As Peterson points out, the international regime envisaged by the Moon Agreement applies only to "exploitation," thus opening the door for surveying and prospecting activities (p. 162). She concludes this chapter by stating that "some members of the transnational community of international lawyers specializing in outer space issues worry that leaving the Moon Treaty in a shadowy existence will weaken the body of outer space law, but governments do not appear to share that view" (p. 171).

Like the other chapters, chapter 8 opens with a historical overview to provide the reader with a more precise and realistic context of the subject, here, the orbit-spectrum resource. This chapter uses predominantly a technical approach to describe this natural resource from space and the ways and means of using it in an orderly manner, be it under either *a priori* or *a posteriori* allocation. Peterson also considers the ITU and its World Administrative Radio Conferences, whose roles have been central to the exploration and use of outer space, particularly as far as orbits and positions are concerned. As to the ITU regulations on the orbit-spectrum resource, she concludes they are the "most elaborate and most heavily used international regime regarding space activity" (p. 212). Hence, this resource is perceived as an increasingly economic asset.

In chapter 9, the final chapter, the author returns to the controversial question of the *res nullius* and *res communis* approaches, generally applicable to areas to be used in common. In her view, these approaches should be inapplicable to airspace, the high seas, or Antarctica. It is surprising, however, to find no reference to the fact that the *res communis humanitatis* approach was originally suggested in a statement by the Argentine delegation before the Legal Subcommittee in June 1967, in the first session after the 1967 Space Treaty was opened for signature and before the Permanent Mission of Malta to the United Nations had sent in a note verbale on August 17, 1967, on the application of the common heritage idea to the seabed and ocean floor.[13] Hence, the paternity of the "common heritage" concept belongs to Argentine Ambassador Aldo Armando Cocca, permanent representative to COPUOS.[14] Thus, the Argentine delegation was the first to express the "common property" (*patrimonio común, patrimoine commun*) concept, one of the four pillars upon which the 1967 Space Treaty rested.

Situation definitions in outer space negotiations and their impact are also addressed in chapter 9. It includes the author's thoughts on the future of space treaties, evaluated in light of the international scenarios of 2005. She observes that governments appear less concerned at the moment, which may be reversed as space activities of private entities gain momentum.

In brief, the author has largely met the objective of this book, namely to give the reader an overall view of the *corpus juris spatialis*, which, like the final frontier itself, is still immense in scope and magnitude.

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The Statehood of Palestine: International Law in the Middle East Conflict. By John Quigley. Cambridge, New York: Cambridge University Press, 2010. Pp. xix, 326. Index. $95, cloth; $27.99, paper.

The statehood of Palestine is a question that has vexed a generation of international lawyers. Is Palestine a state? If so, when did it become a state? In 1922, when Palestine was constituted as a League of Nations mandate? In 1948, when the all-Gaza government first declared independence? In 1988, when the Palestine Liberation Organization (PLO) declared independence from exile in Algiers? Or is Palestine merely a self-determination unit that will only emerge as a state once it has achieved this status in peace negotiations with the

[13] Note Verbale from Arvid Pardo (Malta) to the Secretary-General, UN Doc. A/6695 (Aug. 18, 1967).

[14] If the publication archives at the Peace Palace in Geneva are examined, it becomes clear that the term "common heritage" was first used and explained in that context, corresponding to the inaugural session of June 19, 1967 at 3:15 pm. See UN Doc. A/AC.105/C.2/SR.75 (1967).

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government of Israel? If so, what is the significance of the recognition accorded to "the state of Palestine" by more than one hundred states? These are some of the questions that John Quigley, President's Club Professor in Law at The Ohio State University Moritz College of Law, addresses in this timely, important, and thought-provoking book.

Quigley's *Statehood of Palestine* is timely in light of the recognition accorded Palestine as a state by a score of Latin American states in recent months and in light of the upgrading of the Palestine General Delegations in Denmark, France, Ireland, Norway, Portugal, Spain, and the United Kingdom to diplomatic missions and embassies—a status normally reserved only for states. Riyad Al-Maliki, the Palestinian Authority Foreign Minister, announced that he expects some 150 countries will recognize a Palestinian state within the 1967 borders by September.[1] The book is also timely given that the prosecutor of the International Criminal Court (ICC) is still considering the status of an application lodged by Palestine under Article 12 of the Rome Statute, which requires that such applications be submitted by states. If Palestine is a state, then the prosecutor might have jurisdiction to examine allegations of war crimes and crimes against humanity during "Operation Cast Lead," a twenty-two-day military campaign on the Gaza Strip, which started on December 27, 2008, and involved aerial bombardment and the use of ground forces by Israel. In this regard, the UN fact-finding mission, established by the UN Human Rights Council (which produced the Goldstone Report) to examine allegations regarding serious breaches of international law during that conflict, called on the ICC prosecutor to make the required legal determination as to whether Palestine is a state for the purposes of the Rome Statute "as expeditiously as possible."[2] Thus, the central argument of Quigley's book, namely, that Palestine was and remains a state, is not a solely academic exercise, but an argument that, if widely accepted, could have serious international consequences for all those concerned: Israel, the Palestinian Authority, and Hamas.

Having authored two books and two dozen articles on the topic over a twenty-five-year period, Quigley is no stranger to the Palestine question.[3] Accordingly, he has acquired the necessary expertise and knowledge to address this complex and often controversial subject that many an international lawyer has avoided in case of inadvertently causing offense. *Statehood of Palestine* is structured in four parts, the first three written chronologically and totalling 202 pages, with the fourth—an analytical aspect—presented in 42 pages at the end. The book is very readable and is written in an engaging and argumentative style. Quigley's historical account is useful, although I part ways with his assessment of the legal implications of that account. Quigley seems to rely on the declarative theory of statehood to support his argument that Palestine is a state, although the constitutive theory should have also been considered in light of recent practice.

In part one, entitled "A New Type of State," Quigley clearly and succinctly argues that Palestine was a state in the mandate era. In support of this argument, he cites a wide range of authorities, including a dozen treaties concluded in the name of Palestine, cases on Palestinian nationality,[4] and the award in the Ottoman debt arbitration,[5] in which the sole arbitrator, in dividing the expenses of the former Ottoman Empire equally among the mandates established within its territory, referred to them as states. He also highlights the manner in which the Permanent Court of International Justice in the *Mavrommatis Jerusalem Concessions*

[1] Elior Levy, *PA: 150 States to Recognize Palestine by Sept.*, YNET NEWS, Mar. 3, 2011, *available at* http://www.ynetnews.com/articles/0,7340,L-4036984,00.html.

[2] Report of the United Nations Fact-Finding Mission on the Gaza Conflict on Human Rights in Palestine and Other Occupied Arab Territories, para. 1970, UN Doc. A/HRC/12.48 (Sept. 25, 2009).

[3] See JOHN QUIGLEY, PALESTINE AND ISRAEL: A CHALLENGE TO JUSTICE (1990); JOHN QUIGLEY, THE CASE FOR PALESTINE: AN INTERNATIONAL LAW PERSPECTIVE (2005).

[4] *See also* MUTAZ M. QAFISHEH, THE INTERNATIONAL LAW FOUNDATIONS OF PALESTINIAN NATIONALITY: A LEGAL EXAMINATION OF NATIONALITY IN PALESTINE UNDER BRITAIN'S RULE (2008).

[5] Ottoman Public Debt, 1 R.I.A.A. 529, 609–10 (Perm. Ct. Arb. 1925). (The arbitrator in this case was Professor Eugène Borel of the University of Geneva.)

case[6] referred to Palestine as a successor state with regards to Protocol XII, Article 9 of the Treaty of Lausanne.

Of particular interest is the controversy surrounding Britain's attempt to extend to its mandate over Palestine the favored trading status granted by various states to the British Empire. Britain faced opposition from the United States, Italy, and Spain, all of which argued that Palestine was not part of the British Empire and was therefore not entitled to benefit from the preferential trade tariff. Quigley cites an opinion of the United Kingdom law officers, who argued that Palestine was not part of the Empire and was effectively a "foreign country," from which Quigley concludes that they must have regarded Palestine as a state (p. 64).

Having concluded that Palestine was a state in the League of Nations era, Quigley describes in part two, entitled "Statehood in Turmoil," what happened to Palestinian statehood on the establishment of the state of Israel and the assumption of control by Jordan and Egypt of the West Bank and Gaza respectively after 1948. He argues that Palestinian statehood subsisted throughout this period and that no sovereignty vacuum existed when Britain withdrew its administration on May 15, 1948. Rather, the Arab League "regarded Palestine as a state, but one that was suffering a vacuum in governance, since Britain was departing with no administrative structure in place" (p. 106). The Arab League then assumed an ancillary role in preserving Palestine statehood. Quigley explains that Egypt never claimed sovereignty over Gaza and that Jordan's claim to the West Bank as sovereign was only provisional and without prejudice to the self-determination of the Palestinians. In furtherance of his argument that a Palestinian state already existed prior to 1948—and afterwards—Quigley refers to the Baltic states as a precedent and explains that "States whose territory is occupied, even annexed, may continue in existence as States for long periods of time" (p. 124). In other words, Jordan's annexation of the West Bank and Egypt's administration of Gaza, both until 1967, and, Israel's occupation since then of the West Bank, including East Jerusalem, and the Gaza Strip have not extinguished the existence of the Palestinian state.

In part three, entitled "Palestine in the World Community," Quigley addresses the debates over the status of the PLO during decolonization and includes quite significant and often overlooked documentation. I found this part of the book to be most useful, particularly the author's description of the treatment of the PLO and Palestine in UN discussions. As Quigley observes, with regards to numerous UN debates, the PLO was given "extraordinary access for an entity that was not a member state" (p. 140). In addition to the PLO's role at the General Assembly, Quigley includes useful accounts of the rights granted to the PLO in the Security Council and the PLO's admission to a number of international organizations including the Arab League, the Organization for the Islamic Conference, and the Economic and Social Commission for Western Asia.[7] Quigley also addresses the 1988 Declaration of Independence and the controversy over the failure of Palestine in 1989 to ratify the Geneva Conventions. The failure of Palestine to be admitted to the World Health Organization (WHO) and the UN Economic, Social and Cultural Organization (UNESCO) is attributed to U.S. threats to cut funding to those organizations, rather than a conviction that Palestine did not constitute a state, an issue that both WHO and UNESCO avoided directly addressing, thereby leaving the question open.

Quigley leaves the most analytical and thought-provoking aspects of his book to part four, "The Contours of Statehood." It is here that he advances the case for Palestinian statehood with a sharp critique of the criteria set out in the Montevideo Convention on the Rights and Duties of States.[8] Although Quigley persuasively demonstrates that Palestine presently satisfies all the conditions inscribed in Article 1 of that Convention—that is,

[6] Mavrommatis Jerusalem Concessions (UK v. Greece), 1925 PCIJ (ser. A) No. 5, at 31–32 (Mar. 26).

[7] Palestine is also a member of the Non-Aligned Movement, the Group of 77, the International Federation of the Red Cross and the Red Crescent Societies, and the International Trade Union Confederation.

[8] Convention on the Rights and Duties of States, Dec. 26, 1933, 165 LNTS 19, *reprinted in* 28 AJIL. SUPP. 75 (1934).

a permanent population, a defined territory, government, and the capacity to enter into relations with other states—he is critical of those scholars who add an additional element, namely the criterion of independence, which he claims is not mentioned in the Montevideo Convention.

He explains that one of the aims of the Montevideo Convention is "to make clear that a state could exist apart from recognition" (p. 207). Quigley quotes Article 3 of the Montevideo Convention to support this proposition but fails to point out that apart from the question of recognition, a state must first have a political existence and, second, be independent. Article 3 provides: "The political *existence* of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity *and independence*. . . ."[9] If one accepts Quigley's argument that Palestine was a state in the mandate era, this status would satisfy only the existential requirement but not the requirement of independence.

On the additional criterion of independence, Quigley is particularly critical of an article that James Crawford published on Palestinian statehood in 1999,[10] updated in the second edition of *The Creation of States in International Law*.[11] For Crawford, statehood and independence are linked,[12] whereas Quigley believes that a state can exist even if it is not independent (pp. 6–8). Crawford argues that a state's independence embodies the existence of an organized community on a particular territory, the exclusive or substantial exercising of self-governing power, and the absence of the exercise by another state and of the right of another state to exercise self-governing powers over that territory.[13]

This view clashes with Quigley's central argument, that Palestine has been a state since the mandate era, albeit a state without independence. As Quigley maintains, "[t]he states of the era had no difficulty separating the concept of statehood from that of independence" (p. 79). In reaching this conclusion, Quigley criticizes a 2005 decision by a U.S. federal circuit court charged with determining if Palestine was entitled to state immunity.[14] The court, relying in part on Crawford's analysis of Palestinian statehood, concluded that Palestine was not a state, a decision that Quigley disputes because "it misread the state practice of the period" (p. 76). In his opinion, "the international community as a whole, continued to deal with Palestine as a state after 1948" on the basis that "UN Charter Article 80 . . . called for the preservation of rights of states and people under mandate arrangements" (p. 122). His argument is that since a Palestine state had been provisionally recognized as independent by League Covenant Article 22(4), "it held rights" (*id.*).

Quigley's view that Palestine was a state in the League of Nations era is difficult to sustain, however. It places Quigley in direct conflict with the prevailing view of statehood in the interwar years in which sovereignty—a key element of statehood—was described as the right to exercise in a territory the functions of a state to the exclusion of any other state, with no authority over the state other than that of international law.[15] If statehood is to have any meaning, then the entity that claims to be a state ought to be sovereign. A "sovereignless" state lacking independence is scarcely worthy of being called a state for it would be tantamount to a dependency or a colony. Indeed, the very distinction between a colony and a state seems to be that the former lacks sovereignty and independence, which are attributes associated only with the latter. Moreover, the report of the International Committee of Jurists in the *Aaland Islands* case said in its assessment of the Finnish claim to statehood that a "definitely constituted sovereign state" could only come into existence when "the

[9] *Id.,* Art. 3 (emphasis added).

[10] James Crawford, *Israel (1948–1949) and Palestine (1998–1999): Two Studies in the Creation of States*, *in* THE REALITY OF INTERNATIONAL LAW: ESSAYS IN HONOUR OF IAN BROWNLIE 95 (Guy S. Goodwin-Gill and Stefan Talmon eds., 1999).

[11] See JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 421–48 (2d ed. 2006).

[12] On the criterion of independence, see *id.* at 62–89, 437–38.

[13] *Id.* at 437.

[14] Ungar v. Palestine Liberation Organization, 402 F.3d 274 (1st Cir. 2005).

[15] Island of Palmas (Neth./U.S.), 2 R.I.A.A. 829 (Perm. Ct. Arb. 1928).

public authorities [of the state] had become strong enough to assert themselves throughout the territories of the state without the assistance of foreign troops."[16] For Palestine, this analogy would be inapplicable, given that British troops maintained law and order there from 1917 to 1948, and consequently it would be difficult to view Palestine as a state in this period. Although the view expressed in the *Aaland Islands* case is very strict and would not necessarily apply today, it is an accurate indicator from an authoritative source of the conception of statehood around the time that the Palestine mandate was established.

Thus, prior to their independence, the mandates were not states. Rather, they were colonies of a special kind, that is, a halfway house between a colony and an independent state: they were in a process of transition. For this reason, it would be incorrect to use the word "state" to refer to the Palestine mandate even if it possessed many of the attributes of a state. For instance, it is doubtful whether the protected states of Bahrain, Kuwait, Qatar, and the Trucial states of Oman, were states in the colonial era because, despite their location outside of the Empire, the express use of "state" in each instance, and references to them as "foreign countries," not one of them was independent.[17] Nor is Quigley on strong ground when he argues that the term "nation" is synonymous with "state," despite the point he makes about the League of Nations being an association of states. After all, India was a member of the League, and yet it did not become a state until it had attained independence in 1947. The term "nation" was often used to express the national identity of a community that might eventually form a state.

In several places in *Statehood of Palestine*, Quigley invokes Article 80(1) of the UN Charter to support his argument regarding the continuity of the state of Palestine after the mandate had been dissolved in 1948. Quigley argues that Article 80(1) maintained the rights of the population of Palestine under the mandate and thus was tantamount to preserving Palestinian statehood. This provision states that "nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties."[18]

Even if, for argument's sake, one agreed that a Palestine state existed during the mandate period, which amounted to an existing right that was subsequently preserved by Article 80(1), caution should nonetheless be exercised when invoking it. This is because invocations of Article 80 in past scholarship have led to considerable mischief. In particular, this mischief has arisen because of the policy enunciated in the Balfour Declaration, which complicated the normal operation of an A-class mandate, i.e., the orderly progression of a community towards eventual independence. This complication arose through altering the demographic and ethnic composition of Palestine by providing for Jewish colonization and Jewish settlement of Palestine, subject to the clauses safeguarding the civil and religious rights of the native Arab majority and the rights of those Jews who chose not to immigrate to Palestine. Although Quigley is clearly not arguing in favor of the continued colonization of the West Bank, by construing Article 80 to mean that the mandate is still valid to support his argument regarding the continuity of the state of Palestine, he risks opening a Pandora's box by giving credence to those who argue in favor of the continued colonization of Palestinian land on the basis that the mandate is still in force. Indeed, in an article published in the 1970s, the former dean of Yale Law School selectively invoked the Balfour Declaration (without mentioning the safeguard clauses or the context in which that Declaration was drafted) in the Palestine mandate as well as Article 80 to argue for the continued right of Jews to settle in all of mandatory Palestine (that is, including the West Bank

[16] Report of the International Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question, LEAGUE OF NATIONS O.J. Spec. Supp. 3, 8–9 (1920).

[17] See CRAWFORD, *supra* note 11, at 291–92.

[18] Quigley is correct to conclude that Article 80 covered mandates, although it might have been prudent for him to refer to the *travaux préparatoires* to buttress his argument. See 10 UNCIO Docs. 477 (1945).

and the Gaza Strip).[19] He advanced this argument despite the clear prohibition of population transfers both in the context of occupied territory by Article 49(6) of the Fourth Geneva Convention and in customary international law, which prohibits colonialism.[20]

What Quigley might be suggesting is that the spirit of the League's "sacred trust" and self-determination still live on in the form of the UN Charter with the General Assembly mandated to assist the Palestinians with their quest for statehood. Yet, those provisions requiring a violation of Palestinian self-determination—such as continued Jewish settlement in East Jerusalem and the West Bank, i.e., inside the Palestinian self-determination unit as opposed to settling Jews inside Israel—would be contrary to *jus cogens* and, accordingly, would no longer be applicable. If this is what Quigley means, then he should have articulated this argument more clearly. Whatever the case may be, it is clear that today Israel's continued policy of transferring its population into the West Bank and building settlements there, including in and around East Jerusalem, adversely affects the Palestinian people's right of self-determination that they desire to exercise in the form of an independent state. As the International Court of Justice (ICJ) concluded in its *Wall* opinion, Israel's wall and its associated regime of settlements and their means of access created a *fait accompli* on the ground that could well become permanent, in which case it would be "tantamount to annexation."[21] Accordingly, the wall as well as its associated regime "severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right."[22] In this connection, the ICJ added and affirmed that self-determination was an obligation *erga omnes*.[23]

In the interwar years, the Palestinian Arab majority never recognized the Balfour Declaration and the mandate as lawful instruments on the basis that they were in conflict with Article 22 of the League of Nations Covenant and the principle of self-determination, which the Palestinian Arabs and those peoples struggling against colonialism understood to amount to majority rule. According to their interpretation of the Covenant, a view that Quigley endorses, Palestine had been provisionally recognized as a nation, which after a period of tutelage by the mandatory power was to attain independence as a separate state. In support of this argument, Quigley points out that all the other A-class mandates became independent states: Iraq in 1932, Jordan in 1946, Lebanon in 1941, and Syria in 1943 (p. 83). However, in Palestine, the mandate, subject to the safeguard clauses, favored the rights of the minority Jewish population and those who were to immigrate there to establish a Jewish homeland.[24] This preference for establishing a Jewish homeland in Palestine did not, however, mean that the Arab population of Palestine were not entitled to self-determination as well. Their right to self-determination in Palestine was recognized on several occasions including in Britain's 1937 Peel Partition Plan (in union with Transjordan), Britain's 1939 White Paper, and the United Nations' 1947 Partition Plan, as well as by the United States when it drafted a trusteeship plan as an alternative to partition in 1948.[25]

Britain terminated the mandate at midnight on May 15, 1948, when it withdrew its administration. Article 80 only applies to "the terms of *existing* international instruments to which Members

[19] *See, e.g.*, Eugene V. Rostow, *"Palestinian Self-Determination": Possible Futures for Unallocated Territories of the Palestine Mandate*, 5 YALE STUD. WORLD PUB. ORD. 147, 154–62 (1979).

[20] See Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res. 1514 (XV) (Dec. 14, 1960).

[21] See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ Rep. 136, 184, para. 121 (July 9).

[22] *Id.* at 184, para. 122.

[23] *Id.* at 199, paras. 155–56.

[24] See VICTOR KATTAN, FROM COEXISTENCE TO CONQUEST: INTERNATIONAL LAW AND THE ORIGINS OF THE ARAB-ISRAELI CONFLICT 1891–1949 (2009).

[25] For the political debate surrounding the trusteeship decision see MICHAEL J. COHEN, PALESTINE AND THE GREAT POWERS 1945–1948, at 345–90 (1982). The U.S. Trusteeship Plan for Palestine was drafted by Philip Jessup. See PHILIP C. JESSUP, THE BIRTH OF NATIONS 268–72 (1974).

of the United Nations may respectively be parties."[26] While the mandate was still functioning when the UN Charter entered into force in 1945, its operation ceased when the mandate was terminated three years later.[27] According to one of the commentaries to the UN Charter, Article 80 only applies to mandates for the period between the dissolution of the League on April 19, 1946, and the coming into force of the trusteeship agreements.[28] Although there was a proposal to establish a UN trusteeship for Palestine, the force of circumstances on the ground prevented it from being implemented.[29] It may therefore be questioned whether Article 80 continues to apply today because, irrespective of the question of self-determination that would preclude the policy of population transfer as articulated in the Balfour Declaration, the international instrument to which the United Kingdom and the League of Nations had been parties (i.e., the mandate) is no longer in force.

As a result of the current political impasse and the stalling of negotiations to provide the foundations for a Palestinian state, the Palestinian Authority is pursuing a unilateral policy, which explains the spate of state recognitions emanating from Latin America. In light of the constitutive theory of recognition, it could be said that a Palestinian state exists. But it would exist only in the eyes of those states that have accorded recognition to Palestine. It would not apply to those states that refuse to recognize Palestine as a state, such as Israel, the United States, and the European Union (EU). Indeed, while many EU member states have diplomatic relations with the Palestinian Authority, especially those from the former Eastern bloc that had recognized Palestine prior to their membership of the EU, most EU members have not yet accorded Palestine recognition as a state. Current EU policy, as explained by the European Council most recently, underlines its "readiness, when appropriate, to recognize a Palestinian state."[30]

Recognition is undoubtedly a political act. However, one need not necessarily agree with the opinion expressed by the Badinter Commission that "the effects of recognition by other states are purely declaratory."[31] Recognition can have practical political and legal consequences through the establishment of embassies, exchange of diplomatic representatives, granting of diplomatic immunity, exercise of diplomatic protection, and negotiation and ratification of treaties. Therefore, if the current wave of diplomatic recognition of the state of Palestine continues and if the EU decides to afford Palestine recognition as a state at some future date, it would appear incongruous to hold steadfast to the position that Palestine is not a state. At the time of writing this review, twenty-two members of the EU recognize Kosovo[32] as a state even though its sovereignty is contested by Serbia and even though it is an internationally administered territory, which is precisely the converse of the situation in Palestine. In the latter case, the Palestinian Authority exercises substantial self-governing powers on its own merits without outside assistance. Moreover, Israel and Jordan no longer claim sovereignty. Arguably, Palestine is being treated unfairly when the United States and the EU demand conditions of it that they do not expect of other entities seeking statehood.

Quigley's book is at its best when he argues that developments in recent years have shown that Palestine exercises self-governing power in its territory and that the criteria of independence and those expressed in the Montevideo Convention are not always fulfilled when state practice is examined. Quigley cites, as authorities, the then Soviet satellite states of Belorussia (now Belarus) and the Ukraine in the immediate aftermath of World

[26] UN Charter Art. 80(1) (emphasis added).

[27] See UN Palestine Commission: Restricted Communication Received from the UK Delegation (J. Fletcher-Cooke) Concerning the Date of the Termination of the Mandate, UN Doc. A/AC.21/UK.142 (May 12, 1948).

[28] 2 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 1121 (Bruno Simma ed., 2002).

[29] UN Doc. A/C.1/277 (Apr. 20, 1948).

[30] See Council of the European Union Press Release No. 17835/10, at 14, para. 5 (Dec. 13, 2010), *at* http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/118456.pdf.

[31] European Community Declaration on Yugoslavia and on the Guidelines on the Recognition of New States, Opinion No. 1, 92 ILR 162 (1991), 31 ILM 1494, 1495 (1992).

[32] An updated list is available online at http://www.kosovothanksyou.com/.

War II; Bosnia, which was admitted as UN member despite lacking control over its territory or independence; the tiny principality of Monaco with its 1.95 square kilometers and 5000 citizens, which is widely recognized as a state even though France determines its domestic and foreign policy as provided by the 1918 and 1930 treaties; the U.S.-federated Marshall Islands, Micronesia, and Palau, which are all UN Members even though, according to the 1986 Compact of Free Association, the United States has "full authority and responsibility for security and defense matters" (pp. 240–42); New Zealand's Cook Islands and Niue with populations of 18,999 and 1,600 respectively, which are members of UNESCO, WHO, and UN Food and Agriculture Organization (FAO), even though they lack a permanent population since their inhabitants are citizens of New Zealand; and finally, Namibia, which, as the former mandate of South West Africa, has particular resonance for Palestine. Namibia was treated as a state even when it lacked independence, given that its territory was under South African military and political control.

This aspect of Quigley's argument is thought-provoking, even if one does not accept the central argument advanced in his book that Palestine has been a state since the League era. Indeed, the examples highlighted by Quigley give credence to the constitutive theory of recognition long thought to have lain dormant by international lawyers but which has made a comeback in the last two decades. In light of the foregoing, Palestine seems to be an example of a political entity that (a) fits the constitutive theory of recognition regarding those states that have accorded Palestine explicit recognition as a state and (b) satisfies all the criteria mentioned in the Montevideo Convention, with the exception of the additional criterion of independence mentioned by Crawford.

However, in light of the examples that Quigley mentions, Palestine's lack of independence should arguably not preclude it from being considered a state today. As Quigley astutely observes, few states can claim to be completely sovereign and independent in contemporary international relations. Perhaps it all comes down to how one understands the notion of independence. In this regard, Crawford's definition of independence may be unduly strict. It will be recalled that Phase II of the 2003 Performance-Based Roadmap Towards a Permanent Two-State Solution to the Israel-Palestine Conflict, prepared by the Quartet[33] and endorsed by the Security Council,[34] calls for "creating an independent Palestinian state with provisional borders and attributes of sovereignty, based on the new constitution, as a way station to a permanent status settlement."[35] As part of Phase II (June–December 2003), Quartet members were supposed to "promote international recognition of Palestinian state, including possible UN membership."[36] The Quartet envisaged that a Palestinian state could be established prior to the conclusion of final status negotiations with Israel. In other words, it was accepted that the Palestinian Authority need not wait until Israel had agreed to completely withdraw from the territory before asserting its claim to statehood with provisional borders and attributes of sovereignty by seeking recognition and UN membership. Thus one might argue that the criterion of independence is not absolute and may in certain circumstances be relaxed where the exigencies of the situation so require.

In this connection, Quigley explains that in addition to Palestine having established diplomatic relations with over one hundred countries, the last decade has seen some significant political and legal developments in Palestine that point the way to statehood. These developments include the functioning of effective government in the West Bank and Gaza, with a president, prime minister, cabinet, attorney general, and legislative council whose members were first chosen in a general election held in January 1996, with the executive branch overseeing a civil service employing tens of thousands. Since 1994, Palestinian legislation and executive decrees have been published annually in

[33] The United States, the European Union, the United Nations, and Russia comprise the "Quartet."

[34] SC Res. 1515, para. 1 (Nov. 19, 2003).

[35] See U.S. Dep't of State Press Release, Roadmap to Solution of Israeli-Palestinian Conflict (Apr. 30, 2003), *at* http://www.america.gov/st/washfile-english/2003/April/20030430134837relhcie0.3930475.html.

[36] *Id.*

Arabic in an official gazette, courts of first instance and appellate courts have been established, and the Palestinian Authority High Court functions when necessary as a constitutional court. Palestine has its own central bank, its own internet naming authority, and its own national internet domain name (.ps).

Although, since 2006, Hamas has been in control of the administration, economy, and armed forces of Gaza, where it has many of the powers that the Palestinian Authority exercises in the West Bank, Quigley argues—referring to the examples of Korea, Vietnam, and Yemen—that a divided administrative authority "is not relevant to the governance criterion for statehood" and does not negate statehood (p. 216).

In the absence of a negotiated resolution of the Israel-Palestine conflict before a unilateral assertion of statehood by the Palestinian Authority in September and the recognition of Palestine as a state by other countries, many areas of contention—borders, the status of Jerusalem, the refugee problem, and the settlements—are likely to remain unresolved. In this regard, the establishment of an independent and sovereign Palestinian state will accord Palestine some semblance of sovereign equality with Israel on the international legal plane that will level the playing field in any future negotiations, at least on paper. It will also present the Palestinians with more opportunities to have recourse to international, regional, and municipal courts and tribunals, to become party to the ICC, and to accede to human rights treaties, among others, to become a member of additional international organizations, including the United Nations, to assert its right to diplomatic immunity, and to claim POW status for its fighters, which may cause Israel consternation in the short term. It will also allow "Palestine" to argue that Israel must desist from further settlement construction as a breach of its sovereignty, territorial integrity, and political independence, and to ask those who inhabit the settlements to either move to Israel (and be compensated by Israel) or agree to live as equal citizens of the state of Palestine.

If past practice is to prove any indicator of future policy, the United States is unlikely to recognize the state of Palestine, most likely due to Congressional opposition.[37] And yet it would be unfortunate if, in light of the current clamor for democracy in the Middle East, the United States associated itself with efforts to thwart the birth of a Palestinian state either by lobbying other states not to recognize Palestine or by preventing Palestine from becoming a member of the United Nations.

In making the case that the state of Palestine already exists, Quigley has advanced an argument that deserves serious consideration, even if one does not agree with all of his conclusions. Overall, Quigley's book is an informative and engaging read. It is packed with information from primary and secondary sources and contains many intriguing insights into the origins of the Palestine controversy from the mandate days to the present. In this regard, I would encourage all those with an interest in the legal aspects of the debate on the statehood of Palestine and its almost one-hundred-year struggle for independence to read *Statehood of Palestine*.

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[37] See Natasha Mozgovaya, *U.S. House Opposes Unilateral Declaration of Palestinian State*, HAARETZ, Dec. 8, 2010, *available at* http://www.haaretz.com/news/diplomacy-defense/u-s-house-opposes-unilateral-declaration-of-palestinian-state-1.330922.