

Foreword

The assassination of Prime Minister Yitzhak Rabin adds considerable poignancy to this publication.

By analysing past and present problems and future possibilities this book makes a serious contribution to an understanding of relations between Arabs and Israelis. It is a sequel to a Conference at the School of Oriental and African Studies on the legal aspects of the Arab-Israeli agreement. Attended by many lawyers on each side of the discussion the Conference was organised by His Honour Judge Eugene Cotran and the Director of the Centre of Islamic and Middle Eastern Law at the School, Dr Chibli Mallat. I had the privilege of opening the Conference and hearing some of the speeches and I am very glad that it has proved possible to publish them more widely.

The Conference was sub-titled "Legal Perspectives" but the papers do not just deal with legal issues. They give an extensive explanation of the history of the conflict, indeed in general terms of the history of the area from the Ottoman Caliphate through the British Mandate to the Israeli occupation. They concentrate more particularly on the period of "transition from conflict to reconciliation" in 1992 to 1994. They analyse the difference in attitude of the Israelis and the Palestinians in the approach to a solution, the importance of the Declaration of Principles and the inter-action of politics and law. And some very practical human problems are revealed – who is to be responsible for the enforcement of human rights particularly in the area under the Palestine Authority's control? How far, if at all, can one distinguish between Jewish settlers on the West Bank, for example, those who went there as a religious duty or a national requirement and those who went there for other reasons? How far can those Palestinians who collaborated with the Israeli occupation be protected not just from physical violence but also from social ostracism? How far should terrorists be punished for the past?

Above all, however, it is the analysis of the legal issues which forms the core of the book. Some interesting legal issues are considered. What is the legal definition of "occupation" in the present context? Who in law, if anyone, is entitled to the territory of the West Bank? What is the status of and who is responsible internationally for the acts of the Palestinian Authority? The extraordinarily delicate and difficult task of the Supreme Court of Israel in some of the cases which come before it is well shown as is the no less difficult task of producing an acceptable draft basic law for the national authority in the transitional period.

The opening words of the Declaration of Principles read:

The Government of the State of Israel and the Palestine Liberation Organization team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people, agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process.

It is tempting – maybe premature, maybe naive, on the other hand perhaps constructive – to ask whether the regional integration in Europe has any lessons for the region with which these papers are concerned. Regional co-operation is being explored in so many parts of the world – in the Far East, in South Asia, in South America, in NAFTA, that if the agreements and the peace in the Middle East hold, it is not unreal to think for the region in terms of economic co-operation, of social and environmental improvements jointly planned and executed, of common commercial policies towards third nations. If the long-standing enemies of three terrible wars could subscribe to the preamble and the aims of the Treaty of Rome, it is not impossible that the political will can come about to produce perhaps more limited aims and more limited co-operation but nonetheless a meaningful and a real joint endeavour. The Protocol on Economic Relations attached to the Cairo Agreement and the proposal for a Regional Development Bank for the Middle East provide a start. There are indications in the book of the way in which this might go.

It is here that the role of the courts and the importance of the rule of law have something to show. Without the Court of Justice the European Community would not have advanced as far as it has; without the unwritten principles defined by the Court to ensure the protection of fundamental rights, to control the abuse of power and to prevent backsliding by the States in Treaty obligations, the citizen could not have benefited from the foresight of the founding fathers in the years following 1945. In the present book the stress on the importance of the rule of law and on the definition of legal rules is firm. The role of the courts in the context of the Arab-Israeli agreement is considered. These matters indicate that there is to some extent a common basis and that there are some common problems.

There are, of course, more fundamental differences, deeper seated antagonisms, historically longer roots to the problem here than those which had to be faced by Europe. Yet the exploration and the study of what Europe has done, of what mistakes it has made, of what it has achieved, must be worthwhile in the present context and may have something to teach. Even the history of the association agreements between Israel and the Community may point the way to the basis of a new grouping in the Eastern Mediterranean. On a non-political level there may be some analogies to be drawn with the problems which Europe faced. Raja Shehadeh notes:

There were also fundamental differences between the Israeli and Palestinian legal thinking which became evident in the course of the negotiations. The Israeli legal community follows the English common law tradition of gradual development from decision to decision. The Palestinian legal community thinks abstractly in terms of codes and first principles, not concretely in terms of cases. This is partly because the Palestinian jurists acquired their education in such law faculties as Egypt, Syria and Lebanon where the civil law system is used.

It is unnecessary to make the obvious comparison in Europe of a difference which had to be, and to a significant degree has been, accommodated.

This is perhaps a slight matter in comparison with the other political, economic and military questions. But it has relevance.

For those with a detailed knowledge of the problem this book will be of considerable interest; it is of no less value to those like me who have only a broad background awareness of the history and the problems.

Slynn of Hadley