Palestine as a territorial entity has experienced a curious history. Until World War I, Palestine was part of the sprawling Ottoman Empire. After the war, Palestine came under the administration of Great Britain by an arrangement with the League of Nations. In 1948, Israel established itself in part of Palestine’s territory, and Egypt and Jordan assumed administration of the remainder. By 1967, Israel took control of the sectors administered by Egypt and Jordan, and by 1988, Palestine reasserted itself as a state. Recent years have seen the international community acknowledging Palestinian statehood as it promotes the goal of two independent states, Israel and Palestine, coexisting peacefully. This book draws on the League of Nations arrangements to show that Palestine was constituted as a state by 1924. Palestine remained a state after 1948, even as its territory underwent permutation. This book provides a detailed account of contemporary international interaction with Palestine to show that Palestine is recognized as a state today.

John Quigley is the President’s Club Professor in Law at the Moritz College of Law at The Ohio State University. After earning his A.B., LL.B., and M.A. degrees at Harvard University, he was a research associate at Harvard Law School. He has written extensively in international law, in particular, on the Arab-Israeli conflict.
The Statehood of Palestine

INTERNATIONAL LAW IN THE MIDDLE EAST CONFLICT

John Quigley
Moritz College of Law
The Ohio State University
This book is dedicated to

Ian Brownlie

(1932–2010)

In appreciation for his encouragement of my work
In respect for his contributions to international law
In sadness over his untimely passing
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Two states living peacefully side by side is said to be the appropriate solution for the Israeli-Palestinian conflict. The major powers repeat this formula to the point that it has become a mantra. As regards Palestine, the meaning of this formula varies according to the speaker. Some assume that Palestine is not yet a state but should become one, when and if agreement is reached with Israel. Others assume that Palestine is already a state. For them, “two states side by side” is shorthand for a call on Israel to leave the Palestine territory it has occupied since 1967.

The identity and character of Palestine have long been an enigma. After World War I, Palestine became one of a number of experimental international entities. A generation later it was rent by conflict as two separate communities fought over it. Then Palestine came apart under three separate foci of control. As the twentieth century neared its end, an effort was made to put some of Palestine back together.

What Palestine was through these permutations is far from obvious. The ambiguity over Palestine’s status, in light of its less than ordinary creation and its less than felicitous history, is what prompts the inquiry undertaken in this book. The solution to the puzzle of Palestine’s identity and status holds implications for resolving the intractable conflict between Israelis and Palestinians.

Not every reader will be persuaded by the book’s conclusion, which is that Palestine became, and remains, a state. At a minimum, it is the author’s hope that his examination of Palestine statehood will contribute to clarifying the analysis of the territorial component of the Israeli-Palestinian conundrum.

Columbus, Ohio
August 2010
Note on translations. Passages quoted in the text from sources published in languages other than English have been translated into English by the author.
Acknowledgments

The author’s work on this book was facilitated by a research grant at the Moritz College of Law of The Ohio State University and by the supportive research environment provided by the College. Three colleagues in particular at the College provided invaluable counsel. Professor Stanley K. Laughlin advised on microstates, Professor Amy Cohen provided direction to sources on colonialism, and Professor Annecoos Wiersema reviewed a draft of an article that preceded the book manuscript.

The author’s inquiry into Palestine’s status has required close examination of historical material that was not always readily available. A diligent contingent of research librarians at the College – Linda Poe, Melanie Oberlin, Katherine Hall, and Thomas Sneed – facilitated access to far-flung documents and, importantly, to unpublished documents recently digitized at the National Archives in London.

In a seminar course at the College on the Middle East Conflict, the author’s students helped him think through a number of issues. In particular, J.D. candidates Reem Aly and Nikki Swift produced thoughtful research papers on the status of Palestine. Critical assistance with Arabic-language sources was kindly provided by Lina Mounayer, B.A. in Law, Damascus, and an LL.M. candidate at the College. Expertise on computing software was ably provided by Jenny Pursell, Kyle Shutt, and Sharron Tucker of the College staff, and on graphics by Andrea Reinaker.

Attorney Anis F. Kassim, former Editor-in-Chief of the Palestine Yearbook of International Law, kindly consulted on the status of Palestine. Professor Stefan Talmon gave guidance on a number of legal issues, and Professor Susan Akram assisted on Arab League sources. The author is grateful for the opportunity to have presented a paper on the topic of this book at a United Nations conference in Geneva,
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Switzerland, in July 2009, and for feedback provided by participants in that conference.

The author appreciates the permission granted by the United Nations Cartographic Section to reprint three United Nations maps.

An intellectual debt must be acknowledged to the author’s three erstwhile roommates – Robert N. Cable, Daniel R. Pascale, and W. Haywood Burns, who – each in a different way – provided encouragement and inspiration to pursue issues that led eventually to the writing of this book. And a special acknowledgment is due to C. Robert Wells, instructor in English at the St. Louis Country Day School, who is always in my mind as I endeavor to commit my thoughts to writing by the standards of clarity that he demanded.
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Cases are cited in the style used by the particular institution. Abbreviations appearing in the citations are explained on the Abbreviations page.


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Ungar v. Palestine Liberation Organization, 402 F.3d 274 (1st Cir. 2005). 27, 76, 122, 213

Abbreviations

The following abbreviations are used in citations.

A Assembly. See GA (used in documents of General Assembly)
A/CN a commission of the General Assembly (United Nations)
A/PV Provisional Verbatim Record of a meeting of the General Assembly (United Nations)
C Committee (used in documents of committees of the General Assembly of the United Nations)
c. chapter, preceding number of statute book chapter, Acts of Parliament (United Kingdom)
CAB Cabinet (United Kingdom National Archives code for documents of the British Cabinet)
Cir. Circuit Court of Appeals (federal courts of the United States)
Cmd. Command Paper (United Kingdom, Parliamentary Paper)
CN Commission (of an organ of the United Nations)
C.P. Cabinet Paper, used in numbering of documents of the British Cabinet. In the numbers that follow “C.P.”, an enclosed two digit number is a year in the twentieth century. A non-enclosed number is the sequential number for the particular year.
Dist.Ct. District Court (first instance federal court in the United States)
E Economic. See ECOSOC (used in documents of ECOSOC)
ECOSOC Economic and Social Council (United Nations)
**Abbreviations**

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<th>Abbreviation</th>
<th>Description</th>
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<td>ECWA</td>
<td>Economic Commission for Western Asia (United Nations)</td>
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<td>E.D.</td>
<td>Eastern District (first instance federal court of the United States, located in a state that has more than one federal court district, where one such district is designated as “eastern”)</td>
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<td>ES</td>
<td>Emergency Special Session (of the General Assembly of the United Nations)</td>
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<td>ESCWA</td>
<td>Economic and Social Commission for Western Asia (United Nations)</td>
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<td>EWCA</td>
<td>Court of Appeal of England and Wales</td>
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<td>F.</td>
<td>Federal Reporter (reports of decisions of Court of Appeals, United States)</td>
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<td>FAO</td>
<td>Food and Agriculture Organization (United Nations)</td>
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<tr>
<td>FCA</td>
<td>Federal Court of Australia</td>
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<td>FCAFC</td>
<td>Federal Court of Australia Full Court</td>
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<td>F.C.R.</td>
<td>Federal Courts Reports (Canada)</td>
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<td>F.Supp.</td>
<td>Federal Supplement (reports of decisions of first instance federal courts, United States)</td>
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<td>GA</td>
<td>General Assembly (United Nations)</td>
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<tr>
<td>Geo. 5</td>
<td>George V, King, United Kingdom (used in citation to Acts of Parliament during his reign)</td>
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<tr>
<td>H.C.</td>
<td>High Court (Israel)</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>K.B.</td>
<td>King’s Bench (United Kingdom)</td>
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<tr>
<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
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<tr>
<td>P.D.</td>
<td>Piskei Din (Hebrew “rulings of law” – reports of decisions of the Supreme Court of Israel)</td>
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<tr>
<td>PV</td>
<td>Provisional Verbatim Record of a meeting (United Nations)</td>
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<td>LNTS</td>
<td>League of Nations Treaty Series</td>
</tr>
<tr>
<td>S</td>
<td>Security. See SC (used in documents of the Security Council)</td>
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<tr>
<td>SC</td>
<td>Security Council (United Nations)</td>
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<tr>
<td>S.D.</td>
<td>Southern District (first instance federal court of the United States, located in a state that has more than one federal court district, where one such district is designated as “southern”)</td>
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Abbreviations

SPC  Special Political Committee of the General Assembly (United Nations)
S/PV  Provisional Verbatim Record of a meeting of the Security Council (United Nations)
SR  Summary Record (of a meeting of a United Nations organ)
ST  Secretariat (used in documents of the Secretariat of the United Nations)
TIAS  Treaties and Other International Acts Series (United States)
UNESCO  United Nations Economic, Social and Cultural Organization
UNIDO  United Nations Industrial Development Organization
UNTS  United Nations Treaty Series
U.S.  United States Supreme Court (in reports of decisions)
WHA  World Health Assembly (policy-making body of WHO)
WHO  World Health Organization (United Nations)