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Book Review – ‘Justice for Some: Law and the Question of Palestine’ by Noura Erakat

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Greek historian Thucydides unknowingly captured the modern realist view on today’s international legal order when he paraphrased the negotiations between the city states of Athens and Melos. In 416 B.C., at the height of the Peloponnesian War, Athens sent an armada to the island of Melos in what in today’s terms could be described as a pre-emptive strike, in order to prevent the neutral Melos from choosing sides in the conflict. When the Melians denounced the injustice of this aggression, the Athenian representatives dismissed any moral arguments by claiming, according to Thucydides, that: ‘the strong do what they can, and the weak suffer what they must.’¹

In modern days, the Israeli State does what it can to bolster its apartheid regime whilst the plight of the Palestinian people persists. International law is incapable of regulating the behaviour of the parties to the conflict, let alone fostering a durable and peaceful solution. This discrepancy between political reality and legal normativity lies at the heart of *Justice for Some: Law and the Question of Palestine*, in which Noura Erakat, associate professor at Rutgers University and human rights attorney, explores the law’s use to enable oppression, rather than emancipation, in the Palestinian struggle for freedom.

This incapacity of international law to regulate the behaviour of strong States to the detriment of the more vulnerable is no surprise. The book’s introductory chapter discerns at least two reasons why international law fails to overcome geopolitical realities. First, referring to A. Anghie’s seminal work,² Erakat rightly highlights the colonial origins of international law. Second, international law is rendered toothless by the absence of a global sovereign that can reliably enforce the rules.

Yet, scepticism does not give way to pessimism. Rather than categorically dismissing international law as a tool of oppression, Erakat critically examines the role of the law in both ‘furthering and stunting’ the Palestinian struggle for self-determination. She argues that ‘law is politics: its meaning and application are contingent on the strategy that legal actors deploy as well as on the historical context in which that strategy is deployed.’³ Central to this argument stands the concept of ‘legal work’, a term phrased by legal scholar Duncan Kennedy to describe the

strategic efforts of a legal actor to shift the understanding of the law in function of a desired outcome.⁴

Erakat strikingly visualises this concept by comparing the law to the sail of a boat. Whereas the sail only guarantees motion, it is the legal work, together with political mobilisation, that is the wind giving direction.⁵ Across five chapters, the author gives a comprehensive, historical overview of the winds that have been trying to propel the Palestinian vessel onwards in the direction of self-determination, and which winds have rendered it dead in the water.

This historical overview starts in the first decades of the twentieth century, with an account of how the Zionist movement colluded with British colonialism. Following the end of World War I, Palestine fell under British mandate rule. Erakat demonstrates how the British endeavoured in their legal work to set Palestine apart from other mandate territories, and how the mandate administration resorted to the excessive use of force to quash any demands for Palestinian self-determination.

Thus, the book demonstrates a continuum between British mandate rule and the first years of Israel's policies following the State's establishment in 1948. In addition to describing the violent strategies used in the war of 1948, of which the village Deir Yassin stands as a tragic reminder, the author also points out the legal framework that the nascent Israeli State put in place through military rule, leading to a legal process of dispossession, further entrenching the results of British colonial rule: the erasure of Palestinian peoplehood from international law.

Following the Six-Day War in 1967, and the ensuing occupation of the Gaza Strip, East Jerusalem and the West Bank, Israel further mobilised the law to strengthen its hold on Palestinian territories. Erakat points out how the phrasing of UN Security Resolution 242 contained an ambiguity, which Israel fully exploited to create a legal loophole. In the same vein, Israel stretched the limits of the concept of military necessity. In this way, in the context of the Cold War, and with the backing of the United States, Israel articulated a *sui generis* status of the West Bank and Gaza, in order to legally underpin a creeping annexation.

However, *Justice for Some* is not a one-sided focus on Israel's legal work. The book equally details Palestinian legal strategies and efforts. One of the most notable successes in this regard is the intervention of the chairman of the Palestinian Liberation Organisation to the UN General Assembly in 1974. In the momentum of this intervention, and due to Palestinian legal work against the backdrop of a then still very vibrant, worldwide anti-colonial movement, the UN General Assembly affirmed the Palestinian right to self-determination, inviting the PLO as a non-member observer.

Whilst highlighting these victories, Erakat does not shun criticism either. She poignantly analyses how the PLO failed to leverage on its legal achievements. Instead, the PLO 'abandoned the law as one of its primary tools of struggle'⁶ in an attempt to achieve a political resolution. However, the enduring imbalance of power meant that a political settlement never materialised, eventually leading to the collapse of the peace process. She also explains how the Palestinian Authority, which succeeded the PLO under the framework of the Oslo Accords, is effectively colluding with the Israeli regime.

The Israeli State, from its side, continues to malleate international law, stretching legal concepts like self-defence and introducing legal newspeak such as a 'conflict short of war'. Consequently, the international order increasingly tolerates the use of extrajudicial assassinations amidst a Global War on Terror, increasing civilian casualties in recurring onslaughts against the Gaza Strip are met by less and less legal criticism, and a purported *sui generis* status of the Palestinian occupied territories purportedly constitutes the legal basis for an unwavering process of annexation. Palestinian legal efforts to ensure some degree of accountability, such as the 2014 accession to the Rome Statute, have failed to break the status quo of Israeli dominance, which Erakat rightly describes as a *de iure* apartheid regime.

Whilst the current state of the Palestinian-Israeli conflict offers a grim perspective for the future, Erakat offers a glimmer of hope in her conclusions. After drawing lessons from the case of Namibia, which gained independence from the discriminatory South African regime in 1991, Erakat identifies an exclusively rights-oriented form of activism, which can serve as an alternative to the Palestinian Authority's *Realpolitik*. Erakat rightly lauds the Boycott, Divestment and Sanctions (BDS) Movement, considering its refusal to adopt an explicit political programme as its primary strength, and attributing the grassroots movement's potential to its emphasis on universal legal principles.

However, since the book's publishing, legal work has been mounted across the world in opposition of the movement. In May 2019, the German federal parliament adopted a motion branding the BDS Movement as antisemitic, and in France, a court convicted BDS activists for discrimination, before the European Court of European Rights sanctioned the French judgement as an infringement on the right to freedom of expression.⁷ While these incidents did not prevent a reported series of successes at the municipal level,⁸ it shows that Erakat's conclusions stand true: in order to tap into the law's emancipatory potential, the meaning of the law should be shaped within a political programme.

Justice for Some is a well-argued, critical analysis of the law's potential in the context of the Palestinian struggle for self-determination. It comprehensively explains legal concepts, such as the way in which customary international law is established, which makes the book a recommendable read for jurists and non-jurists alike. Whilst the book deserves a place in the library of legal practitioners and activists with a particular interest in the Palestinian cause, it can also serve as an excellent inspiration for students in law and political sciences to reflect on the role of law in perpetuating injustice.

About the Author

Cedric D'Hondt is a former associate of the Cairo Institute for Human Rights Studies and a trainee lawyer at the Brussels bar. He holds two master's degrees: one in Law from KU Leuven and another in Arab Democracy and Human Rights from the Université Saint-Joseph in Beirut.

¹ Thucydides (1910) *The Peloponnesian War* Book V, Chapter 89.1, translated by R. Crawley, London: J.M. Dent and Sons, consulted in the Perseus Digital Library:

<http://data.perseus.org/citations/urn:cts:greekLit:tlg0003.tlg001.perseus-eng3:5.89.1>.

² Anghie, Antony (2005) *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press).

³ Erakat, Noura (2019) *Justice for Some: Law and the Question of Palestine* (Stanford: Stanford University Press).

⁴ *Ibid.* p. 7; D. KENNEDY (2008) 'A Left Phenomenological Alternative to the Hart/Kelsen Theory of Legal Interpretation' in D. KENNEDY, *Legal Reasoning, Collected Essays* (Aurora: The Davies Book Publishers), p. 158.

⁵ Erakat, Noura (2019) *Justice for Some: Law and the Question of Palestine* (Stanford: Stanford University Press) p. 11.

⁶ *Ibid.* p. 164

⁷ European Court for Human Rights 11 June 2020, *Baldassi e.a. v. France*, n° 15271/16.

⁸ *Cf.*, for instance, a recent motion of the Municipal Council of Liège (Belgium), calling for a boycott of the State of Israel to the example set by Barcelona and Oslo.