

has formed the basis of action by the Security Council under Chapter VII of the UN Charter.⁹ In that respect, the author's position echoes comments by Orakhelashvili, who recently argued that:

[The UN Security Council's] entire approach [on the Iranian nuclear programme] is framed as a legal argument, which is then used to justify further action under Chapter VII. However, while treating alleged violations of the Nuclear Non-proliferation Treaty (NPT) as a cause of action, it is not certain that the Council adopted the proper standard of proof in ascertaining the existence of a breach of that Treaty, relying on presumptive concerns instead of established facts.¹⁰

It remains, however, that, at this stage, such debate, while crucial from the point of view of the international-law issues involved, remains unsettled, in so far as no international court or tribunal has been asked to adjudicate this controversy. Joyner points to the potential involvement of the ICJ in the settlement of disputes arising from allegations of non-compliance with safeguards commitments, as provided for in the IAEA Statute (p. 91).¹¹

To sum up, we hold that an understanding of the unsettled controversies surrounding interpretation of the NPT, and more generally of the balance between non-proliferation concerns and peaceful nuclear energy ambitions that the treaty's 'grand bargain' was supposed to achieve, absolutely requires the reading of Joyner's challenging work.

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John Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict*, New York, Cambridge University Press, 2010, 346 pp., ISBN-13 9780521151658, £17.99/\$27.99.

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'Never a dull moment in the Middle East', wrote Joseph Weiler last year in the *European Journal of International Law*,¹² referring to Palestine's UN membership application – and nothing illustrates the aptness of his remark better than the fact that there has already been a new development since then: Palestine's admission to the UNESCO as a member state. With Palestinian statehood once again in the limelight, one turns with anticipation to a book examining exactly this facet of the Arab–Israeli conflict.

John Quigley aims to demonstrate that Palestine became a state (albeit one without independence) in the mandate era and has retained its statehood ever since. To this end, the first three parts of his book follow through the history of

9 See UNSC Res. 1737 (2006), 1747 (2006), 1803 (2008), and 1929 (2010).

10 A. Orakhelashvili, *Collective Security* (2011), 25.

11 See IAEA Statute, Art. XVII. See also pp. 93–4 for a discussion of the jurisdiction of the ICJ to hear disputes arising under the NPT.

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12 J. H. H. Weiler, 'Editorial', (2011) 22 EJIL 621, at 623.

Palestinian statehood starting from the mandate era, through the establishment of the state of Israel, and what could be termed the 'PLO-era' leading up to today. The fourth and final section, in turn, focuses on factors considered relevant to statehood, such as the criteria for statehood as articulated in the 1933 Montevideo Convention, belligerent occupation, and recognition.

The premise of the book is already somewhat tenuous: attempting to bring the mandate status into conformity with a modern binary view of statehood is like trying to fit a square peg into a round hole. Nonetheless, in the interest of allowing what could turn out to be an interesting and unconventional argument to unfold, one is inclined not to dismiss this starting point. The strongest impression the reader gets about the book is that wherever the author looks, he seems to find evidence of Palestinian statehood. In addition, he does not provide any distinction based on probative value between all this perceived evidence of statehood. The result is that a few good arguments keep on alternating with a great number of significantly weaker ones. This severely detracts from the value of the stronger points and the overall argumentation.

In what is one of his strongest lines of argument, Quigley contends that, since the Ottoman Empire, none of the states exercising effective control over Palestine and later the occupied territories have had sovereignty over it (or at least not without giving priority to Palestinian claims) – while this territory cannot be considered *terra nullius*, either. He demonstrates that the United Kingdom had no sovereignty over mandate Palestine, in accordance with the 'no annexation' principle, which 'distinguished the mandate system from colonialism' (pp. 67–8). Regarding Egypt and Jordan after 1948, he points out that 'Egyptian legislation generally . . . did not apply to Gaza' (p. 128), which was governed separately, and the 1962 Constitution of Egypt provided that it 'shall continue to be observed in the Gaza Strip until a permanent constitution for the state of Palestine is issued' (cited at p. 118). Similarly, Jordan had only a provisional claim on the West Bank and east Jerusalem (p. 119), which it renounced in 1988 (p. 152). He notes that, after 1967, Israel did not formally attempt to annex the West Bank and the Gaza Strip, unlike east Jerusalem (p. 135), the annexation of which was declared invalid by the UN Security Council.¹³ At the same time, Quigley also argues that Palestine is not *terra nullius* (p. 77). While lack of sovereignty by the states exercising effective control on the one hand and lack of *terra nullius* status on the other is not necessarily conclusive evidence of statehood, it definitely provides food for thought. Other intriguing arguments include the League of Nations Covenant's reference to 'provisionally recognized' independence (p. 26) coupled with the continuation of rights acquired under the mandate system by virtue of Article 80 of the UN Charter (p. 88) and the continued existence of Palestinian nationality since the mandate era (pp. 54–8, 125–30).

For the most part, however, references abound to – mostly procedural – matters that can be deemed inconclusive evidence at best. These include the designation of agenda items in the United Nations (p. 122) or seating in the General Assembly

¹³ See, e.g., UN Doc. S/RES/252 (1968).

hall (p. 182), to name just a few. Moreover, even with regard to such inconclusive issues, the author often provides only partial information. For instance, he writes that, in 1948, the UN Security Council ‘made a finding “that the situation in Palestine constitutes a threat to the peace.” The wording “situation in Palestine” was based on an assumption that Palestine continued as a state’ (p. 107). What is not mentioned, however, is that, from 1967 onwards, the Security Council began referring to ‘the situation in the Near East’, later to ‘the situation in the Middle East’.¹⁴ By the same token, this could be considered evidence that the Council no longer regarded Palestine as a state – if it indeed ever did, considering the fact that the region itself has been called Palestine long before any question of statehood emerged.¹⁵ Similarly, the author suggests that, by allowing Palestine to participate in the proceedings of the *Wall* opinion, the International Court of Justice essentially acknowledged Palestinian statehood (p. 194). He states: ‘To demonstrate the status that the Court had found Palestine to enjoy, Judge Higgins [in her separate opinion] . . . said that the Court regarded Palestine as being “sufficiently an international entity to be invited to these proceedings”’ (p. 194). This, however, is not the entire quote. In the full quote, Judge Higgins argued that ‘Palestine cannot be sufficiently an international entity to be invited to these proceedings, and to benefit from humanitarian law, but not sufficiently an international entity for the prohibition of armed attack on others to be applicable’.¹⁶ The Court in fact held – in response to Israel’s argument that the construction of the wall was a measure of self-defence – that Article 51 of the UN Charter applies *between states* and did not find it applicable in this case.¹⁷ Judge Higgins was expressing her disagreement with this finding of the Court, but neither this fact, nor the majority opinion’s statement on this point, is mentioned in the book.

With every piece of such inconclusive evidence cited, what could otherwise be a thought-provoking argument about Palestinian statehood is undermined bit by bit; and with every such omission, the reader becomes more and more suspicious of what else is possibly left unmentioned.

Whatever the quality of evidence cited or the disconcerting effect of the omissions, there is one question that keeps on lingering in the reader’s mind: if Palestine became a state in the 1920s, why did the PLO declare a Palestinian state in 1988? Citing the declaration’s references to the League of Nations Covenant and the Treaty of Lausanne (the peace treaty with Turkey following the First World War), the author concludes that ‘[t]he Declaration was not proclaiming a new state, but reaffirming an existing state’ (p. 157). This is difficult to reconcile, however, with the wording of the declaration, which ‘proclaims . . . the establishment of the State of Palestine’ (cited at p. 154). This is a discrepancy in the argument that is not addressed and cannot even be explained by the distinction between ‘statehood’ and ‘independent statehood’, often used elsewhere in the book.

14 See, e.g., UN Doc. S/RES/233 (1967); UN Doc. S/RES/242 (1967).

15 See, e.g., W. McLeod, *The Geography of Palestine, or the Holy Land* (1858), 2.

16 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004 (hereafter ‘*Wall Opinion*’), Separate Opinion of Judge Higgins, [2004] ICJ Rep. 207, para. 34.

17 *Wall Opinion*, [2004] ICJ Rep. 136, para. 139.

Still, the question remains: what is the significance of linking Palestinian statehood back to mandate times, as opposed to 1988? The answer lies in the rules and factors relevant to determining statehood. If Palestine was already a state at the time of Israeli occupation in 1967, such belligerent occupation does not extinguish its statehood. Furthermore, the Montevideo criteria¹⁸ are usually cited in the context of the *creation* of states and, as demonstrated by Somalia, there is little evidence that, once established, states would need to continuously meet them. At most, these criteria will come into play once the occupation comes to an end. As this is arguably not the case, even with the Oslo Accords and Israel's disengagement from the Gaza Strip, it is particularly surprising that the final part of the book starts with a discussion of the Montevideo criteria. Even though Quigley rightly displays some wariness towards the criteria (pp. 206–7), he goes on to examine them one by one and comes to the conclusion that they are met, at least as they are applied in practice (p. 245). But if one operates under the notion that these criteria are the baseline, then – setting aside the issue of recognition for a moment, which is unquestionably politicized on both sides – all that Palestine needs to do is meet these criteria, regardless of any historical entitlement or previous existence as a state. Therefore, the assumption held throughout the book that Palestine has been a state since the mandate period becomes irrelevant.

Ultimately, the relevance of statehood lies not in its mere attainment, but in its consequences, both legal and otherwise. Accordingly, the author concludes with a brief look at the broader context and the bearing of Palestinian statehood on the Arab–Israeli conflict. Most importantly, he points out that it would level the playing field in negotiations with Israel – an insight echoed elsewhere regarding Palestine's UN membership application.¹⁹

Overall, the book has an interesting starting point that could have provided for a thought-provoking argument. But by trying too hard to demonstrate Palestinian statehood from every possible perspective – and, in the process, citing scores of inconsequential facts overshadowing the good arguments, often presenting evidence selectively, and showing inconsistency in his argument – the author actually falls short of achieving his aim. In the end, the reader will put down the book in precisely as much doubt as before regarding the perplexing issue of Palestinian statehood.

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18 Art. 1 of the Convention on the Rights and Duties of States, 26 December 1933, 165 LNTS 19.

19 See, e.g., K. Elgindy, 'Palestine Goes to the UN: Understanding the New Statehood Strategy', (2011) 90 FA 102, at 104.

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