INTERNATIONAL LAW, SOVEREIGNTY AND THE LAST COLONIAL ENCOUNTER: PALESTINE AND THE NEW TECHNOLOGIES OF QUASI-SOVEREIGNTY

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Introduction

Many Third World scholars have traced the development of the concept of sovereignty to the colonial encounters between Europe and the non-European world; from the Iberian colonization of the Americas to the European empires in Africa and beyond. A dominant feature of these encounters has been ‘economic humanitarianism’ and the ‘civilizing mission,’ which were institutionalized, formalized and codified through treaties such as the Berlin Act 1885 and through the science of administration in the Mandate and Trusteeship systems of the League of Nations. Palestine was a territory under such a Mandate, whose stated objective was to help it achieve sovereignty; however, the British management of the territory openly declared its intention to build a Jewish national home in Palestine and greatly facilitated – politically, institutionally and economically – the realization of this promise. What does this say about sovereignty and the colonial encounter under international law? Moreover, if sovereignty is conceptualized, formalized and administered through the colonial encounter, what does the case of Palestine, as an outpost of modern-day colonialism, say about sovereignty? What new technologies and doctrines are applied? And what is the role of international law and its institutions in this new articulation of sovereignty?

This essay argues that Third World sovereignty is a construct that places the Third World within the parameters of colonial relations by way of its legal claim to equality and universality. It is no longer controversial to say that the experience of the Third World, post-independence, is that of quasi-sovereignty at best – this is largely credited to the global trade rules and direct interference of World Bank conditionality and the International Monetary Fund’s structural adjustment programs. However, Palestine represents a case apart from the usual Third World experience. It was in many ways a colonial outpost that was legally sanctioned at the same time as de-colonization movements elsewhere were being recognized, the results of which remain to this day.

The case of Palestine marks a duplicitous break in international law. Post-WWII international law became the dominant language and institutional means through which de-colonization was articulated, while in Palestine, it reproduced colonial structures and legitimized a new colonial outpost. Moreover, this contradiction was not dichotomized – international law did not just allow decolonization for some while facilitating colonization for others – it colonized and liberated at the same time, in the same place. In the case of Palestine, international law recognized Israel as both the native and colonizer at the same time. It was a settler-colonial project facilitated and validated through international laws and institutions, while simultaneously being an act of de-colonization; an act of self-determination for a non-native ‘native.’ The case of Palestine demonstrates a new modality in the management of sovereignty whereby the colonial power and the colonized people share the same territorial space and reproduce asymmetrical power relations in that space under the guise of uniformity and equality via the doctrine of sovereignty.