

Justice for Some Law and The Question of Palestine

(Noura Erakat)

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The book *Justice for Some: Law and the Question of Palestine* by Noura Erakat, a Palestinian American human rights attorney and scholar, stands as a profoundly insightful and meticulously researched work on the Palestinian struggle for liberation and its complex interplay with international law. The book offers an advanced perspective of how law is used both as a tool of oppression and as a mechanism of resistance in the Israel-Palestine conflict. It essentially explains the conflict through five chapters, and each chapter deals with the narrative of how law is used as a double-edged sword, empowering the powerful and being used as a tool to suppress the marginalised Palestinian people. The five chapters- Colonial Erasers, Permanent Occupation, Pragmatic Revolutionaries, The Oslo peace process and from occupation to Warfare aims to project the trajectory of the conflict through the lens of international law.

Colonial Erasures

The first chapter traces the history of the struggle from the 1917 Balfour Declaration till 1966, with Israel's martial law regime. This period is a demonstration of how international institutions and legal frameworks are used as a means to justify the ends of establishing a Jewish state of Israel in Palestine. In 1917, the Balfour Declaration, issued by British Foreign Secretary Lord Balfour, committed to the establishment of a Jewish state in Palestine. The declaration negated the status of 90% of Palestinian inhabitants as 'non-Jewish' and curbed their civil and religious rights. The

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Mandate system, which was created by the League of Nations, was used by the Zionist lobby as a platform to mark the erasure of Palestinian ethnic identity. The Mandate mentioned Jewish national rights and the Jewish national home but referred to the Palestinian people as essentially non-Jewish or ‘sections of the people.’ The Great Revolt by the Palestinians (1936–39) against British rule and Zionist settlement was met with brutal suppression, which killed nearly 10% of the population.

In 1947, the British were eager to withdraw from Palestine, and so the United Nations was used as a platform to expedite their objectives. United Nations General Assembly Resolution 181 allocated 55% of Palestine to the Jewish community, which comprised just 30% of the population and 6% of the land. Immediately after the partition plan, hundreds of Palestinians were massacred in the village of Deir Yassin, and approximately 2,50,000 Palestinians were forcibly displaced, which marked the "Nakba" of 1948—meaning ‘catastrophe’ in Arabic.

Thus, this chapter marks how the framework of exception was used to navigate the Palestinian’s right of self-determination, and Palestine was treated as a *Sue Generis* (unique) exception, which allowed Britain to violate the legal norms and facilitate the design objective of the Jewish national state in Palestine.

Permanent Occupation

This section elaborates on how Israel, after its victory in the 1967 war, began building a legal framework to justify its control over the newly occupied territory in the West Bank and Gaza Strip. This served as its precursor to lay the foundation for Israel’s colonial settlement project in both territories.

Israel used legal strategies to avoid the implications of the Fourth Geneva Convention, which prohibited forcible transfer of civilian populations from the occupied territories. The first was exploring ambiguities in the legal conventions and resolutions. The United Nations Security Council resolution adopted after the war called upon Israel to withdraw from “occupied territories”, but did not mention all the occupied territories or some of them. Israel very strategically exploited the absence of the definite article “the” in the resolution to argue for a partial withdrawal from occupied territories.

The second strategy was articulated by Yehuda Zvi Blum, a law professor at Hebrew University known as the “Sui Generis,” meaning of its own kind. This argument sought to claim that the West Bank and Gaza made a unique case, and so they should not be subjected to traditional legal norms governing military occupations, and so Israel’s claims of these territories were justified as no other state had better claims.

However, Noura Erakat is against these arguments as she points out that Palestinians had a well-certified claim to self-determination as established in the 1939 white paper, the 1947 UN partition plan, and the 1948 UN Draft Trusteeship Agreement. Taking advantage of these legal vacuums, Israel implemented two colonial strategies to crystallise its control over the occupied territories. The first one was its Settler Colonial Project, and the second one was the Doctrine of Defensible borders, arguing that Israel needs to strategically control significant areas to ensure its national security. Thus, the legal and political manoeuvrings post the 1967 war were used by Israel to solidify its position in the Israel-Palestine conflict.

Pragmatic Revolutionaries

This section of the book marks the period between 1967 and 1974, when the Palestinian Liberation Organisation (PLO) and its leaders explored the opportunity of strategic engagement with international law along with guerilla warfare. PLO participated in the diplomatic conference on reaffirmation and application of international humanitarian law with the aim of securing a legitimisation of the right of the National Liberation Movement to engage in armed struggle.

However, Protocol 1 of the Geneva Conventions limited this right to those movements against colonial domination and racist regimes. Yasser Arafat gave a historic address to the United Nations General Assembly in 1974, and this was followed by the UNGA resolution (Resolution 3379), which gave a formal acceptance that Zionism is a form of racism. Thus, on the world stage, for the first time, the conflict between Israel and Palestine was recognised as the one rooted in settler colonialism and racial discrimination.

The Oslo Peace Process

This chapter of the book focuses on the period between 1987 and 1993 and presents a critique of the Oslo peace process, which was mediated by the United States but undermined Palestinian right to self-determination. The first Intifada (meaning uprising) began in 1987 and was brutally

suppressed by Israel. This was followed by the Madrid peace conference, which was organised by the United States and Soviet Union. The aim of the conference was to engineer a comprehensive peace plan between Israel and its neighbours. Initially, the PLO was excluded from the conference, but later it was included at the insistence of the U.S.

However, the Madrid peace talks were stalled, and secret backchannel negotiation deals started in Oslo. This ultimately culminated in the signing of the declaration of principles, which was called the Oslo peace process in 1993. Erakat criticises the Oslo peace process as it disregarded the critical questions of Palestinian sovereignty, border settlements, and refugees and only focused on legitimising the status of the PLO. Thus, the Oslo peace process signified the Palestinian liberation struggle that started an era of acquiescence by reliance on US mediation and a passive compromise on the question of Palestinian rights.

From Occupation to Warfare

Noura Erakat, in this chapter, examines the change in strategy of Israel of using the legal framework to govern Palestinian territories as one less related to occupation law and more resembling warfare. This was marked by particularly the rise of the second Intifada (uprising) in 2000, which was again met by brutal separation by the Israeli forces. The Sharm El Sheikh fact-finding committee established in October 2000 that Israel used disproportionate and excessive force to suppress the uprising. Israel further blurred the lines between occupation and warfare when, after 2005, with unilateral disengagement, it contended that Israeli forces had withdrawn from the Gaza Strip, but in reality, it had retained control over Gaza's airspace, seaports, borders, and population registry.

Erakat further highlights the role of legal scholars like Asa Kasher and Amos Yadlin, whose works often reflected the strategies employed by Israel's military forces. For example, during Operation Cast Lead in 2008–2009, Israel deployed a “roof knocking” strategy where warning shots were fired at building rooftops before launching airstrikes. This strategy was marked by Israel as the one to minimise civilian casualties, but in reality, it increased the risk of casualties.

Conclusion

Noura Erakat concludes by highlighting the limitation of international law in addressing the question of Palestine and how Israel has successfully manipulated the international legal framework to serve its own interest. The only viable solution, according to her, is to dismantle Israel's settler colonialism and to achieve a peace based on Palestinian rights to self-determination and equity. She acknowledges that the path to decolonisation is long, but change is responsible for which she draws the inspiration from Namibia's struggle for liberation. Thus, real transformation would require a mass movement committed to dismantling the structure of oppression and building a future based on equality and justice.