Victor Kattan, *From Coexistence to Conquest – International Law and the Origins of the Arab–Israeli Conflict, 1891–1949*, London: Pluto Press, New York: Palgrave Macmillan, 2009, 456 pp, ISBN 9780745325781, £26.50/$54.95 (pb).
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*From Coexistence to Conquest* is not just an ordinary book on the Israeli–Arab (Palestinian) conflict. Its gist is that Christians, Jews, Muslims, and others lived in a relative harmony for over a thousand years in North Africa and the Middle East until European anti-Semitism and British colonization started to go hand in hand as of the end of the nineteenth century (pp. xix, 258). The book stands out among the many other scholarly writings about the conflict by rebutting a common misconception that the Arab–Israeli conflict was inevitable (ibid.) and by stressing that Jews, and not only Arabs, were victims of European misbehaviour in the Middle East (p. 15).

The book brings to light new material on the Palestinian question, but this, albeit a monumental achievement in itself, is not its most outstanding feature. That is the discussion of international legal issues related to the origins of the Arab–Israeli conflict in the broader political and historical context of anti-Semitism, colonialism, Zionism, the scramble for the Middle East, Arab opposition to political Zionism, the question of self-determination, and the like. In so doing, the book does not mince matters about international law being integral to the origin and the existence of the Arab–Israeli conflict as well as to its peaceful settlement.

Concerning the origin of the conflict, the book argues that the recognition of the historical connection of the Jewish people with Palestine by successively the British government in its 1917 Balfour Declaration and the League of Nations in its 1922 (British) Mandate for Palestine was inherent in emerging European notions of nationalism and self-determination in general and Zionism in particular. This holds true all the more since, under the veil of international law, these concepts provided anti-Semites with a 'decent' solution to the Jewish Question, 'because it encouraged Jewish immigration out of Europe' (pp. xviii, 6, 36).

As regards the continued existence of the conflict, the book gives ample evidence that the claims of the Palestinian people to independence and statehood from the very beginning find more justification in international law than do the Zionist claims, 'even according to the positive tradition of international law associated with British imperialism and colonialism' (p. xix). What is more, Balfour himself admitted that the Zionists had no legal claim to Palestine (p. 125). This may explain why the purchase of land in Palestine from Arab and other landowners by Jewish funds had played a predominant role in the conflicting Jewish (Israeli) and Arab (Palestinian) claims to territory and statehood during the mandate and after the 1967 Israeli occupation of the West Bank and the Gaza Strip. Kattan reminds us that according to a resolution of the International Zionist Congress, adopted in 1920, land bought from Palestinian and other landowners in Palestine by enterprises such as the Jewish National Fund became the common property of the Jewish people and that the Mandate for Palestine, as an instrument of international law, facilitated this purchase (pp. 3, 36).

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With respect to the peaceful solution of the conflict, international law never gave 'a blank cheque to colonise Palestine' (p. 253). Kattan confirms in his epilogue the significance of a peace treaty between the two states – Israel and Palestine – 'based on equity, justice and principles of international law, which have been sidelined throughout the course of the Arab–Israeli conflict to the detriment of all concerned' (pp. 260–1). One can only endorse the message that in the absence of such conditions 'any peace agreement is doomed to fail, as evinced by the collapse of the Oslo Peace process in the 1990s and all the other failed endeavours' (ibid.).

Unlike Arab leaders at the time (p. 63) and unlike Article 20 of the 1968 Palestine National Charter, Kattan does not attack the legality of the Mandate for Palestine, but rather the practicability of the incorporation of the Balfour Declaration. His book shows cogently that, as a result of this incorporation, the mandatory power came face to face with the difficulty of reconciling the pro-Zionist terms of the mandate with the League of Nations' sacred trust of civilization – Article 22 – regarding the peoples who inhabited Palestine. This reconciliation urged the mandatory power and its supervisors – originally the League of Nations Council and subsequently the UN General Assembly – to proceed legally and politically as if 'both Palestine's indigenous Jewish and Arab inhabitants had a claim to Palestine on the basis of the principle of self-determination' (p. 126), finally leaving no other option than partition. However, the resulting roadmap to a peaceful partition has not so far been practicable. Today, the paradox threatens that instead of there being a Jewish national home in – a large part of – Palestine, as envisaged by the Balfour Declaration and in the mandate, the Palestinians now essentially face the reverse situation that the UN partition resolution would have only brought forth the establishment of a 'Palestinian national home' in – a small part of – Israel (pp. 5, 60, 127, 255).

Referring to the 1950 Advisory Opinion of the International Court of Justice (ICJ) on the *International Status of South West Africa*,[1] Kattan correctly endorses the viewpoint that the sacred trust of civilization, provided for in the Covenant, still applies to the UN General Assembly in order to secure Palestinian self-determination (pp. 144–5). It is more striking that, according to him, despite the opposing views of the then UN Secretary-General Trygve Lie, the then government of Israel, and later the ICJ Advisory Opinion concerning *South West Africa (Namibia)*,[2] the better view would seem that General Assembly Resolution 181 (II) of 29 November 1947 on the partition of Palestine was a recommendation and not a legally binding decision (pp. 154–5). His main arguments – based on the wording of the resolution and the UN Charter's provisions on the functions and powers of the General Assembly and the Security Council – are not convincing. What is more, they play Israel's present game of ignoring the rule of law by arguing away the present validity of the UN partition resolution as the cornerstone of the peace process and maintaining the claim that the West Bank and Gaza Strip have not been occupied since 1967 but are disputed territory.

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1 *International Status of South West Africa*, Advisory Opinion of 11 July 1950, [1950] ICJ Rep. 128.
2 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, [1971] ICJ Rep. 16.

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According to the Guide to the Mideast Peace Process, published on the official website of the Israeli Ministry of Foreign Affairs, the right of Jews to establish homes in these areas, as provided for in the mandate, 'could not be legally invalidated by the Jordanian and Egyptian occupation which resulted from their armed invasion of Israel in 1948, and such rights and titles remain valid to this day'.[3] By excluding official websites as source material, Kattan missed the chance to address the misleading Israeli Guide. This lapse is the more remarkable, since the 2004 ICJ Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[4] makes it clear that Israel must ensure freedom of access to the holy places under its control since 1967, by virtue not only of the Mandate for Palestine, but also of the partition resolution.

Admittedly, the ICJ does not pronounce openly on the legal significance of this resolution. After all, it states that the conflict can be brought to an end only through the implementation in good faith of all relevant Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973), without referring to the partition resolution of the General Assembly.[5] But the same inconsistency remains in Kattan's book. It offers no opinion on whether the termination of the mandate in 1948 was based on a declaration by the mandatory power or on the partition resolution. Nevertheless, despite the fact that the League of Nations Covenant and the mandate system did not deal explicitly with the authority to terminate or revoke a mandate, the author of the book shares the opinion of the former Special Rapporteur on Human Rights in the Occupied Palestinian Territory to the UN Commission on Human Rights (later the Human Rights Council), John Dugard, that the right of revocation was regarded as an implied part of the mandate system (p. 145). In the League of Nations, the Council had that right; in the United Nations it indeed rested with the General Assembly.

Kattan's study focuses on the period 1891–1949 in order to show that the present case of the Palestinian people stands out from other claims to self-determination in that this claim results from the League of Nations' mandate system and the corresponding authority and responsibility of the United Nations for its settlement. This explains the large number of UN resolutions and the persistent interest of the UN in resolving this dispute (p. xix). The 1947 partition resolution of the General Assembly is at the centre of that. In the final chapter of his book, entitled 'The Creation of Israel', Kattan rejects the argument that this resolution is inapplicable because it was superseded by the 1967 Security Council Resolution 242 on the principles for the establishment of a just and lasting peace in the Middle East. He raises the question whether a Security Council resolution, not based on Chapter VII of the UN Charter on action with respect to threats to the peace, breaches of the peace, and acts of aggression, may supersede the territorial formulation contained in the General Assembly partition resolution: 'After all, the 1947 UN Partition Plan is the

3 'Israeli Settlements and International Law', 20 May 2001, available at www.mfa.gov.il/mfa/peace%20process/guide%20to%20the%20peace%20process/israeli%20settlements%20and%20international%20law.

4 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, [2004] ICJ Rep. 136.

5 Ibid., para. 162.

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only authoritative document produced by the United Nations to resolve the Palestine Problem' (p. 246). Kattan does not make clear how this entirely correct observation relates to his view, mentioned above, that the resolution was a recommendation.

In No Safe Place, its report of 30 April 2009 to the League of Arab States,[6] of which Palestine is a member, the Independent Fact Finding Committee on Gaza, chaired by John Dugard, underlined that Palestinian statehood is not the result of the Oslo Agreements but of the right to self-determination of the Palestinian people in conjunction with the partition resolution:

> Whatever the present legal status of the Oslo Agreements, these Agreements do not deny that Palestine is a state, their main purpose being the recognition of Palestine by Israel – and vice versa – as a basis for a peace treaty between the two states, not the establishment of the State of Palestine.[7]

Kattan does not give a decisive answer as to whether Palestine is a state under international law by virtue of the 1988 Declaration of Independence and recognition by almost 150 states, in addition to its full membership of the League of Arab States (LAS) since 1976, or whether its statehood depends on a decision of the United Nations and/or Israel's discretion. It is true that these events took place after 1949. However, the book intends to demonstrate that 'the conflict, and many of the problems associated with it, can be traced back to the Mandate' (p. 7). These problems include the refusal of Arab states to recognize Israel and their opinion that Palestine thus is the sole rightful claimant to the territory of the former Mandate for Palestine, sealed in 1976 by the full membership of the LAS, but revised in 1988 and in the following years. The author himself considers it to be an intriguing, gaping hole in the literature that it is silent on the serious and difficult questions for international lawyers, which arise from the manner in which Israel achieved its statehood in 1948–9 (p. 169). It is more surprising that he does not show his colours in answering difficult legal questions arising from Palestine's obtaining statehood. An explanation or excuse might be that the Palestinians prefer to bide their time out of fear that a clear position may endanger the role of international law in at last restraining the power politics of Israel and its allies, particularly the United States.

My comments above are inspired by Kattan's otherwise profound analysis of the genesis of the Arab–Israeli conflict. All in all, the reading of *From Coexistence to Conquest* is highly recommended, and is even indispensable for anyone who seriously cares about international law as the only reliable and effective guide enabling all actors involved to find their way back from conquest to coexistence between Israel and Palestine and in the Middle East at large.

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6 Report of the Independent Fact Finding Committee on Gaza: No Safe Place, Presented to the League of Arab States, 30 April 2009, available at www.arableagueonline.org/las/picture_gallery/reportfullFINAL.pdf.

7 Ibid., at 147, para. 606.

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