

BOOK REVIEW

REVIEWING JOHN QUIGLEY, *THE STATEHOOD OF PALESTINE: INTERNATIONAL LAW IN THE MIDDLE EAST CONFLICT*. CAMBRIDGE, ENGLAND, CAMBRIDGE UNIVERSITY PRESS 2010. PP 346, HARDBACK ISBN-13: 978-0521768115

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INTRODUCTION

Professor John Quigley's¹ *The Statehood of Palestine: International Law in the Middle East Conflict* seeks to assert that Palestine is a state. *Statehood* aims to advance the position that Palestine has acted, and has been treated, as a state in relation to legal instruments and international bodies since it emerged from 400 years ago under the Ottoman caliphate and since the mid-20th century termination of the League of Nations' mandate system. Drawing heavily on primary-source historical documents, Quigley's methodical legal analysis of statehood set against the complex backdrop of the Palestinian-Israeli conflict makes the book a valuable resource for readers approaching the subject from either a legal or political science perspective.

METHOD AND SUMMARY

Statehood is primarily a legal analysis of the instruments, court decisions, and advisory opinions pertaining to statehood in general and Palestine in particular. Quigley's textual interpretation of the decisions, treaties, and declarations is enhanced by complementary exposition of ambassadorial and delegate papers; many of Quigley's sources are newly available through

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1. Harvard-educated John Quigley is President's Club Professor of Law at Moritz College of the Law at The Ohio State University, where he teaches International and Comparative law. Moritz College of the Law, *Faculty: John B. Quigley*, <http://moritzlaw.osu.edu/faculty/bios.php?ID=42>.

digitization of British Library archives. In addition, the author undertook the English translation of all of the quotations of passages from non-English sources that appear in the book.

Statehood is divided into four Parts. Part One: A New Type of State, and Part Two: Statehood in Turmoil, outline the modern political and legal history of Palestine, providing the foundational background of the current state of affairs in Palestine. Part Three: Palestine in the World Community, describes how Palestine interacts with other states and intergovernmental organizations (“IGOs”). Part Four: The Contours of Statehood, examines the various elements or indicia of statehood and analyzes Palestine against them, all the while maintaining a critical eye on how these elements of statehood have not been applied consistently within the global community.

PART ONE: A NEW TYPE OF STATE

Quigley’s overview of the world’s legal treatment of Palestine begins with the close of World War I and the work of the League of Nations in fashioning accommodations for the former Ottoman territories. France and Britain agreed in the secret Sikes-Picot agreement to promote an Arab state while enlarging their own influence in the region. Both Russia and the United States responded: Leon Trotsky brought the treaty into public light, denouncing European imperialism, and the twelfth point of Woodrow Wilson’s famous Fourteen Points called for “an absolutely unmolested opportunity of autonomous development.”² Quigley argues that an international consensus existed regarding the sovereignty of local peoples, which stopped the victorious powers from colonizing the territories of the defeated countries. However, after World War I, the infrastructures of the various territories were generally in states of disrepair, and there was also fear that merely wresting the occupying Turks from power would thrust the ungoverned countries into instability. In response, the League of Nations developed the mandate system. Palestine is one of the Class A states described in Article 22(4) of the Covenant for the League of Nations: a “community” that had “reached a stage of development where their existence as independent nations can be provisionally recognized,” and to whom the Mandatory state (for Palestine, Britain) would render “administrative advice and assistance” until no longer required.³ Part One of the book continues by describing the mandate system in law and practice, with particular focus on comparing the Britain-Palestine mandate to other Class A mandatory states. This Part also examines the treatment of Palestine during the mandate period, for example, in proceedings concerning the Ottoman public debt, or as a state under most-favored nation treaties. As the years since “the Great War” passed,

2. JOHN QUIGLEY, *THE STATEHOOD OF PALESTINE: INTERNATIONAL LAW IN THE MIDDLE EAST CONFLICT* 17 (2010).

3. *Id.* at 25.

the portrait that emerges is of “a state awaiting independence”, the title of Chapter 7.

PART TWO: STATEHOOD IN TURMOIL

The mandate system was envisioned as one of tutelage and benefit to the recipient state and the mandatory power was obligated to bring the mandate state to independence. The League of Nations dissolved in 1946, and with it an instrument providing for the British mandate with Palestine. However, of the Class A mandate states, only Palestine remained without a plan for independence.

In Part Two, Quigley describes the efforts to regularize Palestine’s status in this transition period. The newly formed regional League of Arab States’ Charter provided a priority for Palestine independence, and the League approved a Palestine-delegate Arab Higher Committee to participate in the League’s work to realize Palestine’s independence within the former-mandate borders.⁴ The United Nations contemplated an arrangement of trusteeship for the remaining mandates, and the United States drafted a tentative trusteeship plan for Palestine, to be exercised by the United Nations. Britain prepared to withdraw from Palestine on May 15, 1948.

All of these plans came to a halt on May 14, when the Jewish Agency declared an independent state of Israel. While U.S. delegates continued to speak in favor of the proposed trusteeship plan at the General Assembly, President Truman—acting without the consultation of his diplomats to Palestine or the State Department, and in contravention of the United Nations trusteeship plan—recognized Israel. “Pandemonium” broke loose in the General Assembly upon hearing the news.⁵ Within Palestine, tension between the Arab League and Jewish forces gave way to war. On October 1st, 1948, Palestine organized a provisional assembly and cabinet and formally declared its independence.

PART THREE: PALESTINE IN THE WORLD COMMUNITY

Part Three of *Statehood* describes the Palestinian government’s actions and reception in the community of states after Britain’s withdrawal. Eighteen years after Britain’s mandate in Palestine ended, representatives from the Palestinian Arab communities formed the Palestine National Council (PNC) to represent Palestine Arabs living inside the territories and abroad. The PNC, a policy entity, formed the Palestine Liberation Organization (PLO) as the inceptive government entity for Palestine. In Part Three, Quigley places some emphasis on Palestine’s governmental components and their functioning despite other

4. *Id.* at 85.

5. *Id.* at 102.

governments' administrative control within the mandate-era Palestinian territory. However, Part Three primarily analyzes Palestine's status in the United Nations, the UN Security Council and other UN organs, the International Criminal Court, and other IGOs, and Palestine's reception by other states, including Israel. Quigley describes how the UN General Assembly condemned Israel's encroachment on Palestine in 1967 in Resolution 242, (which declared acquiring territory by force to be inappropriate⁶) and in 1970 resolved that respect for the "inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace."⁷ The General Assembly granted Palestine a right of reply in 1977, and with it, a right to co-sponsor draft resolutions.⁸ In 1974, the PLO received invitation to admission to UN meetings and in 1975 was invited to UN Security Council meetings in a status analogous to member states invited per Rule 37.⁹

Quigley describes a renewed vigor in Palestine's efforts to participate on the international field in 1989, and how these efforts were met with concern when the PLO Central Council named its first President, Yassir Arafat. Soon after Arafat's appointment, Palestine sought membership in the World Health Organization and UNESCO. Neither application received a final determination; both were postponed indefinitely in response to United States objections.¹⁰ In June of 1989, Switzerland received the PLO's ratification documents for the Geneva conventions of 1949. Several months later, Switzerland informed the PLO that, as a single country and depository for the convention, it was not able to independently determine the validity of Palestine's accession to the Geneva conventions.¹¹

Despite suffering delays and inaction on its applications to international organizations and treaties, Palestine continued to contribute in areas of regional and economic importance. In 1998, the UN General Assembly granted Palestine certain parliamentary privileges including the right to participate in debate on any topic, and inscription priority on the list of speakers before any observer.¹² By this time Palestine possessed full membership status in the Group of Asian States, the Economic and Social Commission for Western Asia, the League of Arab States, the Movement of Non-Aligned Countries, the Organization of the Islamic Conference, and the Group of 77 and China. In 1997, the EU and the PLO signed a trade agreement, and in 2009, the EU High Representative for

6. *Id.* at 135.

7. *Id.* at 137.

8. *Id.* at 146.

9. *Id.* at 142. Rule 37 permits invitations to the Security Council to any Member of the United Nations to participate in discussion, without vote, on matters in which the "interests of that Member are specially affected."

10. *Id.* at 167. It is interesting to note that the U.S. was not a member of UNESCO at this time.

11. *Id.* at 168.

12. *Id.* at 181.

foreign affairs called for the United Nations to admit Palestine to formal membership.¹³

Quigley's argues that by Palestine extensively engaging in, or seeking to engage in, international governing bodies establishes that the Palestinian government's functions as a state, and instances in which it has gained functional recognition as such. In the final Part, he shifts his focus from the functional statehood to the formal tests for statehood.

PART FOUR: THE CONTOURS OF STATEHOOD

Part Four opens with a discussion of the origins of the Montevideo criteria for statehood,¹⁴ and questions the applicability of the criteria to Palestine. These indicators of statehood, expressed in a regional Western Hemisphere treaty concluded in Montevideo, Uruguay in 1933, are: population, territory, capacity to enter into international relations, and control by governmental institutions.¹⁵ Qualifying his analysis with the explanation that these characteristics were not intended to be part of a global standard-setting for statehood, Quigley shows that Palestine exhibits each of the four characteristics. Quigley argues that in some instances, Palestine better satisfies a Montevideo criterion than countries with accepted statehood.

Quigley examines how occupation affects statehood, and asserts that statehood analysis should proceed in a manner acknowledging the fact of occupation.¹⁶ He also focuses on the role of formal and implied recognition in statehood, especially as it relates to self-determination. Observing that there is not consensus regarding an absolute number or percentage of countries in constituting a threshold for recognition of statehood, his focus remains on the U.S. and Israel, the two countries that have refused to admit Palestine to the United Nations. After noting even if international recognition of statehood could be measured by an international consensus, Palestine has already gained this consensus aside from the two outliers, the US and Israel.

The book concludes with a persuasive account of the consequences of Palestinian statehood, in the twentieth and final chapter. Palestine is a "curious" example of state formation, Quigley writes, as an "ancient land" that saw its modern statehood "devised around a conference table far from its shores."¹⁷ Quigley asserts that the contemporary consequences for Palestinian statehood are overwhelmingly positive. Recognition of statehood will contribute

13. *Id.* at 201.

14. *See id.*, at Chapter 16.

15. *Id.*

16. *Id.* at 220. Quigley writes that the idea that occupation does not give rise to sovereignty over the occupied territory gained currency in the 19th century.

17. *Id.* at 247.

constructively to the peace process with Israel¹⁸, and a favorable determination of Palestine's application to the United Nations as a full member state will enhance Palestine's diplomacy, human rights accountability, and liability for criminal acts in the International Court of Justice.¹⁹ When Palestine is accepted as a state, the author writes, its longstanding desire to participate in the Geneva conventions on warfare can be formalized, which will improve the well-being of the region and the world.²⁰ Upon full acceptance as a state, Palestine may also participate in the UNESCO World Heritage Convention and in that way help protect and preserve its cultural property.²¹

Quigley underscores that Palestine's statehood does not pre-commit any party to a particular outcome for peace in the Middle East.²² Instead, participation in the world community as a state will increase Palestine's accountability to international law, and reinforce (but not change) Israel's responsibilities under international law, including its treatment of refugees.

Quigley concludes that, despite a history of occupation and shared administration with other governments, Palestine is a state. He goes so far as to argue that Palestine has a pre-existing and stronger claim to statehood than does the modern state of Israel, and contends that Palestinian self-determination has been the foundation of its statehood.

THE WORK EXAMINED

Among the book's many successes, it has two minor shortcomings: the organization of the book and the treatment and examination of the role of the United States. Regarding the organizational structure of book, *Statehood* analyzes the history of Palestine and its place in the international community *before* discussing the criteria for statehood would include a discussion of statehood generally at the forefront, hence providing the reader with an understanding of the criteria for statehood before an examination of Palestine as a world actor. This would allow the reader to analyze Palestine's potential statehood while the author delved into the chronological examination of historical and contemporary evidentiary materials.

The second critique is that the author describes, but does not explicitly identify, the United States' obstruction of Palestinian statehood. Quigley shows that Palestine meets the criteria for statehood, but acknowledges that certain states have been reluctant to recognize Palestine. Somewhat unaddressed by the book is the U.S.'s sudden and complete change in stance regarding Palestinian

18. *Id.* at 249.

19. *Id.* at 250.

20. *Id.*

21. *Id.*

22. *Id.* at 251.

statehood, as well as how the U.S.'s exercise of powers of fisc and influence have hindered Palestinian self-determination.²³

Quigley remains focused on interpreting treaties, international declarations, and legal opinions expressed by international courts, national courts, and legal advisors. Thus, his analysis does not focus on or explain the unexpected change of the U.S. position regarding Palestinian statehood. The historical material makes clear, however, that the U.S., through Truman's unadvised blurt of congratulations to Israel in May 1947, undermined the peaceful transition to trusteeship or independence for Palestine upon the termination of the League's mandate relationship with Britain.

Thus, whether this is Quigley's aim or not, he shows that the U.S. has been a principal player in Palestine's history. The U.S. was instrumental in protecting Palestinian Arabs' right to self-determination and freedom in League of Nations. During Palestine's early history, the U.S.'s diplomatic stance tempered and sometimes opposed British-led declarations of a Jewish national homeland. The U.S. was also crucial in persuading Israel to retreat from its initiated violence in 1967. In contrast, the U.S. in recent decades has obstructed Palestine's admission to the UN, the WHO, and UNESCO. In 1990, the U.S. Congress passed the Foreign Relations Authorization Act, which prohibits U.S. dues or funding to any agency that "accords the Palestine Liberation Organization the same standing as member states."²⁴

That Quigley does not explicitly discuss the sustained but changed role of the United States is both a critique and a strength of *Statehood*. While his analysis does not get sidetracked from its interpretation of the legal, not political, basis of Palestine's statehood, a nimble reader can nonetheless note the role that politics played.²⁵

CONCLUSION

John Quigley's *The Statehood of Palestine* is an exhaustive inquiry into the evidence in support of and against Palestinian statehood. The book does not shirk from revealing regrettable historical facts and addresses opposing scholars

23. For example, the U.S. Foreign Relations Authorization Act adopted in 1990 prohibits any payments to any agency that gives the PLO member state standing. See Foreign Relations Authorization Act FY 1990 & 1991, Pub. L. No. 101-246, §414, 104 Stat. 15, 70 (1990). Recently, in Spring 2011, the United States exercised its Security Council veto over 14 other members in a resolution to condemn Israeli settlement encroachments on Palestine territory. See *U.S. Vetoes U.N. Resolution On Israeli Settlements*, ASSOCIATED PRESS, February 18, 2011 available at <http://www.cbsnews.com/stories/2011/02/18/501364/main20033476.shtml>.

24. QUIGLEY, *supra* note 2, at 170.

25. It is important to note that a previous book by the author addresses the issue of Palestine in relation to Israel, and hence the absence of explicit appraisal of Palestine-Israel relations in *Statehood* does not indicate the author's reluctance to grapple with the issue generally. See JOHN B. QUIGLEY, *PALESTINE AND ISRAEL: A CHALLENGE TO JUSTICE* (1990).

736 *BERKELEY JOURNAL OF INTERNATIONAL LAW* [Vol. 29:2

head-on, while remaining laudably focused on its examination of the legal facets of Palestinian statehood. Through this nuanced piece, Quigley appears to thoroughly rebut the historical and legal context put forth by opposing scholars. The author provides a substantial contribution to a timely area of debate, made especially interesting because *Statehood* incorporates newly available materials and new English translations of source documents.