. Friedman, 'The Application of the Law of Occupation in Maritime Zones and Rights to "Occupied" Marine Resources', (2021) 36 *International Journal of Marine and Coastal Law* 419, at 420–5.

²³See UNCLOS, *supra* note 5, Art.76(1); Friedman, *ibid.*, at 426, 430.

²⁴See Hague Convention, *supra* note 21, Regulation 55; Y. Dinstein, *The International Law of Belligerent Occupation* (2019), 58; Friedman, *ibid.*, at 430; M. Longobardo, 'The Occupation of Maritime Territory under International Humanitarian Law', (2019) 95 *International Law Studies* 322, at 347–8.

²⁵See Friedman, *ibid.*, at 430–2.

²⁶See UNCLOS, *supra* note 5, Art. 77(3).

the occupying power cannot explore and exploit the ‘occupied continental shelf’ without the former’s consent.²⁷ Lastly, entitlement to the EEZ requires both sovereignty over the land territory (i.e., being a coastal state) and the act of proclamation, which is a domestic constitutive act that cannot be taken by anyone other than the occupied coastal state.²⁸

Considering the above, as the occupying power in Gaza until 2005, Israel had no legal claim to its maritime zones or resources within.²⁹ However, the Oslo Accords granted Israel the right to prohibit transit in the maritime areas allocated to the PA.³⁰ Thus, while Israel had no legal claim to the maritime zones, it could prevent access to these zones, citing security concerns. In this sense, the parties essentially consented to derogate from UNCLOS when they signed the Oslo Accords. This can be done under the rules of UNCLOS, such as Article 311, as it does not reflect *jus cogens* rules. Consequently, Israel could approve or refuse activities in these zones if such an action is reasonably linked to security considerations. Therefore, Israel’s approval of the development of the Gaza Marine gas field is within its rights under the Oslo framework.

In accordance with IHL, from the time that Israel withdrew from the Gaza Strip and ended its military presence in the area in 2005, Gaza should no longer be considered as an occupied territory.³¹ However, some legal scholars argue that Israel exercises a limited form of occupation over Gaza due to its control of imports and exports in Gaza, as well as its restriction on the movement of Gaza’s population outside its borders.³² Both ends of the argument do not change the legal status of Gaza’s maritime zones with respect to Israel, since Israel has no legal claim to the maritime zones and resources within. This applies *a fortiori* after the Israeli withdrawal. However, Israel still has control over the area in accordance with the Oslo Accords, which is still in force.

Under LOS, ostensibly, only coastal *states* are entitled to maritime zones.³³ Since the PA’s statehood status is disputed,³⁴ arguably, it is not entitled to maritime zones. However, self-governing entities that are recognized by the UN and have not yet achieved full independence can be parties to UNCLOS.³⁵ Arguably, the PA falls under this category. While until 2015 the PA did not sign the Convention,³⁶ most of UNCLOS’s provisions are customary law.³⁷ Thus, the PA is entitled to maritime zones, and specifically to the continental shelf, where gas and oil are extracted

²⁷See Friedman, *supra* note 22, at 429.

²⁸*Ibid.*, at 432–3.

²⁹*Ibid.*, at 435–6.

³⁰See Antreasyan, *supra* note 7, at 31; Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 6, at Ann. I, Art. XIV.

³¹See Hague Convention, *supra* note 21, at Regulation 42; Shany, *supra* note 11, at 375–6; E. Samson, ‘Is Gaza Occupied: Redefining the Status of Gaza under International Law’, (2010) 25 *American University International Law Review* 915, at 915.

³²J. S. Sadi and I. Bantekas, ‘The Status of Gaza Occupied Territory Under International Law’, (2023) 72(4) *International & Comparative Law Quarterly* 1069, at 1069–73. Despite these voices, the argument that Gaza still meets the definition of occupation after 2005 is an unorthodox position. See: A. Cohen and Y. Shany, ‘Unpacking Key Assumptions Underlying Legal Analyses of the 2023 Hamas-Israel War’, *Just Security Blog*, 30 October 2023, available at www.justsecurity.org/search-results/?searchwp=%27Unpacking+Key+Assumptions+; A. Cohen and Y. Shany, ‘Internal Law “Made in Israel” v. International Law “Made for Israel”’, *Articles of War Blog*, 22 November 2023, available at www.lieber.westpoint.edu/international-law-made-in-israel-international-law-made-for-israel/.

³³See e.g., UNCLOS, *supra* note 5, Arts. 55, 56, 76.

³⁴P. Eden, ‘Palestinian Statehood: Trapped between Rhetoric and Realpolitik’, (2013) 62 *International and Comparative Law Quarterly* 225, at –237–9. See also *The Situation in the State of Palestine*, Judgment of the Pre-Trial Chamber, ICC-01/18 Chamber I, 5 February 2021. Analysis in the *Decision on the Prosecution Request According to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine*, Judgment of the ICC Pre-Trial Chamber 1, 5 February 2021 (Judge Kovacs, Separate Opinion), paras. 247–267.

³⁵See UNCLOS, *supra* note 5, Art. 305. Arguably, since the PA received the status of UN ‘non-member observer state’ in 2012, *a fortiori* it has rights under UNCLOS.

³⁶See list of ratifications, UNCLOS, available at treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&msgid=XXI-6&chapter=21&Temp=mtmsg3&clang=_en.

³⁷*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment of 24 February 1982, [1982] ICJ Rep. 18; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment of 12 October 1984 [1984] ICJ Rep. 246; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment of 3 June 1985 [1985] ICJ Rep. 13.

from, which is an inherent and automatic right.³⁸ It also has sovereign rights to regulate activities within them even before being a party to UNCLOS. While it is debatable whether customary law applies to non-state actors (NSAs), UNCLOS itself (representing states' opinions) recognizes that self-governing territories can have rights and obligations under it. This is supported by an advisory opinion of the Under-Secretary-General for Legal Affairs (the UN legal counsel) to the Security Council.³⁹

The analysis above thus argues that the PA was entitled to a continental shelf prior to its ratification of UNCLOS in 2015, and thus had sovereign rights in the continental shelf maritime zones regardless of Israel's control over the area and ability to regulate access. While the Oslo Accord does not affect the PA's rights under UNCLOS, it does limit in practice exercising these rights as it narrows the areas for utilization and the PA's access to them. However, while the PA was entitled to proclaim an EEZ, it did so only in 2015, and thus it did not have an EEZ prior to the ratification in 2015.⁴⁰ The analysis concerning the PA's rights in the continental shelf does not change with the PA's ratification of UNCLOS in 2015, and its declaration of maritime zones.⁴¹ The only change is the establishment of the EEZ.

An issue that complicates these matters is that the political situation in Gaza since 2007 may have rendered the PA's declarations of maritime zones unlawful under LOS, as it has had no control over Gaza since then.⁴² As discussed above, sovereign rights in maritime zones stem from sovereignty over the land territory to which these zones are connected. Since the PA has no control over Gaza and arguably no sovereignty, it essentially loses the nexus to the maritime zones. While occupation does not entail the loss of sovereignty, Hamas did not occupy Gaza from the PA but rather ostensibly replace it as the governing entity lawfully through an election process.

Since 2007 there has been a complete separation between Gaza and the PA from legal, political and security perspectives. Essentially, two political entities have been governing different territories for 16 years, with separated decision-making processes on all aspects of governance, and two separated military and police control (i.e., exercise of force). This resulted in a high level of independence between the territories, where the PA is not exercising its autonomous or sovereign powers over Gaza, while another entity exercises such powers in the territory. Thus, arguably, the PA has lost not only control, but also its sovereignty over Gaza.⁴³ In this case, while the PA's ratification of UNCLOS is still valid, it can be argued that the PA has become a 'land-locked state' and has no maritime zones to declare. Therefore, a reasonable argument can be made that the 2015 and 2019 declarations were unlawful, and in theory could be nullified.

To complete and further complicate the picture, unlike the PA, Hamas is not an entity that falls under the category of NSAs that can be parties to UNCLOS. This makes it a unique case since, as mentioned previously, Hamas came to power lawfully through elections in Gaza but was not

³⁸The ICJ defined entitlement to the continental shelf as *ipso facto* and *ab initio*, see *North Sea Continental Shelf (Federal Republic of Germany v. Denmark) (Federal Republic of Germany v. Netherlands)*, Judgment of 20 February 1969, [1969] ICJ Rep. 3, paras. 19, 39, 49; see UNCLOS, *supra* note 5, Art. 77.

³⁹UN Legal Counsel Addressing the President of the Security Council, UN Doc. S/2002/161 (12 February 2002), available at www.arso.org/Olaeng.pdf.

⁴⁰The EEZ requires an act of proclamation to establish the zone. Unlike the continental shelf, the EEZ is not an inherent right of the coastal State. See S. Friedman, 'The Concept of Entitlement to an Exclusive Economic Zone as Reflected in International Judicial Decisions', (2020) 53(1) *Israel Law Review* 101.

⁴¹The PA made two declarations; One in 2015, see UN Division for Ocean and the Law of the Sea (DOALOS), available at www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PSE_2015_Declaration.pdf, and one in 2019, available at www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PSE_Deposit_09-2019.pdf.

⁴²At least until 7 October 2023, although it is debatable whether the IDF military operation on Gaza means that Hamas no longer has political control.

⁴³Although the concept of sovereignty is connected to the state and statehood, there are arguments that sovereignty can also apply to sub-state entities, especially in the context of natural resources, and thus we use this term to describe the loss of nexus between the PA and Gaza. See, e.g., UN Legal Counsel, *supra* note 39; P. R. Williams and F. J. Pecci, 'Earned Sovereignty: Bridging the Gap between Sovereignty and Self-determination', (2004) 40(2) *Stanford Journal of International Law* 347.

recognized as such. On the contrary, the United States and the EU have designated Hamas as a terrorist organization.⁴⁴ Thus, Hamas is not an entity with rights and obligations under the LOS framework and, consequently, is not entitled to Gaza's maritime zones. As such, it seems that from 2007 and until the 2023 Israel-Hamas war, neither of the relevant actors with respect to Gaza had entitlement to its maritime zones and the resources within these zones, creating a legal deadlock for all sides. This, however, has the potential to change following the 2023 Israel-Hamas war.

4. Four administration scenarios in the aftermath of the 2023 Israel-Hamas war

The 2023 Israel-Hamas war altered the political reality in Gaza and challenged previous legal understandings over who can develop its resources. Unlike previous limited rounds of violence between Israel and Hamas in 2008, 2014, and 2021, the stated goal of Israel's military incursion in the Gaza Strip in 2023 was to dismantle Hamas' control over Gaza and effectively force a regime change. As often typical to postwar disputed territories that experience a military takeover, the aftermath of the war created four possible future scenarios of control over the Gaza Strip: establishment of an independent State of Palestine that will unite Gaza and the West Bank under one Palestinian sovereign, establishment of an international transitional administration (ITA) designed to pave the way towards such a goal, renewed Israeli occupation of Gaza, and full or partial Israeli annexation of the territory.

The following section will not point to a recommended or preferable scenario for Gaza's future administration, but rather proceed to examine the legal implications for the development rights of the Gaza Marine gas field under each of these four possible scenarios. It will begin each section by introducing the scenario through other global postwar examples, and then elaborate on how this scenario is possible within the context of the Gaza Strip. It then reviews the legal status of resources exploitation under this scenario and applies it to the case of Gaza Marine. Finally, it suggests legal solutions, where applicable, to advance the development of the field.

4.1. Independent State of Palestine

In the first scenario, long standing conflicts over disputed territories may lead to their eventual independence, subject to the historical, political, demographic, and geographic context of the dispute. In such cases, independence refers to the establishment of a separate and internationally recognized sovereign within the territory, often representing the clear national aspirations of the local population, as well as their consent for the new status. Some of the most recent examples of disputed territories that have won independence following violent episodes of armed conflict can be found in South Sudan,⁴⁵ Eritrea,⁴⁶ and the post-Yugoslavian states of Bosnia or Croatia.⁴⁷

In the case of Gaza, the goal of establishing an independent Palestinian state alongside Israel is the overwhelmingly preferred model of governance by the international community.⁴⁸ Under this model, the West Bank and Gaza will be joined together under a single internationally recognized sovereign which will then negotiate permanent borders with Israel. Senior US and EU officials have suggested that the Israel-Hamas war strengthened the prospects for an independent

⁴⁴The United States Foreign Terrorist Organizations List, available at www.state.gov/foreign-terrorist-organizations/; M. Quell, 'Top EU Court Returns Hamas to Terror List after 3-Year Break', *Courthouse News Services*, 23 November 2021, available at www.courthousenews.com/top-eu-court-returns-hamas-to-terror-list-after-3-year-absence/; see a list of other states that designated Hamas as a terrorist organization in the US Senate letter to the UN, available at www.lankford.senate.gov/v/wp-content/uploads/2023/11/Lankford-Rosen-Letter-to-UN.pdf.

⁴⁵L. B. D. Kuol and S. Logan (eds.), *The Struggle for South Sudan: Challenges of Security and State Formation* (2018).

⁴⁶R. Iyob, *The Eritrean Struggle for Independence: Domination, Resistance, Nationalism, 1941–1993* (1995).

⁴⁷P. Radan, *The Break-up of Yugoslavia and International Law* (2004).

⁴⁸R. Grant and A. Tibon, 'The Death and Life of the Two-State Solution: How the Palestinians May Eventually Get Their State', (2015) 94(4) *Foreign Affairs* 78, at 78–87.

Palestinian state, both due to the weakened state of Hamas, which has served as a strong impediment to previous peace negotiations, and due to increased international pressure on Israel following the strong critique against the way it conducted the war.⁴⁹ This position is also supported by several Arab leaders from the region who advocate for a political solution under the PA authority, such as Egypt, the United Arab Emirates, and Saudi Arabia.

In a scenario in which the PA receives control and exercises its sovereignty over Gaza it will also have entitlement to maritime zones offshore Gaza, whether it is recognized as a state or as an entity with a high degree of self-governance. Thus, the PA will have sovereign rights over the resources within them. Development of the Gaza Marine fields under this scenario is under the governance of the PA. However, since the previous PA's declarations concerning its maritime zones may be invalid and theoretically nulled (see Section 3), it will have to make new declarations, especially with respect to the EEZ, whose establishment requires an official proclamation.⁵⁰

It is noteworthy that in the case of the PA, there is a question of whether it has the capacity to already be a party to international agreements and contracts before it is officially recognized as a state.⁵¹ Although only states can enter international agreements governed by international law, other actors, such as international organizations, have been recognized as having the capacity (i.e., legal personality) to sign international agreements. However, since Israel agreed that the PA could sign the Oslo Accords, this question seems to be moot, and the PA has since signed numerous international treaties. Still, this question may affect the PA's ability to sign contracts with foreign oil companies to develop the Gaza Marine fields as it may be interpreted as having more limited legal personality, but not necessarily. This will depend on the company and the domestic legal system it operates under. However, when considering previous practices in this context, this issue may not hinder the development of Gaza Marine.

The terms of the Oslo Accords, which are still in force as both parties have not terminated the agreements, are also an important factor.⁵² While the PA has sovereign rights over the maritime zones offshore Gaza in an independent state scenario, the Oslo Accords limit both the PA's maritime zones for utilization and its access to them. This grants Israel the right to prohibit maritime transit in the maritime areas allocated to the PA for security reasons so long as the Oslo Accords are not terminated.

Considering the analysis above, despite the PA's sovereignty and sovereign rights under UNCLOS, it seems that it will have to consult with Israel on the development of the Gaza Marine fields even under an independent state scenario, or at least co-operate and share information, in accordance with the Oslo framework. The PA could choose to breach the Oslo agreement, but then Israel will be entitled to exercise the dispute-settlement mechanism.⁵³

⁴⁹C. Kupchan, 'Could the Israel-Hamas War Lead to Peace?', *Project Syndicate*, 11 December 2023, available at www.project-syndicate.org/magazine/israel-hamas-war-could-lead-to-two-state-solution-by-charles-a-kupchan-2023-12; C. Hadavas, 'Gaza's Best Chance at Peace', *Foreign Policy*, 12 November 2023, available at www.foreignpolicy.com/2023/11/12/israel-hamas-war-palestine-peace-conflict-diplomacy-solutions/.

⁵⁰See the discussion in Section 3, *supra*. For the proclamation of the PA EEZ see DOALOS, *supra* note 41.

⁵¹1969 Vienna Convention on the Law of Treaties 1155 UNTS 331 (VCLT), Art. 2(1)(a); M. Shaw, *International Law* (2021), 237.

⁵²See Shaw, *Ibid.*, at 216.

⁵³See The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 6, Art. XXI. Under international law, a breach of a treaty is considered a wrongful act, which entitles the injured state to claim reparations. See ILC, Responsibility of States for Internationally Wrongful Acts, 2001 YILC, vol. II (Part Two), Art. 31 and Ch. II. While the ILC draft is not legally binding, it is regarded as codifying customary international law. See J. Crawford, *State Responsibility, The General Part* (2013), 43. However, the draft applies to the responsibility of states. See ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, With Commentaries, 2001 YILC, vol. II (Part Two), at 34, para. 7. Even if the PA is not yet a state, arguably, the ILC draft applies due to the high degree of self-governance and its practice concerning international agreements.

4.2. Israeli occupation in Gaza

In the second postwar scenario, rather than allow for an independent state, the belligerent side forces a regime of occupation over the disputed territory. In such cases, the armed forces of one side of the war gain effective control over territory outside of its internationally recognized borders, and that territory is placed under the hostile army's authority.⁵⁴ The military is relegated to keeping the territory secure but is not charged with the duties of governance.⁵⁵ In some cases, the occupied population retains various levels of autonomous rule alongside the occupying power, or under its direct influence. Examples of such occupation models can be found in the PA's rule over the West Bank following the Oslo Accords,⁵⁶ or the establishment of the Turkish Republic of Northern Cyprus following the Turkish invasion of the Cypriot island in 1974.⁵⁷

In the case of Gaza, Israel may decide to have its military remain indefinitely in Gaza in the aftermath of the 2023 war and establish an occupation regime, similar to the one that existed prior to its withdrawal from Gaza in 2005. In such a scenario, the Oslo Accords will technically still be in force, and unless terminated would mean that the PA would once again have political autonomy over Gaza, as detailed in the agreement.

Despite the existence of the Oslo Accords, the autonomous leadership over Gaza under this scenario may take different forms: either it is assumed by the PA in the West Bank as the Accords stipulate, essentially recreating the administration that existed before the Hamas takeover of the Gaza Strip in 2007, or it may take the form of a new and separate Palestinian civilian leadership, thus preserving the *de facto* separation between Gaza and the West Bank, as was the case since 2007. A third possible scenario is that Hamas will still control the Gaza Strip, albeit in a weakened form and in conjunction with either the PA or a new civil leadership under Israeli influence.

Since this model is the closest to the pre-2023 situation, its legal implications are similar. As discussed in the previous section, if Gaza is recognized as part of the PA's territory, even if it is under occupation, then it will have sovereign rights over the maritime zones offshore Gaza and its resources. Similar to the first scenario of Palestinian state independence, the PA will have to make new declarations concerning its maritime zones. However, under the Oslo framework, the PA will also have to co-operate with Israel to develop the fields in practice unless the Accords are terminated. Alternatively, in a scenario where Hamas is still in control, it will not be entitled to Gaza's maritime zones since it is not recognized as an entity that has rights and obligations under the LOS framework, and the legal deadlock over the gas field will continue.

In a scenario in which a new Palestinian civilian administration takes control over Gaza which is neither the PA nor Hamas, the PA in the West Bank once again loses its nexus to the maritime zones and will have no sovereign rights to develop the Gaza Marine fields. In this sub-scenario, the new Palestinian leadership, purportedly representing the people in Gaza, may have sovereign rights in the offshore maritime zones if they meet the conditions in UNCLOS Article 305, i.e., if they are considered self-governing territory. Since such leadership will likely not have the recognition and status of the PA in the eyes of the international community, this issue is crucial and may hinder the rights of the people in Gaza to offshore resources. If the new Gazan leadership theoretically falls within UNCLOS Article 305, the Oslo Accords cease to apply over Gaza, as the new leadership is neither a party nor a successor of a party to the agreement, and the Accords will not hinder the exercise of rights by the Gazan leadership.

Under all these sub-scenarios analysed above, Israel, as the occupying power, does not have a right to the maritime zones offshore Gaza or to the resources found in them. Although it can be

⁵⁴See Hague Convention, *supra* note 21, Reg. 42.

⁵⁵S. R. Ratner, 'Foreign Occupation and International Territorial Administration: The Challenges of Convergence', (2005) 16 EJIL 695, at 701.

⁵⁶See the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 6.

⁵⁷L. G. Loucaides, 'The Judgment of the European Court of Human Rights in the Case of Cyprus v. Turkey', (2002) 15(1) LJIL 225.

argued that the occupying state can proclaim an EEZ or utilize resources for the benefit and development of the occupied civilian population, the law of occupation does not support acts that have permanent effects on maritime zones and their resources.⁵⁸ If Israel, as the occupying power, does not allow the occupied population to exercise its rights, or if it utilizes the resources without the explicit consent of Gaza's population and whoever represents them, it breaches both UNCLOS and the law of occupation.⁵⁹

As such, there are only two sub-scenarios in which the Gaza Marine can be developed under the scenario of a continued Israeli military occupation. Either the PA is given control of the Gaza Strip, thus re-establishing the nexus for entitlement to the maritime zones and resources within, or the newly established Palestinian regime in Gaza (which is not the PA or Hamas) is internationally recognized as the legitimate sovereign in Gaza and as an entity that has rights and obligations under UNCLOS. However, in the first sub-scenario, the PA will likely still have to co-operate with Israel to develop the Gaza Marine field, since Israel will still hold the right to prohibit maritime transit in the maritime areas allocated to the PA for security reasons as part of the Oslo Accords.

4.3. International transitional administration

The third scenario for postwar disputed territories involves an interim period in which the area is handed over to the control of an ITA, which exact composition is agreed upon by all parties to the conflict. Such administrations are established *ad hoc* and are sometimes identified as peace-keeping forces or as democracy-building missions, although these titles do not necessarily reflect the same goals.⁶⁰ The ultimate goal of the ITA is to prepare the ground for the eventual establishment of an independent state entity, often by first allowing for the demilitarization of the disputed territory.⁶¹

The ITA model is a relatively new phenomenon which reflects an evolving rather than a static concept, and generally has two main characteristics. First, it enjoys the virtually all-encompassing authority to exercise public power within a particular territory; second, the power enjoyed by the international actors is ultimate and remains with the international administering entity throughout the process of gradual transfer of power.⁶² As such, it is often associated with a more intrusive post-1989 role that the UN has taken in settling conflicts, although any number of state or interstate entities may administer it. Three prominent examples of this model could be seen in postwar Kosovo, Bosnia, and East Timor during the 1990s.⁶³

In the case of Gaza, various think tanks and policy institutions, including in Israel, have suggested that an ITA may serve as a compromise model between international demands for Palestinian independence and Israeli demands for a demilitarized and controlled territory to prevent the rise of Hamas or a similar militant organization within the Gaza Strip.⁶⁴ The use of international forces is a common mechanism in the Israeli-Arab conflict, and there are currently three international forces operating on Israel's borders: the United Nations Interim Force in Lebanon (UNIFIL), a peacekeeping mission established on 19 March 1978 by UN resolutions 425

⁵⁸See Friedman, *supra* note 22, at 433–4.

⁵⁹*Ibid.*, at 435.

⁶⁰O. Korhonen, 'International Governance in Post-Conflict Situations', (2001) 14(3) LJIL 495, at 495.

⁶¹J. Klein, 'The United Nations and Administration of Territory: Lessons from the Front Line', (2003) 97 *Proceedings of the Annual Meeting (American Society of International Law)* 205, at 206.

⁶²A. Momirov, *Accountability of International Territorial Administrations: A Public Law Approach* (2011), 6–7.

⁶³See Ratner, *supra* note 55, at 698.

⁶⁴N. Arielli, J. Stoil and M. E. Walters, 'The Case for Sending a Multinational Force to Gaza', (2023) *Mitvim Institute*, available at www.mitvim.org.il/en/publication/the-case-for-sending-a-multinational-force-to-gaza/; S. Marks, 'US and EU Back UN Force in Postwar Gaza, Adding Pressure on Israel', *Bloomberg*, 16 November 2023, available at www.bloomberg.com/news/articles/2023-11-16/us-eu-back-un-force-in-postwar-gaza-adding-pressure-on-israel.

and 426 to confirm Israel's withdrawal from Lebanon;⁶⁵ the United Nations Disengagement Observer Force (UNDOF), a task force monitoring the ceasefire agreement between Israel and Syria in the aftermath of the 1973 war;⁶⁶ and the Multinational Force and Observers (MUFO), an international peacekeeping force overseeing the peace treaty between Egypt and Israel in the Sinai Peninsula.⁶⁷

The ITA scenario in Gaza assumes a much deeper role for the international forces when compared to the three current peacekeeping operations on Israel's borders. Under such scenario, an international force, whether administered by the UN or by a custom multi-state framework such as the Arab states of the Abraham Accords, governs the Gaza Strip in conjunction with a local civilian Palestinian administration. The stated goal of this multi-national administration will be to prepare the ground for eventual Palestinian independence. The ITA would thus hold much more responsibilities than a peacekeeping force, as it would serve as a temporary governing authority that supervises the reconstruction of postwar Gaza's basic infrastructure and the provision of basic state utilities and services.

There is no general or unified international legal framework for regulating the practice of an ITA.⁶⁸ There are several models for ITA; The nature and content of such frameworks can be adapted based on specific treaties or Security Council (SC) Resolutions.⁶⁹ As there is little practice of ITAs established by a multilateral treaty and there are wide variations between the existing cases, this analysis will mostly address the SC model for this scenario. Chapter VII of the UN Charter provides sufficient legal grounds for establishing an international administration to the extent that this instrument is necessary to maintain or restore international peace and security.⁷⁰ The UN has gained a wide range of practical experience in designing, implementing, and managing comprehensive plans for transitioning territories towards a more stable and secure future. In this context, Chapter VII transitional administration is the most robust model.⁷¹

Two main examples can serve as a basis on which the ITA scenario can draw from. In 1999, the UN Concerning Kosovo, Security Council Resolution 1244, established a UN 'international civil and security presences' in Kosovo.⁷² This Chapter VII-based Resolution granted the UN Interim Administration Mission in Kosovo (UNMIK) wide-ranging powers, without any restrictions.⁷³ In the same year, SC Resolution 1272 established the United Nations Transitional Administration in East Timor (UNTAET), and endowed it with 'overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice'.⁷⁴

⁶⁵Resolution 425, UN Doc. S/RES/425 (1978), available at unsco.unmissions.org/sites/default/files/s_res_4261978.pdf; 71623 Resolution 426, UN Doc. S/RES/426 (1978), available at digitallibrary.un.org/record/.

⁶⁶Resolution 350, UN Doc. S/RES/350 (1974), available at digitallibrary.un.org/record/93704.

⁶⁷Multinational Force and Observers (MUFO), available at www.mfo.org/.

⁶⁸M. Saul, 'The Practice of Shared Responsibility in relation to Internationally Administered Territories', (2015) 65 *SHARES Research Paper*, at 2, available at www.sharesproject.nl.

⁶⁹ITAs under the UNSC framework are distinct from the UN trustee framework for territories under the administration of individual UN member states to ensure the transition for self-governance and independence. This framework essentially deals with the specific issue of decolonization, which is outside the scope of this article. For more details on the UN trusteeship system see the UN website, www.un.org/en/about-us/trusteeship-council.

⁷⁰B. Knoll, *The Legal Status of Territories Subject to Administration by International Organization* (2008), 408.

⁷¹R. McLaughlin, 'Israel – Hamas 2023 Symposium – After the Conflict: AUN Transitional Administration in Gaza?', *Lieber Institute*, 17 November 2023, at 4, available at www.lieber.westpoint.edu/after-conflict-un-transitional-administration-gaza/. There have been three such cases: The UN transitional administration for Eastern Slavonia, Baranja and Western Sirmium (1996–1998); the UN Interim Administration Mission in Kosovo (1999–ongoing, but now with a much-reduced mandate); and the UN transitional administration in East Timor (UNTAET) (1999–2002).

⁷²Resolution 1244, UN Doc. S/RES/1244 (1999), para. 5, available at digitallibrary.un.org/record/274488.

⁷³E. Benvenisti, *The International Law of Occupation* (2012), 708.

⁷⁴Resolution 1272, UN Doc. S/RES/1272 (1999), para.1, available at digitallibrary.un.org/record/291410.

The broad mandate of the ITA in the cases of Kosovo and East Timor results in the fact that the groundwork of the emerging societal order will be laid in *ad hoc* decision-making and dependent on the divergent personal styles of the administrators. Under the SC framework, there is no definition of a limit to the 'necessary' interim means and measures.⁷⁵ Nor is there an external review on the level of individual measures or policies adopted. It may well be true that this level of flexibility is necessary to maintain feasible working conditions for ITA administrations. However, these administrations in Kosovo and East Timor were often criticized for lack of supervision, accountability, and transparency.⁷⁶

We may infer from the cases of Kosovo and East Timor three key features of a possible future ITA under the SC model that may assist in fulfilling its mandate and provide a solution for Gaza. First, there is no legal requirement for the territorial State to consent to the deployment and mandate of the operation.⁷⁷ This is most needed when it is not clear who is responsible for the territory or if the territorial state is not functioning. Second, Chapter VII allows a variety of actions that can be used by the ITA, from economic and diplomatic sanctions to the use of force.⁷⁸ Lastly, the SC has a broad mandate to deal with threats to peace and security, as it gives the transitional administrator, the force commander, and the mission, a greater degree of freedom and scope to act.

When it comes to Gaza's maritime zone and its economic development, in the absence of a clear legal framework for this situation, few conclusions can be drawn for an international mission. The ITA will find that neither of the relevant actors concerning Gaza has an entitlement to its maritime zones and the resources within it. However, currently, these areas are under the *de facto* control of the Israeli military, which may prevent the ITA access to the offshore resources, including the gas fields.⁷⁹ While the ITA can administer a territory, it cannot have sovereign rights over Gaza's maritime zones or the resources within. The issue of sovereignty and resource utilization is beyond the scope of the SC competences.⁸⁰ In addition, like the discussion on occupation, the ITA is an administrator rather than sovereign over the disputed land territory. Thus, it has no nexus to the maritime zones offshore Gaza and the resources within.⁸¹

While ostensibly a SC decision under Chapter VII can derogate from UNCLOS and prevail,⁸² the hierarchy applies only to international agreements, i.e., treaties. However, the rules concerning entitlement to maritime zones are considered customary international law.⁸³ Thus, a SC decision that would indicate sovereign rights of an ITA over maritime resources would not necessarily prevail.⁸⁴ Furthermore, the SC decisions cannot prevail or contradict *jus cogens* norms.⁸⁵ Putting aside the question of the political representation of the people in Gaza or Palestinians in general, which depends on the post-war political situation in Gaza, the right of self-determination of these

⁷⁵See Korhonen, *supra* note 60, at 500.

⁷⁶*Ibid.*, at 524.

⁷⁷Decisions of the SC under Ch. VII bind all states, thus consent is not required in such cases. See Charter of the United Nations (1945), Arts. 25, 103.

⁷⁸*Ibid.*, Arts. 41–42.

⁷⁹Under the Oslo framework and current military operation. See also H. Cuyckens, 'Is Israel Still an Occupying Power in Gaza?', (2016) 63 *Netherlands International Law Review* 275, at 284–5.

⁸⁰See UN Charter, *supra* note 77, Arts. 2(7), 24.

⁸¹See analysis in Section 3.

⁸²See UN Charter, *supra* note 77, Art. 103.

⁸³T. L. McDorman, 'The Continental shelf', in D. R. Rothwell et al. (eds.) *The Oxford Handbook of the Law of the Sea* (2015), 181, at 185, 190–1; T. Treves, 'UNCLOS and Non-Party States before the International Court of Justice', in C. Espósito et al. (eds.) *Ocean Law and Policy, Twenty Years of Development Under the UNCLOS Regime* (2016), 367, at 372–3.

⁸⁴It is noteworthy that in the case of Namibia, the ITA was a party to UNCLOS and thus, had governance over marine resources in the name of the Namibian people. However, this is a unique case as the ITA (the UNCTF) was recognized as both the legitimate government of the territory and as the policy-implementing subsidiary organ of the GA. See B. Knoll, *The Legal Status of Territories Subject to Administration by International Organization* (2008), 106–7.

⁸⁵See VCLT, *supra* note 51, Art. 53.

groups has been recognized.⁸⁶ This right confers sovereign rights over marine resources to entities that have not yet achieved independence,⁸⁷ and is considered a peremptory norm to govern and decide for themselves on utilization of marine resources.⁸⁸ Thus, any possible ITA would not have sovereign rights to develop Gaza Marine on its own, and the people in the disputed territory will retain these rights. However, a binding SC decision may prevail over the Oslo Accords with respect to Israel's security interests.

Arguably, the ITA can govern the maritime zones and develop marine resources in the name of the people in Gaza and for their benefit. On the one hand, the framework that may allow an occupying force such actions for the benefit of an occupied state does not apply in the case of an ITA as the IHL framework would not come into effect and there is no belligerent occupation.⁸⁹ However, the constitutive instrument of the ITA may provide similar competences, so long as this is done with the consent and co-operation of the recognized representatives of the Palestinian people in Gaza.

4.4. Israeli annexation of the Gaza Strip

Finally, in the last scenario, postwar disputed territories may be fully or partially annexed by an external sovereign, often by military force. The local population may either be expelled from the territory, remain as residents with limited rights, or be given citizenship under the new regime. Examples for annexation include the Crimean Peninsula in Ukraine, which was invaded and then immediately annexed by Russia in 2014,⁹⁰ Western Sahara, which was annexed by Morocco in 1976 following the withdrawal of Portugal,⁹¹ and the Syrian Golan Heights, which was occupied by Israel following the 1967 war and eventually annexed by Israel in 1981.⁹² Arguably, annexation could be lawful in cases where the international community tacitly accepts the annexation. Some argue that this is the case of Western Sahara.⁹³ However, in the cases of Crimea and the Golan Heights, the international community rejected the annexation and recognized the situation as a belligerent occupation under IHL.⁹⁴ Thus, in cases of unlawful annexation, the annexed territory will be considered as occupied territory and not under the sovereignty of the annexing party.

⁸⁶See UNGAOR, 78th Sess, UN Doc. A/78/261 (2023); UNGAOR, 78th Sess, UN Doc. A/78/479 (2023), para. 21. Although this recognition is under the assumption that Gaza is part of the 'state of Palestine', i.e., under the leadership of the PA and the unification of Gaza with the West Bank, as recognized by the UN. There is a question concerning the right of self-determination of the people of Gaza as a separate group. Arguably, suppose the people in Gaza meet the flexible requirement for the right to self-determination. In that case, they will also have such a right independently of the Palestinians in the West Bank and the PA leadership.

⁸⁷See also UN Legal Counsel, *supra* note 39.

⁸⁸See ILC Report, UN Doc. A/77/10 (2022), at Chapter IV Peremptory norms of general international law (*jus cogens*), available at legal.un.org/ilc/reports/2022/english/chp4.pdf.

⁸⁹See Hague Convention, *supra* note 21, Regs. 43, 55. See also the discussion in Section 4.2.

⁹⁰R. Hofmann, *1376 Max Planck Encyclopedia of International Law* (2020), 'Annexation', para. 38, available at www.opil.org/plaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1376?prd=MPII.

⁹¹Although this is a difficult case as it also includes issues of decolonization and joint administration of the territory. See, for example, *ibid.*, para. 37; P. M. Vernet, *928 Max Planck Encyclopedia of International Law* (2017), Decolonization: Spanish Territories, para. 37, available at www.opil.org/plaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e928.

⁹²Golan Heights Law, 5742-1981 (Hebrew). Although the word 'annexation' was not explicitly mentioned in the law. See also UN Security Council Resolution 497, UN Doc. S/RES/497(1981) [on annexation of the Golan Heights], available at digitallibrary.un.org/record/26751.

⁹³See S. Friedman, 'To Blockade or not to Blockade? The Legal Status of Russia's Suspension of Shipping in the Sea of Azov', (2024) *Israel Law Review* 1, at note 46.

⁹⁴*Ibid.*, at 8; see also the UN Security Council Resolution concerning Israel 242, UN Doc. S/RES/242 (1967), available at <https://digitallibrary.un.org/record/90717?ln=en&v=pdf>; and on the Iraqi occupation of Kuwait, UN Security Council Resolution 662, UN Doc. S/RES/662 (1990), available at digitallibrary.un.org/record/94573.

In the case of Gaza, a full annexation scenario by Israel similar to the Golan Heights in 1981 is very unlikely. This assessment is based on previous statements by consecutive Israeli governments citing their reluctance to preside over a population of 2.2 million Palestinians in the Gaza Strip, as well as strong opposition from the international community.⁹⁵ However, Israeli officials have contemplated scenarios that may eventually lead to partial annexation, ranging from creating permanent military presence within the Gaza Strip under the pretext of a 'buffer zone',⁹⁶ to establishing permanent Israeli settlements deep within Gaza, as was the case before 2005.⁹⁷

Under a partial annexation scenario of Gaza, Israel will have full control over parts of Gaza's coastal area and may argue that it has rights to Gaza's waters as well. Although such a claim is predicted to meet heavy international resistance, experience in the Israel-Lebanon border has shown that unilateral annexation, though illegal, does weigh into consideration in subsequent border delimitation negotiations.⁹⁸ For the annexing state, the annexed territory is considered part of the annexing state's territory.⁹⁹ Thus, ostensibly, the annexing state has an entitlement to the maritime zones offshore the annexed territory and sovereign rights to the marine resources within. In the context of Gaza, that means that Israel may claim the right to govern the development of the Gaza Marine fields and use the resources for its own interests if it is an offshore part of the annexed area. However, as mentioned above, annexation is no longer an accepted way to acquire territory in international law.¹⁰⁰

If the international community rejects the partial annexation of Gaza, then it will most likely be considered occupied territory, and thus the analysis in Section 4.2 above would apply. As such, there will be an inherent conflict between two competing positions concerning the legal statute of the 'annexed' part of Gaza. In such a case, the development of marine resources in the area would not be possible in practice. Since the competing positions are not equal claims of overlapping maritime zones, as in the case of delimitation,¹⁰¹ but competing interpretations of issues such as sovereignty, territorial acquisition, and belligerent occupation, UNCLOS dispute-settlement mechanisms will not have jurisdiction.¹⁰²

Under such a scenario, the dispute over Gaza Marine would be better addressed by the ICJ or the Security Council. However, dispute settlement in the ICJ requires the consent of the parties,¹⁰³ and submission of a dispute by a state that has standing in this specific case.¹⁰⁴ It is questionable whether the PA can be a party to a case before the Court, especially if Gaza is considered a separate entity which in itself cannot be a party before the Court. Alternatively, the UN can request an

⁹⁵A. Azoulay, and A. Ophir, 'Abandoning Gaza', In M. Svirsky and S. Bignall (eds). *Agamben and Colonialism* (2012), 178, at 178–203.

⁹⁶While creating a demilitarized 'buffer zone' in Gaza is another possible option, this scenario does not refer to issues such as land sovereignty, entitlement to maritime zones, or governance of resources, and thus was included in the scope of this article.

⁹⁷M. Wagner, 'Return to Gush Katif: A Determined Movement Emerges to Resettle Israelis in Gaza', *Times of Israel*, 3 December 2023, available at www.timesofisrael.com/return-to-gush-katif-determined-movement-emerges-to-resettle-israelis-in-gaza/; S. Nakhoul, A. Mohamed Hassan and J. Saul, 'Israel Tells Arab States It Wants Buffer Zone in Post-War Gaza', *Reuters*, 2 December 2023, available at www.reuters.com/world/middle-east/israel-informs-arab-states-it-wants-buffer-zone-post-war-gaza-sources-2023-12-01/.

⁹⁸A. Bacci, 'A Legal Analysis of the Israeli-Lebanese Border Agreement for Petroleum Investors', *S&P Global Platts*, 9 January 2023, available at www.spglobal.com/commodityinsights/en/ci/research-analysis/the-israelilebanese-border-agreement-a-legal-analysis.html.

⁹⁹See Hofmann, *supra* note 90, 'Annexation'.

¹⁰⁰*Ibid.*

¹⁰¹See UNCLOS, *supra* note 5, Arts. 15, 74, 83.

¹⁰²*Ibid.*, Art. 288

¹⁰³1945 Statute of the International Court of Justice, Art. 36; Shaw, *supra* note 51, at 937.

¹⁰⁴See Statute of the ICJ, *ibid.*, Arts. 34, 36.

Advisory Opinion (AO) on the legal status of the partially annexed area.¹⁰⁵ Although not legally binding, the AO of the ICJ has significant legal weight.¹⁰⁶

5. Conclusions

Considering the analysis above, it seems that under most models of administration over Gaza's future, with the exclusion of annexation, the legal deadlock over the development of Gaza Marine can be solved, and the gas field may be developed for the benefit of the Palestinian population. However, except for Gaza as a separate political entity and possibly an ITA model, co-operation and consultation with Israel will still be required before development can begin so long as the Oslo Accords are in force. As such, any solution will require negotiations between the parties to encompass more than just the development of the field.

Even in a scenario in which the Oslo Accords are no longer viewed as applicable or relevant, any model for Gaza's economic development should include co-operation and consultation with Israel. Israel is a significant actor in the region that controls bordering maritime zones and resources, and its presence needs to be accounted for in any legal considerations. This would be critical also for future maritime delimitation between the relevant actors in the area in case additional energy reservoirs are discovered.

Although this article considered four scenarios of administration as separate models for legal analysis, the future of Gaza may include a combination of several scenarios, whether in the form of interim phases or long-term compromises between the parties involved. For example, Israel may try to unofficially annex a strip of land on the northern border of Gaza and announce it as a permanent buffer zone, while the rest of the territory would have one of the types of regimes presented in the analysis above. In this situation, the analyses of the previous sections will apply to each of the areas respectively.

More broadly, the dispute over Gaza Marine suggests that the Law of the Sea leaves much to be desired when it comes to coastal territorial disputes, leaving gaps that still need to be filled. Specifically, more work needs to be done on the legal implications of international transitional forces and the question of resource ownership in maritime zones. As maritime delimitation and marine resource utilization are critical issues with respect to disputed coastal territories, the Gaza example can become instructive for similar cases, such as North Cyprus or Western Sahara. As such, negotiators may wish to consider the implications of their policies in the Gaza case on these disputes as well, since the aftermath of the 2023 Israel-Hamas war in Gaza is likely to serve as a legal precedent for years to come.

¹⁰⁵*Ibid.*, at Art. 65; UN Charter, *supra* note 77, Art. 96. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, [2004] ICJ Rep. 136.

¹⁰⁶See, *Dispute Concerning Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Judgment on Preliminary Objections of 28 January 2021, [2012] ITLOS, paras. 168, 202–205.