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2. FROM COEXISTENCE TO CONQUEST: INTERNATIONAL LAW AND THE ORIGINS OF THE ARAB-ISRAELI CONFLICT, 1891-1949

Victor Kattan

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Reviewed by Mazen Masri*

Zionism, it was proclaimed in the First Zionist Congress in Basel in 1897, “aims at the creation of a home for the Jewish people in Palestine to be secured by public law.” The choice of the words “public law” was a compromise between different streams within the delegates of the congress; one that wanted to explicitly refer to the “law of nations,” and the other that was willing to make do with “law” only.¹ Law, or to be more precise, international law, has always been central to political Zionism. After all, international law reflects the aggregation of the agreements, opinions and interests of those who decide what the law is, and there is little doubt that when the Zionist Congress met in 1897, the law was what the imperial powers decided was law. In order to create a new political entity, one needed the recognition of those powers, and the recognition of the law to gain legitimacy. Hence the centrality of law to the Israeli-Arab conflict. Yet at the same time, most of the Palestinian arguments and demands are based on international law. This leaves a lot of ambiguity about what the law is, how it is interpreted, and how it interacts with other historical events and political realities. FROM COEXISTENCE TO CONQUEST tries to clear up this ambiguity.

In order to understand how the law works, one needs to situate it in its political and historical context, otherwise it loses its relevance. That’s what FROM COEXISTENCE TO CONQUEST does. It is a novel attempt to examine the legal history of the Israeli-Arab conflict, describing law as one factor among many that shaped the development of events. In this book, Victor Kattan, who is currently a teaching fellow at the Centre for International Studies and Diplomacy at the University of London’s School of Oriental and African Studies (SOAS), offers an insightful analytical contribution to the legal scholarship on the Israeli-Arab conflict, focusing on the period beginning at the end of the nineteenth century until the creation of Israel in 1948.

Kattan makes an argument for Palestinian independence and self-determination. He further argues the case for Palestinian independence holds true even according “to the positive tradition of international law associated with British imperialism and colonialism”.² Though he is not the first person to promote such an argument, FROM COEXISTENCE TO CONQUEST makes the argument in an elegant and comprehensive way. In his book, Kattan poses a challenge to international lawyers who have written on the issue, and often criticizes them for shying away

* Mazen Masri is a PhD Candidate at the Osgoode Hall Law School, York University, Toronto, Canada.

¹ DAVID VITAL, THE ORIGINS OF ZIONISM 364-370 (1975).

² VICTOR KATTAN, FROM COEXISTENCE TO CONQUEST: INTERNATIONAL LAW AND THE ORIGINS OF THE ARAB-ISRAELI CONFLICT, 1891-1949 XIX (2009).

from using words such as “conquest,” a term that, Kattan argues, is the best way to describe the events of the 1948 war.³

The book traces the history of the Israeli-Arab conflict, and raises questions about the events that have shaped this history, including the political agreements, understandings and conspiracies that led to the 1948 war. Asserting at the beginning of the book that law is the end product of politics,⁴ Kattan then uses political and historical analysis to inform the legal analysis of the conflict, thus providing a broader context that allows the reader to understand the interplay between law and politics, and how law is used by those in power as a tool to achieve their ends.

The book is divided into nine chapters. In Chapter Two, arguably one of the most important chapters of the book, we see how, paradoxically, to understand what happened in Palestine one should begin in Europe—mainly eastern Europe, but also central and western Europe—and even North America. In this chapter, Kattan makes the link between the rise of anti-Semitism in Europe and the development of Zionism—an issue often overlooked, especially by those writing from a legal perspective. He also discusses the convergence of interests between the Zionist movement and European leaders (mainly British), many of whom are anti-Semites themselves, and how the Zionist movement found a strong and important ally in them. Kattan concludes that “[I]nternational law was integral to the Zionist movement, which was inherently linked to European colonialism, British imperialism and Western capitalism as well as European notions of nationalism, self-determination and anti-Semitism.”⁵

In the next three chapters, Kattan discusses the conflicting pledges given to the Zionist movement, embodied by the Balfour Declaration, and the pledges given to the Sherif of Mecca by Sir Henry MacMahon, the British High Commissioner in Cairo, who handled the negotiations with the Arabs before the eruption of the Arab Revolt in 1916. Here Kattan analyzes the letters exchanged by Sherif Hussein and the British High Commissioner, and assesses them according to the legal standards that prevailed at the time. He concludes that the correspondence amounted to a valid agreement binding on both sides and that contrary to some of the views promoted to justify the conflicting pledges, Palestine was not excluded from the Hussein-MacMahon correspondence.

Questions of self-determination and partition plans are discussed in the next two chapters. Here Kattan assesses the applicability of the right to self-determination (or principle, as it was only a principle and not a part of human rights yet) to the two groups living in Palestine, the indigenous population and the mostly European Jewish settlers. In his analysis, Kattan shows how “the claim of Palestine’s indigenous inhabitants to self-determination was based on effective occupation and continuous habitation whereas the Zionists’ was aligned to British imperialism.”⁶ Kattan also discusses the 1947 UN Partition Plan and the legal, moral and political grounds for objecting to it. Again, he makes the link with events that occurred in Europe and their effect on Palestine by highlighting the assertion that the Partition Plan allocated disproportionate areas to the Jewish state in order to solve Europe’s refugee problem at a time when Western Europe and North America were refusing to resettle those refugees mainly because they were Jewish. In the

³Id. at 241.

⁴id. at 8.

⁵Id. at 36.

⁶Id. at 125.

last three chapters, Kattan focuses on the 1948 war, the refugee problem and the creation of the state of Israel and its subsequent admission to the UN.

The book's novelty lies in its use of new information, data and facts revealed in the last twenty years to update the legal analysis of events. This is especially evident in the chapter about the refugee problem and the chapter about 1948 war. In the latter, Kattan observes that international lawyers tend to overlook the armed conflict of 1948, instead of analyzing the chronology of events leading up to and during the war, thus creating a gap in the literature. Kattan takes international lawyers to task for adhering to a simplistic and inaccurate characterization of the 1948 war, and proceeds to fill the gap by providing new analysis that closely examines the course of the 1948 conflict and the atrocities that took place during the war. Kattan does so to "challenge the prevailing view in legal scholarship that the Palestinian Arabs and the Arab states were the aggressors of 1948 who wanted 'to throw the Jews into the sea.'"⁷

This book is unique in that it is about legal history and not a book about law per se. Probably with the exception of Musa Mazzawi's *PALESTINE AND THE LAW: GUIDELINES FOR THE RESOLUTION OF THE ARAB ISRAEL CONFLICT*⁸ and *THE PALESTINE PROBLEM IN INTERNATIONAL LAW AND WORLD ORDER*⁹ by Thomas and Sally Mallison, both of which include some history and political context but are still highly focused on law, Kattan's book stands alone in the field of legal history of the Israeli-Arab conflict for the periods it covers. The focus on history and political context is evident in the remarkable amount of archival material used and the references to old legal sources in an attempt to establish the law as it was at the time when relevant events took place. Although the book contains legal analysis of the kind that would mainly be familiar only to international lawyers, Kattan endeavours to simplify the legal issues and make them accessible to a novice reader. In this he meets his objective of writing a book that appeals to a wider audience of readers.

Yet, despite the enormous effort of putting the law into its broader context, explaining the results and outcomes, and some attempts at critiquing the law, one aspect that is missing in this book is Third World Approaches to International Law (TWAIL) to critique the role that international law has played in the Israeli-Arab conflict, with the exception of one reference to Antony Anghie's work, which is cited in a narrow context.¹⁰ The reader notices this deference to conventional and orthodox approaches to international law. While this deference is understandable, since one of the author's goals is to show that Palestinians were entitled to independence and self-determination even according to a very traditional or even imperial reading of international law, it is a bit surprising, given the context of the book and the fact that at some points Kattan uses TWAIL methodology to critique the law. Still, this should not detract from this otherwise impressive piece of work.

⁷ Id. at 172.

⁸ MUSA MAZZAWI, *PALESTINE AND THE LAW: GUIDELINES FOR THE RESOLUTION OF THE ARAB-ISRAEL CONFLICT* (1997).

⁹ THOMAS W. MALLISON & SALLY V. MALLISON, *THE PALESTINE PROBLEM IN INTERNATIONAL LAW AND WORLD ORDER* (1986).

¹⁰ Anthony Anghie, *Colonialism and the Birth of International Institutions: Sovereignty, Economy and the Mandate System of the League of Nations*, 34 *New York University Journal of International Law and Politics* 513 (2001-2002).

Kattan ends his book by quoting Sir Arthur Balfour, who says that his Declaration, and the policy of creating a Jewish home in Palestine, is a “great experiment, because nothing like it has ever been tried in the world, and because it is entirely novel.”¹¹ While the suffering of the millions displaced ever since, the thousands killed, and the further millions whose lives have been affected over the past hundred years until today, calls into question the success of Balfour’s experiment, Kattan’s book successfully and methodically shows how law was used, or rather abused, in this experiment.

¹¹ Kattan, *supra* note 2 at 251.

The Arab-Israeli conflict includes the political tension, military conflicts and disputes between Arab countries and Israel, which escalated during the 20th century, but had mostly faded out in the early 21st century. The roots of the Arab-Israeli conflict have been attributed to the support by Arab League member countries for the Palestinians, a fellow League member, in the ongoing Israeli-Palestinian conflict, which in turn has been attributed to the simultaneous rise of Zionism and Arab nationalism. From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949. Victor Kattan. Foreword by Richard Falk. The Chapter on the 1948 conflict seeks to update international lawyers on the scholarship of Israel's "new" historians and reproduces some of the horrific accounts of the atrocities that took place. The penultimate chapter argues that Israel was created through an act of conquest or subjugation. The book concludes with a sobering analysis of the conflict arguing that neither Jews nor Arabs were to blame for starting it. ISBN: 978-1-84964-333-7. Subjects: Law, History. — Close Overlay. Table of Contents. He dates the Arab-Israeli conflict in its primary stage both legally and politically, and uses a unique and solid methodology. This is rare in the field of politics and international law. The book is inclusive of that volatile historic period, discussing events, policies and laws, their consequences and how they interact locally, regionally and internationally. Perhaps one of the main ideas and values that Kattan puts forward in the book is that law is and remains a key factor in the Arab-Israeli conflict and that its role is important and cannot be ignored. Complying with a law does not compr From Coexistence to Conquest, International Law and the Origins of the Arab-Israeli Conflict, 1891-1949. Autores: Robbie Sabel. The reality is, however, that the parties in the Middle East conflict are still interpreting, for example, the 1915 correspondence between Sir Henry McMahon, the British High Commissioner in Egypt, and Sharif Hussein of Mecca. Kattan's book is an invaluable, albeit partisan, resource book for those of us who enjoy delving into such minutiae of the legal arguments of Israelis and Palestinians. Seemingly arcane issues of early 20th century international law are solemnly debated whenever Israeli and Palestinian lawyers get together to try to solve their problems.