

BOOK REVIEW

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From Coexistence to Conquest, International Law and the Origins of the Arab-Israeli Conflict, 1891-1949, VICTOR KATTAN [Pluto Press, 2009, 416 pp., Paperback, ISBN: 9781905221301]

The Arab-Israeli conflict has long been a source of intense public debate well beyond its narrow geographical boundaries. In virtually every discussion on the conflict, both sides – and neutral parties – invoke international law: they brandish United Nations resolutions, appeal to the Geneva Conventions, and rely on self-defence or self-determination.¹ In parallel with these attempts at legal justification, both sides seek legitimacy in a history that predates the conflict in its contemporary form. Thus the Arab Revolt (1916-1918), the Sykes-Picot Agreement (1916), the Balfour Declaration (1917), the British Mandate (1922), the Partition Plan (1947) and the 1948 War feed into the victorious or tragic narratives of today's Jewish and Arab populations of the old mandated territory of Palestine. The historiography and the legal argument often cover different periods of the conflict; historians tend to argue about pre-1948 Palestine, whereas lawyers dispute events since the creation of Israel.

In this book elegantly published by Pluto Press, Victor Kattan takes a critical look at the prehistory of the Arab-Israeli conflict through the prism of international law. He applies international law as it stood at the time to all major historical developments in the origins of the Arab-Israeli conflict since early Zionist immigration into Palestine in the late nineteenth century until the creation of the State of Israel in 1948-1949. He thus seeks to demonstrate that international law was systematically violated to the detriment of the Arab population of Palestine.

The book opens with beautiful ancient maps featuring Palestine through its changing statuses: first an Ottoman province, then part of the illusory Arab Independent State, then an international sphere of influence, then partitioned by the United Nations, and eventually demarcated by the 1948 War. The maps, all from diplomatic archives, provide the best introduction to a legal history of the conflict.

The avid international lawyer will however find little fodder in the first three chapters of the book, where Kattan seems more anxious to provide a concrete historical narrative as a basis for the rest of his work. In Chapter 1, he describes the emergence of Zionism in Europe in the early twentieth century and demonstrates, with extensive recourse to original quotes, its connections to European anti-Semites – including prominent members of the British government – who saw the solution to the “Jewish Question” in massive Jewish emigration to the Holy Land. Chapter 2 provides a good historical account of the critical years during and after World War I, when Britain successively and concurrently pledged Palestine to King Hussein, to the international community and to the Jewish people, before assuming the League of Nations Mandate in 1922. The peripheral treatment of legal questions in this chapter is not compelling: for instance, Kattan suggests that the incorporation of the Balfour Declaration in the preamble to the British Mandate over Palestine violated Articles 22-23 of the League of Nations Covenant,

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¹ The best selection of international law arguments on the conflict can be found in V. Kattan (ed.), *The Palestine Question in International Law* (2008).

but his quotes hardly support any such conclusion.² The bulk of Chapter 3 narrates the mounting tension on the ground through a series of Arab riots, strikes and revolts against British policy, each followed by a commission of inquiry. The three initial chapters thus seem more aimed at arousing sympathy for the Arab Palestinians than at proving a particular legal argument.

At this point in the book, Kattan moves from history sprinkled with international law to legal analysis. In Chapter 4, he examines the Hussein-McMahon correspondence through the optic of the law of treaties. As the Allied powers desperately needed a new front against the Ottoman Empire during World War I, the British promised the Arabs an independent State if they successfully rose against their Turkish masters.³ This pledge, which included the territory of Palestine, is embodied in the correspondence between King Hussein, Sherif of Mecca, and Henry McMahon, British High Commissioner in Cairo. Kattan's argument is that the correspondence constituted a binding treaty under international law, and that the British government breached it when it became the mandatory power over Palestine. The main difficulty with this view is whether the international law of the time even recognized such agreements concluded between a State and a non-State actor. Kattan convincingly argues that it did, drawing support from the later ICJ opinion in *Western Sahara*⁴ and judgment in *Qatar v. Bahrain*⁵: in both pronouncements, the Court recognized the legal nature of agreements concluded in the nineteenth century between European States and local sovereigns.

In Chapter 5, Kattan seeks to demonstrate that the Arab population of Palestine enjoyed the right to self-determination under the class-A Mandate provided for by Article 22(4) of the League Covenant. He quotes many British officials acknowledging this right and its violation by their government. He does not however consider a more critical view of the Mandates System as precisely denying peoples their right to self-determination, at least provisionally until they were deemed fit for independence⁶; such a view finds support in the ICJ's pronouncement in the *Namibia* Opinion that "the *ultimate* objective of the sacred trust was the self-determination and independence of the peoples concerned".⁷ According to this position, the Arab population of Palestine would still have enjoyed the right to self-determination, but only upon termination of the Mandate in May 1948. Whether a concurrent right to self-determination existed for the Zionists who had immigrated into Palestine is less clear from the book.

The next object of legal scrutiny (Chapter 6) is the 1947 UN partition plan. Six months before the end of the British Mandate, General Assembly Resolution 181 recommended a division of the mandated territory into two distinct, though unequal, Arab and Jewish States. Kattan offers fascinating insights into the UN debates and delivers a damning condemnation of the plan as a violation of international law. He regretfully recalls the defeated attempt – by one vote! – of Arab States to request an advisory opinion from the ICJ on the legality of the partition.

² E.g. at 55, when he relies on Art. 22(4) providing that "[t]he wishes of these communities here the population of Palestine] must be a principal consideration in the selection of the Mandatory." It is unclear how the establishment of a Jewish national home in Palestine relates to the selection of the Mandatory power by the League of Nations.

³ These events provide the storyline of the movie *Lawrence of Arabia* (1962).

⁴ *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 12.

⁵ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994, p. 112.

⁶ See A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004).

⁷ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports, p. 16, para. 53; my emphasis.

The partition plan was never enforced, and the map was eventually drawn by war. In Chapter 7, Kattan sheds light on the neglected armed conflict opposing Jews and Arabs in the period between the partition resolution (November 1947) and the end of the British Mandate (May 1948), before the declaration of independence of Israel and the international armed conflict with neighbouring Arab States. Drawing on the work of the new Israeli historians, Kattan details the systematic attacks on the Arab population by Zionist armed groups in order to expel them from the future Jewish State.⁸ He shows how these crimes violated pre-Geneva law of armed conflict, but does not explain how Zionist armed groups were bound by such rules before the creation of the State of Israel.

Chapter 8 looks at the 750,000 Palestinian refugees who fled their homes during the fighting in 1948 and have been denied return since. Kattan does not purport to enter the complex academic debate on the existence of a right of return for the refugees and their descendents but instead relates the diplomatic response to their plight by the international community (notably General Assembly Resolution 194), which he reads as endorsing such a right. He therefore provides most valuable material in support of the right of return but without an ancillary legal argument.

The most challenging argument of the book is made in the final chapter on the creation of Israel. Since the declaration of independence on 14-15 May 1948, international lawyers have struggled to range the case of Israel into one of the traditional categories of State creation.⁹ At the beginning of Chapter 3, Kattan had summarized the “only” five ways of acquiring territorial sovereignty: conquest, accretion, cession, occupation of *terra nullius*, and prescription. He takes this further in Chapter 9 and concludes that “the birth of Israel in 1948 was quite simply one of the twentieth century’s last examples of a successful *conquest*.” He goes on to show that conquest was already outlawed by 1948 and that the creation of Israel therefore came about in violation of international law. The main merit of this view is that it accounts for the injustice done to the Palestinians in the process of Israel’s creation, notably through the systematic attacks and expulsion of civilians related earlier in the book. Its weakness however lies in that the five modes of territorial acquisition, and conquest in particular, seem tailored for relations between existing State entities and not for the creation of a new State; it is difficult to understand as a matter of international law how two peoples dwelling on roughly the same territory, and admittedly exercising their respective right to self-determination, can end up conquering each other. As often in the book, Kattan does not spell out the consequences of the alleged breaches of international law. The reader is thus left with a sense of fatality about the value of international law until the time of a just settlement of the conflict.

“From Coexistence to Conquest” is a formidably well-researched book in an area of the Arab-Israeli conflict neglected by international lawyers. The author’s wide-ranging sources on the origins of the conflict make the book an enjoyable historical narrative even for the reader without prior exposure to pre-1948 Palestine.¹⁰ The international lawyer will also value the brilliant use made by Kattan of contemporary diplomatic documents and legal writings from all sides of the conflict. The numerous legal issues raised throughout the book could easily build a general course of international law; yet in their

⁸ See inter alia I. Pappé, *The Ethnic Cleansing of Palestine* (2007).

⁹ See a summary in J. Crawford, *The Creation of States in International Law* (2nd ed, 2006) 421-434. Crawford’s view is that Israel was created by secession from the self-determination unit of Palestine.

¹⁰ An excellent introductory reading however is the relevant sections of E. Rogan, *The Arabs: A History* (2009); for a more detailed work, I. Pappé, *A History of Modern Palestine* (2nd ed, 2006).

treatment, Kattan seems anxious to keep his writing accessible to a lay audience of non-lawyers. As a result, his legal analysis is not always compelling and proves difficult to discuss in traditional academic fashion. Still, the exceptional amount of sources uncovered for this book, especially in the hundred pages of endnotes, will considerably enrich any further discussion of the subject.